

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

Injury No.: 99-176039

Employee: Allen H. Bleckman
Employer: Jefferson Products Company
Insurer: Liberty Mutual Insurance
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

Date of Accident: December 14, 1999

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 17, 2007. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued May 17, 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 14th day of September 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Allen H. Bleckman

Injury No. 99-176039

Dependents: n/a

Before the

Employer: Jefferson Products Company

**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: State Treasurer as custodian of Second Injury Fund
(Remains open)

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

Insurer: Liberty Mutual Insurance

Hearing Date: March 8, 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: 12/14/99
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 suffered injury to right upper extremity while forcing a cap onto a valve
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 upper extremity at forearm and shoulder
14. Nature and extent of any permanent disability: 5% permanent partial disability of the right forearm; 10% permanent partial disability of the right shoulder.
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? \$2,228.74
17. Value necessary medical aid not furnished by employer/insurer? n/a
18. Employee's average weekly wages: max rate for ppd
19. Weekly compensation rate: \$303.01
20. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable:
33.2 weeks of permanent and partial disability at \$303.01 per week.....\$10,059.93
22. Second Injury Fund liability: open

TOTAL.....\$10,059.93

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:

James L. Logan

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Allen H. Bleckman

Injury No: 99-176039

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: n/a

Employer: Jefferson Products Company

Additional Party: State Treasurer as custodian of Second Injury Fund
(remains open)

Insurer: Liberty Mutual Insurance

Checked by: KD/Isn

The claimant, Allen H. Bleckman, and the employer and its insurer, Jefferson Products Company and Liberty Mutual Insurance Company, appeared at hearing by and through their counsel and entered into certain stipulations and agreements as to the issues and evidence to be submitted in this claim for compensation. The employee and employer agree that permanent partial disability is the only issue to be resolve at hearing.

Assistant Attorney General Jennifer Sommers appeared on behalf of the State Treasurer as custodian of the Second Injury Fund, and in advance of hearing, submitted a MEMORANDUM OF AGREEMENT between the Second Injury Fund and the claimant. Inasmuch as Second Injury Fund liability was not at issue in this matter, the request of counsel for the

Second Injury Fund to be excused from the hearing was granted.

Mr. Bleckman appeared at hearing and testified on his own behalf. The claimant further submitted the deposition testimony of Alan C. Umbright, M.D. The employer and insurer submitted the deposition testimony of Dr. Sandra Tate.

EXHIBITS

The following exhibits are in evidence:

Claimant's Exhibits

- A. Certified physical therapy records of Healthsouth
- B. Certified medical records of Patients First
- C. Certified medical records of Charles H. Sincox, M.D.
- D. Curriculum Vitae and May 4, 2004 report of Dr. Alan C. Umbright
- E. Deposition of Alan C. Umbright, M.D., taken on 8/23/06
- F. Agreement between employee and Second Injury Fund

Employer and Insurer's Exhibits

1. Certified medical records of St. Louis Orthopedic, Inc (Dr. Tate)
2. Independent medical evaluation of Dr. Sandra Tate dated 10/31/06
3. Deposition of Dr. Sandra Tate, taken on 12/20/06

FINDINGS OF FACT AND RULINGS OF LAW

The claimant acknowledged at hearing that prior to his work injury on 12/14/99, he suffered an injury to each of his shoulders, both resulting in a surgery by Dr. Thomas Matthews. On or about 4/21/98 Dr. Matthews performed a left shoulder arthroscopic subacromial decompression and a mini open rotator cuff repair. Claimant had follow up physical therapy, and on 9/3/98 Dr. Matthews released the claimant to normal activity and duty at work.

The 1/21/999 note of Dr. Matthews (See Claimant's Exhibit B) suggests that after a fall from a tree in October of 1998, Mr. Bleckman was in need of surgery for what an MRI revealed to be a torn supraspinatus tendon. On 2/26/99 Dr. Matthews performed a right rotator cuff repair. Physical therapy records from Healthsouth (Claimant's Exhibit A) reveal that at the request of Dr. Matthews, physical therapy was provided for the right shoulder from 3/9/99 to 6/8/99. On 7/20/99 Dr. Matthews reevaluated the right shoulder and released the claimant from his care.

On 12/14/99 Mr. Bleckman suffered the work injury at issue. Claimant was assembling valves, which required him to hold the valve in his left hand, drop a spring into the inside threads of the valve, then twist an adjusting cap onto the threads far enough to put tension on the spring. Claimant recalls having difficulty threading the cap on due to the size of the springs, and recalls that while using an air drill to get the cap on, and while pushing hard on the drill, the threads seized up, causing his right arm to be jerked violently.

Claimant did not miss time from work due to his injury, and did not begin treating until he had a visit with Dr. Charles H. Sincox on 4/10/00. Dr. Sincox ordered physical therapy for what he believed to be a soft tissue injury to the right upper forearm. Healthsouth physical therapy notes indicate that on 4/12/00 the claimant began to treat for complaints of right forearm pain. On 5/22/00 Dr. Sincox elicited complaints from Mr. Bleckman that his right arm was not getting any better with therapy, and Dr. Sincox chose to refer Mr. Bleckman to Dr. Matthews.

On 6/16/00 Dr. Matthews met with Mr. Bleckman, and notes as follows, "He has about a six month history of right forearm pain. He was using a wrench and twisted his arm violently in a supinating action. He complains of mid-volar forearm pain particularly with resisted pronation".

Dr. Matthews prescribed ongoing physical therapy, attended by Mr. Bleckman at Healthsouth. On 7/11/00 claimant had a follow up evaluation by Dr. Matthews, who supposes the claimant may have suffered an interosseous strain or small pronator strain. On 8/7/00 Mr. Bleckman was discharged from physical therapy. On 8/8/00 Dr. Matthews notes that he performed a final evaluation for tendonitis, resolving with conservative management.

On 2/21/01 Mr. Bleckman met with Dr. Sandra Tate, who performed an independent medical evaluation on behalf of the employer and insurer. Mr. Bleckman complained that he had very little strength in his right arm from the shoulder into the forearm, and also complained of pain in the forearm with radiation up into his shoulder region. Dr. Tate performed a physical examination, recommended exercise to relieve symptoms of weakness, and concluded that the claimant was at maximum medical improvement, without providing a firm diagnosis as to the condition suffered by Mr. Bleckman (See Employer and Insurer's Exhibit No. 1).

On 5/24/01 Dr. Tate had a follow up evaluation of Mr. Bleckman for continued complaints of pain and of right

forearm and shoulder weakness. Dr. Tate acknowledges in her report dated 5/24/01 that the claimant had prior bilateral rotator cuff repairs. Dr. Tate concludes that the claimant is at maximum medical improvement, and recommends strengthening exercises for the right brachioradialis muscles.

On 7/17/01 Mr. Bleckman returned to Dr. Matthews with shoulder complaints that claimant related to having wrenched his forearm at work. Dr. Matthews concludes "He strained his rotator cuff repair at the time of injury", and offers conservative treatment for something he anticipates will take a long time to improve. Claimant acknowledged at hearing that he continued working until his retirement in 2003, and offers no further medical history of treatment, as opposed to medical evaluation, post the visit with Dr. Matthews in July of 2001.

On 1/7/04 the claimant met with Alan C. Umbright, M.D., for a disability evaluation. Dr. Umbright provides his opinion as to permanent disability, but does not offer any specifics as to a diagnosis of the conditions at the shoulder and the forearm. Dr. Umbright further acknowledges, at page 28 of his deposition, that he had the opportunity to review the notes of Dr. Matthews from a visit with Mr. Bleckman dated 8/26/05, wherein Dr. Matthews notes that as of 8/26/05 the claimant "is not really symptomatic", and supposes the shoulder will be stable with activity (Employer's Exhibit A to Claimant's Exhibit E) so long as claimant follows the restrictions suggested by Dr. Matthews, which include limiting himself to very light work in front of him, and nothing overhead. Mr. Bleckman testified at hearing that he sought an evaluation by Dr. Matthews in 2005, and testified that the reason for his visit was to find out what he could do with his shoulder without making its condition any worse.

The claimant is obliged to make his proof as to nature and extent of disability with a reasonable degree of medical certainty. Dr. Tate backs up her diagnosis of shoulder strain in the ASSESSMENT section of her report dated 10/31/06, where she states "Neither in his initial examination in February 2001 nor on his examination at this date is there any significant focal rotator cuff weakness or findings compatible with rotator cuff re-injury". Dr. Tate further acknowledges that she did not make a recommendation for an MRI of the right shoulder after her evaluation in 2001, and notes that she would have made such a recommendation if she thought an MRI was needed (Employer and Insurer's Exhibit No. 3, at p. 25). It is apparent that Dr. Tate disputes a history of further rotator cuff tear post the work injury at issue, given the history of treatment, where she notes that there was no evidence of rotator cuff tear when Dr. Matthews saw the claimant for forearm complaints in 2000, and recommended physical therapy for those forearm complaints (Employer and Insurer's Exhibit No. 3, at p. 30).

All of the expert medical in the matter supports the conclusion that the work injury caused Mr. Bleckman to suffer a forearm strain, as well as a shoulder strain.

The testimony of Dr. Tate persuades that the claimant suffered a shoulder strain, but that further tear of the rotator cuff was not indicated. The testimony of Dr. Tate as to diagnosis and permanent disability is generally found more credible than that of Dr. Umbright. However, the testimony of Mr. Bleckman as to the effect of the last injury at work on his ability to use his right arm at the shoulder is found to be worthy of belief. Mr. Bleckman testified persuasively that the last injury has caused him to have lost arm strength that causes him to have difficulty holding objects away from his body. The testimony of the claimant needs to be taken into consideration, and the fact finder is not bound by the percentages of disability expressed by the medical experts, inasmuch as the impact of the injury upon the employee's ability to work involves considerations which are not exclusively medical in nature. See Quinlan v. Incarnate Word Hosp., 714 S.W.2d 237, 238 (Mo. App. E.D. 1986).

From all of the evidence, the work injury is found to have resulted in a strain of the right forearm and shoulder. Claimant is found to have suffered a 5 percent permanent partial disability to the right upper extremity at the level of the forearm. The claimant is further found to have suffered a 10 percent permanent partial disability to the right upper extremity at the level of the shoulder, over and above the permanent and partial disability that was preexisting. The employer and insurer are liable for a total of 33.2 weeks of benefits for permanent and partial disability. At the agreed compensation rate of \$303.01 per week, the total amount due is \$10,059.93.

This award is subject to a lien in favor of James J. Logan, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

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