

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

Injury No.: 03-102284

Employee: Christopher Bauer  
Employer: L. E. Sauer Machine Company, Inc.  
Insurer: Missouri Chamber of Commerce Insurance Group  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

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 resolve the following issues: (1) medical causation; (2) liability for unpaid medical expenses in the amount of \$600.00; (3) necessity of past medical treatment; (4) liability for future medical expenses including prosthetics; (5) nature and extent of permanent partial disability; (6) disfigurement; and (7) mileage.

The administrative law judge rendered the following findings and conclusions: (1) Dr. Schlafly's analysis and opinions are more persuasive than those of Dr. Rotman; (2) a prosthetic device may relieve employee's permanent injury partially or wholly and thus a determination of permanent injury is premature pending whether employee's injury is relieved as a result of a prosthetic device; (3) the record suggests psychiatric permanent partial disability in the range of 15% permanent partial disability of the body; (4) employee is entitled to 20 weeks disfigurement; (5) employee's unpaid medical bill from Allied Behavioral Consultants for psychiatric care from Dr. Bassett is allowed; (6) insufficient evidence was proffered to support a claim of mileage; (7) employee presented probative evidence of the need and utility of a prosthetic device in his recovery; and (8) future medical treatment for psychiatric care from Dr. Bassett at two visits per year, plus medications, is allowed.

Employer filed a timely Application for Review with the Commission alleging the administrative law judge: (1) exceeded his jurisdiction in issuing a temporary award; (2) erred in granting future medical care in the form of a prosthetic device; (3) erred in finding employee sustained a 15% permanent partial psychiatric disability of the body as a whole; (4) erred in finding employee was entitled to future psychiatric treatment to be provided by Dr. Bassett; (5) erred in finding employee's current psychiatric condition and need for psychiatric treatment were work-related; and (6) erred in ruling employee was entitled to past medical expenses in the amount of \$600.00.

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### **Findings of Fact**

The administrative law judge's award sets forth the stipulations of the parties and the administrative law judge's findings of fact as to the issues disputed at the hearing. We adopt and incorporate those findings to the extent that they are not inconsistent with the modifications set forth in our award. Consequently, we make only those findings of fact pertinent to our modifications herein.

#### *Nature and extent of permanent disability resulting from the work injury*

We disagree with the administrative law judge's finding that an assessment of permanent partial disability is premature. Although we agree with the administrative law judge that employee may be partially relieved of the effects of this work injury by the use of a prosthetic, we are not persuaded that a prosthetic will reduce employee's level of permanent partial disability with respect to his right hand. We find that employee sustained a 70% permanent partial disability of the right hand as a result of the October 2003 accident.

The administrative law judge found that employee sustained a 15% permanent partial psychiatric disability of the body as a whole as a result of the work injury. We disagree. We find that employee sustained a 10% permanent partial psychiatric disability of the body as a whole as a result of the work injury.

#### *Past medical expenses*

The parties dispute whether employer is liable to pay a \$600.00 bill from Allied Behavioral Consultants for psychiatric care employee received from Dr. Bassett on January 25, June 14, and December 12, 2010; June 13 and December 12, 2011; and July 16, 2012. Dr. Bassett was deposed on December 9, 2011. At his deposition, Dr. Bassett conceded that the focus of his sessions with employee in the "last two or three years" revolved around employee's complaints stemming from marital problems. *Transcript*, page 126. We note also Dr. Bassett's testimony that, with medication, employee's post-traumatic stress syndrome is in remission.

After careful consideration, we find that there is insufficient proof that these specific charges are for medical treatment that is reasonable and necessary to cure and relieve from the effects of the work injury.

### **Conclusions of Law**

#### *Nature and extent of permanent disability resulting from the work injury*

Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee's compensable work injury. We have found that the October 2003 accident resulted in injury and disability amounting to a 70% permanent partial disability of the right hand, and a 10% permanent partial psychiatric disability of the body as a whole. This amounts to 162.5 weeks of permanent partial disability benefits at the stipulated rate of \$347.05. We conclude, therefore, that employer is liable for \$56,395.63 in permanent partial disability benefits.

We adopt and affirm the administrative law judge's conclusion that employee is also entitled to 20 weeks of disfigurement pursuant to § 287.190.4 RSMo.

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Past medical expenses

Section 287.140.1 RSMo provides, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

We conclude that employee has failed to meet his burden of proving that the disputed treatments with Dr. Bassett were reasonably required to cure and relieve the effects of the work injury. We conclude, therefore, that employer is not liable for the \$600.00 claimed past medical bill.

Future medical care

The administrative law judge rendered the following conclusion regarding the issue of future medical care: “[F]uture medical treatment for psychiatric care from Dr. Bassett at two visits per year, plus medications, is allowed.” *Award*, page 8. Section 287.140.10 RSMo provides, in relevant part, as follows:

The employer shall have the right to select the licensed treating physician, surgeon, chiropractic physician, or other health care provider ...

We agree with the administrative law judge’s conclusion that employee has established a reasonable probability that he will remain in need of future medical care, but we are not permitted to order future medical care to be directed or provided by a specific physician unless an issue is presented under § 287.140.2 RSMo as to whether employee’s life, health, or recovery is endangered such that an administrative law judge or this Commission may order a change in the physician, surgeon, hospital, etc. See, e.g., *Noel v. ABB Combustion Eng’g*, 383 S.W.3d 480, 485 (Mo. App. 2012). Because the parties have not presented any issue implicating § 287.140.2, we believe that the administrative law judge’s award of “care from Dr. Bassett at two visits per year, plus medications” is inappropriate, as it contravenes employer’s statutory right to direct treatment.

Accordingly, we modify the administrative law judge’s award of future medical treatment as follows. We conclude that employer is obligated to provide any and all future medical treatment (including prosthetics) that may reasonably be required to cure and relieve the effects of the work injury. We conclude that employer has the right to direct such future medical treatment.

**Conclusion**

We modify the award of the administrative law judge as to the issues of the nature and extent of disability resulting from the work injury, past medical expenses, and future medical care.

Employer is liable for permanent partial disability benefits in the amount of \$56,395.63, as well as \$6,941.00 for 20 weeks disfigurement.

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Employee's claim for past medical expenses in the amount of \$600.00 is denied.

Employer is obligated to provide future medical treatment that may reasonably be required to cure and relieve the effects of the work injury.

Employee's claim against the Second Injury Fund remains open.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued December 28, 2012, 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 3<sup>rd</sup> day of October 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary