

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

Injury No.: 03-036455

Employee: Rick Powell  
Employer: West Plains Bridge and Grading  
Insurer: Hartford Insurance Co.  
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 section 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 section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 9, 2010. The award and decision of Chief Administrative Law Judge Karla Ogrodnik Boresi, issued September 9, 2010, 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 19<sup>th</sup> day of January 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Rick Powell

Injury No. 03-036455

Dependents: N/A

Employer: West Plains Bridge and Grading

Insurer: Hartford Insurance Co.

Additional Party: Treasurer as Custodian of  
Second Injury Fund

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Hearing Date: June 8, 2010

Checked by: KOB

### 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: alleged April 21, 2003
5. State location where accident occurred or occupational disease was contracted: Willow Springs, 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 the above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was on a screed machine when she slipped, catching his left foot. He fell to the ground injuring his knee.
12. Did accident or occupational disease cause death? No.
13. Part(s) of body injured by accident or occupational disease: left knee
14. Nature and extent of any permanent disability: 60% of left knee; Permanent Total Disability.
15. Compensation paid to date for temporary disability: \$44,835.00
16. Value necessary medical aid paid to date by employer/insurer? \$93,212.36

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$931.60
- 19. Weekly compensation rate: \$621.07/\$340.12
- 20. Method wage computation: by agreement.

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

96 weeks of permanent partial disability from Employer:	\$32,651.52
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22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
 weekly differential (\$280.95) payable for 96 weeks beginning  
 July 25, 2008 and, thereafter, the weekly benefit of \$621.07  
 for Claimant's lifetime:

Indeterminate

TOTAL:

INDETERMINATE

23. Future requirements awarded: Future medical treatment to maintain and replace, if necessary, the total knee replacement, as further described in the 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Dean L. Christianson

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

Employee: Rick Powell

Injury No. 03-036455

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
 COMPENSATION**  
 Department of Labor and Industrial  
 Relations of Missouri  
 Jefferson City, Missouri

Employer: West Plains Bridge and Grading

Insurer: Hartford Insurance Co.

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 Second Injury Fund

Checked by: KOB

**PRELIMINARIES**

The matter of Rick Powell (“Claimant”) proceeded to hearing to determine the compensation due Claimant on account of his April 21, 2003 work injury. Attorney Dean Christianson represented Claimant. Attorney John Palombi represented Lionmark, Inc. (“Employer”) and Hartford Insurance Company (“Insurer”). Assistant Attorney General Carol Barnard represented the Second Injury Fund.

The parties stipulated that on or about April 21, 2003, Claimant sustained an accidental injury arising out of and in the course of his employment that resulted in injury to Claimant’s left knee and leg. At the time, Claimant earned an average weekly wage of \$931.60, with corresponding rates of compensation of \$621.07 for total disability benefits and \$340.12 for permanent partial disability benefits. Employer paid temporary total disability benefits in the amount of \$44,835.00, and medical benefits in the amount of \$93,212.36. Employment, notice, timeliness of the claim, and coverage of the Act are not at issue. The parties stipulated to the St. Louis Division of Workers’ Compensation as being the proper venue for this matter.

The issues for determination are the nature and extent of permanent disability; Employer’s liability for future medical care; liability of the Second Injury Fund; and dependency. Claimant seeks permanent total disability benefits.

**FINDINGS OF FACT**

*Claimant’s testimony*

Claimant is a fifty-two year-old high school graduate, who took several college courses, but did not earn a degree. He has no other training. He is not able to type and only uses a computer for very basic tasks. He has never been in the military. He takes medications for heart problems and occasionally for pain, but he prefers vitamins and alternative treatments when possible.

Claimant has been married to Diane Powell for eight years. They have no children together. He has children from a previous marriage, including: Jordan, who was born in 1986; Amber, who was born in 1984; and Tyler, who was born in 1988. None of them were living with

him on the date of this accident, though he was supporting them financially at the time. Diane has two children from a previous marriage: Travis, who was age thirteen at the time of the accident, and April who was age fifteen. He was supporting them as well. There were no other persons who were dependent upon him at the time.

Claimant's vocational history consists primarily of bridge construction work with various employers, although he has some experience in factory work and carpentry as well. He started off as a laborer and worked his way to supervisor. At the time of the accident, Claimant had been working with Employer for three or four years, initially as a foreman, and then as a superintendent. He explained a foreman would lay out the jobs and keep the other workers going, while also performing manual labor. A superintendent did the same thing as a foreman, except there was more paperwork involved, and he supervised five to seven people. He still performed work of a heavy nature and operated various types of machinery.

Claimant left Employer after they took away his company truck. He then went to a new company, Thompson Construction, as a working superintendent over five to seven people. From 2005 and until January of 2007, he had a similar job with Robertson Contractors. He eventually left because of his ongoing knee problems and inability to perform his work. He last worked in January 2007.

On April 21, 2003, Claimant was working for Employer on a screed machine, which is used to level the bridge deck. As he climbed down, his foot slipped, his left foot caught, and he fell off the deck of the machine. His knee and hip popped and he fell to the ground. It was the end of the day and he did not seek medical care at that time. The next morning, Claimant went to Ozark Medical Center, where they diagnosed a sprain. He subsequently went to the Kneibert Clinic where he saw a nurse a practitioner who also diagnosed a sprain/strain.

Although he continued to have problems, Claimant had no treatment for another year and continued working for the various employer described above. In May 2004, Dr. Stevenson referred him to Dr. Moore, an orthopedic surgeon, who obtained an MRI. Claimant subsequently had four surgeries on his left knee, summarized as follows:

The first surgery of May 24, 2004 was an ACL reconstruction. He went to physical therapy at Ozark Physical Therapy. He was off work for seven or eight weeks. When he returned to work it affected his climbing.

The second surgery was in May 2005 to clean out the scar tissue. He was off for a week or two. When he returned to work he continued to have the same problems.

The third surgery was in May 2007 was a total knee replacement. He had range of motion problems, and he was stiff and sore, despite physical therapy. The surgery was done during a layoff and he did not even attempt to return to work because of the pain. He was working for Robertson's at the time.

In the fourth surgery on April 15, 2008, Dr. Aubuchon cleaned out the area again, removed scar tissue and ordered physical therapy. The knee improved, but occasionally

is sore, pops and gives away. Claimant followed up with Dr. Aubuchon, who released him at MMI on July 24, 2008, and has seen no other doctor since being discharged.

Claimant continues to have problems with his left knee. He has soreness, swelling and popping. The knee gives way four to five times per week with increasing frequency. He has problems with stairs and cannot kneel very well. The knee disrupts his sleep. He discussed an incident where his pain was so bad that he went into his garage with the doors closed and started his truck. His wife found him and got him out of the garage. Claimant became very emotional when discussing this incident.

Claimant had preexisting medical problems. In 1999, he was knocked unconscious when the bucket of a track hoe hit his head. During an 11-day hospitalization, he was diagnosed with four herniated discs, two in his neck and two in his back, and surgery was discussed, although not performed. He returned to work but continued to have problems, including headaches and stiffness in his neck on a daily basis. He lost grip strength in his right hand and he has pain shooting down his right arm. His low back is still stiff, painful and sometimes feels as if jabbed by an ice pick. He has pain into his hips and down both of his legs.

In 1996, Claimant was diagnosed with and medicated for hypertension. He is no longer taking those medications. In 2002, Claimant was diagnosed with heart problems. He was hospitalized and testing was performed, but no surgery. He has had problems with chest pain, pain in his arms and shortness of breath. He has difficulty with climbing stairs. He felt that the shortness of breath affected him at work.

In 2001, a heavy piece of piling fell and fractured Claimant's right great toe in four places. He has problems with pain in the toe and foot. The injury affects his balance and his ability to work at heights.

Claimant's daily activities are limited. He tries to mow his one half acre lawn with a riding mower, although he can only mow or use a weed eater for short periods of time due to his back, neck and knee. He does dishes or a little cleaning around the house. He has difficulty driving due to limited neck motion, and his back and knee pain necessitates stretch breaks. He only sleeps four to five hours per night and often naps. He feels he can stand or sit for 25 to 30 minutes and walk approximately one half mile. With increased activity he has increased knee, neck and back complaints. He has to frequently change positions.

### *Medical Records/Expert Testimony*

#### *Primary injury*

The records from Ozarks Medical Center Emergency Department dated April 22, 2003 (Exhibit G) show treatment for left knee pain. He was released with an immobilizer.

The Kneibert Clinic records (Exhibit D) document treatment for the left knee in addition to prior injuries and conditions discussed below. An April 23, 2003 note indicated Claimant previously injured his left knee and the x-ray showed there was no fracture. Records dated April 16, 2004 note that he fell about one year ago and he feels grinding in his knee. The MRI taken

April 20, 2004 showed partial LC tear, chondropathy with in the medial and patellofemoral compartments of the knee, small knee effusion with 4 mm Baker's cyst and questions of mild strain or partial tear of the proximal patellar tendon. Claimant continued care with the Kneibert Clinic in May 2004 for his left knee. He was assessed with a torn ACL and referred to Dr. Moore for treatment (Exhibit E)

Dr. Moore provided treatment for several years (Exhibit H). The note of July 1, 2004 refers to an ACL reconstruction (Exhibit I). The further treatment included an injection on January 25, 2005; arthroscopic surgery on May 20, 2005, and an injection November 3, 2005. On May 29, 2007, Dr. Moore performed a left total knee replacement at Poplar Bluff Regional Medical Center (Exhibit K). The postoperative diagnosis was post traumatic arthritis left knee. At the time of the surgery Claimant's medical history included hypertension and a history of coronary artery disease, although it did not require a stent or bypass.

On April 15, 2008, Dr. Aubuchon performed a left knee manipulation and arthroscopy with synovectomy at St. John's Mercy Medical Center (Exhibit O). Claimant participated in physical therapy at Ozark Physical Therapy (Exhibit R). The records indicate that his knee did very well with no lasting pain or soreness after treatments. However, he had more back pain after extended activities such as work hardening. Dr. Aubuchon released him from care on July 24, 2008 with a permanent restriction to avoid deep knee bends (Exhibit P).

#### *Pre-existing injuries/conditions*

Claimant treated with Searcy Medical Center regarding his 1999 injury (Exhibit B). Following testing it was determined he had herniated nucleus pulposus at C4-5 and C5-6 as well as L4-5 and L5-S1. He was diagnosed with a cervical and thoracic lumbar strain. His care included medication and physical therapy. No permanent restrictions were imposed.

Records of Kneibert Clinic (Exhibit D, E and F) refer to ongoing treatment for occasional chest pain, low back pain, as well as seeking clearance for left knee surgery. In August 2005 Claimant sought treatment for back pain. He was referred to a neurologist. Claimant underwent an MRI in October 2008 for low back pain. It showed "small" and "minimal" disc problems (Exhibit N).

During the course of treatment for his left knee replacement in 2007 Claimant developed left chest pain. The chest was x-rayed and other than small left effusion and tissue density the chest x-ray was negative (Exhibit K).

#### *Expert Testimony*

Claimant introduced the deposition testimony of Dr. Mark Lichtenfeld, who examined him on two occasions, reviewed medical records, and issued reports. Dr. Lichtenfeld testified that with respect to the primary injury of April 21, 2003, Claimant had a partial tear of the left collateral ligament, a post traumatic left Baker's cyst, a partial tear of the proximal left patellar tendon, chondropalasty within the medial compartment of the left knee, a tear of the left anterior cruciate ligament, status post reconstruction of the left ACL with a tendon graft, and status post left total knee arthroplasty, and status post arthroscopy with manipulation.

Dr. Lichtenfeld testified that the work accident was a substantial factor in causing this problem and that Claimant sustained a 70% permanent partial disability to the body as a whole at the level of the left knee with respect to those diagnoses.

With respect to the left knee only, Dr. Lichtenfeld gave the following restrictions: Claimant should avoid all bending, stooping, kneeling, and squatting and avoid working on slick and uneven surfaces. He should avoid lifting more than 20-25 lbs on a one time basis and 10 lbs on a repetitive basis. He should only perform lifting between the waist and shoulder height. He should avoid working at heights, as well as working on any uneven, unstable and pitched surfaces such as roofs, scaffolding and on outside high construction work. He should also avoid operating any type of air, gas or electric powered tools with his left lower extremity. He should alternate between sitting and standing two to three times per hour and as needed. He should avoid ascending and descending inclines, stairs and ladders.

With regard to further treatment for the left knee, Dr. Lichtenfeld testified that Claimant would benefit from treatment with anti-inflammatory medication. He should also spend time walking to help strengthen his leg. He should also use warm compresses, as well as analgesic creams as needed.

Dr. Lichtenfeld further testified that Claimant has pre-existing conditions which caused him to have pre-existing disabilities. He testified that those conditions are:

- 1) Cervical spine injury including herniated disks as C4-5 and C5-6, causing neural foraminal encroachment on the left at C5 & C6 as well as evidence of a left C5 and C6 radiculopathy on his examination. He testified that due to this condition, Claimant has 32.5% permanent partial disability of the person as a whole. He associated the following restrictions with the neck: Due to the cervical spine conditions, including the herniated disks, Claimant should avoid operating commercial motor vehicles, rapid rotations of his neck in various directions and looking up for periods of time of greater than a few minutes. He should also avoid operating any type of air, gas, or power tools with his upper extremities, lifting above the shoulder level, working with his arms outstretched or overhead, and any repetitive tasks with his upper extremities.
- 2.) The pre-existing lumbar spine injury including the herniation at L4-5 and L5-S1 on the left causing nerve root impingement on the left L4 & S1 nerve root sheet in addition to signs on examination of a left lumbar radiculopathy. Dr. Lichtenfeld testified that Claimant had a 32.5% permanent partial disability of the person as a whole with reference to the lumbar back. Due to his pre-existing lumbar spine condition, herniated disks, and nerve root impingement, Claimant should avoid stooping, bending, kneeling, and squatting, extreme twisting of the torso and all lifting from the ground level to the waist level. He should also avoid working on uneven and unstable surfaces and prolonged sitting and standing.
- 3.) Claimant has long standing hypertension and evidence of end organ damage in terms of cardiomegaly and ophthalmological changes due to his hypertension. Due to this diagnosis, Claimant has a 25% permanent partial disability of the person as a whole. Dr. Lichtenfeld testified that this condition takes a very long time to develop and did not occur between 2003 and

the time of his initial exam in 2006. Due to his hypertension and end organ damage, Claimant should avoid working at rapid rates and quotas, and environments that have extreme temperatures, including cold environments that are less than 35-40 degrees or hot environments that are greater than 85 degrees with high humidity, or 90 degrees with low humidity.

4.) Due to his cardio vascular disease, Claimant sustained a 17.5% permanent partial disability of the person as a whole. As a result, Claimant should avoid all types of heavy exertion as well as exposure to extremes of hot or cold temperatures and lifting greater than 25 pounds.

5.) With respect to the fractured right great toe, Claimant has a 37.5% permanent partial disability at the distal level of the foot at the 110 week level. Due to Claimant's loss of equilibrium and balance, subsequent to the toe injury, Claimant sustained a 12.5% permanent partial disability to the person as a whole. Due to Claimant's loss of equilibrium and balance, Claimant should avoid working at heights or around dangerous equipment and on unstable or uneven surfaces.

Dr. Lichtenfeld further testified that Claimant's pre-existing disabilities combined with the disabilities of his left knee injury. They further form an overall disability that is greater than the simple sum of the disabilities combined and create a significant obstacle and or hindrance to Claimant obtaining employment and/or re-employment. Dr. Lichtenfeld opined, "taking into consideration the patient's educational background, vocational history, as well as his pre-existing medical conditions in combination with the injury he sustained at his workplace on April 21, 2003, Mr. Powell is totally and permanently disabled as he is unable to compete on the open labor market."

Dr. Craig Aubuchon is the authorized treating physician who testified by deposition at the request of Employer/Insurer. He said Claimant was unable to achieve full flexion of his knee after the surgery and physical therapy. He stated that Claimant should have continued restrictions of no deep knee bends, and no running or jogging. He estimated Claimant's disability at 10% of the left knee. He said Claimant will not need any further medical care, other than to continue with stretching and strengthening exercises. Dr. Aubuchon stated that he hoped that Claimant would get 20 years of use out of his knee replacement, which would take Claimant to approximately age 68. He said it is possible Claimant could get a shorter life out of the replacement, or a longer one. He also said that Claimant should follow up with a physician every year or two to assess the status of his knee.

Dr. Michael Chabot, an orthopedic surgeon, also testified on behalf of the Employer/Insurer by deposition. Dr. Chabot testified Claimant had a long standing history of back symptoms, dating back to 1999. Dr. Chabot testified there was nothing in the work injury of April 21, 2003, that was a substantial factor in causing his current back related complaints.

Timothy Lalk, C.R.C., a vocational rehabilitation counselor, evaluated Claimant at the request of Claimant's counsel. He stated, "(Claimant) has experience and skills that would normally allow an individual to consider a wide variety of jobs, but because of his physical complaints, his experience and skills are of not much benefit. They would not allow him to enter skilled positions based upon all of the problems that he's having." He broke his analysis into different scenarios. If he assumed the restrictions of Dr. Aubuchon and the restrictions from Dr.

Lichtenfeld's 2009 report, then Claimant would be able to perform unskilled entry-level work at the sedentary level such as a cashier or customer service representative. But, if he assumed Mr. Powell's symptoms and limitations, as well as the physician's restrictions, then Claimant is not going to be able to secure or maintain employment in the open labor market. Mr. Lalk therefore testified that when he includes the limitations that Claimant has due to the increase in symptoms with activity, then "I do not believe that he would be able to retain employment." Mr. Lalk testified that he would not disagree with the opinion of Dr. Lichtenfeld that if he looked at his left knee symptoms standing alone, that that would not render him unemployable in the open labor market.

### **RULINGS OF LAW**

Based on the facts found, and the Missouri Workers' Compensation Act, I find that Claimant has met his burden of proof. Specifically, I find Claimant is unable to compete in the open labor market on account of a combination of disabilities, and the Second Injury Fund is liable for permanent and total disability benefits.

Claimant seeks permanent and total disability compensation from the Second Injury Fund. "Total disability is defined as the inability to return to any employment and not merely the employment at which the claimant was engaged at the time of the accident. The test for permanent total disability is the workers' ability to compete in the open labor market, in that it measures the workers' potential for returning to employment. The critical question then becomes whether any employer in the usual course of employment would reasonably be expected to hire this claimant in his or her present physical condition." *Lorentz v. Missouri State Treasurer*, 72 S.W.3d 315, 319 (Mo.App.S.D. 2002) citing *Reese v. Gary and Roger Link, Inc.*, 5 S.W.3d 522, 526 (Mo.App. 1999).<sup>1</sup> The overwhelming weight of the evidence, including Claimant's testimony, the medical evidence, and the vocational opinion, establishes Claimant is permanently and totally disabled.

In analyzing an alleged total disability case, "the first determination is the degree of disability from the last injury considered alone." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo.Banc. 2003). If the employee's last injury in and of itself rendered him permanently and totally disabled, the Second Injury Fund has no liability; the employer is responsible for the entire amount of compensation. *Landman* at 248; *Birdsong v. Waste Management*, 147 S.W.3d 132, 138 (Mo.App. S.D. 2004).

Claimant has significant disability as a result of his primary left knee injury. Although he was able to work for many months after the injury, Claimant ultimately underwent four surgeries to cure and relieve the effects of his April 21, 2003 work injury, the results of which were not necessarily good. He has continued pain, swelling, popping and instability. Basic activities such as sleep and climbing stairs are negatively impacted. Based on all the evidence, including Claimant's testimony, which I find credible, medical records, and expert opinions, I find Claimant sustained permanent partial disability of 60% of the left leg referable to the knee on

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<sup>1</sup> These are two of several cases cited herein that were among those overruled, on an unrelated issue, by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 224-32 (Mo. banc 2003). Such cases do not otherwise conflict with *Hampton* and are cited for legal principles unaffected thereby; thus I will not further note *Hampton's* effect thereon.

account of his primary injury of April 2003. While this injury may have foreclosed Claimant's ability to work in his former profession, that injury alone did not render Claimant totally disabled from all employment.

As part of the primary injury, I also find Employer/Insurer liable for future medical care. Section 287.140.1, RSMo, requires the employer to provide medical treatment as a component of an employee's compensation due to injury. *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo. App. 1996). The record establishes Claimant needs further medical care with respect to his left knee. Dr. Aubuchon said that in addition to performing stretching and strengthening exercises, Claimant should follow up with a physician every year or two to assess the status of his knee. If such physician, who shall be authorized by Employer, indicates Claimant's knee hardware needs to be replaced, Employer/Insurer shall provide such treatment, and all other modalities required to cure and relieve from the effects of the injury. Employer and Insurer shall remain liable for the ongoing maintenance and treatment of Claimant's left knee replacement.

Second Injury Fund liability may be triggered if the employer is not responsible for total disability. In order to recover from the Second Injury Fund, a claimant must first prove a pre-existing permanent partial disability whether from a compensable injury or otherwise, pursuant to § 287.220.1. The permanent disability pre-dating the injury in question must "exist at the time the work-related injury was sustained and be of such seriousness as to constitute a hindrance or obstacle to employment or re-employment, should the employee become unemployed." *Messex v. Sachs Electric Co.*, 989 S.W.2d 206, 214 (Mo.App. 1999), cited in *Karoutzos v. Treasurer*, 55 S.W.3d 493, 498 (Mo.App. S.D. 2001).

Claimant has a number of serious preexisting permanent partial disabilities which negatively impacted Claimant's ability to work. For many years, Claimant worked despite having four herniated disks in his cervical and lumbar spine. Pain, radicular symptoms, decreased grip strength, limited motion and headaches plagued him and limited his ability to fully perform at times. His cardiac condition caused him to be short of breath at work, and his foot injury affected his balance and ability to work at heights. The disabilities to the neck, back, cardiovascular system and foot existed at the time of the primary injury and are of such seriousness as to constitute a hindrance or obstacle to employment.

The overwhelming weight of the credible evidence establishes Claimant is permanently and totally disabled due to the combination of the primary left knee injury and the preexisting disabilities. I find credible Claimant's testimony that he finds it necessary to limit his activities because of the increase in his pain complaints with his knee, neck and back when he is more active. I further find credible the conclusions of Dr. Lichtenfeld and Mr. Lalk. They felt Claimant is unable to secure and maintain employment in the open labor market, because of his need to constantly re-position himself, as well as his deficient mobility and stability. He is fifty-two years old, limited in experience to bridge construction, without further education besides several general courses in a junior college, and without transferable skills. His history shows that he has sustained injuries in the past which have kept him off work for substantial periods, and which limited his ability to perform his job once he returned to work. Mr. Lalk, the only vocational expert in this matter, testified that Claimant is unemployable on the open labor market as a result of his disabilities, and Dr. Lichtenfeld agreed. Claimant is unable to compete in the open labor market on account of his primary and preexisting injuries.

Finally, inherent in some permanent total disability awards is the issue of the potential for such benefits to continue to dependents upon the employee's death. *Schoemehl v. Treasurer of State of Missouri*, 217 S.W.3d 900 (Mo. 2007). Claimant produced evidence which establishes that his spouse, Diane Powell, was dependent upon him at the time of his accident of April 21, 2003. The same holds true for his children: Amber Powell, Jordan Powell, and Tyler Powell. It is therefore found that Diane Powell, Amber Powell, Jordan Powell, and Tyler Powell were Claimant's dependents at the time of his injury, for purposes of the possibility of future disability benefits per *Schoemehl*. Whether dependents will ever be entitled to benefits cannot be determined at this time.

**CONCLUSION**

Claimant sustained a left knee injury arising out of and in the course of his employment with Employer, and underwent four surgical procedures as a result, including a total knee replacement. Employer is liable to provide permanent partial disability benefits equivalent to 60% of the left knee, and future medical treatment to maintain the knee replacement and treat the knee. Because Claimant is permanently and totally disabled, and unable to compete in the open labor market on account of the combination of his primary and preexisting disabilities, the Second Injury Fund is liable to pay permanent total disability benefits according to law.

Dean L. Christianson, Attorney at Law, is allowed a fee of 25% of all benefits awarded for necessary legal services rendered, which shall constitute a lien on said compensation.

Made by: \_\_\_\_\_  
 KARLA OGRODNIK BORESI  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*

This award is dated, attested to and transmitted to the parties this \_\_\_\_\_ day of September, 2010 by:

\_\_\_\_\_  
 Naomi Pearson  
*Division of Workers' Compensation*