

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

Injury No.: 02-086032

Employee: Wanda Crockett  
Employer: Ford Motor Company (Settled)  
Insurer: Ford Motor Company (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: August 7, 2002  
Place and County of Accident: Claycomo, 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 July 18, 2005. The award and decision of Administrative Law Judge Lisa Meiners, issued July 18, 2005, 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 13<sup>th</sup> day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Wanda Crockett

Injury No. 02-086032

Dependents: N/A  
Employer: Ford Motor Company  
Insurer: Ford Motor Company

Additional Party: Missouri State Treasurer, Custodian of Second Injury Fund

Hearing Date: June 27, 2005 Checked by: LM/lh

### 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: August 7, 2002.
5. State location where accident occurred or occupational disease was contracted: Claycomo, 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: Claimant sustained occupational injury to her left wrist and thumb while performing repetitive activities within the course and scope of her employment with Ford Motor Company.
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 hand.
14. Nature and extent of any permanent disability: 25 percent to the left wrist.
15. Compensation paid to-date for temporary disability: \$2,151.68.
16. Value necessary medical aid paid to date by employer/insurer? \$5,356.64.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: Maximum.
19. Weekly compensation rate: \$596.16/\$340.12.
20. Method wages computation: By stipulation.

### COMPENSATION PAYABLE

21. Amount of compensation payable: N/A
22. Second Injury Fund liability: \$5,918.08
23. Future requirements awarded: N/A

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 24 percent of all payments hereunder in favor

of the following attorney for necessary legal services rendered to the claimant: Mr. Ron Edelman.

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

Employee: Wanda Crockett

Injury No: 02-086032

Dependents: N/A

Employer: Ford Motor Company

Insurer: Ford Motor Company

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

Hearing Date: June 27, 2005

Checked by: LM/lh

On June 27, 2005, the parties appeared for hearing. The employee, Wanda R. Crockett, appeared in person and with counsel Ronald L. Edelman. The employer Ford Motor Company and Claimant reached a stipulation for compromise settlement on November 18, 2004. However, the Second Injury Fund remained a party and was represented by Tracey Dujakovich.

### STIPULATIONS

The parties stipulated to the following:

- 1) that the employer was operating subject to Missouri's workers' compensation law and that its liability was insured by its authority to self-insure;
- 2) that Wanda Crockett was its employee;
- 3) that Wanda Crockett sustained an occupational disease arising out of and in the course of her employment with Ford on August 7, 2002;
- 4) that Ms. Crockett notified the employer as required by law and filed a claim within the time allowed by law;
- 5) that the wage rates for permanent partial disability are \$340.12 and \$596.16 for temporary total disability;
- 6) that the employer has paid in temporary total disability benefits \$2,151.68 and medical expenses in the amount of \$5,356.64.

The only issue to resolve by this hearing is whether the Second Injury Fund is liable for permanent partial disability benefits to claimant.

Claimant offered her own testimony as well as Exhibits A and B. The Second Injury Fund offered two exhibits: Exhibit 1, a workers' compensation file; and Exhibit 2 consisted of a compromised settlement with Ford Motor Company from a 1997 injury.

Claimant while in the course and scope of her employment with Ford Motor Company sustained an injury to her left wrist by occupational disease. The employer sent her to Jonathan Blake who based on an EMG finding performed a left carpal tunnel release on September 25, 2002. Claimant's complaints of left hand pain continued after the carpal tunnel release, and as a result, Dr. Blake performed a carpometacarpal joints arthroplasty "tendon replacement" to the left thumb on February 19, 2003. Claimant missed approximately four weeks of work as a result of the occupational injury to her left thumb and wrist. Thereafter, Claimant returned to Ford Motor Company working in the paint department but has permanent limitations with her left hand as a result of the occupational injury sustained on or about August 7, 2002.

Prior to August 7, 2002, Claimant used both hands without limitations while performing her repetitive work tasks in Ford's paint department. In that capacity, Claimant used her left and right hands at waist level to pull tape off and wipe down newly painted vehicles in her department. Since the surgeries to her left wrist and thumb, Claimant describes her left hand as useless and mere decoration. She regulates the left hand as a "container" for leftover tape and paper after her right hand pulls it off the painted vehicles. Once again, removing her left hand of activity, she only uses her right hand to wipe down the vehicles in the paint department.

Currently Claimant has limitation with pinching and gripping she did not experience prior to August 2002. Although Dr. Blake did not list restricted activities, Dr. Blake noted Claimant to have "partial" restrictions of the left hand. Her grip strength of the left hand is markedly decreased causing difficulty with fine motor skills. Dr. James A. Stuckmeyer also agreed that Claimant sustained a 30 percent permanent partial disability of the 175-week level as a result of the August 7, 2002, occupational injury. As such I find based on the evidence presented Claimant sustained a 25 percent permanent partial disability of the left wrist as result of the occupational injury sustained on or about August 7, 2002.

