

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

Injury No.: 06-059192

Employee: Glen Nickelson
Employer: Washington County
Insurer: Missouri Association of Counties
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.¹ We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the June 13, 2011, award and decision of the administrative law judge (ALJ). We adopt the findings, conclusions, decision, and award of the ALJ to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

We find that the ALJ erred in concluding that employer waived its right to choose employee's medical providers for his future medical care.

In pertinent part, § 287.140.1 states that 'the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.' ... As a general rule, the employer is given control over the selection of the employee's medical providers. *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 85 (Mo. App. 1995). This principle, however, is subject to an important caveat. If the employer is on notice that the employee needs treatment and fails or refuses to provide it, the employee may select his or her own medical provider and hold the employer liable for the costs thereof. *Jones v. Dan D. Services, L.L.C.*, 91 S.W.3d 214, 220-21 (Mo. App. 2002); *Sheehan v. Springfield Seed and Floral, Inc.*, 733 S.W.2d 795, 798 (Mo. App. 1987); *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 880 (Mo. App. 1984).

Martin v. Town & Country Supermarkets, 220 S.W.3d 836, 848 (Mo. App. 2007).

In this case, employee requested additional medical treatment based on the opinions of Dr. Volarich. Employer refused to provide said treatment to employee, as employee's treating physicians had previously released him from their care. In accordance with the provisions listed above, employee was then free to select his own medical provider and attempt to hold employer liable for the costs of that specific treatment. In essence, employer was waiving its right to select employee's medical provider as to that specific

¹ Statutory references are to the Revised Statutes of Missouri 2005 unless otherwise indicated.

Employee: Glen Nickelson

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treatment. However, going forward, employer maintains its right to direct all of employee's medical treatment.

Based upon the aforementioned, we agree with the ALJ's award of future medical care, but find that the ALJ erred in concluding that employer waived its right to select employee's medical providers for employee's future medical care. We find that employer shall be in control of the selection of employee's medical providers.

The award and decision of Administrative Law Judge Carl Strange, as modified herein, is attached and incorporated by 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 23rd day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Glen Nickelson

Injury No. 06-059192

Dependents: N/A

Employer: Washington County

Additional Party: Second Injury Fund

Insurer: Missouri Association of Counties
(TPA: Gallagher Bassett Services)

Hearing Date: February 7, 2011

Checked by: CS/rf

SUMMARY OF FINDINGS

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? May 12, 2006.
5. State location where accident occurred or occupational disease contracted: Washington 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 happened or occupational disease contracted: Employee was carrying a dump truck spring with a coworker when the coworker dropped the spring which caused injury to Employee's neck.

12. Did accident or occupational disease cause death? N/A
13. Parts of body injured by accident or occupational disease: Neck.
14. Nature and extent of any permanent disability: (See Findings).
15. Compensation paid to date for temporary total disability: \$7,333.50
16. Value necessary medical aid paid to date by employer-insurer: \$45,905.44
17. Value necessary medical aid not furnished by employer-insurer: Denied (See Findings).
18. Employee's average weekly wage: \$589.25
19. Weekly compensation rate:

\$392.83 for temporary total disability and permanent total disability; and
\$365.08 for permanent partial disability.
20. Method wages computation: By Agreement.
21. Amount of compensation payable:
 - a. Employee awarded permanent partial disability from the employer-insurer in the amount of \$ (See Findings).
 - b. Employee awarded permanent total disability benefits from Second Injury Fund at a rate of \$27.75 per week for the period of March 12, 2008 to February 9, 2010 and then at a rate of \$392.83 per week beginning February 10, 2010 (See Findings).
22. Second Injury Fund liability: Yes (See Findings).
23. Future requirements awarded: Employer-insurer directed to pay future medical aid pursuant to Section 287.140 RSMo (See Findings).

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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: Kenneth Seufert

FINDINGS OF FACT AND RULINGS OF LAW

On February 7, 2011, the employee, Glen Nickelson, appeared in person and by his attorney, Kenneth Seufert, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, David Weidner. The Second Injury Fund was represented at the hearing by Assistant Attorney General Jonathan Linter. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about May 12, 2006, Washington County was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was insured by Missouri Association of Counties with a third party administrator of Gallagher Bassett Services.
2. On or about May 12, 2006, the employee was an employee of Washington County and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. On or about May 12, 2006, the employee sustained an accident during the course of his employment.
4. The employer had notice of employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was \$589.25, his rate for temporary total disability and permanent total disability is \$392.83, and his rate for permanent partial disability is \$365.08.
7. The employee's injury is medically causally related to the work injury on or about May 12, 2006.
8. The employer has furnished \$45,905.44 in medical aid to employee.
9. The employer has paid temporary total disability benefits at a rate of \$392.83 per week for a total of \$7,333.50.
10. The employee reached maximum medical improvement on March 11, 2008, so employer and Second Injury Fund liability, if any, for permanent total disability benefits will begin on March 12, 2008.

ISSUES:

1. Previously Incurred Medical Aid.
2. Future Medical Aid.
3. Nature and Extent of Disability.
4. Liability of the Second Injury Fund.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Report of Dr. David Volarich dated July 6, 2009;
- B. Curriculum Vitae of Dr. David Volarich;
- C. Letter to Dr. David Volarich from Employee Attorney;
- D. Claim for Compensations from 04-120274, 04-076814, 04-136988, and 06-059192 along with Reports of Injury from 04-076814 and 04-136988;
- E. Medical Records from 04-120274, 04-076814, 04-136988, and 06-059192;
- F. Medical Records of St. Louis University Hospital related to 2000 amputation of the left ring finger;
- G. Medical Records of St. John's Mercy Medical Center related to 1989 injuries to head, neck, and right shoulder;
- H. Records of the Division of Workers' Compensation;
- I. Pharmacy Records;
- J. Work History;
- K. Education History;
- L. Report of James M. England of November 16, 2009;
- M. Curriculum Vitae of James M. England;
- N. Deposition of Dr. David Volarich;
- O. Deposition of James M. England;
- P. Prescription Printout from Pharmax Pharmacy; and
- Q. Correspondence between Parties concerning Pain Management and Further Treatment.

Employer-Insurer's Exhibits

- 1. Deposition of Dr. James Coyle;
- 2. Deposition of Dr. David Fagan; and
- 3. Deposition of Dr. Anthony Sudekum.

FINDINGS OF FACT:

Based on the testimony of Glen Nickelson ("Employee") and the medical records and reports admitted, I find as follows:

At the time of the hearing, Employee was 60 years old and currently living in Washington County, Missouri. In 1970, Employee graduated from Potosi High School and has only received on the job training since that time (Employee Exhibit K). Prior to beginning work for Washington County, Missouri ("Employer") in 1993, Employee worked making meat hooks, assembling steering columns, performed maintenance work, operated heavy equipment, welded, worked as a foreman, drove a truck, and ran a drag line down the river (Employee Exhibit J). On May 12, 2006, Employee was carrying a dump truck spring with a coworker when the coworker dropped the spring which caused injury to Employee's neck. On October 12, 2007, Dr. Coyle

performed an anterior cervical decompression at C5-6 with partial vertebrectomy. On March 11, 2008, Dr. Coyle placed permanent restrictions on the Employee of no overhead work and no lifting greater than 30 pounds and opined that Employee suffered a 15% permanent partial disability of the body as a whole for his cervical spine (Employee Exhibit E)(Employer-Insurer Exhibit 1). Dr. David Volarich examined Employee and opined that Employee suffered a 35% permanent partial disability of the body as a whole referable to his cervical spine (Employee Exhibits A & N).

Prior to his primary injury of May 12, 2006, Employee had pre-existing injuries to his left wrist, right wrist, left hand, neck, low back, and right shoulder. On July 26, 2004, Employee underwent a nerve conduction study that indicated he had bilateral carpal tunnel syndrome and bilateral ulnar tunnel syndrome (Employee Exhibit E). On February 15, 2005, Dr. Sudekum performed a right open carpal tunnel release and a right open ulnar tunnel release on Employee. On March 1, 2005, Dr. Sudekum performed a left open carpal tunnel release and a left ulnar tunnel release on Employee. In 1989, Employee was in a crane accident and injured his neck, low back and right shoulder (Employee Exhibit G). Employee settled his claim against the employer-insurer for 10% body as a whole referable to his neck and head along with 6% of his right shoulder in 89-061684 (Employee Exhibit H). On August 3, 2004, 2004, Employee was removing a heavy transmission that slipped and injured his right shoulder. On June 29, 2005, Dr. David Fagan performed an arthroscopy of Employee's right shoulder with debridement of subscapularis tendon, open rotator cuff repair and open Mumford procedure (Employee Exhibit E). On February 1, 2006, Dr. Fagan released Employee to full duty and opined that he suffered a 12% permanent partial disability at the level of the shoulder (Employee Exhibit E)(Employer-Insurer Exhibit 2). On August 3, 2004, Employee was in a motor vehicle accident which caused a central disc bulge at L3-4, a right paracentral focal disc protrusion and bulge at L4-5, and a disc bulge at L5-S1 (Employee Exhibit E). In 2000, Employee suffered a degloving injury to his left ring finger that resulted in a complete amputation of his left ring finger at the metacarpal phalangeal joint (Employee Exhibit F). Employee settled his claim against the employer-insurer for 110% of his left ring finger in 00-160620 (Employee Exhibit H). Dr. David Volarich examined Employee and opined that prior to the primary injury in this case that Employee had a 40% permanent partial disability of the right upper extremity and left upper extremity at the level of the wrist, a 20% permanent partial disability of the left hand, a 15% permanent partial disability of the body as a whole referable to his neck, a 20% permanent partial disability of the body as a whole referable to right upper extremity at the shoulder for the 1989 injured shoulder, a 35% permanent partial disability of the right upper extremity at the level of the shoulder for the 2004 injured shoulder, and a 15% permanent partial disability of the body as a whole referable to his lumbosacral spine for the 1989 injured back, and a 25% permanent partial disability of the body as a whole referable to his lumbosacral spine for the 2004 injured back (Employee Exhibits A & N).

In his report, Dr. Volarich further noted that "It is my opinion that Mr. Nickelson is unable to engage in any substantial gainful activity nor can he be expected to perform in an ongoing working capacity in the future. It is my opinion that he cannot be reasonably expected to perform in an ongoing basis 8 hours per day, 5 days per week throughout the work year. It is also my opinion that he is unable to continue in his line of employment that he last held as a heavy equipment mechanic for Washington County nor can he be expected to work on a full time

basis in a similar job. Based on my medical assessment alone, it is my opinion that Mr. Nickelson is permanently and totally disabled as a direct result of the work related injuries of up to 7/26/04, 7/28/04, 8/3/04, and 5/12/06 in combination with his preexisting medical conditions. I note that he is 58 years old (advanced age), has an education limited to graduation from high school, has worked labor type jobs his entire work career, has been unable to get back to work since 10/07 and has received social security disability benefits.” (Employee Exhibit A).

On November 16, 2009, James England, a vocational rehabilitation counselor, evaluated the employee and opined that considering the Employee’s problems that an employer in the normal course of business would not consider actually hiring Employee and the Employee could not sustain work activity in the long run. Further, Mr. England opined that taking into consideration Employee’s overall medical problems and day-to-day functioning that Employee is likely to remain totally disabled from a vocational standpoint (Employee Exhibit L).

At the time of the hearing, Employee continued to have problems with his neck that included decreased range of motion, pain, soreness, and numbness and has not worked since Employer terminated him. In his report, Dr. Volarich opined that Employee in order to maintain his current state, required ongoing care for his pain syndrome using modalities including but not limited to narcotics and non-narcotic medications, muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints. Further, Dr. Volarich opined that Employee would benefit from treatments at a pain clinic because of his ongoing cervical and lumbar pain syndromes including epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units, and ongoing therapy with oral medications for his chronic pain syndrome. Although no additional surgeries are indicated presently, Dr. Volarich noted that there was always the potential that the orthopedic fixating hardware placed in the neck might become infected, loosen or fail and would need to be removed or replaced (Employee Exhibit A). At the time of his deposition, Dr. Volarich further discussed the need for future medical treatment and specifically attributed the need for future medical treatment to Employee’s injuries in 04-120274, 04-076814, 04-136988, and 06-059192 (Employee Exhibit N, Deposition Pages 39-41).

APPLICABLE LAW:

- Under Section 287.140.1 “the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury”. Further, the employer is given the right to select the authorized treating physician. Subsection 1 also provides that the employee has the right to select his own physician at his own expense. The employer, however, may waive its right to select the treating physician by failing or neglecting to provide necessary medical aid. *Emert v Ford Motor Company*, 863 S.W. 2d 629 (Mo.App. 1993); *Shores v General Motors Corporation*, 842 S.W. 2d 929 (Mo.App.1992) and *Hendricks v Motor Freight*, 520 S.W. 2d 702, 710 (Mo.App.1978).
- In *Martin v Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. 1989), the Court held that when the employee testified that her visits to the hospital and various doctors were the product of her fall and that the bills she received were the result of those visits, a

sufficient factual basis exists for the commission to award compensation when the bills are offered into evidence and they relate to the professional services rendered as shown by the medical records in evidence. However, the employer, of course, may challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. See also *Metcalf v Castle Studios*, 946 S.W.2d 282, 287 (Mo.App. W.D. 1997)

- The standard of proof for entitlement to an allowance for future medical aid cannot be met simply by offering testimony that it is “possible” that the claimant will need future medical treatment. *Modlin v Sunmark, Inc.*, 699 S.W. 2d 5, 7 (Mo.App.1995). The cases establish, however, that it is not necessary for the claimant to present “conclusive evidence” of the need for future medical treatment. *Sifferman v Sears Roebuck and Company*, 906 S.W. 2d 823, 838 (Mo. App.1995). To the contrary, numerous cases have made it clear that in order to meet their burden, claimants are required to show by a “reasonable probability” that they will need future medical treatment. *Dean v St. Lukes Hospital*, 936 S.W. 2d 601 (Mo.App.1997). In addition, employees must establish through competent medical evidence that the medical care requested, “flows from the accident” before the employer is responsible. *Landers v Chrysler Corporation*, 963 S.W. 2d 275, (Mo.App.1997).
- The test for finding the Second Injury Fund liable for permanent total disability is set forth in Section 287.220.1 RSMo., as follows:

If the previous disability or disabilities, whether from compensable injuries or otherwise, and the last injury together result in permanent total disability, the minimum standards under this subsection for a body as a whole injury or a major extremity shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employee at the time of the last injury is liable is less than compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under Section 287.200 out of a special fund known as the “Second Injury Fund” hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in Section 287.414.
- Section 287.020.7 RSMo. provides as follows:

The term “total disability” as used in this chapter shall mean the inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.
- The phrase “the inability to return to any employment” has been interpreted as the inability of the employee to perform the usual duties of the employment under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922(Mo.App.1992). The test for permanent total disability is whether, given the employee’s situation and condition, he or she is competent to compete in the open labor market. *Reiner v. Treasurer of the State of Missouri*, 837 S.W.2d 363, 367(Mo.App.1992). Total disability means the “inability to return to any reasonable or

normal employment". *Brown v. Treasurer of the State of Missouri*, 795 S.W.2d 479, 483(Mo.App.1990). An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Id.* The key is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person's physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Reiner* at 365. See also *Thornton v Haas Bakery*, 858 S.W.2d 831,834(Mo.App.1993).

- In *Spencer v SAC Osage Electric Coop, Inc.*, 302 S.W.3d 792 (Mo.App. W.D. 2010) & *Angus v Second Injury Fund*,---S.W.3d--- WL3955449 (Mo.App. W.D. 2010), the court emphasized that without findings of fact to the contrary "[i]n a workers' compensation proceeding the ALJ cannot substitute his or her own opinion for uncontroverted medical evidence regarding causation." *Elliott v. Kansas City, Mo., Sch. Dist.*, 71 S.W.3d 652, 657-58 (Mo. App. W.D. 2002) (citing *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 599 (Mo. banc 1994)).
- In *Daly v. Powell Distributing, Inc. et al.*, ---S.W.3d--- WL3744092 (Mo.App. W.D. 2010), the court emphasized that the Commission has the power to believe or disbelieve an expert's testimony. *Kuykendall v. Gates Rubber Co.*, 207 S.W.3d 694, 711 (Mo. App. S.D. 2006). However, disregarding uncontradicted expert's testimony as to causation must be supported by substantial and competent evidence. *Id.* at 712; *see also Wright v. Sports Assoc., Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003). Moreover, the Commission cannot find there is no causation if the uncontroverted medical evidence is otherwise." *Id.*

RULINGS OF LAW:

Issue 1. Previously Incurred Medical Aid

Employee has requested an order requiring employer-insurer to reimburse him for certain medical expenses incurred for treatment of his work-related injuries. In support of his claim, Employee has offered the medical records and medical bills of Dr. Pairat Vibulakaopun along with the pharmacy bills of Pharmax Pharmacy (Employee Exhibits R & P). After reviewing the records, it is unclear whether or not the treatment and medication was for the work related injuries or other non-related injuries. Consequently, I find that Employee failed to meet his burden of proof that the employer-insurer is liable for the previously incurred medical aid. Accordingly, Employee's claim for previously incurred medical expenses is denied.

Issue 2. Future Medical Aid

Employee is seeking an award ordering employer-insurer to provide him with future medical aid to cure and relieve the effects of his work injury as a result of the May 12, 2006 injury. In his report, Dr. Volarich opined that Employee in order to maintain his current state, required ongoing care for his pain syndrome using modalities including but not limited to narcotics and non-narcotic medications, muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints. Further, Dr. Volarich opined that Employee would benefit from treatments at a pain

clinic because of his ongoing cervical and lumbar pain syndromes including epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units, and ongoing therapy with oral medications for his chronic pain syndrome. Although no additional surgeries are indicated presently, Dr. Volarich noted that there was always the potential that the orthopedic fixating hardware placed in the neck might become infected, loosen or fail and would need to be removed or replaced (Employee Exhibit A). At the time of his deposition, Dr. Volarich further discussed the need for future medical treatment and specifically attributed the need for future medical treatment to Employee's injuries in 04-120274, 04-076814, 04-136988, and 06-059192 (Employee Exhibit N, Deposition Pages 39-41). Based on the evidence, I find that Dr. Volarich is the most credible person regarding future medical aid and that Employee has met his burden of proof by offering substantial competent evidence to support an award of future medical care resulting from the May 12, 2006 work injury. Therefore, the employer-insurer is ordered to provide all medical treatment and medication that is necessary to cure and relieve Employee from the effects of his neck injury for the remainder of his life.

Under Section 287.140.1, Employer is given the right to select the authorized treating physician, but may waive its right to select the treating physician by failing or neglecting to provide necessary medical aid. Employee has offered correspondence between the parties concerning his repeated requests for treatment in support of a finding that Employer has waived its right to select the treating physician (Employee Exhibit Q). Based on the evidence, I find that Employer has waived its right to select the treating physician.

Issue 3. Nature and Extent of Disability & Issue 4. Liability of the Fund

Based on the evidence, I find that Employee sustained a twenty-five percent (25%) permanent partial disability of the body as a whole which is equal to 100 weeks as a result of his neck injury and associated symptomology. Accordingly, Employer is therefore directed to pay Employee the sum of \$365.08 per week for 100 weeks for a total of \$36,508.00.

Employee has also requested an award of permanent total disability benefits against the Second Injury Fund. In support of his position, Employee has offered the opinions of Dr. David Volarich and Vocational Rehabilitation Expert, James England. If Employee is permanently and totally disabled, the Second Injury Fund is only liable for permanent total disability benefits if the permanent disability was caused by a combination of the pre-existing disabilities and Employee's last injury occurring on May 12, 2006. The Second Injury Fund is not liable if the last injury alone caused Employee to be permanently and totally disabled. On the question of whether Employee is permanently and totally disabled, it is significant to note that the Second Injury Fund failed to provide any expert opinion that Employee was capable of competing in the open labor market after the May 12, 2006 injury or that he was permanently and totally disabled as a result of the last injury alone. Based on the evidence and my above findings, I find the opinions of Dr. Volarich and Mr. England to be the most credible ones that are supported by the evidence. Further, I cannot substitute my own opinion for uncontroverted medical evidence and expert opinions.

After reviewing all of the evidence submitted, it is clear that Employee's limitations are based on a combination of his primary injury and pre-existing injuries. Thus, I find that

Employee is permanently and totally disabled as a result of a combination of Employee's primary injury and pre-existing injuries. Based on the stipulation of the parties, employee reached maximum medical improvement on March 11, 2008. In accordance with my above findings, the Employer was ordered to pay 100 weeks of compensation at a rate of \$365.08 for the neck injury covering the time period of March 12, 2008 to February 9, 2010. Based on my above findings and the evidence, I find that the Second Injury Fund's liability for permanent and total disability benefits began on March 12, 2008. The Second Injury Fund is therefore directed to pay to Employee the sum of \$27.75 per week for the period commencing on March 12, 2008 and continuing until February 9, 2010. Further, the Second Injury Fund is directed to pay to employee the sum of \$392.83 per week commencing on February 10, 2010, and said weekly benefits shall be payable during the continuance of such permanent total disability for the lifetime of employee pursuant to Section 287.200.1, unless such payments are suspended during a time in which employee is restored to his regular work or its equivalent as provided in Section 287.200.2. Since part of the Second Injury Fund's liability has accrued prior to the date of the award, the Second Injury Fund shall make a lump sum payment for the appropriate amount that is past due.

ATTORNEY'S FEE:

Kenneth Seufert, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation

Date: _____

A true copy: Attest:

Ms. Naomi Pearson