

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

Injury No.: 00-107720

Employee: Darrell Ragland
Employer: Architectural Woodwork Corp. (Settled)
Insurer: Indiana Lumbermen's Mutual Insurance (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, read the briefs, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated April 4, 2011.

Preliminaries

The administrative law judge heard this matter to consider: (1) whether the employee's injuries arose out of and in the course of employment; (2) whether the accident or occupational disease caused the injuries and disabilities for which employee claims benefits; and (3) Second Injury Fund Liability.

The administrative law judge found that: (1) employee's occupational disease of chronic bronchitis caused the injuries and disabilities for which benefits are now being claimed; (2) employee suffered a 15% permanent partial disability of the body as a whole as a result of contracting chronic bronchitis as a work-related occupational disease; and (3) the Second Injury Fund is liable to employee for permanent total disability benefits based on employee's primary injury and the preexisting conditions employee suffered prior to, on or about September 1, 2000.

The Second Injury Fund filed an Application for Review alleging the administrative law judge erred in finding employee permanently and totally disabled from a combination of his alleged prior disabilities and primary injury because: (1) employee provided no medical treatment records nor credible medical opinion to relate his symptoms to the workplace; (2) employee provided no expert opinion regarding the level of disability of each alleged prior and primary injury; (3) the administrative law judge relied on inadmissible hearsay from treating physicians contained in Dr. Stuckmeyer's report; (4) Dr. Stuckmeyer is not a rehabilitation counselor and is not qualified to render expert testimony regarding employability; and (5) Dr. Stuckmeyer is the only witness who testified regarding employee's access to the open labor market and Dr. Stuckmeyer is not a credible or qualified witness.

For the reasons set forth below, we reverse the decision of the administrative law judge.

Employee: Darrell Ragland

- 2 -

Findings of Fact**Primary injury**

Employee suffered a compensable occupational disease in the form of laryngeal carcinoma in 1997, which we have addressed in our award in employee's claim for Injury No. 97-499986. Employee alleges an additional primary injury in or around September 2000 to his vocal cords, throat, lungs, respiratory system, and body as a whole sustained as a result of his exposure to various chemicals while in the performance of his work for employer. As best we can determine, it appears employee is alleging his chronic bronchitis, which developed as a result of his laryngectomy, is a new and separate occupational disease.

Dr. James Stuckmeyer provided the only expert medical testimony in this matter. Dr. Stuckmeyer did not diagnose any condition sustained in or around September 2000 or opine that employee sustained a second occupational disease subsequent to the laryngeal carcinoma in 1997. Rather, Dr. Stuckmeyer opined that employee did not sustain any new injury:

Q. And after reviewing the records, would you assume that's deterioration – or let me restate that. Were his 2000 new symptoms a deterioration of his 1997 symptoms?

A. You know, I'll be honest with you, it appears that he had a total laryngectomy on September 26th of 1997. I commented on page 3. I don't really understand the – it's the same bodily part, same exposure. I don't really know what the – if there was a deterioration. He had already undergone surgery for the cancer.

Transcript, pages 91, 92.

We find no evidence to suggest employee sustained an additional injury. We find, rather, that employee's chronic bronchitis was a continuing residual from the 1997 injury.

Conclusions of Law**Liability of the Second Injury Fund**

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in "all cases of permanent disability where there has been previous disability." As a threshold matter, employee must show that he sustained a compensable primary injury resulting in permanent disability, or there is no basis for invoking § 287.220.

We have found that employee did not sustain a new injury, but that his chronic bronchitis was related to and caused by the occupational disease sustained in 1997. Our findings are based on the testimony of the sole medical expert. We conclude that employee has failed to meet his threshold burden of proving he sustained a primary injury resulting in permanent disability. We conclude the Second Injury Fund has no liability in this matter.

Employee: Darrell Ragland

- 3 -

Because we have concluded that the employee did not establish the existence of a primary injury in this matter, the award of the administrative law judge is reversed, and all other issues are moot.

Conclusion

Based on the foregoing, the Commission concludes and determines that employee failed to demonstrate that he sustained a compensable primary injury by occupational disease in this matter.

Employee's claim against the Second Injury Fund is denied.

The award and decision of Administrative Law Judge David L. Zerrer, issued April 4, 2011, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 19th day of August 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary