

FINAL AWARD ALLOWING COMPENSATION  
(Pursuant to the Mandate of the Missouri Court of Appeals, Eastern District)

Injury No.: 94-199907

Employee: Kim Feld  
Employer: King O Tile (Settled)  
Insurer: Hartford Insurance Company (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: December 2, 1994

Place and County of Accident: St. Louis County, Missouri

On September 5, 2006, the Missouri Court of Appeals for the Eastern District (Court) issued an opinion reversing the December 21, 2005, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case. In particular, the Court held that the Commission's conclusion that employee's permanent total disability was caused exclusively by the 1994 injury (primary injury) was not warranted by substantial competent evidence in the record. By mandate issued November 2, 2006, the Court remanded this matter to the Commission for entry of an award in accordance with the Court's opinion delivered September 5, 2006. *Feld v. Treasurer of Mo.*, 203 S.W.3d 230 (Mo. App. E.D. 2006).

The parties filed post-mandate briefs and presented their oral arguments to the Commission.

Pursuant to the Court's opinion and mandate, we issue this award.

#### Discussion

Dr. Hanaway's report stated that employee has permanent total disability "mainly because of the low back trauma . . . [in] 1994" and that his total disability was "just based on his back, most of which is based on the 1994 accident." As concluded by the Court, Dr. Hanaway's statements alone do not establish that the last injury in and of itself must have rendered the employee permanently and totally disabled. To state that a condition was "mainly" or "most[ly]" caused by one factor necessarily implies that other factors also caused it, and that the primary factor did not act alone and of itself. Drs. Schoedinger and Feinberg both testified that employee's permanent total disability was a combination of previous injuries and the latest injury. See *Feld*, 203 S.W.3d at 233-234. Based upon the foregoing, we conclude that employee's permanent total disability is the result of the disability he suffered by the primary injury combined with the preexisting disabilities of his ankle, neck, and back.

Based upon the medical records and employee's testimony, we conclude that employee's preexisting disabilities constituted a hindrance or obstacle to employment. Accordingly, the Second Injury Fund is liable for the payment of permanent total disability benefits to employee after the payment of employer's obligation for permanent partial disability benefits. § 287.220.1 RSMo.

Dr. Berkin opined that due to the primary injury employee suffered a permanent partial disability of 60% of the body as a whole referable to the lumbar spine. Dr. Hanaway concluded that employee suffered a permanent partial disability of 80% of the body as a whole referable to the lumbar spine due to the primary injury. Dr. Feinberg testified that employee suffered a permanent partial disability of 75% of the body as a whole due to the primary injury. We find most credible and persuasive the opinion of Dr. Hanaway. Employee suffered a permanent partial disability of 80% of the body as a whole referable to the lumbar spine as a result of the primary injury (320 weeks).

The parties stipulate that employee reached maximum medical improvement on February 23, 1999.

Award

Beginning February 24, 1999, the Second Injury Fund is liable for 320 weekly installments of the \$226.90 differential between the permanent total disability rate (\$476.38) and the permanent partial disability rate (\$249.48). Thereafter, the Second Injury Fund shall pay to employee weekly payments of \$476.38 for her permanent total disability benefit for her lifetime or until modified by law.

John D. Schneider, Attorney at Law, is allowed a fee of 25% of the benefits awarded for necessary legal services rendered to employee, which shall constitute a lien on said compensation.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 9<sup>th</sup> day of May 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary