

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

Injury No.: 05-075487

Employee: Azim Mutapcic
Employer: St. Louis Cold Drawn (Settled)
Insurer: Missouri Employers Mutual Insurance (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: August 1, 2005
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 June 4, 2008, and awards no compensation against the Second Injury Fund in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued June 4, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Azim Mutapcic Injury No.: 05-075487
Dependents: N/A Before the
Employer: St. Louis Cold Drawn (previously settled) **Division of Workers'**
Compensation
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Missouri Employers Mutual Insurance
(previously settled)
Hearing Date: May 21, 2008 Checked by: CW:td

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
 - 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
 - Date of accident or onset of occupational disease: August 1, 2005 primary case settled
 - 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
 - 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 while using a pry bar to move a large piece of metal injured his low back
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Primary low back injury

- Nature and extent of any permanent disability: 25% BAW with regard to the primary injury

15. Compensation paid to-date for temporary disability: \$1,673.14

16. Value necessary medical aid paid to date by employer/insurer? \$15,332.46

Employee: Azim Mutapcic

Injury No.: 05-075487

17. Value necessary medical aid not furnished by employer/insurer? None

- Employee's average weekly wages: N/A

19. Weekly compensation rate: \$365.28/\$365.28

20. Method wages computation: Consent

COMPENSATION PAYABLE

21. Amount of compensation payable: with regards to the primary injury of August 1, 2005 25% BAW referable to the low back \$36,508.00

22. Second Injury Fund liability: None

Total: \$36,508.00

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 _____ of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Date: _____

Made by: _____

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

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Azim Mutapcic	Injury No.: 05-075487
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	St. Louis Cold Drawn (previously settled)	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Missouri Employers Mutual insurance (previously settled)	Checked by: CW:td

PREFACE

A hearing was held on May 21, 2008, in the above mention matter. The hearing was against the Second Injury Fund only. Claimant, Azim Mutapcic, was represented by Attorney Frank J. Niesen, Jr. The Second Injury Fund was represented by Assistant Attorney General Laura Wagner.

STPULATIONS

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- Claimant's primary injury was settled for 25% of the body as a whole referable to the low back.
- PTD/TTD was \$365.28 per week.

ISSUE

Nature and extent of any liability of the Second Injury Fund.

EXHIBITS

Claimant offered the following exhibits and were accepted into evidence as follows:

Claimant's Exhibit A:	Deposition Dr. David T. Volarich D.O.
Claimant's Exhibit B:	Stipulation of Compromise Settlement of primary case 05-075487

FINDINGS OF FACT

Based upon the substantial and credible evidence, I find:

- The Claimant, Asim Mutapcic, at the time of the hearing was 37 years of age, a Bosnian who came to St. Louis from Croatia in the year 2002. Claimant testified that he had 11 years of education in Yugoslavia and before coming to the United States he worked as a laborer in Yugoslavia. Claimant also served in the Bosnian War for a couple of years.

- Claimant testified with the aide of a Bosnian language translator, Edita Cehic.

- Claimant has worked as a laborer for St. Louis Cold Drawn, the Employer, since 2002. His work entailed lifting 70 pound steel coils and putting them into a machine. Claimant testified that he worked at the St. Louis Cold Drawn 5 days per week, 8-10 hours per day.

- Claimant suffered a preexisting injury to his right wrist. At eight years of age, he fell out of a tree, fracturing his right wrist. He received medical treatment in Serbia, where he was placed in a cast, and wore it for approximately one month. After the cast was removed from the Claimant he received no further medical treatment for his wrist while in Serbia or here in the United States.

- Claimant testified while working he does have some pain in his wrist when lifting, bending, and with weather changes.

- Dr. Volarich evaluated the Claimant for his primary case, that settled for 25% BAW referable to the low back. The doctor found the Claimant has 25% permanent partial disability of the right upper extremity at the distal forearm because of the fractured wrist in 1979. Dr. Volarich testified the x-rays showed the Claimant's fracture of the right wrist was well healed. He noted the Claimant had no additional treatment once the cast was removed from his right wrist in 1979.

- Claimant, after fracturing his wrist, was put in a cast for a month and once the cast was removed he has not had any medical treatment for the right wrist in 29 years. Claimant's work history reflects he has never lost any time from work or that the fracture of his wrist had any hindrance in doing his job.

RULINGS OF LAW

- To recover from the Second Injury Fund, Claimant has the burden to prove that he or she had a preexisting PPD of such seriousness as to constitute a hindrance or obstacle to employment in order to recover permanent disability compensation from the Second Injury Fund. See Section 287.220.1; Motton v. Outsource Intern., 77 S.W.3d 669, 673 (Mo.App. E.D.2002).
- Section 287.220.1 Missouri Revised Statute also establishes a minimum threshold requirements of preexisting disability 50 weeks body as a whole injury and 15% of major extremity injury.
- I find the Claimant's preexisting injury of the right wrist is below threshold and it is not a hindrance or obstacle to Claimant's employment. Therefore, Claimant's request for benefits from the Second Injury Fund is denied.

Date: _____

Made by: _____

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

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation