

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

Injury No.: 03-058915

Employee: Edward Lewis
Employer: Universal Printing Company
Insurer: Self-Insured
c/o Corporate Claims Management, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: June 19, 2003
Place and County of Accident: St. Louis 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. Pursuant to section 286.090 RSMo, subsequent to reviewing the evidence and considering the entire record, the Commission modifies the award and decision of the administrative law judge dated May 24, 2005. The award and decision of Administrative Law Judge Matthew D. Vacca, issued May 24, 2005, is attached and incorporated by this reference.

The stipulated issues at trial were as follows: average weekly wage/compensation rate; past unpaid medical expenses; future medical care and treatment; nature and extent of permanent disability; disfigurement; and second injury fund liability.

The administrative law judge reached the following conclusions: average weekly wage of \$905.20 resulting in a compensation rate of \$603.46/\$354.05; past medical expenses owed by employer/insurer in the amount of \$2,726.00; employer/insurer not liable for future medical care and treatment; employer/insurer liable for permanent partial disability of 61.25 weeks representing 20% permanent partial disability of the right wrist and 15% permanent partial disability of the left wrist; employer liable for two weeks of disfigurement; Second Injury Fund liability of 55.56 weeks of permanent partial disability in lieu of permanent total disability as requested by employee; and temporary total disability benefits representing 8 and 2/7 weeks (TTD was not stipulated to be an issue).

The employee filed an application for review with the Commission alleging the award issued by the administrative law judge was erroneous based on the following: the improper admission into evidence and reliance on two medical opinions, i.e., Dr. Keohane and Dr. Weikart (overruling timely objections made by employee); and the administrative law judge erred in concluding that the employee was not permanently totally disabled as a result of the combination of his work injury and pre-existing conditions and/or disabilities.

The employer/insurer also filed an application for review with the Commission alleging the administrative law judge erred as follows: the average weekly wage and corresponding compensation rate was incorrect; and the awarding of temporary total disability benefits was incorrect.

After reviewing the entire record the Commission affirms the findings and legal conclusions of the administrative law judge as to the following issues: past medical expenses awarded; the disfigurement awarded; the permanent partial disability awarded on account of the work related injury; and the denial of future medical care and treatment.

As to the remaining issues of compensation rate, temporary total disability and Second Injury Fund liability, the Commission disagrees with the conclusions reached by the administrative law judge, reversing and/or modifying the portion of the award pertaining to these three separate issues as set forth below.

I. Issue of Compensation Rate

In the award issued by the administrative law judge, he found that the parties had agreed to a compensation rate of \$603.46/\$354.05. The Commission disagrees with this determination as the parties clearly indicated to the administrative law judge that the average weekly wage and corresponding compensation rate were in dispute.

The employee's last day of work was November 8, 2002. Section 287.250.1(4) RSMo is the applicable statutory provision. It states as follows:

If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured... For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. If the employee commenced employment on a day other than the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision;

The following information is gleaned from the employee's check stubs concerning the thirteen weeks immediately preceding November 2, 2005:

1. Period Ending November 10, 2002: 35 regular hours worked = \$787.57; (Tr. 843);
2. Period Ending November 3, 2002: 35 regular hours worked plus 7 hours overtime = \$926.71; (Tr. 842);
3. Period Ending October 27, 2002: 35 regular hours worked plus 5 hours overtime = \$961.78; (Tr. 841);
4. Period Ending October 20, 2002: this period should not be used as Employee apparently received disability benefits during the week, instead of working; (Tr. 840);
5. Period Ending October 13, 2002: 24 regular hours worked plus 2 hours overtime = \$611.01; (Tr. 839);
6. Period Ending October 6, 2002: 35 regular hours worked plus 5 hours overtime = \$961.78; (Tr. 838);
7. Period Ending September 29, 2002: 28 regular hours worked plus 1 hour overtime = \$675.78; (Tr. 837);
8. Period Ending September 22, 2002: 35 regular hours worked plus 3 hours overtime = \$903.11; (Tr. 836);
9. Period Ending September 15, 2002: 35 regular hours worked plus 4 hours overtime = \$937.52; (Tr. 835);
10. Period Ending September 8, 2002: 28 regular hours worked plus 3 hours overtime plus 7 hours holiday = \$893.89; (Tr. 834);
11. Period Ending September 1, 2002: 35 regular hours worked plus 5 hours overtime = \$961.78; (Tr. 833);
12. Period Ending August 25, 2002: 35 regular hours worked plus 5 hours overtime = \$962.12; (Tr. 832);
13. Period Ending August 18, 2002: 35 regular hours worked plus 4.5 hours overtime = \$963.10; (Tr. 831).

Since section 287.250.1(4) requires that "absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week," the above thirteen weeks must be evaluated to see if there are five or more missed days which would require dividing the employee's wages by a number lower than thirteen.

The week of October 20, 2005, involved payment of disability benefits, not wages, which removes five days from the computation. The employee normally works seven regular hours in a workday. Accordingly, the week ending October 13, 2002, the employee missed one day; one day was missed for the week ending September 29, 2002; and one day was missed for the week ending September 8, 2002. The total number of missed days is eight. Pursuant to section 287.250.1(4), the employee's wages for the thirteen-week period must now be divided by twelve, in lieu of thirteen.

The total wages for the thirteen-week time frame is \$10,546.15. Dividing this by twelve gives an average weekly

wage of \$878.85 and a resulting compensation rate of \$585.90 for permanent total/temporary total disability benefits and \$340.12 for permanent partial disability benefits. The Commission finds the applicable compensation rate to be \$585.90/\$340.12.

II. Issue of Temporary Total Disability

The administrative law judge awarded 8 and 2/7 weeks of temporary total disability benefits. However, temporary total disability was not stipulated as a justiciable issue at trial. The Commission reverses the awarding of any temporary total disability benefits as the award of any temporary total disability went beyond the scope of any of the stipulated justiciable issues.

Workers' compensation hearings are conducted in accord with 8 CSR 50-2.010 (14) that states in relevant part:

Hearings before the division shall be simple, informal proceedings. The rules of evidence for civil cases in the state of Missouri shall apply. Prior to hearing, the parties shall stipulate uncontested facts and present evidence only on contested issues.

The question of the scope of an award was addressed by our appellate courts in *Boyer v. National Express Company*, 49 S.W.3d 700 (Mo. App. E.D. 2001). The *Boyer* court stated as follows:

"...the administrative law judge should confine the evidence during the hearing to the stated contested issues. ...Stipulations are controlling and conclusive, and the courts are bound to enforce them. ...A stipulation should be interpreted in view of the result, which the parties were attempting to accomplish. ...In *Lawson*, our colleagues in the Southern District concluded that the Commission acted in excess of its powers in making its award on grounds not in issue. *Lawson v. Emerson Electric Company*, 809 S.W.2d at 126."

Boyer, 49 S.W.3d at 705.

The parties were confined to adducing evidence to the contested issues and no evidence was actually presented on the question of temporary total disability. The award of temporary total disability for 8 and 2/7 weeks was beyond the scope of the stipulated contested issues, was erroneous, and is reversed by the Commission. There is no award of temporary total disability benefits in this matter.

III. Second Injury Fund Liability

The administrative law judge awarded 55.56 weeks of permanent partial disability from the Second Injury Fund. The employee contends that the administrative law judge erred in failing to find the employee permanently and totally disabled as a result of the combination of disabilities from his last injury and his pre-existing medical conditions/disabilities. We agree with the contention of the employee, that the Second Injury Fund is liable for permanent total disability. We find the employee's work related injury combines with the employee's pre-existing injuries or conditions to render the employee permanently totally disabled.

The Commission agrees that the last injury by itself caused the following permanent partial disability: 20% permanent partial disability of the right wrist; and 15% permanent partial disability of the left wrist. The last injury, considered in and of itself, did not cause the employee to be permanently totally disabled.

The Commission is firmly of the opinion that when the last injury alone is combined with the employee's pre-existing conditions, the employee is rendered permanently and totally disabled.

The administrative law judge determined that the employee was presently totally disabled. However, the administrative law judge further found that employee's permanent total disability was attributable to a combination of the last injury alone, only when coupled with or combined with a non-occupational right shoulder injury occurring November 8, 2002, which the administrative law judge considered subsequent to the injury at bar, and also the

pre-existing injuries/conditions to employee's back, wrists and ankles.

The administrative law judge found that as of the date of the right shoulder injury which occurred November 8, 2002, employee suffered from a back injury, a previous left ankle injury as well as the upper extremity injuries sustained in the last injury. The administrative law judge found that the right shoulder injury, when coupled with the then-existing upper extremity injuries, the pre-existing back injury and pre-existing ankle injury, resulted in the employee being permanently totally disabled.

The administrative law judge found that the employee did not become permanently and totally disabled as a result of the combined effect of the bilateral upper extremity injuries, the back injury, and the left ankle injury. Accordingly the administrative law judge found the Second Injury Fund liable only for permanent partial disability.

Upon reviewing the entire record, the Commission believes there is little if any evidence to support any finding that the employee is employable in the open labor market. It is practically indisputable that the employee is presently totally disabled. The Commission relies on the medical opinion of Dr. Lichtenfeld and the vocational opinion of Mr. Lalk, in determining employee to be permanently totally disabled.

Dr. Lichtenfeld thoroughly discusses employee's pre-existing medical conditions and attendant disabilities; discusses the disability attributable to the work injury considered alone; and when all of these conditions and disabilities are taken into consideration, Dr. Lichtenfeld unequivocally testified that employee is permanently and totally disabled and unable to compete in the open labor market. Dr. Lichtenfeld even opined that employee would be totally disabled even if the right shoulder injury were not considered.

The testimony of Mr. Lalk, a vocational expert, was that presently employee was not able to secure and maintain employment in the open labor market, nor was he able to compete for any positions. Mr. Lalk agreed with the opinion of Dr. Lichtenfeld, that the employee is permanently and totally disabled due to a combination of his last injury combined with his pre-existing injuries and disabilities.

The Commission does not agree with the finding of the administrative law judge that employee's right shoulder injury occurring November 8, 2002, and its resultant disability, did not pre-exist the primary injury, employee's occupational disease of his bilateral upper extremities. The Commission is of the opinion that employee's right shoulder injury, subsequent surgery, and residual disability pre-existed the primary injury, as his occupational injury did not become disabling until his surgery date of October 21, 2003. Based on the record before us, October 21, 2003, was the first date employee was unable to perform his ordinary work duties as a result of the occupational disease he contracted. Up to that point in time employee never missed a day of work attributable to his occupational disease.

An occupational disease does not become a compensable injury until the disease causes the employee to become disabled by affecting the employee's ability to perform his ordinary tasks and harming his earning ability. An employee can be diagnosed with an occupational disease and experience symptoms of the disease prior to the time that it becomes disabling. *Coloney v. Accurate Superior Scale Co.*, 952 S.W.2d 755 (Mo. App. W.D. 1997); *Enyard v. Consolidated Underwriters*, 390 S.W.2d 417 (Mo. App. 1965); and *Garrone v. Treasurer of State of Missouri*, 157 S.W.3d 237 (Mo. App. E.D. 2004).

The Commission finds the *Garrone* case, *supra*, very similar to the case at bar. The facts were as follows: employee was diagnosed with bilateral carpal tunnel syndrome November 13, 1998; the employee reported the injury to the employer on December 3, 1998, listing the date of injury as November 3, 1998; subsequently, employee injured his left knee April 9, 1999; the left knee injury resulted in several surgeries including the initial surgery in May 1999; employee was not medically treated for the occupational disease, bilateral carpal tunnel syndrome, until December 1999, which was the first time employee missed work attributable to the occupational disease.

Based on the above facts, the Commission, in the *Garrone* case, *supra*, considered employee's left knee surgery in May 1999, to be a disability that pre-existed his primary injury, carpal tunnel syndrome, which did not become disabling until December 1, 1999, the date of his carpal tunnel surgery, which was the first date employee was unable to perform his ordinary work duties as a result of that disease.

In the instant case, as of November 8, 2002, employee had never missed work due to his occupational disease, and the occupational disease had not affected employee's ability to perform his ordinary tasks nor harmed his earning ability. Employee had been diagnosed with an occupational disease but it had not become disabling. Accordingly, the right shoulder injury occurring November 8, 2002, is, as a matter of law, a pre-existing disability to the employee's subsequent occupational disease that was the last injury.

The Commission determines that employee's permanent total disability is attributable to or caused by the combination of his disability from his last injury and his pre-existing disabilities.

The employee reached maximum medical improvement on account of the last injury as of August 26, 2004, and employee is permanently and totally disabled as of that date. According to section 287.220.1 RSMo, when a combination of the primary injury and pre-existing disabilities renders the employee permanently and totally disabled, the Second Injury Fund liability is determined as follows:

...if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund"...

Second Injury Fund is liable for the remainder of the compensation that would be due for permanent total disability under section 287.200 RSMo after subtracting employer's payment. See *Laturno v. Carnahan*, 640 S.W.2d 470 (Mo. App. 1982); and *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919 (Mo. App. 1982). For the 61.25 weeks immediately subsequent to August 26, 2004, the remainder is \$245.78 (\$585.90 - \$340.12); and upon the lapse of that time frame of 61.25 weeks, and continuing for employee's lifetime or until modified by law, the remainder is \$585.90.

Due to the above findings as to Second Injury Fund liability, the evidentiary issues raised by employee are rendered moot.

IV. Conclusion

Based on the foregoing, the Commission modifies the decision of the administrative law judge as to the issues pertaining to compensation rate, temporary total disability and liability of the Second Injury Fund. All remaining determinations/conclusions are affirmed.

The award and decision of Administrative Law Judge Matthew D. Vacca issued May 24, 2005, as modified, is attached and incorporated by 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 1st day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Edward Lewis Injury No.: 03-058915
Dependents: N/A Before the
Division of Workers'
Employer: Universal Printing Company **Compensation**
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Self-Insured c/o Corporate Claims Management, Inc.
Hearing Date: May 10, 2005 Checked by: MDV:tr

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: October 21, 2003
5. 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
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:
Developed occupational disease by reason of repetitive use.
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: Both upper extremities
14. Nature and extent of any permanent disability: 20% right wrist; 15% left wrist
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$7,551.38

Employee: Edward Lewis Injury No.: 03-058915

- 17. Value necessary medical aid not furnished by employer/insurer? \$2,726.00
- 18. Employee's average weekly wages: \$905.20
- 19. Weekly compensation rate: \$603.46/\$354.05
- 20. Method wages computation: Agreed

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Past medical expenses \$2,726.00

8 2/7 weeks of temporary total disability (or temporary partial disability) \$5,000.97
(October 21, 2003 to December 17, 2003)

61.25 weeks of permanent partial disability from Employer \$21,685.56

2 weeks of disfigurement from Employer \$708.10

- 22. Second Injury Fund liability: Yes

55.56 weeks of permanent partial disability from Second Injury Fund \$19,671.02

TOTAL: \$49,791.65

- 23. Future requirements awarded: None

Said payments to begin immediately 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:

Dean Christianson

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Edward Lewis

Injury No.: 03-058915

Dependents: N/A

Before the
Division of Workers'
Compensation

Employer: Universal Printing Company

Department of Labor and Industrial
Relations of Missouri

Additional Party: Second Injury Fund

Insurer: Self-Insured c/o Corporate Claims Management, Inc.

Checked by: MDV:tr

ISSUES PRESENTED

The issues presented for resolution by way of this hearing are past medical expenses in the amount of \$2,726.00, future medical care, rate, permanent partial disability and/or permanent total disability including liability of the Second Injury Fund and disfigurement.

SYNOPSIS

Claimant was a printer for Universal Printing for 41 years. He last worked on November 8, 2002 when a lawn tractor rolled over onto his right shoulder causing a massive rotator cuff tear. Claimant alleges that as a result of an occupational disease involving carpal and ulnar tunnel syndromes, which was first treated after the right rotator cuff surgery, and in combination with a back injury, gout, some heart conditions, breathing difficulties, psychological problems and gastrointestinal problems, he is permanently and totally disabled from competing for employment in the open labor market irrespective of the right shoulder injury.

I find that Claimant did not become permanently and totally disabled from the carpal and ulnar tunnel syndromes, or following rendition of treatment regarding carpal and ulnar tunnel syndromes but became permanently and totally disabled as a result of the right shoulder injury working in concert with the prior back injuries and the wrist injuries. Therefore, I award permanent partial disability against both the Employer and the Second Injury Fund.

FINDINGS OF FACT

1. Claimant was born April 21, 1944. He is 5 foot, 7 inches tall and weighs 170 pounds. He has lost 25 pounds since the date of the accident. He has been married 38 years and has three children, ages 34, 28, and 22.
2. Claimant has received a high school diploma and no other training than on the job. He served in the military from 1963 to 1965 as a printer/machine gunner. He received an honorable discharge. Claimant has worked his entire work career as a printer for 41 years at Universal Printing Company. He worked for 1 and ½ years as a flyboy, 11 and ½ years as a beater and 28 years as a second pressman. He was making \$25.00 an hour at the time that he retired working 35 hours a week as regular time with overtime paid after that.
3. As a printer Claimant would be required to add ink to the press, take supplies to the press including ink, spray powder and skids of paper. He would help perform maintenance, off load paper, wash the press, take paper from the skid to the press skid and to the binder, he would get the press ready for printing, he would handle lithography plates, he would air paper which included fanning it to dry, he would wash blankets, install blankets, and climb up and down catwalks.
4. Claimant worked for six months as a pipe insulator in 1979 to 1980 while the printers were on strike.
5. Claimant testified that he has had hand complaints for 20 years and that in the last 15 years they began to give him pain. They would swell, they would become numb, and the numbness and swelling would increase at night and awaken him. The numbness has improved since he left work. He testified that the numbness and pain was getting worse up to the last date that he worked.
6. Claimant retired on November 8, 2002 because he overturned a neighbor's lawn tractor onto his right shoulder causing a massive tear of the right rotator cuff.
7. Claimant believes he lost more than half the strength in his right shoulder. Lifting a gallon of milk hurts his right shoulder, vacuuming hurts his right shoulder, and lifting hurts his right shoulder.
8. Following this surgery Claimant underwent a bilateral carpal tunnel release and left ulnar tunnel release. Claimant takes Percocet for pain involving his wrists and his back. Claimant has not looked for work since he retired.
9. Following this surgery Claimant's left hand is good and is occasionally troublesome at night, maybe two to three times a month. His grip is decreased on both hands. Claimant can vacuum; do some dishes, and laundry. Putting dishes away hurts. He no longer enjoys skeet or trap because he can't hold the rifle against his shoulder and his wrists also hurt.

10. Claimant had a stent placed in his heart in 2000. He takes Plavix and nitroglycerin as needed but doesn't take his Plavix, as he should. Claimant suffers from gout. He has a bout of gout 2 to 3 times a year and takes Colchicine when the pain starts. These conditions are controlled by medication.
11. Claimant has had psychological problems relating to depression since the carpal tunnel surgery and his retirement. Claimant never lost time from work as a result of any depression prior to the shoulder incident. The condition is controlled by medication.
12. Claimant still changes tires on his cars, changes the spark plugs and works on his automobiles.
13. Claimant has received social security disability and receives a pension from the printer's union.
14. Dr. Reichert, his personal physician, advised that he retire as a result of his shoulder injury. Dr. Cohane also told Claimant not to go back to work because of his shoulder injury.
15. Claimant did not lose any time from work as a result of carpal tunnel syndrome prior to retiring.
16. Dr. Lichtenfeld, on behalf of Claimant, believes that he is permanently and totally disabled considering only his back injury, his wrist injuries, and some disabilities caused by his heart and gout.
17. Dr. Ollinger, on behalf of Employer/Insurer, believes that Claimant's carpal tunnel syndrome was substantially aggravated by work and that he has sustained a disability of 7% to the right wrist and 5% to the left wrist. Dr. Ollinger termed Claimant's right-handed carpal tunnel syndrome as severe.
18. Claimant underwent a laminectomy in 1991 followed by a fusion and placement of hardware by Drs. Kennedy and Robson and then treated with Dr. Feinberg for some pain management. The second procedure, the fusion, was performed April 19, 1993. The back injury involving the discectomy and fusion was settled as a result of a workers' compensation claim involving 32 ½% of the body as a whole referable to the lumbar spine.
19. Claimant injured his ankle in 1986 involving a claim for workers' compensation benefits and settled his claim for 20% permanent partial disability of the left ankle.
20. Dr. Lichtenfeld rates Claimant's disabilities at 37 ½% of the right wrist, 35% of the left wrist with a loading factor of 10%, a 42 ½% permanent partial disability for the cardiac condition, 50% permanent partial disability of the body as a whole referable to the back condition, 45% permanent partial disability of the right rotator cuff, 12 ½ to 15% due to tobacco abuse and exposure to substances in the workplace and a 12% permanent partial disability at the level of each of his ankles due to the gout.
21. Exhibit O is a bill for nerve conduction studies related to the wrist conditions.

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RULINGS OF LAW

1. Claimant sustained a 20% permanent partial disability of the right wrist as a result of the carpal tunnel syndrome; and 15% permanent partial disability of the left wrist for left carpal tunnel syndrome and ulnar tunnel syndrome.
2. Preexisting these injuries Claimant suffered from a 32 ½% permanent partial disability measured at the level of the body as a whole for his back injuries and a 20% permanent partial disability of the ankle regarding the left ankle injury.
3. Claimant is not permanently and totally disabled as a result of the carpal tunnel syndromes and left ulnar tunnel syndrome combined with the back and ankle injuries, rather he is permanently and totally disabled as a result of the non-work related right shoulder injury and back, wrist and ankle injuries.
4. Claimant is entitled to \$2,726.00 in reasonable and necessary medical care required to treat the upper extremity complaints.

DISCUSSION

Claimant testified that his carpal tunnel syndrome got better following the surgery. At the time he retired on November 8, 2002 he suffered from a back injury, bilateral carpal tunnel syndrome and left ulnar tunnel syndrome which only got better, and the previous left ankle injury. On that date he suffered a massive tear of the rotator cuff when a tractor

rolled over on him at a neighbor's house. It is this rotator cuff injury which was working with the then-existing carpal tunnel and ulnar tunnel syndrome, the back injury and ankle injury which caused him to be permanently and totally disabled. He did not become permanently and totally disabled as a result of the carpal and ulnar tunnel conditions, the back injury and the left ankle injury. Thus, the Second Injury Fund and the Employer are only liable for the permanent partial disabilities assessed herein.

While the wrist surgeries were performed after the shoulder injuries, the wrist disease arose before the shoulder injury and Claimant was able to work up to the date of the tractor injury. In fact, the wrists got better after the date of the tractor injury so it cannot be said that the wrist injuries could have caused the Claimant to stop working even when considering them in combination with the ankle and back. The other conditions are all controlled by medication.

Date: _____ Made by: _____

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

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation