

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

Injury No.: 99-065925

Employee: Scott Dengler  
Employer: John Fabick Tractor  
Insurer: Self-Insured c/o Sedgwick Claims Management Services  
Date of Accident: June 1, 1999

Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 August 11, 2004. The award and decision of Administrative Law Judge Edwin J. Kohner, issued August 11, 2004, 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 8<sup>th</sup> day of February 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

\_\_\_\_\_  
VACANT  
Member

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

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Scott Dengler  
Dependents: N/A  
Injury No.: 99-065925  
Before the  
Division of Workers'

Employer: John Fabick Tractor

**Compensation**

Department of Labor and Industrial

Additional Party: N/A

Relations of Missouri

Jefferson City, Missouri

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

Hearing Date: June 14, 2004

Checked by: EJK:tr

**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: June 1, 1999
5. State location where accident occurred or occupational disease was contracted: St. Louis 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 occurred or occupational disease contracted:  
Employee was moving a motor when the motor pinned him against a temporary wall.
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: Body as a whole regarding chest, thoracic area, heart, and abdomen
14. Nature and extent of any permanent disability: 35% of body referable to chest, thoracic area, and abdomen
15. Compensation paid to-date for temporary disability: \$12,822.96
16. Value necessary medical aid paid to date by employer/insurer? \$46,294.11

Employee: Scott Dengler

Injury No.:

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17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$720.00
19. Weekly compensation rate: \$480.00/\$294.73
20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

140 weeks of permanent partial disability from Employer

\$41,262.20

22. Second Injury Fund liability: No

TOTAL: \$41,262.20

23. Future requirements awarded: See additional Findings of Fact and Rulings of Law

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:

Burton H. Shostak, Esq.

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

Employee:	Scott Dengler	Injury No.: 99-065925
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	John Fabick Tractor	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Self-Insured c/o Sedgwick Claims Management Services	Checked by: EJK

This workers' compensation case raises two issues arising out of a work related injury in which the claimant, a mechanic, suffered an injury to various unscheduled parts of his body while removing a motor from a tractor. The issues for determination are (1) Future medical care and (2) Permanent disability. The evidence compels an award for the claimant for future medical care and permanent partial disability benefits.

At the hearing, the claimant testified in person and offered medical reports from Eli R. Shuter, M.D., Richard Covert, M.D., and Stephen Schuman, M.D., and voluminous medical records. The defense offered medical reports from Stephen Schuman, M.D., and Steven B. Eisenberg, M.D.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the accident occurred in Missouri.

### **SUMMARY OF FACTS**

On June 1, 1999, this thirty-year-old claimant sustained injuries to his body as a whole while taking a motor out of a tractor when he was pinned by the motor against a temporary wall. The claimant's various injuries included disruption of the gastroesophageal sphincter causing gastroesophageal reflux dyspepsia, and a strain to

the anterior thorax and sternum. The claimant received immediate medical care but has had no surgery.

A variety of specialists evaluated the claimant. On December 1, 1999, Dr. Kuhn, a psychiatrist, examined the claimant and opined that the claimant did not suffer from major depression, anxiety disorder, panic disorder, or posttraumatic stress disorder and required no psychiatric treatment. Dr. Kuhn reported, "Mr. Dengler, by his own admission, suffers only from minimal symptoms related to his injuries and these would be considered transient and expectable reactions to the accident."

On January 6, 2000, a left shoulder MRI was normal and the right shoulder indicated supraspinatus tenosynovitis. In September 2000, Dr. Wayne examined the claimant's left shoulder. Left shoulder x-rays on September 29, 2000, were normal. On October 3, 2000, Dr. Wayne examined the claimant again and recommended conservative treatment to the claimant's left shoulder. On May 10, 2001, Dr. Seacord opined that an echocardiogram reflected normal heart function.

On February 28, 2002, Dr. Shuter examined the claimant and found that the claimant's left shoulder was normal and that the right shoulder showed signs of tenosynovitis. Dr. Shuter did not make any statements that the claimant was in need of any further treatment to the shoulders and did not rate any disability of either shoulder. Dr. Shuter provided ratings totaling eighty percent of the body: twenty percent of the diaphragm for disruption of the gastroesophageal sphincter resulting in gastroesophageal reflux dyspepsia, twenty percent of the lumbar spine, cervical spine, and thoracic spine (sprains), fifteen percent of the anterior thorax and sternum (sprain), ten percent of the abdominal wall (sprain), and fifteen percent for depression.

On June 5, 2002, Dr. Covert examined the claimant and rated the claimant's permanent partial disabilities as ten per cent from the chronic esophageal symptoms and five per cent for the chronic abdominal pain. He found no permanent disability to the liver with no ongoing evidence of hepatic damage or impairment of function, the spleen the fractured seventh left rib which apparently was causing the claimant no problems at the time of the exam, the pulmonary status as it relates to the lungs, cardiac status with no residual pulmonary or cardiac dysfunction. Dr. Covert opined that the claimant had some type of impingement problem or possible rotator cuff irritation, which did not appear to be related to the trauma. Neither Dr. Wayne, Dr. Covert, nor Dr. Shuter opined that the bilateral shoulder condition was medically causally related to the work incident, that any further treatment was medically causally related to the work incident, or that the claimant sustained any disability to his shoulders.

On February 5, 2003, Dr. Soper, an internist, opined that if the claimant does not attain sufficient relief of symptoms of the gastroesophageal reflux dyspepsia with antacid or proton pump inhibitors that he could consider undergoing a laparoscopic Nissen fundoplication. See Exhibit A.

Finally, in March 2003, Dr. Eisenberg, a cardiothoracic surgeon, performed testing and reported a negative exam without exercise-induced myocardial ischemia and normal left ventricular ejection fraction. On June 11, 2003, Dr. Eisenberg opined that there was no evidence of cardiac ischemia and no significant traumatic injury after obtaining a thallium stress test and twenty-four hour Holter. On the same date, Dr. Schuman, a cardiologist, also reviewed the report and opined that the claimant recovered well from the myocardial contusion and had normal left ventricular function with no wall motion abnormalities, no evidence of scar tissue, and no evidence of infarcted tissue on a nuclear stress test. Dr. Schuman found "no residual disability (no permanent partial disability)" regarding the heart or cardiovascular system of the claimant as a result of the myocardial contusion sustained from the work related accident. Dr. Schuman, a cardiologist, evaluated the claimant in 2003 and opined that the claimant sustained a myocardial contusion with currently normal left and right ventricular function and that the claimant required no additional treatment regarding his heart. Dr. Schuman also opined that the claimant had normal ventricular function and normal response to a stress echocardiogram.

The claimant was initially off work from the date of incident, June 1, 1999, through December 5, 1999. Thereafter, the claimant returned to work and has continued to work full-time full duties with this employer in the same job as before the injury since December 1999.

However, the claimant testified that he still has discomfort in his upper and middle torso and with gastric reflux from time to time, that he has problems with heart palpitations or irregular heartbeat. The claimant has continued to work as a mechanic for the past four years full time with no restrictions. The claimant takes no prescription

medication and only occasionally takes over the counter Ibuprofen. The claimant is under no doctor's work restrictions. He has not consulted a physician for the past year and a half and has not had to go to the emergency room. The claimant had some back pain in 1996 but nothing of significance.

### **FUTURE MEDICAL CARE**

Awards may and often do include an allowance for the expense of reasonable future medical care and treatment. Rana v. Landstar TLC, 46 S.W.3d 614, 622 (Mo. App. W.D. 2001). Future medical care and treatment are provided for in Section 287.140.1, which states:

In addition to all other compensation, the claimant shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

This statute has been interpreted to mean that a claimant is entitled to compensation for care and treatment "which gives comfort [relieves] even though restoration to soundness [cure] is beyond avail." Id. Of course, the appellant bears the burden to prove an entitlement to benefits for such care and treatment. Id. To prove an entitlement to workers' compensation benefits for future medical care and treatment, an claimant must show something more than a possibility that he will need such medical care and treatment. Id. However, the claimant is not required to present evidence demonstrating with absolute certainty a need for future medical care and treatment. Id. Rather, it is sufficient for the claimant to show his/her need for additional medical care and treatment by a "reasonable probability." Id. "'Probable' means founded on reason and experience which inclines the mind to believe but leaves room for doubt." Id. "In determining whether this standard has been met, the court should resolve all doubt in favor of the claimant." Id. "[A] claimant is not required to present evidence of specific medical treatment or procedures which will be necessary in the future in order to receive an award for future medical care." Id. Such a requirement could "put an impossible and unrealistic burden" upon the claimant. Id. The only requirement is that the finding of a need for future medical care and treatment be shown to be reasonably probable and be founded upon reason and experience. Id.

On February 5, 2003, Dr. Soper, a gastrointestinal surgeon, opined that if the claimant does not attain sufficient relief of symptoms of the gastroesophageal reflux dyspepsia with antacid or proton pump inhibitors that he could consider undergoing a laparoscopic Nissen fundoplication. See Exhibit A. To date, five years after the date of injury, the claimant has not elected surgery. However, given Dr. Soper's specialized expertise and the fact that he is the last expert to render an opinion regarding this condition, his findings carry great weight. Based on Dr. Soper's findings, the claimant is awarded the medication and surgical procedures described by Dr. Soper.

### **PERMANENT DISABILITY**

Workers' compensation awards for permanent partial disability are authorized pursuant to section 287.190. "The reason for [an] award of permanent partial disability benefits is to compensate an injured party for lost earnings." Rana v. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. W.D. 2001). The amount of compensation to be awarded for a PPD is determined pursuant to the "SCHEDULE OF LOSSES" found in section 287.190.1. "Permanent partial disability" is defined in section 287.190.6 as being permanent in nature and partial in degree. Further, "[a]n actual loss of earnings is not an essential element of a claim for permanent partial disability." Id. A permanent partial disability can be awarded notwithstanding the fact the claimant returns to work, if the claimant's injury impairs his efficiency in the ordinary pursuits of life. Id. "[T]he Labor and Industrial Relations Commission has discretion as to the amount of the award and how it is to be calculated." Id. "It is the duty of the Commission to weigh that evidence as well as all the other testimony and reach its own conclusion as to the percentage of the disability suffered." Id. In a workers' compensation case in which an claimant is seeking benefits for PPD, the claimant has the burden of not only proving a work-related injury, but that the injury resulted in the disability claimed. Id.

On February 28, 2002, Dr. Shuter examined the claimant and described the claimant as having pain in his right shoulder most of the time with similar symptoms, less severe, in the left shoulder. An MRI of the left shoulder was normal. He opined that that the claimant's left shoulder was normal and that the right shoulder showed signs of tenosynovitis. Dr. Shuter did not find that the claimant required further treatment to the shoulders, and he did not rate disability to either shoulder. Dr. Shuter also reported abdominal pain around the claimant's navel which radiated to the flanks; heartburn one to three times per week; pain in his sacroiliac region, buttocks, right groin and posterior thighs; stiffness in his neck and thoracic spine and in his left ribs, radiating to the armpit. His exam showed cervical spine tenderness and right shoulder tenderness over the sternoclavicular joint, acromioclavicular

joint and acromion process. Tenderness was present over the same areas of the left shoulder and the left biceps tendon. There was loss of shoulder flexion and abduction on both the right and left. Dr. Shuter opined that the claimant suffered an eighty percent permanent partial disability based on several unscheduled debilitating conditions: twenty percent of the diaphragm for disruption of the gastroesophageal sphincter resulting in gastroesophageal reflux dyspepsia, twenty percent of the lumbar spine, cervical spine, and thoracic spine (sprains), fifteen percent of the anterior thorax and sternum (sprain), ten percent of the abdominal wall (sprain), and fifteen percent for depression.

Three month later, on June 5, 2002, Dr. Covert examined the claimant and rated the claimant's permanent partial disabilities as ten per cent from the chronic esophageal symptoms and five per cent for the chronic abdominal pain. He found no permanent disability to the liver with no ongoing evidence of hepatic damage or impairment of function, the spleen the fractured seventh left rib which apparently was causing the claimant no problems at the time of the exam, the pulmonary status as it relates to the lungs, cardiac status with no residual pulmonary or cardiac dysfunction. Dr. Covert opined that the claimant had some type of impingement problem or possible rotator cuff irritation, which did not appear to be related to the trauma. Neither Dr. Wayne, Dr. Covert, nor Dr. Shuter opined that the bilateral shoulder condition was medically causally related to the work incident, that any further treatment was medically causally related to the work incident, or that the claimant sustained any disability to his shoulder.

Overall, the rating physicians offered ratings ranging from fifteen percent to eighty percent. Based on the evidence as a whole, the claimant suffered a thirty-five percent permanent partial disability as a result of the accident.

Date: \_\_\_\_\_

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

Edwin J. Kohner  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Reneé T. Slusher  
*Director*  
*Division of Workers' Compensation*