

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

Injury No.: 03-123873

Employee: Donna M. Blankenship  
Employer: Von Weise Gear (Settled)  
Insurer: Travelers (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
Of Second Injury Fund

Date of Accident: November 19, 2003

Place and County of Accident: Franklin 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. 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 31, 2007. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued May 31, 2007, 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 13<sup>th</sup> day of November 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

DISSENTING OPINION FILED

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified. I believe the administrative law judge erred in concluding that employee failed to prove permanent total disability against

the Second Injury Fund.

Permanent and total disability is defined by section 287.020.7 RSMo (2000) as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident.

“In order to be entitled to Fund liability, the claimant must establish either that (1) a preexisting partial disability combined with a disability from a subsequent injury to create permanent and total disability or (2) the two disabilities combined to result in a greater disability than that which would have resulted from the last injury by itself.” *Gassen v. Lienbengood*, 134 S.W.3d 75, 79 (Mo.App. W.D. 2004) citing *Karoutzos v. Treasurer of State*, 55 S.W.3d 493, 498 (Mo.App. W.D. 2001).

“Liability of the Second Injury Fund is triggered only ‘by a finding of the presence of an actual and measurable disability at the time the work injury is sustained.’” *E.W. v. Kansas City School District*, 89 S.W.3d 527, 537 (Mo.App. W.D. 2002) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003)).

The administrative law judge ultimately concluded that employee was not unable to compete in the open labor market as a result of the combination of her work injuries and her pre-existing disabilities. However, competent and substantial evidence establishes that employee is entitled to permanent total disability benefits against the Second Injury Fund as she is permanently and totally disabled due to a combination of her pre-existing disabilities and her subsequent shoulder conditions.

The record shows that employee suffered from pre-existing conditions. She suffered from a chronic degenerative back condition, as well as residual symptoms after having surgical repair for bilateral carpal tunnel syndrome.

Employee provided testimony regarding her pre-existing injuries. She testified that she sustained multiple injuries to her low back. She missed a measurable amount of work as a result of her low back injuries for which she received temporary total disability benefits. Prior to November 2003, employee received a settlement along with awards for her back injuries that totaled 17½% permanent partial disability to the body as a whole referable to the low back. Employee also changed to a less strenuous, light-duty job for a few years as a result of her back injuries. Employee testified as to the limitations she had as a result of her back condition which included difficulty with prolonged sitting and standing as well as difficulty sleeping due to pain. Employee also underwent carpal tunnel release surgery on both wrists. She continued to experience weakness and difficulty with regard to her grip after the surgeries.

Employee also provided testimony with regard to her primary injuries. Employee underwent three surgical procedures on her right shoulder and one surgery on her left shoulder. As a result of her surgeries she experiences chronic pain. Employee settled her claim for 32½% permanent partial disability of the right shoulder and 20% permanent partial disability of the left shoulder. Employee testified as to her inability to sustain work as a result of a combination of her primary and pre-existing conditions.

Additionally, employee provided expert testimony to corroborate her testimony. Employee’s medical and vocational experts testified that employee was unable to sustain work. Dr. Volarich testified that employee’s pre-existing conditions were obstacles to her employment. Dr. Volarich noted that degenerative changes in employee’s lumbar spine along with bulging discs accounted for her pain prior to her November 2003 injuries. Dr. Volarich testified that employee sustained a 30% permanent partial disability to the body as a whole referable to her low back. Dr. Volarich opined that employee suffered 25% permanent partial disability referable to each wrist. He further testified that employee was permanently and totally disabled as a result of the combination of employee’s primary and pre-existing disabilities. In addition, vocational expert, Mr. Lalk, testified that employee could not compete in the open labor market. He opined that her shoulder injuries alone would not render her unemployable; however when considered in combination with her low back symptoms and wrist complaints, she would not be able to compete for any position.

The record demonstrates that employee did suffer from actual and measurable disabilities at the time of her work injuries on November 19, 2003, that were an obstacle or hindrance to employment. The evidence supports a finding that employee’s pre-existing disabilities combined with her subsequent shoulder injuries to render her

permanently and totally disabled.

Based on the foregoing, I conclude that employee is permanently and totally disabled as a result of the combination of employee's pre-existing disabilities and her November 19, 2003 injuries.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

---

John J. Hickey, Member

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 04-019858

Employee: Donna M. Blankenship

Employer: Von Weise Gear (Settled)

Insurer: Travelers (Settled)

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

Date of Accident: March 9, 2004

Place and County of Accident: Franklin 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. 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 31, 2007. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued May 31, 2007, 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 13<sup>th</sup> day of November 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee:	Donna M. Blankenship	Injury No. 03-123873 & 04-019858
Dependents:	n/a	
Employer:	Von Weise Gear (previously settled)	Before the <b>DIVISION OF WORKERS' COMPENSATION</b>
Additional Party:	State Treasurer, as Custodian of Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Travelers	
Hearing Date:	March 9, 2007	Checked by: KD/lsn

### 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: 11/19/03
5. State location where accident occurred or occupational disease was contracted: Franklin 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee was moving a basket of metal parts and injured shoulder
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 and right shoulders
14. Nature and extent of any permanent disability: 30 % permanent partial disability of the right shoulder; 20% permanent partial disability of the left shoulder
15. Compensation paid to-date for temporary disability: n/a
16. Value necessary medical aid paid to date by employer/insurer? n/a

- 17. Value necessary medical aid not furnished by employer/insurer? n/a
- 18. Employee's average weekly wages: by agreement
- 19. Weekly compensation rate: \$444.46/\$347.05
- 20. Method wages computation: by agreement of the parties

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

22. Second Injury Fund liability: Yes

34.275 weeks of permanent partial disability from Second Injury Fund at \$347.05 per week..... \$11,895.14

TOTAL: \$11,895.14

23. Future requirements awarded: n/a

Said payments to begin as of the date of this award 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:

John J. Larsen Jr.

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Donna M. Blankenship

Injury No: 03-123873 & 04-019858

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: n/a

Employer: Von Weise Gear (previously settled)

Insurer: Travelers

Checked by: KD/lsn

The claimant, Ms. Donna Blankenship, and the State Treasurer, as custodian of the Second Injury Fund, appeared at hearing by and through their counsel and entered into certain stipulations and agreements as to the issues and evidence to be presented in this claim for compensation. The parties agreed to a joint hearing in injury numbers 03-123873 and 04-019858. The primary claims as against the employer, Von Weise Gear, have been previously settled, and the only issues to be resolved at hearing are as to permanent disability and the liability of the Second Injury Fund. The employee and the Second Injury Fund further agreed that although separate claims were filed in each of these matters, there was in fact only one injury that is at issue, and that injury occurred on 11/19/03 as pleaded in Injury Number 03-123873.

### **EXHIBITS**

The following exhibits are in evidence:

#### **Claimant's Exhibits**

- A. Deposition of David Volarich, M.D., taken on December 12, 2006
- B. Deposition of Timothy G. Lalk, taken on December 14, 2006
- C. Compromise Lump Sum Settlement in Injury Number 03-123873
- D. Compromise Lump Sum Settlement in Injury Number 04-019858
- E. Operative reports of Drs. Robert Markenson and James Emanuel
- F. Compromise Lump Sum Settlement in Injury Number 87-043450
- G. Award in Injury Number 89-015480
- H. Award in Injury Number 90-146526
- I. Award in Injury Number 92-025369
- J. Compromise Lump Sum Settlement in Injury Number 97-088501, with operative report
- K. Award in Injury Number 91-120108

#### **Second Injury Fund Exhibits**

- I. Medical reports of Dr. James P. Emanuel
- II. Deposition of Donna Blankenship, taken on 8/30/06

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

The claimant, 56 years old as of the date of hearing, has been in continuous employment with Von Weise Gear for 31 years. Ms. Blankenship has worked as a machine operator; as a receiving clerk; and during periods while on light duty, she has worked in the electronics department, cutting tubing and putting terminals on wires. Ms. Blankenship has a G.E.D., and no other formal training except for personal computer courses taken in the 1990's to help her in her work.

As a machine operator, the claimant ran drill and punch presses, "hopping" machines, and was obliged to lift parts to a table weighing anywhere from 3 to 50 pounds. Claimant also worked as a receiving clerk, and would unload trucks; weigh and count parts; make computer entries; drive forklifts; use manual and electric hand trucks; and operated a hand bander and a hand shrink wrapper.

On 11/19/03 the claimant was in the process of moving stacks of baskets containing metal shafts, weighing 50 to 60 pounds, when the stack shifted, jerking the claimant and causing immediate and severe pain in her right shoulder. Ms. Blankenship continued working that day, had no improvement in her symptoms the next day, and had chiropractic treatment, followed by a surgery by Dr. Markenson on 1/6/04. The operative note indicates that the claimant had an open right rotator cuff repair of a full thickness tear of the cuff, with bursectomy and acromioplasty (Claimant's Exhibit E).

Claimant relates that on 1/26/04 she was released to light duty, and was put in the electronics department, cutting tubing and working on terminal machines. Claimant was unable to use both of her hands on a job that required the use of both hands, and began to suffer from left arm and shoulder problems. Claimant also suffered a frozen right shoulder, and was unable to raise her right arm over chest level.

In March of 2004 the claimant was unable to continue working, and eventually sought further care from Dr.

Markenson. On 3/23/04 Dr. Markenson performed a manipulation of the right shoulder for adhesive capsulitis post rotator cuff repair. He further found the claimant to suffer from tendonitis of the left shoulder, and provided claimant with an injection of Marcaine and Depo-Medrol.

Claimant relates that she was prescribed physical therapy, had an MRI ordered of the left shoulder, and was released to return to work by Dr. Markenson on 4/9/04 with restriction as to no overhead lifting, as to no lifting over five pounds with either arm, and with no repetitive use of the right arm. Claimant relates that she returned to work in the machine shop, putting gears together and operating a punch press. By 4/21/04 the claimant was unable to work due to left arm pain. Claimant relates that she subsequently had a functional capacity evaluation by Dr. Markenson; was released from his care in June of 2004; and was advised that she would be unable to continue in her old job at Von Weise Gear.

Ms. Blankenship was subsequently referred to Dr. James P. Emanuel on 9/13/04. Dr. Emanuel reviewed the prior medical history, performed a physical examination, and concluded that the claimant suffered adhesive capsulitis in the right shoulder with symptomatic acromioclavicular arthritis, subacromial bursitis with a spur and impingement. In the left shoulder, Dr. Emanuel believed the claimant to have a partial thickness rotator cuff tear bursal surface with subacromial bursitis, and symptomatic acromioclavicular joint arthritis. Dr. Emanuel believed the right and left shoulder complaints to be causally related to the injury on 11/19/03, and recommended re-manipulation of the right shoulder; arthroscopic removal of scar tissue, subacromial decompression and removal of a spur off the anterior acromion, and an arthroscopic distal clavicle resection for symptomatic acromioclavicular joint arthritis. In the event of a successful outcome on the right, Dr. Emanuel would then recommend an arthroscopy of the left shoulder, with subacromial decompression, distal clavicle resection, and debridement or repair of the rotator cuff as indicated. (Second Injury Fund Exhibit No. I).

Ms. Blankenship acknowledges having the surgeries recommended by Dr. Emanuel on the right shoulder on 10/13/04, and on the left shoulder on 2/4/05. None of the operative notes or records as to physical therapy ordered by Dr. Emanuel post surgery are in evidence. Contained within Second Injury Fund Exhibit No. I is a rating of disability by Dr. Emanuel as to each of the shoulders dated 7/11/05, noting "The patient did very well following the surgeries, and regained full range of motion, with good muscle strength of the rotator cuff." Following the shoulder surgeries, Dr. Emanuel found Ms. Blankenship to be at maximum medical improvement on 4/25/05.

Ms. Blankenship has not worked at Von Weise Gear or in any other capacity since 4/21/04. Claimant relates that the employer was in the process of moving to Mexico, and that in November of 2004 she was on lay off and began to receive severance pay. Ms. Blankenship acknowledges on cross examination that she received unemployment compensation for a period of time after the lay off; had no job interviews during that time; and had finished treating as to her shoulders. Claimant further acknowledged on cross examination that prior to her work injury to her shoulders she had worked for two years as a receiving clerk, and that she worked nine to ten hours a day, 6 days a week.

At hearing Ms. Blankenship noted that she had low back complaints since the 1980's, and had multiple low back claims from 1987 to 1992 that resulted in either settlement or an award. Claimant testified that in approximately 1993 she sought a return to the machine shop on account of her back complaints, eventually returning to receiving clerk for higher pay.

Ms. Blankenship testified that she worked 3 hours a day making computer entries, and the rest of her day performing all the other functions of a receiving clerk. Claimant relates that prior to her shoulder injury, she has also had a right foot surgery, wrist tendonitis, and bilateral carpal tunnel surgeries. Claimant testified that despite her wrist complaints, she was able to continue working, but with some tingling in the hands and with some loss of strength.

Claimant relates that she is right hand dominant; that her right shoulder is more symptomatic than the left; that she suffers from some loss of ability to reach behind her with the right arm; and that at times will have increased symptoms when lifting a light shopping bag. Claimant notes that she will do routine household chores with increased discomfort.

Ms. Blankenship acknowledges that her back complaints have gotten progressively worse over time, and currently complains of pain radiating down into her legs, with an inability to sit or stand for long periods of time.

Claimant further complains of constant back and shoulder pain that causes her to lose sleep at night. Claimant relates that she takes over the counter medication for her pain complaints. Ms. Blankenship testified that she doubts she is able to work, citing her inability to use her arms for long, or to sit or stand for long.

Ms. Blankenship further testified by deposition taken on 8/30/06 (Second Injury Fund Exhibit No. II).

Claimant sought an evaluation of disability from David Volarich, M.D., and a vocational opinion from Timothy G. Lalk as to her ability to compete for employment on the open labor market. Dr. Volarich met with Ms. Blankenship on 1/20/06, reviewed medical records, elicited her physical complaints, and performed a physical examination.

The testimony of Dr. Volarich persuades that the claimant has chronic back complaints related to degenerative disc disease and degenerative joint disease from L1 through S1, with disc bulging at L2-3 through L5-S1, causing intermittent bilateral lower extremity paresthesias. Dr. Volarich further persuades that the claimant suffers from some residual loss of strength in her hands related to her bilateral carpal tunnel surgeries. Lastly, Dr. Volarich persuades that the claimant suffers from a loss of strength in her upper extremities following her work injury that resulted in surgeries performed by Drs. Markenson and Emanuel.

## **PERMANENT DISABILITY/LIABILITY OF THE SECOND INJURY FUND**

The liability of the employer for disability related to a work injury must first be determined before the liability of the Second Injury Fund, if any, can be determined. For example, if the last injury, considered alone, is the sole cause of a permanent and total disability, the employer shall be responsible for that liability, and the Second Injury Fund shall have no liability for the combination of disabilities that are pre-existing and work related. Section 287.220 RSMo; Vaught v. Vaughts, Inc., 938 S.W.2d 931 (Mo.App. S.D. 1997); Stewart v. Johnson, 398 S.W.2d 850 (Mo. 1966).

The expert medical opinion in the matter persuades that the last injury suffered by the claimant at work resulted in permanent and partial disability to the left and right upper extremities at the level of the shoulder. The testimony of Ms. Blankenship as to the effective use of her upper extremities at the level of the shoulder, in conjunction with the objective findings by Dr. Volarich supporting those subjective complaints, persuades that as a result of her injury at work on 11/19/03, the claimant suffered impingement of the left shoulder resulting in a 20% permanent partial disability; and an impingement and rotator cuff tear of the right shoulder, resulting in a 30% permanent partial disability.

Chronic back and wrist complaints and right foot complaints are the only preexisting conditions that Ms. Blankenship testified at hearing as causing her difficulty with her work as a receiving clerk. Ms. Blankenship testified that her job required a lot of lifting, bending, stooping, and twisting, and that it was very physical (Second Injury Fund Exhibit II, at page 22). Ms. Blankenship further acknowledged that she would lift as much as 70 pounds at a time, working nine to ten hour days, six days a week. At deposition, the following responses were made on the subject of hobbies:

Q: Did you have any hobbies?

A: Yeah. Riding bikes, riding the horse, swimming.

Q: And were you able to swim, bike, and clean and do all the other household chores up to the time you injured your shoulder?

A: Yes.

Q: Okay, and were you able to do those at any time after you injured your right shoulder?

A: No. And I've tried. (Second Injury Fund Exhibit No. II, at pp. 98-99)

It is difficult to reconcile the complaints made by Ms. Blankenship as to her pre-existing conditions with the fact that she was working an admittedly physically demanding job, bending, stooping, twisting, and lifting for nine or ten hours a day, six days a week, and was also able to pursue hobbies such as biking, swimming, and horseback riding. The existence of a chronic back condition and an operated bilateral carpal tunnel syndrome notwithstanding, claimant continued to perform a physically demanding job. Claimant had her last back injury in 1992, and her carpal tunnel surgery in 1999. Despite both her back and carpal tunnel complaints combined, Ms. Blankenship was able to continue working full time without restrictions from 2000 until her shoulder injury on 11/19/03.

Ms. Blankenship also interviewed with Timothy G. Lalk, a vocational rehabilitation counselor, on 7/10/06. Mr. Lalk reviewed medical records, interviewed Ms. Blankenship, elicited her complaints as to functional limitations, and took a vocational and educational history from the claimant. Mr. Lalk also performed testing to determine claimant's performance levels in arithmetic and reading comprehension. Mr. Lalk notes that he also reviewed medical restrictions by treating and evaluating physicians, as showing on pages 16 and 17 of his report. Mr. Lalk further acknowledges that Dr. Crandall offered no restrictions after the carpal tunnel surgery to restrict claimant from a return to full duty, and that Drs. Musich and Samson likewise offered no restrictions as to the back that would prohibit claimant from working a factory position.

Mr. Lalk concludes that Ms. Blankenship is unable to secure employment on the open labor market, and relies on the symptoms and limitations described to him by the claimant, along with the restrictions from Dr. Volarich. Dr. Volarich opines that the claimant cannot be reasonably expected to perform in an ongoing basis 8 hours a day, 5 days a week throughout a work year, and concludes from his medical perspective that Ms. Blankenship is permanently and totally disabled.

The test for permanent total disability is whether, given the claimant's situation and condition, he is competent to compete in the open labor market. Lturno v. Carnahan, 640 S.W.2d 470, 472 (Mo.App. 1982). This test measures the worker's prospects for returning to employment. Patchin v. National Supermarkets, Inc., 738 S.W.2d 166, 167 (Mo.App. 1987). Total disability means the inability to return to any reasonable employment; it does not require that the employee be completely inactive or inert. Brown v. Treasurer of Missouri, 795 S.W.2d 479, 483 (Mo.App. 1990). The question is whether in the ordinary course of business an employer would reasonably be expected to hire the claimant in his present physical condition, reasonably expecting him to perform the work for which he is hired. Kowalski v. M-G Metals and Sales, Inc., 631 S.W.2d 919, 922 (Mo.App. 1982).

Mr. Lalk acknowledges that while employed at Von Weise, the claimant performed job duties that greatly exceeded the restrictions imposed by Dr. Volarich. He further acknowledges that if the restrictions due to the shoulder injuries were

superimposed on what claimant was actually showing herself to be physically capable of doing as of the date of the shoulder injury, she would be employable (Claimant's Exhibit B, at pp 41,42). Dr. Volarich also concedes that there was an inconsistency between what the claimant said she was capable of lifting at work when discussing her job activities, versus what she said she was capable of lifting when discussing her back complaints (Claimant's Exhibit A, at page 35).

Simply put, the physical nature of the claimant's work activities; the absence of work restrictions to limit those activities when they were being performed; and the acknowledgement from Mr. Lalk that the claimant would be employable if you superimposed her shoulder restrictions on what she was actually capable of performing at the time of the last work injury, leads to the conclusion that the claimant was not rendered unable to compete for employment on the open labor market as a result of the combination of her work injury and her pre-existing disabilities.

Second Injury Fund liability is triggered when the preexisting injury is a hindrance or obstacle to employment or to obtaining reemployment. "If the Second Injury Fund is to fulfill its acknowledged purpose, the proper focus of the inquiry as to the nature of the prior disability is not on the extent to which the condition has caused difficulty in the past; it is on the *potential* that the condition may combine with a work related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition." Wuebbling v. West County Drywall, 898 S.W.2d 615, 620 (Mo.App. E.D. 1995).

Claimant is acknowledged to have a chronic degenerative back condition that has been symptomatic and disabling (See Awards, Claimant's Exhibits G and I). Claimant is also acknowledged to have suffered a loss of strength in the hands relative to a surgically repaired bilateral carpal tunnel syndrome. The testimony of Ms. Blankenship and the expert medical opinion of Dr. Volarich persuades that the preexisting disability at the wrist and the low back meet the threshold for combination disability as against the Second Injury Fund, Section 287.220 RSMo. Claimant is found to have a preexisting permanent partial disability of 15% of the body as a whole, referable to the low back, and a 15 % permanent partial disability of each the left and right wrists, referable to her carpal tunnels. The testimony of Dr. Volarich further persuades that the combination of disability to the shoulders, back and wrists creates a disability greater than their simple sum by a factor of 15%. The total due for permanent and partial disability from the Second Injury Fund is  $(400 \times .15) + (175 \times .15) + (175 \times .15) + (232 \times .20) + (232 \times .30) = 228.5 \times .15 = 34.275$  weeks of disability. At the stipulated rate of \$347.05, the total due from the Second Injury Fund is \$11,895.14.

This award is subject to a lien in favor of John J. Larsen, Jr. in the amount of 25% thereof for necessary legal services rendered.

This award is subject to interest as provided by law.

Date: May 31, 2007

Made by: /s/ KEVIN DINWIDDIE  
KEVIN DINWIDDIE  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST  
PATRICIA "PAT" SECREST  
Director  
Division of Workers' Compensation