

AWARD

Employee: Jacob Morris

Injury No.: 08-124143

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Air Hydraulics (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Sentry Insurance (previously settled)

Hearing Date: August 21, 2012

Checked by: KMH

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 1, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis
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 developed carpal tunnel syndrome as a result of repetitive work.
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: left wrist
14. Nature and extent of any permanent disability: 16.5% left wrist
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$7,357.85

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$400.00 for PPD
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

28.875 weeks of permanent partial disability from Employer	(previously paid)
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22. Second Injury Fund liability: Yes

7.89 weeks of permanent partial disability from Second Injury Fund	\$3,156.00
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TOTAL:	\$3,156.00
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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

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jacob Morris

Injury No.: 08-124143

Dependents: n/a

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Compensation**

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

Additional Party: SIF (only)

Insurer: Sentry Insurance (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter August 21, 2012. Jacob Morris (Claimant) was represented by attorney Sam Eveland. The Second Injury Fund (SIF) was represented by Assistant Attorney General Mike Finneran. Air Hydraulics (Employer) and Claimant previously settled the primary claim in this matter.

STIPULATIONS

1. Claimant developed an occupational injury on October 1, 2008 while in the course and scope of his employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by Sentry Insurance.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to entitle him to a PPD rate of \$400.00.
6. Claimant and Employer entered into a compromise lump sum settlement on March 22, 2012. The settlement was approved by the Division and the Claimant sustained a 16.5% PPD to his left upper extremity at the wrist.
7. Claimant has a prior disability of 12.5% of the lumbar spine.
8. If the prior injury was a hindrance or obstacle to employment and combines with the primary injury to create a greater overall disability, the load factor is 10%.

ISSUES

The parties stipulated the issue to be resolved by trial is the nature and extent of SIF liability.

FINDINGS OF FACT

Based on the competent and substantial evidence, I find:

1. Claimant is a 37 year-old male who worked for Employer from 1997 to 2007 and from January 2008 to August 2009. During his periods of employment, Claimant's duties included welding, servicing air compressor equipment, sales and administrative tasks. In 2009, Claimant became self-employed servicing air compressors. He developed an occupational injury to his left wrist on October 1, 2008. Claimant was diagnosed with left carpal tunnel syndrome. Dr. Henry Ollinger performed surgery to Claimant's wrist on August 19, 2011 and released Claimant from his care at MMI on November 9, 2011. Claimant settled the case with the Employer on March 22, 2012, for 16.5% of the left wrist. He continues to complain of cramping pain and fatigue to his left hand and wrist.
2. Claimant developed back pain in approximately 2000. He has treated with several medical providers, most recently Dr. Daniel Sohn. Dr. Sohn diagnosed Claimant with spondylosis and bilateral facet arthropathy at the L4-5 and L5-S1 levels. He prescribed medication and exercise and has also performed spinal injections and a radiofrequency ablation to Claimant's low back. Claimant continues to experience low back pain approximately two days per week, aggravated by standing and bending over. He occasionally has postponed some service calls, instead performing desk work due to pain.
3. Claimant's medical expert, Dr. Berkin, reviewed the records and examined him on February 15, 2012. He issued a report rating Claimant's disabilities and opined the preexisting disability was a hindrance or obstacle to employment and the combination of disabilities is greater than their simple sum.
4. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the stipulations of the parties, the competent and substantial evidence presented and the applicable law, I find Claimant established a right to recover PPD benefits from the SIF.

The SIF argues they have no liability because Claimant's primary case involved an occupational disease rather than an accident. Section 287.220.1 (RSMo 2005) provides compensation from the SIF for the combination of certain preexisting disabilities with a subsequent "compensable injury" that results in additional permanent disability meeting the statutory thresholds. The SIF asserts an occupational disease does not qualify as a subsequent "compensable injury" because the definition of "injury" in Section 287.020.3 excludes occupational disease.

287.020.3(5) defines “injury” and states the term “shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form”. This is not an absolute exclusion of occupational diseases from SIF liability. The law provides for injuries by accident and for injuries by occupational disease. Section 287.067.2 provides “An injury by occupational disease is compensable...”. 287.067.3 provides “An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter.” The chapter specifically provides occupational diseases are injuries. Claimant’s primary injury by occupational disease triggers SIF liability.

The parties stipulated to Claimant’s primary and prior disabilities. These disabilities total 78.89 weeks of disability. I find the prior injury created a hindrance or obstacle to Claimant’s employment and combines with the primary injury to create a greater overall disability.

The parties stipulated to a 10% load factor. Based upon the stipulations of the parties, the SIF is liable for 7.89 weeks of disability. At Claimant’s compensation rate of \$400.00 per week, the SIF is hereby ordered to pay \$3,156.00 in compensation.

Made by: _____
KATHLEEN M. HART
Administrative Law Judge
Division of Workers’ Compensation