

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

Injury No.: 99-129492

Employee: Harry Bell

Employer: Noranda Aluminum, Inc. (Settled)

Insurer: Self-Insured (TPA: Sedgwick Claims Management Services) (Settled)

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the ALJ dated May 3, 2011, as supplemented herein.

Preliminaries

On September 23, 1999, employee injured his low back while lifting a 50-pound bucket at work. Employee settled his claim against employer, but proceeded to final hearing of his claim against the Second Injury Fund.

The ALJ awarded permanent total disability benefits against the Second Injury Fund. The Second Injury Fund appealed to the Commission alleging that employee's permanent total disability resulted from the last injury alone.

Findings of Fact

The findings of fact and stipulations of the parties were accurately recounted in the award of the ALJ and, to the extent they are not inconsistent with the findings listed below, they are adopted and incorporated by the Commission herein.

On September 23, 1999, employee injured his low back at work while lifting a bucket of material weighing approximately 50 pounds. Employee was treated for this primary injury by Dr. Cheung, Dr. Kee Park, and Dr. Gornet.

Prior to the primary injury, employee injured his neck at work on September 23, 1993. Employee underwent a microdiscectomy and fusion of the cervical spine to treat said injury. Dr. Cheung noted in his last visit with employee for the 1993 injury that employee had some continued musculoskeletal complaints referable to his right shoulder and the base of his neck, as well as residual numbness in his last three fingers on his right hand. Dr. Cheung rated employee at 10% permanent partial disability of the body as a whole referable to the cervical spine.

Employee testified that after the 1993 injury to his neck he continued to have symptoms and problems. Employee described almost constant pain in the neck radiating to the right side, frequent headaches and significant loss of neck motion due to the fusion. He also has problems with strength in the right shoulder and arm, especially when lifting above shoulder level.

¹ Statutory references are to the Revised Statutes of Missouri 1999 unless otherwise indicated.

Employee: Harry Bell

- 2 -

At the time of the primary injury, employee was also receiving ongoing treatment for depression. Employee was taking Effexor, Wellbutrin, and Elavil for the condition. In fact, on August 5, 1999, employee's Effexor XR was increased from 37.5 mg to 75 mg with a continuation of his other medications.

On June 5, 2003, Dr. Cohen saw employee for the purpose of an independent medical evaluation. Dr. Cohen opined in his report that employee is 70% permanently partially disabled of the body as a whole referable to the lumbar spine. Dr. Cohen clarified during his deposition that the 70% lumbar spine rating accounts for employee's preexisting multilevel degenerative disc disease. Dr. Cohen also opined that employee suffers from 20% permanent partial disability of the body as a whole referable to his depression. With respect to employee's 1993 neck injury, Dr. Cohen opined that employee sustained 30% permanent partial disability of the body as a whole referable to his cervical spine. Finally, Dr. Cohen opined that employee's primary injury combines with his preexisting disabilities to render him permanently and totally disabled.

Dr. Gornet's treatment of employee was limited to his low back. Dr. Gornet opined that employee's low back condition was due to a combination of the last injury and the preexisting degenerative changes in his low back. Dr. Gornet testified that employee's multilevel degenerative disc changes predated the primary injury of September 23, 1999.

Mr. England evaluated employee on March 24, 2004, for the purpose of providing a vocational assessment. Mr. England stated: "Looking at [employee's] combination of problems, it appears ... that [employee] would not be able to compete successfully for employment, nor would he be able to sustain any type of work on a consistent, day-to-day basis." Mr. England further stated that "[a]ssuming [employee's] combination of problems with his neck, low back and his emotional problems, I believe he is totally disabled from a vocational standpoint." On cross-examination, Mr. England was asked whether, assuming that employee had no prior neck or depression conditions, if he would be employable in the open labor market. Mr. England responded, "I really don't know. I guess it would depend on how he was functioning and what restrictions he would have just from the low back."

The Second Injury Fund did not offer any contradictory expert testimony.

Employee settled his claim against employer for the lump sum of \$97,500.00. In light of employee's stipulated permanent partial disability rate of \$303.01, this lump sum settlement amounts to approximately 321.77 weeks of compensation, or 80.4% permanent partial disability of the body as a whole.

Discussion

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid from the fund in "all cases of permanent disability where there has been previous disability." In order to trigger liability of the Second Injury Fund, employee must show the presence of an actual and measurable disability at the time the work injury is sustained and be of such seriousness as to constitute a hindrance or obstacle to employment or re-employment should the employee become unemployed. *E. W. v. Kansas City, Missouri, School District*, 89 S.W.3d 527, 537 (Mo. App. W.D. 2002), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

Based upon the medical records and reports, medical expert testimony, employee's testimony, and the record as a whole, we find that employee met his burden of proving that his preexisting cervical neck condition, multilevel degenerative disc disease, and depression amounted to actual and

Employee: Harry Bell

- 3 -

measurable disabilities at the time of the work injury and were of such seriousness as to constitute a hindrance or obstacle to his employment.

In evaluating cases involving preexisting disabilities, the employer's liability must first be considered in isolation before determining Second Injury Fund liability. *Kizior v. Trans World Airlines*, 5 S.W.3d 195 (Mo. App. W.D. 1999), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). In *Kizior*, the Court set out a step-by-step test for determining Second Injury Fund liability:

Section 287.220.1 contains four distinct steps in calculating the compensation due an employee, and from what source, in cases involving permanent disability: (1) the employer's liability is considered in isolation – 'the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability'; (2) Next, the degree or percentage of the employee's disability attributable to all injuries existing at the time of the accident is considered; (3) The degree or percentage of disability existing prior to the last injury, combined with the disability resulting from the last injury, considered alone, is deducted from the combined disability; and (4) The balance becomes the responsibility of the Second Injury Fund.

Kizior, 5 S.W.3d at 200.

The Second Injury Fund argues that employee is permanently and totally disabled solely as a result of the last injury; however, the Second Injury Fund did not present any expert medical evidence supporting said argument. Based on employee's settlement with employer and the record as a whole, we find that as a result of the primary injury employee sustained 80.4% permanent partial disability of the body as a whole referable to the lumbar spine. We further find that he suffered significant disabilities from his aforementioned preexisting conditions. In accordance with Dr. Cohen and Dr. Gornet's opinions, we find that employee's disabilities from his work injuries combine with his preexisting disabilities to produce greater overall disability than the simple arithmetic sum of the separate disabilities.

In determining whether employee is permanently and totally disabled, we turn to § 287.020.7 RSMo, which defines "total disability" as the "inability to return to any employment..." The Court in *Gordon v. Tri-State Motor Transit Company*, 908 S.W.2d 849 (Mo.App. 1995) provided a test for evaluating permanent total disability:

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

Id. at 853 (citations omitted).

Based upon the medical records, medical and vocational reports, employee's testimony, and the expert testimony of Dr. Cohen, Dr. Gornet, and Mr. England, we believe that no employer would reasonably be expected to hire employee in his present condition. We conclude employee is permanently and totally disabled due to the combination of the disabilities from his work injuries with his preexisting disabilities. The Second Injury Fund is liable to employee for permanent total disability benefits.

Employee: Harry Bell

- 4 -

Award

We affirm the award of the ALJ as supplemented herein.

Based upon the aforementioned findings and the stipulations of the parties, beginning December 24, 2003, to February 21, 2010, the Second Injury Fund shall pay to employee \$118.09, the difference between employee's PTD rate and his PPD rate.² Thereafter, the Second Injury Fund shall pay to employee \$421.10 for the remainder of employee's life, or until modified by law.

The award and decision of Administrative Law Judge Carl Strange, issued May 3, 2011, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

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 8th day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

² \$421.10 - \$303.01

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Harry Bell

Injury No. 99-129492

Dependents: N/A

Employer: Noranda Aluminum, Inc.

Additional Party: Second Injury Fund

Insurer: Self-insured
(TPA: Sedgwick Claims Management Services)

Hearing Date: January 24, 2011

Checked by: CS/rf

SUMMARY OF FINDINGS

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? September 23, 1999.
5. State location where accident occurred or occupational disease contracted: New Madrid 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 happened or occupational disease contracted: Employee was lifting a 50 pound bucket when he injured his low back.
12. Did accident or occupational disease cause death? N/A

13. Parts of body injured by accident or occupational disease: Body as a whole referable to his low back and depression.
14. Nature and extent of any permanent disability: See Findings.
15. Compensation paid to date for temporary total disability: \$47,644.48
16. Value necessary medical aid paid to date by employer-insurer: \$128,945.49
17. Value necessary medical aid not furnished by employer-insurer: N/A
18. Employee's average weekly wage: \$631.65
19. Weekly compensation rate:

\$421.10 for temporary total disability and permanent total disability.
\$303.01 for permanent partial disability.
20. Method wages computation: By Agreement.
21. Amount of compensation payable:
 - a. Employee's claim against the employer-insurer previously settled by compromise settlement agreement.
 - b. Employee awarded permanent total disability benefits from Second Injury Fund at a rate of \$118.09 per week for the period of December 24, 2003 to February 21, 2010 and then at a rate of \$421.10 per week beginning February 22, 2010 (See Findings).
22. Second Injury Fund liability: Yes.
23. Future requirements awarded: N/A

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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 15% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Robert Butler.

FINDINGS OF FACT AND RULINGS OF LAW

On January 24, 2011, the employee, Harry Bell, appeared in person and by his attorney, Robert Butler, for a hearing for a final award. The Second Injury Fund was represented at the hearing by its attorney, Assistant Attorney General Jonathan Lintner. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about September 23, 1999, Noranda Aluminum, Inc. was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was self-insured with a third party administrator of Sedgwick Claims Management Services.
2. On or about September 23, 1999, the employee was an employee of Noranda Aluminum, Inc. and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. On or about September 23, 1999, the employee sustained an accident or occupational disease during the course of his employment.
4. The employer had notice of the employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was \$631.65, his rate for temporary total disability and permanent total disability is \$421.10, and his rate for permanent partial disability is \$303.01.
7. The employee's injury is medically causally related to the work injury on or about September 23, 1999.
8. The employer has furnished \$128,945.49 in medical aid to the employee.
9. The employer has paid temporary total disability benefits at a rate of \$421.10 per week for a total of \$47,644.48.
10. The employee reached maximum medical improvement on December 23, 2003.
11. Second Injury Fund liability, if any, for permanent partial disability benefits will begin on February 22, 2010.
12. Second Injury Fund liability, if any, for permanent total disability benefits will be \$118.09 per week for the period of December 24, 2003 to February 21, 2010 and then \$421.10 per week beginning February 22, 2010.

ISSUES:

1. Nature and Extent of Disability.
2. Liability of the Fund.

EXHIBITS:

The following Employee exhibits were offered and admitted into evidence:

- A. Deposition of Dr. Raymond Cohen;

- B. Deposition of Dr. Matthew Gornet;
- C. Deposition of Mr. James England;
- D. Certified copies of the Division of Worker's Compensation Records (Admitted EXCEPT for those portions of the documents that are not business records of the Division);
- E. Medical records of Dr. Charles Cheung;
- F. Medical records of Boothill Counseling;
- G. Medical records of Southeast Missouri Hospital; and
- H. Copy of Stipulation in Injury #93-126650.

APPLICABLE LAW:

- The test for finding the Second Injury Fund liable for permanent partial disability benefits is set forth in Section 287.220.1 RSMo as follows:

“All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a pre-existing permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining re-employment if the employee becomes unemployed, and the pre-existing permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no pre-existing disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for.”
- The test for finding the Second Injury Fund liable for permanent total disability is set forth in Section 287.220.1 RSMo., as follows:

If the previous disability or disabilities, whether from compensable injuries or otherwise, and the last injury together result in permanent total disability, the minimum standards under this subsection for a body as a whole injury or a major extremity shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employee at the time of the last injury is liable is less than compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under Section 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in Section 287.414.

- Section 287.020.7 RSMo. provides as follows:
The term "total disability" as used in this chapter shall mean the inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.
- The phrase "the inability to return to any employment" has been interpreted as the inability of the employee to perform the usual duties of the employment under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kowalski v M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922(Mo.App.1992). The test for permanent total disability is whether, given the employee's situation and condition, he or she is competent to compete in the open labor market. *Reiner v Treasurer of the State of Missouri*, 837 S.W.2d 363, 367(Mo.App.1992). Total disability means the "inability to return to any reasonable or normal employment". *Brown v Treasurer of the State of Missouri*, 795 S.W.2d 479, 483(Mo.App.1990). An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Id.* The key is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person's physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Reiner* at 365. See also *Thornton v Haas Bakery*, 858 S.W.2d 831,834(Mo.App.1993).
- Although the workers' compensation law must be liberally construed in favor of the employee, the burden is still on the claimant to prove all material elements of her claim. *Melvies v Morris*, 422 S.W.2d 335 (Mo. App.1968), and *Marcus v Steel Constructors, Inc.*, 434 S.W.2d 475 (Mo.App.1968).
- In *Spencer v SAC Osage Electric Coop, Inc.*, 302 S.W.3d 792 (Mo.App. W.D. 2010) & *Angus v Second Injury Fund*,---S.W.3d--- WL3955449 (Mo.App. W.D. 2010), the court emphasized that without findings of fact to the contrary "[i]n a workers' compensation proceeding the ALJ cannot substitute his or her own opinion for uncontroverted medical evidence regarding causation." *Elliott v. Kansas City, Mo., Sch. Dist.*, 71 S.W.3d 652, 657-58 (Mo. App. W.D. 2002) (citing *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 599 (Mo. banc 1994)).
- In *Daly v. Powell Distributing, Inc. et al.*, ,---S.W.3d--- WL3744092 (Mo.App. W.D. 2010), the court emphasized that the Commission has the power to believe or disbelieve

an expert's testimony. *Kuykendall v. Gates Rubber Co.*, 207 S.W.3d 694, 711 (Mo. App. S.D. 2006). However, disregarding uncontradicted expert's testimony as to causation must be supported by substantial and competent evidence. *Id.* at 712; *see also Wright v. Sports Assoc., Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003). Moreover, the Commission cannot find there is no causation if the uncontroverted medical evidence is otherwise." *Id.*

FINDINGS OF FACT & RULINGS OF LAW:

Issue 1. Nature and Extent of Disability & Issue 2. Liability of the Fund

Harry Bell ("Employee") has requested an award of permanent total disability benefits against the Second Injury Fund. In support of his position, Employee has offered the opinions of Dr. Matthew Gornet, Dr. Raymond F. Cohen, and Vocational Rehabilitation Expert, James England. The Second Injury Fund has not offered any additional medical opinion in support of their position that they are not liable for benefits. If Employee is permanently and totally disabled, the Second Injury Fund is only liable for permanent total disability benefits if the permanent disability was caused by a combination of the pre-existing disabilities and the employee's last injury occurring on September 23, 1999. The Second Injury Fund is also not liable if the last injury alone caused Employee to be permanently and totally disabled.

On September 23, 1999, Employee was lifting a bucket of 50 pounds and felt immediate pain in his low back. An MRI taken on October 19, 1999 indicated that Employee had prominent degenerative changes in the disc and end plates at L1-2, degenerative changes in the disc and end plates at L2-3 and L3-4 and L4-5, and more severe degenerative changes in the disc at L5-S1 with central vacuum disc phenomenon and extension of disc into the inferior foramen. On October 20, 1999, Dr. Cheung performed a microdiscectomy L5-S1 on the left to repair a herniated nucleus pulposus compressing on the nerve root. Since Employee continued to have problems, he underwent a myelogram lumbar and another MRI. On May 15, 2000, Dr. Cheung noted that although the MRI was negative, the MRI scan indicated that there was a collapse of the disc space at L5/S1 which was related to the previous discectomy and therefore, the September 23, 1999 injury (Employee's Exhibit E). On July 18, 2000, Dr. Cheung performed a bilateral L5-S1 foraminotomy for decompression of the L5 nerve root (Employee's Exhibit G).

Employee continued to have problems with his back and was evaluated by Dr. Matthew Gornet. On July 24, 2002, Dr. Gornet performed an anterior decompression at L5-S1. At his deposition, Dr. Gornet opined that the permanent restrictions he provided her are a result of the September 23, 1999 injury, but the fact that Employee's pain keeps him from being gainfully employed is related to his adjacent segments and pre-existing disc degeneration (Employee's Exhibit B). On June 5, 2003, Dr. Raymond Cohen examined Employee and opined that his primary injuries of depression and lumbar injury combined with his pre-existing cervical injury to render him permanently and totally disabled. At his deposition, he acknowledged that Employee also had pre-existing depression and significant multilevel degenerative disc disease in his back (Employee's Exhibit A). On April 5, 2004, Mr. James England, a vocational rehabilitation expert, evaluated Employee and opined that Employee was totally disabled from a

vocational standpoint based on a combination of problems with his neck, low back, and emotional problems. At his deposition, Mr. England noted that Employee's need to lie down was related to his back and would probably not allow Employee to be capable of performing in the open labor market (Employee's Exhibit C).

With regard to his pre-existing injuries, Employee underwent a microdiscectomy of C7-T1 with fusion on December 9, 1993 (Employee's Exhibit E), treated for depression/anxiety for several years (Employee's Exhibit F & G), and had multilevel degeneration of his lumbar spine (Employee's Exhibits A, B, E & G). At the time of the hearing, Employee testified that he continued to have numbness in his legs and feet, pain in his back, depression, stiffness, inability to sleep, difficulty squatting and bending, and difficulty with many normal activities. It is important to note that Second Injury Fund has failed to provide sufficient evidence to discredit Employee's testimony. Based on the evidence, I find that Employee is credible.

Although the Second Injury Fund has argued that the last injury alone was sufficient to make Employee permanently and totally disabled, I find that the evidence clearly indicates that Employee's lumbar spine had multilevel degeneration which combined with the primary injury to make Employee's back condition more severe. As a result, I also find the opinions of Dr. Gornet to be credible and supported by the evidence. Finally, I find that the Second Injury Fund has failed to offer sufficient credible evidence to discredit the opinions of Dr. Cohen and Mr. England. Based on the evidence and my above findings, I find the opinions of Dr. Cohen and Mr. England to be credible and supported by the evidence. Further, I cannot substitute my own opinion for uncontroverted medical evidence and expert opinions.

Based on the evidence, I find that Employee is permanently and totally disabled as a result of a combination of Employee's primary injuries and pre-existing injuries. Based on the stipulation of the parties, Employee reached maximum medical improvement on December 23, 2003. In accordance with my above findings and the stipulation of the parties, I find that the Second Injury Fund's liability for permanent and total disability benefits at a rate of \$118.09 per week began on December 24, 2003 and ended on February 21, 2010. Further, I find that the Second Injury Fund's liability for permanent and total disability benefits at a rate of \$421.10 per week began on February 22, 2010. The Second Injury Fund is therefore directed to pay to Employee the sum of \$118.09 per week commencing on December 24, 2003 and ending on February 21, 2010. The Second Injury Fund is also directed to pay to Employee the sum of \$421.10 per week commencing on February 22, 2010, and said weekly benefits shall be payable during the continuance of such permanent total disability for the lifetime of the employee pursuant to Section 287.200.1, unless such payments are suspended during a time in which the employee is restored to his regular work or its equivalent as provided in Section 287.200.2. Since part of the Second Injury Fund's liability has accrued prior to the date of the award, the Second Injury Fund shall make a lump sum payment for the appropriate amount that is past due.

ATTORNEY'S FEE:

Robert Butler, attorney at law, is allowed a fee of 15% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation

Date: _____

A true copy: Attest:

Ms. Naomi Pearson