

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

Injury No. 10-085096

Employee: Michael Ard (deceased)
Alleged Dependent: Victoria Ard
Claimant: Gilbert Ard
Employer: Jim Plunkett, Inc.
Insurer: Regent Insurance Company

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) the nature and extent of employee's injury; and (2) whether or not employee is permanently and totally disabled. The administrative law judge took evidence as to those issues at a hearing on August 23, 2013. Subsequent to that hearing, but prior to the administrative law judge's issuance of an award, employee died on September 14, 2013. On February 28, 2014, the parties appeared again before the administrative law judge to provide evidence relevant to the additional issue of determining employee's representatives and/or dependents.

By award issued May 22, 2014, the administrative law judge rendered the following determinations: (1) employee is not entitled to any compensation for psychological or psychiatric impairment as a result of the October 15, 2010, work injury; (2) employee suffered a permanent partial impairment of 65% of the body as a whole; (3) employee's permanent partial impairment of 65% of the body as a whole accrued when Dr. Wise released employee at maximum medical improvement on April 5, 2011; and (4) Victoria Ard's marriage to David Pflugradt is a void marriage that was invalid from its inception, and Victoria Ard is employee's dependent.

Employer filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in finding employee sustained a 65% permanent partial impairment as a result of his work injury; and (2) in finding that the marriage of Victoria Ard and David Pflugradt was void.

Employee, through his estate, filed a timely application for review with the Commission alleging the administrative law judge erred in concluding that Victoria Ard is employee's dependent.

Employee: Michael Ard (deceased)

- 2 -

On September 26, 2014, employee, through his estate, filed a Motion to Submit Additional Evidence (1st Motion) with the Commission. Therein, employee alleged that a Judgment and Decree of Annulment entered by the Circuit Court of Jackson County on January 27, 2014, was set aside and vacated by order dated September 15, 2014. Employee attached a copy of the order to his 1st Motion as Exhibit A and requested that the Commission allow employee to submit it as evidence in this case.

On October 6, 2014, the alleged dependent, Victoria Ard, filed a Motion to Stay Appeal Proceedings with the Commission. Therein, Ms. Ard alleged that proceedings were ongoing before the Circuit Court of Jackson County with respect to the annulment matter. On October 6, 2014, the Commission acknowledged both employee's 1st Motion and Ms. Ard's Motion to Stay Appeal Proceedings, and suspended the briefing schedule in this matter.

On February 10, 2015, employee, through his estate, filed Employee's Second Motion to Submit Additional Evidence (2nd Motion) with the Commission. Therein, employee alleged that on February 5, 2015, the Circuit Court of Jackson County issued a judgment denying Ms. Ard's petition for declaration of invalidity of marriage. Employee attached a copy of the order to his 2nd Motion as Exhibit A and requested that the Commission allow employee to submit it as evidence in this case.

By order dated April 21, 2015, the Commission directed all interested parties to show cause within 15 days why the Commission should not issue an order accepting into the record of evidence in this matter the exhibits attached to employee's 1st and 2nd Motions. Having received no objection, the Commission issued an order on May 28, 2015, accepting into the record of evidence in this matter the exhibits attached to employee's 1st and 2nd Motions, designated as Exhibits A1 and B1, and resuming the briefing schedule.

The Commission received briefs filed on behalf of employee's estate and the employer, but did not receive any brief filed by the alleged dependent, Victoria Ard. On August 6, 2015, the Commission re-mailed to Ms. Ard copies of the orders of Commission entered in this matter on April 21, 2015, and May 28, 2015, because a review of the legal file suggested previous mailings to Ms. Ard at her last known address of record were returned as undeliverable. In a correspondence included with those orders, the Commission advised Ms. Ard that she had until September 7, 2015, to file a brief. To date, we have not received any response to our correspondence of August 6, 2015, from Ms. Ard or from an attorney on her behalf.

For the reasons stated below, we modify the award of the administrative law judge as to the issue of dependency and the appropriate successor to employee's rights herein.

Discussion

These proceedings are revived pursuant to § 287.580 RSMo

The parties agree that employee died on September 14, 2013, after the initial hearing before the administrative law judge, but before any award was issued. Employer filed a Motion to Stay Proceedings with the Division of Workers' Compensation (Division) on

Employee: Michael Ard (deceased)

- 3 -

September 24, 2013, notifying the administrative law judge of employee's death and requesting that the proceedings be stayed until a determination could be made as to the appropriate party to continue employee's claim. The administrative law judge thereafter reopened the record on February 28, 2014, to permit the parties to present evidence as to the issue of dependency. He then issued an award of compensation in favor of employee's alleged dependent, Victoria Ard.

However, to date, there has been no finding pursuant to § 287.580 RSMo that these proceedings are revived and may proceed in favor of the successor to employee's rights. Section 287.580 controls whenever a party dies while proceedings are pending before the Division or Commission:

If any party shall die pending any proceedings under this chapter, the same shall not abate, but on notice to the parties may be revived and proceed in favor of the successor to the rights or against the personal representative of the party liable, in like manner as in civil actions.

The foregoing language refers us to Missouri Supreme Court Rule 52.13(a), which sets forth a specific procedure for substituting the proper party to continue an action whenever a party to the action dies:

If a party dies and the claim is not thereby extinguished, the court may, upon motion, order substitution of the proper parties. Suggestion of death may be made by any party or person in interest by the service of a statement of the fact of the death as provided herein for the service of a motion. A motion for substitution may be made by any party or by the successor or representative of the deceased party. Such motion, together with notice of hearing shall be served upon the parties as provided in Rule 43.01, and upon persons not parties in the manner provided for the service of a summons. Unless a motion for substitution is served within 90 days after a suggestion of death is filed, the action shall be dismissed as to the deceased party without prejudice.

Clearly, the foregoing procedures were not followed in this case. However, given that the interested parties were afforded a full and fair opportunity at the hearing before the administrative law judge of February 28, 2014, to present evidence as to the circumstances of employee's death and the appropriate successor to employee's rights, and because the parties do not object to our jurisdiction over this appeal, we conclude that the parties have received proper notice, and that the filing of a formal suggestion of death and motion to substitute parties pursuant to Rule 52.13(a) are not prerequisites to our application of § 287.580 in this case. This accords with the mandate of § 287.550 RSMo that "[a]ll proceedings before the commission or any commissioner shall be simple, informal, and summary[.]" We conclude that, pursuant to § 287.580, these proceedings are revived, and may proceed in favor of the successor to employee's rights.

Employee: Michael Ard (deceased)

- 4 -

Victoria Ard is not employee's dependent

Victoria Ard married David Pflugradt on September 2, 1992, in Platte County, Missouri. On September 8, 2001, Ms. Ard attempted to marry employee in Jackson County, Missouri. As of September 8, 2001, Ms. Ard had never attempted to dissolve or otherwise nullify her prior marriage to Mr. Pflugradt.

At the time of her purported September 2001 marriage to employee, Ms. Ard told employee that Mr. Pflugradt had died and that she was a widow. But Mr. Pflugradt had not died, and had never filed for divorce or otherwise attempted to dissolve his September 1992 marriage to Ms. Ard.

Following employee's death on September 14, 2013, Ms. Ard filed a Petition for Declaration of Invalidity of Marriage on November 27, 2013, in the Circuit Court of Jackson County, Missouri, seeking to annul her marriage to Mr. Pflugradt. On January 27, 2014, Ms. Ard appeared before the court to take up her Petition. Mr. Pflugradt was not present. Employee's estate did not receive notice of these proceedings, so there was no appearance on behalf of employee's estate at the hearing of January 27, 2014. Following the hearing, the court issued a Judgment & Decree of Invalidity of Marriage that same day, granting an annulment of Ms. Ard's marriage to Mr. Pflugradt. The court found that the Pflugradt marriage was invalid from its inception because Mr. Pflugradt lacked the mental capacity to fully appreciate the marriage contract.

On January 13, 2014, the Probate Division of the Circuit Court of Jackson County, Missouri, issued Letters of Administration appointing employee's father, Gilbert Ard, as the personal representative of employee's estate. On July 22, 2014, employee's estate filed with the court a Motion to Intervene and to Set Aside Default Judgment challenging the January 27, 2014, Judgment and Decree of Annulment.

On September 15, 2014, the court issued an order vacating and setting aside the January 27, 2014, Judgment and Decree of Annulment and ordered that employee's estate was permitted to intervene in the matter. On February 3, 2015, the court held a hearing to once again take up Ms. Ard's Petition for Declaration of Invalidity of Marriage. This time, employee's estate was present and participated in the hearing. That same day, the court entered a judgment denying Ms. Ard's petition. No appeal was taken.

In light of the proceedings before the circuit court, we find that Ms. Ard remains married to David Pflugradt, and that she was married to David Pflugradt on September 8, 2001, when she attempted to marry employee. Section 451.030 RSMo provides that "[a]ll marriages, where either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved." Consequently, we conclude that Ms. Ard's attempted marriage to employee was bigamous and void at its inception.

Section 287.240(4) RSMo defines a "dependent" for purposes of the Missouri Workers' Compensation Law, as follows:

Employee: Michael Ard (deceased)

- 5 -

The word "dependent" as used in this chapter shall be construed to mean a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury.

Because Ms. Ard was not married to employee at the time of the work injury on October 15, 2010, we conclude that she is not employee's dependent for purposes of the foregoing definition. It follows (and we so conclude) that Ms. Ard is not entitled to payment of any sum awarded herein.

There is no evidence that would suggest that any other individual qualified as employee's "dependent" for purposes of § 287.240(4) at the time of the October 2010 work injury. Employee's two adult children were living outside the home, were working, and were not dependent upon employee for support as of that date. We conclude, therefore, that employee died without dependents.

Section 287.230.1 RSMo controls the payment of accrued compensation where an employee dies without dependents, and provides, as follows:

The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, so far as the liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee shall be paid to his dependents without administration, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability.

Employee's father, Gilbert Ard, is the personal representative of employee's estate pursuant to the probate court's order of January 13, 2014. We conclude, therefore, that Gilbert Ard is the successor to employee's rights under the award, and that the accrued and unpaid compensation due employee shall be paid to him.

Corrections

On page 4 of his award, the administrative law judge recites the following issue as disputed by the parties: "Whether Mr. Ard died without dependents that would be entitled to accrued and unpaid compensation due to Mr. Ard at the time of his death such that the personal representative of his estate is entitled to receive and distribute such compensation pursuant to RSMo. § 287.130." We hereby correct the foregoing to read instead as follows: "Whether Mr. Ard died without dependents that would be entitled to accrued and unpaid compensation due to Mr. Ard at the time of his death such that the personal representative of his estate is entitled to receive and distribute such compensation pursuant to § 287.230 RSMo."

We note also that throughout his award, the administrative law judge used the phrase "permanent partial impairment" where he was clearly referring to "permanent partial disability" as defined under § 287.190 RSMo. See, e.g., *Award*, pages 21, 22. The courts have instructed that these terms are not interchangeable: "[a]n industrial *disability*

Employee: Michael Ard (deceased)

- 6 -

is a disability adversely affecting a claimant's ability to work or earning capacity, rather than physical *impairment* as such." *Carron v. Ste. Genevieve School Dist.*, 800 S.W.2d 64, 68 (Mo. App. 1990)(emphasis added). We hereby correct the administrative law judge's award to replace each instance of "permanent partial impairment" with "permanent partial disability."

Conclusion

We modify the award of the administrative law judge as to the issue of dependency and the appropriate successor to employee's rights herein.

Victoria Ard is not employee's dependent, and is not entitled to payment of any sum awarded herein. Instead, the accrued and unpaid compensation due employee in the amount of \$99,333.00 shall be paid to claimant Gilbert Ard, as the personal representative of employee's estate and successor to employee's rights under this award.

The award and decision of Administrative Law Judge Lawrence Rebman, issued May 22, 2014, 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 22nd day of October 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD

Employee: Michael Ard (Deceased) Injury No. 10-085096

Dependents: Victoria Ard (Alleged Spouse)

Employer: Jim Plunkett, Inc.

Insurer: Regent Insurance Company

Hearing Dates: August 23, 2013 and February 28, 2014 Checked by: LGR/pd/lh

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: October 15, 2010
5. State location where accident occurred or occupational disease was contracted: Kansas City, Platte 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 moving heavy glass windows when four windows fell on him.
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: Back/Body as a Whole

14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$4,814.12
16. Value of temporary total disability owed: N/A
17. Value of necessary medical aid paid to date by employer/insurer? \$112,990.52
18. Value of necessary medical aid not furnished by employer/insurer? N/A
19. Employee's average weekly wages: \$573.08
20. Weekly compensation rate: \$382.05/\$382.05
21. Method wages computation: By Stipulation
22. Amount of compensation payable: \$99,333.00
23. Second Injury Fund liability: None
24. Future requirements awarded: N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Michael Ard (Deceased) Injury No. 10-085096

Dependents: Victoria Ard (Alleged Spouse)

Employer: Jim Plunkett, Inc.

Insurer: Regent Insurance Company

Hearing Dates: August 23, 2013 and February 28, 2014 Checked by: LGR/pd/lh

On August 23, 2013, the employee and employer appeared for a final hearing before Administrative Law Judge Lawrence Rebman. The Division had jurisdiction to hear this case pursuant to §287.110. Shortly after the hearing, Mr. Ard was murdered and the parties sought an order determining dependency pursuant to §287.230 and §287.240. On February 28, 2014, the parties appeared for a hearing on the motion. The personal representatives of Michael Ard's estate appear and were represented by Jason Osteen. The employer, Jim Plunkett, Inc., and its insurer, Regent Insurance Company (hereinafter collectively employer) appeared through counsel, Mr. Anthony Andersen. Victoria A. Ard appeared in person and by counsel Robert J. Megraw.

STIPULATIONS

The parties stipulated that:

1. On or about October 15, 2010, Jim Plunkett, Inc. was an employer operating subject to Missouri Workers' Compensation law with its liability fully insured by Regent Insurance Co.;
2. Mr. Ard was its employee working subject to the law in Kansas City, Platte County, Missouri;
3. Mr. Ard sustained injury by accident within the course and scope of his employment on or about October 15, 2010;
4. Mr. Ard notified employer of his injury and filed his Claim For Compensation within the time allowed by law;
5. Mr. Ard earned an average weekly wage of \$573.08 resulting in a compensation rate of \$382.05 for permanent total, temporary total disability and for permanent partial disability;

ISSUES

The parties agreed that the issues to be decided are:

- (1) What is the nature and extent of the injuries Michael Ard sustained in an accident arising out of and in the course of employment on October 15, 2010?
- (2) Whether Mr. Ard died without dependents that would be entitled to accrued and unpaid compensation due to Mr. Ard at the time of his death such that the personal representative of his estate is entitled to receive and distribute such compensation pursuant to RSMo. §287.130.

EVIDENCE PRESENTED

At the hearing held on August 23, 2013, Mr. Ard testified on his own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

- A. Medical Records – 2 volumes
- B. Deposition of Brent Koprivica, M.D., taken 11/20/12
- C. Deposition of Sheba Khalid, M.D., taken 10/22/12
- D. Deposition of Wilbur Swearingin, taken 2/1/13
- E. Letter to Mr. Anton Andersen from Jason Osteen dated 2/25/13
- F. Report of Michael Justice, D.O., dated 1/14/12
- G. Wage Statement of Michael Ard

Although the employer/respondent did not call any witnesses, it did present the following exhibits, all of which were admitted into evidence.

1. Deposition of Christopher Wise, M.D., taken 6/4/13
2. Deposition of James Zarr, M.D., taken 6/25/13
3. Deposition of Terry Cordray taken 2/22/13
4. Deposition of Kathleen Keenan, PhD, taken 3/27/13
5. Deposition of Michael Ard taken 11/20/12
6. Medical Records from ARC Physical Therapy

At the hearing held on February 28, 2014, additional exhibits were presented on behalf of the deceased Claimant, Mr. Ard, all of which were admitted into evidence without objection.

- A. Claimant's death certificate
- B. Letters of Administration
- C. Affidavit by Mr. Pflugradt
- D. Waiver of Notice

Ms. Victoria Ard, alleged dependent, testified on her own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

1. Marriage License of Victoria Ard and Michael Ard
2. Judgment & Decree of Invalidity of marriage (Certified Copy of Annulment Judgment)

Michael Ard was born June 26, 1964. After graduating from high school, Mr. Ard became employed as a construction laborer for Mike Adams Construction. He was involved with framing residential homes.

A year later, he began working at a nail gun supply and packaging service company. He was a service technician for Carlson Systems where he would do repair work on air guns, compressors, packaging systems, shrink wrap machines, and strap wrap machines. Over time, he became responsible for processing payments, inside sales, and dealing with vendors.

Later, he worked at Midwest Staple and Nail stocking shelves. He also did retail sales of air guns, nails, staples and compressors for approximately 1½ years.

In 1987, Mr. Ard went back to work as a carpenter for Gary Adair Construction. He learned how to frame houses and work with tools. He continued this work through 1993 when he went to work for Mike Walker Construction. At that time, he became a lead carpenter and supervised 8 to 12 employees doing residential construction.

In 2000, Mr. Ard started AKA Construction doing residential framing of custom homes in Lee's Summit, Blue Springs, Independence, and Oak Grove, Missouri. At one time, he had 17 employees comprised of two framing crews. He scheduled work, scheduled the men, ordered supplies, bid on jobs, negotiated contracts, hired and fired employees, planned the delivery and scheduling of materials and equipment, kept the books, made the accounts payable, made the accounts receivable, made payroll, prepared bills and invoices, prepared the taxes, budgeted the jobs, sold the framing company's services, coordinated jobs, resolved customer and construction complaints and problems, oversaw the work and quality control, provided estimates, read blueprints, had knowledge of building codes, and confirmed that the work he did was within the building code requirements.

After five years, AKA Enterprises went out of business due to serious mismanagement including not paying income taxes. Mr. Ard went to work for various contractors as a framing carpenter and trim carpenter. In 2008, he went to work for Steve Hillman and constructed concrete walls, wood roofing, and offices. This included work involving trim, doors and windows.

Mr. Ard worked for Mike Titus Construction doing home remodeling work, which involved tearing out material, laying tile, drywall work, and some framing work.

In September of 2008, Mr. Ard was seen by Dr. M.A. Mirza at White Oak Psychiatric Services. At that time, he reported feelings of hopelessness, helplessness, and vague suicidal ideation. He was also suffering from crying spells. He was not sleeping well and reported that he spent his time doing nothing. He owed \$200,000 to the Internal Revenue Service, was having

conflict with his wife and son, and his wife had threatened to divorce him. He had lost his license and was driving without insurance. He had also been jailed two times in the past. Mr. Ard also had a history of polysubstance abuse using marijuana, methamphetamines, and cocaine beginning at age 16. At that time, Dr. Mirza diagnosed Mr. Ard with anxiety and depression. He also was taking Zoloft and Trazodone at this time. Mr. Ard's wife then left him in October of 2008, and his prescriptions for Zoloft and Trazodone were increased.

Mr. Ard lost his job in 2009. He again went into depression and ultimately sought treatment with Dr. John Frances. Mr. Ard was still having difficulty with depression and anxiety at that time. Dr. Frances' records indicate that Mr. Ard was having problems with his family and had had problems with both of his marriages. Dr. Frances diagnosed Mr. Ard with depression, anxiety disorder NOS, and panic disorder. He was continued on prescriptions for Zoloft and Trazodone. In 2010, Mr. Ard returned to Dr. Frances for treatment. Mr. Ard advised Dr. Frances that he was suffering anxiety attacks two to three times a week when seen in August of 2010. On August 2011, Dr. Frances increased Mr. Ard's prescriptions for Zoloft and Trazodone.

Mr. Ard was hired by Jim Plunkett, Inc. (JPI) in late September of 2010. He primarily performed work involving removing window frames, installing window frames, and installing glass.

On October 15, 2010, he was injured in an accident that occurred while he was working on a job at the Trans World Airlines administrative building. On this date, a forklift operator was raising a wood crate filled with four units of glass to the 3rd floor. Each unit of glass consisted of two panes. The glass was 1 inch thick and 7 foot by 12 foot in dimension and each unit weighed approximately 760 pounds. The load weighed over 3,000 pounds.

After the forklift operator had raised the crate up to the 3rd floor and set it down, Mr. Ard was tasked with unchaining the load from the forklift so that the forklift could back out. He was also tasked with stabilizing the load as the forklift backed away from the load. Claimant's left hand and arm were at or above shoulder height, holding on against the load, trying to stabilize it. His right hand was lower on the load in the mid-portion. The load started to rock as the forklift operato

r was pulling out the forks. Mr. Ard was not strong enough to resist the movement of this 3,000 pound load. The load fell onto him, crushing him and causing multiple traumatic injuries.

Mr. Ard was transported by ambulance to North Kansas City Hospital, where he was admitted as an inpatient from October 15, 2010 through October 21, 2010. He did have evidence of a displaced right distal fibular fracture along with non-displaced posterior tibial malleolar fracture. There was instability with subluxation of the ankle joint. David Paul, D.O., performed open reduction and internal fixation for the right distal fibular fracture on October 16, 2010.

As a result of the crush, Mr. Ard also had a severe pelvic fracture. There was an anterior pubic fracture as well as a lower left sided sacral fracture which involved the

sacroiliac joint. Christopher Wise, M.D. performed manipulation of Claimants' pelvis under anesthesia on October 18, 2010. Dr. Wise found that the pubic fracture was stable and that no internal fixation was necessary. For the sacral fracture, Dr. Wise performed percutaneous placement of an iliosacral screw.

Mr. Ard also sustained multiple rib fractures. There were left-sided fractures of the first through sixth ribs. This chest trauma was treated non-operatively. Claimant's left shoulder complaints were really not specifically evaluated to any significant degree while he was hospitalized at North Kansas City Hospital.

Once the acute care situation was stabilized, Mr. Ard was transferred to the inpatient rehabilitation unit at North Kansas City Hospital where Kala Danushkodi, M.D., oversaw him for inpatient rehabilitation from October 21, 2010 through October 29, 2010. Dr. Danushkodi documented multiple traumatic injuries associated with the October 15, 2010 event and corresponding treatment, including (a) blunt chest trauma with multiple rib fractures; (b) right displaced fibular fracture treated with open reduction and internal fixation; and (c) pubic and sacral fractures with the percutaneous fixation of the left sacroiliac joint and fracture. Dr. Danushkodi noted that Mr. Ard was non-weight bearing associated with his pelvic fractures and ankle fracture and that he did have post-operative edema.

After discharge from the rehabilitation unit at North Kansas City Hospital, Mr. Ard's orthopedic care and treatment were transferred from Dr. Paul to Dr. Wise. Dr. Wise saw him on November 3, 2010, and noted that he was experiencing some forefoot pain. As a result, x-rays were taken of Claimant's right foot on November 3, 2010. These were negative for any fracture. Dr. Wise had Mr. Ard maintained on the narcotic medication Norco (Vicodin).

Because of Claimant's left shoulder complaints, Dr. Wise sent him for an MRI scan of the left shoulder on December 1, 2010. This MRI revealed (a) a comminuted distal clavicle fracture with evidence of intermediate- to high-grade sprain of the acromioclavicular joint; (b) a non-displaced fracture of the humeral head and neck; (c) mild biceps pulley tendinopathy, but no rupture; (d) supraspinatus tendinopathy without full-thickness tear; and (e) signal alteration of the labrum consistent with possible partial injury. Dr. Wise recommended non-operative treatment with rehabilitation after reviewing these MRI results.

Mr. Ard attended extensive therapy through ARC. Dr. Wise indicated that Mr. Ard was able to perform sitting work on December 15, 2010. He had not been released to drive at that point, so he did not actually go back to work. Dr. Wise released Mr. Ard to drive on December 20, 2010. A special job was created at JPI Glass for Mr. Ard where he could work in the office beginning on December 28, 2010. Dr. Wise continued him on seated work only at an office visit on January 12, 2011.

Dr. Wise sent Mr. Ard for a functional capacity evaluation (FCE) on 3/7/11.

Sheba Khalid, M.D., a psychiatrist, testified by way of deposition on behalf of Claimant. She is board certified in psychiatry and has practiced in that specialty more than 20 years. She has treated a substantial number of patients diagnosed with depression and anxiety.

On October 16, 2010, David Paul, D.O., performed open reduction and internal fixation to Mr. Ard's ankle to repair the right distal fibular fracture. On October 18, 2010, Dr. Christopher Wise, an orthopedic trauma surgeon, performed manipulation of Mr. Ard's pelvis on October 18, 2010. Dr. Wise found that the pubic fracture was stable and that no internal fixation was necessary. For the sacral fracture, Dr. Wise inserted a screw across the fracture to hold it in place. Mr. Ard had no other surgeries. He did have non-displaced fractures of his shoulder and pelvis, which did not require surgical intervention.

Mr. Ard continued to see Dr. Wise for medical treatment following his injuries.

In March of 2011, Mr. Ard was operating a grinder and was written up for safety violations for failing to use safety goggles or gloves and for not having his hair pulled back so as not to get entangled with the grinder. In April of 2011, JPI terminated Mr. Ard's employment. Mr. Ard testified that it was because JPI did not have any work. JPI challenged Mr. Ard's request for unemployment saying he had been fired for cause based on the safety violations.

Mr. Ard testified that he did not look for any work after leaving JPI. He has made no effort to seek vocational retraining and made no applications for any jobs.

Dr. James Zarr was appointed as the authorized treating physician for pain medications after Dr. Wise released Mr. Ard. Dr. Zarr is a board certified physician in the field of physical medicine and rehabilitation and electrodiagnostic medicine. Dr. Zarr followed up with Mr. Ard two times, each a year apart. He met with him again in May of 2012 and in April of 2013. On April 17, 2013, Mr. Ard had no new complaints. Dr. Zarr felt that the restrictions imposed by Dr. Wise were appropriate and that Mr. Ard could return to work within those restrictions.

Dr. Wise released Mr. Ard at maximal medical improvement with a 50-pound restriction on April 5, 2011.

Mr. Ard continued to work for JPI Glass until Friday, April 8, 2011, when he was terminated. At that time, he was informed that "work was slow and he was laid off." Two additional JPI Glass employees were laid off around the same time. Mr. Ard was later informed that he had been terminated for violating safety rules the first day he was transferred into the shop in early March. It was not until Mr. Ard applied for unemployment benefits because he needed a source of income that he learned of this justification for his termination. He never worked again in any capacity for any employer.

Facts Regarding Dependency

Mr. Michael Ard was murdered on September 14, 2013 weeks after the final hearing in this matter and prior to the time an award was issued by the ALJ. At the time of Mr. Ard's October 15, 2010 injury and at the time of his death, Mr. Ard had two adult children who did not rely on him for financial support. Additionally, a short time prior to Mr. Ard's death, Counsel for Mr. Ard had uncovered evidence that Mr. Ard's marriage to Victoria Ard that was entered into on September 5, 2001 was invalid. Specifically, Ms. Ard had never dissolved or otherwise nullified a prior marriage she entered into on September 2, 1992 to an individual named David Pflugradt at the time she married Mr. Ard in September of 2001.

The testimony at the hearing indicates that Michael Ard and Victoria Ard had been romantically involved on and off since approximately 1987.

On September 2, 1992 during an "off" period in Michael and Victoria's relationship, Ms. Victoria Hamilton married David W. Pflugradt in Platte County, Missouri. (Exhibit 1)

According to the annulment decree David Pflugradt suffered from severe post traumatic stress disorder as a result of his service in the Armed Forces during the Vietnam War, so much so that his sister, Susan Vallandingham, served as his court appointed legal guardian then and still does so today (Exhibit 2). After a brief period of cohabitation with Mr. Pflugradt, alleged dependent left and resumed her relationship with Decedent.

On September 5, 2001, Michael and Victoria Ard married in solemnized ceremony in Jackson County, Missouri and lived together until shortly before Decedent's death. (Exhibit 1)

Mr. Ard was injured at work on October 15, 2010 which led to the filing of this claim in Workers' Compensation as well as a civil injury case (12AE-CV00550).

During the litigation of civil injury case, it was discovered that Claimant's marriage to David Pflugradt had never been dissolved which called into question the validity of Victoria Ard's marriage to Michael Ard.

On January 27, 2014, Victoria Ard's marriage to David Pflugradt was annulled by the Circuit Court of Jackson County. (Exhibit 2)

Ms. Ard is listed as "surviving spouse" on Decedent's death certificate. (Exhibit A)

The testimony of Ms. Ard was that at the time of the purported marriage to Mr. Ard in September 2001 she told him that Mr. Pflugradt had died. Ms. Ard testified at hearing that at the time she purported to marry Mr. Ard in 2001 she believed that Mr. Pflugradt had died because "she hadn't heard from him in a long time," and that at the time she purported to marry Mr. Ard in 2001 she believed that she was no longer married to Mr. Pflugradt because it was her belief that he "had taken care of" dissolving the marriage somehow.

Medical Reports

Dr. Christopher Wise provided treatment to Mr. Ard. In 2010, Dr. Wise referred the Mr. Ard to physical therapy at ARC. Dr. Wise monitored Mr. Ard's progress and determined that his fractures to his ankle and pelvis were healing, and that his shoulder fracture never showed any sign of displacement.

Mr. Ard went back to work at JPI starting January 1, 2011 in a limited duty capacity. He would answer the phone, make phone calls, deliver small packages and do general paperwork. Later, he was put in the shop. Mr. Ard underwent physical therapy with ARC on February 14, 2011; he was at ARC for almost 3 ½ hours. During that time, he walked on the treadmill for 15 minutes and then rode the exercise bicycle for 7 minutes each time. He also did stretching, core stabilization, and walking exercises.

On February 16, 2011, he did 15 minutes on the treadmill, 15 minutes on the upper extremity ergometer three times and two times on the bicycle for 15 minutes each.

On February 21, 2011, he is noted as being able to lift 101.5 pounds from 20 inches off the floor to his waist, 75 pounds from 15 inches off the floor to his waist, and from 10 inches off the floor to his waist. He also was able to lift 50 pounds above shoulder height. He also was observed having normalized gait after he was verbally cued to do so.

On March 7, 2011, he demonstrated the ability to lift 61.9 pounds from 20 inches to waist, 15 inches to waist and 10 inches to waist along with 50 pounds above shoulder height.

On March 11, 2011, Mr. Ard underwent a functional capacity evaluation. The maximum weight achieved to waist height was 102.8 pounds, 47.67 on his right and 50 pounds on his left. He was noted with an invalid impression due to variances in his base line and level on testing. In base line testing, he was able to pick up 68.5 pounds 10 inches to waist; 78.4 pounds 15 inches to waist; and 81.7 pounds from 20 inches to waist. The same levels using the lever arm were 93.22 pounds, 98.01 pounds, and 102.8 pounds.

Dr. Wise testified that patients will fail to give full effort during an FCE or self-limit efforts because of subjective pain complaints, not because they are malingering. (Id. at p. 30, l. 12-17). When prepping Claimant for the FCE, Dr. Wise explained that if Mr. Ard failed to give full effort "the value of the FCE would be nothing." (Employer/Insurer's Exhibit 1, p. 29, l. 21-p. 30, l. 4). He further explained to Mr. Ard that he would have to repeat the FCE if he failed to give full effort. (Id. at p. 30, l. 5-11).

Dr. Wise reviewed the FCE, which he referred to as "questionable" in an April 26, 2011 office note. In this regard, he noted that the therapist who conducted the FCE did not feel that Mr. Ard gave completely valid effort. (Id. at p. 29, l. 12-16). Despite his admonition to Mr. Ard that he

would have to repeat the FCE if he failed to give full effort and that its value would “be nothing” if Mr. Ard did not give full effort, Mr. Ard never repeated the FCE at Dr. Wise’s request or otherwise. (Id. at p. 30, l. 9-11; Claimant’s Exhibit A generally).

Dr. Wise gives greater weight to a FCE than all of the previous physical therapy notes when generating restrictions on physical activity, including lifting restrictions. (Employer/Insurer’s Exhibit 1, p. 21, l. 19-p. 22, l. 5, p. 27, l. 21-p. 28, l. 4). Nevertheless, Dr. Wise generated a 50-pound lifting restriction for Mr. Ard, meaning that Mr. Ard could lift 50 pounds from floor to waist and up to shoulder height as well. (Id. at p. 27, l. 7-20). He set no limitations or restrictions on how often Mr. Ard could lift 50 pounds. (Id. at p. 20, l. 18-25). Dr. Wise testified that Mr. Ard did not require any restrictions other than the lifting restriction. (Id. at p. 19, l. 12-p. 21, l. 23). The summary report indicates the biomechanical requirements of both lifts are identical so that the results should be almost identical. There is over a 30% variance in Mr. Ard’s efforts.

Dr. Wise reviewed the physical therapy reports and FCE and released Mr. Ard with a 50-pound weight restriction on April 5, 2011. He imposed no limitations on bending, twisting, and stooping. He did not limit Mr. Ard’s standing, walking or sitting. Additionally, he did not restrict Mr. Ard’s ability to lift overhead.

Thereafter, his care and treatment was transferred to James Zarr, M.D., a physical medicine and rehabilitation specialist, for ongoing chronic pain management. Dr. Zarr was prescribing Norco (Vicodin) and Oxycontin to Mr. Ard for pain management.

Ultimately, on October 31, 2011, Dr. Wise rated Mr. Ard with a twelve percent (12%) impairment to the body as a whole for all of his injuries. He did not feel that Mr. Ard’s pubic and sacral fractures were an impediment to Mr. Ard returning to work with the restrictions he provided. Similarly, he explained that individuals who have had an ankle fracture or a non-displaced shoulder fracture are typically able to return to work once they have recovered from those injuries.

Dr. James Zarr, M.D. testified on behalf of Employer/Insurer by way of deposition. Dr. Zarr is a physical medicine and rehabilitation physician who managed Mr. Ard’s chronic pain conditions until his death. He first saw Mr. Ard on May 27, 2011 and last saw him on April 17, 2013.

Dr. Zarr reviewed records from various providers. His opinion is that the 50 pound lifting restriction generated by Dr. Wise was more appropriate than the various restrictions on physical activity generated by Dr. Justice.

It is Dr. Zarr’s opinion that Mr. Ard would have required medical treatment for the rest of his life, namely continued use of the medications Norco and Oxycontin he was prescribing to Mr. Ard. He anticipated that Mr. Ard would require higher doses of such medications in the future to manage his pain.

He testified that Norco can cause drowsiness, mental clouding, central nervous system

depression, and “impairment of both physical and mental performance in some way or another.” (Id. at p. 26, l. 8-23). Dr. Zarr opined that the same is true of Oxycontin, only more so. (Id.). Oxycontin is a Schedule 2 narcotic, meaning it is a “higher-level narcotic” used only for “more severe pain” not for mild pain. (Id. at p. 26, l. 19-p. 27, l. 14).

Dr. Zarr testified that Mr. Ard walked with an antalgic gait. In his words, Mr. Ard walked with “a short stance phase on the right lower extremity.” (Id. at p. 29, l. 13-23). The stance phase accounts for about sixty percent of the gait cycle. (Id.). A person develops an antalgic gait (limp) to avoid pain on a weight-bearing structure. (Id. at p. 29, l. 24-p. 30, l. 14). Dr. Zarr attributes Mr. Ard’s antalgic gait to either his ankle injury or his pelvis injury or to both injuries. (Id.).

Walking with an antalgic gait can create or contribute to mechanical back pain because it creates increased stresses on the back by creating pressure in points of the spine where there is not normally pressure in an individual who walks normally. (Id. at p. 30, l. 9-p. 31, l. 2). Dr. Zarr did not ask Mr. Ard if he was suffering from back pain. (Id. at p. 31, l. 3-8). He did not include back pain in the disability rating he generated for Mr. Ard. (Id.).

Dr. Zarr provided a permanent partial disability rating of 20 percent of the body as a whole for Mr. Ard that “takes into account all of the fractures and surgeries that he’s had.” (Id. at p. 20, l. 10-23). In other words, this disability rating takes into account all of Mr. Ard’s injured body parts. (Id. at p. 29, l. 3-12). As with Dr. Wise’s disability rating, I find that Dr. Zarr’s rating lacks credibility when one considers the circumstances.

P. Brent Koprivica, M.D., who practices in occupational medicine, testified on behalf of Mr. Ard by way of deposition. He is board certified in that specialty and has practiced in occupational medicine on a full-time basis since 1983.

Mr. Ard saw Dr. Koprivica for an evaluation on July 23, 2011. Dr. Koprivica initially only addressed Mr. Ard’s physical injuries. He opined that, based on the injuries to Mr. Ard’s left shoulder, chest, pelvis, right foot, right ankle, and acting under the hypothetical that a vocational expert determined that Mr. Ard was not permanently totally disabled, Mr. Ard had a 65% permanent disability to the body as a whole. This rating was based on the synergism of combining the multiple physical impairments to each body part. Dr. Koprivica also found that if Mr. Ard was found by a vocational expert to be unemployable, he is permanently and total disabled based on the injuries he sustained on October 15, 2010.

Dr. Koprivica also felt that Mr. Ard needed significant restrictions. Those restrictions included: limit captive sitting to less than an hour; limit standing and walking intervals to less than an hour; avoid squatting; avoid kneeling or climbing tasks; avoid working on any uneven surfaces; avoid any above-shoulder lifting activities, particularly on the left; avoid repetitive pushing or pulling activities using the left upper extremity; limit himself to occasional lifting or carrying activities to a maximum of 30 pounds; and avoid jarring or whole-body vibration exposure. He also opined that Mr. Ard needed to have the ability to change between sitting, standing, and walking

because his tolerance for each activity would vary throughout the day. He also felt that Mr. Ard could not lift from the floor level because of altered mechanics.

Even though he provided significant restrictions, Dr. Koprivica did also admit that even considering those restrictions, Mr. Ard could still hire people, fire people, do paperwork, and generally run a business. These were Mr. Ard's primary job duties when he ran his own company.

Mr. Ard has also been evaluated by Drs. Sheba Khalid and Kathleen Keenan for his psychological issues. Mr. Ard saw Dr. Sheba Khalid on February 8, 2012. Dr. Khalid acknowledged that Mr. Ard had symptoms of depression and anxiety stemming back to 2008. She diagnosed him with adjustment disorder with mixed symptoms of anxiety and depression and a history of polysubstance and alcohol abuse and dependence. Based on these diagnoses, she felt that Mr. Ard had a fifteen percent (15%) overall psychiatric impairment. Dr. Khalid did not rate or analyze how much Mr. Ard's psychiatric disability existed prior to his October 15, 2010 injury. Specifically, she did not analyze what part of Mr. Ard's pace, persistence, and concentration was affected before October 15, 2010, and what was affected as a result of the injury. Additionally, her report indicates that Mr. Ard's symptoms actually increased when he was let go from his job in April of 2012.

Dr. Koprivica issued an addendum to his initial report on March 18, 2012, after reading Dr. Khalid's report. Based on her finding that the patient had a 15% permanent partial psychological impairment, he amended his own rating. Assuming that a vocational expert were to find Mr. Ard to be employable, he now felt Mr. Ard's rating would be 80% permanent partial disability to the body as a whole instead of the 65% he originally assigned for this hypothetical scenario. He restated his opinion that if a vocational expert were to find Mr. Ard unemployable, then he would consider him to be permanently and totally disabled.

Dr. Kathleen Keenan met with Mr. Ard on October 15, 2012 for an evaluation of his psychological issues. Dr. Keenan noted Mr. Ard's past issues and problems with his wife, children and parents, as well as his history involving depression and anxiety beginning in 2008. She felt that Mr. Ard had major depressive disorder, but that it was unrelated to his work. Specifically, she believed that Mr. Ard was transforming his work injury from October 15, 2010 into a reason not to deal with his own problems. Specifically, she felt that he was over-focusing on his physical injuries and problems as a way to avoid dealing with his emotional issues. Dr. Keenan found that Mr. Ard did not have any psychological or psychiatric disability as a result of his work injury. She concluded that the prevailing factor in causing the need for Mr. Ard's psychological and psychiatric treatment was his pre-existing personality and pre-existing depression and anxiety issues.

Mr. Ard was continued on modified duty on January 19, 2011. Dr. Wise recommended that he begin work conditioning on February 9, 2011. On March 9, 2011, a 20-pound lifting restriction was placed. It is at this point that Mr. Ard was transferred over into the shop at JPI Glass. Dr. Wise was concerned about the validity of effort at ARC on functional capacity testing on March 11, 2011.

Dr. Koprivica performed an evaluation of Mr. Ard that was admitted into evidence. This

evaluation was performed for the purpose of assigning a disability rating to Mr. Ard's October 15, 2010 work-related multiple traumatic injuries while employed by JPI Glass.

Dr. Koprivica testified that his physical examination of Mr. Ard revealed some self-limitation on lumbar examination with lack of fulfillment of the validity criterion that he believed was a pain response and that incorporated some issues from a behavioral standpoint regarding fear of pain. (Claimant's Exhibit B, p. 12, l. 13-p. 14, l. 15; Exhibit 2 to Claimant's Exhibit B, p. 11). Mr. Ard's grip strength had a bell-type distribution, consistent with full effort. (Claimant's Exhibit B, p. 13, l. 22-p. 14, l. 9). Waddell's testing, designed to identify exaggerated pain behaviors in individuals with chronic back pain, was appropriate in four out of five categories. (Id. at p. 12, l. 13-p. 14, l. 15; Exhibit 2 to Claimant's Exhibit B, p. 11). Overall, Dr. Koprivica's clinical opinion was that Mr. Ards's physical presentation was consistent with his objective severe multiple physical impairments. (Exhibit 2 to Claimant's Exhibit B, p. 11).

Dr. Koprivica testified that Mr. Ard sustained multiple physical injuries as a result of the October 15, 2010 work accident. Pursuant to Dr. Koprivica's testimony, the first injury that he suffered was to the left shoulder structure with a comminuted distal clavicle fracture, with a ligamentous injury of the AC joint, which was unstable, and a non-displaced proximal humeral head and neck fracture. Essentially, Mr. Ard suffered multiple broken bones in his left shoulder, including the AC joint, which is the joint between the shoulder blade and the collarbone. Associated with this injury, Mr. Ard was treated non-operatively but he has ongoing residual deficit in terms of weakness, pain and loss of motion.

The second injury that Mr. Ard sustained was severe chest trauma with multiple rib fractures that were treated non-operatively. The rib fractures healed. However, Mr. Ard has ongoing chest wall pain which impacts his ability to do forceful pushing or pulling-type activities.

The third injury that Claimant suffered was a severe pelvic injury. He had a documented pubic fracture, which is in the front of the pelvis, as well as sacral fracture which is in the back. Such injuries make the pelvic ring unstable. Mr. Ard underwent surgery which consisted of stabilization with percutaneous pinning of the left sacroiliac joint. He continues to have chronic mechanical back pain. Based on that, with chronic sacroiliac pain, that limited his capabilities, including limiting him posteriorly in terms of sitting, standing and walking.

Finally, Mr. Ard sustained injury to the right hind foot with a displaced distal fibular fracture as well as a displaced posterior tibial malleolar fracture. There was instability of the ankle and it was treated surgically with both an open reduction and internal fixation, with fixation of the distal fibular fracture fragment. Mr. Ard has loss of ankle motion with chronic pain, altered gait. This impacts his ability to stand, walk, and limits him from being able to do activities on uneven surfaces, prevents him from squatting, crawling or climbing.

Dr. Koprivica testified that some of the above injuries will get progressively worse with time. Specifically, Mr. Ard will develop post-traumatic arthropathy that will negatively impact function, particularly in Mr. Ard's right ankle, his back, and the sacroiliac fracture.

Dr. Koprivica opines that sequela from a traumatic injury like this where Mr. Ard could have been killed is common. However, he deferred psychological or psychiatric issues regarding Mr. Ard to a mental health care expert. He made clear that he was only addressing the physical injuries that Mr. Ard sustained.

Dr. Koprivica generated severe restrictions on physical activities based upon the multiple traumatic injuries Mr. Ard sustained. He feels that Mr. Ard should limit captive sitting to less than an hour as a maximum and also that his standing and walking intervals should be limited to less than an hour as a maximum. However, Mr. Ard needs to have ad lib ability to change between sitting, standing and walking, because his tolerances are going to vary throughout the day depending upon the activity level.

Additionally, Mr. Ard should avoid squatting, kneeling or climbing tasks, working on any uneven surfaces and he should avoid above-shoulder lifting activities, particularly on the left. He should avoid repetitive or sustained activities above the shoulder girdle level. Mr. Ard should also avoid repetitive pushing or pulling activities using the left upper extremity. He should limit himself to only occasional lifting or carrying activities as well. A definition of occasional is an activity cumulative less than one-third of an eight-hour day. A maximum of 30 pounds would be appropriate for occasional lifting and carrying. It is Dr. Koprivica's opinion that Mr. Ard should not lift from the floor level because of his altered mechanics. He should avoid jarring or whole-body vibration exposure, and the common areas where people get these exposures are operating heavy equipment or driving commercially.

In assessing the October 15, 2010 work-related injuries, Dr. Koprivica apportioned 30 percent permanent partial disability of the left upper extremity at the 232-week level for the injury to Mr. Ard's left shoulder. For Mr. Ard's multiple rib fractures, with the ongoing chest wall pain that will impact on his limit to push and pull forcefully, Dr. Koprivica assigned a 5 percent permanent partial disability to the body as a whole. For the multiple pelvic fractures that required surgical intervention, Dr. Koprivica apportioned 25 percent permanent partial disability to the body as a whole. For the right ankle (which was basically a fracture dislocation of the ankle that required surgery), Dr. Koprivica apportioned 35 percent permanent partial disability of the right foot at the level of the ankle at the 155-week level.

When Dr. Koprivica looked at the synergism of combining these multiple disabilities and Mr. Ard's overall presentation, he recommended a vocational evaluation because there was a question in his mind as to whether or not Mr. Ard was employable or not and deferred to a vocational expert.

Under the hypothetical that a vocational expert determined Mr. Ard was not totally disabled, Dr. Koprivica would assign a global 65 percent permanent partial disability to the body as a whole. This combined disability considers the synergism of combining the multiple physical impairments attributable to the October 15, 2010 work accident. This global disability percentage does not take into consideration any psychological/psychiatric disability.

Under the hypothetical that a vocational expert determined Mr. Ard was unable to access the open labor market from a general disability standpoint, Dr. Koprivica opines that permanent total disability arises from multiple impairments and resultant disabilities attributable to the October 15, 2010 work injury in isolation. Stated differently, Dr. Koprivica considered Mr. Ard to be permanently and totally disabled without any consideration of psychological permanent partial disability to the overall presentation.

Michael Justice, D.O., an orthopedist, performed an evaluation of Mr. Ard that was admitted into evidence. This evaluation was performed at the request of Missouri Disability Determinations for the purpose of determining Mr. Ard's qualification for Social Security Disability benefits.

After reviewing medical records, interviewing Mr. Ard, and performing a physical examination of Mr. Ard, Dr. Justice opined that Mr. Ard's ability to perform work-related activities was as follows:

1. **Sitting:** In my opinion, Mr. Ard can sit 2 hours in a typical 8 hour workday with normal breaks and periodic alternating between sitting/standing for pain relief. There was obvious difficulty and pain in his ability to sit for more than 10-15 minutes during our interview.
2. **Standing/Walking:** In my opinion, the claimant can stand/walk 4 hours in a typical 8 hour workday with normal breaks and occasional alternating between sitting/standing for pain relief. There was difficulty noted in his ability to ambulate.
3. **Lifting:** In my opinion, lifting should be restricted to 30 pounds occasionally from floor to bench height with proper lifting mechanics.
4. **Carrying:** In my opinion, no more than 30 pounds occasionally for short distances or 10 pounds frequently.
5. **Handling/Fingering objects:** In my opinion, handling should be restricted with his left upper extremity to an occasional basis adhering to the lifting/carrying restrictions above.
6. **Hearing/Speaking:** No restrictions.
7. **Travel:** No restrictions per se, although he will have obvious difficulty traveling any considerable distances. (Claimant's Exhibit F, p. 1).

Dr. Sheba Khalid met with Mr. Ard on December 5, 2011 for approximately two hours. On that date, Mr. Ard reported that he is in pain 24 hours a day, that the pain is primarily concentrated in his pelvis, ankle, and shoulder, and that the intensity of this pain on most days is 5/10 on a scale of 1 to 10. Mr. Ard also reported that in April of 2011, he developed symptoms of tachycardia, decreased appetite, insomnia, some weight loss, decreased concentration, decreased energy, and feelings of hopelessness. He was also having panic attacks. These symptoms were triggered by the fact that he was let go from his job. Even though some of the symptoms were present prior to April 2011, they were exacerbated when his employment terminated.

During her exam, Dr. Khalid noted that Mr. Ard's mood was being anxious and dysphoric. She also observed that he appeared to be in pain and needed to shift his position several times to get comfortable and that he appeared to be somewhat older than his stated age. Dr. Khalid testified that she reviewed the entire set of medical records which were admitted as an exhibit to this hearing. She provided a diagnostic impression of Mr. Ard expressed in terms of Axes I-V consistent with DSM-IV, a psychiatric publication used nationally to provide parameters for the diagnosis of clinical psychiatric conditions.

Axis I pertains to all clinical psychological diagnoses. Dr. Khalid diagnosed Mr. Ard as suffering from Adjustment Disorder with mixed symptoms of Anxiety and Depression, history of polysubstance abuse, and history of alcohol abuse and dependence. Adjustment disorder is diagnosed when there is an identifiable stressor and the patient's reaction is either anxiety or depression or mixed and such reaction is of sufficient severity for clinical attention or interferes with day-to-day life.

Dr. Khalid provided no Axis II diagnosis for personality disorders and provided chronic back, shoulder, neck, and pelvic pain as current medical diagnoses for Axis III. With regard to Axis IV, Dr. Khalid noted that Mr. Ard has stressors which include (1) loss of employment, (2) financial problems, (3) legal issues (the present case), and (4) chronic pain.

Axis V is a global assessment of functioning. Dr. Khalid provided a global assessment of Mr. Ard's level of functioning (GAF) as a 65 on a hundred point scale, which denotes mild impairment of social and occupational function. In terms of disability, Dr. Khalid opined that Mr. Ard had no impairment in the area of daily living from a psychiatric standpoint. His difficulties in this area arose from his pain. In the area of concentration, pace, and persistence, Dr. Khalid opined that Mr. Ard had a mild Class II impairment. In the areas of social functioning and adaptation, Dr. Khalid testified that Mr. Ard had Class II mild impairment as well. Adaptation is a person's ability to function in a work environment and demands of the work environment. Mr. Ard had the ongoing stressor of chronic pain and his level of anxiety could deteriorate under a stressful work-related environment to the level as to trigger panic attacks.

Overall, Dr. Khalid opined that Mr. Ard was suffering from Class II mild impairment and she assigned a 15% permanent partial disability for his psychiatric condition. In this regard, she testified that Mr. Ard developed an Adjustment Disorder, with mixed symptoms of anxiety and depression, secondary to his marital conflict and divorce in 2008. He showed improvement with treatment and stopped the medications. Symptoms recurred and he restarted treatment. He again improved. In April 2011, due to being terminated from his job, he developed exacerbation of his anxiety symptoms again. Once Xanax was prescribed, it controlled the symptoms of panic attacks, but left him with ongoing residual symptoms of anxiety and obsessive worry.

Although Mr. Ard had a pre-existing psychiatric disorder¹, this disorder was exacerbated in April 2011, and continued to persist at a mild level with medications. She opined that his symptoms were likely to get exacerbated under stressful situations. Dr. Khalid testified that she did not find any evidence that Mr. Ard was malingering. No other treating health care providers have offered such an opinion either. (See generally Exhibit 5 to Claimant's Exhibit C). Dr. Khalid testified that Mr. Ard required and would continue to benefit from medication, especially because there is almost always overlap between chronic pain and anxiety and depression.

Kathleen Keenan, Ph.D., a psychologist, testified by deposition on behalf of Employer/Insurer. According to Dr. Keenan, Mr. Ard had poor insight into his emotions. In this regard, she diagnosed him as having more depression than he admitted to having. Dr. Keenan "concluded that he's [Claimant] actually getting some psychological benefit believe it or not out of the injury in that the injury has provided him with a concrete, egosyntonic, socially-acceptable explanation attribution for his inability to function, even if he has no psychological insight and would really not be able to see the ways in which he is benefitting psychologically."

On Axis I, she diagnosed him as suffering from a major depressive disorder recurrent moderately severe, a pain disorder associated with both psychological factors and a general medical condition, and a history of polysubstance abuse. On Axis II, she diagnosed Mr. Ard with dependent personality with traits and features, and possibility of dependent personality disorder, though she would have to have more evidence to rule that in or out.

Dr. Keenan testified that Mr. Ard had a prescription for Xanax to treat anxiety and that this prescription was added subsequent to the work injury in October 2010. With regard to such anxiety, Mr. Ard reported to her that he is chronically anxious despite taking Xanax as much as three times a day and that he has about two panic attacks a week on average.

She further testified that the level of Trazodone Mr. Ard takes was increased after the work injury from about 150 mgs to about 200 mgs and that the level of Zoloft Mr. Ard takes was doubled after the work injury from about 100 mgs to 200 mgs.

Dr. Keenan testified that Mr. Ard took "a lot" of his narcotic pain medications and that such medications can cause drowsiness, dizziness, mental clouding, central nervous system depression, and impairment of both physical and mental performance. The day that Mr. Ard met with Dr. Keenan, he rambled and wandered off topic. Mr. Ard reported to her that he has problems with

¹ With regard to prior treatment, Dr. Khalid provided the following history: Mr. Ard reports that he received treatment after his separation from his wife in October 2008. Prior to that, he had some conflict in his marriage for about six months. The records from Dr. Francis reflect that he began treatment with him on 7/12/11. Dr. Francis's diagnosis was Depression, Anxiety Disorder NOS, Panic Disorder without Agoraphobia, and Rule-Out Generalized Anxiety Disorder. He apparently also had seen Dr. Mirza previously. The history provided to Dr. Francis revealed that complaints of depression had been present since about 2004. He was given medications, and improved. Records reflect that in November 2011, he was on Zoloft 200 mg per day, Xanax 0.5 mg TID, and Trazedone 100 mg, two at bedtime. Dr. Mirza and Dr. Reddy treated him at White Oaks Psychiatric Services. His visits took place on 9/11/08, 10/13/08, and 4/3/09, with a diagnosis of Depressive Disorder NOS. The primary issue they identified was situational stress of unemployment and marital/family issues. He was prescribed Zoloft and Trazedone, and showed improvement in symptoms. Dr. Mirza's records reflect that Mr. Ard had received anti-depressants within the last year. There is also use of methamphetamine, and cocaine, 5 years prior to the visit. It is unclear as to why he switched physicians and started going to Dr. Francis. Mr. Ard states that he had stopped the medication after six months because he was doing better.

concentration and that he attributes cognitive difficulties he experiences to his medication.

Additionally, she agrees that the narcotic medications Oxycontin and Norco (Vicodin) that were used to treat Mr. Ard's pain condition can cause or increase depression, that such medications can cause anxiety and irritability, and that individuals who suffer from chronic pain conditions have a higher average rate of depression.

The medical records for Mr. Ard which Dr. Keenan reviewed reflect he had lost ten to fifteen pounds since he had been injured on the job, despite the fact he sometimes laid around all day, he sometimes slept all day, and that once or twice a month he slept all weekend. She also noted that he reported he had no motivation and that he had no interest in being around most people.

Dr. Keenan asked Mr. Ard about his hobbies prior to the time he sustained the subject work-related injuries, which he reported to her to be fixing cars, boating, golf, and bowling. She testified that "she imagine[d] he would not be able to perform those hobbies because of his physical injuries," that subsequent to his work-related injuries Mr. Ard lost interest in his hobbies "due to depression," that it can be "extremely depressing giving up hobbies that one loves," and that it was "understood" Mr. Ard felt depressed because he had to give up his hobbies.

Dr. Keenan administered the MMPI-2 (Minnesota Multiphasic Personality II) to Mr. Ard, which she testified is "probably the most standard test" in her field to assess psychological functioning. She testified that the results for Mr. Ard were valid, but that the MMPI-2 cannot distinguish between depression "that's pre-existing and depression that's current." The MMPI-2 testing revealed a T score of 71 (or possibly a score of 74) for Mr. Ard. Pursuant to the MMPI-2 manual, an individual who scores above 65 is suffering from a "significant level of depression."

Dr. Keenan gave Mr. Ard a global assessment of functioning (GAF) of 50 on a scale of 100 (with 55 being the highest GAF for Mr. Ard in the year prior to the time she saw him), a score that is significantly lower than the GAF of 65 that Dr. Khalid gave Mr. Ard.

Dr. Keenan testified that Mr. Ard "has an over-focus on his physical symptoms." (Employer/Insurer's Exhibit 4, p. 32, l. 13-p. 33, l. 2, p. 44, l. 17-24). This means that Mr. Ard was over-focusing on physical problems as a way of dealing with emotional issues that pre-existed the subject work-related injuries. (Id.).

Mr. Ard's "current state represents an exacerbation of his premorbid mental status." His method of coping with his injuries was making him worse rather than better. Dr. Keenan testified that from a psychological standpoint Mr. Ard had no permanent partial disability that was caused by the October 2010 work-related accident. Moreover, if Mr. Ard had any permanent partial disability from a psychological standpoint that pre-existed the October 2010 work-related accident, it would be at most "like 1 or 2 percent okay."

Vocational Reports

Mr. Wilbur Swearingin saw Mr. Ard on January 6, 2012 for a vocational evaluation. He noted in his report that Mr. Ard appeared at the evaluation unkempt. Mr. Swearingin's report did not list Mr. Ard's ability to do sales, order supplies, arrange for delivery of supplies, and other various management and supervisory skills that he had performed in the past. Swearingin testified that Mr. Ard essentially had no transferable skills, and his search for jobs was limited to sedentary and light jobs only. Based on his evaluation and applying the restrictions assigned by Dr. Koprivica, Mr. Ard was unemployable in the open labor market and thus permanently and totally disabled. Swearingin opined that using Dr. Wise's restrictions, Mr. Ard would be capable of performing any and all work except work in the Very Heavy category and would be considered to have no vocational impairment. Mr. Swearingin felt, however, that Mr. Ard's presentation was more consistent with that described by Dr. Koprivica. Based on this, his opinion was that Mr. Ard was permanently and totally disabled and unemployable as a consequence of his October 2010 work injury.

Mr. Terry Cordray, a vocational rehabilitation expert, met with Mr. Ard in October of 2012. The visit lasted approximately 2 ½ hours, and Mr. Ard was noted as having remained seated throughout the entire meeting. Mr. Cordray reviewed Mr. Ard's condition and his prior job tasks. Mr. Cordray felt Mr. Ard had significant transferable skills. These skills included knowledge of carpentry skills, knowledge of retail sales, supervisor skills, and skills he obtained from being an owner/operator of his own construction business. Specifically, his report lists other jobs available to Mr. Ard within his restrictions including assembly, night auditor, patient transporter, bill collection, retail sales, parking lot attendant, security system monitor, cashier at a convenience store, and working at a customer service or contractor desk or doing retail sales at Home Depot or Lowe's. He felt that many jobs existed in the labor market that Mr. Ard could use his experience in retail sales and hardware stores to do. He noted that following his work injury, Mr. Ard had physically demonstrated the ability to do light delivery and small product assembly.

CONCLUSIONS OF LAW

The Employee has the burden to prove the nature and extent of any permanent disability he sustained as a result of his October 15, 2010 work injury. *See* RSMo §287.190. He had the burden to prove the nature and extent of any disability by a reasonable degree of certainty. *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo. Ct. App. 1995).

“For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. The testimony of a lay witness can constitute substantial evidence of the nature, cause, and extent of disability when the facts fall within the realm of lay understanding. An injury, however, may be of such a nature that expert opinion is necessary to show that it was caused by the accident to which it is assigned. Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by

scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. Proper opinion testimony as to causal connection is competent and can constitute substantial evidence.” *Landers v. Chrysler Corporation*, 963 S.W.2d 275 (Mo.App. E.D. 1997).”

What is the nature and extent of the injuries Michael Ard sustained in an accident arising out of and in the course of employment on October 15, 2010?

I. Psychological Disability

Mr. Ard had significant pre-existing mental disability beginning in 2008 and possibly earlier. Mr. Ard had been treated for psychiatric issues, including depression, anxiety, and panic disorder, starting in 2008 and leading up to October 15, 2010. Both Drs. Keenan and Khalid acknowledged these issues in their reports. Stemming back to 2008, Mr. Ard had been treated for depression and anxiety. Mr. Ard began taking Zoloft and Trazodone at this time, and continued using those prescriptions throughout 2009 and 2010. Prior to his work accident, in August of 2011, Mr. Ard’s treating physician increased both prescriptions.

Mr. Ard introduced the report of Dr. Sheba Khalid. Dr. Khalid’s rating of 15% disability for his psychiatric impairment did not differentiate between disability that existed before the October 15, 2010 injury and disability that was a result of the October 15, 2010 accident. (Ex C, p 33-34) She also admitted that Mr. Ard was clearly suffering from depression and anxiety conditions prior to October 15, 2010. Because Dr. Khalid’s rating did not distinguish between what psychiatric impairment was pre-existing and what existed after the accident, Mr. Ard has failed to meet his burden of proving any mental disability resulted from the October 15, 2010 injury.

Dr. Keenan, on the other hand, felt that Mr. Ard had no psychological or psychiatric disability as a result of his work injury. She opined that Mr. Ard appeared to be transforming his work injury into a reason not to deal with his own personal problems. Based on the fact that Mr. Ard had significant pre-existing mental disability, she felt that the prevailing factor in causing the need for Mr. Ard’s psychological and psychiatric treatment were his pre-existing personality and pre-existing depression and anxiety issues.

For these reasons, Mr. Ard has not shown that he is entitled to any psychological or psychiatric impairment as a result of his October 15, 2010 work injury.

II. Physical Permanent Disability

Neither party argues in their briefs that Mr. Ard was permanently and totally disabled at the time of his death. The Employer claims that Mr. Ard has a 12% permanent partial impairment based on the rating of Dr. Wise. Dr. Wise treated Mr. Ard following his injury and referred Mr. Ard to physical therapy at ARC.

Dr. Wise reviewed the physical therapy reports and FCE and released Mr. Ard with a 50-pound weight restriction on April 5, 2011. He imposed no limitations on bending, twisting, and stooping. He did not limit Mr. Ard's standing, walking or sitting. Additionally, he did not restrict Mr. Ard's ability to lift overhead. Dr. Wise provided a 12% rating to the body as a whole. Both vocational experts indicate that Mr. Ard had a significantly higher level of disability than what is referenced in Dr. Wise's report. In addition, Dr. Zarr was Mr. Ard's physician for pain management and was prescribing narcotic pain medication Norco and Oxycontin. At the time of the hearing, Mr. Ard testified that he generally ingested eight Norco (Vicodin) per day and two Oxycontin per day to relieve his pain at that time. This level of pain control indicates a significant level of disability. Given the evidence in this case, Dr. Wise's opinion is not credible.

Mr. Ard argues, through his estate, he is entitled to an award of permanent partial disability benefits equal to eighty percent (80%) of the body as a whole. This is based on Dr. Koprivica's 65% rating to the body as a whole plus an additional 15% disability to the body as a whole on the psychological/psychiatric basis after his review of Dr. Khalid's report. As stated above, Dr. Khalid fails to apportion disability resulting from the accident. Mr. Ard has failed to sustain his burden of proof that is entitled to a fifteen percent (15%) permanent psychiatric impairment based on Dr. Khalid's report. I find Dr. Koprivica's opinion to be credible on the body as a whole rating.

Mr. Cordray testified Mr. Ard had skills that could be transferred to other employment. These skills included knowledge of carpentry skills, knowledge of retail sales, supervisor skills, and skills he obtained from being a supervisor of his and other construction businesses. I give credit to Mr. Cordray's opinion that Mr. Ard could use his experience in retail sales and hardware stores and it was likely he could be employed in those types of positions given his extensive injuries.

For these reasons, this Court finds that Mr. Ard had a permanent partial impairment of 65% to the body as a whole based on the rating of Dr. Koprivica.

III. Benefits following Mr. Ard's death on September 14, 2013.

Pursuant to RSMo 287.230.1, states that the Employee is only entitled to any accrued and unpaid compensation due to him at the time of his death. It specifically provides that "the death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, so far as the liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee shall be paid to his dependents without administration, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability" Employee right to permanent partial disability benefits have "accrued" once he reaches maximum medical improvement for his work injury. *Cantrell v. Baldwin Transp., Inc.* 296 S.W.3d 17, (Mo.App. S.D., 2009).

Accordingly Employee's permanent partial impairment of 65% to the body as a whole accrued when Dr. Wise released Mr. Ard at maximal medical improvement on April 5, 2011.

Whether Mr. Ard died without dependents that would be entitled to accrued and unpaid compensation due to Mr. Ard at the time of his death such that the personal representative of his estate is entitled to receive and distribute such compensation pursuant to RSMo. § 287.130.

Victoria Ard asserts that she was married to Michael Ard at the time of his injury and death. If she is found to be lawfully married to Michael Ard, then she is a dependent under the Workers' Compensation statutes. RSMo § 287.240(4) defines "dependent" as "a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury." As a dependent, Victoria Ard argues that she is entitled to accrued and unpaid compensation due to Mr. Ard at the time of his death because she was married to him.

"All marriages, where either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved." RSMo § 451.030. Missouri law clearly holds that if Victoria Ard was lawfully married to David Pflugradt at the time she married Decedent, that marriage is void.

Pursuant to Missouri law, an annulment is a judicial declaration that no marriage existed. *Everetts v. Apfel*, 214 F.3d 990, 992 (8th Cir. 2000). Missouri law distinguishes between "void" and "voidable" marriages. *Id.* A void marriage is invalid from its inception, because the parties lacked the capacity to contract under state law, or are related in a prohibited manner. *Id.* (citing RSMo. § 451.020). In contrast, a voidable marriage results from fraud, error, duress, or other imperfect consent. *Id.* (citing *Glass v. Glass*, 546 S.W.2d 738, 740 (Mo.App.1977)). The effect of the annulment decree varies according to whether the marriage is void or voidable. *Id.*

§ 451.020 RSMo. States in pertinent part: "All marriages ... between persons who lack capacity to enter into a marriage contract, are presumptively void..."

Ms. Ard argues that her marriage to Mr. Pflugradt was annulled as void from its inception. In support, Ms. Ard offered the grounds for the annulment set forth in the annulment decree are that David Pflugradt suffered from "severe post-traumatic stress" and "**lacked the mental capacity to fully appreciate the marriage contract.**" And, "**That the marriage of Petitioner Victoria A. Ard, and Respondent, David Pflugradt, is hereby annulled as invalid from its inception.**" (Exhibit 2, p. 1, 5 emphasis added). The decree indicates that Mr. Pflugradt did not appear at the hearing but he had been served on December 16, 2013.

Mr. Ard's counsel introduced into evidence at the hearing on dependency Letters of Administration appointing Gilbert Ard as the personal representative of Mr. Ard's Estate and affidavit executed by Mr. Pflugradt. (Exhibit's B & C) In Mr. Pflugradt's affidavit, he has attested to his competency to make the affidavit and that he married Victoria Ard on September 2, 1992. No direct evidence was produced at the hearing that Mr. Pflugradt has ever been under the care and/or

custody of a guardian or lacked the mental capacity to enter into the marriage contract.

Furthermore, Mr. Ard's counsel argues that no party represented Mr. Ard's interests, nor was there any type of privity between Mr. Ard and any party to the annulment proceedings. Moreover, no party before the court had any reason to oppose the annulment decree or object to its language. Under Missouri collateral estoppel law, a court will consider whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication, and whether that party had a full and fair opportunity to litigate the issue in the prior suit. See *Oates v. Safeco Ins. Co. of America*, 583 S.W.2d 713, 719 (Mo.1979) (en banc). Counsel provides no analysis as to the applicability of collateral estoppel to the present matter. Accordingly, I do not find collateral estoppel applies.

Common sense and public policy support the principles that the presumption of validity of a marriage is one of the strongest known to the law. *Forbis v. Forbis*, 274 S.W.2d 800, 806 (Mo.App. 1955 (citations omitted)). There is a general presumption that a person who has entered into a marriage was mentally capable of legally contracting it, and the burden is on the party alleging mental incapacity to prove it upon clear, cogent and convincing proof. *Id.* (citations omitted). Every person is presumed to be sane until the contrary is shown. *Id.* at 807. (citations omitted).

Both parties argue that if a Missouri court were to treat Ms. Ard's marriage to Mr. Pflugradt as void, the annulment decree would relate back and validate Ms. Ard's second marriage to Employee. *Everetts*, 214 F.3d at 990, 992 (8th Cir. 2000) (citing *Eyerman v. Thias*, 760 S.W.2d 187, 189 (Mo.App. 1988)). In contrast, if a Missouri court were to treat the marriage as voidable, the annulment decree would not relate back and validate Ms. Ard's second marriage to Employee. *Id.* (citing *Jordan v. Missouri & Kansas Telephone Company*, 116 S.W. 432 (Mo.App. 1909)).

Mr. Ard's counsel argues that notwithstanding the language of the annulment decree, Ms. Ard's marriage to Mr. Pflugradt should be viewed as voidable, not void, as Ms. Ard has not met her burden of proving that Mr. Pflugradt lacked the mental capacity to fully appreciate the marriage contract. While it is true that Ms. Ard has not presented any direct proof to this court that Mr. Pflugradt lacked the mental capacity to be married in 1992, she has produced a Judgment and Decree from the Circuit Court that Mr. Pflugradt "...**lacked the mental capacity to fully appreciate the marriage contract**" and "**That the marriage of Petitioner Victoria A. Ard, and Respondent, David Pflugradt, is hereby annulled as invalid from its inception.**" (Exhibit 2, emphasis added). I will rely on the findings of the Circuit Court; and, therefore, based upon the decree and order of the Jackson County Circuit Court, Ms. Ard's marriage to David Pflugradt is a void marriage and was invalid from its inception because the Mr. Pfludradt lacked the capacity to contract under state law §451.020 RSMo.

CONCLUSION

Based upon the foregoing, I find that Mr. Ard was 65% permanently partially disabled, from the disabilities attributable to the work injury of October 15, 2010. Accordingly, I find Jim Plunkett, Inc. and its insurance company, Regent Insurance Company liable for permanent partial

disability benefits in the amount of \$99,333.00.

I find that Ms. Victoria A. Ard is the Dependent of Mr. Michael Ard.

The award of compensation against the employer is subject to a lien in the amount of 25% to Jason Osteen for necessary legal services rendered to the Mr. Michael Ard.

Made by: _____

Lawrence Rebman
Administrative Law Judge
Division of Workers' Compensation