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MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE
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Intentionally Lighting Can of Flammable Adhesives on Fire Not Accident Because Not *Unexpected* Traumatic Event

Hedrick vs. Big O Tires, Case No. SD34556 (Mo. App. 2017)

FACTS: The claimant worked as a general mechanic at Big O Tires. Employees sometimes used open flames as part of their job duties, but only when safety methods were utilized to make sure that no flammable materials were nearby. On his date of injury, the claimant intentionally lit a can of glue on fire while a coworker was holding it, which caused an explosion and serious injuries to both the coworker and himself. He pointed to several previous instances of horseplay at work, including greasing a doorknob or snapping a rag. He argued that lighting the can on fire was also horseplay, and since horseplay was prevalent at his workplace, the risk of injury arose out of and in the course and scope of employment.

At a Hearing, the ALJ denied his Claim, finding that the risk did not arise out of and in the course and scope of his employment, because lighting the can on fire was an intentional dangerous act, unlike the prior instances of horseplay, which were not life threatening. On appeal, the Commission affirmed, holding that the mere presence of dangerous materials on the job site combined with the fact that coworkers occasionally engaged in mild horseplay was insufficient to show that these injuries arose out of and in the course and scope of employment.

HELD: On appeal, the Court affirmed the Commission's decision. It held that the claimant failed to prove that he sustained an accident under Workers' Compensation Law. However, it used a different rationale and noted that the dictionary defines an accident as an *unexpected* traumatic event. The claimant could have expected or foreseen that igniting a can of flammable adhesives held by another person could produce injury, and therefore, although it was a traumatic event, it was not *unexpected*. Therefore, it was not a compensable accident.

Court Affirms Commission Finding Injury Is Compensable Despite Multiple Contradicting Statements Because Unguarded Ramp Was Risk Source

ConAgra Foods, Inc. vs. John Phillips, Case No. WD80535 (Mo. App. 2017)

FACTS: The claimant sustained an injury to his left hip on October 14, 2013 when he was walking up a ramp in the break room and turned to step off the ramp, at which time he fell to the floor. According to medical reports from the claimant's date of injury, he told both an EMT and a doctor that he fell because his leg gave out. However, the Claim for Compensation alleged that he slipped and fell from the ramp. He later testified at a Hearing that he did not remember how he fell but believed he may have caught his heel on the ramp.

At a Hearing, the employer pointed out the inconsistencies in the claimant's reports about how he was injured. The ALJ concluded that even if the claimant's knee did give out, falling from a height of 3-5 inches put him at an increased risk for greater injury, and his injury therefore arose out of and in the course and scope of his employment and was compensable either way. On appeal, the Commission agreed that the claimant's reports as to how he fell varied, but it held that any inconsistencies were "understandable, considering the sudden and unexpected occurrence of the injury and the extreme pain caused by his left hip fracture, along with the effects of the medication administered."

FINDINGS: On appeal, the Court affirmed the Commission's decision and Award. It deferred to the Commission's credibility determinations and also noted that it was unclear from the medical records whether the inconsistent statements regarding how the injury occurred were actually provided by the claimant or by other sources, such as EMS or witnesses to the accident. Also, the Court agreed that the injury was compensable because it was caused by the ramp, which was a risk source to which the claimant was not equally exposed in his normal non-employment life.

Injury While Playing Basketball on Paid Break Compensable Because Risk Source Was Wearing Non-Slip Shoes on Blacktop and Employer Required Non-Slip Shoes

Gruender vs. Curators of the University of Missouri, Injury No. 14-043810

The claimant was a member of the custodial staff and was required to wear non-slip shoes while working. She had paid breaks during which she was free to do whatever she wanted as long as she did not leave campus. On June 23, 2014, the claimant played basketball on a black-top court on the employer's property along with her team leader and another employee. While playing basketball, her foot got stuck and she sustained an injury to her left foot. Playing basketball had never been discouraged and was not against any expressed rules, and the claimant was being paid during the break when she was injured.

At a Hearing, the employer argued that the claimant's injury was not compensable because she was participating in a recreational activity which was not related to her job duties at the time she was injured. The ALJ applied the Mutual Benefit Doctrine, which states that an injury is compensable if it occurs while an employee is engaging in an activity that benefits both the employer and employee, and playing basketball on a paid break is mutually beneficial. Alternatively, the claimant was not exposed to the hazard of shooting hoops on a black-top basketball court while wearing slip resistant work shoes in her normal non-employment life. Therefore, the injury was compensable anyway. The ALJ also reasoned that the claimant did not forfeit her workers' compensation benefits by engaging in a recreational activity or program, because under statute, benefits will not be forfeited if the employee was paid wages or travel expenses while participating in the activity. In this case, she was on a paid break while she was playing basketball.

On appeal, the Commission affirmed the ALJ's decision and Award with a supplemental opinion. The Commission held that a finding regarding the Mutual Benefit Doctrine was not necessary to find the claimant's injury compensable because the risk of injury came from a hazard or risk to which she would not have been equally exposed outside of work in her normal non-employment life, specifically playing basketball on a black-top surface while wearing slip resistant shoes that the employer required her to wear. The employer was ordered to pay PPD, TTD, and past medical expenses.

[*Editor's Note: We are not sure why the Judge and Commission focused on the Mutual Benefit Doctrine and risk source analysis as, pursuant to Statute, if a claimant sustains an injury while participating in a paid recreational activity, the injury is compensable.*]

No Penalty Because Employer Failed to Show Violation Occurred In Conjunction With or Was Proximate Cause of Claimant's Injuries

Franklin vs. AB Electrical, Inc., Injury No. 15-094035

On December 7, 2015, the claimant fell off of scaffolding and sustained injuries. A co-worker testified that on the morning of the accident, approximately 5-6 hours before the fall, he saw the claimant smoking marijuana. The claimant's post-accident drug test was positive for marijuana. The employer argued that the claimant forfeited his right to any benefits because he violated the employer's rule or policy regarding the use of controlled drugs in the workplace, and that violation was the proximate cause of his injury.

The claimant's expert testified that the presence of THC in the claimant's system would not necessarily indicate that he was impaired, or to what extent he was impaired, at the time of the accident. The employer's expert testified that the claimant was likely still impaired at the time of his accident because the effects of marijuana can last up to eight hours, and the accident occurred within that time frame. He opined that because the claimant was impaired at the time of his accident, his drug use was the proximate cause of his injuries.

At a Hearing, the ALJ found that the claimant used drugs in violation of the employer's policy. He also noted that the claimant was the only person to have fallen off the scaffold and his fall occurred on the same day that his co-worker saw him take two hits off a marijuana pipe, and he ultimately found it was more likely true than not that his drug use was the proximate cause of his injuries and any workers' compensation benefits were forfeited.

On appeal, the Commission reversed the ALJ's decision and Award. The Commission noted that pursuant to statute, there are two burdens for proving a drug violation penalty. First, compensation shall be reduced by fifty percent if the injury was sustained *in conjunction with* an employee's drug use. However, the employee forfeits his right to any compensation if his drug use was the *proximate cause* of the injury. In this case, the Commission found that the employer did not meet its burden to prove that the claimant's drug use occurred in conjunction with the accident or was the proximate cause of his injuries. With respect to whether he ingested marijuana *in conjunction with* his injury, the Commission noted that the coworker made

inconsistent statements regarding whether or when he saw the claimant smoke marijuana, and the urinalysis test did not show when he ingested marijuana or how much he ingested. With respect to whether drug use was the *proximate cause* of his injuries, the Commission noted that the coworker testified that he saw no evidence that the claimant was intoxicated or impaired prior to his accident and he was not unsteady on his feet. The Commission also noted that the employer's expert's opinion depended on a finding that the coworker did in fact see the claimant smoking that morning *and* he had a positive urinalysis test. Therefore, it declined to apply a drug violation penalty and ordered the employer to pay PPD, past medical expenses, and TTD and provide additional treatment.

[*Editor's Note: 287.120 was amended in 2017. The statute now states that if a claimant's drug screen is administered within twenty-four hours of the accident/injury and is positive for a nonprescribed controlled substance, there is a rebuttable presumption that the accident/injury occurred in conjunction with the use of the controlled drug. This removes the burden from employers to prove that use of the controlled substance occurred in conjunction with the accident/injury*.]

Appeal Dismissed Because Court Lacked Authority to Review Commission's Temporary/Partial Award

Williams vs. Tyson Foods Inc. and Tyson Poultry, Inc., Case No. WD80267 (Mo. App. 2017)

FACTS: The claimant sustained injuries to his feet as a result of his job duties. He filed a Claim, and an ALJ awarded a temporary/partial Award of TTD and medical treatment. The Commission affirmed the ALJ's decision and Award and again acknowledged that it was a temporary/partial Award. The employer appealed the Commission's decision.

HELD: On appeal, the Court held that it lacked statutory authority to review the Award because it was temporary/partial. It identified two exceptions: Awards not made pursuant to 287.510, and when an employer alleges it is not liable for paying any compensation at all. However, the Court held that neither exception applied in this case because the temporary/partial award was made pursuant to 287.510 and the employer only contested the Commission's finding of TTD and did not argue that it was not liable for paying any compensation at all.

Court Vacates Commission Decision. Claimant Must Show Actual Events Would Cause a Reasonable Highway Worker Extraordinary and Unusual Stress

Mantia vs. Missouri Department of Transportation and Treasurer of Missouri as Custodian of the Second Injury Fund, Case No. SC95885 (Mo. Sup. Ct. 2017)

FACTS: The claimant was employed as a highway worker, and her duties involved assisting at scenes of motor vehicle accidents. She would respond to the worst of accidents, which often included fatalities, and she alleged psychiatric disability as a result of an occupational disease. Dr. Jovick, the claimant's psychiatric expert, and Dr. Stillings, the employer/insurer's psychiatric expert both agreed that her job duties were the prevailing factor in her psychiatric condition. Despite this, at a hearing, the ALJ denied compensability largely on the basis that the claimant's co-workers were routinely exposed to the same experiences and therefore, she did not show that her work exposure was extraordinary and unusual as compared to other highway workers or similarly situated employees.

On appeal, the Commission reversed the ALJ's decision and Award and essentially held that claimants need not compare themselves to similarly situated employees in order to satisfy the burden that their stress was extraordinary and unusual as measured by objective standards. The Commission stated that all cases requiring claimants to compare their stress to similarly situated employees pre-dated the 2005 amendments and the plain language of the Statute does not require such a comparison.

HELD: On appeal, the Missouri Supreme Court reversed the Commission's decision and held that the objective standard for determining whether the claimant's stress was compensable was whether the same or similar actual work events would cause a reasonable highway worker extraordinary and unusual stress. The Court found the claimant failed to present evidence that showed that actual work events that were the same or similar to that which she experienced would have caused extraordinary and unusual stress to a reasonable highway worker. Therefore, this matter was vacated and remanded.

Employer Responsible for PTD Benefits, Despite Video Showing Claimant Performing Household Chores Such As Mowing and Pushing Broom

Earnest vs. Jackson County Missouri, Injury No. 14-016690

On March 11, 2014, the claimant was using a chainsaw to cut down a tree when the tree fell on him. He was diagnosed with an acute compression fracture at T7 and underwent an authorized ORIF and fusion of the thoracic spine on April 1, 2014. In

relation to that procedure, he also underwent a resection of rib for bone graft and additional procedures. The claimant continued to undergo authorized treatment with Dr. Pang, who diagnosed neuropathic pain due to the removal of the ribs and placed the claimant at MMI on June 5, 2015 with 15% PPD of the body referable to the thoracic spine.

Dr. Stuckmeyer evaluated the claimant at the claimant's attorney's request and recommended several permanent restrictions, including no prolonged standing or walking and the ability to change positions throughout the day for pain control. He assessed 60% PPD of the body and recommended evaluation by a vocational expert, who opined the claimant was unemployable in the open labor market as a result of his work accident alone.

At a Hearing, the employer argued that the claimant was able to work and presented surveillance videos showing him performing various household chores, including mowing, pushing a broom, and using a hose. The ALJ noted that a claimant may be PTD despite being able to perform some type of work on an ongoing basis and held that the claimant was PTD as a result of his work accident alone. The employer was also ordered to provide future medical care and pay past medical expenses. On appeal, the Commission deferred to the ALJ's credibility determinations and affirmed the decision and Award.

Employer Liable for PTD After Hernia Repair Resulted in Nerve Entrapment and Need to Recline Throughout Day, Despite History of Prior Hernias

Adams vs. City of Kansas City, Missouri, Injury No. 10-067514

The claimant worked for the City of Kansas City, and on July 28, 2010, he was attempting to turn off a rusted valve and sustained a left inguinal hernia. Dr. Petelin surgically repaired the same on September 20, 2010 with a mesh implant. The claimant continued to experience severe abdominal and groinal pain despite injections and physical therapy, and he was ultimately diagnosed with impingement of the ilioinguinal nerve. He treated with Dr. Wheeler, who placed him at MMI without restrictions after he repeatedly missed appointments and physical therapy and assessed 3% PPD of the body. He was noted to have a history of extensive hernia repairs as a small child as well as one in high school.

The claimant's attorney had him evaluated by Dr. Parmet, who concluded that he was PTD as a result of the last injury alone and would likely need to recline throughout the day due to his pain. The claimant's vocational expert, Ms. Titterington, noted the claimant had no transferrable work skills and limited academic skills and opined that, based on Dr. Parmet's opinion, she would agree that he was not employable. The employer's vocational expert, Ms. Sprecker, opined the claimant was not PTD based on Dr. Wheeler's report.

At a Hearing, an ALJ found that the claimant was PTD as a result of his primary injury alone. He did not find Dr. Wheeler's opinion credible and noted that he released the claimant from care without restrictions due to his poor attendance, which the ALJ opined could be explained by his uncontrolled diabetes, severe pain and depression, and lack of a driver's license. The ALJ found the claimant's experts' opinions more persuasive and ordered the employer to pay PTD benefits and provide future medical treatment. On appeal, the Commission affirmed the ALJ's decision and Award.

Claimant PTD and Unemployable Despite Working Part-Time at a Carwash For Five Years After Injury

Weber vs. Kraft Foods, Inc. and Second Injury Fund, Injury No. 08-124473

The claimant, a 65-year-old employee with a 12th grade education and an IQ of 68 was injured on October 26, 2008 when his back gave out. Dr. Trecha performed a discectomy and fusion with instrumentation at L4-5. He subsequently reported neck pain, and Dr. Trecha performed an anterior cervical discectomy and fusion from C3 to T1. The claimant was terminated from his employment following his back surgery due to the restrictions placed by Dr. Trecha. He subsequently obtained a part-time job working 4 hours per day, Monday through Friday, at a local carwash, where he greets and assists customers, supervises other workers, collects money, and deposits money in the bank. The claimant previously resolved his claim against the employer. At a Hearing against the Fund, the owner of the carwash where the claimant worked testified that he hired the claimant because he felt bad for him and he allowed the claimant to take breaks and leave the premises whenever he wanted.

The claimant had a significant prior history of back problems. He sustained an injury in 1991 and ultimately underwent a surgical fusion and laminectomy and settled that claim for 22% PPD of the body. In 1995, he suffered a right upper extremity injury and underwent surgery for a ruptured biceps, which was resolved for 10% PPD of the right elbow.

Dr. Russell evaluated the claimant at his attorney's request and found the claimant PTD as a result of the combination of his primary and pre-existing injuries. The claimant's vocational expert, Mr. Weinholt, agreed and noted he did not consider his

work at the carwash to be full employment in the open labor market. The Fund's vocational expert testified that the claimant was not PTD because he worked part-time at the carwash for the past five years.

At a Hearing, the ALJ found that the claimant was not PTD in light of the fact that he maintained part-time employment at the carwash for the last five years and noted that employment in the open labor market can include part-time work.

On appeal, the Commission held that although part-time employment *can* constitute employment in the open labor market, that was not the case here. The Commission found that the claimant's current employer hired him out of compassion and accommodates him by allowing him to come and go freely during his shift. Therefore, the Fund was responsible for PTD benefits.

Employer Liable for PTD Benefits Because Claimant Must Frequently Sit and Elevate Leg Throughout Day

Badock vs. R.P. Lumber, Injury No. 10-004961

On January 4, 2010, the claimant, a 54-year-old delivery driver/yard man was attempting to enter a truck when his left foot slipped, and he sustained a fracture to his fourth metatarsal. He treated for the fracture, but he ultimately developed multiple pulmonary emboli and partial DVT in the left leg, which doctors opined was secondary to his foot injury, and he started blood thinners. With respect to his DVT, he treated with Dr. Goldberg, who recommended sedentary work only. His care was then transferred to Dr. Rao, who released him to return to work full duty in March 2011 and assessed 10-15% PPD of the body referable to his DVT. However, the claimant continued to experience left foot complaints and also developed complaints in his right foot. He treated on his own with Dr. Finnie, who diagnosed gout in his right foot and opined that he was no longer employable.

