

AWARD

Employee: Mark Parchmon

Injury No.: 08-019733

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Atlantic Express of Missouri (previously settled)

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

Additional Party: Second Injury Fund (SIF)

Insurer: Liberty (previously settled)

Hearing Date: August 6, 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: March 10, 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 in his left and right wrists.
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 and right wrists.
14. Nature and extent of any permanent disability: 17.5% referable to the left wrist and 17.5% for the right wrist.
15. Compensation paid to-date for temporary disability: \$2,692.02
15. Value necessary medical aid paid to date by employer/insurer? \$13,369.77

Employee: Mark Parchmon

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$360.28 for PPD
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

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

16.81 weeks of permanent partial disability from Second Injury Fund	\$6,056.31
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TOTAL:	\$6,056.31
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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: Mark Parchmon

Injury No.: 08-019733

Dependents: n/a

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**Division of Workers'
Compensation**

Employer: Atlantic Express of Missouri (previously settled)

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

Additional Party: SIF (only)

Insurer: Liberty (previously settled)

Checked by: KMH

A hearing was held on the above-captioned matter August 6, 2012. Mark Parchmon (Claimant) was represented by attorney Sam Eveland. The Second Injury Fund (SIF) was represented by Assistant Attorneys General Rachel Hauser and Dominique de Vastey. Atlantic Express (Employer) and Claimant previously settled the primary claim in this matter.

STIPULATIONS

1. Claimant developed an occupational injury on March 10, 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.
4. Employer had notice of all injuries and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to entitle him to a PPD rate of \$360.28.
6. Claimant and Employer entered into a compromise lump sum settlement on February 10, 2010. The settlement was approved by the Division and the Claimant sustained a 17.5% PPD to his left wrist and 17.5% PPD to his right wrist.
7. Claimant has a prior disability of 40% of the right hip and 15% disability of the left knee.
8. If the prior injury was a hindrance or obstacle to employment and combines with the primary injury to create a greater overall disability, and if the SIF is liable for benefits when the primary injury is an occupational disease, the load factor is 10%.

ISSUES

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

FINDINGS OF FACT

Based on the competent and substantial evidence, I find:

1. Claimant is a 51 year-old male who has worked as a school bus driver for more than 20 years. He worked for Employer for approximately 12 years. When operating the bus, Claimant steered it with his hands and manually opened and closed the doors utilizing a handle located on the right side. On March 10, 2008, Claimant developed numbness and tingling in his right hand. He also experienced numbness in his left hand..
2. Claimant was sent to Concentra, where electrodiagnostic studies were performed. The results of the studies showed severe right carpal tunnel syndrome and left carpal tunnel syndrome. Concentra diagnosed Claimant with bilateral carpal tunnel syndrome and advised him to see another physician.
3. Claimant was seen by Dr. Schlafly on September 2, 2008. At that time, Claimant was again experiencing numbness in his right hand, which affected his ability to operate the steering wheel and door handle. Claimant also noticed numbness in the left hand, greater with use. Dr. Schlafly's diagnosis was right carpal tunnel syndrome. He recommended right carpal tunnel release surgery to be followed by evaluation for the left hand symptoms. Dr. Schlafly further recommended X-rays and an MRI for right shoulder complaints. Dr. Schlafly opined Claimant's repetitive work with his right hand, operating the school bus, steering wheel and door handle was the substantial and prevailing factor in causing the right carpal tunnel syndrome.
4. Dr. Sudekum first evaluated Claimant regarding his bilateral carpal tunnel syndrome on March 2, 2009. Dr. Sudekum agreed with Dr. Schlafly's diagnosis and performed right carpal tunnel release surgery on April 16, 2009. He performed the same surgery on Claimant's left hand on April 30, 2009. Claimant attended therapy. Dr. Sudekum released Claimant from his care on August 10, 2009 with no restrictions for either hand.
5. Claimant settled his case with Employer on March 10, 2008. Since Claimant was released from Dr. Sudekum's care, he has not regained normal hand strength he had prior to the surgery. He also continues to have some tenderness at the sites of the incisions.
6. Claimant has a preexisting right hip disability. He was conservatively treated for avascular necrosis, which was unsuccessful. Claimant underwent total right hip replacement surgery performed by Dr. Kostman on December 16, 2005. His right leg is now shorter than the left, and he has an altered gait. Claimant continues to experience daily pain at the right hip and can no longer run.
7. Claimant injured his left knee in 1997 playing basketball. He was seen at St. Louis University Hospital, and was diagnosed with a sprain and treated with crutches. He also underwent arthroscopic surgery to the left knee on two separate occasions prior to the primary injury. He continues to have pain and crepitation in his knee.
8. Claimant's medical expert, Dr. Schlafly, reviewed the records and examined him again on March 29, 2011. He issued a report rating Claimant's disabilities and opined all of

Claimant’s disabilities were a hindrance or obstacle to employment and the combination of disabilities is greater than their simple sum.

9. 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...”. Section 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 168.05 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 16.81 weeks of disability. At Claimant’s compensation rate of \$360.28 per week, the SIF is hereby ordered to pay \$6,056.31 in compensation.

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