

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

Injury No. 11-104962

Employee: Edward Noland  
Employer: Marshfield Rural Fire Association, Inc.  
Insurer: Travelers Commercial Casualty  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)

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 June 3, 2014. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued June 3, 2014, 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 5<sup>th</sup> day of November 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Edward Noland Injury No. 11-104962  
Dependents: N/A  
Employer: Marshfield Rural Fire Association, Inc.  
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund  
Insurer: Travelers Commercial Casualty  
Hearing Date: 2/4/14 & 3/6/14 Checked by: MEH

### 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: 12/31/11
5. State location where accident occurred or occupational disease was contracted: WEBSTER COUNTY, MO
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: HIT IN HEAD BY A TREE BRANCH WHILE FIGHTING A FIRE.
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
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
15. Compensation paid to-date for temporary disability: \$56,867.49
16. Value necessary medical aid paid to date by employer/insurer? \$540,578.05

- 17. Value necessary medical aid not furnished by employer/insurer? \$11,735
- 18. Employee's average weekly wages: \$779.50
- 19. Weekly compensation rate: \$519.67
- 20. Method wages computation: BY AGREEMENT

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses: \$11,735 (FOR MODIFIED VAN)

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning 2/6/14, for Claimant's lifetime

- 22. Second Injury Fund liability: Yes No  Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:

weekly differential (0) payable by SIF for 0 weeks, beginning N/A  
and, thereafter, for Claimant's lifetime

**TOTAL: SEE AWARD**

- 23. Future requirements awarded: MODIFIED VEHICLE REPLACEMENT PER AWARD

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 15% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

JOE HOSMER

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Edward Noland Injury No. 11-104962  
Dependents: N/A  
Employer: Marshfield Rural Fire Association, Inc.  
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund  
Insurer: Travelers Commercial Casualty  
Hearing Date: 2/4/14 & 3/6/14 Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 4, 2014, for a final hearing and the record remained open until March 6, 2014. The claimant appeared in person represented by Joe Hosmer. The employer and insurer appeared represented by Bob Musick. The Second Injury Fund appeared represented by Skyler Burks.

The parties stipulated to the following facts: On or about December 31, 2011, Marshfield Rural Fire Association, Inc., was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Travelers Commercial Casualty. On the alleged injury date of December 31, 2011, Edward Noland was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about December 31, 2011, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in Webster County, Missouri, and the parties agree to venue in Springfield, Missouri, where the hearing was held. The claimant notified the employer of his injury as required by Section 287.420 RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. The employer and insurer do not contest the Nature and Extent of disability claimed by the claimant of permanent and total disability. The employer and insurer agree they are liable for permanent and total disability and agree to continue paying weekly benefits into the future. At the time of the alleged accident, the claimant's average weekly wage was \$779.50, which is sufficient to allow a

compensation rate of \$519.67 for temporary total and permanent total disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$56,867.49, paid through February 5, 2014. The employer and insurer have paid medical benefits in the amount of \$540,578.05. The attorney fee being sought is 15%. The claimant reached maximum medical improvement on February 21, 2013. The employer and insurer agree to continue to provide future medical treatment necessary to cure and relieve the claimant of the effects of his injury.

Prior to presenting evidence, the claimant dismissed his claim against the Second Injury Fund.

#### ISSUES:

1. Reimbursement for a vehicle necessary to accommodate modifications.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The claimant suffered a catastrophic injury on December 31, 2011. He was serving as the Assistant/Deputy Chief for Marshfield Rural Fire Protection District. He testified at the hearing that he has very little memory of the accident. On December 31, 2011, he responded to a brush fire. He last recalls walking towards the truck and hearing yelling behind him. His next recollection is several months later.

The claimant was struck in the head by a tree limb in the course of fighting the fire. He was taken to the emergency room and diagnosed with a subdural hematoma. Surgery was performed. He was hospitalized for a long period of time and required a ventilator and intravenous feeding. He later received inpatient and outpatient rehabilitation.

As a result of his injury, he has lost movement on his left side. He uses a wheelchair as he can walk only with assistance. The left side paralysis is still present. He has more use of his left leg than his arm. He cannot pick up his left foot. In order to walk, he wears a device on his

left leg that shocks him and lifts his left foot. He also has loss of memory and he cannot focus. He needs assistance to dress, eat and prepare his food. He easily fatigues.

Claimant and his wife normally would purchase an Impala every five to six years. His wife testified that they would purchase program cars. She testified that she priced a 2013 Impala the day before the hearing, and was quoted a price of \$17,900.

The claimant and his wife owned a 2010 Impala before his injury. They traded the 2010 Impala for a 2013 Chrysler van that could be accommodated for claimant's use. The price for the van was \$31,885 less a rebate of \$2,250, for a net price of \$29,635. The employer and insurer paid for accommodations for the van but have refused to pay for any of the purchase price of the van.

The only issue is whether the employer and insurer are responsible for any reimbursement for the cost of the van purchased by the claimant.

When a modified vehicle is required by a claimant as a result of their injuries, the claimant is entitled to the difference in the cost of an average, mid-price automobile of the same year as the purchased van, to be deducted from the cost of the converted van. Mickey v. City Wide Maint., 996 S.W.2d 144, 152 (Mo. Ct. App. 1999) overruled on other grounds by Hampton v. Big Boy Steel Erection, 121 S.W.3d 220 (Mo. 2003) The claimant is responsible for the cost of maintenance including repair, fuel, title, license, and insurance costs.

I find that the van is necessary to accommodate modifications required by claimant's restricted mobility and need to use a wheelchair. The only evidence presented as to the cost of a mid size vehicle is the quote given to the claimant's wife of \$17,900. The difference in price calculates to \$11,735. I find the employer and insurer responsible for this amount. I further

order that the employer and insurer reimburse the claimant and provide the cost of the necessary modifications to additional vehicles in the future when this vehicle needs to be replaced.

Attorney for the claimant, Joe Hosmer, is awarded an attorney fee of 15%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*