

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

Injury No.: 10-032791

Employee: Mary Riegel  
Employer: Sisters of St. Mary's Regional Health Services  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 30, 2013. The award and decision of Administrative Law Judge Hannelore D. Fischer, issued April 30, 2013, 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 17<sup>th</sup> day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Mary Riegel Injury No.: 10-032791

Dependents: N/A

Employer: Sisters of St. Mary's Regional Health Services

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

Insurer: Self-insured;  
TPA is Cannon Cochran Management Services

Hearing Date: April 10, 2013

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

Checked by: HDF/scb

### 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: May 5, 2010
5. State location where accident occurred or occupational disease was contracted: Cole 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:  
See award
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: Right knee
14. Nature and extent of any permanent disability: 15% right knee
15. Compensation paid to-date for temporary disability: - 0 -
16. Value necessary medical aid paid to date by employer/insurer? \$1,034.08
17. Value necessary medical aid not furnished by employer/insurer? - 0 -

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- 18. Employee's average weekly wages: - 0 -
- 19. Weekly compensation rate: \$347.65
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: 15% of right knee = 24 weeks or \$8,343.60
- 22. Second Injury Fund liability: Yes. 6 % body as a whole  
24 weeks of permanent partial disability from Second Injury Fund = \$8,343.60
- 23. Future Requirements Awarded: - 0 -

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Van Camp Law Firm.

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

Employee: Mary Riegel

Injury No: 10-032791

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Sisters of St. Mary's Regional Health Services

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

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

Insurer: Self-insured;  
TPA is Cannon Cochran Management Services

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on April 10, 2013. Memoranda were submitted by April 19, 2013.

The parties stipulated that on or about May 5, 2010, the claimant, Mary Riegel, was employed by Sisters of St. Mary's Regional Health Center (St. Mary's Hospital). On or about that date, Ms. Riegel sustained an injury by accident; the accident arose out of and in the course of employment. The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was self-insured with Cannon Cochran Management Services as the third party administrator. The employer had timely notice of the injury; a claim for compensation was timely filed. Ms. Riegel's compensation rate is \$347.65 per week for all disability benefits. No temporary total disability benefits were paid. Medical aid was provided in the amount of \$1,034.08.

The issues to be resolved by hearing include 1) the causation of the injuries alleged, 2) the nature and extent of permanent disability, and 3) the liability of the Second Injury Fund for permanent disability benefits. Permanent partial disability is alleged.

### **FACTS**

The claimant, Mary Riegel, was employed as a registered nurse by St. Mary's Hospital on May 5, 2010, when she tripped on the brake on a chair she had been sitting in while attending to a patient and fell on her right side. Ms. Riegel noticed immediate bruising on her right leg and treated it with ice. Ms. Riegel filled out an incident report the day of the accident. Ms. Riegel noticed pain in her leg the day of the injury as well as soreness over the next few days. Ms. Riegel did not mention her knee complaints at work because she thought the condition of the knee would improve. Currently, Ms. Riegel continues to complain of symptoms of pain in her right knee and avoids going up stairs; Ms. Riegel testified that her right knee occasionally gives way or buckles and that when that happens she has a sharp pain in her right knee; otherwise the right knee pain is at a level three on a ten-point pain scale. Ms. Riegel testified that she cannot kneel on her right knee and puts a pillow under her right knee when she is lying on her back. Ms. Riegel testified that she does not recall whether she mentioned her right knee injury to Dr. Snyder when she saw him in June of 2010 for treatment of her 2009 right shoulder injury. Ms. Riegel testified that she

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did mention her right knee injury to Dr. Snyder when she saw him in August of 2010 and that he ordered an MRI of the right knee.

Prior to 2010, Ms. Riegel had an injury on November 26, 2009, to her right shoulder which settled based on 25 percent of the right shoulder and 2.5 percent of the left hip; the injury resulted from a fall on a wet floor while working at St. Mary's Hospital. Prior to 2009, Ms. Riegel had a fracture of her right foot in 1988, which she described as somewhat painful on rainy days. In 2008 Ms. Riegel had surgery on her right foot for plantar fasciitis and now wears orthotics to alleviate right foot pain. Ms. Riegel also described occasional swelling and pain at a level 8 out of 10 in the right foot attributable to the plantar fasciitis. In 2006 Ms. Riegel had a right hip replacement as the result of which Ms. Riegel can no longer engage in heavy lifting, run, or cross her legs. Ms. Riegel also described a prior left shoulder injury sustained in 2004, while maneuvering a patient in a bed in a hallway. Ms. Riegel received an injection into the left shoulder. Ms. Riegel testified that the left shoulder injury did not bother her until after the right shoulder injury when she was forced to use the left shoulder more.

Dr. David Volarich, D.O., testified by deposition that he evaluated Ms. Riegel on May 24, 2011. As the result of the May 5, 2010 accident and injury, Dr. Volarich diagnosed an internal derangement of the right knee further described as a chondral defect in the medial femoral condyle with a possible medial meniscus tear. Dr. Volarich testified that he found a "little bit" of patellar mistracking. (Volarich depo p20) Dr. Volarich stated that the most common cause of patellar mistracking is damage to the condyle surface of the kneecap. Dr. Volarich opined to a permanent partial disability of 50 percent of the right knee. During cross-examination Dr. Volarich testified that he found "a defect in the condyle surface of the medial femoral condyle" when he reviewed the MRI scan and that is the same thing the radiologist noted when he referred to "a six by five millimeter full thickness cartilage defect in the posterior weight bearing surface of the medial femoral condyle" in his report. (Volarich depo p 40,41)

As the result of the November 26, 2009 accident and injury, Dr. Volarich diagnosed an internal derangement of the right shoulder, including a partial right rotator cuff tear, labral tear and impingement, as well as a left hip contusion with residual trochanteric bursitis. Dr. Volarich opined to a permanent disability of 45 percent of the right shoulder and 20 percent of the left hip as the result of the November 26, 2009 accident and injury.

With regard to permanent disability preexisting 2009, Dr. Volarich opined to a 15 percent permanent disability of the right foot attributable to the surgically released right plantar fascia, a 25 percent permanent disability of the left shoulder attributable to the conservatively treated left shoulder impingement, rotator cuff tendinopathy and labral tear, and 65 percent permanent disability of the right hip for the advanced arthritis requiring a total hip replacement. Dr. Volarich noted in his deposition testimony that Ms. Riegel had a 50-pound lifting restriction attributable to the right hip. In his notes, Dr. Volarich specifically mentioned that Ms. Riegel reported to him that she had no deterioration of the left shoulder subsequent to the 2009 and 2010 injuries.

Dr. Volarich opined that the combination of Ms. Riegel's disabilities created a greater disability than their simple sum.

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Dr. Snyder's records reflect that Ms. Riegel told him of her right knee injury on August 16, 2010, and that he ordered an MRI. The radiology report for the right knee MRI performed on December 14, 2010, reflects the following impressions "1. Three-compartment osteoarthritis with cartilage loss and chondromalacia as detailed above. 2. Patellar tilt and subluxation with asymmetric cartilage loss concerning for patellar of tracking mildly. 3. Menisci are intact. 4. Prominent varicose veins are noted along the medial aspect of the knee." (Radiology St. Mary's Health Center 12.14.10)

Dr. Bernard Randolph evaluated Ms. Riegel on January 10, 2012, and authored a report pertaining thereto on the same date. Dr. Randolph testified by deposition on October 24, 2012, that he opined that Ms. Riegel had osteoarthritis in all three compartments of her right knee. Dr. Randolph described the osteoarthritis as a degenerative process rather than trauma induced and opined to a permanent disability of ten percent of the right knee, none of which is attributable to the May 5, 2010 accident and injury. During cross-examination by counsel for the claimant, Dr. Randolph acknowledged that although Ms. Riegel suffers from the degenerative disease process of osteoarthritis, that she also has a patellar tilt in the right knee which could be traumatic in origin; Dr. Randolph opined that the patellar tilt Ms. Riegel has is probably related to a degenerative or constitutional condition; the patellar tilt was described as having the potential of causing symptoms, including pain. Dr. Randolph acknowledged that although Ms. Riegel sought medical attention for a fall at the Jefferson City mall in April of 2010, that there is nothing in the medical records to indicate that the right knee was injured. Dr. Randolph similarly acknowledged that there was no medical evidence relating to right knee pain for Ms. Riegel after a complaint she made to the physician treating her for plantar fasciitis in February of 2009.

### **APPLICABLE LAW**

RSMo Section 287.020.2 2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

RSMo Section 287.190.1. For permanent partial disability, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with sections 287.170 and 287.180, respectively, the employer shall pay to the employee compensation computed at the weekly rate of compensation in effect under subsection 5 of this section on the date of the injury for which compensation is being made, which compensation shall be allowed for loss by severance, total loss of use, or proportionate loss of use of one or more of the members mentioned in the schedule of losses....(18) Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb 160

RSMo Section 287.190.3. For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. For the permanent partial loss of the use of an arm, hand, thumb,

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finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

RSMo Section 287.220.1. 287.220. 1. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

Employee: Mary Riegel

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**AWARD**

The claimant, Mary Riegel, has sustained her burden of proof that she injured her right knee in the accident of May 5, 2010, when she tripped and fell while caring for a patient at St. Mary's Hospital. Ms. Riegel testified credibly regarding the history of her injury and the subsequent symptoms in her right knee. Dr. Volarich's testimony is consistent with the findings reported on the MRI ordered by Dr. Snyder and performed on December 14, 2010. I find Dr. Volarich's testimony that Ms. Riegel sustained an injury to the medial condyle in her May 5, 2010 fall resulting in patellar mistracking in the right knee to be most persuasive in explaining Ms. Riegel's current and ongoing right knee symptoms.

The employer/insurer is liable for permanent disability of 15 percent of the right knee. This finding is based on Ms. Riegel's testimony as well as that of Dr. Volarich.

Ms. Riegel has sustained her burden of proof that the Second Injury Fund is liable for her increased permanent partial disability as the result of the combination of the right knee injury of May 5, 2010, and the preexisting disabilities to the right shoulder, right foot, the right hip and the left shoulder. Ms. Riegel has proven that the right knee injury of May 5, 2010, and the preexisting injuries to the right shoulder, right foot, the right hip, and the left shoulder are each serious enough to cause a hindrance or obstacle to employment. The disability imposed on Ms. Riegel by her right knee injury is 15 percent of the right foot based on both Ms. Riegel's testimony regarding the limitations imposed on her by her right knee injury as well as the opinion of Dr. Volarich. The disability imposed on Ms. Riegel by her preexisting disabilities is similarly found to be 25 percent of the right shoulder, 15 percent of the right foot, 15 percent of the left shoulder, and 50 percent of the right hip based on Ms. Riegel's testimony regarding the limitations imposed on her by her preexisting disabilities as well as the opinion of Dr. Volarich. The synergistic effect or disability above and beyond the simple sum of the disability to the right knee as the result of the May 5, 2010 accident and injury and the preexisting disabilities to the right shoulder, right foot, the right hip, and the left shoulder is 6 percent of the body.

Made by: \_\_\_\_\_  
HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*