

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

Injury No.: 00-164721

Employee: J. T. Clark  
Employer: General Motors Corporation (previous award)  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: June 23, 2000  
Place and County of Accident: St. Charles 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 May 26, 2006. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued May 26, 2006, 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 11<sup>th</sup> day of September 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: J.T. Clark

Injury No. 00-164721

Dependents: N/A

Employer: General Motors Corporation (previous award)

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

Insurer: Self-Insured

Hearing Date: March 6, 2006; finally submitted April 3, 2006

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

Checked by: KD/lsn

### 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: 6/23/00
5. State location where accident occurred or occupational disease was contracted: St. Charles 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:  
working on assembly line at car manufacturing plant
12. Did accident or occupational disease cause death? --- Date of death? ---
13. Part(s) of body injured by accident or occupational disease: hands and wrists
14. Nature and extent of any permanent disability: See prior award as to employer
15. Compensation paid to-date for temporary disability: See prior award as to employer
16. Value necessary medical aid paid to date by employer/insurer? See prior award as to employer
  
17. Value necessary medical aid not furnished by employer/insurer? See prior award
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$578.98/\$303.01
20. Method wages computation:

### COMPENSATION PAYABLE

21. Amount of compensation payable:
22. Second Injury Fund liability: Yes

24.1875 weeks of permanent partial disability from Second Injury Fund at \$303.01 per week ..... \$7,329.06

TOTAL: ..... \$7,329.06

23. Future requirements awarded: N/A

Said payments to begin as of the date of this 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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

David M. Nissenholtz

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: J.T. Clark

Injury No: 00-164721

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

Dependents: N/A

Employer: General Motors Corporation (previous award)

Additional Party State Treasurer, as Custodian of the Second Injury Fund

Insurer: Self-Insured

Checked by: KD/Isn

The claimant, Mr. J.T. Clark, and the State Treasurer, as custodian of the Second Injury Fund, appeared at hearing by and through their counsel and entered into certain agreements and stipulations as to the issues and evidence to be presented in this claim as against the Second Injury Fund. The underlying workers' compensation claim as against the employer for injury occurring on 6/23/00 was the subject matter of an **AWARD** dated 10/15/03.

The parties have agreed that the only issues to resolve at hearing are nature and extent of permanent disability and liability of the Second Injury Fund.

Mr. J.T. Clark appeared at hearing and testified on his own behalf. The claimant also submitted the deposition testimony of Bruce Schlafly, M.D., and of Mr. James E. Israel. The Second Injury Fund submitted the deposition testimony

of Mr. James England.

## EXHIBITS

The following exhibits are in evidence:

### Claimant's Exhibits

- A. **OPINION AND AWARD**, Commonwealth of Kentucky, Department of Workers' Claims, Claim No. 95-16037
- B. Medical records of C. Leslie Lovett, M.D.
- C. Medical records of Dr. Frank Buono
- D. Medical records of Dr. David Lange

### ***E. AWARD in Injury Number 00-164721***

### ***F. General Motors Plant Dispensary medical records***

- G. Certified medical records of Plastic Surgery Consultants (Dr. Feliciano)
- H. Deposition of Bruce Schlafly, M.D., taken on 10/04/05
- I. Deposition of James E. Israel taken on 10/20/05***

### Second Injury Fund Exhibits

### ***I. Deposition of James England taken on 2/2/06***

## FINDINGS OF FACT AND RULINGS OF LAW

The claimant, Mr. J.T. Clark is a 70 year-old retiree from General Motors (GM), where he performed assembly work for thirty years, beginning in 1970.

Mr. Clark was born in Tennessee, and provided a history of having attended some school as a child, but of working more often on a farm with the rest of his family as a sharecropper. Mr. Clark recalled at hearing that he attended seven grades of school, and alleges that he is incapable of reading or writing, and that he is also incapable of basic mathematics such as adding, subtracting, multiplying, and dividing.

Mr. Clark came to St. Louis in 1957 or '58, and recalls that prior to joining General Motors, he worked as a laborer for a cab company, washing cabs and fixing tires; as a forklift driver; and as a porter at Lambert Airport.

While with GM, Mr. Clark has worked the Union/Natural Bridge plant; at a plant in Bowling Green, Kentucky; and most recently at the Wentzville plant. Claimant recalls injuring his back at the Natural Bridge location; suffering a subsequent injury to his back while working at the Bowling Green location; and returning to St. Louis to be near family while having a back surgery performed by Dr. David Lange on or about 1/31/95. The operative report (See Claimant's Exhibit D) indicates that Dr. Lange performed a laminotomy and removal of disc material at L4-5, freeing up the L5 nerve root. Mr. Clark had follow up treatment with Dr. Lange for several months, before returning to Bowling Green, Kentucky. Thereafter the claimant received evaluation as to his low back from Dr. Frank L. Buono in January of 1996. Claimant had a prior history with Dr. Buono, who had been seeing Mr. Clark on occasion in 1994 for low back complaints leading up to the surgery by Dr. Lange. Dr. Buono treated the claimant for what he diagnosed as an acute lumbosacral sprain, and released Mr. Clark to return to work without restrictions on 1/31/96 (See Claimant's Exhibit C).

Medical records from the GM plant dispensary, Claimant's Exhibit F, suggest that the claimant was transferred to the Wentzville Plant at some point in 1996. The only records in evidence that document any ongoing treatment for low back complaints from 1996 to the date of hearing in the matter are the GM plant records.

Mr. Clark testified that for the first two or three years at the Wentzville plant his back continued to bother him while performing a job that involved pulling covers over seats used in vans. Claimant notes that for those first several years he would use his hands to staple the cloth to the seats. Claimant's next job was "building vans up", which required Mr. Clark to affix rubber weather stripping around doors. Claimant recalls that he would use his hands all day, twisting and pushing weather stripping into seams.

The GM dispensary records indicate that from time to time Mr. Clark would seek treatment for what was noted to be sprain/strain injuries to his low back. Claimant received heat packs, analgesics, and ibuprofen for back complaints on 12/8/97; similar treatment for complaints on 1/26/98; in March and April of 1998; on one occasion in January of 1999; on several occasions in October and November of 1999; and again as to the low back in March and in September of 2000.

Mr. Clark testified that he began to suffer pain in to both hands from the weather stripping job; plant dispensary records indicate that Mr. Clark made many visits to the dispensary in June of 2000, complaining as to his pain into his forearms, hands, and wrists.

On 9/28/00 Dr. Wilfrido C. Feliciano performed a left carpal tunnel release, followed by a right carpal tunnel release on 10/12/00. Dr. Feliciano released Mr. Clark for a return to light duty effective 12/12/00, and recommended that Mr. Clark wear padded gloves at work.

Mr. Clark recalls that he did return to a light duty job, putting "dum dum" (a substance like silly putty) into cracks. Claimant recalls that he couldn't perform the job, as pushing the putty into place hurt his hands, and bending and stooping hurt his back. Mr. Clark was then referred to "final line", where his job was to drive the finished cars off the line, park the vehicles, then walk back to the line. Claimant testified that walking on concrete hurt his back, and that driving the cars hurt his hands. Claimant recalls working perhaps as much as a week or so prior to the plant shutting down for the holidays in mid-December of 2000.

Claimant testified that inasmuch as he was hurting, he chose to check on the status of his retirement, and was advised he could retire with 30 years of service. Mr. Clark testified that he had not been contemplating retirement before, inasmuch as he believed he would make more working than retired.

Mr. Clark retired after the Christmas break, and has not been employed at General Motors or with any other employer since December of 2000.

Mr. Clark currently complains of back, with pain and numbness that goes down his leg into his calf. The claimant complains of stiffness and pain that inhibits his efforts to bend and stoop, and notes that his back will hurt if he sits in one place too long. Mr. Clark exhibited at hearing a back brace given to him by Dr. Buono, which the claimant alleges to have worn every day while on the job at GM.

Mr. Clark also notes that he suffers from numbness and tingling every day in the first three fingers of each hand. Mr. Clark notes a loss of grip strength in both hands, noting that he can lift a gallon of milk, but could not hold it out from his body. Claimant notes that from time to time he will wear either the gloves or the splints that he was given for his hand complaints, and that on occasion his hand complaints will awaken him from his sleep. Mr. Clark noted that he has given up activities such as hunting and fishing on account of his back and upper extremity complaints.

Mr. Clark relates that he is unable to keep his own checkbook, given his difficulty with writing and math, and states that certain of his children living in the St. Louis area will take care of managing his finances.

On cross-examination by the Second Injury Fund, Mr. Clark acknowledged that he had not received any complaints about his performance in his job reviews; that he had been working 40 hours a week, with some overtime from time to time, prior to having suffered his hand injury; and recalled that during a layoff back in 1970, for two or three months or so, he participated in training to learn auto body work, and was able to earn a completion certificate. Mr. Clark acknowledged that he has a license and will drive himself to the store to shop for groceries, and that he will also perform certain household chores such as laundry, vacuuming, and washing dishes.

### **PERMANENT PARTIAL DISABILITY/LIABILITY OF THE SECOND INJURY FUND**

Dr. Bruce Schlafly met with Mr. Clark on 3/11/03. Dr. Schlafly took a history from Mr. Clark; reviewed certain medical records; performed a physical examination; offered his opinion as to permanent and partial disability as to the hands at the wrist, and as to the low back; offered his recommendation as to bending and lifting restrictions as to the claimant's low back; and opined that the synergistic effect of the combined disabilities at the hands and the low back created a disability greater than their simple sum.

Messrs. Israel and England, both certified rehabilitation counselors, offered opinions on behalf of the claimant and the Second Injury Fund respectively as to the prospect of Mr. Clark finding employment on the open labor market. Mr. Israel had the benefit of meeting with Mr. Clark and interviewing him on 2/02/05; Mr. England did not have an occasion to interview Mr. Clark, and acknowledged that his opinions were premised on a records review.

The test for permanent total disability is whether, given the claimant's situation and condition, he is competent to compete in the open labor market. Laturno v. Carnahan, 640 S.W.2d 470, 472 (Mo.App. 1982). This test measures the worker's prospects for returning to employment. Patchin v. National Supermarkets, Inc., 738 S.W.2d 166, 167 (Mo.App. 1987). Total disability means the inability to return to any reasonable employment; it does not require that the employee be completely inactive or inert. Brown v. Treasurer of Missouri, 795 S.W.2d 479, 483 (Mo.App. 1990). The question is whether in the ordinary course of business an employer would reasonably be expected to hire the claimant in his present physical condition, reasonably expecting him to perform the work for which he is hired. Kowalski v. M-G Metals and Sales, Inc., 631 S.W.2d 919, 922 (Mo.App. 1982).

Mr. England noted the lack of any specific work restrictions from any of the treating physicians, and concluded that

in the absence of the opinion from Dr. Schlafly, there was no medical support for concluding that Mr. Clark would be incapable of a return to work at GM. Assuming the limitations as to lifting and bending as proposed by Dr. Schlafly, Mr. England concludes that the claimant might be precluded from certain assembly line work, but would still be capable of light entry level service employments. Mr. England further noted that given the limited education history provided by Mr. Clark, he would have found it helpful to have vocational testing, such as that which measures reading ability, in order to provide an expert opinion bearing on employability.

It is worth note that when asked to offer his restrictions, Dr. Schlafly provided certain limitations referable to the low back, but made no specific recommendations as to limitations as to the use of the hands at the wrists. The limitations offered as to the low back notwithstanding, the work history of Mr. Clark suggests that although he made low back complaint from time to time at the GM dispensary after his release following his low back surgery, he was able to perform his assembly line work duties without any formal work restrictions, working overtime when asked to do so, for the four years following his return to work, up until the time that he treated with Dr. Feliciano for carpal tunnel release on the right and left wrists.

Furthermore, the opinion of Mr. Israel, to the effect that the claimant is rendered unemployable on the open labor market, is premised on limitations made applicable to Mr. Clark by reference to his preexisting low back complaints, and is further premised on the subjective testimony of Mr. Clark as to his inability to read, write, or perform simple mathematics.

The claimant has the burden of proving all the essential elements of the claim for compensation. The explanation of Mr. Israel as to his reasons for failing to perform vocational testing of Mr. Clark are not found persuasive by this fact finder. The testimony of Mr. England persuades that vocational testing would have been of benefit, in order to gauge whether Mr. Clark would have had the necessary academic functioning to compete for entry-level service positions (Second Injury Fund Exhibit I, at pages 11,12).

The testimony of Mr. England is found to be supported by the work and medical history contained within the record. Mr. England was able to work without limitation for four years as an assembly line worker for GM post his back surgery. Dr. Buono released claimant in February of 2002 without any work restrictions. By his own admission, Mr. Clark acknowledged that he was not considering retirement as an option until such time as he began to suffer from the hand complaints that resulted in carpal tunnel releases.

The claimant has failed to persuade that the combination of disability referable to the low back and to the hands at the wrists, in combination with his age and education, has rendered him unemployable on the open labor market. The testimony of Mr. Clark and of Dr. Schlafly does persuade, however, that the claimant suffers from a preexisting disability of the low back, and from a work related injury to the hands at the wrists, of sufficient severity to reach the threshold for finding permanent and partial disability compensable as against the Second Injury Fund per Section 287.220 RSMo.

The testimony of Mr. Clark as to his low back complaints, given his history of laminotomy and discectomy at L4-5 and with ongoing back complaint as documented by the GM medical records, persuades that the claimant suffers from a preexisting permanent partial disability equivalent to 25 % of the body as a whole, referable to the low back. Dr. Schlafly and Mr. Clark, by their testimony, persuade that the preexisting and primary work related injuries each constitute a hindrance or obstacle to employment, and that they combine to create a greater disability over and above their simple combination. The claimant is found to suffer a disability greater than the simple sum by a factor of 15%. Claimant has been previously found to suffer a permanent partial disability equivalent to 17 and ½ % of each wrist. The total due as against the Second Injury Fund is for  $(400 \times .25) + (175 \times .175) + (175 \times .175) \times .15 = 24.1875$  weeks of disability. At the stipulated rate of \$303.01, the amount due for permanent partial disability is \$7,329.06.

This award is subject to a lien in favor of David M. Nissenholtz, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

This award is subject to interest as provided by law.

Date: June 1, 2006

Made by: /s/ KEVIN DINWIDDIE  
KEVIN DINWIDDIE  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST

PATRICIA "PAT" SECREST  
Director  
Division of Workers' Compensation