

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

Injury No.: 02-034780

Employee: John Richardson
Employer: General Motors (Settled)
Insurer: Self-Insured (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: March 18, 2002

Place and County of Accident: St. Charles County, Missouri

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 7, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kevin Dinwiddie, issued May 7, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 6th day of November 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: John Richardson

Injury No. 02-034780

Dependents: n/a

Employer: General Motors (previously settled)

Additional Party: State Treasurer, as custodian of the Second Injury Fund

Insurer: self-insured

Hearing Date: 2/1/07

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

Checked by: KD/lsn

FINDINGS OF FACT AND RULINGS OF LAW

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: 3/18/02
5. State location where accident occurred or occupational disease was contracted: St. Charles 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? n/a
8. Did accident or occupational disease arise out of and in the course of the employment?
yes
9. Was claim for compensation filed within time required by Law? yes
10. Was employer insured by above insurer? yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant suffered cumulative trauma to his upper extremities while performing assembly work
12. Did accident or occupational disease cause death? n/a Date of death?
n/a
13. Part(s) of body injured by accident or occupational disease: right and left shoulders
14. Nature and extent of any permanent disability: 7 and ½ percent of the left and right upper extremity at the level of the shoulder
15. Compensation paid to-date for temporary disability: n/a
16. Value necessary medical aid paid to date by employer/insurer? n/a
17. Value necessary medical aid not furnished by employer/insurer? n/a
18. Employee's average weekly wages: maximum rate
19. Weekly compensation rate: \$628.90/\$329.42
20. Method wages computation: by agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: Claim as against the employer previously settled.

22. Second Injury Fund liability: The claim as against the Second Injury Fund is denied. See award.

TOTAL: N/A

23. Future requirements awarded: n/a

FINDINGS OF FACT and RULINGS OF LAW:

Employee: John Richardson

Injury No: 02-034780

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: n/a

Employer: General Motors (previously settled)

Additional Party State Treasurer, as custodian of Second Injury Fund

Insurer: self -insured

Checked by: KD/lsn

The claimant, John Richardson, and the State Treasurer, as custodian of the Second Injury Fund, appeared at hearing by and through their counsel, and agreed to a joint hearing in Injury Numbers 00-178923 and 02-034780. The claim as against the employer in each of these matters, General Motors Corporation, was previously settled.

In Injury Number 02-034780, the parties agreed that the issues to be resolved at hearing are as follows:

Injury by occupational disease
Medical causation;
Temporary total disability;
Permanent disability; and

Liability of the Second Injury Fund.

The claimant, Mr. Richardson, appeared at hearing and testified on his own behalf. The claimant further submitted the deposition testimony of Dr. Raymond F. Cohen and of Mr. James England. The Second Injury Fund submitted the deposition testimony of Bernard C. Randolph, Jr., M.D.

EXHIBITS

The following exhibits are in evidence:

Claimant's Exhibits

- A. Certified medical records of Dr. Barry Singer
- B. Certified medical records of Dr. Mary Kiehl
- C. Certified medical records of Barnes-Jewish Hospital (radiology)
- D. Records of Missouri Bone & Joint (Manish Suthar, M.D.)
- E. Barnes-Jewish Hospital Pain Management Center records
- F. Records of Dr. William W. Sprich
- G. Certified medical records of Neurology Consultants (Stephen K. Burger, M.D.)
- H. Certified medical records of Dr. Abdul W. Kazi
- I. Certified medical records of Memorial Hospital
- J. Certified medical records of Washington University School of Medicine (Drs. Galatz; Riew; Gelberman; Clohisy; Shively)
- K. Records of Michael D. Weiss, DPM
- L. Records of Rehabilitation Institute of St. Louis
- M. Certified medical records of Susan MacKinnon, M.D.
- N. Certified medical records of Orthopedic Associates, L.L.C. (Dr. Richard E. Hulseley)
- O. General Motors Plant Medical Records
- P. Deposition of Dr. Raymond F. Cohen taken on 7/11/05
- Q Deposition of James England taken on 7/11/05

Second Injury Fund Exhibits

- I. Deposition testimony of Bernard C. Randolph, Jr., M.D., taken on 2/16/06.

FINDINGS OF FACT AND RULINGS OF LAW

Mr. John Richardson, 44 years old as of the date of hearing in this matter, comes from a family of General Motors workers. The claimant graduated from high school in O'Fallon, Illinois and began working off shore "mud logging", described by Mr. Richardson as a safety job that involved monitoring for sediment formation and for natural gas releases off shore while drilling for oil. Thereafter, the claimant worked as a driver for United Transports, a company that shipped General Motors vehicles from the assembly plant. After a year or so of driving, Mr. Richardson accepted a job offer from General Motors. Claimant began with G.M. in Oklahoma City on or about 10/24/83.

Mr. Richardson became an "Absentee Relief Operator" after his first six months with G.M. Claimant explains that an "ARO" was expected to perform a variety of different jobs after short term training. In 1997 Mr. Richardson was transferred to the G.M. plant in Wentzville, Missouri.

On 6/26/00 claimant suffered the work injury that was the subject of the companion claim in this matter, Injury Number 02-178923. On 6/26/00 Mr. Richardson was working in "the pit". Mr. Richardson agrees that the job he was performing was highly desired, and that he was able to bid for the job with his seniority. The pit is a recessed underground repair area, allowing vehicles to roll by overhead. Workers in the pit performed all manner of special repairs necessary before the vehicle could be shipped out.

Claimant was fixing a brake line, and as he attempted to climb out and exit the pit, his head struck the steel frame of a van. Claimant sought medical care at plant medical for a laceration on the top of his forehead at the hairline. The laceration was dura-bonded shut, and claimant suffered no immediate symptoms and was allowed to complete the rest of his shift. Claimant acknowledges that he sought no medical treatment outside of the plant following his injury. The claimant acknowledged that he suffered from migraine headaches prior to his head injury, and notes that after his head injury those

headache complaints worsened in severity and duration. Mr. Richardson also complained that use of his arms causes him to suffer swelling in both sides of his neck, with pockets of fluid, and with increased numbness in his arms.

Mr. Richardson recalled that he worked only a short time in the pit, and when a new man came on that job, claimant transferred to a job on the assembly line deck, working inside the cab, under the hood, and on trim items, requiring more use of his arms than was required when in the pit. Claimant related that strenuous use of his upper extremities caused him all manner of increased complaints as to pockets of swelling, arms and hands becoming numb, and a loss of grip strength that caused him to drop tools and parts. Claimant is alleging to have suffered an occupational injury relating to a cumulative trauma affecting him in his neck and upper extremities at work through 3/18/02. Claimant relates that his complaints became so severe that he ultimately was obliged to leave work, and has not been back to work at G.M or for any other employer since 4/15/02.

Medical records reveal that on 3/25/02 the claimant met with his family physician, Dr. Mary Kiehl, "...in follow up for acute exacerbation of musculoskeletal complaints primarily involving shoulder pain, low back pain, wrist, and low back discomfort after a change in his work routine" (Claimant's Exhibit B). On 4/16/02 Mr. Richardson met with Dr. Robert A. Shively. Dr. Shively noted that the claimant had complaints as to eleven different body parts, and declined to evaluate all of the complaints, opting instead to suggest that the claimant seek a specialist in physical medicine. Dr. Shively did examine the right shoulder; had a diagnostic evaluation performed by Theodore Vandervelde, M.D. (See Claimant's Exhibit J); and concluded that claimant might have some relief by revision surgery following up on an earlier surgery involving the excision of the distal clavicle.

Claimant was then referred to Dr. Manish Suthar, Missouri Bone & Joint Physical Medicine Center (Claimant's Exhibit D). On 4/17/02 Dr. Suthar elicited a history of chronic diffuse body pain; performed a physical examination; formed the impression that the claimant suffered from arthritis or possible fibromyalgia; and suggested a work up for a possible rheumatologic disorder.

On 5/10/02 Mr. Richardson met with Dr. Richard H. Gelberman, complaining of bilateral wrist and hand pain. Dr. Gelberman performed an examination of the upper extremities; concluded that x-rays were negative for arthritis; concluded that the claimant's symptoms were not classic for carpal tunnel on the right side; did not advise a repeat surgery; and recommended an injection, a splint, and nonsteroidals for tennis elbows.

On 5/17/02 Dr. Leesa M. Galatz performed an orthopedic evaluation of the shoulders, noting a chief complaint of bilateral shoulder pain right greater than left. X-ray of the shoulders was found to be negative, and upon physical examination Dr. Galatz noted that the claimant had scarring related to a resection to the left sternoclavicular joint, and scars over the right shoulder from a prior subacromial decompression, debridement of the rotator cuff, and distal clavicle resection. On examination, Dr. Galatz noted some crepitus over the right acromioclavicular joint, negative biceps signs, and an absence of scapular winging or muscular atrophy. Her diagnosis was shoulder pain of unknown etiology, and her recommendation was "Given the constellation of his symptoms, I think he is best managed by Pain Management. I don't think any further surgery would help him."

On 6/17/02 claimant was seen by Dr. John Clohisy for complaints of bilateral knee pain. Dr. Clohisy noted the history of prior arthroscopic debridement on the right, performed an examination of the knees, and reviewed x-rays showing no bony deformity; no major degenerative disease; and no fracture. Dr. Clohisy offered a diagnosis of "bilateral knee pain", and suggested physical therapy for range of motion and strengthening. He further cautioned claimant against prolonged standing or walking activities.

On 6/17/02 Mr. Richardson was also seen by Dr. Ajit Nagra at Barnes-Jewish Pain Management Center. Dr. Nagra took a medical history, performed a physical examination, and concluded that the claimant suffers from myofascial pain syndrome; migraines; and insomnia. Dr. Nagra prescribed amitriptyline, advised claimant to continue to take his Flexeril, Vicodin, and over the counter Aleve and Advil; and advised claimant to take physical therapy/occupational therapy. Claimant was to return in 6 to 8 weeks post therapy for trigger point injections if indicated.

On 6/25/02 Dr. Susan Mackinnon met with Mr. Richardson with regard to his complaints of upper extremity pain. Dr. Mackinnon noted the past medical history, elicited complaints as to the head, neck, hands, arms, wrists, and shoulders; and performed a physical examination. Dr. Mackinnon concludes, "He does have some evidence of compression of the brachial plexus and would probably benefit from physical therapy. Given the multiplicity of his symptoms he is not a good candidate for surgical intervention" (See Claimant's Exhibit M). Dr. Mackinnon encouraged claimant to pursue pain management and physical therapy.

On 7/1/02 Mr. Richardson appeared at The Rehabilitation Institute of St. Louis for the physical therapy recommended by Dr. Nagra. Brenda Pabst, SPT, noted that the claimant had signs and symptoms of upper trapezius overuse, and recommended physical therapy to "correct muscle imbalances in the shoulder complex, and encourage relaxation of the upper trapezius muscle" (See Claimant's Exhibit L). Mr. Richardson was to be seen 1-2 times a week for the following six weeks. Within Exhibit L are the physical therapy notes for visits on 7/1/02; 7/5/02; 7/17/02; 7/24/02; and on 8/6/02.

Claimant had follow up visits with Dr. Nagra on 6/29/02 and again on 8/15/02. The notes of Dr. Nagra indicate that the cervical epidural steroid injection administered to Mr. Richardson at the level of C6-7 on 8/15/02 was for the purpose of allowing claimant the pain relief necessary to proceed with physical therapy.

Between the visits with Dr. Nagra on 6/29/02 and 8/15/02, Mr. Richardson met with Dr. Kiehl on 7/1/02, and after

claimant made a request for a referral to a neck specialist, claimant had further evaluation of a possible thoracic outlet syndrome by Dr. Kazi (Claimant's Exhibit H) and Dr. Burger (Claimant's Exhibit G). Dr. Burger met with Mr. Richardson on 8/7/02, performed an examination, and referred the claimant for testing as to possible thoracic outlet syndrome. On 8/13/02 Dr. Welch performed EMG and Nerve Conduction Studies that he interpreted as revealing a thoracic outlet syndrome, left greater than right. Dr. Burger met with Mr. Richardson on 8/20/02, and followed up with a letter to Dr. Kazi to advise that claimant was to follow up with Dr. Sprich, a neurologist, as to the neck and as to the thoracic outlet issue.

While in pain management, Mr. Richardson was also actively seeking evaluation as to his neck complaints. Contained within the records of Dr. Kazi is a copy of a cervical spine MRI performed on 7/15/02 at the request of Dr. K. Daniel Riew. The MRI is interpreted as showing the prior anterior fusion at C6 and C7, with degenerative changes present at C3-4, C4-5, and C5-6. On 8/6/02 the claimant had a new patient visit with Dr. Riew. Dr. Riew noted that the chief complaint was as to neck and upper shoulder pain and arm weakness and numbness. On physical examination, Dr. Riew noted that the claimant ambulated normally, with normal diadochokinesia; normal reflexes, no pathological reflexes; intact sensation to light touch, normal motor strength, and no evidence of atrophy. Dr. Riew noted the claimant's age (39), and concluded that further surgery was not a good option, as it could lead to further disease and more fusion. Dr. Riew was also concerned that certain of the symptoms could be related to a mild carpal tunnel syndrome or brachial plexopathy, and would not resolve post surgery. Dr. Riew suggested the cervical epidural steroid injection administered by Dr. Nagra on 8/15/02.

Certain records of Dr. Weiss, Claimant's Exhibit K, along with a radiology report dated 7/19/02 as to a finding of right plantar calcaneal spur (See Claimant's Exhibit J), suggest that claimant was also seeking evaluation at this time for certain foot complaints.

On 7/19/02, the claimant further submitted to an independent medical evaluation performed by Dr. George A. Luther, M.D. (See report as contained in the certified records of St. Louis Orthopedic, Inc., Exhibit A to the deposition of Dr. Bernard C. Randolph). The report of Dr. Luther was provided at the request of the employer, General Motors, with respect to injuries on or about 6/26/00 and 3/18/02. Dr. Luther noted what he interpreted to be "numerous subjective musculoskeletal complaints", and nonetheless concluded that the claimant suffered chronic pain syndrome. He further concluded that he would agree with the physician who recommended medical retirement in 1994.

On 8/28/02 Mr. Richardson had an initial consultation with William W. Sprich, M.D., a neurologist located in Belleville, Illinois. Dr. Sprich performed a physical examination, and concluded that a series of three epidural blocks could help the claimant with his cervical complaints. Dr. Sprich believed that thoracic outlet was confirmed by EMG, and recommended a stimulator, in lieu of a first rib resection, noting that claimant was not a good surgical candidate given his previous surgeries (See Claimant's Exhibit F). Dr. Sprich further chose to have a lumbar MRI to check for spinal instability, and recommended that in addition to his other medications, the claimant also start on Neurontin. Lumbar x-rays and an MRI of the lumbar spine were performed on 9/6/02. The MRI showed degenerative disc disease at L4-5 and L5-S1 with no disc herniation or spinal canal stenosis at any level.

On 10/01/02 and again on 11/5/02, Dr. Mark T. Viehmann provided the claimant with a cervical epidural steroid injection. Claimant had a follow up with Dr. Sprich on 11/13/02. Dr. Sprich had no further treatment to offer as to the cervical spine and thoracic outlet, but wanted discography of the low back at L4-5 and L5-S1 to see if the claimant might be a surgical candidate with respect to the low back. On 11/20/02 the claimant had an L4-5, L5-S1 lumbar diskogram w/post lumbar CT. The testing revealed degenerative disc at L4-5, and a completely collapsed disc space at L5-S1, with the claimant suffering immediate severe low back pain and bilateral lower extremity pain after the injection at L5-S1.

Medical documentation of the evaluation and treatment of the various complaints of Mr. Richardson ends with the lumbar diagnostics performed on 11/20/02. If Dr. Sprich had the opportunity to provide follow up evaluation and/or treatment post these diagnostics, such medical is not made a part of the record.

The claimant presents with a medical history prior to 3/18/02 that includes right and left shoulder surgeries; a cervical fusion post a motor vehicle accident in 1990; a right carpal tunnel surgery; a left knee arthroscopy; and a trigger-finger release. The medical records of Dr. Hulsey (Claimant's Exhibit N) document a history of bilateral knee complaint from September of 1994 through February of 1996. In January of 1998, Dr. Lenke evaluated the claimant for complaints of chronic low back pain. Dr. Lenke recommended physical therapy for findings of degenerative disc disease at L4-5 and L5-S1. Claimant had further low back complaint in March of 1999, and a radiology report dated 3/19/99 indicates no change in discogenic disease at the L4-5 and L5-S1 levels by comparison to the exam done in 1998.

OCCUPATIONAL DISEASE/MEDICAL CAUSATION/PERMANENT DISABILITY/LIABILITY OF THE SECOND INJURY FUND

The liability of the employer for disability related to a work injury must first be determined before the liability of the Second Injury Fund, if any, can be determined. For example, if the last injury, considered alone, is the sole cause of a permanent and total disability, the employer shall be responsible for that liability, and the Second Injury Fund shall have no liability for the combination of disabilities that are pre-existing and work related. Section 287.220 RSMo; Vaught v.

Vaughts, Inc., 938 S.W.2d 931 (Mo.App. S.D. 1997); Stewart v. Johnson, 398 S.W.2d 850 (Mo. 1966).

The claimant has the burden of proving all the essential elements of the claim for compensation. Claimant is obliged to establish the medical causal relationship between his complaints of ill being and a work related cause. "Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause". Brundige v. Boehringer Ingelheim, 812 S.W. 2d 200, 202 (Mo.App. 1991); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). The ultimate importance of expert testimony is to be determined from the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. Choate v. Lily Tulip, Inc., 809 S.W. 2d 102, 105 (Mo.App.1991). Medical causation as to an overuse condition of the upper extremities cannot be considered uncomplicated. The commission may not substitute an administrative law judge's personal opinion on the question of medical causation for the uncontradicted testimony of a qualified medical expert. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo banc 1994), citing Merriman v. Ben Gutman Truck Service, Inc., 392 S.W.2d 292, 297 (Mo. 1965). A medical expert's opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence." (citations omitted) Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 904 (Mo.App. 1990).

Drs. Cohen and Randolph had the opportunity to meet with Mr. Richardson, elicit his complaints, review the medical history, and offer their opinions as to nature and extent of disability as it relates to a work injury on 3/18/02, and those disabilities that are believed to be pre-existing. Both Doctors conclude that Mr. Richardson suffered an injury at work on or about 3/18/02. The claimant testified persuasively as to a worsening of complaints as to his upper extremities as a result of his work at General Motors. The testimony of Mr. Richardson, in conjunction with the expert testimony of Drs. Cohen and Randolph, persuades that the claimant suffered an injury by accident, or in the alternative, by occupational disease, on or about 3/18/02 while in the employment of General Motors. Neither of the physicians believe the last injury at work rendered Mr. Richardson permanently and totally disabled.

The more difficult issue is to determine the medical causal relationship between the myriad of complaints made by Mr. Richardson with respect to his head, neck, and upper extremities and the work injury at issue. The only common ground found in the analysis of work related disability between Drs. Cohen and Randolph is the belief that the last work injury at issue resulted in permanent and partial disability to the right and left shoulders, over and above the percentage of disability pre-existing in both shoulders. Coincidentally, it is acknowledged that the employee chose to settle his claim as against the employer for approximate disability of 7 and ½ percent of each shoulder. (Claimant's Exhibit S).

In order to recover against the Second Injury Fund, the claimant must establish permanent and partial disability pre-existing the work injury of 3/18/02 "...of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining employment if the employee becomes unemployed..." Section 287.220.1 RSMo.

"If the Second Injury Fund is to fulfill its acknowledged purpose, the proper focus of the inquiry as to the nature of the prior disability 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." Wuebling v. West County Drywall, 898 S.W.2d 615, 620 (Mo.App. E.D. 1995).

The expert medical testimony in the matter persuades that the claimant has significant pre-existing disabilities in the cervical spine and in the shoulders bilaterally that would give a cautious employer concern as to the potential for those conditions to combine with a work related injury in the future. Those disabilities are of sufficient seriousness as to constitute a hindrance or obstacle to employment within the meaning of Section 287.220 RSMo.

At issue is whether permanent partial disability from the 3/18/02 injury combines with pre-existing disabilities to create a substantially greater disability than their simple sum compensable from the Second Injury Fund.

The testimony of Dr. Randolph persuades that the last injury resulted in a minor sprain to both the right and left shoulders. The employee and employer settled the underlying claim of disability for an approximate disability of 7 and ½ percent of each shoulder. The disabilities as expressed in the settlement are consistent with the conclusion that the claimant suffered a sprain to his shoulders. The claimant is estopped from arguing a greater disability from the last injury than that which is contained in the settlement with the employer, Conley v. Treasurer, 999 S.W.2d 269 (Mo.App. E.D. 1999).

James England, the vocational counselor, testified that the work restrictions he reviewed from General Motors and from Dr. Cohen persuaded him that the claimant would not have the physical capacity to sustain even sedentary employment. More specifically, Mr. England opined that the inability to use the upper extremities repetitively negates the ability to do sedentary work. Dr. Randolph, to the contrary, concluded that the claimant's functional restrictions would not preclude him from work. At issue, then, is whether the vocational opinion of Mr. England or the medical opinion of Dr. Randolph is the most persuasive on the issue of the ability of Mr. Richardson to be employable on the open labor market.

Mr. England premises his conclusion that the claimant is totally disabled on the restrictions found in the General Motors records and the restrictions suggested by Dr. Cohen. However, Mr. England acknowledges that the claimant was working full time without restriction before his injury, with overtime, and that it would appear that claimant was leading a fairly active lifestyle before the injury. Further, the analysis of Mr. England fails to take into account the restrictions suggested by Dr. Randolph, or the fact that after the most recent medical evaluations by Drs. Mackinnon and Riew, those physicians advised claimant's treating doctor that no work restrictions were needed.

From all of the evidence, the opinion of Mr. England is found to be flawed to the extent that it fails to take into consideration all of the expert medical opinions in the matter relating to work restrictions. This flaw is deemed critical, in large part because of the emphasis placed by Mr. England on medical restrictions forming the basis for his conclusion as to employability.

From all of the evidence, claimant is found to have failed to persuade that the combination of pre-existing disabilities and the disability from the last injury, a bilateral shoulder strain, has rendered him unemployable on the open labor market. Inasmuch as permanent and partial disability from the last injury fails to meet the threshold for combination disability, the claim as against the Second Injury Fund must be denied.

TEMPORARY TOTAL DISABILITY

A finding in favor of the Second Injury Fund on the issue as to a liability under Section 287.220 RSMo renders moot the issue as to temporary total disability.

Date: May 7, 2007

Made by: /s/ KEVIN DINWIDDIE
KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation