

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

Injury No.: 02-117042

Employee: William D. Dobbs
Employer: City of Oran (Settled)
Insurer: American Home Assurance Company (Settled)
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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 24, 2011. The award and decision of Administrative Law Judge Gary L. Robbins, issued January 24, 2011, 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 26th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: William D. Dobbs

Injury No. 02-117042

Dependents: N/A

Employer: City of Oran

Additional Party: Second Injury Fund

Insurer: American Home Assurance Company

Hearing Date: October 20, 2010

Checked by: GLR/rf

SUMMARY OF FINDINGS

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? October 30, 2002.
5. State location where accident occurred or occupational disease contracted: Scott County, Missouri.
6. Was above employee in employ of above employers at time of alleged accident or occupational disease? Yes.
7. Did the employers receive proper notice? Yes.
8. Did the accidents or occupational diseases arise out of and in the course of the employment? Yes.
9. Were the claims for compensation filed within time required by law? Yes.
10. Were the employers insured by above insurers? Yes.

11. Describe work employee was doing and how accident happened or occupational disease contracted: The employee was moving a concrete slab when it fell and knocked a landscape timer into the employee's right knee causing injury.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Right knee.
14. Nature and extent of any permanent disability: See Award.
15. Compensation paid to date for temporary total disability: Not disclosed at trial.
16. Value necessary medical aid paid to date by employer-insurer: Not disclosed at trial.
17. Value necessary medical aid not furnished by employer-insurer: None.
18. Employee's average weekly wage: \$413.64.
19. Weekly compensation rate: \$275.76 for all purposes.
20. Method wages computation: By agreement.
21. Amount of compensation payable: See Award.
22. Second Injury Fund liability: See Award.
23. Future requirements awarded: None.

The Compensation awarded to the employee 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 employee: Stephen L. Taylor.

FINDINGS OF FACT AND RULINGS OF LAW

On October 20, 2010, the employee, William D. Dobbs, appeared in person and by his attorney, Stephen L. Taylor, for a final award. The employer-insurer was not represented at the hearing as they had settled their case with the employee prior to trial. Assistant Attorney General Frank A. Rodman represented the Second Injury Fund. The Court took judicial notice of all of the records contained within the files of the Division of Workers' Compensation. At the time of the hearing, the parties agreed on certain undisputed facts and identified the facts that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS

1. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and liability was fully insured by American Home Insurance Company.
2. On or about the date of the alleged accident or occupational disease the employee was an employee of the City of Oran and was working under the Workers' Compensation Act.
3. On or about October 30, 2002 the employee sustained an accident or occupational disease that arose out of and in the course of his employment.
4. The employer had notice of the employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage is \$413.64. His rate for all other purposes is \$275.76 per week.
7. The employee's injury was medically causally related to his accident or occupational disease.
8. The parties did not disclose how much the employer-insurer paid in medical aid.
9. The parties did not disclose how much the employer-insurer paid in temporary disability benefits.
10. The employee had no claim for previously incurred medical bills or mileage or future medical care.
11. The employee had no claim for any temporary disability benefits.

ISSUES

1. Liability of the Second Injury Fund for permanent partial or permanent total disability.

EXHIBITS

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical Records
- B. Prior Medical Records

- C. Deposition of Dr. Annamarie Guidos
- D. Deposition of Susan Shea
- E. Social Security Award
- F. Deposition of Jerome Levy
- G. Workers' Compensation File

Second Injury Fund Exhibits

None.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

STATEMENT OF THE FINDINGS OF FACT-

William D. Dobbs, the employee, was the only witness to provide live testimony in this case. All other evidence was presented in the form of written reports, medical records or deposition testimony.

A general chronology of some of the evidence in this case helps to gain an understanding of this case.

Chronology

At the time of trial, the employee was about fifty-four years old.

- 1972 The employee began working doing general farm labor. He worked in this capacity for several years.
- 1976 - 1982 The employee served in the military.
- 1978 The employee worked as a laborer for Triangle Wire in Sikeston.
- 1979 The employee moved to Wisconsin and worked at a foundry that made caterpillar parts.
- 1979 The employee injured his right ankle due to an injury at National Guard training. The employee testified that he had surgery but filed no claim.
- 1979-1980 The employee moved back to Missouri and again worked as a farm hand.
- 1982 The employee moved to Texas for eight months and worked at a factory making seat covers.
- 1983 The employee returned to Missouri and work for Dollins erecting grain bins.

- 1985 The employee worked for Bell-Mo Seed Company performing manual labor and loading trucks.
- 1988 The employee had a respiratory problem while working for Bell-Mo Seed. No claim was filed.
- 1992 The employee injured his left shoulder while working at Bell-Mo Seed. He underwent three surgeries due to this injury.
- 7- 20-92 The employee had his first left shoulder surgery.
- 9-1-92 The employee had his second left shoulder surgery.
- 8-19-93 The employee had his third left shoulder surgery. The employee was released from all surgeries with no restrictions.
- 4-8-94 The employee settled this case with the employer-insurer for a settlement of thirty-seven and one-half per cent permanent partial disability to his left shoulder. The employee was released without restrictions.
- 1994 The employee worked for Venture Hats. He injured his right wrist there and developed carpal tunnel syndrome.
- 5-22-95 The employee settled this case with the employer for fifteen percent permanent partial disability of the right wrist.
- 6-26-95 The employee settled his carpal tunnel case with the Second Injury Fund. He claimed a pre-existing disability to his left shoulder.
- 1995 The employee returned to work at Dollins erecting grain bins.
- 1996 The employee worked at Oran Mini Mart.
- 3-97 The employee began employment with the City of Oran performing manual labor.**
- 6-99 The employee strained his back strain but did not file a claim.
- 1999 The employee injured his right shoulder while moving a pool table. He testified that he had rotator cuff surgery.
- 10-99 The employee was diagnosed with/coronary artery disease.
- 10-1-99 The employee had the first of several stints that was placed in his heart over the next several years. He returned to work for the City of Oran with no restrictions.

- 2000 The employee hurt his right knee and foot but filed no claim.
- 11-9-01 The employee was working for the City of Oran and injured his neck due to a twisting movement on a tractor.
- 1-10-02 The employee had neck fusion surgery. He filed a workers' compensation claim. Dr. Merkin returned the employee to full duty with no restrictions. The employee returned to work with the City of Oran.
- 11-12-02 The employee settled his neck fusion case with the employer-insurer for twenty percent permanent partial disability to his cervical spine.
- 10-23-03 The employee settled his neck fusion case with the Second Injury Fund claiming pre-existing injuries to both shoulders.
- 10-30-02 The employee injured his right knee while working for the City of Oran. This is the primary injury in this lawsuit. The employee received a substantial amount of conservative care prior to surgery in this case.**
- 11-15-03 The employee was involved in an automobile accident.
- 11-28-03 Dr. Kreighouser performed arthroscopic right knee surgery. The employee did not return to work for the City of Oran. After surgery the employee again worked for Dollins and worked there for approximately three months.
- 1-9-04 Dr. Kreighouser let the employee return to a sit down job. He had been terminated by the City of Oran at that time.
- 3-4-04 Dr. Kreighouser released the employee at maximum medical improvement with permanent restriction of no repetitive squatting or kneeling.
- 3-05 The employee had his second stint/heart surgery.**
- 5-05 The employee is being treated for persistent right knee pain.
- 8-21-06 The employee had his first back surgery with Dr. Gibbs. There was no known accident causing this surgery.**
- 10-5-06 The employee was seen and evaluated by Dr. Levy.
- 2-26-07 The employee underwent back fusion surgery at L5-S1 by Dr. Gibbs.**
- 5-29-07 The Social Security Administration found the employee to be permanently disabled effective October 30, 2002.

- 7-26-07 The employee reports to Dr. Gibbs that his back pain is much worse than his leg pain.
- 2008 The employee advised Dr. Gibbs that he had fallen down steps. Dr. Gibbs reported that he has been treating the employee's pain for a year except for his reported neck pain that began after the employee fell down the steps.
- 11-21-08 The employee was evaluated by Dr Guidos.
- 5-22-09 Deposition of Dr. Guidos taken.
- 7-29-09 The employee was evaluated by Susan Shea.
- 3-10 The employee has his third stint/heart surgery.
- 9-27-10 Susan Shea's deposition taken.

William D. Dobbs

In addition to the portions of the award that were completely authored by the Court, the Court has copied and included the complete "Summary of the Evidence" that the employee prepared in their proposed findings as part of the Court's Statement of Facts found below:

"William "Dwight" Dobbs testified that he resides in Oran, Missouri and was born October 4, 1956. He has been married to his wife, Connie, for 35 years. They have two children, including two boys that still live at home. Mr. Dobbs testified that he finished the ninth grade and spent six years in the military. He said he spent 1976 through 1982 at Fort Bragg, North Carolina.

Mr. Dobbs testified that in 1972 he began doing manual labor on a farm and that he worked for several farmers. He said that he spent the most significant length of time working for Lemons' Farms.

Mr. Dobbs said that in 1978 he went to work at a wire plant in Sikeston doing manual labor and he spent about a year working there.

It was Mr. Dobbs testimony that in 1979 he went to work at a foundry making Caterpillar parts in Wisconsin and that during that period of time he injured his ankle while still in the National Guard. He said he had surgery for that condition and then shortly thereafter moved back to Missouri.

Upon returning to Missouri Mr. Dobbs said that he went back to doing farm labor for a couple of years until he moved to Texas in 1982 and worked at doing seat covering for approximately a year.

Mr. Dobbs said that in approximately 1983 he moved back to Missouri and began erecting grain bins for Dollins Farms for a period of time.

Mr. Dobbs said that he went to work at Bell-MO Seed in Bell City, Missouri as a laborer bagging seed and loading trucks in approximately 1985. He said that he developed a respiratory injury in 1998 and a left rotator cuff tear in 1992. Mr. Dobbs said that as a result of the left rotator cuff tear which occurred May 1, 1992 he underwent three surgical procedures and that he settled the workers compensation claim that resulted from that injury in 1994.

Mr. Dobbs said because there was no light duty available that he left Bell-MO Seed and went to work at a hat factory in 1984 making hats where he developed carpal tunnel syndrome. He said that although he did not undergo any surgery for the right carpal condition that he did settle his workers compensation claim related to that for 15% permanent partial disability. He said they did thereafter settle with the Second Injury Fund as a result of his carpal tunnel syndrome settlement at the hat factory.

Mr. Dobbs said in approximately 1995 he returned to working for Dollins again erecting grain bins. He said that he had to significantly change the way that he did the work in that he had to use his right arm more because his left upper extremity was significantly weaker following the three surgeries to repair the left rotator cuff tear.

Mr. Dobbs said that in 1996 he went to work at Oran Mini Mart as a cashier and stock clerk because it was lighter work that he was physically capable of doing. Mr. Dobbs said that while working at the Oran Mini Mart he continued to cope with left shoulder weakness and significant loss of grip strength and numbness in his right hand.

Mr. Dobbs went to work for the City of Oran maintenance department in 1997 doing general labor. He said that the position did not require any heavy lifting, in part because the job allowed him to use a backhoe whenever heavy items needed to be moved.

When asked specifically whether he was having continued problems with his left shoulder when he went to work for the City of Oran he replied that he did indeed have continued loss of strength that significant on his left side causing him to use his right side more. When asked about whether he was having any continued problems with his right hand as of the date that he began working at the City of Oran he indicated that he was having ongoing complaints with numbness, tingling and loss of grip strength in his right hand. As for his right ankle, he said that when he began working for the City of Oran his right ankle would periodically become swollen and he had loss of strength in his right lower extremity because of the

injury that he had sustained back in approximately 1979 in the National Guard Camp.

Mr. Dobbs said he did not miss any work because of his left shoulder, right hand or right ankle conditions but he did have to be very conscientious about the way that he performed the physical parts of his job and that he had to change the way that he did things significantly.

Mr. Dobbs said that in 1999 he had a back strain. He testified that he did get some treatment and went back to work without filing a claim for compensation.

Mr. Dobbs said that in October 1999 he had some heart problems and that there was a stent placed by Dr. LaFoe. He said that after the stent procedure that it slowed him down, things that he did both at work and at home and that there were some activities that he was no longer able to do at all after the heart surgery.

Mr. Dobbs said that in 1999 he injured his right rotator cuff when he was using his right arm to move a pool table. He said that he has consistently had complaints with that right rotator cuff since that time, specifically loss of strength and ongoing pain requiring him to take over the counter pain medication and forcing him to change the way that he does things.

Mr. Dobbs testified that he went back to working for the City doing the same job but that he found the work substantially more difficult after his return.

Mr. Dobbs testified that in 2000 he fell and injured his right knee and his right foot but that he did not file a claim for compensation and that he returned to work.

Mr. Dobbs said that on November 9, 2001 he sustained a work related neck injury. He testified that he was treated by Dr. Mirkin and then he filed a workers' compensation claim and that he settled this claim for 20% of the whole body referable to the neck. Mr. Dobbs said that thereafter he settled a Second Injury Fund Claim based upon the 20% of the neck primary claim and attributing 37.5% to his prior left shoulder injury and 17.5% to his prior right shoulder injury.

After the November 9, 2001 falling injury Mr. Dobbs testified that he continued to have significant loss of movement with his neck and that he had ongoing headaches because of the neck injury. He testified that he continues to take over the counter pain medication because of the headaches associated with the neck injury.

Upon returning to his work at the City of Oran Mr. Dobbs said that he had to change the way that he did his work. He said he could no longer do any shoveling and that his co-workers had to help him significantly. He said he had problems lifting because of his right shoulder and his left shoulder. He said that his right hand was causing him problems as well as his right foot. He said that he was

continuing to suffer from neck pains and headaches. He said he was able to still do his job only because he had assistance and because he modified the way that his work was done.

Mr. Dobbs said October 20, 2002 he was injured at the ball park in Oran, Missouri when another employee that was lifting timber and concrete inadvertently dropped the materials which crashed onto his right knee. He said that he was immediately taken to St. Francis Hospital in Cape Girardeau and he treated without having surgery until April 2003. He said that he was continuing to have excruciating pain and limitations in his ability to walk. He said that he was off work and that he had to hire an attorney and file a claim to get further treatment. He said he was thereafter sent to Dr. Kriegshouser in November, 2003 for surgery. He said that following the surgery his pain remained approximately 9 on a 0 to 10 scale and then he was referred to Dr. Whistler for pain management.

Mr. Dobbs said that after the October 30, 2002 injury he did not return to working for the City of Oran.

Mr. Dobbs said that he tried to return to work for Dollins as a supervisor for a few months but he couldn't do it and that he tried to work elsewhere but he wasn't able to find anything he was qualified to do that he was physically capable of.

Mr. Dobbs said that he filed for Social Security Disability after his doctor advised him that he should look into that and that he was approved October 30, 2002. He said that according to that Social Security Award they found that he was disabled as of October 30, 2002, the date of his last work injury.

Mr. Dobbs said that since he filed for disability his complaints with his right shoulder, left shoulder, right wrist, heart, neck, right knee and right foot have remained unchanged. Mr. Dobbs said he has not had any injuries since October 30, 2002 but that he has had two back surgeries and three more stents since October 30, 2002. Mr. Dobbs said that he had back surgery in 2005 that was unrelated to any injury as well as a back surgery in 2006 that was not attributable to any particular injury. He said that the surgeries, in his opinion, did not improve his back pain.

As to the heart surgeries, Mr. Dobbs said that he has had three separate heart surgeries, one in 2005, the second in 2009 and the final procedure being in 2010.

When asked about whether there were things outside of work that he has not been able to do since his left shoulder injury he replied that he was no longer able to go hunting and he had to cut back on playing ball and began fishing off the bank. He said he was no longer able to cut firewood or lift weights after the left shoulder injury.

When asked about whether his activities had changed from the right hand carpal tunnel syndrome condition he said that he had further reduced the amount of ball he was able to play. As to his right shoulder injury, Mr. Dobbs testified that he was no longer able to do much at all outside of work and that he specifically recalled that the carpal tunnel stopped him from playing pool and caused him to cut back on his fishing even more than the left shoulder injury.

When asked about how the 1999 heart surgery affected how he did things at work and at home, he testified generally that it slowed him down doing everything.

As for the way the neck surgery affected him in the long term, Mr. Dobbs said that following the neck surgery he could no longer mow his yard, he had to limit how long he sat and it made it difficult for him to sleep at night.

When asked about how the 2002 right knee injury affected him he testified that he has continued problems with severe pain that keeps him awake at night. He said he now has to take Lorcet and over the counter medications to try and control his pain. He said he also relies upon a Lidoderm pain patch to try and manage his ongoing pain with his right knee. He said that the right knee significantly interferes with his ability to walk, stand, kneel, sit and drive a motor vehicle. He said the he is no longer able to maneuver stairs well because of that right knee.

As for his typical day, Mr. Dobbs said that he generally wakes up at 5:00 a.m. and drinks coffee, and he does a breathing treatment. He said that he will occasionally go to his neighbors and visit and check his mail. He said that he will watch some T.V. and then sit down and rest some. He said that he usually fixes himself a sandwich or something simple for lunch. He said that he will often go next door to his son's house to visit or sit outside if it is nice. He said that he generally comes back to his house around 2:30 and he will get the supper out for his wife. He said his wife comes home at 3:30 and they will visit and then she cooks supper and they generally eat about 5:00 p.m. He said that about dinner time he does a second breathing treatment, which takes about 15 minutes. He said that he and his wife would watch T.V. in the evenings on an average night and will go to bed at approximately 9:00 p.m. He says he does not sleep well because he is up and down all night.

Mr. Dobbs said he is only able to do a little housework but that he does try to vacuum but that he will have to sit down and take breaks as he is doing it and he states that there are some days he does not feel well enough to do it at all. He says he does try to help out by doing things like making the bed and trying to do some laundry but that these tasks are hard for him, that the walking, standing and lifting all increases pain and that there are some days where he just has to leave those chores for his wife to do when she gets home from work. He said he cannot drive far and that just driving to Cape Girardeau from his home in Oran bothers him.

Mr. Dobbs testified that there are no jobs that he is aware of that he could do because of his multiple pre-existing conditions as well as his right knee condition combined with the fact that his medication has undesirable side effects including making him severely drowsy. He testified that he would indeed rather be working but that in his opinion he didn't feel that his physical condition would allow him to do so.

Numerous medical records were admitted into evidence.

Medical records from Chaffee Medical Arts were marked Exhibit A, Section 1. These reflect that Dr. Stephen Whistler saw Mr. Dobbs August 23, 2002 for high blood pressure and headaches. (Exhibit A, Section 1 at Page 1).

Mr. Dobbs' medical records from Dr. James Palen are located in Section 2 of Exhibit A. These reflect that Dr. Palen treated Mr. Dobbs for knee pain from October 30, 2002 through November 20, 2002. It appears that on November 20, 2002 Mr. Dobbs was referred to an orthopedist for consultation due to on-going knee pain. (Exhibit A, Section 2 at Page 2-3).

Section 3 of Exhibit 1 contains the right knee MRI ordered by Dr. James Palen. The MRI shows a history of "Right knee pain above and below the knee for one week. Patient hit knee one week ago at work. Limited range of motion with bending." (Exhibit A, Section 3 at Page 1).

Orthopaedic Associates' records are located in Section 5 of Exhibit A. These reflect Dr. Brian Schafer saw Mr. Dobbs on November 22, 2002 for right knee pain and Mr. Dobbs reported that he "on 10-30-02 was holding a board and a piece of concrete hit the board and the board then smashed into his knee just above his knee." (Exhibit A, Section 5 at Page 1).

Dr. Schafer's records reflect he referred Mr. Dobbs for a bone scan at St. Francis Medical Center on November 29, 2002 and that he thereafter concluded that there was no evidence of fracture or lesion. Dr. Schafer referred Mr. Dobbs to Dr. Bernard Burns for evaluation. (Exhibit A, Section 5 at Page 2).

St. Francis Medical Center records reflect that Mr. Dobbs had a bone scan November 29, 2002 that revealed no occult fracture. (Exhibit A, Section 6 at Page 1).

Dr. Burns' notes reflect that he saw Mr. Dobbs for evaluation on December 18, 2002 and he diagnosed him with soft tissue contusion with mild degenerative joint disease at the knee. Dr. Burns prescribed physical therapy and medication. When Dr. Burns saw Mr. Dobbs next on January 8, 2003 for his continued knee pain that was steadily worsening Dr. Burns prescribed Hydrocodone and Neurontin and ordered an MRI. (Exhibit A, Section 5 at Page 5).

Dr. Whistler records contain an x-ray of Mr. Dobbs' right knee dated October 30, 2002. (Exhibit A, Section 1 at Page 7). Mr. Dobbs was seen April 3, 2003 by Dr. Whistler for his right knee. At that time Dr. Whistler noted that Mr. Dobbs had been seen by Dr. Palen, Dr. Schaffer, Dr. Burns, Dr. Cantrell and the Emergency Room at Southeast. Dr. Whistler prescribed Lorcet and Celebrex. (Exhibit A, Section 1 at Page 11).

On February 5, 2003 Dr. Burns saw Mr. Dobbs again for knee pain. At that time Dr. Burns indicated that he felt Mr. Dobbs had simply a soft tissue contusion, patellofemoral chondromalacia at the medial facet and features of chronic pain syndrome. (Exhibit A, Section 5 at Page 5-6).

In his note dated February 6, 2003 Dr. Burns states that he had reviewed the case with Dr. Brian Schafer and it was agreed that Mr. Dobbs should be treated with a trial of Synvisc injections. (Exhibit A, Section 5 at Page 6).

An MRI from Cape Imaging reflects that on April 9, 2003 Mr. Dobbs was diagnosed with a "small soft disc bulge on the left side at L3-L4". (Exhibit A, Section 1 at Page 13).

A letter dated April 30, 2003 from Dr. Whistler to Wayne Keller states that an MRI had confirmed "a Lateral Bulging Disc L3-4 to the affected side. We are now seeking neurosurgery input on this condition." (Exhibit A, Section 1 at Page 15).

Mr. Dobbs was seen by Dr. Whistler April 30, 2003 and June 26, 2003 for knee and back pain. (Exhibit A, Section 1 at Page 16 & 20).

Pain management records from St. Francis Medical Center reflect that Mr. Dobbs was seen May 8, 2003 and was given an injection. (Exhibit A, Section 6 at Page 5).

The pain clinic records from St. Francis Medical Center of May 30, 2003 reflect that Mr. Dobbs returned for a repeat L3-4 lumbar epidural steroid injection to treat his right lower extremity pain. (Exhibit A, Section 6 at Page 15).

Mr. Dobbs was seen November 17, 2003 by Dr. Whistler for medical clearance for a knee surgery that was scheduled for November 28, 2003. (Exhibit A, Section 1 at Page 22).

Surgical notes from Dr. Lawrence A. Kriegshauser dated November 28, 2003 reflect that Mr. Dobbs had arthroscopic chondroplasty and release of the right knee at the Surgery Center of St. Louis. (Exhibit A, Section 1 at Page 38).

Dr. Kriegshauser reported to AIG Claim on January 8, 2004 that Mr. Dobbs felt like he was not making any progress as to his knee despite physical therapy and that he was prescribing pain medication. (Exhibit A, Section 1 at Page 44).

Dr. Kriegshauser's records from February 5, 2004 and March 4, 2004 reflect that Mr. Dobbs continued to have diffuse pain in his right knee despite surgery and conservative treatment. (Exhibit A, Section 1 at Page 45-48).

Upon releasing Mr. Dobbs March 4, 2004, Dr. Kriegshauser stated that in his opinion Mr. Dobbs would need to avoid work with repetitive squatting or kneeling activities and that he should continue treating his pain with ibuprofen or Aleve or something of that nature. (Exhibit A, Section 1 at Page 48).

Dr. Whistler's records reflect that he has continued to prescribe pain medication for chronic knee and back pain consistently from the date of his release by Dr. Kriegshauser to the present date. (Exhibit A, Section 1 at Page 52 -).

Southeast Missouri Hospital records reflect Mr. Dobbs was seen for knee pain May 9, 2005 and was diagnosed with chronic right knee pain. (Exhibit A, Section 12 at Page 1-2).

Mr. Dobbs was next seen at Orthopaedic Associates by Dr. Tammy Hahn-Brown on June 29, 2005. Dr. Hahn-Brown referred him back to his family physician for referral to St. Louis or Memphis for continued care as they had nothing to offer him at that time. (Exhibit A, Section 5 at Page 7).

Mr. Dobbs was seen October 30, 2006 by Dr. Rickey Lents who diagnosed him with chronic chondromalacia patella. Dr. Lents states that there is nothing that he could do for him and his problem was chronic pain syndrome. (Exhibit A, Section 5 at Page 8).

Dr. Burns' notes from December 6, 2006 reflect that he suggested Lidoderm patches and Neurontin. (Exhibit A, Section 5 at Page 10).

INJURY DATE: 11-09-2001 - Neck

Exhibit B, Section 1 contains medical records from Dr. Peter Mirkin pertaining to treatment of Mr. Dobbs' neck injury. These reflect that Mr. Dobbs was treated for a disc protrusion at C5-6 and that Dr. Mirkin performed a cervical discectomy and fusion on January 10, 2002 and that he followed up with Mr. Dobbs until releasing him September 30, 2002. (Exhibit B, Section 1).

Exhibit B, Section 2 contains medical records from Chaffee Medical Arts pertaining to Mr. Dobbs cervical spine injury. (Exhibit B, Section 2).

These reflect that Mr. Dobbs was seen November 19, 2001 and reported that he was digging out a culvert for a water leak when he was injured. Dr. Whistler provided the treatment initially including physical therapy and ordering an MRI. Dr. Whistler referred Mr. Dobbs for a neurosurgeon consultation December 11, 2001. (Exhibit B, Section 2 at Page 20).

INJURY DATE: 1988 – Dust; Respiratory

Medical records from Cardiovascular Consultants were marked Exhibit B, Section 4. These reflect that Mr. Dobbs underwent a stenting procedure in 1999. In an office note dated November 11, 1999 Dr. LaFoe stated that he was “having some vague atypical chest pains now, nothing nearly as severe as what he had pretesting however.” (Exhibit B, Section 4 at Page 1).

Southeast Missouri Hospital records found at Page 1 of Exhibit B, Section 5 reflect that Mr. Dobbs presented September 29, 1999 with chest pains. Dr. LaFoe noted that they scheduled him for an angiography. (Exhibit B, Section 5 at Page 1).

The Discharge Summary dated October 2, 1999 from Southeast Missouri Hospital reflects a discharge diagnosis of “chest pain with positive stress test; history of gastroesophageal reflux disease and asthma”. (Exhibit B, Section 5 at Page 3).

It was noted by Dr. Richard Voszler on October 1, 1999 that Mr. Dobbs had a stent placed for a 95% obstruction of the left anterior descending artery. (Exhibit B, Section 5 at Page 5).

INJURY DATE: 10-17-1989 – Soft Tissue Injury Left Arm

Orthopaedic Associates records from 1989 are located in Section 7 of Exhibit B. These reflect that Mr. Dobbs was diagnosed with a soft tissue injury of his left arm, overuse syndrome by Dr. Thorpe and that he was put in a sling and prescribed physical therapy at that time. (Exhibit B, Section 7).

INJURY DATE: 05-01-1992 – Left Shoulder

Medical records from Mr. Dobbs’ treatment by Dr. Thorpe in 1992 are contained in Section 8 of Exhibit B. These reflect Dr. Thorpe treated Mr. Dobbs for left shoulder pain in May 1992 and ordered an MRI. Due to his lack of improvement with conservative treatment Mr. Dobbs had an arthroscopic repair of his rotator cuff July 20, 1992 at St. Francis Medical Center. (Exhibit B, Section 8 at Page 4).

It was noted in Dr. Thorpe records that the diagnosis was “status post arthroscopic debridement for what turned out to be a full thickness tear of the rotator cuff.” (Exhibit B, Section 8 at Page 4).

Dr. Thorpe continued to treat Mr. Dobbs through November 12, 1992 at which time he released him to return to work without restrictions. (Exhibit B, Section 8 at Page 6).

Dr. Thorpe's records reflect second left shoulder rotator cuff surgery at St. Francis Medical Center on September 1, 1992. (Exhibit B, Section 9 at Pages 5-6).

Dr. William Sedgwick's records are located at Section 11 of Exhibit B. These reflect that Dr. Sedgwick saw Mr. Dobbs for on-going left shoulder pain and that he treated Mr. Dobbs following the arthroscopic procedure dated August 19, 1993 up through January 21, 1994 at which time Mr. Dobbs reported that he was "having some continued intermittent symptoms in his left shoulder". (Exhibit B, Section 11 at Page 7).

Dr. Brent Voszler's records are located in Section 12 of Exhibit B. These reflect that on June 7, 1999 Dr. Voszler saw Mr. Dobbs for lumbar strain. (Exhibit B, Section 12 at Page 5).

INJURY DATE: 2000 – Right Knee / Right Foot

Dr. Voszler's treatment notes following a right foot and ankle injury on June 1, 2000 reflect that Dr. Voszler saw Mr. Dobbs on June 5th and diagnosed him with a strain of his right foot / right knee and prescribed medication for that. (Exhibit B, Section 13).

Mr. Dobbs was seen in the Emergency Room of St. Francis Medical Center on December 23, 2000 for pain in his right shoulder and was diagnosed with right shoulder pain. (Exhibit B, Section 14 at Page 1).

EXHIBIT C

The deposition of Dr. Annamaria Guidos was marked Exhibit C. Dr. Guidos opined that "given a combination of his numerous disabilities prior to and in combination with his right knee injury of October 30, 2002, he was permanently and totally disabled" (Exhibit C, at Page 19).

EXHIBIT D

The deposition of Susan Shea was marked Exhibit D and was admitted into evidence. It was the testimony of Susan Shea that in her opinion that Mr. Dobbs was not employable in the open labor market. (Exhibit D, at page 21).

EXHIBIT E

Mr. Dobbs' Social Security Award was marked Exhibit E and was admitted into the record. This document is date May 29, 2007 and reflects that Mr. Dobbs has been under a disability as defined in the Social Security Acts since October 30, 2002.

EXHIBIT F

The report of Dr. Jerome Levy dated October 5, 2006 was marked Exhibit F and admitted into evidence. Dr. Levy states in his report that in his opinion that Mr. Dobbs had a 30% permanent partial disability of the right lower extremity at the knee and that he had a 25% permanent partial disability of the shoulder and a 25% permanent partial disability of the man as a whole due to his neck pre-existed the knee injury.

EXHIBIT G

A copy of Mr. Dobbs' file as maintained by the Division of Workers' Compensation was marked Exhibit G and admitted into evidence. This document reflects six prior work related injuries:

- (1) An August 23, 1988 Report of Injury alleging respiratory injuries;
- (2) An injury May 1, 1992 that settled for 37.5% of the left shoulder;
- (3) An injury dated September 7, 2004 that settled for 15% of the right arm at the wrist and included a SIF settlement for \$1,320.83 pertaining to the left shoulder.
- (4) A June 3, 1999 Report of Injury pertaining to a back strain;
- (5) A right knee and right foot injury dated June 1, 2000;
- (6) And a cervical spine injury that settled for 20% PPD and a SIF settlement for same in the amount of \$5,416.49 for preexisting left and right shoulder conditions."

Jerome E. Levy, M.D.

Dr. Levy evaluated the employee on September 14, 2006 at the request of the employee's counsel. In addition, he conducted a physical examination and reviewed medical records that were provided to him. Dr. Levy prepared a report dated October 5, 2006. Dr. Levy was aware of the employee's first back surgery with Dr. Gibbs however, the employee's back fusion surgery did not occur until 2007. Dr. Levy reported that the employee never returned to work after his right knee surgery; however the employee testified that he returned to work for Dollins for three months after his knee surgery. Neither party took the deposition of Dr. Levy.

In his report, Dr. Levy included some of the employee's injuries that occurred prior to October 30, 2002. Those included the 2001 neck fusion surgery, a 1989 left rotator cuff injury due to throwing heavy bags and a 2000 right rotator cuff injury while moving a pool table. Dr. Levy

also reviewed medical records concerning the employee's medical care for his right knee injury of October 30, 2002.

After his physical examination of the employee's gait, Dr. Levy reported that the employee has a normal gait, he is able to walk on heels and toes without limping and without difficulty, and squatting was performed without difficulty. After his examination of the employee's neck, he reported that the employee has full range of motion although full range of movement is uncomfortable, there is no tenderness and the cervical curvature is normal. Dr. Levy did not evaluate the employee's back due to his recent surgery. After he examined the employee's shoulders he reported no deformity, full range of motion in both shoulders, moderate discomfort with movement, no joint instability, no grating, the biceps have equal circumference with no atrophy and both upper extremities are equal in strength with no Tinel's or Phalen's findings. After Dr. Levy examined the employee's lower extremities he reported that all joints move through a full range of motion, there is tenderness about the right knee, there is no joint instability, no grating on motion and straight leg raising was negative bilaterally. In addition he reported that there was no measurable atrophy, the right lower extremity was somewhat weaker, the legs were of equal length, pinprick and touch examination was normal and that deep tendon reflexes are equal and active bilaterally.

Based on his review, Dr. Levy provided his diagnoses:

1. Status post arthroscopic evaluation of the right knee.
2. Status post chondroplasty, right knee.
3. Status post lateral release, right knee.
4. Chronic strain, right knee.
5. Status post repair of both rotator cuffs.
6. Chronic strain, both shoulders.
7. Status post neck fusion, old.
8. Cervical strain, chronic.

Dr. Levy rated the employee's right knee with a thirty percent permanent partial disability. He also stated:

“In my opinion, this patient has the following permanent partial disability pre-existing the accident of October 31, 2002 and was and is a hindrance and obstacle to employment and re-employment should he become un-employed:
-Twenty five percent (25%) of each upper extremity at the shoulder.
-Twenty five percent (25%) of the man as a whole due to the neck.
-The combination of the impairments creates a greater disability than the simple total of each and a loading factor should be added”.

Dr. Levy does not specifically use the term or provide a specific opinion regarding permanent total disability.

Annamaria Guidos, M.D.

Dr. Guidos was retained by the employee's counsel to evaluate Mr. Dobbs. She met with the employee on November 21, 2008, took a history, reviewed medical records, performed a physical examination, prepared a report dated February 3, 2009 and testified by deposition on May 22, 2009. She reported that the employee was using the following medications at the time she saw him:

- Lorcet 10/650 MG TABS (Hydrocodone-Acetaminophen) BID.
- Zantac CAPS (Ranitidine HCL CAPS) bid.
- Toprol XL TB24 (Metoprolol Succinate TB24) once daily.
- Aspirin TABS (Aspirin Tabs) 2 tab daily.

Under direct examination, Dr. Guidos reported that the employee is limited in his ability to do any type of work, even in his home with frequent rest breaks, his greatest limitation being low back pain. The doctor was asked about her opinions or diagnostic impressions. She gave her impressions as "Middle-age male with a history of multiple surgeries, neck surgery, bilateral rotator cuff, cardiac surgery, right knee, low back surgery, and low back fusion was seen for disability evaluation, independent medical exam. "May I give you my impression?" Her impression was "Given a combination of his numerous disabilities prior to and in combination with his right knee injury of October 30, 2002, he was permanently and totally disabled ...". Immediately after the doctor's answer, employee's counsel stated that he needed to fill in what she just stated and asked the following question, "Is it your medical opinion that the numerous disabilities that occurred prior to and in combination with this right knee injury makes him permanently and totally disabled?" She replied "That's correct."

Counsel for the Second Injury Fund then questioned Dr. Guidos. She agreed that the employee's most significant factor that she found was the range of motion in the lumbar spine. She also agreed that at the time she saw the employee he reported 10/10 pain and that Lorcet, the pain medication he was taking, was primarily for his back. She also agreed that prior to 2002 there were no permanent work restrictions placed on any of the employee's conditions. She testified that the employee told her that he was limited to do any kind of work and that he was primarily limited due to his back. Dr. Guidos testified that when she examined the employee's back she found that the employee has normal gait, some limitation in range of motion, no focal tenderness, no spasm and no leg length discrepancy. Dr. Guidos agreed that of the records she had and reviewed, about one-third of them pertained to the employee's back. As to the knee, she reported she found normal range of motion, full extension and flexion with no laxity, no tenderness upon palpation, anterior and posterior drawer testing was negative, Lachman's testing was negative, McMurray's testing was negative, 5/5 strength, normal reflexes and negative bilateral straight leg testing,

Dr. Guidos testified that she was not aware that she was the third doctor that was asked to provide ratings. She was aware of Dr. Levy's report and stated that Dr. Levy did not say that he did not find permanent total disability.

Counsel then asked Dr. Guidos if she included the fusion back surgery in her determination of permanent total disability. She responded "Prior to and in combination of the right knee. I would think - - I don't really say in my report, to be honest with you, whether that includes the low back or not". She was then asked if the low back is included as to the employee's overall total disability. Dr. Guidos responded "Well, if you look at his total disability at the time, yes, he is totally disabled, if you want to include everything to-date. But if your question is, was he totally disabled taking out the low-back fusion because the low-back fusion was in 2006, then he would be disabled based on his neck, bilateral rotator cuff, cardiac, and right knee and I still think that he was permanently disabled because of the severity of his knee injury."

Counsel further asked Dr. Guidos about her opinion, "So, despite the fact that he indicated to you that he thinks his primary problem is with his low back, that he had two low-back surgeries since the knee injury, and clearly indicated to you that - - or you indicated the main problem he has is with his low back range of motion and pain, you did not include that in your conclusion?" Dr. Guidos responded, "Well, I gave you both scenarios, before and after. I said he would be disabled either way. I don't remember what I meant, because I don't clarify that. I say given a combination of his numerous disabilities prior to and in combination with his right knee injury, and his right knee injury was on - - well, actually, I do say 11/28/08, so I guess it is included. As I'm reading my report, I say he is permanently totally disabled. So, I apologize if that caused a confusion".

Susan Shea

Ms. Shea was also retained by employee's counsel to evaluate the employee. She saw him in 2007 and then again in July 2009. She testified that she got histories from the employee both times and reviewed medical records. She testified that she specifically reviewed the report of Dr. Guidos.

She confirmed that even though the employee reported continuing problems, there were no permanent restrictions placed on the employee for any of his pre 2002 injuries and that he was always released to full duty. She also confirmed that the only restriction that was given was no repetitive kneeling or squatting that was imposed by Dr. Kreighouser after the employee's right knee surgery.

Ms. Shea stated that the employee had additional medical problems that were not work related including stinging, hypertension, COPD, GERD and asthma. She testified about the complaints that the employee made to her when she saw him:

- Constant pain.
- Could not sit for more than an hour due to back pain but also due to pain in right leg.
- Could not stand or walk very much due to his right leg issue.
- Could only stand in one position for about thirty minutes.
- Didn't know how much he could lift. He didn't try to lift.
- The most he would do during the day would be some housework or dishes.
- Could only work ten to fifteen minutes without changing posture.
- He walked with a definite limp and appeared to be in pain.

- He felt drowsy through the day due to medications and poor sleep.

She testified that the employee completed the ninth grade and was receiving social security disability.

Ms. Shea testified that the employee is not employable in the open labor market and reported factors to support her opinion:

- The employee reported pain levels that precluded all work.
- The employee takes narcotic medications which cause him to be drowsy in the day.
- The employee's vocational history consisted of physically active work and he can no longer do that.
- The employee did relatively low skilled work and had a tenth grade education.
- The employee could not sit long enough to perform low skilled sedentary work and such work would be affected by shoulder and neck pain.
- The employee's age makes retraining more difficult and it is not likely that an employer would invest in retraining him.
- The employee has an extensive medical history
- Dr. Guidos said that the employee was permanently and totally disabled.
- Social Security said the employee was permanently and totally disabled.
- It is highly unlikely that any typical employer who was aware of the employee's limitations and medical history would hire him.
- For all these reasons she says he is unemployable in the regular open labor market.

Counsel for the Second Injury Fund questioned Ms. Shea about her opinions.

Shea agreed that Dr. Kreighouser opines that the employee's subjective complaints were well in excess of his objective findings. She confirmed that her opinions are based on what the employee told her including his pain representations.

Shea confirmed that after the left shoulder surgery in the 1990's, the employee was released without restrictions and that after his 2001 neck fusion surgery with Dr. Merkin he was again released to work without restrictions. She also testified that Dr. Cantrell saw the employee about his right knee and an FCE was done. She agrees that the opinion of the rater and Dr. Cantrell was that the employee gave sub maximal effort during extremity testing. She further agreed that after the employee's 1999 heart/stint surgery the doctors imposed no restrictions. She also agreed that the 1999 right ankle problems resolved with no permanent restrictions or limitations. She also agreed that employee had no restrictions for his additional problems including COPD, GERD, hypertension or asthma.

In further response to the attorney's questions, Ms. Shea agreed that employee did not report any doctor imposed restrictions for his problems prior to 2002. She agreed that the employee had two back surgeries after his 2002 accident and he then complained of back and right leg pain.

From her review of the records she confirmed that Dr. Gibbs has an August 15, 2008 record where the employee had recently fallen and exacerbated all his pain. It was at this time that Dr. Gibbs noted that the employee had an increase in neck pain and left arm pain.

Ms. Shea testified that the employee was not taking pain narcotic meds when he injured his knee in 2002. Shea agrees that the number one problem that she listed for the employee was pain. Ms. Shea testified that people work in pain daily, and that the pain that the employee complained of was pain in the back and pain in the right leg from the back surgery and neck pain.

Ms. Shea confirmed that her opinions are based on what the employee told her and histories and medical records she reviewed. She also testified that she relied on the report and conclusions of Dr. Guidos in providing her vocational opinion, and that Dr. Guidos was the only one who said that the employee was permanently and totally disabled.

In Injury Number 92-055416, on April 8, 2004, the employee settled a May 1, 1992 injury to his left shoulder for thirty-seven and one-half percent permanent partial disability.

In Injury Number 94-138426, on May 22, 1995, the employee settled a September 7, 1994 injury to his right arm for fifteen percent permanent partial disability. In this same case, on June 26, 1995 the employee settled with the Second Injury Fund claiming a pre-existing injury to his left shoulder of thirty-seven and one-half permanent partial disability.

In Injury Number 01-138617, on November 12, 2002, the employee settled a November 9, 2001 injury to his cervical disc for twenty percent permanent partial disability. In that same case, on October 23, 2003, the employee settled with the Second Injury Fund for preexisting injuries to his left and right shoulders.

In this case, on June 27, 2005, the employee settled his October 30, 2002 injury to his right knee with the employer-insurer for twenty percent permanent partial disability of his right knee. In his amended claim he listed pre-existing injuries regarding a 2001 neck and a 1990 shoulder.

RULINGS OF LAW

Liability of the Second Injury Fund for permanent total disability

In this case the employee is claiming that he is permanently and totally disabled due to a combination of disabilities resulting from his October 30, 2002 accident and his pre-existing disabilities. The Second Injury Fund claims that the employee is not permanently and totally disabled due to his accident and his pre-existing disabilities. The Second Injury Fund suggests that it may have some liability for permanent partial disability.

The Court set out a partial chronology earlier in this award. Critical dates are the date of the accident, October 30, 2002 and the dates of subsequent problems or surgeries that the employee had after that date including multiple heart stints, a back surgery and a back fusion surgery.

The Second Injury Fund indicates that they have no responsibility for permanent total disability, as the primary right knee injury does not combine with the employee's various pre-existing injuries creating such Second Injury Fund liability.

The employee has offered three principal bodies of evidence to support his claim for permanent total disability;

1. Testimony of the employee as to the disabilities he had from his accidents/conditions and surgeries.
2. Professional opinion of Dr. Guidos.
3. Professional opinion Susan Shea.

This case is complicated by the fact that the employee has had two stints placed since his 2002 accident, has had one back surgery and a second back fusion surgery. Despite the employee saying that he has not had any accidents since 2002, the records indicate that he was involved in an automobile accident and fell down some steps since 2002. All of these subsequent events have affected the employee's overall health and disability.

The important question is whether the conditions and/or disabilities that pre-existed the accident and the disabilities created by the accident of October 30, 2002 combine to render the employee permanently and totally disabled and unemployable in the open labor market such that it is unlikely that any employer would be likely to hire the employee. Any disabilities that occurred due to events after October 30, 2002 are not considered for Second Injury Fund liability for purposes of permanent total disability.

The employee's testimony was quite clear. He says that each surgery or procedure that he had beginning in the 1980's affected his ability to do his work in that he either had pain or loss of strength or motion or other impediments that affected his ability to do his various jobs. He indicated that he continued to perform his various jobs over the years and in each instance made adjustments in how he performed his job duties and/or got assistance from other employee's in completing his job or just did not perform certain duties. The employee has always worked in jobs requiring strong physical labor. The record is quite clear; there are absolutely no medical restrictions of any kind that were placed on the employee for any medical condition or disability that occurred prior to October 30, 2002. The employee always returned to physical work and never asked for or received any accommodations from his employers in order to complete his job duties. There is also no evidence that the employee was ever discharged or suffered any loss of pay or demotion due to his inability to perform his assigned job duties. While the employee indicated that he had such problems, there is no convincing medical evidence to support his position that his disabilities are as he indicated. While the employee's testimony is clear, his medical history does not back up his position. For this reason, the Court does not find that the employee's testimony as to the effects of his pre-existing disabilities meets his burden of proof on permanent total disability creating Second Fund liability.

In addition to the effects of the employee's pre-existing problems, he has had serious medical problems that happened after October 30, 2002. The employee's testimony was again clear in that he outlined his problems from his accident and how they combine such that he can no longer

work and is thus permanently and totally disabled. Once again the Court does not accept the employee's position as to the seriousness of his problems at least as to the effects of the 2002 injury as combined with pre-existing disabilities.

The employee presented the testimony of Dr. Guidos in support of his position that he is permanently and totally disabled in combination. Dr. Guidos does in fact provide such an opinion. However, the Court does not find her testimony and opinions to be credible in that they are based on inaccurate information or information from the employee that is not credible.

There is no question that in strong part Dr. Guidos relied on the statements of the employee and the effects of his disabilities in reaching her conclusions. It is the subsequent disabilities/surgeries that are most relevant here. When you consider the credibility of Dr. Guidos' opinion, you need to look at the evidence that she relied on and based her opinion on. The employee had his first back surgery with Dr. Gibbs on August 21, 2006. On February 26, 2007 Dr. Gibbs performed back fusion surgery. In addition, the employee has had multiple stints placed since 2002. The employee would have you believe that he is permanently and totally disabled without considering these events. The employee correctly points out that Dr. Guidos' opinion and testimony was that the employee is permanently and totally disabled in combination despite these subsequent events. The Court took some effort to set out the questions of the attorneys and the answers by Dr. Guidos when she gave her deposition testimony. Dr. Guidos was asked her opinion regarding permanent total disability. Her answer is contained on page 20 of the statement of facts. Initially, there is no question that Dr. Guidos' included the employee's subsequent problems, heart and back, in formulating her opinion that the employee was permanently and totally disabled in combination. Counsel for the Second Injury Fund challenged her opinion or at least the basis for it. It was at that time that Dr. Guidos apologized for the confusion she caused. She then went on to say that the employee was permanently and totally disabled in combination whether you considered his subsequent problems or not.

In addition, a review of Dr. Guidos' report and the information she gained from the employee must be examined. She saw the employee on November 21, 2008 and prepared her report February 3, 2009. She reported that the employee told her that he was most severely limited due to pain and the pain that primarily limited him was low back pain. At trial she agreed that the most significant factor she found was the range of motion in the employee's lumbar spine. She also stated that the employee reported his pain at 10/10 and that Lorcet, the pain medication he was taking was mostly for his back. She also testified that the employee had no prior work restrictions and that his work limitations were primarily limited due to his back.

Given all of these factors, the Court has considered the doctor's opinions and found them to lack credibility as the information she relied on is not as persuasive as to Second Injury Fund liability for permanent total disability due to events that happened after October 30, 2002. The Court is not ignoring the opinions of Dr. Guidos, however, they are being rejected based on the medical evidence.

Dr. Levy also saw the employee and evaluated the employee's disabilities. The Second Injury Fund's position is that Dr. Levy's opinion was that the employee was not permanently and totally

disabled. The Court disagrees with this position. You can infer that Dr. Levy did not find permanent total disability, but he did not say so. He was credible.

Dr. Guidos' opinion that the employee is permanently and totally disabled if you include his back surgeries and heart stints has credible evidence to support such a conclusion. However, in order to reach that conclusion, disabilities have to necessarily be included that have no bearing on Second Injury Fund liability.

The employee also offered the opinions of Susan Shea in support of his position. Ms. Shea testified that she relied on the opinions of Dr. Guidos in formulating her opinions regarding the employee's employment status and permanent total disability. The Court finds Ms. Shea's opinions to lack credibility.

In summary, the Court finds that after a consideration of all of the evidence, the employee has failed to offer clear, convincing and credible evidence to meet his burden to show that the Second Injury Fund is responsible for permanent total disability.

Liability of the Second Injury Fund for permanent partial disability

While the Court found that the employee did not have sufficient evidence to meet his burden of proof for permanent total disability, the Court finds that the employee has presented sufficient evidence to meet his burden of proof for permanent partial disability.

The Court finds that the employee had disabilities prior to October 30, 2002 that were a hindrance and/or obstacle to employment or reemployment:

- 92-055416-Left shoulder surgery
- Accident-Right shoulder surgery
- 94-138426-Carpal tunnel surgery
- 01-138617-Neck fusion surgery
- 02-117042-Right knee surgery

The Court further finds that the employee had a thirty-seven and one-half percent permanent partial disability to each shoulder due to rotator cuff surgeries, a fifteen percent permanent partial disability due to the carpal tunnel surgery, a twenty percent permanent partial disability to the employee's neck due to his neck fusion surgery and a twenty percent permanent partial disability due to his right knee surgery. The Court further orders that a fifteen percent load should apply in this case. The Second Injury Fund is ordered to pay \$12,916.00 to the employee as permanent partial disability compensation.

ATTORNEY'S FEE

Stephen L. Taylor, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____ Made by:

Gary L. Robbins
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation