

FINAL AWARD ALLOWING COMPENSATION
(After Mandate from the Missouri Court of Appeals
for the Southern District)

Injury No.: 03-077312

Employee: Larry D. Calvert
Employer: Noranda Aluminum Incorporated
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

On November 27, 2013, the Missouri Court of Appeals, Southern District, issued an opinion affirming in part and reversing and remanding in part the December 8, 2011, award and decision of the Labor and Industrial Relations Commission (Commission). *Larry D. Calvert v. Treasurer of the State of Missouri, Custodian of Second Injury Fund*, SD31751 & SD31807 (November 27, 2013). By mandate dated February 5, 2014, the Court confirmed its decision to affirm in part and to reverse and remand in part the Commission's award and remanded this matter to the Commission with directions to recalculate the benefits due employee from the Second Injury Fund to exclude preexisting disability to employee's thumb and any scarring.

We note that the Court left undisturbed our factual findings with respect to the nature and extent of employee's permanent partial disability referable to his preexisting conditions of ill-being and to the primary injury. Excluding, per the Court's mandate, the preexisting disability to employee's thumb and any scarring, our findings referable to employee's other conditions were (and continue to be) as follows.

Preexisting conditions of ill-being

At the time of the primary injury, employee suffered a 22% permanent partial disability of the body as a whole referable to his neck, 15% permanent partial disability of the body as a whole referable to his back, 15% permanent partial disability of the left knee, and a 5% permanent partial disability of his right knee.

Applying § 287.190 RSMo to convert employee's preexisting disabilities into weeks of compensation yields the following results: 88 weeks for the neck, 60 weeks for the back, 24 weeks for the left knee, and 8 weeks for the right knee. The sum equals 180 weeks.

The primary injury

As a result of the primary injury, employee suffered the following permanent partially disabling conditions: 15% of the right wrist, 15% of the left elbow, 7.5% of the body as a whole referable to the lumbar spine, and 7.5% of the body as a whole referable to the cervical spine.

Converting employee's permanent partial disability resulting from the primary injury into weeks of compensation yields the following results: 26.25 weeks for the right wrist, 31.5

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weeks for the left elbow, 30 weeks for the lumbar spine, and 30 weeks for the cervical spine. The sum is 117.75 weeks.

Pursuant to the Court's mandate, we have calculated 180 weeks of preexisting permanent partial disability and 117.75 weeks of permanent partial disability referable to the primary injury. The sum of these amounts is 297.75 weeks. Applying the 10% synergy factor, the result is 29.775 weeks.

We conclude that the Second Injury Fund is liable for 29.775 weeks of permanent partial disability benefits. The stipulated rate of compensation for permanent partial disability benefits is \$347.05. The Second Injury Fund is liable to employee for \$10,333.41 in permanent partial disability benefits.

Award

Pursuant to the Court's mandate, the Second Injury Fund is liable to employee for \$10,333.41 in permanent partial disability benefits.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 26th day of February 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary