

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

Injury No. 12-047298

Employee: Ernest Hallock
Employer: Professional Management Group, Inc. (Settled)
Insurer: Travelers Property & Casualty Company (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. 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 31, 2014. The award and decision of Administrative Law Judge Vicky Ruth, issued December 31, 2014, 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 14th day of May 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: Ernest Hallock

Injury No. 12-047298

Dependents: N/A

Employer: Professional Management Group, Inc.
(SETTLED)

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

Additional Party: Second Injury Fund Only

Insurer: Travelers Property & Casualty Company
(SETTLED)

Hearing Date: September 29, 2014

Checked by: VR/cs

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: June 4, 2012.
5. State location where accident occurred or occupational disease was contracted: Miller County, Missouri.
6. Was above employee in the employ of above employer at the time of the alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was using a drill when the drill bit caught, injuring his right hand.
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 hand and trigger finger injury.
14. Nature and extent of any permanent disability: 30% of the right hand at the level of the wrist.
15. Compensation paid to-date for temporary disability: \$10,408.89.
16. Value necessary medical aid paid to date by employer/insurer? \$42,515.30.
17. Value necessary medical aid not furnished by employer/insurer? N/A.

Employee: Ernest Hallock

Injury No. 12-047298

18. Employee's average weekly wages: N/A.
19. Weekly compensation rate: \$233.23.
20. Method of wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from employer: Previously settled.
22. Second Injury Fund liability: Yes, for permanent total disability benefits of \$233.23 per week beginning April 27, 2014, and continuing for Claimant's lifetime or until modified pursuant to statute.
23. Future medical awarded: N/A.

Said payments to begin immediately and to be payable and subject to modification and review as provided by law.

The compensation awarded to 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: Evan Porter/Timothy McDuffey, McDuffey Law Firm, LLC.

Employee: Ernest Hallock

Injury No. 12-047298

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ernest Hallock

Injury No. 12-047298

Dependents: N/A

Employer: Professional Management Group, Inc.
(SETTLED)

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

Additional Party: Second Injury Fund Only

Insurer: Travelers Property & Casualty Company
(SETTLED)

Hearing Date: September 29, 2014

PRELIMINARIES

On September 29, 2014, Ernest Hallock (the claimant) and the Second Injury Fund appeared in Jefferson City, Missouri, for a final award hearing regarding the Second Injury Fund claim in three separate cases: Injury Nos. 11-111535, 12-047298, and 12-106201. A separate award will be issued in each case. Claimant was represented by attorney Evan Porter. The Second Injury Fund was represented by attorney Brian Herman; Attorney David McCain observed on behalf of the Fund. Claimant testified in person at the hearing as well as by deposition. Dr. David Volarich, Mr. Michael Dreiling, and Mr. James England testified by deposition. The parties submitted briefs on or about October 22, 2014, and the record closed at that time.

STIPULATIONS

The parties stipulated to the following:

Injury No. 11-111535

1. On or about October 24, 2011, Ernest Hallock (the claimant) was an employee of Professional Management Group (the employer) when he allegedly sustained an injury by accident to his low back and upper back. This accident occurred while Claimant was working in the course and scope of his employment with employer.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. In October 2011, the employer's liability for workers' compensation was insured by Commerce and Industry Insurance Company, in care of AIG Claims, Incorporated.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Miller County is proper. For trial purposes, venue is also proper in Jefferson City, Missouri.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.
7. Claimant's compensation rate is \$295.08 for permanent partial disability benefits and permanent total disability benefits.

8. No medical aid was provided.
9. No temporary total disability benefits were provided.

Injury No. 12-106201

1. On or about January 18, 2012, Ernest Hallock (the claimant) was an employee of Professional Management Group, Incorporated (the employer) when he allegedly sustained an injury by occupational disease to his left hand and left finger. (trigger finger).
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. In January 2012, the employer's liability for workers' compensation was insured by Commerce and Industry Insurance Company in care of AIG Claims, Incorporated.
4. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
5. The employer's liability for workers' compensation was insured by Commerce and Industry Insurance Company, in care of AIG Claims, Incorporated.
6. The Missouri Division of Workers' Compensation has jurisdiction and venue in Miller County is proper. For trial purposes, venue is also proper in Jefferson City, Missouri.
7. Notice is not an issue.
8. Claimant filed a Claim for Compensation within the time prescribed by law.
9. Claimant's compensation rate of \$194.87 for permanent partial disability benefits and permanent total disability benefits.
10. No medical aid was provided.
11. No temporary total disability benefits were provided.

Injury No. 12-047298

1. On or about June 4, 2012, Ernest Hallock (the claimant) was an employee of Professional Management Group, Incorporated (the employer) when he sustained an injury by accident to his right hand and right finger.
2. The Missouri Division of Workers' Compensation has jurisdiction and venue in Miller County is proper. For trial purposes, venue is also proper in Jefferson City, Missouri.
3. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
4. At the time of the June 2012 injury, the employer's liability for workers' compensation was insured by Travelers Property and Casualty Company.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.
7. Claimant's compensation rate was \$233.23 for permanent partial disability benefits and permanent total disability benefits.
8. Claimant reached maximum medical improvement on April 22, 2013.
9. Medical aid was provided in the amount of \$42,515.30.
10. Temporary total disability was provided in the amount of \$10,408.89, representing approximately 44 and 4/7th weeks of benefits. The period of temporary total disability benefits ended when the employee was released on April 22, 2013.

ISSUES

The parties agreed that the issues to be resolved are as follows:

Injury No. 11-111535

1. Accident or occupational disease arising out of and in the course of employment;
2. Nature and extent of any permanent partial disability.
3. Second Injury Fund liability, if any.

Injury No. 12-106201

1. Accident or occupational disease arising out of and in the course of employment;
2. Nature and extent of any permanent partial disability.
3. Second Injury Fund liability, if any.

Injury No. 12-047298

1. Alleged permanent total disability, or
2. Nature and extent of permanent partial disability.
3. Second Injury Fund liability, if any.

EXHIBITS

On behalf of Claimant, the following exhibits were entered into evidence:

- | | |
|------------|---------------------------------------------------------------------|
| Exhibit 1 | Medical records from Lake Regional Hospital. |
| Exhibit 2 | Medical records from Lake Regional Hospital. |
| Exhibit 3 | Medical records from Dr. Christopher Leslie. |
| Exhibit 4 | Medical records from Surgical Institute of Lake of the Ozarks. |
| Exhibit 5 | Medical records from Surgical Institute of Lake of the Ozarks. |
| Exhibit 6 | Medical records from Dr. Christopher Leslie. |
| Exhibit 7 | Medical records from Advanced Radiology. |
| Exhibit 8 | Medical records from Dr. David Brown. |
| Exhibit 9 | Medical records from Barnes Care. |
| Exhibit 10 | Medical records from Lake Regional Hospital. |
| Exhibit 11 | Medical records from Occupational Medicine Clinic. |
| Exhibit 12 | Medical records from Osage Beach Cardiology. |
| Exhibit 13 | Medical records from Dr. Mark Shen. |
| Exhibit 14 | Medical records from Lake Regional Cardiovascular Institute. |
| Exhibit 15 | Medical records from St. Mary's Clinic – Lake Ozark. |
| Exhibit 16 | Medical records from Dr. Osvaldo Acosta-Rodriquez. |
| Exhibit 17 | Deposition and report of Dr. Volarich. |
| Exhibit 18 | Deposition and report of Michael Dreiling. |
| Exhibit 19 | <i>Stipulation for Compromise Settlement, Injury No. 11-111535.</i> |
| Exhibit 20 | <i>Stipulation for Compromise Settlement, Injury No. 12-106201.</i> |
| Exhibit 21 | <i>Stipulation for Compromise Settlement, Injury No. 12-047298.</i> |
| Exhibit 22 | <i>Amended Claim for Compensation, Injury No. 11-111535.</i> |

Employee: Ernest Hallock

Injury No. 12-047298

Exhibit 23 Amended *Claim for Compensation*, Injury No. 12-106201.
Exhibit 24 Amended *Claim for Compensation*, Injury No. 12-047298.

On behalf of the Second Injury Fund, the following exhibits were entered into evidence:

Exhibit A Deposition of Claimant, Ernest Hallock.
Exhibit B Deposition and report of James England.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence. All depositions were admitted subject to any objections contained therein. Unless noted otherwise, the objections are overruled.

FINDINGS OF FACT

Based on the above exhibits, the stipulations, and the testimony presented at the hearing, I make the following findings:

1. Claimant was born on January 4, 1061. On the date of the hearing, he was 53 years of age. Claimant lives in Camdenton, Missouri.
2. Claimant made it through the ninth grade but he did not finish high school. He never obtained any additional education, certifications, or formal training. He testified that he is not able to use a computer.
3. Claimant's work history includes raising cattle on his grandfather's farm, working in the construction field, helping a friend build a Tiki bar in Mexico, and various roofing and construction jobs in Illinois and Missouri.
4. Claimant testified that his roofing, remodeling, and construction jobs required him to lift up to 100 pounds, climb ladders, and use tools such as a nail gun, hammer, and drill. Claimant also testified that a majority of his work experience was for outdoor work.
5. Leading up to his heart attack in 2010, Claimant worked for John Hicks Construction remodeling condos at Tan-Tar-A Resort in Osage Beach, Missouri, for approximately five years. Claimant testified that following his 2010 heart attack, he was not hired back by John Hicks Construction.
6. During this period, Claimant and a friend attempted to start their own roofing business on the side, but the business was unsuccessful. They did not have any employees. Claimant testified that the heart attack slowed him down and after less than a year, he had to close the business.
7. Claimant's last job was as a remodeler for Professional Management Group (the employer). He began working for the employer in August 2011 and he worked five days a week, eight hours each day. His duties included repairing boat docks, mending fences,

and making cosmetic repairs to the outside of buildings. Most of the time he worked alone, but sometimes he would work on a project with another field employee.

Injury No. 11-111535

8. Claimant testified that on October 24, 2011, he was working for the employer when he slipped down a steep hill while carrying a piece of lumber. He indicated that his right foot slid on gravel, which caused him to lose his balance. He fell on his right hip and also injured his left rib cage. Claimant reported the injury and was seen in the emergency room, where he was diagnosed with non-cardiac chest.
9. On October 25, 2011, Claimant saw Dr. Pauline Abbott with a chief complaint of mid-back pain and left rib pain. The diagnosis was thoracic and lumbar spine strains.

Injury No. 12-106201

10. Claimant testified that on or about January 18, 2012, he felt a pop and cramping of his left long finger PIP joint. He reported the injury and his employer referred him to Dr. Abbott.
11. On May 31, 2012, Claimant treated with Dr. Mark Shen at Lake Regional Medical Group.¹ Claimant reported chest pain that runs from the chest to the back on the left side only. He also reported chronic back issues with lower back pain. The doctor prescribed medication.

Injury No. 12-047298

12. On June 4, 2012, Claimant sustained an injury by accident arising out of and in the course and scope of employment. The accident occurred when Claimant was using a drill bit and the drill bit caught, twisting his hand suddenly.
13. On June 7, 2012, Claimant saw Dr. Christopher Leslie, who diagnosed Claimant with a displaced right 4th metacarpal fracture.² The doctor recommended surgery.
14. On June 13, 2012, Claimant underwent an open reduction internal fixation of the right fourth metacarpal fracture.³ The surgery was performed by Dr. Christopher Leslie. At a follow-up visit on June 28, 2012, Dr. Leslie noted Claimant was complaining of increased pain in his right hand since he had returned to work last week.⁴ Claimant reported that as he was staining a deck he felt a "pop" in his right hand with immediate pain. The doctor ordered an x-ray, which revealed a displaced fracture of the ring finger metacarpal with loose hardware. The doctor ordered a repeat ORIF right ring finger metacarpal due to displacement with loosened hardware.
15. On July 11, 2012, Dr. Leslie performed a second surgery on Claimant's right hand.⁵ The

¹ Exh. 11.

² Exh. 3.

³ Exhs. 5 and 4.

⁴ Exhs. 5 and 3.

⁵ Exh. 5.

procedure was an open reduction and internal fixation of right ring finger metacarpal and removal of hardware.

16. On September 25, 2012, Claimant was seen by Dr. Leslie for a re-check of the right hand.⁶ Claimant reported severe pain that was more in the wrist than the hand. The doctor noted minimal swelling and “[n]o obvious TTP over the 4th MC. Severe TTP throughout the wrist. Decreased range of motion. NV intact.”⁷ The doctor applied a short arm case and ordered an MRI. That MRI was performed September 28, 2012.⁸ On or about October 2, 2012, Dr. Leslie reviewed the MRI and noted that it revealed the a right wrist TFCC tear.
17. On October 15, 2012, Claimant saw Dr. David Brown his right hand injury.⁹ Dr. Brown ordered a home physical therapy program for range of motion of the digits, and he referred Claimant to a supervised therapy program for three times per week for a month. With regard to the wrist pain, Dr. Brown recommended treating Claimant with a removable short arm splint.. He noted that once Claimant gets some range of motion back into his finger, they can re-evaluate the wrist. The doctor released Claimant to work with no use of the right upper extremity and strict one-handed work with the uninjured extremity.
18. Claimant returned to Dr. Brown on November 1, 2012.¹⁰ Claimant reported significant improvement in motion since the last visit. The doctor recommended four more weeks of an aggressive supervised therapy program, along with the home therapy program. At the December 17, 2012 visit, the doctor noted continued improvement with the range of motion. Claimant, however, indicated that the ulnar aspect of his hand and wrist hurt all the time. The doctor recommended an MRI with arthrogram. On January 9, 2013, Dr. Brown noted that conservative treatment has failed (with regard to the radial-sided TFCC tear). Dr. Brown indicated that Claimant is a candidate for a wrist arthroscopy TFCC debridement.
19. On January 24, 2013, Dr. Brown performed a right wrist arthroscopy with an arthroscopic debridement of the radial-sided TFCC tear.¹¹ Claimant subsequently underwent additional physical therapy. At a follow-up visit with on March 11, 2013, Dr. Brown found Claimant was progressing and ordered additional physical therapy. On April 8, 2013, Claimant saw Dr. Brown with complaints of continued right wrist pain that hurts “everywhere.” Dr. Brown determined that based on Claimant’s lack of response to treatment modalities, he thinks it is unlikely that Claimant will benefit from any further intervention. The doctor recommended a Functional Capacity Evaluation (FCE).
20. Claimant underwent an FCE on April 16, 2013, which placed him in the medium work category.

⁶ Exh. 6.

⁷ Exh. 6.

⁸ Exh. 7.

⁹ Exh. 8.

¹⁰ Exh. 8.

¹¹ Exh. 8.

21. On April 22, 2013, Claimant returned to Dr. Brown, who found him to be at maximum medical improvement. Dr. Brown noted that the FCE evaluator found that Claimant failed three out of six performance criteria. Dr. Brown recommended the restrictions outlined in the FCE, which indicate Claimant can work within a medium work demand level. Dr. Brown further noted that Claimant can handle 40 pounds occasionally, 18 pounds frequently, and 9 pounds constantly and a push/pull of 60 pounds.
22. Dr. Brown, on May 15, 2013, provided a rating of 15% permanent partial disability at the level of the right wrist.

Pre-existing Injuries

Upper and lower back

23. Claimant testified that he has chronic lumbar pain with intermittent left leg radicular symptoms. On or about June 30, 2004, Dr. Osvaldo Acosta-Rodriguez noted complaints of low back pain following an incident where Claimant was throwing trees out of a ditch and felt a pop and pain in his low back.
24. On or about June 30, 2004, Dr. Osvaldo Acosta-Rodriguez of Rehabilitation Specialists, University of Missouri health Care, performed a Family Services Evaluation of Claimant.¹² The doctor noted Claimant complained of sudden onset (4 weeks ago) of low back pain. The pain began following an incident when he was in a ditch cutting trees and hurt his back. The doctor's assessment was (1) right SI joint dysfunction with an anteriorly rotated sacral iliac joint, and (2) complaints of radiculopathy without any objective evidence for disc herniation or nerve compression on the examination. During the exam, the doctor extended Claimant's hip and heard loud pops.
25. At a visit on January 17, 2005, the doctor again diagnosed Claimant with SI joint dysfunction; Claimant also had bronchitis.¹³ Dr. Acosta-Rodriguez again placed Claimant in the supine position and forcefully extended his left lower extremity until he heard a large pop at the SI joint region. Claimant reported this caused a significant decrease in pain. At the February 7, 2005 visit, the doctor noted that Claimant "has not listened to anything" the doctor has told him to do and "therefore he continues to have pain."¹⁴ Dr. Acosta-Rodriguez again instructed Claimant to do knee to chest exercises, apply ice, and take the prescribed medication.
26. On April 13, 2005, Dr. Acosta-Rodriguez noted in a letter that he had called the Claimant at home on that date to discuss his condition; Claimant reported he had returned to his normal pre-morbid state and was doing well. Dr. Acosta-Rodriguez found that Claimant had reached maximum medical improvement.
27. On January 12, 2006, Claimant returned to Dr. Acosta-Rodriguez. Claimant complained

¹² Exh. 14.

¹³ Exh. 14.

¹⁴ Exh. 14.

of sudden pain in his leg from the back “all the way down.”¹⁵ Claimant reported pain that was an 8 out of 10. The assessment was left SI joint dysfunction and mild radiculopathy of undetermined etiology. The doctor provided an SI joint injection and performed reduction in his thoracic and lumbar spine. In addition, the doctor provided medication and instructed Claimant on how to do knee to chest exercises and other exercises to strengthen his back.

28. Claimant again treated for back pain in September 2009.¹⁶

Heart Condition

29. In January 2010, Claimant suffered a heart attack and was seen in the emergency room with complaints of chest pain. An EKG revealed a left bundle branch bloc and pulse of 66. X-rays of the chest were read to show pulmonary venous congestion. An echocardiogram revealed an ejection fraction of 35% and a cardiac catheterization noted a 100% occlusion of the right coronary artery. Claimant was diagnosed with acute myocardial infarction. On or about January 6, 2010, Claimant underwent a four-vessel bypass. Claimant had several more visits regarding chest pain.

30. Claimant was seen by Dr. Muthu Krishnan on December 18, 2012, regarding his chest pain.¹⁷ On January 23, 2013, Dr. Krishnan completed Cardiac Clearance and indicated that from a cardiac standpoint, Claimant was at low risk for the planned surgical procedure (hand surgery) and may undergo anesthesia. A similar form was completed approximately a week before, on January 15, 2013.

Independent Medical Evaluation - Dr. Volarich

31. On or about January 29, 2014, Dr. David Volarich examined Claimant for an Independent Medical Examination (IME).¹⁸ Dr. Volarich also reviewed various medical records.

32. As to the October 2011 injury, Dr. Volarich made the following diagnoses: (1) left posterior chest wall and thoracic strain/sprain; (2) lumbar strain/sprain. The doctor opined that Claimant sustained a 17.5% permanent partial disability (PPD) of the body as a whole rated at the thoracic spine and left posterior chest wall. He indicated that this rating accounts for ongoing myofascial back pain and lost motion. Dr. Volarich also noted that there is a 5% PPD of the body as a whole rated at the lumbar spine due to the aggravation of his lumbar syndrome causing an increase in back pain and contributing to lost motion. Dr. Volarich opined that these disabilities were a hindrance to Claimant's employment or re-employment.

33. As to the January 2012 injury, Dr. Volarich diagnosed Claimant with left long finger triggering. The doctor determined that this injury resulted in PPD of 35% of the left hand long finger at the metacarpophalangeal joint due to triggering for which he received non-

¹⁵ Exh. 14.

¹⁶ Exh. 15.

¹⁷ Exh. 13.

¹⁸ Exh. 17.

operative treatment. According to Dr. Volarich, this disability was a hindrance to Claimant's employment or re-employment.

34. As to the June 2012 injury, Dr. Volarich diagnosed Claimant with the following: (1) right hand ring finger metacarpal fracture – S/P open reduction internal fixation; (2) failed hardware right ring metacarpal fracture – S/P revision open reduction internal fixation with retained hardware; and (3) right wrist torn triangulofibrocartilage complex – S/P arthroscopic debridement of a right sided TFCC tear. Dr. Volarich opined that these injuries resulted in the following PPD: (1) 35% of the right hand at the level of the wrist, and (2) 35% of the right upper extremity rated at the forearm. Dr. Volarich opined that these disabilities were a hindrance to Claimant's employment or re-employment.
35. Dr. Volarich also made the following diagnoses regarding Claimant's pre-existing conditions: (1) chronic lumbar syndrome with myofascial pain and intermittent left leg radicular symptoms requiring Tramadol for control prior to October 24, 2011; (2) left wrist carpal avulsion fracture – asymptomatic; and (3) triple vessel coronary artery disease – S/P four-vessel coronary artery bypass grafting. Dr. Volarich opined that Claimant has the following PPD for these pre-existing conditions: (1) 20% of the body as a whole rated at the lumbar spine due to chronic lumbar left leg radicular syndrome and myofascial pain that contributes to lost motion in the low back; and (2) 40% of the body as a whole rated at the cardiovascular system due to the triple vessel coronary artery disease that required surgery and resulted in recurrent chest pain, loss of endurance, easy fatigability, and the need to take multiple medications. Dr. Volarich opined that there was no disability from the 2006 wrist injury. He further found that the combination of disabilities creates a substantially greater disability than the simple sum or total of each separate injury/illness, and that a loading factor should be added.
36. In his IME report, Dr. Volarich indicated that he is uncertain whether Claimant will be able to return to work in the southwestern part of Missouri. He recommended a vocational assessment. If that vocational assessment is able to identify a job for which Claimant is suited, the doctor had no objection to Claimant attempting to return to work based on the limitations Dr. Volarich imposed. However, if vocational assessment is unable to identify a job for which Claimant is suited, the doctor believes that Claimant is permanently and totally disabled as a direct result of the work-related injuries of October 2011, January 2012, and June 2012 in combination with each other and in combination with his pre-existing medical conditions.
37. Dr. Volarich indicated that as to the spine before the October 2011, he would have advised Claimant to work full duty to tolerance.
38. As to the October 2011 injury, Dr. Volarich indicated that he would have advised Claimant to work full duty to tolerance with normal work precautions.
39. As to the January 2012 work injury, Dr. Volarich determined that limitations were not required.

40. For the June 2012 work injury, Dr. Volarich imposed a long list of restrictions which include (but are not limited to) the following:
- Do not handle weights greater than two to three pounds with the right upper extremity alone, particularly with the right arm extended away from the body.
 - Handle weights to tolerance with the right arm dependent, close to the body, but in general, no more than 15 pounds.
 - Minimize repetitive gripping, pinching, squeezing, pushing, pulling, twisting, rotary motions, and similar tasks, and to limit use to as-needed.
 - Avoid impact and vibratory trauma to the hand.
41. As to Claimant's pre-existing heart condition, Dr. Volarich imposed several restrictions, including but not limited to the following:
- Avoid weather extremes.
 - Avoid vigorous and strenuous activities, particularly pushing, pulling, and carrying. Avoid emotional distress.
 - Do not handle weights greater than about 50 pounds and limit this to an occasional, as-needed basis.

Vocational Evaluation – Michael Dreiling

42. On February 28, 2014, Michael Dreiling, a vocational rehabilitation specialist, performed a Vocational Evaluation of Claimant.¹⁹ Mr. Dreiling met with Claimant, reviewed various records, including the FCE report, Dr. Volarich's report. Mr. Dreiling also conducted vocational testing of Claimant, including the Wonderlic Personnel Test. Mr. Dreiling determined that based on his vocational profile, Claimant cannot return to any of his past work. He also noted that based upon the results of the functional-capacity testing, there would theoretically be work in the labor market consistent with the medical limitations, but that when factoring in the other vocational factors in Claimant's vocational profile, it is very unlikely that he could obtain employment in the open labor market. In addition, Mr. Dreiling opined that taking into account Claimant's heart condition and related restrictions, along with the problems he has with his dominant upper extremity, Claimant is quite limited vocationally. According to Mr. Dreiling, when looking at "the totality of his vocational profile, no employer in the usual course of business seeking persons to perform employment in the usual and customary way would reasonably be expected to employ [Claimant] in his condition."²⁰ Mr. Dreiling concluded that Claimant is permanently and totally disabled from a vocational perspective.

Vocational Evaluation – James England

43. On July 9, 2014, James England issued a Vocational Rehabilitation Evaluation report based on a review of Claimant's medical records and his deposition. Mr. England noted that Claimant, at the time of the evaluation, was 53 years old and had a limited education with no G.E.D. Mr. England indicated that based on Dr. Brown's findings, Claimant can

Exh. 18.

²⁰ Exh. 18, report p. 10.

still do medium level work activity. Mr. England acknowledged that this would prevent Claimant from doing his past job in construction; however, Mr. England believed the medium level work restriction would not prevent Claimant from doing a variety of alternative work, such as working in the cost estimation area of construction work, or at the “answer desk” at a home remodeling facility or a supervisor or building maintenance for a property management company.²¹ Mr. England also believed that Claimant could work a wide variety of entry-level service positions such as security work, being a desk clerk at a motel, or a number of cashiering positions. Mr. England further opined that “[e]ven under Dr. Volarich’s restrictions he could still perform virtually all of those positions as well.”²²

44. Nevertheless, Mr. England acknowledged that “if one assumes his subjective complaints that he has to lie down at least twice a day because of back pain and that this is at an unpredictable time and for unknown amounts of time, that could preclude his ability to work in and of itself regardless of any problems with his hand or heart. The medical doctors’ statements, however, do not appear to back up that level of disability with regard to the back and the man did, in fact, work after his back injury for quite a few months at a heavy job without restriction.”²³
45. In his deposition, Mr. England testified that he found it pertinent that although Claimant had previously had some cardiac issues, he was eventually returned to work without any specific cardiac restrictions “per se” and he did in fact return to performing some fairly heavy construction work.²⁴

Stipulations for Compromise Settlement

46. Claimant settled his case against the employer/insurer in Injury Number 11-111535 for 7.5% permanent partial disability of the body as a whole referable to the thoracic and lumbar spine.
47. Claimant settled his case against the employer/insurer in Injury Number 12-106201 for 17.5% permanent partial disability of the left middle finger at the 35-week level.
48. Claimant settled his case against the employer/insurer in Injury Number 12-047298 for 30% permanent partial disability of the right wrist (at the 175-week level), plus \$5,000.00 for future medical benefits.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

²¹ Exh. A, report pp. 12-13.

²² Exh. A, report. p. 14.

²³ Exh. A, report p. 14.

²⁴ Exh. A, p. 9.

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.²⁵ The employee must prove by a preponderance of credible evidence all material elements of his or her claim, including Second Injury Fund liability.²⁶ Proof is made only by competent and substantial evidence, and may not rest on speculation.²⁷

Issue 1: Whether Claimant is permanently and totally disabled, or

Issue 2: Nature and extent of permanent partial disability or permanent total disability.

Issue 3: Second Injury Fund liability, if any.

Claimant seeks an Award of permanent total disability against the Second Injury Fund. In the alternative, claimant argues that if the Tribunal finds that claimant is permanently and totally disabled due to the last injury alone, then claimant is still entitled to permanent partial disability benefits against the Second Injury Fund.²⁸

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.²⁹ Proof is made only by competent and substantial evidence, and may not rest on speculation.³⁰ Medical causation not within lay understanding or experience requires expert medical evidence.³¹ When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.³²

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.³³ Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.³⁴

Section 287.020.7, RSMo, provides that "total disability" is the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident.³⁵ The main factor in this determination is whether, in the ordinary course of business, any employer would reasonably be expected to employ the employee in this present physical condition and reasonably expect him to perform the duties of

²⁵ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo.App. 2002).

²⁶ *Meilves v. Morris*, 422 S.W.2d 335, 399 (Mo. 1968).

²⁷ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. W.D. 1974).

²⁸ If claimant is permanently and totally disabled due to the last injury alone, the Second Injury Fund bears no liability. *Roller v. Treasurer of the State of Mo.*, 935 S.W.2d 739, 742-743 (Mo.App. 1996).

²⁹ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

³⁰ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. W.D. 1974).

³¹ *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

³² *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo.App. 1984).

³³ *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo.App. 1957).

³⁴ *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

³⁵ See also *Houston v. Roadway Express, Inc.*, 133 S.W.3d 173, 178 (Mo.App. S.D. 2004).

the work for which he was hired.³⁶ The test for permanent and total disability is whether the claimant would be able to compete in the open labor market.³⁷ When the claimant is disabled by a combination of the work-related event and pre-existing disabilities, the responsibility for benefits lies with the Second Injury Fund.³⁸ If the last injury in and of itself renders a claimant permanently and totally disabled, the Second Injury Fund has no liability and the employer is responsible for the entire compensation.³⁹

In order to find permanent total disability against the Second Injury Fund, it is necessary that the employee suffer from a permanent partial disability as the result of the last compensable injury, and that the disability has combined with a prior permanent partial disability to result in total disability.⁴⁰

Where a pre-existing permanent partial disability combines with a work-related permanent partial disability to cause permanent total disability, the Second Injury Fund is liable for compensation due the employee for the permanent total disability after the employer has paid the compensation due the employee for the disability resulting from the work-related injury.⁴¹ In determining the extent of disability attributable to the employer and the Second Injury Fund, an administrative law judge must determine the extent of the compensable injury first.⁴² If the compensable injury results in permanent total disability, no further inquiry into Second Injury Fund liability is made.⁴³ Therefore, it is necessary that the employee's last injury be closely evaluated and scrutinized to determine if it alone results in permanent total disability and not permanent partial disability.

Various factors have been considered by courts attempting to determine whether or not an employee is permanently totally disabled. It is not necessary that an injured employee be rendered, or remain, wholly or completely inactive, inert or helpless in order to be entitled to receive compensation for permanent total disability.⁴⁴ An employee's ability or inability to perform simple physical tasks such as sitting,⁴⁵ bending, twisting,⁴⁶ and walking⁴⁷ may prove that the employee is permanently totally disabled. An employee's age may also be taken into consideration.⁴⁸

³⁶ *Reiner v. Treasurer of the State of Missouri*, 837 S.W.2d 363, 367 (Mo.App. 1992).

³⁷ *Id.*

³⁸ Section 287.200.1, RSMo.

³⁹ *Nance v. Treasurer of Missouri*, 85 S.W.3d 767 (Mo.App. W.D. 2003).

⁴⁰ Section 287.220.1, RSMo.; *Brown* at 482; *Anderson* at 576.

⁴¹ *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 366 (Mo.App. 1992).

⁴² *Roller v. Treasurer of the State of Mo.*, 935 S.W.2d 739, 742-743 (Mo.App. 1996).

⁴³ *Id.*

⁴⁴ *Maddux v. Kansas City Public Service Co.*, 100 S.W.2d 535 (Mo. 1936); *Grgic v. P & G. Const.*, 904 S.W.2d 464 (Mo.App. E.D. 1995); *Julian v. Consumers Markets, Inc.*, 882 S.W.2d 274 (Mo.App. S.D. 1994); *Groce v. Pyle*, 315 S.W.2d 482 (Mo.App. 1958).

⁴⁵ *Brown v. Treasurer of Missouri*, 795 S.W.2d 479 (Mo.App. E.D. 1990).

⁴⁶ *Sprung v. Interior Const. Service*, 752 S.W.2d 354 (Mo.App. E.D. 1988).

⁴⁷ *Keener v. Wilcox Elec. Inc.*, 884 S.W.2d 744 (Mo.App. W.D. 1994).

⁴⁸ *Tiller v. 166 Auto Auction*, 941 S.W.2d 863 (Mo.App. S.D. 1997); *Reves v. Kindell's Mercantile Co., Inc.* 793 S.W.2d 917 (Mo.App. S.D. 1990). See also *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919 (Mo.App. S.D. 1982).

Employee: Ernest Hallock

Injury No. 12-047298

On June 4, 2012, Claimant sustained a compensable injury to his right hand. This injury occurred during the course and scope of his employment with the employer. I find that as a result of the June 2012 injury, Claimant sustained a permanent partial disability (PPD) of 30% permanent partial disability of the right wrist/hand (at the 175-week level).

Claimant also has several pre-existing permanent partial disabilities, as follows: 17.5% of the left middle finger at the 35-week level, 7.5% of the body as a whole referable to the thoracic and lumbar spine, 3% of the body as a whole referable to the lumbar spine (non-work injury), and 15% of the body as a whole referable to the heart condition.

Claimant argues that he is permanently and totally disabled due to the combination of his primary (June 2012) work injury to his right wrist/hand in combination with his pre-existing conditions (which include the October 2011 work injury to his body as a whole/back, January 2012 work injury to his left middle finger at the 35-week level; the body as a whole referable to the lumbar spine from the non-work injury, and the body as a whole referable to the heart condition). The Second Injury Fund suggests that it is liable for no benefits, or at most, is liable for permanent partial disability benefits as to the June 2012 case.

After considering all of the evidence, I find that Claimant is permanently and totally disabled and that such disability is due to the combination of his primary injury (June 2012) to his right wrist/hand and his pre-existing conditions (left middle finger at the 35-week level, thoracic and lumbar spine, and cardiac condition). In making this determination, I find the opinions of Dr. Volarich and Mr. Dreiling to be credible and persuasive on this issue. I also specifically find that Claimant was a credible and convincing witness. Since the permanent and total disability is the result of a combination of Claimant's primary and pre-existing disabilities, the Second Injury Fund is therefore liable for payment of permanent total disability benefits.

Having established the responsibility of the Second Injury Fund for permanent total disability (PTD) exposure under this claim, there is yet the issue regarding the amount and timing of the payments under the statute. The parties agreed that Claimant reached maximum medical improvement on April 22, 2013. Claimant and the employer/insurer settled the primary injury for permanent partial disability of 30% of the right wrist/hand, which represents 52.5 weeks of disability. Thus, the liability of the employer/insurer for permanent partial disability commences on April 23, 2013, and continues through April 26, 2014. I find the Second Injury Fund is liable for weekly PTD payments of \$233.23, beginning April 27, 2014, and continuing for Claimant's lifetime or until modified pursuant to statute. Since Claimant's rates for permanent partial disability and permanent total disability are the same, there is no rate differential.

Any pending objections not expressly ruled on in this Award are overruled.

Employee: Ernest Hallock

Injury No. 12-047298

This Award is subject to a lien in the amount of 25% of the payments hereunder in favor of Evan Porter/Timothy McDuffey, McDuffey Law Firm, LLC for necessary legal services rendered to Claimant.

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation