

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

Injury No.: 08-085143

Employee: Shawna Prope  
Employer: Lonnie Chandler d/b/a Chandler Exteriors  
Insurer: Missouri Employers Mutual Insurance

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 July 8, 2011. The award and decision of Administrative Law Judge Vicky Ruth, issued July 8, 2011, 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 18<sup>th</sup> day of January 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

NOT SITTING  
\_\_\_\_\_  
James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

# AWARD

Employee: Shawna Prope

Injury No. 08-085143

Dependents: N/A

Employer: Lonnie Chandler, d/b/a Chandler Exteriors

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance

Hearing Date: April 7, 2011

## 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: September 24, 2008.
5. State location where accident occurred or occupational disease was contracted: Crawford 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 fell from a ladder, catching her right leg between the rung of the ladder and then falling to the ground.
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 (back) and right leg.
14. Nature and extent of any permanent disability: 20% of the right knee and 12.5% of the body as a whole referable to the right hip and the lumbosacral spine.
15. Compensation paid to-date for temporary disability: \$5,790.38.
16. Value necessary medical aid paid to date by employer/insurer? \$62,046.50.
17. Value necessary medical aid not furnished by employer/insurer? N/A.

18. Employee's average weekly wages: \$320.
19. Weekly compensation rate: \$213.33.
20. Method of wages computation: By agreement.

#### **COMPENSATION PAYABLE**

21. Amount of compensation payable from employer:

Permanent partial disability (82 weeks x \$213.33): \$17,493.06

22. Second Injury Fund liability: N/A.
23. Future medical awarded: No.

Said payments to begin immediately and to be payable and 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: Gary Matheny.

Employee: Shawna Prope

Injury No. 08-085143

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

Employee: Shawna Prope

Injury No: 08-085143

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Lonnie Chandler, d/b/a Chandler Exteriors

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

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance

On April 7, 2011, Shawna Prope (the claimant) and Lonnie Chandler, d/b/a Chandler Exteriors/Missouri Employers Mutual (the employer and insurer) appeared for a temporary award hearing.<sup>1</sup> The claimant was represented by attorney Gary Matheny. The employer/insurer was represented by attorney Amanda Reichert. Claimant testified at the trial, as did Lonnie Chandler and Fred Pope. Dr. Christopher Rothrock and Dr. James Doll testified by deposition. The parties submitted briefs on or about May 3, 2011, and the record closed at that time.

### **STIPULATIONS**

The parties stipulated to the following:

1. On September 24, 2008, claimant sustained an injury by accident. This accident arose out of and in the course of employment with Lonnie Chandler, d/b/a Chandler Exteriors (the employer).
2. The parties agree that the claimant's right leg was injured in that September 24, 2008 accident. Claimant also alleges that her low back was injured in the accident, but the employer/insurer disputes this.
3. The claimant and the employer were operating under and subject to the provisions of Missouri Workers' Compensation Law.
4. The employer's liability for workers' compensation was insured by Missouri Employers Mutual Insurance.
5. The employer had notice of the injuries, and a Claim for Compensation was filed within the time prescribed by law.
6. The Missouri Division of Workers' Compensation has jurisdiction, and venue in Callaway County is proper.
7. The employer/insurer provided temporary total disability benefits in the amount of \$5,790.38, for the period of September 25, 2008 through April 2, 2009.
8. The employer/insurer provided medical aid in the amount of \$62,046.50.

### **ISSUES**

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<sup>1</sup> The hearing was a hardship hearing, but was not brought under Section 287.203. In addition, the parties agreed that in the event that no additional treatment was ordered, the award should be converted to a final award.

The parties agreed that the issues to be resolved in this proceeding are as follows:

1. Whether claimant's need for additional medical aid for her right leg is medically casually related to the September 24, 2008 accident.
2. Whether claimant is entitled to temporary total disability benefits from August 9, 2010 and ongoing.

The parties also agreed that if the Administrative Law Judge determined that claimant's need for additional medical treatment is not necessary or not medically casually related to the work accident, that the temporary award should be converted to a final award and the following issues would also need to be addressed.

3. Medical causation as to claimant's low back injury.
4. Nature and extent of permanent partial disability.

### **EXHIBITS**

On behalf of the claimant, the following exhibits were entered into evidence without objection:

- |           |   |
|-----------|---|
| Exhibit 1 | Medical records from Patients First/Dr. Modad.                |
| Exhibit 2 | Independent Medical Examination report from Dr. Shawn Berkin. |
| Exhibit 3 | Deposition of Dr. Christopher Rothrock.                       |

On behalf of the employer/insurer, the following exhibits were admitted into evidence without objection:

- |           |   |
|-----------|---|
| Exhibit A | Medical records from Barnes-Jewish Hospital.                                      |
| Exhibit B | Medical record from Missouri Baptist Hospital.                                    |
| Exhibit C | Medical records from Dr. William Ricci.   |
| Exhibit D | Medical records from Phelps Country Regional Medical Center, Physical Therapy.    |
| Exhibit E | Medical records from Dr. James Doll.  |
| Exhibit F | Report from Dr. David King.   |
| Exhibit G | Medical records from Dr. Rothrock and Dr. James (regarding subsequent treatment). |
| Exhibit H | Deposition for Dr. James Doll, along with CV and June 2010 report.                |

*Note: All marks, handwritten notations, highlighting, and tabs on the exhibits were present at the time the documents were admitted into evidence.*

### **FINDINGS OF FACT**

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Based on the above exhibits and the testimony presented at the hearing, I make the following findings of fact:

1. Claimant was born on July 11, 1972; on the date of the hearing she was 38 years old. She lives in Steeleville, Missouri.
2. On September 24, 2008, claimant was working for Chandler Exterior, a business owned by her father, Lonnie Chandler. Claimant's position with Chandler Exterior was part-time. She was also employed with Wal-Mart.
3. On September 24, 2008, claimant was replacing gutters for Chandler Exterior (the employer). Claimant was working on a ladder when it "kicked out," causing her to fall with her right leg caught in the rungs of the ladder. Claimant fell five or six feet to the deck.
4. Claimant was transported by ambulance to the emergency room of Missouri Baptist Hospital in Sullivan, where she complained of leg pain and x-rays revealed a right femoral fracture.<sup>2</sup>
5. Claimant was transported to Barnes-Jewish Hospital for further evaluation and treatment, including additional x-rays. Claimant's chief complaints were right knee and hip pain, as well as neck pain. The records do not mention back pain at this time.<sup>3</sup> X-rays of the right tibia and fibula revealed an intraarticular comminuted fracture of the distal femoral diaphysis with posterior angulation and displacement of the distal fracture fragment. The x-rays of the right knee revealed the comminuted femoral fracture with a large knee effusion and soft tissue swelling. X-rays of the right femur revealed the intraarticular fracture with posterior displacement of the distal fragment. X-rays of the cervical spine revealed a mild kyphosis without a discernible fracture. Lumbar spine and pelvis x-rays were normal. A CT scan of the right knee revealed a comminuted intraarticular distal femoral fracture with lipohemarthrosis.
6. Claimant was admitted to the hospital, and on September 26, 2008, she underwent surgery by Dr. William Ricci for open reduction with internal fixation of the right intercondylar femoral fracture with intramedullary mailing. Postoperative x-rays of the femur, taken on September 26, 2008, revealed internal fixation of the distal femoral fractures with an intramedullary rod with proximal and distal interlocking screws.
7. On November 21, 2008, physical therapy began at Phelps Country Regional Medical Center.<sup>4</sup> Contrary to claimant's testimony at trial, the therapy notes indicate that claimant's pain complaints improved after each session. Her strength and range of motion also improved. On December 16, 2008, Dr. Ricci noted that claimant's range of motion was "quite good."<sup>5</sup> Dr. Ricci recommended that claimant advance her weight

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<sup>2</sup> Employer/insurer's Exh. B.

<sup>3</sup> Employer/insurer's Exh. A.

<sup>4</sup> Employer/insurer's Exh. D.

<sup>5</sup> Employer/insurer's Exh. C.

bearing as tolerated, continue physical therapy, and he released her to return to work with crutches or a cane.

8. Claimant continued with physical therapy, and on January 14, 2009, she reported that she felt like she was getting stronger.<sup>6</sup> On January 21, 2009, claimant reported that she had no pain in her right knee prior to treatment that day and that she had no pain after treatment.
9. Dr. Ricci's February 24, 2009 notes indicate that claimant complained of shooting pain from the posterior buttock extending into her thigh and calf. The pain was affecting her ability to return to work. Physical examination of claimant's knee was normal, and she had no significant tenderness over the fracture site. The doctor noted that claimant's wounds were well-healed, and there was no significant pain on range of motion of the hip and knee. Dr. Ricci indicated that he thought that claimant had developed sciatic nerve irritation and recommended that she be evaluated for her neurologic symptoms. With respect to her fracture, Dr. Ricci released claimant to full duty.<sup>7</sup> Dr. Ricci did not recommend any additional treatment with respect to claimant's right leg or knee.
10. There is no reference to claimant's low back pain in any of Dr. Ricci's records. Contrary to claimant's position, there is no reference to any "popping" or "locking" of the knee in any of her treatment records for the September 2008 injury.
11. Dr. Doll evaluated and treated claimant on February 24, 2009, the same date as she saw Dr. Ricci. At that time, claimant reported diffuse pain to her right leg with numbness and tingling to her foot. She reported pain over the right lumbosacral area extending into her buttock and over her right hip. On physical examination, Dr. Doll noted tenderness over the right paralumbar region extending into the right sacroiliac joint. Active range of motion testing revealed limited lumbar movement in all planes of motion. There was localized tenderness over the right greater trochanter. There was diffuse tenderness over the lateral surface of the right thigh and posterior calf. Dr. Doll obtained x-rays of the lumbar spine and pelvis, which revealed mild degenerative changes. Claimant was diagnosed with right lumbar/sacroiliac pain, right trochanteric bursitis, right leg pain with paresthasias, and status post open reduction with internal fixation of a distal right femoral fracture. Dr. Doll administered a steroid injection to the right trochanteric bursa and prescribed amitriptyline, Ultra, and Naprosyn for her symptoms. In his deposition, Dr. Doll explained that this injection was along the side of the hip, not the back. Dr. Doll's February 2009 notes indicate that claimant was permitted to work on limited duty restrictions.<sup>8</sup> Claimant was continued on her rehabilitation program, and was instructed to be examined in two weeks.
12. The next day, February 25, 2009, claimant reported to the physical therapist that she was not having any pain and that for the first time, she had a full night's rest the night before.

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<sup>6</sup> Employer/insurer's Exh. D.

<sup>7</sup> Employer/insurer's Exh. C.

<sup>8</sup> Employer/insurer's Exh. E.

13. On March 4, 2009, claimant was provided with a shoe lift that led to a more normal gait pattern.<sup>9</sup> On March 6, 2009, claimant reported to the therapist that she was feeling good and walking much better with the insert. In an update to Dr. Doll on March 10, 2009, the therapist noted that claimant was making good progress with therapy, that claimant had reported less pain, and that claimant felt her leg was getting stronger.
14. On March 11, 2009, claimant returned to see Dr. Doll. Claimant described considerable relief in her thigh following the last injection. She reported some ongoing pain in her right tailbone. She also noted excellent improvement with therapy and the shoe lift. She indicated that she was pleased with her progress. There is no mention of any ongoing right knee pain. Dr. Doll provided a right SI joint injection and released claimant to light-duty work with the restriction of no lifting greater than 15 pounds and no ladder climbing. He recommended that she continue with physical therapy and a home exercise program.<sup>10</sup> In his deposition, Dr. Doll explained that this injection was in the right sacroiliac (SI) joint, which is in the region of the hip. He did not provide any injections in claimant's back.
15. On March 19, 2009, claimant again saw Dr. Doll. She reported episodes of numbness in her face, hands, and left lower extremity. Although her neurological examination was normal, she complained of decreased sensation circumferentially through the right lower extremity relative to the contralateral side without any dermatomal pattern. Reflexes were normal and the rest of the physical exam was normal. The doctor's notes indicate that he reviewed with claimant the lack of medical causal relationship between her work injury and diffuse symptomatology. She was encouraged to follow-up with her primary care doctor, especially with respect to the reported symptoms in her upper extremities, face, and left side of her body. She was continued in physical therapy.
16. On March 23, 2009, claimant reported to the therapist that she was able to walk a mile the day before and that she did "pretty good with it."<sup>11</sup>
17. An MRI of the right knee, performed on March 23, 2009, was negative. All tendons and ligaments were intact and no joint effusion was identified. Claimant had minor degenerative changes noted. An MRI of the lumbar spine was also negative. On March 27, 2009, the therapist noted that claimant's gait was smooth, and claimant made no complaints during therapy.<sup>12</sup>
18. Claimant last saw Dr. Doll on April 2, 2009. Upon examination, claimant had subjective tenderness in the lumbosacral region but no focal spinous process tenderness, spasming, or trigger point formation. Claimant did not report any lateral hip discomfort or SI joint discomfort. There was no erythema, bruising, or swelling noted in the right lower extremity. Claimant had full strength. She did have mild decreased sensation, and an electrodiagnostic study was performed and found to be negative. She was observed to

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<sup>9</sup> Employer/insurer's Exh. D.

<sup>10</sup> Employer/insurer's Exh. E.

<sup>11</sup> Employer/insurer's Exh. D.

<sup>12</sup> *Id.*

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ambulate with a normal gait. She had mild patella tenderness.<sup>13</sup> Dr. Doll released claimant to work without restrictions and placed her at MMI.

19. Claimant returned to work at Wal-Mart on full duty in March 2009.
20. Claimant presented to her primary care physician, Dr. Modad, and to nurse practitioner Kelly Vago, on May 18, 2009.<sup>14</sup> Claimant's chief complaint was hip pain. There was no reference to her knee.
21. Claimant was authorized for a second opinion evaluation with Dr. David King. The appointment was initially scheduled for May 14, 2009, but was rescheduled for June 22, 2009. In connection with the examination, Dr. King reviewed the treatment records. Claimant's chief complaint was thigh pain. She denied any significant complaints with respect to her back or the knee.<sup>15</sup> Claimant had full range of motion at the hip, lumbosacral, and the knee, including full flexion and extension. Although claimant complained of minimal tenderness around the incision sites, the sites were well-healed. The records indicate that in terms of strength testing, claimant was inconsistent in her efforts and cogwheeling was noted. Neurologically, claimant's examination was normal.<sup>16</sup>
22. Dr. King ordered x-rays, which showed the healed distal femur fracture with hardware intact. There were no signs of malalignment or other soft tissue pathology.<sup>17</sup> Dr. King's assessment was a healed right distal femur fracture post-fall with residual thigh pain and minor leg length discrepancy corrected with the heel lift. The doctor did not provide a rating, but he noted that claimant had an excellent outcome and had healed without complication. He opined that the treatment she received for her sciatic nerve symptoms was appropriate. He also found that as of March 11, 2009, claimant was at maximum medical improvement (MMI) as to the September 2008 work injury.
23. On July 15, 2009, claimant's attorney had her evaluated by Dr. Shawn Berkin.<sup>18</sup> Dr. Berkin is a family physician, not an orthopedic surgeon or neurologist. Dr. Berkin did not review the report of Dr. King. Claimant reported to Dr. Berkin that she was crying every night because of her symptoms; she indicated that her pain was a seven on a scale of one to ten. Dr. Berkin diagnosed (1) intra-articular comminuted angulated and displaced intercondylar fracture of the right distal femur with leg length shortening; (2) traumatic right trochanteric bursitis; (3) lumbosacral strain; and (4) status post open reduction with internal fixation of intercondylar fracture of the right femur with intramedullary nail insertion. Dr. Berkin related all diagnoses to the September 2008 work injury. Dr. Berkin also placed claimant at MMI from that September 2008 work injury. As a result of that work injury, Dr. Berkin assigned permanent partial disabilities of 25% of the right knee, 15% of the right hip, and 12.5% of the body as a whole

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<sup>13</sup> Employer/insurer's Exh. E.

<sup>14</sup> Claimant's Exh. 1.

<sup>15</sup> Employer/insurer's Exh. F.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Claimant's Exh. 2.

referable to the lumbosacral spine. Dr. Berkin did not recommend any additional treatment or testing.

24. On or about August 9, 2009, claimant again hurt her knee, this time while working as a warehouse loader for Wal-Mart. She had been working full duty for Wal-Mart since her return to work in March 2009. On August 9, 2009, claimant stepped off of forklift and felt an "excruciating" burn in her right knee. She was unable to stand or put any pressure on the knee, and her leg began to swell. Claimant testified that this pain was different from the pain she had felt before.
25. At the direction of Wal-Mart, claimant was seen on August 15, 2009, by Dr. Spurlock at St. John's Mercy Corporate Health and Wellness. The records indicate that claimant had sudden onset knee pain following a twisting injury. Claimant complained of persistent burning pain since onset in the front and on both sides of her knee. She was referred to an orthopedic surgeon and placed on restricted duties.<sup>19</sup> Prior to this, claimant had not had restrictions on her work activities.
26. On August 27, 2009, claimant was seen by Dr. Donald James at the direction of Wal-Mart. Claimant complained of ongoing pain and severe intractable pain with walking. Claimant's husband was present at the appointment. Claimant was now noted to walk with a limp. Dr. James recorded that claimant had specific point tenderness about the right knee on the medial tibial protuberance. The doctor prescribed a course of conservative treatment. Claimant was put in an immobilizer and prescribed pain medication, and she was restricted to desk work.<sup>20</sup>
27. Claimant returned to Dr. James on September 14, 2009. He noted that claimant reported that after she fell off a ladder in September 2008, she had a complete recovery and was having no trouble until the August 2009 injury.<sup>21</sup> Upon examination, claimant had swelling and right medial knee pain as well as great difficulty walking. Claimant returned to Dr. James on September 21, 2009. He noted that at that point, he was unable to make any correlation between the prior 2008 injury/surgery and claimant's current symptoms. Dr. James recommended a referral to an orthopedic surgeon with specialization in diseases to the knee.
28. Wal-Mart subsequently referred claimant to Dr. Christopher Rothrock, an orthopedic surgeon; claimant's first visit was on or about October 7, 2009. Dr. Rothrock's records specifically reflect that claimant "reported that she was not experiencing any pain in her right knee and was working full duty prior to the subsequent injury in August 2009."<sup>22</sup> Dr. Rothrock had radiographs taken, which showed that claimant had a healed distal third femur fracture with abundant callous formation. Dr. Rothrock opined that the claimant's primary problem involved the knee injury from September 2008. He noted that claimant still had hardware in her knee, which consisted of a retrograde intermedullary nail with

