

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

Injury No.: 12-101047

Employee: Adam Brumble
Employer: Missouri Department of Corrections
Insurer: Central Accident Reporting Office
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 March 18, 2016. The award and decision of Administrative Law Judge Hannelore Fischer, issued March 18, 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 17th day of August 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Adam Brumble

Injury No.: 12-101047

Dependents: N/A

Employer: Missouri Department of Corrections

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Treasurer of the State of Missouri
Custodian of the Second Injury Fund

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

Insurer: Central Accident Reporting Office

Hearing Date: February 17, 2016

Checked by: HDF/scb

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: December 6, 2012
5. State location where accident occurred or occupational disease was contracted: Cole 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:
See Award
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: Low back
14. Nature and extent of any permanent disability: Permanent and total disability
15. Compensation paid to-date for temporary disability: \$12,582.57
16. Value necessary medical aid paid to date by employer/insurer? \$134,477.91

Employee: Adam Brumble

Injury No. 12-101047

- 17. Value necessary medical aid not furnished by employer/insurer? \$166.00
- 18. Employee's average weekly wages: ----
- 19. Weekly compensation rate: \$384.62
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

- 21. Amount of compensation payable: Permanent and total disability, benefits beginning November 12, 2013, less April 8, 2015 through April 22, 2015; as well as \$166.00 in past medical treatment, plus past mileage in the amount of \$957.22.
- 22. Second Injury Fund liability: No
- 23. Future Requirements Awarded: Medical treatment

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to 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: Elizabeth Skinner/Van Camp Law Firm.

Employee: Adam Brumble

Injury No. 12-101047

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Adam Brumble

Injury No: 12-101047

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Missouri Department of Corrections

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

Additional Party: Treasurer of the State of Missouri
Custodian of the Second Injury Fund

Insurer: Central Accident Reporting Office

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on February 17, 2016. Memoranda were due by March 4, 2016.

The parties stipulated that on or about December 6, 2012, the claimant, Adam Brumble, was in the employment of the Missouri Department of Corrections (DOC). Mr. Brumble sustained an injury by accident; the injury arose out of and in the course of employment. The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was insured by the Central Accident Reporting Office of the Missouri Office of Administration. The employer had notice of the injury. A claim for compensation was timely filed. The compensation rate is \$384.62 per week for all benefits. Temporary disability benefits have been provided in the amount of \$12,582.57, reflecting 32 and 5/7 weeks of benefits, including two weeks of benefits paid from April 8, 2015, through April 22, 2015. Medical aid has been provided in the amount of \$134,477.91.

The issues to be resolved by hearing are 1) the nature and extent of permanent disability, 2) the liability of the Second Injury Fund 3) the liability of the employer/insurer for past medical treatment in the amount of \$166.00, and 4) the liability of the employer/insurer for future medical treatment.

The parties have stipulated to a date of maximum medical improvement of November 12, 2013.

The parties have further stipulated to the liability of the employer/insurer for mileage reimbursement in the amount of \$957.22 for miles traveled in pursuit of medical treatment.

FACTS

The claimant, Adam Brumble, is 29 years old as of the date of hearing. Mr. Brumble graduated from high school in 2005, in Dixon, Missouri, where he took courses in auto body work. Mr. Brumble attended college for less than a year and described the experience as "not good" and resulting in no credit hours. Mr. Brumble worked retail clothing sales for a few months while in college. Mr. Brumble then worked successively as a roofer for five to six months, as a house

Employee: Adam Brumble

Injury No. 12-101047

framer for five to six months, and in the lumber department at Lowe's for three to four months. In 2007 Mr. Brumble joined the National Guard where he received weapons and explosives training; Mr. Brumble said he left the National Guard in 2013 due to his back injuries. In 2008 Mr. Brumble started his employment with the DOC at the Jefferson City Correctional Center (JCCC). Mr. Brumble worked in housing unit 7, taking inmates to meals, showers, physician visits, inspecting their quarters, and handling inmate counts.

Mr. Brumble testified that he was able to handle all aspects of his position until February 20, 2011, despite a surgically repaired right medial meniscus in high school. Mr. Brumble described his right knee as feeling sore and stiff after he was on it a lot, but that it rarely felt unstable and that he had minimal swelling after a long run.

On February 20, 2011, Mr. Brumble hit his right elbow on a food cart. Mr. Brumble described being off work for two weeks as the result of the injury before returning to full duty work. Mr. Brumble has pain when he straightens the elbow, which he described as stabbing and burning and resulting in stiffness. Mr. Brumble described the pain as at a four when at its worst on a one through ten pain scale, with ten being the worst pain.

On January 24, 2012, Mr. Brumble was running to break up a fight and tripped on a door frame injuring his left knee. Mr. Brumble testified that he now has weakness in his left knee, worse in the winter than in the summer, and that every once in a while it feels like it might give out. Mr. Brumble described the worst left knee pain as at a four to five, similar to the worst right knee pain, on the same one to ten pain scale.

On December 6, 2012, Mr. Brumble lifted a "cambro" container during breakfast for the inmates; the container weighed 75 to 100 pounds and was lifted from five to six inches off the ground to two and one half feet off the ground when he felt a pop or pull in his right hip. Mr. Brumble reported his injury and eventually had treatment with Dr. Brett Taylor who diagnosed an L5-S1 annular tear. Dr. Taylor performed surgery in May of 2013, which alleviated the pain Mr. Brumble had experienced radiating into his feet. Post surgery, Mr. Brumble still had back pain radiating into his buttocks and thighs. Mr. Brumble continued to have physical therapy under Dr. Taylor's direction until November of 2013, when he was released from treatment. Mr. Brumble's employment with DOC ended on April 13, 2013.

Prior to December 6, 2012, Mr. Brumble was able to hunt for hours, both turkeys and deer, without mention of needing a break and without modified equipment. Mr. Brumble testified that he fished two to three times a week prior to December 6, 2012, and hunted three to four days a week during hunting season in that same time frame. Mr. Brumble was able to perform all of his jobs with the DOC and the National Guard without restrictions prior to December 6, 2012.

In his deposition testimony Mr. Brumble noted cutting wood with a chain saw up to three times a week before his December 6, 2012 accident and injury. When asked about whether the right knee, right elbow, or left knee injuries factor into how long Mr. Brumble is able to walk, sit, or stand, Mr. Brumble replied that he did not believe they contributed and that his pain is primarily in his back and down his right leg. Mr. Brumble went on to say that he does not believe that he can work because of "the pain in my back and right hip and leg, constantly having to change

Employee: Adam Brumble

Injury No. 12-101047

positions, not being able to sit or stand very long and I have to lay down to relieve the pressure and pain. It eases my pain somewhat.” (Brumble depo p47, 119-22) Mr. Brumble testified that his right knee injury did not interfere with any of his job duties and did not interfere with his hunting, fishing, baseball or softball activities.

The records of Dr. Brett Taylor include his last notation on November 12, 2013, stating that Mr. Brumble is six months post L5-S1 anterior lumbar fusion. In that notation Dr. Taylor finds Mr. Brumble to be at maximum medical improvement and able to work in the medium demand level. Dr. Taylor opined to a 14 percent disability rating and noted that Mr. Brumble had been lifting up to 50 pounds in physical therapy and “bending down, butchering roosters, chopping wood with a log splitter and cutting logs with a chainsaw.” (Orthopedic Center records 11.12.13) Dr. Taylor noted that Mr. Brumble reported additional pain with more bending. The “work status report” of November 12, 2013, completed by Dr. Taylor for Mr. Brumble, reflects lifting up to 50 pounds; bending, kneeling, crawling, squatting, working overhead and reaching above shoulder level as well as sitting, standing and walking restrictions in the occasional or one to three hours category; while climbing stairs is restricted to up to one hour in the limited category, with bilateral hand forceful grasping and repetitive motion in that same category; and, finally, a complete prohibition of climbing ladders and using both hands for activities involving low or high impact vibration.

Dr. David Volarich testified by deposition that his residency was in internal medicine and that his fellowship was in nuclear medicine as it relates to diagnostic imaging. Dr. Volarich is certified as a disability evaluating physician. Dr. Volarich saw Mr. Brumble once and provided a report dated March 28, 2014, relating to that examination of Mr. Brumble as well as an addendum to that report dated October 13, 2014. Dr. Volarich noted that Mr. Brumble complained only of occasional stiffness in the right elbow as the result of the February 2011 injury to the right elbow. Dr. Volarich stated that Mr. Brumble would note pain in the right elbow if he hit his elbow on anything or touched it. Dr. Volarich admitted that he noted no restrictions on Mr. Brumble’s knees as the result of the pre 2012 injury to the right knee and the 2012 injury to the left knee. Dr. Volarich opined to a permanent disability of 40 percent of the body referable to the lumbar spine as the result of the December 26, 2012 accident and injury as well as an additional five percent permanent disability of the left knee as the result of an aggravation of Mr. Brumble’s left knee syndrome. With regard to Mr. Brumble’s back, Dr. Volarich’s examination revealed a 10 percent loss in flexion, a 12 percent loss in extension, a 44 percent loss in right lateral flexion and a 36 percent loss in left lateral flexion. Dr. Volarich noted “[t]he worst pain in the low back occurs with right side bending. Palpation elicits pain in both sacroiliac joints right greater than left and in the right sciatic notch. A trigger point is found in the right sacroiliac joint. Straight leg raise was accomplished to 80° on the left where he stopped because of some hamstring tightness. On the right he stopped at 65° because of back pain. There was significant pulling in the right buttocks and thigh.” (Dr. Volarich depo exh 2, p8) Dr. Volarich opined to a 15 percent permanent disability of the left knee as the result of the January 24, 2012 accident and injury. Dr. Volarich found only trace crepitus in the patellofemoral joint with ¼ tracking in the left knee. Dr. Volarich opined to a preexisting permanent disability of 15 percent of the right elbow as the result of the February 20, 2011 accident and injury and a 20 percent disability of the right knee preexisting the February 20, 2011 accident and injury. Dr. Volarich’s only findings applicable to Mr. Brumble’s right elbow injury were “pain when palpating the olecranon process and insertion

Employee: Adam Brumble

Injury No. 12-101047

or the tricep in this region.” (Dr. Volarich depo exh 2, p9) All other examinations of the right elbow indicated normal ranges of flexion, extension, etc. With regard to Mr. Brumble’s right knee injury, Dr. Volarich’s only positive findings were “1/4 patellofemoral crepitus ... [and] 1-2/4 patellofemoral mistracking ...” (Dr. Volarich depo exh 2, p10) No swelling or hyperemia was noted and all testing was negative for meniscal or ligamentous tears.

Dr. Volarich testified that Mr. Brumble would need additional medical treatment into the future, including medication such as flexeril and ibuprofen and, potentially, meloxicam and pain management if Mr. Brumble has a flare-up of radicular symptoms, including epidurals, foraminal nerve blocks, trigger point injections, TENS units, and radio frequency ablations, etc. Dr. Volarich also noted a frequency rate of two percent per year for adjacent level breakdown due to the L5-S1 fusion. Due to Mr. Brumble’s young age, Dr. Volarich opined to a significant risk of adjacent level breakdown. Dr. Volarich opined that Mr. Brumble is permanently and totally disabled as the result of the December 6, 2012 accident and injury. Dr. Volarich went on to say that if Mr. Brumble were not able to lie down during the day it would cause additional stress on his back and result in the need for additional medical care.

Phillip Eldred, certified rehabilitation counselor, testified by deposition that he evaluated Mr. Brumble on August 21, 2014, and issued a report pertaining to that evaluation on September 24, 2014. Mr. Eldred noted that Mr. Brumble’s physical problems prior to December 6, 2012, were not a sufficient impairment to result in vocational disability. Mr. Eldred found it significant that Mr. Brumble had to lie down during the time that Mr. Eldred spent with him and that Mr. Brumble stated to Mr. Eldred that he needs to lie down about four times a day for five minutes to an hour at a time. Mr. Eldred discussed the limitations placed on Mr. Brumble by Dr. Taylor and said that the one to three hour limitations on most activities would restrict Mr. Brumble from engaging in work in any of the physical demand categories. Mr. Eldred opined that Mr. Brumble is unemployable in the open labor market as the result of the injury of December 6, 2012, in isolation from any other injuries.

James England, certified rehabilitation counselor, testified by deposition that he evaluated Mr. Brumble on February 17, 2015, and issued a corresponding report on March 4, 2015. Mr. England found Mr. Brumble’s December 6, 2012 back injury to be the most significant of his injuries from a vocational standpoint. Mr. England felt that Mr. Brumble had transferable skills from previous employment with the Missouri DOC, from his construction work, and from past sales employment. Mr. England felt that, given Dr. Taylor’s restrictions, Mr. Brumble would be able to maintain employment in the areas of retail sales of clothing, sales of construction materials, security work, and light assembly packing. Given Dr. Volarich’s restrictions, Mr. England felt that Mr. Brumble would be able to engage in the same types of employments with the exception that Mr. Brumble’s need to lie down would restrict him from any employment. Mr. England went on to say that Mr. Brumble’s need to lie down during the day “knocks him out” of the employment pool. (England depo p39, 118) In addition, Mr. England acknowledged that his partner, Tim Kaver, opined that Mr. Brumble appeared unable to be employed and Mr. England stated that “I think certainly if I assume what he indicated to is correct to Tim and the way he appeared at the time that Tim met with him, then, no, I don’t think we would be able to get him back to work if that’s the way he is going to come across in an interview. No.” (England depo p49-50 l21-1)

Employee: Adam Brumble

Injury No. 12-101047

Tim Kaver, vocational rehabilitation counselor with England and company, met with Mr. Brumble on April 8, 2015 with the goal of initiating vocational services. Mr. Kaver reported on the meeting in an April 9, 2015 status report. Mr. Kaver noted that Mr. Brumble appeared to be in pain and incapacitated after driving to the interview site without pain medications as he had been instructed by his physicians not to drive while on pain medications. Mr. Kaver opined that he was confident that he could find employment for Mr. Brumble within Dr. Taylor's activity restrictions, but that no employer would hire Mr. Brumble as he appeared to Mr. Kaver on the day of their meeting. Mr. Kaver also noted that Mr. Brumble's stated need to recline three to four times a day for 15 to 30 minutes at a time to relieve symptoms of pain and fatigue would keep Mr. Brumble from being employed.

Medical records from the Jefferson City Medical Group (JCMG) include the notes of Dr. Snyder after a January 7, 2015 examination of his low back. Dr. Snyder's history includes the following remarks:

Adam is a 28-year-old gentlemen with a longstanding history of problems with his low back. He had a work related injury to this while working for the Department of Corrections. The date of that injury was December 6, 2012. He twisted his back and felt a pop. Later that day he lost complete control of his right leg. I reviewed his medical records. He saw two different doctors. He saw Dr. Elliot and eventually he went and saw Dr. Taylor in St. Louis by recommendation of Work Comp. He underwent major back surgery. He had an anterior approach and a lumbar fusion performed 05/16/13. He said he felt a lot better after surgery. He started some PT and then went to work hardening and then another incident occurred. Since that time he has been disabled with severe back pain with radiation of that pain down through his right buttocks and into his leg. There is pain radiating down his leg. There is pain with bending. Pain walking. Pain doing activities. He has been unable to work. He was on disability but they took it away in August because he wasn't under a doctor's care. His symptoms rated at 2-3. He has a constant pain in his lower back with radiation. When he does activities it goes from a 2-3 to an 8-9. He can't lay for any extended period of time. He can't walk for any extended period of time. He can't lift. He can't twist. He can't turn. All of this has been constant over the last year and is documented in his chart. He has seen vocational rehab doctors who have recommended that he is not employable in the open market.
(JCMG notes Snyder 1.7.15)

Dr. Snyder concluded his report of his evaluation of Mr. Brumble with his opinion that Mr. Brumble had sustained a failed back fusion and failed back surgery. Dr. Snyder opined that Mr. Brumble's back fusion was the direct result of his work injury while working for DOC. Dr. Snyder found Mr. Brumble to be permanently and totally disabled and recommended long term disability; Dr. Snyder did not believe that vocational rehabilitation would be beneficial to Mr. Brumble as there is nothing vocational disability could offer to Mr. Brumble. Dr. Snyder prescribed Vicodin for Mr. Brumble and referred Mr. Brumble for pain management. Dr. Snyder's bill for his evaluation of Mr. Brumble is \$166.00 and remains unpaid.

Employee: Adam Brumble

Injury No. 12-101047

Dr. Haake's notes are also included in the records of JCMG. Dr. Haake's records include a reference to being part of "JCMG Pain Management." (JCMG notes Haake 1.29.15) The history taken by Dr. Haake is expressed as follows:

Patient words: Dr. Snyder referred me here for my low back pain. I had a fusion at L5-S1 back in May 2013 and then started PT 2 months after the surgery. That is when the pain started and has been bad ever since and I haven't been able to work since April of 2013.

The patient is a 28 year old male who presents with back pain. Symptoms include back pain and stiffness. Symptoms are located in the midline lower back and on the right side more than the left. The pain radiates to the buttock and lower leg. The patient describes the pain as sharp and aching. Onset was gradual month(s) ago (1 ½ yrs). The symptoms occur constantly. The patient describes symptoms as severe and unchanged. Symptoms are exacerbated by standing and sitting. Symptoms are relieved by opioid analgesics. Associated symptoms do not include leg numbness or leg weakness. Current treatment includes opioid analgesics. The patient is currently able to do activities of daily living with limitations and unable to work. He states that he would like to work but can't. He currently stays home and cares for his daughter during the day. He states that he is somewhat depressed over his situation.
(JCMG notes Haake 1.29.15)

Dr. Haake concluded his report by stating that there were not a significant amount of physical findings on exam, but that he believed that Mr. Brumble experiences pain. Dr. Haake recommended back exercises and meloxicam as well as an epidural steroid injection followed by physical therapy. Dr. Haake felt that if Mr. Brumble were to remain on disability that he would be at high risk for obesity, deterioration in function, and depression. Dr. Haake hoped to return Mr. Brumble to work by alleviating his pain. Dr. Haake prescribed meloxicam for Mr. Brumble.

APPLICABLE LAW

RSMo Section 287.020.6 The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

RSMo Section 287.220.2 All cases of permanent disability where there has been previous disability due to injuries occurring prior to January 1, 2014, shall be compensated as provided in this subsection. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen

Employee: Adam Brumble

Injury No. 12-101047

percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section [287.200](#) out of the second injury fund.

AWARD

Mr. Brumble has sustained his burden of proof that he is permanently and totally disabled from employment as the result of his December 6, 2012 accident and back injury. Mr. Brumble testified credibly with regard to his limitations, including his need to recline during the day to alleviate his low back pain. Mr. Brumble's assessment of his abilities is supported by the medical records of the physicians who treated and evaluated him as well as the opinions of the vocational experts who evaluated Mr. Brumble. Dr. Taylor, the physician who operated on Mr. Brumble's back, offered significant restrictions on Mr. Brumble's activities, well short of what constitutes an average work day. Even Mr. England acknowledged that Mr. Brumble's need to recline nullifies his ability to engage in gainful employment. Permanent total disability benefits are due from November 12, 2013, with an exception for the two weeks in April of 2015 during which Mr. Brumble was paid temporary total disability benefits.

No Second Injury Fund liability is found where Mr. Brumble's permanent and total disability is found to result from the accident and injury of December 6, 2012.

Employee: Adam Brumble

Injury No. 12-101047

The employer/insurer are liable for past medical expenses in the amount of \$166.00 for evaluation and treatment by Dr. Snyder. Dr. Snyder prescribed Vicodin for Mr. Brumble and referred him for pain management where he was prescribed meloxicam. This treatment is in line with Dr. Volarich's recommendation for future medical treatment for Mr. Brumble and is the responsibility of the employer/insurer.

Finally, Mr. Brumble has sustained his burden of proof that he is entitled to future medical treatment from the employer/insurer. As noted earlier, Dr. Volarich's description of Mr. Brumble's medical needs beyond maximum medical improvement has already been realized.

Made by: _____
HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation