

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

Injury No.: 08-029795

Employee: Elizabeth Jones  
Employer: Special School District of St. Louis (Settled)  
Insurer: CCMI Insurance Co. (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.<sup>1</sup> We have reviewed the evidence, read the briefs, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge (ALJ) dated May 21, 2012.

**Preliminaries**

On April 9, 2008, a student at employee's school ran down the hallway and collided with employee. Employee was knocked across the hallway and onto the floor. The collision caused employee to suffer a work injury to her low back.

Employee settled her claim against employer/insurer. The settlement was based upon an approximate 12.5% permanent partial disability of the body as a whole referable to the low back. Employee proceeded to final hearing of her claim against the Second Injury Fund.

Employee and the Second Injury Fund stipulated that employee's primary injury resulted in permanent partial disability of 12.5% of the body as a whole referable to the low back. The parties further stipulated that the only preexisting disabilities employee suffered from at the time of the primary injury were 20% permanent partial disability of the body as a whole referable to employee's spinal kyphosis condition and 35% permanent partial disability of the left knee.

The sole issue before the ALJ in this matter was the nature and extent of liability, if any, of the Second Injury Fund.

Without any explanation or analysis, the ALJ found that employee's primary and preexisting disabilities totaled 66 2/3% permanent partial disability of the body as a whole, or 266.64 weeks. The ALJ then subtracted the sum of the primary and preexisting permanent partial disabilities from said total and arrived at 80.64 weeks of enhanced permanent partial disability liability against the Second Injury Fund.

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2007 unless otherwise indicated.

Employee: Elizabeth Jones

- 2 -

The Second Injury Fund appealed to the Commission alleging that the ALJ's award of 80.64 weeks of permanent partial disability benefits against the Second Injury Fund is excessive.

### **Findings of Fact**

Employee is a teacher for the Special School District of St. Louis (employer). On April 9, 2008, a male student, running down the hallway looking backwards, collided with employee causing her to be knocked across the hallway and onto the floor.

Prior to the primary injury, employee had a lifting restriction of 25 pounds due to her spinal kyphosis condition. After the primary injury, employee's lifting was reduced to 10 pounds. Employee testified that prior to the primary injury she was able to ascend three flights of stairs, but now she can only go up one flight of stairs. Employee stated that she cannot walk up or down a staircase that does not have a handrail.

On July 2, 2009, Dr. Margolis saw employee for the purpose of an independent medical evaluation. Dr. Margolis provided the only independent medical evaluation in this case. Dr. Margolis opined that the disability resulting from employee's primary injury combined with her preexisting disabilities "to create a greater disability to the person as a whole when compared to the simple sum and therefore (sic) a loading factor should be added."

After reviewing the entire record, we note that the ALJ incorrectly stated in the award that employee and the Second Injury Fund stipulated that employee's primary disability combined synergistically with her preexisting disabilities "to create an increased overall disability resulting in PPD liability to the [Second Injury Fund]...." While the parties did stipulate to the amount of permanent partial disability employee sustained as a result of the primary injury and her preexisting disabilities, the parties did not stipulate that they combined synergistically to create greater overall disability than their simple sum.

### **Discussion**

The only issue to be decided is whether the disability employee suffered from the primary injury combines synergistically with her preexisting disabilities to create greater overall disability than their simple sum, and, if so, how much.

Based upon employee's testimony, Dr. Margolis' medical expert opinions, and the record as a whole, we find that employee's primary and preexisting disabilities do combine synergistically to create greater overall disability than their simple sum. Therefore, the only issue remaining concerns how much enhanced permanent partial disability is created by this synergistic combination.

The ALJ found that the primary and preexisting disabilities combine to create enhanced permanent partial disability of over 43%. We find, based upon our review of the record, that the ALJ's enhanced permanent partial disability finding is grossly overstated. While employee does suffer some increased limitations and restrictions due to the combination of the disabilities, the evidence simply does not support a finding of 43% enhanced permanent partial disability. We find, based upon the competent and substantial evidence, that employee's primary and preexisting disabilities combine synergistically to

Employee: Elizabeth Jones

- 3 -

create enhanced permanent partial disability of 10%. We find the Second Injury Fund liable for this 10% enhanced permanent partial disability.

**Award**

For the foregoing reasons, we modify the award of the ALJ and find that employee's primary injury (12.5% PPD of the body as a whole referable to her low back, or 50 weeks) combines with her preexisting disabilities (20% PPD of the body as a whole referable to her spinal kyphosis, or 80 weeks, and 35% permanent partial disability of the left knee, or 56 weeks) to result in a permanent partial disability enhancement of 10% above the simple arithmetic sum of the separate disabilities, or 18.6 weeks of benefits ( $= .10 * (50 + 80 + 56)$ ).

The Second Injury Fund is liable for employee's 18.6 weeks of enhanced permanent partial disability benefits, or \$7,236.14 ( $= 18.6 \text{ weeks} * \$389.04$ ).

The award and decision of Administrative Law Judge Joseph E. Denigan issued May 21, 2012, is attached for reference only.

The Commission further approves and affirms the ALJ's allowance of attorney's fee as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 6<sup>th</sup> day of December 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T  
Chairman

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James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary