

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

Injury No.: 04-140492

Employee: Mary Grayson  
Employer: DaimlerChrysler Corporation (Settled)  
Insurer: ESIS (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.<sup>1</sup> Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) 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 ALJ dated June 22, 2011, as supplemented herein.

**Preliminaries**

Employee developed pain and numbness in both hands and wrists as a result of her repetitive job duties while working for employer. Employee settled her permanent partial disability claim against employer, but proceeded to final hearing of her claim against the Second Injury Fund.

The ALJ awarded permanent total disability (PTD) benefits against the Second Injury Fund. The Second Injury Fund appealed to the Commission, alleging that the ALJ erred in finding it liable for employee's PTD benefits. The Second Injury Fund alleges that employee's PTD is solely the result of subsequent deterioration of a preexisting condition.

**Findings of Fact**

The findings of fact and stipulations of the parties were accurately recounted in the award of the ALJ and, to the extent they are not inconsistent with the findings listed below, they are adopted and incorporated by the Commission herein.

Employee testified that years after her multiple finger and thumb release surgeries she has daily problems with both hands. She complained of pain and numbness in the fingers/hand of her left extremity and in her right thumb. Employee was never released to return to work after her bilateral hand surgeries and retired from Chrysler on February 1, 2005.

Dr. Volarich saw employee on December 7, 2005, for the purpose of an independent medical evaluation. Dr. Volarich opined that "the repetitive nature of [employee's] work leading up to 3/1/04, ... are the substantial contributing factors, as well as the prevailing

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2000 unless otherwise indicated.

Employee: Mary Grayson

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factors in causing the triggering of the right hand thumb, long and ring fingers, as well as triggering of the left hand long and ring fingers, all of which required surgical repairs.”

Dr. Volarich opined that employee sustained the following permanent partial disabilities as a direct result of the work injuries sustained leading up to March 1, 2004: 1) 35% of the right thumb rated at the metacarpal phalangeal joint; 2) 35% of the right hand rated at the metacarpal phalangeal joint of the long finger; 3) 35% of the right hand rated at the metacarpal phalangeal joint of the ring finger; 4) 35% of the left hand rated at the metacarpal phalangeal joint of the long finger; 5) 35% of the left hand rated at the metacarpal phalangeal joint of the ring finger; 6) 15% of the right hand due to the injury's contribution to diminished grip strength and pinch strength, as well as loss of dexterity of the dominant hand; and 7) 10% of the left hand due to diminished grip strength and dexterity in the non-dominant hand.

With respect to employee's preexisting disabilities, Dr. Volarich referred to his previous independent medical evaluations in which he opined that employee suffered from the following permanent partial disabilities: 1) 7.5% of the left lower extremity rated at the knee; 2) 50% of the right lower extremity rated at the knee; 3) 35% of the right wrist; 4) 35% of the left wrist; 5) 35% of the right shoulder; 6) 20% of the body as a whole rated at the cervical spine; 7) 40% of the right lower extremity rated at the knee; 8) 20% of the body as a whole rated at the lumbar spine (L4-5 and L5-S1); and 9) 25% of the body as a whole rated at the lumbar spine (L3-4).

Dr. Volarich ultimately concluded “that [employee] is permanently and totally disabled as a direct result of the work related injuries ... leading up to 3/1/04, in combination with all of her preexisting medical conditions.”

Mr. Israel saw employee on September 29, 2009, for the purpose of a vocational evaluation. Mr. Israel opined that employee is disabled from returning to her job as an automotive assembler due to the March 1, 2004, bilateral hand/wrist injuries and that she is permanently and totally disabled from any and all substantial gainful activity or full-time employment due to the primary injury and all preexisting industrial injuries or conditions. Mr. Israel concluded that employee's “... greatly diminished capability and work adaptability makes it quite unlikely she could sustain any substantial or full-time job...” and, therefore, she can no longer compete in the open labor market.

Mr. England also performed a vocational evaluation of employee. Mr. England provided his opinion based only upon a records review. Mr. England opined that employee is totally disabled from a vocational standpoint, but believes that her back problems alone render her totally disabled.

Based upon the record as a whole, we find employee, Dr. Volarich, and Mr. Israel credible. We find that the record does not support Mr. England's opinion that employee is permanently and totally disabled solely as a result of employee's back problems and, therefore, do not find his opinions credible.

Employee: Mary Grayson

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In accordance with employee's settlement with employer, we find that as a direct result of the March 1, 2004, occupational injuries, employee sustained 17% permanent partial disability of the right wrist and 5% permanent partial disability of the left wrist. With respect to employee's preexisting disabilities, we adopt Dr. Volarich's ratings and find that said conditions were a hindrance and obstacle to her employment or reemployment.

As to employee's maximum medical improvement date, we agree with the ALJ's presumed conclusion that employee reached maximum medical improvement on January 31, 2005.

### **Discussion**

In evaluating cases involving preexisting disabilities, the employer's liability must first be considered in isolation before determining Second Injury Fund liability. *Kizior v. Trans World Airlines*, 5 S.W.3d 195 (Mo. App. W.D. 1999), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). In *Kizior*, the Court set out a step-by-step test for determining Second Injury Fund liability:

Section 287.220.1 contains four distinct steps in calculating the compensation due an employee, and from what source, in cases involving permanent disability: (1) the employer's liability is considered in isolation – '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'; (2) Next, the degree or percentage of the employee's disability attributable to all injuries existing at the time of the accident is considered; (3) The degree or percentage of disability existing prior to the last injury, combined with the disability resulting from the last injury, considered alone, is deducted from the combined disability; and (4) The balance becomes the responsibility of the Second Injury Fund.

*Kizior*, 5 S.W.3d at 200.

We have previously found that as a result of the primary injury employee sustained 17% permanent partial disability of the right wrist and 5% permanent partial disability of the left wrist; and that she suffered significant disabilities from her preexisting conditions. In accordance with Dr. Volarich's opinions, we find that employee's disabilities from her work injuries combine with her preexisting disabilities to produce greater overall disability than the simple arithmetic sum of the separate disabilities.

In determining whether employee is permanently and totally disabled, we turn to § 287.020.7 RSMo, which defines "total disability" as the "inability to return to any employment..." The Court in *Gordon v. Tri-State Motor Transit Company*, 908 S.W.2d 849 (Mo.App. 1995) provided a test for evaluating permanent total disability:

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present

Employee: Mary Grayson

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condition, reasonably expecting the employee to perform the work for which he or she is hired.

*Id.* at 853 (citations omitted).

Based upon the medical records, employee's testimony, and the opinions of Dr. Volarich and Mr. Israel, we believe that no employer would reasonably be expected to hire employee in her present condition. We conclude employee is permanently and totally disabled due to the combination of the disabilities from her work injuries with her preexisting disabilities. The Second Injury Fund is liable to employee for permanent total disability benefits.

**Award**

We affirm the award of the ALJ as supplemented herein.

Beginning February 1, 2005, and continuing for 38.5 weeks<sup>2</sup>, the Second Injury Fund shall pay to employee \$315.50, the difference between employee's PTD rate and his PPD rate.<sup>3</sup> Thereafter, the Second Injury Fund shall pay to employee \$662.55 for the remainder of employee's life, or until modified by law.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued June 22, 2011, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

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 2<sup>nd</sup> day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

\_\_\_\_\_  
James Avery, Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

<sup>2</sup> The work injury resulted in permanent partial disabilities of 29.75 weeks (right wrist) and 8.75 weeks (left wrist). Therefore, the total PPD attributable to the work injury is 38.5 weeks.

<sup>3</sup> \$662.55 - \$347.05

# AWARD

Employee: Mary L. Grayson

Injury No.: 04-140492

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: DaimlerChrysler Corporation

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

Additional Party: Second Injury Fund

Insurer: ESIS

Hearing Date: April 5, 2011

Checked by: CTL;jj

## 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 1, 2004
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
10. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant injured her hands as a result of her repetitive work for Employer.
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 and left hands
14. Nature and extent of any permanent disability: 17% right wrist and 5% left wrist previously paid by Employer, and permanent and total disability benefits from the SIF beginning February 1, 2005
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Mary L. Grayson

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- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$662.55/\$347.05
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:  
 31.70 weeks of permanent partial disability from Employer (Previously paid)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
 weekly differential of \$315.50 payable by Second Injury Fund  
 for 31.70 weeks beginning February 1, 2005, and thereafter,  
 \$662.55 per week as provided by law.

TOTAL: TO BE DETERMINED

23. Future requirements awarded:

Said payments to begin 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: Randall Parker

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Mary L. Grayson

Injury No.: 04-140492

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: DaimlerChrysler

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

Additional Party: Second Injury Fund

Insurer: ESIS

Checked by: CTL;jj

**PREFACE**

A hearing in the above-mentioned matter was heard on April 5, 2011. The claimant, Mary L. Grayson, was represented by Attorney Randall Parker. The primary case was previously settled with the Employer/Insurer. This hearing was Claimant's case against the Second Injury Fund only. The Second Injury Fund was represented by Assistant Attorney General Da-Niel Cunningham.

**STIPULATIONS**

Claimant's permanent partial workers' compensation rate is \$662.55/\$347.05.

**ISSUE**

The nature and extent of the Second Injury Fund liability.

**EXHIBITS**

The following exhibits were offered by the Claimant:

- A. St. John's Mercy Medical Center record
- B. St. Louis University Health records
- C. Dr. Bruce Schlafly's records
- D. Dr. Daniel Phillips' records
- E. Christian Hospital record 5/1/00
- F. Christian Hospital record 5/15/00
- G. Dr. Henry Paul Jr.'s records
- H. Christian Hospital record 9/18/00
- I. Christian Hospital records 9/27/00-9/30/00
- J. Christian Hospital records 11/1/00-11/30/00
- K. Christian Hospital record 11/17/00

- L. Christian Hospital records 1/8/01-3/20/01
- M. Christian Hospital record 2/23/01
- N. Dr. Thomas Oliver's records
- O. Dr. William Paris' records
- P. Dr. Charles Mannis' records
- Q. HealthSouth records
- R. Metro Imaging record
- S. St. Anthony's Medical Center record
- T. HealthSouth Outpatient Surgery Center record
- U. HealthSouth records
- V. St. Louis Neurological Institute records
- W. Dr. J. H. Morrow's record
- X. Pulmonary Sleep Consultants records
- Y. Dr. William Paris' record
- Z. Northland MidAmerica Orthopedics records
- AA. Hand & Physical Therapy records
- BB. Christian Hospital record 7/22/02
- CC. Christian Hospital record 8/28/02
- DD. NAI, Ltd., Dr. John Krettek's record
- EE. DePaul Health Center records 10/4/02-10/5/02
- FF. DePaul Health Center record 4/12/04
- GG. Metropolitan Orthopedics record
- HH. DePaul Health Center record 6/21/04
- II. DePaul Health Center record 7/30/04
- JJ. Dr. William Paris' records
- KK. The Imaging Center records
- LL. Dr. Ahmed Jafri's records
- MM. St. Louis Clayton Orthopedic Group records
- NN. Pain Management Services records
- OO. DePaul Health Center record 7/30/04
- PP. North County Neurosurgery record
- QQ. Back Pain Institute of St. Louis records
- RR. Northland MidAmerica Orthopedics records
- SS. Hand & Physical Therapy records
- TT. Metropolitan Orthopedics record
- UU. Northwest Physician records
- VV. Christian Hospital record 8/26/05
- WW. Christian Hospital record 11/2/05
- XX. Christian Hospital record 1/4/06
- YY. Christian Hospital record 5/8/06
- ZZ. Christian Hospital record 7/27/06
- AAA. Christian Hospital record 1/11/07
- BBB. Christian Hospital record 5/4/09
- CCC. Deposition of Dr. David Volarich
- DDD. Deposition of Mr. James Israel
- EEE. Previous Stipulations for Compromise Settlement

The following exhibit was offered by the Second Injury Fund:

- I. Deposition and vocational report of Mr. James England.

### **FINDINGS OF FACT**

1. Claimant at the time of the hearing was 70 years of age. She had obtained a high school education. Claimant worked for the Employer, DaimlerChrysler, from 1994 to 2004 as an assembly line worker. Claimant's duties as an assembly line worker required her to install ignition panels with a motor into approximately 500 vans daily on the line. The panels weigh approximately 10 pounds and the motor she worked with was approximately 16 pounds. Claimant would lift the motor with her left hand and secure it and the ignition panels in the moving vans with her right hand. Claimant, as a result of her work duties, noticed numbness and pain in both her hands. As a result of the pain in her hands, Claimant was sent to the Employer's doctor, Gary Farley, in March of 2004. Dr. Farley performed two surgeries on her hands in April of 2004 and June of 2004. Even after the surgeries, Claimant testified she still experienced pain and stiffness and loss of strength in her hands. Claimant's primary injury to her hands was settled with the Employer/Insurer for 17% of the right wrist and 5% of the left wrist for a total of \$11,000.
2. Prior claims and disabilities are as follows:
  - a. Claimant's September 1, 2003, injury involved her lumbar spine and it was found that she had repetitive trauma of the lumbar spine causing a disk protrusion at L3-4 to the left as well as aggravation of preexisting degenerative disk disease and bulging at the L4-5 and L5-S1 levels, as well as associated spinal stenosis. Claimant did not undergo surgery for her low back. Claimant, in her workers' compensation claim for the back injury, settled for 12.5% of the body as a whole referable to the back.
  - b. On June 1, 1995, Claimant sustained an injury while working for her Employer, DaimlerChrysler, to her wrists. She settled her workers' compensation case for her injuries to the wrists for 17.5% of each wrist.
  - c. In August of 1999, Claimant while working for the Employer sustained an injury to her right shoulder and as a result of that injury she settled her workers' compensation case for 22.5% of the right shoulder. Claimant still has problems with the right shoulder, in the movement of the shoulder as well as the ability to lift, et cetera.
  - d. On August 28, 1999, Claimant while working for Employer injured her right knee. As a result thereof, she settled her workers' compensation claim against the Employer for 22.5% of the right knee. Claimant still claims having various problems with her knee in movement and walking, et cetera..
  - e. Claimant in June of 2002 injured her right shoulder while working for Employer and she settled that injury claim against her Employer for 25% of the right shoulder. Claimant still has problems with her right shoulder in movement and lifting, et cetera.

- f. Claimant, previous to her primary injury, also had been diagnosed in 2003 with diabetes and asthma.
- 3. Claimant did return to work for the Employer after the March 1, 2004, injury to her hands and retired on February 1, 2005
- 4. Dr. David Volarich examined the Claimant on December 7, 2005, and very credibly testified in his deposition. He opined Claimant is permanently and totally disabled as a result of the primary injury of March 1, 2004, and the preexisting conditions and disabilities.
- 5. James Israel, a certified vocational evaluator, saw the Claimant on September 29, 2009, and is of the opinion that the Claimant was permanently and totally disabled and unemployable as a result of the primary injury of March 1, 2004, as well as her preexisting injuries and conditions.

**CONCLUSIONS OF LAW**

The Second Injury Fund is liable for permanent total disability due to the Claimant’s primary injury and preexisting medical conditions and, thus, Second Injury Fund is liable for permanent total disability of \$662.55 per week beginning February 1, 2005, the date of the Claimant’s retirement from her Employer.

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

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

CORNELIUS T. LANE  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*