

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

Injury No.: 03-027182

Employee: Glenn Fernau  
Employer: City of Florissant  
Insurer: Missouri Rural Services Workers' Compensation Ins. Trust  
Self-Insured c/o CCMSI  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: March 22, 2003  
Place and County of Accident: St. Louis County, 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. We have heard the arguments of the parties, reviewed the evidence and considered the whole record. We find 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 of the administrative law judge dated April 14, 2006, by modified decision.

The administrative law judge found, "that the Employee, as a result of the primary injury of March 22, 2003, sustained permanent partial disability in the following amounts: 100% of the right upper extremity at the shoulder, 15% of the low back and hip, 25% of the body as a whole referable to the psychiatric mental condition, and a 10% of the body as a whole referable to the facial fractures and injuries." Based upon the evidence regarding employee's low back and hip problems, in particular employee's testimony regarding his difficulties walking and sleeping, we believe the disability is properly rated in relation to the body as a whole. Accordingly, we find the permanent partial disability attributable to employee's low back and hip is 5% of the body as a whole. The award of 392 weeks of permanent partial disability against employer remains unchanged. In all other respects, the decision of the administrative law judge is affirmed.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued April 14, 2006, is attached and incorporated by this reference, to the extent it is not inconsistent with our modification herein.

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 15<sup>th</sup> day of December 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Glenn Fernau Injury No.: 03-027182  
Dependents: N/A Before the  
Employer: City of Florissant **Division of Workers'**  
**Compensation**  
Department of Labor and Industrial  
Additional Party: Second Injury Fund Relations of Missouri  
Jefferson City, Missouri  
Insurer: Missouri Rural Services Workers' Compensation  
Insurance Trust, Self-Insured, c/o CCMSI  
Hearing Date: March 1, 2006 Checked by: CTL:tr

### 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: March 22, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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, a police officer, was checking a building at night when he fell down concrete steps.
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 arm at shoulder level, low back and hip, mental and facial fractures
14. Nature and extent of any permanent disability: Claimant is permanently and totally disabled
15. Compensation paid to-date for temporary disability: 34 weeks (33.7 weeks) at \$648.67 for a total of \$21,870.84
16. Value necessary medical aid paid to date by employer/insurer? \$102,944.63

Employee: Glenn Fernau Injury No.: 03-027182

17. Value necessary medical aid not furnished by employer/insurer? \$25,223.65
18. Employee's average weekly wages: \$973.00
19. Weekly compensation rate: \$648.67/\$340.12
20. Method wages computation: By agreement

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$25,223.65
392 weeks of permanent partial disability from Employer at \$340.12 per week	\$133,327.04

Employer to provide future psychiatric care for Claimant resultant from Claimant's injury of March 22, 2003, as well as future medical care for injuries Claimant sustained on March 23, 2003

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund: weekly differential (\$308.55) payable by SIF for 392 weeks beginning May 21, 2004, and thereafter \$648.67 for Claimant's lifetime	\$ *
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(\* denotes an uncertain contingent future benefit)

TOTAL:	\$158,550.69*
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23. Future requirements awarded:

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:

Cynthia Hennessey

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Glenn Fernau	Injury No.: 03-027182
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	City of Florissant	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Missouri Rural Services Workers' Compensation Insurance Trust, Self-Insured, c/o CCMSI	Checked by: CTL:tr

### PREFACE

On March 1, 2006, a hearing was held in the above-mentioned matter. The Claimant was represented by Attorney Cynthia Hennessey. The Employer/Insurer was represented by Attorney Paul Huck. The Second Injury Fund was represented by Assistant Attorney General Da-Niel Cunningham.

### STIPULATIONS

1. Employee, Glenn Fernau, on March 22, 2003, was a city police officer for the City of Florissant and sustained an accident arising out of and in the course of his employment.
2. Employer had notice of the Employee's accident and the Claim for Compensation was filed within the time allowed by law.
3. Employee's average weekly wage was \$973.00 per week with a compensation rate of \$648.67 TTD/PTD and \$340.12 for PPD.
4. Employer paid \$102,944.63 for medical for the Employee.
5. Employer paid TTD in the amount of \$21,870.84 for a healing period of 34 weeks from March 23, 2003 through November 16, 2003.

## ISSUES

1. Liability of the Employer for past medical bills of Employee;
2. Liability for TTD/PPD/PTD;
3. Liability of the Second Injury Fund, if any;
4. Employer's liability for future medical treatment for Employee; and
5. Attorney's lien of J. Patrick Chassaing and Pleban and Associates.

## EXHIBITS

The following exhibits were offered and admitted into evidence.

### Claimant's Exhibits:

- A. Letter from Injury Specialists.
- B. Deposition of Rachel Feinberg, M.D. (Volume I).
- C. Deposition of Rachel Feinberg, M.D. (Volume II).
- D. Deposition of Wayne Stillings, M.D.
- E. Deposition of James England.
- F. Deposition of Robert Margolis, M.D.
- G. Patient history.
- H. Customer history.
- I. Records of Dr. Glogovac.
- J. Florissant Police Department police report.
- K. Photographs.

### Employer's Exhibits:

1. Copy of Division of Workers' Compensation file (Injury No. 97-428707).
2. W. Stephen Knapp, D.O. office notes dated 7/17/02-8/20/02.
3. Christian Hospital Northeast admission dated 3/22/03-3/28/03.
4. W. Stephen Knapp, D.O. (primary care physician) records dated 3/22/03-4/7/03.
5. Martin B. Wice, M.D. (physiatrist) records dated 4/25/03-12/10/03.
6. Morris E. Hartstein, M.D. (oculoplastic surgeon) report dated 4/15/03.
7. Patrick Morris, D.D.S. (oral facial surgeon) records dated 4/25/03-7/22/03.
8. Laura L. Nieder, Ph.D./St. John's Mercy Medical Center Neuropsychology Department neuropsychological evaluation dated 5/8/03.
9. John J. Purcell, Jr., M.D. (ophthalmology surgeon) report dated 5/17/04.
10. G. Robert Kletzker, M.D./Ear Care & Skull Base Surgery, Inc. records dated 6/16/03-9/11/03.
11. William M. Hart, Jr., M.D./Washington University Eye Center report dated 8/4/03.
12. Michael P. Nogalski, M.D./Orthopedic Associates, L.L.C. records dated 5/16/03-10/3/03.
13. Gary W. Farley, D.O./Northland Mid America Orthopedics records dated 4/4/03-4/23/03.
14. Robert E. Tucker, M.D./St. Louis Orthopedic Institute records dated 4/17/03-4/21/04.
15. Rachel Feinberg, M.D./Injury Specialists records dated 6/15/05-10/8/05.
16. S. Vic Glogovac, M.D. record dated 8/12/05.
17. Michael P. Nogalski, M.D. dated 2/6/06.
18. Robert E. Tucker, M.D. dated 2/1/06.
19. John A. Gagnani, M.D. dated 2/2/06.
20. Patrick A. Hogan, M.D. dated 12/9/05.

21. Statement of Dr. Feinberg showing charges and payments.

22. Certified records of Division of Employment Security.

23. Certified records of Missouri Department of Conservation.\* (Exhibit 23 was taken under submission and offered by Employer pursuant to §490.180 R.S.Mo.)

24. Certified Transcript of Glennon R. Fernau from Lindenwood University for 2004-2005.

25. Private disability claim records of Prudential Insurance.

26. SSDI claim record.

## FINDINGS OF FACT

1. At the time of the hearing, the Claimant, Mr. Fernau, was 41 years of age and a right-hand dominant individual who was a police officer for approximately 14 years prior to his injury. On March 22, 2003, he fell down a flight of concrete stairs resulting in his injuries. Employee lost consciousness and eventually was taken from the scene of the fall by ambulance to Christian Hospital Northeast where he was diagnosed as having a jaw fracture, right orbital fracture, fifth cranial nerve injury, and seventh cranial nerve injury resulting in facial weakness and hypersensitivity, right upper extremity injuries including fracture of the right elbow, carpal tunnel syndrome, right wrist fracture and adhesive capsulitis of the right shoulder as well as hip and low back injuries. Claimant was further diagnosed with having mental/emotional trauma.
2. Employee was in the hospital for six days and remained off work until November 2003 when his Employer allowed him to return to work at light duty capacity. The Employer, City of Florissant, terminated the Employee's employment on May 21, 2004 because of the permanent restrictions that he had.
3. Employee's medical treatment terminated in May of 2004 and since that time to the date of the hearing his physical as well as mental condition has certainly deteriorated.
4. At the time of the hearing it was very obvious that the Employee's right hand was in a clawed position and he was unable to move the right arm because of injury to the right elbow and the right shoulder.
5. Claimant testified very credibly that because of pain he is unable to sleep, has difficulty with concentration, is depressed, and has anxiety. Although the Employee did try to seek work as a security officer, employers rejected him because of his physical condition.
6. Since May of 2004, the Employee began treatment with Dr. Rachel Feinberg who diagnosed the Employee with reflex sympathetic dystrophy and to the date the hearing was still seeing Dr. Feinberg approximately three times a week for injection, physical therapy and medication.
7. Claimant was not worked since May 21, 2004.
8. ***Summary and treatment resulting from the primary injury of March 22, 2003: a) after Employee was released from the hospital after six days he underwent a closed reduction of the right wrist and an MRI of the right shoulder showed impingement and effusion; b) Employee was diagnosed with a closed head injury with secondary cognitive deficits, a right orbital fracture and right mandibular fracture, right seventh cranial nerve paresis and a right fifth cranial nerve paresis, right radial and ulnar fractures, right iliac contusion, slurred speech and carpal tunnel syndrome; c) Employee was also treated for blurring of the right eye as well as numbness in the right facial area with right eye complaints; d) Employee underwent a right carpal tunnel release and resection of the distal ulna; e) Employee sustained injuries to his right shoulder and underwent an arthroscopic subacromial decompression and extensive***

**debridement of adhesions of the right shoulder and was further diagnosed with rotator cuff tendonitis and persistent adhesive capsulitis; f) Employee has lost all use and motion in his right wrist, arm and shoulder and this is very evident when you look at the Employee while testifying his hand was clawed and he couldn't move his arm; g) Employee's right hand is clawed and he is unable to open his fingers at all; h) Employee testified he has very severe pain in the right hip and low back and is unable to sit, stand or walk for any length of time and he has a great deal of problems trying to sleep and while observing the Employee walking in and out of court it was very visible that he has a limp on the right leg; i) Employee's face is drooping to the right side and he has facial weakness and as a result of the injury to the fifth and seventh cranial nerve; and j) Employee testified that he has migraine headaches and his neck always hurts him as well as suffering from depression, fatigue, slow thinking, memory problems, concentration problems, and is truly depressed.**

9. **Employee's prior injuries before the primary injury of March 22, 2003 include: a) Employee, while in grade school, suffered a fracture of his right hip as a result of a soccer injury which resulted in a leg length difference which has caused problems with his spine and upper back and shoulder; b) while Employee was attending St. Louis University he injured his right knee and underwent surgery for a torn right meniscus resulting from a injury while playing soccer at the university; c) in 1989 Employee sustained a right wrist fracture and underwent a closed reduction; d) Employee, while working at the University of Missouri-Columbia as a police officer, sustained an injury while trying to restrain a suspect and sustained a closed head injury and concussion which resulted in having migraine headaches; and e) Employee, in 2000, sustained a low back injury with pain going into his right leg as a result of bending and lifting.**
10. **Employee, in May of 2004, was placed at maximum medical improvement by all of his treating physicians and all medical treatment provided by the Employer was terminated.**
11. Employee, in June of 2005, came under the care of Dr. Rachel Feinberg, a pain management specialist, and has continued to treat Claimant approximately three times a week with physical therapy, injections and medication.
12. Dr. Feinberg testified very credibly that the Employee is permanently and totally disabled and unable to work and that his inability to work is a result of the primary injury of March 22, 2003 and his preexisting disabilities and testified that each of the preexisting disabilities combine with the disabilities due to the primary work injury to produce a greater overall disability than that which would have occurred from each injury alone.
13. Dr. Wayne Stillings, a psychiatrist, testified that the Employee suffers from dementia due to the traumatic brain injury of March 22, 2003 as well as having major depression and pain disorder and he felt that his diagnosis was directly related to the March 22, 2003 primary work injury.

14. Dr. Stillings also testified very credibly that the Employee is permanently and totally disabled from employment due to psychiatric problems. Dr. Stillings also testified he felt that the Employee is in need of psychiatric treatment in the future because he felt that Employee had a high risk of suicide as a result of the primary injury of March 22, 2003.
15. Mr. James England, a vocational expert, testified very credibly that Employee had very obvious problems with his right arm and hand, which was curled, and that it was his opinion that Employee was permanently and totally disabled due to the primary injury as well as the preexisting disabilities.

RULINGS OF LAW

1. Employee is permanently and totally disabled and unable to compete in the open job market as a result of the combination of the preexisting disabilities and the primary work injury of March 22, 2003 and thus the Second Injury Fund is liable for permanent total disability benefits.
2. The permanent and total disability benefits should commence as of May 21, 2004 and with credit being given for the permanent partial disability benefits paid by the Employer/Insurer.
3. I find that the Employee, as a result of the primary injury of March 22, 2003, sustained permanent partial disability in the following amounts: 100% of the right upper extremity at the shoulder, 15% of the low back and hip, 25% of the body as a whole referable to the psychiatric mental condition, and a 10% of the body as a whole referable to the facial fractures and injuries.
4. The Employer is liable and must pay the past medical bills for medical treatment in the amount of \$23,592.00 to Injury Specialists, \$1,066.00 to Missouri Baptist Hospital, and \$565.65 to Goldsmith Pharmacy.
5. I find that the Employer/Insurer is required to provide future medical treatment to the Employee for the injuries sustained in the primary injury of March 22, 2003 as testified to by Dr. Feinberg and Dr. Stillings.
6. With regard to the attorney's fees and liens presented by Attorneys Patrick Chassaing and Mr. Schaller of Pleban and Associates, I find the following: With regard to Attorney Patrick Chassaing, who testified to 27 hours of legal work on behalf of the Employee on his workers' compensation case, I find that at \$100.00 an hour he is awarded \$2,700.00 and with regard to Mr. Schaller who testified his firm had 37 hours and thus at \$100.00 is awarded \$3,700.00. I find that the hourly rate is fair and reasonable in light of the legal work done and is a fair rate in the St. Louis, Missouri area.

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*

