

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

Injury No.: 08-124458

Employee: Norman Ott
Employer: Government Employees Hospital
Insurer: Liberty Mutual Insurance Company
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. 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 December 26, 2012. The award and decision of Administrative Law Judge Mark Siedlik, issued December 26, 2012, 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 1st day of November 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD

Employee: Norman Ott Injury No. 08-124458
Dependents: N/A
Employer: Government Employees Hospital
Insurer: Liberty Mutual Insurance Company
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: September 6, 2012 Checked by: MSS/pd

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: April 30, 2008
5. State location where accident occurred or occupational disease was contracted: Jackson County, Missouri
6. Was above Employee an employee 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:
On April 30, 2008, Claimant was lifting a box overhead and reinjured his right shoulder.
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: Right shoulder

14. Nature and extent of any permanent disability: 15 percent permanent partial disability to the right shoulder for the April 30, 2008 injury
15. Compensation paid to date for temporary disability: \$9,412.47
16. Value necessary medical aid paid to date by employer/insurer? \$50,604.74
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$259.68
19. Weekly compensation rate: \$173.13
20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: From the Employer/Insurer – 15 percent permanent partial disability to the right shoulder, a sum of \$6,024.92
22. Second Injury Liability: 15% permanent partial disability to the right shoulder at the 232-week level; 22.5% permanent partial disability of the body as a whole due to his preexisting lumbar spine condition; 20% permanent partial disability of the right leg at the 160-week level due to the preexisting right knee condition; 20% permanent partial disability of the left leg at the 160-week level due to the preexisting left knee condition; and 20% permanent partial disability to the left arm at the 175-week level due to the left wrist condition, a sum of \$4,477.14..
23. Future requirements awarded: None

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of David Whipple, Employee's attorney, for necessary legal services rendered.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Norman Ott Injury No. 06-122864
Dependents: N/A
Employer: Government Employees Hospital
Insurer: Liberty Mutual Insurance Company
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: September 6, 2012 Checked by: MSS/pd

On September 6, 2012, the Employee, Employer and the Second Injury Fund appeared for a final hearing. The Employee, Norman Ott, appeared in person and with counsel, David Whipple. The Employer/Insurer appeared by and through counsel, Heather Howard. The Second Injury Fund appeared by counsel, Eric Lowe.

STIPULATIONS

The parties stipulated to the following:

- 1) that on or about April 30, 2008, the parties were operating under and subject to the Missouri Workers' Compensation Law;
- 2) That Claimant suffered an accidental injury that occurred within the course and scope of his employment on April 30, 2008;
- 3) That proper notice of the injury was given by Claimant and the claim was filed within the time allowed by law;
- 4) That the Claimant's average weekly wage was \$259.68;
- 5) That medical care was provided in the amount of \$50,604.74; and
- 6) That temporary total disability benefits have been provided in the amount of \$9,412.47.

ISSUES

The issues to be resolved by this hearing are as follows:

- 1) The nature and extent of the Employee's disability.
- 2) The liability of the Employer and Insurer for Claimant's disability.
- 3) The liability of the Second Injury Fund for Claimant's disability.
- 4) The liability of the Employer and Insurer for future medical treatment.

FINDINGS OF FACT AND RULINGS OF LAW

Claimant testified on his own behalf and presented the following exhibits which were admitted subject to the objections in the deposition transcripts.

- Claimant's Exhibit A – Deposition of Dr. Truett Swaim*
- Claimant's Exhibit B – Deposition of Michael Dreiling*
- Claimant's Exhibit C – Midwest Brain & Spine Associates (Dr. Park) medical records*
- Claimant's Exhibit D – Centerpoint Medical Center medical records*
- Claimant's Exhibit E – St. Luke's Imaging Center medical records*
- Claimant's Exhibit F – Kansas City Bone & Joint Clinic medical records (Dr. Samuelson)*
- Claimant's Exhibit G – OHS Compicare medical records*
- Claimant's Exhibit H – Oak Grove Medical Clinic medical records (Dr. Steve Gialde)*
- Claimant's Exhibit I – Dr. Gregory Hummel's medical records*
- Claimant's Exhibit J – Independence Regional Health Center and Medical Center of Independence medical records*

Employer and Insurer presented the following exhibit which was admitted into evidence subject to the objections in the transcript:

- Employer/Insurer Exhibit No. 1 – Deposition of Dr. Samuelson*

The Second Injury Fund presented the following exhibits, all of which were admitted into evidence subject to the objections in the transcripts:

- Second Injury Fund Exhibit No. 1 – Deposition of Normal Ott*
- Second Injury Fund Exhibit No. 2 – Deposition of Mary Titterington*

EVIDENCE

Norman Ott testified in person about two specific accidents. The first injury occurred on November 30, 2006. Mr. Ott was walking across a parking lot to a warehouse when he slipped on ice. He fell backward onto his right side and injured the right elbow and shoulder region. He reported that he had immediate pain and left work within 30 minutes of the fall. He reported the injury the next day when he awoke with increased shoulder and elbow pain. Mr. Ott testified to receiving medical treatment after the original injury and then being released from care and returning to work when he later suffered a second accident.

The second injury occurred on April 30, 2008 when he was pushing a box up on a shelf with his right arm and felt a sharp twinge in the right shoulder. Mr. Ott testified that following the second accident he had an increase in pain and described in general terms his medical condition. Mr. Ott also testified to having surgery on his right shoulder after both injuries. Mr. Ott was off of work until January of 2009, when he was given a permanent work restriction of no lifting more than 15 pounds overhead. He took the restriction provided by the treating physician, Dr. Samuelson, back to his employer and on January 23, 2009, was notified by letter that they had no work that would accommodate the restrictions imposed by Dr. Samuelson.

After being informed that there was no work GEHA had that could accommodate his restrictions, Mr. Ott filed for unemployment. As a condition of filing for unemployment he stated that he was able to work and was actively looking for employment. Mr. Ott testified that he continued to look for employment by completing job applications and contacting businesses in person until his injury in February 2009.

Mr. Ott testified in February 2009 that a tree fell on his property. He used a chain saw to cut the tree and had an increase in pain in his back. Mr. Ott went to the doctor on March 6, 2009, reporting to his personal doctor that he had low back pain with pain in both legs for approximately one month. Mr. Ott testified that it was a pain that he had not had before. Mr. Ott testified that as a result of that injury in February 2009, he had a fusion at L4-5. He then had a second fusion in January 2010 incorporating additional levels including L2-3 and L3-4. Mr. Ott testified that it was his belief that not enough was done during the surgery in October 2009 and, therefore, he needed the additional surgery.

Mr. Ott testified after the subsequent injury in February 2009 and the surgery in October 2009, he knew he was no longer able to work and stopped filing for unemployment and looking for employment. Mr. Ott testified after the subsequent injury in February 2009 and surgery in October 2009, he no longer went to the meetings at the American Legion or the VFW. He also testified that after the subsequent injury and surgery he had to start lying down during the day. Mr. Ott testified currently his back hurts at the time. On a scale of 1-10 with 10 being the worst pain possible, Mr. Ott testified that his pain was a 4 at rest and a 10 when it is at its worst.

Mr. Ott testified that after the back injury he only walks down the driveway once in the morning for the paper and once in the afternoon for the mail. Mr. Ott estimated that the walk down the driveway was approximately 100 or so feet. Mr. Ott also testified he now uses a cane since the back in February 2009. He reported that he did not use the cane in his home but did use it to get around when he walked to the mailbox and when going into town. Mr. Ott uses the cane for both stability and to rest on. During a normal day, Mr. Ott reported that he spends a lot of time in bed watching television. Mr. Ott reported that he purchased a Tempur-Pedic bed that is adjustable and vibrates. Additionally, since the back injury in February 2009, Mr. Ott utilizes several narcotic pain medications on a daily basis for pain relief. These medications include a Lidocaine pain patch, Oxycontin 10 mg twice daily, Oxycodone ½ pill twice daily, and epidural injections. Mr. Ott's pain management has been ongoing since the last back surgery in 2011.