The claimant was evaluated by Dr. Volarich in March 2012, who opined that the claimant was PTD as a result of his primary injury alone. The claimant advised Mr. England that he had to sit with his leg elevated most of the day, and Mr. England opined that if this were true, he would be PTD.

At a Hearing, the ALJ noted the claimant's lack of computer skills and the fact that he had never worked a sedentary job. However, the ALJ found that the claimant was not PTD and noted the claimant's testimony that he is able to sit in one place for over 90 minutes and would probably not prop his leg up the whole time. Also, the claimant testified that he had a fairly active lifestyle and was able to drive and do chores around the house. Although Dr. Finnie believed the claimant could not work as a result of a combination of his left and right foot problems, the ALJ noted that Dr. Wieman, the claimant's personal doctor, diagnosed right foot problems in 2004, six years before his primary injury. Therefore, the claimant failed to prove that he was permanently and totally disabled as a result of his primary injury. The ALJ awarded 15% PPD of the left foot, 30% PPD of the thigh, and 10% PPD of the body along with TTD and future medical, to be paid by the employer.

On appeal, the Commission modified the ALJ's decision and Award and found that the claimant PTD as a result of his last injury alone. The Commission noted his extensive history of labor intensive jobs, lack of computer skills, and the fact that he had never worked a sedentary job and is 54 years old. Also, the claimant testified that if he is on his feet for an extended period, he has to sit down the entire next day due to swelling/pain. Also, the Commission opined that even if the claimant does not have to elevate his leg all day every day, if he does so even a few days per week, he would be unemployable.

Employer Responsible for PTD Because Claimant Must Now Recline and Alternate Between Sitting and Standing

Jones vs. Harley Davidson Motor Company and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 11-062102

The claimant was a 50-year-old high school graduate who previously worked in technical communication installation in the Army. He sustained an injury to his low back on July 13, 2011 while working for his current employer. Dr. Drisko performed surgery on the claimant's low back, including a fusion with instrumentation and released him from care in October 2012. He returned to Dr. Drisko on December 27, 2012, at which time the doctor opined he had developed sacroiliac dysfunction and recommended additional injections and physical therapy, which the claimant declined, and he was released from care again.

The claimant did have pre-existing disabilities. He previously settled workers' compensation claims for 22.8% of the right shoulder in 2003, 18% of the body referable to a left shoulder injury he sustained in 2007, and 29.5% of the right elbow in 2010. He also previously underwent chiropractic treatment for his low back beginning in May 2011.

The claimant's experts, Dr. Koprovica, Dr. Stuckmeyer, and Mr. Cordray opined that the claimant would be unemployable and PTD due to his need to recline unpredictably throughout the day. Dr. Koprivica and Mr. Cordray opined he was PTD as a result of his last injury alone. Dr. Stuckmeyer opined he was PTD as a result of his primary injury and pre-existing disabilities. The employer's expert, Dr. Drisko, also opined that the claimant may be PTD, and if so, it was as a result of the last injury alone.

The ALJ found the claimant PTD as a result of the last accident alone and ordered the employer to pay PTD benefits and leave future medical open. On appeal, the Commission affirmed the ALJ's decision and Award.

Employer Responsible for PTD Benefits Due to Need to Alternate Positions and Inability to Work Full Day Despite Only Conservative Treatment for Back

Barahona vs. Hilton Hotels/Hilton Worldwide, Inc. and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 11-031709

The claimant is a 55-year-old immigrant from Honduras with an 8th grade education who never obtained a GED or received vocational training. Her employment history included waitressing and housekeeping. On April 24, 2011, the claimant was cleaning a table when she slipped and fell on a wet floor and injured her back and struck her head on the floor and lost consciousness. Dr. Olive diagnosed a lumbar strain and placed the claimant at MMI with respect to her back. Dr. Miller performed surgery to repair a lateral meniscal tear, placed the claimant at MMI, and assessed 2% of the knee. The claimant began receiving Social Security Disability benefits in 2012 or 2013.

The claimant also had prior injuries. She sustained two injuries to her right ankle as well as an injury to her low back in 2010, for which she treated conservatively. She also had a history of DDD in her lumbar spine.

Dr. Volarich examined the claimant at the request of her attorney, and opined that she could not be expected to work on a full-time basis in her prior jobs and was PTD as a result of her last injury alone. Mr. Eldrid performed a vocational evaluation and noted her limited education, math and English skills, and lack of a driver's license, but he opined she was PTD as a result of her last injury alone. Dr. Kitchens testified on behalf of the employer and opined that she did not sustain an injury to her back as a result of her April 24, 2011 work injury, despite the diagnoses made by other doctors that she sustained a low back sprain/strain. Mr. England testified on behalf of the employer and opined that assuming Dr. Volarich's restrictions and that she is unable to sustain a regular workday, then she would be unemployable.

At a Hearing before an ALJ, the claimant testified that she continues to take pain medication and has to alternate positions and has difficulty walking, sitting, or standing for more than five minutes. The ALJ found her testimony and Dr. Volarich's opinion credible and held that she was PTD as a result of her primary injury alone. Therefore, the employer was responsible for PTD benefits, future medical, past medical expenses, and TTD. On appeal, the Commission affirmed the ALJ's decision and Award.

Claim Against Fund for Enhanced Benefits Denied Because Primary Injury Occurred After January 1, 2014

Cosby vs. Drake Carpentry, Inc. and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 14-003644

The claimant sustained an injury to his left knee on January 22, 2014 when he was climbing down a ladder at work and the ladder slid out from underneath him, at which time he fell on his left knee and leg. Dr. Kostman performed surgery. The claimant subsequently settled his claim against the employer for an unspecified percentage of disability.

The claimant filed against the Second Injury Fund for enhanced PPD benefits based on the combination of the disability resulting from his current work accident and pre-existing disabilities resulting from prior injuries to the claimant's left knee, bilateral shoulders, and a hernia. At a hearing, the ALJ held that the 2013 amendments to workers' compensation statute prohibit the filing of claims against the Second Injury Fund for enhanced PPD benefits for injuries occurring after January 1, 2014. Since the claimant's injury occurred on January 22, 2014, his claim against the Second Injury Fund was denied. The claimant appealed to the Commission.

Interestingly, in a supplemental opinion, despite having no authority to determine constitutionality issues, the Commission opined that the 2013 Amendments to Workers' Compensation statute are not unconstitutional. Further, the Commission opined that in light of the changes in the 2013 Amendments, the employer/insurer are now responsible for any enhanced PPD benefits resulting from injuries when the primary injury occurs after January 1, 2014.

Obviously, this is mere dicta, and the employer/insurer are only responsible for PPD benefits resulting from the primary injury. Pursuant to 287.220.3(2), "[When] an employee is entitled to compensation as provided in this subsection, the employer at the time of the last work-related injury shall only be liable for the disability resulting from the subsequent work-related injury considered alone and of itself."

Employer Not Require to Pay Claimant's Attorney's Fees Because It Was Reasonable for Employer to Rely On Medical Expert's Opinion That Claimant Did Not Require Additional Treatment

Simpson vs. Columbia College, Injury No. 13-069045

On September 19, 2013, the claimant tripped and sustained an injury to her left knee. She underwent authorized treatment with Dr. Leslie, who performed an ORIF and two additional surgeries after her wire broke and she developed chondromalacia. She subsequently underwent an MRI of the left knee, which showed severe chondromalacia of the patella and a torn medial meniscus, and she underwent a fourth left knee surgery. After the fourth surgery, Dr. Leslie recommended injections. However, the employer sent the claimant to Dr. Mall for an evaluation, who opined that the arthritis was pre-existing and the progression of her arthritis was not due to her injury. He placed her at MMI.

At a Hearing before an ALJ, both Dr. Leslie and Dr. Volarich testified that the claimant required additional medical treatment and would require a future left total knee joint replacement. The claimant requested attorney's fees and argued that the employer defended its claim on unreasonable grounds when it denied her medical treatment for a year and a half prior to the Hearing. The ALJ found the testimony of Dr. Leslie and Dr. Volarich more persuasive than Dr. Mall, assessed 22.5% PPD of the left knee, and ordered the employer to provide future medical treatment. However, the ALJ declined to award attorney's fees and noted that the employer relied on the expert medical opinion of Dr. Mall, which was reasonable, despite the fact that the ALJ found Dr. Mall's opinion unpersuasive. On appeal, the Commission affirmed the ALJ's decision and Award, although it modified the Award to include 40% PPD of the left knee.