

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

Injury No.: 10-058282

Employee: Matthew Branson
Employer: B & G Skid Removal (Settled)
Insurer: Travelers Indemnity Company (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 November 18, 2013. The award and decision of Administrative Law Judge Vicky Ruth, issued November 18, 2013, 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 March 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Matthew Branson

Injury No. 10-058282

Dependents: N/A

Employer: B & G Skid Removal
(SETTLED)

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

Additional Party: Second Injury Fund

Insurer: Travelers Indemnity Company
(SETTLED)

Hearing Date: August 19, 2013

Checked by: VR/cs

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: July 14, 2010.
5. State location where accident occurred or occupational disease was contracted: Callaway 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 slipped on a mat that did not have grips to attach it to the floor. Claimant injured his right shoulder in the fall.
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 shoulder.
14. Nature and extent of any permanent disability: 22.5% permanent partial disability of the right 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: N/A.
19. Weekly compensation rate: \$282.81.
20. Method of wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from employer: Previously settled.
22. Second Injury Fund liability: Yes.
 $35.596 \text{ weeks} \times \$282.81 = \$10,066.90.$
23. Future medical awarded: N/A.

Said payments to begin immediately and to be payable and 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: Daniel Keefe.

Employee: Matthew Branson

Injury No. 10-058282

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Matthew Branson

Injury No. 10-058282

Dependents: N/A

Employer: B & G Skid Removal
(SETTLED)

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

Additional Party: Second Injury Fund

Insurer: Travelers Indemnity Company
(SETTLED)

Hearing Date: August 19, 2013

On August 19, 2013, Matthew Branson (the claimant) and the Second Injury Fund appeared in Jefferson City, Missouri, for a final award hearing regarding the Second Injury Fund claim. Claimant was represented by attorney Daniel Keefe. The Second Injury Fund was represented by attorney Adam Rowley. Claimant testified in person at the hearing. The parties submitted briefs on or about September 9, 2013, and the record closed at that time.

STIPULATIONS

The parties stipulated to the following:

1. On or about July 14, 2010, Matthew Branson (the claimant) was an employee of B & G Skid Removal (the employer) when he sustained an injury by accident to his right shoulder while in the course and scope of his employment with employer.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was insured by Travelers Indemnity Company.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Callaway County is proper. For trial purposes, venue is also proper in Jefferson City, Missouri.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.
7. Claimant's weekly compensation rate for permanent partial disability benefits is \$282.81.
8. The parties agree that if Second Injury Fund liability is found, the appropriate loading factor is 15% for opposing shoulders and 10% for all other pre-existing conditions/disabilities.

ISSUES

The parties agreed that the issues to be resolved in this proceeding are as follows:

1. Nature and extent of claimant's permanent partial disabilities; and
2. Liability, if any, of the Second Injury Fund.

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence without objection:

Exhibit A	Medical records from Dr. Michael Snyder.
Exhibit B	Medical records from Dr. Mark Adams.
Exhibit C	Medical records from St. Mary's Health Center.
Exhibit D	Medical records from The Therapy Source.
Exhibit E	Medical records from Boone Hospital Center.
Exhibit F	Medical records from Capital Region Medical Center.
Exhibit G	Medical report of Dr. David Volarich.
Exhibit H	<i>Compromise Lump Sum Settlement</i> , Injury No. 10-058282.

The Second Injury Fund did not offer any exhibits.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

1. Claimant is 44 years of age. He is divorced and his three children live with him.
2. Claimant worked for B & G Skid Removal (the employer). On July 14, 2010, as claimant was leaving the shop where he worked, he stepped on a rubber mat. The mat did not have any grips securing it to the floor. The mat slipped, causing claimant to fall and strike his right shoulder against the raised threshold of the door and also causing him to hit his neck on the door.
3. Claimant treated at the St. Mary's Health Center emergency room on July 14, 2010, the date of the accident.¹ At the emergency room, he complained of right shoulder pain. He

¹ Exh. C.

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- was diagnosed with a right shoulder sprain and contusion.
4. On or about August 25, 2010, claimant saw Dr. Michael Snyder. Dr. Snyder reviewed the x-rays taken in the emergency room and noted an avulsion fracture around the acromion. Due to claimant's persistent symptoms, the doctor ordered an MRI of the right shoulder to rule out a rotator cuff tear.
 5. The right shoulder MRI, taken September 8, 2010, showed marked edema and inflation in the distal clavicle, acromion, and acromioclavicular joint with partial intrasubstance tear of the anterior and infraspinatus tendon fairly diffuse, and posterior labral tear with small paralabral cyst. Claimant was then referred to Dr. Mark Adams.
 6. Claimant saw Dr. Adams on or about October 19, 2010. Dr. Adams reviewed the MRI and diagnosed a right shoulder acromioclavicular joint injury with resulting osteolysis, and labral tear/infraspinatus partial thickness tear. He recommended surgery.
 7. On November 3, 2010, Dr. Adams performed surgery on claimant's shoulder. The surgery consisted of a right shoulder arthroscopy, debridement of the partial rotator cuff tear, and debridement of the posterior labrum. Claimant underwent a course of physical therapy after the surgery.
 8. On April 28, 2011, Dr. Adams placed claimant at maximum medical improvement and released him with no restrictions.
 9. On December 15, 2011, Dr. David Volarich examined claimant for an Independent Medical Examination.² As to the July 14, 2010 work injury, Dr. Volarich diagnosed claimant with an internal derangement of the right shoulder (rotator cuff and labral tears), status post arthroscopic debridement of the rotator cuff and labral tears. The doctor opined that the July 14, 2010 work accident was the substantial contributing factor as well as the prevailing or primary factor causing the right shoulder labral and rotator cuff tears that required surgical repairs. Dr. Volarich opined that claimant was at maximum medical improvement regarding his 2010 shoulder injury. Dr. Volarich further opined that as a result of the that work injury, claimant had sustained a permanent partial disability of 40% of the right upper extremity rated at the shoulder due to the rotator cuff and labral tears that required arthroscopic repairs. He noted that his rating accounted for ongoing discomfort, lost motion, weakness, crepitus, and atrophy of the dominant arm. Dr. Volarich also addressed claimant's pre-existing conditions and noted that the combination of claimant's disabilities creates a substantially greater disability than the simple sum or total of each separate injury or illness, and that a loading factor should be added. Dr. Volarich's opinions as to claimant's pre-existing disabilities are more thoroughly addressed later in this award. In addition, Dr. Volarich imposed significant restrictions on claimant.
 10. On or about June 19, 2012, claimant and the employer/insurer settled the workers' compensation claim arising out of the July 14, 2010 accident for 22.5% permanent partial disability of the right arm at the shoulder.

² Exh. G.

Pre-existing Injuries

Right elbow

11. Claimant indicates that he fractured his right elbow twice as a child. No medical records regarding the right elbow injuries were offered into evidence, nor were they provided for Dr. Volarich's review.
12. Claimant reported to Dr. Volarich that motion in his right elbow was limited and his elbow sometimes caught and locked. He also told the doctor that over the past ten years, he believes he may have missed one or two days from work due to elbow pain. Claimant did not recall seeking any treatment for his elbow as an adult. Dr. Volarich diagnosed claimant with right elbow fracture twice in adolescence, status post non-operative care. The doctor opined that claimant had sustained a permanent partial disability of 35% of the right elbow due to the fractures that were not surgically repaired. He noted that his rating accounts for lost motion in the dominant arm.

Right knee

13. In June 2003, claimant slipped on a ramp and twisted his right knee. Claimant was diagnosed with a medial meniscus tear. On July 1, 2003, Dr. Michael Snyder performed a right knee arthroscopy and a partial medial and lateral meniscectomy.
14. Claimant continued to have problems with his right knee and Dr. Snyder later administered a cortisone injection. A subsequent MRI showed a tear of the lateral meniscus similar to the previous imaging, minimal joint effusion, low grade chondromalacia of the patella, and postoperative changes. Dr. Snyder diagnosed a right knee lateral meniscal tear and recommended surgery.
15. On or about March 20, 2004, Dr. Snyder performed a right knee arthroscopy and partial lateral meniscectomy. Claimant underwent additional physical therapy after the surgery. On or about May 17, 2004, Dr. Snyder released claimant to full duty with no restrictions.
16. Claimant testified that he continues to experience difficulties from his 2003 right knee injury. He still has pain in his right knee and it swells and pops. His right knee catches. Although he is able to run and jump to a limited extent, he avoids activities that require him to move quickly. He testified that he has difficulties kneeling, squatting, climbing, and descending stairs and ladders.
17. Dr. Volarich examined claimant in December 2011 and found that claimant had trace swelling for no hyperemia. The drawer, Lachman's, pivot shift, and McMurray's tests were negative for meniscal or ligamentous tears. Dr. Volarich diagnosed claimant with right knee internal derangement, status post arthroscopic partial medial and lateral meniscectomies. He opined that claimant has a permanent partial disability of 40% of the right lower extremity rated at the knee due to the internal derangement that required two separate arthroscopic repairs in 2003 and 2004. The doctor indicates that his rating

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accounts for ongoing discomfort, lost motion, weakness, crepitus, and mild swelling in the right lower extremity.

Left shoulder

18. In December 2003, claimant was lifting a heavy hot tub with a co-worker. The co-worker dropped his end, causing claimant to bear the full weight. Claimant felt a tearing sensation in his left shoulder, along with excruciating pain. He was treated in the emergency room, where he was diagnosed with a left shoulder strain.
19. Claimant followed up with Dr. Timothy Galbraith, who diagnosed left shoulder acromioclavicular pain, outlet impingement.³ On May 6, 2004, Dr. Galbraith performed a left shoulder diagnostic and operative arthroscopy, subacromial decompression, and acromioclavicular resection.
20. Claimant indicated that leading up to and continuing after his July 2010 work injury, he still had symptoms in his left shoulder that were similar to those in his right shoulder, although they were not as severe.
21. Claimant testified that leading up to and continuing beyond his primary right shoulder injury in July 2010, he continued to experience significant problems due to his left shoulder injury:
22. After he injured his left shoulder, claimant had to rely more heavily on his right shoulder in his jobs moving furniture and as a sheriff's deputy. He had, and continues to have, a reduced range of motion in his left shoulder. If he rolled onto his left side while sleeping at night, the pain was enough to wake him up. As a result, he was forced to sleep with pillows on his left side, next to his head, and with one propping up his left arm to prevent his sleep from being interrupted. He testified that he could not lift his children with his left arm. As a result, he developed coping maneuvers, like one where his daughter would jump from his left knee to his right shoulder in order for claimant to carry her. Also, claimant testified that he drove primarily with his right arm following the left shoulder injury to reduce any strain on the left shoulder.
23. Claimant testified that even though he favored his right shoulder before his left shoulder injury, since he is right-handed, he became much more reliant on his right arm after the 2003 left shoulder injury. However, once he injured his right shoulder at work in July 2010, claimant found that almost all of the progress he made over the previous six-and-a-half years adapting to his preexisting left shoulder injury seemed to be for naught.
24. Dr. Volarich, in his December 2011 examination, found that there was a 15% loss of motion as evaluated by the Apley scratch with circumduction. He indicated that impingement testing is weakly positive. Apprehension, clunk, Adson's, and O'Brien's

³ Exh. F.

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tests were negative. Dr. Volarich diagnosed claimant with left shoulder impingement status post arthroscopic subacromial decompression and distal clavicle excision. He opined that claimant had a 30% permanent partial disability of the left shoulder due to the impingement that required arthroscopic repairs. Dr. Volarich noted that the rating accounts for pain, lost motion, weakness, and crepitus in the non-dominant arm.

Left knee

25. Claimant apparently injured his left knee prior to the work injury. Claimant, however, did not testify as to this injury. Dr. Volarich, in his December 2011 report, noted that claimant injured his left knee in a fall. Dr. Volarich examined claimant's left knee and noted that there was crepitus at the patellofemoral joint.⁴ There was no mistracking, swelling, or hyperemia. The drawer, Lachman's, pivot shift, and McMurray's tests were negative for meniscal or ligamentous tears. Dr. Volarich diagnosed claimant with a left knee strain/sprain. He opined that claimant sustained a permanent partial disability of 5% of the left lower extremity rated at the knee due to the minor strain injury that causes occasional aching with weather changes.

Cardiovascular system

26. Claimant testified to a history of hypertension and high cholesterol. He indicated that he smoked a pack of cigarettes per day for over ten years, but he quit in 2006 pursuant to doctors' recommendations. On February 13, 2005, he treated in the emergency room for chest pain that radiated into both shoulders.⁵ The x-rays of claimant's chest showed no active infiltrate. An esophagogastroduodenoscopy performed that same day showed esophagitis. Claimant testified that he was told he had heartburn. A cardiac catheterization performed the next day demonstrated coronary artery disease, which was non-critical, and showed that he had normal LV function. He was diagnosed with non-cardiac chest pain with pleuritic component.
27. On March 22, 2007, claimant returned to the emergency room for chest pain. Dr. John Sanfelippo noted complaints of headaches, neck, and chest pain. Dr. Sanfelippo diagnosed chest discomfort syndrome and hypertension. A cardiac catheterization on March 23, 2007, showed minimal to mild branch vessel coronary artery disease characterized by 35% - 55% lesion at the bifurcation of the posterior descending coronary artery and the posterior left ventricle extension branch with a 35% lesion and continuation of posterior left ventricle extension branch. There was a 35% lesion in the very distal small AV groove circumflex, and grade I myocardial bridging in the distal left anterior descending artery with symmetric hypertrophy of the left ventricle with normal contractibility.⁶ Claimant testified that later in 2007 he had two stents placed.

⁴ Exh. G.

⁵ Exh. F.

⁶ Exh. F.

28. Claimant testified that as a result of his coronary artery disease and associated problems, he has had multiple medication changes and adjustments. He indicated that he takes eight medications each day, and some of them he is forced to take multiple times each day. He testified that one of the daily medications, Clonazepam, is prescribed to curb his frustration, in order to better keep his blood pressure under control. He indicated that he started taking that medication sometime in 2012 because his frustration and anger were becoming more of a problem than they had been prior to his July 2010 work injury, and this was causing his blood pressure to spike and putting his heart at increased risk.
29. Dr. Volarich diagnosed claimant with coronary artery disease, status post stent placement in two coronary arteries. He opined that claimant had sustained a permanent partial disability of 20% of the body as a whole rated at the cardiovascular system due to claimant's coronary artery disease that required the placement of two stents in 2007. He noted that his rating accounts for ongoing difficulties with blood pressure control, occasional chest discomfort, and the need to take medications for his coronary disease on a daily basis.

Spine – cervical and lumbar

30. Claimant testified that in 2006, while working as a deputy sheriff at the Osage County Sheriff's Department, he developed worsening neck and right arm pain. He also developed low back pain that radiated into both of his legs and became unbearable over in 2006. In August 2006 he sought medical treatment and reported to Boone Hospital Center.⁷ Dr. Jeffrey Parker later performed a cervical and lumbar myelogram and CT. The cervical CT myelogram revealed degenerative disc disease at C6-7, uncovertebral osteophytes at C2-3, a mild disc bulge at C4-5, mild anterior thecal sac with mild anterior thecal sac effacement also at C4-5. There was a right anterolateral disc herniation and osteophyte formation with right neural foraminal encroachment, and moderate to severe spinal stenosis and severe right neural foraminal encroachment at C6-7. The lumbar spine CT myelogram revealed mild disc space narrowing at L2-3 with no significant stenosis and neural foraminal encroachment. At L4-5 there was concentric disc bulge and spondylitic changes resulting in mild spinal stenosis and bilateral neural foraminal encroachment, and a central herniation at L5-S1 with anterior thecal sac effacement without significant stenosis. There was also some lateralization and possible compromise of the left neural foramina at L5-S1. Dr. Parker diagnosed a herniated nucleus pulposus, C6-7, on the right with severe right upper extremity radicular arm complaints and severe right C7 radiculopathy.

⁷ Exh. E.

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31. On September 5, 2006, Dr. Parker performed an anterior cervical discectomy, C6-7, with right foraminotomy and partial discectomy and an anterior cervical arthrodesis at C6-7, with allograft packed with local bone graft augmented with Ossature granules at cervical instrumentation. During the operation, Dr. Parker found a large disk herniation at C6-7 on the right.
32. Despite the disc herniation at L5-S1, the concentric disc bulge and spondylitic change, claimant had no further treatment for his low back and was unsure of the reason for the lack of lumbar treatment. He did testify that the lack of additional treatment could have been due to complications involving his “insurance situation.”
33. Claimant testified that as to his cervical and lumbar spine, he continued to have difficulty leading up to, and continuing beyond, his primary right shoulder injury of July 14, 2010. Claimant testified that he continues to experience constant low back pain, which radiates into both of his legs, with the left leg radicular symptoms worse than those on the right. He testified that his low back further hindered his already reduced ability (due to his right knee injuries of 2003) to run, jump, squat, kneel and climb stairs; he woke up every morning with significant stiffness in his low back; if he had to maintain a fixed position for an hour to an hour-and-a-half, his symptoms were exacerbated, which significantly impacts his ability to work (since his current job requires him to drive for most of the day). Claimant testified that he experienced more pain when he had to stand up from a seated position. He attributed this difficulty to a combination of his knee and low back pain, as well as his bilateral shoulder and right elbow injuries, because he has to press on his legs with both arms in order to lift himself out of a chair. In response to questions from counsel for the Second Injury Fund, Claimant explained that even though he has sold vacuum cleaners off and on for two years following his left shoulder and right knee injuries, he was able to take breaks often throughout the day, between sales demonstrations.
34. Regarding his neck, claimant testified that although the neck fusion surgery helped, it did not eliminate his neck pain and it drastically lowered his range of motion in his neck because his vertebrae were fused with a titanium plate and screws. As a result, he found that in order to drive, he had to rotate his trunk in order to check his blind spots because he could not turn his head enough. This limitation was somewhat relieved when he had convex side mirrors installed below his regular side mirrors on his truck as this helped him check blind spots. He testified that he still experiences neck pain daily and the pain radiates into his right arm. He stated that heavy lifting causes his fingers on his right hand to go numb, which he attributes to a combination of his neck injury in combination with his preexisting right elbow disabilities and his primary right shoulder work injury of July 14, 2010.

35. Dr. Volarich examined claimant in December 2011. At that time, the doctor found that claimant's cervical motion and lumbar motion was restricted. Dr. Volarich diagnosed claimant with a herniated disc C6-7 to the right causing right arm radiculopathy, status post anterior cervical discectomy with foraminotomy, fusion, and instrumentation (2006). He opined that claimant has a permanent partial disability of 35% of the body as a whole rated at the cervical spine due to the disc herniation at C6-7 that required anterior cervical discectomy with foraminotomy and fusion with instrumentation. Dr. Volarich noted that his rating accounts for neck pain, lost motion, and ongoing right upper extremity paresthesias.
36. Dr. Volarich also diagnosed claimant with lumbar radicular syndrome secondary to disc herniation L5-S1 causing left-sided foraminal encroachment as well as bulging and spinal stenosis at L4-5, status post non-operative treatment. Dr. Volarich opined that claimant had sustained a permanent partial disability of 30% of the body as a whole at the lumbar spine due to the disc herniation at L5-S1 causing left foraminal encroachment as well as the diffuse bulge causing spinal stenosis at L4-5. The doctor indicated that his rating accounts for ongoing back pain, lost motion, and recurrent lower extremity radicular symptoms.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.⁸ The employee must prove by a preponderance of credible evidence all material elements of his or her claim, including Second Injury Fund liability.⁹ Proof is made only by competent and substantial evidence, and may not rest on speculation.¹⁰

The determination of the specific amount or percentage of disability to be awarded to an injured employee is a finding of fact within the unique province of the ALJ.¹¹ The ALJ has discretion as to the amount of the permanent partial disability to be awarded and how it is to be calculated.¹² A determination of the percentage of disability arising from a work-related injury is to be made from the evidence as a whole.¹³ It is the duty of the ALJ to weigh the medical

⁸ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo.App. 2002).

⁹ *Meilves v. Morris*, 422 S.W.2d 335, 399 (Mo. 1968).

¹⁰ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. W.D. 1974).

¹¹ *Hawthorne v. Lester E. Cox Medical Center*, 165 S.W.2d 587, 594-595 (Mo.App. S.D. 2005); *Sifferman v. Sears & Robuck*, 906 S.W.2d 823, 826 (Mo.App. S.D. 1999).

¹² *Rana v. Land Star TLC*, 46 S.W.3d 614 626 (Mo.App. W.D. 2001).

¹³ *Landers v. Chrysler*, 963 S.W.2d 275, 284 (Mo.App. E.D. 1998).

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evidence, as well as all other testimony and evidence, in reaching his or her own conclusion as to the percentage of disability sustained.¹⁴

The Second Injury Fund is a creature of statute, and benefits from the Fund are awarded only if the employee proves that under Section 287.220.1, RSMo (2000), he or she is entitled to such benefits. In order to recover against the Second Injury Fund, a claimant must prove that he had a pre-existing permanent partial disability, whether from a compensable injury or otherwise, that: (1) existed at the time the last injury was sustained; and (2) meet the statutory requirements and was of such seriousness as to constitute a hindrance or obstacle to his employment or reemployment should he become unemployed. Second Injury Fund liability exists only if the employee suffers from a pre-existing permanent partial disability (PPD) that combines with a compensable injury to create a disability greater than the simple sum of disabilities.¹⁵ When such proof is made, the Second Injury Fund is liable only for the difference between the combined disability and the simple sum of the disabilities.¹⁶

Claimant has established a right to recover from the Second Injury Fund. I find that on July 14, 2010, claimant sustained a compensable work injury that resulted in permanent partial disability of 22.5% of the right shoulder. This injury resulted in a total of 52.2 weeks of disability.

I also find that at the time of the injury, claimant had the following pre-existing permanent partial disabilities that were of such seriousness as to constitute a hindrance or obstacle to employment or re-employment:

- 20% PPD of the body as a whole referable to the cervical spine (80 weeks),
- 17% PPD of the body as a whole referable to lumbar spine (68 weeks),
- 25% PPD of the right knee (40 weeks),
- 17% PPD of the left shoulder (39.44),
- 5% PPD of the body as a whole referable to the cardiovascular system (20 weeks), and
- 5% permanent partial disability (PPD) of the right elbow (10.5 weeks).¹⁷

Although claimant had a prior injury to his left knee, I find that that the left knee injury did not result in any measurable disability and was not a hindrance or obstacle to employment.

Based on the credible evidence presented, I find that the last injury, to claimant's right shoulder, combined with the pre-existing permanent partial disability to his left shoulder, right knee, right elbow, body as a whole referable to the cardiovascular system, body as a whole referable to the cervical spine, and body as a whole referable to the lumbar spine, to cause a greater overall disability than the independent sum of those disabilities. I also find that the

¹⁴ *Rana* at 626.

¹⁵ Section 287.220.1, RSMo.; *Anderson v. Emerson Elec. Co.*, 698 S.W.2d 574, 576 (Mo.App. 1985).

¹⁶ *Brown v. Treasurer of Missouri*, 795 S.W.2d 479, 482 (Mo.App. 1990).

¹⁷ Pursuant to the recent decision in *Treasurer of the State of Missouri-Custodian of the Second Injury Fund v. James Witte*, 2013 WL 5989277, each of these pre-existing injuries is used when calculating Second Injury Fund liability.

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Second Injury Fund is liable for this greater overall disability. The parties stipulated that if Second Injury Fund liability was found, that the appropriate load factor was 15% for the bilateral shoulders and 10% for all other pre-existing disabilities. The Second Injury Fund liability is calculated as follows:

- Primary injury/disability to the right shoulder (22.5% PPD/52.2 weeks) and the pre-existing disability to the left shoulder (17% PPD/39.44 weeks) equal 91.64 weeks. This number, 91.64, is multiplied by a 15% load factor, resulting in 13.746 weeks.
- Pre-existing disabilities to the right knee (25% PPD/40 weeks), right elbow (5% PPD/10.5 weeks), body as a whole referable to the cardiovascular system (5% PPD/20 weeks), cervical spine (20% PPD/80 weeks), and lumbar spine (17% PPD/68 weeks) equal 218.5 weeks. This number, 218.5, is multiplied by a 10% load factor, resulting in 21.85 weeks.
- Adding these two sums, 13.746 weeks and 21.85 weeks, totals 35.596 weeks. This number, 35.596, must be multiplied by the compensation rate of \$282.81, for a total due of \$10,066.90 (35.596 weeks x \$282.81 comp rate = \$10,066.90).

Thus, the Second Injury Fund is liable to claimant for the amount of \$10,066.90. Any pending objections not expressly ruled on in this award are overruled.

This Award is subject to a lien in the amount of 25% of the payments hereunder in favor of Daniel Keefe for necessary legal services rendered to the claimant.

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation