

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

Injury No.: 06-052461

Employee: Darlene Jamison

Employer: St. Luke's Hospital d/b/a Surrey Place (Settled)

Insurer: Safety National Casualty Insurance Company (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 § 287.480 RSMo. Having reviewed the evidence, read the briefs, 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 March 7, 2011, as supplemented herein.

Permanent Total Disability

Pursuant to the mandate of § 287.460.1 RSMo, a workers' compensation award must contain unequivocal, affirmative findings of fact and rulings of law resolving all of the disputed issues. See *Stegman v. Grand River Reg'l Ambulance Dist.*, 274 S.W.3d 529 (Mo. App. 2008). We agree with the administrative law judge that employee is permanently and totally disabled due to a combination of the last injury and her preexisting left knee condition. While the administrative law judge's conclusion implies it, we supplement his opinion to state unequivocally that we find employee was not rendered permanently and totally disabled by the primary low back injury.

Dr. David Volarich provided his expert medical opinion for employee. Dr. Volarich rated the primary injury at 65% permanent partial disability of the body as a whole referable to the lumbar spine, and the preexisting condition at 85% of the left knee. Dr. Volarich believes employee is permanently and totally disabled as a result of the effects of her low back injury combined with her preexisting conditions including her left knee disability and psychiatric illness.

James England provided his expert vocational opinion for the Second Injury Fund. Mr. England agreed with Dr. Volarich that employee is permanently and totally disabled, although he felt it was due to the primary injury alone. Mr. England explained he thought the restrictions Dr. Volarich assigned to the low back would take employee out of the labor market notwithstanding any other problems she had.

We acknowledge this is a close case and that the restrictions due to the primary injury are very limiting. However, after carefully weighing the testimony and opinions of Dr. Volarich and Mr. England, we find Dr. Volarich more credible with regard to the basis of employee's permanent total disability.

Dr. Volarich personally examined employee. Mr. England only reviewed records. Employee's permanent total disability results from purely physical factors (in other words, employee's age and transferable skills are not holding her back), and we find the opinions of the sole doctor in this case more persuasive than those of the sole vocational expert. We note that Dr. Volarich's restrictions for the low back do not include restricting employee from prolonged weight bearing

Employee: Darlene Jamison

or walking—but he does so restrict employee with regard to the lower extremities. Employee is currently confined to a wheelchair primarily due to her left knee conditions; employee had to move from a walker to a wheelchair because her left knee would not support any weight bearing. Ultimately, when we consider the last injury in isolation, we are convinced employee is not permanently and totally disabled due to the effects of her low back injury alone, but rather we are persuaded by the credible testimony from Dr. Volarich that she is unemployable as a result of the combination of the low back and left knee conditions.

We note that on page 5 at the conclusion of his award, the administrative law judge cited § 287.200 RSMo in support of his award against the Second Injury Fund. Section 287.220 RSMo is the statute imposing Second Injury Fund liability.

We supplement the award of the administrative law judge with the foregoing findings, conclusions, and comments. In all other respects, we affirm the award.

Award

The Second Injury Fund is ordered to pay to employee weekly payments of \$331.89, the difference between employee's permanent total disability rate (\$696.97) and employee's permanent partial disability rate (\$365.08) for 200 weeks (the extent of employer's theoretical liability for the work injury) beginning August 5, 2008. Thereafter, the Second Injury Fund is liable to employee for weekly permanent total disability benefits in the amount of \$696.97 for her lifetime, or until modified by law.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued March 7, 2011, along with Judge Denigan's March 21, 2011, Order are attached hereto and incorporated herein to the extent they are not inconsistent with this decision and award.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee as awarded in his March 21, 2011, Order.

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

Given at Jefferson City, State of Missouri, this 12th day of August 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary