

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

Injury No.: 03-133769

Employee: Steven Dubinsky  
Employer: St. Louis Blues Hockey Club  
Insurer: Federal Insurance Company  
Date of Accident: January 28, 2003  
Place and County of Accident: Washington, D. C.

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 April 6, 2006. The award and decision of Administrative Law Judge Margaret D. Landolt, issued April 6, 2006, 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 7<sup>th</sup> day of September 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Steven Dubinsky

Injury No.: 03-133769

Dependents: N/A  
Employer: St. Louis Blues Hockey Club  
Additional Party: N/A  
Insurer: Federal Insurance Co.  
Hearing Date: January 30, 2006

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

Checked by: MDL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes, subject to credit
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 28, 2003
5. State location where accident occurred or occupational disease was contracted: Washington, DC
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:  
Employee was hit with a hockey stick while playing professional hockey.
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
14. Nature and extent of any permanent disability: 10% of the body as a whole
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$10,635.00

Employee: Steven Dubinsky Injury No.: 03-133769

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$17,500.00
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable:

40 weeks of permanent partial disability from Employer

\$13,604.80 \*

22. Second Injury Fund liability: No

TOTAL: -0-

\* Employer is entitled to a credit in the amount of \$13,604.80

23. Future requirements awarded: N/A

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:	Steven Dubinsky	Injury No.: 03-133769
Dependents:	N/A	Before the <b>Division of Workers'</b> <b>Compensation</b>
Employer:	St. Louis Blues Hockey Club	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Federal Insurance Co.	Checked by: MDL:tr

### PRELIMINARIES

A hearing was held on January 30, 2006, at the Division of Workers' Compensation in the City of St. Louis. Steven Dubinsky (Claimant) was represented by Mr. Bryan Round. St. Louis Blues Hockey Club (Employer) and its Insurer, Federal Insurance Company, were represented by Mr. John Kafoury. Mr. Round requested a fee of 25% of Claimant's award.

The parties stipulated that on or about January 28, 2003, Claimant was an employee of Employer, venue is proper in the City of St. Louis, the claim was timely filed, Claimant sustained an accidental injury that arose out of and in the course of his employment, and Claimant provided proper notice of the injury. The parties further stipulated that Claimant was earning an average weekly wage of \$17,500.00 resulting in applicable rates of compensation of \$649.32 for temporary total disability benefits and \$340.12 for permanent partial disability benefits. Employer continued Claimant's full wages after the injury. Employer also provided Claimant with \$10,635.00 in medical benefits.

The issues for determination in this hearing are nature and extent of Claimant's permanent partial disability; Employer's request for credits for benefits pursuant to §287.270 RSMo. (1998); and Employer's request for attorney's fees and costs pursuant to §287.560 RSMo.

### **FINDINGS OF FACT**

On January 28, 2003, Claimant was employed as a professional hockey player and was injured during a professional hockey game in Washington, DC. Claimant was struck by a hockey stick and sustained a concussion. Claimant testified that he received conservative care, and was unable to play for the next few weeks. In February, he returned to play two games but testified that he was still having problems with concentration and blurred vision. After that date, he missed the remainder of the professional hockey season. He was placed on the post-season roster but did not play.

Claimant was diagnosed with a concussion. He testified that he sustained at least two or three prior concussions during the course of his professional hockey career. Claimant had played hockey at the time of his injury for approximately twelve years for various professional hockey clubs.

Claimant testified that immediately after the date of injury of January 28, 2003, Employer continued his full wages pursuant to the provisions of his contract. (Exhibit 1). His contract of employment expired after December 31, 2003. Employer did not pick up his option for play for the 2003-2004 season. Claimant's contract called for payment to him in the amount of \$450,000.00 for the year 2002-2003 with a club option for 2003-2004.

Claimant asserts that even though he played two games after the date of incident, for the remainder of his contract, he was an employee of the St. Louis Blues Hockey Club, and he attended training sessions, practices and player appearances. Claimant testified that he did not sustain a period of temporary total disability after the incident. He continued to receive his full wages from Employer.

Throughout the season Claimant continued to receive conservative medical care. On November 10, 2004, Claimant obtained a rating from Dr. Ptito, a neurologist, of 10% of the body as a whole as a result of the accident. Claimant was also examined on August 23, 2005, by Dr. Peeples, a neurologist, who provided a rating of 8% of the body relating to the accident.

Claimant testified that he retired from hockey, although he is employed as a hockey teacher in Chicago. Claimant testified that as a result of this accident his overall demeanor has changed, and he has difficulty with his temper.

### **RULINGS OF LAW**

Claimant asserts he is entitled to permanent partial disability benefits. Employer asserts that §287.270 RSMo provides Employer with a full credit for wages paid after the injury for any and all benefits including permanent partial disability benefits based upon Claimant's status as a professional athlete at the time of the incident.

Section 287.270 RSMo reads:

“No savings or insurance of the injured employee, nor any benefits derived from any other source other than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder; except as provided in subsection 3 of 287.170, and employers of professional athletes under contract shall be entitled to full credit for wages or benefits paid to the employee after the injury including medical, surgical or hospital benefits paid to or for the employee or his dependents on account of the injury, disability or death pursuant to the provisions of the contract.” RSMo §287.270 (1998) (emphasis added).

This specific Missouri statute intentionally creates a credit on the employer's behalf for those wages paid out to a claimant who is a professional athlete pursuant to their employment contract after the injury. The credit is used to offset all benefits related to compensation the employee would otherwise be entitled to receive under the Workers' Compensation Act. Thus, so long as a professional athlete/claimant's post injury wages exceed the benefits the athlete would otherwise receive (following the work injury), the athlete/claimant is not entitled to additional Worker's Compensation benefits.

I find Claimant sustained a 10% permanent partial disability to the body as a whole for his concussion, and further find that Employer is entitled to a credit for salary paid, and Claimant is not entitled to any further benefits from Employer.

Claimant was a professional hockey player who was under contract with the St. Louis Blues at the time of his injury. Claimant continued to receive wages in the amount of \$241,442.83 pursuant to his employment contract after the date of accident. These payments are the funds that create the “credit” described under the statute against which Claimant's workers' compensation benefits will be assessed. The wages paid by Employer after the injury “pursuant to the provisions of the contract” more than take into account Claimant's right to benefits for medical expenses, temporary total disability, and permanent partial disability. Therefore, pursuant to §287.270 RSMo (1998), Employer is not liable for the payment of any additional benefits related to Claimant's injury. The player contract is very specific in that if Claimant is injured, Employer

shall pay his medical expenses and Employer shall be entitled to receive his remaining salary in accordance with the contract and for the remaining state or term of the contract.

Employer also requested that Claimant be liable to Employer for costs in the form of attorney's fees under §287.560 RSMo (2005). Section 287.560 RSMo provides that "if the Division or the Commission determines that if any proceedings have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so broad, prosecuted, or defended them." *Id.* Although I find that Claimant's constitutional argument is without merit, I do not find that it was brought without a reasonable ground.

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

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

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*

Employee: Steven Dubinsky

Injury No.: 03-133769