

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

Injury No.: 03-145807

Employee: William Michael
Employer: Ameren UE (Settled)
Insurer: Corporate Claims Management (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: May 1, 2003
Place and County of Accident: St. Louis, 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. 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 20, 2007. The award and decision of Administrative Law Judge Cornelius T. Lane, issued February 20, 2007, 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 20th day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: William Michael

Injury No.: 03-145807

Permanent total disability benefits from Second Injury Fund:
weekly differential (\$309.20) payable by SIF for 16 weeks beginning
May 1, 2003, and thereafter \$649.32 per week for Claimant's lifetime

Indeterminate

TOTAL:

INDETERMINATE

23. Future requirements awarded: N/A

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:

Cynthia M. Hennessey

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	William Michael	Injury No.: 03-145807
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Ameren UE (Settled)	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Corporate Claims Management (Settled)	Checked by: CTL:tr

PREFACE

There was a hearing on the above-mentioned matter on January 10, 2007. The Claimant, William Michael, was represented by Attorney Cynthia Hennessey. The Second Injury Fund was represented by Assistant Attorney General Tracey Cordia.

STIPULATIONS

1. Claimant was in the employment of the Employer on May 1, 2003.
2. Claimant sustained an occupational disease to his knee arising out of and in the course of his employment in St. Louis, Missouri.
3. Claimant's average weekly wage was sufficient to be at maximum rates for PPD, TTD, and PTD. The TTD/PTD rate is \$649.32 and PPD rate is \$340.12.

ISSUE

Is the Second Injury Fund liable for permanent total disability?

EXHIBITS

Claimant offered the following exhibits which were admitted into evidence:

- Exhibit A. Deposition of Dr. Volarich.
- Exhibit B. Deposition of James England.
- Exhibit C. Medical Records from Orthopedic Associates.
- Exhibit D. Medical Records from Dr. Ollinger.
- Exhibit E. Medical Records from Missouri Baptist Medical Center.
- Exhibit F. Medical Records from Metropolitan Orthopedics.
- Exhibit G. Medical Records from Dr. Tariq.
- Exhibit H. Medical Records from Boonslick Medical.
- Exhibit I. Medical Records from Allergy Associates.
- Exhibit J. Settlement Stipulation between Claimant and Employer.

The Second Injury Fund offered the following exhibit which was admitted into evidence:

- Exhibit I. Report of Dr. Nogalski.

FINDINGS OF FACT

1. At the time of the hearing, the Claimant was 62 years of age, married, who had a high school education, attended college but did not receive a college degree. Claimant began working for the Employer, UE, in 1964 and as an employee he was a rod man, laborer, clerk, ground man, truck driver, apprentice, journeyman, and repair man. His job required him to climb poles, drive trucks, bend, squat, and kneel.
2. I find that because of the work and the type of work that the Claimant did for the Employer that he injured both knees and this was stipulated to by the parties. Claimant had a left knee partial lateral meniscectomy and debridement of the chondromalacia of the medial femoral condyle in March of 2000.
3. On June 25, 2003, Dr. Haupt performed a right knee lateral meniscectomy on the Claimant.
4. Claimant filed a claim against the Employer for his knee injuries and that case was settled with the Employer for 5% permanent partial disability of each knee.
5. Claimant had a number of preexisting injuries and conditions: a) Claimant injured his knee in high school while playing football; b) In March of 2002, Claimant injured his left shoulder which was operated on by Dr. Haupt for a tear that the Claimant suffered near the humeral head; c) On August 26, 2003, Dr. Ollinger performed a right hand open carpal tunnel release and left open carpal tunnel release on September 9, 2003, and the bilateral carpal tunnel syndrome was work related; d) In the 1980s, Claimant was diagnosed with asthma; e) Claimant suffered a heart attack in 1997 and underwent different medical procedures, one of which was the placement of a stint; f) Prior to the primary injury, Claimant also had tinnitus; g) In 1990, Claimant was diagnosed with a torn rotator cuff as a result of a baseball injury but did not undergo surgery for the torn rotator cuff; and h) Claimant also testified very credibly that he has had problems with his right and left ankles over the years.
6. Dr. Volarich testified very credibly by deposition that the combination of the Claimant's disabilities create a substantially greater disability than the simple sum or total of each separate injury or illness. Dr. Volarich further testified to the ratings of all the prior injuries Claimant has sustained and to the percentage of disability regarding the primary injury.
7. Dr. Volarich testified very credibly that the Claimant is permanently and totally disabled.
8. Mr. James England, a rehabilitation counselor, testified on behalf of the Claimant that, after having reviewed the medical records and interviewing the Claimant, is of the opinion that the Claimant is permanently and totally disabled from a vocational standpoint due to the combination of his preexisting disabilities and those attributed to his primary injury.

RULINGS OF LAW

1. Claimant is permanently and totally disabled and unable to compete in the open labor market as a result of a combination of his preexisting disabilities and primary work injury/occupational disease of May 1, 2003, and

thus the Second Injury Fund is liable for permanent and total disability benefits.

2. The permanent and total disability benefits commence as of May 1, 2003, with credit being given for permanent partial disability paid by the Employer.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation