

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

Injury No.: 04-025439

Employee: James Andrews
Employer: City of Glendale
Insurer: St. Louis Area Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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, read the briefs, heard oral argument, 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 October 16, 2008.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 16, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: James Andrews

Injury No.: 04-025439

Dependents: N/A

Before

the

Division of

Workers'

Employer: City of Glendale

Compensation

Department of Labor and Industrial

Relations of Missouri

Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: St. Louis Area Insurance Trust

Hearing Date: July 30, 2008

Checked by: MDL

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: March 11, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County, 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 was fighting a fire when he fell into a fish pond
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Body as a whole
14. Nature and extent of any permanent disability: 12-1/2% of the body as a whole referable to the cervical and lumbar spine
15. Compensation paid to-date for temporary disability: \$4,480.58
16. Value necessary medical aid paid to date by employer/insurer? \$11,835.48

Employee: City of Glendale

Injury No: 04-025439

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$662.55/\$347.05
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

50 weeks of permanent partial disability from Employer	\$17,352.50
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22. Second Injury Fund liability: Yes

34.2 weeks of permanent partial disability from Second Injury Fund	\$11,869.11
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Total:	\$29,221.61
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23. Future requirements awarded: None

Said payments to begin 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. Dean L. Christianson

FINDINGS OF FACT and RULINGS OF LAW:

Employee: James Andrews

Injury No.: 04-025439

Dependents: N/A

Before the
Division of Workers'

Employer: City of Glendale

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Compensation
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: MDL

PRELIMINARIES

A hearing was held on July 30, 2008 at the Division of Workers' Compensation in the City of St. Louis. This case was tried concurrently with Injury No. 05-089725, which is the subject of a second award. James Andrews ("Claimant") was represented by Mr. Dean Christianson. City of Glendale ("Employer") and its Insurer, St. Louis Area Insurance Trust, were represented by Mr. Mark Bates. The Second Injury Fund ("SIF") was represented by Assistant Attorney General Kareitha Osborne. Mr. Christianson requested a fee of 25% of Claimant's award.

The parties stipulated that on or about March 11, 2004, Claimant sustained an accidental injury arising out of and in the course and scope of employment. At the time of the accident, Claimant was earning an average weekly wage sufficient to entitle him to the maximum rates of compensation of \$662.55 for Temporary Total Disability ("TTD") benefits, and \$347.05 for Permanent Partial Disability ("PPD") benefits. Employer paid TTD benefits of \$4,480.50 for 8 and 6/7 weeks from March 12, 2004 until March 21, 2004 and from March 26, 2004 until May 16, 2004. Employer also paid medical benefits of \$11,835.48. Employment, venue, notice and timeliness of the claim are not at issue.

The issues for resolution by hearing are: liability of Employer to provide future medical treatment; nature and extent of permanent partial disability sustained by Claimant; whether Claimant is permanently and totally disabled; liability of the SIF; and dependency.

SUMMARY OF EVIDENCE

Claimant is a 51 year old man who was in the US Air Force from 1975 to 1979, and was honorably discharged. While in the military, Claimant attended technical school, and became a firefighter. Claimant obtained his GED in 1975, and graduated from Forest Park Community College in 1987 with an Associates Degree in Applied Science for Fire Technology.

Claimant went to work for Employer as a firefighter in 1980, and worked there continuously until he retired in April 2006.

PREEXISTING MEDICAL TREATMENT

Claimant first injured his back in 1992 when he was taking a bath, and moved the wrong way in the bathtub. He was in severe pain, and sought medical treatment. In 1992, Claimant underwent a percutaneous lumbar discectomy at L4-5. When Claimant continued to have post operative symptoms he underwent a right L4-5 subtotal laminotomy with foraminotomy for L5 nerve root decompression. The post-operative diagnosis was right L5 radiculopathy, lateral recessed stenosis L4-L5 level. Following his 1992 back surgery, Claimant was able to return to work as a firefighter, although he continued to have back pain.

In approximately 1997, Claimant was diagnosed with benign prostatic hypertrophy. Claimant has taken several medications with no success. He has difficulty urinating, and the condition affected his work because he had to use the bathroom frequently, which was difficult while on fire calls.

Claimant testified he had a ruptured eardrum, and has had a ringing in his ears for approximately 10 years.

He testified it affected him at work because it made it difficult for him to hear the radio. In addition, he has difficulty hearing his wife speak.

In 1999, Claimant saw Dr. Stahle for several months for neck and back complaints arising out of a work accident. Claimant was in full gear, and tripped over a curb. After a short course of medication and physical therapy, Claimant returned to full duty.

Claimant saw Dr. Rickmeyer, his primary care physician, in October 2000 with complaints of back pain. Dr. Rickmeyer diagnosed low back pain status post laminectomy, and prescribed several medications.

Claimant returned to Dr. Stahle in December 2000 after injuring his back while on a ladder. Dr. Stahle diagnosed back pain, and ordered an MRI which revealed postoperative and degenerative changes with mild disc space abnormalities at several levels. There was minimal disc bulging at L3-4 with no stenosis identified. At L4-5 and L5-S1 there was mild diffuse disc bulge with associated enhancing scar tissue, and no stenosis identified.

Dr. Stahle thought Claimant had degenerative disk problems, and felt Claimant had an acute flare-up of preexisting problems. Dr. Stahle did not find his problems to be related to his October, 1999 injury, but rather were related to his 1992 back injury. Dr. Stahle stated "he (Claimant) will have back trouble, but most of it is pre-existing and arthritic in nature." Dr. Stahle prescribed medications and physical therapy in an effort to calm his acute process down back to his baseline, and returned Claimant to full duty. In January, 2001 Dr. Stahle found Claimant to be back at baseline.

In 2002, Claimant injured his right shoulder which ultimately led to surgery in 2003. Claimant underwent a right shoulder arthroscopy, with debridement of labral and rotator cuff fraying, a subacromial decompression, and distal clavicle excision. The post operative diagnosis was right shoulder pain, secondary to subacromial impingement, symptomatic acromioclavicular joint degenerative arthritis. Following his surgery Claimant was released to full duty.

MARCH 11, 2004 ACCIDENT

On March 11, 2004, Claimant was called to the scene of a house fire. Claimant was in the back of the house, and fell into a fish pond while wearing his full gear. After a struggle, he was able to get out of the pond, and felt immediate pain in his back. Claimant reported the accident, and was referred to Dr. Stahle on March 15, 2004. Claimant complained of neck, back and knee pain. Dr. Stahle diagnosed neck and back pain, and a knee strain. He took Claimant off work for one week, and prescribed medication and physical therapy. Claimant returned for a follow up visit on March 22, 2004. Dr. Stahle diagnosed neck pain, recommended Claimant continue taking anti-inflammatories, and released Claimant to full duty on March 25, 2004.

Cervical and Lumbar MRIs were performed on March 26, 2004. The cervical MRI was normal. The lumbar MRI showed lumbar spondylosis with moderately bulging, degenerative disc at L4-5 and moderately bulging, degenerative and atrophic disc at L5-S1 with marginal sclerosis. There was slight central stenosis at those two levels with no disc extrusion.

After reviewing the MRIs, Dr. Stahle did not believe Claimant to be a surgical candidate. He diagnosed neck and back pain, and recommended epidural steroid injections. Dr. Stahle kept Claimant on light duty, and recommended he obtain a second opinion on his pain.

Claimant first saw Dr. Chabot on May 7, 2004 complaining of back pain radiating into the right leg, aggravated with more vigorous activities with numbness and tingling involving the top of the right foot. Dr. Chabot recommended an MRI which revealed evidence of advanced disc degeneration involving the lumbar spine with no evidence of specific neural compression. He allowed Claimant to return to work with no lifting more than 35 pounds. He recommended physical therapy, Vicodin for pain, and Soma for muscle spasm. Claimant continued to follow up with Dr. Chabot, who recommended selective nerve root injections at L4 and L5 on the right. On June 2, 2004, Dr. Chabot noted Claimant's symptoms had improved 65% with injections and therapy. His impression at that time was resolving neck and back pain. He allowed Claimant to return to work limited duty with no lifting more than 60

pounds.

Claimant attended Work Hardening, and was able to perform in the heavy lifting category. On July 30, 2004 Dr. Chabot found Claimant to be at MMI and did not believe Claimant sustained any PPD.

On August 16, 2004, Claimant saw Dr. Rickmeyer complaining of low back pain after falling in a pond. Dr. Rickmeyer diagnosed low back strain, and prescribed Vicodin and Naproxen. Claimant returned to Dr. Rickmeyer in February, 2005 complaining of left shoulder, thumb, right leg and back pain as a result of pond accident. Dr. Rickmeyer diagnosed low back pain and osteoarthritis.

Dr. Mark Lichtenfeld testified on behalf of Claimant. Dr. Lichtenfeld examined Claimant on September 10, 2007. Dr. Lichtenfeld diagnosed the following conditions as a result of the work accident of March 11, 2004: chronic lumbosacral spine strain; chronic cervical spine strain; incitation, exacerbation, and acceleration of preexisting degenerative changes in the lumbar spine; lumbar spine radicular pain; left lateral disc bulging at L4-5 extending into the inferior left neuroforamen; and mild bilateral neural foraminal narrowing at L4-5 and L5-S1. Dr. Lichtenfeld testified Claimant sustained PPD of 7.5% of the body as a whole referable to the cervical spine; and 12.5% of the body as a whole referable to the lumbosacral spine; which combine to form an overall disability that is greater than the simple sum of the disabilities combined.

Dr. Lichtenfeld testified Claimant had preexisting disabilities of 15% of the body as a whole due to benign prostatic hypertrophy, 35% of the right shoulder, 7.5% of the body as a whole regarding the lumbar spine, and 15% of the body as a whole due to tinnitus. He further testified they create a hindrance or obstacle to Claimant obtaining employment and/or reemployment.

Dr. Lichtenfeld testified Claimant would need additional medical treatment as a result of an alleged occupational disease sustained on August 13, 2005, which is the subject of a separate award. Dr. Lichtenfeld also testified Claimant was permanently and totally disabled as a result of the alleged occupational disease of August 13, 2005, combined with his preexisting conditions. This is also the subject of a separate award.

Dr. Michael Chabot, an orthopedic spine surgeon, testified on behalf of Employer. Dr. Chabot testified Claimant reached maximum medical improvement on July 30, 2004, and could return to work without restrictions as a result of the work injury of March 11, 2004. Dr. Chabot testified Claimant did not suffer any PPD as a result of the injury of March 11, 2004, and the incident of March 11, 2004 was a substantial factor in his back conditions.

Dr. Russell Cantrell, a board certified physical medicine and rehabilitation physician, testified on behalf of Employer. Dr. Chabot examined Claimant on October 24, 2005. Dr. Cantrell testified Claimant's bulging discs in his lumbar spine were degenerative in nature, and were not caused by either his March 2004 or August 2005 work injury. Dr. Cantrell testified he found Claimant to be at maximum medical improvement, and released him to regular duty on November 28, 2005. Dr. Cantrell testified Claimant did not suffer any PPD as a result of his injury of March 11, 2004.

FINDINGS OF FACT AND RULINGS OF LAW

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

Claimant is not permanently and totally disabled as a result of the work injury of March 11, 2004. There is no evidence to support such a claim. Likewise, there is no evidence to support a finding that Claimant is entitled to future medical treatment as a result of his work injury of March 11, 2004. Since Claimant is not permanently and totally disabled as a result of his work injury of March 11, 2004, the issue of dependency is moot.

As a result of the stipulated accident of March 11, 2004, Claimant sustained disability of 12.5% of the body as a whole referable to the cervical and lumbar spine. Claimant's work accident resulted in an exacerbation of his underlying degenerative disc disease of the spine that necessitated treatment with medications, physical therapy and

injections.

The Second Injury Fund is liable for permanent partial disability benefits. In order to recover from SIF, a claimant must first prove a pre-existing permanent partial disability whether from compensable injury or otherwise, pursuant to § 287.220.1. The permanent disability pre-dating the injury in question must “exist at the time the work-related injury was sustained and be of such seriousness as to constitute a hindrance or obstacle to employment or re-employment should the employee become unemployed.” *Messex v. Sachs Elec. Co.*, 989 S.W.2d 206, 214 (Mo.App.1999); *Karoutzos v. Treasurer* 55 S.W.3d 493, 498 (Mo.App.)W.D., 2001).

Claimant had preexisting disabilities of 25% of the right shoulder, 15% of the body of a whole for benign prostatic hypertrophy, and 15% of the body as a whole for tinnitus. These prior disabilities constituted a hindrance or obstacle to employment or re-employment, and combined with the primary injury to create a greater overall disability. A load factor of 15% shall apply. Claimant’s prior lumbar spine condition did not reach the threshold amount of 12.5% of the body as a whole to trigger SIF liability. Claimant is entitled to 34.2 weeks of compensation from the SIF at the rate of \$347.05 or \$11,869.00.

This award is subject to an attorney’s lien in the amount of 25% in favor of Claimant’s attorney Mr. Dean L. Christianson.

Date: _____

Made by: _____

MARGARET D. LANDOLT

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

Jeffrey W. Buker

Director

Division of Workers' Compensation