

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

Injury No.: 00-180012

Employee: Jason Dodson  
Employer: Von Hoffmann Press, Inc. (Settled)  
Insurer: Continental Casualty Co. (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. We have reviewed the evidence and considered the whole record and we find 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, except as modified herein. Pursuant to section 286.090 RSMo, we issue this final award and decision modifying the November 6, 2009, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

We modify the award solely to increase the permanent partial disability award against the Second Injury Fund.

In calculating the Second Injury Fund's liability for enhanced permanent partial disability, the administrative law judge factored in employee's preexisting disabilities to his left knee, left wrist and right shoulder. As to all other alleged preexisting disabilities, the administrative law judge vaguely stated that they were either too minimal to combine with employee's injuries to his feet or they did not pre-exist the injuries to employee's feet.

We believe the administrative law judge erred by excluding three preexisting disabilities from her calculation of Second Injury Fund liability. In addition to the preexisting disabilities found relevant by the administrative law judge in reaching her Second Injury Fund conclusion, we find the following permanent partial disabilities preexisted the work injury, constituted hindrances or obstacles to employment or reemployment, and met the thresholds for inclusion set forth in § 287.220 RSMo: 15% of the body as a whole due to employee's psychiatric disorder; 15% of the body as a whole due to employee's chronic sinusitis; and, 15% of the body as a whole due to employee's asthma.

Based upon the testimony of employee and Dr. Lichtenfeld, we conclude that employee's overall disability as a result of all includible disabilities exceeds the simple sum of those disabilities by a factor of 20%. Our disability findings and calculations are summarized below.

Employee: Jason Dodson

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<b>Includible Disabilities</b>	<b>Weeks</b>
<u><i>Disabilities from primary injury</i></u>	
Right foot (25%)	37.500
Left foot (22.5%)	33.750
10% multiplicity	7.125
<u><i>Preexisting disabilities</i></u>	
Left knee (25%)	40.000
Left wrist (15%)	26.250
Right shoulder	63.800
Psychiatric disorder	60.000
Sinusitis	60.000
Asthma	60.000
<i>Simple sum</i>	388.425
<i>Overall disability simple sum X 120%</i>	466.110

We award to employee from the Second Injury Fund permanent partial disability benefits in the amount of \$23,539.33 (77.685 weeks X \$303.01).

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.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued November 6, 2009, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 23<sup>rd</sup> day of September 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Jason Dodson

Injury No. 00-180012

Dependents: N/A

Employer: N/A

Additional Party: State Treasurer as Custodian of the  
Second Injury Fund

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Insurer: State of Missouri

Hearing Date: August 25 & September 9, 2009

Checked by: HDF/tmt

### 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: February 1, 2000.
5. State location where accident occurred or occupational disease was contracted: Cole 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? N/A.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: See award.
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: Both feet.
14. Nature and extent of any permanent disability: 25% right foot, 22.5% left foot.
15. Compensation paid to-date for temporary disability: N/A.
16. Value necessary medical aid paid to date by employer/insurer? N/A.
17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: N/A.

Employee: Jason Dodson

Injury No. 00-180012

19. Weekly compensation rate: \$578.48/\$303.01.

20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

21. Second Injury Fund liability: 15% body, 60 weeks - \$18,180.60.

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: Dean Christiansen

Employee: Jason Dodson

Injury No. 00-180012

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

Employee: Jason Dodson

Injury No: 00-180012

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: N/A

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: State Treasurer as Custodian of the  
Second Injury Fund

Insurer: State of Missouri

Checked by: HDF/tmt

## **ISSUES DECIDED**

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on August 25, 2009, and the record was left open until September 9, 2009. Memoranda were submitted by September 11, 2009.

The parties stipulated that on or about February 1, 2000, the claimant was in the employment of Von Hoffmann Press, Inc. All issues related to compensability of the underlying workers' compensation claim were stipulated between the parties to this claim against the Second Injury Fund. The compensation rate applicable to this claim is \$578.48 per week for permanent total disability benefits and \$303.01 per week for permanent partial benefits.

The issue to be resolved by hearing is the liability of the Second Injury Fund.

## **FACTS**

The claimant, Jason Dodson, 38 years old as of the date of the hearing of this claim, is a high school graduate with some additional vocational training in diesel mechanics and completion of two college courses in the early 2000s.

Mr. Dodson injured his feet while working for Von Hoffmann Press, Inc. (Von Hoffmann), in 2000 as the result of standing and walking on concrete. The ensuing workers' compensation claim, which is the foundation of this Second Injury Fund claim, settled for \$23,000.00, reflecting permanent partial disability of 25 percent of the right foot, 22.5 percent of the left foot and an additional ten percent of the total amount.

Relevant pre-existing disabilities include a settlement of a 1998 workers' compensation claim based on 25 percent of the left knee and a settlement of a 1999 workers' compensation claim based on 15 percent of the left wrist. Mr. Dodson also had a right shoulder injury in 1989, which caused Dr. Lichtenfeld to opine to a 27.5 percent permanent partial disability of the right shoulder. Mr. Dodson testified to his difficulty in walking, lifting, standing on a hard surface, and lack of strength in the left hand.

Employee: Jason Dodson

Injury No. 00-180012

While Mr. Dodson claimed additional pre-existing disabilities, including tinnitus, hypertension, premature heart beat, damage to the blood vessels of the eyes, injury to the left small finger, gastric issues, sinus problems, asthma, epididymitis, and psychiatric problems, these disabilities are found to either be too minimal to combine with Mr. Dodson's injuries to his feet or to not pre-exist the 2000 injuries to the feet and, therefore, not to implicate the Second Injury Fund.

Dr. Lichtenfeld testified that the sum of Mr. Dodson's disabilities is less than the combined disability.

### **APPLICABLE LAW**

RSMo, Section 287.220. 1. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund

Employee: Jason Dodson

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known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

**AWARD**

The claimant, Jason Dodson, has sustained his burden of proof that he has combined disability resulting from his 2000 work injury to his feet and his pre-existing disabilities greater than their simple sum. The disability in excess of the simple sum of the disabilities is found to be 15 percent of the body. This award is based on the testimony of Mr. Dodson regarding his disabilities and the opinion of Dr. Lichtenfeld.

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

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

HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson

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

Injury No.: 02-047268

Employee: Jason Dodson  
Employer: Von Hoffmann Press, Inc.  
Insurer: Sentry Insurance  
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 November 6, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued November 6, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23<sup>rd</sup> day of September 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Jason Dodson

Injury No. 02-047268

Dependents: N/A

Employer: Von Hoffmann Press, Inc.

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Insurer: Sentry Insurance

Hearing Date: August 25 & September 9, 2009

Checked by: HDF/tmt

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: March 13, 2002.
5. State location where accident occurred or occupational disease was contracted: Cole 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? No.
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: See award.
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: N/A.
14. Nature and extent of any permanent disability: 0.
15. Compensation paid to-date for temporary disability: 0.
16. Value necessary medical aid paid to date by employer/insurer? \$847.42.
17. Value necessary medical aid not furnished by employer/insurer? 0.
18. Employee's average weekly wages: N/A.
19. Weekly compensation rate: \$620.83/\$329.42.

Employee: Jason Dodson

Injury No. 02-047268

20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

21. Amount of compensation payable: 0.

22. Second Injury Fund liability: 0.

23. Future requirements awarded: 0.

Employee: Jason Dodson

Injury No. 02-047268

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

Employee: Jason Dodson

Injury No: 02-047268

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Von Hoffmann Press, Inc.

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party:

Insurer: Sentry Insurance

Checked by: HDF/tmt

## **ISSUES DECIDED**

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on August 25, 2009, and the record was left open until September 9, 2009. Memoranda were submitted by September 11, 2009.

The parties stipulated that on or about March 13, 2002, the claimant was in the employment of Von Hoffmann Press, Inc. The employer was operating under the provisions of the Missouri workers' compensation law; the employers' liability for workers' compensation was insured by Sentry Insurance. The employer had notice of the alleged injury and a claim for compensation was timely filed. The compensation rate applicable to this claim is \$620.83 per week for permanent total disability benefits and \$329.42 per week for permanent partial disability benefits. No temporary disability benefits have been provided; medical benefits have been provided in the amount of \$847.42.

The issues to be resolved by hearing include 1) the occurrence of an accident or occupational disease, 2) the medical causation of the injuries alleged, 3) the liability of the employer/insurer for past medical treatment, 4) the liability of the employer/insurer for past temporary disability benefits from November 8, 2002, through March 10, 2003; 5) the liability of the employer/insurer for permanent total disability benefits (permanent total disability is alleged), 6) the liability of the Second Injury Fund, 7) the liability of the employer/insurer for future medical treatment, and 8) the issue of dependency.

## **FINDINGS OF FACT**

The claimant, Jason Dodson, in his late 30's as of the date of the hearing of this claim, is a high school graduate with some additional vocational training in diesel mechanics and completion of two college courses in the early 2000s.

Mr. Dodson began working at Von Hoffmann Press, Inc. (Von Hoffmann) in 1993; prior to that, he changed oil at a Chrysler dealership in Eldon. Mr. Dodson's last day of employment for Von

Employee: Jason Dodson

Injury No. 02-047268

Hoffmann was March 10, 2003. Mr. Dodson's work at Von Hoffmann has included work as a utility worker, carton printer, machine operator, and running a trimming machine. Mr. Dodson last worked as a utility worker for a little over a year; in this job, he threw bales of paper, boxed books, and worked with a book feeder. A bale of paper was about three feet long and weighed between 60 and 107 pounds; a bale had 500 books in it and Mr. Dodson would throw as many as five bales an hour. Stacking book boxes involved handling about 100 45-pound boxes per hour. Mr. Dodson worked for about a year-and-a-half as a carton printer where he would take 30-pounds of cartons at a time and feed them into a printer where the box contents and the company logo would be printed onto the cartons. As a machine operator Mr. Dodson put hard covers on books and lifted 50-pound boxes of dried glue. Mr. Dodson also ran two types of trimming machines, one of which was manual, which Mr. Dodson set up, as well as the newer trimmer, which required no set up and just required quality control observation. Mr. Dodson usually worked 12-hour days, six days of the week; in the busy season he would work 12-hour days, 72 days straight.

With regard to the March 13, 2002, claim, Mr. Dodson discussed having neck complaints over time beginning with problems when he coughed or sneezed in 2001. Mr. Dodson complained of having shooting pains into his forearms and hands, as well as a burning sensation. When Mr. Dodson reported his problems to Von Hoffmann, they initially sent him to Dr. Wolfmeier, who diagnosed neck problems. Mr. Dodson then went to see Dr. Blake Rodgers on his own.

On August 29, 2002, Mr. Dodson sustained an injury to his neck when a 50-pound metal door came off of the trimmer he was working on and struck him on the left side of the head, pushing his head so that his right ear hit his right shoulder. The door fell a distance of about four feet when it hit Mr. Dodson's head. Mr. Dodson reported his injury and was seen at Capital Regional Medical Center and then returned to Dr. Rodgers for treatment.

Dr. Rodgers' notes of July 9, 2002, refer to Mr. Dodson's complaints 18 months prior of "having some shooting pains down his arms, but now it is fairly consistent, particularly when he sneezes." Dr. Rodgers' notes also include an MRI of Mr. Dodson's cervical spine without contrast dated July 15, 2002, read by Dr. Jeffrey Patrick. The "findings" include the following statements: "At C4-C5, mild disc bulging is present. At C5-C6, mild disc bulging and a small central disc protrusion are present. The C6-C7 and C7-T1 levels are negative." The "impression" is 1) mild disc bulging and a small central disc protrusion are present at C6-C7. 2) mild disc bulging C4-C5."

Dr. Rodgers initially operated on Mr. Dodson's cervical spine in November of 2002, operating at the C6-7 level of the cervical spine. Dr. Rodgers performed an anterior cervical discectomy with bilateral osteophytectomies and foraminotomy at C6-7, with fusion at C7 using fibular allograft, a custom demineralized bone protein and a plate. Dr. Rodgers' operative notes include the statements that "Mr. Dodson is an old friend who, quite a while ago, began having trouble with his neck and both arms. When he would sneeze he had symptoms like ???????? (sic) phenomenon where he had electric shocks shooting down his arms." The operative note prepared by Dr. Rodgers in conjunction with the November 8, 2002, surgery reflects a "discectomy was performed at C6-7 with bilateral osteophytectomies and foraminotomies. There was a rent in the

Employee: Jason Dodson

Injury No. 02-047268

posterior longitudinal ligament. A very small amount of dense material had propagated through. The ????????? (sic) was opened and the neural elements well decompressed.”

Dr. Rodgers’ records also include an MRI performed on January 7, 2004, again read by Dr. Patrick. The findings reflect that “at C5-C6, a moderate broad-based right paracentral disc herniation as (sic) developed since 07/02.”

Dr. Rodgers then operated again at the C5-6 level in April of 2004. Dr. Rodgers performed an anterior cervical discectomy and bilateral osteophylectomies and foraminotomies of C5-C6 and a fusion of C5-C7 using a cage, local reamings, demineralized bone matrix, and zenith plate applications. The operative notes from that surgery include the following excerpt from the “Indication for Surgery”: “Mr. Dodson is a gentleman who had a C6-C7 discectomy and anterior fusion done some years ago. He went on to successful relief of his symptoms and did very well for a while. Then he herniated the disc above (sic) the C5-C6 disc and was very debilitated by his symptoms.”

Dr. Mark Lichtenfeld, M.D., testified by deposition that he is a family physician. Dr. Lichtenfeld evaluated Mr. Dodson on December 16, 2004, and on January 8, 2009. Dr. Lichtenfeld testified that “clearly the mechanism of injury, the activities that he was doing, the fact that he chronically bent over, twisted and turned, lifted heavy boxes, had to lift these things to the chest level over and over again throughout the day off and on, grasping things in awkward positions, that’s the issue at hand, and that clearly did cause...was enough to cause the repetitive trauma that caused his foot and neck injury.”

In his first deposition, Dr. Lichtenfeld opined that Mr. Dodson sustained another disc herniation on August 29, 2002, based on his comparison of the July 2002 and January 2004 MRIs, saying that because there was no disc herniation at the C5-C6 level in July of 2002, and there was one in January of 2004, it must have been caused by the accident of August 29, 2002. In his second deposition, Dr. Lichtenfeld acknowledged that it is “fairly common” to need a fusion above or below a previously fused disc.

Dr. Lichtenfeld rated Mr. Dodson’s permanent disability as the result of his cervical injury from cumulative trauma in March of 2002 at 32.5 percent of the body. As the result of the August 29, 2002, cervical injury, Dr. Lichtenfeld opined to a 32.5 percent permanent partial disability. In both cases, Dr. Lichtenfeld opined that Mr. Dodson’s injuries were work related and that they combined with Mr. Dodson’s preexisting disabilities to create a combination of disabilities greater than their simple sum, although he found Mr. Dodson to be incapable of work after the August 29, 2002, injury.

Dr. Lichtenfeld testified that Mr. Dodson’s medical treatment following both injuries was reasonable and necessary.

Dr. Patrick Hogan, M.D., physician specializing in neurology and psychiatry, issued a report dated November 22, 2005, along with an October 17, 2005, “film review” describing the MRIs he reviewed in Mr. Dodson’s case. Dr. Hogan was deposed on June 23, 2006, and again on August 10, 2009. Dr. Hogan opined that Mr. Dodson has degenerative disc disease “from C3

Employee: Jason Dodson

Injury No. 02-047268

through C7 with a spur and bulge complex at C4-5, C5-6 and C6-7. In other words, there's a spur and bulge complex there. There's no evidence of disk herniation at all." With regard to the role of sneezing in Mr. Dodson's development of neck problems, Dr. Hogan testified that while degenerative disc disease does not necessarily lead to disc herniation, a disc herniation can develop as the result of a raise in "inner nuclear pressure acutely or suddenly. So coughing or sneezing is possible to cause disk herniation and it's possible not to cause disk herniation. It's just a fluke, you know." Dr. Hogan reviewed the July 15, 2002 MRI taken of Mr. Dodson's neck and found there to be no operable lesion there. Dr. Hogan described it as a disc bulge and stated that the "Congress of Neurosurgery states that you should not operate on a disk bulge." Dr. Hogan found, based on the July 15, 2002 MRI, that Mr. Dodson had degenerative spondylosis at all levels from C4 through C7, and opined that this condition was unrelated to his work. Dr. Hogan went on to opine that Mr. Dodson's operation at the C5-C6 level was because of degenerative changes brought on by the fusion at C6-C7. Dr. Hogan also reviewed Mr. Dodson's MRIs taken on January 6 or 7, 2004, and April 9, 2004.

Records of the Jefferson City Medical Group document Mr. Dodson's complaints of neck pain in May of 2000, when he told Dr. DeSelms, D.O., D.C., that this pain "has been going on for years. More recently he has noted some pain shooting down both arms with sneezing. This has occurred for the last few months."

Records of Capital Region Medical Center include Mr. Dodson's emergency room visit of August 29, 2002. The records indicate Mr. Dodson's complaints of head and neck pain after being hit on the left side of the head by a door at work. A medical imaging report shows "disc space narrowing present at C3-C4, C4-C5, and C5-C6 and to a lesser degree, the C6-7 level. The patient has no evidence of a discreet fracture. There is no evidence of prevertebral soft tissue swelling." The "impression" includes "intervertebral disc degenerative disease within the midcervical spine."

### **APPLICABLE LAW**

RSMo, Section 287.020.3 (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

- (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and
- (b) It can be seen to have followed as a natural incident of the work; and
- (c) It can be fairly traced to the employment as a proximate cause; and

Employee: Jason Dodson

Injury No. 02-047268

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

**AWARD**

The claimant, Jason Dodson, has failed in his burden of proof that he has an occupational disease caused by his work at Von Hoffmann Press, Inc. There is no question that Mr. Dodson suffered from cervical pain and that Dr. Rodgers operated on Mr. Dodson's neck in an attempt to alleviate his pain. Mr. Dodson himself testified that his neck problems were precipitated by sneezing or coughing many months before March of 2002. The medical records of Dr. DeSelms, with the Capital Region Medical Center, and the records of Dr. Rodgers, the surgeon who operated on Mr. Dodson, both treating doctors, bear out this origin of neck pain. The only physician who causally connected the work at Von Hoffmann to the neck pain was Dr. Lichtenfeld, a family physician who evaluated Mr. Dodson. The activities described by Dr. Lichtenfeld as the alleged cause of Mr. Dodson's neck pain, i.e., bending, twisting, turning, repetitive lifting to chest level, awkward positioning while grasping, are not activities that on their face appear to be related to neck problems. Dr. Rodgers, Mr. Dodson's orthopedic surgeon, did not opine to the relationship between Mr. Dodson's work at Von Hoffmann and his neck complaints. Dr. Hogan, a neurologist, testified that Mr. Dodson suffers from degenerative disc disability rather than a work-related injury. In this case, I find Dr. Lichtenfeld's testimony to lack credibility.

All other issues raised for resolution are hereby rendered moot.

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

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

HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson

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

Injury No.: 02-089107

Employee: Jason Dodson  
Employer: Von Hoffmann Press, Inc.  
Insurer: Sentry Insurance  
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 November 6, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued November 6, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23<sup>rd</sup> day of September 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Jason Dodson

Injury No. 02-089107

Dependents: N/A

Employer: Von Hoffmann Press, Inc.

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: N/A

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Insurer: Sentry Insurance

Hearing Date: August 25 & September 9, 2009

Checked by: HDF/tmt

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: August 29, 2002.
5. State location where accident occurred or occupational disease was contracted: Cole 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: See award.
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: Neck.
14. Nature and extent of any permanent disability: 0.
15. Compensation paid to-date for temporary disability: \$959.39.
16. Value necessary medical aid paid to date by employer/insurer? 0.
17. Value necessary medical aid not furnished by employer/insurer? 0.
18. Employee's average weekly wages: N/A.
19. Weekly compensation rate: \$620.83/\$340.12.

Employee: Jason Dodson

Injury No. 02-089107

20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

21. Amount of compensation payable: 0.

22. Second Injury Fund liability: 0.

23. Future requirements awarded: 0.

Employee: Jason Dodson

Injury No. 02-089107

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

Employee: Jason Dodson

Injury No: 02-089107

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Von Hoffmann Press, Inc.

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party:

Insurer: Sentry Insurance

Checked by: HDF/tmt

## **ISSUES DECIDED**

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on August 25, 2009, and the record was left open until September 9, 2009. Memoranda were submitted by September 11, 2009.

The parties stipulated that on or about August 29, 2002, the claimant was in the employment of Von Hoffmann Press, Inc. The employer was operating under the provisions of the Missouri workers' compensation law; the employers' liability for workers' compensation was insured by Sentry Insurance. The employer had notice of the alleged injury and a claim for compensation was timely filed. The compensation rate applicable to this claim is \$620.83 per week for permanent total disability benefits and \$340.12 per week for permanent partial disability benefits. No temporary disability benefits have been provided; medical benefits have been provided in the amount of \$959.39.

The issues to be resolved by hearing include 1) the occurrence of an accident or occupational disease, 2) the medical causation of the injuries alleged, 3) the liability of the employer/insurer for past medical treatment, 4) the liability of the employer/insurer for past temporary disability benefits from November 8, 2002, through March 10, 2003; 5) the liability of the employer/insurer for permanent total disability benefits (permanent total disability is alleged), 6) the liability of the Second Injury Fund, 7) the liability of the employer/insurer for future medical treatment, and 8) the issue of dependency.

## **FINDINGS OF FACT**

The claimant, Jason Dodson, in his late 30's as of the date of the hearing of this claim, is a high school graduate with some additional vocational training in diesel mechanics and completion of two college courses in the early 2000s.

Mr. Dodson began working at Von Hoffmann Press, Inc. (Von Hoffmann), in 1993; prior to that he changed oil at a Chrysler dealership in Eldon. Mr. Dodson's last day of employment for Von

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Hoffmann was March 10, 2003. Mr. Dodson's work at Von Hoffmann has included work as a utility worker, carton printer, machine operator, and running a trimming machine. Mr. Dodson last worked as a utility worker for a little over a year; in this job he threw bales of paper, boxed books, and worked with a book feeder. A bale of paper was about three feet long and weighed between 60 and 107 pounds; a bale had 500 books in it and Mr. Dodson would throw as many as five bales an hour. Stacking book boxes involved handling about 100 45-pound boxes per hour. Mr. Dodson worked for about a year-and-a-half as a carton printer, where he would take 30 pounds of cartons at a time and feed them into a printer, where the box contents and the company logo would be printed onto the cartons. As a machine operator, Mr. Dodson put hard covers on books and lifted 50 pound boxes of dried glue. Mr. Dodson also ran two types of trimming machines, one of which was manual which Mr. Dodson set up, as well as the newer trimmer, which required no set up and just required quality control observation. Mr. Dodson usually worked 12-hour days, six days of the week; in the busy season, he would work 12-hour, days 72 days straight.

With regard to the March 13, 2002, claim, Mr. Dodson discussed having neck complaints over time, beginning with problems when he coughed or sneezed, in 2001. Mr. Dodson complained of having shooting pains into his forearms and hands, as well as a burning sensation. When Mr. Dodson reported his problems to Von Hoffmann, they initially sent him to Dr. Wolfmeier, who diagnosed neck problems. Mr. Dodson then went to see Dr. Blake Rodgers on his own.

On August 29, 2002, Mr. Dodson sustained an injury to his neck when a 50 pound metal door came off of the trimmer he was working on and struck him on the left side of the head, pushing his head so that his right ear hit his right shoulder. The door fell a distance of about four feet when it hit Mr. Dodson's head. Mr. Dodson reported his injury and was seen at the emergency room at Capital Regional Medical Center, twice at Capital region Health Branch where a contusion of the left scalp and a history of C<sup>4</sup>-C<sup>7</sup> disc disease was noted and then returned to Dr. Rodgers for treatment.

Dr. Rodgers' notes of July 9, 2002, refer to Mr. Dodson's complaints 18 months prior of "having some shooting pains down his arms, but now it is fairly consistent, particularly when he sneezes." Dr. Rodgers' notes also include an MRI of Mr. Dodson's cervical spine without contrast dated July 15, 2002, read by Dr. Jeffrey Patrick. The "findings" include the following statements: "At C4-C5, mild disc bulging is present. At C5-C6, mild disc bulging and a small central disc protrusion are present. The C6-C7 and C7-T1 levels are negative." The "impression" is 1) mild disc bulging and a small central disc protrusion are present at C6-C7. 2) mild disc bulging C4-C5."

Dr. Rodgers initially operated on Mr. Dodson's cervical spine in November of 2002, operating at the C6-7 level of the cervical spine. Dr. Rodgers performed an anterior cervical discectomy with bilateral osteophylectomies and foraminotomy at C6-7, with fusion at C7 using fibular allograft, a custom demineralized bone protein and a plate. Dr. Rodgers' operative notes include the statements that "Mr. Dodson is an old friend who, quite a while ago, began having trouble with his neck and both arms. When he would sneeze he had symptoms like ????????? (sic) phenomenon where he had electric shocks shooting down his arms." The operative note prepared by Dr. Rodgers in conjunction with the November 8, 2002, surgery reflects a "discectomy was

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performed at C6-7 with bilateral osteophytectomies and foraminotomies. There was a rent in the posterior longitudinal ligament. A very small amount of dense material had propagated through. The ???????? (sic) was opened and the neural elements well decompressed.”

Dr. Rodgers’ records also include an MRI performed on January 7, 2004, again read by Dr. Patrick. The findings reflect that “at C5-C6, a moderate broad-based right paracentral disc herniation as (sic) developed since 07/02.”

Dr. Rodgers then operated again at the C5-6 level in April of 2004. Dr. Rodgers performed an anterior cervical discectomy and bilateral osteophytectomies and foraminotomies of C5-C6 and a fusion of C5-C7 using a cage, local reamings, demineralized bone matrix and zenith plate applications. The operative notes from that surgery include the following excerpt from the “Indication for Surgery”: “Mr. Dodson is a gentleman who had a C6-C7 discectomy and anterior fusion done some years ago. He went on to successful relief of his symptoms and did very well for a while. Then he herniated the disc above (sic) the C5-C6 disc and was very debilitated by his symptoms.”

Dr. Mark Lichtenfeld, M.D., testified by deposition that he is a family physician. Dr. Lichtenfeld evaluated Mr. Dodson on December 16, 2004, and on January 8, 2009. Dr. Lichtenfeld testified that “clearly the mechanism of injury, the activities that he was doing, the fact that he chronically bent over, twisted and turned, lifted heavy boxes, had to lift these things to the chest level over and over again throughout the day off and on, grasping things in awkward positions, that’s the issue at hand, and that clearly did cause...was enough to cause the repetitive trauma that caused his foot and neck injury.”

In his first deposition, Dr. Lichtenfeld opined that Mr. Dodson sustained another disc herniation on August 29, 2002, based on his comparison of the July 2002 and January 2004 MRIs, saying that because there was no disc herniation at the C5-C6 level in July of 2002, and there was one in January of 2004, it must have been caused by the accident of August 29, 2002. In his second deposition, Dr. Lichtenfeld acknowledged that it is “fairly common” to need a fusion above or below a previously fused disc.

Dr. Lichtenfeld rated Mr. Dodson’s permanent disability, as the result of his cervical injury from cumulative trauma in March of 2002, at 32.5 percent of the body. As the result of the August 29, 2002, cervical injury, Dr. Lichtenfeld opined to a 32.5 percent permanent partial disability. In both cases, Dr. Lichtenfeld opined that Mr. Dodson’s injuries were work related and that they combined with Mr. Dodson’s preexisting disabilities to create a combination of disabilities greater than their simple sum, although he found Mr. Dodson to be incapable of work after the August 29, 2002, injury.

Dr. Lichtenfeld testified that Mr. Dodson’s medical treatment following both injuries was reasonable and necessary.

Dr. Patrick Hogan, M.D., physician specializing in neurology and psychiatry, issued a report dated November 22, 2005, along with an October 17, 2005, “film review” describing the MRIs he reviewed in Mr. Dodson’s case. Dr. Hogan was deposed on June 23, 2006, and again on

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August 10, 2009. Dr. Hogan opined that Mr. Dodson has degenerative disc disease “from C3 through C7 with a spur and bulge complex at C4-5, C5-6 and C6-7. In other words, there’s a spur and bulge complex there. There’s no evidence of disk herniation at all.” With regard to the role of sneezing in Mr. Dodson’s development of neck problems, Dr. Hogan testified that while degenerative disc disease does not necessarily lead to disc herniation, a disc herniation can develop as the result of a raise in “inner nuclear pressure acutely or suddenly. So coughing or sneezing is possible to cause disk herniation and it’s possible not to cause disk herniation. It’s just a fluke, you know.” Dr. Hogan reviewed the July 15, 2002, MRI taken of Mr. Dodson’s neck and found there to be no operable lesion there. Dr. Hogan described it as a disc bulge and stated that the “Congress of Neurosurgery states that you should not operate on a disk bulge.” Dr. Hogan found, based on the July 15, 2002, MRI, that Mr. Dodson had degenerative spondylosis at all levels from C4 through C7, and opined that this condition was unrelated to his work. Dr. Hogan went on to opine that Mr. Dodson’s operation at the C5-C6 level was because of degenerative changes brought on by the fusion at C6-C7. Dr. Hogan also reviewed Mr. Dodson’s MRIs taken on January 6 or 7, 2004, and April 9, 2004.

Records of the Jefferson City Medical Group document Mr. Dodson’s complaints of neck pain in May of 2000, when he told Dr. DeSelms, D.O., D.C., that this pain “has been going on for years. More recently he has noted some pain shooting down both arms with sneezing. This has occurred for the last few months.”

Records of Capital Region Medical Center include Mr. Dodson’s emergency room visit of August 29, 2002. The records indicate Mr. Dodson’s complaints of head and neck pain after being hit on the left side of the head by a door at work. A medical imaging report shows “disc space narrowing present at C3-C4, C4-C5, and C5-C6 and to a lesser degree, the C6-7 level. The patient has no evidence of a discreet fracture. There is no evidence of prevertebral soft tissue swelling.” The “impression” includes “intervertebral disc degenerative disease within the midcervical spine.”

### **APPLICABLE LAW**

RSMo, Section 287.020.3 (1) In this chapter the term “injury” is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

Employee: Jason Dodson

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(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

**AWARD**

The claimant, Jason Dodson, has failed in his burden of proof that the cause of the injury alleged to his cervical spine was his accident of August 29, 2002, while employed by Von Hoffmann Press, Inc. There was no substantive treatment for the August 29, 2002, accident beyond an emergency room visit and two follow-up visits. Dr. Rodgers never referred to the August 29, 2002, accident as a factor in his treatment of Mr. Dodson. Mr. Dodson, himself, testified that his neck problems were precipitated by sneezing or coughing many months before August 29, 2002. The medical records of Dr. DeSelms with the Capital Region Medical Center and the records of Dr. Rodgers, the surgeon who operated on Mr. Dodson, both treating doctors, bear out this origin of Mr. Dodson's neck pain. The only physician who causally connected the August 29, 2002, work accident at Von Hoffmann to the neck pain was Dr. Lichtenfeld, a family physician who evaluated Mr. Dodson. Dr. Lichtenfeld's analysis that the accident of August 29, 2002, must have resulted in a disc herniation at the C5-C6 level, because it is identified in an MRI taken well over a year after the August 29, 2002, accident is in conflict with Dr. Rodgers' analysis of Mr. Dodson's second herniation *after* the surgery for the initial herniation. Since Dr. Rodgers performed the first surgery after August 29, 2002, it is not possible, using his analysis, that the August 29, 2002, accident caused another herniation. Dr. Rodgers' theory regarding the timing of the second herniation is found to be the more credible of the two.

All other issues raised for resolution are hereby rendered moot.

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

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

HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson