

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

Injury No.: 99-181911

Employee: Donald Hudgins
Employer: Sentinel Fastener Supply Co., Inc.
Insurer: Uninsured
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 March 5, 2009. The award and decision of Administrative Law Judge Emily Fowler, issued March 5, 2009, 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 30th day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Donald Hudgins Injury No: 99-181911
Dependents: N/A
Employer: Sentinel Fastener Supply Co., Inc.
Additional Party: Treasurer of the State of Missouri as the Guardian of the Second Injury Fund
Insurer: None
Hearing Date: January 27, 2009 Checked by: ESF/pd

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 24, 1999
5. State location where accident occurred or occupational disease was contracted: North Kansas City, Clay 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? No
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was filling an order and fell, causing injury to Employee's right upper extremity.
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 shoulder, right upper extremity
14. Nature and extent of any permanent disability: 35% to the right shoulder at the 232-week level
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None
17. Value necessary medical aid not furnished by employer/insurer? \$29,076.47
18. Employee's average weekly wages: \$360.00

19. Weekly compensation rate: \$240.00/\$240.00
20. Method wages computation: Hourly rate of \$9.00 per hour by 40 hours per week

COMPENSATION PAYABLE

21. Amount of compensation payable by employer
 35% permanent partial disability to the right shoulder for a total of 81.2 weeks at \$240.00 per week..... \$19,488.00
- Medical bills totaling\$29,076.47
22. Amount of compensation payable by the Second Injury Fund: Because Employer was not insured as required by law the Second Injury Fund shall pay to Employee the medical bills incurred.....\$29,076.47
23. Future requirements awarded: None

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 claimant: David A. Slocum

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Donald Hudgins Injury No: 99-181911

Dependents: N/A

Employer: Sentinel Fastener Supply Co., Inc.

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

Insurer: None

Hearing Date: January 27, 2009 Checked by: ESF/pd

On January 27, 2009, the Employee and the Second Injury Fund appeared for a final hearing. The Employer although having received noticed appeared not and was found in default. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Mr. Donald Hudgins, appeared in person and with counsel, David A. Slocum. The Second Injury Fund appeared, through counsel, Maureen Shine.

STIPULATIONS

The parties stipulated that:

- Mr. Hudgins filed a claim for compensation within the time allowed by law.
- Sentinel Fastener Supply Co., Inc. was an Employer for the purposes of the workers' compensation on March 24,

1999.

- Sentinel did not carry workers' compensation insurance on March 24, 1999.
- Mr. Hudgins was an Employee of Sentinel on March 24, 1999.
- Missouri Jurisdiction is proper in this claim.

ISSUES

The parties requested the Division to determine:

- Whether Mr. Hudgins sustained injury by accident arising out of and in the course of his employment with Sentinel Supply Co., Inc.;
- Whether Sentinel Supply Co., Inc. received notice of the March 24, 1999 accident as prescribed by law;
- Whether Employee is entitled to payment of medical bills totaling \$29,076.47;
- Whether Mr. Hudgins sustained permanent partial disability as a result of the work injury of March 24, 1999;
- Whether the Second Injury Fund is liable for medical expenses incurred as a result of the March 24, 1999 work accident pursuant to section 287.220.5.

FINDINGS

Mr. Hudgins testified on his own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

- Exhibit A - Missouri Proof of Coverage.
- Exhibit B - Deposition of P. Brent Koprivica, MD with Exhibits
- Exhibit C - Deposition of Mary Titterington with Exhibits
- Exhibit D - Deposition of Allan Schmidt, Ph.D. with Exhibits
- Exhibit E - Medical Bill Summary
- Exhibit F - Medical Bill of Mid America Rehabilitation Hospital
- Exhibit G - Medical Bill of Northland Neurological Associates
- Exhibit H - Medical Bill of OSI
- Exhibit I - Medical Bill of Creekwood Family Care
- Exhibit J - Withdrawn
- Exhibit K - Withdrawn
- Exhibit L - Medical Bill of Medical Imaging
- Exhibit M - Medical Bill of North Kansas City Hospital
- Exhibit N - Medical Bill of MAWD Pathology
- Exhibit O - Medical Bill of Northland Anesthesiology, Inc.
- Exhibit P - Medical Bill of Northland Radiology, Inc.
- Exhibit Q - Donald Hudgins' written list of current complaints

Sentinel Fastener Supply Co., Inc., Employer, did not attend and did not present any evidence.

The Second Injury Fund did not present any evidence.

Mr. Hudgins is 52-year-old man who sustained an injured on March 24, 1999 while employed by Sentinel Fastener Supply Co., Inc. (hereinafter Sentinel). Mr. Hudgin testified that at the time of the injury, Sentinel

employed at least five employees. On March 24, 1999, Sentinel was located in North Kansas City, Clay County, Missouri.

In his employment at Sentinel, Mr. Hudgins was a warehouse worker/order picker. Mr. Hudgins' job duties were to fill the orders of the customers, and ship or deliver the ordered goods to the customer. Mr. Hudgins was hired to work on a full time basis, and averaged 40 hours per week. Mr. Hudgins was paid by the hour at a rate of \$9.00 per hour thus making his average weekly wage \$360.00.

On March 24, 1999, while filling an order in the Sentinel warehouse, Mr. Hudgins injured his right shoulder. According to Mr. Hudgins' testimony, he was filling an order that required him to retrieve product from an upper shelf on a shelving unit. In order to retrieve the product, Mr. Hudgins climbed the shelving unit. While Mr. Hudgins was standing on the shelving unit, the unit collapsed, causing Mr. Hudgins to fall to the ground. Mr. Hudgins immediately felt pain in his right shoulder. The accident of March 24, 1999 occurred at the Sentinel warehouse located at 1416 Gentry Street, North Kansas City, Clay County, Missouri. Immediately after the accident, Mr. Hudgins reported to Steve Stigall, Mr. Hudgins' immediate supervisor, that he had sustained an injury to his right shoulder while filling the order.

Following his accident, Mr. Hudgins required medical attention for his right shoulder injuries. Initially, Mr. Hudgins went to Dr. Vescovo, Mr. Hudgins' primary care physician. After his examination, Dr. Vescovo referred Mr. Hudgins to Dr. Paul, an orthopedic surgeon. On February 10, 2000, Dr. Paul performed a right shoulder arthroscopy. At that time, Dr. Paul debrided a partial thickness rotator cuff tear. Subacromial decompression and acromioplasty were also performed. Following his surgery, Mr. Hudgins performed physical therapy. Unfortunately, Mr. Hudgins developed heterotopic calcification in his right shoulder as a complication of the original surgery. For this condition, Mr. Hudgins underwent a lateral clavicle re-section and excision of heterotopic bone formation on August 31, 2000. Mr. Hudgins again followed surgery with physical therapy, and because of continued complaints had a neurological workup performed by Dr. Hollenbeck.

As a result of the treatment necessitated by Mr. Hudgins' work injury, Mr. Hudgins incurred medical expenses totaling \$29,076.47.

Despite the treatment that Mr. Hudgins received, he continues to have problems with his right shoulder. According to the written list of complaints admitted at the hearing, Mr. Hudgins' complains of sharp pain, instability, limited range of motion and loss of strength. Mr. Hudgins' disability was rated by Dr. Koprivica at 35% permanent partial disability to the shoulder at the 232-week level.

Based upon the evidence presented this Court finds that on March 24, 1999, Sentinel was an Employer operating under the provisions of the Missouri Workers' Compensation law. Mr. Hudgins was an employee of Sentinel, and his average weekly wage was \$360.00, which renders a compensation rate of \$240.00. Mr. Hudgins was acting within course and scope of his employment when he was filling the order that resulted in his injury. The accident of March 24, 1999 occurred at the Sentinel warehouse located at 1416 Gentry Street, North Kansas City, Clay County, Missouri, therefore, Missouri Jurisdiction is proper in this claim. Sentinel received proper notice of Mr. Hudgins' injury and Mr. Hudgins' claim for compensation was filed within the time allowed by law. Mr. Hudgins had medical bills which amounted to \$29,076.47. These medical bills were reasonable and necessary for treatment which aided in curing and relieving Mr. Hudgins of the symptoms he suffered from his injury. Finally this Court finds that Mr. Hudgins sustained a permanent partial disability of 35% of the right upper extremity at the shoulder due to his injury on March 24, 1999.

Sentinel had more than five employees at the time of the injury and therefore was required by law to carry workers' compensation insurance. Although required to do so by law, Sentinel did not carry the required workers' compensation insurance on March 24, 1999. Pursuant to section 287.220.5, "If an employer fails to

insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer..." As stated above, Sentinel was an employer under the law and did not carry workers' compensation insurance as required by 287.280. Therefore, the Second Injury Fund steps into the place of the uninsured Employer to cover medical expenses incurred by Mr. Hudgins. The medical expenses introduced at trial are corroborated by the medical records attached to Exhibit B. These expenses are fair, reasonable and necessary to cure and relieve Mr. Hudgins from the effects of the work accident of March 24, 1999. The total amount of medical expenses recoverable from the Second Injury Fund is \$29,076.47.

Therefore, this Court finds that as a result of Mr. Hudgins' work accident on March 24, 1999, he sustained 35% permanent partial disability to his right shoulder at the 232-week level. This Court orders Employer, Sentinel Fastener Supply Co., Inc. to pay \$19,488.00 in permanent partial disability benefits to Mr. Hudgins. The medical bills introduced at trial are reasonable and necessary, and resulted directly from the work accident of March 24, 1999. This Court orders the Employer, Sentinel Fastener Supply Co., Inc. to pay \$29,076.47 to Mr. Hudgins for the medical bills necessitated by the work injury of March 24, 1999. Because Sentinel Fastener Supply Co., Inc. was uninsured on March 24, 1999, this Court therefore orders the Second Injury Fund to pay the \$29,076.47 owed to Mr. Hudgins by the employer for the medical bills that he incurred.

This Court further awards to Employee's attorney, David A. Slocum, 25% of all benefits awarded herein.

Date: _____

Made by: _____

Emily Fowler
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Peter Lyskowski
Acting Director
Division of Workers' Compensation