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<sup>19</sup> Employer/insurer's Exh. G.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Employer/insurer's Exh. G.

five locking screws.<sup>23</sup> In his deposition, Dr. Rothrock testified that claimant's medial and lateral joint spaces did not show any evidence of narrowing.<sup>24</sup> However, in her patellofemoral joint there was a slight incongruity of the trochlear groove, which Dr. Rothrock thought was probably a result of claimant's prior fracture.<sup>25</sup> Dr. Rothrock opined that claimant had patellofemoral pain and aggravated her pre-existing chondromalacia that was a result of her ORIF (open reduction internal fixation) of her distal femur.

29. On December 3, 2009, claimant again saw Dr. Rothrock. The doctor's diagnosis was that claimant was suffering from patellofemoral chondromalacia within her right knee. Dr. Rothrock explained that patella chondromalacia means that the cartilage in the region is not perfectly pristine and instead has a breakdown.<sup>26</sup> In Dr. Rothrock's opinion, the work injury at Wal-Mart on August 9, 2009, was not the prevailing factor in causing claimant's final diagnosis. He testified that claimant aggravated her underlying patellofemoral dysfunction with her work-related injury on August 9, 2009.<sup>27</sup>
30. Dr. Rothrock testified that claimant needed additional medical care, including further evaluation as to whether the nail inserted in her knee during the September 2008 surgery needed to be removed. He recommended that claimant consult with the treating orthopedist from the ORIF surgery.<sup>28</sup> Dr. Rothrock opined that the prevailing factor for the need for this recommended treatment was the accident of September 24, 2008, and the subsequent surgery by Dr. Ricci.
31. Dr. Ricci's notes from October 12, 2009, indicate that claimant was still walking with a profound limp and that she complained of severe patellar pain. He referred her for physical therapy.
32. On November 3, 2009, claimant presented for therapy at ProRehab. She reported that since the subsequent injury of August 2009, her knee "felt like it ripped in two." Although she reported some weakness in her right leg after she was released from care in April 2009, she did not report any pain prior to the subsequent injury in August 2009. The therapy notes indicate that claimant had a severe antalgic gait with decreased heel toe pattern, decreased stance time, and decreased toe off. She had mild edema, tenderness over the medial joint line, over the patellar tendon, and medial/lateral to the patella. Varus stress test produced medial knee pain, as did McMurray's. The therapist noted cogwheeling with flexion and extension tested. It was also noted that claimant demonstrated very high pain levels that were out of proportion with the objective medical evidence.<sup>29</sup>

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<sup>23</sup> Employer/insurer's Exh. C, p. 9.

<sup>24</sup> Claimant's Exh. 3.

<sup>25</sup> Employer/insurer's Exh. C, p. 10.

<sup>26</sup> *Id.* at pp. 14-15.

<sup>27</sup> *Id.* at p. 15.

<sup>28</sup> *Id.* at p. 17.

<sup>29</sup> Employer/insurer's Exh. G.

33. On November 19, 2009, the therapist noted that although claimant had full available range, claimant required significant encouragement to ambulate with increased knee extension. In a progress note dated December 1, 2009, the therapist noted that claimant continued to report that her knee was locking and then releasing suddenly, which was causing her to be thrown off balance. Claimant also now complained of problems with stairs.
34. Claimant returned to Dr. Rothrock on December 22, 2009. A small joint effusion was present. Degeneration was identified within the posterior horn of the lateral meniscus, but no tear was identified.
35. Claimant returned to Dr. Rothrock for the last time on January 4, 2010. Upon physical examination, Dr. Rothrock found no evidence of effusion. The physical examination of claimant's knee was essentially normal. Dr. Rothrock diagnosed patellofemoral chondromalacia. He opined that the 2009 injury was not the prevailing factor for her continued right knee complaints. Although Dr. Rothrock suggested that she consult with her prior treating orthopedist for any questions or concerns she might have, he did not make any specific recommendations for further treatment. He attributed her ongoing complaints to her prior surgery in 2008. He placed her at MMI and released her to work full duty.
36. Claimant testified that she returned to work full duty in January 2010. She worked her regular duties until March 2010, when she was laid off due to a slow-down in work at Wal-Mart. She collected unemployment benefits until June 2010, when she was recalled to work by Wal-Mart. At that time, she asked to be laid off again in hopes that a different position would open up. Her request was granted and she was on lay-off status until August 8, 2010, when she resigned because her right leg was causing her significant pain. Claimant has not worked since that date.
37. Dr. Doll provided reviewed additional medical records and prepared a report dated June 21, 2010. The additional records included medical records and reports from Dr. King, Dr. Berkin, Dr. Spurlock, Dr. James, and Dr. Rothrock, along with the 2009 MRI of her knee, numerous physical therapy records, and miscellaneous other records. In Dr. Dolls' June 2010 report, he opined that claimant was still at MMI from the 2008 injury and that she required no restrictions on her work activities that would be attributable to the 2008 work injury. Dr. Doll opined that claimant sustained a permanent partial disability of 6% of the right lower extremity at the level of the knee due to the 2008 work injury. He also opined that claimant has not sustained any permanent partial disability attributable to her right hip, low back, or any other body region attributable to her September 24, 2008 work injury.
38. Claimant testified that her August 9, 2009 injury at Wal-Mart involved the outside of her knee, and that her injury from September 24, 2008, while working for Chandler Exteriors, involved the inside of her right knee. She claims that the persistent and most significant problem involves the inside of her right knee, which she attributes to her 2008 injury at Chandler Exterior.

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39. Claimant testified that she is taking online classes towards a degree in Homeland Security.
40. Claimant's father and owner of Chandler Exterior, Lonnie Chandler, testified that he wants the insurer in this case to provide his daughter with additional treatment.
41. Claimant's husband, Fred Prope, also testified at the hearing. He indicated that he was present during claimant's appointments with Dr. James, and that claimant did not tell Dr. James that she was doing fine prior to the August 2009 injury at Wal-Mart.

### **CONCLUSIONS OF LAW**

Based upon the findings of fact and the applicable law, I find the following:

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.<sup>30</sup> Proof is made only by competent and substantial evidence, and may not rest on speculation.<sup>31</sup> Medical causation not within lay understanding or experience requires expert medical evidence.<sup>32</sup> Expert testimony is required where the cause and effect relationship between a claimed injury or condition and the alleged cause is not within the realm of common understanding.<sup>33</sup> When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.<sup>34</sup> In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.<sup>35</sup>

#### **Issue 1: Whether claimant's need for additional medical care for her right leg is medically casually related to the 9/24/08 accident.**

Section 287.140, RSMo (1994), requires that the employer provide "such medical, surgical, chiropractic, and hospital treatment . . . as may reasonably be required . . . to cure and relieve from the effects of the injury."<sup>36</sup> Such treatment "must flow from the accident before the employer is to be held responsible."<sup>37</sup>

After carefully considering all of the evidence and the applicable law, I find that claimant has not meet her burden of proof that her need for additional medical care is medically casually related to the September 24, 2008 accident she had while working for Chandler Exteriors. In making this decision, I find the opinions of Dr. Berkin, Dr. Doll, and Dr. King as to future medical treatment to be more credible and convincing than the opinion of Dr. Rothrock.

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<sup>30</sup> *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

<sup>31</sup> *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).

<sup>32</sup> *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

<sup>33</sup> *McGrath v. Satellite Sprinkler Systems, Inc.*, 877 S.W.2d 704, 708 (Mo. App. E.D. 1994).

<sup>34</sup> *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).

<sup>35</sup> *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).

<sup>36</sup> Section 287.140, RSMo. 2000.

<sup>37</sup> *Modlin v. Sun Mark, Inc.*, 699 S.W.2d 5, 7 (Mo.App. 1985).

Dr. Berkin was hired by claimant's attorney. He examined claimant on July 15, 2009. As to the September 2008 work injury, he made the following diagnoses: (1) intraarticular comminuted angulated and displaced intercondylar fracture of the right distal femur with leg length shortening; (2) traumatic right trochanteric bursitis; (3) lumbosacral strain; and (4) status post open reduction with internal fixation of intercondylar fracture of the right femur with intramedullary nail insertion. Dr. Berkin determined that the September 2008 accident was the prevailing factor in causing these conditions. He opined that claimant sustained a permanent partial disability (PPD) of 35% of the right lower extremity at the level of the knee; 15% PPD of the right lower extremity at the level of the hip; and 12.5% PPD of the body as a whole at the level of the lumbosacral spine. He recommended that claimant use non-steroidal anti-inflammatory medication for the control of her right leg and lower back pain, and that she participate in a home exercise program to strengthen and improve the mobility and flexibility of her right leg and lower back. He did not mention a need for any additional testing or treatment.

Dr. Doll treated claimant from February 24, 2009, to April 2, 2009. Dr. Doll determined that claimant was at maximum medical improvement on April 2, 2009, and he released her to work without restrictions. This decision is consistent with the numerous physical therapy notes that demonstrate that claimant was doing much better. Claimant in fact did return to work in March 2009 and worked full-duty without restrictions until she had a subsequent injury to her right knee at Wal-Mart on August 9, 2009.

Dr. Rothrock suggests that claimant needs additional treatment due to the September 24, 2008 injury. Dr. Rothrock's opinion, however, is flawed for several reasons. Dr. Rothrock was not told how claimant was injured in 2008 during her employment with the employer, Chandler Exteriors. Dr. Rothrock did not review any records for treatment claimant received prior to her Wal-Mart injury in August 2009. He did not review the diagnostic films obtained prior to August 2009. He did not review the operative report from the surgery performed by Dr. Ricci. He did not review any of the treatment records of Dr. Ricci, her post-surgical therapy records from 2008, the evaluative report and treatment records of Dr. Doll, the evaluative report of Dr. King, or the evaluative report of Dr. Berkin from July 2009 (which was obtained at the request of claimant's counsel). Dr. Rothrock testified that he did not know when the claimant had last received treatment or the condition of her knee prior to August 2009. He testified that claimant reported to him that prior to August 2009, she was not having any pain in her right knee. This is contradictory to what claimant testified at trial, and contradictory to what claimant told her rating doctor, Dr. Berkin, in July 2009. I find that Dr. Rothrock relied on incorrect information provided by claimant as to her knee problems during the period of time immediately before the August 2009 injury at Wal-Mart. Due to these significant shortcomings, Dr. Rothrock's opinion as to the need for future medical treatment carries little weight.

I find that claimant has *not* sustained her burden of proof that she needs additional medical treatment due to the September 24, 2008 work injury.

**Issue 2: Whether claimant is entitled to temporary total disability benefits from August 9, 2010 and ongoing.**

Temporary total disability is addressed in Section 287.170, RSMo. This section provides, in pertinent part, that “the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability at the weekly rate of compensation in effect under this section on the date of the injury for which compensation is being made.” The term “total disability” is defined in Section 287.020.6, as the “inability to return to any employment and not merely [the] inability to return to the employment in which the employee was engaged at the time of the accident.” The purpose of temporary total disability is to cover the employee’s healing period, so the award should cover only the time before the employee can return to work.<sup>38</sup> Temporary total disability benefits (TTD) are owed until the employee can find employment or the condition has reached the point of “maximum medical progress.”<sup>39</sup> Thus, TTD benefits are not intended to encompass disability after the condition has reached the point where further progress is not expected.<sup>40</sup> This is reflected in the language that TTD benefits last only “during the continuance of such disability.”<sup>41</sup>

Claimant requests that she be awarded TTD benefits for 34 weeks and ongoing, representing the period from August 9, 2010 until the hearing on April 7, 2011, and continuing as long as she is entitled to such benefits.

The employer/insurer provided TTD benefits to claimant in the amount of \$5,790.38, for the period of September 25, 2008 to April 2, 2009, when Dr. Doll found claimant to be at maximum medical improvement (MMI) and released her without restrictions. I also find that claimant was at MMI on April 2, 2009. Therefore, claimant’s request for additional TTD benefits is denied.

### **Issue 3: Medical causation as to claimant’s low back injury.**

Dr. Doll found that claimant sustained a lumbosacral strain as a result of the September 24, 2008 accident. Claimant had conservative treatment for this injury. Dr. Doll opined that claimant did not sustain any permanent partial disability as to the low back.

Dr. Berkin also diagnosed claimant with a lumbosacral strain as a result of the September 2008 work injury. He opined that claimant sustained a permanent partial disability of 12.5% of the body as a whole at the level of the lumbosacral spine.

I find that claimant has met her burden of proof that she sustained a lumbosacral strain as a result of the September 24, 2008 accident.

### **Issue 4: Nature and extent of permanent partial disability.**

Under Section 287.020.3(1), a compensable “injury” is one that arises out of and in the course of employment. The injury is only compensable if the work related incident is the

<sup>38</sup> *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo. App. W.D. 1997), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d at 226 (Mo. Banc 2003).

<sup>39</sup> *Cooper* at 575.

<sup>40</sup> *Cooper* at 575; *Smith v. Tiger Coaches, Inc.*, 73 S.W.3d 756, 764 (Mo. App. E.D. 2002), *overruled on other grounds by Hampton*, 121 S.W.3d at 225.

<sup>41</sup> Section 287.170.1, RSMo.

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“prevailing factor in causing the resulting medical condition and disability.”<sup>42</sup> The term “prevailing factor” shall be defined as the “primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”<sup>43</sup>

The determination of the specific amount or percentage of disability to be awarded to an injured employee is a finding of fact within the unique province of the ALJ.<sup>44</sup> The ALJ has discretion as to the amount of the permanent partial disability to be awarded and how it is to be calculated.<sup>45</sup> A determination of the percentage of disability arising from a work-related injury is to be made from the evidence as a whole.<sup>46</sup> It is the duty of the ALJ to weigh the medical evidence, as well as all other testimony and evidence, in reaching his or her own conclusion as to the percentage of disability sustained.<sup>47</sup>

The fact finder is encumbered with determining the credibility of witnesses.<sup>48</sup> The fact finder is free to disregard that testimony which it does not hold credible.<sup>49</sup> I find that claimant’s credibility is somewhat suspect. Her testimony at trial as to her right leg, hip and back complaints differs significantly from what is found in the records of Dr. Doll, Dr. King, and the physical therapists. The record is replete with references in the physical therapy records and in the doctors’ records that demonstrate that claimant was doing well and that her right leg and knee injuries had improved significantly. In July 2009, however, claimant told her rating doctor, Dr. Berkin, that she was crying every night because of her severe knee pain. Less than one month later she told Dr. Rothrock that she was not experiencing any pain in her right knee when she sustained another right leg injury on August 9, 2009. At trial, claimant testified that after her September 2008 injury and up to the August 2009 injury, she had severe leg pain on a daily basis.

Dr. Berkin was hired by claimant’s attorney. He examined claimant on July 15, 2009. As to the September 2008 work injury, he opined that claimant sustained a permanent partial disability (PPD) of 35% of the right lower extremity at the level of the knee; 15% PPD of the right lower extremity at the level of the hip; and 12.5% PPD of the body as a whole at the level of the lumbosacral spine.

Dr. Doll opined that that claimant had sustained a PPD of 6% of the right lower extremity at the level of the knee. He indicated that claimant had not sustained any PPD of her lumbosacral spine.

Neither Dr. Rothrock nor Dr. King provided a rating. Dr. King’s June 22, 2009 report, however, indicates that claimant had an excellent outcome following her treatment for a severe distal femur fracture, and that the fracture healed without complication.

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<sup>42</sup> Section 287.020.3(1).

<sup>43</sup> *Id.*

<sup>44</sup> *Hawthorne v. Lester E. Cox Medical Center*, 165 S.W.2d 587, 594-595 (Mo.App. S.D. 2005); *Sifferman v. Sears & Robuck*, 906 S.W.2d 823, 826 (Mo.App. S.D. 1999).

<sup>45</sup> *Rana v. Land Star TLC*, 46 S.W.3d 614 626 (Mo.App. W.D. 2001).

<sup>46</sup> *Landers v. Chrysler*, 963 S.W.2d 275, 284 (Mo.App. E.D. 1998).

<sup>47</sup> *Rana* at 626.

<sup>48</sup> *Cardwell v. Treasurer of the State of Missouri*, 249 S.W.3d 902 (Mo. App. E.D. 2008).

<sup>49</sup> *Id.* at 908.

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Based on a thorough review of the evidence, I find that claimant sustained a compensable injury to her right knee, right hip, and body as a whole (lumbosacral spine). Specifically, I find that claimant sustained a permanent partial disability of 20% of the right knee and 12.5% of the body as a whole referable to the right hip and the lumbosacral spine.

Any pending objections not expressly addressed in this award are overruled.

Made by: \_\_\_\_\_  
Vicky Ruth  
*Administrative Law Judge*  
*Division of Workers' Compensation*