

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

Injury No.: 07-063356

Employee: Elmer Leroy Harrison
Employer: Thyssenkrupp Stahl Company
Insurer: Self-Insured/Stahl Specialty Company
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 award and decision of the administrative law judge dated October 13, 2010. The award and decision of Administrative Law Judge Mark S. Siedlik, issued October 13, 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 19th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

CONCURRING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Elmer Leroy Harrison

CONCURRING OPINION

I write separately to disclose the fact that I did not participate in the June 15, 2011, oral argument in this matter. I have reviewed the evidence, read the briefs of the parties, and considered the whole record. I concur with the decision of the majority of the Commission.

Curtis E. Chick, Jr., Member

AWARD

Employee: Elmer Leroy Harrison

Injury No. 07-063356

Dependents: N/A

Employer: Thyssenkrupp Stahl Company

Insurer: Self-insured

Additional Party: Missouri Treasurer as Custodian of the Second Injury Fund

Hearing Date: August 19, 2010

Checked by: MSS/lh

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: February 21, 2007.
5. State location where accident occurred or occupational disease was contracted: Johnson 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? Employer was self-insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was pushing a metal cart out of a rut.
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 foot, right ankle, knees and low back.
14. Nature and extent of any permanent disability: Permanent total disability
15. Compensation paid to-date for temporary disability: \$28,136.85

16. Value necessary medical aid paid to date by employer/insurer? \$101,165.16
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$599.01.
19. Weekly compensation rate: \$399.36/\$376.55.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: The following amounts are awarded as benefits to Claimant.

Permanent total disability benefits: The Employer shall pay future permanent total disability payments at the rate of \$399.36 per week, starting February 11, 2009, and to continue for the life of the Claimant.

Medical treatment: Future medical treatment is left open.

22. Second Injury Fund liability: None.

Said payments to begin as of the date of the award and to be payable and be subject to modification and review as provided by law.

This Award is subject to a lien in favor of Thomas Stein, attorney at law, in the amount of 25% for legal services rendered.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Elmer Leroy Harrison Injury No. 07-063356
Dependents: N/A
Employer: Thyssenkrupp Stahl Company
Insurer: Self-insured
Additional Party: Missouri Treasurer as Custodian of the Second Injury Fund
Hearing Date: August 19, 2010 Checked by: MSS/lh

FINDINGS OF FACT AND RULINGS OF LAW

At the hearing, the parties stipulated that: (1) Thyssenkrupp Stahl Company was an employer operating under the subject Missouri Workers' Compensation Law on February 21, 2007; (2) on February 21, 2007, an employer/employee relationship existed between Thyssenkrupp Stahl Company and Claimant; (3) the employer was self-insured under the law; (4) the employee filed a claim for compensation within the time prescribed by law; (5) notice was properly given; (6) the employee sustained an accident on February 21, 2007 that arose out of and in the course of his employment; and (7) the claimant's average weekly wage was \$599.01 and the applicable compensation rate is \$399.36/\$376.55.

The issues to be decided are as follows:

- (1) The nature and extent of permanent disability and the liability of the Employer for same;
- (2) The liability of the Second Injury Fund;
- (3) Future medical treatment.

Claimant testified on his behalf. He also offered the following exhibits, all of which were admitted into evidence:

- C Annual Employee's Performance & Compliance Review
- D Medical records—Central Family Medicine
- E Medical records—Western Missouri Bone & Joint Clinic
- F Medical records—Saul Trevino, M.D.
- G Medical records—Stanley Bowling, M.D.
- H Medical records—Columbia Regional Hospital
- I Medical records—Greg Horton, M.D.
- J Deposition—James Stuckmeyer, M.D.
- K Deposition—Allan Schmidt, Ph.D.

- L Deposition—Mary Titterington (2009)
- M Deposition—Mary Titterington (2010)
- O Photographs of Claimant's feet and right ankle

The Employer offered the following exhibits, all of which were admitted into evidence:

- 1 Deposition—Claimant
- 2 Deposition—Eden Wheeler, M.D.
- 3 Deposition—Greg Horton, M.D.
- 4 Deposition—Terry Cordray

The Fund offered no witnesses or exhibits.

Claimant testified that he was born on August 5, 1960 and is 50 years old. He attended Warrensburg High School and dropped out after the 9th grade. He struggled in school and got poor grades. He never obtained his GED.

In 1978, Claimant went to work for the Employer as a buffer. He continued to work there until 2009. When his accident occurred on February 21, 2007, he was a cell leader. On that date, he was pushing a heavy mold cart when the cart got stuck in a crack. He squatted and then lifted and pushed the cart to get it out. In the process of doing this, he heard a pop in his right ankle.

He reported the injury to his supervisor and eventually filled out an accident report. He got treatment on his own until the Employer began authorizing medical treatment. He saw his family physician, Dr. Dyer, who referred him to an orthopedic surgeon, Gregory Bliss, M.D.. Dr. Bliss referred him to another orthopedic surgeon, Saul Trevino, M.D.. Dr. Trevino performed surgery on his ankle in September, 2007. During Claimant's treatment with Dr. Trevino, the Employer began authorizing treatment for the injury.

The Employer then referred Claimant to Gregory Horton, M.D. at K.U. Medical Center for further treatment. Dr. Horton treated Claimant until February, 2009. Dr. Horton performed surgery on Claimant in August, 2008.

Claimant testified that he has the following medical problems from the accident:

- 1. Constant swelling in the right foot, which worsens as the day progresses. If there is significant swelling, his skin will split.
- 2. Constant aching in the right foot.
- 3. Constant popping in his right ankle and knee.
- 4. Difficulty sleeping.
- 5. Frequent knee pain.

6. Frequent back pain.
7. Constant feeling of being tired.
8. Depression

Because of the pain in his right ankle and back, he cannot be on his feet for more than an hour. He then has to elevate his leg. He will elevate his leg four or five times a day. He typically rests his leg for an hour each time.

It is difficult for him to get a decent night's sleep. Because of that, he takes naps during the day.

He testified that he feels depressed because he is not able to financially provide for his family as he did before his injury.

Claimant testified that he worked light duty in early 2009 before being laid off. He sat down and inspected parts. He was laid off in January or February, 2009. After that, he applied for Social Security disability benefits. He was approved for those and is currently receiving them. He does not feel capable of working anywhere.

At the request of the Employer, Claimant saw Terry Cordray, vocational expert. Claimant's attorney informed Claimant that Mr. Cordray initially believed that he was capable of performing some jobs in the Warrensburg area. That included a cashier's job at a convenience store like Casey's. Claimant applied for those jobs and received no job offers.

Employer's Exhibit 1 was Claimant's deposition. In that deposition, Claimant testified that he normally wears a size 10 ½ shoe. Because of the constant swelling in his right foot and ankle, he has to wear a size 13 ½. (p. 58). He puts inserts in his left shoe to compensate. (p. 58). He also testified that his right foot swells every day. (p. 59). The swelling goes down when he sleeps. (p. 60). To relieve the swelling, he elevates his foot. (p. 60).

He also testified in his deposition that he can drive a car, but does not drive for long distances. (p. 91). He only drives in or near his home in Warrensburg. (p. 92).

He also testified in his deposition that he did light duty work for the Employer until early 2009. (p. 65). He sat down and inspected parts. (p. 65). This was just a temporary, light duty job that the Employer created for him. (p. 66). It was a made up job for him. (p. 67).

James Stuckmeyer, M.D. testified by deposition. His deposition was marked Claimant's Exhibit J. Dr. Stuckmeyer is a board certified orthopedic surgeon. (p. 48). He evaluated Claimant on March 19, 2009. (p. 50). The medical records he reviewed indicate that the work accident caused a possible navicular fracture and a posterior tibial tendon rupture in Claimant's right foot. (p. 52). On September 6, 2007, Claimant underwent his first surgery for his ankle.

(p. 52). On August 21, 2008, he underwent a second surgery. At that time, Dr. Horton performed a triple arthrodesis on his right foot and ankle. (p. 54).

Dr. Stuckmeyer reviewed the treatment records of Dr. Horton. Those records were marked Claimant's Exhibit I. The last office visit with Dr. Horton was on February 10, 2009. (Exhibit I, p. 2). At that time, Claimant had a loud popping in his ankle when he stepped down. (p. 2). Claimant also complained of swelling in his ankle. (p. 2). Dr. Horton commented that Claimant's foot and ankle would never be the same, that he had some substantial limitations and that he should resume activities as tolerated. (p. 2). Dr. Horton felt that Claimant would need long-term management of the swelling. (p. 2). This long-term management would include a brace and a doctor to manage his pain medication needs in the long term. (p. 2).

Claimant told Dr. Stuckmeyer that he had significant pain in his right foot and ankle. (p. 55). He had difficulty with prolonged standing, walking and traversing steps. (p. 55). He has difficulty walking on uneven surfaces. (p. 55). He has significant swelling in his right foot and ankle, which requires him to frequently elevate his leg. (p. 55). He has difficulty with shoe wear. (p. 55).

Claimant also told Dr. Stuckmeyer that because of his foot injury and surgeries, he developed pain in his knees and lower back. (p. 55). Because of his knee and back symptoms, Claimant has problems with prolonged standing, walking, lifting and bending. (p. 55).

During his physical examination, Dr. Stuckmeyer found that Claimant had 3 to 4 plus pitting edema of the right foot and ankle. (p. 56). Pitting means that when you push your finger into the skin, it leaves a pit. (p. 7). People are not supposed to have that much edema. (p. 8). The scale for edema is 1 (mild), 2 (moderate), 3 (significant), and 4 (severe). (p. 9). The pitting edema was caused by the circulatory problems Claimant has in his ankle from the trauma of the accident and the surgeries in the ankle. (pp. 8 to 9). Claimant also had a reproducible popping sensation in his foot. (p. 56). His range of motion in the foot and ankle was very limited. (p. 56).

Dr. Stuckmeyer concluded that Claimant had a very complicated orthopedic situation. (p. 57). He noted that Claimant used an orthotic for ankle support and has an obvious antalgic gait. (p. 57). He concurred with Dr. Horton that Claimant would need ongoing brace wear for the ankle and foot. (p. 57). He also agreed with Dr. Horton that Claimant would need long-term pain management for prescriptions. (p. 57).

Dr. Stuckmeyer concluded that the ankle/foot injury caused further injury to Claimant's knees and low back. (p. 57). Dr. Stuckmeyer believes that the work accident caused permanent disability as follows: 60% for the right ankle, 25% for the right knee, 5% for the left knee, and 12.5% for the low back. (pp. 57 to 58).

Dr. Stuckmeyer recommended significant work restrictions. (p. 58). Because of the significant swelling in the right foot/ankle with evidence of pitting edema, Dr. Stuckmeyer recommended that Claimant be allowed to sit as needed with his right leg elevated. (p. 58). Ideally, Claimant should elevate his leg above heart level. (p. 19). Because of the severity of the injury to the ankle/foot, Claimant will have difficulty standing for prolonged periods. (p. 10). He recommended that he avoid jobs that require prolonged standing, walking, climbing stairs, or

climbing ladders. (p. 58). He felt that Claimant should be allowed to sit and elevate his leg as required for pain and swelling control. (p. 58).

In light of Claimant's significant work restrictions, he believed that Claimant was probably permanently and totally disabled as a result of his work injury. (p. 58). He did not believe that any employer would hire Claimant based on the condition of his foot/ankle and his need to elevate his right foot. (p. 59). However, he stated that he would defer to a vocational expert on this issue. (p. 59).

Dr. Stuckmeyer reviewed the functional capacity evaluation. He disagreed with the results of it. (p. 26). He does not believe Claimant can perform in the light/medium category. (p. 26). That category would require prolonged standing. (pp. 26 to 27). Dr. Stuckmeyer did not believe Claimant could perform this work given the amount of pain, swelling and dysfunction in his right foot/ankle. (p. 27). Dr. Stuckmeyer did not believe Claimant would be able to stand 40 minutes out of an hour or 6 hours out of an 8-hour work day. (p. 29).

Dr. Stuckmeyer also testified that due to Claimant's antalgic gait, the problems in his other joints will worsen with time. (p. 27).

Mary Titterington testified by deposition. Her August 20, 2009 deposition was marked Claimant's Exhibit L. Her May 13, 2010 deposition was marked Claimant's Exhibit M.

Ms. Titterington is a vocational expert. She evaluated Claimant on May 7, 2009. (Exhibit L, p. 57). She reviewed the report of Dr. Stuckmeyer in preparing her report. (p. 57). She also administered several tests on Claimant. The tests she gave Claimant during her evaluation showed that he had the spelling skills of a 4th grade student, the math skills of a 7th grader, and the reading comprehension of a 6th grader. (p. 62).

Ms. Titterington concluded that the restrictions from Drs. Horton and Stuckmeyer would prevent Claimant from performing any of the jobs he had performed with the Employer. (pp. 24 to 25). The skills he developed during his 30-year career with the Employer were industry specific, meaning that he has no transferable job skills. (p. 25). That makes him an unskilled worker. (p. 25).

Claimant is an unskilled worker with limited educational skills and a low IQ. (p. 25). He will also need to elevate his leg, which is an unacceptable work practice. (p. 26). Elevating his leg will push Claimant's body away from a workstation. (p. 26). These factors and the restrictions from Dr. Stuckmeyer completely erode his work base and make him unemployable. (p. 26).

She believes the swelling in Claimant's leg and his need to elevate that leg make Claimant unemployable. (p. 41).

In her second deposition, Ms. Titterington reaffirmed her opinion that Claimant is permanently and totally disabled. It was significant to her that Claimant would need to elevate his leg above heart level. (Exhibit M, p. 5). That would take someone out of the workforce. (p. 5). That is not an acceptable work practice. (p. 5). Employers do not want their employees with

their leg up in the air. (p. 5). Elevating your leg also pushes you away from your work post. (p. 5).

Ms. Titterington also commented on Dr. Schmidt's report. She considered Dr. Schmidt's conclusion that Claimant has a learning disability. (p. 6). This learning disability would make it difficult for him to learn new tasks. (p. 6).

Ms. Titterington reviewed the report of Terry Cordray, who performed a vocational assessment at the request of the Employer. (p. 7). She does not believe Claimant could perform any of the jobs Cordray suggested, including security monitor, cashier, or hotel desk clerk. (p. 7). Security monitors and desk clerks require a high school diploma, which Claimant does not have. (p. 8). An employer would not allow him to elevate his leg in any of these three jobs. (p. 8). As far as cashier, Claimant does not even do his own finances at home because he was making so many errors. (p. 8). Because of his inability to focus and concentrate well, an employer would not want him handling money. (p. 8).

As far as desk clerks, those jobs require multitasking. (p. 9). They are required to do several tasks, including booking rooms, collecting money, and getting memos. (p. 9). He would not be able to do that job. (p. 9).

As far as security monitors, it is rare to have a job where you are just sitting watching a monitor. (p. 9). Employers have found that people do not focus well when they are stuck in a room for 8 hours a day. (p. 9). Now they may sit and watch a monitor for an hour or two and then they have to walk around, which Claimant would not be able to do. (p. 9).

Ms. Titterington reaffirmed her opinion that having to elevate his leg takes Claimant out of the labor force. (p. 10).

Ms. Titterington's tests show that Claimant had a learning disability. (p. 12). This would make it difficult for him to remember what he has been taught. (p. 12).

She also commented on Dr. Horton's restrictions of standing for 40 minutes and sitting for 20 minutes an hour. (p. 15). There are no jobs at the unskilled work level that would allow an employee to work in this fashion. (p. 15). An unskilled worker may be able to occasionally stand or sit, but he will not be allowed to just sit down all of a sudden. (p. 15). While there might be a few jobs that might have allowed that, Claimant does not have the academic skills to perform them. (p. 15).

Allan Schmidt, Ph.D. testified on behalf of Claimant. His deposition was marked Exhibit K. He is a psychologist. (p. 3). He evaluated Claimant on November 17, 2009 and December 11, 2009. (p. 6). He performed a number of psychological tests on Claimant. (p. 7).

Claimant told Dr. Schmidt that he has felt depressed since his work injury. (p. 51). He had prided himself on being a good worker for 29 years with the Employer and on being able to provide for his family. (p. 51). Since his injury, he has applied to other employers but does not get any responses to his applications. (p. 51). Employers would look at him and he never got a

second chance. (p. 12). They would not call him back or offer him a job. (p. 12). He then began receiving Social Security disability in August, 2009. (p. 51).

Claimant told Dr. Schmidt that he is very limited in his activities as a result of his foot/ankle injury. (p. 52). Claimant feels discouraged about his future. (p. 52). He has been unable to find any employment opportunities, has limited mobility, and is limited in the physical activities he can participate in. (p. 52). Dr. Schmidt believes Claimant is depressed because he is unable to work. (p. 25).

After performing several tests on Claimant, Dr. Schmidt concluded that Claimant has a learning disability. This learning disability existed even before the work injury. (p. 22). He has a very limited working memory and it is difficult for him to learn and store new information. (p. 53). He would have difficulty reading new information and being able to remember it. (p. 53). This would prevent him from being able to obtain a GED. (p. 53).

Dr. Schmidt concluded that Claimant has mild depression as a result of the work injury and assessed a 10% disability rating for that. (p. 54). He also assessed Claimant as having a preexisting learning disability and assessed 10% disability for that. (p. 54).

Claimant also offered into evidence a job evaluation marked Exhibit C and a photograph marked Exhibit O. Claimant's supervisor signed off on the job evaluation on the day of the accident, February 21, 2007. Claimant's supervisor gave Claimant good marks for the quality of his work, job knowledge, safety, attitude, quantity of work and attendance.

The photograph marked Exhibit O shows that Claimant's right ankle is significantly swollen.

Greg Horton, M.D. testified by deposition. His deposition was marked Employer's Exhibit 3. Dr. Horton performed surgery on Claimant's right ankle in August, 2008. (p. 11). That surgery was a triple arthrodesis with a bone graft. (p. 11). The surgery fused three joints in the back of Claimant's foot. (p. 11).

In January, 2009, Dr. Horton saw Claimant. At that time, Claimant was complaining of pain in his back and knee. (p. 16). Claimant attributed these to his altered gait from the ankle injury/surgery. (p. 17). Dr. Horton did not think it was completely unreasonable to associate the back and knee problems with his altered gait. (p. 17). However, Dr. Horton did not want to treat those conditions. (p. 17).

Dr. Horton testified that if Claimant's ankle swells, he should elevate it. (p. 27). If Claimant were working at a job that required him to sit, he should be allowed to elevate his foot while sitting. (p. 20). Ideally, Claimant should elevate his leg above heart level. (p. 27). Dr. Horton testified that if Claimant is on his feet too long, that his swelling may increase. (p. 28). That would require him to elevate his foot. (p. 28). He believes Claimant would benefit from a brace and/or an orthotic when he is not using his brace. (p. 29).

Dr. Horton testified that Claimant had a limp every time he saw him. (p. 29).

Dr. Horton assigned a 38% permanent disability rating for the right ankle. (p. 23).

Terry Cordray testified by deposition for the Employer. His deposition was marked Employer's Exhibit 4. Mr. Cordray was hired by the Employer to perform a vocational assessment. (p. 7). Mr. Cordray testified as follows:

[I]f he has to have the opportunity to elevate his leg as an individual with less than a high school education who's unskilled, he's probably not going to get a job. I think he's not employable. Most unskilled jobs are not going to give you the opportunity to raise your leg whenever you want to.

(p. 26).

Is it your opinion that if Mr. Harrison does not have a GED and if he has to elevate his leg throughout the day that he is unemployable; is that your testimony?

Yes.

(p. 33).

If you assume that Mr. Harrison is unable to get a GED for whatever reason and if he has to elevate his leg like Dr. Horton has suggested, do you believe that he could reasonably perform any job in the open labor market?

No.

(p. 34).

Eden Wheeler, M.D. testified by deposition for the Employer. Her deposition was marked as Exhibit 2. Her specialty is physical medicine and rehabilitation. (p. 3). She examined Claimant at the request of the Employer on June 30, 2009. (p. 5). She found that Claimant had obvious swelling in his right foot. (p. 22). He also had significant swelling in his ankle. (p. 24). The swelling was so significant that she could not find the right malleolar landmark in his ankle. (p. 24). She found that he had no inversion or eversion with approximately 0 to 30 degrees for plantar and dorsiflexion plane of motion. (p. 25). He had significantly reduced range of motion, which was expected given his ankle fusion. (p. 25). He had no ability to rotate or twist his foot out and could not twist his foot in. (p. 25).

She also found that his right leg was 1 to 2 centimeters shorter than his left leg. (p. 26). While everyone has some leg length discrepancy, his was more significant than normal. (p. 27).

She found that Claimant had an antalgic gait. (p. 27). He walked with a limp. (p. 27). She does not believe his limp will ever go away. (p. 27).

Her report was marked Exhibit 2 at the deposition. On page 10 of the report, she assessed Claimant's permanent disability from the accident for his low back and knee. She opined that he had 8% permanent partial disability in the low back and 2% for each knee.

The evidence established that Claimant had a good work record before his injury. He began working for the Employer when he was 18 years old. He worked there for 30 years before being laid off. He received a good job evaluation before his termination.

As a result of the accident, Claimant has significant physical injuries and limitations. He has a badly injured right ankle that has essentially been fused, is constantly swollen, and needs to be elevated throughout the day. He has a bad limp that has caused injury to his lower back and knees. His injuries have limited his ability to sleep at night, which requires him to take several naps during the day.

He has also suffered psychological injuries from the accident. Dr. Schmidt testified that Claimant suffers from depression as a result of the accident. Dr. Schmidt assessed his permanent disability for that at 10% whole body disability. That testimony and evidence is uncontroverted.

The evidence established that Claimant is an unskilled worker with significant physical limitations. It is not reasonable to believe that any employer would hire Claimant. He limps, has a bad back, and must elevate his leg throughout the day. He does not present well to prospective employers. Claimant has applied for work with other companies, but these employers have looked at him and not called him back or offered him a job.

The test for determining whether a claimant is permanently and totally disabled is whether given the claimant's situation and condition, he is competent to compete in the open market. *Bazi v. United Tech. Auto*, 956 S.W.2d 340, 343 (Mo. App. 1997). The central question is whether in the ordinary course of business, an employer would reasonably be expected to hire the claimant in his present physical or mental condition reasonably expecting him to perform the work for which he is hired. *Id.*

I find that Claimant is not competent to compete in the open labor market and that he is permanently and totally disabled as a result of the accident. No employer would reasonably be expected to hire him in his present physical and mental condition.

I further find that the Employer, not the Second Injury Fund, is liable for Claimant's permanent and total disability. In deciding whether the Fund has any liability, the first determination is the degree of disability from the last injury considered alone. If the last injury in and of itself renders a claimant permanently and totally disabled, then the Fund has no liability and the employer is responsible for the entire amount of compensation. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo. banc 2003). I find that the restrictions and disabilities from the accident in and of themselves are sufficient to render Claimant permanently and totally disabled.

The parties stipulated to an average weekly wage of \$599.01. This would yield a compensation of rate of \$399.36 per week for permanent total disability.

Dr. Stuckmeyer testified that Claimant reached maximum medical improvement on February 10, 2009. Therefore, I find that Claimant is entitled to \$33,546.24 in permanent total disability benefits from February 11, 2009. Employer is given a credit of \$864.55 for overpayment of temporary total disability benefits.

I further award future permanent total disability benefits against the Employer at the rate of \$399.36 per week.

Drs. Horton and Stuckmeyer testified that Claimant will need ongoing medical treatment, including, but not limited to, ongoing brace wear for his ankle and foot and long-term pain management. Therefore, I further order that future medical treatment be left open.

In light of the foregoing award of permanent total disability against the Employer, no award is entered against the Second Injury Fund for any benefits.

Claimant's attorney is awarded a fee of 25% of the past and future permanent total disability benefits awarded herein.

Date: _____

Made by: _____

Mark S. Siedlik
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this ____ day of _____, 2010, by:

Naomi Pearson
Division of Workers' Compensation