

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

Injury No.: 04-055924

Employee: Angela Kern
Employer: Ortmann Stair Company
Insurer: American Family Mutual Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)
Date of Accident: June 4, 2004
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 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 April 25, 2006. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued April 25, 2006, 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 7th day of September 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Angela Kern

Injury No. 04-055924

Dependents:

Employer: Ortmann Stair Company

Additional Party: State Treasurer, as Custodian of the Second Injury Fund
(dismissed)

Insurer: American Family Mutual Insurance Company

Hearing Date: February 2, 2006

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: KD/lsn for bb

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: 6/04/04
5. State location where accident occurred or occupational disease was contracted: Franklin 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee suffered a slip and fall while running to answer a ringing telephone
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: Neck, left shoulder, left knee, left ankle
14. Nature and extent of any permanent disability: 25% PPD of the left knee; 10% PPD of left ankle; 10% PPD of left shoulder; 5% BAW referable to the cervical spine
15. Compensation paid to-date for temporary disability: \$8,613.27
16. Value necessary medical aid paid to date by employer/insurer? \$8,470.02
17. Value necessary medical aid not furnished by employer/insurer? \$1,867.00
18. Employee's average weekly wages: \$680
19. Weekly compensation rate: \$453.33/\$347.05
20. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$1,867.00

98.7 weeks of permanent partial disability from Employer at \$347.05 per week \$34,253.84

Claim for disputed period of temporary total disability is denied. See Award.

22. Second Injury Fund liability: The claim as against the Second Injury Fund is dismissed at the request of the claimant.

TOTAL:\$36,120.84

(Employer also responsible for bills of Unity Corporate Health in the amount of \$471.00)

23. Future requirements awarded: N/A

Said payments to begin as of the date of this Award 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:

Ronald D. Edelman

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Angela Kern

Injury No: 04-055924

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents:

Employer: Ortmann Stair Company

Additional Party State Treasurer, as Custodian of the Second Injury Fund (dismissed)

Insurer: American Family Mutual Insurance Company

Checked by: KD/Isn for bb

The claimant, Ms. Angela Kern, and the employer and its insurer, Ortmann Stair Company and American Family Mutual Insurance Company, appeared at hearing and entered into certain stipulations and agreements as to the issues and evidence to be presented in this claim for compensation. The parties have stipulated that on or about 6/04/04 the claimant suffered an injury by accident arising out of and in the course of employment. The parties further agreed that the issues to be resolved at hearing are as follows:

Medical causation as to knee complaints;
Liability for certain past medical expense;
Temporary total disability; and
Permanent partial disability.

The claimant is alleging that in addition to the 19 weeks of temporary total disability previously paid, claimant suffered a temporary total disability from 3/18/05 to 4/15/05 for which no benefit has been paid.

The employer further stipulates that it is liable for the \$471.00 in medical services expense put in issue by Unity Corporate Health in their demand for direct payment filed in this matter.

EXHIBITS

The following exhibits were offered and received into evidence:

Claimant's Exhibits

- A. Employee's request for statements and records
- B. Certified copy of Division of Workers' Compensation file as to Injury Number 04-055924
- C. Certified medical records of St. John's Mercy Hospital, Washington, Missouri
- D. Certified medical records of Unity Corporate Health (Charles Keefe, M.D.)
- E. Certified medical records of Mid County Orthopaedic Surgery (Dr. Strege report dated 7/28/04)
- F. Certified medical records of Mid County Orthopaedic (Dr. Strege and Dr. Sohn 8/12/04 to 10/19/04)
- G. Certified copy of the physical therapy records of ProRehab
- H. Medical records of Drs. Tiefenbrunn and Lusardi, including Curriculum vitae and billing records from Patients First Health Care
- I. Curriculum vitae and medical reports of Robert Poetz, D.O.
- J. Certified copy of the medical records of Thanh D. Vo, M.D.
- K. Certified medical records of Missouri Baptist Hospital-Sullivan

Employer and Insurer's Exhibits

1. Deposition of Angela Kern taken 7/27/04 (subject to objections made at hearing)
2. Medical report of Dr. Daniel G. Sohn dated 1/21/05
3. Medical report of Dr. Daniel G. Sohn dated 7/21/05
4. Curriculum vitae of Dr. Daniel G. Sohn
5. Direct Payment application of Unity Corporate Health

FINDINGS OF FACT AND RULINGS OF LAW

The claimant, Ms. Angela F. Kern, is a 38-year-old married mother of three children under the age of eighteen. Ms. Kern is a high school graduate with two years of college credits and with some schooling in the field of real estate. Ms. Kern had worked as personnel office manager for Ortmann Stair Company (otherwise referred to herein as 'employer') for approximately one year prior to suffering a compensable work injury on or about 6/04/04.

Ms. Kern suffered an injury at work while in haste to answer a telephone. In the process of running back to her office, Ms. Kern suffered a fall as she stepped into her office. Ms. Kern testified that there was a carpeted hallway with a plastic runner, and that she got her foot tangled up into the runner, causing her to twist her knee and ankle while "flipping" into the office, landing heavily on her left side.

Ms. Kern testified that she had immediate pain in her left ankle and knee, with throbbing into her arm and shoulder on her left side. Claimant was assisted by other workers to her car, and was driven to the emergency room at St. John's Mercy Hospital in Washington, Missouri. Ms. Kern had x-rays of her ankle, knee, shoulder, and cervical spine. All of the x-rays were negative for fracture or dislocation except for the ankle, which showed the possibility of a tiny avulsion fracture adjacent to the medial malleolus. An air cast was put on the left foot and ankle, and claimant was provided with pain medication. Claimant also received a prescription of Vicodin for her ongoing pain complaints, as well as Skelaxin, a muscle relaxer. Ms. Kern was further advised to follow up at Unity Corporate Health.

Ms. Kern had her first examination by Dr. Charles Keefe on 6/07/04. Dr. Keefe documented ongoing pain complaints, with continued swelling in the left knee, and diagnosed the claimant with neck, left shoulder, left knee,

and left ankle sprain. Claimant was to remain off work while treating with Dr. Keefe. Claimant returned for re-evaluation on 6/11/04. In addition to certain other findings, on 6/11/04 Dr. Keefe noted as follows; "There is some visible swelling just medial to the patellar tendon. She is able to flex and extend the left knee with some discomfort. There is also popping noted of the patella."

Dr. Keefe noted that the posterior neck and left shoulder areas elicited the greatest pain complaints. Claimant was switched to the use of an ace wrap for an improving left ankle, and was to continue off work and on pain medication and muscle relaxants while undergoing physical therapy three times a week.

As of 6/21/04 Ms. Kern had attended three out of three physical therapy sessions at ProRehab. The physical therapy report of that same date (See attached within Claimant's Exhibit D, the records of Unity Corporate Health) includes, in part, the following:

Today patient displays trigger points and tightness to the left rhomboid, upper trapezius and Levator scapulae muscles. Tightness with tenderness also noted to the right suboccipital musculature. Decreased active ROM noted throughout the left shoulder therefore muscle testing not performed. Deferred her left knee testing today as most irritation noted in neck and left shoulder...

The physical therapy records indicate that claimant had been referred to physical therapy for a diagnosis as to neck, left shoulder, and left knee sprain (See note for 6/21/04 within Claimant's Exhibit G, the records of ProRehab), but there is no mention as to any testing or therapy to the left knee after the testing was deferred on 6/21/04. Thereafter, all of the physical therapy was concentrated on complaint as to the neck and the left shoulder.

A work status report from Unity Corporate Health dated 7/15/04 suggests that Dr. Keefe advised that claimant continue off of work, and that the claimant be referred to an orthopedist for further evaluation while continuing her physical therapy.

Claimant then had an orthopedic evaluation by Dr. David W. Strege performed on 7/28/04. The history provided by Dr. Strege in his report (Claimant's Exhibit E) makes no mention of any history of left lower extremity complaint or treatment post injury on 6/04/04, noting only that the claimant "sustained injury to her neck and shoulder". Dr. Strege performed an examination of the neck and shoulder, and recommended both an MRI of the cervical spine, and a referral to Dr. Sohn for further evaluation of the cervical spine.

Dr. Sohn met with Ms. Kern on 8/12/04 and performed a physical examination of the neck and left shoulder. Physical therapy was continued at ProRehab after Dr. Sohn took over management of her care; Dr. Sohn also concluded on 8/12 /04 that Ms. Kern might benefit from trigger point injections depending on the course of her symptoms (See Claimant's Exhibit F).

The failure of the parties to include in evidence a copy of the MRI report notwithstanding, the report of Dr. Sohn suggests that an MRI of the cervical spine taken on 7/30/04 revealed degenerative disc changes at C5-6 and C6-7 without disc herniation or protrusions.

In his report dated 8/27/04, Dr. Sohn notes that the claimant received two trigger point injection in to the thoracic mid and upper areas, and one in the left upper cervical paraspinals. Claimant was noted as doing better with physical therapy, and was diagnosed by Dr. Sohn as having left shoulder girdle and cervical strain.

Claimant had follow ups with Dr. Sohn on 9/10/04, 9/28/04, and on 10/19/04. Dr. Sohn concluded that Ms. Kern was at maximum medical improvement with respect to a left shoulder girdle strain, and released her to work full duty.

Ms. Kern never returned to her employment at Ortmann Stair Company. Claimant thereafter started a new job with Meramec Group in January of 2005. Ms. Kern acknowledged that the job involves taking shoe soles off of a tray and placing them in boxes. Claimant further acknowledges that she is given accommodations at her new employment, to the extent that she is allowed to sit on a stool, and is not obliged to lift more than 5 to 7 pounds of shoes in a box.

Ms. Kern testified to ongoing knee complaints such as pain, swelling, and occasional giving way. After the employer refused a request for further medical evaluation of her knee complaints, Ms. Kern chose to seek a medical evaluation of her knee complaints from Drs. Tiefenbrunn and Lusardi at Patients First Health Care. On 3/18/05 Dr. Tiefenbrunn performed an examination, took an x-ray of the knee that was reported as normal, and also ordered the MRI taken on 3/30/05 that was interpreted as showing minimal joint effusion, and minimal strain or partial tear of the patellar tendon. (See Claimant's Exhibit H). Ms. Kern then saw Dr. Lusardi on 4/15/06. Dr. Lusardi performed an examination of the left knee, took another x-ray, and reviewed the results of the MRI. Dr. Lusardi noted a small spur off the medial side of the patella, documented pain complaints referable to the medial patellofemoral joint, and noted tenderness in the area of the pes bursa. He further agreed with the findings on MRI, and recommended to Ms. Kern a trial of physical therapy. Dr. Lusardi also recommended a steroid injection as an alternative to physical therapy, and possible arthroscopic exam of the medial plica in the event the other two treatments failed to relieve her complaints. Ms. Kern declined further treatment, and

has not made future medical care an issue in this matter. Ms. Kern testified that she remained off of work from 3/18/05 to 4/15/05, and seeks temporary total disability benefits for the period of time when she was being evaluated as to her knee complaints at Patients First Health Care.

MEDICAL CAUSATION AS TO THE LEFT KNEE/PERMANENT PARTIAL DISABILITY

On 1/21/05 Dr. Sohn authored a disability evaluation as to what he considered to be a work related left shoulder girdle strain (Employer and Insurer's Exhibit No. 2). In July of 2005 Ms. Kern returned to Dr. Sohn, apparently for the purposes of evaluating causation and disability referable to the left knee (See report dated 7/12/05, Employer and Insurer's Exhibit No. 3). Based on the history of complaint he elicited from Ms. Kern, and given the medical history, Dr. Sohn concludes that the claimant suffered a resolved knee strain on 6/04/04. It is unclear whether Dr. Sohn had the opportunity to review the MRI itself or the MRI report, but his history suggests that he had reason to believe the MRI showed a "slight patellar tear". Dr. Sohn does not believe the left knee complaints expressed to him by the claimant on 7/12/05 could be traced back to the fall on 6/04/04.

Dr. Poetz performed a disability evaluation of Ms. Kern on or about 3/10/05. He took a history from Ms. Kern, reviewed the medical records, and performed a physical examination. Dr. Poetz concluded that the work injury on 6/04/04 resulted in sprains to, among others, the left knee. Claimant had treatment with Drs. Tiefenbrunn and Lusardi thereafter, and Dr. Poetz wrote a supplemental report dated 6/7/05 once he had the benefit of the left knee MRI findings and the Patients First medical records. He concludes that the MRI revealed a partial tear of the patellar tendon, and revised his disability evaluation accordingly.

The claimant suffered pain, popping, and effusion of her left knee immediately after having suffered her fall at work on 6/04/04. The testimony of Ms. Kern, to the effect that her knee complaints continued unabated thereafter, and were exacerbated from time to time, is found worthy of belief. The fact that left knee sprain was diagnosed, and that physical therapy to the left knee was deferred by the physical therapist and not by Dr. Keefe, who made the referral for treatment for a knee sprain, supports the testimony of Ms. Kern to the effect that she continued to make complaints as to her left knee once her care was transferred to Doctors Strege and Sohn at Mid County Orthopaedic Surgery and Sports Medicine. The testimony of Ms. Kern persuades that Dr. Sohn specifically declined to evaluate or treat the knee because he believed he lacked the authority to provide such treatment, not because he was of the opinion that any left knee complaint had resolved.

The claimant has the burden of proving all the essential elements of the claim for compensation. It is noted that the proof as to medical causation need not be by absolute certainty, but rather by a reasonable probability. "Probable" means founded on reason and experience which inclines the mind to believe but leaves room for doubt. Tate v. Southwestern Bell Telephone Co., 715 S.W.2d 326, 329 (Mo.App. 1986).

"Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause". Brundige v. Boehringer Ingelheim, 812 S.W. 2d 200, 202 (Mo.App. 1991); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). The ultimate importance of expert testimony is to be determined from the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. Choate v. Lily Tulip, Inc., 809 S.W. 2d 102, 105 (Mo.App.1991).

The testimony of Ms. Kern and of Dr. Poetz persuades, as a matter of a reasonable probability, that there is a medical causal relationship between her left knee complaints and her work injury on 6/04/04. Ms. Kern provided credible testimony concerning her complaints referable to her left knee. The claimant is unable to be on her feet all day, and for that reason is now precluded from such employments as assembly line work, waitress, or such other jobs as require an employee to be on their feet during the course of the day. Claimant also complains of knee pain that will on occasion preclude her from restful sleep, and from engaging in certain leisure and exercise activities such as racquetball, tennis, and running. The evidence persuades that as a result of her work injury, the claimant has sustained a permanent partial disability equivalent to 25% of the left lower extremity at the level of the knee. At the stipulated rate of \$347.05 per week, the amount due at the knee is for 40 weeks, or a total of \$13,882.00.

The expert medical further persuades that the claimant suffered a left ankle sprain on 6/04/04. Claimant testified that her complaints for the most part resolved, but that she will suffer from pain complaints due to overuse. From all of the evidence, as a result of her work injury the claimant is found to have suffered a permanent partial disability equivalent to 10% of the left lower extremity at the level of the ankle. The amount due at the ankle is for 15.5 weeks, or a total of \$5,379.28.

Claimant acknowledges having suffered left upper extremity and neck complaints after a motor vehicle accident in November of 1997, and her treatment after that injury is documented in the records of Dr. Thanh D. Vo (Claimant's Exhibit J) and the records of Missouri Baptist Hospital-Sullivan (Claimant's Exhibit K). The records suggest that the claimant finished treating for her complaints within months of her injury. Given the absence of any history of follow up treatment thereafter, the suggestion by Ms. Kern that her prior complaints resolved is deemed worthy of belief.

Drs. Sohn and Poetz agree that Ms. Kern suffered a work related left shoulder strain. Dr. Poetz further opined that the claimant also suffered a lumbar and cervical strain as a result of her injury. The testimony of Ms. Kern and the medical records in evidence persuade that the injury on 6/04/04 caused Ms. Kern to suffer soft tissue injury to both her neck and to her left upper extremity at the level of the shoulder. Dr. Sohn supposed the claimant to be capable of a return to full duty

without restriction with regard to her left shoulder. Dr. Poetz offered general proscriptions as to overhead reaching and lifting, strenuous activity and heavy lifting, and any prolonged standing, sitting, walking, bending, kneeling, and so on.

Claimant clearly suffered a very hard fall onto her left shoulder at work. Claimant remained off of work and under a doctor's care for 19 weeks, and benefited from a course of treatment that included both physical therapy and trigger point injection into the affected areas of the shoulder and back. As a result of her injury, the claimant is found to have suffered a permanent partial disability equivalent to 10% of the left upper extremity at the level of the shoulder, and a 5% permanent partial disability of the body as a whole referable to the cervical spine. The amount due at the shoulder is for 23.2 weeks, or a total of \$8,051.56. The amount due at the cervical spine is for 20 weeks, or a total of \$6,941.00. The total due for permanent partial disability is \$34,253.84.

TEMPORARY TOTAL DISABILITY

Section 287.020.7 defines "total disability" as the "inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident". "Temporary total disability" is a judicial creation that is defined by case law and not by statute. See Herring v. Yellow Freight System, Inc., 914 S.W.2d 816, 820 (Mo.App 1995). Temporary total disability awards are owed until the claimant can find employment or the condition has reached the point of maximum medical progress. Vinson v. Curators of Univ. of Missouri, 822 S.W.2d 504, 508 (Mo.App. 1991) In determining whether an employee is totally disabled, the main issue is whether any employer, in the usual course of business, would reasonably be expected to employ the employee in the employee's present physical condition. Brookman v. Henry Transp., 924 S.W.2d 286, 290 (Mo.App. 1996). A number of cases have acknowledged that a claimant can be totally disabled even if able to perform sporadic or light duty work. Minnick v. South Metro Fire Protection Dist., 926 S.W.2d 906, 909 (Mo.App. 1996); Gordon v. Tri-State Motor Transit Co., 908 S.W.2d 849 (Mo.App. 1995). "A nonexclusive list of other factors relevant to a claimant's employability on the open labor market includes the anticipated length of time until the claimant's condition has reached the point of maximum medical progress, the nature of the continuing course of treatment, and whether there is a reasonable expectation that the claimant will return to the claimant's former employment." Cooper v. Medical Center of Independence, 955 S.W.2d 570, 576 (Mo.App. W.D. 1997).

The claimant is seeking the payment of temporary total disability from 3/18/05 through 4/15/05, the period of time that she was in the process of having her knee evaluated by Drs. Tiefenbrunn and Lusardi.

Ms. Kern has failed to persuade that she was rendered unemployable during the time period in question. By her own acknowledgment, claimant had found work with Meramec Group and had been working since January of 2005 with accommodation that allowed her to sit on a stool, nor was she obliged to lift over five to seven pounds. Further, there is nothing in evidence by way of expert medical opinion to suggest that Ms Kern was unable to work, or would otherwise jeopardize her recovery by continuing to work. To the contrary, Dr. Poetz had the opportunity to perform a physical examination of Ms. Kern on 3/10/05, a matter of a week prior to the visit to Dr. Tiefenbrunn on 3/18/05, and although Dr. Poetz suggested an MRI of the knee in the event symptoms should persist, he nevertheless rated permanent disability as to the involved knee. The issue as to temporary total disability is found in favor of the employer.

PAST MEDICAL EXPENSE

The issue as to the requisite proof needed to support a claim for medical expense was addressed in Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo banc 1989). The Court stated:

In this case, Martin testified that her visits to the hospital and various doctors were the product of her fall. She further stated that the bills she received were the result of those visits. We believe that when such testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the commission to award compensation. The employer, of course, may challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. In this age of soaring medical costs it no longer serves the purposes of the Act to assume that medical bills paid by an injured worker are presumed reasonable (because they were paid), while those which remain unpaid, very probably because of lack of means, must be proved reasonable and fair. Martin, at pp. 111-112.

It is further apparent that there must be medical records in evidence that correspond to the bills put in evidence. See Meyer v. Superior Insulating Tape, 882 S.W.2d 735 (Mo.App. E.D. 1994).

Further, Section 287.140.1 RSMo, provides, in part, as follows: "In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury." The right of the employer to provide medical treatment of its choice is waived when the employer fails to provide necessary medical treatment after receiving notice of an injury.

Wiedower v. ACF Indus., Inc., 657 S.W.2d 71, 74 (Mo.App.1983); Hawkins v. Emerson Elec. Co., 676 S.W.2d 872 (Mo.App.1984).

The expert medical opinion of Dr. Poetz, as contained in his letter to claimant's counsel dated 1/30/06 (See Claimant's Exhibit I), persuades that the medical bills as contained in Claimant's Exhibit H from Patients First Health Care were necessary to cure and relieve of the effects of the involved work injury, and that those charges were reasonable and customary. The employer is found liable for the medical expenses for services from Patients First Health Care beginning on 3/18/05 and ending on 4/15/05, in the amount of \$1867.00, as shown on the statement dated 12/22/2005 as contained in Claimant's Exhibit H. The cost of the medical in dispute is payable to Ms. Kern as a benefit entitlement under the act.

**LIABILITY FOR THE MEDICAL EXPENSES OF UNITY
CORPORATE HEALTH**

The employer stipulated at hearing that it is liable for the medical services expense within the direct pay application of Unity Corporate Health (See Employer and Insurer's Exhibit No. 5). Accordingly, employer is liable for those medical expenses, in the amount of \$471.00.

LIABILITY OF THE SECOND INJURY FUND

The claim filed by Ms. Kern as against the State Treasurer, as Custodian of the Second Injury Fund, is dismissed at the request of the claimant.

This award is subject to a lien in favor of Ronald D. Edelman, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

This award is subject to interest as provided by law.

Date: April 25, 2006

Made by: /s/ KEVIN DINWIDDIE
KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation