

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

Injury No.: 11-047378

Employee: Roy Blair
Employer: DJ Contracting
Insurer: Travelers Commercial Casualty
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. 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 19, 2012. The award and decision of Administrative Law Judge Kathleen M. Hart, issued November 19, 2012, 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 10th day of July 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Roy Blair

Injury No.: 11-047378

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: DJ Contracting

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund (SIF)

Insurer: Travelers

Hearing Date: September 12, 2012

Checked by: KMH

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: May 25, 2011
5. State location where accident occurred or occupational disease was contracted: St. Louis
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: Claimant injured his left hand while cutting steel in the course and scope of his employment.
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: left hand
14. Nature and extent of any permanent disability: 5% PPD to the left hand and 5 weeks disfigurement
15. Compensation paid to-date for temporary disability: \$4,566.35
16. Value necessary medical aid paid to date by employer/insurer? \$4,410.32

Employee: Roy Blair

Injury No.: 11-047378

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$799.11/\$418.58
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

8.75 weeks of permanent partial disability from Employer	\$3,662.58
5 weeks of disfigurement from Employer	\$2,092.90

22. Second Injury Fund liability: No

TOTAL:	\$5,755.48
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23. Future requirements awarded: None

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Andrew Weigley

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Roy Blair

Injury No.: 11-047378

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: DJ Contracting

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: SIF

Insurer: Travelers

Checked by: KMH

A hearing was held on the above captioned matter September 12, 2012. Roy Blair (Claimant) was represented by attorney Andrew Weigley. DJ Contracting (Employer) was represented by attorney Rhonda Kattelman. The SIF left open.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Claimant injured his left hand in the course and scope of his employment. Employer provided treatment, and Claimant seeks a temporary award for additional treatment. Employer asserts Claimant is at MMI and seeks a final award.

STIPULATIONS

The parties stipulated to the following:

1. Claimant sustained an injury by accident May 25, 2011 while in the course and scope of his employment.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by Travelers.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to yield rates of \$799.11 for TTD and \$418.58 for PPD.
6. Employer paid \$4,566.35, or 5 6/7 weeks, in TTD benefits and \$4,410.32 in medical benefits.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Future medical care
2. Future TTD
3. Permanent disability
4. Disfigurement

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 34 year-old male who worked for Employer from 2001 through May 2011. Employer is a demolition contracting company. Claimant was a working supervisor, and his duties involved use of all construction tools.
2. On May 25, 2011, Claimant and several co-workers were replacing a two-story boiler. Claimant was instructing his team on how to use a torch to cut the steel out in sections. A co-worker pushed a large pipe, and it hit and lacerated Claimant's non-dominant, left hand. Employer took Claimant to Barnes Hospital, where x-rays were negative and his hand was surgically repaired.
3. Claimant had follow-up treatment with Dr. Breeden at Concentra. On June 1, 2011, he was released to return to modified work duties, but no modified duties were available. Claimant developed an infection in his hand, and he was given additional medications to treat the infection. Claimant was released to full duty July 5, 2011, and released at MMI July 29, 2011. Claimant received TTD from the date of injury through July 5, 2011.
4. Claimant has not worked since the date of injury. No doctor has told him he could not work.
5. Claimant testified he continues to have numbness in his hand. He has pain from his hand to his elbow. His hand feels cold all the time. He has sharp pain when he touches metal. He has lost grip strength in his hand. He has difficulty working with small tools.
6. Dr. Breeden testified his examinations revealed Claimant had full range of motion in his fingers, and he was able to make a fist without any difficulty or weakness. Upon his release from treatment, Claimant's infection had healed, and he was neurovascularly intact. He did not have any paresthesias or weakness in his hand. He opined Claimant would not benefit from a course of physical therapy because his injury was to the soft tissue of his hand. There is very little musculature that needs to be rehabilitated with that type of injury. He opined Claimant had no permanent disability.

7. Claimant's expert, Dr. Schlafly, examined him and issued a report in October 2011. His physical examination was normal, with the exception of slightly reduced grip strength. He opined Claimant "would probably benefit from a course of supervised physical therapy" for strengthening and scar desensitization. He rated Claimant's disability at 30% PPD of the hand.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. Claimant is not entitled to additional medical treatment.

Section 287.140.1 (RSMO 2005) provides an injured worker is entitled to medical treatment as may reasonably be required to cure and relieve from the effects of the injury. In order to receive an award of future medical benefits, Claimant must show by reasonable probability that he is in need of additional medical treatment by reason of his work-related accident.

Dr. Schlafly's examination was normal with the exception of some loss of grip strength. He opined Claimant would probably benefit from some therapy. Dr. Breeden, the treating physician, found no loss of strength and opined Claimant would not benefit from physical therapy. He noted Claimant's laceration was on the outer aspect of his hand, and there is very little musculature there that would require rehabilitation.

I find Dr. Breeden's opinion more persuasive. Dr. Schlafly's somewhat equivocal opinion is not sufficient to establish a need for additional treatment.

2. Claimant is not entitled to additional TTD benefits.

Claimant was paid TTD through his release to return to work. He has reached MMI and is not entitled to additional treatment, and he is not entitled to additional TTD benefits.

- 3. Claimant sustained 5% PPD to his left hand and 5 weeks of disfigurement, and is entitled to \$5,755.48 in compensation.**

Based on the medical evidence, Claimant's ongoing symptoms, and my viewing of his disfigurement, I find Claimant sustained 5% PPD to his hand and is entitled to an additional 5 weeks for disfigurement. He is therefore entitled to \$5,755.48 in compensation.

- 4. Claimant's primary injury does not meet the statutory thresholds necessary to trigger SIF liability. The SIF claim is hereby dismissed.**

Made by: _____
KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation