

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

Injury No.: 05-041331

Employee: Brenda K. Boyer  
Employer: Kuenze Heating and Sheet Metal  
Insurer: Missouri Employers Mutual Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: May 11, 2005  
Place and County of Accident: St. Charles 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 September 25, 2007. The award and decision of Administrative Law Judge Grant C. Gorman, issued September 25, 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 31<sup>st</sup> day of January 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Brenda K. Boyer

Injury No. 05-041331

Dependents: None  
Employer: Kuenze Heating and Sheet Metal  
Additional Party: Second Injury Fund  
Insurer: Missouri Employers Mutual Insurance Company  
Hearing Date: June 22, 2007

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by: GCG/ln

### 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 11, 2005
5. State location where accident occurred or occupational disease was contracted: St. Charles County, 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:  
Claimant was engaged in work which required repetitive motion of the hands.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Bilateral wrists and hands
14. Nature and extent of any permanent disability: 20% bilateral upper extremity at 175 week level + 10% loading factor (77 weeks).
15. Compensation paid to-date for temporary disability: \$12,262.75
16. Value necessary medical aid paid to date by employer/insurer? \$11,046.35
17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: Parties Stipulate that Claimant qualifies for maximum rate.
19. Weekly compensation rate: \$675.90 TTD/\$354.05 PPD
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable: \$27,261.85  
77 weeks of permanent partial disability from Employer  
0 weeks of disfigurement from Employer

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:

Weekly differential of \$321.85 payable by SIF for 77 weeks beginning  
November 21, 2005, and thereafter \$675.90 weekly for Claimant's lifetime.\*

TOTAL: \$27,261.85\*

23. Future requirements awarded: None

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:

David J. Jerome

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

Employee: Brenda K. Boyer Injury No: 05-041331

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents: None

Employer: Kuenze Heating and Sheet Metal

Additional Party Second Injury Fund

Insurer: Missouri Employers Mutual Insurance Company

Checked by: GCG/ln

## **INTRODUCTION**

Hearing on the above-referenced case was held before the undersigned Administrative Law Judge on June 22, 2007 at the Division of Workers' Compensation in St. Charles, Missouri. Brenda Boyer (Claimant) was present, and represented by David Jerome. Paul Keeven represented Kuenz Heating and Sheet Metal (Employer) and Missouri Employers Mutual Insurance Co. (Insurer). Assistant Attorney General Laura Wagener represented the Second Injury Fund.

The parties made the following stipulations. Claimant sustained an occupational disease arising out of and in the course of employment with a date of May 11, 2005; Claimant was an employee of Employer; venue is proper in St. Charles County, Missouri; Employer received proper notice of injury; the Claim was filed in a timely manner; applicable rates of compensation are \$675.90 for total disability and \$354.05 for permanent partial disability (PPD). Employer paid \$12,262.75 in temporary total disability (TTD) benefits (18 1/7 weeks); Employer paid medical expenses totaling \$11,046.35.

The following issues are presented for determination: nature and extent of claimant's disability attributable to the primary injury; medical causation of psychiatric injury; whether or not claimant is permanently and totally disabled; liability of Second Injury Fund.

Claimant testified in person at hearing. Dr. Volarich testified by deposition (Exhibit A). Dr. Stillings testified by deposition (Exhibit B). Timothy Lalk testified by deposition (Exhibit C). Dr. Wolfgram testified by deposition (Exhibit I).

The following exhibits were offered by claimant and received into evidence without objection:

Exhibit A: Deposition of Dr. David Volarich  
Exhibit B: Deposition of Dr. Wayne Stillings  
Exhibit C: Deposition of Timothy Lalk  
Exhibit D: Medical records of Dr. Donald Pruitt  
Exhibit E: Medical records of Dr. Daniel Phillips  
Exhibit F: Medical records of PRORehab  
Exhibit G: Medical records of Dr. Srinibas Chilakamari  
Exhibit H: Medical records of Another Way Counseling Services, Inc.  
Exhibit I: Medical records of Dr. Sharma Sanjay

The following exhibits were offered by employer and insurer and received into evidence without objection:

Exhibit 1: Medical records of Dr. Donald Pruitt  
Exhibit 2: Medical records of PRORehab

The following exhibit was offered by the Second Injury Fund and received into evidence without objection:

Exhibit I. Deposition of Dr. Edwin Wolfgram

## **SUMMARY OF THE EVIDENCE**

### **Live Testimony**

Claimant is a 50 year old widow. She was a sheet metal worker for 22 years and worked for Kuenz Sheet Metal from 2003 to January 2005. Claimant was diagnosed with depression and began receiving psychiatric treatment in 1997. In 1997 she was having complaints which included fatigue, depression, crying spells, forgetfulness, and moodiness. In 1999 she was on medication for depression and attention deficit disorder and was having problems at work as her boss told her that she needed to focus better. Her psychiatric condition and complaints became worse following her husband's suicide in December of 2002. She had problems concentrating, memory problems and sometimes couldn't remember how to do her job. Her supervisor was aware of the condition and showed her how to do her job. She also received assistance from co-workers and was unable to work by herself due to her psychiatric condition. She sometimes missed work due to depression between 2002 and 2005. Claimant currently receives psychiatric treatment from Dr. Chilakamari and Joan Brady.

Claimant was diagnosed with bilateral carpal tunnel syndrome in May 2005. She initially saw Dr. Brown, and was then referred to Dr. Pruitt. She had a right carpal tunnel release on July 8, 2005 and left carpal tunnel release on August 18, 2005 by Dr. Pruitt. She is right-handed. She testified that the carpal tunnel surgeries did improve the condition of her hands. Currently, she complains of loss of strength in her hands. Claimant testified that Dr. Pruitt placed restrictions on the use of her hands. She has not had any treatment to her hands since she was discharged by Dr. Pruitt in November of 2005. No doctor is recommending any treatment for her hands. She does not wear any type of wrist splint or brace.

Claimant testified under cross-examination that she was laid off from work in January 2005. After she was laid off she applied for and received unemployment benefits. She testified under direct examination that after the treatment for her carpal tunnel syndrome was complete, her union put her on inactive status due to the restrictions placed on the use of her hands. The union indicated that if her condition improved, she could be returned to active status. She applied for and received Social Security disability in March of 2005 for depression which she stated was due to her husband's suicide and not related to the problems with her hands.

Claimant has not sought employment due to memory problems. She doesn't think she could learn new job skills. She alleges that her psychiatric complaints have worsened since she stopped working. She is able to do most of her household chores including cooking, cleaning and laundry. She is able to drive without any limitations. She is a high school graduate and also took some college courses. She is able to read and perform basic math. She does not have any problems or

restrictions as far as sitting or standing.

## **Deposition Testimony**

Dr. David Volarich testified by deposition on behalf of the claimant on November 27, 2006 (Exhibit A). Dr. Volarich diagnosed bilateral carpal tunnel syndrome status post release as a result of repetitive work duties. He opined that Claimant was at maximum medical improvement (MMI). He testified that Claimant suffered 40% PPD to each upper extremity at the wrist, and that there is an additional 15% PPD due to the combination of the injuries to the upper extremities. Dr. Volarich further diagnosed pre-existing depression and post-traumatic stress disorder, but did not provide a rating of PPD pertaining to the mental conditions. Dr. Volarich placed restrictions on Claimant's use of her hands which include: Minimizing repetitive tasks, no lifting of weights greater than 1-3 pounds with either hand alone, and not handling weights over 5-10 pounds.

Dr. Stillings testified on behalf of the employee on September 5, 2006 (Exhibit B). He diagnosed major depressive disorder, ADD, and partner-relational problems. All three diagnoses pre-existed the work injury. He testified regarding her significant psychiatric complaints and treatment prior to 2005. He testified that her psychiatric condition was a hindrance or obstacle to employment prior to 2005. He testified that the work injury aggravated pre-existing psychiatric condition. He did not specify any permanent partial psychiatric disability attributable to the work injury. He was also unable to point out any specific psychiatric treatment directly related to the work injury. Dr. Stillings testified that she was permanently and totally disabled from a psychiatric standpoint alone, which is from a combination of her pre-existing psychiatric condition and her current psychiatric condition related to her loss of work.

The deposition of Timothy Lalk was taken on behalf of the employee on January 26, 2007 (Exhibit C). Mr. Lalk is a vocational rehabilitation counselor. Mr. Lalk testified regarding the extensive psychiatric complaints and treatment prior to 2005. Mr. Lalk testified that based on Dr. Pruitt's physical restrictions, she could not return to her work as a sheet metal worker, but she could perform a number of unskilled entry level jobs. The restrictions of Dr. Volarich's were more restrictive, and would eliminate some of the positions available under Dr. Pruitt's restrictions, but she could still qualify for some sedentary employment based on physical restrictions alone.

Mr. Lalk further testified that Claimant's description of her complaints and limitations are consistent with Dr. Stilling's assessment that she has severe symptoms and impairments and is permanently and totally disabled due to her psychiatric condition. Mr. Lalk opines that Claimant is not capable of learning instructions or performing any duties repetitively, and able to secure and maintain employment in the open labor market. Mr. Lalk testified that his conclusions are based on a combination of the physical injury and her pre-existing psychiatric condition.

The deposition of Dr. Edwin Wolfram was obtained on behalf of the Second Injury Fund on June 5, 2007 (Exhibit D). Dr. Wolfram found the claimant to be totally temporarily disabled secondary to major depression that commenced in 1997 and still continues. He found no psychiatric disability secondary to the carpal tunnel condition. He recommended treatment in the form of electrotherapy. Dr. Wolfram indicated in his testimony that it was most likely correct that Claimant was able to continue her employment as a sheet metal worker, despite her pre-existing psychiatric condition, due to her familiarity with the job because it required less concentration.

Other medical evidence was introduced in the form of medical records as exhibits.

Dr. Pruitt (Exhibit 1) first examined the claimant on June 29, 2005. He performed right carpal tunnel release on July 8, 2005 and left carpal tunnel release on August 9, 2005. He referred the claimant for work conditioning. In his note of October 13, 2005, stated that the therapy records indicated there was a high level of perceived disability by the patient and that she had failed four out of ten validity criteria indicating submaximal effort. He referred her for an FCE. The Functional Capacity Evaluation was performed at PRORehab on November 15, 2005 (Exhibit 2). That report states she failed four out of ten validity criteria reflecting submaximal effort and self-limiting behavior. Secondary to possible self-limiting effort it was not possible to accurately identify abilities and limitations. It was the therapist's opinion that the worker was employable on a full time basis within at least the medium work demand level. Her display of tolerances did not meet full duty requirements when compared with the employer's reported job demands but did meet the DOT work demand level for full duty in her previous job category. Dr. Pruitt in his report of November 21, 2005 found the claimant to be at maximum medical improvement. He reiterated the findings on the FCE that it was limited somewhat by self-limiting effort and that she had restrictions of floor level to waist 30 pounds, 15 pounds up to shoulder level, and 12 pounds above that. He felt she could work in a medium work level which would allow her to work as a sheet metal worker according to Occupational DOT standards, but the employer she was working for had more stringent recommendations she could not meet. In a supplemental report of December 15, 2005, Dr. Pruitt rated her PPD at 8% of each wrist.

The medical records of Dr. Chilakamari (Exhibit G), Another Way Counseling Services (Exhibit H), and Dr. Sanjay (Exhibit I) document the extensive psychiatric complaints, treatment, restrictions, etc. beginning in 1997 and increasing following her husband's suicide in 2002.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the substantial and competent evidence, including Claimant's testimony, personal observations of claimant, deposition testimony, medical records, and all other evidence presented in the record, I find as follows:

1. Claimant's carpal tunnel syndrome is a compensable work injury resulting in permanent partial disability of 20% to the left upper extremity at the wrist and 20% of the right upper extremity at the wrist, with an additional 10% "loading" factor, for a total of 77 weeks of compensation, or \$27,261.85, which Employer is obligated to pay.
2. At the time of the work injury, Claimant suffered from major depression, which was a pre-existing permanent partial disability of such seriousness as to constitute a hindrance or obstacle to employment or obtaining re-employment.
3. The compensable carpal tunnel syndrome and the pre-existing major depression combine together to result in permanent total disability. Permanent total disability is not a result of the last injury alone. As a result of the combination of the current disability and the pre-existing disability, Claimant is not able to compete in the open labor market for employment.
4. Based on the stipulations of the parties, and evidence in the record, this Claim was filed within the statute of limitations.
5. The award of permanent total disability is against the Second Injury Fund as it is the result of a combination of the current injury with a pre-existing permanent partial disability. The Second Injury Fund is obligated to pay the weekly differential of \$321.85 for 77 weeks beginning November 21, 2005, and thereafter \$675.90 weekly for Claimant's lifetime.

## Analysis

There is no dispute as to whether Claimant is permanently and totally disabled, only as to whom, if anyone, is responsible to pay total disability benefits to her. Through expert testimony and post trial argument, SIF asserts that Claimant was totally disabled due to her psychiatric condition alone, and this totally disabling condition pre-dated the work injury, therefore, the SIF is not responsible for her total disability. Assuming that Dr. Wolfgram is correct, and she was working since 1997 with a totally disabling psychiatric condition, she was still employable as a sheet metal worker, as evidenced by her continued employment in that capacity.

Claimant worked as a sheet metal worker until 2005. In January of 2005 she was laid off, but collected unemployment benefits, and was still available for work in sheet metal. She began her treatment for carpal tunnel syndrome in May 2005 and was not released from treatment until November 2005, with certain medical restrictions on the use of her hands. It was these medical restrictions, not her psychiatric condition, which precluded her from returning to work as a sheet metal worker, the job she had done for the last 22 years.

In other words, Claimant was working with sheet metal despite her pre-existing severe psychiatric condition, which according to Wolfgram, had not worsened in 2005. She then suffered the carpal tunnel injuries and underwent treatment. As a result of the carpal tunnel syndrome, she had physical restrictions placed on her activity which precluded any further employment as a sheet metal worker. Her pre-existing psychiatric condition precludes her from learning the new job skills necessary to find other employment. Therefore, it is a combination of the disability from the primary injury and disability of the pre-existing condition which render Ms. Boyer permanently and totally disabled.

The present case is similar to **Laturno v. Carnahan**, 640 S.W.2d 470 (Mo.App.1982). In **Laturno**, the claimant suffered from life-long mental disability and had spent his entire career with the same employer. He was only able to do simple, manual tasks in an unskilled, closely supervised position. His employment options were clearly limited before his work injury. He was found permanently and totally disabled before his work accident, in terms of competition in the open labor market. However, given the fact that Mr. Laturno had maintained steady employment for over 30 years before his work injury, the court affirmed a finding that the Claimant was permanently and totally disabled as a result of the combination of his pre-existing disabilities and his work injury.

In the present case, Ms. Boyer's pre-existing disability is not mental retardation, but it is similar in that her condition prevents her from learning new skills necessary to be employable in the open labor market. She was working the only job she was able to do, and when she could no longer do that job because of the limitations placed on her hands, she became permanently and totally disabled.

One issue presented for resolution at hearing was causation of psychiatric injury from the primary injury. Due to the foregoing, it is not necessary to make a determination on this issue.

The compensation awarded to the claimant shall be subject to a lien of 25% of all payments rendered in favor of Attorney David J. Jerome for necessary legal services rendered to claimant.

Date: September 25, 2007

Made by: /s/ Grant C. Gorman  
Grant C. Gorman  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Jeffrey W. Buker  
Jeffrey W. Buker  
*Director*  
*Division of Workers' Compensation*