Mr. Ott testified regarding all of his pre-existing conditions. He was diagnosed with prostate cancer and had prostate surgery. After the surgery, he returned to work full-time for six weeks before informing his boss that he could no longer work 40 hours. Mr. Ott was allowed to work two days a week for a total of sixteen hours. He testified he would get too exhausted working more than two days a week.

Mr. Ott had a pre-existing back condition. He testified he had surgery on his back in July 2006. When he returned from that surgery he was not able to stand for long periods of time. His employer was accommodating and would allow him rest when needed. He testified he would regularly take breaks to rest for his back and knee conditions. He testified in 2006 he also had to use his vehicle to move materials to the warehouse because he was not able to carrying items like he was previously able to do because of his back and knees. He also testified he would have

some back pain that would wake him up at night. There was no evidence of any restrictions from a medical doctor being provided for Mr. Ott's back prior to the February 2009 injury at his home.

Mr. Ott testified that he had pre-existing knee conditions that required surgery on both knees. He testified that he had to take breaks after walking to the warehouse because of pain in his knees.

Mr. Ott testified to a pre-existing left wrist condition. He was seen in 2000 for wrist pain. He testified that surgery was recommended, but he did not proceed with surgery. After the left wrist injury he would get help when lifting boxes or working on the lawn mower some times. He testified that he had pain and weakness in his left wrist.

Mr. Ott testified he does very little around the house except what would be considered light housework. He is able to drive a vehicle and does rest at various times during the day. He testified that the level of activity lowered after his back injury in 2009. Mr. Ott testified that he is limited in walking, now has balance problems which might be attributable to the narcotic medication, doesn't go out to do things with his wife, doesn't go to the American Legion or VFW often anymore because of difficulty sitting through meetings due to his back.

REVIEW OF THE EXPERT EVIDENCE

The Employee was seen by Dr. Truett Swaim, M.D., at the request of Mr. Ott's attorney. Dr. Swaim gave deposition testimony that was offered into evidence.

After conducting his physical examination and reviewing the records Dr. Swaim came to the conclusion that Mr. Ott was not able to compete in the open labor market and that he would be "permanently totally disabled as a result of the combination of his permanent partial disabilities after combining his additional permanent partial disabilities with the additional surgery from 2009 and 2010."

Dr. Swaim testified Mr. Ott had a 15% permanent partial disability of the right arm at the 232-week level from the injury in April 30, 2008, and a 20% permanent partial disability to the right arm at the 232-week level due to the injury of November 30, 2006. Dr. Swaim also testified that he would consider the incident in February 2009 where Mr. Ott had back pain while sawing a tree a new injury. He testified it was an aggravation of a pre-existing condition because a MRI scan from 2006 showed a disc bulge at that level and the MRI following the February 2009 accident showed an extruded fragment at L3-4. Dr. Swaim testified that the incident of sawing the tree in 2009 within a reasonable degree of medical certainty was the prevailing factor causing the necessity for the surgery he had on his back in October 2009. Dr. Swaim testified that he could not find the chain saw accident to be the prevailing factor for the need for the surgery in January 2010, because that surgery was due to degenerative changes that were pre-existing and there hadn't been any significant change in their structure after the chain sawing accident. Ultimately, Dr. Swaim testified that his opinion regarding Mr. Ott's permanent and total disability being a result of a combination of his permanent partial disabilities including the lumbar surgeries performed in 2009 and 2010. (Swaim Depo. 59:18 – 61:13; Swaim report pg. 16). Dr. Swaim also testified that he felt Mr. Ott was permanently totally disabled from an occupational standpoint prior to the lumbar injury and subsequent surgery.

Dr. Swaim testified he provided work restrictions at the sedentary to light work level. The doctor's report stated that Mr. Ott would have the ability to exert up to 20 pounds occasionally, and/or up to 10 pounds frequently, and/or a negligible amount of force constantly, to move objects. The restrictions include for Mr. Ott to avoid prolonged sitting, standing and walking, which Dr. Swaim testified that was related mainly to the back and some to the knees. The restriction on lifting, Dr. Swaim testified was related to the back, shoulder, left wrist and some to the knees. The limitation on sitting, bending, stooping and crawling were related to the back and knees according to Dr. Swaim's testimony.

Dr. Swaim testified the claimant had pre-existing 22.5% permanent partial disability of the body as a whole due to his pre-existing lumbar spine condition; 20% permanent partial disability of the right leg at the 160 week level due to the pre-existing right knee condition; 20% permanent partial disability of the left leg at the 160 week level due to the pre-existing left knee condition; and 20% permanent partial disability to the left arm at the 175 week level due to the left wrist condition. Dr. Swaim also testified that the combined effects of the disabilities arose to the level that they created a 10% enhancement of overall disability.

Dr. Swaim testified Mr. Ott would need to take analgesic medication and/or anti-inflammatory medication indefinitely related to the occupational injuries of November 30, 2006 and April 2008 while working for Government Employees Health Association.

In addition, the employee offered the vocational report from Michael Dreiling. Mr. Dreiling provided deposition testimony that was submitted into evidence. Mr. Dreiling testified based on Mr. Ott's vocational profile and difficulties with prolonged sitting and standing, he was permanently and totally disabled from any type of employment. Mr. Dreiling testified the restrictions given to alternate sitting, standing and walking, along with the limited use of both upper extremities were significant. He also testified it was his opinion that no employer in the usual course of business would reasonably be expected to employ him in his physical condition. His opinion was based upon the medical restrictions imposed for the various conditions and other vocational factors including his age, education, training and work experience.

On cross-examination, Mr. Dreiling admitted that his opinions regarding Mr. Ott's permanent and total disability considered the additional lumbar surgery performed in 2009 and 2010 as included in the restrictions from Dr. Swaim on page 1 and 2 of his report. Mr. Dreiling also admitted that it was possible that many of the limitations Mr. Ott provided to him in his evaluation could be due to the subsequent back condition in February of 2009. These statements were confirmed based on Mr. Ott's testimony at hearing about his activities before and after the back injury. Mr. Dreiling admitted that he didn't see any evidence that Mr. Ott was provided restrictions for any pre-existing condition or that Mr. Ott was taking ongoing pain medication for his knees after being released from treatment at MMI.

The Second Injury Fund offered the deposition testimony of Mary Titterington. Ms. Titterington testified that based on the restrictions of Dr. Samuelson, Mr. Ott would not be able to return to the actual supply or support service work he was previously doing, but he could return to the work he was doing as an enrollment clerk, mail clerk or file clerk. Ms. Titterington also testified that it was only after Mr. Ott's 2009 back injury and the 2 subsequent surgeries that he needed to lie down and was no longer looking for work. Ms. Titterington testified if the need

to lie down at least two or three times a day as described by Mr. Ott was medically indicated then Mr. Ott would be unemployable in the labor market. Ms. Titterington was of the opinion that Mr. Ott would be able to return to work under the restrictions of Dr. Samuelson, but if you considered the opinions of Dr. Swaim there was no work in the open labor market that Mr. Ott could perform. Finally, if you considered Mr. Ott's report that he needs to lie down multiple times daily he would be unemployable in the open labor market. (Titterington Depo, page 22-23). Ms. Titterington testified that Mr. Ott was holding himself out as being able to work as a result of applying for and receiving unemployment compensation and it wasn't until after the back injury in February 2009 that he reported the need to lie down and withdrew from looking for work. (Titterington Depo, page 23).

The employer and insurer offered the deposition testimony of Thomas Samuelson, M.D. Dr. Samuelson is a board certified orthopedic surgeon. Dr. Samuelson did treat the claimant over a period of time and went into detail regarding his treatment of the claimant. Dr. Samuelson testified that he performed two operations on Mr. Ott where he repaired his rotator cuff. Dr. Samuelson testified that he assessed 12% permanent partial disability to the right arm at the 232-week level for the injury of November 30, 2006 and an additional 3% permanent partial disability to the right arm at the 232-week level for the injury of April 30, 2008. These would combine to make a total of 15% permanent partial disability of the right shoulder at the 232-week level. He also testified that he gave permanent restrictions of no lifting over 15 pounds overhead. Dr. Samuelson testified that Mr. Ott could take Aleve or Advil as needed for pain.

Conclusion

Mr. Ott has alleged that he is permanently and totally disabled. In order to determine whether an employee is deemed totally disabled under the Missouri Workers' Compensation Law, it must be found that the Claimant is unable to return to any employment. § 287.020(7) RSMo (1986) defines total disability as "an inability to return to any employment and not merely . . . inability to return to the employment which the employee was engaged at the time of the accident." The terms "any employment" mean any reasonable or normal employment or occupation. Reese v. Gary & Roger Link, Inc., 5 S.W. 3d 522 (Mo. App. 1999); Fletcher v. Second Injury Fund, 922 S.W. 2d 402 (Mo. App. 1996); Kowalski v. M-G Metal and Sales, Inc., 631 S.W. 2e 919, 921 (Mo. App. 1982); Groce v. Pyle, 315 S.W. 2d 482, 490 (Mo. App. 1958). It is not necessary that an individual be completely inactive or inert in order to meet the statutory definition of permanent total disability. It is necessary, however, that they be unable to compete in the open labor market. *See* Reese v. Gary & Roger Link, Inc., 5 S.W. 3d 522 (Mo. App. 1958); Carlson v. Plant Farm, 952 S.W. 2d 369, 373 (Mo. App. 1997); Fletcher v. Second Injury Fund, 922 S.W. 2d 402 (Mo. App. 1996); Searcy v. McDonnell Douglas Aircraft, 894 S.W. 2d 173 (MO. App. 1995); Reiner v. Treasurer, 837 S.W. 2d 363 (Mo. App. 1992); Brown v. Treasurer, 795 S.W. 2d 478 (Mo. App. 1990).

Missouri courts have repeatedly held that the test for determining permanent total disability is whether the individual is able to compete in the open labor market and whether the Employer in the usual course of business would reasonably be expected to employ the employee in his present physical condition. *See* Garcia v. St. Louis County, 916 S.W. 2d 263 (Mo. App. 1995); Lawrence v. R-VIII School District, 834 S.W. 2d 789 (Mo. App. 1992); Carron v. St. Genevieve School District, 800 S.W. 2d 6 (Mo. App. 1991); Fischer v. Arch Diocese of St. Louis, 793 S.W. 2d 195 (Mo. App. 1990). In other words, a determination of permanent total disability should focus on the ability or inability of the employee to perform the usual duties of

various employments in the manner that such duties are customarily performed by the average person engaged in such employments. Gordon v. Tri-State Motor Transit, 908 S.W. 2d 849 (Mo. App. 1995). The courts of this state have held that various factors may be considered, including a claimant's physical and mental condition, age, education, job experience and skills in making the determination as to whether a claimant is permanently and totally disabled. *See e.g.*, Tiller v. 166 Auto Auction, 941 S.W. 2d 863 (Mo. App. 1997); Olds v. Treasurer, 864 S.W. 2d 406 (Mo. App. 1993); Brown v. Treasurer, 795 S.W. 2d 439 (Mo. App. 1990); Patchin v. National Supermarkets, Inc., 738 S.W. 2d 166 (Mo. App. 1987); Laturno v. Carnahan, 640 S.W. 2d 470 (Mo. App. 1982); Vogel v. Hall Implement Company, 551 S.W. 2d 922 (Mo. App. 1977).

Based upon all the evidence presented at hearing including the testimony of the claimant and the deposition testimony offered into evidence, I find that Mr. Ott is not permanently and totally disabled as a result of the primary injury of April 30, 2008 and injuries that pre-existed that injury date. Mr. Ott's testimony makes clear that after being released from treatment at MMI in January 2009 he did not return to work at GEHA. After he was terminated at GEHA, Mr. Ott received unemployment compensation benefits from February 2009 through October 2009. During this time he reported that he was capable of gainful employment and Mr. Ott actively searched for employment in the open labor market during that time. Mr. Ott testified he did believe that he could work but never found employment during that time.

Mr. Ott testified that it was only after he received his back surgery in October of 2009 that he stopped receiving unemployment benefits and realized his back problems wouldn't allow him to return to work. While Dr. Swaim testified at his deposition that he believed Mr. Ott was permanently and totally disabled as a result of the April 30, 2008, injury it is clear based on Mr. Ott's actions that he felt was still employable and actively sought employment. Additionally, Dr. Swaim's report made clear that his opinion that Mr. Ott was permanently and totally disabled was based upon consideration of the subsequent back surgeries performed in October 2009 and January 2010. It was based upon this opinion that Mr. Dreiling reached his opinion that Mr. Ott was permanently and totally disabled in the open labor market.

Mr. Ott testified that his use of the chainsaw to remove a fallen tree from his driveway caused the pain in his back that ultimately led to him seeking treatment in March 2009. Mr. Ott also testified since the injury to his back in February 2009 he has been receiving ongoing pain management consisting of narcotic oral pain medications, Lidocaine pain patches, and steroid injections. Additionally, Mr. Ott reports the need to lie down at home on a daily basis. I find Ms. Titterington's testimony regarding the need to lie down and the effects it has on a person's employability credible. Mr. Ott never reported the need to lie down multiple times on a daily basis prior to the accident in February 2009. Since that time he has sought relief through pain medications, laying down during the day, and limiting his activities both inside and outside of the home.

Dr. Swaim's conclusion of permanent and total disability prior to the February 2009 chainsaw accident is not supported by the testimony of Mr. Ott that he continued to look for employment and received unemployment compensation until he had the lumbar spine surgery in October 2009. Therefore, I find that Mr. Ott is not permanently and totally disabled as a result of the primary injury of April 30, 2008, and any pre-existing disabilities.

While Mr. Ott is not permanently and totally disabled, I find that he did suffer permanent

partial disability as a result of the work injuries of November 30, 2006 and April 30, 2008. I find that Mr. Ott suffered 15% permanent partial disability as a result of the April 30, 2008, injury and 15% permanent partial disability as a result of the November 30, 2006, injury. While Dr. Samuelson did provide a finding of 15% permanent partial disability as a result of the two injury dates I don't find that opinion credible. Dr. Samuelson testified that while the April 30, 2008 injury was a recurrent rotator cuff tear there was no opinion that Mr. Ott suffered a recurrent tear at the same location of the rotator cuff. Dr. Samuelson testified that the diagnosis of recurrent rotator cuff tear dealt with the fact that there was another tear in the cuff, and not that the same area was torn a second time. I find that the two injuries were separate and distinct, with the second injury in April 2008 following release at MMI from the first rotator cuff repair.

As a result of the injury of April 30, 2008, Mr. Ott suffered 15% permanent partial disability of the right shoulder at the 232-week level resulting in 34.8 weeks of disability. This resulted in employer liability of \$6,024.92.

I find that Mr. Ott is eligible for permanent partial disability benefits from the Second Injury Fund as a result of the April 2008 injury. Dr. Swaim is the only expert to address the preexisting disabilities of the Claimant. I find that Mr. Ott suffered a 15% permanent partial disability of the right shoulder at the 232-week level resulting in 34.8 weeks of disability. Preexisting that injury, Mr. Ott suffered 15% permanent partial disability of the right shoulder at the 232-week level resulting in 34.8 weeks of disability; 22.5% permanent partial disability of the body as a whole or 90 weeks; 20% permanent partial disability of the right leg at the 160-week level or 32 weeks; 20% permanent partial disability of the left leg at the 160-week level or 32 weeks; 20% permanent partial disability of the left arm at the 175-week level or 35 weeks; and a 10% loading factor above the simple arithmetic sum. This results in \$4,477.14 of Second Injury Fund liability resulting from the April 30, 2008 injury.

I find no basis for ongoing medical treatment from the work injuries and award none.

I find Claimant's counsel, Mr. David Whipple, entitled to attorney's fees of 25 percent of sums recovered for his legal services.

Made by: _____

Mark Siedlik

Administrative Law Judge

Division of Workers' Compensation