

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

Injury No.: 03-142001

Employee: Robert Taylor

Employer: QuikTrip

Insurer: QuikTrip Corporation, Self-Insured

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, read the briefs, heard oral argument, 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 November 6, 2009. The award and decision of Administrative Law Judge Emily S. Fowler, issued November 6, 2009, 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 4th day of November 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Robert Taylor Injury No. 03-142001
Dependents: N/A
Employer: QuikTrip
Insurer: QuikTrip Corporation, Self-Insured
Additional Party: N/A
Hearing Date: September 21, 2009 Checked by: ESF/pd

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: October 13, 2003.
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? 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: While in the course and scope of his employment, Employee was required to stand during entire shifts with constant turning and twisting of his ankle and rotate among tasks, causing cumulative trauma to his right ankle.
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 at the ankle.
14. Nature and extent of any permanent disability: 15 percent permanent partial disability to the right lower extremity and 5 percent permanent partial disability to the body as a whole.
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? \$21,415.45
18. Employee's average weekly wages: \$616.67
19. Weekly compensation rate: \$411.13/\$347.05
20. Method wages computation: By agreement of parties.

COMPENSATION PAYABLE

21. Amount of compensation payable: Employer shall pay to Employee permanent partial disability benefits of 15 percent permanent partial disability to the right lower extremity at the ankle equaling 23.25 weeks of compensation at a rate of \$347.05, equating to \$8,068.91, as well as 5 percent to the body as a whole equaling 20 weeks at \$347.05, equating to \$6,941.00, for a total of \$15,009.91.

Further employer shall pay to Employee temporary total disability from October 13, 2003 to April 21, 2004 in the sum of \$171.01 per week which is the difference between the full TTD rate of \$411.13 and the amount Employee was paid by Employer through Employer's short-term disability benefits, a rate of \$240.12. ($\$411.13 - \$240.12 = \171.01)

22. Second Injury Fund liability: N/A
23. Future requirements awarded: Employer shall provide to Employee all reasonable and necessary medical treatment to cure and relieve the effects of Employee's injury to his right lower extremity, including all diagnostic testing, physical therapy and surgery as required. Further, Employer shall provide to Employee temporary total disability payments if Employee is rendered temporarily but totally disabled during such treatment.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of Michael Knepper, Employee's attorney, for necessary legal services rendered.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Robert Taylor Injury No. 03-142001
Dependents: N/A
Employer: QuikTrip
Insurer: QuikTrip Corporation, Self-Insured
Additional Party: N/A
Hearing Date: September 21, 2009 Checked by: ESF/pd

On September 21, 2009, Employee and Employer/Insurer appeared for a final hearing. The Employee appeared in person and through his counsel, Michael Knepper. The Employer/Insurer appeared through its attorney, Brian Fowler. The Division had jurisdiction to hear this case pursuant to Section 287.110 RSMo.

STIPULATIONS

The parties stipulated to the following:

- 1) that the Employer were operating under and subject to Missouri's Workers' Compensation Law on October 13, 2003 and the Employer was fully insured through self-insurance;
- 2) that Robert Taylor was its Employee and was working subject to the law in Kansas City, Jackson County, Missouri;
- 3) that Employee's contract of employment was made in Missouri;
- 4) that Employee's claim was filed within the time allowed by law;
- 5) that Employee's average weekly wage was \$616.67, resulting in a compensation rate of \$411.13 for temporary total and \$347.05 for permanent partial disability compensation;
- 6) that the Employer has paid no temporary total disability compensation nor any medical care to date.

ISSUES

The parties request the Division to determine the following:

- 1) whether the Employee sustained an accident or occupational disease arising out of and in the course of his employment;
- 2) whether the Employee notified the Employer of the injuries as required by law;
- 3) whether the Employee is entitled to temporary total disability benefits from October 13, 2003 through April 21, 2004;
- 4) whether the Employer must reimburse Employee for medical expenses totaling \$21,415.45;
- 5) whether the Employer must provide Employee with additional medical care;
- 6) whether the Employee suffered any disability and, if so, the nature and extent of Employee's disability; and
- 7) whether the accident or occupational disease caused the disability of which the Employee complains.

FINDINGS OF FACT AND RULINGS OF LAW

Employee testified on his own behalf and presented the following exhibits, which were all admitted into evidence.

Claimant's Exhibit A – Medical Records of Dr. Larry Cordell, 8/29/83 – 4/16/91
Claimant's Exhibit B – Medical Records of Dr. Dan Geha, 3/25/04-4/6/04
Claimant's Exhibit C – Medical Records of Dr. Michael Hughes, 7/1/99-8/4/99
Claimant's Exhibit D – Medical Records of Medical Center of Independence, 2/25/04
Claimant's Exhibit E – Medical Records of Dr. Raymond Rizzi, 10/16/02-4/21/04
Claimant's Exhibit F – Medical Records of St. Joseph Hospital, 7/28/99-3/25/04
Claimant's Exhibit G – Medical Records of St. Mary's Hospital, 10/4/90-3/30-04
Claimant's Exhibit H – Medical Records of V.A. Medical Center, 12/1/04-3/18/09
Claimant's Exhibit I – Deposition of Dr. Edward Prostic, 3/24/09
Claimant's Exhibit J – 60-Day Letter of P. Dr. Brent Koprivica
Claimant's Exhibit K – Medical Report of Dr. Koprivica, dated 6/1/05
Claimant's Exhibit L – Curriculum Vitae of Dr. Koprivica
Claimant's Exhibit M – Claim for Compensation, DOI: 9/30/02
Claimant's Exhibit N – Amended Claim for Compensation, DOI: 9/30/02
Claimant's Exhibit O – Claim for Compensation, DOI: 10/31/02
Claimant's Exhibit P – Answer to Claim for Compensation, DOI: 10/31/02
Claimant's Exhibit Q – Amended claim for Compensation, DOI: 10/31/02
Claimant's Exhibit R – Claim for Compensation, DOI: through 10/13/03
Claimant's Exhibit S – Amended Claim for Compensation, DOI: 10/13/03
Claimant's Exhibit T – Report of Injury, DOI: 10/13/03
Claimant's Exhibit U – (Not offered)
Claimant's Exhibit V – Incident Report, 9/30/02
Claimant's Exhibit W – Recorded Statement, 10/29/02
Claimant's Exhibit X – Report of Injury, 9/30/02
Claimant's Exhibit Y – Vocational Rehabilitation Records
Claimant's Exhibit Z – St. Mary's Medical Center Billing Statement

Claimant's Exhibit AA – Medical Center of Independence Billing DOS: 2/25/04
Claimant's Exhibit BB – Dr. Raymond Rizzi's off-work note
Claimant's Exhibit CC – Fax to Doug Schimiel
Claimant's Exhibit DD – QuikTrip Adjuster Letter dated 11/20/02
Claimant's Exhibit EE – Primax Recoveries Letter dated 12/12/03
Claimant's Exhibit FF – Coventry Recovery Letter
Claimant's Exhibit GG – Anesthesia Associates of K.C. Billing
Claimant's Exhibit HH – Jackson County Orthopedics Billing
Claimant's Exhibit II – Dr. Dan Geha's Billing

The Employer/Insurer offered no live testimony but offered the following exhibits which were admitted into evidence:

Employer/Insurer's Exhibit 1 – Deposition of Jeremy Donnelly, 11/28/06
Employer/Insurer's Exhibit 2 – Deposition of Kevin Bergman, 3/2/07
Employer/Insurer's Exhibit 3 – Medical Records of Dr. Yost
Employer/Insurer's Exhibit 4 – Claimant's Employment Application
Employer/Insurer's Exhibit 5 – Vocational Rehabilitation records, 10/12/00
Employer/Insurer's Exhibit 6 – (Not offered)
Employer/Insurer's Exhibit 7 – Claim for Compensation, DOI: 10/31/02
Employer/Insurer's Exhibit 8 – Dr. Raymond Rizzi's medical records
Employer/Insurer's Exhibit 9 – St. Mary's Hospital medical records, 11/19/02
Employer/Insurer's Exhibit 10 – Dr. Raymond Rizzi's report, 10/23/03
Employer/Insurer's Exhibit 11 – Dr. Dan Geha's report, 3/25/04
Employer/Insurer's Exhibit 12 – Claim for Compensation, DOI: 10/13/03
Employer/Insurer's Exhibit 13 – Claim for Compensation, DOI: 9/30/02
Employer/Insurer's Exhibit 14 – Short-term disability payments

Robert Taylor, hereinafter referred to as Employee, is a 49-year-old male who has worked for QuikTrip Corporation since November of 2001. His job duties during this time working for QuikTrip included Assistant Manager as well as an employee in what is referred as the ERP program. His alleged injuries occurred during the time period when he was in the ERP program. His typical day included emptying all the trash cans, both inside and out, picking up the lot and the grass area around the store. He would stock the shelves, coolers and the grocery aisles. He would face all product labels out so that everything looked good. He would go in the back room and get the cups and lids that were necessary and stack them. In order to get to the tall shelves, he would sometimes have to use a ladder to get cases of coffee off of them. He would clean the bathrooms and sweep and mop them. He would make the coffee. Then he would audit, which entailed checking the money in the register for the new shift. This he would all get done in approximately 30 to 45 minutes. Then he would check the coffee again and he would work the cash register. Other duties included cleaning the coffee aisle and power washing the parking lot.

Prior to his working for QuikTrip, Employee was involved in a serious motor vehicle accident in 1990. He had serious injuries to his right ankle which required plates and screws to stabilize his ankle.

Employee testified that on September 30, 2002 when he was working his shift at the QuikTrip store at 10232 Wornall Rd., Kansas City, Missouri, he was standing on the podium where the cash registers were and went to step off the podium to the main floor. When he did so, he twisted his ankle, causing immediate pain and discomfort to his ankle. He said he sat down and rubbed his ankle for a while. The manager on duty, Mr. Kevin Bergman, witnessed this incident. He stated that Mr. Bergman saw him fall to the floor and that he asked him if he would be all right and Employee told Mr. Bergman, "I will be in a minute." He sat and rubbed his ankle for a while and then got up and started getting back to work. After a short time, his ankle started feeling better and he was able to continue his duties. He stated it was Mr. Bergman's job to report an accident. He never asked for medical care from Mr. Bergman. He just wanted to see if he could start walking and he did and he thought he could just shake it off. He did not want to leave and miss work due to this injury. He said the ankle was sore for the next couple of weeks, but he kept working on it. He felt like something was rubbing in his ankle, but he was not concerned enough to see a doctor at the time; he just thought it was sore.

As time went on, however, Employee started having more problems with his ankle with more pain. He eventually went to see Dr. Downs, his regular physician, who referred him to a Dr. Rizzi, who is a podiatrist. Dr. Rizzi saw him on October 24, 2002 and noted radiographic evidence of loosening of the hardware in his ankle and recommended removal of his hardware. On the initial visit, Dr. Rizzi noted considerations for future intra-articular steroid injection as well as ultimate need for a fusion.

On October 31, 2002 while Employee was working for QuikTrip at a store in Lee's Summit, Jackson County, Missouri, he once again was stepping from the cashier podium when he misstepped, twisting his ankle, causing additional pain to his ankle. Employee noted that when he fell on October 31, 2002, this was witnessed by Mr. Donnelly who was the store manager at the time. Employee stated he fell right in front of Mr. Donnelly, but at that time he did not ask for any medical care. He stated that he was already seeing a doctor at that point and he did not want to lose his job.

Dr. Rizzi ultimately removed the hardware from Employee's right ankle in November of 2002. Employee returned to Dr. Rizzi on December 16, 2002 who noted that the Employee had a new complaint of pain in the posterior aspect of his right ankle. "He states he did not notice anything he was doing that caused this, he just woke up with a lot of pain in his ankle area." Dr. Rizzi also noted that Employee was walking on the ankle pain free and was able to do a normal stride. Upon examination, Dr. Rizzi noted there was no pain in the ankle but significant pain along the posterior aspect of the Achilles. Employee had less pain with plantar flexion and more pain with dorsal flexion as far as passive range of motion. Dr. Rizzi felt that Employee was suffering from Achilles tendonitis secondary to increased motion available in his ankle. He put him in a CAM walker to alleviate the symptoms and allowed him to progressively start ambulating without stressing his Achilles tendon. He was also given a heel lift in his shoe so when he was not wearing the CAM walker he could wear the shoe with the heel lift. He wanted Employee to return to the clinic in two weeks and gave him Vioxx samples as well as a home exercise program. Dr. Rizzi wanted him to do a physical therapy program but noted that Employee could not afford the co-pay.

Dr. Rizzi saw Employee again on December 30, 2002 where he released Employee regarding his injuries. He did recommend that Employee cut his hours or change his job at the time.

On May 30, 2003, Employee returned to Dr. Rizzi, who noted that there had been a progression of the degenerative joint disease of the ankle at that point with increasing pain.

Dr. Rizzi saw Employee again on August 20, 2003 when Employee was having pain affecting his low back and left lower extremity due to overcompensation. Dr. Rizzi recommended rocker bottom soles on Employee's shoes. However, those were never obtained. He also recommended orthotics, and Employee finally received orthotics when he went to the Veteran's Administration.

In October of 2003, Dr. Rizzi noted that Employee was suffering difficulties in attempting to do his job and he recommended changing to a sitting job. He also recommended that Employee see Dr. Horton regarding a possible implant arthroplasty.

Ultimately, Employee was suffering from so many problems due to pain in his ankle and low back that he quit working at QuikTrip on October 13, 2003. Employee ultimately underwent debridement of the heterotopic bone with an external fixator for arthrodiastasis which was performed on February 25, 2004. He was seen for follow-up on March 5, 2004 and March 12, 2004 at which point a pin site infection was noted and the pins were removed. Employee was placed on heavy antibiotics, including Vancomycin starting March 25, 2004 by Dr. Geha. He continued on antibiotics through April 6, 2004 and was ultimately released by Dr. Rizzi on April 21, 2004.

Employee has continued to have problems with his right ankle and has gone to the Veteran's Administration System for treatment beginning March 4, 2005.

Employee stated that he filed a Report of Injury after his first injury of September 30, 2002. According to Claimant's Exhibit V, there is an employee accident/injury report dated November 7, 2002. Prior to this time, he was contacted by an Amy Enright on October 29, 2002 wherein he gave a statement regarding his injury of September 30, 2002. He did not know why she called him as his Report of Injury was filled out after his statement was taken. However, he gave her the information as he recalled it, including his prior injuries. He was not used to using the form on the computer and, therefore, the report, Exhibit V, was submitted as a handwritten form. He stated he submitted the form by computer but made a handwritten version which he put in the check-up folder. He stated he did this prior to his first surgery. Employee also noted that he faxed a copy of the off-work statement signed by Dr. Rizzi to a Doug Schimiel at QuikTrip corporate headquarters (Ex. BB and CC). In this note, it is stated that Employee was seen by Dr. Downs on October 16, 2002 and had hardware removal on November 19, 2002 and has been off work since October 31, 2002. This is dated December 5, 2002.

After Employee's return to work, he felt that his ankle was better and was relieved from a lot of the pain he had had prior to the removal of his hardware. However, as time went on, his ankle started to deteriorate and, also, he was no longer given Vioxx or any of the anti-inflammatories that had helped him with pain prior to that. He felt the aggravation to his ankle was caused by standing on cement, climbing ladders, power washing, and the constant walking

and standing he did throughout his work day. As stated previously Employee ultimately left employment with QuikTrip on October 13, 2003.

Employee's current problems with his ankle include pain when standing for long periods of time. He cannot walk on unlevel surfaces. He cannot climb ladders. He no longer goes to concerts or sports games because of the standing and walking on concrete. He currently goes to the VA for his medical care. He has been given orthotics and arch supports, but he does not wear them. He wears tennis shoes, which are the most comfortable for him. He notes that none of the current anti-inflammatories he has been given helped. He has been told that he can either undergo an ankle replacement or a fusion. He believes that Dr. Rizzi wanted him to do a replacement first and, if that did not work, then move on to a fusion. At this time, he is uncomfortable about getting additional surgeries. Employee is asking for QuikTrip to pay for the surgeries he has already had and the temporary total disability that he was not paid during his time off work, as well as permanent partial disability.

Employee stated that he did not file a Report of Injury on his second injury because he did not want to lose his job. He did apply for short-term disability because he needed some kind of paycheck at that time.

On cross-examination, Employee admitted that he tried to work for a limousine service after he left QuikTrip but had difficulty driving and sitting in the vehicle throughout the day. Also, his hearing impairment gave him difficulty with passengers. He attempted work at Apple Market in Customer Service as an assistant manager. He admitted to a history of right ankle problems. In 1983 he twisted his ankle when he fell and then, again, the injury in 1990 when he had the surgery with the rods put in. He admitted that he went through orientation with QuikTrip and understood that when someone was hurt, it was the manager's job to report it. He discussed the confusion with the claims, noting his first claim on the September 30, 2002 injury was noted at the wrong store location. He apparently got the store locations mixed up between the two injuries. He stated that he never asked QuikTrip in 2002 for treatment with a doctor. He does not know why the doctors did not put in their reports that he was injured on the job because he believes he told them he had hurt his ankle while working. He admitted he did not pay for his short-term disability insurance; that was provided solely by QuikTrip Corporation.

Employee was seen by Dr. Koprivica on June 1, 2005 for a disability rating. Dr. Koprivica reviewed Employee's medical records and did a medical examination of him. He felt that as a direct and proximate result of Employee's work injury of September 30, 2002 and October of 2002, it was his opinion that Employee sustained a permanent aggravating injury to the right ankle, that both of these injuries contributed to the loosening of the hardware that necessitated the ultimate surgical intervention that was performed. He felt that the removal of the hardware as well as the debridement was medically reasonable and a direct necessity of the injuries of September 30 and October 31 of 2002. He felt that the two injury dates required an apportionment of 10 percent permanent partial disability to the right lower extremity at the ankle. He would attribute 50 percent of that permanent partial disability to the September 30, 2002 injury and then the other 50 percent of permanent partial disability would be assigned to the October 2002 injury. This would give Employee 5 percent permanent partial disability of the right lower extremity at the ankle at a 155-week level for the September 30, 2002 injury and 5 percent permanent partial disability at the right lower extremity at the ankle at a 155-week level for the October 31, 2002 injury.

Dr. Koprivica continued to state that Employee's ongoing employment activities after his surgery where he was working on his feet for extended hours were felt to be a substantial factor leading to progression of degeneration of the right ankle and the development of severe disability from symptomatic severe post-traumatic degenerative osteoarthritis of the right ankle. In addition, he felt that as a direct and natural consequence of the severity of the further aggravating injury and development of disability from symptomatic degenerative joint disease of the right ankle that Employee had developed compensatory left ankle, left knee, left hip and low back pain. Employee was temporarily and totally disabled from his last date of employment in October of 2003 until his release by Dr. Rizzi on April 21, 2004. He felt this was medically reasonable and a direct necessity of the injuries sustained from the repetitive trauma associated with his employment activities at QuikTrip through his last date of employment of October of 2003. He felt that Employee sustained a 25 percent permanent partial disability to the right foot at the level of the ankle at the 155-week level for further aggravating injury to the right foot and ankle region. He also felt that he would separately apportion a 5 to 7-12 percent permanent partial disability to the body as a whole for the additional compensatory low back, left hip, left knee and left foot and ankle pain. He felt globally for the cumulative injury through October 13, 2003 that he would assign Employee 15 percent permanent partial disability to the body as a whole. He felt Employee should be restricted from squatting, crawling, kneeling and climbing. Dr. Koprivica also believes that Employee requires future treatment, including surgical intervention on the right ankle, including implant arthroplasty versus an arthrodesis. He would tend to recommend arthrodesis at this point.

There is also a report and deposition of Dr. Edward Prostic. Dr. Prostic feels that Employee's injuries were due to the two accidents as well as the continued standing, walking, etc., that Employee encountered while employed by Quiktrip. He apportioned a 5 percent permanent partial disability to the right lower extremity to Employee's accident of September 30, 2002 but did not apportion any of the remaining 30 percent permanent partial disability between Employee's accident of October 31, 2002 and his continued physical wear and tear caused by his work activities.

Employer's witnesses included Rick Reasby, who has worked for QuikTrip for 20 years. His current position requires him to check compliance with rules and deals with discipline. He notes that in September 2002 Employee never reported an injury on the job, and that was true for the time period from 2002 to 2004. He stated that he saw Employee during that time period and knew him, and he also knew that he was missing time due to problems with his ankle and that he had had prior problems with his ankle and a prior injury. He stated there was video technology at the time at the stores, but the tapes were re-recorded over every six hours; and if the Employee had reported it later than six hours after the incident, they would not have been able to view it on the tape. On cross-examination, Mr. Reasby noted that he never asked Employee if he had been hurt on the job. He stated he never had any involved discussion with Employee about his injuries.

Employer's other evidence included medical records and depositions of the two store managers, Jeremy Donnelly and Kevin Bergman. In Kevin Bergman's deposition, he stated that he did not see Employee fall on the September 30, 2002 but did note him sitting on the podium step and asked him what was wrong. He said the Employee made it sound like he was winded, that he would be all right in a minute, to just give him a minute and he would be fine. He asked

Employee if he needed to file a report; is there something wrong? And Employee told him, no, that he would be all right in a minute. He thought Employee was just tired from walking around. He did not recall him hobbling at any time that evening. In Jeremy Donnelly's deposition, who was the manager for the store in Lee's Summit on October 31, 2002, Mr. Donnelly stated that he never saw Employee fall and never noted any problems Employee was having with regard to being able to walk. He simply did not recall any incident where he had a problem after stepping down from the podium.

Employer offered no medical ratings or medical determination with regard to causation. Employer did offer a print out of disability payment of \$240.12 a week from October 31, 2003 to April 16, 2004.

The first issue for this Court to determine is whether the Employee sustained an accident or occupational disease arising out of and in the course of his employment. Employee testimony was that after his first two injuries and subsequent surgeries he continued to work for QuikTrip in the same or similar position as he had before. He was required to do extensive walking and standing as well as turning and twisting on his right ankle throughout his work day. This caused his right ankle to continue to deteriorate further, causing additional injury to his ankle. Dr. Koprivica stated that this activity caused the continued deterioration to Employee's ankle as well as causing injury to Employee's left ankle, knee, hip and low back. This Court therefore finds that Employee did, in fact, sustain an accident or occupational disease due to the repetitive walking, standing and turning on his right ankle, all arising out of and during the course of his employment.

The next issue to be determined by this Court is whether the Employee notified the Employer of his injuries as required by law. Because this case is pre-2005 law which only requires that notice be given when a claim is filed in repetitive trauma injuries, Employee's requirement of notice to Employer has been fulfilled. Therefore, this Court finds that Employer had notice of Employee's injury.

The next issue to be determined by this Court is whether Employee is entitled to temporary total disability benefits from October 13, 2003 to April 21, 2004. The only evidence presented other than Employee's testimony with regard to when he was able to work and when he was not able to work is Dr. Koprivica's report, which is Claimant's Exhibit K. Dr. Koprivica opines that Employee was unable to work from his last date of employment in October 2003 until his release by Dr. Rizzi on April 21, 2004. This Court finds Dr. Koprivica's report and determination to be credible. There being no other evidence on this issue, this Court finds that Employee is due temporary total disability benefits from October 13, 2003, his last day of work, until April 21, 2004. However, it is also noted by this Court that Employee received short-term total disability payments of \$240.12 from the Employer during this same time period. Therefore, Employee's TTD benefits shall be reduced by this amount and therefore Employee shall receive the sum of \$171.01 per week for the time period from October 13, 2003 to April 16, 2004.

The next issue to be determined by this Court is whether the Employer must reimburse the Employee for medical expenses totaling \$21,415.45. This Court finds no evidence wherein Employee ever requested medical care from the Employer. In fact, Employee's testimony was specifically that he had not asked for medical care from his Employer. Further, there is nothing in the claims filed requesting medical care, only a request for penalty for failure to provide

medical care. All claims were filed after the date of Employee's last surgery. Therefore, there is no finding of any request for medical care by Claimant to Employer prior to his medical care. Therefore, this Court finds that Employer is not liable for the medical care which Employee sought on his own as it is all unauthorized medical care obtained without requesting any care from the Employer first.

The next issue for this Court to determine is whether the Employer must provide the Employee with additional medical care. This Court finds that, in fact, the injuries that Employee has sustained, both in Employee's first and second injury as well as the injury herein, were a direct result of his work activities, such activities being a substantial factor in causing the injuries he suffers from. Dr. Koprivica also believes that Employee requires future treatment, including surgical intervention on the right ankle, including implant arthroplasty versus an arthrodesis. He would tend to recommend arthrodesis at this point. Therefore, this Court finds that Employer must provide Employee with additional medical care which will cure or relieve the symptoms caused by the injuries to Employee's right lower extremity as well as to his back and hips. Further, this Court finds that if this Employee is temporarily totally disabled during the time period of treatment that Employer shall pay to Employee temporary total disability during that time period.

The next issue to be determined by this Court is whether the Employee suffered any disability and, if so, the nature and extent of any disability. This Court finds that Employee does suffer additional disability to Employee's right lower extremity as well as his left ankle, knee, hip and low back due to the cumulative trauma to Employee's right lower extremity through October 13, 2003. Dr. Koprivica opined that Employee suffered a 25 percent permanent partial disability to the right lower extremity. This Court, however, finds that Employee, in fact, suffers an additional 15 percent disability to his right lower extremity. Further, Dr. Koprivica determined that Employee suffered an additional 5 to 7-1/2 percent disability to the body as a whole due to the effects of Employee's injury on his lower back, left hip and left knee, foot and ankle, causing pain due to the antalgic gait he suffered from. This Court finds that Employee suffered 5 percent permanent partial disability to the body as a whole due to the additional problems caused to Employee's low back, left hip, left knee, and left foot and ankle from his injury herein. This Court orders Employer to pay to Employee the sum of \$15,009.91 as and for permanent partial disability benefits herein.

The next issue to be determined is whether the accident or occupational disease caused the disability the Employee claims. The only information this Court has before it is Dr. Koprivica's report with regard to injuries caused by Employee's work duties. Dr. Koprivica confirms that Employee suffered additional injury to his right lower extremity as well as his back, left hip, left knee and left ankle due to his constant repetitive walking, standing, and turning on his right ankle. Therefore, this Court finds that the disability determined by this Court was caused by the injuries Employee sustained at his place of employment due to his standing, walking, turning and twisting on his ankle.

Finally, this Court awards to Employee's attorney, Mr. Michael Knepper, 25 percent as and for attorney's fees.

Date: _____

Made by: _____

Emily S. Fowler
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this ____ day of _____
2009, by:

Naomi Pearson
Division of Workers' Compensation