

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

Injury No.: 98-169918

Employee: James V. Aulbach  
Employer: Sachs Electric (Settled)  
Insurer: Liberty Mutual Insurance Company (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: October 23, 1998  
Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 28, 2006. The award and decision of Administrative Law Judge Cornelius T. Lane, Jr., issued February 28, 2006, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: James V. Aulbach

Injury No.: 98-169918

Dependents: N/A  
Employer: Sachs Electric  
Additional Party: Second Injury Fund (Only)  
Insurer: Liberty Mutual Insurance  
Hearing Date: January 13, 2006

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

Checked by: CTL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: October 23, 1998
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Installing a u-shaped channel iron into concrete floors.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Right knee
14. Nature and extent of any permanent disability: 27.5% permanent partial disability of the right knee
15. Compensation paid to-date for temporary disability: \$4,903.26
16. Value necessary medical aid paid to date by employer/insurer? \$6,810.23

Employee: James V. Aulbach

Injury No.:

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17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: Maximum
19. Weekly compensation rate: \$562.67/\$294.73
20. Method wages computation: By agreement

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Weeks of permanent partial disability from Employer

(previously settled)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
weekly differential (\$267.94) payable by SIF for 44 weeks beginning  
March 24, 2000 and thereafter \$562.67 for Claimant's lifetime

Indeterminate

TOTAL:

INDETERMINATE

23. Future requirements awarded: N/A

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 20% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Ann G. Dalton

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	James V. Aulbach	Injury No.: 98-169918
Dependents:	N/A	Before the <b>Division of Workers'</b> <b>Compensation</b>
Employer:	Sachs Electric	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (Only)	Jefferson City, Missouri
Insurer:	Liberty Mutual Insurance	Checked by: CTL:tr

### **PREFACE**

On January 13, 2006, there was a hearing in the above-mentioned matter. The Claimant, James V. Aulbach, was represented by Attorney Ann G. Dalton and the Second Injury Fund was represented by Assistant Attorney General Kay Osborne.

### **STIPULATIONS**

1. The parties stipulated that Claimant sustained an accident or injury arising out of and in the course and scope of his employment on October 23, 1998.
2. At the time, Claimant's temporary total/permanent total disability rate was \$562.67 and permanent partial

disability rate was \$294.73.

### ISSUE

1. Liability of the Second Injury Fund.

### EXHIBITS

The Claimant offered the following exhibits which were admitted into evidence without objection:

- |            |   |
|------------|---|
| Exhibit A. | Primary Treatment Records.                      |
| Exhibit B. | SIF Records related to Left Knee.               |
| Exhibit C. | SIF Records related to Back.                    |
| Exhibit D. | Treatment related to subsequent back treatment. |
| Exhibit E. | Deposition of Dr. David Volarich.               |
| Exhibit F. | Deposition of Mr. Timothy Lalk.                 |

### FINDINGS OF FACT

Based upon the substantial and competent evidence, I find:

1. Claimant, at the time of the hearing, was 62 years of age who had a high school education and after high school served in the Navy from 1961 to 1965 as a seaman aboard a submarine.
2. Claimant was very credible and using a cane at the time of the hearing and it was very difficult for him to sit for any period of time or stand for any period of time.
3. Claimant worked from the time he came out of the Navy in 1965 until he last worked in March 2002 as an electrician.
4. Claimant worked as an electrician and in other various positions as an inspector, foreman, etc. This work involved physical activity including bending, stooping, lifting and pulling.
5. Claimant sustained his primary injury on October 23, 1998 when he was working for Sachs Electric installing a u-shaped channel iron into a concrete floor and injured his right knee.
6. As a result of the knee injury on October 23, 1998, Claimant underwent surgery involving a chondroplasty of the medial femoral condyle, medial meniscectomy, chondroplasty of the patella and debridement of calcium pyrophosphate crystals. Dr. Rende was the surgeon who operated on the Claimant and he opined that the Claimant has sustained a 20% permanent partial disability of the knee, 10% which was due to a preexisting condition.
7. Claimant sustained the following preexisting injuries to the primary injury of October 23, 1998. A) When Claimant was 5 or 6 years of age he was struck by his brother who was wielding some type of a whip striking the Claimant in his left elbow which had to be operated on. Claimant stated at the time of hearing that he still has some difficulties with the left elbow and it has been a problem since the incident. B) Claimant testified that in the early 1970s that he injured his low back while lifting weights and that as a result of the back problems he would miss work occasionally. C) On July 8, 1981 while Claimant was pulling an up drive out of a boat he injured his low back and as a result a Dr. Wilkinson performed a lumbar hemilaminectomy at the L4-L5 and L5-S1 level with removal of a ruptured disc at L5-S1. D) On July 26, 1982 Claimant sustained a work related injury to his low back and again had surgery by Dr. Wilkinson for a hemilaminectomy at the L4-L5 and L5-S1 level with foraminotomy and decompression of nerve root at the L5 and S1 level. Claimant settled his workers' compensation claim against the employer for 20% of the body as a whole referable to the low back. E) Claimant, in August 1986, was involved in a motor vehicle accident in which he injured his low back and again Dr. Wilkinson performed a lumbar myelogram and decompressive laminectomy at the L4-L5 and L5-S1 level with decompression of the spinal canal at L4-L5 and posterior interbody fusion with Steffe plates. Claimant went back to work after this surgery but said he had many problems trying to do his work because of his condition. F) Claimant, on October 21, 1993, sustained a work related injury to his left knee. Dr. Rende, on February 11, 1994, performed arthroscopic surgery on Claimant's left knee. Claimant testified that although he had some problems with his left knee, his greater problem was with his back. Claimant settled his workers' compensation claim for the left knee for 25% permanent partial disability referable to the left knee.
8. Claimant, after his primary injury of October 23, 1998, returned to work in March of 1999 and continued

working through March of 2000 and has not returned to work. Claimant testified that he was unable to continue to do to his job because of such severe pain in his back and his knees. Claimant also had to start using a cane and had difficulty sleeping and during the daytime had to take a nap to relax and had many problems that would make working impossible for him.

9. Claimant was very credible in his testimony and I give a great deal of credit to him for trying so hard to work after all the injuries and disabilities that he sustained through his life.
10. Dr. Volarich testified on behalf of the Claimant. Dr. Volarich stated that the Claimant sustained a 50% permanent partial disability of the right knee as a result of the injury of October 23, 1998. The doctor also felt Claimant had a 35% permanent partial disability of the left knee; 25% permanent partial disability of the left elbow; 35% preexisting permanent partial disability as a whole due to the surgery performed prior to October 23, 1998; and an additional 35% permanent partial disability as a body as a whole for the back surgery performed in 2001 and 2002. Dr. Volarich testified very credibly that Claimant was permanently and totally disabled as a result of his work injury of October 23, 1998 and his preexisting disabilities.
11. Timothy Lalk, a vocational counselor, testified that after having viewed all of the injuries of the Claimant and reviewing off of his medical records, and administering vocational testing exams, that Claimant would be unable to compete with other job applicants when applying for a job.

### **RULINGS OF LAW**

Based upon the Claimant's testimony, Dr. Volarich's testimony, Mr. Timothy Lalk's testimony, and exhibits entered into evidence, it is evident that Claimant is permanently and totally disabled. Claimant's many injuries create a synergistic effect which result in Claimant's inability to work in the open market place. The Second Injury Fund is liable for permanent and total disability benefits resulting from Claimant's disability from the last injury in combination with the preexisting injuries.

Employee: James V. Aulbach

Injury No.:98-169918

This award is subject to a lien in the amount of 20% of the additional payments hereunder in favor of the Claimant's attorney, Ann G. Dalton, for necessary legal services rendered to Claimant.

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

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

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

A true copy: Attest:

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