

FINAL AWARD ALLOWING COMPENSATION

Injury No.: 08-016828

Employee: Douglas Manning

Employer: Hussmann Corporation (Settled)

Insurer: Indemnity Insurance Company of North America (Settled)

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

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have reviewed the evidence and considered the whole record and we find 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, except as modified herein. Pursuant to § 286.090 RSMo, we issue this final award and decision affirming the September 10, 2012, award and decision of the administrative law judge, as modified herein. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Discussion

We modify the administrative law judge award to increase the extent of pre-existing permanent partial disability of employee's shoulder. The administrative law judge found employee's left shoulder disability to be 12.5%, the exact percentage for which employee settled his left shoulder claim in November 1993.

Employee testified that over time the condition of his left shoulder has gotten worse. Employee has increasing pain and difficulties with his left shoulder. Employee experiences popping, his range of motion is reduced, and he has a limited range of reach. Coworkers are aware of employee's shoulder problems and assist him when he has to do heavy lifting. Dr. Volarich, the only medical expert to testify in this matter, opined that employee had a 35% permanent partial disability of his left shoulder as of the date of the primary injury. Dr. Volarich attributed the disability to ongoing pain, lost motion, weakness, crepitus, atrophy and ongoing impingement signs.

We find credible employee's testimony that the condition of his left shoulder has deteriorated since 1993. We find credible the testimony of Dr. Volarich regarding the deficits in the functioning of employee's left shoulder but we believe his disability rating is somewhat high. We find that as of the date of the primary injury, employee had a 17.5% permanent partial disability of his left shoulder.

This left shoulder disability must be included in the calculation of Second Injury Fund liability. Employee sustained a 25% permanent partial disability of the right shoulder as a result of the primary injury (58 weeks). As of the date of the primary injury, employee

¹ Statutory references are to the Revised Statutes of Missouri 2007, unless otherwise indicated.

Employee: Douglas Manning

had a 27.5% permanent partial disability of the body as a whole referable to his heart condition (110 weeks) and employee had a 17.5% permanent partial disability of his left shoulder (40.6 weeks). We find appropriate the administrative law judge's adoption of a 15% load factor. The Second Injury Fund is liable for 31.29 weeks of permanent partial disability.²

Award

The Second Injury Fund shall pay to employee \$12,173.06, for permanent partial disability benefits.³

In all other respects, we affirm the administrative law judge's award.

We further approve and affirm the administrative law judge's allowance of attorney's fees herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued September 10, 2012, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 11th day of April 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

² 58 weeks + 110 weeks + 40.6 weeks = 208.6 weeks. 208.6 X 15% = 31.29.

³ 31.29 X \$389.04 = \$12,173.06.

AWARD

Employee:	Douglas Manning	Injury No.:	08-016828
Dependents:	N/A	Before the	
Employer:	Hussmann Corporation (Settled)	Division of Workers'	Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial	Relations of Missouri
Insurer:	Indemnity Insurance Company of North America (Settled)	Jefferson City, Missouri	
Hearing Date:	August 10, 2012	Checked by:	CTL

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: February 17, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant was crossing over a doorway when he fell and jammed his right shoulder
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 shoulder
14. Nature and extent of any permanent disability: 25% permanent partial disability of the right shoulder
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Douglas Manning

Injury No.: 08-016828

17. Value necessary medical aid not furnished by employer/insurer? N/A

18. Employee's average weekly wages: N/A

19. Weekly compensation rate: \$600.00 TTD/\$389.04 PPD

20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

58 weeks of permanent partial disability from Employer (previously paid)

22. Second Injury Fund liability:

25.20 weeks of permanent partial disability at the rate of \$389.04 per week from Second Injury Fund for a total of \$9,803.80

TOTAL: \$9,803.80

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: Colleen Vetter

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Douglas Manning	Injury No.:	08-016828
Dependents:	N/A	Before the	
Employer:	Husmann Corporation (Settled)	Division of Workers'	Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial	Relations of Missouri
		Jefferson City, Missouri	
Insurer:	Indemnity Insurance Company of North America (Settled)	Checked by:	CTL

PREFACE

The Claimant, Douglas Manning, was represented by Attorney Colleen Vetter. The Second Injury Fund was represented by Assistant Attorney General Dustin Mayer. Claimant’s primary case was previously settled with the Employer/Insurer.

STIPULATIONS

The parties stipulated to the following:

1. Claimant and the Employer were operating under and subject to the provisions of the Missouri Workers’ Compensation Law;
2. Employer's liability was insured by Indemnity Insurance Company of North America c/o Gallagher Bassett;
3. Employer had notice of the injury and a claim for compensation was filed within the time prescribed by law;
4. The rate of compensation for TTD is \$600.00 and for PPD is \$389.04;
5. Claimant settled his primary case against Employer/Insurer for 25% permanent partial disability of the right shoulder with a date of accident of February 17, 2008.

ISSUE

The nature and extent of liability of the Second Injury Fund.

EXHIBITS

Claimant offered the following exhibits which were accepted into evidence and any objection to Claimant’s exhibits were overruled:

- A) Stipulation for Compromise Settlement – 2/17/2008 injury
- B) Dr. Cynthia Byler medical records
- C) RAMIC Medical Imaging record
- D) Orthopedic Associates medical records

- E) St. Anthony's Medical Center medical records
- F) Division of Workers' Compensation records
- G) St. Charles Clinic Medical Group medical records
- H) Metro Heart Group medical records
- I) Barnes-Jewish St. Peters Hospital medical records
- J) Dr. Lichtenfeld report
- K) Dr. Volarich deposition dated March 30, 2012

The Second Injury Fund did not offer any exhibits.

FINDINGS OF FACT

1. Claimant at the time of the hearing was 64 years old and said he had worked for Employer for 34 years doing maintenance work.
2. Claimant's primary claim was the result of an injury of February 17, 2008, when Claimant was crossing over a doorway and he fell and jammed his right shoulder. As a result of Claimant's fall, Claimant was diagnosed with a torn rotator cuff, but he did not undergo surgery. At the time of trial, the Claimant testified that he still has right shoulder problems which cause him pain and limited range of motion and at work he has to have other people help him. Claimant said because of his right shoulder injury he still has a problem doing wrench work, using screwdrivers and hammering and handling air-powered tools. Claimant settled his primary case for 25% permanent partial disability of his right shoulder.
3. The Claimant had the following preexisting disabilities and injuries:
 - a. In 1990 Claimant injured his left shoulder when he was at work and caught his left arm when trying to fix an incinerator. Claimant was operated on by Dr. Roush, who performed a left arthroscopy and subacromial decompression on June 9, 1992. Dr. Roush in September 1992 found Claimant had full range of motion and no particular point tenderness or impingement signs. Claimant testified that he still has problems with his left shoulder and has gone to get medical treatment on a couple of occasions in 2004. Claimant settled his case with Employer/Insurer on November 3, 1993 at 12.5% permanent partial disability of the left shoulder.
 - b. Claimant had a preexisting cardiovascular problem prior to his primary injury to his right shoulder as of February 17, 2008. From the medical records, it shows the Claimant was diagnosed with atrial fibrillation and LV systolic dysfunction. At the time of the hearing, Claimant had a pacemaker. As a result of his heart problems, leading up to the primary injury and thereafter, he has a problem working, has to have assistance from coworkers to do his job and has chest pain with work. Dr. Volarich examined the Claimant on November 7, 2011, and rated the Claimant in the primary injury with 30% permanent partial disability of the right shoulder and 35% permanent partial disability of the left shoulder and 35% permanent partial disability of the body as a whole with regard to the heart condition.

4. The Claimant settled his case of the left shoulder for 12.5%. I find this to be a proper percentage of disability of the Claimant's left shoulder as of the date of the primary injury and it does not meet the statutory threshold for Second Injury Fund liability.

RULINGS OF LAW

Claimant sustained in the primary injury 25% permanent partial disability referable to the right shoulder which amounts to 58 weeks and 27.5% of the body as a whole referable to his heart amounts to 110 weeks; thus, for a total of 168 weeks with a 15% load factor for a total of 25.20 weeks of liability from the Second Injury Fund at the permanent partial disability rate of \$389.04 for a total of \$9,803.80.

Made by: _____

CORNELIUS T. LANE
Administrative Law Judge
Division of Workers' Compensation