

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

Injury No.: 09-053261

Employee: Kenneth Siculan
Employer: American Lock & Key Service
Insurer: American Family Mutual Insurance

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Findings of Fact

The parties dispute the specific sequence of events that led up to employee suffering the onset of severe right knee pain during his work shift on July 21, 2009. We adopt the administrative law judge's (implied) finding that employee provided credible testimony regarding the incident, and supplement the administrative law judge's findings regarding the incident as follows.

Employee got some mud on his boots in the course of walking to and from the customer's house. Employee experienced the sudden onset of severe pain in his right leg when his right foot slipped off the curb while he was performing a motion which involved placing his toolbox into employer's van, pulling the door shut with his left hand, and pivoting with his right leg.

We adopt the administrative law judge's (implied) finding that Dr. Burns and Dr. Woiteshek persuasively opined that employee's accident on July 21, 2009, is the prevailing factor in causing employee's right knee injury.

Conclusions of Law

Accident

The administrative law judge did not specifically address the issue whether employee sustained an accident. Section 287.020.2 RSMo provides, as follows:

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.

We have found that employee felt pain in his right leg when his right foot slipped off a curb while he was performing a motion which involved placing his toolbox into employer's

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van, pulling the door shut with his left hand, and pivoting with his right leg. We are persuaded that these facts satisfy each of the foregoing criteria for an "accident." We conclude that employee suffered an accident for purposes of § 287.020.2.

Medical causation

Section 287.020.3(1) RSMo sets forth the standard for medical causation applicable to this claim and provides, in relevant part, as follows:

An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

We have found that Dr. Burns and Dr. Woiteshek persuasively opined that employee's accident on July 21, 2009, is the prevailing factor in causing employee's right knee injury. We conclude that the accident is the prevailing factor causing the resulting medical condition of internal derangement of the right knee including a torn medial meniscus, and permanent partial disability to the extent of 25% of the right knee.

Injury arising out of and in the course of employment

The parties dispute whether employee proved that his injuries arose out of and in the course of employment for purposes of § 287.020.3(2) RSMo which provides, as follows:

An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

We have credited the opinions from Dr. Burns and Dr. Woiteshek that the accident was the prevailing factor in causing the injury. We conclude that employee has satisfied subsection (a) above. With respect to subsection (b), we note that the courts have interpreted the foregoing language to involve a "causal connection" test that employees must satisfy in order to prove that an injury has arisen out of and in the course of the employment. *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504, 510-11 (Mo. 2012). The *Johme* court held that an employee who fell and suffered injuries while making coffee "failed to meet her burden to show that her injury was compensable because she did not show that it was caused by risk related to her employment activity as opposed to a risk to which she was equally exposed in her normal nonemployment life." *Id.* at 512.

Here, employee's injuries resulted from the intersection of several risks specific to his employment. First, employee's pivoting action was a product of the motion involved in

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closing the sliding door on employer's commercial van. Second, employee was handling a 25 pound toolbox. Third, employee had mud on his boots, which led to employee's foot slipping off the curb while pivoting with his right leg. (We deem the question whether the mud was the result of rain or some other cause to be irrelevant; the fact remains that employee had mud on his boots as a direct result of performing his duties for employer that day.)

The record contains no evidence that would support a finding that workers would have been equally exposed, outside of and unrelated to the employment in normal nonemployment life, to the risks involved in handling a 25 pound toolbox, shutting a sliding door on a commercial van, and pivoting on a curb in muddy boots.

We conclude, therefore, that employee's injuries arose out of and in the course of his employment.

Conclusion

We affirm and adopt the award of the administrative law judge, as supplemented herein.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued March 28, 2013, is attached and incorporated by this reference.

We approve and affirm 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 26th day of September 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Kenneth Siculan

Injury No.: 09-053261

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: American Lock & Key Service

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

Additional Party: N/A

Insurer: American Family Mutual Insurance

Hearing Date: January 24, 2013

Checked by: CTL

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: July 21, 2009
5. State location where accident occurred or occupational disease was contracted: St. Louis 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 twisted his knee while closing the van door.
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: 25% of the right knee
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

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- 17. Value necessary medical aid not furnished by employer/insurer? \$39,591.97
- 18. Employee's average weekly wages: \$658.77
- 19. Weekly compensation rate: \$439.20
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

- 21. Amount of compensation payable:
 - a. Unpaid medical expenses of \$39,591.97
 - b. TTD: \$3,011.65 (7/22/09 to 9/8/09, 6 6/7 weeks)
 - c. PPD: \$16,918.80 (25% of right knee)

22. Second Injury Fund liability: N/A

TOTAL: \$59,522.42

23. Future requirements awarded: N/A

Said payments to begin 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: Robert Butler

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Kenneth Siculan	Injury No.:	09-053261
Dependents:	N/A		
Employer:	American Lock & Key Service		
Additional Party:	N/A		
Insurer:	American Family Mutual Insurance	Checked by:	CTL

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

PREFACE

A hearing was held in the above mentioned matter on January 24, 2013. The Claimant, Kenneth Siculan, was represented by Attorney Robert Butler. The Employer/Insurer, American Lock & Key Service and American Family Mutual Insurance, were represented by Attorney John R. Fox.

STIPULATIONS

The parties stipulated to the following:

1. Jurisdiction and venue are proper.
2. Claimant timely filed a proper claim.
3. Notice was proper.
4. The compensation rates are \$439.20/\$422.97.
5. Employer paid no medical expenses.
6. Employer paid no temporary total disability benefits.

ISSUES

1. Did the accident arise out of and in the course of Claimant's employment?
2. Medical causation.
3. Employer's liability for medical bills
4. Employer's liability for temporary total disability benefits.
5. Nature and extent of permanent partial disability.

EXHIBITS

The Claimant offered the following exhibits which were accepted into evidence:

- A. Records of BarnesCare
- B. Records of Dr. Burns

- C. Records of Dr. Bonsanti
- D. Records of City Place Surgery Center
- E. Records of St. Luke's Rehabilitation Hospital
- F. Report of Dr. Burns
- G. Deposition of Dr. Woiteshek
- H. Bills and summary

The Employer/Insurer offered the following exhibits which were accepted into evidence:

- 1. Report of Injury
- 2. Original Claim for Compensation
- 3. Amended Claim for Compensation
- 4. Workers' Compensation Accident Information Request
- 5. Correspondence from Claimant to Kendra Welton
- 6. Statement of Kenneth Siculan
- 7. NOAA Hourly Precipitation Data
- 8. 60 day submission of Dr. Arekapudi
- 9. 60 day submission of Dr. Lux

FINDINGS OF FACT

- 1. Claimant was 66 years of age at the time of the hearing. He testified that he started working for the Employer in March of 1997 and last worked there on March 19, 2010. Claimant testified that he did field work and bench work as a locksmith and that his job required being on his feet and seated, carrying tools and toolboxes, and he would also be dispatched to various locations such as the Employer's customers' homes and businesses.
- 2. The Employer provided him with a trade van in order to call upon customers at different locations.
- 3. On July 21, 2009, Claimant in his work van went to a customer's house to remove a broken key and repair a lock on the front door of the residence.
- 4. Claimant parked his car on the street in front of the customer's house and took his toolbox out of the van. As he approached the house, he noticed they were doing some repair work to the front of the house and there were various people working there.
- 5. Claimant after repairing the lock went and walked through the front yard which was muddy.
- 6. Claimant loaded his toolbox into the van and pulled the sliding van door closed from his left to his right and his right foot slipped and he twisted and experienced pain immediately in his right knee.

7. After feeling the pain in his right knee, Claimant got into the van and called owner/supervisor Bruce Baker and told him he had injured his right knee.
8. Employer sent Claimant to see Dr. Arekapudi on July 22, 2009. He told the doctor that he closed the van door and when he turned he felt a sharp pain in his right knee. The Claimant was seen by Dr. Arekapudi at BarnesCare Center. As a result of the doctor's records, the Employer refused any additional medical care for Claimant.
9. Claimant on July 24, 2009 went to see Dr. Michael Burns at Mid County Orthopaedic group. Dr. Burns felt that Claimant had right knee arthritis with likelihood of meniscus tear and ordered an MRI.
10. An MRI was taken of Claimant's knee on July 27, 2009 and revealed a complex tear involving the posterior body and posterior horn of the medial meniscus.
11. On August 5, 2009, Dr. Burns performed surgery on Claimant's right knee. After the surgery, he diagnosed right knee medial meniscal tear with synovitis and degenerative disease.
12. Claimant returned to work after the surgery on September 9, 2009.
13. Dr. Burns was of the opinion, according to the evidence, that Claimant's twist of July 21, 2009, was the prevailing cause of the medial meniscus tear as well as contributing to an element of synovitis.
14. Claimant was seen by Dr. Woiteshek for an IME and the doctor was of the opinion that the prevailing factor in causing the right knee injury was Claimant getting out of his work van and turning and feeling immediate pain in the right knee on July 21, 2009. Dr. Woiteshek issued a rating of 35% PPD of the Claimant's right knee.
15. Claimant was seen by Dr. Paul Lux on June 15, 2012 for an IME at the request of the Employer. Dr. Lux took a history from the Claimant as to how his injury occurred and he was of the opinion and felt that the description of his injury and findings at the time of the surgery were consistent with the work-related injury of July 21, 2009. He was also of the further opinion that the care and treatment Claimant received was appropriate and necessary.
16. Claimant testified that with regard to his right knee injury he still has pain and discomfort and cannot walk or stand as he could prior to the injury and can no longer play golf because of his right knee injury.

17. Claimant submitted his evidence of the medical bills as follows:

BarnesCare	\$ 338.00
Dr. Michael Burns	\$27,636.65
Dr. Robert Bonsanti	\$ 162.00
City Place Surgery Center	\$ 9,320.00
St. Luke's Hospital	\$ 1,495.32
Comprehensive Anesthesia	\$ 640.00
Total	\$39,591.97

18. The Claimant missed work from July 22, 2009 to September 8, 2009 for a total of 6 6/7 weeks.

19. The parties stipulated that Claimant's TTD/PPD rates are \$439.20/\$422.97.

RULINGS OF LAW

1. Claimant's right knee injury of July 21, 2009 was the prevailing factor in his medical condition and injury to his right knee.
2. Employer/Insurer is responsible to the Claimant for his incurred medical bills of \$39,591.97, which I find to be reasonable and necessary for the cure and relief of Claimant's injury.
3. Employer is liable to the Claimant for TTD benefits for 6 6/7 weeks from July 22, 2009 to September 8, 2009 in the amount of \$439.20 per week for a total of \$3,011.65.
4. As a result of Claimant's injury of July 21, 2009, he sustained 25% permanent partial disability of his right knee and the Employer/Insurer shall pay to the Claimant \$422.97 for 40 weeks for a total of \$16,918.80.
5. Claimant's Attorney Robert Butler is entitled to an attorney's fee of 25%.

Made by: _____
 CORNELIUS T. LANE
 Administrative Law Judge
 Division of Workers' Compensation