Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Employee: Alvin Hellmann
Employer: Prairie Farms Dairy, 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 November 3, 2017. The award and decision of Administrative Law Judge Joseph E. Denigan, issued November 3, 2017, 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 April 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

__________________________________________
John J. Larsen, Jr., Chairman

__________________________________________
VACANT
Member

__________________________________________
Curtis E. Chick, Jr., Member

Attest:

__________________________________________
Secretary
AWARD

Employee: Alvin Hellmann                                      Injury No.: 12-081978
Dependents: N/A                                              
Employer: Prairie Farms Dairy, Inc. (settled)                 Before the
Additional Party: Second Injury Fund                         Division of Workers’ Compensation
Insurer: Travelers Property & Cas. Co. (settled)              Department of Labor and Industrial Relations of Missouri
Hearing Date: August 3, 2017                                  Jefferson City, Missouri
                                                                 Checked by: JED

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: October 17, 2012 (stipulated)
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee sustained a slip and fall onto the floor of a loading dock.
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 elbow
14. Nature and extent of any permanent disability: 30% PPD of right elbow; PTD from SIF.
15. Compensation paid to-date for temporary disability: $4,511.92
16. Value necessary medical aid paid to date by employer/insurer? $20,338.53
17. Value necessary medical aid not furnished by employer/insurer? N/A

18. Employee's average weekly wages: N/A


20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

   63 weeks of PPD from Employer (Settled)

22. Second Injury Fund liability: Yes

   Permanent total disability benefits from Second Injury Fund:
   weekly differential ($171.36) payable by SIF for 63 weeks beginning
   August 29, 2014 and, thereafter, $596.55 for Claimant's lifetime
   Indeterminate

   TOTAL: INDETERMINATE

23. Future requirements awarded: Unknown

Said payments to begin immediately 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 20% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the Claimant:

Ann Dalton
This case involves a right elbow injury resulting to Claimant on the reported accident date of October 17, 2012 with multiple allegations of preexisting disability. Employer/Insurer previously settled its risk of liability. The Second Injury Fund (“SIF”) remains a party to this Claim. Both parties are represented by counsel. Claimant seeks permanent total disability benefits.

The parties stipulated Claimant attained maximum medical improvement on June 3, 2013 but that Claimant’s last day of work was August 28, 2014.

The single issue for trial is the liability of the SIF. Any objections not previously sustained are hereby overruled consistent with the findings and rulings herein.

FINDINGS OF FACT

1. Claimant worked for Employer receiving freight on docks. Claimant manually handled pieces up to 200 pounds, or 50 pounds up to 200 times per day. He was required to bend, stoop, squat, and reach. He operated forklifts and loaded trucks over dock plates. He did not use a computer on the dock and did not sit or stand “very long.”

2. Claimant, age 56, performed this type of work most of his working life. He attained his G.E.D. and served in the Navy. He had no vocational training.

3. Claimant injured himself when he slipped and fell on the dock while carrying two packages. He landed on his left hip, left knee and right outstretched arm, striking his right elbow on the dock floor.
4. Claimant treated right elbow and left leg symptoms at an urgent care facility where he was diagnosed with right elbow contusion sprain and prescribed physical therapy. The urgent care physician ordered a left knee MRI but then referred Claimant to an orthopedist.

5. Claimant was referred to an orthopedist, Dr. David Brown, for persistent symptoms. A right elbow MRI of December 3, 2012 revealed a mild lateral epicondylitis with a partial tear of the common extensor tendon with minimum medial epicondylar inflammation. Dr. Brown injected the elbow and prescribed physical therapy.

6. Dr. Brown recommended surgery on April 8, 2013 for persistent symptoms and surgery was performed on April 25, 2013. Dr. Brown returned Claimant to work six weeks later on June 3, 2013 without restrictions.

7. The parties stipulated Claimant attained MMI on June 3, 2013. Claimant continued working with difficulty. He found himself arriving late and leaving early from work. He last worked on August 28, 2014.

8. Claimant worked every day with difficulty and assistance. He stated it was a “struggle everyday.”

9. In 2015, Dr. Volarich rated the primary injury at 35 percent PPD of the right elbow, 5 percent PPD of the body referable to increased pelvic pain (note prior injury), and 10 percent PPD of the left knee (note prior injury). Claimant settled this primary injury for 27.5 percent PPD of the right elbow.

10. Claimant’s current complaints and limitations include limited active range of motion, difficulty lifting, and increased pain with repetitive activity. Claimant must lie down twice daily to relieve pain and stiffness in his left hip and left knee. He cannot sit or stand longer than 30 to 45 minutes. His testimony was spontaneous and straightforward.

**Significant Preexisting Disabilities**


12. In 1996, Claimant injured his left elbow and underwent surgery. Dr. Volarich assigned a rating of 20 percent PPD of the left elbow.

13. In 1999 and 2008, Claimant injured his right shoulder and underwent surgery on each occasion. Dr. Volarich assigned a rating of 45 percent PPD of the right shoulder.

14. In 2000, Claimant lacerated his wrist and underwent surgical repair of the extensor tendons of the right long and index fingers. Dr. Volarich assigned a rating of 15 percent PPD of the right wrist.
15. In 2001, Claimant injured his left knee and underwent surgery. Dr. Volarich assigned a rating of 30 percent PPD of the left knee.

16. In 2002, Claimant injured his left shoulder and underwent surgery. Dr. Volarich assigned a rating of 30 percent PPD of the left shoulder.

17. In 1998 and 2005, Claimant injured his low back resulting in radicular symptoms. He underwent surgery at the L5-S1 level in 2005. Dr. Volarich assigned a rating of 27.5 percent PPD of the body referable to the lumbar spine.

18. In 2009, Claimant injured his neck and underwent cervical fusion surgery (ORIF). Dr. Volarich assigned a rating of 35 percent PPD of the body referable to the cervical spine, including right arm radiculopathy.

19. In 2010, Claimant injured his pelvis and underwent surgery (ORIF). Dr. Volarich assigned a rating of 25 percent PPD of the body referable to the pelvis.

Opinion Evidence

Claimant offered the deposition testimony and narrative reports of Dr. David Volarich as Exhibit 10. Dr. Volarich took a patient history, reviewed the medical record and examined Claimant on two occasions. He noted sufficient significant physical findings for the diagnosed conditions that he rated. Dr. Volarich assigned the above PPD percentages to the primary injury and pre-existing disabilities for which he articulated ongoing problems. Dr. Volarich assigned broad restrictions on activity as to tolerance, lifting to tolerance, limiting all repetitive activity, and no impact exercise. He believes ongoing medical care would be required to control symptoms and maintain his current physical status.

Dr. Volarich further opined the primary injury combined with the preexisting disabilities to create an increased overall disability. He found on the basis of his medical assessment alone that Claimant was permanently and totally disabled based on the combination of the primary injury and his preexisting disabilities. He did not believe Claimant could work a full eight-hour day on a weekly basis. Further, Dr. Volarich opined that Claimant was unable to return to the open labor market. He noted Claimant’s G.E.D. and age. Dr. Volarich’s testimony was convincing and unrebutted.

Claimant offered the narrative report of James England, CRC, as Exhibit 11. Mr. England examined Claimant in November 2015 and gave his opinion that Claimant cannot return to work in the open labor market. He explained Claimant’s very stable past work history was favorable for employment but was outweighed by the multiplicity of injuries incurred. Claimant currently performs very limited chores. He experiences disturbed sleep on a nightly basis due to pain in multiple body parts. Testing revealed Claimant tested well commensurate with his education and could learn new things. Mr. England essentially embraced the opinions and
restrictions of Dr. Volarich. He believed Claimant was likely to remain totally disabled from a vocational standpoint. This opinion was probative and unrebutted.

RULINGS OF LAW

Nature and Extent of Permanent Disability

Claimant presented substantial credible expert opinion evidence establishing his continuous pain and accompanying limitations that pre-existed the reported injury and additional pain and activity deficits resulting from the primary injury. Both experts were persuasive and uncontradicted in the record. The parties stipulated Claimant attained MMI on June 3, 2013 but, nevertheless, continued his return to work effort until August 28, 2014.

The unusual number of surgeries and diagnoses are unchallenged in the record. Dr. Volarich’s ratings were founded upon history, medical records and his clinical findings. This record supports a finding that Claimant demonstrated a 30 percent current PPD of the right elbow. The record compels a finding of multiple severe pre-existing disabilities. The record support a finding of 25 percent PPD of the left shoulder, 45 percent PPD of the right shoulder, 15 percent of the right wrist, 20 percent of the left elbow, 35 percent of the right elbow, 25 percent of the body referable to pelvic condition, and 25 percent of the body referable to the low back, 20 percent of the body referable to the cervical spine. The evidence compels a finding that Claimant is permanently and totally disabled.

Liability of the Second Injury Fund

The liability of the SIF is set out in Section 287.220 RSMo (2000). SIF liability for permanent total disability requires a combination of the primary and preexisting disabilities. Lewis v. Treasurer of Mo., 435 S.w.3d 145, 157 (Mo.App. 2014). Here, Dr. Volarich credibly testified that Claimant’s inability to return to the open labor market was the result of a combination of the primary injury and the preexisting disabilities herein. The medical evidence and Claimant’s testimony demonstrate Claimant’s primary injury and preexisting disabilities combined to create additional disability, including various bilateral upper extremity deficits and various upper body-lower body deficits. The evidence compels a finding that Claimant is permanently and totally disabled as a result of the combination of his primary injury with his pre-existing disabilities.

Conclusion

Accordingly, on the basis of substantial and competent evidence contained within the whole record, Claimant is found to have sustained a 30 percent PPD of the right elbow as a result of the primary injury. In addition, Claimant is found to have sustained permanent total disability as a result of the combination of the primary injury with the preexisting disabilities described.
Beginning August 29, 2014, the SIF is liable for the differential between the PTD rate and the PPD rate for the period of PPD installment and, thereafter, at the full rate for Claimant’s lifetime, or until Claimant is no longer permanently and totally disabled. Section 287.200.1 RSMo (Cum.Supp. 2008).

Date:          Made by:  __________________________________

JOSEPH E. DENIGAN

Administrative Law Judge