

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

Injury No.: 11-064736

Employee: Conrad Priest

Employer: Piramal Glass USA, Inc.

Insurer: Mitsui Sumitomo Insurance Co. of America

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 April 2, 2014. The award and decision of Administrative Law Judge Maureen Tilley, issued April 2, 2014, 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 16th day of July 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Conrad Priest

Injury No. 11-064736

Dependents: N/A

Employer: Piramal Glass

Additional Party: N/A

Insurer: Mitsui Sumitomo

Hearing Date: January 15, 2014

Checked by: MT/rmm

SUMMARY OF FINDINGS

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 16, 2011.
5. State location where accident occurred or occupational disease was contracted:
Piramal Glass - Park Hills, St. Francois County, Missouri 63601.
6. Was the above Employee an employee of the above Employer at the time of the alleged accident or occupational disease? Yes.
7. Did the Employer receive proper notice? Yes.
8. Did the accident or occupational disease arise out of and in the course of employment?
Yes.
9. Was the claim for compensation filed within the time required by Law? Yes.
10. Was the Employer insured by the above Insurer: Yes.
11. Describe the work the Employee was doing and how the accident occurred or when the occupational disease was contracted: Employee was changing parts on a machine. He crawled up on the back of the machine to change a part. He felt and heard a loud pop in

his right knee. Employee felt severe pain in his right knee, reported it to the superintendent, and was sent to the nurse.

12. Did the accident or occupational disease cause death? No.
13. Part(s) of the body injured by the accident or occupational disease: Right knee.
14. Nature and extent of any permanent partial disability: See findings.
15. Compensation paid to-date for temporary disability: \$0.00.
16. Value necessary medical aid paid to date by Employer/Insurer? \$3,582.95.
17. Value necessary medical aid not furnished by the Employer/Insurer: None.
18. Employee's average weekly wages: \$682.40.
19. Weekly compensation rate: \$454.48 for T.T.D \$425.19 for P.P.D.
20. Method wages computation: By agreement.
21. Amount of compensation payable: See findings.
22. Second Injury Fund liability: No.
23. Future requirements awarded: See Findings.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the Employee 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 Employee: Lindell Dunivan.

FINDINGS OF FACT AND RULINGS OF LAW

On January 15, 2014, the Employee, Conrad Priest, appeared in person and by his attorney, Mr. Lindell P. Dunivan, for a hearing for a final award. The Employer was represented by attorney, Kevin Leahy. At the time of the hearing the parties agreed on certain undisputed facts and identified the issues in dispute. The undisputed facts and issues, together with a summary of the evidence and the Findings of Fact and Rulings of Law, are set forth below as follows:

UNDISPUTED FACTS:

1. Piramal Glass was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Mitsui Sumitomo.
2. On August 16, 2011, Conrad Priest was an employee of Piramal Glass and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's alleged accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage was \$682.40, resulting in a compensation rate of \$454.48 for temporary total disability benefits and the maximum applicable rate of \$425.19 for permanent partial disability benefits.
6. The employer-insurer paid \$3,582.95 in medical aid.
7. The employer-insurer paid no temporary disability benefits.
8. The employee had no claim for previously incurred medical bills or mileage or future medical care.
9. The employee had no claim for any temporary disability benefits.

ISSUES:

1. Accident.
2. Medical causation.
3. Permanent partial disability.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A: Deposition and Report of Dr. Shawn L. Berkin, D.O.
- B: Medical Records of Midwest Convenient Care, LLC and Midwest Imaging Center.

Employer/Insurer's Exhibits:

- 1: Medical Records of Dr. Robert H. Brophy, M.D.

2: Deposition of Dr. Robert H. Brophy, M.D.

FINDINGS OF FACT:

At the final hearing on January 15, 2014, evidence indicated that Employee was born on October 20, 1950. Employee testified that he had been a long-time employee of a business known as “the Glass Factory,” although the business had changed hands a few times during Employee’s tenure. Employee testified that on August 16, 2011, he was working at the Piral Glass Plant when he injured his right knee while crawling onto a machine to change parts. Employee reported that he heard a loud pop, he then felt severe pain and numbness in the right leg. He immediately reported the injury to his superintendent, who sent him to the nurse, who provided him with crutches, and arranged transportation to Midwest Convenient Care. X-rays at that time revealed the presence of osteoarthritis, and an MRI by Midwest Imaging six days later on August 22, 2011, revealed a torn meniscus in the right knee. Employee asked for a referral to Dr. Robert Brophy which the Employer authorized.

Dr. Brophy first examined the Employee and reviewed his MRI results on September 6, 2011. The Employee reported that he had been working when he turned, twisted, and felt a pop in his right knee, accompanied by a sharp pain. On the day of the examination, he complained of continuing moderate, dull pain, as well as a little bit of catching and some very minimal popping in the knee, but no locking. Dr. Brophy noted that the August 22 MRI showed a possible medial meniscus tear as well as some degenerative changes in the joint. X-rays taken on September 6, showed moderate bilateral medial and mild lateral compartment knee osteoarthritis, consistent with the MRI; ligaments appeared intact. Dr. Brophy recommended conservative treatment; beginning with a steroid injection followed by a month of physical therapy, and restricted him to performing only seated work.

The Employee returned to Dr. Brophy on October 17, 2011; at that time, he reported feeling much better following the injection on September 6, and stated that he felt ready to return to work. On physical examination, there was no inflammation or effusion, and he had full range of motion with no significant crepitus. Dr. Brophy recommended that he return to full-duty work, then included an addendum: “Please note that the treatment administered to Conrad is related to the event that happened at work where he turned, twisted, and felt a pop in his knee. The treatment that I administered was related to aggravation from this episode at work.” On or about July 25, 2012, counsel for the Employee asked Dr. Brophy to clarify this addendum in response to the employer/insurer’s position that it meant that any current complaints were the result of normal daily use, and not related to any work repeat accident or re-injury; on August 20, 2012, Dr. Brophy replied that there was nothing he could add to the addendum.

When asked for his opinion, within a reasonable degree of medical certainty, regarding whether the osteoarthritis pre-existed the August 16, 2011, popping incident, Dr. Brophy testified that it “certainly would not have appeared in that short time ... so that would have been pre-existing.” He also testified that the osteoarthritis would not have been caused by any popping incident such as that on August 16, 2011. His diagnosis was “osteoarthritis and potentially meniscus tears.” He explained his treatment plan was to inject cortisone “to try to calm it down”, followed by

physical therapy. He stated that “it wasn’t clear that surgery would either be necessary or sufficient to make him much better than” the conservative course of treatment.

Dr. Brophy noted that the August 22 MRI scan was of diagnostic quality, and that he reviewed the films. He testified that it was impossible to know the chronology of the onset of any possible meniscus tear. He also testified that “certainly there’s a component of that [his knee condition] that would have just been part of the normal wear and tear” for a 60-year-old laborer.

Dr. Brophy testified that he did not think the Employee had any permanent disability related specifically to the August 16, 2011 popping incident. When asked about the addendum to his October 17 office note [“Please note that the treatment administered to Conrad is related to the event that happened at work where he turned, twisted, and felt a pop in his knee. The treatment that I administered was related to aggravation from this episode at work.”], he testified that he believed the August 16 popping incident “was an aggravation to a pre-existing condition”, and that the popping incident was what led to the need for the successful conservative treatment the Employee received.

An independent medical evaluation and the deposition of Dr. Shawn L. Berkin were submitted by Employee regarding the issue of whether or not Employee’s injury arose out of the course and scope of his employment, Dr. Berkin said, “The industrial accident that occurred in August, 2011 when Mr. Priest twisted his right knee while crawling into a machine was a prevailing factor in causing the right knee strain with tear of the medial meniscus”. Dr. Berkin stated that Employee had previously been treated by Dr. Scott Van Ness in February of 2012. Dr. Van Ness had treated Employee for his left knee. Dr. Van Ness drained the left knee and administered a steroid injection to Employee’s left knee. Dr. Berkin also notes that Dr. Van Ness also treated Employee’s right knee. Dr. Berkin stated that surgical treatment for Employee’s injury would be a medial meniscectomy. He stated that surgery might not entirely relieve his symptoms due to his underlying degenerative disease. When discussing treatment recommendations, Dr. Berkin gave Employee the following restrictions: “Avoid excessive squatting, kneeling, stooping, turning, twisting, lifting and climbing. He should be cautious when climbing ladders and stairs, working at heights above ground level, and when walking on uneven surfaces.”

Dr. Berkin gave Employee a permanent partial disability rating of 30% of the right lower extremity at the level of the knee. Dr. Berkin stated that there existed an additional permanent partial disability of the right knee of 10% based on Employee’s arthritis.

At the January 15, 2014 hearing, the Employee testified that he is not currently using crutches or wearing a knee brace or other knee support, and that it has been more than two years since he sought any treatment for his right knee.

RULINGS OF LAW:

Issue 1. Accident and Issue 2. Medical causation

Based on all of the evidence presented, including the credible testimony of the Employee, I find that the opinion of Dr. Berkin is more persuasive than any conflicting opinions of Dr. Brophy on the issue of accident and medical causation. I find that on or about August 16, 2011, Employee sustained an accident arising out of and in the course of his employment. I also find that Employee's injury to his right knee was medically causally related to his work accident on August 16, 2011. I also find that Employee's work (where he crawled onto machinery) was the prevailing factor in causing Employee's right knee injury.

Issue 3. Permanent partial disability

Based on all of the evidence presented, I find that Employee sustained 15% permanent partial disability of the right knee (160 week level) from the August 16, 2011 work accident. Therefore, Employer-insurer is directed to pay Employee for 24 weeks of compensation at a rate of \$425.19. This equals \$10,204.56.

ATTORNEY'S FEE:

Lindell Dunivan, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation