

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

Injury No.: 07-031458

Employee: Annette Smith
Employer: B F & B Enterprises
d/b/a TDL Personnel Service (Settled)
Insurer: Missouri Retailers Insurance (Settled)
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 February 22, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued February 22, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 20TH day of August 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:	Annette Smith	Injury No.: 07-031458
Dependents:	N/A	Before the
Employer:	BF&B Enterprises, d/b/a TDL Personnel Service (Settled)	Division of Workers' Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Missouri Retailers Insurance (Settled)	
Hearing Date:	November 26, 2012	Checked by: SC

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: Alleged March 16, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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:
Claimant alleged she injured her right knee while climbing a ladder at work.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right knee
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Annette Smith

Injury No.: 07-031458

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Sufficient for the rate listed in number 19 below.
- 19. Weekly compensation rate: \$163.31
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

- 21. Amount of compensation payable: Settled prior to hearing
- 22. Second Injury Fund liability: None
- TOTAL: None
- 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Kurt Hoener

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Annette Smith	Injury No.: 07-031458
Dependents:	N/A	Before the
Employer:	BF&B Enterprises, d/b/a TDL Personnel Service (Settled)	Division of Workers' Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri
Insurer:	Missouri Retailers Insurance (Settled)	Jefferson City, Missouri
Hearing Date:	November 26, 2012	

PRELIMINARIES

The parties appeared before the undersigned administrative law judge on November 26, 2012 for a hearing for a final award to determine the Second Injury Fund's ("SIF's") liability for benefits at the request of Annette Smith ("Claimant"). Attorney Kurt Hoener represented Claimant. Assistant Attorney General E. Joye Hudson represented SIF. The court reporter was Kathy Rethemeyer. The record closed after presentation of the evidence. Venue is proper and jurisdiction properly lies with the Division of Workers' Compensation. Memorandums of law were received from the parties by December 11, 2012.

Prior to the start of the hearing, BF&B Enterprises ("Employer") and their Insurer, Missouri Retailers Insurance, settled their claims with Claimant for 15% permanent partial disability ("PPD") of the right knee and did not participate in the proceeding.

Claimant submitted two claims for disposition, injury numbers 07-031458 and 07-023867. Both awards contain similar facts but separate awards were written.

The parties stipulated that on or about March 16, 2007:

1. Claimant was employed by Employer in St. Louis, Missouri.
2. Claimant and Employer operated pursuant to Chapter 287 RSMo.¹
3. Employer's liability was fully insured.
4. Claimant filed the claim within the time allowed by law.
5. Employer received proper notice of the claim.
6. Claimant's average weekly wage was sufficient for a rate of \$163.31 for PPD and permanent total disability ("PTD").
7. Employer paid no TTD or medical benefits.
8. Claimant achieved maximum medical improvement ("MMI") on July 3, 2008.

The parties identified the following issues for disposition:

¹ All references in this award are to the 2005 Revised Statutes of Missouri unless otherwise stated. All references to the Employer also include the Insurer unless otherwise stated.

1. Did Claimant's repetitive job duties cause her right knee injury?
2. If so, is SIF liable for occupational disease injuries?
3. What is the nature and extent of SIF liability for PPD or PTD benefits, if any?

EXHIBITS

Claimant's Exhibits A through P and SIF's Exhibit I were offered and received into evidence without objection. Any objections not expressly ruled on during the hearing or in this award are now overruled. To the extent there are marks or highlights contained in the exhibits, they were made prior to being made part of this record, and were not placed there by the undersigned administrative law judge.

SUMMARY OF EVIDENCE

All evidence was reviewed but only evidence that supports this award is discussed below.

1. At the time of the hearing, Claimant was 50 years old and single. She obtained a GED and completed office skills training at Harris Stowe State University in 2004.
2. Claimant's past employment includes kitchen manager at Calico's, manager at Church's Chicken, she also worked at McDonald's, and during several periods for the U.S. Post Office. Each job required Claimant to stand on her feet all day.

Preexisting Disability

3. In the early 1980's Claimant sustained burns to both arms. She did not receive medical treatment in the five years leading up to March 2007.
4. Before March 2007, Claimant sustained a lumbar injury in a car accident. Leading up to March 2007 Claimant's back flared up occasionally, but was not a constant problem. Occasionally she had difficulty standing or sitting. The biggest problem occurred in December 2006 when she bent to pick up items and had pain for four days. Claimant has not received medical care for her back in the last five years before March 2007.
5. In 1999 Claimant developed swelling and water on her right knee, and in 2000 she received medication from Grace Hill to remove it. Medical records show left knee complaints in May 2002 and two right knee complaints in July 2002, a day apart. First Claimant developed right knee pain at work when she bent to pick up an item. At home that night she needed help to get up from the toilet because of right knee and leg pain. Her knee problems improved before March 2007.
6. In 2000 Claimant developed varicose veins. Claimant had leg swelling and pain. Medical treatment included stockings and home exercise. Her leg problems flared up at least once a month. To relieve symptoms, Claimant took a bath, applied heat and ice, and relaxed.
7. Claimant had an anxiety attack in May 2002 due to stress, and was prescribed Xanax for a short period. Claimant had no other problems with depression prior to March 2007.

History of Injury

8. Employer hired Claimant in August 2006. Claimant placed orders, cut and sized belts, handled returns, and packed boxes.
9. In the spring of 2007 Claimant was assigned to rearrange merchandise in the warehouse. Employer assigned her to move cases of belts up and down ladders. Claimant worked alone and some belts hung as high as the ceiling. She removed belts, and replaced them with different belts. Claimant climbed the ladder all day except during two 15 minute breaks and a 30 minute lunch.
10. At the end of February 2007, Claimant developed knee pain and swelling, which she reported to her supervisor Tim at the beginning of March 2007. Tim promised to reassign Claimant but did not. Claimant continued to climb the ladder and the knee pain increased.²
11. On March 16, 2007 Claimant's right knee buckled when she stepped off the ladder; and her knee began to hurt and swell. She was removed from the job on March 22, 2007. Claimant's knee remained symptomatic after her transfer, but Employer did not provide medical treatment.
12. Claimant last worked for Employer on March 22, 2007 after she sustained a second injury. She has not worked anywhere since that time.
13. In April 2007 Grace Hill Clinic provided Claimant with medication for bilateral knee swelling, and difficulty walking, and referred Claimant to a specialist.
14. On May 18, 2007, St. Louis University Emergency Department, provided medication for leg buckling, pain, and swelling, and referred Claimant to a specialist.
15. St. Louis Connect Care treated Claimant on July 18, 2007, took x-rays and prescribed medication. Claimant returned in August 2007 after her knee buckled and she injured her shoulder.
16. Claimant did not have insurance, so the clinic entered her name into a lottery to receive free medical treatment, and her name was pulled. Claimant testified knee treatment was delayed because she waited for Connect Care to approve payment for surgery.
17. In May 2008 Dr. Kieffer performed right knee surgery at Anheuser Busch Institute. Claimant treated between May 27, 2008 and July 3, 2008.
18. Dr. Kieffer released Claimant from medical care in September 2008, but she did not return her to work because she could not stand or sit long enough to work. He expected the problems to continue.
19. Recently Dr. Mitchell, with Anheuser Institute, provided injections once a week for four weeks, in both knees.

² Claimant also testified the knee pain remained the same between February and March 2007.

20. Claimant settled the case for 15% of the right knee.
21. Claimant has constant right knee pain and spasms that wake her when her legs touch. Her legs feel frostbitten. She keeps her legs apart, one on a pillow, and takes a pill to return to sleep. She sleeps up to four hours per night. She cannot sit or stand longer than 15 minutes, and she has occasional buckling. Claimant has decreased strength and range of motion. Claimant limits her activity during the day. She can clean house for 10 minutes, then breaks for 30 to 35 minutes. Walking and steps increase pain and swelling. Claimant elevates her leg with a pillow and applies ice.
22. Claimant testified she cannot work because she can only move for 15 or 20 minutes then she has to sit down because of problems with her knees.
23. To relieve pain, Claimant takes Vicodin or muscle relaxers, elevates the knee, and applies ice. She takes medication for depression, anxiety, asthma, high blood pressure, cholesterol, allergies, pain, acid reflux, and to soften stools. Medication causes Claimant to nod during the day. It helps to get up and walk around.
24. Each day, Claimant wakes, washes dishes, and wipes the kitchen. She elevates leg for 30 minutes and watches television. Claimant makes her bed, and has to sit before she can finish straightening her room. Before March 2007 Claimant played volleyball on at family reunions. She can no longer skate, dance, and play basketball, jump rope, or ride a bicycle. Claimant's daughters shop for her groceries, and cook food for her.
25. Claimant is active in her church, New Beginners' Full Gospel Ministry. She oversees the women and usher ministries. She sends women to two nursing homes and accompanies them on some occasions. Claimant meets with members of the women's ministry one Monday per month for 30 minutes.
26. Claimant meets with ushers, reminds them to wear the correct colors, and recruits new members. Also, Claimant serves as an usher and greets people at the door, hands them a program, directs parishioners to their seats, and monitors the use of food and drink in the sanctuary. She can sit as needed.
27. Claimant creates "tricklets," for visitors. For example, November was "frangelism" month. Each week, Claimant make presents for visitors from milk bottles. She writes a Bible verse on each bottle, such as: "Come and buy milk and honey without money," and "Blessed are the pure in heart." She puts ribbon around gift and presents it to guests. An Elder buys the material and Claimant makes the gifts at home.

Medical Treatment-Bilateral Knees/Right Shoulder

25. Claimant treated at Grace Hill Neighborhood Health Center on April 11, 2007, May 3, 2007, and May 18, 2007. Claimant gave a history of slipping on concrete at work in the last year. X-rays of the right knee dated May 6, 2008 revealed minimal osteoarthritic changes, without subluxation. Minimal osteophyte spurring was present of the posterior patella.

25. On May 20, 2008 **David A. Kieffer, M.D.**, diagnosed chronic subluxation and dislocation of the patella, and performed a lateral release to correct the patella sliding off the normal track, and shaved Grade 3 chondromalacia. During surgery, Dr. Kieffer noted Grade 3 malacia covered the entire keel of the patella.
26. Dr. Kieffer prescribed medication, physical therapy, and a stocking, and released Claimant from care on September 23, 2008 with a home exercise program. Dr. Kieffer noted the knee cap tracked in the center.
27. From July 2009 to January 2010, Dr. Kieffer performed a series of three Synvisc injections for right knee complaints and inability to exercise.
28. Medical records show Claimant fell and developed a left knee arthrosis. X-rays of the left knee dated January 12, 2010 showed minimal osteophyte spurring in the patella. X-rays of the right shoulder dated February 18, 2010 were negative. August 18, 2010 x-rays of the right knee showed no significant change in osteophytes found in the medial patella area in 2008. 2010 X-rays of the left knee were unremarkable.
29. Dr. Kieffer recommended a possible lateral retinacular release for the left knee to correct patellar tilt.
30. **Scott C. Kaar, M.D.**, examined Claimant on March 17, 2010 for right shoulder pain with overhead activity, and no history of trauma to the shoulder. X-rays of the right shoulder showed sclerosis of the greater tuberosity. August 2010 x-rays show no significant degenerative changes. X-rays of the cervical spine showed minimal scoliosis and spondylosis with osteophyte formation at C5-6. Dr. Kaar diagnosed subacromial bursitis and rotator cuff tendinosis, and recommended physical therapy.
31. In September 2010, Claimant was diagnosed with right rotator cuff syndrome and impingement and bilateral osteoarthritis, and patellofemoral syndrome. Claimant received a right steroid injection.
32. **William A. Mitchell, M.D.**, prescribed right shoulder physical therapy in October 2010. MRI of the right shoulder dated February 18, 2011 revealed fluid and a split tear of the long biceps tendon, supraspinatus tendinosis and subacromial subdeltoid bursitis, no tear. Dr. Mitchell diagnosed right shoulder impingement syndrome, rotator cuff syndrome, and biceps tendinitis, injected the shoulder, and ordered physical therapy. In April 2011, Claimant reported pain resolution of the right shoulder. Right shoulder complaints reoccurred in September 2011 and Dr. Mitchell injected the shoulder again.
33. In April 2011 Dr. Mitchell diagnosed a right knee medial collateral ligament sprain after Claimant increased her workout at the gym. Dr. Mitchell prescribed a brace and physical therapy. Physical therapy was discontinued in June 2011 due to poor attendance.
34. Dr. Mitchell administered a corticosteroid injection to the left knee due to increased pain with weight bearing in May and July 2011. Hydraluronic acid injections were recommended in September 2011 due to lack of improvement.

35. In February 2012, Claimant gave Dr. Mitchell a recent history of increased pain in both knees and her right shoulder. Dr. Mitchell injected all three areas. A series of right knee injections continued in March 2012, he recommended exercise. Exercises and a thera-Band were ordered for the right shoulder. The first in a series of left knee injections began in March 2012.
36. In April 2012 Claimant reported two recent episodes when her left knee buckled. Dr. Mitchell diagnosed a mild MCL sprain from the buckling, and recommended she wear the brace.

Expert Medical Opinion

37. **Russell Cantrell, M.D.**, performed two independent medical examinations (“IME’s”) at the Employer’s request, and wrote reports. X-rays revealed bilateral lateral patellar tilt, with no significant osteoarthritis.
38. In 2007 Dr. Cantrell diagnosed bilateral lateral patellar tilting, and symptom magnification based on “ratchety muscle weakness” and global tenderness.
39. Dr. Cantrell opined Claimant’s work activities were not the prevailing factor that caused her complaints. He cited a number of reasons for the development of patellar tilting; a) Weakness in the vastus medialis, b) Tight IT band, and c) Increased Q angle of wider hips found in women more than men.
40. Dr. Cantrell concluded that overuse of the knee does not cause lateral patellar tilt, but may cause it to become symptomatic.
41. Dr. Cantrell concluded Claimant had achieved maximum medical improvement (“MMI”), and found Claimant sustained no PPD.
42. In 2009, Dr. Cantrell reevaluated Claimant’s knees. X-rays of the knees taken in 2008 revealed minimal degenerative changes of the patellofemoral joint.
43. Dr. Cantrell maintained his opinion that Claimant’s work activities did not cause her current knee complaints, although they may have aggravated the underlying degenerative condition.
44. Dr. Cantrell attributed Claimant’s complaints to osteoarthritis of the patellofemoral joint, due to Grade 3 chondromalacia of the patellofemoral joint and /or “biomechanical abnormality of lateral patellar tracking.”
45. Dr. Cantrell concluded right knee surgery was not related to Claimant’s work activities. He further concluded Claimant was at MMI, and imposed restrictions for the osteoarthritis, not the work injury. Knee restrictions for arthritis include: avoid repetitive stair and ladder climbing, and repetitive crawling, kneeling, and squatting.
46. Dr. Cantrell opined Claimant sustained 10% PPD of the right knee for surgery to correct Grade 3 chondromalacia, but no disability related to her work activities. He further rated 5% PPD of the left knee for chondromalacia and patellofemoral pain.

47. **Robert Poetz, M.D.**, a physician board certified in family medicine, performed an IME on May 5, 2009, wrote a report, and testified at the request of Claimant's attorney.
48. Claimant gave a history of right knee buckling after constantly climbing ladders for four days.
49. Dr. Poetz diagnosed the following work related injuries; a) Right knee sprain and chronic patellar subluxation, with exacerbation of right knee degenerative joint disease from the March 16, 2007 injury, status post surgery, and b) Left knee sprain with exacerbation of left knee degenerative joint disease.
50. Dr. Poetz opined Claimant's work activities were the prevailing factor that caused her knee injuries in March 2007. Dr. Poetz opined the right knee buckle was a traumatic event that caused her knee to track abnormally. Furthermore, he concluded the left knee strain was caused by overwork from repetitive climbing to retrieve belts. Dr. Poetz relied on Claimant's history of the accident, and acknowledged medical records do not contain a history of right knee buckling.
51. For the primary injury, Dr. Poetz rated 40% PPD of the right knee, and 20% PPD of the left knee. Dr. Poetz further opined the surgery performed by Dr. Kieffer to Claimant's right knee was reasonable and necessary to cure and relieve her injuries from March 16, 2007.
52. Dr. Poetz diagnosed the following preexisting medical conditions: hypertension, tubal ligation, burns on her arms, 1994 motor vehicle accident, where she sustained injuries to her ribs and low back, and bilateral osteoarthritis of the knees. He noted knee swelling began ten years ago and resolved with a water pill. Dr. Poetz did not diagnose varicose veins. For preexisting medical conditions Dr. Poetz rated the following: a) Right knee – 5%, B) Left knee – 5%, c) Lumbar spine – 15%.
53. Dr. Poetz further opined that Claimant's combined disabilities were greater than their sum by 15 to 20%.

Vocational Expert Opinion

54. **Mr. James England Jr.**, a rehabilitation counselor, examined Claimant at the request of her attorney on January 18, 2011.
55. Mr. England administered the Wide-Range Achievement Test, Revision 3, where Claimant scored post high school in reading and beginning high school level in math. Mr. England concluded these scores were sufficient to develop additional skills.
56. Mr. England noted a difference in medical opinion about Claimant's ability to function. He noted Dr. Kieffer opined Claimant was unable to work due to chronic knee pain.
57. Based on Dr. Cantrell's findings, Mr. England concluded Claimant could return to her former work. But for the level of Claimant's complaints, Mr. England believed Claimant could work at the light level of exertion.

58. Based on Dr. Poetz's restrictions, Mr. England concluded Claimant would have "tremendous difficulty" competing for employment, and would be unable to sustain employment due to her combined medical problems. He explained that Claimant's upper extremity problems limit her to sedentary work. However, he did not believe Claimant could sustain sedentary work because of her need to elevate her legs, inability to get adequate sleep, and numbness in her dominate right hand.
59. Based on Dr. Poetz's restrictions and Claimant's ability to function, Mr. England expected Claimant to remain totally disabled based on medical restrictions and functional difficulties, and would not benefit from vocational rehabilitation services.

FINDINGS OF FACT & RULINGS OF LAW

After giving careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, Claimant's demeanor during the hearing, and the applicable law of the State of Missouri, I find Claimant did not meet her burden to show her work activities were the prevailing factor that caused her right knee injury for the reasons stated below.

Claimant asserts she developed right knee problems from repetitively climbing a ladder at work for several weeks. SIF contends Claimant's work activities were not the prevailing factor that caused her medical condition.

Despite the statutory changes, the basic burden of proof is constant. Claimant must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo. App. 1992).³ Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992).

Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 877 (Mo. App. 1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *George v. Shop ' N Save Warehouse Foods Inc.*, 855 S.W.2d 460, 462 (Mo. App. 1993)

A claimant has the burden to prove all elements of his claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo.App. 2008). Section 287.808 requires claimants to establish the proposition is more likely to be true than not true. Section 287.067 provides:

³ Overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 230 (Mo. banc 2003). No further reference will be made in this award to the *Hampton* case.

1. An “**occupational disease**” is a disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not be foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

3. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined as the primary factor, in relation to any other, causing both the medical condition and disability.

I find Dr. Cantrell’s causation opinion is more credible than Dr. Poetz’s opinion. Dr. Cantrell concluded Claimant’s right knee lateral patellar tilt (subluxation) was not caused by overuse. Dr. Cantrell explained lateral patellar tilt is commonly caused by weakness in the vastus medialis, tight IT band, or the increased Q angle in women due to a wide pelvis, and is found in runners. However, patellar tilt is not the exclusive domain of runners, who experience many knee problems. Moreover, overuse does not cause these conditions, but if present, may cause symptoms. Claimant did not provide a history of knee buckling and Dr. Cantrell was not asked about it.

In addition, Dr. Cantrell noted symptom magnification because Claimant’s clinical examination was inconsistent with patellar tilt. She reported tenderness on the patella, medial and lateral joint lines, and “ratchet muscle weakness,” which Dr. Cantrell testified were not typically associated with patellar tilt. Also, x-rays taken at Grace Hill a short time after the date of injury reveal no subluxation.

On the other hand, Dr. Poetz’s opinion is not credible that the buckling of Claimant’s right knee affected ligamentous support and caused abnormal tracking. Also, Dr. Poetz did not explain why x-rays show bilateral patellar tilt when Claimant did not report a left knee buckle and Dr. Kieffer has recommended the same surgery for the left knee.⁴

Also, Dr. Poetz’s opinion is not credible that repetitive climbing caused a left knee sprain. As stated above, Dr. Cantrell read x-rays to show bilateral patellar tilt.

Claimant’s testimony is not credible that her right knee buckled while descending the ladder and Dr. Poetz acknowledged the medical records he reviewed contained no history that Claimant’s right knee buckled on the alleged date of injury. Also, she gave contradictory histories of knee problems between February 2007 and March 2007 when her assignment was changed. She testified the pain and swelling remained the same, and later testified it increased.

Based on credible testimony by Dr. Cantrell, medical records and reports, and less than credible testimony by Dr. Poetz and Claimant, I find Claimant did not prove that climbing the ladder or buckling caused right knee patellar tilt and the need for surgery.

⁴ Dr. Kieffer’s recommendation is not in evidence but Mr. Hoener questioned Dr. Cantrell about the recommendation during deposition.

Having found Claimant's work activities were not the prevailing factor that caused patellar tilt and the need for surgery, all other issues are moot.

CONCLUSION

Claimant's job duties did not cause her right knee injury. The Second Injury Fund case is denied.

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation