

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

Injury No.: 05-079505

Employee: Mark Winningham
Employer: Missouri Department of Transportation
Insurer: Missouri Highway & Transportation

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 August 23, 2011. The award and decision of Administrative Law Judge Karen Fisher, issued August 23, 2011, 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 1st day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Mark Winningham

Injury No : 05-079505

Dependents: N/A

Employer: Missouri Department of Transportation

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party:

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

Insurer:

Hearing Date: May 13, 2011

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: AUGUST 18, 2005
5. State location where accident occurred or occupational disease was contracted: JASPER COUNTY, MO
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 INSTALLING DRAINPIPE, STEPPED IN HOLE TWISTING RIGHT KNEE
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: 20 PERCENT RIGHT KNEE
15. Compensation paid to-date for temporary disability: NONE PAID
16. Value necessary medical aid paid to date by employer/insurer? \$9,669.10
17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: N/A

Employee: Mark Winningham

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19. Weekly compensation rate: \$365.08

20. Method wages computation: STATUTORY MAXIMUM

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: -0-

0 weeks of temporary total disability (or temporary partial disability)

32 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

22. Second Injury Fund liability: N/A

TOTAL: \$11,682.56

23. Future requirements awarded: FUTURE MEDICAL

Said payments to begin AUGUST 19, 2005 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 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

MATTHEW WEBSTER

Employee: Mark Winningham

Injury No. 05-079505

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Mark Winningham

Injury No : 05-079505

Dependents: N/A

Employer: Missouri Department of Transportation

Additional Party:

Insurer:

Hearing Date: May 13, 2011

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

AWARD

A final hearing was held on May 13, 2011, before the undersigned Administrative Law Judge, Karen Fisher. Attorney Matthew Webster represented the claimant. Attorney Jim Wesley represented the employer/insurer.

STIPULATIONS

The parties stipulated to all issues of compensability and jurisdiction in this case. Further the parties stipulated to permanent partial disability of 20 percent of the right knee at a compensation rate of \$365.08 per week for a total of \$11,682.56. No temporary total disability was paid or claimed. Medical was paid in the amount of \$9,669.10. No past medical is being claimed.

ISSUE

The sole issue to be determined as a result of this hearing is whether or not the employer/insurer is obligated to pay for future medical treatment.

EVIDENCE PRESENTED

The claimant and employer/insurer offered the following joint exhibits which were admitted into evidence:

Exhibit 1	Claim for Compensation
Exhibit 2	Dr. Koprivica IME
Exhibit 3	Work Partners records
Exhibit 4	Midwest Surgery records
Exhibit 5	St. John's records
Exhibit 6	Dr. Fevurly deposition

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Claimant is an assistant supervisor with Missouri Department of Transportation. The claimant injured his right knee on August 18, 2005, when he was helping to install a pipe in a ditch near a construction area. At the time he was operating a loader. He stepped down into the ditch, missed his step due to a hole and twisted his knee. The knee popped and claimant fell. There was immediate swelling and pain. His treatment was initially conservative until an MRI scan revealed evidence of a meniscal tear at which time claimant was referred to Dr. Esch, an orthopedic surgeon, who performed a medial femoral condyle chondroplasty, minimal debridement of the lateral meniscus and a partial medial meniscectomy.

The claimant has ongoing pain in the knee and cannot kneel, squat, or crawl. He has difficulty climbing. He has particular difficulty climbing stairs. The claimant has no prior history of injury to the right knee or any symptomatic condition for which he had any type of care or treatment prior to the date of accident.

The report and opinion of Dr. Brent Koprivica, a specialist in occupational medicine, was admitted into evidence. His opinion is that there is a likely probability that claimant will require care and treatment in the future as a direct necessity of the injury sustained on August 18, 2005. He goes on to indicate that claimant will develop progressive post traumatic degenerative osteoarthritis. He believes the injury and subsequent surgery have permanently aggravated and accelerated the degenerative process which will lead to the necessity for further care and treatment. He is of the opinion that treatment could include delaying interventions such as use of hyaluronic injections or steroid injections. He concludes that it is probable that claimant will require a total knee arthroplasty and the need for revision arthroplasty as well.

The report and opinion of Dr. Fevurly, a specialist in occupational medicine who performed an IME on behalf of employer/insurer, was also admitted into evidence. He indicated that the MRI revealed moderately advanced three compartment degenerative changes. He also noted that there was maceration of the entire medial meniscus and cartilaginous/lateral meniscal tear. Dr. Esch, the treating physician, reported that the articular cartilage problem preexisted the work event, but the medial meniscal tear was the result of the work event on August 18, 2005.

Dr. Fevurly noted that there was significant degenerative arthritis and chondromalacia present in all three compartments of the knee when the claimant underwent arthroscopy on October 7, 2005. Claimant did return to work three days after surgery and was maintained on light duty for a few weeks eventually advanced back to his full and regular duties. Claimant did report persistent medial right knee pain after the surgery. Dr. Fevurly indicated that the prevailing cause of any permanent partial disability to the right knee is preexisting moderately advanced degenerative cartilage changes or the chondromalacia. He believed this is primarily the result of claimant's body habitus and preexisted the work event of August 18, 2005. He believed any need for future total knee arthroplasty is predominately the result of the preexisting arthritis. Dr. Fevurly did indicate that claimant would need to limit prolonged standing and walking and avoid kneeling, squatting, and crawling. He also indicated that claimant should avoid high impact activities such as running and jumping.

Dr. Fevurly issued a supplemental report after receiving a radiology report on bilateral standing knee films which he had previously requested. He indicated that this report documents bilateral knee osteoarthritis showing the right knee is moderately advanced and reveals medial

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compartment joint space of three millimeters. There was osteophyte formation in the right knee. The left knee osteoarthritis was mildly advanced and the medial compartment measured four millimeters. Dr. Fevurly indicated that the cartilage height on the left is considered normal and resulted in no ratable permanent disability. The cartilage height on the right indicated permanent partial disability but that it was resulting primarily due to his body habitus. He went on to indicate that it is unlikely that there will be a need for total knee replacement in the next five years based on the remaining cartilage height. The need for total knee replacement would be predominately related to degenerative joint disease resulting from his body habitus and not as a result of the work event on August 18, 2005.

I find the opinion of Dr. Koprivica to be credible and most persuasive in this case. Therefore I find that claimant has met his burden in proving that there is a probability he will need future medical treatment in the future which is related to the work injury. I order that the future medical be left open for any treatment necessary to cure and relieve the claimant of the symptoms of the August 18, 2005, injury.

Claimant's attorney has asked for an attorney's fee of 25 percent of all amounts awarded herein. I find that to be reasonable. Consequently, I allow claimant's attorney, Matthew Webster, 25 percent of all amounts awarded herein which shall constitute a lien upon this award.

Date: August 23, 2011

Made by: /s/ Karen Fisher

Karen Fisher
Administrative Law Judge
Division of Workers' Compensation