

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

Injury No.: 11-105117

Employee: Billy Davis  
Employer: Enerfab, Inc.  
Insurer: Continental Casualty Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

**Discussion**

*Future medical treatment*

At the hearing before the administrative law judge, the parties disputed employee's claim for additional or future medical aid. The administrative law judge credited the recommendation for future medical care rendered by employee's medical expert, Dr. David Volarich, and ordered employer to provide all medical treatment that is necessary to cure and relieve employee from the effects of his work injury. Employer filed an application for review, arguing that the administrative law judge erred in finding a need for future medical treatment that flows from the accident of November 26, 2011.

In its brief, employer suggests that employee's proposed award submitted to the administrative law judge after the hearing conceded that employee's claim for future medical treatment should be denied. In his respondent's brief, employee agrees that this was his position after the trial, and all but concedes that, to date, he has not sought or received any additional future medical aid beyond that he was already receiving to cure and relieve the effects of his preexisting disabling conditions.

After careful consideration, however, we are convinced that the award of future medical treatment remains appropriate. As our courts have recently made clear, "once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury," and "[t]he fact that the medication or treatment may also benefit a non-compensable or earlier injury or condition is irrelevant." *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 519 (Mo. App. 2011). At the present time, we cannot predict or foresee the medical treatments that may be recommended to cure and relieve the effects of the enhanced disability that employee suffers as a result of the November 2011 work injury, and the mere fact that employee has not, to date, sought or desired significant additional treatment beyond that which he was receiving before the work injury does not, alone, rule out the reasonable probability that he may require such treatment if his symptoms worsen.

The evidence in this matter suggests to us (and we so find) that there is a reasonable probability that employee may have a future need for medical treatment flowing from the effects of his work injury. Employee testified he now needs between six to eight hydrocodone pills to manage his

Employee: Billy Davis

symptoms per day, which is more than what he was taking before the November 2011 work injury. The fact that taking hydrocodone may also benefit employee's earlier injuries is, as the *Tillotson* court makes clear, irrelevant. Meanwhile, Dr. Volarich's recommendations for future medical treatment in 2013, while substantially similar, are not identical to those he provided in 2004. Specifically, in 2013, Dr. Volarich recommended, for the first time, consideration of a TENS unit and radiofrequency ablation procedures if employee experiences a worsening of his symptoms referable to lumbar radicular syndrome.

For the foregoing reasons, we do not discern a compelling reason to disturb the administrative law judge's award of future medical treatment. We do note that it would appear, given employee's concessions in his brief, that the issue of future medical treatment in this case may be susceptible to final resolution by entry of a stipulation for compromise settlement closing out the award of future medical treatment.

**Conclusion**

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Maureen Tilley, issued January 12, 2016, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm 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 14<sup>th</sup> day of September 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

Employee: Billy Davis

Injury No. 11-105117

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Billy Davis

Injury No. 11-105117

Dependents: N/A

Employer: Enerfab, Inc.

Additional Party: Second Injury Fund

Insurer: Continental Casualty Company c/o Claims Plus, Inc.

Hearing Date: 10-7-2015

Checked by: MT/kg

**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: November 26, 2011.
5. State location where accident occurred or occupational disease was contracted:  
New Madrid County, Missouri.
6. Was the employee in the employ of above employer at time of alleged incident 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 the employer insured by above insurer? Yes.
11. Describe work Employee was doing and how accident occurred or occupational

disease contracted: The employee was riding an elevator on the premises of his work site; the elevator malfunctioned and the employee fell.

12. Did accident or occupational disease cause death? No.
13. Part(s) of body injured by accident or occupational disease: Left and right hip, body as a whole referable to low back, and body as a whole referable to ventral hernia.
14. Nature and extent of any permanent disability: See findings.
15. Compensation paid to date for temporary total disability: \$38,151.31
16. Value of necessary medical aid paid to date by employer: \$10,336.81
17. Value of necessary medical aid not furnished by employer-insurer: N/A.
18. Employee's average weekly wage: \$1,665.33.
19. Weekly compensation rate: \$811.73 for TTD/PTD; \$425.19 for PPD.
20. Method of wage computation: By agreement of parties.
21. Amount of compensation payable for permanent partial disability: See findings.
22. Second Injury Fund Liability: Payment of \$811.73 per week for the lifetime of the employee.
23. Future requirements awarded: See findings.

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 employee shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the employee: William Beatty

## **FINDINGS OF FACT AND RULINGS OF LAW**

On October 7, 2015, the employee, Billy Davis, appeared in person and with his attorney, William Beatty, for a hearing for a final award. The employer was represented at the hearing by its attorney, Randee Schmittiel. The Second Injury Fund was represented by Assistant Attorney General, Crystal Williams. By agreement of the parties, the record was left open until October 14, 2015, in order for Employee to offer medical exhibits. 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. Covered Employer: Employer-Insurer was a covered employer and duly insured under the Missouri Workers' Compensation Act.
2. Covered Employee: Employee was a covered employee under the Missouri Workers' Compensation Act.
3. Accident: The parties agree that Employee was involved in an accident on November 26, 2011, while working for Employer-Insurer that arose out of and was in the course of his employment.
4. Notice: The parties agree that Employer-Insurer had proper notice of the accident.
5. Statute of limitations: The parties agree that the Claim for Compensation was filed within the time prescribed by law.
6. Average weekly wage and rate: At the relevant time, Employee earned an average weekly wage of \$1,665.33 resulting in applicable rates of compensation of \$811.73 for temporary total disability and permanent total disability benefits. The compensation rate for permanent partial disability benefits is \$425.19.
7. Medical aid furnished by Employer-Insurer: Employer-Insurer paid \$10,336.81 in medical benefits.
8. Temporary disability paid by Employer-Insurer: Employer-Insurer paid \$38,151.31 for 49 weeks from June 13, 2012, to May 17, 2013, for temporary total disability benefits.

### **ISSUES:**

1. Medical causation: Are Employee's injuries and continuing complaints medically causally connected to his alleged accident?
2. Claim for additional or future medical aid: Is Employer-Insurer liable for future medical?
3. Permanent total disability: Is Employee entitled to permanent total disability from Second Injury Fund?
4. Permanent partial disability: Is Employee entitled to permanent partial disability from Employer-Insurer and/or Second Injury Fund?

**EXHIBITS:**

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

1. Certified Stipulations for Compromise Settlement from the Missouri Division of Workers' Compensation
2. Certified Settlement Contract and Lump Sum Petition and Order, Illinois Workers' Compensation Commission 10-WC-45848
3. Report of Dr. David Volarich (December 26, 2013)
4. Report of Dr. David Volarich (April 29, 2004)
5. Deposition of James England (June 17, 2015)
6. Employee Medical Records

The employer-insurer and the Second Injury Fund did not offer any exhibits into evidence.

**FINDINGS OF FACT:**

Employee is a fifty-three year old boilermaker who had worked out of the union hall for various employers since 1997. On November 26, 2011, he was working as a union boilermaker at the New Madrid power plant for Employer-Insurer. At the time of the accident, Employee was in an elevator with fifteen other workers going up to his work site. Between the fourth and fifth floors, the elevator failed and dropped approximately forty to fifty feet. It took a while to rescue everyone from the elevator. All the workers, including Employee, were taken to Missouri Delta Medical Center.

On November 26, 2011, Employee was seen in Missouri Delta Medical Center emergency room with complaints to his low back and left hip that radiated down his leg. He reported improvement after receiving an injection. He was discharged and told to rest and use ice packs.

Employee received follow-up treatment from his primary care physician, Dr. Lum. He reviewed an MRI that was performed on December 6, 2011. That study did not show a new and/or acute injury. It indicated postoperative changes of the partial left-sided hemilaminectomy at the L3-4 and L4-5 levels with slight retrolisthesis of the L3 on the L4 vertebral body by 1-2mm. There was also some scar tissue surrounding the operative site. There was no evidence of central canal stenosis, disc protrusions or herniations. Based on this study, Dr. Lum referred Employee to Dr. Youkilis, a neurosurgeon, who had performed his November 21, 2006 back surgery.

Employee was examined by Dr. Youkilis on January 4, 2012. At the time of this exam, Employee was complaining of numbness in his bilateral gluteal region, left leg, and left foot. Dr. Youkilis was concerned that Employee had suffered a musculoskeletal injury and possible hip injury. He did not feel that Employee needed neurosurgical intervention and referred him to physical therapy and an orthopedic surgeon to evaluate his hips.

Employee saw Dr. Van Ness on March 13, 2012. The focus of his exam was limited to the hip joints. Dr. Van Ness ordered a bilateral hip MRI. That study was done on March 20, 2012, and it did not show any abnormality or injury to the hips. Based on this study, Dr. Van Ness did not feel that Employee's hips were his pain generator. Dr. Van Ness indicated that he did not need to re-examine Employee and recommended that Employee receive pain management for his ongoing back complaints.

Thereafter, Dr. Lum managed Employee's medical care and sent him to physical therapy. While in therapy on August 6, 2012, Employee sustained a groin injury and was diagnosed with a hernia. He treated with Dr. Dugarte, who repaired an incisional hernia on October 11, 2012. He was released at MMI by Dr. Dugarte as of January 8, 2013. Employee continued to receive treatment from Dr. Lum for his global complaints and medical conditions.

March 13, 2013, Employee underwent an EMG/NCV that indicated a mild bilateral mild L5-S1 radiculopathy. Dr. Lum continued to refill Employee's pain medications. No other treatment was ordered.

On March 21, 2013, Employer-Insurer had Employee examined by Dr. Bernard Randolph for an independent examination. Regarding the work accident, Dr. Randolph diagnosed a lumbar contusion and sprain which was superimposed on preexisting and post-operative degenerative disc disease. Employee complained of increased symptoms in his low back and hips after the accident. Dr. Randolph noted that a work-up has revealed no evidence of structural injury to the hips or back. Dr. Randolph opined that Employee requires no additional structure workup or treatment regarding the effects of the injuries occurring on November 26, 2011. Dr. Randolph stated that he would recommend that Employee stay active to maintain strength in his trunk and lower extremity muscle groups.

Dr. Randolph placed Employee at MMI from the work accident and rated him at 22% to the low back with 5% apportioned to the work accident and 17% to his preexisting conditions. Dr. Randolph also rated an additional 2% for the left hip strain.

The last treating medical report entered into evidence was dated July 15, 2013, from Dr. Lum. At that time, Employee was being treated for chronic pain, degenerative disc disease, anxiety, depression, hip pain, elevated blood sugar, and left flank pain. He was prescribed Kombiglyze, Carisoprodol and Hydrocodone-acetaminophen. Dr. Lum was concerned that Employee had a kidney stone.

The employee was examined by Dr. David Volarich on December 26, 2013. The employee reported to Dr. Volarich that he continues to experience ongoing difficulties as a result of the injury of November 26, 2011. The employee reported ongoing low back pain and described a radiating pain into his left hip and leg as more severe than the low back pain. The employee reported that he could not run or jump and had difficulty climbing stairs and ladders. He reported that he could stand for about 15 to 30 minutes, can sit for 30 to 60 minutes, and does best in a recliner. The employee reported that he could lift eight to ten pounds comfortably, but avoids pushing and pulling. The employee can bend and twist to a limited degree with increased

pain. Because of the left hip pain, he avoids getting down on the floor and cannot cross his legs. The employee also reported ongoing abdominal pain at the surgical site, with sneezing and reaching over to tie his shoes causing increased pain. The employee also related his difficulties with disruptions of his sleep patterns and is awakened because of his left hip pain.

Dr. Volarich noted a weakness in the right triceps 4/5, with the left triceps measured at 4.5/5. There was weakness in the forearms bilaterally at 4/5. The right hip girdle was of normal strength, the left hip girdle had diminished strength at 4.5/5. There was also weakness in the left quadriceps at 4/5 with the calves being weak to planter flexion bilaterally at 4/5. The dorsa flexors were also weak at 4/5. Dr. Volarich also noted the left Achilles reflex was absent with reinforcement. Other reflexes were normal and symmetric in the lower legs. Squatting was limited to one-half of normal due to back pain.

The lumbar range of motion was limited in all plains. Flexion indicated a 33% loss, extension a 50% loss, right lateral flexion an 80% loss and left lateral flexion a 60% loss. In Dr. Volarich's previous exam of April 29, 2004, there were no limitations in the lumbar flexion. Range of motion was measured at 20% loss for extension, 52% loss for right lateral flexion, and 60% loss for left lateral flexion.

Dr. Volarich opined that the injury of November 26, 2011, was a lumbar bilateral lower extremity radiculopathy, left greater than right with non-operative treatment. He also diagnosed a left hip strain/sprain, recurrent ventral hernia, status postsurgical repair, and a right hip strain that had resolved.

Dr. Volarich noted that Employee developed a hernia in August of 2012, when the employee was doing abdominal crunches on a stability ball. Dr. Volarich noted that on October 11, 2012, Employee had a surgery to repair his hernia.

Dr. Volarich also noted preexisting diagnoses of lumbar left leg radiculopathy secondary to disc herniation at L5/S1 to the left, status post laminectomy discectomy of 2003. He also diagnosed a recurrent lumbar left leg radiculopathy secondary to disc herniation at L3-4 on the left with recurrent herniation at L5/S1 also on the left, status postsurgical treatment in 2006. Other diagnoses that preexisted the November 26, 2011 accident included post-operative epidural fibrosis at L5/S1 with annular tear at L4-5 and retrolisthesis at L3-4, chronic cervical syndrome, bilateral elbow olecranon bursitis, triceps tendonitis right greater than left, umbilical and ventral herniopathies, and bilateral carpal tunnel syndrome, status post carpal tunnel releases.

Dr. Volarich's opined that his diagnoses regarding the November 26, 2011 accident were causally related to that accident and that they were the substantial contributing factor, as well as the prevailing or primary factor, in causing the bilateral lumbar lower extremity radiculopathy and bilateral hip strains. He also related the hernia to activities that were required in the conservative treatment prescribed for the employee's injuries.

Dr. Volarich opined that the injuries sustained on November 26, 2011, caused a 20% permanent partial disability to the body as a whole rated at the lumbar spine and a 15% permanent partial disability of the left leg rated at the hip due to the hip strain and ongoing pain. Dr. Volarich also

found that industrial disability existed as to 7.5% as the body as a whole as a result of the ventral hernia and surgical repair. No disability was assigned to the right hip.

Dr. Volarich opined that the employee's medical conditions preexisting his accident of November 26, 2011, caused a hindrance to the employment or re-employment of Employee. These disabilities include:

1. A 50% permanent partial disability to the body as a whole and chronic lumbar syndrome that required two previous surgical repairs. This rating also considered the employee's epidural fibrosis, annular tear, and retrolisthesis.
2. A 20% permanent partial disability to the right upper extremity rated at the elbow due to chronic olecranon bursitis and triceps tendonitis.
3. A 15% permanent partial disability to the left upper extremity rated at the elbow due to chronic olecranon bursitis and triceps tendonitis.
4. A 15% permanent partial disability to the body as a whole rated at the cervical spine due to chronic cervical syndrome.
5. A 25% permanent partial disability to the right upper extremity at the wrist due to carpal tunnel syndrome with a surgical release.
6. A 25% permanent partial disability to the left upper extremity rated at the wrist due to carpal tunnel syndrome.

Dr. Volarich deferred consideration on any disability related to Employee's depression and deferred to his psychiatrist.

Dr. Volarich opined that the combination of the employee's disabilities created a substantially greater disability than the simple sum or total of each separate injury or illness.

Dr. Volarich opined that Employee is unable to engage in any substantial or gainful activity nor can he be expected to perform in any ongoing working capacity in the future. Dr. Volarich opined that the employee could not reasonably be expected to perform work on an ongoing basis eight hours per day, five days per week throughout the work year. Dr. Volarich opined that Employee could not continue in his line of employment last held as a boilermaker for Enerfab, nor could he work on a full-time basis in a similar job.

Dr. Volarich opined that Employee is permanently and totally disabled as a direct result of the work injury of November 26, 2011, in combination with his preexisting medical conditions.

Dr. Volarich opined that in order to maintain his current state, the employee will require modalities, including narcotic and non-narcotic pain medications, muscle relaxers, and physical therapy and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints. He also believed that the employee will continue to

require ongoing prescriptions for Hydrocodone and Soma. Dr. Volarich opined that if the Employee's symptoms get worse, additional treatment at a pain clinic would be indicated. He stated that this would include; epidural steroid injections, nerve root blocks, trigger point injections, TENS units, radiofrequency ablation procedures and similar treatment.

Dr. Volarich has indicated work restrictions included all bending, twisting, lifting, pushing, pulling, carrying, climbing, and other similar tasks, lifting weights less than 20 pounds on an occasional basis, refrain from carrying weight overhead or away from the employee's body or over long distances on uneven terrain. Dr. Volarich also advised that the employee avoid remaining in a fixed position for any more than 30 minutes, including both sitting and standing, and change positions frequently. Dr. Volarich recommended appropriate stretching, strengthening, and range of motion exercises on a daily basis as tolerated.

Dr. Volarich's previous evaluation, conducted on April 29, 2004, found that Employee sustained a 40% permanent partial disability to the body as a whole as a result of the April 17, 2002 accident. This rating was based upon injuries to the lumbar spine and surgical treatment to the lumbar spine. Dr. Volarich also rated the right upper extremity at the elbow at 10% permanent partial disability as a result of the April 17, 2002 accident. Dr. Volarich's report of his examination of April 29, 2004 also indicated that permanent industrial disabilities preexisted the employee's injuries of April 17, 2002.

In terms of prior problems, complaints, or injuries, Employee has an extensive history of work and non-work-related conditions. Employee's preexisting medical history is documented in Dr. Volarich's December 26, 2013 and April 29, 2004 reports. In addition, Employee testified in great detail regarding his prior medical history and the effect of those problems, complaints and injuries on his ability to compete in the open labor market, and function in his personal life.

In 1999 Employee was diagnosed with an umbilical hernia that was surgically repaired. In 2001 he suffered a ventral hernia that was also surgically repaired. Employee testified that he could feel a pull in the abdominal wall when he lifted at work following these surgeries.

In 2001 Employee was diagnosed with depression that required counseling and medication over the years.

On April 17, 2002, Employee injured his low back attempting to lift a metal door while working as a boilermaker for Atlantic Services URI. Employee had low back pain and left radicular symptoms. He was diagnosed with a herniated disc at L5-S1. He underwent a laminotomy with microdiscectomy, left L5-S1 with lateral foraminotomy and S1 nerve root decompression by Dr. Petkovoich. After routine post-op care, Employee was released at MMI as of June 2, 2003.

Employee testified that he was doing well after his surgery until he was working in his backyard and felt a pop in his low back. A repeat MRI was done on July 2, 2003, and revealed a recurrent disc and epidural scarring at L5-S1. Employee made a demand for additional treatment to Atlantic Services, which was denied. Employee underwent Vax-D treatment paid for by his group carrier and that provided him with some relief. Employee testified that his symptoms began to deteriorate. Employee said that could not move forward with treatment until his

compensation claim settled because of a conflict in coverage between the compensation and general health carriers. That matter settled March 22, 2005, for 25% BAW referable to the low back and right elbow.

Starting in 2006, Dr. Lum noted ongoing low back pain that radiated down into Employee's left hip and leg. He prescribed Hydrocodone, Medrol Doespak, an S1 injection, and repeat MRI. Employee also saw Dr. Margherita for a second opinion. He suspected nerve root irritation. Employee was diagnosed with a new disc herniation at L3-4, an annulus tear at L4-5, and recurrent disc at L5-S1. Employee underwent a series of injections. Employee was referred to Dr. Taylor for a surgical consult. Dr. Taylor diagnosed recurrent disc pathology, failed back syndrome, post-laminectomy syndrome, and severe lumbar radiculopathy. He recommended further work-up in anticipation of surgery. An EMG/NCV was interpreted as consistent with L3-4 left radiculopathy and L5-S1 moderate chronic left radiculopathy. Employee sought a second surgical opinion with Dr. Youkilis. Dr. Youkilis concurred with Dr. Taylor's diagnosis and surgical recommendation. On November 21, 2006, Dr. Youkilis performed a left-sided L3-4 microlumbar discectomy and redo left-sided L5-S1 microlumbar discectomy. He did well post-operatively, but did not have a complete resolution of his low back pain and left leg radicular complaints.

Employee was allowed to return to work by February 2007. Employee's symptoms waxed and waned depending on his activity level. He required ongoing narcotic pain medications, injection therapy, and work restrictions up until the time of the work accident on November 26, 2011. He incurred additional lost time and had to turn down jobs because of his continuing problems, complaints, and injuries up until his November 26, 2011 work accident.

Employee testified that after his November 21, 2006 surgery he was never fully able to perform all of his job duties as a boilermaker because of his back and left leg complaints. He testified that he could only accept jobs where he could work in the tool room or some other light-duty capacity. Employee said that on those few jobs where he had to perform regular boilermaker duties, his co-workers helped him out by performing the heavier job tasks and allowing him to take additional breaks. He also said that he needed to take his narcotic medication in order get through his work shifts, including his shift on November 26, 2011.

While also treating for his back in 2003, Employee was diagnosed with bilateral elbow bursitis and bone spurs. He underwent injections, which provided him with some relief. Employee testified that he had ongoing complaints with his elbows. These complaints interfered with his ability to lift while at work.

Employee was also diagnosed with bilateral carpal tunnel. He underwent a right carpal tunnel release in 2004 and a left release in 2011. The left carpal tunnel was aggravated by a November 5, 2010 work accident at Bechtel Corporation. Employee testified that he had to miss time from work while he recovered from his surgeries and he continued to have problems with his grip strength as a result of this injury. It affected his ability to use his hand tools at work. He received 17.5% of the left hand under the Illinois Act (converts to approximately 20% of the hand under the Missouri Act).

In 2006 while getting steroids for his low back pain, Employee became diabetic. Employee testified that he is insulin dependent and has occasional flare-ups that require more intensive medical care. He also admitted that he was told by his doctors that his left leg symptoms could be secondary to diabetic neuropathy rather than nerve root compression in his back.

On July 21, 2014, Employee was evaluated by Mr. James England, a vocational specialist, at the request of his attorney, for an Independent Vocational Examination. Mr. England was deposed on June 17, 2015. He opined that Employee was totally disabled from employment in the open labor market based on a combination of his preexisting problems, complaints and injuries and his November 26, 2011 work injuries.

## **RULINGS OF LAW:**

### ***Issue 1. Medical causation***

The employee presented credible and persuasive testimony that following the accident of November 26, 2011, he developed pain in his left and right hips, suffered an increase in his low back pain, and suffered an increase or aggravation of his left-sided radiculopathy, and to a lesser extent, his right-sided radiculopathy. Employee also testified as to the development of his hernia during his physical therapy activities.

Both Dr. Randolph and Dr. Volarich credibly agree that the accident of November 26, 2011, caused injuries to the employee's lumbar spine and left and right hips. Dr. Randolph does not comment on the relationship of the hernia. Dr. Volarich credibly believes that the hernia is related to the necessary medical aid provided to the employee following his injuries. Specifically, it occurred during activities associated with prescribed physical therapy. Both Dr. Randolph and Dr. Volarich agree that the employee had multiple preexisting limitations and disabilities, including a preexisting lumbar spine disability, and preexisting left and right-sided radiculopathy. Dr. Randolph does not comment on the relationship of the aggravation of any radiculopathy, but he notes muscle pain in the left hip. Dr. Volarich does diagnose lumbar bilateral low extremity radiculopathy, left greater than right; however, his report also identifies that these conditions are preexisting and he so states in his report. In addition, the employee's increased complaints regarding his radiculopathy, primarily on the left, appear consistently throughout the medical records of Dr. Lum, Dr. Youkilis, and Dr. Van Ness.

Based on all of the evidence presented, I find that the November 26, 2011 work accident was the prevailing factor causing the resulting aggravation of the employee's low back injury and bilateral radiculopathies. In addition, the November 26, 2011 accident was the prevailing factor in causing injuries to the employee's left and right hips and an umbilical hernia. I further find that these injuries and resulting medical conditions and disability are medically causally related to the November 26, 2011 work accident.

### ***Issue 3. Permanent total disability against the Second Injury Fund; and Issue 4. Permanent partial disability against Employer***

Prior to the accident of November 26, 2011, the employee had significant multiple preexisting permanent partial disabilities. These disabilities were significant in both their nature and extent, and were ongoing at the time of the employee's accident of November 26, 2011. These disabilities included: two prior lumbar spine injuries, a right elbow injury, a left elbow injury, a cervical injury, right hand injury (carpal tunnel syndrome), and left hand injury (carpal tunnel syndrome). These disabilities were a hindrance or obstacle to his employment or re-employment.

The Employee was working on a job requiring 60 to 72 hours per week at the time of his accident and had no formal restrictions on his employment; he only actively pursued light-duty job assignments, i.e. working in the tool room. When Employee accepted regular work, his co-employees were aware of his physical limitations and permitted him to rest or take breaks as needed and performed the heavier tasks for him. Employee's primary care physician, Dr. Lawrence Lum, encouraged the employee to apply for disability prior to the November 26, 2011 accident. The employee declined Dr. Lum's suggestion because his pain medication regimen, including Hydrocodone, diminished or controlled his pain sufficiently for him to continue to work. This was no longer the case after the November 26, 2011 work accident.

Based on all of the evidence presented, I find that the disabilities caused by the employee's injuries of November 26, 2011, have combined with the employee's preexisting permanent partial disabilities so as to create a greater overall disability than the sum of the independent disabilities. In determining the extent of the liability of the Fund, I have carefully considered all of the evidence and exhibits. I find that the opinions of Dr. Volarich and the testimony of Mr. England are persuasive as to this issue. Both witnesses indicated that the employee was unable to return to any gainful employment and was unable to compete in the open labor market for such employment. The only other expert opinion testimony bearing on this issue is contained in Dr. Randolph's report. Dr. Randolph opined that the employee could return to medium level employment; however, Dr. Randolph's own restrictions as described in his report would eliminate medium level work. In addition, Dr. Randolph failed to consider other prior disabilities of the employee. Based on all of the evidence presented, I find Dr. Randolph's opinion as to Employee's current ability to seek gainful employment less persuasive than those of Dr. Volarich and Mr. England. In making this conclusion, I have also considered the testimony of the employee. I find that he is a credible witness as his testimony has been consistent throughout visits to multiple physicians and witnesses. In observing both his demeanor and assessing the content of his testimony, I find him to be a credible witness.

The Second Injury Fund did not present any evidence to contradict the opinions of Dr. Volarich and Mr. England that Employee's injuries of November 26, 2011, have combined with his preexisting permanent partial disabilities so as to create a greater overall disability than the sum of the independent disabilities.

Based on all of the evidence presented, I find that the employee is permanently and totally disabled from all gainful employment as a result of a synergistic combination of the employee's preexisting permanent partial disabilities and the disability arising from the accident of November 26, 2011.

Based on the credible testimony of the employee and the supporting medical and vocational evidence, I find that no employer in the usual course of business would reasonably be expected to employ the employee in his present physical condition and reasonably expect the employee to perform the work for which he is hired. I find that the employee is unable to compete in the open labor market and is permanently and totally disabled.

Based upon the evidence I find that as a direct result of the last injury the employee sustained a permanent partial disability of 7.5 % of the body as a whole referable to the lumbar lower extremity radiculopathy (30 weeks). I further find that employee sustained a permanent partial disability of 5% of left lower extremity rated at the hip due to a hip strain (10.35 weeks). I also find that Employee sustained 5% permanent partial disability to the body as a whole referable to a ventral hernia (20 weeks). Based on all of the evidence presented, including Dr. Volarich's ratings, I find that Employee does not have any permanent partial disability of the right hip. Furthermore, I find that the last injury alone did not cause the employee to be permanently and totally disabled. Based on all of the evidence presented, I find that Employer-Insurer is directed to pay the Employee a total of \$25,660.22 in permanent partial disability benefits (60.35 weeks of compensation) based on the permanent partial disability Employee sustained from the November 26, 2011 work accident.

Based on a review of the evidence, I find that the employee's preexisting disability and conditions regarding his low back, neck, right elbow, left elbow, right hand, and left hand constitute a hindrance or obstacle to his employment or to obtaining reemployment.

I find that the prior injuries to the employee's low back, neck, right elbow, left elbow, right hand, and left hand combined synergistically with the primary injury to the employee's low back, to cause the employee's overall condition and symptoms. Based on the supporting medical evidence and Employee's testimony, I find that the employee is permanently and totally disabled as a result of the combination of his preexisting injuries and condition and the November 26, 2011 injury and condition.

The permanent total disability rate is \$811.73, which is \$386.54 higher than the permanent partial disability rate of \$425.19. The Second Injury is therefore responsible for paying the difference between the permanent total disability rate and the permanent partial disability rate during the weeks that are attributable to the permanent partial disability benefits.

Based on all of the evidence presented, I find that Employee reached maximum medical improvement on March 21, 2013.

The Second Injury Fund is therefore directed to pay to the employee the sum of \$386.54 per week commencing on March 22, 2013, and ending on May 18, 2014, for a lump sum of (60.35 weeks x \$386.54 = \$23,327.69). Thereafter, commencing on May 19, 2014, the Second Injury Fund is directed to pay to the employee the sum of \$811.73 per week for permanent total disability; and said weekly payments shall be payable for the lifetime of the employee pursuant to Section 287.200.1 RSMo., 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 RSMo.

***Issue 2. Claim for additional or future medical aid***

Dr. Randolph opined that Employee requires no additional structure workup or treatment regarding the effects of the injuries occurring on November 26, 2011.

Dr. Volarich opined that in order to maintain his current state, the employee will require modalities, including narcotic and non-narcotic pain medications, muscle relaxers, and physical therapy and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints. He also believed that the employee will continue to require ongoing prescriptions for Hydrocodone and Soma. Dr. Volarich opined that if the Employee's symptoms get worse, additional treatment at a pain clinic would be indicated. He stated that this would include; epidural steroid injections, nerve root blocks, trigger point injections, TENS units, radiofrequency ablation procedures and similar treatment.

Employee credibly testified regarding his increase in pain after the November 26, 2011 work accident. Based on all of the evidence presented, including medical records, expert opinions, and the credible testimony of Employee, I find that the opinion of Dr. Volarich is more credible than the opinion of Dr. Randolph on the issue of additional or future medical aid. Furthermore, based on all of the evidence presented, I find that Employee's need for future medical care "flows" from the accident that occurred on November 26, 2011.

Based on all of the evidence presented, I find that the recommendations of future medical care made by Dr. Volarich are reasonable and necessary to cure and relieve the effects of the injury.

Based on these findings, Employer-Insurer is ordered to provide all medical treatment that is necessary to cure and relieve Employee from the effects of his work injury.

**ATTORNEY'S FEE:**

William Beatty, attorney at law, is allowed a fee of 25% 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.

Employee: Billy Davis

Injury No. 11-105117

Made by:

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Maureen Tilley  
*Administrative Law Judge*  
*Division of Workers' Compensation*