

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

Injury No.: 05-065111

Employee: John Dreiman
Employer: Central Paper Stock Co., Inc. (Settled)
Insurer: Missouri Printing Industries (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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 29, 2008. The award and decision of Administrative Law Judge Margret D. Landolt, issued December 29, 2008, 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 24th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: John Dreiman

Injury No.: 05-065111

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

Dependents: N/A

Employer: Central Paper Stock Co., Inc. (Settled)

Additional Party: Second Injury Fund

Insurer: Missouri Printing Industries (Settled)

Hearing Date: October 15, 2008

Checked by: MDL

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
 - 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
 - Date of accident or onset of occupational disease: July 6, 2005
 - State location where accident occurred or occupational disease was contracted: Washington, 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
 - Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was involved in a motor vehicle accident
12. Did accident or occupational disease cause death? No

13. Part(s) of body injured by accident or occupational disease: Body as a whole – cervical spine, and bilateral Wrists

- Nature and extent of any permanent disability: 15% PPD of each wrist, and 30% PPD of the body as a whole referable to the cervical spine, and Permanent Total Disability Benefits from SIF due to combination of disability of primary injury with preexisting injuries

15. Compensation paid to-date for temporary disability: Unknown

16. Value necessary medical aid paid to date by employer/insurer? Unknown

Employee: John Dreiman

Injury No.: 05-065111

17. Value necessary medical aid not furnished by employer/insurer? Unknown

- Employee's average weekly wages: \$633.08

19. Weekly compensation rate: \$422.05/\$365.08

20. Method wages computation: wage statement

COMPENSATION PAYABLE

21. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:

Weekly differential \$56.97 payable by SIF for 172.5 weeks beginning January 1, 2008

And, thereafter, \$422.05 for Claimant's lifetime

Total: Indeterminate Lifetime Benefit

23. Future requirements awarded: None

Said payments to begin 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: Mr. James Krispin

FINDINGS OF FACT and RULINGS OF LAW:

Employee: John Dreiman

Injury No.: 05-065111

Dependents: N/A

Before the
Division of Workers'

Employer: Central Paper Stock Co., Inc. (Settled)

Compensation

Additional Party: Second Injury Fund (Only)

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

Insurer: Missouri Printing Industries (Settled)

Checked by: MDL

PRELIMINARIES

A hearing was held on October 15, 2008 at the Division of Workers' Compensation in the City of St. Louis, Missouri. John Dreiman ("Claimant") was represented by Mr. James Krispin. Central Paper Stock Co., Inc. ("Employer"), and its insurer Missouri Printing Industries, previously settled its liability with Claimant, and this case proceeded to hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General Da-Neil Cunningham. Mr. Krispin requested a fee of 25% of Claimant's award.

The parties stipulated that on or about July 6, 2005, Claimant was an employee of Employer, venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; and the claim was timely filed.

The issues for determination by hearing are: whether Claimant sustained an accident arising out of and in the course of employment on or about July 6, 2005; medical causation; nature and extent of permanent disability sustained by Claimant; whether Claimant is permanently and totally disabled; liability of SIF for permanent partial disability or permanent total disability benefits; and what is the appropriate rate of compensation.

SUMMARY OF EVIDENCE

Claimant is a 47 year old man who is currently unemployed. After graduating from high school, Claimant enlisted in the United States Navy, and served 18 months before receiving an honorable discharge. After serving in the Navy, Claimant returned to Missouri, where he performed heavy labor in a factory. In 1987, Claimant took a job as a prison guard, but was involved in a serious motor vehicle accident in which he sustained a right fractured femur and tibia/fibula which required multiple surgeries and hospitalizations, and required extensive internal fixation hardware. As a result of these injuries, Claimant received Social Security Disability benefits for 7 years. After his accident, Claimant could no longer run or kneel, ride a bicycle or walk distances. He walked with a limp, and had difficulty climbing ladders, and in and out of trucks.

In approximately 1994, after receiving additional education in the field of electronics, Claimant rejoined the work force, and eventually found work as a truck driver.

In 1995, Claimant was injured in a tornado, and broke 4 ribs. Following that accident, Claimant had aching with weather changes.

Claimant had a prior low back injury in which he had a crushed L-5 vertebrae. Claimant continued to have stiffness in his lower back that has worsened with age.

In approximately 1999, Claimant injured his left knee at work. He filed a workers' compensation claim which he settled for 15% of his left knee. After being released from treatment, Claimant's knee was sore, especially with weather changes.

In approximately 1999, Claimant injured his right shoulder at work. Claimant sustained a rotator cuff tear for which he received therapy. Following his shoulder injury, Claimant had difficulty working overhead, and climbing in and out of trucks.

Before working for Employer, Claimant had no problems with either hand. He had some stiffness in his neck before working for Employer, and sought some chiropractic treatment. He sprained his neck in approximately 1990, but it cleared up. Claimant had no treatment for his neck since approximately 2001.

In 2001 Claimant began working for Employer as a truck driver. His duties included Driving an 18 wheel tractor trailer. His load consisted of 2000 to 4000 pounds of paper. Claimant made local deliveries within 60 miles of St. Louis. Claimant made between 10 and 15 deliveries a day. Although Claimant testified he worked 40 to 80 hours a week including a lot of overtime, Claimant's Exhibit J reflects Claimant worked between 32 and 54.85 hours in the 13 weeks preceding the primary injury.

On July 6, 2005, Claimant was driving a tractor trailer on Highway 100 in Franklin County, near Washington, Missouri. Claimant was stopped in traffic, while a vehicle in front of him attempted to make a left hand turn. Claimant was leaning over attempting to light a cigarette, when he felt a big jolt, and his glasses flew off his face and landed on the floor. Initially Claimant thought his load had shifted. He attempted to drive, but his truck stalled. He started the truck again and drove approximately 75 yards, when he realized a car had rear ended his vehicle and was stuck underneath his truck.

Claimant immediately contacted his Employer, and began to notice stiffness and soreness in his neck and back that afternoon. The next morning he had difficulty moving. When he returned to work, he asked for medical treatment, and was referred to Barnes Care.

On July 7, 2005, Claimant reported to Barnes Care complaining of neck, left shoulder, arm, and right forearm pain. Claimant reported feeling some tingling in his left hand, and reported awakening on the evening of the accident to use the bathroom and had bilateral numbness in his hands, which, at the time of his examination was bilateral tingling. Claimant complained of neck stiffness, and numbness/spasm in his left shoulder blade. Claimant reported a history of prior motor vehicle accidents with wrist, back, leg and some neck injuries. Claimant was released to work with restrictions of limited bending and twisting of his neck, and activities that required quick head/neck movements. Claimant was prescribed medication, and was released to full duty on July 18, 2005, but returned to Barnes Care on August 18, 2005, with complaints of increased numbness and tingling in his left upper extremity and "dropping things". Claimant was again released to full duty.

On August 8, 2005, Claimant was working. As he was cranking the handle on his truck, due to weakness in his hand, he lost his grip, and the handle came back and struck him in the face, knocking him to the ground. Claimant was treated at Barnes Care. An x-ray of Claimant's jaw was negative. Claimant was prescribed medication, and was released to work without restrictions.

Claimant returned to Barnes Care again on August 25, 2005, complaining of persisting numbness and tingling which came on after his work accident. A nerve conduction study performed on August 24, 2005 revealed carpal tunnel syndrome. Claimant was again returned to work without restrictions, and was released from treatment.

Claimant saw his personal physician, Dr. Warren on September 26, 2005, complaining of numbness in his hands, and neck stiffness. An MRI was performed on October 15, 2005, which revealed a small left lateral herniation at C3-4, a moderate left lateral disc herniation at C5-6, a moderate to large left lateral herniation at C6-7, and a tiny central disc herniation at C7-T1. Dr. Warren referred Claimant to Dr. Polinsky, a neurosurgeon.

Claimant saw Dr. Polinsky on October 24, 2005. Dr. Polinsky did not think Claimant's hand numbness was related to his cervical disc herniations, but suspected carpal tunnel syndrome.

Claimant returned to Dr. Warren in March 2006 complaining of neck and arm pain and numbness in both of his hands. Dr. Warren referred Claimant to Dr. Chapel to determine if his hand numbness was related to his neck or to carpal tunnel syndrome. Dr. Chapel thought Claimant's hand symptoms were related to his neck injury.

Claimant continued to request additional treatment from Employer which was denied. A hardship hearing was

held in October 2006, and Administrative Law Judge Vacca found Claimant was entitled to further medical care including, but not limited to the diagnostic tests and medical care outlined by Dr. Volarich pertaining to carpal tunnel syndrome and injuries to the jaw. Judge Vacca was unable to determine based upon the evidence presented at that time if Claimant's cervical disc problems were work related. He stated further evidence might elucidate the issue.

Following the hardship hearing, Employer sent Claimant to Dr. Ollinger for his wrist injuries and Dr. Bernardi for his neck injuries. Neither doctor provided any treatment. In February and March 2007, Claimant underwent carpal tunnel release surgeries which were performed by Dr. Polinsky. In May 2007, Claimant underwent an anterior cervical discectomy with fusion and instrumentation at the C5-6, and C6-7 levels performed by Dr. Albanna. Claimant was released to work without restrictions.

These surgeries provided Claimant with relief, but he continued to deteriorate. His symptoms affected his ability to perform his job, and activities of daily living. Claimant had difficulty getting in and out of his truck. He stopped working overtime. It took him longer to perform his routes, and he had to ask for assistance. He began to take a board with him on his routes, and had to occasionally pull over and lay down on the board stretched across the two seats of his cab in order to alleviate his pain. Claimant had difficulty sleeping because of his pain. He had difficulty cutting his grass, and was no longer able to cut grass for his elderly neighbors. Bouncing around in his truck was painful. Eventually, Claimant could no longer perform the functions of his job, and was terminated from employment at the end of 2007, and has not worked since.

Claimant does not believe he can work. He is unable to sit or stand for very long. In a typical day it takes him a few minutes to get to the alarm clock. He has to lie down periodically throughout the day to relieve his pain. His hands are still weak, and he drops things.

Mr. David Welch, testified on behalf of Claimant. Mr. Welch became Claimant's next door neighbor approximately 2 -1/2 years ago after his parents died, and he moved in their house. Before Mr. Welch moved in, Claimant used to help Mr. Welch's parents with yard work. Before his accident, Claimant was active around his house, working on his car, barbequing, and working in his yard. Mr. Welch has noticed a change in Claimant since his July 2005 accident. He is no longer active outside, and has been a recluse since his accident.

Mr. Don Haley testified on behalf of Claimant. Mr. Haley is currently employed by Employer as a truck driver. Mr. Haley interacted with Claimant on a daily basis because their shifts overlapped. Claimant was slow before July 2005. He was slow walking and bending over. He had difficulty getting in and out of his truck, and used a block to rest his leg on. Claimant was a good employee who worked overtime. After the July 2005 accident, Claimant became progressively slower in performing his work tasks. He stopped working overtime and Saturdays.

Mr. Gordon Baumes testified on behalf of Claimant. He is a friend of Claimant's mother, and has known Claimant for approximately 17 years. At one point, Claimant lived with Mr. Baumes, and Claimant's mother. Before July 2005 Claimant's leg affected his ability to walk and get around, but he still did all his chores and functioned. Claimant changed the engine in his van, and painted his garage with Mr. Baumes's assistance. Claimant also performed routine yard work and household repairs including plumbing and electrical work. Since his July 2005 accident, Claimant has been unable to do chores around the house. Claimant's wife cuts the grass. On one occasion, Claimant's sewer pipe backed up, and Mr. Baumes testified Claimant would have easily been able to perform the repair before his work accident, but Mr. Baumes had to perform the repair for Claimant. Mr. Baumes testified there has been a significant change in Claimant since his July 2005 accident.

Mr. James Dunbar testified on behalf of Claimant. Mr. Dunbar is currently Employer's warehouse manager. He supervises all truck drivers, and was Claimant's supervisor. Claimant was considered one of the better workers. Mr. Dunbar was aware Claimant had previous leg injuries which affected his work before July 2005, although Claimant was able to perform his duties. After Claimant's July 2005 accident, he noticed a change in Claimant's job performance. Claimant became slower and slower, and it took him longer to finish up at the end of the day. Mr. Dunbar testified Claimant was putting in hours, but it just got too hard for Claimant to keep on working with his injuries. It gradually got worse until Claimant was terminated.

Dr. Volarich testified on behalf of Claimant. Dr. Volarich examined Claimant on multiple occasions, and diagnosed Claimant with C5-6, C6-7 disc herniations and bilateral carpal tunnel syndrome as a result of the July 6, 2005 work injury. He testified the work accident of July 6, 2005, was the substantial contributing factor, as well as the prevailing or primary factor causing the cervical disc herniations and bilateral upper extremity radicular symptoms. Dr. Volarich testified immediately after the accident, Claimant had bilateral hand pain, numbness and tingling, but became symptomatic from the accident, and it was unmasked and worse due to the many years of truck driving.

Dr. Volarich diagnosed the following preexisting injuries: left knee strain with posttraumatic degenerative arthritis; chronic lumbar syndrome; right fifth toe fracture, asymptomatic; right shoulder internal derangement, including fracture of the tubercle of the humeral head; torn rotator cuff; torn labrum and adhesive capsulitis, not surgically repaired; right forearm fracture, asymptomatic; comminuted right femur fracture extending into the knee joint, status post four surgical repairs with severe posttraumatic degenerative arthritis and knee joint contractures; comminuted right tibia/fibula fractures with right peroneal nerve palsy (foot drop), status post three separate surgical repairs with considerable ankle posttraumatic degenerative arthritis and calf weakness; and mild cervical syndrome secondary to degenerative disc disease; and degenerative joint disease without radicular symptoms.

Dr. Volarich rated Claimant's disability at 40% PPD of the body as a whole at the cervical spine due to the disc herniations and aggravation of disc osteophyte complexes at C5-6 and C6-7 that caused bilateral upper extremity radicular symptoms and paresthesias that required a two level anterior cervical discectomy with fusion and instrumentation at both of these levels. Dr. Volarich also diagnosed 35% PPD of each wrist as a result of the carpal tunnel syndrome. Dr. Volarich testified a 15% multiplicity factor should be added due to the combination of injuries involving the neck and both upper extremities.

With regard to Claimant's preexisting injuries, Dr. Volarich assigned the following ratings: 20% PPD of the right shoulder, 7.5% PPD of the body as a whole referable to the cervical spine for his prior cervical strain injuries and degenerative disc disease, 15% PPD of the body as a whole at the lumbosacral spine due to his lumbar strain and contusion, 20% PPD of the left knee due to his strain injury, 75% PPD of the right leg due to the tibia/fibula fracture, and 85% PPD of the right leg at the femur due to the comminuted fracture of the femur.

Dr. Volarich testified he had significant concerns about Claimant's ability to continue working, and he suggested if Claimant continued to work he should work in a sedentary job. He recommended a vocational assessment to determine if Claimant was capable of working in the open labor market.

Dr. Margolis, a neurologist, testified on behalf of Claimant. Dr. Margolis examined Claimant on August 12, 2008. Dr. Margolis testified in his opinion, Claimant's accident of July 2005 was the substantial prevailing factor exacerbating his preexisting cervical spine disease leading to the surgery performed by Dr. Albanna, and Claimant's activity as a trucker was the substantial prevailing factor in causing his carpal tunnel syndrome.

Mr. James England, a rehabilitation counselor testified on behalf of Claimant. Mr. England met with Claimant on November 13, 2007, and prepared a report. At the time Mr. England met with Claimant, he was still working. Mr. England testified based upon the restrictions imposed by Dr. Volarich, he did not believe Claimant would be able to function in a sedentary capacity because he would have to use his hands a lot, and a sedentary job would not allow him to lay down periodically. Mr. England testified with the combination of all the different medical problems he had, the chances of Claimant competing for or sustaining regular or full time employment were not likely. Mr. England testified Claimant would be unable to sustain employment.

Dr. Ollinger, a plastic surgeon, testified on behalf of the SIF. Dr. Ollinger examined Claimant on October 16, 2006. Dr. Ollinger testified Claimant's July 2005 accident was not a substantial factor for his bilateral carpal tunnel condition. Based upon the mechanism of injury, he opined the accident had no part in the development of his carpal tunnel syndrome. He identified Claimant morbidly obese status and history of smoking as risk factors in his development of carpal tunnel syndrome.

Dr. Robert Bernardi, a neurosurgeon, testified on behalf of Employer. Dr. Bernardi examined Claimant on November 7, 2006 and June 3, 2008. Dr. Bernardi testified Claimant's need for cervical spine surgery was not related

to his work accident of July 2005.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of the witnesses and Claimant at hearing, and the application of Missouri law, I find:

Claimant sustained a work accident arising out of and in the course of his employment on July 6, 2005. Claimant immediately reported the injury, and Employer provided medical treatment. The evidence is uncontroverted.

Claimant's work accident of July 2005 was the cause of Claimant's bilateral carpal tunnel syndrome, and need for surgery. I find the opinions of Dr. Volarich and Dr. Margolis more persuasive than Dr. Ollinger's. Dr. Ollinger did not believe the mechanism of injury could have caused Claimant to develop carpal tunnel syndrome. Dr. Volarich explained that Claimant's accident unmasked his hand symptoms, which were aggravated by years of truck driving. Claimant's upper extremity symptoms began the same day as the accident. Before the accident, Claimant had no upper extremity complaints. Dr. Volarich's opinion is persuasive, and is supported by the evidence. Dr. Margolis also found Claimant's work to be the substantial prevailing factor in causing Claimant's carpal tunnel syndrome.

Claimant's accident was also the medical cause of Claimant's neck symptoms and need for surgery. I find the opinions of Drs. Volarich and Margolis more persuasive and credible than that of Dr. Bernardi. The experts agree Claimant had preexisting degenerative changes in his cervical spine before the primary work accident, but Claimant was functioning well in his job, and there is no evidence of any treatment for neck complaints in the years preceding the accident. Claimant experienced immediate and progressively worsening symptoms related to his neck, beginning on the night of his work accident, which continued until Claimant underwent surgery. Drs. Volarich and Margolis both testified Claimant's work accident was the substantial and prevailing factor in causing his cervical radiculopathy, which resulted in the need for a cervical fusion.

Claimant is permanently and totally disabled, and unable to compete in the open labor market. I am persuaded by the opinion of Mr. England that Claimant is unable to perform a sedentary job in the open labor market. Because Claimant must take frequent rests throughout the day to control his pain, no employer would be able to accommodate him.

SIF is liable for permanent total disability benefits because Claimant's preexisting right leg and right shoulder injuries combined with the primary injury to render him permanently and totally disabled. Claimant sustained 15% PPD of each wrist as a result of his carpal tunnel syndrome, and 30% PPD of the body as a whole related to the cervical spine as a result of his cervical spine injury.

Claimant's right leg and shoulder injuries were a hindrance or obstacle to employment or re-employment before his July, 2005 accident. Following his leg injury, Claimant received Social Security Disability benefits for several years before he re-entered the work force. Claimant was able to perform his job reasonably well until the primary injury in 2005. Mr. Dunbar, Employer's warehouse manager testified Claimant's prior leg injury slowed him down before the primary injury, and affected his ability to work. After the work accident his work became progressively slower until he was no longer able to perform his job. The other witnesses corroborated Mr. Dunbar's observations. After Claimant's 2005 accident, he took a board with him on his routes and had to periodically rest to control his pain.

Claimant's average weekly wage is \$633.08. Claimant's Exhibit J, a wage statement, which was not disputed, indicates in the 13 weeks preceding his accident Claimant's gross wages were \$8,230.08. Therefore, Claimant is entitled to a PTD rate of \$422.05, and the maximum PPD rate of \$365.08.

CONCLUSION

Claimant is entitled to weekly PTD benefits from the SIF beginning on January 1, 2008. Claimant continued

to work through December 2007. Claimant is entitled to the weekly differential of \$56.97 for a period of 172.5 weeks, and thereafter, \$422.05 for Claimant's lifetime.

This award is subject to an attorney's lien of 25% in favor of Claimant's attorney Mr. James Krispin.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation