

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

Injury No.: 13-017063

Employee: Doris Hazelrigg
Employer: Garry Gribble's Running Sports (Settled)
Insurer: Travelers (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 May 3, 2016. The award and decision of Administrative Law Judge Angie Heffner Robyn, issued May 3, 2016, 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 23rd day of September 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD
As to the Second Injury Fund Only

Employee: Doris Hazelrigg Injury No: 13-017063

Employer: Garry Gribble's Running Sports (Settled)

Insurer: Travelers (Settled)

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

Hearing Date: April 14, 2016

Checked by: AR/drl

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: March 2, 2013.
5. State location where accident occurred or occupational disease was contracted. Independence, Jackson 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: While in the course and scope of employment, Employee climbed an eight-foot ladder to retrieve shoes, when she climbed down, she tripped over another box on the floor causing her to fall and injure her ribs and back.
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: Ribs, back, and body as a whole.
14. Nature and extent of any permanent disability: 16.5 percent of the body for thoracic and lumbar spine and rib fractures.
15. Compensation paid to date for temporary disability: \$7,032.30.
16. Value necessary medical aid paid to date by employer/insurer? \$31,681.73.
17. Employee's average weekly wages: \$489.06.
18. Weekly compensation rate: \$360.00.
19. Method wages computation: By stipulation.

COMPENSATION PAYABLE

Amount of compensation payable:

Employer previously settled this claim.

20. Second Injury Fund liability: Yes.

9.8 weeks of permanent partial disability from Second Injury Fund @ \$360.00 per week...\$3,528.00.

TOTAL: \$3,528.00

21. Future requirements awarded: N/A

Said payments to begin as of the date of this award 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 percent in favor of the following attorney for necessary legal services rendered to the claimant: Steffanie Stracke

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Doris Hazelrigg Injury No: 13-017063

Employer: Garry Gribble's Running Sports (Settled)

Insurer: Travelers (Settled)

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

Hearing Date: April 14, 2016

Checked by: AR/drl

FINDINGS OF FACT AND RULINGS OF LAW

On April 14, 2016, the parties appeared for a final hearing to determine the liability of the Second Injury Fund in the matter of Doris Hazelrigg. The Division had jurisdiction to hear the case pursuant to Section 287.100. The Employee, Doris Hazelrigg, appeared in person and with counsel, Steffanie Stracke. The Second Injury Fund appeared through Assistant Attorney General Jacob Colling. There was no appearance on behalf of the Employer and Insurer as the claim between the Employer and Employee had previously been settled.

STIPULATIONS

The parties stipulated to the following:

- 1) That Claimant was an employee of Employer pursuant to Chapter 287 RSMo on March 2, 2013 and Employer was fully insured by Travelers;
- 2) That Claimant sustained an accident or occupational disease arising out of and in the course and scope of his employment;
- 3) That Employer received proper notice of Claimant's injuries and Claimant filed a claim within the time allowed by law;
- 4) That Claimant's average weekly wage was \$489.06 resulting in a compensation rate of \$326.00 for temporary total disability and \$360.00 for permanent partial disability compensation;
- 5) That Employer has paid temporary total disability in the amount of \$7,032.30 and medical care costing \$31,681.73;
- 6) That the Claimant and the Employer settled the primary injury for 16.5 percent of the body for thoracic and lumbar spine and rib fractures.

ISSUE

The only issue to be determined by this hearing is the liability of the Second Injury Fund.

FINDINGS OF FACT AND RULINGS OF LAW

The Claimant, Doris Hazelrigg, testified in person and offered Exhibits A and B which were admitted without objection.

The Second Injury Fund did not call any witnesses or offer any exhibits.

Hazelrigg's testimony was credible. Claimant is 82 years old. At the time of her accident, she had worked for Garry Gribble Running Sports as a retail clerk for 16 years. She had a prior right knee injury resulting in chronic and progressive osteoarthritis. In order to delay the need for a knee replacement, she received a series of Suparz and Cortisone injections. She had pain and stiffness in her knee making it difficult to kneel and squat. Hazelrigg testified at trial that she changed the way she did several of her job duties because of the pain in her knee.

The Second Injury Fund argues that because Hazelrigg was physically fit and able to run half marathons and other shorter distance races prior to her injury at work, her knee condition is not a disability and a hindrance and an obstacle to her employment. However, Hazelrigg was consistent and credible in her testimony that her knee injury made it difficult to kneel, squat, climb ladders and sit on stool to fit customers in shoes and how she modified the physical actions required to do her job at Garry Gribble. In addition, Claimant offered medical records and expert opinion at hearing that support and corroborate her testimony. I do not find the Second Injury's argument to be credible or persuasive.

On March 2, 2013, Hazelrigg sustained an accidental injury arising out of and in the course and scope of employment that resulted in injury to her back and ribs. As a result, Hazelrigg has the following limitations or complaints regarding the work injury: pain in back, stiffness, reduced strength and difficulty breathing. She also testified that her Employer did not allow her to return to work and that she was not able to re-gain employment after her work-related accident.

Prior to date of injury, Hazelrigg had the following disabling condition:

- 1) Claimant had a right knee injury. This condition was disabling and constituted a hindrance and obstacle to employment.

Dr. Poppa assessed 30 percent body as a whole as a result of her March 2, 2013 accident at work. He assessed 20 percent permanent partial disability of her right lower extremity at the knee. Dr. Poppa found that the injuries combined to create a synergistic effect of 15 percent enhancement.

Hazelrigg has established a right to recover from the Second Injury Fund. A claimant in a workers' compensation proceeding has the burden of proving all elements of his claim to a reasonable probability. Cardwell v. Treasurer of State of Missouri, 249 S.W. 3d 902, 911 (Mo.App. E.D. 2008). In order for a claimant to recover against the Second Injury Fund, he must prove that he sustained a compensable injury, referred to

as “the last injury,” which resulted in permanent partial disability. Section 287.220.1 RSMo. A claimant must also prove that he had a pre-existing permanent partial disability, whether from a compensable injury or otherwise, that: (1) existed at the time the last injury was sustained; (2) was of such seriousness as to constitute a hindrance or obstacle to his employment or reemployment should he become unemployed; and (3) equals a minimum of 50 weeks of comp for injuries to the body as a whole or 15% for major extremities. Dunn v. Treasurer of Missouri as Custodian of Second Injury Fund, 272 S.W. 3d 267, 272 (Mo. App. E.D. 2008) (Citations omitted). In order for a claimant to be entitled to recover permanent partial disability benefits from the Second Injury Fund, he must prove that the last injury, combined with his pre-existing permanent partial disabilities, causes greater overall disability than the independent sum of the disabilities. Elrod v. Treasurer of Missouri as Custodian of the Second Injury Fund, 183 S.W. 3d 714, 717-718 (Mo.Banc 2004). Claimant has met the burden imposed by law.

Having given careful consideration to the entire record, based upon the above testimony, stipulations of the parties, the competent and substantial evidence presented, and the applicable law of the State of Missouri and stipulations of the parties, I find the following:

- 1) Hazelrigg sustained a compensable last injury which resulted in permanent partial disability equivalent to 16.5 percent disability to the body as a whole. (66 weeks)
- 2) As of the time the last injury was sustained, Hazelrigg had the following preexisting permanent partial disability which meets the statutory thresholds and is of such seriousness as to constitute a hindrance or obstacle to employment or re-employment:
 - a. 20 percent to the right knee (32 weeks)
- 3) The credible evidence establishes that the last injury, combined with the pre-existing permanent partial disabilities, causes 10 percent greater overall disability than the independent sum of the disabilities. The Second Injury Fund liability is calculated as follows: 66 weeks for the last injury plus 32 weeks for pre-existing injuries = 98 weeks x 10 % = 9.8 weeks of overall greater disability.

CONCLUSION

The Second Injury Fund is liable to Hazelrigg for \$3,528.00 (9.8 weeks x 360.00) in permanent partial disability benefits.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the Claimant: Steffanie Stracke.

Made by: _____
Angie Heffner Robyn
Administrative Law Judge
Division of Workers' Compensation