

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

Injury No.: 05-030088

Employee: Andrew Krausz
Employer: Krausz Corporation (Settled)
Insurer: Missouri Employers Mutual Insurance (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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 16, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued January 16, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Andrew Krausz Injury No.: 05-030088
Dependents: N/A Before the
Employer: Krausz Corporation **Division of Workers'**
Compensation
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Missouri Employers Mutual Insurance
Hearing Date: October 30, 2008 Checked by: MDV

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
 - 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
 - Date of accident or onset of occupational disease: April 13, 2005
 - State location where accident occurred or occupational disease was contracted: St. Louis County
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
 - 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:
Injured/severed foot while unpinning crane
12. Did accident or occupational disease cause death? Date of death?
13. Part(s) of body injured by accident or occupational disease: Foot

Nature and extent of any permanent disability: Settled

15. Compensation paid to-date for temporary disability: \$17,126.28
16. Value necessary medical aid paid to date by employer/insurer? \$60,444.63

Employee: Andrew Krausz

Injury No.: 05-030088

17. Value necessary medical aid not furnished by employer/insurer? -0-

- Employee's average weekly wages: \$1068.60

19. Weekly compensation rate: \$599.42/\$354.05

20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable:

weeks of permanent partial disability from Employer (Settled)

22. Second Injury Fund liability: No

weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:
weekly differential () payable by SIF for weeks beginning
and, thereafter, for Claimant's lifetime

Total: -0-

23. Future requirements awarded: None

Said payments to begin 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 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:	Andrew Krausz	Injury No.: 05-030088
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Krausz Corporation	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Missouri Employers Mutual Insurance	Checked by: MDV

ISSUES PRESENTED

The issues presented for resolution by way of this hearing were the nature and extent of any synergistic permanent partial disability assessable against the Second Injury Fund. Claimant seeks to combine his primary injury, which resulted in a 77% permanent partial disability at the level of the foot, with pre-existing asthma for additional synergistic permanent partial disability against the Second Injury Fund.

FACTS

- Claimant has had asthma since he was 16 years old.
- Claimant began working at McDonald's restaurant when he was 16 years old and went to work for his family's corporation, Krausz Equipment Services, when he was 19 to 20 years old. Claimant worked there servicing the cranes.
- Claimant went to Northwest High School, graduated in 2002 and went for one year of general studies at Meramec Community College from 2002 to 2003. Claimant then went onto vocational training, specialized training on some specific machines within the heavy machine category. He is training in forklift certification, crane certification, hazmat and some other classes.

4. In April of 2006, Claimant's parents tragically died. Drug interactions caused Claimant's father to shoot his mother and then caused him to commit suicide.
5. Claimant is a third-year apprentice who will graduate in May of 2009 as an operating engineer.
6. He worked for Pace Construction in August of 2006. He has currently been laid off there for one month. He is working there as a crane operator/oiler performing maintenance.
7. Claimant went to work for McCarthy in November of 2006. Claimant was working for McCarthy at the Holcim Cement Plant as a crane operator/oiler in November of 2006. It was Claimant's job to oil, maintain, grease and lubricate the cranes and to run them also. Claimant works out of Local 513 Operating Engineers-Silex.
8. Claimant was injured while working for his family business while dismantling a crane. The 10,000 pound boom fell on Claimant's foot as he was hitting a support pin out.
9. The injury crushed Claimant's foot and toes. He underwent skin grafts. He had an enormous hematoma, used a vacuum pump and hyperbaric oxygen treatment to treat an amputation of the foot by the toes.
10. Currently Claimant's foot swells. After 10 minutes of running, it gets numb. He feels pressure and feels like he needs to protect it. Pushing hard on brakes to pressurize them requires him to use his left foot, but he is supposed to use his right. He uses his left when the right swells bad.
11. Claimant had asthma as a child. Dr. Sakmar treated him for it and he uses a variety of drugs, two inhalers from which he takes two puffs sometimes four times a day. He coughs and wheezes, has shortness of breath and then has to use his inhaler. He has to use the inhaler to sleep, otherwise he coughs himself awake. It is hard to adjust to sleep. When he wakes up he has to cough a little here and there to get the phlegm up.

12. Claimant takes steroids, albuterol. He had his inhalers refilled when he was in the hospital for his foot. He also has asthma flare-ups. He takes Proventil and has used a methylprednisolone dosepak.
13. Spring is the worst time of year, although hot, humid weather also makes the asthma worse.
14. Claimant has to work harder because of the asthma when he dismantles a crane. He has exertional increases in his asthmatic problems.
15. Claimant has asthma sometimes when he plays baseball. Spring dust causes the asthma to come on more prominently.
16. Claimant suffers from a 10% permanent partial disability measured at the body as a whole relative to the asthma. It is generally controlled through the use of medications and inhalers.

RULINGS OF LAW

Claimant has not established that he has a combination of injuries which is greater than their simple sum total. There is no doubt Claimant experienced a serious foot injury. There is no doubt that he also has asthma. The severity of the asthma, however, would not meet the 12.5/15% threshold necessary to qualify for Second Injury Fund benefits. But, more importantly, assuming that the asthma was severe enough to qualify as a threshold permanent partial disability, I cannot see where there is any synergistic effect between the foot injury and the asthma. §287.200 RSMo No doctor has testified to the synergistic effect and, as a matter of logic, I do not see how the two could work in tandem to create a disability greater than their simple sum total. Permanent partial disability based on synergy has been awarded in the past without a doctor's testimony as in the case of *Walter Bell v. Apostles of the Sacred Heart*, No. 99-148465 (LIRC March 4, 2004), but the synergistic effect in that case was rather obvious. See also, *Bock v. City of Columbia*, slip op, Case No. W.D. December 30, 2008 (Mo. App. W.D. December 30, 2008) Unlike *Bell*, Id., I cannot find where Claimant is deprived of the ability to perform any physical tasks by reason of the combination of these two conditions. Perhaps difficulty in walking makes him breathe harder, but I am not comfortable in awarding synergy in this case without expert testimony.

Claimant is an extremely pleasant individual. He is somewhat stoic and is definitely not given to complaining. He has suffered some serious tragedies in his life, but the fact remains I simply cannot find the requisite evidence to support an award of synergistic permanent partial disability. I only see the sum total of two injuries.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Nasreen Emails
Interim Director

