

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

Injury No.: 05-078571

Employee: Gary Craig
Employer: General Motors Corporation
Insurer: Self-Insured
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. We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the February 23, 2011, award and decision of the administrative law judge (ALJ). We adopt the findings, conclusions, decision, and award of the ALJ to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

While we agree with the ALJ's conclusion that employee is permanently and totally disabled as a result of his July 27, 2005, primary injury combining with his preexisting disabilities, we find that the ALJ's apportionment of permanent partial disability attributable to the primary injury is excessive.

The ALJ found that as a result of employee's primary injury, he sustained permanent partial disability to his low back and psyche. In relying on Dr. Sky's opinion, the ALJ found that employee sustained 30% permanent partial disability of the body as a whole referable to his psychiatric disability; and in relying on Dr. Poetz' opinion, the ALJ found that employee sustained 20% permanent partial disability of the body as a whole referable to his lumbar spine.

Psychiatric

With regard to employee's psyche, the ALJ correctly found that employee had a significant preexisting permanent partial psychiatric disability. Employee testified that prior to the primary injury he had problems with depression both at work and at home. He stated that his depression would come and go, with some extended periods of depression. Employee sought treatment for his psychiatric condition in 1993, 2000, and 2004. Dr. Stillings rated employee's preexisting psychiatric disability at 60% permanent partial disability of the body as a whole.

Whereas the record is clear that employee suffered from a significant preexisting psychiatric condition, the evidence does not support the ALJ's conclusion that the primary injury caused an additional 30% permanent partial disability to employee's body as a whole. The extent of employee's psychiatric care subsequent to the primary injury involves him taking medication prescribed by Dr. Golding, nothing more. The other psychiatrist that examined employee, Dr. Stillings, opined that the primary injury caused no more than 3% permanent partial disability of the body as a whole.

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We find that Dr. Stillings' opinions are more credible than Dr. Sky's. Dr. Sky opined that employee's psychiatric disabilities related to his physical health. However, it is difficult to give this much credence when it appears from Dr. Sky's report that he did not review a complete medical history of employee. In addition, Dr. Sky had no opinion as to employee's physical health prior to the primary injury. His explanation for this during his deposition was that "as a psychiatrist the physical diagnoses would be outside the scope of my practice." If that is the case, it is inappropriate for him to base his psychiatric disability ratings on physical diagnoses if they are outside the scope of his practice.

In addition to the aforementioned, Dr. Sky testified that he was not aware of any physical limitations employee suffered from prior to the primary injury, when in fact employee had been working light duty at General Motors for nine to ten years prior to the primary injury due to his ongoing low back problems.

It is clear that Dr. Sky formed his opinions without a thorough understanding of employee's preexisting disabilities. For this reason, we do not find that his 30% permanent partial psychiatric disability rating is supported by the record. We find that Dr. Stillings provided a much more accurate assessment of employee's psychiatric disability attributable to the primary injury.

Dr. Stillings took a thorough history of employee's condition before and after the work injury. Dr. Stillings reviewed records of psychiatric treatment before the work injury, including all of the records that Dr. Sky admitted he did not review. In addition, Dr. Stillings completed a mental status examination and performed numerous psychiatric tests on employee before setting out his diagnoses and opining that the primary injury accounted for only an additional 2%-3% permanent partial disability of the body as a whole.

We find that Dr. Stillings' rating of 2%-3% is far more accurate than Dr. Sky's rating of 30%; however, after a review of employee's testimony, the medical experts' testimony, and the record as a whole, we find that the competent and substantial evidence supports a rating slightly greater than Dr. Stillings' maximum rating of 3%. We find, after considering all of the evidence that the primary injury resulted in employee sustaining an additional 5% permanent partial psychiatric disability.

Lumbar Spine

We agree with the ALJ's determination that employee suffered some permanent partial disability to his lumbar spine as a result of the work injury that occurred on July 27, 2005. However, we find that the weight of the evidence establishes that the nature and extent of employee's lumbar spine disability attributable to the primary injury is far less than the 20% awarded by the ALJ.

Employee's preexisting lumbar spine condition was well documented. Employee testified that he began suffering from low back pain as early as 1991. In 1995, employee had to go to an emergency room due to twisting his back, and in 1996, he injured his back again when he fell on ice. Employee testified that he missed an entire year of employment in 1996 due to low back pain. In 2001, Dr. Albanna diagnosed severe disc degeneration at L5-S1, a herniated nucleus pulposus on the left at L5-S1, and spinal stenosis at L4-L5. Employee

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testified that he was again out of work from March 20, 2001, to August 30, 2001, due to back complaints and treatment. Employee continued receiving treatment for his back pain leading all the way up to the July 27, 2005, work injury. In fact, prior to the work injury, employee was seen for his back pain by Dr. Golding as recently as June 8, 2005.

Following the primary injury, employee was initially prescribed medication and physical therapy. Employee completed therapy on October 19, 2005, and from that point on, never sought or requested additional medical care from a surgeon or specialist of any kind. Employee did not receive any additional epidural steroid injections or recommendations for any additional medical care.

Dr. Poetz examined employee and concluded that he sustained an exacerbation of a herniated L5-S1 disc and rated his permanent partial disability of the low back at 20%. The ALJ adopted Dr. Poetz' rating despite the fact that Dr. Poetz testified that employee was under no restrictions prior to the primary injury and was performing moderately heavy work. Dr. Poetz' testimony on this issue was entirely refuted by employee's testimony that he was working light duty for the last nine or ten years of his employment due to his low back pain. In addition, Dr. Poetz admitted that the only diagnostic test he reviewed relating to the work injury was a lumbar x-ray. He did not review the March 23, 2001, lumbar CT scan or the March 31, 2001, lumbar MRI. Dr. Poetz also did not review the post-injury lumbar MRI done on October 28, 2005. Lastly, despite diagnosing employee with an exacerbation of a herniated L5-S1 disc, he testified that he did not know that employee had been diagnosed with a herniated disc at L5-S1 prior to the work injury. His testimony is inconsistent with his report and cuts to his credibility.

In addition, without reviewing the aforementioned pre-injury and post-injury diagnostic tests, Dr. Poetz could not have had a very informed opinion regarding employee's lumbar spine condition, either before or after the primary injury. For the foregoing reasons, we do not find Dr. Poetz credible.

The other physician who testified in this case was Dr. Raskas. Unlike Dr. Poetz, Dr. Raskas was aware of the MRI that showed employee had an L5-S1 herniated disc in 2001 and reviewed the 2005 post-injury MRI scan. Dr. Raskas rated employee's preexisting back disability at 35% permanent partial disability of the body as a whole. Dr. Raskas opined that the primary injury did not cause any additional permanent partial disability.

While we find that Dr. Raskas' opinion is more accurate than Dr. Poetz's, in considering the record as a whole, we find that the weight of the evidence establishes that employee did sustain some additional permanent partial disability as a result of the primary injury. Based upon employee's testimony, the medical experts' testimony, and the record as a whole, we find that as a result of the primary injury employee sustained 5% permanent partial disability of the body as a whole referable to the lumbar spine.

We find, as did the ALJ, that employee suffered his condition of permanent and total disability as of the date of his work injury. Therefore, we find a maximum medical improvement date of July 27, 2005.

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In accordance with the modifications herein, we find that employee is liable for permanent partial disability benefits amounting to 10% of the body as a whole (5% PPD of the body as a whole referable to employee's psyche + 5% PPD of the body as a whole referable to employee's lumbar spine), which amounts to 40 weeks of compensation, or \$14,603.20 (= \$365.08 PPD rate x 40 weeks).

The Second Injury Fund is liable for the difference between the permanent total disability benefits and the permanent partial disability benefits (\$696.97 PTD rate - \$365.08 PPD rate) for 40 weeks beginning on July 28, 2005. Thereafter the Second Injury Fund shall be liable for employee's weekly permanent total disability benefit of \$696.97 for the remainder of employee's life, or until modified by law.

The award and decision of Administrative Law Judge Kevin Dinwiddie, as modified, is attached and incorporated by 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 7th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Gary Craig

DISSENTING OPINION

I did not participate in the September 14, 2011, oral argument in this matter. However, I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be affirmed without modification. Therefore, I adopt the decision of the administrative law judge, in its entirety, as my decision in this matter.

Because the Commission majority has decided otherwise, I respectfully dissent.

Curtis E. Chick, Jr., Member

FINAL AWARD

Employee: Gary Craig Injury No.: 05-078571
Dependents: N/A
Employer: General Motors Corporation
Additional Party: State Treasurer, as Custodian of the Second Injury Fund
Insurer: Self- insured c/o Sedgwick Claims Management Services
Hearing Date: Thursday, February 04, 2010

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

Checked by: KD/cmh

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 27, 2005
5. State location where accident occurred or occupational disease was contracted: St. Charles County, 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 is alleged to have occurred: Employee struck by machine called a traveler while working on the assembly line
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: low back, psyche
14. Nature and extent of any permanent disability: 30 percent psychiatric disability of the body as a whole; 20 percent permanent partial disability to the body as a whole at the lumbar spine; permanent total disability payable from the Second Injury Fund
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? None

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17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: by stipulation
19. Weekly compensation rate: \$696.97/\$365.08
20. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable:

The total of permanent partial disability due to the work injury is for 200 weeks, payable by the employer at the stipulated rate of \$365.08 per week from the date of maximum medical improvement, the date of injury on 7/27/05. The differential between the permanent total and the permanent partial disability rate, \$331.89 is payable by the Second Injury Fund from 7/27/05 for 200 weeks, and thereafter at the stipulated rate of \$696.97 for so long as the condition of permanent total disability shall continue to subsist, Section 287.200 RSMo.

22. Future requirements awarded: N/A

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Gary Craig

Injury No: 05-078571

Dependents: N/A

Employer: General Motors Corporation

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

Insurer: Self-insured c/o Sedgwick Claims Management Services

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

Checked by: KD/cmh

The employee, Mr. Gary Craig, appeared at hearing in person and by his counsel, David Hughes. The claimant seeks a final award for benefits relating to his claim as against both General Motors Corporation and as against the State Treasurer, as Custodian of the Second Injury Fund. Attorney Julie L. Petraborg appeared on behalf of General Motors Corporation. Assistant Attorney General Lacy Fields appeared on behalf of the Second Injury Fund. The employee and the employer stipulated that on or about July 27, 2005, the employee sustained an injury by accident arising out of and in the course of his employment in St. Charles County, Missouri. The State Treasurer, as Custodian of the Second Injury Fund, did not stipulate to injury by accident arising out of and in the course of employment. The parties further stipulated that the issues to be resolved in Injury Number 05-078571 are as follows:

Second Injury Fund disputes injury by accident arising out of and in the course of employment;

Both the Second Injury Fund and the employer put the following issues in dispute:

Medical causation;
Future medical care;
Temporary total disability;
Permanent disability; and
Liability of the Second Injury Fund

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Mr. Gary Craig appeared at hearing and testified on his own behalf. The claimant also submitted the deposition testimony of Robert P. Poetz, D.O.; of Dr. Adam Sky; and of James England. The employer submitted the deposition testimony of David S. Raskas, M.D.; of Wayne A. Stillings, M.D.; and of June Blaine.

EXHIBITS

Claimants Exhibits A through L were offered and received in evidence without objection. Employer and Insurer's Exhibits 1 through 6 were received without objection. The following exhibits are in evidence:

Claimant's Exhibits

- A. Deposition of Robert P. Poetz, D.O., taken on 2/11/08.
- B. Deposition of Dr. Adam Sky, taken on 11/13/09
- C. Deposition of James England, taken on 8/18/09
- D. Report of Devon N. Golding, M.D., dated October 8, 2007
- E. Certified medical records of National Medical Information Services, Inc.
- F. Certified medical records of St. Alexius Hospital
- G. Certified medical records of General Motors Assembly Center
- H. Certified medical records of Anthony J. Berni, M.D.
- I. Certified medical records of Faisal Albanna, M.D.
- J. Certified medical records of Healthsouth
- K. Certified records of Psych Care Consultants
- L. Certified records of Saint Louis University Hospital

Employer and Insurer's Exhibits

- 1. Deposition of David S. Raskas, M.D., taken on 5/8/08
- 2. Deposition of Wayne A. Stillings, M.D., taken on April 9, 2008
- 3. Deposition of June Blaine, taken on November 19, 2009
- 4. Sick & Accident benefit statement
- 5. Medical reports of Andrew M. Wayne, M.D. dated 2/17/06 and 10/12/05
- 6. GM Dispensary records 1/28/02 through 8/10/2005

Second Injury Fund Exhibits

- I. Stipulation of the parties as to supplement of the medical records of General Motors

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FINDINGS OF FACT AND RULINGS OF LAW

The employee, Mr. Gary Craig, born on February 9 of 1962 is 47 years old as of the date of hearing. He is married, with two sons, aged seventeen and eighteen, and a stepdaughter who is 29. Prior to his 20 or so years with General Motors Corporation (hereinafter referred to as "employer") Mr. Craig received his GED and found employment both as a cook and as a furniture salesman. For the first two years with the employer the employee assembled seats, and was then transferred to the parts department. Mr. Craig would pick up parts, load them into a cart, and also drove a forklift.

The employee claims to have injured his back in about 1991, providing a history to Dr. Devon Golding, his personal physician, on 3/20/01 as to having back pain and pain going down the left leg, with a history of trauma ten years prior to the back.

Employee also injured his low back in 1996 when carrying his son on ice at home. Dr. Emil A. DiFilippo (see record of Dr. Berni, Claimant's Exhibit H) noted that he did not have the benefit of x-rays and a bone scan from Deaconess Hospital, and concluded that the physical exam and history suggested a lumbar sacral strain. Claimant was advised to consider physical therapy of the low back and possible anti-inflammatory medication, with a possible return to work after one month.

The most current diagnostics as to the back were generated when the claimant first began to treat with Dr. Golding in March of 2001. In the IMPRESSION section of the St. Alexius Hospital radiology report dated 3/24/01, it states:

LEFT PARACENTRAL PROTRUSION OF THE L5-S1 DISC CAUSING AT LEAST BORDERLINE CENTRAL SPINAL STENOSIS AND APPARENT LEFT LATERAL SPINAL STENOSIS.
BORDERLINE CENTRAL SPINAL STENOSIS AT L4-5 SECONDARY TO A COMBINATION OF THICKENED LIGAMENTUM FLAVUM AND MILD POSTERIOR BULGING OF THE DISC.
MINIMAL POSTERIOR BULGING OF THE L3-4 DISC.
OTHERWISE UNREMARKABLE.

Records from Healthsouth (Claimant's Exhibit J) indicate that from April 10, 2001 through June 11, 2001 claimant received physical therapy by referral from Dr. Golding, and was missing work due to low back complaints.

Employee was referred to Dr. Faisal Albanna in September of 2001, complaining of lower back pain and pain in the left leg starting about 8 years ago and getting worse. Dr. Albanna performed a physical exam on 9/4/01, reviewed diagnostic tests, and concluded that the claimant had degenerative disc disease L5-S1 with a herniated nucleus pulposus L5-S1 on the left. Conservative treatment was offered, such as epidural steroid injection and physical therapy. A Medrol Dosepak was provided. Trigger point injections, TENS unit, and surgical intervention were discussed if other treatment failed. The records of Dr. Albanna suggest no further appointments were either made or kept.

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Mr. Craig continued to treat with Dr. Golding, complaining of back pain on 3/20/03 while working on the van line. On 8/14/03 the employee saw Dr. Anthony J. Berni of St. Charles Orthopaedic Surgery Associates, Inc. Dr. Berni noted a history of herniated disc some 18 months prior, and noted complaints of back pain when stooping and twisting putting on kick plates on vans. Dr. Berni found weakness of the left lower extremity compared to the right; some spasm in the lower back; symmetrically absent patella and Achilles reflexes bilaterally; marked limitation of motion of the lumbar spine; and a positive straight leg raise on the left. Dr. Berni was concerned as to left sided root irritation; suggested EMG and nerve conduction studies; and concluded that claimant was in no condition to go back to his job.

Employee continued to treat with Dr. Golding from March of 2003 through 2007. Although the records are in many respects difficult to decipher, it is apparent that for the most part Dr. Golding treated for low back pain, depression, and occasionally for left shoulder complaints.

Mr. Craig testified that from approximately 2002 to 2005, or for the last three years of his employment with employer, he was working at the Wentzville plant as a floater, installing kick panels and brake pedals. Mr. Craig recalls he was unable to keep up with the assembly line pace due to his ongoing back pain, and was subsequently transferred to a light duty door assembly line job. On the door handle assembly job Mr. Craig would assemble right and left door handles, followed by what is called a traveler, roughly the size of a refrigerator, which held all the components needed to install door handles. The traveler would move up and down the line, with a release switch that was faulty and would often cause the traveler to become stuck. Mr. Craig testified that early on 7/27/05, at around 6:15 to 6:30 a.m., the traveler became stuck, and when it broke lose he was struck on the left side of the body, from his buttocks to his shoulder, and was sent flying six to ten feet into two parts racks, saving him from falling to the ground. Employee recalls having a supervisor advise him to lie down; claims not to have been sent to the plant dispensary; and claims to have been left alone for the rest of the shift. Mr. Craig further claims that another worker did the job the rest of the shift; that he was not interviewed or asked to fill out any paper work; and that he went home after the shift. Mr. Craig claims to have stayed in bed for the next two or three days, and to have called his work to advise he was unable to work because of his back. He notes that he made an appointment with Dr. Golding a few days later. A record in the notes of Dr. Golding dated 8/2/05 (Claimant's Exhibit E) notes a history of lower back x 1 week, noting a history of pushing and pulling a travel cart about 800 x a day. There is no history in the 8/02/05 note as to being struck by the traveler on the left side. It is also apparent that the claimant was seen not by Dr. Golding, but by his nurse practitioner.

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**INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF
EMPLOYMENT/MEDICAL CAUSATION/SECOND INJURY FUND
LIABILITY/TEMPORARY TOTAL DISABILITY/PERMANENT DISABILITY**

Dr. Raskas performed an examination of Mr. Craig on 3/5/08. He concluded that the employee had cervical degenerative disc disease and lumbar degenerative disc disease with a history of lumbar herniated disc at L5-S1 and radiculitis. Dr. Raskas further believed that the claimant suffered a 35 percent permanent partial disability of his lumbar spine, but did not attribute any disability to a work injury in July of 2005 because he believed the medical records contemporaneous with the alleged injury did not support the claimant's history of suffering a traumatic event in July of 2005 when he was struck by the traveler. Dr. Raskas agreed that prior to July 27th of 2005 Mr. Craig had a bad back, but suggests that the claimant would have provided a history of traumatic event with the traveler when he first reported an injury on 8/10/05. Dr. Raskas agrees with Dr. Golding that Mr. Craig is unable to work, and considers him a candidate for pain management as opposed to a surgical candidate. Dr. Raskas further agrees with the medical psychiatric opinion of Dr. Sky, who concluded that the claimant suffered from a major depression, moderate recurrent, and was incapable of participating in any work activity in which persistence, speed, or accuracy was required. Dr. Raskas apparently takes exception to the conclusion of Dr. Sky that the claimant suffered a 30 percent permanent partial disability specifically as to a July 27, 2005 injury, as Dr. Raskas does not believe such an injury is reflected in the medical. Dr. Sky further opined that the claimant suffered a 20 percent permanent partial psychiatric disability prior to July 27, 2005. In any case, Dr. Raskas notes that he would not defer to a vocational expert as to the claimant's employability, having seen the employee in March of 2008 and after reviewing the medical records.

Dr. Andrew Wayne wrote reports dated 10/12/05 and 2/17/06 relating to the ability of Mr. Craig to perform his regular activities, based on evaluation performed by Dr. Wayne on 10/12/05. Dr. Wayne was able to review the various CTs and MRI reports of the lumbar spine, along with left shoulder x-rays from 1/18/05 and from 8/24/05, and concluded that despite chronic degenerative changes noted in the lower back, he saw no reason why employee could not continue doing his normal job duties. Those reports speak for themselves, because Dr. Wayne did not otherwise testify in the matter beyond the scope of his two reports.

The employer has admitted that the employee suffered a work related injury when struck by the traveler while working on the assembly of installing door handles (see brief of employer/insurer). The medical reveals a history of complaint by employee of the traveler sticking, and supports his history of injury. While Dr. Raskas doubts the history of injury due to the lack of a specific history of injury in certain of the medical records, the testimony of the employee and the admission of injury by accident by the employer persuade that the opinion of Dr. Raskas that a work injury did not occur is not credible. The evidence persuades that on July 27, 2005 the claimant suffered an injury when he was struck by the traveler, thereby suffering an injury by accident arising out of and in the course of his employment as an assembly line worker.

The testimony of Dr. Sky persuades that as a result of the 7/27/05 injury, the employee suffered a major depression, moderate recurrent, resulting in a permanent partial disability

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equivalent to 30 percent psychiatric disability of the body as a whole. Dr. Poetz persuades that the claimant has suffered a 20 percent permanent partial disability to the body as a whole at the lumbar spine as a result of the injury of 7/27/05. The evidence further persuades that the Second Injury Fund is liable for permanent total disability due to the combination of the work injury and pre-existing permanent partial disability. The testimony of Drs. Poetz and Stillings persuade that the claimant had a significant permanent partial physical and psychiatric disability that pre-existed the involved work injury to his low back.

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 test for permanent total disability is whether, given the claimant's situation and condition, he is competent to compete in the open labor market. Lurno 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). 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).

Drs. Raskas, Poetz, Golding, and Sky persuade that the claimant is unable to work. The expert vocational opinion of James England and of June Blaine further persuades that the claimant has been rendered unable to compete for employment on the open labor market as a result of his various injuries and resulting disability. Those opinions persuade that it is the combination of pre-existing permanent physical and psychiatric disabilities, with the involved permanent disability from the work injury that has rendered the claimant unemployable on the open labor market.

The total of permanent partial disability due to the work injury is for 200 weeks, payable by the employer at the stipulated rate of \$365.08 per week from the date of maximum medical improvement, the date of injury on 7/27/05. It is found that the attempt at therapy was unsuccessful, and that the claimant suffered his condition of permanent and total disability as of the date of his work injury on 7/27/05. The differential between the permanent total rate and the permanent partial disability rate, \$331.89 is payable by the Second Injury Fund from 7/27/05 for 200 weeks, and thereafter at the stipulated rate of \$696.97 for so long as the condition of permanent total disability shall continue to subsist, Section 287.200 RSMo.

FUTURE MEDICAL CARE

There is insufficient medical evidence to hold the employer/insurer responsible for providing any future medical care. The burden is on the claimant to show that there is a need for medical to cure and relieve of the effects of the involved work injury. The claimant has failed to make such proof.

ATTORNEY'S FEES

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

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This award is subject to interest as provided by law.

FINAL AWARD

This fact finder means for this award to be a final determination of the issues raised at hearing on this claim for workers' compensation benefits, and to be ripe for appeal under the act.

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

This award is dated and attested to this 23rd day of February, 2011.

/s/ NAOMI PEARSON
Naomi Pearson
Division of Workers' Compensation