

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

Injury No.: 05-098155

Employee: Albert Griffin  
Employer: Gates Corporation d/b/a Gates Rubber  
Insurer: Self-Insured c/o Gallagher Bassett Services  
Date of Accident: September 20, 2005  
Place and County of Accident: Mississippi 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. Having reviewed the evidence 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 8, 2007. The award and decision of Administrative Law Judge Lawrence C. Kasten, issued February 8, 2007, is attached and incorporated by this reference.

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 1<sup>st</sup> day of August 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**AWARD**

Employee: Albert Griffin

Injury No. 05-098155

Employer: Gates Corporation d/b/a Gates Rubber

Additional Party: N/A

Insurer: Self-insured c/o Gallagher Bassett Services

Hearing Date: December 6, 2006

Checked by: LK/kh

## SUMMARY OF FINDINGS

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 20, 2005
5. State location where accident occurred or occupational disease contracted: Mississippi 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 happened or occupational disease contracted: The employee was pulling a hose which caused an injury to his right shoulder.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Right shoulder
14. Nature and extent of any permanent disability: 25% permanent partial disability to the right shoulder
15. Compensation paid to date for temporary total disability: \$2,601.60
16. Value necessary medical aid paid to date by employer-insurer? \$20,788.30.
17. Value necessary medical aid not furnished by employer-insurer? None
18. Employee's average weekly wage: \$515.60
19. Weekly compensation rate: \$343.73
20. Method wages computation: By agreement.
21. Amount of compensation payable:  
  
58 weeks of compensation at the rate of \$343.73 for a total of \$19,936.34 for 25% permanent partial disability of the right shoulder.
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None

Said payments to begin (see findings) and 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: Mr. Stephen Taylor

## **FINDINGS OF FACT AND RULINGS OF LAW**

On December 6, 2006, the employee, Albert Griffin, appeared in person with his attorney, Stephen L. Taylor for a hearing for a final award. The employer was represented at the hearing by its attorney, Ken McManaman. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS:**

1. Gates Company d/b/a Gates Rubber was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was duly qualified as self-insured employer c/o Gallagher Bassett.
2. On or about September 20, 2005, Albert Griffin was an employee of Gates Corporation d/b/a Gates Rubber and was working under the Workers' Compensation Act.
3. On or about September 20, 2005, the employee sustained an accident arising out of and in the course of his employment.
4. The employer had notice of the employee's accident as required by law.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was \$515.60. The employee's rate of compensation for temporary total disability and permanent partial disability is \$343.73.
7. The employee's injury was medically causally related to the accident.
8. The employer has paid a total of \$20,788.30 in medical aid.
9. The employer has paid a total of \$2,601.60 in temporary disability representing 7 and 6/7 weeks of compensation.

### **ISSUES:**

1. Nature and extent of permanent partial disability.

### **EXHIBITS:**

The following exhibits were offered and admitted into evidence:

#### Employee's Exhibits

- A. Medical report and rating of Dr. James Palen
- B. Medical records of various health care providers.

#### Employer's Exhibits

1. Report of employee's wages
2. Operative report dated December 15, 2005
3. Functional capacity evaluation
4. Rating of Dr. Knight

(The employer's exhibits had various highlighted portions that were present when offered and admitted into evidence.)

**Witness:** Albert Griffin, the employee

**Briefs:** The employee filed his brief on the day of the hearing. The employer filed its' brief on January 5, 2007.

### **FINDINGS OF FACT:**

The employee worked in the spiral line department which made hoses. On September 20, 1995, the employee was pulling a hose when he noticed a hot burning sensation which started at the top of his right shoulder and went down to his elbow. The employer sent the employee to Dr. Douglas on September 27. Dr. Douglas

noted bruising along the posterior aspect of the right shoulder, significant pain and loss of strength. He referred the employee to Dr. Knight, an orthopedic surgeon. Dr. Knight saw the employee on September 29, and noted that the employee had swelling, tenderness, and bruising to his right shoulder. Dr. Knight ordered an MRI. After the MRI was performed, Dr. Knight stated that there was not a rotator cuff tear. He diagnosed right shoulder pain with impingement and bursitis, gave an injection and ordered therapy. The therapist noted that the employee had loss of flexion and abduction in his right shoulder. In November, Dr. Knight's impression was right shoulder impingement with pain and bursitis with an intrasubstance cuff tear. Dr. Knight ordered an EMG and nerve conduction study due to numbness in the employee's right upper extremity. The studies performed by Dr. Tellow on November 15 were interpreted as normal.

On November 16, Dr. Knight noted that the bruising of the employee's shoulder occurred from muscle tearing at the time of the injury. Since the employee failed non-surgical treatment he recommended surgery which was performed on December 15. The operative report showed a post operative diagnosis of right shoulder pain with subacromial impingement with minimal synovitis in the glenohumeral joint. Dr. Knight performed a right shoulder arthroscopy with limited debridement in the glenohumeral joint, and a subacromial decompression and acromioplasty. It was noted that although the MRI showed intrasubstance tearing of the rotator cuff and no full thickness tear, the operative notes noted no evidence of a rotator cuff tear.

The employee received therapy in January and February of 2006. In February the employee had constant shoulder pain and trouble sleeping. Dr. Knight noted that the employee had made good progress with his range of motion and strength but still had pain. Dr. Knight stated that it was most likely due to the anterior superior portal due to the size of his musculature and that it was probably iatrogenic pain. Dr. Knight continued therapy and prescribed Vicodin for pain. The employee had a total of 28 physical therapy sessions. In March the employee had work conditioning but still continued to have pain.

At the end of March, it was Dr. Knight's opinion that the employee was at maximum medical improvement and ordered a functional capacity evaluation which was performed on March 29. The evaluation showed marked limitation in right shoulder internal rotation and moderate limitation in the other planes of movement. The range of motion was seventy-three percent of normal flexion, eighty-one percent of normal extension, seventy-eight percent of normal abduction, twenty-one percent of normal internal rotation and seventy percent of normal external rotation. There was a suggestion of capsular adhesions. There was moderately decreased right shoulder strength in all plans of movement particularly abduction. It was noted that there was a suggestion of a tendency to over-guard which may account in part for the continued range of motion deficit. The employee had an acceptable quality of effort. It was noted that the employee should be able to safely function in a job in the heavy work demand level on a full time basis with the restrictions of lifting up to seventy pounds occasionally and thirty-five pounds frequently and a limit of overhead lifting of thirty-five pounds occasionally and twenty pounds frequently.

The employee testified that the surgery helped and the physical therapy helped with his range of motion. He has swelling and tingling in his right shoulder which goes down into his hand and finger tips. The employee has pain in his shoulder everyday including when he moves his arm out to the side and if he lifts more than a gallon of milk. To help alleviate the pain, he takes over the counter ibuprofen 1-2 times a day and uses ice and heat. He has to stop doing laundry and vacuuming due to the pain. He has trouble sleeping on his right side and the pain in his shoulder wakes him up. The employee has limited range of motion which causes problems lifting over his shoulder level. He can reach out to the front to shoulder level but if he pushes up, he has pain. He has loss of motion behind his back and can only get his arm up to his beltline as opposed to the mid back area with his left arm. He has trouble pushing a lawnmower and cannot play basketball, cannot pitch, throw or bat due to his loss of range of motion. He has trouble lifting with his right arm due to the loss of strength and cannot change a tire or move furniture. The employee stated that his pain is now worse than when he was released at maximum medical improvement. While he was doing therapy his motion and strength was improved but since he stopped therapy it is not as good.

Although the employee is right handed, he has switched to his left hand when using hammers, wrenches and when he cooks. He believes he has a 50% loss of use on his right side. He is no longer working at Gates Rubber and could not go back to work at Gates with the restrictions given by Dr. Knight. He has looked for but has not been able to find a job due to the limits with his right arm. Although the FCE said he could work in a heavy capacity, the employee testified that he cannot work at that level due to the pain, loss of strength and loss of range of motion.

Dr. Knight noted that the FCE showed that the employee did fairly well with his effort. Dr. Knight stated based on the FCE, the employee was clear to work at a heavy demand level. He gave the employee the same restrictions as was given in the FCE. Dr. Knight rated the employee's right upper extremity at 3%. The rating was based upon the range of motion and the guidelines set by the AMA Guide to the Evaluation of Permanent Impairment Fifth Edition, and the final set of physical therapy measurements which were much better than in the FCE.

The employee was examined and rated by Dr. Palen. The physical exam showed a 50% decrease in right handed grip strength. There was a marked decrease in abduction in the right shoulder and a moderate loss of strength in the upper arm. It was Dr. Palen's opinion that the employee sustained a permanent partial disability of 35% of the right upper extremity at the right shoulder.

**RULINGS OF LAW:**

***Issue 1. Nature and Extent of Permanent Partial Disability***

Based on a review of the medical records, Dr. Knight's impairment rating, Dr. Palen's disability rating, the credible testimony of the employee and my observation during the hearing of the employee's limitations, I find that as a direct result of the accident, the employee has sustained a 25 % permanent partial disability of the right upper extremity at the level of the shoulder (232 weeks). The employer is therefore ordered to pay to the employee 58 weeks of compensation at the rate of \$343.73 per week for a total award of permanent partial disability of \$19,936.34.

**ATTORNEY'S FEE:**

Stephen Taylor, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

**INTEREST:**

Interest on all sums awarded herein shall be paid as provided by law.

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

Made by:

\_\_\_\_\_  
Lawrence C. Kasten  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Ms. Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*