

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
WORKER'S COMPENSATION DIVISION
P.O. BOX 7901
MADISON, WISCONSIN 53707
(608) 266-1340

2010-024764

RICHARD L DECKER
N981 KNEPPRATH RD
CEDAR GROVE WI 53013

Applicant,

vs.

PLEASE SEE ENCLOSURE

KOHLER CO
DEAN YAGODINSKI MAIL STOP 009
444 HIGHLAND DR
KOHLER WI 53044

Respondent,

KOHLER CO
C/O BROADSPIRE
1900 E GOLF RD STE 800
SCHAUMBURG IL 60173-5033

Insurance Carrier.

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Hearing was held in Milwaukee, Wisconsin on March 27, 2013. The record was closed per stipulation of the attorneys on January 23, 2015 upon receipt of outside materials and confirmation of cessation of settlement negotiations.

APPEARANCES: in person, and by Attorney Charles F. Domer, of Domer Law, S.C.; respondent self-insurer by Attorney William R. Sachse of Peterson Johnson & Murray, S.C.

Jurisdictional facts, a \$1,013.12 gross weekly wage and a compensable work injury of September 15, 2010 are conceded. The respondent self-insurer asserts that any claims of injury to the lower back were a temporary aggravation of a prior January 26, 2005 conceded back injury, and that the 2010 aggravation ended as of December 15, 2010, without need for permanent restriction or permanent partial disability benefits. Respondent's Exhibit 3 was received, a WKC-13 with benefits conceded and paid, noting intermittent periods of temporary partial disability and temporary total disability benefits for a continuous period from September 15, 2010 to May 16, 2011 (both dates exclusive) with \$4,314.19 and \$5,039.50 in temporary partial disability benefits paid and \$675.41 in temporary total disability benefits paid.

The applicant is claiming entitlement to alternating temporary partial disability and temporary total disability benefits for a continuous period from May 17, 2011 (inclusive) to March 7, 2012 (exclusive), with the parties stipulating to a document received as Respondent's Exhibit 1 and various social security information, including a prior reverse offset calculation worksheet by the Department received into the record on January 23, 2015. The parties stipulate that, if liability is found, this worksheet shall be binding regarding the benefits due.

The applicant also is claiming entitlement to permanent total disability benefits as of March 7, 2012 (inclusive).

In the event that liability is found for medical expense, the parties stipulate that such medical expense should be based upon an amended Respondent's Exhibit 4 stipulated by the parties and received on April 16, 2013.

Accordingly, the issues in dispute are the nature and extent of disability and related medical expense for the conceded September 15, 2010 work injury.

Upon the issues, the Administrative Law Judge makes the following

FINDINGS OF FACT

The applicant is a 1974 graduate of Ozaukee High School and did not have any post-high school education thereafter. In 1976 he began work for the respondent self-insurer, Kohler

Company, with over 35 years experience as a manual caster, primarily involved in the manufacture of Kohler toilets. His duties involved pouring slurry into a mold and allowing it to harden. After solidifying, the molds were moved, separated and touched up as necessary. After the casting pieces were assembled and inspected, the toilet was processed further in another department for drying and claying in a kiln. The applicant testified that the work was very physical, hot work involving lifting weights between 5 to 80 pounds, with frequent lifting of 80 pounds. The applicant stated that for the first 20 to 25 years he probably worked six days a week with regular overtime.

On January 26, 2005, the applicant sustained a conceded work related injury and was treated with multiple surgeries with Dr. Richard Karr. The two surgeries were a two-level discectomy at the L4-5 level and L5-S1 level in June of 2005, and repeat surgery in June of 2006. In May of 2007, Dr. Karr released the applicant to return to work without physical limitations. The applicant returned to his work as a manual caster, and in the summer of 2009 he experienced a flare up in his back pain. He returned to work in December of 2009 without limitation. The applicant testified that he had not experienced any problems with his neck prior to September 15, 2010, and testified that he had every intention of working full duty for the respondent until his eventual retirement.

On September 15, 2010, the applicant sustained the conceded work injury but has no recollection of the incident. During the hearing, the parties reached a stipulation of the following facts: "The applicant sustained an injury when an unfinished toilet bowl fell from a height of 2 to 7 feet with an approximate weight of 80 pounds, striking the applicant on the back left side of the head." The applicant testified that his partner, John Flesch, later informed him that he had lost consciousness for between 2 to 3 minutes. Post-accident, the applicant stated that he experienced pain on the back left side of his head which radiated down into his neck and into his left shoulder and arm. The applicant treated with his primary physician, Dr. Demaster, at the Aurora Sheboygan Clinic with complaints of stiffness in his upper back and neck. The applicant was also experiencing continued headaches and dizziness and referred for physical therapy and chiropractic treatment,

which failed to provide relief. As time continued, the applicant began complaining of low back pain radiating into his left groin. He sought a second opinion with Dr. Jaslonski and was referred to Dr. John Broderick, a neurologist at Columbia-St. Mary's Hospital. During his initial visit with Dr. Broderick on March 15, 2011, the office note mentions the applicant providing a history of neck pain and radiating pain and numbness into his left arm and fingers. It further noted complaints of headaches, blurry vision, speech problems, marked fatigue, light headed dizziness and short term memory problems. Dr. Broderick performed injections in the applicant's low back, back of his head, neck, upper back and mid back. Dr. Broderick referred him for pain management with Dr. Sadeghi, who performed epidural injections in both the neck and lower back; and for a surgical consultation with Dr. Spencer Block. Dr. Block, in an office note of November 30, 2011, noted that since the September 15, 2010 work injury, the applicant had been experiencing low back pain and radicular left leg pain, numbness and tingling. The EMG revealed left L5 and S1 radiculopathy. He opined that he did not believe urgent surgical intervention was warranted due to good strength at the time of his exam. He noted that lumbar surgical intervention was an option given his failure to improve with non-surgical management but recommended a discogram for further study. Dr. Block opined that the applicant's causation of his symptoms was a pre-existing condition of lumbar degeneration that was exacerbated beyond its normal progression due to the work injury, as he was not experiencing his symptoms prior to the event. Dr. Block did not recommend surgery on the applicant's neck.

The applicant testified that following his discussions with Dr. Broderick he was inclined to not pursue further back surgery. In a narrative report (Applicant's Exhibit T) of March 7, 2012, Dr. Broderick opined the applicant could perform sedentary work of lifting up to 10 pounds occasionally, but that he should avoid lifting; and should never bend or stoop, twist, squat, crawl, climb or perform overhead work. He opined that the applicant should not perform any work hours, as he was unable to stand, walk, sit or drive during work related activities. He further noted that the applicant required three or more breaks per day in the work setting and was taking Percocet

and Soma, narcotic medications which would preclude him from driving or operating machinery in a work setting. He opined the applicant should never drive automotive equipment, be around or operate moving machinery, work at unprotected heights, or work in areas with changes in the temperature and humidity. He therefore opined the applicant was unable to work, and noted the aforementioned restrictions were permanent. In response to questions regarding causation, he opined that the restrictions were due to the September 15, 2010 work injury and assessed functional permanent partial disability ratings of 5% for the low back condition; 5% for the neck condition; and 5% for the head injury, including a post-concussive syndrome.

The applicant was referred by Dr. Broderick to a brain injury program at Sacred Heart Rehabilitation through Columbia-St. Mary's and at the time of hearing was treating with two psychiatrists, Dr. Jennifer Kennedy and Dr. Kenneth Johnson. Dr. Kennedy diagnosed a post-traumatic stress disorder and depression. Dr. Kennedy opined the applicant sustained a post-concussive syndrome with post-traumatic stress disorder and difficulty with psychological adjustment. The applicant is prescribed Zoloft and takes it on a daily basis.

The respondent self-insurer relied upon the opinions of Dr. Mark Novum, a neurologist, who examined the applicant on August 9, 2012 and performed various medical record reviews. In a narrative report of August 16, 2012, Dr. Novum opined the applicant sustained a closed head injury with brief loss of consciousness at work on September 15, 2010 followed by complaints of headaches, dizziness and impaired mental concentration/altered memory consistent with post-concussive syndrome, which had resolved as of the time of his examination. He further opined the applicant had persistent post-concussive syndrome which he opined was not work related but due to non work factors including past serious illness of his wife, past personal medical ills including back surgeries; post-traumatic stress disorder and limited skill set reflecting poor academic performance and psychosocial deprivation growing up in a rural farm area. He also diagnosed chronic depression and anxiety. He opined that the applicant had reached a healing plateau as of April 29, 2011 with regard to post-concussive syndrome. He opined the applicant sustained 0%

permanent partial disability in connection to mild traumatic brain injuries and post-concussive syndrome as a result of the work injury. He opined no further medical treatment or medical therapies were indicated.

The respondent self-insurer also offered the opinions of Dr. Stephen Robbins, an orthopedic surgeon, who examined the applicant at the respondent self-insurer's request on March 26, 2012 and performed a medical record review. Dr. Robbins opined the applicant sustained a temporary exacerbation due to the work injury of September 15, 2010 which resolved as of December 15, 2010 without any permanent injury to the lumbar spine. He further opined the applicant sustained a temporary aggravation of cervical degenerative disc disease at the C6-7 level and opined that he healed from his neck injury as of December 15, 2010. He also opined the applicant sustained a post-concussive syndrome following the injury. He opined the applicant reached a healing plateau in the cervical spine without sustaining any permanent partial disability. He opined that the applicant had significant psychosocial issues that were contributing to chronic pain issues and opined the applicant was capable of full time gainful employment with a permanent 40 pound lifting restriction, but those were secondary to his previous back injury in 2005.

Based upon the record made, I found the applicant's testimony was credible. Combined with the more credible opinions of his treating physician, Dr. Broderick, I find the applicant sustained the aforementioned functional permanent partial disability ratings of 5% each at the back, head, and neck, and permanent restrictions opined by Dr. Broderick.

The applicant offered the vocational opinions of John Woest. Mr. Woest opined that, based upon Dr. Broderick's restrictions, the applicant is incapable of performing even part time sedentary work. He also requires multiple unscheduled breaks from work, and will experience extreme difficulties with attention and concentration due to severe pain. Combined with the applicant's heavy reliance upon narcotic medication, he opined that the applicant is 100% totally vocationally disabled due to the September 15, 2010 work injury.

Based upon the record, I adopt the opinions of Mr. Woest and opine that the applicant is permanently and totally disabled, and that such permanent disability began as of March 7, 2012 (inclusive), the date of Dr. Broderick's restrictions. I further find that the respondent self-insurer is liable for the payment of the temporary total disability and temporary partial disability benefits for the period from May 17, 2011 (inclusive) to March 7, 2012 (exclusive) based upon the wage information provided in Respondent's Exhibit 1, equaling \$19,011.95. The permanent total disability benefits which have accrued to March 1, 2015 equal \$61,561.11 (155 weeks and 4 days, from which social security reverse offsets have been credited). The total accrued equals \$80,573.06, from which a 20% attorney fee or \$16,114.92 shall be paid to Attorney Domer. The attorney is also entitled to \$1,809.38 as costs. The applicant is entitled to \$64,458.14 as accrued compensation.

Beginning April 1, 2015, the applicant shall receive \$1,489.41 per month and Attorney Domer shall receive \$372.36 per month and monthly thereafter until January 1, 2018 when the social security offset is redetermined. The attorney fee shall be paid until October 6, 2021, per rule limiting payments to 500 weeks. The respondent self-insurer shall also pay the following reasonable and necessary medical expense: \$19,583.93 to United Healthcare as reimbursement for their payment of non-industrial medical expense; to Columbia-St. Mary's Community Physicians, \$1,599.17; to Columbia-St. Mary's Hospital/Milwaukee Campus, \$4,729.61; to Freedom Physical Therapy, \$3,148.00; to Injured Worker's Pharmacy, \$1,254.54; to Medical College of Wisconsin Physicians, \$408.00; and to Metropolitan Anesthesiologists, \$12,363.29 (of which \$8,633.16 is at Collection Associates); that the respondent self-insurer will be allowed 45 days to audit those bills for reasonableness pursuant to Wisconsin Administrative Code 80.72, with payment up to the full amount remaining thereafter.

Because the applicant shall require future medical expense to cure and relieve the effects of his injuries, jurisdiction is reserved as to all issues for such further findings and orders that may be warranted.

NOW, THEREFORE, this:

INTERLOCUTORY ORDER

That within twenty one days, the respondent self-insurer shall pay to the applicant, Richard L. Decker, as accrued compensation, the sum of Sixty four thousand four hundred fifty eight dollars and fourteen cents (\$64,458.14), lump sum; to Attorney Charles F. Domer, the sum of Sixteen thousand one hundred fourteen dollars and ninety two cents (\$16,114.92) as fees plus the sum of One thousand eight hundred nine dollars and thirty eight cents (\$1,809.38) as costs.

Beginning April 1, 2015, the respondent self-insurer shall pay to the applicant the sum of One thousand four hundred eighty nine dollars (1,489.00) per month and monthly thereafter until the next social security offset is redetermined on January 1, 2018; that the aforementioned monthly benefits and redetermined monthly benefits are payable for as long as he may live; beginning April 1, 2015, to Attorney Charles F. Domer, the sum of Three hundred seventy two dollars and thirty six cents (\$372.36) as fees per month and monthly thereafter until January 1, 2018 when the next social security offset redetermination is made; that the attorney fee herein is payable for only as long as the applicant may survive, with the limitation that no attorney fee is payable beyond October 6, 2021.

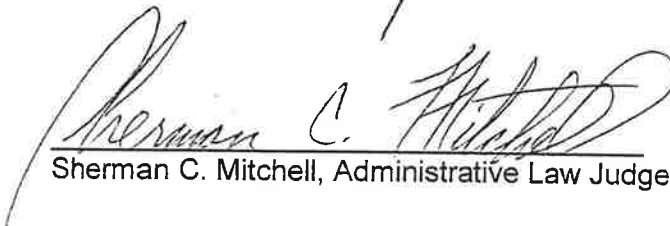
The respondent self-insurer shall be allowed 45 days to conduct an audit for reasonableness pursuant to Wisconsin Administrative Code DWD 80.72 and upon such review they shall pay up to the following reasonable and necessary medical expense: to United Healthcare as reimbursement for their payment of non-industrial medical expense, up to the sum of Nineteen thousand five hundred eighty three dollars and ninety three cents (\$19,583.93); to Columbia-St. Mary's Community Physicians, up to the sum of One thousand five hundred ninety nine dollars and seventeen cents (\$1,599.17); to Columbia-St. Mary's Hospital/Milwaukee Campus, up to the sum of Four thousand seven hundred twenty nine dollars and sixty one cents (\$4,729.61); to Freedom Physical Therapy, up to the sum of Three thousand one hundred forty eight dollars (\$3,148.00); to Injured Worker's Pharmacy, up to the sum of One thousand two

hundred fifty four dollars and fifty four cents (\$1,254.54); to Medical College of Wisconsin Physicians, up to the sum of Four hundred eight dollars (\$408.00); and to Metropolitan Anesthesiologists, up to the sum of Twelve thousand three hundred sixty three dollars and twenty nine cents (\$12,363.29), of which the sum of \$8,633.16 is at Collection Associates; that any amounts remaining after 45 days shall be paid up to the full amounts.

Jurisdiction is reserved as to all issues for such further findings and orders as may be warranted.

Dated and mailed at Madison, Wisconsin this 24th day of

February, 2015


Sherman C. Mitchell, Administrative Law Judge

SCM:an

cc:
ATTORNEY CHARLES F DOMER
C/O DOMER LAW, S C
3970 N OAKLAND AVE STE 201
MILWAUKEE WI 53211

ATTORNEY WILLIAM R SACHSE JR
C/O PETERSON JOHNSON & MURRAY
PETERSON JOHNSON & MURRAY
788 N JEFFERSON ST STE 500
MILWAUKEE WI 53202-3763