Prior to August 7, 2002, Claimant suffered bilateral shoulder problems that were an hindrance and obstacle to her employment. On or about April 10, 1997, Claimant sustained a prior occupational injury to both shoulders. At that time, Claimant worked power sanding vehicles for Ford Motor Company. In this capacity she sanded approximately 580 vehicles during a 10-hour shift each workday. Claimant described her duties as 50 percent overhead work and the other 50 percent at waist level. Consequently, Claimant noted symptoms of pain to her right shoulder so relied more on her left shoulder when power sanding. Gradually both shoulders developed persistent pain from overuse and diagnostic tests revealed chronic impingements to both shoulders.

On September 29, 1997, Dr. Craig Newland performed a right shoulder arthroscopic acromialplasty, and on January 13, 1998, a right shoulder manipulation due to adhesive capsulitis. Dr. Newland then performed the exact procedures to Claimant's left shoulder on August 31, 1998, and March 2, 1999. Dr. Newland released Claimant from medical care on April 15, 1999, and restricted Claimant from sustained overhead use of both shoulders. As a result of the occupational injury to both shoulders, Claimant reached a stipulation for compromise settlement with Ford Motor Company on September 27, 2000. Claimant who was unrepresented by an attorney settled for \$14,962.32 or 12 percent permanent partial disability of each shoulder.

Prior to August 7, 2002, Claimant had permanent restrictions of sustained overhead motions, as well as self-limitations of inability to push or pull greater than 10 pounds. Additionally, Claimant is unable to abduct above her shoulders without experiencing debilitating pain as well as limited with sustained overhead activity. As a result of these restrictions, Claimant is restricted from 50 percent of positions available at Ford.

In order to recover permanent partial disability compensation from the Second Injury Fund, Claimant has the burden to prove that she had pre-existing permanent partial disability of such seriousness as to constitute a hindrance or obstacle to her employment or re-employment and must meet the numeric guidelines set forth in §287.220.1 RSMo 2000. The numeric guidelines set forth in §287.220.1 are 12.5 percent body as a whole or 15 percent to a major extremity. In the case *at bar*, there is no dispute that Claimant sustained permanent partial disability to her left hand from a work related injury on August 7, 2002. Indeed, as noted above, I found 25 percent permanent partial disability of the 175-workweek level as a result of the left wrist. Claimant's testimony was clear, cogent and credible as to the seriousness of this loss and how it constituted a hindrance and obstacle to her occupation.

The next step in determining Second Injury Fund liability is assessing whether Claimant sustained medical conditions that were a hindrance and obstacle prior to the work accident of August 7, 2002. The Second Injury Fund argues that they are not liable because Claimant settled her shoulders with Ford Motor Company below the mandatory threshold of 15 percent permanent partial disability of a major extremity. Claimant is unable to attack the degree of disability agreed upon in the stipulation of compromise settlement based on Conley v. Treasurer of Missouri, 999 S.W.2d 269 Missouri Court of Appeals (1999). Claimant, however, argues that bilateral shoulder conditions stemming from one occupational injury have the synergistic effect of body as a whole.

Both medical report and testimony of Claimant demonstrate a greater permanent partial disability to the body than the percentage of the scheduled injury noted in the settlement agreement with Ford Motor Company. I also note that Claimant was pro se at the time of the compromise settlement of the 1997 injury and not aware of the intricacies of multiplicity or synergistic effects to the body as a whole. I also find despite the percentage of 12 percent of each shoulder that the number of weeks calculate to 55.68 weeks, well over the 50-week minimum or 12.5 percent body as a whole threshold. Lastly, the combined effect of dual shoulder involvement from one injury is greater than the simple sum of the individual disability, and therefore I find the appropriate demonstration of disability is body as a whole verses to each shoulder.

Dr. Stuckmeyer rendered 15 percent permanent partial disability of each shoulder at the 232-week level. He also found a synergistic effect when combining the shoulders and left hand to create a greater disability than the simple sum. I find based on her testimony and medical reports and records Claimant sustained a 13.92 percent body as a whole or 55.68 weeks as a result of the bilateral shoulder conditions prior to August 7, 2002. I also find the shoulders were a hindrance and obstacle to her employment prior to August 7, 2002.

The simple sums of 25 percent permanent partial disability at the 175-week level plus 55.68 weeks for the pre-existing disability to the body as a whole equals approximately 99.43 weeks. The evidence is compelling that the primary and pre-existing injuries combined to create a synergistic effect to invoke Fund liability. Dr. Stuckmeyer rendered an augmentation factor of 10 percent but due to the synergistic effect of the left and right extremities, I find a 17.5 percent load factor entirely appropriate in this case.

The Second Injury Fund is liable for a total of 17.40 weeks at a rate of \$340.12 or \$5,918.08. This award is subject to a 24 percent attorney's lien for services rendered by Ronald Edelman.

Date: \_\_\_\_\_ Made by: \_\_\_\_\_

Lisa Meiners  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*