

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

Injury No.: 06-094655

Employee: Jerry Roberson
Employer: Ben Hur Construction (Settled)
Insurer: Virginia Surety Company, Inc. (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 November 19, 2009. The award and decision of Administrative Law Judge Margaret D. Landolt, issued November 19, 2009, 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 15th day of July 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

SEPARATE OPINION FILED
John J. Hickey, Member

Attest:

Secretary

Employee: Jerry Roberson

SEPARATE OPINION

(Concurring in part and dissenting in part)

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based upon my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified. I agree with the administrative law judge that the Second Injury Fund is liable to employee for permanent disability benefits but I believe employee is entitled to permanent total disability benefits, rather than permanent partial disability benefits.

Although none of the experts suggested that employee is magnifying his symptoms, the administrative law judge decided employee is exaggerating his back pain. The administrative law judge found not credible employee's testimony regarding the level of back pain he experiences because he received only conservative treatment for his back injury and because he settled his back and psychological claims for a combined 15% of the body as a whole. The administrative law judge erroneously concluded that "any evidence of total disability is based on [employee's] account of back pain." Therefore, she reasoned, "I find no credible evidence of permanent total disability."

A close reading of the record reveals that all of the experts believe employee has significant problems with his back. But the experts rely upon much more than employee's back pain in reaching their conclusions that employee is unable to compete in the open labor market. The experts considered employee's physical conditions of ill relative to the primary injury (back, shoulder, right knee) and relative to his preexisting conditions of ill (left knee, wrist, hand). The experts considered employee's psychiatric conditions (preexisting and primary). Finally, the experts considered employee's age, training, and lack of transferable skills.

Dr. Volarich, Dr. Stillings, and Ms. Gonzalez all personally evaluated employee. Dr. Volarich, Dr. Stillings, and Ms. Gonzalez all believe employee is not employable in the open labor market. Dr. Volarich, Dr. Stillings, and Ms. Gonzalez all believe employee is not employable in the open labor market due to a combination of his preexisting disabilities and the disabilities from his primary injury.

Notwithstanding the testimony of these three well-qualified experts, the administrative law judge found the opinion of Mr. England – *who never met employee* – to be the most persuasive on the issue of permanent total disability. The administrative law judge's reliance upon the opinion of Mr. England is misplaced. Mr. England never said employee was employable in the open labor market. Mr. England said that based upon employee's description in a deposition of his activities around the house, "[employee] lifts into the light range and functions at a sedentary to light level with the exception of reclining for his low back pain as needed." Emphasis added. The administrative law judge ignored the emphasized language and concluded employee could work. The test for permanent total disability is whether an employer would reasonably be expected to hire employee in the open labor market. Even Mr. England agreed that if employee has to lie down for portions of each day, employee would be unable to compete in the open labor market.

Employee: Jerry Roberson

- 2 -

Based upon the testimony of employee, Dr. Volarich, Dr. Stillings, Ms. Gonzalez and, in some respects, even Mr. England, I believe employee is permanently and totally disabled due to the combination of his preexisting disabilities and his disability from the primary injury.

I would modify the administrative law judge's award. I would award to employee permanent total disability from the Second Injury Fund. For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member

AWARD

Employee: Jerry Roberson

Injury No.: 06-094655

Dependents: N/A

Before the

Employer: Ben Hur Construction (settled)

**Division of Workers'
Compensation**

Additional Party: Second Injury Fund

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

Insurer: Virginia Surety Company, Inc.

Hearing Date: September 2, 2009

Checked by: MDL

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: August 31, 2006
5. State location where accident occurred or occupational disease contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted:
While carrying a welding cable lead, Claimant slipped and fell backwards.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: right knee, right shoulder, right hip, low back, body as a whole
14. Nature and extent of any permanent disability: 30% of the right arm at the 222 week level; 10% PPD of the right leg at knee and 15% body as a whole lumbar sprain and psychiatric for primary injury previously paid by Employer; and 30% PPD of the right wrist; 25% PPD of the left knee; and 20% PPD of the body as a whole – psychiatric – preexisting.
15. Compensation paid to-date for temporary disability: \$9,550.71
16. Value necessary medical aid paid to date by employer/insurer? \$23,553.76

Issued by DIVISION OF WORKERS' COMPENSATION

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$N/A
- 19. Weekly compensation rate: \$718.87/\$376.55
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: Employer previously settled

22. Second Injury Fund liability: Yes

44.865 weeks of permanent partial disability benefits \$16,893.92

TOTAL: \$16,893.92

23. Future requirements awarded: none

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:

James J. Sievers

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jerry Roberson

Injury No.: 06-094655

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Ben Hur Construction (settled)

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

Additional Party: Second Injury Fund

Insurer: Virginia Surety Company, Inc.

Checked by: MDL

PRELIMINARIES

A hearing was held on September 2, 2009, at the Division of Worker's Compensation in the City of St. Louis, Missouri. Jerry Roberson ("Claimant") was represented by Mr. James Sievers. Ben Hur Construction ("Employer") previously settled its liability with Claimant, and this case proceeded to hearing against the Second Injury Fund, which was represented by Assistant Attorney General Carol Barnard. Mr. Sievers requested a fee of 25% of Claimant's Award.

The parties stipulated that on or about August 31, 2006, Claimant sustained an accident arising out of and in the course of employment; and Claimant was earning an average weekly wage sufficient to yield compensation rates of \$718.87 for total disability benefits, and \$376.55 for Permanent Partial Disability benefits. The parties further stipulated Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; and the claim was timely filed. It was further stipulated if Claimant is found to be PTD, benefits shall begin on October 24, 2007.

The sole issue for resolution by hearing is the liability of the Second Injury Fund for permanent total or permanent partial disability benefits.

FINDINGS OF FACT

Claimant is a 56 year old man with approximately 35 years of experience as an ironworker. Claimant has a high school education and two quarters of college work. Claimant attended the apprentice program to become a journeyman iron worker. Claimant began working as an ironworker for Employer in May 2006, approximately three months before the primary injury. Over the years, Claimant has owned his own photography business and a barbeque and spice business. He testified his businesses failed because he was unable to get along with people. Claimant also taught welding at a Vo-Tech school, but was fired after an altercation.

Claimant suffered from preexisting injuries to his right hand, left knee, and body as a whole referable to his pulmonary system due to COPD, and psychiatric problems prior to the work injury of August 31, 2006. In 1978, Claimant was working with a piece of rebar when it fell on his hand fracturing his right 4th metacarpal. X-rays demonstrated residual shortness of the 4th metacarpal with disruption of normal function. Dr. James Leslie performed an osteotomy of the 4th metacarpal to increase length and function. On October 4, 1988, a steel plate fell onto Claimant's right hand, and he sustained a fracture of the distal 5th metacarpal. Claimant returned to full duty after his hand injuries, and had no additional medical treatment. Following these accidents, and leading up to the primary injury of August 31, 2006 Claimant testified he had very little gripping ability and bent fingers, which he had to unlock in order to attempt to grip something. He continues to suffer from these symptoms.

In 1981, Claimant bent down and his left knee gave out. He was diagnosed with chondromalacia patella. He was taken to surgery for an arthroscopic chondroplasty. Following the surgery and leading up to the primary injury, Claimant testified he experienced pain, could not stand or squat for long periods, had to use a knee pad or guard when kneeling, his knee would go out, and he couldn't get into positions at work like he used to. He continues to suffer from these problems.

Leading up to August 31, 2006, Claimant also suffered from asthma which was triggered by allergies, perfume, dust and smoke. It caused him shortness of breath and coughing. It caused his jobs to get more difficult as there was a lot of dust, and respirators were not always available.

The primary injury occurred on August 31, 2006. While Claimant was carrying a welding lead, he slipped on some fire proofing and fell injuring his right knee, right shoulder, right leg, right hip and low back. Following the injury, Claimant reported to Unity Corporate Health. After x-rays were taken of his right shoulder, lumbar spine and right knee, Claimant was diagnosed with strains of the right shoulder and knee, and lumbar strain. Claimant was given prescription medication and returned to work light duty. Once Claimant returned to work, his right shoulder and lumbar symptoms lessened, however he continued to experience persistent right knee swelling and pain.

On September 9, 2006, while walking at work, Claimant stepped on a rock, causing his right leg to buckle and his knee to twist. Following the accident Claimant presented to Unity Health with complaints that he had aggravated his right knee symptoms. Claimant was given a prescription and told to elevate his leg. An MRI of the right knee taken on September 12, 2006, demonstrated intact menisci, Grade I chondromalacia of the patella and osteochondritis of both femoral condyles.

On September 19, 2006, as Claimant was walking down the stairs at work, the bottom step shifted. This shift caused him to be thrown backwards onto his back. Claimant felt an increase in back pain following the fall. He reported to Unity Corporate Health, and was prescribed physical therapy for lumbar and shoulder strain. He was able to work light duty, however he continued to experience lumbar pain, and his shoulder symptoms were exacerbated with lifting and overhead work activities.

On November 16, 2006, a lumbar MRI demonstrated an L4-5 minimal bulge without stenosis. An MRI taken of the right shoulder demonstrated tendinosis of the supraspinatus tendon with small full thickness tear and arthrosis of the AC joint. Upon review of the shoulder MRI, Claimant was referred to Dr. David Irvine. Dr. Irvine recommended an arthroscopic repair of the right shoulder girdle.

On March 22, 2007, Dr. Irvine performed a right shoulder diagnostic arthroscopy with debridement of labral tear, arthroscopic subacromial decompression, arthroscopic distal clavicle excision and partial debridement of undersurface tear of the right supraspinatus rotator cuff tendon. Claimant participated in physical therapy for three weeks following surgery to improve his range of motion and strength. Claimant returned to work light duty at the end of April with restrictions of no lifting greater than 5 pounds and no overhead work with his right arm. Throughout therapy Claimant experienced exacerbations of pain in the right shoulder joint. On June 14, 2007, Claimant was laid off from work.

In July 2007, Claimant's physical therapy was increased to work hardening. His strength and range of motion increased. He was called back to work on August 31, 2007.

At his last office visit with his treating physician on October 24, 2007, Claimant reported he had been at work full duty without any restrictions and was doing well. He reported difficulty with certain abducted activities when lifting heavy objects. He reported no numbness or tingling and no specific complaints. He reported doing well, for the most part, although he stated the level of activity required by his job was somewhat demanding and he told Dr. Irvine he planned to retire soon. Dr. Irving discharged Claimant at maximum medical improvement with no restrictions.

Claimant was diagnosed with bipolar disorder in 2007. He explained that his father also suffered from the disorder and as a result, he was subjected to physical abuse from his father. Claimant reported he did not have a stable family life to due to his abusive father, which forced both of his sisters to move away from home at a young age. Claimant testified he currently suffers from anger problems. He has been in fights on the job and has been removed from jobs due to his temper. Claimant testified he has been told by employers he would not be hired because of his anger issues. Claimant testified he is currently on Alleve and Ibuprofin for pain, and psychotropic medications. Claimant testified since he has been on psychotropic medications, he gets angry less. It took a while to get the right combination of medicines.

On January 14, 2008, Claimant saw Dr. David Volarich for an independent medical examination. Dr. Volarich opined that the work accident of August 31, 2006, was the substantial contributing factor as well as the prevailing or primary factor which caused the disc bulge/protrusion at L4-5 with right leg radicular symptoms that required conservative care, as well as the right knee chondral defects of the femoral condyles and aggravation of chondromalacia that required conservative care, as well as the right shoulder torn rotator cuff, torn labrum and impingement that required arthroscopic surgical repair.

Dr. Volarich found Claimant to be at maximum medical improvement. He found Claimant suffered 25% PPD of the of the body as a whole at the lumbosacral spine; 60% PPD of the right upper extremity at the shoulder; and 25% PPD of the right lower extremity at the knee.

Dr. Volarich also opined Claimant suffered 50% PPD of the right upper extremity at the wrist; 45% PPD of the left lower extremity at the knee; and 7.5% PPD of the body as a whole at the pulmonary system.

Dr. Volarich opined Claimant would not be able to engage in any substantial gainful activity nor could be expected to perform in an ongoing working capacity in the future. He opined Claimant could not be reasonably expected to perform in an ongoing basis eight hours per day, five days per week throughout the work year. Dr. Volarich further opined Claimant was unable to continue in his line of employment as an ironworker for Employer, nor could be expected to work on a full time basis in a similar job. Dr. Volarich reported Claimant was permanently and totally disabled as a result of the work related injuries of August 31, 2006, in combination with his preexisting medical conditions.

On February 27, 2008, Claimant saw Dr. Wayne Stillings for a psychiatric examination. During the examination, Claimant reported pain and decreased range of motion in his right shoulder, low back pain radiating into the right lower extremity to the foot and pain in his right knee. He reported that all of his symptoms were aggravated by physical activity. Claimant also reported increased depression and mood instability since the work injury. Additionally he stated he has increased manic symptoms, anger outbursts and emotional and behavioral instability.

Following the examination, Dr. Stillings opined that the work injury of August 31, 2006, was the prevailing factor in significantly aggravating Claimant's preexisting bipolar disorder, and rated the disorder at 30% permanent partial psychiatric disability, and in causing Claimant to experience a pain disorder with an associated 15% permanent partial psychiatric disability. Dr. Stillings also noted Claimant suffered from preexisting disabilities which included parent-child relational problems with a chaotic family, with an associated 10% permanent partial psychiatric disability; bipolar disorder with an associated 20% permanent partial psychiatric disability and personality disorder with an associated 10% permanent partial psychiatric disability.

Dr. Stillings further opined Claimant's psychiatric conditions/disabilities due to his primary injuries combine synergistically with his preexisting psychiatric conditions/disabilities, and are a hindrance or an obstacle to employment or re-employment, creating a total disability greater than the simple sum, and rendering him permanently and totally disabled from gainful employment on a psychiatric basis. Dr. Stillings stated it is reasonably probable that Claimant would need lifelong psychiatric treatment for his preexisting bipolar disorder and the pain disorder to prevent deterioration in his clinical psychiatric condition.

Claimant saw Delores Gonzalez, a certified rehabilitation counselor, on April 18, 2008, for a vocational rehabilitation evaluation. During his initial interview, Claimant offered complaints of right shoulder pain that radiated down his right arm, low back pain that radiated down his right leg, right knee pain, and right hand pain. Claimant reported he could not sit for more than thirty minutes at a time and he had to change positions frequently. Claimant indicated he could not stand for more than five to ten minutes, or walk for more than ten to fifteen minutes.

Claimant stated he must hold on to a stationary object when kneeling or arising due to his difficulty with bending. Claimant noted he loses balance easily, and is unable to stoop because it

causes increased pain in his low back. Claimant has trouble hearing due to bilateral hearing loss, and difficulty breathing due to asthma. Claimant reported he could only drive for approximately twenty to thirty minutes because he must stop, get out of his vehicle, stretch and walk around.

Claimant completed a Transferability of Work Skills Analysis for Ms. Gonzales. She found the process did not identify any skills Claimant could transfer to jobs within his residual functional capacity. Ms. Gonzalez found Claimant's physical restrictions limited him to less than sedentary work that does not exist on the open labor market. Additionally, Ms. Gonzalez offered Claimant had significant non-exertional impairments related to significant psychological conditions. Ms. Gonzalez stated Claimant would not present well in a job interview situation, and would not be able to maintain competitive employment as a result of his physical and mental disabilities.

Ms. Gonzalez also stated Claimant suffered from permanent disabilities which prevent him from performing his past jobs or any job on the open market. She opined Claimant's impairments have severely compromised his ability to either return to his past relevant jobs or to perform even sedentary work on a sustained basis. Ms. Gonzalez further opined Claimant was not a candidate for vocational rehabilitation, and that he was not capable of any competitive work for which there is a reasonably stable job market. She found Claimant to suffer from a combination of adverse vocational factors that would preclude him from employment currently and in the future.

On January 28, 2009, James England, a vocational rehabilitation counselor, performed a record review. Mr. England reviewed Claimant's medical records, doctors' reports, Claimant's deposition, and the report of Ms. Gonzalez in order to formulate his opinion as to Claimant's employability in the open labor market. He noted Claimant reported because of his back problems he lies down for his back daily anywhere from 30 minutes to hours as needed. Mr. England stated it did not appear Claimant has any transferable skill below a medium level of exertion considering his past work, and noted welding can be done down to a medium level. He did not see any functional restrictions placed on Claimant by the treating doctors after the primary injury. He noted Claimant was released to full duty by Dr. Ivrine. Mr. England stated based on Claimant's description of his functioning at home, it appears he fits into the light range, and functions at a sedentary to light level with the exception of reclining for his low back pain as needed. Mr. England opined assuming Claimant has to get in a recumbent position as needed throughout the day he does not believe Claimant would be capable of sustaining work in the open labor market. He noted Claimant's inability to sustain work was due to the primary injury, rather than due to a combination of preexisting problems along with the primary injury. He also indicated Claimant was asked in his deposition whether he would consider looking at alternative work activity, and Claimant indicated it would depend on what the job paid, not that he felt he couldn't do any type of work activity.

Claimant settled his claim for the primary injury with Employer for 30% PPD of the right arm between the shoulder and elbow; 10% PPD at the right leg and knee; and 15% of the body as a whole referable to lumbar sprain and psychiatric.

At trial, Mike Butler testified on behalf of Claimant. He testified he has been an ironworker business agent for the past four years. Mr. Butler testified his job duties include

dealing with contractual problems, jurisdictional problems and problems with other trades. He testified he met Claimant approximately twenty years ago, and Claimant was a good ironworker and welder. Mr. Butler testified Claimant was involved in multiple confrontations on the job, and specifically noted that on one occasion the police were notified. He also testified Claimant has been asked to leave some jobs, and some contractors would not work Claimant because of his history of confrontations. Mr. Butler testified Claimant's problems have existed throughout the past twenty years.

RULINGS OF LAW

Section 287.220 creates the Second Injury Fund and sets forth when and in what amounts compensation shall be paid from the Fund and all cases of permanent disability where there has been previous disability. For the Fund to be liable for permanent total disability benefits, the claimant must establish that: (1) he suffered from a permanent *partial* disability as a result of the *last* compensable injury, and (2) that disability has combined with a *prior* permanent *partial* disability to result in total permanent disability. Section 287.220.1, RSMo 2000. The Fund is liable for the permanent total disability only *after* the employer has paid the compensation due for the disability resulting from the later work-related injury. Section 287.220.1 ("After the compensation liability of the employer for the last injury, considered alone, has been determined..., the degree or percentage of...disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined..."). Thus, in deciding whether the Fund is liable, the first assessment is the degree of disability from *the last injury considered alone*. Any prior partial disabilities are irrelevant until the employer's liability from the last injury is determined. If the last injury in and of itself resulted in the employee's permanent total disability, then the Fund has no liability. and the employer is responsible for the entire amount of compensation. *ABB Power T & D Company v. William Kempker and Treasurer of the State of Missouri*, 236 S.W.3d 43, 50 (Mo.App. 2007).

The test for permanent total disability is the worker's ability to compete in the open labor market. The critical question is whether, in the ordinary course of business, any employer reasonably would be expected to hire the injured worker, given his present physical condition. *Id.* At 48. Missouri courts require that the permanent nature of an injury be shown to a reasonable certainty and that proof may not rest upon surmise and speculation. *Sanders v. St. Clair Corp.*, 943 S.W.2nd 12, 16 (Mo.App.1997). A disability is "permanent" if it is shown to be of indefinite duration in recover or substantial improvement is not expected. *Tiller v. 166 Auto Auction*, 941 S.W.2nd 863, 865 (Mo.App. 1997).

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing and the application of Missouri law, I find:

Claimant sustained a work related injury on or about August 31, 2006, that resulted in 30% PPD of the right shoulder, 10% PPD of the right knee; and 15% PPD of the body as a whole at the lumbosacral spine and psychiatric. Claimant settled his claim with Employer for those amounts, and the medical evidence supports those levels of disability.

Claimant suffered from preexisting permanent partial disabilities of 30% of the right hand, 25% PPD of the left knee; and 20% PPD of the body as a whole referable to his psychiatric

condition. Each of these injuries constituted a hindrance or obstacle to employment or re-employment.

Claimant is not permanently and totally disabled. I find the opinion of James England to be the most persuasive opinion on this point. Mr. England opined if you assume Claimant must lie down throughout the day, he would not be employable in the open labor market. He stated based upon Claimant's description of his functioning at home it appears that he fits into the light range, and functions at a sedentary to light level of work. As Mr. England noted, Claimant testified in his deposition that he would consider looking at alternative work activity depending on what the job paid, and not that he felt he couldn't do any type of work activity.

I do not find Claimant credible with respect to his reported pain level of his back, and that he needs to recline throughout the day. Claimant was essentially diagnosed with a bulging disc with radiculopathy at L4-5. I do not find Claimant credible with regard to his pain level in light of the minimal conservative treatment provided for his injury, and the fact that he settled the claim for the primary injury for a mere 15% of the body as a whole for lumbar and psychiatric combined. These facts do not support the level of pain he is now describing. Because Claimant's testimony regarding his back is not credible, and any evidence of total disability is based on his account of back pain, I find no credible evidence of permanent total disability.

I also do not find Ms. Gonzales and Dr. Stillings' testimony that Claimant's preexisting psychiatric condition combined with his psychiatric disability sustained from the primary injury to render him permanently and totally disabled. Although Claimant's preexisting psychiatric condition constituted a hindrance or obstacle to employment or re-employment, in spite of his condition, he was able to sustain employment as an ironworker for 35 years. Claimant testified now that he is on the right combination of psychotropic medications his anger issues have improved. Therefore it is reasonable to believe Claimant's chances of securing and maintaining employment in the future will improve.

I find Claimant's primary injury combined synergistically with his preexisting injuries to create a greater overall disability and a load factor of 15% shall apply. The Second Injury Fund is liable for permanent partial disability benefits. Claimant is not awarded benefits for his preexisting COPD and asthma since his 7.5% PPD does not meet the statutory threshold for SIF liability, and the primary right knee injury is not included in this calculation, because it also falls below the threshold.

CONCLUSION

Claimant is awarded 44.865 weeks of compensation from the Second Injury Fund or \$16,893.92.

This award is subject to an attorney's lien of 25% in favor of Claimant's attorney Mr. James Sievers.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation