

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

Injury No.: 03-116517

Employee: William Robertson

Employer: Ameren U.E.

Insurer: Self-Insured
c/o Corporate Claims Management, Inc.

Date of Accident: November 20, 2003

Place and County of Accident: Franklin County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, heard oral argument, and considered the whole record. Pursuant to section 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge dated May 25, 2005. The award and decision of Administrative Law Judge Dinwiddie, is attached and incorporated to the extent it is not inconsistent with this award and decision.

I. Preliminary Matters

At the hearing conducted before the administrative law judge the parties stipulated to two issues: (1) disfigurement and (2) nature and extent of permanent partial disability.

The final award issued by the administrative law judge ordered the following compensation payable: (1) 15 weeks of disfigurement; and (2) 40 weeks of permanent partial disability representing 10% permanent partial disability of the body as a whole referable to the injury sustained.

The employer appealed contending the final award issued by the administrative law judge was erroneous only as to the issue of permanent partial disability. There is no contention in the instant appeal that the amount of disfigurement awarded by the administrative law judge was erroneous, and, therefore, the Commission affirms all findings and conclusions made by the administrative law judge in awarding disfigurement to the employee in the amount of 15 weeks.

The remainder of the Commission decision will concern itself only with the issue of nature and extent of permanent partial disability, if any, attributable to this accident.

II. Facts

Employee indisputably sustained a work related injury, i.e., second-degree flash burns over approximately 8% of his body surface. His principal treating physician was Peter M. Rumbolo, M.D., F.A.C.S. (Dr. Rumbolo). Dr. Rumbolo treated employee from the date of accident through his medical release and discharge of April 14, 2004. Employee has had no additional medical care and treatment since April 14, 2004.

Employee testified in his own behalf. Employee described the accident and injury and ensuing medical treatment, which facts are not in dispute. Employee was released to return to work without restrictions as of January 5, 2004. Employee has worked full duty without restrictions since January 5, 2004.

Employee's job title is the same post-injury as it was pre-injury; in fact, employee testified he has more job duties

post-injury; and he has continuously worked full duty without restrictions since January 5, 2004, and has received good reviews for his job performance.

Employee's principal complaints at trial were itching sensations; sensitivity to both heat and sunlight; some pain; and he restricts himself somewhat when working in intense heat or performing outside activities, be it occupational or non-occupational in nature.

Employee admits he has no physical limitations and only limits himself concerning exposure to intense heat and sunlight.

When employee was evaluated by his selected examining physician, Dr. Volarich, and discussed his activities of daily living with Dr. Volarich, employee described to Dr. Volarich that the application of sunscreen was the only factor limiting his ability to engage in physical leisure activities such as fishing, hunting, boating, gardening and splitting wood.

When employee described his complaints to Dr. Volarich, he denied any problems using any affected part of his body attributable to this injury and that employee is able to run, jump, sit, climb, crawl, kneel, stoop and squat. Employee did describe to Dr. Volarich areas of tenderness attributable to the burning type injury and sensitivity to sunlight. Employee also described intermittent itching concerning the burned areas.

Dr. Volarich was of the opinion employee sustained 12.5% permanent partial disability of the body as a whole referable to the accident.

The treating records of Dr. Rumbolo consist of reports and/or visits to Dr. Rumbolo on the following dates subsequent to the accident: November 24, 2003; December 1, 2003; December 10, 2003; December 31, 2003; January 21, 2004; and April 14, 2004. Employee admits he has had no additional medical care and treatment attributable to this injury since last seen by Dr. Rumbolo on April 14, 2004.

On November 24, 2003, among other findings, Dr. Rumbolo noted that the employee's "wounds were fairly superficial". Employee followed up with Dr. Rumbolo on December 1, 2003, and Dr. Rumbolo noted that his burn wounds "are healing very nicely". Among additional findings, that same visit Dr. Rumbolo noted "there are no problems at this point". Employee returned to Dr. Rumbolo on December 31, 2003, and Dr. Rumbolo noted that employee "is here with excellent healing of his burn wounds". At this same visit Dr. Rumbolo released the employee to work beginning January 5, 2004, without restrictions, and if the employee could not tolerate the return to work employee was instructed to call the doctor's office so he might be placed on light duty and work hardening, if necessary. No such call was made.

Employee returned to Dr. Rumbolo on January 21, 2004, and Dr. Rumbolo noted "he is back to work full duty full-time without any difficulties. He has no functional disturbance from these burn wounds at all".

Employee made his final return visit to Dr. Rumbolo on April 14, 2004, at which time Dr. Rumbolo noted, "his burned areas are doing very well". Dr. Rumbolo further noted "his burn wounds are completely flat with no evidence of hypertrophic scar formation. There is some discoloration present which may be his only permanence to this injury. He has no functional disturbance from his burns. He will not require any surgical intervention or any scar revisions in the future. He has no restrictions on his activities."

At that point in time Dr. Rumbolo discharged employee from any additional medical care and treatment.

III. Conclusions

The Commission does not find credible, persuasive or worthy of belief, the medical opinions or conclusions of Dr. Volarich. The Commission does find persuasive, credible and worthy of belief, employee's own testimony, coupled with the treating medical records and opinions contained therein, of the treating physician, Dr. Rumbolo.

By employee's own admission and consistent with the treating records of Dr. Rumbolo, employee has been able to

work full duty without any restrictions since January 5, 2004. Employee also testified that he has or is involved in more job duties presently post-injury than he was pre-injury.

Employee does complain concerning sensitivity to intense heat and exposure to sunlight, as well as some itching to the burned areas. However, the Commission does not find that these complaints have resulted in any type of permanent partial disability.

Dr. Rumbolo found that the employee's wounds were fairly superficial; employee did not suffer any functional disturbance from his burn wounds; since returning to work full duty without restrictions employee has not sustained any difficulties; discoloration is employee's only permanence to this specific injury; and employee did not sustain any functional disturbance.

The employee has been awarded disfigurement for his discoloration, etc., and the Commission finds no permanent partial disability associated with this injury.

The Commission gives no credence to the rating rendered by Dr. Volarich. The disability rating rendered by Dr. Volarich is inconsistent when compared and contrasted to the treating records and opinions of Dr. Rumbolo, and is also inconsistent with the complaints given Dr. Volarich when employee visited him, as well as being further inconsistent with the activities of daily living described to Dr. Volarich by employee.

In conclusion, based on the more credible evidence in this record, i.e., employee's own testimony and statements given his selected evaluating physician, in combination with the treating medical records and medical opinions of Dr. Rumbolo, the Commission concludes that employee did not sustain any permanent partial disability attributable to this accident.

Accordingly, the portion of the award of the administrative law judge concluding that employee sustained 10% permanent partial disability of the body as a whole attributable to this accident is reversed. In lieu thereof the Commission concludes that the injured employee did not sustain any permanent partial disability attributable to this accident. The awarding of disfigurement in the amount of 15 weeks is affirmed.

No attorney's fees are awarded concerning the obligation of the employer to pay the employee disfigurement. Legal services were not necessary in order for the employee to receive compensation for disfigurement.

Given at Jefferson City, State of Missouri, this 23rd day of September 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

SEPARATE OPINION FILED

John J. Hickey, Member

Attest:

Secretary

SEPARATE OPINION
CONCURRING IN PART AND DISSENTING IN PART

I concur in the decision of the Commission majority to affirm the disfigurement award. I respectfully dissent from

the portion of the decision of the majority reversing the award of permanent partial disability in this case.

Employee suffered second-degree burns over 10% of his body surface area. He testified to his ongoing physical complaints related to his burns. Employee suffers discomfort in the areas of the body that suffered burns. Employee is sensitive to heat and light. Extreme heat exhausts employee. The heat sensitivity affects his ability to perform his job duties in that he is required to take extra breaks when exposed to extreme heat, such as when he is working near the boilers where temperatures reach up to 140 degrees. Employee must always wear sunscreen when outside or risk further discoloration of the affected skin. Employee suffers from chronic itching of the affected areas. The itching disturbs employee's sleep several times a week.

The majority of the Commission reversed the permanent partial disability award on a finding that employee suffered no "functional disturbance" as a result of the burns. I believe the majority of the Commission applied the wrong standard in reaching its conclusion that employee is not permanently and partially disabled. The following summarizes the proper standard:

"Permanent partial disability" is defined in § 287.190.6 as being permanent in nature and partial in degree. Further, "an actual loss of earnings is not an essential element of a claim for permanent partial disability." *Wiele v. Nat'l Supermarkets, Inc.*, 948 S.W.2d 142, 148 (Mo. App. 1997). A permanent partial disability can be awarded notwithstanding the fact the claimant returns to work, if the claimant's injury impairs his efficiency in the ordinary pursuits of life. *Sapienza v. Deaconess Hosp.*, 738 S.W.2d 149, 151 (Mo. App. 1987).

Rana v. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. 2001).

There can be no doubt that employee's need to limit his exposure to heat and light and employee's sleep disturbances impair employee's efficiency in the ordinary pursuits of life. For example, employee may have no "functional disturbance" preparing boiler reports in that he can read and write. However, employee is certainly less efficient in that task when he has to stop the task and remove himself from the boiler area than he would be if he could work straight through the job.

The administrative law judge properly determined that employee was permanently and partially disabled under the standard set for in *Rana*. I would affirm the award and decision of the administrative law judge.

John J. Hickey, Member

AWARD

Employee: William Robertson

Injury No. 03-116517

Before the
DIVISION OF WORKERS'
COMPENSATION

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

Employer: Ameren U. E.

Add. Party: State Treasurer, as Custodian of the
Second Injury Fund [Claim dismissed as to
Second Injury Fund]

Insurer: Self-Insured c/o Corporate Claims Management, Inc.

Hearing Date: April 5, 2005

Checked by: KD:df

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: 11/20/03
5. State location where accident occurred or occupational disease was contracted: Franklin County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes, self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee suffered burn injuries when breaker exploded.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: Burn injury to body as a whole, various parts of the body
14. Nature and extent of any permanent disability: 10% permanent partial disability of the body as a whole; 15 weeks disfigurement
15. Compensation paid to-date for temporary disability: \$4,259.25
16. Value necessary medical aid paid to date by employer/insurer? \$13,741.35
17. Value necessary medical aid not furnished by employer/insurer? n/a
18. Employee's average weekly wages: \$1,110.20
19. Weekly compensation rate: \$662.55/\$347.05
20. Method wages computation: By agreement of the parties, maximum rates allowed by law

COMPENSATION PAYABLE

21. Amount of compensation payable:

40 weeks of permanent partial disability from Employer at \$347.05 per week.....	\$13,882.00
15 weeks of disfigurement from Employer at \$347.05 per week.....	\$ 5,205.75

22. Second Injury Fund liability: Dismissed at request of employee

TOTAL: \$19,087.75

23. Future requirements awarded: n/a

Said payments to begin as of date of Award 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:

Scott H. Green

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	William Robertson	Injury No: 03-116517
Employer:	Ameren U. E.	Before the DIVISION OF WORKERS' COMPENSATION
Add. Party:	State Treasurer, as Custodian of the Second Injury Fund [Claim dismissed as to Second Injury Fund]	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured c/o Corporate Claims Management, Inc.	Checked by: KD:df

The claimant, Mr. William Robertson, and the employer, Ameren UE, self-insured, appeared at hearing by and through their counsel and entered into certain stipulations and agreements as to the issues and evidence to be presented in this claim for compensation. The parties agree that the only issues to be resolved at hearing are nature and extent of permanent partial disability, and as to disfigurement.

The claimant appeared at hearing and testified on his own behalf. Claimant further requested in advance of the hearing that the claim as against the State Treasurer, as custodian of The Second Injury Fund, be dismissed.

EXHIBITS

The following exhibits were offered and received in evidence:

Claimant's Exhibits

- A. Certified medical records of St. John's Mercy Medical Center
- B. Medical records of Peter M. Rumbolo, M.D.
- C. Curriculum vitae and IME report of Dr. David T. Volarich

FINDINGS OF FACT AND RULINGS OF LAW

The claimant, William Robertson, suffered burn wounds to his face neck, and to his upper and lower extremities as a result of an electrical fire at work. On 11/20/03, Mr. Robertson, at that time a plant operating engineer for Ameren UE, was attempting to bring a unit back to operation after a repair, and was standing in front of a breaker when the breaker exploded. The breaker was locked and secured at the time, but flames came out of the vents in the door and caused the involved burn injuries. Fortunately, at the time of injury Mr. Robertson was wearing protective gear, in the form of gloves, switching jacket, and eye goggles. Unfortunately, Mr. Robertson suffered burns to relatively unprotected areas of his body.

Claimant was taken by helicopter to St. John's Mercy Medical Center, where he was treated and released that same day. Dr. Smock admitted the claimant in the emergency room of the medical center, and Dr. Peter Rombolo later evaluated claimant. Dr. Rombolo noted that the claimant had suffered second-degree burns to approximately 10% of his total body surface area, and that the wounds would heal without the need for surgical intervention.

Treatment consisted of ongoing debridement and cleaning of the burn areas, with dressing changes and application of Silvadene cream twice a day to the lower extremities. Claimant was provided with a prescription of Percocet to help with his pain complaints, and was advised to take Advil on a regular basis.

Claimant remained off of work for almost seven weeks while recovering under the care of Dr. Rumbolo. Through the course of the follow up visits with Dr. Rumbolo, the burn areas were noted to be healing well. On April 14, 2004, Mr. Robertson had a final visit with Dr. Rumbolo and was discharged from care. Dr. Rumbolo noted the absence of any evidence of hypertrophic scar formation, but did note some discoloration. Claimant was released with no restrictions on his activities.

Claimant presents at hearing with visible proof of his injury about his face, neck, left arm, and left leg. Claimant continues to work for Ameren UE, and is in training to become a plant operating engineer repairman. The only disability referred to by Mr. Robertson relates to the discomfort caused by those portions of his body burned by the involved fire.

Mr. Robertson works in rotation with 3 other engineers, and will spend approximately 25% of his work time out of doors. The burn injury has caused the claimant to be heat and light sensitive to the affected parts of his body, both inside and outside of the plant, inasmuch as temperatures will reach 140 degrees Fahrenheit around the boilers inside the plant.

Mr. Robertson is obliged to wear sunscreen lotion on a regular basis, as he is advised that tanning of the affected skin can cause further permanent discoloration. Claimant agrees that he has no functional limitations from the injury as to his ability to perform such activity as lifting or walking, but notes that his heat sensitivity will cause him to need longer breaks away from the boilers while preparing boiler reports. Mr. Robertson agrees that he has not sought any further medical treatment for his complaints since his release by Dr. Rumbolo. Mr. Robertson complains of a chronic itching of the skin that waxes and wanes, and that causes him to awaken from his sleep from time to time

At hearing the claimant presented with visible disfigurement on his left arm, elbow to shoulder, and to his neck and face that can be described as a slight lightening of his normal skin color. Conversely, the claimant exhibited what can be described as a darkened skin disfigurement akin to a port wine stain on his left leg below the knee, and on his left leg above the knee and on the back of the leg to the buttock. Claimant exhibits a similar discoloration of less severity on the opposite leg (This fact finder acknowledges that disfigurement by law is only compensable as to the head, neck, hands or arms per subsection 3 of Section 287.190 RSMo; the disfigurement as it relates to the legs is noted for purposes of clarity with respect to the totality of the complaints of Mr. Robertson as to his burn injury).

PERMANENT PARTIAL DISABILITY AND DISFIGUREMENT

Claimant met with Dr. Volarich on or about 11/2/04, and had Dr. Volarich perform a disability evaluation as to this burn injury. The findings of Dr. Volarich are consistent with the medical records in evidence, showing that the claimant received conservative treatment for second-degree burns to the face, neck, left upper, and both lower extremities involving 10% of the body surface area.

Claimant is found to be a wholly credible witness, and his complaints of ill being with respect to his work injury to be worthy of belief. Those credible complaints are hereby incorporated into these findings of fact by this reference.

From all of the evidence, as a result of his work injury the claimant is found to have suffered a permanent partial disability equivalent to 10% of the body as a whole, referable to the burn injuries suffered. Claimant is further found to have suffered disfigurement to the face, neck, and left upper extremity of sufficient severity as to be compensable per subsection 3 of Section 287.190 RSMo. A total of 15 weeks of disfigurement is found to be due from the employer and insurer.

At the stipulated rate of \$347.05, the maximum allowed by law for permanent partial disability on the date of injury, the claimant is found entitled to 40 weeks of permanent partial disability benefits. The total due for permanent partial disability is \$13,882.00. The total due for disfigurement is \$5,205.75.

LIABILITY OF THE SECOND INJURY FUND

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At the request of the claimant made at hearing, the claim as against the Second Injury Fund is dismissed.

ATTORNEY'S FEES

This award is subject to a lien in favor of Scott H. Green, Attorney at Law, in the amount of 25 % thereof for necessary legal services rendered.

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Date: _____

Made by: _____

KEVIN DINWIDDIE
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia Secret
Director
Division of Workers' Compensation