

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

Injury No.: 02-009091

Employee: Karim Alnaumany  
Employer: Trend Manufacturing (Settled)  
Insurer: Travelers Indemnity Co. (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: January 4, 2002  
Place and County of Accident: St. Louis, 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 August 3, 2006. The award and decision of Administrative Law Judge Margaret D. Landolt, issued August 3, 2006, 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 13<sup>th</sup> day of December 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Karim Alnaumany

Injury No.: 02-009091

Dependents: N/A  
Employer: Trend Manufacturing (Settled)  
Additional Party: Second Injury Fund  
Insurer: Travelers Indemnity Co. (Settled)  
Hearing Date: May 22, 2006

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

Checked by: MDL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? 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 4, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee injured his right upper extremity while lifting a kitchen countertop.
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: Right upper extremity
14. Nature and extent of any permanent disability: 19% permanent partial disability of the right upper extremity at the 232 week level
15. Compensation paid to-date for temporary disability: Not determined
16. Value necessary medical aid paid to date by employer/insurer? Not determined

Employee: Karim Alnaumany Injury No.: 02-009091

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: Not determined
19. Weekly compensation rate: \$240.00 for permanent partial disability
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable: -0-
22. Second Injury Fund liability: Yes

10.5 weeks of permanent partial disability from Second Injury Fund \$2,520.00

TOTAL: \$2,520.00

23. Future requirements awarded: N/A

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:

Mr. Kevin Wayman

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Karim Alnaumany	Injury No.:	02-009091
Dependents:	N/A	Before the	<b>Division of Workers'</b>
Employer:	Trend Manufacturing (Settled)	<b>Compensation</b>	
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Travelers Indemnity Co. (Settled)	Checked by:	MDL:tr

### PRELIMINARIES

A hearing was held on May 22, 2006, at the Division of Workers' Compensation in the City of St. Louis. Karim Alnaumany (Claimant) was represented by Mr. Kevin Wayman. Trend Manufacturing (Employer) and its insurer, Travelers Indemnity Company, previously settled its liability with Claimant. This case proceeded to a hearing against the Second Injury Fund only which was represented by Assistant Attorney General Kay Osborne. Mr. Wayman requested a fee of 25% of Claimant's award.

The parties stipulated that on or about January 4, 2002, Claimant sustained an accidental injury arising out of and in the course of his employment; at that time Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated that the applicable rate of compensation is \$240.00 for permanent partial disability benefits. The single issue for resolution by hearing is what is the nature and extent of permanent partial disability sustained by Claimant with regard to the Second

## SUMMARY OF EVIDENCE

Claimant was born in Iraq, and came to the United States in 1994. He has a college degree in sports from Iraq. Claimant is right-handed. Claimant began working for Employer in 2001. His job was to carry kitchen countertops. The countertops were large and heavy.

On January 4, 2002, Claimant injured his right arm from the shoulder to his hand while lifting a kitchen countertop. Claimant went to see Dr. Haupt who x-rayed him and gave him an injection in his elbow. He was taken off work and referred to physical therapy. Currently, Claimant is unable to make a fist and is unable to lift anything heavy. Sometimes his elbow burns at night, and there is numbness and pain with movement of his shoulder. He is unable to carry a gallon of milk and has decreased grip strength. Claimant also has trouble lifting overhead and has lost one-half of the strength in his arm. He has numbness in the fingers of his right hand and, when he wakes up in the morning, he has difficulty making a fist. He has weakness lifting anything away from his body.

Claimant testified that he represented his country throwing the discus. In 1995, he had an injury to his right shoulder when he slipped on ice while working for another employer. He received medical treatment for his shoulder.

Claimant previously injured his left hand in 1985. He was participating in professional sports when he fractured his left thumb. His left thumb became infected which ultimately led to a partial thumb amputation. Currently, Claimant has trouble tying his shoe because he can't use his thumb. He has to use his index and middle finger. If he grips using his remaining thumb his hand hurts. He has trouble picking up anything with his left hand. The stub of his left thumb bothers him, especially in the wintertime in the cold. He now uses his right hand more because his left thumb has been amputated.

Claimant settled his claim against Employer for the primary injury for 10% of the right shoulder and 10% of the right elbow.

### *Medical Evidence*

Dr. Haupt examined Claimant on February 14, 2002, and diagnosed a shoulder strain, lateral epicondylitis of the right elbow, decreased sympathetically induced swelling and discoloration, and possible low grade carpal tunnel complaints. Dr. Haupt recommended physical therapy and on April 4, 2002, found Claimant to be at maximum medical improvement.

Claimant was examined by Dr. Volarich on November 18, 2002. Dr. Volarich diagnosed a right shoulder sprain/strain of the rotator cuff tendonitis, and a right elbow lateral epicondylitis. Dr. Volarich further diagnosed a left shoulder AC separation asymptomatic, and a left thumb amputation at the distal tip. Dr. Volarich opined that Claimant's disabilities are 20% of the right upper extremity at the level of the shoulder, 30% permanent partial disability of the right upper extremity at the elbow, and 25% permanent partial disability to the left hand due to the amputation of the distal interphalangeal joint. Dr. Volarich testified that there was more than a 15% disability to Claimant's arm.

## FINDINGS OF FACT AND RULINGS OF LAW

Based upon my observations of Claimant at hearing, the evidence presented, and the application of Missouri law, I find:

Claimant sustained permanent partial disability exceeding 15% of a major extremity. A claimant has the burden to prove that he or she had a preexisting permanent partial disability of such seriousness as to constitute a hindrance or obstacle to employment in order to recover permanent disability compensation from the Second Injury Fund. Section 287.220.1; *Motton v. Outsource Intern.*, 77 S.W.3d 669, 673 (Mo.App. E.D. 2003). Among other elements, the claimant must show that the "preexisting permanent partial disability ... if a *major extremity injury only, equals a minimum of fifteen percent permanent partial disability*, according to the medical standards that are used in determining such compensation." *Motton*, 77 S.W.3d at 673 (quoting Section 287.220.1).

Claimant settled his primary injury for 10% permanent partial disability of the right shoulder and 10% permanent partial disability of the right elbow. That equals 44.2 weeks of compensation. Fifteen percent of the right upper extremity is 34.8 weeks of compensation. The case of *Shipp v. Treasurer of the State of Missouri*, 99 S.W.3d 44 (Mo.App. 2003) (overruled on other grounds in *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.2003)) is controlling in this matter. The *Shipp* Court found that an injury to the arm at the wrist and at the elbow are also injuries to a major extremity. The

Court held that if the claimant has multiple injuries to a major extremity at various levels, it might be appropriate depending on the facts and circumstances to rate the percentage of disability to the entire major extremity.

Dr. Volarich testified that Claimant sustained a 20% permanent partial disability of the right upper extremity at the shoulder and 30% permanent partial disability of the right upper extremity at the elbow related to his work accident of January 4, 2002. I find that the evidence supports a finding that Claimant has sustained a permanent partial disability of 19% of the right upper extremity related to his work accident of January 4, 2002. I further find that Claimant sustained a permanent partial disability of 15% to the left hand due to the amputation of the distal interphalangeal joint. I find that a 15% load should apply due to the fact that Claimant's injuries are to opposite extremities, and his injuries combine to create a greater overall disability than their simple sums.

In conclusion, I find the Second Injury Fund is liable to Claimant for 10.5 weeks of compensation at the rate of \$240.00 per week or \$2,520.00.

This award is subject to a 25% lien in favor of Claimant's attorney, Mr. Kevin Wayman.

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

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

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

A true copy: Attest:

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

Employee: Karim Alnaumany

Injury No.:

02-009091