

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

Injury No.: 05-046880

Employee: William Blakely
Employer: Solomon Contracting
Insurer: Uninsured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: February 9, 2005
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Pursuant to section 286.090 RSMo, subsequent to reviewing the evidence and considering the entire record, the Commission modifies the award and decision of the administrative law judge dated July 18, 2007.

I. Preliminary Matters

The Commission affirms all findings and conclusions of the administrative law judge except for the liability determination of the Second Injury Fund for permanent partial disability benefits in the amount of \$7,318.21. The Commission modifies that determination by concluding that the proper rate of preexisting disability for employee's left ankle is 75% at the 155 week level rather than 35% at the 155 week level. As such, the Second Injury Fund is liable to employee for \$9,515.09 in permanent partial disability benefits.

II. Preexisting Disability of Employee's Left Ankle

In his award, the administrative law judge determined that employee had a 35% preexisting disability of his left ankle. However, based on employee's prior injuries, the Commission does not agree with this finding. In 1997, employee's left foot was crushed by a forklift which required surgery to release his left tarsal tunnel and deep peroneal nerve. On October 11, 2001, employee fell off a ladder and injured his left foot again, this time requiring a left medial foot fusion. Employee also developed an infection in his foot and ankle which required several surgeries and placement of a plate and screws in employee's left ankle. Finally, in November of 2002, employee again fell off a ladder, this time suffering a comminuted fracture of the posterior and inferior calcaneus of the left heel.

Employee testified that as a result of these injuries, he has persistent pain when standing, walking or climbing stairs, and limps. He also testified that his left ankle gives out three to four times a week, causing him to fall down. Employee also stated that he constantly feels "pressure" pain regardless of his level of activity, and described this level of pain as 7 or 8 on a scale of 10. Additionally, in the Stipulation for Compromise Settlement for injury 03-026563, employee was assessed a 75% disability rating of the left ankle at the 155 week level.

Based on the above, the Commission finds that employee has a preexisting disability of his left ankle of 75% at the 155 week level. As such, the Commission calculates the Second Injury Fund's liability for permanent partial disability benefits as follows:

Preexisting Disabilities

75% of employee's left ankle at the 155 week level = 116.25
30% of employee's right wrist at the 175 week level = 52.50
25% of employee's right shoulder at the 232 week level = 58.00
226.75

Primary

20% of employee's right elbow at the 210 week level = 42.00

226.75 + 42.00 = 268.75(10% enhancement) = 26.875(\$354.05) = \$9,515.09

Based on the above modification, the Commission ascertains and determines the Second Injury Fund is liable to employee for \$9,515.09 in permanent partial disability benefits.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued July 18, 2007, as modified herein, is attached and incorporated by 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 19th day of November 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: William Blakely Injury No.: 05-046880

Dependents: N/A Before the
Division of Workers'

Employer: Solomon Contracting Compensation
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Uninsured

Hearing Date: June 13, 2007 Checked by: CTL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes

2. Was the injury or occupational disease compensable under Chapter 287? Yes
 3. Was there an accident or incident of occupational disease under the Law? Yes
 4. Date of accident or onset of occupational disease: February 9, 2005
 5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
 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? Uninsured
 11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant fell off of a ladder.
 12. Did accident or occupational disease cause death? No Date of death? N/A
 13. Part(s) of body injured by accident or occupational disease: Right elbow
 14. Nature and extent of any permanent disability: 20% of the right elbow at the 210 week level for a total of 42 weeks
 15. Compensation paid to-date for temporary disability: None
 16. Value necessary medical aid paid to date by employer/insurer? None
- Employee: William Blakely Injury No.: 05-046880
17. Value necessary medical aid not furnished by employer/insurer? \$2,381.50
 18. Employee's average weekly wages: \$1,160.50
 19. Weekly compensation rate: \$675.90/\$354.05
 20. Method wages computation: Workers' Compensation Tables

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$2,381.50

42 weeks of permanent partial disability from Employer \$14,870.10

22. Second Injury Fund liability: Yes

The combination of the primary injury and Claimant's prior injuries

amount to 206.75 weeks with a 10% load factor for 20.67 weeks at
\$354.05 per week or \$7,318.21

Uninsured medical/death benefits: \$2,381.50

TOTAL: \$26,951.31

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:

Dean Christianson

FINDINGS OF FACT and RULINGS OF LAW:

Employee: William Blakely

Injury No.: 05-046880

Dependents: N/A

Before the
Division of Workers'

Employer: Solomon Contracting

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: Uninsured

Checked by: CTL:tr

PREFACE

A hearing was held in the above-mentioned matter on June 13, 2007. The Claimant, William Blakely, was represented by Attorney Dean L. Christianson. The Employer was represented by Attorney James C. Leritz. The Second Injury Fund was represented by Assistant Attorney General Kay Osborne.

STIPULATIONS

1. The Claimant was an employee of the Employer on February 9, 2005, and both were subject to the provisions of the Missouri Workers' Compensation law.
2. Employer had no workers' compensation insurance coverage on February 9, 2005.

EXHIBITS

The Claimant offered the following exhibits which were admitted into evidence:

- Exhibit A. Deposition of Dr. Lichtenfeld.
- Exhibit B. Medical Records of St. Anthony's Medical Center.
- Exhibit C. Medical Records of Signature Health #1.
- Exhibit D. Medical Records of Signature Health #2.
- Exhibit E. Medical Records of Signature Health #3.
- Exhibit F. Medical Records of Signature Health #4.
- Exhibit G. Medical Records of Barnes West County Hospital.
- Exhibit H. Medical Records of Premier Care #1.
- Exhibit I. Medical Records of Premier Care #2.
- Exhibit J. Medical Records of Jefferson Memorial Hospital #1.
- Exhibit K. Medical Records of Jefferson Memorial Hospital #2.
- Exhibit L. Medical Records of Tesson Heights Orthopaedic & Arthroscopic Assoc.
- Exhibit M. Medical Records of The Surgery Center of St. Louis.
- Exhibit N. Medical Records of Geistler Family Footcare #1.
- Exhibit O. Medical Records of Geistler Family Footcare #2.
- Exhibit P. Medical Records of Dr. Burmeister.
- Exhibit Q. Medical Records of Dr. Cruz.
- Exhibit R. Medical Records of Dr. Johnson.
- Exhibit S. Medical Records of Dr. Marino.
- Exhibit T. Medical Records of Missouri Bone & Joint Center.
- Exhibit U. Claim for Compensation for February 9, 2005 Injury.
- Exhibit V. Correspondence from Attorney Richard Dorsey.
- Exhibit W. Solomon Contracting Check Stubs.
- Exhibit X. Medical Bills.

The Employer offered the following exhibits which were admitted into evidence:

- Exhibit 1. Premier Care Report.
- Exhibit 2. Premier Care Records.

The Second Injury Fund offered the following exhibit which was admitted into evidence:

- Exhibit I. Stipulation on Injury Number 03-026563.

ISSUES

1. Did Claimant suffer an accidental injury that arose out of and in the course of his employment with Employer;
2. Did Claimant provide proper notice of said accident to Employer;
3. Was Claimant's Claim for Compensation filed within the time prescribed by law;
4. What is Claimant's average weekly wage and what is Claimant's compensation rate;
5. Has Claimant sustained any permanent disability and, if so, what is the nature and extent of such disability;
6. Is Employer liable for any past medical bills;
7. Is Employer liable for any future medical care;
8. Is the Second Injury Fund liable for any permanent disability and, if so, what is the nature of such disability; and
9. Is the Second Injury Fund liable for any past medical expenses?

FINDINGS OF FACT

1. Claimant, at the time of the hearing, was 35 years of age and was injured on February 9, 2005, when he was in the employ of Solomon Contracting Company, the Employer. He was using a ladder to inspect a roof which slipped and Claimant fell approximately 9 to 10 feet onto the asphalt surface below him. At the time he hit the asphalt surface, he immediately felt pain in his right elbow. Claimant, immediately after the fall, put the ladder on his truck and went home.

2. Claimant, on the way home after the fall, called his supervisor, Mr. Chuck Carneghi, and advised him of the fall.
3. The day after his fall, Claimant went to Jefferson Memorial Hospital and complained of right elbow and wrist pain, and x-rays were taken. The x-rays revealed a comminuted displaced radial head fracture with extension to the radial neck.
4. After being seen at Jefferson Memorial Hospital, Claimant went to see Dr. Haueisen, an orthopedic surgeon who had treated him for past injuries. Dr. Haueisen gave Claimant a plaster splint and told him to do various exercises.
5. On February 9, 2005, the date of Claimant's injury, the temporary total disability rate for the Claimant was \$675.90 per week for and the rate for permanent partial disability was \$354.05.
6. Claimant's supervisor at the time of the fall on February 9, 2005, was Chuck Carneghi. He testified Claimant had called him after the fall.
7. The Court takes judicial notice of its file.
8. As a result of Claimant's fall on February 9, 2005, he incurred medical bills in the amount of \$2,381.50.
9. The Claimant testified that his right elbow still hurts him, has lost range of motion, and it gives him problems when he is lifting.
10. Claimant, as a result of the February 9, 2005 fall, sustained a comminuted, displaced, intra-articular right radial head fracture with extension to the radial head.
11. Dr. Lichtenfeld felt that the Claimant was in need of further medical treatment; to wit, anti-inflammatory medication and an elbow pad.
12. Claimant's preexisting disabilities and injuries are as follows: a) in 1997, Claimant's left foot was crushed by a forklift and he had to have surgery which consisted of a left tarsal tunnel release as well as a release of the deep peroneal nerve; b) on October 11, 2001, Claimant fell off a ladder and as a result of his injuries underwent surgery for a left medial foot fusion and Claimant testified he still has problems with the left foot when walking and limps; c) Claimant fell off a ladder in November 2002 and suffered a comminuted fracture of the posterior and inferior calcaneus of the left heel and Claimant still has persistent pain when standing, walking or climbing the stairs; d) on March 13, 2003, the Claimant fell off a ladder approximately 15 feet and he landed on his back and as a result sustained injuries to his right shoulder and Dr. Haueisen performed right shoulder arthroscopy surgery on the shoulder; and e) on March 13, 2003, Claimant injured his right hand, wrist and arm and underwent surgery for the right wrist as well as to his right shoulder.

RULINGS OF LAW

1. Claimant sustained an accident on February 9, 2005, which arose out of and in the course of employment with the Employer.
2. Employer, on February 9, 2005, did not have workers' compensation insurance for its employees.
3. Employer had notice of Claimant's injury on February 9, 2005 and Claimant also filed his claim within the statute of limitations.
4. Claimant's weekly compensation rate of February 9, 2005 was \$675.90/\$354.05.
5. Claimant, as a result of the accident on February 9, 2005, sustained 20% permanent partial disability of the right elbow at the 210 week level for a total of 42 weeks at \$354.05 per week for a total of \$14,870.10.
6. Employer is liable for past medical bills in the amount of \$2,381.50 and permanent partial disability in the amount of \$14,870.10.
7. The Second Injury Fund is liable for Claimant's medical bills since the Employer did not have workers' compensation insurance on February 9, 2005, for its employees. The Second Injury Fund is liable for medical bills in the amount of \$2,381.50.
8. I do not feel that the Employer or the Second Injury Fund shall be liable for the future medical care that Dr.

Lichtenfeld testified to.

9. The Second Injury Fund is liable for preexisting disabilities of 35% of the Claimant's left foot at the 155 week level as a result of the combined injuries Claimant sustained of a left foot fracture, left ankle fracture and heel fracture; 30% of the right wrist; and 25% of the right shoulder combined with the primary injury of 20% at the 210 week level for a total of 206.75 weeks and a 10% load factor for a total of 20.67 weeks at \$354.05 permanent partial disability per week for a total of \$7,318.21.
10. Claimant's prior disability complaint of headaches does not reach the statutory threshold for Second Injury Fund liability.

Date: _____

Made by: _____

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

A true copy: Attest:

Acting Director
Division of Workers' Compensation