

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

Injury No.: 99-016103

Employee: Linda Stevens  
Employer: Citizens Memorial Healthcare Foundation  
Insurer: Self-Insured  
c/o Health Care Facilities of Missouri  
Date of Accident: February 17, 1999  
Place and County of Accident: Polk County

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 amended award and decision of the administrative law judge dated October 26, 2006. The amended award and decision of Administrative Law Judge Robert H. House, issued October 26, 2006, 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 19<sup>th</sup> day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AMENDED  
AWARD**

Employee: Linda Stevens  
Dependents: N/A  
Employer: Citizens Memorial  
Additional Party: N/A  
Insurer: Self-insured

Injury No. 99-016103  
Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Hearing Date: June 28, 2006

Checked by:

**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: February 17, 1999
5. State location where accident occurred or occupational disease was contracted:
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? N/A SELF-INSURED
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
WALKING AND PIVOTING TO ASSIST ANOTHER WORKER WITH A PATIENT
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: 15 PERCENT RIGHT LEG AT 160-WEEK LEVEL
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$811.36
17. Value necessary medical aid not furnished by employer/insurer? \$31,290.77
18. Employee's average weekly wages: \$294.38
19. Weekly compensation rate: \$196.23
20. Method wages computation: AGREED

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses: \$31,290.77

60 5/7 weeks of temporary total disability (or temporary partial disability) \$11,913.96

24 weeks of permanent partial disability from Employer \$4,709.52

-0- weeks of disfigurement from Employer

22. Second Injury Fund liability: NONE

TOTAL: \$47,914.25

23. Future requirements awarded: YES

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:

JAY CUMMINGS

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

Employee: Linda Stevens Injury No: 99-016103  
Dependents: N/A  
Employer: Citizens Memorial  
Additional Party: N/A  
Insurer: Self-Insured Checked by:

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

### **AMENDED AWARD**

A hearing was held in this matter on June 28, 2006. Claimant appeared in person and with her attorney, Jay Cummings. However, the record was held open until 7-28-06 by agreement of the parties. Employer/self-insured appeared through its attorney, Kevin Johnson. An off-the-record discussion was held concerning the issues to be presented for determination at this hearing. The parties agree that the following issues were to be considered:

1. Whether claimant is entitled to past medical benefits with the employer/self-insured alleging that that medical is not authorized.
2. Whether claimant is entitled to temporary total disability benefits from February 17, 1999, to April 17, 2000.
3. Whether claimant's current condition and the need for medical care both past and future was caused by an accident at work.
4. Whether claimant provided notice to the employer as required by Missouri law.
5. The nature and extent of any disability.

Employer/self-insured attempted to present the issue of accident during a prehearing discussion of this case. In that discussion it was determined that causation was the issue rather than accident. However, upon presentation of all of the evidence in this case it appears that accident has also been raised as an issue by the parties, and I will consider that as an additional issue to be determined. Employer/Insurer also have sought a credit for all amounts paid by claimant's health insurance and her medical bills.

The parties agree that claimant's average weekly wage is \$294.38 and that her workers' compensation rate is \$196.23 per week. Medical benefits have been paid in the amount of \$811.36.

The parties attempted to settle the case following the hearing and informed the Court on October 2, 2006, that an award needed to be entered.

Claimant was the only witness testifying at the hearing. However, Dr. Marion L. Wolf, an orthopedic surgeon testified by deposition as did Arless Hazel Evans, a co-worker of claimant. Medical reports of Drs. David Paff and Ted Lennard were also presented into evidence along with various medical records for claimant's alleged injury at work and her other medical conditions.

Claimant was a certified nurse's aid and registered medication certificate holder for Citizen's Memorial Healthcare Facility, a nursing home. Her work required her to do lifting and walking. On February 17, 1999, a co-employee, Arless Evans, asked claimant to assist her with another patient. According to claimant's testimony, she exited the room in which she was working. She walked into the hallway and pivoted to go toward the nursing home patient with whom she was to assist her co-worker. While pivoting and walking toward that patient and placing pressure and weight upon her left foot, she heard a pop and suffered pain, causing her to nearly fall to the floor. She hopped to a guardrail, called for help and was assisted by other nursing home workers so that she did not fall to the floor. She was placed in a chair. Claimant indicated that she did not twist her knee and instead merely pivoted while placing weight upon her foot when she heard the pop.

Arless Evans, a co-worker, testified that her view to the event was partially obscured. She heard claimant scream and saw her arms waving. Ms. Evans testified that claimant may have somewhat twisted or turned as she was holding onto the rail trying to stay off the floor. While claimant was halfway to the floor, Arless Evans approached claimant and got her left knee under claimant to keep claimant from hitting the floor. Other employees assisted claimant into a chair. Arless Evans testified that claimant was in obvious pain. Claimant was transported to the emergency room where she was treated and referred to an orthopedic surgeon, Dr. Marion Wolf.

On March 17, 1999, claimant was asked to give a statement. Within that statement claimant testified that she did not know whether she tripped or stumbled since it happened so fast. She stated, "I don't know what happened." She also stated that she was walking fast, had almost made it up all the way to the desk when her leg started going out from under her and something snapped on the back side of her left leg on the knee area. The emergency room record indicated that claimant's knee popped as she was walking along at work. Dr. Wolf's initial examination shows the history of claimant walking when her knee gave way. Claimant's letter of May 19, 1999, along with the testimony of Arless Evans indicated that claimant had turned as she was walking.

Dr. Wolf performed an arthroscopic surgery on claimant's knee on April 7, 1999, which included abrasion chondroplasty and shaving of the patella. Dr. Wolf later performed a surgery on October 20, 1999, for a total knee replacement.

Dr. Wolf has testified that although claimant's underlying osteoarthritis or chondromalacia was not caused by her work, it could have been aggravated by it. Dr. David Paff has opined that claimant's February 17, 1999, injury was "one substantial cause of her necessity for surgery," and rated her as having a 30 percent disability to the left lower extremity at the 160-week level with 50 percent of that total to her preexisting condition and 50 percent to her injury at work. Dr. Ted Lennard in his independent medical examination rated claimant as having 35 percent disability to the left lower extremity at the 160-week level with 20 percent being related to preexisting conditions and 15 percent to her work injury. He also opined that, "[H]er work injury, however, on 2/17/99 was such that necessitated an arthroscopic exploration of the joint and ultimately a total knee arthroplasty."

This case is remarkably similar to *Bennett v. Columbia Healthcare*, 80 S.W.3d 524 (Mo.App. W.D. 2002) and *Bennett v. Columbia Healthcare*, 134 S.W.3d 84 (Mo.App. W.D. 2004).<sup>[1]</sup> In *Bennett* the claimant was a nurse's aid whose knee injury was found compensable as a result of two incidents at work in which she was walking around a bed and felt a pop in her right knee and later in the day was carrying linens up a flight of stairs when she felt another pop in her knee. Bennett had preexisting arthritis and had undergone a surgery in 1979 for a torn cartilage. She also earlier had experienced problems with her other knee in 1986 for which she had arthroscopic knee surgery. The focus of both *Bennett* decisions was whether claimant sustained an accident arising out of and in the course and scope of her employment under Missouri law. The ultimate conclusion of the court in both cases was that claimant had sustained a compensable injury by accident. Those

decisions held that walking generally and walking up stairs in particular were incidents of claimant's employment as a nurse's aid and were a substantial factor in the change of pathology of claimant's right knee. Based upon the *Bennett* decisions, it is clear that claimant sustained an injury by accident arising out of and in the course and scope of her employment. I so find.

Employer/self-insurer has also raised the issue of whether claimant's specific condition was caused by her accidental injury at work. It is clear from all three physicians who rendered opinions in this case that claimant had preexisting arthritis. Nevertheless, all three doctors have opined that claimant's condition necessitating surgery was a result of her accidental injury at work. In effect, Dr. Wolf indicated that her condition (chondromalacia) was aggravated by her accidental injury at work; Dr. Paff believed that the necessity for her surgery had her injury as "one substantial cause of the injury;" and Dr. Lennard opined that "her work injury, however, on 2/17/99 was such that necessitated arthroscopic exploration of the joint and ultimately a total knee arthroplasty." There are no opinions to the contrary. As a result, I find that claimant's accidental injury at work aggravated her preexisting knee problems and necessitated her surgeries. As a result, I find that claimant's knee problems for which she underwent two knee surgeries were caused by the accidental injury at work.

Claimant has sought payment of the medical bills which resulted from her accidental injury at work. Employer/self-insurer have denied those benefits. The only medical bill paid by employer/insurer was for the first emergency room visit. However, it was the testimony of Dr. Wolf that all of claimant's medical bills were reasonable and necessary to treat her for the injury at work. As a result, I order employer/self-insurer to pay claimant \$31,290.77 to cover the costs of those bills as set out below.

Citizen's Memorial Hospital (Dr. Marion Wolf)	\$24,773.77
Bolivar Family Care	38.00
Parkview Surgery Clinic	6,479.00
<b>TOTAL</b>	<b>\$31,290.77</b>

Employer/self-insurer raise the issue of authorization of those bills. Employer/self-insurer filed a general denial of this case. Additionally, the claimant testified that the individual in charge of workers' compensation benefits for employer denied her injury as being work related and denied any additional treatment orally and following a letter that claimant wrote to employer requesting additional care.

When there is a general denial of benefits, a claimant may seek medical care on his own. *Wiedower v. ACF Industries, Inc.*, 657 S.W.2d 71 (Mo.App. E.D. 1983). Employer/self-insured claims that it has not received notice of the injury and her need for treatment. However, it is clear that the employer was aware of claimant's injury by sending claimant to the emergency room on the date of the injury. Additionally, claimant's self-insured administrator took a statement from claimant less than thirty days following the injury on March 17, 1999. Moreover, claimant sought medical care by informing Sherry Welch, the person in charge of workers' compensation claims at the employer, of her need for treatment as a result of her injury. She was refused additional treatment. In addition, claimant wrote in May of 1999 a request for additional treatment. Consequently, the employer had notice of the injury and the need for treatment and failed to provide any such treatment. As a result, under Missouri law, employer/self-insured are responsible for claimant's medical bills. *Anderson v. Parrish*, 472 S.W.2d 452 (Mo.App. K.C. 1971).

Employer/Insurer seek a credit for all amounts paid by claimant's health insurance provided by her employer. Employer/Insurer were allowed to offer into evidence an exhibit following hearing that asserted employer paid the health insurance premiums for Linda Stevens. However, Linda Stevens testified that she was required to make co-payments for the treatment provided to her as a result of her injury and has been out-of-pocket for more than \$1,000.00 for her medical treatment as a result of her injury.

If an employer/insurer fully paid for claimant's medical care directly or through a fully funded health insurance plan, then employer/insurer would be entitled to a credit for those amounts paid. *Morris v. National Refractories & Minerals*, 21 S.W.3d 866 (Mo.App. E.D. 2000). However, here, as

in *Shaffer v. St. John's Regional Health Center*, 943 S.W.2d 803, 807-808 (Mo.App. S.D. 1997), employer is not entitled to a credit:

“Payments from an insurance company or from any source other than the employer or the employer's insurer for liability for Workmen's Compensation are not to be credited on Workmen's Compensation benefits.” *Ellis v. Western Elec. Co.*, 664 S.W.2d [639] at 643 [(Mo.App S.D.1984)]. In addition, in *Homan v. American Can Co.*, 535 S.W.2d 574, 576 (Mo.App. W.D.1976), the court said: Section 287.270 requires benefits to come from the employer or its insurer for Workmen's Compensation liability. Payments from any other source are not credited on benefits payable under the Workmen's Compensation Chapter. In the case before us, the facts indicate that all of Claimant's medical bills were turned over to “Premier Insurance.” There is no showing that all of the medical bills were paid and in fact there is some indication in the transcript that Claimant was responsible for a portion of the bills due to a deductible or copay. The cases have held that the burden of substantiating a credit is on the employer. *Ellis v. Western Elec. Co.*, 664 S.W.2d at 643; *Point v. Westinghouse Elec. Corp.*, 382 S.W.2d 436, 439 (Mo.App. E.D.1964). In the present case, Employer did not meet its burden of proving that a credit should be given. There is no evidence that the medical bills were paid by Employer or its Workers' Compensation insurer. To the contrary, the evidence shows that the medical bills, or at least a portion of the bills, were paid by a medical insurance company which means no credit is due Employer. This point is denied.

The evidence is clear that claimant paid deductibles or copayments for her medical care related to her injury. The other payments were made by her health insurance and not employer's worker's compensation carrier. As a result, employer/insurer are not entitled to a credit for any payments toward claimant's medical bills.

Claimant has also sought future medical care in this case. It is clear that future medical care may be awarded in workers' compensation cases. *Gill v. Massman Construction Company*, 458 S.W.2d 878 (Mo.App. 1970). The general proof required for future medical care is the same standard required in workers' compensation cases generally—“reasonable probability.” *Modlin v. Sun Mark, Inc.*, 699 S.W.2d 659 (Mo.App. 1985). Probable has been defined to mean that which appears to be founded in reason and experience which inclines the mind to believe but leaves room for doubt. *Welker v. MFA Central Cooperative*, 380 S.W.2d 481 (Mo.App. 1964).

Dr. Wolf has indicated that claimant in all likelihood will need additional treatment for a future knee replacement. Dr. Wolf specifically stated as follows:

Q. Doctor, there's been some talk about the need for another knee replacement in the future. Do you have an opinion as to whether or not this injury that occurred while she was working for Citizens Memorial hospital is a substantial factor in causing the possibility for a knee replacement in the future?

A. Well, probably not a great effect on it because, as I said, she had osteoarthritis. So it's likely irrespective of the injury, that she would still have to have a knee joint done at an early age. So then, I think, within a few years' period of time, the thing would have been -- or the outcome would have been the same. So I think whether that injury occurred or whether it didn't, it's likely that she would be facing another surgery if she lived long enough.

He also indicated that the life expectancy of knee replacements is in the neighborhood of twenty years. Putting all of the testimony of Dr. Wolf together, the gist of his opinion would be that claimant's underlying condition would have necessitated a total knee replacement regardless of the injury, however, he thought that her underlying condition was aggravated by her injury at work and performed two surgeries including a knee replacement. Since I have found based upon his testimony and the opinions of Drs. Paff and Lennard that claimant's condition and the need for her surgery were related to work and compensable, and finding that it is likely that her current prosthesis will last no more than twenty years, I find that claimant has met her burden of proof as to the need of future medical care for replacement of her prosthesis. It is reasonably probable that claimant will need another knee replacement surgery to replace the current prosthesis that will last no more than twenty years. As a result, I order employer/self-insured to provide claimant with future medical care as is necessary to cure and relieve her from the effects of her injury.

Claimant has also sought temporary total disability benefits. She has sought those benefits from February 17, 1999, the date of the injury until April 17, 2000, the date of her last treatment by Dr. Wolf. Although there is no showing that Dr. Wolf specifically released claimant and found her at maximum medical improvement, he opined in his deposition that claimant was not able to return to work from the date of her injury up until the time of the arthroscopic surgery. He also opined that she was unable to return to gainful employment from the time of her arthroscopic procedure up until the time of her total knee replacement. He did not opine specifically within his deposition the timeframe in which claimant would be unable to work following the total knee replacement. However, it is reasonable to assume based upon

his testimony regarding claimant's treatment following the arthroscopic surgery of three months off work full time and three months thereafter part time that claimant would have temporarily and totally disabled for at least that period of time. Additionally, it is clear that Dr. Wolf continued to treat claimant until April 17, 2000, without releasing her, and claimant testified that she was unable to work following her injury. As a result, I find that claimant has met her burden of proof concerning the need of temporary total disability benefits from February 17, 1999, until April 17, 2000, for a total of 60 5/7 weeks of compensation. I order employer/self-insured to pay claimant 60 5/7 weeks of compensation at the agreed upon rate of \$196.23 for a total of \$11,913.96.

Claimant has also sought a determination of the nature and extent of her disability. The only doctors who have rated in this case agree that claimant has sustained a 15 percent disability to the leg at the 160-week level based upon her injury at work alone. Based upon claimant's preexisting condition, also rated by the examining physicians, claimant's testimony regarding her prior problems along with her testimony concerning her problems resulting from the injury alone, I find that claimant has sustained a permanent partial disability of 15 percent to her right leg at the 160-week level representing 24 weeks of compensation as a result of her injury at work. As a result, I order the employer/self-insurer to pay to claimant 24 weeks of compensation at the agreed upon rate of \$196.23 for a total of \$4,709.52.

Claimant's attorney, Jay Cummings, has requested an attorney's fee of 25 percent of all amounts awarded herein. I find that that is a reasonable request. As a result, I allow Jay Cummings an attorney's fee of 25 percent of all amounts which are awarded herein which shall constitute a lien upon this award.

Date: October 26, 2006

Made by: /s/ Robert H. House  
Robert H. House  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Patricia "Pat" Secret  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*

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[\[1\]](#) Section 287.020 was amended in 2005 to specifically "reject and abrogate" the first *Bennett* decision.