

FINAL AWARD ALLOWING COMPENSATION  
(Pursuant to the Mandate of the Missouri Court of Appeals, Eastern District)

Injury No.: 99-077613

Employee: Marian Knisley  
Employer: Charleswood Corporation  
Insurer: Fireman's Fund Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: April 6, 1999  
Place and County of Accident: Warren County, Missouri

On January 16, 2007, the Missouri Court of Appeals for the Eastern District (Court) issued an opinion affirming in part and reversing in part the January 24, 2006, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case. By mandate issued February 8, 2007, the Court remanded this matter to the Commission for entry of an award of permanent total disability benefits from the Second Injury Fund in accordance with the Court's opinion dated January 16, 2007. *Knisley v. Charleswood Corp.*, ED87605, 2007 Mo.App. Lexis 66 (Mo.App. E.D 2007).

Pursuant to the Court's opinion and mandate, we issue this award.

Second Injury Fund Liability

*Permanent Total Disability*

Dr. Musich concluded employee suffered a 35 percent permanent partial disability due to her pre-existing disabilities. Dr. Musich opined employee was permanently and totally disabled due to the combination of her pre-existing disabilities and work-related injury, lack of transferable skills, limited education, and need for ongoing medical care and treatment.

Furthermore, Mr. England, vocational expert, testified that employee's pre-existing problems, including cancer, depression, anxiety, and difficulties with her upper extremities, combined with her work injury to render her permanently and totally disabled. Mr. England provided unimpeached and uncontradicted testimony that employee's pre-existing conditions impeded her employment and affected her ability to compete in the open labor market.

Employee has sustained her burden of proving Second Injury Fund liability. Both Dr. Musich and Mr. England testified that employee was permanently and totally disabled as a result of the combination of pre-existing disabilities and her work-related injury.

After considering the entire record, including the expert opinions of Dr. Musich and Mr. England, we conclude that employee is permanently and totally disabled due to a combination of her pre-existing disabilities and April 6, 1999 work-related injury.

*Computation of Liability*

According to Dr. Kennedy, employee reached maximum medical improvement with regard to her primary injury on January 22, 2003. This is the appropriate date for determining Second Injury Fund liability. Employee is permanently and totally disabled as of that date. Employer is liable for permanent partial disability of 45% body as a whole as a result of her work injury of April 6, 1999.

If the compensation to which the employee is entitled for the new injury is *less* than the compensation for permanent and total disability, then in addition to the compensation from the employer for the new injury, the employee (after receiving the compensation owed by the employer) is entitled to receive from the Second Injury Fund the remainder of the compensation due for permanent and total disability. Section 287.220.1 RSMo.

*Vaught v. Vaughns, Inc./Southern Mo. Constr.*, 938 S.W.2d 931, 939 (Mo.App. S.D. 1997) (overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.banc 2003)). Therefore, the Second Injury Fund is liable for the remainder of the compensation that would be due for permanent total disability after subtracting employer's payment.

Award

Pursuant to the Court's mandate, we award permanent total disability against the Second Injury Fund. Employer shall pay employee permanent partial disability benefits in the weekly amount of \$269.20, beginning January 21, 2003 for 180 weeks; and thereafter, for life, employee shall receive permanent total disability benefits from the Second Injury Fund in the weekly amount of \$269.20.

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 12<sup>th</sup> day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary