

FINAL AWARD ALLOWING COMPENSATION
(Pursuant to the Mandate of the Missouri Court of Appeals, Eastern District)

Injury No.: 03-138799

Employee: Debra Highley
Employer: Von Weise Gear (Settled)
Insurer: Travelers Insurance (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: December 16, 2003
Place and County of Accident: Franklin County, Missouri

On March 4, 2008, the Missouri Court of Appeals for the Eastern District issued an opinion reversing the July 19, 2007, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case. By mandate issued March 27, 2008, the Court remanded this matter to the Commission with directions to enter a new award finding employee is permanently and totally disabled and the Second Injury Fund is liable for the enhanced permanent and total disability in accordance with the Court's opinion delivered March 4, 2008. *Highley v. Von Weise Gear*, ED90160, 2008 Mo.App. LEXIS 27 (Mo.App E.D. 2008).

Pursuant to the Court's opinion and mandate, we issue this new award reversing the award and decision of the administrative law judge dated February 6, 2007.

Discussion

Dr. Margolis concluded that employee suffered from several pre-existing conditions, including bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral shoulder impingement, right ulnar nerve entrapment at the wrist, left medial epicondylitis, history of cervical strain/sprain, degenerative cervical disc disease, degenerative disease of the lumbar spine, and multiple sclerosis. According to Dr. Margolis, these pre-existing conditions combined with employee's primary injury of bilateral carpal tunnel syndrome to create a greater overall disability. Dr. Margolis opined that employee was permanently and totally disabled based on employee's disabilities.

James England, vocational expert, provided unimpeached and uncontradicted testimony. Mr. England opined that employee was unable to sustain work in the open labor market in any job. Mr. England opined that employee was not a good candidate for vocational rehabilitation and was likely to remain permanently and totally disabled from a vocational standpoint.

After considering the entire record, including the expert opinions of Dr. Margolis and Mr. England, we conclude that employee is permanently and totally disabled due to a combination of her pre-existing disabilities and December 16, 2003 work-related injury.

Section 287.200.1(4) RSMo, provides:

“the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage.”

Employee introduced Exhibit SS, a pay stub reflecting one week of employee's wages from November 16, 2003 through November 21, 2003, as evidence of employee's average weekly earnings. Exhibit SS showed that employee worked 48 hours that week and earned \$14.56 per hour. Employee testified at hearing that she earned \$14.56 per hour, and testified that the number of hours listed on Exhibit SS accurately reflected the number of hours she worked for employer. Exhibit SS showed a weekly earnings of \$757.12. Pursuant to section 287.200.1(4), the applicable rate for permanent total disability benefits is \$504.75 ($\$757.12 \times 66 \frac{2}{3}\%$).

Award

Pursuant to the Court's mandate, we award permanent total disability against the Second Injury Fund. The Second Injury Fund is liable for 52.5 weekly installments of the \$157.70, the differential between the permanent total disability rate (\$504.75) and the permanent partial disability rate (\$347.05). Thereafter, the Second Injury Fund shall pay to employee weekly payments of \$504.75 for her permanent total disability benefit for her lifetime or until modified by law.

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 15th day of April 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary