

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

Injury No.: 08-057310

Employee: Clyde Crane  
Employer: Interior Construction Services, Ltd.  
Insurer: Zurich American Insurance Co.  
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.<sup>1</sup> Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) 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 ALJ dated March 21, 2012, as supplemented herein.

**Preliminaries**

The ALJ awarded employee permanent total disability benefits against the Second Injury Fund. The Second Injury Fund appealed to the Commission, alleging that the ALJ erred in finding that employee met his burden of proving that his left shoulder injury was medically caused by the July 2, 2008, work injury. The Second Injury Fund further alleges that the ALJ erred in finding that employee is permanently and totally disabled as a result of the primary injury combining with his preexisting disabilities.

**Discussion**

The findings of fact and stipulations of the parties were accurately recounted in the award of the ALJ and, to the extent they are not inconsistent with the findings listed below, they are adopted and incorporated by the Commission herein.

While employee had preexisting left shoulder problems, the parties stipulated that employee sustained an accident which arose out of and in the course of his employment on July 2, 2008. Employee credibly testified that his shoulder was made permanently worse by this accident. Further, the medical records and opinions of Drs. Hulsey and Volarich support the ALJ's finding that as a direct result of the July 2, 2008, work injury employee sustained 30% permanent partial disability of the left shoulder.

In Dr. Hulsey's initial evaluation of employee on May 13, 2009, he noted:

While [employee] does have pre-existing disease in his left shoulder, I am concerned he may have developed a labral tear [on July 2, 2008], or even a partial rotator cuff tear, based on his history of a pop and increasing pain. In

---

<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2007 unless otherwise indicated.

Employee: Clyde Crane

- 2 -

review of previous operative notes, there was basically no significant intra-articular pathology in the past. From a diagnostic standpoint, I feel an MRI arthrogram is warranted. If there is significant abnormality of the biceps anchor and labrum or the rotator cuff, I would believe that the [July 2, 2008] injury he describes is the prevailing factor in the development of these lesions. If the MRI arthrogram is negative, other than some tendinopathy and/or changes in the subacromial space, I would feel that his pre-existing disease is the primary factor in his present discomfort.

Following the MRI arthrogram, performed on July 29, 2009, Dr. Hulseley noted that the MRI demonstrated a “[l]arge supraspinatus complete rotator cuff tear.” This finding is sufficient to confirm Dr. Hulseley’s opinion, set forth above, that the July 2, 2008, injury was the prevailing factor in causing employee’s medical condition and disability.

Dr. Hulseley’s operative notes reveal that the problem actually appeared to be in the labrum and biceps tendon, rather than the rotator cuff. However, the operative findings are still sufficient to establish the July 2, 2008, injury as the prevailing factor. The labrum and biceps tendon were two of the possibilities, along with the rotator cuff, that Dr. Hulseley considered on May 13, 2009.

With respect to permanent partial disability, Dr. Hulseley opined that employee has a total of 20% permanent partial disability of his left shoulder, of which he felt 10% was directly related to the July 2, 2008, injury.

Dr. Volarich also opined that the July 2, 2008, work injury “is the substantial contributing factor as well as the prevailing or primary factor causing the fraying of the biceps tendon and recurrent mild impingement that required arthroscopic biceps tenodesis and limited subacromial decompression.” Dr. Volarich further opined that as a result of the July 2, 2008, injury employee sustained “30% permanent partial disability of the left upper extremity rated at the shoulder....”

We find the opinions of Drs. Hulseley and Volarich more credible than Dr. Mutchen’s opinion that there was no new injury to employee’s left shoulder on July 2, 2008.

Based upon the aforementioned, we find that employee met his burden of proof with respect to medical causation. We find, as did the ALJ, that as a result of the July 2, 2008, work injury, employee sustained 30% permanent partial disability of the left upper extremity rated at the shoulder.

With respect to the nature and extent of employee’s permanent disability, we find that the ALJ’s determination that employee is permanently and totally disabled is fully supported by the competent and substantial evidence.

Employee testified that he cannot return to work due to his numerous injuries, surgeries, and disabilities. Dr. Volarich opined that employee is permanently and totally disabled as a direct result of the work-related injuries of September 30, 2004, and July 2, 2008, in combination with each other as well as in combination with his preexisting medical

Employee: Clyde Crane

conditions that were present prior to September 30, 2004, as well as before July 2, 2008. Mr. England, the only vocational expert to provide an opinion as to employability, testified that in light of employee's medical problems, physical restrictions, physical presentation, limited daily activities, limited education, and lack of transferable skills, employee is not employable in the open labor market.

We find, based upon the totality of the evidence, that employee is permanently and totally disabled as a result of his primary injury combining with his preexisting disabilities.

**Award**

We affirm the award of the ALJ, as supplemented herein.

Beginning January 26, 2010, and continuing for 69.6 weeks<sup>2</sup>, the Second Injury Fund shall pay to employee the difference between employee's PTD rate and his PPD rate, or \$367.87 (= \$772.53 - \$404.66). After said 69.6 weeks, the Second Injury Fund shall be liable for employee's weekly PTD benefit of \$772.53 for the remainder of employee's life, or until modified by law.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued March 21, 2012, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

The Commission further approves and affirms the ALJ'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 27<sup>th</sup> day of September 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

<sup>2</sup> 69.6 weeks = .30 x 232 weeks.

# AWARD

Employee:	Clyde Crane	Injury No.:	08-057310
Dependents:	N/A		
Employer:	Interior Construction Services, Ltd.		Before the
			<b>Division of Workers'</b>
			<b>Compensation</b>
Additional Party:	Second Injury Fund		Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Insurer:	Zurich North America		
Hearing Date:	January 10, 2012	Checked by:	CDL

## 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 02, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis City, 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:  
Reached around a column and felt a pop in his shoulder
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: Left shoulder
14. Nature and extent of any permanent disability: 30% left shoulder
15. Compensation paid to-date for temporary disability: \$30,214.94
16. Value necessary medical aid paid to date by employer/insurer? \$33,214.10

Employee: Clyde Crane

Injury No.: 08-057310

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$
- 19. Weekly compensation rate: \$772.53/\$404.66
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: 30% permanent partial disability of left shoulder

69.6 weeks of permanent partial disability from Employer at the rate of \$404.66 per weeks for a total \$28,164.34

- 22. Second Injury Fund liability:

69 6/7 weeks of permanent partial disability from Second Injury Fund at \$367.87 per week commencing January 25, 2010 (date of MMI)

**TOTAL:**

- 23. Future requirements awarded: \$772.53 per week Claimant's life

Said payments to begin 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: Robert Keefe

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

Employee:	Clyde Crane	Injury No.:	08-057310
Dependents:	N/A	Before the	
Employer:	Interior Construction Services, Ltd.	<b>Division of Workers'</b>	<b>Compensation</b>
Additional Party:	Second Injury Fund	Department of Labor and Industrial	Relations of Missouri
		Jefferson City, Missouri	
Insurer:	Zurich North America	Checked by:	

**PREFACE**

A hearing was held on the above captioned matter on January 10, 2012. Claimant, Clyde Crane, was represented by Robert Keefe. Employer/Insurer was represented by Attorney Jared Cone. Second Injury Fund was represented by Assistant Attorney General Da-Niel Cunningham.

**STIPULATIONS**

The parties stipulated to the following:

1. On July 02, 2008, Claimant was an employee of the employer and was working operating under the subject to the Missouri Workers' Compensation law.
2. On or about July 02, 2008, Claimant was sustained an accident which arose out of and in the course of his employment with the employer.
3. The accident on July 02, 2008, occurred in St. Louis, Missouri.
4. Claimant filed his claim within the time allowed by law.
5. On July 02, 2008, Claimant's compensation rate would be \$772.53 for temporary total disability and \$404.66 for permanent partial disability.
6. Claimant received temporary total disability in the amount of \$20,335.94, which represents 22 6/7 weeks of disability benefits which are payable for the period of May 13, 2009 to January 28, 2010.
7. The Employer/Insurer has provided medical treatment to the Claimant, having paid \$33,214.10 in medical expenses.

8. Issues to be resolved by hearing include:

Medical causation with respect to the July 02, 2008 accident.

Permanent partial disability as a result of the July 02, 2008 accident.

Liability of the Second Injury Fund for permanent total disability benefits.

**EXHIBITS**

The following Exhibits were submitted by the Employer and submitted into evidence without objection. The exhibits go from Exhibit A through V.

Employer/Insurer offered: Exhibits 1 Deposition transcript of Dr. Richard Hulsey, CV and medical records. Employer/Insurer Exhibits were accepted into evidence.

Second Injury Fund offered Exhibit I which was received and admitted into evidence without objection.

**FINDINGS OF FACT**

Claimant, at the time of hearing was 53 years old, married with three children. Claimant's educational background was eighth grade and a GED in 1990.

Claimant worked as a drywall finisher, which required Claimant to be on his feet, standing and walking all day while working. Claimants testified that it was physically demanding. Claimant would set up and take down scaffold, bending, stooping, and sometimes would wear stilts to do some overhead work. Claimant used his upper extremities because he worked on ceilings and walls.

Claimant testified on July 02, 2008, while he was working as a drywall finisher in the City of St. Louis, reached up and around a column with his left arm and felt a pop in the left shoulder. Claimant went to Concentra medical center the next day and they referred Claimant to an orthopedic surgeon.

Employer/Insurer Zurich sent the Claimant to see Dr. Hulsey who order an MRI on July 29, 2009 and performed left shoulder surgery on August 19, 2009. The operation was because of a partial rotator cut and tear with marked fraying and tendinopathy of the biceps tendon. Dr Hulsey released Claimant at MMI and from treatment on January 25, 2010.

Prior to Claimant's primary injury of July 02, 2008, Claimant had the following pre existing injuries:

- a. When Claimant was 12yrs old Claimant fractured his left arm and he underwent an open reduction with internal fixation of a pin, which still remains in his left arm. Claimant has testified that because of this injury he has less strength and stamina and had to use the opposite arm when doing jobs
- b. On September 30, 2004, while working Claimant fell on a cement floor while doing his drywall work and as a result of this injury Claimant underwent two shoulder surgeries and a left knee surgery. Claimant testified that after the surgery he had problems working and decrease range of motion and strength in his shoulders. Claimant testified that because of pain he had trouble sleeping. Claimant testified that as a result of left knee surgery, his left knee was not as strong and making it harder for him to climb, squat, and kneel etc.
- c. On October 29, 2005, Claimant broke his right leg while roller skating. Claimant was treated by doctors who performed an open reduction and installed a rod in his tibia. Claimant testified that he was off work for 15 months following the roller skating accident. As a result of the roller skating accident, Claimant testified that he has a great deal of pain and weakness in his right leg, which gave him problems climbing, stooping, squatting etc.
- d. On December 07, 2008, Claimant was involved in an automobile accident injuring his neck which causes him pain and numbness in his left upper extremity. Claimant was under medical care taking medication, saw doctors and had some injections which was before the primary injury July 02, 2008.
- e. After Claimant's primary injury on July 02, 2008, Claimant underwent a neck fusion in August 2008. On April 26, 2010, Claimant underwent an IME with Dr. Volarich. Dr. Volarich took history from Claimant, reviewed medical records, and performed his own medical examination.
- f. Dr. Volarich testified that Claimant had the pre existing injuries before the July 02, 2008, accident as follows:
  - a. 40% of the left shoulder
  - b. 40% of the left knee
  - c. 15% of the cervical spine
  - d. 20% of the left elbow
  - e. 5% of the body (hernia)
  - f. 35% of the cervical spine
  - g. 40% of the right knee

Dr. Volarich was of the opinion that the combination of the pre existing disabilities and the July 02, 2008, injury in which Dr. Volarich found Claimant has 30% permanent partial disability of the left shoulder that the combinations of the pre existing disabilities and the primary injury of July 02, 2008, rendered the Claimant totally disabled.

Mr. James England performed a vocational evaluation on Claimant. Mr. England saw the Claimant, did various tests and reviewed medical records that concluded that a number of different problems that Claimant had more than just the primary injury and the combination of medical problems that were described in his records, he was of the opinion that the Claimant could not be competitively be employable in the open labor market.

**RULINGS OF LAW**

Claimant’s result of primary injury in July 02, 2008, has a 30% permanent partial disability of the left shoulder which amounts to 69.6 weeks at a permanent partial disability benefits at \$404.66 per week for a total award amount against Employer/Insurer \$28,164.33.

Claimant is permanent and totally disabled and Second Injury Fund is liable for permanent partial disability in the amount \$772.53 per week, which Second Injury Fund owes from January 25, 2010, the date of Claimant’s MMI to the present.

Second Injury Fund is entitled to 69.6 weeks of for benefits the responsibility for Employer/Insurer which amounts to the time period of January 26, 2010 to May 28, 2011.

Thus, Second Injury Fund is responsible for permanent total disability from May 28, 2011 in the amount of \$772.53 for the rest of Claimant’s life.

Made by: \_\_\_\_\_  
 CORNELIUS T. LANE  
*Administrative Law Judge*  
*Division of Workers' Compensation*