

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

Injury No.: 03-138064

Employee: Mark Harris
Employer: Rebar Specialist, Inc. (Settled)
Insurer: Liberty Mutual Insurance 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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the corrected award and decision of the administrative law judge dated March 11, 2010. The corrected award and decision of Administrative Law Judge Cornelius T. Lane, issued March 11, 2010, 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 5th day of November 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Mark Harris Injury No.: 03-138064
Dependents: N/A Before the
Employer: Rebar Specialist, Inc. (Settled) **Division of Workers'**
Compensation
Department of Labor and Industrial
Additional Party: Treasurer as Custodian of the Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Liberty Mutual Insurance Company
Hearing Date: December 17, 2009 Checked by: CTL:ms

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: April 1, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant worked as an iron worker which required a great deal of repetitive heavy work.
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: Lower back settled for 26 percent of the body as whole PPD, and psychiatric condition settled for 20 percent PPD.
14. Nature and extent of any permanent disability: Permanent and total disability benefits from the Second Injury Fund beginning January 1, 2004, due to a combination of the primary injury and the pre-existing disabilities.
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? n/a

Issued by DIVISION OF WORKERS' COMPENSATION

Employee: Mark Harris

Injury No.: 03-138064

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,118.28
19. Weekly compensation rate: TTD/PTD \$649.32/PPD \$340.12
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: 184 weeks of permanent partial disability from Employer (previously paid)

22. Second Injury Fund liability: Permanent total disability benefits at \$309.20 weekly for 184 weeks beginning January 1, 2004 and thereafter \$649.34 per week as provided by law.

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: Colleen Joern Vetter

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Mark Harris	Injury No.:	03-138064
Dependents:	N/A	Before the	
Employer:	Rebar Specialist, Inc.	Division of Workers'	Compensation
Additional Party:	Treasurer as the Custodian of the Second Injury Fund	Department of Labor and Industrial Relations of Missouri	Jefferson City, Missouri
Insurer:	Liberty Mutual Insurance Company	Checked by:	CTL: ms

PREFACE

A hearing in the above mentioned matter was held on December 17, 2009. The Claimant, Mark Harris, was represented by attorney Colleen Joern Vetter. The primary case by the Claimant against the Employer/Insurer was settled and the hearing was with regards to the Second Injury Fund, which was represented by attorney Karen Schute and Michael Finneran, both Assistant Attorney Generals.

STIPULATIONS

The parties stipulated to the following:

1. Claimant's average weekly wage was \$1,118.28 with a compensation rate of \$649.32 for permanent total disability and \$340.12 for permanent partial disability.
2. Claimant's claim against the Employer/Insurer was settled for 26 percent permanent partial disability of the body as a whole referable to the lumbar spine and 20 percent permanent partial disability of the body as a whole referable to psychiatric condition, and future medical/psychiatric treatment.

ISSUES

The nature and extent of the liability of the Second Injury Fund for permanent total disability or permanent partial disability.

EXHIBITS

The Claimant offered the following exhibits into evidence:

- Exhibit A: Deposition of Dr. Volarich (April 17, 2009).
- Exhibit B: Deposition of Dr. Stillings (March 3, 2009).
- Exhibit C: Deposition of Dr. Stillings (April 28, 2009).
- Exhibit D: Deposition of Mr. Lalk (September 9, 2009).

- Exhibit E: Stipulation for Compromise Settlement.
- Exhibit F: Social Security Administration records.
- Exhibit G: St. Anthony's Medical Center records.
- Exhibit H: BJC Medical Group records.
- Exhibit I: Medical records of Troy Surgical Clinic/Dr. Gushleff .
- Exhibit J: Medical records of Dr. Vellinga medical records.
- Exhibit K: DePaul Health Center records.
- Exhibit L: Crossroads Regional Medical Center records.
- Exhibit M: SLU Care – Medical records of Dr. Xu.
- Exhibit N: SLU Care – Medical records of Dr. Alander.
- Exhibit O: Medical records of Dr. Arthur Friskel.
- Exhibit P: Medical records of Dr. Jackson.

The Second Injury Fund offered the following exhibits into evidence:

- Exhibit 1. Deposition of Dr. Randolph (June 15, 2009).
- Exhibit 2. Report of Dr. Bassett.

All objections contained in the depositions as well as at the time of trial are overruled. All the exhibits of the employee and the Second Injury Fund were taken into evidence.

FINDINGS OF FACT

1. Claimant, Mark Harris, testified at the time of the hearing that he was fifty one years of age and had worked as an iron worker for approximately 25 years up until the time of his last day of work on April 1, 2003. Claimant's last Employer was Rebar Specialist, Inc. where he had worked for approximately 14 years.
2. Claimant working as an iron worker had to unload trucks, deliver steel to work sites, separate out bars of steel, carry loads of steel to building sites, siding, installing and tying rebars in place. Claimant during his workday would be required to carry iron of 70 pounds across various construction sites and also work the rebars which were approximately 50 to 150 pounds which he would have to manipulate.
3. Claimant over the last five to ten years before his last day of work on April 1, 2003, had pain in his back, left leg, and the pain was constant. Claimant also experienced left arm pain which included numbness and tingling and would go down from the shoulder down to his left hand.
4. Claimant in the last five or ten years of work had problems sleeping due to the numbness in his left arm and armpit, and to his hand as well as low back pain and leg pain.
5. Claimant as a result of the problem he developed while working for his Employer/Insurer settled his primary case for 26 percent permanent partial disability of the low back and 20 percent for psychiatric condition.

6. Claimant going back to 1980 had a history of addiction to and abuse of alcohol, and he would drink sometimes some six to twenty four beers per day. Claimant back in 1996 was diagnosed at St. Anthony's Hospital with a chemical dependency problem and also secondary diagnosis of depression. Claimant testified that he stopped drinking alcohol in April of 2009.
7. The Claimant was seen by Dr. Volarich on December 4, 2007, at the request of Claimant's attorney. Dr. Volarich testified very credibly that the Claimant was working as an iron worker up until April 1, 2003, and he diagnosed Claimant as having repetitive trauma, lumbar spine, causing lumbar radicular syndrome secondary to a disc protrusion at L5-S1 to the left, aggravation of degenerative disc disease and degenerative joint disease at L4-L5 and L5-7, S1, as well as aggravation of disc bulge and degenerative disc disease at T11-12. Dr. Volarich also felt that the Claimant had preexisting permanent disabilities before April of 2003 and felt that the Claimant had 15 percent permanent partial disability of the body as a whole rated at the lumbar sacral spine due to chronic lumbar syndrome secondary to sore muscles from heavy work, as well as his degenerative disc and degenerative joint diseases prior to and worsening of his symptoms beginning in 2001 and leading up to April 1, 2003, and the doctor felt that the Claimant had 35 percent permanent partial disability of the body as a whole due to his peripheral neuropathy secondary to alcohol consumption involving both upper and lower extremities, and that the Claimant had significant disability existing as a result of his anxiety, depression, and alcoholism.
8. Dr. Volarich felt that the Claimant, Mr. Harris, is permanently and totally disabled as a result of the work related injury of April 1, 2003, in combination with his preexisting medical conditions.
9. Dr. Stilling, a psychiatrist, evaluated Claimant on behalf of the Claimant's attorney and testified credibly that Claimant is permanently and psychiatrically disabled due to a mood disorder and pain disorder caused by work injury and had preexisting diagnosis of illicit drug abuse and dependency, ongoing alcohol abuse and dependency, partner relational problems, pain disorder in the left ulnar nerve, and personality disorder. Dr. Stilling's was of the opinion that the combination of preexisting and work related psychiatric problems rendered Claimant permanently and totally psychiatrically disabled.
10. Mr. Lalk, a vocational consultant, evaluated Claimant on behalf of Claimant's attorney and testified very credibly that Claimant would be unable to secure, compete for or maintain employment in the open labor market.

RULINGS OF LAW

1. Claimant is permanently and totally disabled as a result of the primary injury and the previous injuries and disabilities and Claimant is entitled to permanent total disability benefits from the Second Injury Fund at the rate of \$309.20 weekly for 184 weeks beginning January 1, 2004, and thereafter, \$649.32 per week as provided by law.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Division of Workers' Compensation