

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

Injury No.: 07-118938

Employee: Sara Perkins
Employer: Missouri Department of Corrections (Settled)
Insurer: Central Accident Reporting Office (Settled)
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. We have reviewed the evidence and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge.

Introduction

The sole issue stipulated in dispute at the hearing before the administrative law judge was the liability of the Second Injury Fund for permanent partial disability benefits. The administrative law judge found that employee failed to sustain her burden of proof on the issue of Second Injury Fund liability.

Employee filed an Application for Review alleging the administrative law judge's award is erroneous in that the administrative law judge erred: (1) in finding employee's preexisting disabilities equated to only a 10% permanent partial disability of the body as a whole; and (2) in dismissing the opinion of Dr. Cohen who assigned a 30% permanent partial disability rating to employee's preexisting cardiac disorder.

We reverse the award of the administrative law judge for the reasons set forth herein.

Findings of Fact

Primary injury

Employee worked as a prison cook supervisor for employer. On December 11, 2007, employee injured her back pushing open a heavy door while working for employer. Employee's back injuries were serious and necessitated two surgeries, including a fusion in 2009. Dr. David Robson, who performed the surgeries, opined employee sustained a 10% permanent partial disability of the body as a whole referable to the lumbar spine. On the other hand, Dr. Raymond Cohen, employee's evaluating doctor, opined employee sustained a 55% permanent partial disability of the body as a whole. Employee ultimately settled her workers' compensation claim arising from the December 2007 injury with employer for 30% permanent partial disability of the body as a whole referable to the lumbar spine. We find this amount accurately reflects the disability attributable to the primary injury.

We find employee sustained a 30% permanent partial disability of the body as a whole as a result of the primary low back injury.

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Preexisting conditions

Employee claims she suffered multiple preexisting conditions of ill at the time she sustained the primary injury, including cardiac problems, depression, and sleep apnea. Employee's heart problems required surgeries to implant a pacemaker in 1996 and a stent in 2005. Dr. Raymond Cohen evaluated employee and provided his expert medical opinion in this matter and rated employee's cardiac disability at 30% of the body as a whole. Dr. Robson, who performed employee's back surgeries, opined that employee suffered from 0% preexisting permanent partial disability. Employee testified that she is able to satisfy her supervisor with her job performance, but that her heart problems cause her to experience daily fatigue, pain in her chest if she is tired or stressed, and shortness of breath.

We find employee's testimony as to her heart problems credible and persuasive. We also find credible Dr. Cohen's testimony that employee's heart condition amounted to a preexisting permanent partial disability, although we consider his rating somewhat high in light of his testimony that employee's work restrictions related to the heart condition are minimal. At the same time, we reject the (apparent) position of the Second Injury Fund in this matter that doctor-imposed work restrictions are necessary for a finding that employee suffers some permanent disability referable to her cardiac condition. Clearly, the absence of specific functional or mechanical restrictions such as a lifting restriction does not necessarily mean that employee is not disabled in the performance of her work by shortness of breath, chest pain, and fatigue.

Ultimately, we find employee suffered a 12.5% preexisting permanent partial disability of the body as a whole referable to her cardiac condition.

Dr. Cohen did not provide ratings for employee's claimed conditions of depression and sleep apnea, and testified that he had no indication that depression caused any problems with employee's work. Employee notably did not testify at all about depression or sleep apnea.

We find employee did not suffer any preexisting permanent partial disability referable to the claimed depression and sleep apnea conditions.

Dr. Cohen credibly opined (and we so find) that employee's preexisting cardiac condition combines with the primary injury to result in greater overall disability than in the absence of the condition. Dr. Cohen opined that a load factor of 15% reflects the degree of synergy between employee's preexisting condition and the effects of the primary injury. We find a load factor of 10% more appropriate.

Conclusions of Law

Employee brings this claim against the Second Injury Fund alleging multiple preexisting conditions of ill. On page 8 of his award, the administrative law judge explained why he denied employee's claim against the Second Injury Fund: "The Court finds that none of the employee's pre-existing disabilities meet the threshold requirements that are necessary to combine with the employee's disabilities from her primary injury to trigger Second Injury Fund liability." These comments suggest the administrative law judge was of the opinion

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that if none of a worker's preexisting disabilities, considered in isolation, meet one of the thresholds in § 287.220.1, then there can be no Second Injury Fund liability. Such an approach has no support in the Missouri Workers' Compensation Law or in Missouri case law. We reject the administrative law judge's reasoning regarding the triggering of Second Injury Fund liability. Our analysis of the operation of the Second Injury Fund thresholds follows.

Purpose of the Second Injury Fund

The purpose of the Second Injury Fund is "to encourage the employment of individuals who are already disabled from a preexisting injury, regardless of the type or cause of that injury." *Pierson v. Treasurer of Mo. As Custodian of the Second Injury Fund*, 126 S.W.3d 386, 390 (Mo. 2004) (citation omitted). The Second Injury Fund statute encourages such employment by ensuring that an employer is only liable for the disability caused by the work injury. Any disability attributable to the combination of the work injury with preexisting disabilities is compensated, if at all, by the Second Injury Fund.

Purpose of the thresholds

Before 1993, any preexisting disability that was a hindrance to employment or reemployment could open the door to possible Second Injury Fund liability. The Second Injury Fund statute was amended in 1993 to limit permanent partial disability awards against the Second Injury Fund to those cases where both the preexisting disabilities and the disabilities from the work injury are more than de minimis. The provision defining what preexisting disabilities will trigger Second Injury Fund liability now states:

If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability.

The thresholds found in the quoted provision serve to protect the Second Injury Fund from enhanced permanent partial disability claims of claimants with de minimis

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disabilities. And that is where the service of the thresholds ends. Section 287.220.1 goes on to say:

After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to **all injuries or conditions existing at the time the last injury was sustained** shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund...(emphasis added).

Under the plain language of the statute, once it is determined that the thresholds are met, all disabilities that exist at the time of the work injury should be considered in the calculation of Second Injury Fund liability.

Application of the thresholds

The second threshold applies when a claimant has preexisting permanent partial disability of a single major extremity ("if a major extremity injury only"). In all other circumstances, the first threshold applies.

The legislature chose two different units of measurement to describe the thresholds: "fifty weeks of compensation" for preexisting disabilities of the body as a whole; and "fifteen percent permanent partial disability" for a preexisting disability to a major extremity only. We believe the legislature rested on different units of measurement to foster arithmetic simplicity.

Where a claimant has only a preexisting disability to a major extremity, the legislature made "a simple 15% disability to a major extremity the threshold rather than attempt a more complex formula based on weeks of disability to various body parts at various levels." *Motton v. Outsource Int'l*, 77 S.W.3d 669, 675 (Mo. App. 2002).

But where there is more than one preexisting disability, the simplicity described above cannot be achieved. In that event, we need a method to combine the various disabilities to determine claimant's overall preexisting disability as of the moment of the primary injury. In order to combine the disabilities for comparison to the threshold, the disabilities must be converted to a common unit of measure. The legislature selected weeks of compensation as the common unit of measure.

This claim

In the context of the instant case, employee claimed multiple preexisting conditions of ill, but proved only that her cardiac condition amounted to a permanent partial disability of the body as a whole. We first ask whether this condition was "of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed." § 287.220.1. The Missouri courts have articulated

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the following test for determining whether a preexisting disability constitutes a “hindrance or obstacle to employment”:

[T]he proper focus of the inquiry is not on the extent to which the condition has caused difficulty in the past; it is on the potential that the condition may combine with a work-related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition.

Knisley v. Charleswood Corp., 211 S.W.3d 629, 637 (Mo. App. 2007) (citation omitted).

We are persuaded that employee’s cardiac condition has the potential to combine with future work-related injuries so as to cause greater disability than in the absence of the condition. Specifically, the symptoms of fatigue, chest pain, and shortness of breath referable to the cardiac condition all have the potential to render employee worse off when combined with a subsequent injury than if she did not suffer the cardiac condition. We conclude employee’s preexisting cardiac condition was of sufficient seriousness to amount to a hindrance or obstacle to employment.

We now proceed to examine the preexisting cardiac condition against the thresholds. Because the preexisting condition does not involve a major extremity only, we apply the first threshold and ask whether employee’s overall preexisting permanent partial disability – stated in weeks – meets or exceeds 50 weeks.

We have found employee suffered a 12.5% permanent partial disability of the body as a whole referable to her cardiac condition. This equals 50 weeks of compensation. Employee has met the 50-week threshold.

As a result of the work injury, employee suffers permanent partial disability of the low back equivalent to 30% of the body as a whole, or 120 weeks. Employee has also met the 50-week threshold for disability resulting from the primary injury. Accordingly, under § 287.220.1, employee is entitled to compensation from the Second Injury Fund if she has proved the disabilities combine to result in a greater disability than that which would have resulted from the last injury by itself. See *Gassen v. Lienbengood*, 134 S.W.3d 75 (Mo. App. 2004).

We have credited Dr. Cohen’s opinion that employee’s preexisting cardiac condition combines with the effects of the December 2007 work injury to result in greater disability than the simple sum. We have also found that this synergism is best represented by a load factor of 10% applied to the sum of permanent disability attributable to employee’s preexisting conditions and primary injuries.

Employee’s preexisting conditions amount to 50 weeks of disability. Her primary injury amounts to 120 weeks. The sum of these two amounts is 170 weeks. When we multiply the sum by the 10% load factor, the result is 17 weeks.

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Employee has met her burden. We conclude that the Second Injury Fund is liable for 17 weeks of permanent partial disability enhancement.

Award

We reverse the award of the administrative law judge. We conclude employee met her burden of proof on the issue of Second Injury Fund liability for enhanced permanent partial disability.

The stipulated rate of compensation is \$360.05 per week. Employee is entitled to, and the Second Injury Fund is ordered to pay, \$6,120.85 in permanent partial disability benefits.

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Gary L. Robbins is attached solely for reference.

Given at Jefferson City, State of Missouri, this 15th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Sara J. Perkins

Injury No. 07-118938

Dependents: N/A

Employer: Missouri Department of Corrections

Additional Party: Second Injury Fund

Insurer: Central Accident Reporting Office/State of Missouri

Hearing Date: April 20, 2011

Checked by: GLR/rf

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? No.
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? December 11, 2007.
5. State location where accident occurred or occupational disease contracted: Mississippi 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: The employee was opening a door when she hurt her back and body as whole.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Back and body as a whole.
14. Nature and extent of any permanent disability: The employee settled with the employer-insurer for 30% body as a whole (lumbar)/\$43,206.00.
15. Compensation paid to date for temporary total disability: \$5,555.10.
16. Value necessary medical aid paid to date by employer-insurer: \$93,970.32.
17. Value necessary medical aid not furnished by employer-insurer: Non issue.
18. Employee's average weekly wage: \$540.07.
19. Weekly compensation rate: \$360.05 for all purposes.
20. Method wages computation: By agreement.
21. Amount of compensation payable: None. See Award.
22. Second Injury Fund liability: None. See Award.
23. Future requirements awarded: None.

No attorney fees are awarded in this case.

FINDINGS OF FACT AND RULINGS OF LAW

On April 20, 2011, the employee, Sara J. Perkins, appeared in person and with her attorney, Douglas L. Van Camp, for a hearing for a final award. The employer-insurer was not represented at the hearing as they already settled their portion of the case with the employee. Assistant Attorney General Jonathan Lintner represented the Second Injury Fund. The Court took judicial notice of all records contained within the files of the Division of Workers' Compensation. 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 statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS

1. On or about December 11, 2007, the Missouri Department of Corrections was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and was duly qualified as a self-insured employer.
2. On or about December 11, 2007, Sara J. Perkins was an employee of the Missouri Department of Corrections, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about December 11, 2007 the employee sustained an accident or occupational disease that arose out of and in the course of her employment.
4. The employer had notice of the employee's accident.
5. The employee's claim for compensation was filed within the time allowed by law.
6. The employee's average weekly wage was \$540.07. The employee's rate of compensation for temporary total disability, permanent total disability and permanent partial disability is \$360.05.
7. The employee's injury was medically causally related to her accident or occupational disease.
8. The amount of medical expenses paid by the employer-insurer is \$93,970.32.
9. The employer-insurer paid \$5,555.10 in temporary total disability benefits.
10. Previously incurred medical is a non issue.
11. Medical mileage and future medical care is a non issue.
12. Additional temporary total disability is a non issue.
13. Employer-Insurer's liability for permanent partial disability or permanent total disability is a non issue.

ISSUES

Liability of the Second Injury Fund for permanent partial disability.

EXHIBITS

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical records of Glen E. Cooper, D.O.
- B. Medical records from ReStart of Sikeston
- C. Medical records from St. Louis Orthopedic, Inc./Bernard C. Randolph, M.D.
- D. Medical records from Southeast Missouri Hospital/Richard E. Moore, M.D.
- E. Medical records from Saint Louis Spine Care Alliance/David Robson, M.D.
- F. Medical records from Professional Imaging
- G. Medical records of Proceso T. Arenos, Jr., M.D.
- H. Medical records from Missouri Baptist Medical Center
- I. Medical records from Ozark Physical Therapy
- J. Medical records from Ozark Physical Therapy
- K. Medical records from Ferguson Medical Group/Joyce Reed, D.O.
- L. Medical records from Cardiovascular Consultants of Cape Girardeau/Allen L. Spittler, M.D.
- M. Medical records from St. Louis Spine Care Alliance
- N. Stipulation for Compromise Settlement in Case No. 07-118938
- O. Deposition of Raymond F. Cohen, D.O.

Second Injury Fund Exhibits

- 1. Report of David B. Robson, M.D.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

STATEMENT OF THE FINDINGS OF FACT-

The employee, Sara J. Perkins was the only witness to personally testify at trial. All other evidence was introduced in the form of written reports, medical records or deposition testimony.

Ms. Perkins injured her back while working at the Missouri Department of Corrections (hereinafter referred to as employer), on December 11, 2007. She began her employment with her employer about 2005. As a result of her injury, she received conservative treatment from several doctors. She eventually came under the care of Dr. Robson. Dr. Robson performed two surgeries on the employees back, including a fusion in 2009. The employee settled this portion of the case with the employer-insurer by Stipulation for Compromise Settlement on August 17, 2010 for 30% permanent partial disability of the body as a whole/lumbar.

The employee had medical problems that predated her December 11, 2007 accident. In 1997 the employee had surgery wherein a pacemaker was installed and in 2005 the employee had a stent inserted into her heart.

The employee testified that when she had her December 11, 2007 accident she was working at a prison as a Cook 3. She described the job as involving physical work and stress of getting the job done and serving 1600 meals a day to the inmates and stress due to the inmates. She indicated that the work place is hot with the serving line getting over 102 degrees. She returned back to work at her same job after her back surgery, but testified to the problems she was having regarding her back:

- Has good days and bad days.
- On good days has pain burning across her back but can function on the job.
- On good days pain is a two.
- Bad days start when her husband has to help her get out of bed. Pain levels are a 7. When she gets to work she has to walk up two flights of stairs and this causes pain to be like a knife stick in the back.
- Lifting at work results in bad days and a bad day is extremely bad when she has to stand behind the serving line to serve food as there is a twisting motion that is painful.
- Having to stand non-mobile really causes pain.
- Pain radiates into her right hip and groin.
- Has a problem lifting heavy weights-she tries to get someone to lift for her. If she has to lift it cause pain and she has a bad day the next day.
- Her job requires bending and it hurts when she bends.
- She can't squat.
- Sitting at work causes pain-she sits and stand alternatively to get through the day.
- She does her job but with difficulty.

Ms. Perkins testified about her pre-existing heart problems. She indicated that she has had heart problems for many years that required the necessity for the pacemaker and the stent. She had heart problems before she ever began employment with her employer. She reported the daily problems she had at work after her heart problems:

- A high stress job.
- The heat.
- No pain due to heart problems.
- When she really gets tired or when she is stressed, pain radiates across her chest.
- It is hot at work and she cannot breath. She has sensations when she walks through the door as she coughs and wheezes as soon as she walks in due to use of an oven cleaner.
- Coughing causes chest pain.
- Lifting does not cause chest pain.
- Going up stairs causes her to be short of breath and has pain.
- Is fatigued at work half way through the day.
- Has a reduced tolerance to heat due to her chest problems.

She testified that a combination of her conditions makes her daily job more difficult and affects her ability to do her job.

On cross examination the employee testified that she does her job satisfactorily and her yearly evaluations are all good. She agreed that the problems with stairs developed since December 11, 2007. She indicated that she does not make a move now without considering what pain will be caused.

During trial the Court questioned the employee and commented that with the severity of the problems she described, the Court indicated that it was hard to see how she did her job. She responded that she had to eat.

Dr. Cohen testified by deposition on November 1, 2010. He saw the employee on April 10, 2010 and prepared a report of the same date. Dr. Cohen took a history from the employee, reviewed medical records and conducted a physical examination. He provided a disability rating of 55% of the whole person at the lumbar spine.

Dr. Cohen also testified that he evaluated the employee for her pre-existing heart problems which he identified as a cardiac pacemaker implantation for sick sinus syndrome and depression. The pacemaker was installed in 1997. In 2005 the employee had a stent placed into her heart due to lightheadedness. He testified that the employee has a 30% permanent partial disability of the whole person due to her cardiac disorder. Dr. Cohen also testified that the injuries had a synergistic effect for which he assigned a 15% loading factor. He specifically testified that the cardiac pacemaker and depression combined with the primary injury to the employee's back to create a greater overall disability.

On cross examination, Dr. Cohen testified that he did not rate the depression and indicated that he was not aware of any difficulty or restrictions that affected the employee's work prior to the 2007 injury. He agreed that he had no evidence that her depression was industrially disabling. Dr. Cohen testified that no work restrictions were placed on the employee after her pacemaker was implanted other than to stay away from electrical equipment that would interfere with the pacemaker. He agreed that when he saw the employee she did not complain of lightheadedness or any problems related to her stent. Dr. Cohen further testified that he did not rate sleep apnea.

Dr. Cohen also testified that the employee had pain complaints from her 2007 work accident, including pain into her groin, left hip, muscle spasm in the low back, muscles feeling hard and tight, difficulty going up stairs, has to go slow because of pain and being out of breath. He confirmed that these problems had nothing to do with her heart. He further agreed that the employee's inability to play volleyball or go bowling or engage in other physical activities has nothing to do with her heart and are related to her back problems.

Dr. Robson is the surgeon who performed the employee's back surgery. In a letter dated August 16, 2010 he stated:

- The employee reached MMI as of August 26, 2009 and was released without restrictions.
- The employee has a 10% permanent partial disability as a result of her December 11, 2007 injury and will not need any additional medical care.

- The percentage of disability which may have pre-existed the employee's December 11, 2007 injury is 0%.

RULINGS OF LAW-

The employee claims that the disabilities from her pre-existing injuries synergistically combined with the disabilities created by her accident of December 11, 2007 in such a manner that they create a hindrance or obstacle to employment or reemployment. She listed a 1997 pacemaker, 2005 stents and sleep apnea as her pre-existing injuries. No ratings were provided regarding sleep apnea or depression/stress.

Section 287.220 RSMo., sets out the requirements that the employee must meet in order to require that the Second Injury Fund pay disability compensation for a combination of pre-existing disabilities and disabilities from the primary accident. One of the major components of proof that is required is that the disabilities meet a level of disability that is referred to as "threshold". Threshold requirements for a body as a whole disability are 12½% of the body as a whole. Threshold requirements for a major extremity disability are 15% of the extremity. Additionally the disabilities must combine to create a hindrance or obstacle to employment or re-employment.

The employee testified that her job as a Cook 3 at the Missouri Department of Corrections was stressful and physical in nature in a hot environment. Whatever the job requirements or the conditions of work, the employee was performing all job requirements without medical job restrictions or any accommodations prior to December 11, 2007. She was performing the requirements of her job even though she had the two heart procedures.

She received her pacemaker prior to ever beginning her employment at the Department of Corrections. She performed her job after she received her pacemaker in 1997 and after she received her stent in 2005. As she testified she did her job and received "Good" reviews. After her accident she underwent two back surgeries and was released back to full duty with no restrictions. She returned to her job and once again performed all of the duties that her job required, except that she now has a lot of problems, mostly related to pain that she did not have to deal with in the past. It is clear that these pain complaints stemmed from the back accident and not from the prior heart problems.

Dr. Cohen and Dr. Robson provided ratings listed supra. The employee settled her back accident for 30% permanent partial disability of the lumbar spine by Stipulation For Compromise Settlement. The Court finds that the employee incurred a 30% permanent partial disability to her body as a whole due to her accident of December 11, 2007. With this finding, the employee has met the threshold finding for her primary injury.

The Court is the trier of fact and has the responsibility to judge the credibility of any witness. By case law, the Court is free to disregard medical testimony that is not seemingly based on medical judgment. The Court does not find the testimony of Dr. Cohen credible as to the employee's pre-existing disability considering the testimony that the employee provided as to the effects of her

pre-existing disabilities when compared to the requirements of the job that she met on a daily basis prior to December 11, 2011.

After consideration of all of the evidence in this case, including the requirements of the job that the employee was performing both before and after her December 11, 2007 accident; the Court finds that the employee's pre-existing disabilities or conditions equate to a 10 % permanent partial disability of the body as a whole. A permanent partial disability of 10% of the body as a whole does not meet the threshold requirements of Section 287.220. It is the Court's responsibility to assess disability based on a consideration of all of the evidence. The employee is to be commended for continuing to work after her back surgeries in what she described as a difficult/strenuous job. While the employee certainly had some restrictions from her heart problems, the Court does not see how the employee could perform the requirements of the job that she described if she had a serious disability from her pre-existing conditions.

The Court further finds that none of the employee's pre-existing disabilities meet the threshold requirements that are necessary to combine with the employee's disabilities from her primary injury to trigger Second Injury Fund liability. The Court finds that the employee's evidence is not sufficient and does not arise to a level that justifies an award of permanent partial disability in this case.

The employee's claim is denied and the Second Injury Fund is not ordered to provide any permanent partial disability benefits to the employee in this case.

ATTORNEY'S FEE

No attorney fees are awarded in this case.

INTEREST

There is no interest in this case.

Gary L. Robbins
Administrative Law Judge
Division of Workers' Compensation