

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

Injury No. 08-087820

Employee: Ronald Gamble
Employer: Chester Bross Construction Company, Inc.
Insurer: Midwest Builders Casualty Insurance Mutual Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Medical causation

The administrative law judge found that the accident of September 19, 2008, was the prevailing factor causing employee to suffer the resulting medical conditions of right lateral epicondylitis and right olecranon bursitis. Employer challenges these findings on appeal. After a careful review of the expert medical opinion evidence on the issue, we ultimately agree with the administrative law judge's findings, but discern a need to specifically identify the expert opinions upon which we rely in order to fulfill the mandate of § 286.090 RSMo requiring us to provide the reasons for our decision, and also to make clear that we have not substituted our own lay opinions for those of the qualified medical experts on complicated issues of medical causation.

Employee presented expert medical testimony from Dr. Bruce Schlafly, who opined that the September 2008 accident was the prevailing factor causing employee to suffer (among other conditions not at issue in employer's appeal) right lateral epicondylitis and right olecranon bursitis, as well as permanent disability referable to those conditions. Dr. Schlafly explained that the treating physicians first focused on addressing employee's rotator cuff tear before addressing complaints referable to the right elbow, which accounts for the absence of early evaluation and treatment recommendations specific to the right elbow.

Employer presented expert medical testimony from Dr. David Brown, who opined that the accident did not cause employee to suffer right lateral epicondylitis or right olecranon bursitis. In rendering this opinion, Dr. Brown pointed to what he characterized as an absence of contemporaneous elbow complaints around the time of the accident, but he conceded on cross-examination that the emergency room records from the date of the injury recorded a history of right elbow pain. Dr. Brown also relied on the premise that if the epicondylitis were caused by the September 2008 accident, acute changes would have been visible on the June 2009 MRI of employee's right elbow. But Dr. Brown conceded that one would only expect to see acute changes on an MRI taken, at most, 3 or 4 months

Employee: Ronald Gamble

- 2 -

after an accident. In other words, Dr. Brown relied on the absence of acute findings on an MRI that he admits was taken too late to show any acute findings.

In light of these considerations, we find more persuasive Dr. Schlafly's opinion regarding medical causation of employee's right lateral epicondylitis and right olecranon bursitis. We find that the accident of September 19, 2008, was the prevailing factor causing employee to suffer the resulting medical conditions of right lateral epicondylitis and right olecranon bursitis, as well as permanent disability referable to those conditions.

Past medical expenses

The administrative law judge found that the ulnar shortening procedure performed by Dr. David Strege on January 21, 2010, was reasonable and necessary to cure and relieve employee from the effects of his TFCC tear sustained in the work injury, and awarded employee his past medical expenses for this surgery. Employer challenges this finding on appeal. We ultimately agree with the administrative law judge's findings, but once again, we wish to specifically identify the expert opinions upon which we rely in order to fulfill the requirements of § 286.090 RSMo.

Employer has not appealed the administrative law judge's determination that the accident of September 19, 2008, caused employee to suffer a TFCC tear. Dr. Schlafly opined that an ulnar shortening procedure is an accepted surgical treatment of a TFCC tear, and pointed out that the symptoms referable to employee's TFCC tear persisted after the initial wrist arthroscopy. Dr. Schlafly opined that the ulnar shortening procedure was not only reasonable but, in his experience, would provide employee a more predictably beneficial result. Dr. Brown, meanwhile, characterized ulnar shortening as a very aggressive treatment option that is more reserved for a diagnosis of ulnar impaction syndrome. Dr. Brown did acknowledge, however, that the initial wrist arthroscopy failed to resolve employee's ulnar-sided wrist complaints referable to the TFCC tear, and that ulnar shortening is an accepted surgical treatment for a TFCC tear.

After careful consideration, we find Dr. Schlafly's opinion on this point to be persuasive. We find that the ulnar shortening procedure was reasonable and necessary to cure and relieve the effects of employee's injuries sustained in the September 2008 accident. We conclude, therefore, that employee is entitled to his past medical expenses incurred for this procedure.

Employer additionally argues it is not liable for the past medical expenses awarded by the administrative law judge because employee is not entitled to those expenses where his health insurance with employer paid some of the costs of his treatment. Employer acknowledges § 287.270 RSMo, but argues that the evidence shows that it paid 100% of the costs of employee's health insurance, with the effect that this insurance should be deemed to be a "benefit derived from the employer" for purposes of that provision. Employer points to the testimony from its witness Sherry Drew, an 8-year employee of employer's human resources department.

Ms. Drew testified that, historically, after an employee's third year with employer, employer would pay 100% of the employee's premiums for health insurance. But Ms. Drew did not address the question of who bears other costs typically associated with health insurance, such as copays or coinsurance, or the amount of any deductible. Ms. Drew also admitted

Employee: Ronald Gamble

- 3 -

that significant changes have gone into effect that she believes make employees once again liable for a portion of the premiums. (Ms. Drew was unable to identify when this occurred or whether it may have affected employee.) Ms. Drew further testified the group health insurer probably has a subrogation interest or reimbursement provision requiring repayment in the event medical bills are determined to be work-related; Ms. Drew was unable to specifically testify whether employee's insurance with employer works this way, although she speculated employee would have to pay the insurer back in the event his medical expenses were deemed compensable under workers' compensation.

For obvious reasons, the foregoing testimony does not persuade us to make a finding that employee's health insurance was fully subsidized by employer, so we need not address the question whether payments from a fully subsidized health insurance plan may be deemed "benefits derived from the employer" for purposes of § 287.270. And especially in light of Ms. Drew's concession regarding the group health insurer's likely subrogation interest, we are not persuaded to make any finding that employee's liability for expenses he incurred for past medical care in connection with the work injury has been extinguished in any amount. See *Farmer-Cummings v. Pers. Pool of Platte County*, 110 S.W.3d 818 (Mo. 2003). Accordingly, we affirm the administrative law judge's conclusion employer is liable to employee for \$34,323.53 in past medical expenses.

Temporary total disability benefits

The administrative law judge determined that employer is liable for temporary total disability benefits from August 31, 2009, through August 24, 2010, and from March 15, 2011, through September 12, 2011. Employer challenges this determination on appeal, pointing to employee's sporadic history of working odd jobs during the relevant time periods.

It is well-settling in Missouri that "[t]he ultimate issue ... remains earning capacity, not actual earnings" when considering whether an employee is entitled to temporary disability benefits. *Minnick v. South Metro Fire Protection Dist.*, 926 S.W.2d 906, 911 (Mo. App. 1996). In *Minnick*, the court found that an employee's sporadic history of doing maintenance work for a friend's carwash and assisting his wife in managing an apartment complex would not preclude the Commission from awarding temporary total disability benefits, because of the long-standing principle in Missouri that "neither the worker's ability to engage in occasional or light duty work nor the worker's good fortune in obtaining work other than through competition on the open labor market should disqualify the worker from receiving such total disability benefits." *Id.*

Similarly here, employee credibly testified (and we so find) that all of his odd jobs during the relevant time periods came from his acquaintance, Kelley Nogles, a person whom employee knew could find work for him. It follows (and we so find) that employee did not obtain this work through competition in the open labor market. We also credit employee's testimony (and so find) that he was only capable of making an average of \$300 per week on such jobs during the relevant time periods, that such jobs were few and far between, and that during most weeks, employee earned nothing. Finally, we credit employee's testimony (and so find) that 90% of this work involved employee instructing or supervising other workers on how to perform the jobs. In light of these facts derived from employee's credible testimony, we decline to disturb the administrative law judge's award of temporary total disability benefits.

Employee: Ronald Gamble

Future medical treatment

The administrative law judge found that because employee has retained surgical hardware in his right wrist as a result of the work injury, employer is liable to provide employee with future removal or revision of that surgical hardware to the extent that such may become both reasonable and necessary. We agree, for the following reasons. Section 287.140.8 RSMo provides, in relevant part, as follows:

The employer may be required by the division or the commission to furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as needed, for life whenever the division or the commission shall find that the injured employee may be partially or wholly relieved of the effects of a permanent injury by the use thereof.

(emphasis added).

Our dictionary defines “brace” as follows: “something that transmits, directs, resists, or supports weight or pressure ... an appliance that gives support to moveable parts (as a joint or a fractured bone).” *Webster’s Third New International Dictionary*, 264 (2002). Pursuant to § 287.140.8, employer is liable to furnish to employee that future medical treatment that may be reasonably required to cure and relieve the effects of the surgical hardware in his right wrist.

Conclusion

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued May 15, 2014, is attached and incorporated by this reference.

We approve and affirm 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 15th day of January 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: **Ronald Gamble**

Injury No. **08-087820**

Dependents:

Employer: **Chester Bross Construction Company**

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: **Second Injury Fund**

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

Insurer: **Midwest Builders Casualty Insurance Company**

Hearing Date: **March 11, 2014**

Checked by: RJD/njp

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: **September 19, 2008.**
5. State location where accident occurred or occupational disease was contracted: **Macon County, 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.**
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 working on a box culvert and was being handed a jackhammer by another employee; while Employee's right arm was thus extended, a large dirt boulder weighing over 1000 pounds came rolling down the hill and struck Employee's extended right arm, causing injury to Employee's right upper extremity.**
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 upper extremity.**
14. Nature and extent of any permanent disability: **60% permanent partial disability of the right upper extremity at the 232-week level.**
15. Compensation paid to-date for temporary disability: **\$37,853.97.**
16. Value necessary medical aid paid to date by employer/insurer? **Unknown.**

Employee: **Ronald Gamble**

Injury No. **08-087820**

- 17. Value necessary medical aid not furnished by employer/insurer? **Unknown.**
- 18. Employee's average weekly wages: **\$1,477.53.**
- 19. Weekly compensation rate: **\$772.53 for temporary total disability benefits; \$404.66 for permanent partial disability benefits.**
- 20. Method wages computation: **Stipulation.**

COMPENSATION PAYABLE

From Employer

139.2 weeks of permanent partial disability benefits	\$56,328.67
77 2/7 weeks of temporary total disability benefits	\$59,705.53
Medical expense reimbursement	<u>\$34,323.53</u>
TOTAL	\$150,357.73

Employer is also ordered to provide future medical benefits as set forth more fully herein.

Second Injury Fund liability:

26.13 weeks of permanent partial disability benefits	\$10,573.77
--	-------------

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:

Michael Gerritzen

Employee: **Ronald Gamble**

Injury No. **08-087820**

FINDINGS OF FACT AND RULINGS OF LAW

Employee: **Ronald Gamble**

Injury No. **08-087820**

Dependents:

Employer: **Chester Bross Construction Company**

Additional Party: **Second Injury Fund**

Insurer: **Midwest Builders Casualty Insurance Company**

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

ISSUES DECIDED

The evidentiary hearing in this case was held on March 11, 2014 in Macon. Employee, Ronald Gamble, appeared personally and by counsel, Michael Gerritzen. Employer, Chester Bross Construction Company, appeared by counsel, Steve McManus, and by corporate representative Sherry Drew. Insurer, Midwest Builders Casualty Insurance Company, appeared by counsel, Steve McManus. The Treasurer of the State of Missouri, as custodian of the Second Injury Fund, appeared by counsel, Maggie Ahrens, Assistant Attorney General. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on April 11, 2014. The hearing was held to determine the following issues:

1. The liability, if any, of Employer-Insurer to reimburse Claimant for expenses for past medical treatment;
2. The liability, if any, of Employer-Insurer for payment of temporary total disability ("TTD") benefits and/or temporary partial disability ("TPD") benefits after August 30, 2009;
3. The liability, if any, of Employer-Insurer for payment of permanent partial disability benefits;
4. The liability, if any, of the Second Injury Fund for payment of permanent partial disability benefits;
5. Whether Employer-Insurer shall be ordered to provide future medical benefits pursuant to §287.140, RSMo;
6. Whether Employer-Insurer shall be ordered to reimburse Claimant \$56.00 for a court reporter's charge for a transcript;
7. Whether the work accident of September 19, 2008 is the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence and for which medical treatment was rendered.

Employee: **Ronald Gamble**

Injury No. **08-087820**

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over this case;
2. That venue for the evidentiary hearing is proper in Macon County;
3. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
4. That the Claim for Compensation was filed within the time allowed by the statute of limitations, §287.430, RSMo;
5. That Claimant's average weekly wage is \$1,477.53, with compensation rates of \$772.53 for temporary total disability benefits and \$404.66 for permanent partial disability benefits;
6. That Ronald Gamble ("Claimant") sustained an accident arising out of and in the course of his employment with Chester Bross Construction Company ("Employer") on September 19, 2008;
7. That the notice requirement of §287.420 does not serve as a bar to the Claim for Compensation;
8. That Employer-Insurer has paid TTD benefits in the total amount of \$37,853.97, covering the period from September 20, 2008 through August 30, 2009, and that the TTD benefits have been fully paid through August 30, 2009;
9. That proper and timely demand for additional medical treatment from and after August 31, 2009 was made by Claimant and was received by Employer-Insurer;
10. That Claimant has paid the \$56.00 court reporter bill for which he is seeking reimbursement; and
11. That Chester Bross Construction Company was fully insured for Missouri Workers' Compensation purposes at all relevant times by Midwest Builders Casualty Insurance Company.

EVIDENCE

The evidence consisted of the testimony of Claimant, Ronald Gamble; the testimony of Sherry Drew, as well as the deposition testimony of Sherry Drew; the transcript of the deposition testimony of Dr. Bruce Schlafly and attachments thereto, including *curriculum vitae*, narrative report, x-ray films, and handwritten notes; the transcripts of the deposition testimony of Dr. David Brown; numerous medical records; correspondence from Sherry Drew to Dr. Subbarao

Employee: **Ronald Gamble**

Injury No. **08-087820**

Polenini. Additionally, there were exhibits to which counsel for the Second Injury Fund objected, and which objections were sustained, and thus those exhibits were admitted only as to Claimant's claims against Employer and Insurer, those exhibits being: Exhibit W (correspondence between Claimant's counsel and Employer-Insurer's counsel), Exhibit Y (medical bills), Exhibit EE (a portion of Claimant's wage history with Employer), and Exhibits MM, NN and OO.

FINDINGS OF FACT AND RULINGS OF LAW

After carefully considering all of the evidence, in addition to those facts and legal conclusions to which the parties stipulated, I find the following:

1. Ronald Gamble ("Claimant") was born July 26, 1954 and was 59 years of age at the time of the evidentiary hearing.
2. Claimant began working for Chester Bross Construction Co. ("Employer") on July 31, 2006.
3. As stipulated, Claimant sustained an accident arising out of and in the course of his employment with Employer on September 19, 2008; the accident occurred near Highway 36 in Macon County, Missouri; Claimant was working on a box culvert and was being handed a jackhammer by another employee; while Claimant's right arm was thus extended, a large dirt boulder weighing over 1000 pounds came rolling down the hill and struck Claimant's extended right arm, causing injury to Claimant's right upper extremity.
4. Claimant is right-handed.
5. Prior to September 19, 2008, Claimant had no injuries to his right upper extremity.
6. Prior to September 19, 2008, Claimant had no treatment to his right upper extremity.
7. Prior to September 19, 2008, no diagnostic testing had been performed on Claimant's right upper extremity.
8. Prior to September 19, 2008, Claimant had no disability of any kind to his right upper extremity.
9. In 1971, Claimant sustained injury to his left wrist, consisting of a fracture.
10. The work accident of September 19, 2008 was the prevailing factor in the cause of a right rotator cuff tear; all necessary treatment for Claimant's right rotator cuff tear has been provided by Employer-Insurer.
11. The work accident of September 19, 2008 was the prevailing factor in the cause of a right proximal biceps tendon avulsion; all necessary treatment for Claimant's right proximal biceps tendon avulsion has been provided by Employer-Insurer.
12. The work accident of September 19, 2008 was the prevailing factor in the cause of a right triangular fibrocartilage complex ("TFCC") tear; Employer-Insurer provided some treatment to Claimant for the right TFCC tear.
13. The work accident of September 19, 2008 was the prevailing factor in the cause of right lateral epicondylitis; despite proper and timely demand by Claimant to Employer-Insurer for treatment thereof (as stipulated), Employer-Insurer has not provided Claimant with any medical treatment for the right lateral epicondylitis.
14. The work accident of September 19, 2008 was the prevailing factor in the cause of right olecranon bursitis; despite proper and timely demand by Claimant to Employer-Insurer

Employee: **Ronald Gamble**

Injury No. **08-087820**

for treatment thereof (as stipulated), Employer-Insurer has not provided Claimant with any medical treatment for the right olecranon bursitis.

15. It is probable that the work accident of September 19, 2008 was not the prevailing factor in the cause of right ulnar impaction syndrome; however, the surgical procedure performed by Dr. David Strege on January 21, 2010 (“ulnar shortening procedure”), besides addressing the ulnar impaction syndrome, was also reasonable and necessary to cure and relieve Claimant from the work-related TFCC tear; despite proper and timely demand by Claimant to Employer-Insurer for additional treatment of the TFCC tear, Employer-Insurer failed and refused to provide Claimant with such additional treatment.
16. While the need for treatment must flow from the work injury, the fact that the treatment also benefits a noncompensable condition is irrelevant. *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 268 (Mo. App. S.D. 2004).
17. It is probable that the work accident of September 19, 2008 was not the prevailing factor in the cause of Claimant’s right middle finger triggering.
18. An employee has the right to employ his own physician at his own expense, but when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails and neglects to provide needed treatment, the employer is held liable for the medical treatment procured by the employee. *Hendricks v. Motor Freight Corp.*, 570 S.W.2d 702, 709-10 (Mo. App. St. L. 1978).
19. Section 287.270, RSMo, states, in part: “No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer’s insurer for liability under this chapter, shall be considered in determining the compensation due hereunder”. Portions of the medical charges for Claimant’s medical treatment rendered after August 30, 2009 (for which medical charges Claimant is seeking reimbursement from Employer-Insurer) were paid by Mercy Health Plans; Mercy Health Plans was not and is not “employer’s insurer for liability under this chapter (Chapter 287)”; Employer is entitled to no credit or offset for such payments in determining the compensation due Claimant.
20. Employer and Insurer are responsible for the charges for treatment rendered by Dr. David Strege for Claimant’s right wrist, as follows:

Mid-County Orthopaedics	\$8,851.50
City Place Surgery Center	\$5,470.63
Excel Physical Therapy	\$5,355.00

21. Employer and Insurer are not responsible for the charges by Dr. Strege for services of 3/23/2010 in the amounts of \$281.00 and \$24.00, such charges being for Claimant’s trigger finger; Employer and Insurer are not responsible for the charges by Dr. Strege for services of 4/20/2010 in the amounts of \$281.00 and \$48.00, such charges being for Claimant’s trigger finger; Employer and Insurer are not responsible for the charges by Dr. Strege for services of 5/18/2010 in the amount of \$81.00, such charges being for Claimant’s trigger finger; none of these charges are included in those charges listed in the preceding paragraph for which the Employer and Insurer are responsible.
22. Employer and Insurer are responsible for the charges for treatment rendered by Dr. Strege for Claimant’s right lateral epicondylitis and right olecranon bursitis, as follows:

Employee:	Ronald Gamble	Injury No. 08-087820
	Mid-County Orthopaedics	\$5,234.00
	St. John's Mercy Medical Center	\$8,542.60
	Western Anesthesiology Associates	\$ 869.80

23. Employer and Insurer are not responsible for the charges by Dr. Strege for services of 3/15/2011 in the amount of \$2,061.00, such charges being for Claimant's trigger finger; these charges are not included in those charges listed in the preceding paragraph for which the Employer and Insurer are responsible.
24. When Claimant was released from the care of Dr. Joseph Ritchie on August 28, 2009, Claimant was not at maximum medical improvement from the work-related right TFCC tear and was in need of additional surgery; Claimant was unable to compete in the open market for employment until such surgery was performed on January 21, 2010; it appears from Dr. Strege's records and from Claimant's testimony that Claimant was again able to compete in the open market for employment on August 24, 2010.
25. Employer-Insurer is responsible for payment of TTD benefits from August 31, 2009 through August 24, 2010, a period of 51 2/7 weeks; at the stipulated TTD rate of \$772.53, the total TTD owed for this period is \$39,619.75.
26. Claimant testified that he was able to procure and perform work as a painter "between Dr. Strege's first surgery (on 1/21/2010) and Dr. Strege's second surgery (on 3-15-2011)"; I find, therefore, that despite not having reached maximum medical improvement for the work-related right lateral epicondylitis and right olecranon bursitis, Claimant was able to compete in the open market for employment between August 24, 2010 and March 15, 2011.
27. Claimant was unable to compete in the open market for employment from March 15, 2011, the date of the right lateral epicondylectomy and bursectomy surgery, until released to return to work by Dr. Strege on September 12, 2011.
28. Employer-Insurer is responsible for payment of TTD benefits from March 15, 2011 through September 12, 2011, a period of 26 weeks; at the stipulated TTD rate of \$772.53, the total TTD owed for this period is \$20,085.78.
29. As a direct and proximate result of the work-related injuries to Claimant's right upper extremity caused by the work accident of September 19, 2008, to-wit: rotator cuff tear, biceps tendon avulsion, lateral epicondylitis, olecranon bursitis, and TFCC tear, Claimant has sustained a permanent partial disability of 60% of the upper extremity (232-week level). Employer-Insurer is responsible for payment of 139.2 weeks of permanent partial disability benefits at the stipulated rate of \$404.66, totaling \$56,328.67.
30. There is no legal or factual basis for an award requiring Employer-Insurer to reimburse Claimant for the \$56.00 court reporter charge for a "Record of Nonappearance" of July 11, 2011.
31. As Claimant has retained surgical hardware in his right wrist as a result of the work injury of September 19, 2008, Employer-Insurer's responsibility, under Section 287.140, RSMo, for future removal or revision of that surgical hardware is both reasonable and necessary.
32. On September 19, 2008, Claimant sustained a compensable "last injury" which resulted in permanent partial disability of 60% of the right upper extremity at the 232-week level (139.2 weeks).
33. As of the time the last injury was sustained, Claimant had a preexisting permanent partial disability of 20% of the left wrist (35 weeks), resulting from an injury in 1971 which

Employee: **Ronald Gamble**

Injury No. **08-087820**

satisfies the statutory threshold and was of such seriousness as to constitute a hindrance or obstacle to employment or reemployment.

34. The credible evidence establishes that the last injury, combined with the pre-existing permanent partial disabilities, causes 15% greater overall disability than the independent sum of the disabilities. The Second Injury Fund liability is calculated as follows: 139.2 weeks for last injury + 35 weeks for preexisting injuries = 174.2 weeks; 174.2 weeks x 15% = 26.13 weeks of overall greater disability.

ORDER

Employer and Insurer are ordered to pay Claimant \$56,328.67 for permanent partial disability benefits, \$59,705.53 for temporary total disability benefits, and \$34,323.53 for reimbursement of necessary medical expenses.

Employer and Insurer are ordered to provide Claimant with all medical treatment necessary to cure and relieve Claimant from the effects of the retained surgical hardware in the right wrist.

The Treasurer of the State of Missouri, as custodian of the Second Injury Fund, is ordered to pay Claimant \$10,573.77 for permanent partial disability benefits.

Claimant's attorney, Michael Gerritzen, is allowed 25% of all permanent partial disability benefits, temporary total disability benefits, medical expenses, and Second Injury Fund benefits awarded herein as and for necessary attorney's fees, and the amount of such fees shall constitute a lien on those benefits.

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

Made by: /s/Robert J. Dierkes 5/15/2014

Robert J. Dierkes
Chief Administrative Law Judge
Division of Workers' Compensation