

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

Injury No.: 07-131425

Employee: Darrell G. Hager
Employer: Daimler Chrysler (Settled)
Insurer: Old Carco LLC (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the September 21, 2012, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The parties stipulate that we modify the administrative law judge's award by the inclusion of the following language:

Employee's wife, Phyllis Hagar, is entitled to receive Employee's Permanent Total Disability benefits in the event she remains married to Employee and Employee predeceases her while they remain married. Her entitlement to Permanent Total Disability benefits shall cease upon her death or remarriage.

We accept the stipulation and we modify the award accordingly.

We approve and affirm the administrative law judge's allowance of attorney's fee as being fair and reasonable.

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

The award and decision of Administrative Law Judge Margaret D. Landolt, issued September 21, 2012, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 23rd day of January 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

 V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Darrell G. Hager

Injury No.: 07-131425

Dependents: Phyllis Hager

Employer: Daimler Chrysler (Settled)

Additional Party: Second Injury Fund

Insurer: Old Carco LLC (Settled)

Hearing Date: June 19, 2012

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: MDL

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: December 7, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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 opening a lid on a container when he injured his right shoulder.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right Shoulder
14. Nature and extent of any permanent disability: 36.5% PPD of a reduced right shoulder previously settled with Employer and permanent total disability for which Second Injury Fund is liable.
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Darrell Hager

Injury No.: 07-131425

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: \$742.72/\$389.04
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: SETTLED

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential (\$353.68) payable by SIF for 64 weeks beginning September 9, 2008
and, thereafter \$742.72 , for Claimant's lifetime

TOTAL: TO BE DETERMINED

23. Future requirements awarded: None

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: Ms. Diane L. Sandza

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Darrell Hager

Injury No.: 07-131425

Dependents: Phyllis Hager

Before the
**Division of Workers'
Compensation**

Employer: Daimler Chrysler (Settled)

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

Additional Party: Second Injury Fund

Insurer: Old Carco LLC (Settled)

Checked by: MDL

PRELIMINARIES

A hearing was held on June 19, 2012 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Darrell Hager ("Claimant") was represented by Ms. Diane L. Sandza. Daimler Chrysler ("Employer") and its insurer Carco LLC previously settled their liability with Claimant, and this matter proceeded to a hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General Rachael Houser. Ms. Sandza requested a fee of 25% of Claimant's award.

The parties stipulated that on or about December 7, 2012 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant's rates of compensation are \$742.72 for Permanent Total Disability ("PTD") benefits and \$389.04 for Permanent Partial Disability ("PPD") benefits; and Claimant reached maximum medical improvement on September 9, 2008, and in the event Claimant is found to be permanently and totally disabled, PTD benefits should commence on that date.

The issues for determination by hearing are whether the SIF is liable for either PPD or PTD benefits; and whether Claimant's wife is a dependent and entitled to PTD benefits in the event of Claimant's death.

SUMMARY OF EVIDENCE

Claimant is 61 years of age, right hand dominant and a high school graduate. He is able to read, write and perform basic math calculations. He has difficulty with reading retention and comprehension and suffers from optical migraines and tinnitus. (Exhibit I & J) He uses a computer on a daily basis to check and send e-mails. Claimant must limit his time on the computer to 20 to 30 minute intervals because of pain in his low back and right upper extremity. Claimant has not worked since February 2008. Prior to his retirement Claimant worked for 13 years as an assembler for Employer. Claimant began receiving Social Security Disability benefits in August, 2008.

PRIMARY INJURY

In December, 2007 Claimant was working as an assembler for Employer performing the right seal build up job. His job duties required constant and repetitive bending, lifting, lifting overhead, twisting, standing, reaching, reaching overhead, pushing, pulling and carrying of parts.

On December 7, 2007, Claimant was opening a lid on a tub container when he felt a sharp shooting pain in his right shoulder. On February 26, 2008, he sought treatment from Dr. Mark Belew. (Exhibit D) He was diagnosed with a possible rotator cuff tear and an MRI was ordered. The MRI revealed a full thickness tear of the right rotator cuff and on March 11, 2008, Dr. Belew performed an open rotator cuff repair with subacromial decompression, acromioplasty and insertion of on-cue pain pump. Dr. Belew noted in his records that Claimant's tear was acute and as a result of the December 7, 2007 work incident. (Exhibit D)

On May 5, 2008 Claimant presented to Dr. Belew complaining of ongoing pain and new soreness in his right shoulder. An incident occurred in physical therapy in May, 2008 where the electrical stimulation machine was turned up too rapidly causing his right arm to jerk severely. An MRI on May 23, 2008 revealed a small partial thickness bursal surface tear of the posterior portion of the distal supraspinatus tendon without retraction. He continued with physical therapy and on June 16, 2008 a positive impingement sign with dysesthesias was noted. On July 29, 2008 Dr. Belew noted a 30% tear of the rotator cuff with positive impingement sign and weakness and administered an injection. He imposed the following permanent work restrictions: avoid any lifting at arm's length, any overhead lifting and no lifting greater than 30 pounds. In addition, Dr. Belew cautioned Claimant against any rapid reaching with the right arm, any heavy lifting, any reaching at arm's length or any reaching overhead or behind him. Dr. Belew further opined that due to Claimant's significant shoulder injuries he would be at a risk for re-injury and as such it would be reasonable for Claimant to apply for disability. (Exhibit D)

Following his release from Dr. Belew Claimant continued to suffer from problems with his right shoulder. He experienced constant pain in his shoulder radiating into the bicep, and occasional tingling in the bicep with activity. Claimant was unable to perform any overhead work or carry or lift items with his arms extended away from his body. He was limited to lifting and carrying only 15 pounds close to his body. Claimant had significant weakness in his shoulder and his arm fatigued easily.

PRIOR INJURIES

On September 22, 2004, a chain on the hoist Claimant was moving broke, causing a sudden severe downward jerking of his right arm. Claimant was diagnosed with a right shoulder strain and received Aleve and ice from the plant medical dispensary. (Exhibit K) Claimant settled this claim with Employer on January 23, 2012 for 5% PPD of the right shoulder. (Exhibit C)

In August, 2006, Claimant noted a gradual increase in right shoulder pain culminating in a sharp stabbing like pain in the right shoulder. On August 29, 2006 an MRI revealed an undersurface tear of the rotator cuff tendons in the supraspinatus region, a partial tear of the ulnar surface of the supraspinatus with irregularity of the bursal surface, and AC joint hypertrophy with

impingement. (Exhibit D) Dr. Belew diagnosed chronic rotator cuff tendonitis, or full thickness tear, along with the possibility of medial epicondylitis and cubital tunnel syndrome. On November 1, 2006, Dr. Belew performed an open rotator cuff repair with acromioplasty and subacromial decompression. (Exhibit D & E) On May 8, 2007, Claimant returned to Dr. Belew complaining of ongoing pain in the right shoulder aggravated by work. Dr. Belew diagnosed residual rotator cuff tendonitis and administered a cortisone injection. (Exhibit D)

As a result of his two prior injuries, Claimant had problems with his right shoulder leading up to his December 7, 2007 work injury. He suffered from a sharp pain in his right shoulder that came and went with activity. Lifting, overhead work, and reaching caused pain in his right shoulder. Occasionally he would have pain and tingling radiating into his bicep. He had limited range of motion and had problems when he was required to perform duties with his arms extended in front of him or above his head. As a result of his pain and limitations he worked at a much slower pace and occasionally was unable to complete the number of jobs required per hour by his employer. Claimant settled this claim with Employer on January 23, 2012 for 20% permanent partial disability of a reduced right shoulder. (Exhibit B)

Leading up to December 7, 2007, Claimant suffered from low back pain. X-rays performed in 1999 showed narrowing of the L4-5 intervertebral disc space and minimum degenerative facet hypertrophy at L4-5 and L5-S1. (Exhibit H) He suffered from episodes of muscle spasms in the low back and was treated with manipulation and duragesics from 1999 to 2002. (Exhibit H & K) In July, 2002, he complained of severe low back pain which prompted an x-ray showing degenerative disc disease at L4-5. Physical therapy was prescribed. Due to continuing pain an MRI was performed on August 12, 2002 which revealed a posterior lateral disc protrusion at L4-5 with narrowing of lateral recesses bilaterally (left greater than right) a central disc protrusion at L1-L2 (compressing on the anterior aspect of the thecal sac) and disc desiccation at L1-2 and L4-5. As a result, Claimant received chiropractic care and injections. (Exhibit H)

Leading up to December 7, 2007 Claimant had difficulty performing his job because he suffered from a constant sharp stabbing pain in the center of his back that radiated into both hips. In addition he had daily stiffness in his low back and suffered from weakness in his back and legs. Although he was not under any physician imposed restrictions leading up to December 7, 2007, the problems in his low back slowed him down and affected his ability to perform his job duties. Claimant frequently suffered from muscle spasms that developed with increased activity such as bending, lifting or twisting. Because of his low back pain he frequently could not complete the number of jobs required per hour and had difficulty keeping up with his job duties. He typically had pain at a 5/10 level with flares to 10/10. Frequently flare-ups came on Friday, and he spent his weekends recuperating before returning to work. He used his sick and vacation days because of his back pain.

Leading up to Claimant's December 7, 2007 work injury he also had difficulty with his right hand and fingers. In 2004 he was diagnosed with multiple trigger fingers and underwent a right long and ring finger release by Dr. Schlafly. (Exhibit H, K & L). He suffered from pain in the palm of his hand that came and went with activity, stiffness in his fingers and weakness in his hand. These conditions affected his ability to complete his job duties. Prior to December 7,

2007 he had difficulty gripping and dropping parts. The problems in his right hand sometimes made it difficult for him to keep pace with his job.

Since the December 7, 2007 work injury, Claimant continues to have problems with his low back and right hand. He continues to suffer from constant sharp pain in the center of his back radiating into both hips. Claimant suffers from frequent muscle spasms and has weakness in his back and instability in his legs. He is unable to stand in a fixed position for greater than 20 minutes or he experiences increased pain, weakness and muscle spasms. Sitting for more than 20 minutes causes the same type of symptoms. He can walk about a mile, which takes 30 minutes to complete, before he must stop and rest due to pain. Bending, squatting and climbing stairs cause increased pain. The most comfortable position is to recline with his feet elevated. In addition, Claimant continues to have problems with his right hand and fingers. He suffers from pain in the palm of his hand that comes and goes with activity, stiffness in his fingers and weakness of the hand. He testified that his grip strength is decreased, and he continues to drop items and has difficulty opening jars.

Claimant's right shoulder problems have remained the same since being released from Dr. Belew in August 2008. He is constantly plagued with a sharp stabbing like pain in his right shoulder that radiates into the bicep. In addition, he suffers from occasional tingling in the bicep with activity. He is unable to perform overhead work or carry or lift items with his arms extended away from his body. The most he is able to lift is 15 pounds, and that must be done close to his body. He has significant weakness in the shoulder, and his arm fatigues easily. He can no longer drive with his right arm and compensates with his left. Claimant is never without pain in his right shoulder, even when at rest, and he performs most of his daily activities with his left arm.

As a result of his constant right shoulder and low back pain, Claimant has significant difficulty sleeping. He is unable to sleep on his right side, and wakes up nightly from pain. He sleeps approximately 3 hours uninterrupted and gets a total of about 5 to 6 hours of sleep per night. He wakes nightly from pain in both his shoulder and low back and has difficulty falling back to sleep. As a result of his sleeping problems Claimant gets fatigued easily and naps 1 to 2 hours a day. Claimant does not do any household work, and can no longer perform yard work as a result of his right shoulder and low back conditions.

Dr. David Volarich examined Claimant on July 28, 2009, prepared a report, and testified on behalf of Claimant. Based upon his physical examination and review of the medical records, Dr. Volarich diagnosed a re-tear of the right shoulder rotator cuff status post open rotator cuff repair with subacromial decompression and acromioplasty, and a partial re-tear of the right shoulder rotator cuff as a result of the December 7, 2007 work injury. In addition, he diagnosed the following pre-existing illnesses: minimal right shoulder discomfort due to the September 22, 2004 work injury; overuse trauma of the right shoulder causing impingement and rotator cuff tear status post open rotator cuff repair with acromioplasty and subacromial decompression as a result of the August 17, 2006 work injury; nasal fracture status post septoplasty; chronic lumbar syndrome secondary to disc protrusions at L1-2 and L4-5 with intermittent bilateral L5 radicular symptoms and parathesias; and right hand long and ring finger triggering status post A1 pulley releases. Dr. Volarich rated 40% PPD of the right upper extremity rated at the shoulder as a result of the December 7, 2007 work injury; 30% PPD of the right upper extremity rated at the

shoulder due to the August 17, 2006 work injury; 7.5% PPD of the right upper extremity rated at the shoulder due to the September 22, 2004 work injury; 25% PPD of the body as a whole referable to the lumbar spine due to the pre-existing chronic lumbar syndrome; and 10% PPD of the right hand.

Dr. Volarich testified that the combination of Claimant's disabilities created a substantially greater disability than the simple sum or total of each separate injury and illness and a loading factor should be added. In addition, he imposed permanent restrictions referable to Claimant's right upper extremity and lumbar spine. (Exhibit L) Dr. Volarich opined that Claimant was unable to engage in any substantial gainful activity or be expected to perform in any ongoing working capacity in the future. Based upon his medical assessment alone, he opined that Claimant was permanently and totally disabled as a result of the work injury of December 7, 2007 in combination with his pre-existing medical conditions. (Exhibit L)

Delores Gonzalez is a vocational rehabilitation counselor who testified on behalf of Claimant. At the time of her evaluation, Claimant was 58 years old and considered advanced age. He complained of pain in the right upper extremity, low and mid back, neck, right hip and occasional numbness and tingling in both arms. He could not sit or stand for more than 30 minutes at a time or walk more than 20 minutes before needing to stop, change positions and rest. He could not lift greater than 10 pounds with his right arm and no more than 25 pounds with his left, but not repetitively. He experienced increased pain in his low back with bending, stooping, and climbing, and had instability in the low back with kneeling. He napped one to two hours a day due to fatigue from lack of sleep.

Ms. Gonzalez administered the Wide Range Achievement Test (WRAT-4) which revealed very low academic achievement in reading, spelling and math. Based upon these results, Ms. Gonzalez opined that Claimant had impoverished academic skills and would have great difficulty doing even clerical work at a sedentary level. Based upon her interview and review of the medical records, Ms. Gonzalez concluded that Claimant could not perform past relevant work and did not have transferable skills. In addition, she testified that Claimant's age affected his employability. She opined that his advanced age made it much more difficult to transition into other employment. She further opined that, due to the severity of his physical limitations, Claimant had the residual functional capacity of less than sedentary work. Ms. Gonzalez testified that as a result of Claimant's residual functional capacity, his age, education and lack of transferable skills he was not capable of any competitive work for which there is a reasonably stable job market. In addition, Ms. Gonzalez testified that Claimant's need to nap 1 to 2 hours a day precluded employment. Ms. Gonzalez's opinions regarding Claimant's employability were based upon a combination of his pre-existing back injury and his three right shoulder injuries at Chrysler. (Exhibit M)

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Claimant sustained an injury by accident to the right shoulder that was medically and causally related to the incident of December 7, 2007, and resulted in permanent partial disability equaling 36.5% permanent partial disability of a reduced right shoulder.

The parties stipulated that Claimant sustained an accident to his right shoulder on December 7, 2007 resulting in injury. Dr. Volarich testified that the work accident of December 7, 2007 was the substantial contributing factor, as well as, the prevailing or primary factor in causing both the full thickness tear and the partial re-tear of the right rotator cuff and subsequent need for treatment. (Exhibit L) In addition, Dr. Volarich opined that as a result of the December 7, 2007 work injury, Claimant sustained 40% permanent partial disability to the right shoulder. (Exhibit L) Dr. Volarich was the only medical doctor to testify with respect to causation and permanent partial disability. His opinions with regard to causation are supported by the medical records of Claimant's treating physician, Dr. Belew. (Exhibit D) No evidence was offered to contradict Dr. Volarich's findings.

Dr. Volarich's testimony is supported by Claimant's testimony. Claimant continues to be plagued with right shoulder problems. He suffers daily from a constant sharp, stabbing, pain in the shoulder that radiates into the bicep. He is unable to perform any overhead activity or carry, lift or perform activities with his arms extended away from his body. He is limited to lifting and carrying only 15 pounds close to his body. Claimant has significant weakness in the shoulder and his arm fatigues easily. Claimant and Employer entered into a Stipulation for Compromise Settlement for 36.5% permanent partial disability of a reduced right shoulder for the December 7, 2007 work injury. (Exhibit A) The evidence supports that level of disability.

Based upon the record as a whole, including Claimant's testimony, the medical records of Dr. Belew and the unrebutted testimony of Dr. Volarich, I find Claimant is permanently and totally disabled and has been unable to engage in substantial gainful activity since September 9, 2008.

Dr. Volarich and Delores Gonzalez testified that Claimant was permanently and totally disabled. (Exhibit L & M) Dr. Volarich opined that based upon his medical assessment alone, Claimant is permanently and totally disabled as a result of the December 7, 2007 work injury in combination with his pre-existing medical conditions. (Exhibit L) Dr. Volarich was the only medical expert to testify with regard to permanent total disability. No evidence was offered to contradict Dr. Volarich's testimony regarding permanent total disability.

Ms. Gonzalez testified that Claimant had the residual functional capacity of less than sedentary work and as such was not capable of any competitive work for which there is a reasonably stable job market. (Exhibit M) Ms. Gonzalez was the only vocational expert to testify in this matter. No evidence was offered to contradict her findings.

Based upon the record as a whole, including Claimant's testimony and the testimony of Dr. Volarich and Ms. Gonzalez, I find Claimant is permanently and totally disabled as a result of the combination of his primary work injury to his right shoulder and the medical conditions and injuries that pre-existed December 7, 2007, and award him permanent total disability benefits against the Second Injury Fund beginning September 10, 2008.

Dr. Volarich opined that, based upon his medical assessment alone, Claimant was permanently and totally disabled as a result of the work injury of December 7, 2007 in combination with his pre-existing medical conditions. (Exhibit L) Dr. Volarich imposed significant restrictions referable to the lumbar spine and right upper extremity. (Exhibit L)

Ms. Gonzales agreed with Dr. Volarich's assessment. She testified that due to the severity of his physical limitations, Claimant could not perform his past relevant work and did not have transferable skills. (Exhibit M) She further opined that Claimant had the residual functional capacity for less than sedentary work. As a result of his residual functional capacity, age, education and lack of transferable skills, Ms. Gonzales testified that Claimant was not capable of any competitive work for which there is a reasonable stable job market. Ms. Gonzales's opinions regarding Claimant's employability were based upon the combination of Claimant's pre-existing low back injury, his pre-existing right shoulder injuries and his December 7, 2007 right shoulder work injury.

The Missouri Supreme Court held in Schoemehl v. Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007) that an injured worker's right to compensation for both accrued and un-acrued permanent and total disability benefits survives to his or her dependents. Id. at 902. The Court found that a [claimant's] dependent(s) at the time of his [or her] death falls within the statutory definition of an "employee", as set forth in Section 287.020.1 RSMo. (2000), for purposes of workers' compensation benefits. Id. at 901-902. Consequently, a surviving dependent(s) of an injured worker, who has been awarded permanent total disability benefits and subsequently dies of a cause unrelated to the work injury, is entitled to receive the awarded benefits for his or her lifetime. Buescher v. Mo. Highway and Transportation Commission, 254 S.W.3d 105, 106 (Mo. App. W.D. 2008); Section 287.230.2 RSMo. (2000) Recovery under Schoemehl, however, is limited to claims for permanent total disability benefits that were pending between January 9, 2007, the date the Missouri Supreme Court issued the decision in Schoemehl, and the effective date of the amendment abrogating Schoemehl of June 26, 2008. Bennett v. Treasurer of Missouri, 271 S.W.3d 49, 53 (Mo. App. W.D. 2008)

Claimant asserts that his wife, Phyllis Hager, is his dependent and as such entitled to survivorship benefits pursuant to Schoemehl. Section 287.240 (4) RSMo. (2000), defines a dependent as:

"... a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon [employee's] wages at the time of his injury."

A wife upon a husband with whom she lives, or who is legally liable for her support, shall be conclusively presumed to be totally dependent for support. Section 287.240 (4)(a) RSMo. (2000) Claimant and Phyllis Hager were married on July 6, 1987, in Las Vegas, Nevada. At the time of Claimant's work injury of December 7, 2007, Phyllis Hager was living with Claimant and dependent upon him for financial support. As of the date of hearing, Claimant and Phyllis Hager remained married and living together. In addition, Phyllis Hager continued to be dependent upon Claimant for financial support. Pursuant to Section 287.240 (4) RSMo., Claimant has met his burden establishing Phyllis Hager as his dependent.

As stated above, Claimant was injured December 7, 2007 and filed a Claim for Compensation with the Division of Workers' Compensation on April 1, 2008. On January 9, 2007, the Missouri Supreme Court issued its decision in Schoemehl v. Treasurer of Missouri, 217 S.W.3d 900 (Mo. 2007). Subsequently, the Missouri Legislature amended Section 287.230.2 RSMo. (Supp. 2009) abrogating Schoemehl. The effective date of said amendment is June 26, 2008. Claimant's workers' compensation claim was pending between the operative dates of January 9, 2007 and June 26, 2008.

In Gervich v. Treasurer of Missouri, the Missouri Court of Appeals, Eastern District concluded that a dependent's right to benefits under Schoemehl vest at the same time the worker's rights vest. An injured worker acquires a legal right or interest in the workers' compensation award when he or she suffers the work injury. Petties vs. Petties, 129 S.W. 3d 901, 908 (Mo. App. W.D. 2004). The Court further stated that "a theory that the status and rights of a dependent vest at some later time than those of the injured worker vest is not supported by logic, case law, or statute, and fails to follow the logic of Section 287.240 (4) RSMo. (2000), which defines the term "dependent" as used throughout the Workers' Compensation Law." Gervich v. Condaire, Inc., ED94726 (Mo.App. 2011)

Claimant and Phyllis Hager were married on the date that Claimant suffered his work-related injury. Pursuant to Gervich, Phyllis Hager has a legal and martial property interest in Claimant's workers' compensation award for his December 7, 2007 workers' compensation injury. Gervich v. Condaire, Inc., ED94726 (Mo. App. 2011) *citing* Petties vs. Petties, 129 S.W. 3d 901, 907-908 (Mo. App. W.D. 2004) Claimant's workers' compensation claim was pending between January 9, 2007 and June 26, 2008. As such, Phyllis Hager is a party to survivor benefits under Schoemehl vs. Treasurer of Missouri.

Claimant is awarded PTD benefits from the SIF beginning on September 10, 2008. Claimant's attorney Diane L. Sandza is entitled to an attorney's fee of 25% of Claimant's award.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation