

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

Injury No.: 92-027749

Employee: Jeff Meacheam
Employer: Ozark Periodical Distribution, Inc.
Insurer: Millers Mutual Insurance Association of Illinois
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: February 17, 1992
Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the associate administrative law judge dated November 30, 2005. The award and decision of Associate Administrative Law Judge Margaret Ellis Holden, issued November 30, 2005, is attached and incorporated by this reference.

The Commission further approves and affirms the associate 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 19th day of June 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

 NOT SITTING
William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Jeff Meacheam

Injury No. 92-027749

Dependents: N/A

Employer: Ozark Periodical Distribution, Inc.

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Insurer: Millers Mutual Insurance Association of Illinois

Hearing Date: 4/11/05

Checked by: MEH

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: 2/17/92
5. State location where accident occurred or occupational disease was contracted: GREENE COUNTY, MO
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:
WHILE MOVING A BOAT OUT OF THE WAY OF HIS WOODWORKING ACTIVITIES, A SECOND BOAT WAS PUSHED INTO HIS LEFT 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: BODY AS A WHOLE
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABLITY
14. Compensation paid to-date for temporary disability: \$27,558.42
16. Value necessary medical aid paid to date by employer/insurer? \$159,066.09

Employee: JEFF MEACHEAM

Injury No. 92-027749

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$285
19. Weekly compensation rate: \$190.01
20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: 0

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

206 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

22. Second Injury Fund liability: Yes No Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits:

Permanent total disability benefits from Second Injury Fund:
weekly differential (0) payable by SIF for 206 weeks, beginning 11/14/02
and 190.01, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: MEDICAL TREATMENT

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:

PATRICK PLATTER

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jeff Meacheam Injury No. 92-027749

Dependents: N/A

Employer: Ozark Periodical Distribution, Inc.

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Insurer: Millers Mutual Insurance Association of Illinois

Hearing Date: 4/11/05 Checked by: MEH

The parties appeared before the undersigned administrative law judge on April 11, 2005, for a final hearing. The claimant appeared in person represented by Patrick Platter. The employer and insurer appeared represented by Thomas Rykowski. The Second Injury Fund appeared represented by Susan Colburn. Memorandums of law were filed by May 20, 2005.

The parties stipulated to the following facts. On or about February 17, 1992, Ozark Periodical Distribution, Inc., was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Millers Mutual Insurance Association of Illinois. On the alleged injury date of February 17, 1992, Jeff Meacheam was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about

February 17, 1992, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in Greene County, Missouri. The claimant notified the employer of his injury as required by Section 287.420, RSMo. The claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$285, which is sufficient to allow a compensation rate of \$190.01 for temporary disability, permanent partial disability and permanent total disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$27,558.42, representing 137 1/7 weeks. The employer and insurer have paid medical benefits in the amount of \$159,066.09. The attorney fee being sought is 25%.

ISSUES:

1. 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.
2. The nature and extent of permanent disabilities.
3. The liability of the Second Injury Fund for permanent total disability.

FINDINGS OF FACT:

Jeff Meacheam, the claimant, is 47 years of age and resides in Republic, Missouri. He is a high school graduate who attended Graf Votek School for the purpose of becoming a cabinetmaker. He worked as a cabinetmaker until the completion of medical treatment that is the subject of this claim. He worked from February 1975 until approximately the fall of 1984 for L & R Cabinet Shop. He started work in September 1984 for Ozark Periodical Distribution, Inc., also known as Ozark News Agency.

The claimant had two surgeries to his left knee before February 17, 1992. He underwent a repair of the anterior cruciate ligament in 1984. He suffered an injury to this ligament during a pickup basketball game. Dr. Harvey Michael of Smith-Glynn-Callaway repaired the ligament. Claimant eventually returned to work at Ozark News Agency. He was able to perform 10% of his work that required him to squat and kneel.

Claimant injured his left knee in 1990 in a motor vehicle accident. His left knee hit the dashboard, and Dr. Ben Harmon performed an arthroscopic surgery. Records of that particular surgery are not available. Claimant testified that he returned to his full duties after both surgeries. He did not have any symptoms in his left knee for at least one year prior to the date of the accident of February 17, 1992. He limited, but did not completely end, his sports activities. Dr. Belz noted that claimant, before February 17, 1992, did not kneel or squat with the exception of that which he did as part of his job. He did not believe claimant would be able to engage in activities such as a roofer or carpet layer.

Claimant worked for Ozark News Agency at a manufacturing shop located at 1630 North Eldon in Springfield. His primary job was to build magazine display racks for grocery stores and other similar retail facilities. The racks were typically 8 feet long and 5 to 6 feet tall, typically made of entirely pinewood. There would be two viewing areas on the racks, each area having 3 or 4 sub racks. The racks would extend from ankle level to 5 to 6 feet above ground level. Each rack would weigh approximately 250 lbs. when completed.

Claimant used table saws, skill saws, planers, sanders, air-powered nailers, staplers, hammers and nails. He would also paint the product after assembly was complete, then he and a co-worker would deliver the racks to the store using a pickup truck and trailer. They would load and unload the magazine racks with a two-wheel dolly.

Claimant would unload lumber from lumberyard trucks with a forklift. The lumber would be stacked with that forklift, but he would use one piece of pine at a time. 4' x 8' sheets of plywood would be used with pine bracings. He used 1" x 12' boards for the bracing. Claimant would carry the lumber to his workbench, typically 30 to 40 feet in walking distance. His own work area was 30' x 40', though owners of the property would keep their bass boats and RV's in the workshop area.

Claimant and a co-worker were moving two bass boats on February 17, 1992, to make room for a larger work area. Claimant was pulling a bass boat that was atop a standard metal trailer. His co-worker was pushing the other bass boat. The bass boat the co-worker was pushing hit the claimant on his left side. Claimant had just planted his left foot and was pulling his bass boat while twisting his left foot to the right. The bass boat pushed by the co-worker hit claimant's left knee at a 90 degree or perpendicular angle. The nose of the trailer that the claimant had been pulling then hit the inside of that same left knee.

Claimant felt an immediate sharp pain and swelling throughout his left knee. He attempted to walk this off in hopes that the problems would disappear by the next day. This accident happened towards the end of his work shift. Claimant attempted to work the next day on February 18th, but had to go home early because of continued pain and swelling in the left knee. He then scheduled an appointment to see Dr. David Brown of the orthopedic association affiliated with St. Johns Regional Health Center on February 19th.

Much of claimant's medical treatment has centered upon his surgeries to the left knee. The list below describes those surgeries. Claimant's surgeries have been extensive, and a description of his course would be helpful in understanding the surgeries.

Surgery #1	March 31, 1992	An arthroscopy with debridement of the medial compartment and patella and medial meniscectomy. (Dr. Brown)
Surgery #2	November 25, 1992	An arthroscopy with extensive debridement and abrasion chondroplasty. (Dr. Brown)
Surgery #3	October 26, 1993	A total left knee replacement arthroplasty. (Dr. Brown)
Surgery #4	November 16, 1993	A removal of the total knee components and replacement. (Dr. Brown)
Surgery #5	December 28, 1993	A revision of the total left knee replacement. (Dr. Brown)
Surgery #6	December 28, 1993	A rotation of the medial gastroc to the right knee

	defect. (Dr. Meystrik)	
Surgery #7	August 10, 1994	Excision and closure of the scar superior portion of the surgical flap. (Dr. Meystrik)
Surgery #8	September 7, 1994	Excision of the open wound with primary closure. (Dr. Meystrik)
Surgery #9	October 14, 1996	Excision of an open wound of the left knee with primary closure. (Dr. Meystrik)
Surgery #10	August 25, 1997	An arthrotomy and application of patellar prosthesis to the left patella. (Dr. Brown)
Surgery #11	September 11, 1997	A debridement, irrigation and repair of quadriceps and repair of skin dehiscence. (Dr. Brown)
Surgery #12	May 7, 2002	A revision of the total left knee joint replacement. (Dr. Gurba)

Dr. Brown initially found damage to the medial compartment and patella with a tear to the medial meniscus, which justified surgery #1. He performed surgery #1 approximately six weeks following the accident. Claimant's condition within his left knee joint deteriorated rather than improved. He felt a popping and grinding in his left knee joint after surgery #1. He underwent surgery #2 in order that Dr. Brown could debride and abrade the condyles within the left knee joint. This left claimant, however, with very little cartilage (meniscus) in his left knee joint, and it was necessary in surgery #3 to perform a total left knee joint replacement. That knee joint became infected, and it was necessary to remove the joint on November 16, 1993, then to replace the knee joint on December 28, 1993.

That infection was significant. The infection compromised the blood supply necessary to heal the knee joint. It affected the ability of all parts of the knee joint. Those included the bones themselves, blood supply to the knee, and tissues around the knee, the bone that could not grow around the surgical hardware, and the muscle and tendons around that hardware that became compromised. This explains why the fusion failed. The plastic surgeries performed by Dr. Meystrik (surgeries #6-9) intended to bring healthy skin to the knee joint to give a new and hopefully healthier blood supply so that the knee would heal.

Dr. Brown performed an arthrotomy and installed a patellar prosthesis in order to make the left kneecap move more smoothly in surgery #10. Dr. Brown attempted to tighten already weakened quadriceps in the left leg in surgery #11. Dr. Brown noted in his chart notes of December 17, 1997, and January 21, 1998, that the insurer had not yet approved physical therapy. His chart notes indicate that claimant suffered atrophy of the left leg by January 4, 1999.

Dr. Brown retired and Dr. Michael Nachtigal of the same group took his place. Dr. Nachtigal wanted to fuse the left knee joint. Dr. Nachtigal recommended a fusion twice, in chart notes dated July 22, 1999, and

September 20, 1999.

The insurer also referred claimant to Dr. Robert Bennett for an additional opinion upon claimant's prognosis. Dr. Bennett addressed the medical cause of claimant's condition and his prognosis. The "subsequent cascade of events" (the subsequent surgeries) was the "direct result" of the original injury. He found a revision of the knee joint to be "very probable" and that future surgeries included either a fusion or amputation above the knee.

The claimant hesitated to proceed with the knee joint fusion recommended by Dr. Nachtigal. He sought a second opinion from Dr. Lowry Jones, an orthopedic surgeon located in Kansas City. Dr. Jones instead suggested a replacement of the polyethylene spacers in the left knee joint, and suggested that his associate, Dr. Daniel Gurba, perform this procedure. That spacer had worn quite thin, especially around the tibia. He was concerned about the implications of the knee joint fusion at that time since a fusion would shorten claimant's left leg. Dr. Jones suggested the spacer revision in 2000.

Claimant requested that the insurer authorize this procedure on November 13, 2000. The insurer eventually did so in the spring of 2002, and this led to surgery #12. Dr. Gurba found claimant at maximum medical improvement on November 14, 2002. Dr. Gurba rated him at 20% body as a whole or 50% of the lower extremity. The prognosis for claimant is that he may still be able to undergo one more polyethylene spacer replacement. Once the next spacer wears out, he will then face either a left knee joint fusion or amputation of the left leg above the knee. His left knee is still unstable. He has fallen because it is unstable. His left leg has atrophied and has a poor blood supply.

Dr. Norbert Belz examined claimant on November 27, 2000, and December 2, 2003, at the referral of claimant's counsel. He is a specialist and board certified in occupational medicine. His *curriculum vitae* is set forth in Exhibit 1 to his deposition testimony.

Dr. Belz found and concluded that claimant suffered internal derangement and articular cartilage damage requiring the surgeries outlined above. Claimant had already, during previous surgeries, lost some of his cartilage, and that which remained on February 17, 1992, was subjected to further damage from the accident with the boat trailers. The resulting condition after these surgeries left claimant with a marked limp, and he would frequently fall. The limp, in particular, led to an increased load upon claimant's right leg and low back. Dr. Belz, therefore, found claimant to suffer injuries to the right knee, right hip, and low back as a result of the limp.

Dr. Norbert Belz imposed the following restrictions. He limited claimant from any kneeling or squatting whatsoever. He suggested that claimant be provided a seated workstation with the ability to elevate claimant's left leg. Claimant would also need to have padding to allow for a left knee flexion of approximately 25 degrees. Claimant would not be able to perform "captive" seating. Dr. Belz believed claimant should be allowed to stand, walk and move about when needed.

Dr. Belz suggested that claimant work with no foot controls. He did not believe claimant should lift any

weight from floor level to knuckle level. He believed claimant should be limited to 25 lbs in lifting from the waist level upward. He suggested claimant not climb on ladders and not to walk as a condition of employment. He did not believe it wise for claimant to climb stairs as a condition of employment. Dr. Belz also believed claimant would benefit, intermittently, from using a cane. He likewise believed that claimant should not lift while standing as a condition of employment.

Claimant had fallen three times because of a continuous instability in his left knee joint. Given this, Dr. Belz did not believe claimant should work on elevated platforms or at unprotected heights. He did not believe claimant should work around open vats of hot liquid, around conveyor lines where pinch points exist, or in areas of moving equipment such as fork lifts or trucks. He noted that the claimant would use narcotics on a daily basis for pain relief, and did not believe claimant should work in safety sensitive functions.

Dr. Belz imposed the following ratings of permanent disability, subject to the restrictions previously set forth: 95% to the left knee; 5% to the right knee; 5% to the right hip; and 7.5% to the low back. The rating to the left knee included a disability of 15% before the accident of February 17, 1992, and 82% as a direct result of it.

Dr. Belz also found very significant and marked atrophy of the entire left leg, which included the left thigh and left calf. Dr. Belz also found the left patella to be deviated laterally. This means that the left patella or kneecap is low riding, which further limits range of motion in the left knee. The remaining range of motion in the left knee was markedly impaired.

Dr. Belz believed that further medical treatment would be necessary for all of these injuries. These would include: further medical and surgical management for the left knee; narcotic pain medication management; potential for either a fusion of the left knee joint or amputation of the left leg; visits with physicians to monitor the left knee and medications; wheelchair needs; wheelchair accessories and maintenance; what Dr. Belz called "architectural renovations" (modifications to claimant's home); physical therapy after surgeries; and medical appliance, such as but not limited to, crutches, amputation stump socks and the like. Dr. Belz set forth a medical care plan.

Dr. Belz believed that claimant was permanently and totally disabled, given claimant's personal background and physical limitations. In his report he states, "prior and last disabilities are necessary for permanent and total disability." He found claimant's prognosis to be poor, since there is now a loss of blood supply to the left knee joint, and that loss of blood prevents the left knee from healing, as it should. His knee has been and will continue to be unstable, and he will require future intervention as the left knee worsens.

Philip Eldred is a vocational consultant who interviewed claimant and evaluated his potential for employment on April 6, 2004. He testified at the hearing at the referral of claimant's counsel.

Eldred did not find claimant to be employable or placeable in the open labor market. Eldred relied primarily

upon the restrictions set forth by Dr. Belz. Claimant's relevant work history was that of cabinetmaker, and he did not have significant work skills to transfer from that position. Vocational testing indicated that claimant scored less than 92% of the general population of his age group in reading, less than 95% of that population for spelling, and less than 70% of that population in arithmetic. His general mental ability, scored by the *PTI Oral Directions Test*, indicated that he was in the equivalent of the 45th to 55th percentile. Eldred found claimant to have a significant vocational loss. Research indicates that persons with a high school education and a work disability have a work life expectancy of 4.6 years. If that disability is severe, one generally has a work life expectancy of no more than 0.8 years. Eldred found claimant to have very little training potential, and that he could not presently perform unskilled jobs.

Eldred defined the category of sedentary labor, as defined by the United States Department of Labor. He stated that even if claimant were able to perform sedentary work, he would still have no transferable job skills. His worker trade profile would be comparable to 26 sedentary jobs that one may accurately characterize as "entry level" labor. He would only be able to perform this level of work if he had the physical ability and aptitude to be trained for these jobs, which he has not been. These jobs, in and of themselves, do not have transferable work skills. They require a short demonstration of up to thirty days of training in order to be able to perform them. Claimant's worker trade profile would be comparable to four sedentary unskilled occupations if he were even able to perform sedentary work.

CONCLUSIONS OF LAW:

1. 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.

It is specifically concluded that claimant is entitled to future medical treatment for his left knee, right knee, right hip and low back. The employer and insurer are ordered to provide such treatment.

The following provisions, in particular, highlight claimant's right to treatment. §287.140.1^[1] entitles an injured employee to such medical treatment as may cure or relieve the effects of his injuries. That includes, among other things, medical, surgical and hospital treatment, and nursing, custodial, ambulance and medicines. § 287.140.8 requires an employer to provide an injured employee with, as pertinent here, artificial legs, surgical orthopedic joints, or braces, as needed, for the life of the employee, when it is found that the employee may be partially or wholly relieved from the effects of the permanent injury. §287.140.2 provides that the Division or Commission may order a change in physicians, surgeons, hospitals or other requirement when the life, health or recovery of an employee is endangered. Medical treatment is compensable if it either cures or relieves the effects of an injury or disability. *Brollier v. Van Alstine*, 163 S.W.2d 109 (Mo. App. 1942). Medical treatment is compensable if, based upon a reasonable probability, an injury or disability, which resulted from an accident or

work conditions thus results in the need for that treatment. *Sharp v. New Mac Electric Cooperative*, 92 S.W.3d 351 (Mo. App. S.D. 2003); *Rana v. Landstar TLC*, 46 S.W.3d 614 (Mo. App. W.D. 2001); *Kaderly v. Race Brothers Farm & Home Supply*, 993 S.W.2d 512 (Mo. App. S.D. 1999); *Williams v. City of Ava*, 982 S.W.2d 307 (Mo. App. S.D. 1998); *Mathia v. Contract Freighters, Inc.*, 929271 (Mo. App. S.D. 1996); *Sifferman v. Sears Roebuck & Company*, 906 S.W.2d 823 (Mo. App. S.D. 1995).

The record to award treatment is overwhelming for the left knee. The opinions of Dr. Belz, Dr. Nachtigal, Dr. Gurba, and Dr. Bennett all support such treatment in one method or another. The physicians only disagree upon the sequence of the treatment necessary. That is, should the left knee be fused now or should one wait and revise the polyethylene spacer one last time. The only reasonable designation for surgical treatment is that of Dr. Gurba. His surgery in 2002 saved claimant's left knee from a fusion at that time. It would not be reasonable to disturb the patient/physician relationship between claimant and Dr. Gurba at this time.

While specialized surgical care will be periodically necessary, claimant will also need access to regular office visits. It is not reasonably likely that returning to the orthopedic association (e.g., Dr. Nachtigal) would be worthwhile since claimant followed the advice of Dr. Gurba in replacing the polyethylene spacer as opposed to undergoing a fusion of the knee joint. Neither the employer nor insurer has suggested any other physician to follow claimant on a local basis. As a result, the employer and insurer are ordered to designate Dr. Jonathan Clark as the treating physician for non-surgical and local purposes. It is contemplated that Dr. Gurba will primarily concern himself with future surgeries to the left knee and procedures associated with it. Dr. Clark will primarily be concerned with non-surgical treatment.

Medical treatment is also ordered to be provided for the right knee, right hip and low back that are related to this injury. Dr. Belz clearly testified that the inability of claimant to walk properly, that is, his limp, has placed additional stresses upon the right knee, right hip and low back. Compensable injuries can result from an abnormal gait that is due to a compensable injury. *Fitzgerald v. Meyer*, 820 S.W.2d 633 (Mo. App. E.D. 1991). The employer and insurer are ordered to provide such treatment under §§287.140.1 and 287.140.8.

2. The nature and extent of permanent disabilities.

After carefully considering all of the evidence, I find claimant is permanently and totally disabled. The standard or definition for total disability is set forth in *Reves v. Kindell's Mercantile Company, Inc.*, 793 S.W.2d 917, 920-21 (Mo. App. S.D. 1990):

“§287.020(7) [former revised version] defines “total disability” as “inability to return to any employment and not merely [inability] to return to the employment in which the employee was engaged at the time of the accident.” Decisions interpreting the statute state that “inability to return to any employment” means that the employee is unable to perform the usual duties of the

employment after consideration in the manner that such duties are customarily performed by the average person engaged in such employment [citing authority].

Any employment means any reasonable or normal employment or occupation and it is not necessary that the employee be completely inactive or inert. The central question is whether any employer in the usual course of business would reasonably be expected to employ the employee in that physical condition.” *Reves*, 793 S.W.2d at p. 920.

Other authorities which adopt this standard include: *Pavia v. Smitty's Supermarket*, 118 S.W.3d 228 (Mo. App. S.D. 2003); *McCormack v. Carmine Schell Construction Company*, 97 S.W.3d 497 (Mo. App. W.D. 2002); *Stawizynski v. J.S. Alberici Construction Company*, 936 S.W.2d 159 (Mo. App. E.D. 1996); *Talley v. Runny Meade Estates, LTD*, 831 S.W.2d 692 (Mo. App. E.D. 1992).

Applying this standard, claimant is permanently and totally disabled. There is no question that he can no longer perform work as a cabinetmaker. Physical restrictions set forth by both Dr. Belz and Dr. Gurba remove him from his previous work. Claimant also attempted frequent returns to work for Ozark News Agency while undergoing several of his surgeries, only to experience that his left knee continued to fail.

Philip Eldred testified, based upon his whole analysis, that claimant was not placeable in the open labor market. Mr. Eldred could only identify three sedentary positions for which no training other than on the job training would have been necessary. Both Mr. Eldred and Dr. Belz testified that claimant was totally disabled for any substantial employment, and Dr. Belz specifically stated that claimant could not work in even sedentary labor since seating would not be available. There was no evidence to believe that any employers in the southwest Missouri labor market would be able to accommodate claimant in these three sedentary positions identified by Mr. Eldred.

Dr. Gurba placed restrictions upon claimant that would include alternating between sitting and standing as needed for pain control, with no repeated bending, kneeling, squatting, climbing or crawling. He placed maximum lifting of 50 lbs. It cannot be reasonably said that these restrictions place claimant in “medium” employment or that he may be considered to be employable, or employable in sedentary or light employment. Dr. Gurba’s recommendation that claimant alternate between standing and sitting is not inconsistent with the recommendations of Dr. Belz, and further, not inconsistent with the recommendation that claimant be able to keep his knee flexed at 25 to 30 degrees while seated. That claimant may, in Dr. Gurba’s opinion, be able to lift a maximum of 50 lbs. He does not, however, state how often claimant would be able to do this. That Dr. Gurba restricts claimant from repeated bending, kneeling, squatting, climbing or crawling infers that he does not believe claimant is qualified for “medium” labor, as defined by the *United States Dictionary of Occupational Titles*, in that these restrictions would by themselves disqualify him from most “light” labor positions. These significant restrictions upon his activities, plus his lack of transferable skills, does not leave claimant with any reasonable potential to become employable.

There is likewise no reasonably certain evidence that vocational rehabilitation would lead claimant to

placeability or employability. Claimant attended employment during two days of attendance at a sheltered workshop, possibly arranged by the Insurer. There was no documentation presented at the hearing to explain this referral, and there was no explanation by any expert that would lead one to believe that claimant should be considered employable as a result.

Consequently, I find claimant permanently and totally disabled. I do not find that this occurred as a result of the last injury alone. Dr. Belz and Mr. Eldred testified it was the combination of the previous disability and the last injury, and specifically it was necessary to have the previous disability, to make the claimant permanently and totally disabled.

Permanent partial disability is awarded to the claimant against the employer and insurer based upon the following. As a result of the last injury, I find that the claimant has sustained 82% to the left knee; 5% to the right knee; 5% to the right hip; and 7.5% to the low back. The disability rating to the right hip is adjusted to a week level of 199 in order to account for the rating to the right knee (207 weeks minus 8 weeks to account for the knee rating = 199 weeks). These disability ratings compute to the following: 113.2 weeks for the left knee; 8 weeks for the right knee; 9.95 weeks for the right hip; and 30 weeks for the low back. This equals 179.15 weeks. I also believe that a loading factor of 15% is appropriate. This would result in an additional 206.0225 weeks. This is rounded to 206 weeks due from the employer and insurer at a rate of \$190.01, equaling \$39,142.06. The employer and insurer had previously made an advance of \$2,000. After this is deducted a total amount of \$37,142.06 is due.

3. The liability of the Second Injury Fund for permanent total disability.

The standard for assessing whether the Second Injury Fund is liable for permanent total disability benefits is set forth in *Kizior v. Trans World Airlines*, 5 S.W.3d 195 (Mo. App. W.D. 1995).

It is specifically concluded that the Second Injury Fund is liable for permanent total disability benefits based upon the testimony of Dr. Belz. He specifically assessed claimant's disability at 15% to the left knee before February 17, 1992. He further specifically testified that it was the combination of disabilities, and not merely the effects of the injury from the February 17, 1992 accident alone, which resulted in claimant's total disability.

As a result, permanent total disability benefits shall be paid by the Second Injury Fund upon the expiration of the employer and insurer's liability of 206 weeks. The claimant reached maximum medical improvement on November 14, 2002. The permanent partial disability payments would thus expire 206 weeks after this date, October 26, 2006. Second Injury Fund shall then begin payments of permanent total disability at \$190.01 per week for the remainder of claimant's lifetime.

Attorney for the claimant, Patrick Platter, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: November 3, 2005

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Associate Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret

Patricia "Pat" Secret

Director

Division of Workers' Compensation

[1]

References to statutes are to the Revised Statutes of Missouri unless otherwise indicated.