

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

Injury No.: 04-007832

Employee: Kenneth Allison  
Employer: Stephen Vincel Honda (Settled)  
Insurer: Missouri Chamber of Commerce Group Self-Insurer's Trust Fund  
c/o CCMSI (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: January 29, 2004  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 16, 2007. The award and decision of Administrative Law Judge Cornelius T. Lane, issued May 16, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of September 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Kenneth Allison

Injury No.: 04-007832

Dependents: N/A  
Employer: Stephen Vincel Honda  
Additional Party: Second Injury Fund  
Insurer: Missouri Chamber of Commerce Group  
Hearing Date: April 16, 2007

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

Checked by: CTL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: January 29, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant fell injuring his knees and low back in the accident of January 29, 2004.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left knee, right knee and low back
14. Nature and extent of any permanent disability: Permanent and total disability as a result of the primary injury and the prior existing injuries and disabilities.
15. Compensation paid to-date for temporary disability: \$6,377.03
16. Value necessary medical aid paid to date by employer/insurer? \$21,403.91

Employee: Kenneth Allison Injury No.: 04-007832

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$
19. Weekly compensation rate: \$245.65/\$245.65
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable:

109.2 weeks of permanent partial disability from Employer

(Settled)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
\$245.65 payable by SIF for weeks beginning July 19, 2006 and thereafter for Claimant's lifetime as provided by law (109.2 weeks from the date Claimant reached maximum medical improvement on June 16, 2004).

TOTAL: \*

23. Future requirements awarded:

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Brian Stokes

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Kenneth Allison	Injury No.: 04-007832
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Stephen Vincel Honda	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Missouri Chamber of Commerce Group	Checked by: CTL:tr

### PREFACE

A hearing was held in the above-mentioned matter on April 16, 2007. Kenneth Allison, Claimant, was represented by Attorney Brian Stokes. Attorney Karietha Osborne represented the Second Injury Fund.

### ISSUE

1. Second Injury Fund liability.

### STIPULATIONS

1. The Claimant's rate of compensation for permanent partial disability is \$245.65 and temporary total disability

is \$245.65.

2. On January 29, 2004, the Claimant sustained an accidental injury in his employment.
3. Claimant reached maximum medical improvement on June 16, 2004.
4. A Stipulation for Compromise Settlement of the primary case, Exhibit A, and the facts therein were stipulated. It should be noted that Claimant's Exhibit A, on paragraph 5, should have been 26 weeks for temporary total disability rather than 16 weeks.

### **EXHIBITS**

Claimant offered the following exhibits which were accepted into evidence:

- |            |   |
|------------|---|
| Exhibit A. | Stipulation for Compromise Settlement for Primary Injury. |
| Exhibit B. | 13 Week Wage Statement.                                   |
| Exhibit C. | SIF Medical Records Internal Medicine.                    |
| Exhibit D. | Primary Injury Treatment Records.                         |
| Exhibit E. | Deposition of James Israel.                               |
| Exhibit F. | Deposition of Shawn Berkin, D.O.                          |
| Exhibit G. | List of Medications.                                      |

The Second Injury Fund offered no exhibits.

### **FINDINGS OF FACT**

1. Claimant, Kenneth Allison, at the time of the hearing was 59 years of age. Claimant completed the ninth grade and from all of the exhibits and testimony it seems Claimant possesses limited reading and writing skills.
2. Claimant sustained his primary injury on January 29, 2004, when he was working as a truck driver and fell and sustained injuries to his low back and both knees.
3. In accordance with Claimant's Exhibit A, his primary case against the Employer was settled for 22.5% of the left leg at the knee, 22.5% of the right leg at the knee, 7.5% of the body as a whole referable to the low back, and a 10% load factor with regard to the knees.
4. Prior to Claimant's primary injury of January 29, 2004, Claimant suffered from preexisting disabilities including hypertension, sclerotic heart disease, gastroesophageal reflux disease, migraine headaches, neuropathy of the hands and feet and emphysema.
5. Claimant had worked as a mechanic but because of his preexisting disabilities he had to have people assist him at work and as a result had to go to obtain a job as a truck driver.
6. Claimant was examined by Dr. Berkin on behalf of the Claimant and he testified very credibly. He was of the opinion that the Claimant could not continue in the work that he had normally performed because of preexisting as well as the primary injury.
7. Claimant was seen by certified vocational expert, Mr. James Israel, who testified very credibly that Claimant is permanently and totally disabled and unable to compete in the open labor market because of his primary injury as well as his preexisting injuries and taking into consideration Claimant's age and limited education.

### **CONCLUSIONS OF LAW**

1. Claimant is permanently and totally disabled and unable to compete in the open labor market as a result of his primary injury combined with his preexisting injuries and disabilities.
2. Claimant is permanently and totally disabled and is entitled to permanent and total disability benefits from the Second Injury Fund for the Claimant's lifetime as provided by law.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Cornelius T. Lane  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*