

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

Injury No.: 01--169224

Employee: Ralph Scott
Employer: Modern Maintenance
Insurer: Liberty Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: May 31, 2001
Place and County of Accident: Kansas City, Jackson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 23, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Paula A. McKeon, issued May 23, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11th day of December 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Ralph Scott

Injury No. 01-169224

Dependants: N/A

Employer: Modern Maintenance

Insurer: Liberty Insurance Company

Hearing Date: April 17, 2006

Checked by: PAM/bi

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: May 31, 2001
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
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:
Ralph Scott alleges injury to his right knee during in the course and scope of his employment due to prolonged walking and standing.
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 lower extremity knee.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$255.39/\$255.39
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
N/A weeks of temporary total disability
N/A weeks of permanent partial disability from Employer
N/A weeks of disfigurement from Employer
22. Second Injury Fund liability: None.

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ralph Scott Injury No. 01-169224

Dependants: N/A

Employer: Modern Maintenance

Insurer: Liberty Insurance Company

Additional Party: N/A

On April 17, 2006, the parties appeared for hearing. The Division had jurisdiction to hear this claim pursuant to §287.110. The Employee, Ralph Scott, appeared in person and with counsel, Jerry Kenter. The Employer and its Insurer, Liberty Insurance Company appeared in person through counsel, Andrew Wimmer.

STIPULATED FACTS

At the hearing the parties stipulated to the following:

1. that all liability of the Employer was fully insured by Liberty Mutual Company;
2. that on or about May 31, 2001, Ralph Scott was an employee of Modern Maintenance;
3. that the Employer had notice of the injury and a timely claim for compensation was filed; and
4. that a compensation rate for Ralph Scott is \$255.39/\$255.39.

ISSUES

The parties requested the Division to determine:

1. whether Ralph Scott sustained an accident, series of accidents or occupational disease in Jackson County, Missouri;

2. what is the nature and extent of Ralph Scott's permanent partial disability; and
3. whether Ralph Scott is entitled to future medical treatment.

Ralph Scott is a 62-year-old former maintenance supervisor for Modern Maintenance. Scott was required to make sure the cleaning crews were performing correctly and assists with cleaning and maintenance if necessary. Scott's job duties required him to walk on concrete floors all day. Scott frequently climbed stairs and was required to squat occasionally in performance of his job duties.

In 2000 Scott noticed he had problems with his right knee. Scott's knee began to hurt and swell. Scott sought medical treatment at Truman Medical Center. Scott was diagnosed with arthritis, provided a knee brace and was advised to limit occupational activities. Scott eventually underwent arthroscopic knee surgery on August 15, 2000. Scott was advised he had significant arthritis and would require a total knee replacement. Scott was released to return to work in October 2000. Scott returned to work until May 2001 when he took leave to care for his ill wife. Scott did not return to work for Modern Maintenance after May 2001.

Scott said during the period of time between the surgery and May 2001, his knee continued to deteriorate. Scott could not identify any specific trauma or incident after his return to work. Scott said the constant working, stair climbing, and standing on concrete floors aggravated his ongoing right knee symptoms.

Scott filed a claim for compensation against the same Employer in 2000 for a right knee injury. That claim was settled on February 26, 2004 for 7.5 percent disability.

Dr. Truett Swaim evaluated Scott on July 10, 2001 for Scott's January 12, 2000 injury. In that report Swaim attributes Scott's occupational activities as a substantial contributing factor to Scott's development of arthritis and his need for surgery in August 2000. Swaim believes Scott's condition would deteriorate and opined that he is a "candidate for a total knee replacement in the future." Swaim assessed 40 percent permanent partial disability to Scott's right knee attributable to his 2000 injury and places Scott at maximum medical improvement. This examination was conducted six weeks after the alleged aggravation of his knee condition ending with his last day of work on May 31, 2001.

Dr. Prostic opined in December 2004 that Scott had no evidence of work injury after his return to work in October 2000 until his employment ended in May 2001.

Dr. Stuckmeyer in August 2004 acknowledged Scott's arthritis condition and attributes its development to Scott's work activities. Stuckmeyer's findings including diagnosis, treatment and history of complaints are almost identical to the ones set forth by Dr. Swaim in July 2001 in reference to Scott's January 12, 2000 date of injury. Dr. Stuckmeyer attributes 50 percent permanent partial disability to Scott's right knee with 7.5 percent preexisting.

Scott has failed to demonstrate an accident, series of accidents or occupational disease referable to a May 31, 2001 date of injury. All records and reports point to the problems as directly related to occupational activities in the 2000 claim for compensation, which was settled in February 2004.

Accordingly, Scott's claim for compensation is denied.

Date: _____

Made by: _____

Paula A. McKeon
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director

