

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

Injury No.: 86-002115

Employee: Derrick Downing
Employer: Western Auto (Settled)
Insurer: Royal Insurance Company of America (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged January 24, 1986
Place and County of Accident: Alleged St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 17, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued August 17, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 9th day of January 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Derrick Downing

Injury No.: 86-002115

Dependents: N/A Before the
Division of Workers'
Employer: Western Auto (Settled) **Compensation**
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Royal Insurance Company of America (Settled)
Hearing Date: August 8, 2005 Checked by: CTL:tr

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: January 24, 1986
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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:
Tire blew up in Claimant's hands.
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: Head, face, teeth, right hand and arm, left hand and arm, neck, back, body as a whole
14. Nature and extent of any permanent disability: \$40,000.00 lump sum payment
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Derrick Downing Injury No.: 86-002115

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: N/A
20. Method wages computation: N/A

COMPENSATION PAYABLE

21. Amount of compensation payable: (Settled)
22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Derrick Downing	Injury No.: 86-002115
Dependents:	N/A	Before the
Employer:	Western Auto (Settled)	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
Insurer:	Royal Insurance Company of America (Settled)	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: CTL:tr

PREFACE

A hearing was held on the above-mentioned matter on August 8, 2005. The Claimant was pro-se and the Second Injury Fund was represented by Assistant Attorney General Da-Niel Cunningham.

ISSUE

1. Second Injury Fund liability.

EXHIBITS

The Claimant offered, and were accepted into evidence, the following exhibits:

Exhibit A. Claim on Reported Case.

Exhibit B. Second Injury Fund Answer.
Exhibit C. Workers' Compensation Statute.
Exhibit D. Notice of Mediation.
Exhibit E. Missouri Division of Workers' Compensation Printout.
Exhibit F. Missouri Division of Workers' Compensation Printout.
Exhibit G. Stipulation for Compromise Settlement.
Exhibit H. Stipulation for Compromise Settlement (yellow copy).
Exhibit I. Stipulation for Compromise Settlement.
Exhibit J. Claim for Compensation.
Exhibit K. Missouri's Second Injury Fund Brochure.
Exhibit L. Hearing Minute Sheet.
Exhibit M. Correspondence from Attorney David G. Hughes.
Exhibit N. Motion to Withdraw.
Exhibit O. Correspondence from Attorney David G. Hughes.
Exhibit P. Medical Report of Allen Sclaroff, DDS.
Exhibit Q. Transcript of Compromise Settlement.
Exhibit R. Application for Change of Judge.
Exhibit S. Correspondence from Attorney W.J. Glaser.
Exhibit T. Notice of Hearing.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

1. The Court took judicial notice of its file.
2. Claimant filed his Claim for Compensation in Injury Number 86-002115 on February 7, 1986. At that time there was no filing of a claim against the Second Injury Fund.
3. Claimant's Claim for Compensation against Employer was settled on January 26, 1988 for the lump sum of \$40,000.00. There was no Second Injury Fund claim filed.
4. Claimant, on May 19, 2005, filed a Second Injury Fund claim in the above-mentioned case. Said claim against the Second Injury Fund showed no previous injuries before the date of the original primary injury of January 24, 1986.

RULINGS OF LAW

1. Claimant's Second Injury Fund claim is time barred by §287.430 RSMo.

Date: _____ Made by: _____
Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation