

AWARD

Employee: Barbara Magouirk

Injury No.: 05-142768

Dependents: N/A

Employer: American Family Insurance Co. (Settled)

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Sentry Insurance Co. (Settled)

Hearing Date: January 30, 2012

Checked by: MDL

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: December 1, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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 developed bilateral carpal tunnel syndrome from the repetitive use of her hands at work.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Both hands
14. Nature and extent of any permanent disability: 15% PPD of each hand previously settled with Employer.
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Barbara Magouirk

Injury No.: 05-142768

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$365.08 for PPD
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:	SETTLED
22. Second Injury Fund liability: Yes	
14.25 weeks of permanent partial disability from Second Injury Fund	\$5,202.39
TOTAL:	\$5,202.39
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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Sam Eveland

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Barbara Magouirk

Injury No.: 05-142768

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: American Family Insurance Co. (Settled)

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

Additional Party: Second Injury Fund

Insurer: Sentry Insurance Co.

Checked by: MDL

PRELIMINARIES

A hearing was held on January 30, 2012 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Barbara Magouirk ("Claimant") was represented by Mr. Sam Eveland. American Family Insurance Co. ("Employer") and its insurer Sentry Insurance Co., previously settled their liability with Claimant, and this matter proceeded to a hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General Michael Finneran. Mr. Eveland requested a fee of 25% of Claimant's award.

The parties stipulated that on or about December 1, 2005, Claimant sustained an occupational disease arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the city of St. Louis, Missouri; the claim was timely filed; Claimant's Permanent Partial Disability ("PPD") rate is \$365.08; as a result of the primary injury Claimant sustained 15% PPD of each hand; at the time of the primary injury Claimant had preexisting PPD of 22.5% of the body as a whole referable to the lumbar spine; and in the event the SIF is liable for PPD benefits, a loading factor of 10% shall apply.

The only issue for hearing is whether the SIF is liable for PPD benefits.

SUMMARY OF EVIDENCE

In 2005, Claimant worked for Employer as a claims support clerk, when she developed symptoms in her upper extremities. Claimant was diagnosed with bilateral carpal tunnel syndrome, and underwent surgery on both hands in 2009. Although the surgery resolved her complaints of numbness and tingling, Claimant continues to get shooting pains when she drives, and pain in cold weather. Claimant settled her claim with Employer for 15% PPD of each wrist.

In 2000, Claimant injured her low back and underwent a lumbar laminectomy and discectomy at L45. The operation helped with the pain that had been radiating into her lower extremities, but, following her surgery, and leading up to her 2005 carpal tunnel injury and the time of hearing, she still had problems with pain in her lower back and must be careful in how

she uses her back to avoid the onset of pain. She no longer runs or bowls, and must lie on her side when she sleeps.

Dr. Bruce Schlafly examined Claimant on two separate occasions, prepared reports and testified on behalf of Claimant. Dr. Schlafly rated Claimant's carpal tunnel syndrome at 25% of each wrist as a result of her bilateral carpal tunnel syndrome and 25% PPD of the body as a whole referable to the low back as a result of her back surgery in 2000. Dr. Schlafly testified Claimant has a combination of disabilities that creates a synergistic effect between the prior disability of her low back and the disabilities of her hands, giving a combined effect greater than the simple sum of the components, which create an obstacle or hindrance to employment.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri Law, I find:

Occupational diseases are compensable injuries under Section 287.220.1 RSMo. Section 287.220.1 requires for SIF compensation, a claimant must have a preexisting permanent partial disability of such seriousness as to constitute a hindrance or obstacle to her employment and then sustain a subsequent compensable injury that results in additional permanent partial disability. The term "injury" as defined in Section 287.020.3(5) states:

The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case **except as specifically provided in this chapter** be construed to include occupational disease in any form. [Emphasis added]

Section 287.067.3 states: An **injury** due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. [Emphasis added]

Reading these statutory provisions together, I find Section 287.220.1 applies to injuries due to occupational diseases.

Claimant has established a right to recover from the Second Injury Fund. A claimant in a workers' compensation proceeding has the burden of proving all elements of his claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo.App. E.D.2008). In order for a claimant to recover against the SIF, he must prove that he sustained a compensable injury, referred to as "the last injury," which resulted in permanent partial disability. Section 287.220.1 RSMo. A claimant must also prove that he had a preexisting permanent partial disability, whether from a compensable injury or otherwise, that: (1) existed at the time the last injury was sustained; (2) was of such seriousness as to constitute a hindrance or obstacle to his employment or reemployment should he become unemployed; and (3) equals a minimum of 50 weeks of compensation for injuries to the body as a whole or 15% for major

extremities. *Dunn v. Treasurer of State of Missouri as Custodian of Second Injury Fund*, 272 S.W.3d 267, 272 (Mo.App. E.D.2008)(Citations omitted). In order for a claimant to be entitled to recover permanent partial disability benefits from the Second Injury Fund, he must prove that the last injury, combined with his pre-existing permanent partial disabilities, causes greater overall disability than the independent sum of the disabilities. *Elrod v. Treasurer of Missouri as Custodian of the Second Injury Fund*, 138 S.W.3d 714, 717-18 (Mo. Banc 2004). Claimant has met the burden imposed by law.

I find Claimant sustained 15% PPD of the bilateral wrists as a result of the primary work related injury by occupational disease of December 1, 2005. Claimant settled her claim with Employer for that amount, and the evidence supports that level of disability. I further find Claimant had preexisting 22.5% PPD of the Body as a whole referable to the low back as a result of her 2000 low back surgery. I find the primary work related injury combined synergistically with the preexisting injury, and a loading factor of 10% should be added.

The SIF liability is calculated as follows: 15% PPD of each wrist (52.5) weeks for the primary injury, plus 22.5% of the lower back (90 weeks) for her preexisting back injury or 142.5 weeks of compensation with a 10% loading factor or 14.25 weeks of compensation at a rate of \$365.08 per week or \$5,202.39.

This award is subject to an attorney's lien in the amount of 25% in favor of Claimant's attorney Mr. Sam Eveland.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation