

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

Injury No.: 08-095124

Employee: Jeanne Wilson  
Employer: Park Terrace (Settled)  
Insurer: Liberty Mutual (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 May 30, 2012. The award and decision of Administrative Law Judge Kathleen M. Hart, issued May 30, 2012, 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 1<sup>st</sup> 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: Jeanne Wilson

Injury No.: 08-095124

Dependents: n/a

Employer: Park Terrace (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Liberty Mutual (previously settled)

Hearing Date: March 12, 2012

Checked by: KMH

### 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: September 30, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant injured her left knee when she slipped and fell in the course and scope of her employment.
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 knee
14. Nature and extent of any permanent disability: 35% left knee, previously paid by Employer and permanent and total disability benefits from the SIF.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$4,590.12

Employee: Jeanne Wilson

Injury No.: 08-095124

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$205.50/\$205.50
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

56 weeks of permanent partial disability from Employer (previously paid)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
\$205.50 per week payable by SIF beginning 56 weeks after  
November 9, 2009, for as long as provided by law.

TOTAL: TO BE DETERMINED

23. Future requirements awarded:

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:

Kari Peterson

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jeanne Wilson

Injury No.: 08-095124

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Park Terrace (previously settled)

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

Additional Party: SIF (only)

Insurer: Liberty Mutual (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter March 12, 2012. Jeanne Wilson (Claimant) was represented by attorney Kari Peterson. The SIF was represented by Assistant Attorney General Kevin Nelson. Employer and Claimant settled the primary claim in this matter prior to the hearing.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Claimant alleges she developed an occupational disease on or about January 17, 2007. She settled this case with Employer for 15% of each wrist. Claimant sustained an injury by accident September 30, 2008, and settled that case with Employer for 35% of the left knee. Both cases proceeded to trial to determine the nature and extent of SIF liability.

### STIPULATIONS

The parties stipulated to the following:

1. Claimant sustained an injury by accident in the course and scope of her employment September 30, 2008.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by LMIC.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage yields a TTD, PTD, and PPD rate of \$205.50.
6. On August 12, 2011, Claimant and Employer/Insurer settled Employer/Insurer's liability for this claim for 35% PPD to the left knee.

## ISSUES

The parties stipulated the sole issue to be resolved by trial is the nature and extent of the SIF liability.

## FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 57 year-old woman with a ninth grade education. She took the GED test, but did not pass. Claimant is a widow and lives with her son, daughter-in-law, and three grandchildren.
2. Claimant worked for Employer from 2000 through March 2009. Employer operates a nursing home, and Claimant was hired to do laundry and housekeeping. Her duties involved mopping, dusting, scrubbing, cleaning, and laundry. Prior to working for Employer, she worked in housekeeping at a shopping mall, and in housekeeping and laundry for a hotel and nursing home.
3. In 2002 Claimant developed pain in her right knee. She treated with Dr. Weis who performed a partial medial meniscectomy in February 2002. Her complaints continued, and Dr. Weis performed a total knee replacement in November 2002. Claimant had extensive follow-up treatment and was released in March 2003.
4. Since she was released from treatment, Claimant has continued to have problems with her right knee. She has pain if she stands too long. She has difficulty bending her knee. When she was working, she had to take a break and sit for a few minutes to relieve her knee pain. When she sits too long, she has to straighten her leg. She can't kneel, has difficulty gardening, and has developed numbness in her right leg.
5. Claimant testified she had a heart attack in April 2004, and was hospitalized for one week. She was diagnosed with congestive heart failure, and given dietary restrictions and exercises. In 2005 she had a stent placed in her distal left coronary artery. In 2006 she had a stent placed in her distal right coronary artery. She is still actively treating for her coronary artery disease and has been taking heart medications since her surgeries.
6. Claimant testified she has fatigue and shortness of breath since her heart attack. Claimant testified the cardiologist recommended she lose weight and exercise. Since her heart attack, she is not able to walk as fast because she develops shortness of breath with exertion. This affected her at work. When she had to carry heavy laundry or work at a fast pace, she had shortness of breath. She had a general lack of energy, and continues to have chest pain.

7. In December 2006, Claimant developed pain, numbness and tingling in her hands. She treated with Dr. VanRyn, and testified he advised Claimant her work contributed to her complaints. After conservative treatment failed, he performed bilateral carpal tunnel releases.
8. After her surgeries, she returned to work but continued to have weakness and pain in her hands. When she performed repetitive tasks, her hands went numb and she dropped things. She had pain when putting in and pulling clothes out of the washer and dryer at work. She continues to have pain when cooking and emptying heavy pots. She can't sew much because of hand complaints.
9. On September 30, 2008, Claimant was putting away a resident's clothing. She did not see a puddle on the floor, and she slipped and fell on her left side, hitting her head and left knee. Claimant was taken by ambulance to Christian Northeast Hospital. She was diagnosed with a left knee contusion and sent for physical therapy through Concentra. Claimant returned to work after the initial injury and had problems standing and bending. She was not allowed to bend down on her knees and she had to sit on occasion. She was written up at work for not completing her tasks and for sleeping on the job. Claimant last worked in March 2009, when she was terminated for sleeping on the job. Claimant testified she was not sleeping. She was sitting because she was tired. Her complaints continued, and she was referred to an orthopedist for additional treatment.
10. In July 2009, she began treatment with Dr. Couchman. After receiving clearance from Claimant's cardiologist, Dr. Couchman performed a left total knee replacement in August. Claimant had no treatment or complaints in her left knee before her 2008 accident. Claimant was released from treatment November 9, 2009.
11. Claimant continues to have constant pain in her left knee. In the morning her knee pops when she gets out of bed. When she stands too long, she loses her balance. She can't get in the bathtub. She can't garden, sit on the floor, or climb steps. She needs to lie down or sit in her rocking chair for pain relief. Claimant is on numerous medications for high blood pressure, high cholesterol, depression, sleep aids, asthma, and pain.
12. Claimant testified she typically gets up around 7 am and straightens her room. Her sleep is interrupted several times a night due to knee pain. She watches TV in her rocking chair. She often falls asleep during the day because of fatigue and shortness of breath related to her cardiac condition. She does very little to help around the house. She used to knit and crochet quilts, but she hasn't been able to do that since 2007 due to hand complaints. She occasionally uses a cane, and uses the electric cart at stores. She has a handicap sticker on her car. She is no longer able to garden, and does not go out much. Her son handles her checkbook, and does most of the driving.
13. Claimant's medical expert, Dr. Woiteshek, examined Claimant and issued several reports. He rated Claimant's disabilities, and opined Claimant is permanently and totally disabled due to the combination of her disabilities. He opined while Claimant has other risk factors for the development of carpal tunnel syndrome, her repetitive work activities were the prevailing factor in the development of her condition and need for treatment. He

opined her slip and fall at work in 2008 was the prevailing factor in causing her left knee condition and need for treatment. Her prior injuries were a hindrance or obstacle to her employment. He issued numerous permanent restrictions relating to each of her conditions. He opined Claimant is employable when considering her left knee injury alone, but she is totally disabled when considering all of her disabilities.

14. Claimant's vocational expert, Jim England, reviewed the records, met with Claimant, and issued a report in July 2011. He noted all of Claimant's jobs have been in unskilled entry-level work, and she has not acquired any transferable skills. She is not capable of going back to any of her past jobs. He opined she is totally disabled and not able to compete for or sustain work given the combination of her medical problems, age, limited education, difficulty sleeping, and depression.
15. Claimant is credible.

### **RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

- 1. Claimant's September 30, 2008, injury was the prevailing factor in causing her left knee condition and disability.**

The parties stipulated Claimant was injured by accident in the course and scope of her employment September 30, 2008. Claimant had no treatment on her left knee before 2008. Employer provided medical treatment, and when Claimant's condition did not improve, Dr. Couchman recommended a total knee replacement. Dr. Woiteshek credibly testified Claimant's fall at work was the prevailing factor in the development of her left knee condition. His opinion is uncontradicted.

I find Claimant's September 30, 2008, accident was the prevailing factor in causing the condition and disability in Claimant's left knee.

- 2. Claimant is permanently and totally disabled as a result of the combination of her primary injury and her preexisting disabilities.**

Section 287.220 RSMO provides that in cases of permanent total disability against the Second Injury Fund, there must be a determination of the following:

- the percentage of disability resulting from the last injury alone;

- that there was a pre-existing permanent disability that was a hindrance or obstacle to employment or to obtaining re-employment;
- that all of the injuries and conditions combined, including the last injury, have resulted in the employee being permanently and totally disabled.

Based on my review of the medical records and Claimant's testimony, I find Claimant sustained 35% PPD to her left knee as a result of her primary injury.

Claimant had a number of pre-existing injuries and disabilities. She continues to have significant complaints and restrictions regarding her right knee, right upper extremity, left upper extremity, and heart condition. Each of these injuries made it more difficult for Claimant to work, and they limit Claimant's ability to work. Mr. England testified each of these conditions constitute a hindrance or obstacle to employment. I find Claimant's preexisting injuries and disabilities were a hindrance or obstacle to employment or to obtaining re-employment.

The final question is whether the combination of Claimant's injuries rendered her permanently and totally disabled. The test for total disability is whether Claimant is able to adequately compete in the open labor market. The question is whether any employer in the usual course of business would reasonably be expected to employ Claimant given her condition.

Dr. Woiteshek is the only physician to examine Claimant regarding all of her injuries. He imposed significant restrictions on Claimant, and opined she is totally disabled due to a combination of her injuries and disabilities. Mr. England testified Claimant is not physically capable of entry level employment, Claimant is not employable in the open labor market, and Claimant is not capable of sustaining any employment.

Based on my observations of Claimant, her credible testimony, the vocational and medical evidence, I find Claimant is permanently and totally disabled as a result of the combination of her injuries and disabilities. She is not able to compete in the open labor market and no employer in the usual course of business would reasonably be expected to employ Claimant.

It is not the last injury alone that totally disabled Claimant. She had substantial cardiac, right knee, right upper extremity, and left upper extremity issues before her primary injury. While she did work full time until her primary injury, she credibly testified she had difficulties performing her job. She had to take breaks due to right knee pain. She needed assistance with lifting due to her hand conditions. She was slower at work and had shortness of breath, chest pain, and a general lack of energy due to her heart condition. Claimant attempted to work after the primary injury, but clearly could not sustain employment. Her personnel file corroborates this testimony. She went from Employee of the Month prior to her carpal tunnel surgeries to poor job evaluations and disciplinary actions for not completing her tasks and sleeping on the job. She was ultimately terminated in March 2009 for sleeping on the job. While her left knee injury slowed her down, it is the combination of all her injuries and disabilities that renders her totally disabled.

The parties stipulated if Claimant is permanently and totally disabled, she reached maximum medical improvement November 9, 2009. The SIF is hereby ordered to pay

permanent total disability benefits of \$205.50 per week beginning 56 weeks after November 9, 2009, for as long as provided by law. The amount accrued to date shall be paid forthwith with interest as provided by law.

Kari Peterson is allowed a fee of 25% of all benefits awarded for necessary legal service rendered, which shall constitute a lien on said compensation.

Made by: \_\_\_\_\_  
KATHLEEN M. HART  
*Administrative Law Judge*  
*Division of Workers' Compensation*