

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

Injury No.: 04-132024

Employee: Glenda Reed

Employer: Government Employees Hospital Association (Settled)

Insurer: Liberty Mutual Insurance Company (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 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 February 17, 2010. The award and decision of Administrative Law Judge Emily S. Fowler, issued February 17, 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 29th day of July 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Glenda Reed Injury No: 04-132024
Dependants: N/A
Employer: Government Employees Hospital Association
Additional Party: The Treasurer of the State of Missouri as Custodian for the Second Injury Fund
Insurer: Liberty Mutual Insurance Company
Hearing Date: December 21, 2009

FINDINGS OF FACTS 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: October 7, 2004.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri.
6. Was above employee in employ of above employer at the 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 was contracted: During the course of her employment, Employee developed pain in her shoulders, hands and wrists as a result of her repetitive work.
12. Did accident or occupational disease cause death? No.

13. Part(s) of body injured by accident or occupational disease: right shoulder, right wrist, right upper extremity and left shoulder, left wrist and left upper extremity.
14. Nature and extent of any permanent disability: 15.75% BAW Permanent Partial Disability from settlement with Employer. Permanent Total Disability as to the Second Injury Fund
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$1,024.14
19. Weekly compensation rate: \$354.05/\$675.90
20. Method wages computation: by agreement.

COMPENSATION PAYABLE

21. Previously paid by Employer 15.75% body as a whole equating to 63 weeks at \$354.05 for \$22,305.15.
22. Second Injury Fund liability:

Permanent total disability benefits from Second Injury Fund Beginning February 8, 2007 at \$321.85 per week for 52 and 4/7 weeks for a total of \$16,920.11, then beginning February 21, 2008 and thereafter at \$675.90 per week for the remainder of Employee's life.
23. Future requirements awarded: None

The compensation awarded against the Second Injury Fund shall be subject to a lien in the amount of 25% plus expenses to attorney Christopher Smith.

FINAL AWARD

Employee: Glenda Reed Injury No 04-132024
Dependants: N/A
Employer: Government Employees Hospital Association
Additional Party: The Treasurer of the State of Missouri as Custodian for the Second Injury Fund
Insurer: Liberty Mutual Insurance Company
Hearing Date: December 21, 2009

FINDINGS OF FACT and RULINGS OF LAW:

On December 21, 2009, the parties appeared for hearing. The Employee, Glenda Reed, appeared in person and with counsel Christopher Smith. The Employer and its Insurer had previously settled their liability with Employee. The Missouri Second Injury Fund appeared by Assistant Attorney General Benita Seliga.

STIPULATIONS

At the hearing, the parties stipulated to the following:

1. That on or about October 7, 2004 Employer and Employee were operating under and subject to the provisions of the Missouri Workers' Compensation law and that Employer was fully insured by Liberty Mutual Insurance
2. That Glenda Reed was an Employee of Government Employee's Hospital Association.
3. That Employee was working in Kansas City, Jackson County, Missouri.
4. That Employer had notice of the claim and said claim for compensation was timely filed; and
5. That Employee's average weekly wage was \$1,024.14 making a compensation rate of \$675.90/\$354.05.
6. That Employer's liability was previously settled for 15.75% of the body as a whole referable to both upper extremities and mental and emotional psyche.
7. That prior to settlement, Employer paid temporary total compensation in the amount of -0- and medical expenses in the amount of -0-.

ISSUES

The parties requested the Division to determine the following issues:

1. Whether Employee sustained an accidental injury arising out of and in the scope and course of her employment; and
2. Whether the Second Injury Fund is liable to Employee for permanent and total disability by the combined effects of the injuries through October 7, 2004 and pre-existing disabilities.

The Employee's evidence consisted of Ms. Reed's live testimony and the following exhibits which were admitted without objection:

- Exhibit C: Deposition of Mary Titterington along with attachments, taken on 11/10/09
- Exhibit D: Report of Dr. Lynn Ketchum 11/09/06
- Exhibit E: Addendum of Dr. Lynn Ketchum 3/6/07
- Exhibit F: Medical Records of Rockhill Orthopedics
- Exhibit G: Medical Records of Baptist – Lutheran Medical Center
- Exhibit H: Medical Records of H. Joe Pryor M.D.
- Exhibit I: Medical Records of Independence Regional Medical Center (1-32)
- Exhibit J: Medical Records of Independence Regional Medical Center (1-9)
- Exhibit K: Medical Records of Independence Regional Medical Center (1-23)
- Exhibit L: Medical Records of Centerpoint Medical Center (1-7)
- Exhibit M: Medical Records of Centerpoint Medical Center (1-79)
- Exhibit N: Medical Records of Dr. John Stanley
- Exhibit O: Medical Records of Orthopedic Surgeons, Inc.
- Exhibit P: Medical Records of Orthopedic Associates of Kansas City (1-14)
- Exhibit Q: Medical Records of Orthopedic Associates of Kansas City (1-10)
- Exhibit R: Medical Records of Orthopedic Associates of Kansas City (1-13)
- Exhibit S: Medical Records of Orthopedic Associates of Kansas City (1-16)
- Exhibit T: Medical Records of KUPI (1-4)
- Exhibit U: Medical Records of KUMC (1-3)
- Exhibit V: Medical Records of Kansas City Bone & Joint
- Exhibit W: Medical Records of Dr. Mark Killman
- Exhibit X: Medical Records of OHS Compcare
- Exhibit Y: Medical Records of Primary/Urgent Care
- Exhibit Z: Medical Records of SERC
- Exhibit AA: Medical Records of Research Medical Center
- Exhibit BB: Medical Records of Pain Management Associates (1-6)
- Exhibit CC: Medical Records of Pain Management Associates (1-21)
- Exhibit DD: Medical Records of Midwest Brain and Spine (1-14)
- Exhibit EE: Medical Records of Midwest Brain and Spine (1-14)
- Exhibit FF: Medical Records of Blue River Medical Group
- Exhibit HH: Claimant's exhibit list
- Exhibit II: Claimant's Deposition with Second Injury Fund

The following exhibits were admitted over Second Injury Fund's objection:

- Exhibit A: Deposition of Dr. P Brent Koprivica taken on 11/6/09 with attachments
- Exhibit B: Deposition of Allan Schmidt taken on 10/27/09 with attachments

The following exhibit was admitted over Second Injury Fund's objection having been taken under advisement:

Exhibit GG: Medical Records of Dr. Samuel Lehman

The Second Injury Fund offered no live testimony but offered the following exhibit which was admitted with no objection:

SIF Exhibit No 1: Letter from Dr. Lehman's office

FINDINGS AND RULINGS

Primary Claim – bilateral upper extremities

Glenda Reed is a 48 year old female who lives in Raytown, Missouri with two disabled brothers. Both brothers are self-sufficient; she is not responsible for the care of either of them. If she did not provide housing for her brothers, they would be homeless.

Ms. Reed worked for Government Employees Hospital Association (GEHA) from 1988 through August 8, 2006. Her job title was claims processor, and as such, she processed claims received from medical providers and answered the telephone in a customer service capacity. Physically, Ms. Reed was required to use her hands, wrists and arms to do computer keyboarding activities in a repetitive fashion, generally 8 hours per day, 5 days per week. She also worked overtime an average of 7 hours per week.

In the spring of 2004, Ms. Reed started experiencing pain in her elbows. She received medical treatment, initially for the left elbow, from her personal physician, Dr. William Brown, as well as from Dr. Michael Clemente. The treatment included steroid injections in the lateral epicondyle area, and ice packs and medications were prescribed. When she submitted claims for this treatment with her personal insurance carrier, she was told that her complaints were work-related. Therefore, she reported this as a work-related condition to her supervisor, Rosemary Baugher, and began to receive further medical evaluation and treatment, now authorized, including medications, an EMG, a wrist brace and physical therapy from OHS CompCare.

Ms. Reed's upper extremity complaints persisted, and the OHS CompCare records indicate that by November 23, 2004, she was beginning to develop right wrist flexor tenosynovitis. She reported this as a work-related condition to Linda Downing in GEHA's human resources department.

OHS CompCare referred Ms. Reed to Dr. Rosenthal who, in December of 2004, opined that the left elbow complaints were of unknown etiology and that regarding the right upper extremity, there were no objective findings. Ms. Reed was released from authorized medical care, but her upper extremity complaints continued. Therefore, she returned to Dr. Brown who, in turn, referred her to Dr. Sol Dubin. Dr. Dubin performed medial epicondylectomies – on the left on January 25, 2005, and on the right on March 22, 2005. Dr. Brown continued to follow Ms. Reed regarding her work-related upper extremity injuries through October 25, 2005.

Ms. Reed continued to work at GEHA on an intermittent basis for the duration of the above-described course of medical treatment. Her job title, duties and work schedule did not change. The problems with her upper extremities worsened, and that worsening, coupled with her multiple pre-existing conditions, caused a significant decrease in her production rate. In fact, she was terminated on August 8, 2006 for failure to make production quotas. She has not worked since that date.

Based on Ms. Reed's continuing complaints regarding the right wrist, Dr. Mark Killman performed electrodiagnostic studies on October 18, 2006 which revealed mild carpal tunnel syndrome on the right. On November 29, 2006, Dr. Bert Park performed a right carpal tunnel release.

Ms. Reed was sent by her attorneys to Dr. Lynn Ketchum. In his report of March 6, 2007, Dr. Ketchum opined that Ms. Reed's repetitive work activities were the prevailing factor in causing the carpal tunnel syndrome on the right and subsequent need for a carpal tunnel release.

Ms. Reed's appointment with Dr. Park on December 7, 2006 was the last time Ms. Reed was seen for the upper extremities problems which she relates to her employment activities with GEHA.

Despite having been released from medical care, Ms. Reed continues to have problems with the upper extremities. Her chronic pain and ongoing loss of strength has resulted in a significant loss of function. Specifically, she has a reduced ability to do household activities and to take care of her personal grooming needs. She has difficulty sleeping on a nightly basis due to pain in her arms and hands.

In addition to the permanent disability attributable to her physical injuries and resultant disabilities, Ms. Reed has suffered from a psychological standpoint. She now has permanent psychological and emotional problems which she relates to the work-related upper extremities injuries and to her inability to work. While she did have psychological issues prior to October of 2004, the injuries to the upper extremities have caused an increase in anxiety and depression. She receives treatment 1 to 2 times per month from Dr. John Stanley, a psychiatrist, for ongoing anxiety, depression, attention deficit disorder and sleep disorder. She has counseling with Dr. Stanley, and he prescribes psychotropic medications.

Ms. Reed applied for and received unemployment compensation for the six month period following August 8, 2006. Despite attempts to find employment, she has not worked at any job since that date. She currently receives Social Security Disability benefits.

PRE-EXISTING DISABILITIES /
HINDRANCE OR OBSTACLE TO EMPLOYMENT OR RE-EMPLOYMENT

Prior to October 7, 2004, Ms. Reed had a number of significant disabilities. The pre-existing disabling conditions relate to the left ankle, migraine headaches, bowel and abdominal problems, problems with the neck and back and mental and emotional psyche problems. In combination with the work-related disability to the bilateral upper extremities, all of these pre-existing disabling conditions negatively impacted her ability to meet her production goals at work and ultimately led to her inability to maintain employment.

In 1999, Ms. Reed suffered a bi-malleolar left ankle fracture. She underwent an open reduction and internal fixation with eventual removal of the hardware. She had ongoing ankle complaints and would not have been able to do work that required standing, walking or working on uneven surfaces. The employer accommodated her by providing a foot stool on which she could prop up and rest the left ankle.

Ms. Reed also had pre-existing problems with disabling migraine headaches. She typically would miss work one day per month due to a migraine headache. The headaches would cause blurred vision, an uncomfortable sensitivity to light and difficulties with focus and concentration. As with the foot stool for her ankle, the employer provided special accommodations to Ms. Reed to make her job easier given the migraine headaches. The employer lowered the lighting in her work area and provided a screen guard for her computer monitor.

Also pre-dating October of 2004, Ms. Reed suffered from severe bowel and abdominal problems. Beginning in 1989, she underwent seven abdominal surgeries to treat short bowel syndrome. This led to dumping syndrome which required her to use the restroom on a frequent and unpredictable basis throughout the work day.

Ms. Reed was involved in several motor vehicle accidents over the years, the first of which occurred in 1982. Associated with these accidents, Ms. Reed developed problems with the neck and low back. MRI scans in 2005 revealed a disk protrusion in the cervical spine and bulges in the low back at L4-L5 and L5-S1. Although these objective findings were made subsequent to October of 2004, the medical records reflect that the neck and low back problems are longstanding.

The chronic problems with the neck, in particular, hindered Ms. Reed in performing her job duties. She experienced pain and stiffness in the neck. When this happened, she had difficulty with range of motion, *i.e.*, with turning her head from side to side, an activity that was required repeatedly throughout the work day as she used the

computer and answered the telephone. If she had become unemployed, she would not have been able to do jobs requiring heavier labor than that required of the sedentary claims processor position.

Lastly, Ms. Reed has a significant history of psychological issues for which she has undergone treatment pre-dating October of 2004. She was diagnosed with attention deficit disorder as a child; this was treated with medication. She was divorced in 1998, experienced the loss of her parents in 1997 and 1998, and, in 1998, a brother died. In 2001, a niece was killed in a motor vehicle accident. Her personal physician treated her during this period by prescribing psychotropic medications. Then in 2001, she started treatment with a psychiatrist, Dr. John Stanley, for anxiety, depression attention deficit disorder and sleep disturbance. Dr. Stanley prescribed psychotropic medications and provided counseling. She did miss work from time to time based on her pre-existing psychological condition. In fact, she was on FMLA for a six month period in 1997 for depression, crying at work and inability to concentrate.

THE EVIDENCE - EMPLOYEE

PHYSICAL:

Dr. Koprivica evaluated Ms. Reed on July 19, 2008 for the series of injuries through October 7, 2004, as well as for her preexisting physical injuries and conditions. He opined that Ms. Reed had disability from the series of injuries through October 7, 2004 and had significant disability predating October 7, 2004 as well. He outlined the numerous physical restrictions placed on Ms. Reed for her various physical injuries and conditions. He assigned the following permanent partial disability ratings: 30% permanent partial disability of the body as a whole for the primary claim of repetitive injury to the bilateral upper extremities, 20% permanent partial disability of the left lower extremity at the level of the ankle for the prior left ankle fracture, 12.5% permanent partial disability of the body as a whole for the prior disabling migraine headaches, 15% permanent partial disability of the body as a whole for the bowel and abdominal problems, 12.5% permanent partial disability of the body as a whole for the symptomatic cervical spine and 15% permanent partial disability of the body as a whole for the chronic mechanical low back pain with multi-level degenerative disk disease and disk bulging. He detailed the medical treatment.

Based on his findings as well as those of Dr. Schmidt and Mary Titterington (see below), Dr. Koprivica opined that Ms. Reed is permanently, totally disabled and attributes the permanent, total disability to the combined effects of the series of injuries through October 7, 2004 and the pre-existing disabilities.

PSYCHOLOGICAL:

Dr. Schmidt evaluated Ms. Reed on September 11, 2008 to determine her psychological status and degree of any psychological disability. He opined that Ms. Reed

had permanent pre-existing psychological disability which was aggravated by the work-related injuries to the upper extremities.

Regarding the pre-existing psychological status: Ms. Reed's father was an abusive alcoholic. She was diagnosed with attention deficit disorder as a child and was treated for this with medication. Her first husband was physically abusive. She was prescribed medication for anxiety, depression and sleep disturbance even before beginning formal psychiatric treatment with Dr. John Stanley, a psychiatrist, in 2001. Ms. Reed underwent counseling with Dr. Stanley and was also prescribed psychotropic medications.

The work-related upper extremities injuries permanently aggravated Ms. Reed's pre-existing psychological state. Due to these injuries and resultant pain and inability to work, her anxiety and depression have increased.

Dr. Schmidt assigned the following psychological disability ratings: 10% as a result of the primary claim of injuries to the upper extremities and 30% prior to these injuries.

VOCATIONAL:

Vocational and rehabilitation consultant Mary Titterington evaluated Ms. Reed on September 20, 2008. Ms. Titterington reviewed medical records and reports, consulted standardized references, obtained educational and work histories and administered four tests. Based on the information she gathered, Ms. Titterington concluded that Ms. Reed is not a good candidate for vocational rehabilitation and is unemployable in the open labor market due to a combination of her multiple impairments.

THE EVIDENCE – SECOND INJURY FUND

The Second Injury Fund put on no evidence. However upon cross examination by the Second Injury Fund, Ms. Reed admitted that she received a raise every year she was employed by employer and constantly hit her production requirements until the last couple of months of her employment when she was ultimately terminated for not reaching production goals. She worked full time after she returned to work after her surgery to her elbow. She had no restrictions placed on her due to her "dumping" syndrome. There was no note from any doctor requesting the stool for her swollen ankle, although Ms. Reed testified that upon request of the stool from her employer she did give her employer a note from her doctor who had written it on a prescription. She admitted that she only missed work once a month due to her migraines. After she was terminated she did seek and was given unemployment insurance. Although she did look for employment she was unable to find any. She interviewed with Overland Park Regional Hospital but she stated that the pay was not enough to make it worthwhile but also upon discussing it with the interviewer they told her they could not hire her anyway due to the health problems she explained to them.

It is also noted that on Dr. Koprivika's deposition, upon cross examination by the Second Injury Fund he admitted there were no formal work restrictions placed on Ms. Reed by Dr.s Chaplick, Isreal, Maden, Lehman or Dubin. It is noted however by this Court that although Dr. Lehman did not place any restrictions upon Ms. Reed, he determined that she was unable to work due to intractable pain. Further Dr. Dubin's last medical note referred her to K.U. Medical Center for further medical care including surgery.

THE LAW

Ms. Reed claims she is permanently and totally disabled. Section 287.020.5 RSMo defines total disability as the inability to return to any employment and not merely . . . to return to the employment in which the employee was engaged at the time of the accident. The term, "any employment" means "any reasonable or normal employment or occupation." *Fletcher v. Second Injury Fund*, 1992 S.W.2d 402 (Mo.App.1996); *Crum v. Sachs Electric*, 786 S.W.2d 131 (Mo.App.1989); *Kowalski v. M-G Metals and Sales*, 631 S.W.2d 919 (Mo.App.1992); *Groce v. Pyle*, 315 S.W.2d 482 (Mo.App.1958). It is not necessary that an individual be completely inert or inactive in order to meet the statutory definition of permanent total disability. It is necessary, however, that the employee be unable to compete in the open labor market. See *Fletcher v. Second Injury Fund*, *Searcy v. McDonnell Douglas Aircraft*, 894 S.W.2d 1173 (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 held that the test for determining permanent total disability is whether the individual is able to compete in the open labor market and whether an employer in the usual course of business would reasonably be expected to employ the employee in his present physical condition. *Sullivan v. Masters Jackson Paving Company*, 35 S.W.3d 879 (Mo.App.S.D.2001). See *Garcia v. St. Louis County*, 916 S.W.2d 263 (Mo.App.1995); *Lawrence v. RV-III School District*, 834 S.W.2d 789 (Mo.App. 1992). A determination of permanent, total disability focuses 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 employment. *Gordon v. Tri-State Motor Transit*, 908 S.W.2d 849 (Mo.App. 1995). Various factors may be considered, including the employee's physical and mental condition, age, education, job experience and skills in making a determination as to whether the employee is permanent, totally disabled. See *Tiller v. 166 Auto Auction*, 941 S.W.2d 863 (Mo.App. 1997; and *Olds v. Treasurer*, 864 S.W.2d (Mo.App.1993).

I find that Ms. Reed's physical restrictions are significant, and her complaints of pain and disability are uncontradicted and credible.

SECOND INJURY FUND LIABILITY

Initially, it must be decided whether Ms. Reed is permanently, totally disabled due to the primary accident alone or as a result of the combined effects of the primary accident and her pre-existing disabilities. I do not believe that she is permanently, totally

disabled as a result of the primary accident alone. Rather, I find, based on the Employee's testimony, the expert testimony and the medical reports and records, that she is permanently and totally disabled as a result of all the disabilities combined, both from the primary accident and the pre-existing conditions.

In order to establish Second Injury Fund liability for permanent, total disability benefits, Ms. Reed must prove the following: (1) that she has permanent disability as a result of a compensable work-related injury; (2) that she has permanent disability predating the compensable work-related injury which is of "such seriousness as to constitute a hindrance or obstacle to employment or to obtain reemployment if employee becomes unemployable", Section 287.220.1 RSMo 1994; *Garribay v. Treasurer*, 930 S.W.2d 57 (Mo.App. 1996); *Rose v. Treasurer*, 899 S.W.2d 563 (Mo.App.1995); *Leutzinger v. Treasurer*, 895 S.W.2d 591 (Mo.App.1995); and *Wuebbeling v. West County Drywall*, 898 S.W.2d 615 (Mo.App.1995); and (3) that the combined effect of the disability resulting from the work-related injury and the disability that is attributable to all conditions existing at the time the last injury was sustained results in permanent, total disability. *Boring v. Treasurer*, 947 S.W. 2d 483 (Mo.App.1997); *Reiner v. Treasurer*, 837 S.W.2d 152 (Mo.App.1994).

Ms. Reed has met the first test for establishing Second Injury Fund liability for permanent total disability. She testified that she injured her upper extremities at work by doing repetitive computer keyboarding activities for as many as 47 hours per week. She further testified that her pre-existing psychological problems were aggravated by the work-related repetitive injury and eventual inability to work. I find Ms. Reed to be credible and note that the testimony of Dr. Koprivica and Dr. Schmidt bolsters that of Ms. Reed. I believe that she has permanent disability of at least 15.75% of the body as a whole, the percentage at which the claim was settled with the employer and insurer.

Ms. Reed has met the second test for establishing Second Injury Fund liability for permanent total disability. As discussed in detail above, there is ample substantial and competent evidence, in the form of Ms. Reed's and the experts' credible testimony as well as the medical reports and records, that she has permanent disability predating the compensable work-related injury which is of "such seriousness as to constitute a hindrance or obstacle to employment or to obtain reemployment if employee becomes unemployable".

Ms. Reed did have a long history of physical problems and psychological problems which constituted a hindrance or obstacle to employment. And, with particular regard to the pre-existing dumping syndrome for which the employer did accommodate her by permitting her to use the restroom as needed, this is an unacceptable work practice. Accordingly, I find that should Ms. Reed have become unemployed, it is unlikely that a subsequent employer would have hired her given her need for such an accommodation. Further accommodation included here need for a foot stool for her ankle.

Ms. Reed has met the third test for establishing Second Injury Fund liability for permanent, total disability. Her testimony is that no one of her multiple impairments, considered independently and in isolation, is the cause of her inability to work. This is supported by the testimony of Dr. Koprivica and Mary Titterington – that Ms. Reed is unable to work due to a combination of her multiple disabilities. I find Ms. Reed to be permanently, totally disabled as a result of the combined effects from the October 7, 2004 injury and her preexisting disabilities, specifically her preexisting physical injuries and psychological problems combined with the current physical and psychological injuries.

An employee's burden of proof in a workers' compensation claim is "more likely than not." And, in the present case, all of the evidence favors the award of benefits. Ms. Reed and the experts are credible. Thus, I find that based on the competent and substantial evidence, including Ms. Reed's testimony, the expert testimony, the medical records and reports, and considering the whole record, Glenda Reed has met her burden of proving that she is permanently and totally disabled and unemployable on the open labor market and that the Second Injury Fund is responsible to her for lifetime benefits for permanent total disability.

I further find that Ms. Reed's disability became permanent effective December 7, 2006. Thus, the Employer/Insurer's liability for the 63 weeks of compensation for permanent partial disability at the rate of \$354.05 per week began on that date and ran through February 21, 2008.

I further find that Ms. Reed received unemployment benefits through February 8, 2007 (6 months from the date of termination, August 8, 2006).

I further find that the permanent total disability rate is \$675.90. Therefore, the Second Injury Fund is liable for a differential in the amount of \$321.85 per week for 52 and 4/7 weeks (February 8, 2007 through February 21, 2008), or a total of \$16,920.11.

I further find that from February 21, 2008 (the expiration of 52 and 4/7 weeks from February 8, 2007), the Second Injury Fund is liable for \$675.90 per week in permanent, total disability benefits. The Second Injury Fund shall remain liable for such benefits for as long as Ms. Reed remains so disabled and entitled to benefits pursuant to law.

The Award of compensation against the Second Injury Fund is subject to a lien in the amount of 25% plus expenses to Christopher Smith for necessary legal services rendered to the Claimant.

Issued by: Division of Workers' Compensation
Employee: Glenda Reed

Injury No. 04-132024

Date: _____ Made by: _____
Emily S. Fowler
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this ____day of _____,
2010 by:

Naomi Pearson
Division of Workers' Compensation