

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

Injury No.: 01-165783

Employee: Nancy Johanning
Employer: K. R. Wilson Construction Company
Insurer: Bituminous Casualty Corporation
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

Date of Accident: November 28, 2001

Place and County of Accident: Franklin County, Missouri

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 (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 19, 2004, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Leslie E. H. Brown, is attached and incorporated by this reference.

The Commission finds that the ALJ correctly weighed and evaluated the lay and medical testimony in reaching her conclusions and properly applied the law. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D.2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001); *Landman v. Ice Cream Specialties, Inc.*, 197 S.W.3d 240 (Mo. banc 2003).

Given at Jefferson City, State of Missouri, this 21st day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Donald Edwards

Injury No.: 01-075478

Dependents: N/A
Employer: Shapiro Supply Company, Inc. (Settled)
Additional Party: Second Injury Fund
Insurer: AIG Risk Management c/o AIG Claim Services, Inc.
Hearing Date: August 25, 2004

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: CTL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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: July 17, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis, Mo.
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 was preparing to unload a trailer of a truck when he was knocked down by an explosion when a propane tank fell off another truck.
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: Back, head and psychological
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$35,611.39
16. Value necessary medical aid paid to date by employer/insurer? \$18,265.00

Employee: Donald Edwards Injury No.: 01-075478

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$563.46
19. Weekly compensation rate: \$375.60/\$329.42
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:
22. Second Injury Fund liability: No

TOTAL:

-0-

23. Future requirements awarded: N/A

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Donald Edwards	Injury No.: 01-075478
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Shapiro Supply Company, Inc. (Settled)	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	AIG Risk Management c/o AIG Claim Services, Inc.	Checked by: CTL:tr

PRELIMINARIES

A hearing was held in the above-captioned matter on August 25, 2004. The Claimant was represented by Attorney Burton A Librach. The Second Injury Fund was represented by Assistant Attorney General Da-Niel Cunningham. The Employer entered in a Stipulation for Compromise Settlement with Claimant on June 1, 2004.

ISSUE

1. What is the liability of the Second Injury Fund?

EXHIBITS

The Claimant offered the following exhibits:

- Exhibit A. Deposition and Report of Dr. Schreiber.
- Exhibit B. Deposition and IME of Dr. Samuel Berstein.
- Exhibit C. Deposition and IME of Dr. Wayne Stillings.
- Exhibit D. Deposition and Records of Dr. Mary Fitzgibbons.
- Exhibit E. Deposition of Dr. Timothy Leonberger.
- Exhibit F. Deposition and Records of Donna K. Abram.
- Exhibit G. Deposition and IME of Dr. Russell Cantrell.
- Exhibit H. Deposition and IME of Dr. Phillip George.
- Exhibit I. Deposition and IME of Dr. Patrick Hogan.
- Exhibit J. Deposition and IME of Dr. Sandra Tate.
- Exhibit K. Deposition and IME of Dr. Stacey Smith.
- Exhibit L. Deposition of IME of Dr. Richard Wetzell.
- Exhibit M. St. Louis University Hospital Records.
- Exhibit N. Certified Copy of the Division of Workers' Compensation Records.
- Exhibit O. Nydic Open MRI of America – St. Louis.

The Second Injury Fund offered the following exhibit:

- Exhibit I. Stipulation for Compromise Settlement of Injury Number 01-075478.

FINDINGS OF FACT

1. Claimant, on July 17, 2001, while in the course and scope of his duties for Employer, Shapiro Supply Company, Inc., was preparing to unload a trailer when a truck nearby dropped a propane tank, which exploded and caused the Claimant to be thrown 20 to 30 feet.
2. As a result of the accident on July 17, 2001, Claimant sustained injuries to his head, neck, back, and psychological trauma.
3. Claimant, since July 17, 2001, has not been able to work.
4. Claimant testified that he has shortness of breath and back pain, as well as pain all over his body.
5. Claimant was educated in the Clayton Special School District through twelfth grade. Claimant became employed after he graduated from high school and had worked regularly until the injury of July 17, 2001.
6. Claimant, prior to his primary injury of July 17, 2001, had some preexisting injuries and conditions, to wit: a prior injury to his head, a right knee injury, which was surgically repaired, and a back injury.
7. Dr. Schreiber, Dr. Berstein and Dr. Stillings all testified very credibly that the Claimant was permanently and totally disabled based on the primary injury of July 17, 2001.

RULINGS OF LAW

1. Claimant is permanently and totally disabled as a result of the primary injury considered alone and thus there is no Second Injury Fund liability as a matter of law.

DISCUSSION

Claimant's preexisting injuries are irrelevant insofar as his current inability to work is concerned. Erase the prior injuries and the last injury would still prevent Claimant from working.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Reneé T. Slusher

Director

Division of Workers' Compensation