

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

Injury No.: 08-051320

Employee: Carol Herrington
Employer: Cedar Ridge Manor
Insurer: American Home Assurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have read the briefs, reviewed the evidence and considered the whole record. We find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge by this supplemental opinion.

We offer this supplemental opinion to address arguments raised by employer/insurer in his brief.

Employer/insurer urges us to treat Dr. Mirkin's silence regarding future medical care as an affirmative opinion by Dr. Mirkin that no future medical care is due. That we cannot do. Employee met her burden of proof by putting forth the expert medical opinion of Dr. Volarich that it was reasonably probable that employee would need future medical care for her pain syndrome. The administrative law judge found Dr. Volarich credible and so do we. Dr. Mirkin's silence has no probative value in the face of a credible, affirmative expert opinion on the issue of future medical care.

Employer/insurer argues that because Dr. Mirkin was employee's treating physician, his opinion regarding treatment should be given deferential weight when we consider treatment issues, including whether employee needs for future medical treatment. As we pointed out in the previous paragraph, Dr. Mirkin had no affirmative opinion regarding future medical treatment so there is no opinion to which we can give weight. To the argument in general, we answer that we afford the opinions of treating physicians the weight they are due. We cannot, however, afford them conclusive strength. To do so would give an unfair advantage to employers in treatment disputes, because employers have the statutory right to direct treatment and select treating physicians. See § 287.140 RSMo.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

¹ Statutory references are to the Revised Statutes of Missouri 2007.

Employee: Carol Herrington

- 2 -

Any past due compensation shall bear interest as provided by law.

The July 18, 2012, award and decision of Administrative Law Judge Carl Strange is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of February 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Carol Herrington

Injury No. 08-051320

Dependents: N/A

Employer: Cedar Ridge Manor

Additional Party: Second Injury Fund

Insurer: American Home Assurance Company
(TPA: Chartis Claims Inc.)

Hearing Date: April 16, 2012

Checked by: CS/rf

SUMMARY OF FINDINGS

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 10, 2008.
5. State location where accident occurred or occupational disease contracted: Jefferson 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 happened or occupational disease contracted: Employee was transferring a patient and injured her low back.

12. Did accident or occupational disease cause death? N/A
13. Parts of body injured by accident or occupational disease: Body as a whole referable to the low back.
14. Nature and extent of any permanent disability: (See Findings).
15. Compensation paid to date for temporary total disability: \$31,877.82.
16. Value necessary medical aid paid to date by employer-insurer: \$217,078.30.
17. Value necessary medical aid not furnished by employer-insurer: N/A
18. Employee's average weekly wage: \$466.83.
19. Weekly compensation rate: \$311.22 for temporary total disability, permanent total disability, and permanent partial disability.
20. Method wages computation: By agreement.
21. Amount of compensation payable: Employee awarded permanent total disability from the employer-insurer. (See Findings.)
22. Second Injury Fund liability: None (See Findings).
23. Future requirements awarded: Employer-insurer directed to pay future medical aid pursuant to Section 287.140 RSMo (See Findings).

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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 costs plus 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Dan Gauthier

FINDINGS OF FACT AND RULINGS OF LAW

On April 16, 2012, the employee, Carol Herrington, appeared in person and by her attorney, Dan Gauthier, for a hearing for a final award. The Employer-insurer was represented at the hearing by its attorney, Peter Maher. The Second Injury Fund was represented by Assistant Attorney General, Kevin Nelson. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about June 10, 2008, Cedar Ridge Manor was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was insured by American Home Assurance Company with a third party administrator of Chartis Claims Inc.
2. On or about June 10, 2008, the employee was an employee of Cedar Ridge Manor and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. On or about June 10, 2008, the employee sustained an accident arising out of and in the course of her employment.
4. The employer had notice of employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was \$466.83 and her rate for temporary total disability, permanent total disability, and permanent partial disability is \$311.22.
7. The employee's injury is medically causally related to the work injury occurring on or about June 10, 2008.
8. The employer has furnished \$217,078.30 in medical aid to employee.
9. The employer has paid temporary total disability benefits at a rate of \$311.22 per week for a total of \$31,877.82.
10. Employee reached maximum medical improvement on August 16, 2010.

ISSUES:

1. Future Medical Aid
2. Nature and Extent of Disability
3. Liability of the Second Injury Fund

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Deposition of Dr. David T. Volarich;
- B. Curriculum Vitae of Dr. David T. Volarich;

- C. Dr. Volarich's Medical Report of August 16, 2010;
- D. James England Deposition;
- E. Curriculum Vitae of James England;
- F. James England's Report of April 25, 2011;
- G. Medical Records from Concentra Medical Centers;
- H. Medical records from Des Peres Hospital;
- I. Medical Records from Dr. Craig Pope;
- J. Medical Records from Dr. Chris Kostman;
- K. Medical Records from Dr. Phillip Rowden;
- L. Medical Records from Dr. David Raskas; and
- M. Stipulation for Compromise Settlement 05-122367.

Employer-Insurer's Exhibits

- 1. Deposition of Dr. Peter Mirkin; and
- 2. Deposition of Stephen Dolan.

FINDINGS OF FACT:

Based on the testimony of Carol Herrington ("Employee") and the medical records and reports admitted, I find as follows:

Employee was born on October 12, 1954 and is currently 57 years old. She left school in the 10th grade and later obtained her GED. Her work history includes working as a CMT and CNA. She has worked for Cedar Hill Manor (under different names) for the last fifteen years. Cedar Hill Manor is a nursing home with approximately 150 beds. Employee's job duties were to assist residents with their daily life which included but was not limited to assisting patients from their beds to toiletries, getting them to the cafeteria for meals, returning them to their rooms, transferring them to recliners or beds, assisting them with showers, and helping them take their medications. Her job included lifting, squatting, walking, sitting, bending, twisting, pulling, reaching and carrying.

Pre-existing Injuries:

On September 13, 2005, Employee injured her left knee at work. Dr. Kostman performed a left knee arthroscopy with a partial lateral meniscectomy and chondroplasty of the lateral tibial plateau and patella. Employee testified she continues to have pain with her knee along with swelling and limitations on her ability to navigate stairs. Dr. David Volarich opined that Employee had a 20% permanent partial disability of the left lower extremity rated at the knee due to the internal derangement that required arthroscopic partial lateral meniscectomy and chondroplasty of the lateral tibial plateau and patella. The rating accounts for discomfort, weakness, and mild crepitus prior to June 10, 2008. Employee settled her workers' compensation claim for 15% PPD related to her left knee.

In 2007, Employee was diagnosed with breast cancer and underwent a left radical mastectomy. This was followed by chemotherapy and radiation. Employee testified that she

continued to have pain in her chest area. Her left arm is weaker since the operation and her skin is attached to her ribs which causes discomfort. Dr. David Volarich opined that Employee had a 20% permanent partial disability of the body as a whole rated at the chest due to the left sided radical mastectomy followed by chemotherapy and radiation. The rating accounts for significant scarring and skin adherence to the chest wall limiting motion of the left shoulder which in turn caused weakness and difficulties with lifting above chest level.

Primary Injury:

On June 10, 2008, Employee and co-employee were assisting a resident from the wheel chair to the recliner. As the resident's weight shifted, Employee twisted which caused pain and a pop in her back. Employee finished her shift, but her pain had increased greatly and she was limping by the end of her shift. Employee sought medical treatment with Concentra later that day. After receiving an MRI, Employee was referred to Dr. R. Peter Mirkin. Dr. Mirkin began conservative therapy and the Employee only received two sets of injections. On September 9, 2008, Dr. Mirkin performed a posterior discectomy and fusion at L2-3 and L3-4 with laminectomies at L2-3. In his operative report, Dr. Mirkin noted herniations at both levels. On the second day after the surgery, Employee had shortness of breath and her serum troponins were elevated. Employee was transferred to the Intensive Care Unit and was diagnosed with Congestive Heart Failure. She remained in the ICU for seven days breathing on a non-re-breather. At the time of the hearing, Employee testified that her memory has not been the same since the continued loss of oxygen and near death experience. She now forgets dates and past experiences.

After beginning physical therapy, Employee began having additional problems and returned to Dr. Mirkin who diagnosed her with a failed fusion. Her complaints at this time were pain down her left leg to ankle, extreme pain in her back and she was walking with a limp and cane. When she attempted to squat, she could not get up and Dr. Raskas had to help her. Dr. Raskas recommended a myelogram. On November 23, 2009, a myelogram showed that the fusion at L2-4 was incomplete, that there was not hardware failure, but that there were bulges at L1-2 affecting the central canal and causing bilateral neural foraminal encroachment and a bulge at L4-5 causing bilateral foraminal encroachment. Dr. Raskas reviewed the study on December 9, 2009 and recommended revising the fusion and addressing the herniation at L1-2.

On January 26, 2010, Dr. Mirkin performed an exploration of the fusion and removal of hardware placing instruments at L1-4 and interbody fusion at L1-2, posterolateral fusion at L1-4, revision of bilateral laminectomies with decompression on the nerve roots from L1-4 and iliac grafting with cage at L1-2. In his operative report, he described a disc herniation at L1-2. Following the surgery, Employee spent several days in the ICU for hypotension due to blood loss from the surgery.

Current Condition:

Employee's current conditions from her June 10, 2008 injury are as follows:

1. Constant pain in low back, sometimes rising to a level of nine, on a scale of one to ten.
2. Stiffness in her low back.
3. Pain and numbness radiating into her left leg down to her ankle and into her right buttock.

Employee's ability to walk is limited and requires her to use a cane. She cannot sit for long periods of time and has pain when bending. If she stoops, she cannot get back up. Employee is unable to squat and has difficulty lifting. In order to shower, she must use a shower chair. Her housework is limited to waist level activities, and she no longer performs any outside yard work. She takes narcotics three times a day, which consists of flexeril and tramadol, and prescription *nortriptyline*, which does assist her sleeping. However, she can only sleep on her right side and wakes up three or four times a night. Employee testified that there is no way in her current medical condition that she could return to work as a CMT or CNA. Further, she stated that she could not return to any work because she is required to lay down every afternoon for a few hours and most mornings. At the time of the hearing, Employee also noted that if she could return to work, she would, but she is physically unable.

Medical and Vocational Opinions:

On August 16, 2010, Dr. David Volarich examined Employee and opined that pertaining to and as a direct result of the injury sustained on June 10, 2008, while in the employ of Cedar Hill Manor, that Employee suffered a 75% permanent partial disability of the body as a whole, rated at the lumbosacral spine, due to disc herniations at L2-3 and L3-4 that required laminectomy, discectomy and fusion with instrumentation followed by the development of nonunion and adjacent level herniation at L1-2 that required a second fusion from the L1 through L4 levels (3 levels). This rating accounts for the recurrence of her pain and the left leg radicular symptoms all of which contribute to not only back pain, but lost motion and ongoing left leg radiculopathy. Dr. Volarich also opined that Ms. Herrington is not able to engage in any substantial gainful activity nor can she be expected to perform in an ongoing working capacity in the future. Further, he opined that Employee is not able to continue in her line of employment that she last held as a CMT/CAN for Cedar Hill Manor, nor can she be expected to work on a full time basis in a similar job. Based on his medical assessment alone, Dr. Volarich noted that Ms. Herrington is permanently and totally disabled as a direct result of the work related injuries of June 10, 2008 standing alone since the severity of the June 10, 2008 injury far outweighs any preexisting disabilities that she had.

In addition to issuing restrictions for Employee, Dr. Volarich opined that in order to maintain her current state, Employee will require ongoing care for her pain syndrome using modalities, including but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of her complaints. Finally, Dr. Volarich noted that Employee would benefit from ongoing treatments at a pain clinic, epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units and similar treatments would all be beneficial to help control her symptoms due to her postlaminectomy syndrome.

Dr. R. Peter Mirkin testified by deposition on April 18, 2011. On March 2, 2009, after the first fusion surgery, he placed a 35lb permanent lifting restriction on Employee. When the fusion failed, he performed the following procedure on January 26, 2010:

1. Exploration of fusion;
2. Removal of segmental instrumentation;
3. Segmental instrumentation at L1-L2-L3-L4;
4. Interbody fusion L1-2;
5. Posterior lateral fusion of L1-L2-L3-L4;
6. Bilateral revision laminectomy with decompression of nerve roots L1-L2-L3-L4;
7. Harvest of right iliac crest bone grafts;
8. Placement of interbody cage, L1-L2;

On February 5, 2010, Employee was given a bone stimulator and a back brace. Two months later, Dr. Mirkin placed a 10lb lifting restriction on Employee. Without performing any tests or recording any complaints by Employee, Dr. Mirkin raised Employee's lifting restriction from 10 pounds to 35 pounds on May 28, 2010. At his deposition, Dr. Mirkin testified that Employee had the physical capability to go back to work when he last saw her.

On April 25, 2011, James England, a Vocational Rehabilitation Expert, issued his report and opined that Employee would be prevented from going back to her past work, but would not be precluded from some types of unskilled, entry-level service employment if considering just with Dr. Mirkin's restrictions. Considering the restrictions mentioned by Dr. Volarich, however, and Employee's description of her functional difficulties, Mr. England did not believe Employee would be able to successfully complete a sustained work activity at any level of exertion. Further, Mr. England opined that Employee's presentation would certainly make it extremely unlikely that she would be picked over virtually any other candidate for an unskilled, entry level position.

Stephen Dolan, a Vocational Rehabilitation Expert, issued his report and opined that Employee could work as a pharmacy technician, but, her anxiety would prevent her from doing this job. Further, Mr. Dolan also noted that Employee was currently providing care for her mother. Mr. Dolan's opinions did not consider the opinions or restrictions placed on Ms. Herrington by Dr. Volarich, but did consider the 35lb restriction of Dr. Mirkin. At his deposition, Mr. Dolan agreed that if Ms. Herrington was required to lay down during the day, she would not be employable.

APPLICABLE LAW:

- Under Section 287.140.1., "the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury". Further, the employer is given the right to select the authorized treating physician. Subsection 1 also provides that the employee has the right to select his own physician at his own expense. The employer, however, may

waive its right to select the treating physician by failing or neglecting to provide necessary medical aid. *Emert v Ford Motor Company*, 863 S.W. 2d 629 (Mo.App. 1993); *Shores v General Motors Corporation*, 842 S.W. 2d 929 (Mo.App.1992) and *Hendricks v Motor Freight*, 520 S.W. 2d 702, 710 (Mo.App.1978).

- The standard of proof for entitlement to an allowance for future medical aid cannot be met simply by offering testimony that it is “possible” that the claimant will need future medical treatment. *Modlin v Sunmark, Inc.*, 699 S.W. 2d 5, 7 (Mo.App.1995). The cases establish, however, that it is not necessary for the claimant to present “conclusive evidence” of the need for future medical treatment. *Sifferman v Sears Roebuck and Company*, 906 S.W. 2d 823, 838 (Mo. App.1995). To the contrary, numerous cases have made it clear that in order to meet their burden, claimants are required to show by a “reasonable probability” that they will need future medical treatment. *Dean v St. Lukes Hospital*, 936 S.W. 2d 601 (Mo.App.1997). In addition, employees must establish through competent medical evidence that the medical care requested, “flows from the accident” before the employer is responsible. *Landers v Chrysler Corporation*, 963 S.W. 2d 275, (Mo.App.1997).
- The test for finding the Second Injury Fund liable for permanent partial disability benefits is set forth in Section 287.220.1 RSMo as follows:

“All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a pre-existing permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining re-employment if the employee becomes unemployed, and the pre-existing permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no pre-existing disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee’s disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and

compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for.”

- The test for finding the Second Injury Fund liable for permanent total disability is set forth in Section 287.220.1 RSMo., as follows:

If the previous disability or disabilities, whether from compensable injuries or otherwise, and the last injury together result in permanent total disability, the minimum standards under this subsection for a body as a whole injury or a major extremity shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employee at the time of the last injury is liable is less than compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under Section 287.200 out of a special fund known as the “Second Injury Fund” hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in Section 287.414.
- Section 287.020.7 RSMo. provides as follows:

The term “total disability” as used in this chapter shall mean the inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.
- The phrase “the inability to return to any employment” has been interpreted as the inability of the employee to perform the usual duties of the employment under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kowalski v M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922(Mo.App.1992). The test for permanent total disability is whether, given the employee’s situation and condition, he or she is competent to compete in the open labor market. *Reiner v Treasurer of the State of Missouri*, 837 S.W.2d 363, 367(Mo.App.1992). Total disability means the “inability to return to any reasonable or normal employment”. *Brown v Treasurer of the State of Missouri*, 795 S.W.2d 479, 483(Mo.App.1990). An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Id.* The key is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person’s physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Reiner* at 365. See also *Thornton v Haas Bakery*, 858 S.W.2d 831,834(Mo.App.1993).

RULINGS OF LAW:

Issue 1. Future Medical Aid

Employee has alleged that she will require additional medical treatment to cure and relieve her from the effects of her June 10, 2008 work related injury. In support of her position, Employee has offered the opinion of Dr. David Volarich. Following his examination of

Employee, Dr. Volarich opined that Employee will require ongoing care for her pain syndrome using modalities, including but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of her complaints, and further Employee would need ongoing treatments at a pain clinic, epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units and similar treatments to help control her symptoms due to her postlaminectomy syndrome. The Employer-insurer has relied on the opinion of Dr. Peter Mirkin that Employee is at maximum medical improvement and can be released back to work with a 35 pound weight restriction. After reviewing all of the evidence, I find that Employee is credible and the Employer-insurer has failed to offer sufficient evidence to discredit Employee's testimony. With regard to Dr. Mirkin, he released her back to work the second time without even examining Employee. As a result, I find the opinions of Dr. Mirkin to be not credible since they are not based on the full information available to him. It is important to note that the Employer-insurer has also failed to offer sufficient evidence to discredit the opinions of Dr. David Volarich. Consequently, I find the opinions of Dr. Volarich are more credible than the opinions of Dr. Mirkin. The medical evidence supports a finding that Employee will require future medical treatment to cure and relieve her from the effects of her June 10, 2008 work related injury.

Based on the evidence and my above findings, the Employer-insurer is therefore directed to furnish additional medical treatment related to Employee's June 10, 2008 work related lumbar condition in accordance with Section 287.140 RSMo.

Issue 2. Nature and Extent of Disability

Employee has alleged that she is permanently and totally disabled as a result of her June 10, 2008 accident. In support of her position, Employee has offered the opinions of Dr. David Volarich and vocational rehabilitation expert, Mr. James England. The Employer-insurer has offered the opinions of Dr. Mirkin and vocational rehabilitation expert, Mr. Stephen Dolan, in support of their position that they are not liable for permanent and total disability benefits. In accordance with my above findings that the opinions of Dr. Volarich more credible than the opinions of Dr. Mirkin, I further find the opinions of Mr. Dolan to be not credible because he fails to consider in his opinion the restrictions and limitations of Dr. David Volarich. With regard to Mr. England's opinions, I find that the Employer-insurer has failed to offer sufficient credible evidence to discredit his opinions. Consequently, I find the opinions of Mr. England more credible the Mr. Dolan's opinions.

Based on the evidence, I find that no employer in the usual course of business would reasonably be expected to employ Employee in her present condition, nor reasonably expect Employee to perform the work for which she had been hired. Consequently, I find that Employee is no longer able to compete in the open labor market and therefore is permanently and totally disabled. Based on the evidence including the medical opinions of Dr. Volarich and the vocational opinion of Mr. England, I find that Employee is permanently and totally disabled as a result of the June 10, 2008 accident alone. While Employee had some degree of pre-existing disability, the effects of the June 10, 2008 accident are simply too substantial for Employee to overcome in attempting to compete in the open labor market.

The Employer-insurer has paid Employee temporary total disability benefits, and the parties stipulated that Employee reached maximum medical improvement on August 16, 2010. Based on my above findings regarding permanent total disability and the stipulations of the parties, the Employer-insurer is therefore directed to pay to Employee the sum of \$311.22 per week commencing on August 17, 2010, and said weekly benefits shall be payable during the continuance of such permanent total disability for the lifetime of Employee pursuant to Section 287.200.1, unless such payments are suspended during a time in which Employee is restored to his regular work or its equivalent as provided in Section 287.200.2.

Issue 3. Liability of the Second Injury Fund

Under Section 287.220.1 RSMo., the Second Injury Fund has no liability and the Employer-insurer is solely responsible for full permanent total disability benefits if the last injury, considered alone and of itself, results in permanent total disability. Based on my above findings that Employee's work injuries resulting from the accident of June 10, 2008 are the cause of this Employee's permanent and total disability, I find that the Second Injury Fund has no liability in this matter.

ATTORNEY'S FEE:

Dan Gauthier, attorney at law, is allowed a fee of costs plus 25% of all sums awarded under the provisions of this award for necessary legal services rendered to Employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation