

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

Injury No.: 09-079086

Employee: Gregory Meredith
Employer: Ice Cream Specialties, Inc. (Settled)
Insurer: Fidelity & Casualty Insurance Company (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 § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 2, 2012. The award and decision of Administrative Law Judge Suzette Carlisle, issued August 2, 2012, is attached and incorporated by this 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 13th day of February 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Gregory Meredith

Injury No.: 09-079086

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Ice Cream Specialties, Inc. (Settled)

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

Additional: Second Injury Fund

Insurer: Fidelity & Guaranty Insurance Company
c/o Broadspire Services, Inc. (Settled)

Hearing Date: May 1, 2012

Checked by:SC

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 9, 2009
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 injured his chest and left shoulder when a garage door pinned him between the door and a forklift.
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: Body as a Whole (back & ribs, and left shoulder)
14. Nature and extent of any permanent disability: 15% BAW (Body as a Whole), 5% left shoulder (Settled)
15. Compensation paid to-date for temporary disability: \$12,168.15
16. Value necessary medical aid paid to date by employer/insurer? \$70,613.64

Employee: Gregory Meredith

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Sufficient for the rate listed in #19 below
- 19. Weekly compensation rate: \$529.05/\$422.97
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

Settled with Employer prior to hearing.

22. Second Injury Fund liability: Yes
35.6875 weeks of permanent partial disability benefits from Second Injury Fund \$15,094.74

TOTAL: \$15,094.74

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: D. Andrew Weigley

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Gregory Meredith	Injury No.: 09-079086
Dependents:	N/A	Before the
Employer:	Ice Cream Specialties, Inc. (Settled)	Division of Workers'
Additional :	Second Injury Fund	Compensation
Insurer:	Fidelity & Guaranty Insurance Company, c/o Broadspire Services Inc. (Settled)	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri

STATEMENT OF THE CASE

The parties appeared before the undersigned administrative law judge on May 1, 2012, for a final hearing to determine liability of the Second Injury Fund (“SIF”) at the request Greg Meredith (“Claimant”). Attorney D. Andrew Weigley represented Claimant. Assistant Attorney General Michael Finneran represented SIF. Venue is proper and jurisdiction properly lies with the Division of Workers’ Compensation. The record closed after presentation of the evidence.

Prior to the start of the hearing, Employer Ice Cream Specialties, Inc. and their Insurer Fidelity & Guaranty Insurance Company, settled with Claimant for 15% of the body as a whole, and did not participate in the hearing.¹

STIPULATIONS

The parties stipulated that on or about October 9, 2009:

1. Claimant was employed by Employer;
2. Claimant sustained an accident that arose out of and in the course of employment in St. Louis County, Missouri;
3. Venue is proper in St. Louis;
4. Employer and Claimant operated under the Missouri Workers’ Compensation Law;²
5. Employer’s liability is fully insured;
6. Employer had notice of the injury;
7. A Claim for compensation was timely filed;
8. Claimant’s average weekly wage was sufficient for a benefit rate for temporary total disability (“TTD”) and permanent total disability (“PTD”) of \$529.05; and \$422.97 for permanent partial disability (“PPD”) benefits;
9. Employer paid TTD benefits totaling \$12,168.15 and medical benefits totaling \$70,613.64; and

¹ All references in this award to the Employer also refer to the Insurer.

² All statutory references in this award are to Section 287 of the Revised Statutes of Missouri (2005), unless otherwise stated.

10. Claimant reached maximum medical improvement (“MMI”) on May 6, 2010.

ISSUES

The sole issue to be decided is the nature and extent of SIF liability for either PPD or PTD benefits, if any.

SUMMARY OF THE EVIDENCE

All of the evidence was reviewed but only evidence that supports this award will be summarized below. Any objections not expressly ruled on during the hearing or in this award are now overruled. To the extent there are marks or highlights in the exhibits, they were made prior to becoming part of this record, and were not placed there by the undersigned administrative law judge.

Exhibits

Claimants Exhibits A through L were admitted into evidence without objection. The SIF offered no additional exhibits.

Live Testimony

1. At the time of the hearing, **Claimant** was 49 years old. He was married and had 4 children living at home. While in school Claimant was a “C” student. In 1978, Claimant left school in the 10th grade.
2. After Claimant left school he worked at a full-service gas station. In 1979 Claimant enlisted in the Air Force where he served until 1980. He was honorably discharged for medical limitations related to his left ankle.

Preexisting Disabilities

3. In the 1970s Claimant dislocated his left ankle while playing baseball. Later, Dr. Perry Sheddinger surgically repaired the ankle. No medical records are in evidence.
4. While in the military, Claimant reinjured his left ankle, and received an honorable discharge because he was physically unfit for military duty. At work, the ankle hurt.
5. On May 22, 1995, Claimant sustained a herniated disc to his low back when he slipped and fell. Dr. Frank Petkovich performed a lumbar laminotomy with decompression on September 14, 1995. Later, Claimant received physical therapy. Claimant missed 16 weeks from work. Claimant also treated with a chiropractor once a week which helped “somewhat.”
6. Claimant settled the case for 27.5% of the body for the low back. After treatment ended, Claimant missed time from work, could not drive the forklift, and stacking product jarred his back.

7. On March 21, 1996, Claimant fell after he felt a sharp back pain and fractured a bone near his right elbow. Treatment included a cast and physical therapy. Claimant settled the case for 17.5% of the right elbow.
8. In 2003 Claimant saw Dr. David Fagan for hand tingling and loss of strength. (The same part of the upper extremity as the 1996 injury). Dr. Fagan decompressed the right cubital tunnel on June 16, 2003. Claimant missed a month from work. The surgery was not helpful. He returned to work with the same symptoms. Claimant dropped products due to decreased grip strength. He is right-handed.
9. In 2004 Claimant received treatment at Cedar Hill Medical Center from Dr. Goodell for blood passed in his stool. Two surgical procedures were performed in August 2004. A large polyp was surgically removed from his colon and he was hospitalized for five days. Claimant was readmitted on August 23, 2004 for exploratory laparotomy, revision of sigmoid resection, and construction of a diverting ileostomy. He was discharged on September 2, 2004. Claimant missed work for 4 to 6 months. Ongoing complaints included cramping and diaherra. Claimant was embarrassed to talk about the condition.
10. About 2004 Claimant was diagnosed with diabetes. Claimant's energy level decreased after abdominal surgery, and he could barely make it to work. Since 2005 Claimant has taken insulin, pills, and used diet to control his diabetes. Complaints include tingling and pain in his feet and hands, loss of grip strength, numbness in his fingers and feet. Diabetes affected Claimant at work and caused him to miss work.
11. Five years before Claimant left work, he occasionally took medication for depression as a result of his health issues.
12. Before October 9, 2009, Claimant had no permanent work restrictions related to his preexisting conditions. He successfully performed all aspects of his physical job leading up to October 2009. Claimant did not receive complaints from his supervisors about the quality of his work prior to October 9, 2009.
13. Claimant worked for Employer from July 11, 1983 until May 2010. The company made ice cream novelties. Claimant worked in a warehouse freezer and stacked products all day with the use of a forklift. The temperature in the warehouse was 30 to 35 degrees to below zero. Claimant worked in the freezer and operated a stand-up forklift for 27 years.

The work accident

14. On October 9, 2009, Claimant was closing the garage door while standing on the forklift. The forklift moved into reverse and crushed him against the door. He became trapped between the fork lift and the garage door. Claimant injured his left ribs and left shoulder.
15. Claimant was hospitalized at St. John's Hospital until October 15, 2009. He received oxygen, pain management, and learned how to use a walker because he had difficulty walking. He missed six months from work.

16. After Claimant's release from the hospital, he treated with Orthopedic and Sports Medicine from November 2009 to May 2010.
17. Claimant returned to work for five weeks, and Employer honored Dr. Cantrell's restrictions. However, Claimant voluntarily left work at age 47 because he had difficulty performing his duties because of problems with his ribs, left ankle, knees, arms, feet, and back.
18. Claimant settled the case with Employer for 15% of BAW for the ribs and 5% of the left shoulder. The case was settled on March 13, 2010.
19. Current complaints from the primary injury include: pain with breathing and his shoulder is aggravated when he twists or lifts.
20. Claimant reviewed a list of medications that were reviewed in Exhibit L. He took all the medications in May 2010 when he left Employer, except for morphine. Sertraline is a medication prescribed by the VA Hospital after he stopped working for Employer. It is used to treat depression.
21. Claimant has not worked since he left Employer, and has no pension. After Claimant stopped working he did not apply for work anywhere else. When asked why he did not look for work, Claimant asked "What can I do?"
22. Claimant applied for social security disability but has not been approved. He has no plans to inquire about vocational retraining.

Medical treatment for the primary injury

23. Claimant treated at **St. John's Mercy Medical Center** for multiple left broken ribs and a lung contusion. He was hospitalized until October 15, 2009.
24. **Russell C. Cantrell, M.D.** provided follow-up treatment, and diagnosed left shoulder tendinosis, left sided rib fractures, and a lung contusion.
25. Dr. Cantrell recommended a single-point cane, non-narcotic medication, bone stimulator, work conditioning, a functional capacity evaluation, and physical therapy. A CT scan of the chest revealed delayed fracture union in January 2010. An MRI of the left shoulder show supraspinatus tendinosis.
26. On April 7, 2010, Dr. Cantrell restricted Claimant to lifting less than 30 pounds, and opined he could drive and operate a forklift. Dr. Cantrell scheduled Claimant to return on May 3, 2010 for a follow up appointment. He was 48 years old at the time.

Expert medical evidence

27. **Thomas F. Musich, M.D.**, a medical doctor, examined Claimant on October 20, 2010, and wrote a report at the request of Claimant's attorney. Dr. Musich diagnosed the following work related medical conditions from the October 9, 2009 work accident: Chest wall contusions and left shoulder supraspinatus tendinosis.
28. Dr. Musich rated 40% PPD of the body for chest trauma, and 15% PPD of the left shoulder for the work injuries.
29. Dr. Musich rated the following preexisting disabilities: a) 30% of the left ankle, b) 25% of the right elbow, c) 25% of the body for the lumbar spine, 10% of the body for colon polyps, and 30% of the body for poorly-controlled insulin dependent diabetes.
30. Furthermore, the combined injuries produce more disability than their simple sum and are a hindrance to routine activities.
31. Dr. Musich opined Claimant may attempt to return to the open labor market with the following restrictions: no lifting more than 30 pounds, no climbing ladders, no repetitive stair climbing, and no operation of any commercial motor vehicles.
32. Dr. Musich opined a vocational opinion may be required, and deferred to a vocational expert about Claimant's ability to maintain full time employment.

Expert vocational evidence

33. **Mr. James Israel**, a vocational rehabilitation counselor, testified at the request of Claimant's attorney. Mr. Israel interviewed Claimant on March 15, 2011, reviewed medical records and reports, and submitted a written opinion.
34. Mr. Israel administered the Wide Range Achievement Test 3 (WRAT-3), where Claimant scored at the 10th grade level in reading, fourth grade in spelling, and fifth grade in arithmetic. Mr. Israel concluded Claimant's academic skills were sufficient for unskilled or semi-skilled positions.
35. However, Claimant's test scores on the Purdue Pegboard Test ("PPT") were so low; Mr. Israel described it as "noncompetitive across the board." The test compared Claimant's hand dexterity with other male hourly workers with similar skills. Mr. Israel opined Claimant could expect problems performing work or vocational training that require average academic skills due to his age, 48, lack of transferable skills, disabilities, and low scores on the PPT.
36. Also, Mr. Israel found no jobs in the sedentary to light range utilizing the OASYS job analysis because operating a vehicle started in the medium level.
37. Mr. Israel opined Claimant could not continue to work in the warehouse based on work restrictions, Claimant's profile, and medical records. Further, Claimant had no

transferable skills that could be applied to sedentary or light work because vehicle operation starts at the medium level. Also, Claimant had no vocational skills that can transfer from his labor intense work to other jobs within his restrictions.

38. Mr. Israel concluded Claimant could only work in the sedentary or light level despite functional capacity results that placed him in the medium level. The U.S. Department of Labor defined medium employment as occasional lifting to 50 pounds, frequent lifting to 25. However, both Drs. Cantrell and Musich limited Claimant's lifting to 30 pounds.
39. Mr. Israel predicted Claimant would be challenged to "locate, apply, adapt to, and maintain a suitable job," because employers would chose "work ready" applicants over Claimant. Based on the primary and preexisting physical conditions, Mr. Israel found Claimant "vocationally unprepared and substantially disadvantaged to compete in the open labor market." Mr. Israel observed Claimant stand and sit throughout the interview.
40. Mr. Israel conceded Claimant was not precluded from all light and sedentary jobs. But Claimant's work experience far exceeds his current medical restrictions. Also, limited education and dexterity, preexisting medical conditions, and lack of transferable skills in a struggling economy, present a "disconnect" between marketing his abilities, securing an offer, and sustaining work.
41. Mr. Israel opined vocational rehabilitation assessment and job retraining were mandatory to improve Claimant's chances for re-entry into the work force.

ADDITIONAL FINDINGS OF FACT and RULINGS OF LAW

After careful consideration of the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find Claimant is not PTD for the reasons stated below.

Claimant asserts he is PTD due to a combination of his primary and preexisting medical conditions. SIF contends Claimant failed to meet his burden to show he is PTD because he did not obtain physician certification that he is PTD, as required by Section 287.190.6(2), under strict construction. In the alternative, Claimant's expert suggests the possibility of retraining, therefore he cannot be PTD.

The employee has the burden to prove by a preponderance of credible evidence all material elements of his claim, including SIF liability. *Meilves v. Morris*, 422 S.W.2d 335, 339 (Mo.1968). A claimant in a worker's 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. 2008). Section 287.220 RSMo, pertaining to SIF liability, provides the [fact finder] must make the following findings regarding disability:

- 1) There must be a determination that the employee has permanent disability resulting from the last injury alone, and
- 2) There was a pre-existing permanent disability that was serious enough to constitute a

hindrance or obstacle to employment or re-employment which combines with the disability from the compensable work related injury to create a greater overall disability to the employee's body as a whole than the simple sum of the disability from the work injury and the pre-existing disability considered separately, and

For permanent total disability,

- 3) There must be a determination that all of the injuries and conditions combined, including the last injury, have resulted in the employee being permanently and totally disabled.

However, in deciding whether SIF has any liability, the first determination is the degree of disability from the last injury considered alone. *Hughey v. Chrysler Corp.*, 34 S.W.3d 845, 847 (Mo.App. 2000). Accordingly, pre-existing disabilities are irrelevant until the employer's liability for the last injury is determined. *Id.*

Claimant sustained disability from the last injury

I find Claimant to be generally credible. Claimant must prove the nature and extent of disability by a reasonable degree of certainty. *Downing v. Willamette Industries, Inc*, 895 S.W.2d 650, 655 (Mo. Ct. App. 1995).³ I find Claimant sustained disability from the October 9, 2009 accident. The rib fractures were slow to heal and residual complaints include pain with breathing and shoulder discomfort when he twists or lifts. Dr. Musich rated 40% of the body for the rib fractures and 15% of the left shoulder. I find Claimant sustained the following disability from the primary injury: 15% PPD of the body for multiple rib fractures, and 5% PPD of the left shoulder.

Claimant's preexisting disabilities were a hindrance and obstacle

I find Claimant's pre-existing disabilities were serious enough to constitute a hindrance or obstacle to his employment or re-employment. Prior to October 2009, Claimant had a stable work history; however he missed a considerable amount of time from work due to surgeries to his left ankle, low back, right elbow and abdomen. He was medically discharged from the military because of his left ankle. He also suffered the effects of uncontrolled diabetes. At work, he dropped products because of hand numbness, tingling, and pain.

Claimant is not PTD

Section 287.020.7 RSM. Defines "total disability" as the inability to return to any employment, and not merely the inability to return to employment in which the employee was engaged at the time of the last work related injury. See *Fletcher v. Second Injury Fund*, 922 S.W.2d 402 (Mo. App. 1996). Any employment means any reasonable or normal employment or occupation; it is not necessary that the employee be completely inactive or inert in order to meet this statutory definition. *Kowalski v. M-G Metals and Sales, Inc.* 631 S.W.2d 919, 922 (Mo. App. 1982) (*Citations omitted*). Even though a claimant might be able to work for brief periods

³ Several cases herein were overruled by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo banc 2003) on grounds other than those for which the cases are cited. No further reference will be made to *Hampton* in this award.

of time, or on a part-time basis it does not establish they are employable. *Grgic v. P&G Construction*, 904 S.W.2d 464, 466 (Mo. App. 1995). The central question is whether any employer in the usual course of business could reasonably be expected to employ claimant in his present physical condition. *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W.2d 173, 178 (Mo.App. 1995).

I find SIF's argument is not persuasive that Claimant is not PTD because Dr. Musich did not certify the disability. [Section 287.190.6(2)] does not describe or define "demonstrated" or "certified." Nor does the subsection provide a sanction for a worker's failure to produce evidence that a physician has so demonstrated or certified. "[T]he use of 'shall' in a statute does not inevitably render compliance mandatory, when the legislature has not prescribed a sanction for noncompliance." *State ex rel. Fischer v. Brooks*, 150 S.W.3d 284 (Mo. banc 2004). Depending on context, "shall" may prescribe a mandatory duty, as in *State v. Teer*, 275 S.W.3d 258 (Mo. banc 2009), but it may be considered only directory. *Id.* Section 287 contains no sanctions for failure to comply with Section 287.190.6(2), therefore, I find the provision requiring permanent disability be demonstrated and certified by a physician is directory.

However, I find Claimant is not PTD based on the opinions of Drs. Cantrell and Musich, and Mr. Israel regarding Claimant's ability to compete in the open labor market.

Dr. Cantrell returned Claimant to work on the forklift in April 2010. At that time the medical evidence shows Claimant had made "excellent" progress with his left shoulder and ribs, and returned to work without significant complaint. His pain levels had decreased. Functional capacity results showed he could lift 40 pounds with valid effort. Work required Claimant to lift up to 60 pounds frequently, but Dr. Musich restricted lifting to less than 30 pounds, and instructed him to follow up for reevaluation on May 3rd. However the record contains no follow up visit.

Five months later, Dr. Musich rated disability for Claimant's preexisting disabilities and opined Claimant "may attempt to return to work in the open job market with no lifting more than 30 pounds, no climbing ladders, or repetitive stair climbing or operating commercial motor vehicles."

Claimant provided consistent testimony to Dr. Musich and at trial, that he left work in May 2010 because he was unable to perform his duties due to pain in his left shoulder and chest wall. However, the record contains no evidence he kept the May 3rd appointment or reported the change in condition to Dr. Cantrell. It seems reasonable Claimant would have followed up with Dr. Cantrell on May 3rd if he was having problems, instead of quitting his job with no medical follow up.

Furthermore, Dr. Musich rated the left shoulder, multiple rib fractures, left ankle, right elbow, low back, abdominal surgery, and uncontrolled diabetes, and found the combined disabilities were greater than their simple sum and created a chronic hindrance to daily living. This opinion falls short of permanent total disability opinion, and suggests the fact finder should apply a loading factor to PPD benefits.

Both of Claimant's experts recommended vocational rehabilitation. First, Dr. Musich recommended vocational rehabilitation for Claimant to determine whether or not he is capable of obtaining and maintaining full time employment in the open labor market given his present and past disabilities. But Dr. Musich deferred to a vocational expert about Claimant's employability.

Second, Mr. Israel declined to opine that Claimant is PTD, because in his opinion, it is a medical opinion. He concluded Claimant could not return to work in the warehouse, and did not have transferable skills to other occupations. However, he concluded Claimant could perform rudimentary sedentary and light work, with some difficulties. Based on Claimant's primary and preexisting injuries, education, lack of transferable skills, job history, and age, Mr. Israel determined Claimant was "unprepared to adapt to viable alternative re-employment, without state vocational rehabilitation assessment, and possible alternative job retraining to "optimize his long term prospects for suitable alternative re-employment in the labor market." Given the recommendation for vocational assessment, I find Mr. Israel does not conclude Claimant's inability to work is a permanent condition.

Claimant testified he returned to work and Employer accommodated his restrictions. His testimony is not credible that he stopped work after six weeks because he could no longer perform his duties because of pain. Claimant told Dr. Musich he stopped working because of pain to his chest and left shoulder. At the hearing, he testified he stopped working because of pain to his chest, left shoulder, left ankle, knees, abdomen, and back. But the record contains no evidence Claimant followed up with Dr. Cantrell to report the change in his condition between May 2010 and his October appointment with Dr. Musich.

During the hearing Claimant made audible sounds as if he was in pain. When asked if he needed a break he said "no, this is a daily problem with my colon."

Based on credible testimony by Drs. Cantrell and Musich, and some credible testimony by Claimant, medical reports, records, age, and test scores, and less than credible evidence by Mr. Israel, I find Claimant failed to show he is unable to compete in the open labor market. I find Claimant is not be PTD due to a combination of pre-existing disability to his left ankle, low back, abdomen, right elbow, diabetes, low back and the October 9, 2009 work injury.

Claimant sustained PPD

Once a determination is made that a claimant is not PTD, the inquiry turns to what degree, if any, is an individual permanently partially disabled for purposes of SIF liability. *Leutzinger v. Treasurer of the State of Missouri*, 895 S.W.2d 591, 593 (Mo. App. 1995). Section 287.220.1 RSMo., provides the SIF is triggered in all cases of PPD where there has been previous disability that created a hindrance or obstacle to employment or re-employment, and the primary injury along with the preexisting disability(s) reach a threshold of 50 weeks (12.5%) for a body as a whole injury or 15% of a major extremity. The combination of the primary and the preexisting conditions must produce additional disability greater than the last injury standing alone.

I find Claimant sustained the following preexisting disabilities:

- 1. 22.5% of the left ankle = 34.875 weeks
 - 2. 20% of the right elbow = 42.000 weeks
 - 3. 22.5% of the lumbar spine = 90.000 weeks
 - 4. 7.5% of the abdomen = 30.000 weeks
 - 5. 25% of the body for diabetes = 100.000 weeks
- Total preexisting weeks: 296.875**

I previously found Claimant sustained 15% of the body for multiple rib fractures, and Claimant’s preexisting disabilities created a hindrance or obstacle to employment or reemployment. I further find the primary and preexisting disabilities combine to create more disability than their simple sum, and a 10% loading factor should be applied. I find the primary injury to Claimant’s left shoulder totaling 5% does not reach the threshold to trigger SIF liability.

The credible evidence established that the last injury, combined with the pre-existing permanent partial disabilities, cause 10% greater overall disability than the independent sum of the disabilities.

The Second Injury Fund liability is calculated as follows: 60 weeks for last injury + 296.875 weeks for preexisting injuries = 356.875 weeks x 10% = 35.6875 weeks of overall greater disability.

CONCLUSION

SIF is liable for permanent partial disability benefits as outlined in this award. The award is subject to a lien of 25% in favor of Claimant’s attorney for legal services rendered.

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation