

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No. 13-005378

Employee: Carmela McCurdy-Cade

Employer: Department of Corrections

Insurer: C A R O

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated June 23, 2015. The award and decision of Administrative Law Judge David L. Zerrer, issued June 23, 2015, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 8th day of October 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Carmela McCurdy-Cade Injury No. 13-005378

Dependents:

Employer: State of Missouri, Department of Corrections Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party:

Insurer: Central Accident Reporting Office (CARO)

Hearing Date: March 18, 2015/April 10, 2015 Checked by: DLZ

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: January 30, 2013
5. State location where accident occurred or occupational disease was contracted: Vandalia, Audrain County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was running when felt pop in knee
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Right knee
14. Nature and extent of any permanent disability: 20% of the right knee at the 160-week level
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$30,988.87

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$598.67
- 19. Weekly compensation rate: \$399.11
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: -0-

-0- weeks of temporary total disability (or temporary partial disability)

32 weeks of permanent partial disability from Employer-\$12,771.52

Mileage reimbursement of \$417.99

- 22. Second Injury Fund liability: Yes No Open

TOTAL: \$13,189.51 PLUS FUTURE MEDICAL TREATMENT

- 23. Future requirements awarded: As set out in this award.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Van Camp Law Firm

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carmela McCurdy-Cade

Injury No: 13-005378

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: State of Missouri, Department of Corrections

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party:

Insurer: Central Accident Reporting Office (CARO)

Checked by: DLZ

On the 18th day of March, 2015, the parties appeared before the undersigned Administrative Law Judge for final hearing. The Claimant appeared in person and by her attorney, Kevin Spear. The Employer appeared by its attorneys, Assistant Attorneys General Erin Smith and Brian Herman. The record was ordered to remain open until April 10, 2015, at 5 p.m.

The parties have stipulated to certain facts which are not at issue in this claim as follows, to wit: On or about the 30th day of January, 2013, the State of Missouri, Department of Corrections, was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully self-insured by and through the Central Accident Reporting Office (CARO); on the alleged injury date of January 30, 2013, Carmela McCurdy-Cade was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the parties agree that on or about January 30, 2013, Claimant sustained an accident, which arose out of the course of and scope of employment; the employment occurred in Audrain County, Missouri, and the parties agree that Audrain County, Missouri, is the proper venue for this hearing; the Claimant notified the Employer of the injury as required by Section 287.420; the Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident, Claimant's average weekly wage was \$598.67, sufficient to allow a

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compensation rate of \$399.11 for temporary total disability, permanent partial disability, and permanent total disability; no temporary disability benefits have been paid prior to the date of this hearing; the Employer has paid medical benefits in the amount of \$30,988.87 prior to the date of this hearing; Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award; the parties further agree that medical treatment mileage subject to reimbursement is 2,381.68 miles; the parties agree that Employer has paid medical mileage reimbursement of \$844.23 prior to the date of this hearing.

ISSUES

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

The nature and extent of any permanent disabilities?

What is proper mileage reimbursement rate?

What is the amount of medical mileage reimbursement due to Claimant?

DISCUSSION

A legal file was established for this hearing which consisted of the following documents, to wit: Report of Injury; Claim for Compensation, filed with the Division July 8, 2014; Employer's Answer to Claim for Compensation, filed with the Division July 24, 2014; Request for Final Hearing, filed with the Division December 18, 2014.

Carmela McCurdy-Cade, claimant herein, testified in her own behalf. Claimant testified that she is one and the same person as Carmela McCurdy, Carmela Cade, and Carmela McCurdy-Cade, and that she has been married to Henry Cade for one and one-half years at the date of the

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hearing. Claimant testified that she has been employed by the State of Missouri, Department of Corrections, Women's Eastern Reception, Diagnostic, and Correctional Center (WERDCC) for a period of 16 years. Claimant's current job classification is CO1, transportation officer, and that she has worked in that position for about three and one-half years. Claimant's job tasks involved maintaining safety in the institution, which involves bending, squatting, running, kneeling, and making rapid responses to situations at the prison.

Claimant testified that prior to working at her present position, she worked within the housing units which required more contact with the inmates and more walking than her current position.

Claimant testified that on January 30, 2013, she was standing in the area of the food hall when she was dispatched to a fight among inmates. Claimant stated that she began running toward where the incident was occurring when she felt her right knee "pop," causing immediate sharp stabbing pain. She stopped running and sat down. Claimant further stated that when her supervisor saw her sitting in the chair, he addressed Claimant's issues and that when Claimant stood up from the chair, she did not have feeling in her right leg.

Claimant testified that she was sent to Pike County Memorial Hospital where she was treated with X-rays, a knee wrap, and discharged on crutches. Claimant was referred to Dr. Henry for follow-up treatment. Dr. Henry prescribed a metal knee brace and physical therapy. Claimant stated that Dr. Henry released Claimant to full duty in April of 2013. Claimant testified that after her release from treatment she continued to have painful swelling and popping of the right knee. Claimant returned to Dr. Henry who ordered an MRI.

Claimant testified that after the MRI she was referred to Dr. Krause, an orthopedic surgeon. Claimant stated that Dr. Krause treated her with a second MRI and injections, which

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did not provide relief from right knee pain. Dr. Krause took Claimant to surgery in August 2013, after which Claimant received physical therapy and was released at maximum medical improvement on October 14, 2013.

Claimant testified that she currently continues to have pain in the right knee. She stated that on a good day her pain level would be about 3 on a scale of 0 to 10. After working all day, her knee burns and throbs and averages about 6 on a scale of 0 to 10. She further stated that on a bad day, her pain level increases to an 8 on a scale of 0 to 10. Claimant testified that she takes Tramadol every day for pain in her knee and that she still has some grinding and popping in her right knee.

Claimant testified that she now has a fear of running and thereby reinjuring her right knee. Claimant is on her feet for five to six hours in an eight-hour workday. She stated that after a full day of work, her knee swells up and that she requires more breaks during the day than prior to the date of her injury. Claimant testified that she does not complain of knee pain while at work because officers in her classification are expected to be able to perform their assigned job tasks.

Claimant testified that she has too much knee pain to work in her garden at home since the injury and, further, that she has difficulty getting down and up from the floor to play with her grandchildren because of her knee pain.

Claimant testified that she drives a 2007 Dodge Charger and that she pays for fuel, maintenance, equipment, insurance, license fees, interest, and property taxes on her car. She further testified that she was never told by anyone at the State of Missouri to use the state's "trip optimizer;" never told she could use a state vehicle to travel to and from medical treatment

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appointments; and never informed that travel to medical appointments was considered “official state business.”

On cross-examination Claimant admitted that she was released from Dr. Krause without restrictions. She further admitted that she never requested accommodations from Employer because officers “have to be able to do their job, there are no accommodations.”

Claimant admitted that she returned to full duty after her release from treatment and that she currently works from 10 a.m. to 6 p.m., five days per week. Claimant admitted that she is able to run but that she is afraid of reinjuring her knee. She also admitted that her knee feels better if she props the leg up and puts ice on her knee.

Claimant admitted that she owned her vehicle prior to the date of injury and that she paid operational expenses on the vehicle prior to the date of injury. She also admitted that she used the vehicle to travel to and from work and to go to the grocery store and other purposes.

Claimant admitted medical records which generally support the Claimant’s testimony with regard to the medical treatment received after her injury.

Claimant offered, and there was admitted into evidence, Exhibit 1, which included a letter report from Dr. Snyder, dated April 10, 2014; a report of Independent Medical Examination; a letter report dated October 29, 2014; and curriculum vitae of Dr. Snyder. The report of Independent Medical Examination indicates that Dr. Snyder took a history, reviewed certain medical records, and performed a physical examination of the Claimant. Dr. Snyder opined that Claimant suffered an injury on January 30, 2013; that Claimant’s right knee showed swelling with some tenderness over the medial femoral condyle along with patellofemoral crepitation. Dr. Snyder further opined that Claimant sustained an osteochondral lesion defect to

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the medial femoral condyle for which she underwent surgical procedure which included debridement and a micro fracture technique, as well as repair of flap tear to the articular cartilage.

Dr. Snyder also opined that Dr. Krause performed the necessary surgery to repair the damaged cartilage, but that the surgically repaired defect will not repair itself with normal cartilage and that it may cause Claimant to have symptomatic problems in the future including possible arthritis in the patellofemoral joints and in the medial femoral compartment.

In his letter report of April 10, 2014, Dr. Snyder opined that Claimant had achieved maximum medical improvement with regard to her right knee injury of January 30, 2013, and further, that Claimant had a permanent partial disability rating of 40% of the right knee.

Dr. John O. Krause testified on behalf of Employer by video deposition. He testified that he performed surgery on Claimant's right knee after a diagnosis of medial femoral osteochondral lesion and a cartilage injury to the back side of the kneecap. He stated that the lesion was five millimeters by five millimeters and that it was located on the non-weight bearing surface of the medial femoral condyle. Dr. Krause testified that he prescribed four weeks of physical therapy and that after the physical therapy was completed, he saw Claimant on October 14, 2013, at which time he noted that the incision was well healed, there was no fluid on the knee, and he released Claimant from treatment on that day.

Dr. Krause testified that he authored a report dated June 30, 2014, which is marked, offered, and admitted as Exhibit A. He testified that his report was with reference to a report which he had reviewed which was authored by Dr. Snyder. Dr. Krause testified that he did not agree with Dr. Snyder's opinion that osteochondral lesions usually progress to degenerative arthritis. He further testified that the chondroplasty performed would have some impact on the

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development of arthritis, but that Claimant did not suffer a full thickness cartilage loss in the patella so there would be a smaller impact than if a full thickness loss.

Dr. Krause testified, in response to a question concerning whether the Claimant would need further treatment because of this injury: "I think it's reasonable, not probable, that she would. There's a small chance, but it's likely she will never need further treatment regarding this lesion." He further testified on re-direct examination that he anticipated that Claimant would have no further problems with the knee and need no further treatment for this injury such as Synvisc injections, physical therapy, or other treatment.

On cross-examination, Dr. Krause admitted that he and Dr. Snyder agreed on methods of treatment and diagnosis, except he did not agree with Dr. Snyder that the injury occurred to a weight-bearing surface of the patella. He further admitted that part of the operative procedure was to shave down the cartilage, which causes Claimant to be missing part of the medial femoral condyle. He also admitted that he drilled out the cartilage to promote blood flow which forms scar cartilage known as fibro cartilage as opposed to hyaline cartilage being the normal cartilage. Dr. Krause admitted that the normal cartilage would never grow back after the operative procedure. He also admitted that Claimant's condition after the surgery could cause the fibro cartilage to rub against the patella at certain degrees of flexion.

Dr. Krause admitted that during the procedure he removed some of the cartilage from the back side of the patella by shaving some loose cartilage, which would be a permanent loss of some of the cartilage.

Dr. Krause admitted that there is a possibility that Claimant could develop arthritis and that she could need a knee replacement or additional treatment on her knee.

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Employer offered, and there was admitted without objection, Exhibit B, which sets out a rating report authored by Dr. Krause stating that Claimant sustained an 8% partial permanent disability at the level of the knee as result of a right medial femoral osteochondral lesion.

Cynthia Dixon testified on behalf of Employer. Ms. Dixon testified that she is employed by the State of Missouri, Office of Administration, in the position of fleet manager since 2002. She stated that her job duties consist of making policy, tracking the motor vehicle system for the state, overseeing the motor pool, and overseeing the maintenance facility.

Ms. Dixon testified that part of her duties were to prepare cost of operations of motor vehicles including fixed, as well as variable costs, including depreciation, fuel, maintenance, and repair. She indicated that variable costs consisted of gas usage, out-of-pocket expenses, and maintenance costs. Fixed costs consisted of expenses not based on mileage such as license, taxes, insurance, depreciation, and interest.

Ms. Dixon identified Exhibit D which is a chart showing the cost of fuel and maintenance, considered the out-of-pocket expenses for the year 2014. Ms. Dixon also identified Exhibit C which showed the allowance rate published by the Internal Revenue Service for medical travel, which was based on gas and oil expenses.

On cross-examination Ms. Dixon admitted that the state has an optimizer plan used by the Office of Administration to determine the least expensive form of transportation for state employees on official business for the state. She further admitted that the optimizer plan is not used for medical travel reimbursement for injured workers, and that injured state workers were not entitled to use the optimizer program.

Ms. Dixon admitted that the 37 cents per mile rate that she determined does not include any consideration for interest paid as part of operational expenses of a motor vehicle. She also

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admitted that the calculation for fuel cost on the state rate was based on vehicles within the state fleet, but injured workers would not be able to use a state fleet vehicle to travel from origin to the place of treatment selected by the employer, State of Missouri.

Ms. Dixon further admitted that the state would not reimburse an injured worker for medical treatment mileage if the mileage reimbursement request was filed on an official monthly reimbursement form.

FINDINGS OF FACT AND RULINGS OF LAW

Whether the Claimant sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

Claimant testified that she continues to have swelling in her right knee, particularly after working a full shift. Dr. Snyder opined that Claimant would need additional medical treatment as a result of the injury of January 20, 2013. His report of April 10, 2014, states that Claimant could need follow-up with physicians, medications such as non-steroidal anti-inflammatories, or Synvisc injections, as well as the possibility of a total knee replacement. Dr. Krause agreed with the opinion of Dr. Snyder that the cartilage damaged and lost from this injury would not rejuvenate itself, which results in a permanent fibrocartilage defect. He disagreed with Dr. Snyder's opinion that Claimant would develop arthritis in the area of the injury because the lesion on Claimant's right knee was not in the weight-bearing part of the knee. Dr. Krause further opined that Claimant would need no further medical treatment. However, Dr. Krause admitted on cross-examination that he has had to re-operate on knees in the past. He also admitted that it was possible that someone in Claimant's situation could require Synvisc

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injections, medications, physical therapy, and possibly that Claimant could require a total knee replacement.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that Claimant has sustained her burden of proof that there is a reasonable probability that Claimant will require future medical treatment to cure and relieve the Claimant of the effects of the injury of January 30, 2013.

Employer is hereby ordered to provide to Claimant such medical treatment as may be recommended from time to time by authorized physicians who opine that such future medical treatment is necessary to cure and relieve the effects of the injury of January 30, 2013.

I find this issue in favor of Claimant.

The nature and extent of any permanent disabilities?

Claimant testified credibly concerning the effect this injury has had on her ability to perform her job task. She testified that her knee swells after a day of work, but that she works through any pain in the performance of her duties because she is required to perform her functions in order to keep her job with the Department of Corrections.

Dr. Snyder opined that Claimant has a permanent disability of 40% of the right knee at the 160-week level. Dr. Krause opined that Claimant has a permanent disability of 8% of the right knee at the 160-week level.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that Claimant has suffered a permanent partial disability of 20% of the right knee at the 160-week level as a result of the injury of January 30, 2013. The parties stipulated that Claimant's compensation rate is \$399.11.

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Employer is hereby ordered to pay to Claimant the sum of \$12,771.52 as and for permanent partial disability benefits ($160 \text{ weeks} \times .20 = 32 \text{ weeks} \times \$399.11 = \$12,771.52$).

I find this issue in favor of Claimant.

What is the proper mileage reimbursement rate?

What is the amount of medical mileage reimbursement due to Claimant?

The parties have stipulated that medical treatment mileage subject to reimbursement is 2,381.68 miles. The parties further stipulated that the Employer has paid medical mileage reimbursement of \$844.23 prior to the date of this hearing. The dispute between the parties is the rate of reimbursement rather than the amount of mileage subject to reimbursement.

Claimant adduced evidence of mileage reimbursement miles of 2,674.4 miles set out in Exhibit 11. There is no evidence to explain the variance between the stipulation of the parties and the amount of miles listed in Exhibit 11, other than Exhibit 18. Claimant adduced evidence of a mileage reimbursement rate of \$.535 per mile as promulgated by the Division in Exhibit 14, which sets out the mileage reimbursement rate for the period July 1, 2013, through June 30, 2014, in form WC-110 (07/13). Claimant further adduced evidence of a mileage reimbursement rate of \$.525 per mile as promulgated by the Division in Exhibit 15, for the mileage reimbursement rate for the period July 1, 2012, through June 30, 2013, in form WC-110 (07/12). Claimant admitted into evidence Exhibits 16 and 17, which set out the maximum temporary total disability, permanent total disability, and permanent partial disability compensation rates, as well as the mileage allowance for travel expenses as of July 1, 2013, and July 1, 2012. Exhibits 16 and 17 were directed to Third Party Administrators, Self-Insured Employers, Self-Insured Trusts, and "other interested parties." Exhibit 18 sets out a compilation of mileage reimbursement for medical treatment which is similar but not the same as Exhibit 11. The total miles listed on

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Exhibit 18 are the same as the amount of the stipulation for mileage reimbursement, 2,381.68.

Exhibit 11 was not withdrawn on the record.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that the Claimant has sustained her burden of proof that the reasonable expense of operating a motor vehicle includes both the fixed, as well as the variable costs of owning and operating a motor vehicle. Employer's witness admitted that Claimant would not be allowed to use a state-owned vehicle to travel to medical treatment, nor would she be eligible to use the "trip optimizer" program of Employer in determining her reasonable cost to own and operate a motor vehicle.

I further find that the Division of Workers' Compensation has, on a yearly basis, determined and published a rate which the Division considers to be an amount of reasonable reimbursement for an injured worker to be reimbursed for travel to medical treatment. I find that the proper rate of mileage reimbursement for Claimant's travel expense for the period January 30, 2013, (the date of injury), to June 30, 2013, is \$.525 per mile. I further find that the proper rate of mileage reimbursement for Claimant's travel expense for the period July 1, 2013, through June 30, 2014, is \$.535 per mile. The parties stipulated that the number of miles eligible for reimbursement is 2,381.68. I further find that the discrepancy between the amounts set out in Exhibit 11 and Exhibit 18 should be resolved by applying the sum total of miles set out in Exhibit 18 allocated by the dates set out in Exhibit 18 in order to apply the proper applicable mileage rate to be used in calculating the amount of mileage reimbursement due to the Claimant. I further find that Claimant is entitled to reimbursement for 1,197.68 miles for the period January 30, 2013, to June 30, 2013. I further find that Claimant is entitled to reimbursement for 1,184 miles for the period July 1, 2013, to October 30, 2013. The parties have stipulated that

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Employer has paid mileage reimbursement in the amount of \$844.23 prior to the date of this hearing. I find that Employer is entitled to a credit for mileage reimbursement in the sum of \$844.23 to be applied against the total sum of mileage reimbursement due to Claimant.

Employer is hereby ordered to pay to Claimant for mileage reimbursement the sum of \$628.78, ($1,197.68 \times .525 = \628.78) as and for medical treatment mileage for the period January 30, 2013, until June 30, 2013. Employer is further ordered to pay to Claimant the sum of \$633.44 ($1,184 \times .535 = \633.44) as and for medical treatment mileage for the period July 1, 2013, until October 30, 2014, the last date for which Claimant seeks medical mileage reimbursement. The total amount of mileage reimbursement due to Claimant is \$1,262.22. Employer is hereby granted a credit against the total sum due to Claimant in the amount of \$844.23, as and for medical mileage reimbursement, resulting in an additional sum due to Claimant of \$417.99, which Employer is ordered to pay.

Claimant's attorney requests approval of an attorney fee of 25% of the amount of any award. Claimant's attorney's fee request is hereby approved. Claimant's attorney is awarded an attorney fee of 25% of the amount of this award. Claimant's attorney is granted a lien on the proceeds of this award unless and until the attorney fee shall have been paid in full.

Made by: _____
David L. Zerrer
Administrative Law Judge
Division of Workers' Compensation