

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

Injury No.: 99-058939

Employee: Thomas Whalen  
Employer: Supreme Court Administration  
Insurer: C A R O  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: May 6, 1999  
Place and County of Accident: St. Louis City

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 29, 2005. The award and decision of Administrative Law Judge Joseph E. Denigan, issued November 29, 2005, 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 23<sup>rd</sup> day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Thomas Whalen Injury No.: 99-058939

Dependents: N/A Before the  
**Division of Workers'**  
Employer: Supreme Court Administration **Compensation**  
Department of Labor and Industrial  
Additional Party: Second Injury Fund (Open) Relations of Missouri  
Jefferson City, Missouri  
Insurer: CARO  
Hearing Date: August 23, 2005 Checked by: JED:tr

### 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: May 6, 1999
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? 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:  
Employee slipped and fell in office environment.
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: left lower extremity at the 160 level
14. Nature and extent of any permanent disability: 20% PPD of left lower extremity at the 160 week level.
15. Compensation paid to-date for temporary disability: \$956.12
16. Value necessary medical aid paid to date by employer/insurer? \$2,861.27

Employee: Thomas Whalen Injury No.: 99-058939

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: unknown
19. Weekly compensation rate: \$418.30/\$294.73
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable:

32 weeks of permanent partial disability from Employer \$9,431.36

22. Second Injury Fund liability: Open

TOTAL: \$9,431.36

23. Future requirements awarded: None

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 20% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Charles Bobinette

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Thomas Whalen	Injury No.: 99-058939
Dependents:	N/A	Before the
Employer:	Supreme Court Administration	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund (Open)	<b>Compensation</b>
Insurer:	CARO	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: JED

This case involves left lower extremity injury resulting to Claimant with the reported accident date of May 6, 1999. Employer admits Claimant was employed on said date and that any liability was fully insured. The Second Injury Fund is a party to this claim but remains open for a determination of liability at a future date. Both parties are represented by counsel. The single issue for trial is the nature and extent of permanent partial disability.

### FINDINGS OF FACT

#### Dispositive Evidence

1. Claimant testified to the requisite facts underlying a compensable left knee injury including details of the awkward positioning of his left foot as he slipped and fell causing left quadriceps and left knee pain.

2. Claimant, Docket Controller for the Circuit Court, had a sedentary job and was able to finish his shift. He sought treatment two days later.
3. Claimant's complaints relate somewhat to his many years prior severe right lower extremity fractures below the knee, requiring ORIF, which injury has degenerated over the years into chronic pain. Hardware was removed from the right lower leg in 1992.
4. Claimant's supervisor (circuit clerk) did not return Claimant's telephone reports of injury and need for treatment. Claimant contacted his prior orthopedic surgeon, Dr. Richard Ramus who diagnosed a left anterior thigh contusion on May 10, 1999.
5. Claimant testified he favored the right leg over the past decade, relying on the left leg to lead with and to carry more of his weight.
6. Right leg symptoms include throbbing and swelling from the 1991 surgery cause the favoring and increased strain on the left leg.
7. Claimant testified he feels unstable and guards his movements. He cannot climb a ladder. Claimant exhibited a mildly altered gait at trial upon entering and leaving the courtroom. His job permits him to rest and otherwise avoid movement when pain manifests.
8. Dr. David Volarich evaluated Claimant and noted complaints of left quadriceps "twinges" and feelings of left knee instability. On physical examination, he noted altered gait and difficulty standing from a squat position, and only trace swelling in the prepatellar bursa and trace hyperemia in the left knee joint, and otherwise negative findings. He diagnosed left quadriceps strain and aggravation of chondromalacia. Restrictions included avoiding kneeling, squatting, climbing and pivoting, and all impact maneuvers.
9. Dr. Emmanuel evaluated Claimant and reported a largely negative physical examination except for left quadriceps atrophy which was measured against the right quadriceps. He noted chondromalacia from review of an MRI contemporaneous to the reported accident. Dr. Emmanuel assigned no PPD percentage to the left lower extremity.

## RULINGS OF LAW

### Nature and Extent of PPD

Claimant's testimony was spontaneous and included sufficient detail to compare easily with recognized body mechanics and the treatment history. His description of symptoms was neither overstated nor understated. His sedentary duties and job responsibilities render the *de minimis* lost time record as largely irrelevant in understanding the course of symptoms, recovery and permanency. Claimant's age and medical experience suggests he has dealt with considerable orthopedic discomfort to date; Claimant added that he is often limited in what analgesics (or anti-inflammatories) he may take considering prescriptions for other ailments.

The proffered opinion evidence is useful. Dr. Volarich noted the altered gait seen at trial which is consistent with Employer's expert's note of left quadriceps trophy. Dr. Emmanuel's assignment of no PPD is difficult to reconcile with his own findings and Claimant's testimony. While no surgery recommendation is found in the record, the complaints and therapies and restrictions are consistent with injury and aggravation of symptoms accompanying a chronically weakened and, subsequently, severely contused left quadriceps muscle. The left knee joint pathology and symptoms and observations were consistent with chondromalacia and subsequent injury. Thus, Claimant exhibits a chronically wasted quadriceps reasonably inferred to have exacerbated post-accident as a result of guarding and decreased ambulation. The guarding predates and, yet, is consistent with restrictions imposed by Dr. Volarich, his expert.

### Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have sustained a twenty percent PPD of the left lower extremity at the 160 week level. The SIF remains open.

Date: \_\_\_\_\_ Made by: \_\_\_\_\_

Joseph E. Denigan  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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