

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

Injury No.: 09-043100

Employee: Dorothy Isom  
Employer: New World Pasta  
Insurer: New Hampshire Insurance Co.  
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 September 26, 2012. The award and decision of Administrative Law Judge Kathleen M. Hart, issued September 26, 2012, 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 4<sup>th</sup> day of March 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T  
Chairman

\_\_\_\_\_  
James Avery, Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Dorothy Isom

Injury No.: 09-043100

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: New World Pasta

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

Additional Party: Second Injury Fund (SIF)

Insurer: New Hampshire Insurance Co.

Hearing Date: July 18, 2012

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: May 19, 2009
5. State location where accident occurred or occupational disease was contracted: St. Louis
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 right hand when a heavy carton fell onto her hand.
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 hand
14. Nature and extent of any permanent disability: 15% PPD to right hand and 2 weeks disfigurement
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$9,066.54

Employee: Dorothy Isom

Injury No.: 09-043100

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$772.53/\$404.66
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

26.25 weeks of permanent partial disability from Employer	\$10,622.33
2 weeks of disfigurement from Employer	\$ 809.32

22. Second Injury Fund liability: Yes No

46.03 weeks of permanent partial disability from Second Injury Fund	\$18,626.50
---	-------------

TOTAL: \$30,058.15

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:

James N. Guirl

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Dorothy Isom

Injury No.: 09-043100

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: New World Pasta

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

Additional Party: SIF

Insurer: New Hampshire Insurance

Checked by: KMH

A hearing was held on the above captioned matter July 18, 2012. Dorothy Isom (Claimant) was represented by attorney Jim Guirl. New World Pasta (Employer) was represented by attorney Bob Hendershot. The SIF was represented by Assistant Attorney General Rodney Campbell.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award. Any markings on the exhibit were present when admitted into evidence.

### STIPULATIONS

The parties stipulated to the following:

1. Claimant was injured by accident May 19, 2009, 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 New Hampshire Insurance.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage yields a TTD rate of \$772.53 and PPD rate of \$404.66.
6. Claimant has received no TTD and has received \$9,066.54 in medical benefits.
7. Claimant has prior disabilities of 17.5% of the left wrist, 22.5% of the left elbow, 37.5% of the left shoulder, 17.5% of the right wrist, 52.8% of the right shoulder, and 15% of the left knee.
8. If the primary injury meets the statutory thresholds to impose SIF liability, and if the prior injuries were a hindrance or obstacle to employment, the appropriate load factor is 12.5%.

## ISSUES

The parties stipulated the issues to be resolved are as follows:

1. PPD and disfigurement
2. SIF 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 61 year-old, right handed, female who has worked as a machine operator and packer for Employer since April 1995. Her work involves substantial lifting and repetitive use of her hands and arms.
2. On May 19, 2009, Claimant was loading cartons of packaged pasta onto a machine for shipping. The cartons weighed between 75 and 90 pounds, and one fell onto her right hand. She had immediate severe pain and swelling in her right hand. Claimant was treated at BarnesCare and then sent to Dr. Ollinger.
3. Conservative treatment failed to relieve Claimant's symptoms, and Dr. Ollinger performed a right ring trigger finger release in June 2009. He released her from care in January 2010, and noted she had full motion with no clicking or tenderness in her finger.
4. Claimant continued to have pain, weakness, and swelling in her finger and hand. She testified she could not sleep and took Advil every day. Claimant saw Dr. Schlafly in May 2010. He diagnosed recurrent ring trigger finger and recommended additional surgery.
5. Claimant returned to Dr. Ollinger in August 2010. By then, her middle finger had begun triggering, and she had severe pain and swelling in her hand. Dr. Ollinger opined Claimant had developed flexor synovitis in her right ring finger and triggering in her middle finger. Dr. Ollinger injected her middle finger, but Claimant did not get relief from her symptoms. Her hand and middle and ring fingers continued to swell.
6. On October 26, 2010, Dr. Ollinger performed a right long trigger finger release and a flexor tenolysis of the right ring finger at the palm. Dr. Ollinger sent Claimant to physical therapy.
7. Claimant saw Dr. Ollinger for follow-up visits and complained her fingers would not bend sufficiently to make a fist. She continued to have pain, swelling, and stiffness in her fingers and hand. She was released to return to work full duty January 2011. She returned to her regular job and often worked overtime. She last worked February 7, 2012, and is off work on medical leave for a condition unrelated to this injury.

8. Claimant continues to have swelling in her right ring and middle fingers. She has pain throughout her hand. She can't bend her fingers enough to make a fist. She has decreased strength. Her symptoms affect her work and have slowed her down. She has to have help lifting anything heavy at work. She testified she can hardly do anything with her hand. If she does too much, she has severe pain and swelling. She has swelling in her fingers at the end of the work day.
9. In 2002, Claimant had a right carpal tunnel release. She testified the surgery helped, and she had pain free use of her hand after that injury.
10. Employer's expert, Dr. Ollinger, last saw Claimant in January 2011. He noted Claimant continued to have symptoms in her fingers and rated her disability at 5% of each finger.
11. Claimant's expert, Dr. Schlafly, last examined Claimant in March 2011. At that point Claimant had returned to full duty, but continued to have loss of flexion in her fingers and inability to make a tight fist. She had pain in her hand, swelling in her long finger, and reduced grip strength. Dr. Schlafly rated Claimant's disability at 27.5% of her right hand and recommended Claimant work in jobs that require limited repetitive gripping with no lifting over 15 pounds.
12. Dr. Schlafly reviewed Claimant's prior injuries to her hands, shoulder, left elbow, and knee. He performed a physical exam and rated her disabilities from her primary and prior injuries. Dr. Schlafly opined Claimant's injuries were a hindrance or obstacle to her employment and combined to create a greater overall disability.
13. 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 sustained 15% PPD to her right hand and 2 weeks of disfigurement, and she is entitled to \$11,431.65 in compensation.**

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991) (overruled in part). Section 287.190.4 RSMo (2005) allows additional compensation, not to exceed forty weeks, for disfigurement when an injury produces scarring to the head, neck and arms.

Claimant credibly testified her fingers still swell, and she has pain throughout her hand. She is unable to make a tight fist, and she has decreased strength in her hand. These complaints are different than those related to her prior carpal tunnel syndrome. Claimant has spent the majority of her career in an occupation involving repetitive lifting and work with her hands. This injury to her dominant hand has slowed her down at work, and she now requires assistance with some aspects of her job. Her symptoms impact more than her two fingers, and result in restricted use and disability to her entire hand.

Based on the medical evidence and Claimant’s credible testimony, I find Claimant has sustained 15% PPD to her right hand. In addition to PPD, Claimant has scarring from the surgeries, and I find she has sustained 2 weeks of disfigurement.

**2. Claimant is entitled to PPD benefits from the SIF totaling \$18,626.50.**

Claimant’s primary injury resulted in 15% PPD to her right hand. The parties stipulated to Claimant’s prior disabilities. Each of these disabilities meet the statutory thresholds as set forth in §287.220(1) RSMo (2005). This section of the law also provides for compensation from the SIF when the prior injuries were of such seriousness as to constitute a hindrance or obstacle to employment or to reemployment, and the disabilities combine to create a greater overall disability.

I find Claimant has met her burden and established the prior injuries created a hindrance or obstacle to Claimant’s employment and combine with the primary injury to create a greater overall disability. Claimant has established a right to recover PPD benefits from the SIF.

The parties stipulated the load factor that best represents the combination of disabilities is 12.5%. The primary injury resulted in 26.25 weeks of disability. Based on the stipulations of the parties, the prior disabilities total 342 weeks of disability. The SIF is liable for 12.5% of 368.25 weeks, or 46.03 weeks of disability. At Claimant’s compensation rate, she is entitled to, and the SIF is hereby ordered to pay \$18,626.50 in compensation.

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

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

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