

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge
by Separate Opinion)

Injury No.: 03-015063

Employee: William Carpenter
Employer: Trio Masonry, Inc.
Insurer: Liberty Mutual Insurance Co.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by §287.480 RSMo. We have reviewed the evidence and briefs, heard the parties' oral arguments and we have considered the whole record. Pursuant to §286.090 RSMo, we issue this final award and decision modifying the June 19, 2008, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries

Employer/insurer stipulated that employee was employed by employer on February 21, 2003, and that any liability assessed against it was fully insured. The administrative law judge heard this matter to consider 1) the nature and extent of employee's disability resulting from the February 21, 2003 accident, 2) the liability of the Second Injury Fund; and 3) the nature and extent of employee's disfigurement pursuant to §287.190 RSMo.

Employee's contract of employment was in the state of Missouri, but the work-related injury took place in Overland Park, Kansas. Employee brought actions in both states. The employee and the employer/insurer settled the Kansas case prior to the final hearing in this Missouri case.

The administrative law judge found that the employee sustained a sixty percent (60%) permanent partial disability of the body as a whole due to the primary injury. That rating encompasses employee's right and left shoulder problems, the sequela of his closed-head injury (double-vision and headaches), his cervical region problems, chronic pain syndrome and depression. The administrative law judge also found that employee's preexisting disabilities of his upper extremities combine with the primary injury to render employee permanently and totally disabled. Lastly, the administrative law judge awarded employee an additional four weeks of compensation for disfigurement for a long thin scar along the front of his neck due to a cervical fusion.

The administrative law judge found employer liable to employee for a total of 244 weeks of disability. This 244 weeks represents the sixty percent (60%) of permanent partial disability of the body as a whole (or 240

weeks) from the primary injury, plus the additional four weeks of compensation for the cervical fusion scar disfigurement. The administrative law judge found the Second Injury Fund liable to employee for permanent total disability benefits of \$649.32 per week for employee's lifetime. The Second Injury Fund appealed to the Commission alleging the administrative law judge erred in finding the Second Injury Fund liable for employee's permanent total disability benefits because employee's permanent total disability resulted from the last injury alone.

Summary of Facts

The findings of fact and stipulations of the parties were recounted in the award of the administrative law judge; therefore, the pertinent facts will merely be summarized below.

When the injury occurred, employee was working for employer as a machine operator. In this capacity, employee operated forklifts, cranes and mixed mortar and grout. On February 21, 2003, employee was struck by a revolving handle of a mixer and was knocked unconscious for 8-10 minutes. As a result of that injury, employee suffered a closed head injury, underwent three surgeries of the right shoulder, including a partial titanium joint replacement and had a two-level neck fusion.

Employee testified that he has ongoing symptoms related to his closed-head injury due to this primary accident, including photo sensitivity requiring him to wear sunglasses both inside and outside the house. Employee continues to have debilitating headaches nearly everyday, double vision 85-90% of the time, times where he blacks out, he has trouble sleeping more than two hours at night, and he has serious memory problems. Employee takes Chlorazepam, Norco, Oxycontin and Cymbalta, all of which are medications prescribed for the conditions that arose from his injury of February 21, 2003.

Prior to the February 21, 2003 accident, employee had two significant injuries to his upper extremities and broke his right ankle in the Marines. In 1984 employee fell from scaffolding injuring his right shoulder. This injury required two surgeries on his right shoulder. Employee was off work for approximately three years as a result of the 1984 fall. After returning to masonry work, employee again sustained an injury in the form of bilateral carpal tunnel syndrome. Employee underwent carpal tunnel releases but did not fully recover from his symptoms.

Employee and employee's wife provided testimony that employee has been unable to participate in various activities and hobbies since the February 21, 2003 accident. In the summer of 2004 employee attempted to return to employment as a truck driver. Employee quit this job because he felt he posed a danger to himself and other drivers. Employee testified that his limited range of motion in his neck and constant headaches rendered him unable to perform his duties as a truck driver.

Multiple doctors performed evaluations of employee's physical and psychiatric conditions. Dr. Brent Koprivica saw employee on two separate occasions for the purpose of providing an independent medical evaluation. Dr. Koprivica first saw employee in June of 2004. Following said visit, Dr. Koprivica prepared a report and assigned employee a rating of 50% permanent partial disability to the body as a whole based solely on the work injury of February 21, 2003. Dr. Koprivica also assigned employee various preexisting disability ratings for his right and left shoulders, right and left wrists and right ankle. Dr. Koprivica concluded that the preexisting disabilities combine with the primary injury to rise above the simple arithmetic sum of the separate disabilities. Dr. Koprivica did not state that employee was permanently and totally disabled at that point.

Dr. Koprivica's second visit with employee took place in June of 2006. Following this visit, Dr. Koprivica assigned employee a permanent partial disability rating of 60% to the body as a whole for the primary injury of February 21, 2003. In addition, after considering that employee had been unable to sustain employment

and was receiving Social Security Disability benefits, Dr. Koprivica opined that “the impact of combining ... [employee’s preexisting] disabilities results in permanent and total disability.”

On October 12, 2006, Dr. Allan Schmidt saw employee for the purpose of performing a psychological evaluation on employee. Dr. Schmidt ultimately concluded that employee had a total psychological disability rating of 30% and a psychological disability rating of 10% prior to the February 21, 2003 injury.

Michael J. Dreiling, the employee’s vocational expert, evaluated employee and provided testimony that employee was unemployable in the open labor market. Mr. Dreiling initially testified that it is a combination of both the February 21, 2003 injury and employee’s preexisting medical problems with the carpal tunnel surgeries that make employee unemployable in the open labor market. On cross-examination, Mr. Dreiling was directed to Dr. Koprivica’s deposition testimony in which Dr. Koprivica testified that given the restrictions isolated solely to the February 21, 2003 injury, employee would only be able to do sedentary types of tasks. Mr. Dreiling testified that Dr. Koprivica’s testimony was consistent with his vocational assessment and that solely considering employee’s restrictions from the last injury, Mr. Dreiling would limit employee to sedentary or very sedentary jobs. Mr. Dreiling was then given a listing of all of employee’s subjective complaints relating solely to the February 21, 2003 injury. Mr. Dreiling was asked to assess employee’s employability given said complaints and the medical restrictions assigned solely for the February 21, 2003 injury. Mr. Dreiling testified that an employee with those complaints and those restrictions could not access the open labor market and be employed for a job the way it is customarily performed.

Findings of Fact and Conclusions of Law

Upon careful review of the entire record, including the testimony, as well as the medical records offered and admitted into evidence, the Commission determines and concludes that the evidence supports a finding that the last injury alone renders employee permanently and totally disabled.

As the administrative law judge correctly stated in the award, there is no doubt that the employee is permanently and totally disabled. The issue is whether the employee is unemployable in the open labor market as a result of the last accident alone or a combination of the last accident and employee’s preexisting conditions.

Second Injury Fund

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid from the fund in "all cases of permanent disability where there has been previous disability." In this case, there is a substantial amount of medical and testimonial evidence supporting the proposition that employee had preexisting disabilities. However, the employer’s liability must first be considered in isolation before determining Second Injury Fund liability. *Kizior v. Trans World Airlines*, 5 S.W.3d 195 (Mo.App. W.D. 1999), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). In *Kizior*, the Court set out the test for determining Second Injury Fund liability as follows:

Section 287.220.1 contains four distinct steps in calculating the compensation due an employee, and from what source, in cases involving permanent disability: (1) the employer’s liability is considered in isolation – ‘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’; (2) Next, the degree or percentage of the employee’s disability attributable to all injuries existing at the time of the accident is considered; (3) The degree or percentage of disability existing prior to the last injury, combined with the disability resulting from the last injury, considered alone, is deducted from the combined disability; and (4) The balance becomes the responsibility of the Second Injury Fund.

Kizior v. Trans World Airlines, 5 S.W.3d 195, 200 (Mo.App. W.D. 1999).

In this case, the analysis stops at step one because there is substantial medical and testimonial evidence provided in the record that the last injury alone caused employee to be permanently and totally disabled. As a result of the February 21, 2003 injury, employee suffered a closed head injury, underwent three surgeries of the right shoulder, including a partial titanium joint replacement and had a two-level neck fusion. Solely, as a result of this injury, employee is unable to participate in various activities and hobbies, has trouble sleeping more than two hours at night, he gets horrible headaches, his eyes are sensitive to light, he has double-vision 85-90% of the time, and he has memory loss. Although Dr. Koprivica opined that employee was permanently and totally disabled as a result of combining the last injury with employee's preexisting disabilities, he testified that employee would be restricted to very sedentary duties if he were to consider the last injury alone. Dr. Koprivica also testified that he would defer to a vocational expert as to employee's employability in the open labor market.

The only vocational expert involved in this case, Mr. Dreiling, opined that an employee with employee's subjective complaints and medical restrictions, which were all solely the result of the last injury, could not access the open labor market and be employed for a job the way it is customarily performed. The administrative law judge did not give weight to this testimony and instead relied on Mr. Dreiling's earlier testimony which did not take into account employee's subjective complaints. For this reason, the administrative law judge determined that employee was permanently and totally disabled as a result of combining the last injury with the preexisting disabilities. The Commission, based on the totality of the opinions of Mr. Dreiling, disagrees and finds the last injury alone caused employee to be permanently and totally disabled.

Award

We modify the award of the administrative law judge on the issue of Second Injury Fund liability for permanent total disability benefits. The employee is permanently and totally disabled, but it is the employer/insurer, not the Second Injury Fund, that is liable to employee for permanent total disability benefits. In all other respects, we affirm the award.

We direct the employer/insurer pay to employee a weekly permanent total disability benefit in the amount of \$649.32 beginning June 7, 2006, the day after employee achieved maximum medical improvement. Said permanent total disability benefit payments shall continue for employee's lifetime, or until as modified by law.

The award and decision of Administrative Law Judge Lisa Meiners, issued June 19, 2008, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees 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 25th day of March 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: William Carpenter

Injury No. 03-015063

Dependents: N/A

Employer: Trio Masonry, Inc.

Insurer: Liberty Mutual Insurance Co.

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

Hearing Date: May 5, 2008

Checked by: LM/lh

FINDINGS OF FACT AND RULINGS OF LAW

- 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: February 21, 2003.
- 5. State location where accident occurred or occupational disease was contracted: Accident occurred in Kansas. There was a contract of employment in 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: A handle of a mixer struck employee rendering him unconscious. As a result, the employee sustained injury of his neck, right and left shoulders and head.
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 and left shoulder, neck, head.
14. Nature and extent of any permanent disability: 60 percent permanent partial disability body as a whole.
15. Compensation paid to-date for temporary disability: \$70,937.76.
16. Value necessary medical aid paid to date by employer/insurer? \$98,583.47.
17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: \$1,238.47.
19. Weekly compensation rate: \$649.32/\$340.12.
20. Method wages computation: By Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: \$82,989.28.
240 weeks for permanent partial disability from employer
4 weeks of disfigurement

22. Second Injury Fund liability:
The Second Injury Fund is liable to Claimant for permanent total disability benefits.

TOTAL: Unknown.

23. Future requirements awarded: No.

Said payments to begin upon receipt of 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Mark Kolich.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: William Carpenter

Injury No. 03-015063

Dependents: N/A

Employer: Trio Masonry, Inc.

Insurer: Liberty Mutual Insurance Co.

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

Hearing Date: May 5, 2008

Checked by: LM/lh

On May 5, 2008, the parties appeared for final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, William Carpenter, appears in person and with Counsel Mark Kolich. The Employer/Insurer appeared through Counsel John Graham. The Second Injury Fund appeared through Assistant Attorney General Meredith Moser.

STIPULATIONS

The parties stipulated:

- that on or about February 21, 2003, Trio Masonry, Inc., was an employer operating subject to Missouri's workers' compensation law with its liability fully insured by Liberty Mutual Insurance;
- that Mr. Carpenter was its employee working subject to the law in Overland Park, Johnson County, Kansas;
- that the contract of employment was in the state of Missouri;
- that Mr. Carpenter filed his claim within the time allowed by law; that the employer has provided medical care through the companion case in the state of Kansas in the amount of \$98,583.47;
- that future medical is left open through the companion case in the state of Kansas;
- that the employer has paid temporary total disability benefits in the amount of \$70,937.76;
- that Claimant's average weekly wage rate is \$1,238.47 which would make the compensation rates \$649.32/\$340.12;
- that this was the case of dual jurisdiction between the states of Kansas and Missouri and that there was an underpayment of the weekly rate of temporary total disability in the amount of \$13,477.86 that is due and owing of the employer for this Missouri claim and that the employer is entitled to a credit of \$29,062.24 for permanency paid in Kansas. This results in a net credit of \$15,584.38 to employer for any permanency awarded in the Missouri claim;
- that past medical had been provided in the state of Kansas and Employee was not seeking reimbursement for any past or future medical in the State of Missouri.

ISSUES

The issues to be determined by this hearing are:

- the nature and extent of disability resulting from the February 21, 2003 accident;
- the liability of the Second Injury Fund; and
- disfigurement pursuant to §287.190.

Claimant, a high school graduate, worked performing heavy manual labor his entire vocational career. Additionally, Claimant sustained several injuries prior to February 2003 that were hindrances and obstacles

to his employment.

Claimant fractured his right ankle while serving in the Marine Corp. Claimant did not received military disability of the right ankle but he was medically discharged from military service. Thereafter, Claimant went to work laying bricks. He continued this line of employment for approximately 28 years. In 1984 Claimant fell from scaffolding injuring his right shoulder. Claimant underwent two surgeries of the right shoulder due to the 1984 fall. Claimant was off work for approximately three years as a result of the 1984 fall. Several doctors recommended Claimant not return to masonry work.

Despite doctors' recommendations, Claimant returned to masonry work. Claimant again sustained injury in the form of bilateral carpal tunnel syndrome. Claimant underwent carpal tunnel releases but did not fully recover from his symptoms. Indeed, Claimant could not perform masonry work (laying bricks) after surgery for carpal tunnel. Due to occupational exposure, Claimant could no longer perform the repetitive hand use required for the position.

As a result, Claimant went to work as a machine operator for Trio Masonry. In this capacity he operated forklifts, cranes and mixed mortar and grout. Prior to February 21, 2003, Claimant had limited range of motion of his right shoulder and weakened strength of his upper extremities as a result of the carpal tunnel syndrome. Claimant missed three years of work as a result of the right shoulder and had to change his line of work as a result of the carpal tunnel syndrome.

On February 21, 2003, Claimant was struck by a revolving handle of a mixer and was knocked unconscious eight to ten minutes. Claimant underwent extensive medical care as a result of the February 21, 2003 injury. Claimant underwent three surgeries of the right shoulder including a partial titanium joint replacement. Claimant also had a two-level neck fusion with Dr. Wesley Griffith as a result of his February 21, 2003 injury. It was Claimant's uncontroverted testimony that Dr. Lowry Jones recommended a left shoulder titanium replacement due to the left shoulder overcompensating for the right shoulder as a result of the February 21, 2003 injury.

Claimant has ongoing symptoms related to his closed-head injury due to the last accident, including photo sensitivity requiring him to wear sunglasses both inside and outside the house. Indeed, during the administrative hearing in May of 2008, Claimant wore sunglasses during the hearing. Claimant continues to have debilitating headaches nearly everyday, double vision, times where he blacks out and memory problems. Claimant currently takes Chlorazepam, Norco, Oxycontin and Cymbalta, all of which are medications prescribed for the conditions that arose from his injury of February 21, 2003.

Claimant may have a dorsal column stimulator trial later in May of 2008. This stimulator was recommended and is being provided by workers' compensation for the February 21, 2003 injury. Claimant also provided uncontroverted testimony that he has been given the option of having a permanent morphine pump implanted by the workers' compensation doctors treating him for the last accident.

Claimant's spouse, Jill Carpenter, corroborated the testimony of her husband regarding the physical abilities and attitudes since his February 21, 2003 work injury. Mrs. Carpenter testified that Claimant had been able to work regularly prior to the last accident. She testified that prior to February 21, 2003 he did all the lawn work and was very involved in fixing things around the home, something that he is no longer able to do. She also testified the only thing that seemed to relieve Claimant's pain was taking pain medications, pulling the blinds and laying down in a recliner.

Claimant engaged in several hobbies prior to February 21, 2003, that he is no longer able to do. He is no longer able to ride motorcycles and four-wheelers, bow hunt and golf.

Several doctors issued independent medical evaluations of Claimant's physical and psychiatric conditions that were presented as evidence. Dr. Brent Koprivica, Dr. Lowry Jones and Dr. Edward Prostic issued opinions regarding Claimant's physical conditions. Dr. Allan D. Schmidt issued an opinion regarding Claimant's psychological condition.

Despite Claimant's and his wife's testimony regarding the last accident both Dr. Koprivica and Dr. Prostic agree Claimant sustained permanent partial disabilities of the upper extremities prior to February 21, 2003. Dr. Prostic testified Claimant sustained substantial weakness of his hands as a result of the 1996 occupational exposures. Dr. Prostic found Claimant sustained 22 percent permanent partial disability body as a whole due to carpal tunnel syndrome or 20 percent permanent partial disability of each hand. Claimant at that time was restricted from forceful gripping and the use of vibrating equipment.

Dr. Koprivica opined Claimant permanently and totally disabled as a result of the last accident combined with the preexisting upper extremities. Dr. Koprivica also noted Claimant to have the following preexisting permanent partial disability: 20 percent permanent partial disability of the right shoulder; 15 percent permanent partial disability of the left shoulder; 15 percent permanent partial disability of the right hand; and 10 percent permanent partial disability of the left hand.

As a result of the February 21, 2003 accident, Dr. Koprivica opined an overall 60 percent permanent partial disability body as a whole but broke down each component as follows: 5 to 10 percent permanent partial disability body as a whole due to closed-head injury; 50 percent permanent partial disability of the right shoulder; 20 percent permanent partial disability body as a whole due to the cervical injury; 5 percent permanent partial disability of the left shoulder due to overuse. Dr. Koprivica also found as a result of the last accident that Claimant needed future medical care for chronic pain syndrome, depression and an evaluation of Claimant's left shoulder. As to date, Claimant does not want treatment of the left shoulder despite the recommendations by Dr. Lowry Jones and Koprivica.

Another expert, Dr. Allan D. Schmidt, a licensed psychologist, testified by deposition. Dr. Schmidt diagnosed Claimant with depression and chronic pain syndrome as a result of the last accident. Dr. Schmidt also suggested Claimant needs further medical care as a result of the February 21, 2003 accident. Dr. Schmidt assessed 20 percent permanent partial disability body as a whole as a result of the February 21, 2003 accident. Additionally, Dr. Schmidt opined Claimant has a preexisting personality disorder that renders him 10 percent permanently partially disabled body as a whole.

The Employer/Insurer and Claimant reached an agreement and held a settlement hearing in the state of Kansas. The parties agreed to leave medical care open in order to cure and relieve the symptoms of the February 21, 2003 injuries. The parties also agreed to \$29, 062.24, the amount which was left available for a maximum award of \$100,000 in Kansas.

There is no doubt that Claimant is permanently and totally disabled. The issue is whether Claimant is unemployable in the open labor market as a result of the last accident or a combination of the last accident and Claimant's preexisting conditions. The test for permanent partial disability is the Claimant's ability to compete in the open labor market Forshee v. Landmark Excavating and Equipment, 164 SW3d 533, 537 (Mo. Ct. App. E.D. 2005.) The pivotal question is whether an employer can reasonably be expected to hire this employee given his present physical condition and reasonably expect him to successfully perform the work Sutton v. V.J. Cement Contracting Co., 37 S.W.3d 803, 811 (Mo. Ct. App. E.D. 2000).

"Section 287.220.1 contains four distinct steps in calculating the compensation due an employee in cases involving permanent disability: (1) The employer's liability is considered in isolations – 'the employer at the time of that 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;' (2) Next, the degree or percentage of the

employee's disability attributable to all injuries existing at the time of the accident is considered; (3) The degree or percentage of disability resulting from the last injury, considered alone, is deducted from the combined disability; and (4) The balance becomes the responsibility of the Second Injury Fund." Kizior v. Trans World Airlines, 5 S.W. 3d 195, 200 (Mo. Ct. App. W.D. 1999). See Mo. Ann. Stat. § 287.200 (West 2008).

While I find Claimant sustained serious debilitating injuries as a result of the February 21, 2003 accident all expert opinions find Claimant permanently and totally disabled as a result of his preexisting conditions and the residuals effects of the February 21, 2003 injury. There is no medical or vocational evidence allowing me to find otherwise despite the serious injuries Claimant sustained from the last accident.

I find Claimant sustained 60 percent permanent partial disability body as a whole as a result of the last accident. This rating encompasses his right and left shoulders, the sequela of his closed-head injury (double-vision and headaches) his cervical region, chronic pain syndrome and depression Claimant sustained as a result of the February 21, 2003 accident.

Claimant, as noted earlier in this decision, also had preexisting disability that according to the experts presented at hearing combine to render Claimant permanently and totally disabled. Claimant missed three years of employment due to a serious injury of his right shoulder. Additionally Claimant was diagnosed with carpal tunnel syndrome so severe he was required to change his line of work. I find these conditions were hindrances and obstacles to his employment as well as rendered Claimant 30 percent permanent partial disability body as a whole prior to February 21, 2003.

The Claimant also presented Michael J. Dreiling who testified no reasonable employer would hire Claimant in his existing physical condition. Dreiling noted Claimant could perform some type of work when taking the limitations of the last accident in isolation. Dreiling noted Claimant's use of heavy narcotics taken as a result of the last accident limits his employability. Dreiling, however, finds the preexisting disabilities of his upper extremities combined with the effects of the last accident render Claimant unemployable.

As further indicia of Claimant's inability to sustain employment in his present physical condition, Claimant attempted to drive a truck for several months in the summer of 2004. Claimant, however, quit his truck driving job because he felt he posed a danger to himself and other drivers. Claimant testified that his limited range of motion of his neck and constant headaches rendered him unable to perform his duties as a truck driver.

Therefore, based on Drs. Prostic, Koprivica, Schmidt and Mr. Dreiling's opinions, I find Claimant is permanently and totally disabled due to his preexisting disabilities of his upper extremities and the effects of the last accident.

Claimant also sustained a long thin scar along the front of his neck due to a cervical fusion. I find this scar to be serious since it is noticeable and results from undergoing a fusion. This scar is also permanent in appearance. Therefore, pursuant to §287.190 I find the Claimant is entitled to additional compensation of four weeks.

The Employer is liable to Claimant for 60 percent permanent partial disability body as a whole or 240-weeks of disability. The Employer is liable for an additional four weeks of compensation pursuant to §287.190. Therefore, the Claimant is awarded 244 weeks of compensation or \$82,989.28.

The Second Injury Fund is liable to Claimant for permanent total disability benefits of \$649.32 per week for Claimant's lifetime. The Second Injury Fund begins weekly differential payments of \$309.20 (\$649.32 minus \$340.12) beginning on June 6, 2006, the date of maximum medical improvement and continuing those

payments for 240 weeks. Thereafter the Second Injury Fund is liable for permanent total disability benefits in the amount of \$649.32 per week for Claimant's lifetime. This award is subject to an attorney's lien of 25 percent for services rendered by Mark Kolich.

Date: _____

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeff Buker
Director
Division of Workers' Compensation