

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

Injury No.: 06-134457

Employee: Eric Lichtinger
Employer: Swiss Meats
Insurer: St. Paul Travelers Insurance Company
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 § 287.480 RSMo. Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge, as modified herein, is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 28, 2010, as modified herein.

Introduction

The parties stipulated to the following issues at the hearing before the administrative law judge: (1) medical causation of employee's alleged injury; (2) nature and extent of permanent disability; (3) Second Injury Fund liability; and (3) future medical treatment.

The administrative law judge made the following findings: (1) employee failed to sustain his burden of proof that his cardiac condition was caused by the accident and injury of October 11, 2006; (2) employee sustained a 5% permanent partial disability of the right forearm as a result of the October 11, 2006, accident; (3) employee sustained disfigurement equivalent to 14 weeks of disability from the scars on his right forearm; and (4) all other issues are moot.

Employee submitted a timely Application for Review with the Commission alleging the administrative law judge erred: (1) by relying on employer's expert, who used an improper definition of "prevailing factor" in arriving at his opinion; (2) by failing to address the issue whether employee is permanently and totally disabled; (3) by failing to address whether employee's permanent total disability is based on a combination of his present and prior injuries; and (4) by generally failing to explain her decision, leaving counsel to guess at the reasoning for dismissing the Second Injury Fund.

For the reasons set forth in this award and decision, the Commission modifies the award of the administrative law judge.

Discussion

Preexisting conditions

Employee's medical history is significant for cardiovascular disease for which he has received extensive treatment, including a multiple bypass surgery in 2003. Employee had stents in five of his arteries before the primary injury. Employee eventually had to change

Employee: Eric Lichtinger

- 2 -

jobs due to his preexisting heart condition: employee took the indoor job with employer because working as a roofer outside in the heat aggravated his cardiac problems.

Both Dr. Berkin and Dr. Schuman agreed employee suffered preexisting disability referable to the cardiovascular condition. Dr. Berkin opined employee suffered a 30% permanent partial disability of the body as a whole in connection with his preexisting cardiovascular condition, and that this condition constituted a hindrance or obstacle to employment at the time of the primary injury. We find Dr. Berkin credible. We find that employee suffered a 30% preexisting permanent partial disability of the body as a whole referable to his cardiovascular condition, and that this condition constituted a hindrance or obstacle to employment at the time employee sustained the primary injury.

The primary injury

On October 11, 2006, employee was cutting meat with a knife when the knife slipped and stabbed employee in the right forearm. Immediate and severe swelling resulted from the stabbing injury and employee went to the hospital where an emergency fasciotomy was performed to relieve the blood pressure on the forearm. That night, employee experienced nausea and dizziness. These symptoms recurred and worsened throughout subsequent days, until employee was hospitalized once again on October 18, 2006. Tests revealed employee had suffered a myocardial infarction. While in the hospital, employee underwent an angioplasty, with placement of two additional stents in his arteries. Employee attempted to return to work after his release from the hospital, but discovered he was no longer able to perform his job duties due to fatigue, sweating, and dizziness. Eventually, employee was back in the hospital for cardiovascular symptoms and complaints. This time, doctors implanted a pacemaker.

Dr. Berkin opined that the stress from the October 2006 knife accident was the direct and proximal cause of the subsequent acute myocardial infarction. Dr. Schuman agreed there is a causal relationship between the October 2006 accident and the myocardial infarction of October 17, 2006. Dr. Schuman believes that the type of injury and procedure (fasciotomy) could have put a pathologic stress on the cardiovascular system, and that this stress could be a significant factor in causing a myocardial infarction. Although Dr. Schuman ultimately opined that the accident was not the prevailing factor causing the heart attack, he also made clear that he was reluctant to “pick a word” that would have a legal effect in this case, such as whether the accident was a “substantial” or “prevailing” factor. When we read Dr. Schuman’s testimony together with his report, it appears to us that Dr. Schuman testified that the work accident was not the prevailing factor causing the heart attack because Dr. Schuman could not say the work accident was the *only* factor at play:

I couldn't say prevailing. It's not the only factor. Because if he didn't have this degree of underlying coronary artery disease he wouldn't have had [a myocardial infarction]. It's like most [myocardial infarctions], it's multifactorial.

Transcript, Page 756.

But the law does not require an employee to show a work accident was the *only* factor in causing the resulting medical condition and disability, but merely the prevailing factor,

Employee: Eric Lichtinger

- 3 -

which is defined as “the primary factor, in relation to any other factor ...” See section 287.020.3(1) RSMo.

When we examine Dr. Schuman’s testimony and report together, we find them ultimately supportive of employee’s claim that the accident was the prevailing factor in causing the myocardial infarction and subsequent deterioration of employee’s cardiovascular condition. And, after carefully weighing the expert medical opinions, we disagree with the administrative law judge’s finding that employee did not suffer any cardiovascular injury as a result of the October 2006 knife accident. We find instead that the accident was the prevailing factor causing the myocardial infarction on October 17, 2006, and subsequent deterioration of employee’s cardiovascular condition and disability.

Maximum medical improvement

On appeal before this Commission, employee fails to identify or suggest the time that he reached maximum medical improvement following the work injury. We note that Dr. Schuman opined employee was at maximum medical improvement as of his evaluation on November 23, 2009. Finding no contrary suggestion from the parties, and declining to become an advocate for the employee by searching the medical record in this matter for evidence that might support an earlier date of maximum medical improvement, we adopt Dr. Schuman’s opinion and find that employee reached maximum medical improvement on November 23, 2009.

We find that employee sustained a 25% permanent partial disability of the body as a whole referable to his cardiovascular system as a result of the primary injury.

We find appropriate and leave undisturbed the administrative law judge’s findings that employee suffered, as a result of the primary injury, a 5% permanent partial disability at the 200-week level referable to the right forearm and 14 weeks of disfigurement.

Permanent total disability

The evidence is uncontested that employee is permanently and totally disabled for all employment due to the condition of his cardiovascular system. Both Dr. Schuman and Dr. Berkin agree this is the case.

Timothy Lalk, employee’s vocational expert, opined that employee is unable to secure and maintain employment in the open labor market and is unable to compete for any position due to his problems with fatigue and his need to rest almost constantly in order to avoid aggravating the symptoms of his cardiovascular condition. Mr. Lalk explained that he understands employee to be permanently and totally disabled due to a combination of his preexisting cardiovascular condition in combination with the effects of the primary injury on that condition. We find Mr. Lalk credible.

Dr. Schuman opined that the primary injury and resultant myocardial infarction “tipped him over” to much worse left ventricular function than existed before, with the effect that employee is now permanently and totally disabled. This supports employee’s argument that he is permanently and totally disabled due to a combination of his preexisting conditions and the effects of the primary injury.

Employee: Eric Lichtinger

- 4 -

We find this evidence persuasive. We find employee is permanently and totally disabled as a result of his preexisting cardiovascular condition and the effects of the primary injury.

Future medical treatment

Because we have modified the administrative law judge's findings as to medical causation in respect to the primary injury, we must resolve the issue whether employee is entitled to future medical treatment from employer. Section 287.140.1 RSMo provides, 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.

We have found that the myocardial infarction on October 17, 2006, and subsequent deterioration of employee's cardiovascular condition were caused by the work accident. Dr. Schuman opined that employee will need ongoing monitoring and care related to his cardiovascular condition. We find this evidence persuasive.

In order to receive future medical benefits under the Act, a claimant is not required to present conclusive evidence that future medical treatment is needed. Rather, he only needs to demonstrate a reasonable probability that future medical treatment is necessary by reason of his work-related injury. Probable in this context means founded on reason and experience which inclines the mind to believe but leaves room for doubt. The claimant is not required to present evidence of the specific medical care that will be needed but he is required to establish through competent medical evidence that the care requested flows from the accident. An employer is required to compensate for future medical care only if the evidence establishes a reasonable probability that additional medical treatment is needed and, to a reasonable degree of medical certainty, that the need arose from the work injury.

ABB Power T & D Co. v. Kempker, 236 S.W.3d 43, 52 (Mo. App. 2007) (citations omitted).

We conclude that employee has met his burden of establishing a reasonable probability that additional medical treatment is needed and that the need arose from the work injury. Accordingly, we conclude that employer is liable for any future medical treatment that may reasonably be required to cure and relieve from the effects of the work injury.

Second Injury Fund Liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in "all cases of permanent disability where there has been previous disability." As a preliminary matter, the employee must show that he suffers from "a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed ..." *Id.* The courts

Employee: Eric Lichtinger

- 5 -

have articulated the following test for determining whether a preexisting disability constitutes a “hindrance or obstacle to employment”:

[T]he proper focus of the inquiry is not on the extent to which the condition has caused difficulty in the past; it is on the potential that the condition may combine with a work-related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition.

Knisley v. Charleswood Corp., 211 S.W.3d 629, 637 (Mo. App. 2007) (citation omitted).

Employee provided evidence of a preexisting cardiovascular condition requiring extensive treatment, including surgery, before the primary injury. Dr. Berkin opined that employee’s cardiovascular disorder amounted to a preexisting permanent partial disability that constituted a hindrance or obstacle to employment, and we have found Dr. Berkin credible. We are persuaded that employee’s preexisting cardiovascular condition had the potential to combine with future work-related injuries so as to cause greater disability than would have resulted in the absence of the condition. This is despite the evidence that employee was able to work prior to the primary injury; again, we are required to evaluate the *potential* for a preexisting condition to combine with a subsequent work injury, not the degree to which the condition has actually impaired the employee’s work performance in the past.

In sum, we conclude that at the time he sustained the primary injury, employee suffered from a preexisting permanent partial disability referable to his cardiovascular condition, and that the condition constituted a hindrance or obstacle to employment or reemployment for purposes of § 287.220.1 RSMo.

We now proceed to the question whether employee met his burden of establishing entitlement to compensation from the Second Injury Fund. Section 287.220.1 RSMo requires us to first determine the compensation liability of the employer for the last injury, considered alone. If employee is permanently and totally disabled due to the last injury considered in isolation, the employer, and not the Second Injury Fund, is responsible for the entire amount of compensation. See *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 50 (Mo. App. 2007).

We have found that employee’s preexisting cardiovascular condition did constitute a hindrance or obstacle to his employment. We have also found that, as a result of the last injury, employee sustained a 25% permanent partial disability of the body as a whole referable to his cardiac condition, a 5% permanent partial disability at the 200-week level referable to the right forearm, and 14 weeks of disfigurement. The Second Injury Fund argues that if employee is permanently and totally disabled, it is due to the effects of the work injury considered alone, citing *Portwood v. Treasurer of Missouri-Custodian of the Second Injury Fund*, 219 S.W.3d 289 (Mo. App. 2007), for the proposition that where a work injury aggravates an asymptomatic preexisting condition to result in permanent disability, the employer, not the Second Injury Fund, is liable.

We find *Portwood* distinguishable. In that case, the employee suffered from an unknown, undiagnosed preexisting condition of the cervical spine. *Id.* at 291. Here, it is uncontested that employee’s preexisting cardiovascular condition was diagnosed and

Employee: Eric Lichtinger

- 6 -

treated extensively before the October 2006 knife accident. The employee in *Portwood* also stipulated that his preexisting condition did not constitute a hindrance or obstacle to employment. *Id.* Here, there are no such stipulations.

We conclude that the primary injury, considered in isolation, did not render employee permanently and totally disabled, but that employee is disabled due to a combination of his preexisting disabilities and conditions of ill as they existed on October 11, 2006, in combination with the injuries employee sustained as a result of the work accident on that date. We conclude, therefore, that employee has met his burden of establishing Second Injury Fund liability under § 287.220.1.

Decision

The Commission modifies the award of the administrative law judge with the foregoing findings, analysis, and conclusions. We find employer liable for any future medical treatment that is reasonably required as a result of the work injury.

We find that employee is entitled to permanent partial disability benefits from the employer commencing November 23, 2009, and thereafter for 124 weeks (100 weeks for the primary cardiac injury + 10 weeks for the primary right forearm injury + 14 weeks disfigurement) at the stipulated rate of \$326.62. Thereafter, employee is entitled, and the Second Injury Fund is hereby ordered to pay, \$326.62 per week for employee's lifetime, or as provided by law.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued October 28, 2010, is attached and incorporated by this reference to the extent it is not inconsistent with our findings, conclusions, award and decision herein.

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 July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Eric Lichtinger

Injury No. 06-134457

Dependents: N/A

Employer: Swiss Meats

Additional Party: Treasurer of the State of Missouri
as Custodian of the Second Injury Fund

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

Insurer: Travelers Insurance Company

Hearing Date: September 28, 2010

Checked by: HDF/tmt

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 11, 2006.
5. State location where accident occurred or occupational disease was contracted: Gasconade 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? N/A.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
See award.
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: Right forearm.
14. Nature and extent of any permanent disability: 5% right forearm.
15. Compensation paid to-date for temporary disability: \$933.20.
16. Value necessary medical aid paid to date by employer/insurer? \$6,606.26.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$489.94.

Employee: Eric Lichtinger

Injury No. 06-134457

- 19. Weekly compensation rate: \$326.62 per week for all benefits.
- 20. Method wages computation: By agreement.

COMPENSATION PAYABLE

- 21. Amount of compensation payable: **5% x 200 = 10 weeks**
10 x \$326.62 = \$3,266.20 (permanent disability)
14 x \$326.62 = \$4,572.68 (disfigurement)
TOTAL: \$7,838.88

- 22. Second Injury Fund liability: None.
- 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: Sam Eveland

Employee: Eric Lichtinger

Injury No. 06-134457

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Eric Lichtinger

Injury No: 06-134457

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Swiss Meats

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

Additional Party: Treasurer of the State of Missouri
as Custodian of the Second Injury Fund

Insurer: Traveler Insurance Company

Checked by: HDF/tmt

ISSUES DECIDED

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on September 28, 2010. Memoranda were due by October 15, 2010.

The parties stipulated that on or about October 11, 2006, the claimant, Eric Lichtinger, was in the employment of Swiss Meats, when he sustained an injury by accident which arose out of and in the course of his employment. The employer was operating under the provisions of Missouri's Workers' Compensation Law; the employer's liability for workers' compensation was insured by Travelers Insurance Company. The employer had notice of the injury. A claim for compensation was timely filed.

The claimant's average weekly wage was \$489.94; the compensation rate is \$326.62 per week for all benefits. Temporary disability benefits have been paid to the claimant to date in the amount of \$933.20, representing 2 and 6/7 weeks of benefits paid between October 17, 2006, and November 6, 2006. Medical aid has been provided in the amount of \$6,606.26.

The issues to be resolved by hearing include 1) the causation of the injury alleged, 2) the nature and extent of permanent disability, 3) the liability of the Second Injury Fund, and 4) the liability of the employer/insurer for future medical treatment.

FACTS

The claimant, Eric Lichtinger, was injured while employed by Swiss Meats on October 11, 2006, when he cut his right arm near the wrist while cutting a hog. Mr. Lichtinger's right forearm immediately became very swollen. Mr. Lichtinger received medical treatment at the Hermann Area Hospital where a fasciotomy was performed, involving two incisions in the forearm to relieve the pressure; Mr. Lichtinger was discharged that same day. That evening, Mr. Lichtinger felt sweaty, dizzy, and nauseous and returned to the Hermann Area Hospital where blood work revealed no abnormalities and he returned home. The next morning, Mr. Lichtinger had similar symptoms, went to St. Johns Mercy Hospital in Washington, Missouri, and again went home after blood work revealed no abnormalities. That evening, Mr. Lichtinger went by ambulance to

Employee: Eric Lichtinger

Injury No. 06-134457

the Hermann Area Hospital with similar symptoms; blood work reflected abnormally high enzymes and Mr. Lichtinger was taken to Columbia Regional Hospital in Columbia, Missouri.

Mr. Lichtinger testified to a history of heart problems dating back to 1999, when he had a stent put in one of his coronary arteries. Mr. Lichtinger acknowledged that his medical records reflected two additional stents put in in 2001. Mr. Lichtinger testified to five coronary bypasses in 2003, which were then repaired several months later.

Mr. Lichtinger had been a roofer in the 20 years before he started with Swiss Meats; Mr. Lichtinger quit roofing in May or June of 2006 to work indoors at Swiss Meats.

Mr. Lichtinger testified at the hearing that he had no problems with his right arm as the result of the 2006 accident, although he testified during his deposition to some diminished grip strength in his right arm. Mr. Lichtinger has two scars on his right forearm as the result of his treatment for the swelling in the arm after the initial wound; each scar is about six to eight inches long. Mr. Lichtinger occasionally sells dachshunds and sold two dachshunds early in the summer of 2010.

Dr. Stephen Schuman, board certified in internal medicine and cardiology, testified by deposition that he examined Mr. Lichtinger at the request of the employer/insurer on November 23, 2009. Dr. Schuman testified with regard to the events of Mr. Lichtinger's cut on his right forearm on October 11, 2006, describing the resulting swelling in the forearm and the fasciotomy which followed at the Hermann Area Hospital. Dr. Schuman described the fasciotomy as cutting the tight connective tissue which holds the muscle groups together, the fascia, to relieve the swelling and allow the muscles to expand. Mr. Lichtinger had cardiac symptoms later that day and went to two area hospitals where blood tests came back normal and Mr. Lichtinger was sent back home. Mr. Lichtinger went back to the Hermann Area Hospital where testing revealed that his enzymes were high and he was transferred to Columbia Regional Hospital with a myocardial infarction. Mr. Lichtinger was discharged after three days feeling better and had the fasciotomy repaired several days later. Mr. Lichtinger later received a defibrillator/pacemaker, which had to be replaced at some point.

Dr. Schuman noted Mr. Lichtinger's medical history which included a heart attack and stent in 1999, another heart attack and two stents in 2001, a cardiac catheterization and five vessel coronary bypass surgery in 2003, with correction of the bypass surgery within the following months.

Dr. Schuman concluded that Mr. Lichtinger would not have had a myocardial infarction due to the stress of his stab wound or his fasciotomy had he not had the underlying coronary artery disease. Dr. Schuman found the stab wound and resulting swelling of the arm and fasciotomy a substantial factor in causing the myocardial infarction, but not the prevailing factor.

Dr. Shawn Berkin, D.O., a certified osteopathic family physician and certified independent medical examiner, evaluated Mr. Lichtinger on May 22, 2008. Dr. Berkin opined that Mr. Lichtinger sustained a 25 percent permanent disability of the body as the result of his cardiac condition caused by his workplace injury and that Mr. Lichtinger had a preexisting disability of 30 percent of the body attributable to his cardiac condition. Dr. Berkin went on to state that he considered Mr. Lichtinger to be permanently and totally disabled as the result of his cardiac

Employee: Eric Lichtinger

Injury No. 06-134457

condition and his right arm. Dr. Berkin referred to Mr. Lichtinger's nervousness when he saw Mr. Lichtinger in the office for the evaluation and, referring back to the October 11, 2006, accident, stated that "the degree of anxiety caused a spasm of his coronary arteries resulting in the lack of blood flow and the ultimate myocardial infarction." Dr. Berkin stated that it was the obstruction along with the spasm that caused the lack of blood flow to the heart muscle resulting in loss of oxygen which caused death of the heart muscle.

APPLICABLE LAW

RSMo, Section 287.020.3 (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

RSMo, Section 287.220.1. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that 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

Employee: Eric Lichtinger

Injury No. 06-134457

that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

AWARD

The claimant, Eric Lichtinger, has failed to sustain his burden of proof that his cardiac condition was caused by the accident and injury of October 11, 2006. While Mr. Lichtinger clearly injured his right forearm as the result of the puncture wound to the arm and the resulting treatment of the swelling in the forearm, there is insufficient evidence that the accident and injury was the prevailing factor in causing the cardiac condition Mr. Lichtinger suffered in the days after the accident and injury to the forearm. While two physicians testified regarding the causation of Mr. Lichtinger's cardiac problems, only Dr. Schuman is board certified in cardiology. Dr. Schuman testified that while the stress of Mr. Lichtinger's accident and injury and treatment may have contributed to his need for cardiac treatment, without the underlying and well documented coronary heart disease Mr. Lichtinger would not have had a cardiac event. Dr. Schuman pointed out that the October 11, 2006, accident was not the prevailing factor in causing Mr. Lichtinger's cardiac condition.

Mr. Lichtinger has sustained his burden of proof that he has a five percent permanent partial disability of the right forearm as the result of his October 11, 2006, accident and that he has disfigurement equivalent to 14 weeks of disability from the scars on his right forearm.

All other issues raised for resolution are hereby rendered moot.

Date: _____

Made by: _____

HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson