

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

Injury No.: 09-070259

Employee: Frank Pappageorge

Employer: Tim Cason Construction

Insurer: Uninsured

Additional Parties: Treasurer of Missouri as Custodian of Second Injury Fund  
University of Kansas Hospital Authority  
University of Kansas Physicians, Inc.

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.<sup>1</sup> We have reviewed the evidence and briefs and have considered the whole record. Pursuant to § 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge (ALJ) dated February 17, 2012.

On August 3, 2009, employee slipped and fell while working for an uninsured construction contractor. Employee injured his hip in the fall. Employee was initially provided conservative treatment, but ended up having five surgical procedures in an eight-week period. Employee ultimately underwent surgery for a total hip replacement on April 1, 2010.

With regard to the medical treatment employee received for the August 3, 2009, work injury, two health care providers – University of Kansas Medical Center and University of Kansas Physicians – filed Applications for Direct Payment, pursuant to § 287.140.13(6). In addition, employee claimed reimbursement for all of his medical expenses from the Second Injury Fund. Employee offered evidence of amounts owing to eight health care providers, including the University of Kansas Medical Center and the University of Kansas Physicians. The Second Injury Fund did not object to any of employee's evidence. For reasons that are not explained, the ALJ found the Second Injury Fund liable for the medical bills of only one health care provider, the University of Kansas Medical Center. Further, the ALJ failed to rule on the Applications for Direct Payment.

Employee filed an Application for Review seeking reimbursement for the remaining medical bills from the other seven health care providers. The University of Kansas Physicians filed an Application for Review as well, but it was late and, therefore, dismissed by the Commission in an order dated March 22, 2012.

The evidence employee offered regarding the amounts owed to the various health care providers is summarized in the table below:

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2008 unless otherwise indicated.

Employee: Frank Pappageorge

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**Medical Expenses Summary  
Employee's Exhibit A**

		<b>Total on Bills</b>	<b>Claimed in MFD</b>
St. Joseph Medical Center	\$1,019.27		
	\$514.31	\$1,533.58	
St. Joseph Emergency Physicians	\$228.00		
	\$228.00	\$456.00	
Alliance R & D	\$65.00	\$65.00	
KU Med Center -- awarded by ALJ	\$221,661.16 <sup>2</sup>		
KU Physicians	\$13,530.00		
	\$29,239.00		
	0.00	\$42,769.00	\$42,684.00 <sup>3</sup>
Encompass	\$291.00	\$291.00	
Essential Home Health	\$620.00	\$620.00	
Professional Rehab Services	\$5,409.00	\$5,409.00	
<b>Total</b>		\$51,143.58	

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The Court in *Martin v. Mid-America Farm Lines*, 769 S.W.2d 105 (Mo. 1989), held that when a claimant credibly testifies that his/her visits to hospitals and various doctors were the product of a work injury and provides medical bills identified as being related to and the product of said injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the Commission to award compensation. *Id.* at 111-12. The Court noted, however, that the employer (or Second Injury Fund in this case) may challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. *Id.*

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<sup>2</sup> This \$221,661.16 represents the only medical expenses for which the ALJ awarded reimbursement. It is worth noting that the medical bills offered by employee showed that he actually incurred \$227,579.16 of medical expenses with the University of Kansas Medical Center, but \$5,918.00 of said expenses were written off, transferred, or reduced by the institution.

<sup>3</sup> The medical bills offered by employee show that he incurred \$42,769.00 of medical expenses with the University of Kansas Physicians. However, the University of Kansas Physicians only claimed \$42,684.00 in its Application for Direct Payment.

Employee: Frank Pappageorge

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In this case, we find, as did the ALJ, that employee “credibly detailed the mechanism of his injury and provided credible evidence of his medical treatment to cure and relieve the effects of those injuries.” In addition, we find that employee provided medical bills reflecting the treatment received and credibly testified that the medical bills do, in fact, relate to and are the product of the work-related injury. We further find that the Second Injury Fund did not challenge the reasonableness or fairness of the bills or show that the medical expenses incurred were not related to the injury in question.

Based upon the aforementioned, we find that employee shall be awarded reimbursement for the sum total of all of the medical expenses outlined under the heading “Total on Bills” in the aforementioned table, with the exception of the expenses incurred with the University of Kansas Physicians, for which we find that employee shall be awarded the amount requested by the University of Kansas Physicians in its Application for Direct Payment, \$42,684.00.

**Award**

We award employee additional medical expenses from the Second Injury Fund in the amount of \$51,058.58.

The award and decision of Administrative Law Judge Mark S. Siedlik, issued February 17, 2012, as modified, is attached hereto, and its findings and conclusions are incorporated to the extent they are not inconsistent with our findings and conclusions herein.

The Commission further approves and affirms the ALJ’s allowance of attorney’s fee as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 26<sup>th</sup> day of July 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

## **AWARD AS TO SECOND INJURY FUND ONLY**

Employee: Frank Pappageorge

Injury No. 09-070259

Dependents: N/A

Employer: Tim Cason Construction

Insurer: Uninsured

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

Hearing Date: November 15, 2011

Checked by: MSS/lh

### **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: August 3, 2009.
5. State location where accident occurred or occupational disease was contracted: Johnson 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? No.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While in the course and scope of employee's work, employee fell injuring his hip.
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: Back and body as a whole.
14. Nature and extent of any permanent disability: 35 percent whole body.
15. Compensation paid to-date for temporary disability: -0-

16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? \$221,661.16
18. Employee's average weekly wages: \$300
19. Weekly compensation rate: \$200
20. Method wages computation: Evidence at trial.

### **COMPENSATION PAYABLE**

21. Second Injury Fund liability: Medical expenses of \$221,661.16
22. Future requirements awarded: None

Said payments to begin as of the date of the award 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Jason Osteen

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Frank Pappageorge

Injury No. 09-070259

Dependents: N/A

Employer: Tim Cason Construction

Insurer: Uninsured

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

Hearing Date: November 15, 2011

Checked by: MSS/lh

### **FINDINGS OF FACT AND RULINGS OF LAW**

This case comes on for hearing before Administrative Law Judge Siedlik in Clinton, Missouri, on November 15, 2011. The Claimant Frank Pappageorge was present with his counsel Mr. Jason Osteen. The Second Injury Fund was represented by their counsel, Ms. Laura Van Fleet. The University of Kansas and Kansas University of Physicians were represented by their counsel Mr. Scott Gardner and Ms. Jennifer Smith.

This case involves injuries on or about August 3, 2009, while the Claimant was in the employ of Tim Cason Construction and sustained injuries by accident arising out of and in the course and scope of his employment in Johnson County, Missouri. At the time of the injuries the parties were subject to the Missouri Workers' Compensation Law and the Employer's liability uninsured. The Employer had notice of an injury and a claim was timely filed. There have been no weekly benefits or medical expenses paid to date.

### **ISSUES**

The issues to be resolved include:

- 1) Whether the accident arose out of and in the course and scope of employment;
- 2) The liability for past medical expenses; and,
- 3) The entitlement to a medical lien of the University of Kansas and the Kansas University Physicians.

The evidence of trial consisted of the testimony of Claimant and David Geiss in person, together with Claimant's Exhibits A through E and Second Injury Fund Exhibit No. 1.

The Claimant testified on August 3, 2009, he was an employee of Tim Cason Construction and while so employed worked as a home remodeler on jobs contracted by Mr. Cason. The Claimant described various duties, including trash removal, dry wall hanging and painting as part of his assigned duties. The Claimant testified he worked for no other employer than Tim Cason Construction. The Claimant was paid by the Employer and indicated he was paid weekly although from time to time the Claimant was paid late. The Claimant provided one check stub (Claimant's Exhibit D) from Tim Cason Construction for a net weekly pay of \$300. Claimant testified he received neither a 1099 nor W2 from

Tim Cason Construction. The Claimant testified while so employed for Mr. Cason the Claimant on a construction site slipped and fell while scraping floors injuring his hip. The Claimant was provided conservative treatment and ultimately ended up having five surgical procedures in an eight-week period. The Claimant detailed these surgical procedures to his hip involving initial surgical treatment of the right hip injury with subsequent infections and further surgical interventions ultimately resulting in a total hip replacement on April 1, 2010.

The Claimant testified the hip still causes considerable pain and the Claimant cannot sit for any length of time indicating 40 minutes is the longest that Claimant can comfortably sit. The Claimant then indicated he must stand for a period of time to relieve his discomfort. Claimant testified he was told by Mr. Cason that Mr. Cason was paying workers' compensation insurance on his behalf and actually withheld part of his weekly paycheck to that end. The Claimant is unaware of, and Mr. Cason and Tim Cason Construction have not provided, proof of insurance or any payment of benefits to date for the Claimant's injuries or loss time.

The Claimant testified all of his medical bills remain unpaid and provided documentation of those medical bills in the form of the Claimant's summary admitted as Claimant's Exhibit E. Those total bills are \$227,579.16. The Second Injury Fund provided what has been marked and admitted as Second Injury Fund Exhibit No. 1, an affidavit from Mr. David Geiss, the custodian of bills at the University of Kansas Hospital and patient financial services that of the \$227,579.16 accrued for the treatment of the Claimant in this matter, \$5,918 have been written off, transferred or reduced by the institution. The Second Injury Fund Exhibit 1 indicates as sworn to by the custodian of records the outstanding debt to which the Claimant is held responsible is \$221,661.16.

The Claimant had provided as part of his evidence Exhibit B the deposition testimony and exhibits including the report of Dr. P. Brent Koprivica. Dr. Koprivica examined the Claimant and reviewed the Claimant's medical history and treatment to date. Dr. Koprivica took a history from the Claimant and was of the opinion the Claimant's complaints of ill are consistent with the type of injuries and treatment which the Claimant received. Dr. Koprivica was of the opinion that all the tendered medical bills were reasonable and necessary to care and cure and relieve the Claimant of his work-related injuries.

Dr. Koprivica in examining the Claimant felt the Claimant was and is entitled to a period of temporary total disability from August 3, 2009 through June 23, 2010. Dr. Koprivica further felt the Claimant had from his injuries of August 3, 2009, a permanent partial disability of 60 percent of the right hip at the 207-week level and 5 percent of the whole body referable to the low back pain. The overall disability as opined by Dr. Koprivica is a total of 35 percent of the whole body.

### **FINDINGS**

I find based on the evidence and testimony presented largely un rebutted by the Claimant, Mr. Pappageorge that he was in fact in the employ of Tim Cason Construction on or about August 3, 2009. Mr. Pappageorge credibly detailed the mechanism of his injury and provided credible evidence of his medical treatment to cure and relieve the effects of those injuries. The evidence credibly leads me to conclude that Claimant was in the employ of Tim Cason Construction, an uninsured employer under Missouri law. The evidence and testimony presented leads me to therefore conclude the Claimant is entitled to compensation from the Second Injury Fund for medical expenses incurred.

I find from the Second Injury Fund pursuant to 287.220 RSMo, the Claimant is entitled to reimbursement of medical expenses incurred as a result of a work-related injury by a noninsured employer in the amount of \$221,661.16, which is now due and owing from the Treasurer of the State of Missouri as Custodian of the Second Injury Fund.

I find Claimant's counsel, Mr. Jason Osteen, entitled to attorney's fees of 25 percent of sums recovered or to be recovered on account of his legal services rendered.

Made by: \_\_\_\_\_  
Mark S. Siedlik  
*Administrative Law Judge*  
*Division of Workers' Compensation*