

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

Injury No.: 08-002266

Employee: William Dyson
Employer: D & D Distributors (Settled)
Insurer: Travelers (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 § 287.480 RSMo. Having reviewed the evidence, read the parties' briefs, 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated June 14, 2011, as supplemented herein.

The parties stipulated that the sole issue in this matter is the nature and extent of Second Injury Fund liability. Employee claims the Second Injury Fund is liable for enhanced permanent partial disability resulting from a combination of his January 2008 primary injury and a preexisting right ankle condition. Employee does not claim that he was suffering from any other preexisting conditions of ill at the time of the primary injury.

We agree with the administrative law judge that employee is not entitled to benefits from the Second Injury Fund because his preexisting right ankle condition was not sufficiently disabling to trigger Second Injury Fund liability under § 287.220.1 RSMo. The administrative law judge, however, failed to make a factual finding as to the actual extent of permanent disability employee suffered due to his preexisting right ankle condition.

Section 287.460.1 mandates that an award in a contested workers' compensation case be accompanied by findings of fact and conclusions of law. *Parrott v. HQ, Inc.*, 907 S.W.2d 236, 244 (Mo. App. 1995). The Missouri Supreme Court has declared that such statutory requirements "contemplate an unequivocal affirmative finding" as to what the pertinent facts are. *Michler v. Krey Packing Co.*, 253 S.W.2d 136, 142 (Mo. banc 1952).

Stegman v. Grand River Reg'l Ambulance Dist., 274 S.W.3d 529, 533 (Mo. App. 2008).

While we know that the administrative law judge believes employee's permanent partial disability of his right ankle does not meet the 15% major extremity threshold under § 287.220.1, this amounts to a conclusion of law rather than a factual finding, and

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leaves us guessing as to what the administrative law judge believed was the extent of permanent partial disability referable to employee's right ankle condition.

After carefully reviewing employee's testimony, the opinions of Dr. Volarich, and the treatment record, we find that employee suffered a 7.5% permanent partial disability of his right ankle at the time of the January 7, 2008, primary injury. Section 287.220.1 provides, in relevant part, as follows:

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 ...

Employee's preexisting right ankle condition constitutes a preexisting permanent partial disability of "a major extremity only," and thus must meet the 15% threshold under the foregoing section. Because employee's 7.5% preexisting permanent partial disability of the right ankle is insufficient to trigger Second Injury Fund liability for permanent partial disability, we affirm the administrative law judge's finding that employee failed to meet his burden of proof on the issue of Second Injury Fund liability.

We supplement the award of the administrative law judge with the foregoing findings and comments. In all other respects, we affirm the award.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued June 14, 2011, is attached hereto and incorporated herein to the extent not inconsistent with our findings in this supplemental opinion.

Given at Jefferson City, State of Missouri, this 8th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: William Dyson

Injury No.: 08-002266

Dependents: n/a

Employer: D&D Distributors (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Travelers (previously settled)

Hearing Date: March 28, 2011

Checked by: KMH

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 7, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis
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:
Claimant was moving barrels of beer when he twisted and injured his lumbar, thoracic, and cervical spine.
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: lumbar, thoracic, and cervical spine
14. Nature and extent of any permanent disability: 15% PPD to the neck, previously paid by Employer
15. Compensation paid to-date for temporary disability: \$3,289.23
16. Value necessary medical aid paid to date by employer/insurer? \$7,984.52

Employee: William Dyson

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$639.03/\$389.04
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

60 weeks of permanent partial disability from Employer (previously paid)

22. Second Injury Fund liability: No

TOTAL: NONE

23. Future requirements awarded: None

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:

James Haupt

FINDINGS OF FACT and RULINGS OF LAW:

Employee: William Dyson

Injury No.: 08-002266

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: D&D Distributors (previously settled)

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

Additional Party: SIF (only)

Insurer: Travelers (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter March 28, 2011. William Dyson (Claimant) was represented by attorney James Haupt. The Second Injury Fund (SIF) was represented by Assistant Attorney General Da-Niel Cunningham. D&D Distributors (Employer) and Claimant previously settled the primary claim in this matter.

STIPULATIONS

The parties stipulated to the following:

1. Claimant was injured by accident January 7, 2008, while in the course and scope of his employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by Travelers.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to entitle him to a PPD rate of \$389.04.
6. Claimant and Employer entered into a compromise lump sum settlement on December 30, 2008. The settlement was approved by the Division and represents 15% PPD to the neck.

ISSUES

The parties stipulated the issue to be resolved by trial is the nature and extent of SIF liability.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

1. Claimant is a 34 year-old male who is a warehouseman and driver for Employer. He loads and unloads approximately 180 half barrels and 2,500-3,500 cases of beer each day. He has worked for Employer for seven years. He sustained a compensable injury to his neck on January 7, 2008, when he was lifting a barrel of beer. He had extensive physical therapy, trigger point injections, and an MRI, the results of which are unknown.
2. Claimant continues to have pain in his neck and low back when standing or sitting for any length of time. He has pain in his right hip. He has no permanent restrictions and returned to work full time, but had difficulties. Some days he left work early due to pain in his neck.
3. In 2008 Claimant settled this case with Employer for 15% PPD to his neck.
4. Claimant injured his right foot in 2001 when he slipped in some mud and twisted his foot backwards. He was treated with steroid injections and physical therapy. He continues to have pain in his ankle when standing for long periods of time, when squatting, and with barometric pressure changes. The doctor prescribed orthotics, but they did not help because he needs support at the ankle. He testified he can't wear tennis shoes, and wears boots for ankle support. Claimant testified he missed a few days of work each month for the year after he was released from treatment.
5. Claimant testified his foot injury and neck injury combine to make it more difficult for him to climb in and out of the trucks at work. When he uses his right shoulder to lift himself into the truck, he has increased pain in his right foot. When he uses his left arm, he has increased low back pain. Claimant puts more weight on his left side and uses his low back and left shoulder more when lifting. His neck hurts when he drives the tow motor. When he walks all day, his foot hurts.
6. Claimant's medical expert, Dr. Volarich, examined him and rated his disabilities in 2009. He rated Claimant's disabilities at 15% of the thoracolumbar spine due to a strain/sprain, and 20% of the right ankle due to a strain and tendonitis. He opined the two injuries have a synergistic effect because the back injury limits his ability to stay in a prolonged fixed position which makes driving difficult; and the ankle injury makes it difficult to work the gas pedal.
7. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find Claimant has not established a right to recover PPD benefits from the SIF.

§287.220(1) RSMO (2005) requires the prior disabilities to equal a minimum of 15% PPD of the extremity in order to trigger SIF liability. Dr. Volarich rated Claimant’s ankle at 20% PPD, but had no medical records to review. He diagnosed Claimant with a strain and tendonitis. The medical records in evidence show minimal treatment and a diagnosis of ankle strain. Based on my review of the medical records, I find Claimant’s prior ankle injury does not meet the minimum statutory threshold, and there is no SIF liability.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

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

Injury No.: 08-061071

Employee: William Dyson
Employer: D & D Distributors (Settled)
Insurer: Travelers (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 § 287.480 RSMo. We have reviewed the evidence, read the briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the June 17, 2011, 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.

Introduction

The administrative law judge found the Second Injury Fund liable for 11.8 weeks of permanent partial disability benefits under § 287.220.1 RSMo. Employee filed an Application for Review arguing that the award is insufficient and that the administrative law judge should have considered his preexisting right ankle condition.

We agree that the administrative law judge improperly failed to include employee's preexisting right ankle condition in determining the extent of Second Injury Fund liability, but for somewhat different reasons than argued by employee. We are of the opinion that the administrative law judge applied an improper analysis both as to the thresholds for triggering Second Injury Fund liability and also in calculating the extent of Second Injury Fund liability. Because employee's Application for Review implicates that analysis, we write this opinion and modify the award and decision of the administrative law judge as follows.

Discussion

On page 5 of her award, the administrative law judge found that "[employee's] prior ankle injury did not meet the minimum statutory threshold to trigger SIF liability." This comment and the resulting award suggest the administrative law judge was of the opinion, that if one of a worker's preexisting disabling conditions, considered in isolation, fails to meet one of the thresholds in § 287.220.1, then that condition is ignored for all purposes when considering the liability of the Second Injury Fund. Such an approach has no support in the Missouri Workers' Compensation Law or in Missouri case law. We reject the administrative law judge's reasoning regarding the triggering of Second Injury Fund liability. Our analysis of the operation of the Second Injury Fund thresholds follows.

Purpose of the Second Injury Fund

The purpose of the Second Injury Fund is "to encourage the employment of individuals who are already disabled from a preexisting injury, regardless of the type or cause of that

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injury.” *Pierson v. Treasurer of Mo. As Custodian of the Second Injury Fund*, 126 S.W.3d 386, 390 (Mo. 2004) (citation omitted). The Second Injury Fund statute encourages such employment by ensuring that an employer is only liable for the disability caused by the work injury. Any disability attributable to the combination of the work injury with preexisting disabilities is compensated, if at all, by the Second Injury Fund.

Purpose of the thresholds

Before 1993, any preexisting disability that was a hindrance to employment or reemployment could open the door to possible Second Injury Fund liability. The Second Injury Fund statute was amended in 1993 to limit permanent partial disability awards against the Second Injury Fund to those cases where both the preexisting disabilities and the disabilities from the work injury are more than de minimis. The provision defining what disabilities will trigger Second Injury Fund liability now states:

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.

The thresholds found in the quoted provision serve to protect the Second Injury Fund from enhanced permanent partial disability claims of claimants with de minimis disabilities. And that is where the service of the thresholds ends. Section 287.220.1 goes on to say:

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

Employee: William Dyson

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disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund...(emphasis added).

Under the plain language of the statute, once it is determined that the thresholds are met, all disabilities that exist at the time of the work injury should be considered in the calculation of Second Injury Fund liability.

Application of the thresholds

The second threshold applies when a claimant has preexisting permanent partial disability of a single major extremity (“if a major extremity injury only”). In all other circumstances, the first threshold applies.

The legislature chose two different units of measurement to describe the thresholds: “fifty weeks of compensation” for preexisting disabilities of the body as a whole; and “fifteen percent permanent partial disability” for a preexisting disability to a major extremity only. We believe the legislature rested on different units of measurement to foster arithmetic simplicity.

Where a claimant has only a preexisting disability to a major extremity, the legislature made “a simple 15% disability to a major extremity the threshold rather than attempt a more complex formula based on weeks of disability to various body parts at various levels.” *Motton v. Outsource Int'l*, 77 S.W.3d 669, 675 (Mo. App. 2002).

But where there is more than one preexisting disability, the simplicity described above cannot be achieved. In that event, we need a method to combine the various disabilities to determine claimant’s overall preexisting disability as of the moment of the primary injury. In order to combine the disabilities for comparison to the threshold, the disabilities must be converted to a common unit of measure. The legislature selected weeks of compensation as the common unit of measure.

This claim

In the instant case, employee had more than a single preexisting disabling condition so the first threshold applies. We must determine if employee’s overall preexisting permanent partial disability – stated in weeks – meets or exceeds this amount.

We find appropriate and affirm the administrative law judge’s finding that employee suffered a preexisting permanent partial disability of 15% of the body as a whole referable to the cervical spine as a result of his neck injury in January 2008. We also find employee suffered a 7.5% permanent partial disability of the right ankle.

Converting employee’s preexisting disabilities into weeks of compensation yields the following results: 60 weeks for the neck and 11.63 weeks for the right ankle. The sum of the preexisting disabilities is 71.63 weeks. Employee has met the 50-week threshold.

We find that these preexisting conditions combine with employee’s primary injury to result in greater disability than the simple sum. We agree that a 10% load factor is appropriate to represent this synergistic effect. We also credit Dr. Volarich’s opinion

Employee: William Dyson

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(and so find) that employee's neck and right ankle conditions amounted to a hindrance or obstacle to employment at the time employee sustained the June 2008 primary injury in this matter.

We have found that employee's preexisting conditions amount to 71.63 weeks of permanent partial disability. Employee's primary injury resulted in 25% permanent partial disability of the right shoulder, or 58 weeks of permanent partial disability. The sum of these two amounts is 129.63 weeks. When we multiply the sum by the 10% load factor, the result is 12.96 weeks.

We conclude that the Second Injury Fund is liable for 12.96 weeks of permanent partial disability benefits.

Award

We modify the award of the administrative law judge as to the extent of Second Injury Fund liability.

The stipulated rate of compensation is \$389.04. The Second Injury Fund is liable to employee for \$5,041.96 in permanent partial disability benefits.

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 Kathleen M. Hart, issued June 17, 2011, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 8th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: William Dyson

Injury No.: 08-061071

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: D&D Distributors (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Travelers (previously settled)

Hearing Date: March 28, 2011

Checked by: KMH

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: June 23, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis
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:
Claimant was lifting a barrel of beer and injured his right shoulder.
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: right shoulder
14. Nature and extent of any permanent disability: 25% right shoulder, previously paid by Employer
15. Compensation paid to-date for temporary disability: \$5,717.97
16. Value necessary medical aid paid to date by employer/insurer? \$16,651.76

Employee: William Dyson

Injury No.: 08-061071

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$640.71/\$389.04
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

58 weeks of permanent partial disability from Employer	(previously paid)
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22. Second Injury Fund liability: Yes

11.8 weeks of permanent partial disability from Second Injury Fund	\$4,590.67
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TOTAL:	\$4,590.67
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23. Future requirements awarded: None

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:

James Haupt

FINDINGS OF FACT and RULINGS OF LAW:

Employee: William Dyson

Injury No.: 08-061071

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: D&D Distributors (previously settled)

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

Additional Party: SIF (only)

Insurer: Travelers (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter March 28, 2011. William Dyson (Claimant) was represented by attorney James Haupt. The Second Injury Fund (SIF) was represented by Assistant Attorney General Da-Niel Cunningham. D&D Distributors (Employer) and Claimant previously settled the primary claim in this matter.

STIPULATIONS

The parties stipulated to the following:

1. Claimant was injured by accident June 23, 2008, while in the course and scope of his employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by Travelers.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to entitle him to a PPD rate of \$389.04.
6. Claimant and Employer entered into a compromise lump sum settlement on September 9, 2009. The settlement was approved by the Division and represents 25% PPD to the right shoulder.

ISSUES

The parties stipulated the issue to be resolved by trial is the nature and extent of SIF liability.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

1. Claimant is a 34 year-old male who is a warehouseman and driver for Employer. He loads and unloads approximately 180 half barrels and 2,500-3,500 cases of beer each day. He has worked for Employer for seven years. He sustained a compensable injury to his right shoulder June 23, 2008, when he was loading a truck. He had therapy, injections, and ultimately an arthroscopic subacromial decompression.
2. Following his release from treatment, Claimant saw his personal physician for his shoulder and missed an additional five days of work. He continues to have decreased strength and mobility. He has a constant low-grade pain which worsens with any overhead lifting. He has difficulty lifting his child. He is unable to fish or hunt, and has difficulty doing yard work. He can't reach into his back pocket to get his wallet.
3. Claimant and Employer settled this case for 25% PPD to the right shoulder in 2009.
4. Claimant injured his low back, mid back, and neck on January 7, 2008, when he was lifting a barrel of beer. He had extensive physical therapy and trigger point injections. Claimant continues to have pain in his neck and low back when standing or sitting for any length of time. He has no permanent restrictions and returned to work full time, but had difficulties. Some days he left work early due to pain in his neck.
5. In 2008 Claimant settled this case with Employer for 15% PPD of the neck.
6. Claimant injured his right foot in 2001 when he slipped in some mud and twisted his foot backwards. He was treated with steroid injections and physical therapy. He continues to have pain in his ankle when standing for long periods of time, when squatting, and with barometric pressure changes. The doctor prescribed orthotics but they did not help because he needs support at the ankle. He testified he can't wear tennis shoes, and wears boots for ankle support. Claimant testified he missed a few days of work each month for the year after he was released from treatment.
7. Claimant testified his foot, neck, and shoulder injuries combine to produce a greater disability. It is more difficult for him to climb in and out of the truck now. When he uses his right shoulder to lift himself into the truck, he has increased pain in his right foot. When he uses his left arm, he has increased low back pain. He has to put all his weight on his left side and use his low back and left shoulder more when lifting. He is right handed. He uses his left side for lifting, stooping, and bending. His neck hurts when he drives the two motor.
8. Claimant's medical expert, Dr. Volarich, examined him and rated his disabilities in 2009. His findings are credible. He noted decreased motion in the shoulder, positive impingement, and clicking and popping. He opined Claimant had a component of frozen shoulder and rated Claimant's right shoulder at 65% PPD. He diagnosed Claimant with a thoracolumbar injury from the January 2008 accident, and rated his disability at 15% of

the thoracolumbar spine. He diagnosed Claimant with a preexisting ankle strain and tendonitis and rated him at 20% PPD of the ankle. He testified the three injuries combine to create a greater overall disability because Claimant now has difficulty sitting to drive, holding the steering wheel, and lifting the deliveries.

9. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find Claimant established a right to recover PPD benefits from the SIF.

I find Claimant’s prior ankle injury did not meet the minimum statutory threshold to trigger SIF liability.

Claimant’s prior injury was compromised with Employer and assigned permanent partial disability percentage of 15% of the body. This totals 60 weeks of disability. Based on the medical evidence and Claimant’s testimony, I find this percentage accurately reflects Claimant’s disability prior to his June 2008 work injury.

Claimant’s June 2008 injury was compromised with Employer for 25% of the right shoulder, for a total of 58 weeks of compensation. Based on the medical evidence and Claimant’s testimony, I find this percentage accurately reflects Claimant’s disability resulting from this injury.

The 2008 injuries each meet the statutory thresholds as set forth in §287.220(1) RSMO (2005). This section of the law also provides for compensation from the SIF when a claimant’s preexisting disabilities combine with his work injury to create a greater overall disability. From all the evidence presented, I find this combination is best represented by applying a 10% load factor. The sum of Claimant’s disabilities is 118 weeks. Applying a 10% load factor yields 11.8 weeks. At Claimant’s compensation rate, he is entitled to, and the SIF is hereby ordered to pay, \$4,590.67 in compensation.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation