

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

Injury No.: 00-105429

Employee: Mike Burks
Employer: Ford Motor Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

Date of Accident: July 31, 2000

Place and County of Accident: St. Louis 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 June 9, 2005. The award and decision of Administrative Law Judge Joseph E. Denigan, issued June 9, 2005, 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 4th day of November 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Mike Burks

Injury No.: 00-105429

Dependents: N/A
Employer: Ford Motor Company
Additional Party: Second Injury Fund (Open)
Insurer: Self-Insured
Hearing Date: April 6, 2005

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

Checked by: JED:tr

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 31, 2000
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was carrying a hood in an overhead position when he slipped and as the weight of the hood shifted behind him, employee sustained an injury to his left shoulder.
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: Left shoulder
14. Nature and extent of any permanent disability: 7.5% PPD of left shoulder
15. Compensation paid to-date for temporary disability: None (no lost time)
16. Value necessary medical aid paid to date by employer/insurer? \$1,667.85

Employee: Mike Burks Injury No.: 00-105429

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,127.33
19. Weekly compensation rate: \$599.96/\$314.26
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

17.4 weeks of permanent partial disability from Employer \$5,468.12

22. Second Injury Fund liability: Open

TOTAL: \$5,468.12

23. Future requirements awarded: N/A

Said payments to begin immediately 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:

Harry J. Nichols

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Mike Burks	Injury No.: 00-105429
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Ford Motor Company	Department of Labor and Industrial
Additional Party:	Second Injury Fund (Open)	Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: JED

This case involves a left shoulder injury resulting to Claimant on the reported accident date of July 31, 2000. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is a party to this claim but remains open for a determination of liability at a future date. Both parties are represented by counsel. The single issue for trial is the nature and extent of permanent partial disability.

FINDINGS OF FACT

Stipulations

The parties stipulated that the employee's compensation rate was \$599.96 for temporary total disability and

\$314.26 for permanent partial disability. Employer paid \$1,067.85 in medical expenses. Claimant had no lost time.

Dispositive Evidence

1. Claimant that he was carrying an Explorer automobile hood in an overhead position when he slipped and as the weight of the hood went behind him, he injured his left shoulder. Although he had some initial complaints of right shoulder pain, his Claim is limited to the left shoulder.
2. Claimant was seen at the Ford plant dispensary where medical treatment was directed by Dr. Robert Thomas. Treatment consisted of ice, use of Anaprox and therapy.
3. Dr. Thomas obtained an MRI and arthrogram of the shoulder at The Imaging Center on October 3, 2000.
4. Claimant was referred by his attorney to Dr. Joseph Hanaway who diagnosed traumatically induced impingement syndrome and recommended arthroscopic surgery. Notwithstanding Claimant's admission to a resolution of any right shoulder complaints following the July 31, 2000 incident, Dr. Hanaway provided a rating referable to the right shoulder in addition to the left shoulder which is the subject of this claim. Dr. Hanaway is a neurologist and provided no treatment.
5. Claimant was examined by Dr. John Wagner, an orthopedic surgeon, at the request of Employer on July 26, 2004. His findings on examination was consistent with Claimant's testimony regarding his complaints. Dr. Wagner noted that he had only slight residual pain in his left shoulder from the July 31, 2000 incident. On examination, complaint of pain was made about the supraspinatus muscle belly area on passive and active impingement tests. Dr. Wagner reported no other complaints on his examination and range of motion was excellent.
6. Dr. Wagner reviewed the MRI and arthrogram. He noted that the MRI showed some edema in the musculotendinous junction. There was no evidence of any abnormality in the rotator cuff tendon. He noted that the MRI report showed an intrasubstance tear of the supraspinatus tendon at the musculotendinous junction which is in the body of the muscle and not in the tendon.
7. Dr. Wagner diagnosed a sprain injury to the left shoulder with a partial tear of the musculotendinous junction at the supraspinatus muscle. There was no sign of any rotator cuff tear. He opined that the Claimant's residual symptoms were secondary to the muscle tear and that he has a permanent partial disability of 2.5% of the left upper extremity at the level of the shoulder.
8. Dr. Wagner is the only orthopedist to have examined the Claimant and his report is persuasive. He is much more credible than a neurologist such as Dr. Hanaway to evaluate a shoulder injury and review the MRI and arthrogram.

RULINGS OF LAW

Nature and Extent of PPD

Claimant's testimony regarding his current complaints is easily reconcilable with Dr. Wagner's findings and his report. Claimant has minimal residual complaints of pain resulting from the July 31, 2000 incident and has no restrictions regarding the use of his left arm. He has complaints of pain when he reaches behind his back and above his head, noticing a "bite" on the top of his shoulder. He does not take any over the counter pain medications for residual left shoulder complaints. He noted that when he does take any medication it is for aches and pains to other body parts, especially his elbow, from another injury.

Claimant has worked without restrictions in the mix room in the paint department since March of 2003. Dr. Wagner noted that he has excellent range of motion and Claimant's testimony supports Dr. Wagner's findings.

Claimant's trial testimony regarding his residual complaints is not consistent with Dr. Hanaway's purported findings, recommendation for arthroscopic surgery, and disability rating. Dr. Hanaway's opinions are unsupported by the medical record.

Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant sustained seven and one-half percent permanent partial disability of the left upper extremity at the level of the shoulder.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation