

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

Injury No.: 09-103570

Employee: Eric Conrad  
Employer: Air Masters Corp (Settled)  
Insurer: Ace American (Settled)  
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 November 13, 2012. The award and decision of Administrative Law Judge Kathleen M. Hart, issued November 13, 2012, 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 4<sup>th</sup> day of February 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

## AWARD

Employee: Eric Conrad

Injury No.: 09-103570

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Air Masters Corp (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Ace American (previously settled)

Hearing Date: October 16, 2012

Checked by: KMH

### 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: November 1, 2009
5. State location where accident occurred or occupational disease was contracted: St. Louis
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:  
Claimant injured his right and left elbows in the course and scope of his employment.
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 elbows
14. Nature and extent of any permanent disability: 27.5% right elbow, 20% left elbow
15. Compensation paid to-date for temporary disability: \$13,481.94
16. Value necessary medical aid paid to date by employer/insurer? \$61,167.22

Employee: Eric Conrad

Injury No.: 09-103570

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$422.97 for PPD
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

99.75 weeks of permanent partial disability from Employer	(previously paid)
---	-------------------

22. Second Injury Fund liability: Yes

23.49 weeks of permanent partial disability from Second Injury Fund	\$9,937.15
---	------------

<b>TOTAL:</b>	<b>\$9,937.15</b>
---------------	-------------------

23. Future requirements awarded: None

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:

**Sam Eveland**

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Eric Conrad

Injury No.: 09-103570

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Air Masters (previously settled)

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

Additional Party: SIF (only)

Insurer: Ace American (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter October 16, 2012. Eric Conrad (Claimant) was represented by attorney Sam Eveland. The Second Injury Fund (SIF) was represented by Assistant Attorney General Da-Neil Cunningham. Air Masters (Employer) and Claimant previously settled the primary claim in this matter.

### **STIPULATIONS**

The parties stipulated to the following:

1. Claimant was injured by occupational disease, while in the course and scope of his employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to entitle him to a PPD rate of \$422.97.
6. Claimant and Employer entered into a compromise lump sum settlement on May 15, 2012. The settlement was approved by the Division and Claimant sustained 27.5% PPD to his right elbow and 20% PPD to his left elbow as a result of his primary injury.
7. Claimant has prior disabilities of 17.5% of the right wrist and 15% of the left wrist.
8. If the prior injuries were a hindrance or obstacle to employment and combine with the primary injury to create a greater overall disability, and if the SIF is liable for PPD benefits when the primary injury was an occupational disease, the load factor is 15%.

### **ISSUES**

The parties stipulated the issue to be resolved by trial is the nature and extent of SIF liability.

## FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

1. Claimant is a 44 year-old male who developed pain in his elbows and numbness and tingling in his fourth and fifth fingers in November 2009, after working as a sheet metal worker for several years. His duties involved using power tools and working overhead to fabricate duct work for heating and cooling systems. He was diagnosed with bilateral cubital tunnel syndrome and had bilateral ulnar nerve transpositions. He developed recurrent symptoms in his right arm and had a revision ulnar nerve transposition for recurrent cubital tunnel syndrome. He was released at MMI and tried to return to work, but had difficulty performing the duties of his job due to his ongoing symptoms. He settled this case with Employer for 27.5% of his right elbow and 20% of his left elbow in May 2012.
2. Claimant continues to have pain in his elbows and numbness in his fingers and right forearm. He developed triggering of his right ring fingers. He has significantly decreased grip strength in both arms.
3. Claimant developed bilateral carpal tunnel syndrome in 2008 and had bilateral open carpal tunnel releases. He was released at MMI in July 2008, and returned to full duty. Claimant settled this case with Employer for 17.5% of the right wrist and 15% of the left wrist in February 2009.
4. Claimant continues to have stiffness in his wrists and decreased grip strength. He has weakness and his hands fatigue easily.
5. Claimant's medical expert, Dr. Berkin, reviewed the records and examined him in March 2012. He issued a report rating Claimant's disabilities and opined the combination of disabilities is greater than their simple sum total. He opined the preexisting disabilities represented a hindrance or obstacle to employment or reemployment.
6. Claimant is credible.

## RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the stipulations of the parties, the competent and substantial evidence presented and the applicable law, I find Claimant established a right to recover PPD benefits from the SIF.

The SIF argues they have no liability because Claimant’s primary case involved an occupational disease rather than an accident. Section 287.220.1 (RSMo 2005) provides compensation from the SIF for the combination of certain preexisting disabilities with a subsequent “compensable injury” that results in additional permanent disability meeting the statutory thresholds. The SIF asserts an occupational disease does not qualify as a subsequent “compensable injury” because the definition of “injury” in Section 287.020.3 excludes occupational disease.

287.020.3(5) defines “injury” and states the term “shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form”. This is not an absolute exclusion of occupational diseases from SIF liability. The law provides for injuries by accident and for injuries by occupational disease. Section 287.067.2 provides “An injury by occupational disease is compensable...”. 287.067.3 provides “An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter.” The chapter specifically provides occupational diseases are injuries. Claimant’s primary injury by occupational disease triggers SIF liability.

The parties stipulated to Claimant’s primary and prior disabilities. These disabilities total 156.625 weeks of disability. I find the prior injuries created a hindrance or obstacle to Claimant’s employment and combine with the primary injury to create a greater overall disability.

The parties stipulated to the appropriate load factor. Based on the stipulations of the parties, the SIF is liable for 23.49 weeks of disability. At Claimant’s compensation rate, he is entitled to, and the SIF is hereby ordered to pay \$9,937.15 in compensation.

Made by: \_\_\_\_\_  
 KATHLEEN M. HART  
*Administrative Law Judge*  
*Division of Workers' Compensation*