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

Injury No.: 14-094735

Employee: Travis Wilkins

Employer: Piramal Glass USA, Inc.

Insurer: Mitsui Sumitomo Insurance Company of America

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries
The parties asked the administrative law judge to determine the following issues: (1) whether employee sustained an accident or occupational disease arising out of and in the course of his employment; (2) whether employee's injury was medically causally related to the accident or occupational disease; (3) past medical expenses in the amount of $35,135.94; (4) mileage; (5) temporary total disability from December 25, 2014, through March 6, 2015; (6) permanent partial disability; and (7) attorney fees and expenses under § 287.560 RSMo.

The administrative law judge determined as follows: (1) employee sustained a work-related accident on December 6, 2014, that arose out of and in the course of his employment; (2) the development of employee's staph infection and all medical care due to that condition was not medically causally related to employee's accident; (3) employer is not ordered to pay the medical bills that employee incurred to treat his staph infection; (4) employee's claim for mileage is denied; (5) employee's claim for temporary total disability benefits is denied; (6) employee sustained a 10% permanent partial disability to his left leg at the 160-week level as a result of the December 6, 2014, work accident; and (7) employer is not ordered to pay costs and attorney fees to the employee.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred in concluding that employee's staph infection was unrelated to the work injury.

Employer also filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in concluding employee sustained an accident arising out of and in the course of his employment; and (2) in overruling employer's objections to employee's Exhibits 7 through 14 and 20 through 22.

For the reasons stated below, we modify the award and decision of the administrative law judge referable to the issues of: (1) medical causation; (2) past medical expenses; (3) temporary total disability; and (4) permanent partial disability. We additionally

supplement the administrative law judge's decision with respect to the issue whether employee's injuries arose out of and in the course of employment.

Discussion

Medical causation

Section 287.020.3(1) RSMo sets forth the statutory test for medical causation applicable to this claim, and provides, in relevant part, as follows:

> An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

The administrative law judge did not render an affirmative determination that employee's accident was the prevailing factor causing him to suffer a tear of his left calf muscle, as well as a resulting hematoma, but this finding is implicit in his award of compensation referable to this medical condition. We agree with, and defer to this implicit determination on the part of the administrative law judge. We conclude employee's accident was the prevailing factor causing him to suffer the resulting medical conditions of a torn left calf muscle and hematoma.

The administrative law judge found that employee's accident at work on December 6, 2014, was not the prevailing factor causing his subsequent staph infection. The administrative law judge so found based on his determination that the causation opinion from the authorizing treating physician, Dr. Richard Hulsey, was confusing, and supported the proposition that employee's staph infection may have resulted from an open wound on employee's left ankle on December 4, 2014.

We disagree. At his deposition, Dr. Hulsey made clear his opinion that employee's staph infection most likely developed within the 24 hours or so before employee was seen by the admitting physicians at Missouri Baptist Medical Center on December 25, 2014. In our view, this persuasive testimony effectively rules out the possibility that employee's infection process began prior to the accident as the product of some preexisting wound on the left ankle; we so find.[1] Dr. Hulsey did concede that, typically, hematomas don't become infected and will heal with conservative treatment. He did not, however, change or in any way disclaim his own prior opinion, stated clearly in his treatment records, that the infection was related to employee's work injury of December 6, 2014. In our view, a testifying expert's concession that a resulting medical condition is unusual or atypical does not, standing alone, compel a finding that the accident is not the prevailing factor causing same.

Employer argues that the hematoma would not have become infected if employee were not suffering from poorly controlled diabetes at the time of the work injury, and proffers

[1] By the same token, we deem the testimony from employer's occupational health and safety nurse, Jenger Hickman, unpersuasive to the extent it is proffered to establish that employee's infection resulted from an open sore that she observed on his left ankle as of December 4, 2014.

the opinion of Dr. Michael Burns that employee's diabetic condition was the prevailing factor in causing the staph infection to develop. Notably, though, Dr. Burns did not suggest that employee's diabetes would have caused him to suffer an infection in his left leg on December 25, 2014, if employee had not developed a hematoma as a result of the work injury on December 6, 2014. Instead, the expert medical evidence on record appears to be unanimous that the existence of the hematoma (a collection of blood under the surface of the skin) was a necessary precursor for the infection to develop. Stated simply, absent the work injury, there would have been no hematoma to become infected.

We are persuaded (and so find) that employee's diabetes was, at least, a contributing factor in the development of his staph infection. But we are not persuaded to find employee's diabetes was the prevailing factor causing the infection where there is no evidence employee would have suffered an infection *but for* the existence of the work-related hematoma.

In any event, we find the opinions from employee's evaluating expert, Dr. Dwight Woiteshek, and Dr. Hulsey to be more persuasive than the contrary testimony from Dr. Burns on this point. We find that the accident was the prevailing factor causing employee to suffer the additional resulting medical condition of a staph infection, and disability referable thereto.

Injury arising out of and in the course of the employment[2]

The administrative law judge implicitly determined that employee's injury arose out of and in the course of the employment. We agree, but discern a need to provide some additional analysis referable to the statutory test. Section 287.020.3(2) RSMo controls with regard to this question, and provides as follows:

> An injury shall be deemed to arise out of and in the course of the employment only if:
>
> (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
>
> (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

We have determined that the accident is the prevailing factor causing employee's injuries, so we conclude that § 287.020.3(2)(a) is satisfied. Turning to the unequal

[2] Although the parties and administrative law judge framed the issue as whether employee sustained an *accident* arising out of and in the course of the employment, the appropriate statutory test is whether employee's *injuries* arose out of and in the course of the employment. The distinction is not merely academic where both "accident" and "injury" enjoy unique definitions under Chapter 287, and where we are required under § 287.800.1 RSMo to construe those definitions strictly. From their briefs, at least, it is clear to us that the parties do not now dispute whether employee sustained an "accident," as defined under § 287.020.2 RSMo, but instead ask us to resolve the issue whether employee's *injuries* arose out of and in the course of the employment for purposes of § 287.020.3(2) RSMo.

exposure test under § 287.020.3(2)(b), we adopt the administrative law judge's finding that employee's injury occurred when he arose from an awkward, squatting position upon a catwalk, where he had been engaged in his work duty of changing a spool valve.

Employer argues that the risk or hazard from which employee's injuries came was merely that of rising from a natural position; employer compares this risk to that of a worker slipping off her sandal while walking to get coffee. See *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504 (Mo. 2012). We are not persuaded. First, we do not think the risk source can be so narrowly defined in this case. This is because the lay and medical evidence persuasively demonstrates (and we so find) that employee's injuries came from the action of rising from an *awkward*, squatting position upon a catwalk. We find that this activity was required by employee's work duties; it follows that this activity was directly related to employee's work for employer. Second, even if we were persuaded to find that the risk source in this case was merely that of rising from a squatting position, there is no evidence on this record that would support a finding that workers would have been equally exposed to that risk outside of and unrelated to the employment in normal, nonemployment life. Although employer urges us to do so, we cannot make such a finding based purely on our own speculation or surmise that such is a "natural" activity to which all workers are equally exposed in their normal, nonemployment lives.

In sum, we find that the risk or hazard from which employee's injuries came was directly related to his work. We find that workers would not be equally exposed to this risk outside of and unrelated to the employment in nonemployment life. We conclude, therefore, that employee's injuries arose out of and in the course of the employment.

Past medical expenses

Section 287.140.1 RSMo controls with respect to the issue of past medical expenses, and provides, in relevant part, as follows:

> In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

It is well-settled in Missouri that an award of past medical expenses is supported when the record includes (1) the bills themselves; (2) the medical records reflecting the treatment giving rise to the bills; and (3) testimony from the employee establishing the relationship between the bills and the disputed treatment. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105, 111-12 (Mo. 1989). Employee offered into evidence his Exhibits 7 through 14, which appear to be certified copies of medical bills from Parkland Health Center; Missouri Baptist Medical Center; Orthopedic Associates, LLC; Pro Rehab; Farmington Sports and Rehabilitation Center; Dr. Michael Gutwein; S. E. Emergency Physicians; and Anesthesia Services.

Employer objects to employee's Exhibits 7 through 14 on the basis of hearsay and lack of foundation. We are not persuaded. First, we note that employer's brief misstates the record, in that employer avers that employee never identified, at the hearing, the bills or testified that he received them. In fact, employee specifically testified that he continues to receive bills from the identified providers on a regular basis. See *Transcript*, page 30. Employer did not provide any evidence to undermine this testimony from the employee or to otherwise demonstrate that the proffered exhibits do not accurately reflect the charges employee incurred for disputed treatment.

Second, employee provided testimony recounting the self-directed treatment he underwent, and also provided the medical records documenting such treatment, and thus established the relationship between the bills and the disputed treatment. Again, employer did not provide any evidence that would suggest employee did not actually undergo this treatment, or did not incur the charges reflected in the proffered bills. Given these circumstances, we fail to appreciate how Exhibits 7 through 14 may be argued to lack adequate foundation.

Third, to the extent employer complains, in its brief, that employee's attorney merely held the proffered bills in the air and did not physically place them, at the hearing, in employee's hands for identification, we note that counsel's observations in this regard are not part of the record before us. We note also the absence of any specific objection from employer, at the hearing, regarding the sufficiency or propriety of this particular method of identification, nor are we aware of any rule of evidence applicable in these proceedings which would require that medical bills be identified by placing them in a witness's physical possession.

Ultimately, it appears that these arguments from employer ask us to elevate form over substance, something Chapter 287 and the courts specifically instruct against:

> All proceedings before the commission or any commissioner shall be simple, informal, and summary, and without regard to the technical rules of evidence[.]

§ 287.550 RSMo.

> Under the Workers' Compensation Act, substantial rights are to be enforced at the sacrifice of procedural rights.

Hale v. Treasurer of Mo., 164 S.W.3d 184 (Mo. App. 2005).[3]

[3] See also *Parsons v. Steelman Transp., Inc.*, 335 S.W.3d 6, 18 (Mo. App. 2011); *Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736 (Mo. App. 2004); *Seeley v. Anchor Fence Co.*, 96 S.W.3d 809, 816 (Mo. App. 2002); *Crowell v. Hawkins*, 68 S.W.3d 432, 441 (Mo. App. 2001); *Lorenz v. Sweetheart Cup Co.*, 60 S.W.3d 677, 683 (Mo. App. 2001); *Elking v. Deaconess Hosp.*, 996 S.W.2d 718 (Mo. App. 1999); *Wiele v. National Super Mkts.*, 948 S.W.2d 142, 146 (Mo. App. 1997); and *Vogt v. Ford Motor Co.*, 138 S.W.2d 684, 686 (Mo. App. 1940).

Employer's objections to Exhibits 7 through 14 are overruled. We find employee incurred $35,135.94 in charges as a result of disputed past medical treatment. Employee's evaluating expert, Dr. Woiteshek, opined that the disputed treatment was necessary to cure and relieve the effects of employee's injuries; we so find.

Employer has not advanced any evidence that would demonstrate that employee is not required to pay the billed amounts, that his liability for the disputed amounts was extinguished, and that the reason such liability was extinguished does not otherwise fall within the provisions of § 287.270 RSMo. See *Farmer-Cummings v. Pers. Pool of Platte Cnty.*, 110 S.W.3d 818 (Mo. 2003), and *Maness v. City of De Soto*, 421 S.W.3d 532, 545 (Mo. App. 2014). We conclude employer is liable for $35,135.94 in past medical expenses.

Mileage

The administrative law judge denied employee's claim for mileage based on his finding that employee's treatment for the staph infection was not reasonably required to cure and relieve the effects of his work injury. We have modified the administrative law judge's award on this point, and must therefore revisit the issue whether employee is entitled to transportation costs in connection with disputed treatment. Section 287.140.1 RSMo provides, in relevant part:

> When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; ... In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment.

In his brief, employee does not address the disputed issue whether he is entitled to compensation pursuant to the foregoing provision for his transportation costs. Nor does he cite evidence on the record that would support a finding that he was required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area of his principal place of employment. At the hearing, employee testified that he drove to "downtown St. Louis" to attend certain medical appointments, but he was never asked to identify his principal place of employment. See *Transcript*, page 30. Nor was he asked to identify the number of miles he drove for such appointments, or to identify his exhibit purporting to summarize same.

We will not parse the transcript for evidence that might be pieced together to support findings in employee's favor with regard to this issue, as we are concerned that such activity would inappropriately place us in the role of advocate. This is especially the case where employee has effectively abandoned his claim for mileage by failing to address it in his brief.

Consequently, the claim for transportation costs pursuant to § 287.140.1 RSMo is denied.

Temporary total disability
Sections 287.170 and 287.149.1 RSMo provide for the payment of temporary total disability benefits while an employee is engaged in the rehabilitative process following a compensable work injury. *Greer v. Sysco Food Servs.*, 475 S.W.3d 655 (Mo. 2015). Employee claims that he was rendered temporarily and totally disabled from December 25, 2014, through March 6, 2015.

The medical treatment records in evidence reveal that employee was admitted to Missouri Baptist Medical Center on December 25, 2014, for treatment and observation referable to the staph infection; he was not discharged until January 2, 2015. Thereafter, Dr. Hulsey saw employee on January 12, 2015, at which time he restricted employee to sit down work only. On February 5, 2015, Dr. Hulsey permitted employee to return to regular duty work with the exception of no climbing ladders for three to four weeks; however, employer would not permit employee to return to work, for fear he would get another infection. On March 5, 2015, Dr. Hulsey released employee from his care.

Based on the foregoing considerations, we find that employee was engaged in the rehabilitative process from December 25, 2014, through March 5, 2015. Consequently, we conclude that employee is entitled to, and employer is obligated to pay, weekly payments of temporary total disability benefits from December 25, 2014, through March 5, 2015, at the stipulated weekly temporary total disability benefit rate of $548.47, for a total of $5,563.05.

Permanent partial disability
Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee's compensable work injury. We have found that employee's work injury included the resulting medical condition of his staph infection; accordingly, we must revisit the issue of the nature and extent of permanent disability referable to the work injury.

Dr. Woiteshek was the only expert to provide a rating that took into account the sequelae of employee's staph infection and surgery referable thereto; Dr. Woiteshek rated 35% permanent partial disability of the left leg at the 160-week level. Given employee's credible description of the symptoms and limitations he continues to experience referable to his left leg work injury, we find that the work injury caused employee to suffer a 20% permanent partial disability of the left leg at the 160-week level.

At the stipulated weekly benefit rate of $451.02, we conclude that employer is liable for $14,432.64 in permanent partial disability benefits.

Conclusion
We modify the award of the administrative law judge as to the issues of: (1) medical causation; (2) past medical expenses; (3) temporary total disability; and (4) permanent partial disability.

Employee is entitled to, and employer is hereby ordered to pay, past medical expenses in the amount of $35,135.94.

Employee is entitled to, and employer is hereby ordered to pay, temporary total disability benefits in the amount of $5,563.05.

Employee is entitled to, and employer is hereby ordered to pay, permanent partial disability benefits in the amount of $14,432.64.

The award and decision of Administrative Law Judge Gary L. Robbins, issued July 8, 2016, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission approves and affirms the administrative law judge's allowance of an 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 __19th__ day of May 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

_____

John J. Larsen, Jr., Chairman

VACANT

Member

_____

Curtis E. Chick, Jr., Member

Attest:

_____

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee:	Travis R. Wilkins	Injury No. 14-094735
Employer:	Piramal Glass USA, Incorporated	
Insurer:	Mitsui Sumitomo Insurance Company of America	
Appearances:	Candice R. Burke, attorney for the employee. Kevin M. Leahy, attorney for the employer-insurer.	
Hearing Date:	April 6, 2016	Checked by: GLR/kg

SUMMARY OF FINDINGS

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? December 6, 2014.

5. State location where accident occurred or occupational disease contracted: St. Francois County, Missouri.

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

7. Did the 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 the employer insured by above insurer? Yes.

11. Describe work the employee was doing and how accident happened or occupational disease contracted: The employee was working on a machine at his place of employment.

He stood up from a squatted position and felt a sharp pain in his left leg at the level of the calf/160.

12. Did accident or occupational disease cause death? No.

13. Parts of body injured by accident or occupational disease: Left calf.

14. Nature and extent of any permanent disability: 10% permanent partial disability of the left calf/160.

15. Compensation paid to date for temporary total disability: $0

16. Value necessary medical aid paid to date by the employer-insurer: $6,250.26

17. Value necessary medical aid not furnished by the employer-insurer: $35,135.94

18. Employee's average weekly wage: $822.71

19. Weekly compensation rate: $548.47 per week for temporary total and permanent total disability. $451.02 per week for permanent partial disability.

20. Method wages computation: By agreement.

21. Amount of compensation payable: See Award.

22. Second Injury Fund liability: N/A.

23. Future requirements awarded: N/A.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the employee 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 employee: Candice R. Burke.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW

On April 6, 2016, the employee, Travis R. Wilkins, appeared in person and with his attorney, Candice R. Burke for a hearing for a final award. The employer-insurer was represented at the hearing by their attorney, Kevin M. Leahy. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. Piramal Glass USA, Incorporated was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Mitsui Sumitomo Insurance Company of America.
2. On December 6, 2014, Travis R. Wilkins was an employee of Piramal Glass USA, Incorporated and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage is $822.71, resulting in a compensation rate of $548.47 per week for temporary total and permanent total disability benefits and $451.02 per week for permanent partial disability benefits.
6. The employer-insurer paid $6,250.26 in medical aid.
7. The employer-insurer paid $0 in temporary disability benefits.
8. The employee had no claim for future medical care.
9. The employee had no claim for permanent total disability.
10. The parties agreed that the employee reached MMI as of March 15, 2015.

ISSUES:

1. Accident.
2. Medical Causation.
3. Previously Incurred Medical Bills.
4. Mileage.
5. Temporary Total Disability.
6. Permanent Partial Disability.
7. Attorney fees and expenses under Section 287.560 RSMo.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee Exhibits:

1. Medical records from Parkland Health Center.
2. Medical records from Missouri Baptist Medical Center.

3. Medical records from Orthopedic Associates, LLC/Dr. Hulsey.
4. Medical records from Pro Rehab.
5. Medical records from Farmington Sports & Rehab Center.
6. Medical records from Missouri Baptist Medical Center/Dr. Gutwein.
7. Medical bills from Parkland Health Center.
8. Medical Bills from Missouri Baptist Medical Center.
9. Medical Bills from Orthopedic Associates, LLC.
10. Medical bills from Pro Rehab.
11. Medical bills from Farmington Sports & Rehabilitation Center.
12. Medical bills of Michael Gutwein, M.D.
13. Medical bills SE Emergency Physicians.
14. Medical bills from Anesthesia Services.
15. Medical report of Dwight I. Woiteshek, M.D.
16. CV of Dwight I. Woiteshek, M.D.
17. Letter from Candice R. Burke, J.D.
18. Deposition of Richard E. Hulsey, M.D.
19. CV of Richard E. Hulsey, M.D.
20. Billing Index.
21. Mileage Chart.
22. Costs and Expenses.

Employer-Insurer Exhibits:

A. Report of Injury.
B. Claim for Compensation.
C. Deposition of Michael F. Burns, M.D.

RULINGS ON MOTIONS AND OBJECTIONS

1. Employer-Insurer objections to Employee Exhibits 7 through 14 and Employee Exhibit 20 through 22 are denied, and the exhibits are received into evidence.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

STATEMENT OF THE FINDINGS OF FACT:

Travis R. Wilkins, the employee, and Jenger R. Hickman were the only witnesses to personally testify at trial. All other evidence was received in the form of written records and reports, medical records and deposition testimony.

Mr. Wilkins was injured at work on December 6, 2014. He is 27 years old. He is employed as a mechanic and works on the machines utilized by his employer in the manufacturing of glass products.

On December 6, 2014, Mr. Wilkins was on a catwalk working on a machine. He positioned himself in a squatted position in order to change a part on a machine. When he was done working on the machine he stood up from his squatted position. As he did so he felt a pop in the back of his left leg below the knee and felt immediate pain. He described the pain as severe as one would experience with a "Charlie Horse."

Mr. Wilkins testified that he immediately reported the event but did not request any medical care as he thought the problem would go away. He worked his shift on December 7, 2014. He testified that the pain got worse over the next few days. About December 8, 2014, he contacted Ms. Hickman at home and reported his problem to her. Ms. Hickman is the plant nurse. He testified that she advised him to go get care.

Mr. Wilkins received care from Parkland Health Center on December 9, 2014. He was examined; some testing was performed and was told to get follow-up care. Ms. Hickman sent him to see Dr. Hulsey. Dr. Hulsey first saw Mr. Wilkins on December 11, 2014.

Mr. Wilkins indicated that an MRI scan was obtained and he was prescribed some physical therapy at the Farmington Sports & Rehabilitation Center. He obtained this therapy up through December 23, 2014. On that date, he described his condition as a stabbing pain in the back of his calf muscle. His leg began swelling up and he returned to the emergency room at Parkland Health Center on the evening of December 24, 2014. He returned home in the late hours of December 24, 2014 and described his left leg as constantly swelling up on him. He got through most of the day Christmas, December 25, 2014, but continued to be in significant pain and discomfort. At the end of Christmas evening, he called his parents to take him to Missouri Baptist Hospital. When he arrived at the hospital, a blood test revealed a high white blood cell count and they diagnosed him with having an infection. He was admitted to the hospital. He was treated by Dr. Hulsey, and received a consultation from an infectious specialist, Dr. Gutwein, as well as Dr. Nogalski who was taking calls for Dr. Hulsey. He was hospitalized for approximately nine days during which time he underwent an incision and drainage procedure of the left calf muscle for a staph infection. He was off work from December 25, 2014, through February 4, 2015, by Dr. Hulsey at which time thereafter he was placed on light-duty restrictions. He testified he was not allowed to return to work by Piramal Glass on light duty because there was a risk of the infection returning. He was off work for 10 2/7 weeks and until he was released to full-duty work on March 5, 2015.

Mr. Wilkins testified about his current condition. He indicated that he feels an occasional dullish sensation while walking and squatting. There is no current activity that he is unable to perform or engage in after this event that he was able to perform before the event. He notices the dullish sensation when climbing a lot of stairs, and his calf muscle does not affect him when sleeping. He occasionally takes Ibuprofen. He testified that he requested permission to change duties and positions at work because of the stress of attending to the machines in his former position.

Mr. Wilkins is still diabetic. He says it rockets up depending on what he eats. He takes two medications to try and control his diabetic condition which he admits is still not under control. He testified he had never experienced a staph infection before. He further denied on direct examination that he ever had any open wounds on his leg or ankles at or near the time of the

accident of December 6, 2014, although he recalls that he did have a bout with cellulitis about 1 ½ months before December 6, 2014. Mr. Wilkins also indicated that he had an open sore on his left ankle a few days prior to his work injury. He reported that the wound was caused by a new boot rubbing on his ankle.

He reported that in his non-work-related free time he is a volunteer firefighter for the City of Park Hills and he continued performing those duties, training, and responding to calls up through the time of his hospitalization on December 25, 2014. He engages in hunting, fishing, boating, and camping which he is currently performing. According to his recollection, it was Dr. Hulsey that diagnosed him with a staph infection.

Ms. Hickman testified that she is the company nurse for Piramal. She testified that Mr. Wilkins came to her office on December 4, 2014, asking that she look at his left ankle. She testified that he had a 3cm wound on his left ankle. She indicated that Mr. Wilkins told her that he did not know how he got the wound. She was aware that Mr. Wilkins had a history of diabetes and referred him to his family doctor. She testified that she and Mr. Wilkins discussed diabetes and that he was at risk for infection due to his diabetes. She further testified that she told Mr. Wilkins that he needed to get treatment to avoid infection.

Ms. Hickman testified that Mr. Wilkins contacted her on December 9, 2014, and advised her of his calf problems on Saturday. She testified that Mr. Wilkins told her he was hurting so bad that he could not report for work. She authorized medical care with Dr. Hulsey. She saw him again on December 9th after he saw Dr. Hulsey.

Ms. Hickman reviewed medical records. She testified that when she reviewed Dr. Hulsey's records she found that the records were about infections that she warned Mr. Wilkins about. Her opinion was that without the infection there would have been no need for surgery. She testified that a person needs to have an open wound to get a staph infection.

Ms. Hickman indicated that she contacted Mr. Wilkins' family doctor to get records about the treatment for his open sore on his left ankle. She testified that there were no such records and she does not believe that Mr. Wilkins got any treatment for the open wound to his left ankle that she saw on December 4th. Her opinion was that the staph infection came through the wound on the left ankle; however she testified that she did not know when the staph infection occurred.

She testified that a hematoma is a collection of blood that can be a medium for infection.

Mr. Wilkins was seen on the morning of December 9, 2014, at Parkland Health Center. He gave a history of having leg pain for the past four days. The history described was that he was at work kneeling down when he got a cramp to his left calf as he stood up and claims he felt something pop in his leg. He was able to walk, but it was very painful. He was diagnosed with a muscle strain to the left lower leg and advised to follow-up with workers' compensation orthopedic physicians for further evaluation. It was suggested that he might need an MRI scan to further evaluate the muscle strain and he was given Ultram and crutches to use if needed.

Mr. Wilkins was then referred to Dr. Hulsey who saw him on December 11, 2014, at his office affiliated with the Parkland Health Center facilities. Mr. Wilkins presented himself with a painful left leg. He gave the history that:

> "He was squatting down working on a machine on December 6, 2014. As he got up he felt a sudden pain in the back part of the calf and popliteal region. The pain increased with time and he had difficulty in ambulating. Over a couple of days, the pain persisted and he went to the emergency room at Parkland. He was placed on Tramadol which he states does not provide much benefit."

Dr. Hulsey noted a significant medical history for diabetes and noted that he was presently working light duty with no excessive walking or standing. His right knee exam was unremarkable with full range of motion and his left leg revealed marked tenderness over the upper left calf muscle complex. He noted mild swelling and tenderness extending into the popliteal region, but there were no palpable masses. Mr. Wilkins had difficulty with extension of the leg at that time secondary to pain. There was no effusion at that time, but he was tender over joint lines. Knee examinations were negative or normal, other than the pain that was previously noted over the calf muscle complex. X-rays were normal for bony pathology. Dr. Hulsey's initial impression was a calf strain with a questionable rupture of the gastroc. Because of the severe pain presentation he recommended an MRI scan of the knee to evaluate posterior structures. The MRI scan was performed on December 18, 2014. The radiologist's findings were fluid and edema present in the area of the popliteal fossa. There was "no retracted tear" determined to be present over the complex muscle structures of the calf. There was fluid collection "Suggestive of a hematoma in the proximal muscle belly measuring 3.3 by 1.6 by 1.1 cm. The lateral gastrocnemius muscle and tendon are intact, but edema is seen within the muscle belly." The radiologist's impression was a partial tear of the medial gastrocnemius with a hematoma seen inside the muscle belly.

Mr. Wilkins returned to Dr. Hulsey the following day on December 19, 2014, at which time he was reevaluated with his MRI scan being present. Dr. Hulsey diagnosed a "gastroc strain" supported by the MRI scan. He told Mr. Wilkins this may take several weeks to resolve and that it usually responds to conservative treatment. At that time, there were no surgical lesions. He gave him some pain relieving packages and recommended a physical therapy program for gentle range of motion. The next time Dr. Hulsey saw Mr. Wilkins was after he had been admitted to Missouri Baptist Hospital.

Dr. Hulsey was on vacation and the admission was performed by the hospital staff. Medical records for that hospitalization are centered upon an infection to the sub-muscular hematoma. It was aspirated by needle and grew out staphylococcus aureus secondary to uncontrolled Type II diabetes with exceedingly high blood sugar levels. Since Dr. Hulsey was on vacation at the time of the admission, Mr. Wilkins was seen in consultation by Dr. Hulsey's partner, Dr. Nogalski, followed by Dr. Younus, Dr. Gutwein, an infectious disease specialist, Dr. Dunteman, Dr. Baig, and Dr. Burke.

These physicians presented consultations and impressions leading up to Dr. Hulsey's return from vacation and the decision to perform an incision and drainage of an infected hematoma to the left calf muscle on December 30, 2014. The consensus of all the physicians that participated in Mr. Wilkins' care was that he definitely had uncontrolled diabetic blood sugars leading to weakened defense mechanism. His blood sugar level at the time of admission was at or in excess of 400-450 (normal range being between 80-150). This history is in Dr. Schein's discharge note from Missouri Baptist Hospital reviewing the aforementioned prior treating consultations and treatment notes that he indeed was discharged with a final diagnosis of an infected left calf hematoma with staphylococcus aureus. The initial plan was to treat him medically, but that failed due to the fact that the initial needle drainage drew out the staph infection. The decision was to perform an I & D procedure on December 30, 2014.

After the procedure, Dr. Gutwein began treating Mr. Wilkins' high blood sugar elevation to bring his defense mechanisms under control. The elevated blood sugar count was drastically reduced at the time of his discharge from the hospital. He was discharged on medications to address the infection issues.

A consultation by Dr. Dunteman on December 28, 2014, re-verified the history from the patient that, "Approximately on December 6, when he suddenly developed a sharp charley horse sensation in the back of his left lower leg, as he was standing from a squatting position. In changing from a squatting to standing position, he felt a pop in the back of his leg, which preceded the charley horse sensation…" Records indicate that Dr. Dunteman's examination included the left lower extremity near the ankle. He discovered, "There is a 1+ to 2+ edema at the ankle and foot on the left lower extremity, as well as an enlarged area with slight discoloration, suggestive of a deep ecchymosis in the left proximal posterior calf…" Dr. Dunteman's assessment was history of alleged muscle trauma with hematoma expansion accompanied by warmth, elevated white count, and earlier fever raises the question of possible infection. Another consultation was with Dr. Gutwein on December 28, 2014. Dr. Gutwein's history noted the presence of, "The appearance of cellulitis of the lower extremity as well as some transient fever and some leukocytosis."

Mr. Wilkins at this time provided a history of having had cellulitis in his right lower extremity one month earlier and his left lower extremity about two years ago. It was Dr. Gutwein's recommendation to do the needle drainage of the hematoma to determine if staph culture would be positive from the laboratory. This was done and the lab culture was positive. Dr. Hulsey returned and performed the incision and drainage surgery on December 30, 2014.

Post-surgery, Mr. Wilkins healed uneventfully with no post-operative infections or complications as his diabetes was being treated. He was discharge from the hospital on or about January 3, 2015. Following discharge from the hospital, he returned to Dr. Hulsey to have his stitches removed on or about January 12, 2015, and was then referred to physical therapy two times a week for four weeks. The parties stipulate that he returned to work at Piramal Glass on or about March 5, 2015.

Dr Hulsey testified by deposition on August 31, 2015. He first saw Mr. Wilkins on December 11, 2014, when he was referred to him by Nurse Hickman. Dr. Hulsey took a history including how the accident happened. He performed a physical exam and found mild swelling in the back of the calf toward the knee. Dr. Hulsey felt that Mr. Wilkins had strained his left calf and possibly ruptured the gastroc soleus, which is the muscle of the calf.

Dr. Hulsey saw Mr. Wilkins again on December 19, 2014. Examination results were similar; however an MRI had been done which showed a hematoma showing a tear involving the medial head of the gastroc. Dr. Hulsey testified that a hematoma is a collection of blood. He also testified that he saw no signs of infection at that time.

Dr. Hulsey saw Mr. Wilkins again on December 27, 2014. By that time Mr. Wilkins had been admitted to the hospital and had been evaluated by other physicians. Dr. Hulsey indicated that Mr. Wilkins white count was elevated and there was concern that he had an infection.

On December 30, 2014 Dr. Hulsey did an I&D (incision and drainage) of the calf with evacuation of a large hematoma as a staph grew out of the aspiration. Dr. Hulsey did surgery to excise and drain the hematoma. He testified that he decided to do the evacuation and drainage of the hematoma as there was a staph aureus and Mr. Wilkins' diabetes was not in very good control.

In his medical record dated January 12, 2105, under the section marked "Impression" Dr. Hulsey reported "Status post I & D of the infected hematoma left calf." Under the section "Recommendations" he reported "This is a very unusual presentation, especially with someone of this age. This is related to his injury and the development of the hematoma." On page 13 of his deposition, Dr. Hulsey agreed that in his Recommendation he said "This is related to his injury and the development of the hematoma." He was then asked whether he believes that the hematoma and the injury were work related. Dr. Hulsey agreed that based on the history that he had received, the hematoma and the injury were work related.

Dr. Hulsey was not directly asked whether the staph infection was related to the work injury.

Dr. Hulsey was asked to agree to the question "Hematomas cause swelling and inflammation. It often leads to consequences that can cause irritation with adjacent organs and tissues and cause symptoms and complications of a hematoma. One common complication of all hematomas is a risk of infection. He responded, "I think it's not a yes. I just don't think it's real common to get an infected hematoma." He further testified that "Infections have to come from someplace else but they can see a hematoma." He also agreed that most hematomas resolve spontaneously and need no further evaluation. Since blood is a rich medium full of nutrients, some hematomas can become infected.

On cross examination Dr. Hulsey testified:
-Considering his 30 years of practice, he has never seen a patient come in with a history of a tear of a medial head of the "gastric-nemus" from standing up out of a squatting position. He said that occasionally we'll see runners, jumpers that have more forceful extensions of the knee.

-It is more common when a person is doing an activity that is commanding and demanding a lot of that muscle on an instantaneous basis.
-Mr. Wilkins gave no such history.

Dr. Hulsey also testified that:
- The severity of the injury generally dictates the degree of pain.
-Assuming Mr. Wilkins has the tearing of the gastroc, it did not require surgical intervention to repair the gastroc or any tendons.
-They are left to heal on their own.
-If the tendons heal on their own, the person returns to work in their regular duties, and if there is no surgery, there generally is no residual disability.

Dr. Hulsey suggested that if there were some disability, maybe 1 to 2 percent.

Dr. Hulsey testified that Mr. Wilkins did not tell him that he had seen the company nurse about December 4, 2014. He further testified that:
- No one did a white cell count before December 27, 2014, and he doubted that it was indicated.
-The terms sprain and partial tear are used but they are basically the same thing. There was some damage to the muscle fibers and that caused the hematoma.
-It is not possible to get the same result when reviewing the MRI with someone who has cellulitis. If someone has an infection from cellulitis, the MRI could look a little similar.
-You can get a hematoma from blunt trauma but Mr. Wilkins did not describe any blunt trauma.
-You do not have to have a huge tear to have a hematoma.
-It is not common for hematomas to become infected most of the time.
-Infections have to come from some other place-a penetrating trauma where you get bacteria from the outside to the inside.
-Typically a sterile hematoma is okay until it becomes infected from some other source.

Dr. Hulsey agreed that when Mr. Wilkins went to the hospital on Dec 24th he had cellulitis and that is what brought in Dr. Gutwein.

Dr. Hulsey provided his opinion:
-Mr. Wilkins' problem started as a hematoma.
-If it started as an actual abscess, it would have progressed more quickly.
-If it was infected it probably would have come to a point where he needed emergency surgery much faster than if it was a hematoma and then subsequently became infected because, even though he's painful, it was not exquisitely painful until a couple weeks later. I think he would have been much more sick initially if it was an actual infection.

Dr. Hulsey was aware that Mr. Wilkins had cellulitis a couple years earlier. He reported that if you have cellulitis or an infection process, it would take 24 hours or less for a white cell count to jump from 10 to 15. He stated that Mr. Wilkins was admitted to the hospital due to the presumed infection. He says the muscle looked fine so it did not appear to be significantly damaged.

Dr. Hulsey released Mr. Wilkins on March 5, 2015 with no pain and reported that he is not restricted in any way.

Finally Dr. Hulsey testified that the hematoma was caused by arising from a squatting position and then some fibers of the gastroc were torn. He reported that the hematoma did not start out as an infection, it became infected later.

Mr. Wilkins was seen by Dr. Woiteshek for an IME on April 29, 2015. He prepared a report dated May 4, 2015. Dr. Woiteshek obtained a medical history from Mr. Wilkins, reviewed records and performed a physical examination. Dr. Woiteshek noted that Mr. Wilkins had a history of diabetes. Dr. Woiteshek was not provided any history of the pre-existing cellulitis, nor was he provided the history of the open sore to Mr. Wilkins' left ankle and the visit to the company nurse on December 4, 2016.

Dr. Woiteshek described the December 6, 2014 accident that was reported to him by Mr. Wilkins as: Mr. Wilkins was working on a machine in the squatting position. As he got up he felt a sudden pop followed by pain in the back part of his left calf and popliteal area. The pain intensified over the next few days.

Dr. Woiteshek provided a partial summary of medical care that was provided to Mr. Wilkins:
-December 9, 2014. Mr. Wilkins was treated at Parkland Health Center with complaints of pain and discomfort in the left calf area. The diagnosis was a muscle strain of the left lower leg. Mr. Wilkins was given medications and sent home.
-December 11, 2014. Dr. Hulsey saw Mr. Wilkins at Orthopedic Associates. X-rays taken showed no evidence of an acute fracture or dislocation. Dr. Hulsey diagnosed a calf strain. Mr. Wilkins was treated with medications and work restrictions.
-December 25, 2014. Mr. Wilkins was admitted to Missouri Baptist Medical Center as his condition had worsened and his left area became cellulitic.
-December 26, 2014. MRI testing revealed findings compatible with a hematoma in the left calf.
-December 29, 2014. An ultrasound guided aspiration of the fluid in the left calf was performed. The fluid showed a "Staphylococcus Aureus Infection." Mr. Wilkins was seen by Dr. Gutwein.
-December 30, 2014. Dr. Hulsey performed I & D surgery on Mr. Wilkins' left lower leg. The post operative diagnosis was an infected hematoma of the left calf.
-March 15, 2015. Dr. Hulsey released Mr. Wilkins at MMI to work with no restrictions.

Dr. Woiteshek provided his diagnoses:
1. Traumatic acute tearing of the proximal gastrocnemius muscle of the left calf with subsequent hematoma formation seen by MRI.
2. Subsequent infected hematoma on the left calf s/p surgery by Dr. Hulsey on December 30, 2014 secondary to #1 above.

Dr. Woiteshek provided further opinions:
-The injury of December 6, 2014 was the prevailing factor in the cause of Mr. Wilkins' traumatic acute tearing of the proximal gastrocnemius muscle of the left calf with subsequent hematoma formation seen on the MRI scan taken December 26, 2014 and he has subsequent infected hematoma of the left calf status post surgery by Dr. Hulsey on December 30, 2014.

-the injury of December 6, 2014 was also the prevailing factor in the cause of the following disability and the subsequent need for treatment including the surgery by Dr. Hulsey.
-The medical care that Mr. Wilkins received was reasonable and necessary to help relieve the effects of the December 6, 2014 injury.
-Mr. Wilkins has reached MMI.
-Mr. Wilkins has a 35% permanent partial disability of the lower extremity rated at the upper calf level due to the traumatic acute tearing of the proximal gastrocnemius muscle of the left calf with subsequent hematoma formation and the subsequent infected hematoma of the left calf status post surgery by Dr. Hulsey.

Dr. Burns saw Mr. Wilkins for an IME on June 4, 2015, after he was done with treatment. Mr. Wilkins reported that he was doing "quite well." Dr. Burns reviewed records and studies and prepared a report dated June 4, 2015, and testified by deposition on March 21, 2016.

Dr. Burns provided opinions in his June 4, 2015 report:
-His diagnosis was that Mr. Wilkins has a gastrocnemius strain to the left lower leg, with associated hematoma. The hematoma subsequently became infected, requiring further treatment in the form of incision and drainage, with antibiotics.
-Mr. Wilkins sustained a gastroc strain to his left calf while at work on December 6, 2014.
-The muscular strain was treated appropriately with conservative care.
-Mr. Wilkins subsequently developed an infected hematoma in this region that required surgical intervention and antibiotics.
-The infectious condition developed due to the patient's diabetes (several notes reflect that his diabetes was found to be under rather poor control).
-The mostly likely entry site for the Staph bacteria was a wound which developed along the ankle region.
-The ankle would and surrounding cellulitis is referenced in a nurse's note dated December 4, 2014.
-The ankle wound was treated conservatively with antibiotic ointment and a sterile dressing.
-The event of December 6, 2014, was not the prevailing factor in the onset and development of the infected hematoma which subsequently required incision and drainage as well as antibiotics.
-Mr. Wilkins does not require any further care.
-Mr. Wilkins has reached MMI.
-Mr. Wilkins has a 5% permanent partial disability of the left lower leg due to the gastroc strain.

Dr. Burns provided further information when his deposition was taken on March 21, 2016:
-He referred to the injury as a strain which was shown in the MRI.
-Strains like this are treated conservatively. He specifically testified that the records that he reviewed showed no need for surgery.
-The only reason that Mr. Wilkins had surgery was that he developed a secondary infection and the purpose of the surgery was to drain the infection.

Dr. Burns further testified that there were two scenarios going on with Mr. Wilkins. One was the strain and hematoma. Secondary to that Mr. Wilkins developed an infection. He testified that anytime you injure a tissue or strain a ligament you're going to bleed. The hematoma just

reflects the fact that Mr. Wilkins collected some blood. Secondary to that and in a very unusual way he developed an infection. Dr. Burns indicated that any blood is a potential culture medium and if you get bacteria in your bloodstream or if you have bacteria in your bloodstream it can lodge in that region and you get a secondary infection, which is most likely what happened in this case.

After he did his physical examination, his diagnosis was a gastroc strain with an associated hematoma that subsequently became infected. The initial diagnosis of the infection was found during the aspiration and then they did the surgery-an Incision and Drainage. Dr. Burns testified that the gastroc strain was related to the event that Mr. Wilkins described where he got up from a squatted position. He said that Mr. Wilkins must have been in an awkward position. He indicated that when he sees a gastroc strain, it is usually related to some significant event-something that is done in a vigorous activity.

Dr. Burns further reported that Mr. Wilkins has a poorly controlled diabetic condition. He testified that Mr. Wilkins' poorly controlled diabetes or an open sore on his left ankle from boots did not have any relationship to the gastroc strain, but it has everything to do with the fact that subsequently he developed an infection that required surgery and antibiotics. He also testified that you just do not get a spontaneous infection from a muscle strain, there has to be some other associated set of factors that would account for that resulting in an infection; the most typical one is metabolically someone who is immunosuppressed or has diabetes and isn't well controlled and the infection enters from somewhere else such as a bad tooth or you have unhealed sores.

Dr. Burns further testified that it is a well known risk that a diabetic is more prone to have an infection. He indicated that the event of December 6, 2014, was not the prevailing factor in the onset of the infection; the metabolic status is the prevailing cause of the infection. Dr. Burns testified that Mr. Wilkins had an open sore and that is the most likely source for entry for bacteria.

At the time Dr. Burns saw Mr. Wilkins, he reported that he did not require any more care. He rated Mr. Wilkins as having a 5% permanent partial disability at the level of the calf.

When cross examined by Mr. Wilkins' counsel he explained his opinions:
-He testified that a strain and a tear are the same thing/they are interchangeable. The key is that there are different levels.
-He testified that a staph infection is typically introduced at some sort of an entry site. A person may be carrying around a bacteria or it inters the system through some sort of a portal. A sore is extremely common.
-He testified that blood is a culture medium. It can grow bacteria.
-He reported that you are dealing with a different host when you're dealing with a diabetic, particularly one whose diabetes may not be well controlled. If there is an open wound a person can get a staph infection without diabetes, the diabetes just markedly increases the risk of infection whether there is an open wound or not.

Dr. Burns again testified that the hematoma is related to the accident but not the infection in the hematoma.

RULINGS OF LAW:

1. Accident

The employer-insurer challenges whether the employee's accident of December 6, 2016, arose out of and in the course of his employment. The employer-insurer suggests that the employee's "accident" is compensable only if he was exposed to a risk related to his employment activity as opposed to a risk to which he was equally exposed in his normal non-employment life.

The undisputed facts are that at the time of his accident, the employee was performing job duties that were required by his employer. He worked as a mechanic and was required to fix and maintain the machines that were utilized by the employer to produce the product that they sold. The records consistently show that at the time he was injured he was positioned on a catwalk working to repair a machine. In order to do so, he positioned his body in a stooped or squatted position. Medical records indicate that the employee must have been in an awkward position. As the employee regained the standing position, after repairing the machine he was working on, he felt an immediate "pop" and sharp pain in his left calf. The only reason the employee positioned himself in a squatted position was to enable him to repair his employer's machine. By placing himself in such a position he incurred a hazard or risk that he would not have been exposed to except in his work environment.

The medical record is totally clear on this matter. The treating and reviewing doctors were all given essentially the same history as to how the employee injured his left calf area. In essence he stood up from a squatted position and felt a pop and immediate pain in his left calf.

Dr. Hulsey, Dr. Woiteshek and Dr. Burns all agree that while it may be unusual, the employee's injury occurred when he was standing up from a squatted position after working on a machine.

Based on a consideration of all of the evidence in the case, the Court finds that the employee sustained a work-related accident on December 6, 2014. The Court further finds that the employee's accident arose out of and in the course of his employment.

2. Medical Causation

A central question to be answered is whether the staph infection that the employee developed was medically causally related to his accident of December 6, 2014; as opposed to whether the staph infection developed because of unrelated conditions such as an open wounds at the left ankle, cellulitis or due to the employee's poorly controlled diabetic condition? The employer-insurer's position is that the persuasive medical evidence does not establish that the medical bills and the treatment incurred from December 24, 2014, through March 5, 2015, were causally related to the accident of December 6, 2014, in that the treatment received was not reasonably required to cure and relieve the employee from the effects of his muscle strain. Specifically, their

position is that the staph infection that the employee developed was not medically causally related to his accident.

While the medical evidence is consistent that the employee strained his calf muscle and thereby developed a hematoma, there is a very large disagreement as to whether the development of the staph infection was medically causally related to the accident. There are three medical opinions that offer opinions on whether the development of the staph infection was caused by the employee's accident and was thereby derived from the hematoma that was caused by the accident.

Dr. Woiteshek clearly says that the employee's injury of December 6, 2014 was the prevailing factor in the tearing of his left calf muscle, as well as the development of the hematoma and the surgery that was performed by Dr. Hulsey due to the staph infection. His opinion is limited by the fact that he was unaware of the employee's open wound of December 4, 2014, the employee's history of cellulitis and the employee's poorly controlled diabetic condition.

Dr. Burns clearly says that the employee has a gastrocnemius strain to his left lower leg that developed a hematoma. However, his opinion is that the staph infection developed for reasons other than the accident, referencing the wound of December 4, 2014, the employee's history of cellulitis and his poorly controlled diabetic condition.

In the Court's opinion what Dr. Hulsey say is less clear.

Employee counsel claims that Dr. Hulsey testified that the staph infection was caused by the employee's accident. The Court has reviewed the evidence and finds Dr. Hulsey's opinions to be unclear as to what caused the staph infection. Dr. Hulsey made it clear that while it may be unusual, he believes that the employee developed the hematoma when he stood up from a squatted position. It is confusing whether Dr. Hulsey's opinion is that the staph infection was caused by the accident and the development of the hematoma. Or, whether the employee had the accident, developed a hematoma and developed a staph infection due to some outside factor such as poor diabetic control, pre-existing cellulitis or an open wound on the employee's ankle that was viewed by the company nurse on December 4th, just two days before the employee's accident of December 6.

When you read Dr. Hulsey's medical records and view his deposition questions with specific reference to the wording of the questions that were asked of him and his answers to those questions, the Court does not believe that he said that the staph infection was caused by the employee's accident. At a minimum his testimony can be construed to be confusing depending on which portion you place emphasis upon. Despite the position of employee's counsel, the Court does not agree with her reading of the evidence and therefore does not find that the prevailing factor of the staph infection was the employee's accident. The Court further finds that the development of the employee's staph infection and all medical care due to that condition was not medically causally related to the employee's accident. The Court further finds that the employee has failed to meet his burden of proof that the disputed medical care that was provided to him was medically necessary due to his accident.

The Court questions whether Dr. Hulsey's actual opinion is that the staph infection was caused by or resulted from the accident.

3. Previously Incurred Medical Bills, Mileage and Temporary Total Disability.

The Court has found that the medical care that the employee received for the treatment of his staph infection was not related to his accident.

Based on a consideration of all of the evidence, the Court finds that the medical care that the employee received to treat his staph infection was not caused by and was not related to his accident of December 6, 2014. The employer-insurer is not ordered to pay the medical bills that were incurred by the employee to treat this condition. The Court further finds that the employer-insurer:
- Did not authorize such medical care.
-Such medical care was not reasonable to cure and relieve the employee from the effects of his December 6, 2014 accident.
-Such medical care was not necessary to cure and relieve the employee from the effects of his December 6, 2014 accident.
-There is no medical causally relationship between the employee's accident and the treatment that he received to treat his staph infection.

For the same reasoning, the Court denies the employee's claims for mileage and temporary total disability compensation.

6. Permanent Partial Disability.

Based on a consideration of all of the evidence in the case, the Court finds that the employee sustained a 10 % permanent partial disability to his left calf/160 level as a result of his December 6, 2014 accident. The employer-insurer is ordered to pay to the employee $7,216.32 for permanent partial disability compensation.

7. Attorney fees and expenses under Section 287.560 RSMo.

Under Section 287.5460, employee counsel maintains that the employer-insurer defended this case without reasonable grounds and they are therefore entitled to $11,238.00 in attorney fees and $3,157.33 in costs. Their factual assertion supporting their theory is their position that Dr. Hulsey related the gastroc tear and hematoma, as well as the staph infection to the employee's December 6, 2014 accident.

It is obvious from the Court's rulings that the Court does not accept the employee's position that Dr. Hulsey related the employee's staph infection to his accident. A narrow reading of Dr. Hulsey's opinions and testimony was used to support this position; however when you read all of the records, look at all of the evidence, and specifically view the statements and testimony of Dr. Hulsey in the context of the questions that were posed to him, the Court does not accept the

employee's position that the staph infection and care therefore, was in any way related to or necessitated by the employee's muscle strain of December 6, 2014.

Based on a consideration of all of the evidence in this case, the Court finds that the employee has not provided persuasive evidence that the employer-insurer defended this case unreasonably. The Court specifically finds that the employer-insurer did not defend this case unreasonably. The employer-insurer is not ordered to pay costs and attorney fees to the employee.

ATTORNEY'S FEE:

Candice R. Burke, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

_____

Gary L. Robbins
Administrative Law Judge
Division of Workers' Compensation