

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

Injury No.: 03-060218

Employee: Danny Diesel
Employer: ACME Erectors, Inc. (Settled)
Insurer: Amerisure Mutual Insurance (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: June 24, 2003
Place and County of Accident: City of St. Louis. 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 (ALJ) 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 October 20, 2004. The award and decision of Administrative Law Judge Cornelius T. Lane, is attached and incorporated by this reference.

The Commission finds that the ALJ correctly weighed and evaluated the lay and medical testimony in reaching his conclusions as to disability and causation. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001), *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. banc 2003).

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 21st day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Danny Diesel

Injury No.: 03-060218

Dependents: N/A
Employer: ACME Erectors, Inc. (Settled)
Additional Party: Second Injury Fund
Insurer: Amerisure Mutual Insurance Company
Hearing Date: September 13, 2004

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: CTL: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 24, 2003
5. State location where accident occurred or occupational disease was contracted: City of 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 was injured while carrying a piece of iron and fell into a hole.
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: Back, left knee, head, right wrist, shoulder, left and right leg, body as a whole
14. Nature and extent of any permanent disability: 10% body as a whole referable to the neck and back; 25% of the left knee; and 15% of the right hand
15. Compensation paid to-date for temporary disability: \$10,203.60
16. Value necessary medical aid paid to date by employer/insurer? \$30,606.53

Employee: Danny K. Diesel

Injury No.:

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17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,148.00
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: (Settled)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential (\$309.20) payable by SIF for 106.25 weeks beginning
October 13, 2003, and thereafter \$649.32 for Claimant's lifetime

Undetermined

TOTAL:

UNDETERMINED

23. Future requirements awarded: N/A

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:

James J. Sievers, Jr.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Danny K. Diesel	Injury No.: 03-060218
Dependents:	N/A	Before the
Employer:	ACME Erectors, Inc. (Settled)	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
Insurer:	Amerisure Mutual Insurance Company	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: CTL:tr

PRELIMINARIES

A hearing was held on Monday, September 13, 2004. The Claimant, Danny Diesel, was represented by James Sievers, Jr. The Second Injury Fund appeared by and through Assistant Attorney General Da-Niel Cunningham. The Employer/Insurer, ACME Erectors, previously settled.

ISSUE

The issue to be resolved in this proceeding is:

1. Nature and extent of SIF disability.

EXHIBITS

The Claimant offered the following exhibits:

Claimants Exhibit A:	Deposition Transcript of Dr. David T. Volarich, M.D., dated September 2, 2004.
Claimants Exhibit B:	Deposition Transcript of Ms. June M. Blaine, C.R.C., dated September 9, 2004.
Claimants Exhibit C:	Copy of Stipulation for Compromise Settlement for Injury No. 91-168240.
Claimants Exhibit D:	270 pages of Medical Records from Deaconess Medical Center.
Claimants Exhibit E:	Medical Records of Lutheran Medical Center; Harlen Hunter, D.O.
Claimants Exhibit F:	Medical Report of David B. Robson, M.D. dated July 14, 1992.
Claimants Exhibit G:	Kirkwood MRI and Imaging Report dated June 30, 2003.
Claimants Exhibit H:	Medical Records of Incarnate Word Hospital.
Claimants Exhibit I:	Medical Records of St. John's Mercy Hospital.
Claimants Exhibit J:	Treating Records of Dr. Cynthia Byler.
Claimants Exhibit K:	Operative Report of Dr. Joseph Ritchie.
Claimant Exhibit L:	Compromise Lump Sum Settlement of Injury Number 03-060218.

The Second Injury Fund offered the following exhibits:

SIF Exhibit I:	Deposition Transcript of James Lamantia dated April 16, 2004.
SIF Exhibit II:	Copy of Ironworkers Handbook from 2001 thru 2004.
SIF Exhibit III:	Photograph of Jobsite where Dan Diesel was injured.
SIF Exhibit IV:	Photograph of Jobsite where Dan Diesel was injured.
SIF Exhibit V:	Photograph of Jobsite where Dan Diesel was injured.

FINDINGS OF FACT

1. Claimant, whose date of birth is February 16, 1945, testified he completed the ninth grade. Claimant has been an ironworker since 1968 and as an ironworker his job involved lifting, stooping, bending, climbing and carrying heavy materials along with a variety of overhead activities. Claimant's work as an ironworker involved welding and cutting steel.
2. On June 24, 2003, Claimant, while working for ACME Erectors, the Employer, was carrying a piece of iron up a set of stairs and fell backwards into a hole and injured himself.
3. Claimant went to the emergency room where x-rays were taken which had a diagnosis of arthritis of the right knee, a severe disc space loss at L4-L5 and possible C5 fracture.
4. Claimant went to see Dr. Byler who performed several MRIs which disclosed a severe degeneration at L4-L5 with changes and degenerative bulging spur formation and broad-based bulge at L3-L4. The MRI of the left knee revealed a horizontal tear of the posterior horn of the medial meniscus and the MRI of the neck revealed spondylitic changes at C5-6 and C6-7.
5. Dr. Byler referred the Claimant to Dr. Ritchie for his left knee and right wrist injuries.
6. Dr. Ritchie performed a left knee arthroscopy with partial medial meniscectomy, chondroplasty of the medial femoral chondyle, partial lateral meniscectomy, synovectomy and right wrist aspiration on July 17, 2003.
7. Claimant, as a result of his injuries, has pain in his back and neck. He has problems bending, twisting, pulling, carrying or pushing. He claims to be in constant pain in his upper extremities.
8. Claimant had the following preexisting injuries and disabilities: a) in 1968 Claimant injured his right

tibia and fibula which required surgical repair; b) in 1994 Claimant fell and required right knee arthroscopy with partial medial meniscectomy and synovectomy; c) in 1982 Claimant tripped over a railroad tie injuring his right shoulder which required rotator cuff surgery; d) in 1991 Claimant slipped on ice injuring his left shoulder, left hand and both feet and was diagnosed with hyperextension of both great toes and had surgery for bilateral hallux rigidus. Further, as a result of his fall in 1991, he had complete rotator cuff tear and was taken to surgery for acromioplasty, repair of rotator cuff tear and release of coracoacromial ligament.

9. Claimant has also undergone a left carpal tunnel operation.
10. Claimant, because of the many injuries he sustained, quit work as an ironworker in 1991 and did not return to work until 2001 when he became employed with Weaver Steel. Claimant's son obtained his employment with Weaver Steel where he worked some eighteen months before he went to work for ACME Erectors. While at work at ACME Erectors, he received his primary injury.
11. Dr. Volarich testified very credibly that it was his opinion that the Claimant is permanently and totally disabled as a result of the work related injuries of June 24, 2003, in combination with the preexisting medical conditions to wit: 25% permanent partial disability of the body as a whole related to the lumbosacral spine; 5% permanent partial disability of the body as a whole rated at the cervical spine due to mild cervical syndrome; 65% permanent partial disability of the right lower extremity related to the knee due to internal derangement; 20% permanent partial disability of each foot due to hyperextension injury; 40% permanent partial disability of the right upper extremity rated at the shoulder due to a rotator cuff tear; 35% permanent partial disability of the left upper extremity rated at the shoulder due to a rotator cuff tear; and 40% permanent partial disability of the left upper extremity rated at the wrist due to carpal tunnel syndrome.
12. June M. Blaine, a certified rehabilitation counselor, testified very credibly that the Claimant is not employable in the open labor market.

RULINGS OF LAW

1. Claimant is found to have sustained permanent total disability as a result of the combination of the primary injury to the neck, back, left knee, right hand, and preexisting injuries. Claimant is unable to return to any employment.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary J. Estenson
Acting Director
Division of Workers' Compensation

