

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

Injury No. 13-103315

Employee: Deborah Bolden  
Employer: Parkway C-2 School District (Settled)  
Insurer: Gallagher Bassett Services, Inc. (Settled)  
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 February 19, 2016. The award and decision of Administrative Law Judge Margaret D. Landolt, issued February 19, 2016, 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 8<sup>th</sup> day of July 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Deborah Bolden

Injury No.: 13-103315

Dependents: N/A

Employer: Parkway C-2 School District (Settled)

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Gallagher Bassett Services, Inc. (Settled)

Hearing Date: November 23, 2015

Checked by: MDL

### 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: September 5, 2013
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
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 injured her left shoulder when she was assisting a disabled student and tried to stop a wheelchair from slipping
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left shoulder
14. Nature and extent of any permanent disability: 25% PPD of the left shoulder previously settled with Employer and permanent total disability for which SIF is liable
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Deborah Bolden

Injury No.: 13-103315

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$325.76/\$325.76
- 20. Method wages computation: By stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable: **SETTLED**

22. Second Injury Fund liability: Yes

weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:

No weekly differential owed by SIF for 58 weeks beginning October 31, 2014  
and, thereafter \$325.76 a week , for Claimant's lifetime

**TOTAL:**

**TO BE DETERMINED**

23. Future requirements awarded: None

Said payments to begin 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: Mr. James Krispin

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

Employee: Deborah Bolden

Injury No.: 13-103315

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Parkway C-2 School District (Settled)

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

Additional Party: Second Injury Fund

Insurer: Gallagher Bassett Services, Inc. (Settled)

Checked by: MDL

### **PRELIMINARIES**

A hearing was held on November 23, 2015. Deborah Bolden ("Claimant") was represented by Mr. James Krispin. Parkway C-2 School District ("Employer") and its insurer Gallagher Bassett Services Inc. previously settled their liability with Claimant, and this matter proceeded to a hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General, Leslye Winslow.

The parties stipulated that on or about September 5, 2013 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; the appropriate rate of compensation is \$325.76 for both Permanent Total Disability ("PTD") benefits and Permanent Partial Disability ("PPD") benefits; Claimant reached maximum medical improvement from her primary injury on October 30, 2014; and in the event Claimant is found to be permanently and totally disabled PTD benefits shall commence on October 31, 2014. The issue for resolution is whether the SIF is liable for PTD or PPD benefits.

### **SUMMARY OF EVIDENCE**

Claimant is a 63 year old woman with a 10<sup>th</sup> grade education who obtained a GED in 1972, and completed one year of Junior College. From approximately 1983 until 1994 Claimant worked at a music production company she owned with her husband. From approximately 1993 until 2003 Claimant worked for the Salvation Army, first as a volunteer, and later as a shelter director developing and implementing programs for the homeless, and managing day to day shelter operations. In 2005 Claimant began working for Employer as a special needs school bus attendant. She assisted students getting on and off school buses, which involved fastening their wheel chairs to the floor and helping put some of them in vests and seat belts. Claimant's job involved standing, walking, sitting, bending, kneeling, squatting, climbing, and reaching. Claimant held a secondary job at Jack in the Box from 2002 until 2011.

### **PRIOR INJURIES**

Claimant injured her right shoulder in approximately 2000 when moving some equipment at a shelter. In September 2001, Dr. Ritchie performed a right shoulder manipulation, glenohumeral arthroscopy, synovectomy and subacromial decompression. Following this injury, and leading up to September 5, 2013, Claimant continued to experience stiffness and limitation in her shoulder which caused her pain and difficulty working with her right arm above shoulder level. Claimant worked a desk job, and someone else typed for her because typing caused her right shoulder pain.

In approximately 2003 Claimant started experiencing problems breathing. She sought medical treatment from her primary care physician Dr. Squitieri, and was hospitalized in 2006 for approximately one week. In 2008 she was diagnosed with chronic obstructive pulmonary disease ("COPD") and Emphysema. Her breathing problems progressively worsened until the date of her primary injury on September 5, 2013. As she continued to experience episodes of shortness of breath with minimal exertion, she occasionally had to use an emergency inhaler. She also used a nebulizer. The split shift she worked for Employer allowed her sufficient time to go home for a couple of hours, use her nebulizer, rest, and recover between shifts. This rest between shifts allowed her to continue to perform the essential functions of her job with Employer. Claimant experienced difficulties in hot and cold weather extremes. School buses were always cold in the winter, and she had to cover her mouth. Bending and stooping adversely affected her breathing. She became short of breath when she lifted and positioned students.

Claimant quit her second job at Jack in the Box in 2011 because of her COPD. The fryers adversely affected her breathing. She also stopped doing outside yard work around 2009 due to her breathing problems. Before September 2013, Claimant had discontinued almost all outside social activities which she previously enjoyed so she could rest when not working, thus allowing her to perform the essential functions of her job with Employer.

### **PRIMARY INJURY**

On September 5, 2013, Claimant injured her left shoulder when she was assisting a disabled student onto a bus. When the motorized wheelchair on the lift started to lurch forward, she grabbed it with her left hand and was jerked. She had immediate pain in her left shoulder and was unable to do anything with her left arm for the rest of her shift. She attempted to work over the next several weeks hoping her shoulder would improve. During this time, the school bus driver performed most of Claimant's job duties because of her limited use of her left upper extremity.

Claimant ultimately sought medical treatment, and in October 2013, an MRI of her left shoulder revealed tendinopathic changes of the supraspinatus tendon. In November 2013, Dr. Jason Young diagnosed left shoulder rotator cuff tendinopathy with a possible full thickness tear and bicipital labral inflammation. Surgery was recommended by December 2013, but her surgery was delayed because she experienced an episode of pneumonia. On February 18, 2014, Dr. Young performed a left shoulder arthroscopy, capsular release, biceps tenotomy and subacromial decompression. The post-operative diagnoses were adhesive capsulitis, impingement syndrome,

rotator cuff tendonosis, and long head of the biceps tendonosis. On October 30, 2014, Dr. Young released Claimant and advised her to follow up as needed.

Claimant continues to experience difficulties with her left shoulder. It is sensitive to touch. She has limited motion in her left arm, and cannot reach away from her body very far or overhead. She mostly uses her right arm to perform tasks. Activities of daily living are restricted as a result of her left arm injury. She requires assistance from her husband with household chores and grocery shopping. Due to her left shoulder injury, Claimant has difficulty getting an adequate night's sleep which causes her fatigue during the day.

Claimant settled her claim with Employer for 25% PPD of the left shoulder. Claimant has not worked since the end of 2013.

### **EXPERT OPINIONS**

Dr. Volarich examined Claimant on January 8, 2015, prepared reports, and testified on behalf of Claimant. Dr. Volarich diagnosed internal derangement of the left shoulder, status post-arthroscopic subacromial decompression, biceps tenotomy and capsular release in addition to moderately severe postoperative adhesive capsulitis as a result of Claimant's September 5, 2013 injury. Dr. Volarich found Claimant suffered 50% PPD of the left shoulder, and the injury constituted an industrial disability. In addition, Dr. Volarich diagnosed pre-existing right shoulder internal derangement, status post-manipulation under anesthesia followed by arthroscopic synovectomy and subacromial decompression from her 2001 injury. Dr. Volarich assessed 20% PPD of the right shoulder. Dr. Volarich also diagnosed pre-existing moderately severe COPD for which he assessed 30% PPD of the body as a whole noting that up until September 5, 2013, Claimant experienced shortness of breath with minimal exertional activities and when working in the extremes of weather. He opined her pre-existing conditions were a hindrance or obstacle to employment or re-employment.

Mr. James England, a vocational expert, examined Claimant on February 4, 2015, prepared a report, and testified on behalf of Claimant. Mr. England testified Claimant was unemployable in the open labor market and would not reasonably be able to find an employer who could be expected to hire her for any job available in the open labor market. He opined Claimant would not be able to adequately maintain even a sedentary job and remain employed on a consistent full time basis.

Dr. Volarich prepared a supplemental report on March 23, 2015. After reviewing Mr. James England's vocational report of February 12, 2015, he opined Claimant is permanently and totally disabled as a direct result of the work related injury of September 5, 2013 in combination with her pre-existing medical conditions.

Mr. Gary Weimholt, a vocational expert, performed a record review, prepared a report, and testified on behalf of the SIF. Mr. Weimholt opined that Claimant would be employable in the open labor market, and offered theoretical employment positions. He agreed that Claimant would not be able to return to her former work as a school bus attendant with Employer.

**FINDINGS OF FACT AND RULINGS OF LAW**

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri Law, I find:

Claimant sustained a work related injury on September 5, 2013 that resulted in 25% PPD of the left shoulder. Claimant settled her claim with Employer for that amount, and the evidence supports that level of disability.

The competent and substantial evidence indicates that Claimant is permanently and totally disabled as a result of the combination of her primary left shoulder injury together with her pre-existing right shoulder and pulmonary disabilities. I find Mr. England's opinion more persuasive than Mr. Weimholt's.

The fact that Claimant's primary injury is to the opposite shoulder of a pre-existing shoulder injury creates a much greater overall disability with regard to Claimant's ability to work. But Claimant's pre-existing disability from her COPD is the most significant component of her combination of disabilities rendering her permanently and totally disabled. Beginning roughly ten years before her primary left shoulder injury, Claimant began experiencing pulmonary and breathing problems. By 2006 she was hospitalized, and in 2008 was diagnosed with COPD and Emphysema which required permanent maintenance medication. While she managed the condition as best she could, it continued to progress requiring periodic medical treatment and modification of her lifestyle. For instance, she totally quit doing all outside yard work by 2010 because of her breathing problems even though there was no doctor imposed restriction. She gave up her second job at Jack in the Box by 2011 as a result of her breathing problems. Her social and personal life suffered because she found that the only way she could continue performing the essential functions of her job as a school bus attendant was to maximize evening rest to build up enough energy to work the next day. Even that was only feasible due to the split-shift nature of her job which allowed her to return home after the morning school bus run to recuperate for a couple of hours and use her nebulizer so she could return for the afternoon portion of her shift. Given the pain she now suffers from her primary shoulder injury, she finds herself unable to get anything close to a full night's sleep. This deprives her of the essential rest she needs to adequately concentrate and function during the daytime. Because of her daytime fatigue Claimant lacks the concentration necessary to perform even a sedentary job.

The credible evidence establishes that Claimant is permanently and totally disabled as a result of the combination of the primary and pre-existing injuries, and not as a result of the last injury alone. Therefore the SIF is liable for PTD benefits commencing on October 31, 2014.

This award is subject to an attorney's lien in the amount of 25% of all benefits recovered in favor of Claimant's attorney, Mr. James G. Krispin.

Made by: \_\_\_\_\_

MARGARET D. LANDOLT  
*Administrative Law Judge*  
*Division of Workers' Compensation*