

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

Injury No.: 06-125024

Employee: Alma Holzer  
Dependent: John Holzer  
Employer: St. Louis Cardinals (settled)  
Insurer: Ace American (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 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 February 28, 2011. The award and decision of Administrative Law Judge Kathleen M. Hart, issued February 28, 2011, 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 8<sup>th</sup> day of November 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Alma Holzer

Injury No.: 06-125024

Dependents: John Holzer

Before the  
**Division of Workers'  
Compensation**

Employer: St. Louis Cardinals (previously settled)

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund (only)

Insurer: Ace American (previously settled)

Hearing Date: November 22, 2010, and December 7, 2010

Checked by: KMH

### 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: June 30, 2006
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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:  
Claimant injured her left upper extremity when she was hit in the elbow by a door at work.
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: left upper extremity
14. Nature and extent of any permanent disability: 48% left elbow previously paid by Employer/Insurer, and permanent and total disability benefits from the SIF beginning March 15, 2009, due to a combination of the primary injury and the pre-existing injuries and disabilities.
15. Compensation paid to-date for temporary disability: \$23,639.60
16. Value necessary medical aid paid to date by employer/insurer? \$47,051.40

Employee: Alma Holzer

Injury No.: 06-125024

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$590.99/\$365.08
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

|   |                   |
|---|-------------------|
| 100.8 weeks of permanent partial disability from Employer | (previously paid) |
|---|-------------------|

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
 weekly differential \$225.91 payable by SIF for 100.8 weeks beginning  
 March 15, 2009, and, thereafter, \$590.00 as long as provided by law

|        |                  |
|--------|------------------|
| TOTAL: | TO BE DETERMINED |
|--------|------------------|

23. Future requirements awarded:

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Richard Dowd

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Alma Holzer

Injury No.: 06-125024

Dependents: John Holzer

Before the  
**Division of Workers'  
Compensation**

Employer: St. Louis Cardinals (previously settled)

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund (SIF)

Insurer: Ace American (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter November 22, 2010, and December 7, 2010. Alma Holzer (Claimant) was represented by attorney Richard Dowd. The SIF was represented by Assistant Attorney General Karin Schute. Employer/Insurer and Claimant settled their case prior to hearing.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

### **STIPULATIONS**

The parties stipulated to the following:

1. Claimant was injured by accident June 30, 2006, while in the course and scope of her employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by Ace American Insurance Company.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to yield a TTD/PTD rate of \$590.99 and a PPD rate of \$365.08.
6. Claimant has been paid TTD benefits of \$23,639.60 representing 40 weeks of TTD. Employer paid \$47,051.40 in medical benefits.
7. Employer/Insurer and Claimant settled the primary injury for 48% of the left elbow on April 16, 2010.

### **ISSUES**

The parties stipulated the sole issue for trial is Second Injury Fund liability.

### **FINDINGS OF FACT**

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 64 year-old married female who is a high school graduate and has no other formal education. After high school, Claimant worked as a secretary for a short time until she married and stayed home to raise her children. Claimant began working for Employer in the ticket office in 1981. She is right handed, and her work involved continuous keyboarding. Claimant's job was seasonal, and she worked full-time from February through October.
2. In the late 1990's, Claimant developed low back pain with radiation into her legs. She had a laminectomy and discectomy at the L4-5 level. The surgery relieved her left sided sciatic pain, but she continued to have constant low back pain. In June 1999, Claimant sought treatment for her low back again. An MRI showed bulging discs from L1 through L4, a herniated disc at L3-4, and a possible recurrent herniation at L4-5. A Myelogram showed diffuse bulging throughout her low back and post op changes at L4-5.
3. Claimant continued to have burning and stabbing pain in her back and into her leg. Conservative treatment did not relieve her symptoms, and Claimant was referred for pain management in 2001. She was diagnosed with scoliosis from L2-L4. She had a series of injections. By December 2002, Dr. Mollman noted surgery was an option, and would involve a fusion from L2 through L5. This would leave only one motion segment in her low back. Claimant was reluctant to proceed with this extensive surgery, so Dr. Mollman recommended more therapy and conservative treatment. She was treated with pain management and injections on a regular basis for the next several years.
4. Claimant testified the injections occasionally helped. She testified she was told repeatedly the only way to help her back was with a fusion. She periodically left work early to get injections. Employer accommodated her back problem by letting her work at a desk instead of at the ticket windows. The ticket counter was high, had high chairs and the window was far from the chair. Claimant is petite, and had to stand and lean into the windows to hear and talk to the customers. That caused an increase in her back and leg pain. Working at the desk instead of the windows relieved the pressure on her back. Claimant put a box under her desk, and rested her legs on top of the box to ease her pain. Employer also let Claimant get up and walk around when her back hurt. She was not able to walk around when she worked the ticket window.
5. Claimant continued to have constant pain in her low back going into her left leg. She stopped going to dances, playing ball with her children, working in the garden and other outdoor activities because of back pain. She significantly cut down on travel because of

low back pain. Her pain increased with walking, standing, and sitting. Changing positions, elevating her legs, and periodic injections decreased some of her pain.

6. In 2001 Claimant developed right shoulder pain. Her shoulder was injected, and she was diagnosed with tendonitis. The doctor noted Claimant had a ganglion cyst on her right wrist. By 2003, her right wrist complaints increased, and studies showed she had carpal tunnel syndrome. She had a right carpal tunnel release in February 2004, but her complaints continued. She developed triggering and numbness in her right thumb, and she continued to have pain and numbness in her hand. In April 2005, she had a trigger thumb release, recurrent carpal tunnel release, and release of the digital nerves at her thumb.
7. Claimant settled her right wrist injury for 20% of her hand. She continued to have pain with gripping, and was not able to work as fast. She is unable to grip the steering wheel enough to drive for more than short distances. Attempts to use her right hand to relieve her left arm problems increased her right arm complaints.
8. On June 30, 2006, Claimant injured her left elbow at work. She was returning to the ticket window room when a co-worker slammed the door open and it hit Claimant in the elbow. She felt immediate pain in her elbow, but tried to keep working. The pain in her arm increased, and her fingers started curling up. She began treatment with Dr. Cole, and he performed a decompression and ulnar nerve transposition in August 2006. Claimant had extensive physical therapy, but continued to have atrophy, weakness in her hand, grip strength loss, and an inability to fully extend her fingers. A 2007 EMG showed profound slowing of the ulnar nerve, and the doctor noted Claimant had muscle wasting, significant weakness and hand deformity.
9. Claimant was referred to Dr. Hagan in June 2007. He diagnosed persistent ulnar nerve injury. In August 2007, he performed an excision of a neuroma, nerve transposition, redo decompression of the ulnar nerve, pronator release, transposition of the ulnar nerve, and decompression of the median nerve. Claimant had extensive physical therapy and pain management.
10. When Claimant returned to work, she could only keyboard with two of the fingers on her left hand. She had to use her right hand to accommodate for the loss of use in her left hand. Her left fourth and fifth fingers curled inward, and she was not able to work as fast as she had before this injury. Claimant advised Employer she was having problems keyboarding because of her fingers, and she was having problems with her back.
11. In September 2008, Employer sent Claimant for a functional capacity evaluation (FCE). The therapist opined Claimant was able to work full time in a medium capacity job. Claimant testified after the FCE, she had pain, stiffness, and soreness the next day. Claimant does not believe she could do the activities she did during the FCE on a continuous basis eight hours a day. She testified the doctors have restricted her to lifting lighter weights than what the therapist asked her to do in the FCE.
12. Claimant settled her left arm injury for 48% PPD of the left elbow in April 2010.

13. Claimant continues to have pain, weakness, and difficulty spreading her fingers. She is unable to straighten her ring and small finger, and they flex and curl into the palm of her hand. She has cramping and pain in her forearm, elbow, left shoulder and neck. Simple activities such as cutting her salad cause pain in her fingers. She is unable to grip with her left hand. She is not able to keyboard. Claimant testified the doctor thought additional surgery would be more harmful than helpful.
14. Claimant has a long history of peripheral vascular disease, atherosclerotic disease and cardiovascular disease. While working for Employer, Claimant developed pain in her calves and could hardly walk. She was diagnosed with left leg claudication due to reduced blood flow to the legs. In August 2006, she was diagnosed with bilateral femoral artery stenosis, and had two stents inserted to improve blood flow. In March 2007, her left leg complaints worsened and caused chest pain. The doctor noted she had a history of TIA, and admitted her for cardiac catheterization. She had a triple coronary artery bypass, and suffered a right pneumothorax while on the ventilator. By May 2007, her stents failed, and she had a left femoral popliteal bypass graft. That graft failed, and in August 2007, she had a second femoral artery bypass.
15. In 2008, Employer assigned Claimant to work the ticket window again. When Claimant returned to work in February 2009, she had difficulty working the window. She could not keyboard quickly enough. The high chairs pulled on her legs and caused more pain in her back. She had to stand to hear the customers. She was not able to take breaks or walk around as needed to control her pain. At the end of a work day, she had pain in her hands, arms, and back. She also had significant problems with her leg. She told her boss she could not work at the ticket window and asked for another job. Employer did not have a job that did not require keyboarding. Due to the problems she had with her arms, legs, and back, Claimant left her job. She last worked March 13<sup>th</sup> or 14<sup>th</sup>, 2009.
16. Claimant testified she continues to have lower extremity problems related to her radiculopathy and vascular condition. Claimant continues to see her doctor for Doppler studies of her legs every six months. She continues to have shortness of breath related to her cardiac surgery, and this increases with walking or going up stairs. She has difficulty tolerating heat and cold weather due to her heart condition.
17. Claimant continues to have significant problems with her back. She sees Dr. Smith for pain management and injections on a regular basis. She can only stand fifteen minutes, and walk two blocks. Stairs increase the pain in her low back and legs. She has poor balance due to numbness in her left leg. She is unable to bend to reach past her knees because of low back pain. She can't bend or squat, and she can't sit more than twenty minutes. She frequently sits with her legs elevated and lies down throughout the day to relieve her back complaints.
18. Claimant believes she is most limited because of her low back and left arm. She is unable to use her left hand to compensate for her right hand difficulties. She avoids using either hand to lift, and uses her arms instead. She can only lift about five pounds. She has difficulty simply grasping paper, money or change. Claimant is not able to sleep through the night due to low back and leg pain. She can only do light work around the

house. She doesn't have enough arm strength to hold the leash and take the dog for a walk.

19. Claimant's vocational expert, Tim Lalk, reviewed the medical records and evaluated Claimant in August 2009. He noted Claimant is unable to tolerate eight hours in which she is only able to change position from sitting to standing and walking. She needs to sit and put her feet up or lie down to control her low back pain. She needs to rest her hands and avoid activities.
20. Mr. Lalk opined Claimant's back condition limited her to sedentary or near sedentary work before 2006. Employer accommodated this condition. Claimant had problems with her right hand, but was able to accommodate that with her left hand. Claimant would have had difficulty before her 2006 injury being considered for other entry-level work.
21. Claimant has no experience or training that would qualify her for a skilled position. Her primary limitation to employment is her back, and that limits her to sedentary work. Most sedentary work involves keyboarding. Her 2006 injury limits the use of her left hand. She has prior problems with her right arm. She is now unable to work in sedentary customer service due to the inability to use her hands repetitively. He opined Claimant is not able to seek or maintain employment in the open labor market. An Employer would not allow an employee in an unskilled, entry-level position to take breaks and change positions. While Claimant has other medical conditions, her back and arms are the primary things that limit her. Her back limits her exertion, so her heart condition doesn't come into play.
22. Claimant's medical expert, Dr. Musich, noted Claimant has been treated for hypercholesterolemia dating back to the 1990's, and she was treated for hypertension prior to her 2006 work injury. Her vascular disease was going on for several years prior to 2006. Her left leg claudication symptoms began in 2005. She continues to have left calf pain after walking over one mile or climbing stairs. She has significant loss in all ranges of motion in her low back. She has continued constant radiculopathy into her left leg and foot. She limps favoring her left leg. She continues to have numbness and tingling in her right hand and pain in her right thumb. She has burning and numbness in her left arm, is unable to fully extend her fingers, and has significant weakness in her hand.
23. Dr. Musich opined her past and present disabilities produce a chronic hindrance in Claimant's routine activities of daily living. He recommended numerous limitations and opined Claimant is permanently and totally disabled due to a combination of her present and past disabilities.
24. Claimant is credible.

## **RULINGS OF LAW**

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

**1. Claimant's Exhibit F is inadmissible.**

Claimant's Exhibit F is a medical report prepared by Dr Chaudry at the request of the Social Security Administration. The doctor examined Claimant and issued this report containing his opinion as to Claimant's disabilities relating to her application for Social Security Disability benefits. The SIF objected to the admission of this report on the basis of hearsay. I find Claimant's Exhibit F is inadmissible based on the SIF's hearsay objection.

**2. SIF's Exhibit I is admissible.**

The SIF offered the September 27, 2008, FCE as Exhibit I. This FCE was relied on by the treating doctors, Mr. Lalk and Dr. Musich. I find the FCE relevant as it was relied on by the experts, and it is therefore admitted into evidence.

**3. Claimant is permanently and totally disabled as a result of the combination of her 2006 work injury and her prior injuries and disabilities.**

Section 287.220 provides in cases of permanent total disability against the Second Injury Fund, there must be a determination of the following:

- the percentage of disability resulting from the last injury alone;
- that there was a pre-existing permanent disability that was a hindrance or obstacle to employment or to obtaining re-employment;
- that all of the injuries and conditions combined, including the last injury, have resulted in the employee being permanently and totally disabled.

Claimant settled her claim with Employer for 48% of her left elbow prior to this hearing. Based on the medical evidence and Claimant's testimony, I find this percentage accurately reflects her disability from the primary injury. I find her work injury was the prevailing factor in causing the condition in her left arm and her need for medical treatment.

Claimant had a number of injuries and medical conditions prior to her 2006 work injury. The medical records and stipulation for compromise settlement regarding those injuries and conditions were admitted into evidence. Claimant credibly testified to her numerous complaints and limitations from those prior injuries and conditions. I find each of these injuries and disabilities were a hindrance or obstacle to Claimant's employment or to obtaining re-employment.

The final question is whether the combination of Claimant's injuries rendered her permanently and totally disabled.

Permanent and total disability is defined by Section 287.020.7 RSMo as the “inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident.” The Missouri Court of Appeals explained this definition in *Gordon v. Tri-State Motor Transit Company*, 908 S.W.2d 849, 853 (Mo.App. S.D. 1995)(citations omitted)(overruled on other grounds):

The phrase “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. 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. Total disability means the “inability to return to any reasonable or normal employment.” An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. The pivotal question is whether any employer would reasonably be expected to employ the employee in the person’s present condition, reasonably expecting the employee to perform the work for which he or she is hired.

While Claimant returned to work for 2 baseball seasons after her primary injury, she missed a substantial amount of that work while she treated for her primary injury and her vascular and cardiac conditions. The work she did perform during that time was at a desk job where she could elevate her legs throughout the day and take breaks as needed. The September 2008 FCE is not compelling. It does not measure Claimant’s ability to sustain work on an ongoing basis eight hours a day, 40 hours a week. When Claimant tried to work the 2009 baseball season, Employer returned her to the ticket window, and she was no longer physically able to work due to her back and bilateral upper extremity conditions.

Claimant last worked March 13 or 14, 2009. She credibly testified she could not continue working for Employer due to her back and arm problems. There was no job available that was less physically demanding. Mr. Lalk opined Claimant was limited to sedentary or near sedentary work before her 2006 injury. Her 2006 injury caused further limitations, and eliminated her from sedentary and customer service jobs. Claimant does not have the training to work in a skilled position, and an Employer would not accommodate Claimant’s need to take breaks and change positions in order to hire her in an unskilled, entry level position.

Claimant’s medical expert, Dr. Musich, opined Claimant’s prior conditions and her 2006 work injury created hindrances to her ability to function. He opined her vascular conditions were present long before her 2006 work injury and Claimant had begun treatment for these conditions before the work injury. He found Claimant had significant symptoms relating to her back and upper extremities, and opined she is permanently and totally disabled as a result of the combination of disabilities from her work injury and prior conditions.

I find the testimony and opinions of Mr. Lalk and Dr. Musich credible. While much of the treatment for Claimant’s vascular conditions occurred after her 2006 work injury, she was symptomatic before the work injury. These conditions develop over a long period of time before

treatment is necessary. I find Claimant is permanently and totally disabled even without considering her vascular disease. Her back injury limited her ability to work, and confined her to sedentary work. This type of work typically involves repetitive use of the hands and arms. With Claimant's hand and arm injuries and disabilities, no Employer would reasonably be expected to hire her. She is not capable of competing for work in the open labor market.

The overwhelming weight of the medical and vocational evidence establishes Claimant is permanently and totally disabled as a result of the combination of her June 30, 2006, accident and the pre-existing medical conditions. Claimant last worked March 14, 2009. She became permanently and totally disabled March 15, 2009. She received compensation from Employer for 100.8 weeks at \$365.08 per week. The SIF is hereby ordered to pay permanent total disability benefits of at a differential rate of \$225.91 per week beginning March 15, 2009, for 100.8 weeks, and thereafter \$590.99 per week. The weekly benefit shall continue as long as provided by law. The amount accrued to date shall be paid forthwith with interest as provided by law.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

KATHLEEN M. HART  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*