TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 15-099678

Employee: Candy Myers
Employer: Quanta Services, Inc./InfraSource, LLC
Insurer: Old Republic Insurance Company

The above-entitled workers’ compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated July 19, 2017.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The award and decision of Administrative Law Judge Mark S. Siedlik, issued July 19, 2017, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 18th day of October 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT
Member

Curtis E. Chick, Jr., Member

Attest:

Secretary
TEMPORARY AWARD

Employee: Candy Myers

Employer: Quanta Services, Inc.
/InfraSource, LLC

Insurer: Old Republic Insurance Company

Additional Party: N/A

Hearing Date: June 13, 2017

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 alleged accident or occupational disease: December 18, 2015

5. State location where alleged accident or occupational disease was contracted: Kansas City, Jackson 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 alleged 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 alleged accident occurred or occupational disease contracted: Employee was unplugging computer cords under her desk when she heard a pop and noticed onset of symptoms.

12. Did accident or occupational disease cause death? No Date of death? N/A

13. Part(s) of body injured by alleged accident or occupational disease: right knee
14. Nature and extent of any permanent partial disability: N/A

15. Compensation paid to date for temporary total disability: $0.00

16. Value necessary medical aid paid to date by employer/insurer? Undetermined at time of hearing

17. Value necessary medical aid not furnished by employer/insurer? $0.00

18. Employee’s average weekly wage: $644.54


20. Method wages computation: Agreement

**COMPENSATION PAYABLE**

21. Amount of compensation payable: The Claimant is entitled to medical care to cure and relieve her right knee consistent with the medical opinions of Dr. Paul and Dr. Hopkins.

22. Second Injury Fund liability: N/A

23. Future requirements awarded: Medical treatment and weekly benefits as ordered during medical care.

Said payments to begin upon receipt of Award and to be payable and subject to modification and review as provided by law.

Claimant’s attorney, Mr. Tim Alvarez, is entitled to attorney’s fees of 25 percent of sums to be recovered for his legal services.
FINDINGS OF FACT and RULINGS OF LAW:

Employee: Candy Myers
Employer: Quanta Services, Inc./InfraSource, LLC
Insurer: Old Republic Insurance Company
Additional Party: N/A

Hearing Date: June 13, 2017
Checked by: MSS/lh

This case came before Administrative Law Judge Mark Siedlik in Kansas City, Missouri on June 13, 2017 for hardship hearing. The employee, Candy Myers was represented by her counsel, Tim Alvarez. The Employer/Insurer was represented by counsel, Tom Walsh. The Employee alleged an injury by accident on December 18, 2015 while in the course and scope of her employment in Kansas City, Missouri. The Employer is Quanta Services, Inc./InfraSource, LLC. The formal Claim was timely filed. There have been medical benefits paid but the amount was undetermined at time of hearing. No temporary total disability benefits were paid.

STIPULATIONS

The parties stipulated to the following:

1. That both the Employer and Employee were operating under and subject to the provisions of the Missouri workers’ compensation law on December 18, 2015;

2. That Employer’s liability was fully insured by Old Republic Insurance Company;

3. That Candy Myers was its employee;

4. That Employee was working subject to the law in Kansas City, Jackson County, Missouri;

5. That Employee notified the employer of the alleged accident as required by law;

6. That Employee’s claim was filed within the time allowed by law;

7. That Employee’s average weekly wage was $644.54, which makes the permanent total/temporary total disability rate $429.71 and the permanent partial disability rate $429.71;

8. That Employer has paid medical expenses in an undetermined amount. Temporary total disability benefits were paid in the amount of $0.00.
EXHIBITS

The evidence at trial consisted of the testimony of the employee in person, as well as the following exhibits offered by the Employee:

Exhibit A: William Hopkins, M.D. Report dated August 16, 2016;
Exhibit C: Medical Records of Liberty Urgent Care.

The employer offered the following exhibits:

Exhibit 1: Transcript of Deposition of Alexandra J. Strong, M.D., along with accompanying exhibits offered during said deposition.

ISSUES

1. Whether the claimant sustained an injury arising out of and in the course of her employment with the respondent?

2. Whether the accident was the prevailing factor in causing Claimant’s medical condition and disability?

FINDINGS OF FACT

Candy Myers, approximate age 57, appeared and testified at the hearing. I found her testimony credible based on her demeanor at the hearing and medical records that corroborate her testimony. Claimant testified she was employed at Quanta Services Inc./InfraSource, Inc., where she worked as a billing clerk. On Friday, December 18, 2015, the Employer was in the process of moving to a different floor in its office building. That morning at approximately 11 AM, Ms. Myers was in the process of moving her workstation to the new location. She testified that as she felt a pop in her right knee as she kneeled and got onto her knees to unplug the computer and its related components. She immediately felt pain in her right knee. She then repeated at her new office the process of kneeling and getting onto her knees to plug in the computer and its related components which caused her to have increased symptoms of pain. She reported the injury and accident to her supervisor over a joint lunch. The pain continued to increase through the remainder of the day.

Ms. Myers’s symptoms continued to increase over the weekend and on Monday, December 21, 2015, she completed an incident report and was taken by the Employer for authorized medical treatment to Liberty Urgent Care. The Urgent Care records indicate Ms. Myers was injured when she “was getting up- heard pop” and elsewhere as “injured at work crawling under her desk to unplug stuff” (Exhibit C, pages 19 & 29). At Liberty Urgent Care, the
physician performed a physical exam, took x-rays, prescribed medications, provided Ms. Myers with a knee brace, issued work restrictions and ordered an MRI.

The MRI was performed approximately two weeks later on January 8, 2016. The MRI indicated “marked degenerative joint change”, a “full thickness meniscus tear” and an “abnormal appearance of the anterior cruciate ligament . . . A high-grade tear suspected.” (Exhibit C, page 27).

Ms. Myers was then referred by the Employer/Insurer to Robert Paul, a board-certified orthopedic surgeon, on January 22, 2016. Dr. Paul’s records were admitted both as medical records via a medical affidavit and also admitted as a medical report pursuant to R.S.Mo. §287.210.7. Accordingly, any opinions of Dr. Paul are admitted and properly considered by this Court.

Dr. Paul wrote Ms. Myers was injured while “. . . moving to a different building and crawling under her desk to unplug things and she had an audible pop with swelling and popping and clicking after that . . .” (Exhibit B, page 14). Dr. Paul performed a physical examination, reviewed the appropriate records including the MRI and made the following statement as to causation and treatment:

“This ACL injury is likely acute on physical exam and MRI. This ACL tear will likely exacerbate her symptoms of tricompartmental DJD and it may decrease the effectiveness of any conservative management. Our recommendation (sic) be a total knee arthroplasty, as anything else would not be appropriate and it would not help her symptoms, including an ACL type surgery. This is not appropriate in the setting of DJD.” (Emphasis added). (Exhibit B, page 15).

Although the use of the term “acute” may not prove that the acute injury was the December 18, 2015 work event, it does preclude degenerative joint disease, a chronic condition, as the cause of Ms. Myers’ injuries.

After this visit with Dr. Paul, no additional authorized treatment was provided by the Employer/Insurance Carrier. A mediation was held June 13, 2016, but the parties could not reach an agreement regarding the continuation of authorized medical treatment. Accordingly, Ms. Myers obtained a medical report to address the issue of causation, prevailing factor and appropriate medical treatment.

Ms. Myers was then seen by Dr. William O. Hopkins, board-certified orthopedic surgeon, on behalf of claimant. Based on review of Ms. Myers medical records and his physical examination, Dr. Hopkins stated as to causation:

“I believe with reasonable medical certainty that Ms. Myers sustained an injury to her right knee as a direct and prevailing factor of her work-incurred injury on or about December 18, 2015, when she was helping in a move and was under her desk in an awkward position unplugging computer equipment and felt pain in her right knee.” (Emphasis added). (Exhibit A pages 5-6).
Dr. Hopkins states that he does not believe the medial meniscus tear could have been pre-existing given Ms. Myers’ degree of functioning prior to the work-related accident:

“Of major importance also was that there was a complex tear of the medial meniscus directly under the weight bearing area of the medial femoral condyle making contact with the medial tibial plateau. This type of meniscus tear would certainly be symptomatic and I do not believe that Ms. Myers could have performed work activities on a day-to-day basis with this type of tear, which would be painful with constant weight-bearing on a day-to-day basis.” (Emphasis added). (Exhibit A, page 6).

Acknowledging the degenerative changes in the knee, Dr. Hopkins agrees with the opinion of the authorized orthopedic surgeon, Dr. Paul, that the only way to repair the work injury is with a total knee replacement:

“With these additional considerations, I would agree with her orthopedist Dr. Paul that performing an arthroscopic meniscectomy in the presence of even non–symptomatic degenerative changes in her knee is not associated with a satisfactory result and I would agree with his decision to perform a right knee replacement as treatment for her work-incurred injury on or about December 18, 2015, that the injury on that date was the direct and prevailing factor causing her injury and a requirement for that knee replacement . . . “ (Emphasis added). (Exhibit A, page 6).

Despite the similar reports and recommendations of Dr. David D. Paul and Dr. William O. Hopkins, board-certified orthopedic surgeons, authorized treatment was not resumed. The Employer/insurer instead obtained a medical report from Dr. Alexandra Strong, orthopedic surgeon. Dr. Strong went through the unusual effort of getting onto her hands and knees asking Ms. Myers to confirm this was the position when she felt her knee pop. Dr. Strong then writes:

“I do not think that she had an acute ACL tear. Her mechanism of injury is not consistent with that. By her MRI report, her findings are more consistent with chronic ACL tear. She has a medial meniscus tear. This would be expected with severe osteoarthritis . . .” (Exhibit 1).

Authorized medical treatment was never resumed and a hardship hearing was held on June 13, 2017.

She testified her symptoms have worsened since she last saw Dr. Paul. Ms. Myers testified that her current symptoms include knee pain, swelling, and loss of range of motion interfering with activities of daily living. She testified that she had previous right knee surgery approximately 15 years ago for what she believed was a cyst. Ms. Myers testified that her right knee felt normal and asymptomatic until the work accident of December 18, 2015. In those 15 years since this surgery her right knee was not symptomatic. She testified that she walked in breast cancer fundraiser events several years ago and continued to walk as much as 4 miles per
day up until the work accident of December 18, 2015. She testified she had no trouble with her right knee nor sought any medical treatment for her right knee until the injury of December 18, 2015. Ms. Myers testified she had a partial knee replacement to the opposite knee approximately eight years ago.

The first issues to address is whether claimant sustained an accident arising out of the course of her employment with her employer and whether this accident was the prevailing factor in causing her injuries. Ms. Myers testified she and the other employees were in the process of moving their workstations from one floor in her office building to another. She testified she sustained an injury to her right knee while in the process of disconnecting and then reconnecting her computer and accessories under her workstation. Ms. Myers testified this involved her bending down, getting onto her knees, crawling under the workstation to disconnect the various equipment and then getting back upon her feet. She then repeated the process at the new location.

The history contained in the medical records may differ as to whether she was standing up, bending down or on her knees at the time that she felt a pop but the records are consistent that her accident occurred during these work activities and thus constitute an accident within the scope and course of her employment. Furthermore, the evidence indicates Ms. Myers’ right knee was relatively symptom-free until the work activities on December 18, 2015. Dr. Hopkins stated with reasonable medical certainty that Ms. Myers sustained an injury to her right knee as a direct and prevailing factor of her work-incurred injury on or about December 18, 2015. Accordingly, I find that the Employee sustained an accident in the course and scope of her employment on December 18, 2015 and that this accident was the prevailing factor in causing her injuries.

The next issues include medical causation and the need for additional medical treatment. Both Dr. Paul, the initial authorized orthopedic surgeon, and Dr. Hopkins, claimant’s medical expert, rendered similar opinions. Dr. Paul stated the ACL injury is likely acute based on her physical exam and MRI results and that with her pre-existing degenerative joint disease, the only proper treatment is a total knee replacement. Dr. Hopkins stated that performing an arthroscopic meniscectomy in the presence of even non–symptomatic degenerative changes in her knee is not associated with a satisfactory result and he agreed with Dr. Paul’s decision to perform a right knee replacement.

Dr. Hopkins further stated that Ms. Myers’ type of meniscus tear would have been symptomatic and would have prevented her from performing day-to-day work activities had it existed before the work accident of December 18, 2015. Finally, Dr. Hopkins stated with reasonable medical certainty that Ms. Myers sustained an injury to her right knee as a direct and prevailing factor of her work-incurred injury on or about December 18, 2015.

Dr. Strong testified to the contrary stating that she believed the ACL and meniscus tears were pre-existing. I disagree with the opinion of Dr. Strong and find that the preponderance of the credible medical testimony is that of Dr. Paul and Dr. Hopkins and establishes Ms. Myers suffered a work accident on December 18, 2015 and that this accident was the prevailing factor in causing her meniscus and/or ACL tears.
The next issue is whether the employer is liable to the employee for additional medical care of the meniscus and/or ACL tears. Both Dr. Paul and Dr. Hopkins agree that a total knee replacement is the only appropriate remedy given Ms. Myers’ pre-existing degenerative joint disease of the knee. A similar issue was presented in *Phyllis Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511 (Mo.App. W.D. 2011), where the Court held “the total knee replacement was reasonably required to cure and relieve Tillotson’s compensable injury [her torn lateral meniscus].” *Id. at 521.*

In *Tillotson* the Missouri Court of Appeals held R.S.Mo. §287.140.1 guarantees an injured worker the right to medical treatment reasonably necessary to cure and relieve the effects of the compensable injury but does not require a finding that a workplace accident was the prevailing factor in causing the need for a particular medical treatment. The Court noted that R.S.Mo. §287.120.1 requires two findings. First, that the employee suffered a compensable injury arising out of and in the course of employment. Here a finding of prevailing factor is required. Secondly, if a compensable injury has been sustained, then the appropriate compensation must be determined. Compensation includes medical treatment under §287.140. *Id. at 517.* However, a finding of prevailing factor is not required for medical treatment. *Id. at 519.* Simply put, once it is determined the employee has suffered a compensable accident, she need only prove that the need for medical treatment flows from the work injury. *Id.*

In this pending matter, Ms. Myers has proven through the statements of Dr. Paul and Dr. Hopkins that her accident of December 18, 2015 was the prevailing factor in causing her meniscus and/or ACL injuries and that a total knee replacement is the only appropriate medical treatment to cure and relieve the effects of her work injury.

Accordingly, I find that Ms. Myers’ accident of December 18, 2015 arose out of and in the course of her employment and that this accident was the prevailing factor in causing her resulting injuries. I further find that a total knee replacement as recommended by both Dr. Paul and Dr. Hopkins to be the appropriate treatment to cure and relieve the effects of her work injury. I find the Employer is liable to the Employee for additional medical care based on both physicians’ recommendation of a total right knee replacement but not limited to those recommendations in order to cure and relieve the effects of the torn meniscus and/or ACL claimant acquired while performing her work for Qantas Services Inc./InfraSource, Inc. If the Claimant is determined to be unable to work during the course of the ordered treatment, the Claimant is entitled to weekly benefits for that time.

This case is to return to an open docket status pending final disposition.

Claimant’s attorney, Mr. Tim Alvarez, is entitled to attorney’s fees of 25 percent of sums to be recovered for his legal services.
Made by:____________________________________

Mark S. Siedlik
Administrative Law Judge
Division of Workers’ Compensation