

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

Injury No.: 03-069251

Employee: Rick Wiseman
Employer: First Fleet, Inc.
Insurer: Travelers Casualty and Surety Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

Date of Accident: July 22, 2003

Place and County of Accident: Maryland Heights, St. Louis County, Missouri

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 February 9, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued February 9, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Rick Wiseman

Injury No.: 03-069251

Dependents: N/A
Employer: First Fleet, Inc.
Additional Party: Second Injury Fund
Insurer: Travelers Casualty and Surety Company
Hearing Date: October 13 and November 10, 2004

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

Checked by: MDL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: July 22, 2003
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:
Employee was getting out of a truck when he fell in a manhole.
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: Lower extremities
14. Nature and extent of any permanent disability: -0-
15. Compensation paid to-date for temporary disability: \$1,260.33
16. Value necessary medical aid paid to date by employer/insurer? \$3,558.01

Employee: Rick Wiseman Injury No.: 03-069251

17. Value necessary medical aid not furnished by employer/insurer? \$12,480.48
18. Employee's average weekly wages: \$549.27
19. Weekly compensation rate: \$366.18/\$347.05
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

TOTAL:

-0-

23. Future requirements awarded: None

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Rick Wiseman	Injury No.: 03-069251
Dependents:	N/A	Before the
Employer:	First Fleet, Inc.	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
Insurer:	Travelers Casualty and Surety Company	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: MDL:tr

PRELIMINARIES

A hearing was held on October 13, 2004 and November 10, 2004 at the Division of Workers' Compensation in the City of St. Louis. Rick Wiseman ("Claimant") was represented by Mr. Ben Messina. First Fleet, Inc. ("Employer") and its Insurer, Travelers Casualty and Surety Company, were represented by Mr. Stephen Larson. Although the Second Injury Fund is a party to this case, pursuant to the agreement of the parties the Fund did not participate at hearing. Mr. Messina requested a fee of 25% of Claimant's award.

The parties stipulated that on or about July 22, 2003, Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of injury; and the claim was timely filed. Claimant was earning an average weekly wage of \$549.27 resulting in applicable rates of compensation of \$366.18 for temporary total disability benefits and \$347.05 for permanent partial disability benefits. Employer has paid

temporary partial disability benefits in the amount of \$1,260.33 representing a period of time from July 24, 2003 to September 2, 2003. Employer also paid medical benefits of \$3,558.01.

The issues for determination by hearing are whether or not the accident Claimant sustained on July 22, 2003 resulted in an injury to his left knee; medical causation; liability of Employer for past medical benefits; liability of Employer for past temporary total disability benefits from October 17, 2003 to February 2, 2004; and nature and extent of permanent partial disability sustained by Claimant.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant's Testimony

Claimant began working for Employer on April 1, 2003 as a spotter/dispatcher. On July 22, 2003, Claimant was pulling a trailer out of a dock. When Claimant climbed down from the tractor he partially fell into a manhole. Claimant testified that he hit his left ankle, shin bone and knee when he fell. Claimant testified that his right leg was above the manhole, and he was in a splits-like position. Claimant testified that he caught himself with his elbows before he fell all the way into the hole, and was able to push himself out of the hole. According to Claimant's testimony, after the accident his left knee was painful, and the outer calf and ankle on his right leg hurt. Below the knee on both of his legs was the most severe pain. On his left, on the inner calf, he lost an approximately one-half dollar size of flesh. His right leg had contusions, and his right ankle was black and blue. The lower left part of his left leg was worst pain he had.

Claimant testified that he notified Employer of his fall, and he was advised to report to Concentra for treatment.

Claimant testified that he had treated for problems with his left knee with Dr. Mannis before the injury. Claimant had arthroscopic surgeries in 1987 and 1988, and an ACL reconstruction in 1999. Claimant testified that he had pain in his left knee beginning in late 2001 or early 2002. According to Claimant, when he first saw the doctors at Concentra on July 22, 2003, he specifically complained of left knee pain. According to Claimant, when he complained to Concentra about his left knee he was told that his pain was from his previous injuries. According to Claimant, Concentra put him on light duty but there was no light duty available. Claimant testified that he showed up every morning for an hour, did payroll, faxed the payroll and then went home and dispatched trucks from his home via a Nextel radio.

Claimant testified that from July 22 until September 2, 2003, he followed the same routine of work every day.

Claimant testified that after he returned to full duty as a spotter, he had increased pain in his left knee. The pain in his left knee became more severe because he had to start using a clutch which made his left knee pain more severe. Claimant told his Employer that his left knee was getting worse, but he was told that he had been released and there was no more treatment available. Claimant testified that he then called Dr. Leo Warren, his primary care physician, who saw him on September 22, 2003. At that time Dr. Warren gave Claimant a cortisone injection in his left knee and referred him to Dr. Mannis, the orthopedic doctor who had performed Claimant's prior knee surgeries.

Dr. Mannis recommended an MRI, and then ultimately performed surgery on October 24, 2003. Dr. Mannis took Claimant off work on October 17, and performed the surgery at Missouri Baptist on October 24. After the surgery Dr. Mannis kept him off work and prescribed physical therapy. After Claimant's surgery he had another cortisone shot and three injections in his left knee. Claimant's surgery did not correct his pain.

Dr. Mannis saw Claimant again in February 2004, and at that time told him he should find another type of work besides driving a delivery truck. Claimant has not been employed anywhere since he last worked for Employer.

Claimant currently complains that his left knee still hurts constantly. He takes Darvocet and anti-inflammatories and wears a knee brace on his left leg. Claimant's right ankle pain and the pain on his inner calf on his left leg went away. Claimant has no further pain in his left shin, left ankle or right ankle. The only pain

Claimant still has is in his left knee.

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Other Evidence

Claimant reported to Concentra on July 22, 2003, three hours after the injury. The records give a history that Claimant injured his lower legs and left upper leg. The medical records reflect that Claimant's left knee, which has been injured the past, indicates no pain or effusion, and has full range of motion and a negative McMurray's test. The diagnosis was contusion and abrasions of both lower legs and left upper leg. X-rays were negative for fracture.

Claimant returned to Concentra on July 24, 2003. Claimant developed cellulitis of the abrasion on his left shin. He was given antibiotics and continued on limited duty. Claimant followed up again on July 28 and was continued on his antibiotics. Treatment notes state that Claimant injured his left lower leg between his knee and down to his ankle when he stepped down into a manhole at work on July 22, 2003. The knee was not injured by his reports. Claimant was prescribed physical therapy.

On July 31, Claimant was examined at Concentra and allowed to return to full duty on August 4, 2003. On August 7, 2003, Claimant returned to Concentra because his cellulitis had worsened. His antibiotic was changed and he was put back on restricted duty. Claimant's cellulitis continued to improve, and on August 26, 2003 Claimant was released to full duty.

On September 22, 2003, Claimant reported to his personal physician, Dr. Leo Warren. Claimant gave a history of a recent left knee injury status post falling through a manhole. Claimant was given a cortisone injection by Dr. Warren and was referred to Dr. Mannis for an orthopedic evaluation.

On September 23, 2003, Claimant completed a condition and/or injury report for Dr. Mannis at Metropolitan Orthopedics. The history given by Claimant of the area of body affected was the left knee. Claimant indicated that the injury happened at work in 1987 when he fell from a truck. No mention of falling through a manhole on July 22 was made. In Dr. Mannis' office notes under "history of present illness" Dr. Mannis states that, "Claimant gave a history of over the past year to noting gradually increasing pain in his left knee. He did not describe a specific incident or injury. Claimant stated that he got so bad that yesterday he had a cortisone shot. He noted that three months ago he fell through a manhole and had an injury to his left lower tibia." Dr. Mannis recommended an MRI which was performed on October 1, 2003. The impressions were ACL cyst, small joint effusion, and thickening of the patellar tendon which may represent mild tendonitis. Ultimately Dr. Mannis performed an arthroscopic surgery on Claimant's knee on October 24, 2003. Dr. Mannis performed a chondroplasty of the patella, and the post-operative diagnosis was chondromalacia of the patella. At an office visit on December 11, 2003, Dr. Mannis felt that Claimant's complaints were somewhat disproportionate to the lack of subjective findings.

Following his surgery, Claimant had physical therapy and was ultimately released from treatment on March 8, 2004. Dr. Mannis restricted Claimant permanently from driving a semi-truck tractor-trailer over the road or local.

On July 30, 2003, Claimant gave a recorded statement to Employer's insurance company. In his statement Claimant acknowledged that his left knee was injured in 1987, and with reference to the accident of July 22, 2003, Claimant stated that surprisingly he did not hurt his left knee and was amazed by that. He stated that he was lucky he didn't hurt his left knee because there was nothing there to replace.

Deborah Parsons testified on behalf of Employer. She is the Director of Human Resources and Risk Management for Employer. She is in charge of employee benefits and risk management including workers' compensation. Ms. Parsons testified that she spoke with Claimant the day of his injury by phone. Ms. Parsons testified that Claimant told her he had had prior knee surgeries to his left knee, but that his left knee was not involved in his work accident of July 22, 2003.

Dr. Rende testified that Claimant gave him a history of falling in a manhole with his knee striking the metal edge of the manhole with immediate onset of pain and swelling. Dr. Rende stated that Claimant appeared to have

aggravated a preexisting condition and that his opinions were based on the accuracy of the patient's history. Dr. Rende rated Claimant's disability at 10% permanent partial disability with 5% preexisting.

Dr. Rende also testified that in reviewing the records from Concentra and Dr. Mannis, the histories in those records regarding direct trauma to the knee were inconsistent with the history given to him. Dr. Rende further stated that he gave Claimant the benefit of the doubt based on the history he was provided. While Dr. Rende testified that the surgical findings were all chronic with no findings of acute abnormality at the time of surgery, he did provide a 5% disability based on Claimant's assertion of direct trauma to the knee, and based on the difficulty in assessing how much of the problem preexisted. Dr. Rende agreed that if the evidence at trial supported that the knee was not involved, that the disability would be unrelated to the work incident and there would be no support even for an aggravation. In that regard, he testified that none of the disability to the knee would be work related. He also noted that the patient was exaggerated and showed signs of symptom magnification. During the course of his deposition Dr. Rende opined that, "as we now kind of put all these pieces of the puzzle together it's obvious to me that he has a longstanding problem with the knee, and he manufactured a history to me so that he could get his on the job or surgical procedure covered as an on the job injury".

Dr. Mannis testified on behalf of Claimant. Dr. Mannis testified that when Claimant told him that he fell through a manhole three months earlier and that his knee was okay, he took that to mean that Claimant's knee was okay from that incident. Mr. Mannis testified that in the absence of trauma, chondromalacia can be attributable to age and degeneration. Dr. Mannis testified that the cyst on the ACL was unrelated to Claimant's fall in the manhole. The surgery performed by Dr. Mannis included debridement of some of the arthritis below the kneecap, and removal of the cyst. During Dr. Mannis' testimony he initially stated that Claimant told him that he had a direct blow to the front of the leg and knee at that time. Dr. Mannis later testified that the history of a direct blow to the knee in July 2003 was inconsistent with the history provided by Claimant at the initial visit on September 23, 2003.

RULINGS OF LAW

Based upon my examination of the entire record, the testimony, and the applicable law of the State of Missouri, I find:

Claimant has failed to meet his burden of proving that the accident of July 22, 2003 resulted in any injury to his left knee or that his left knee complaints were medically causally related to this accident. While the evidence does establish that he injured his lower legs in the accident of July 22, 2003, there is no credible evidence to support that his left knee was also injured at that time. In fact, the credible and substantial evidence specifically supports that the left knee was not involved, and that Claimant specifically denied left knee involvement.

Claimant testified that he struck his knee in the July 22, 2003 accident and had immediate pain. Claimant contends that he repeatedly told the doctors at Concentra about his knee. The Concentra records over a two-month period fail to document any complaints of left knee pain. This significant discrepancy cannot be reasonably reconciled.

Claimant's own expert medical evidence on accident/causation is also inconsistent and unpersuasive. Claimant testified that he told Dr. Mannis that he struck his left knee at the time of incident and had immediate pain. Dr. Mannis' records from the first visit on September 23 indicate that Claimant gave a history of gradually increasing pain over the last one to two years without any specific injury or accident. Furthermore, Dr. Mannis' handwritten notes from that first visit mention the July 22, 2003 incident, but also state that the "knee was okay". Furthermore, the patient intake sheet prepared and signed by Claimant indicates that when he was first seen he was being seen for chronic ongoing problems due to a 1987 work injury. It is obvious from Dr. Mannis' records that Claimant was being seen for chronic left knee problems which predated July 22, 2003, and that Claimant initially denied involvement of the left knee.

Claimant's testimony of an acute traumatic left knee injury with immediate pain is also inconsistent with other evidence. Deborah Parsons testified that Claimant only reported and complained of injury to his lower legs. Claimant also gave a recorded statement in which he states that he is amazed that he did not injure his left knee.

Claimant's testimony is completely against the weight of the credible evidence.

The overall credible evidence supports that Claimant was involved in an accident on July 22, 2003, which

caused him to suffer abrasions/contusions to his lower legs. Claimant received both medical and temporary total disability benefits for the injuries to his lower legs and Claimant testified he had no residual problems as a result of these lower leg injuries. No medical expert assigned any disability to his lower leg injuries. As such no permanent partial disability is awarded for the lower legs. Given the absence of evidentiary support for an accident and medical causation as they relate to his left knee, no benefits are awarded to Claimant with regard to the left knee, and all medical bills relating to treatment for the left knee shall remain Claimant's responsibility. Claimant's request for benefits for the left knee is denied.

In as much as no disability is found, the claim against the Second Injury Fund is dismissed.

Date: _____

Made by: _____

Margaret D. Landolt
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation