

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

Injury No.: 04-019321

Employee: Anthony Rolens
Employer: S & R Concrete
Insurer: Federated Mutual Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ Having reviewed the evidence, read the briefs, heard oral argument, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the ALJ dated June 21, 2011, as supplemented herein.

The ALJ awarded employee 100% permanent partial disability benefits at the level of the distal phalanx of the right index finger (30 week level), plus an additional 10% (or 3 weeks) permanent partial disability under § 287.190.2 RSMo. The ALJ also awarded 2.5% permanent partial disability benefits at the level of the right wrist, or 4.375 weeks (= 2.5% x 175 weeks) and 4 weeks for disfigurement. While we agree with the ALJ's assessment of employee's permanent partial disability suffered, we find that additional facts and analysis are needed to support his conclusions.

On February 11, 2004, employee smashed his finger between a 10 pound sledgehammer and a concrete stake. After employee's shift, he underwent an open reduction and internal fixation of the right index finger with irrigation and debridement.

On October 2, 2008, Dr. Strege amputated the distal phalanx of the right index finger to alleviate pain, cold tolerance, and insensation. On November 19, 2008, Dr. Strege opined that employee could return to full duty without restrictions. Dr. Strege concluded that the injury caused 30% permanent partial disability to the right index finger.

Dr. Schlafly examined employee before and after the amputation. On May 8, 2009, Dr. Schlafly opined that employee has a 100% permanent partial disability of the right index finger at the distal (30 week) joint, a 15% permanent partial disability to the right hand at the level of the wrist, and a 40% permanent partial disability at the metacarpal (45 week) joint. Dr. Schlafly reasoned at his deposition that he assigned the 40% permanent partial disability of the metacarpal joint because the restriction of range of motion in the index finger extends to all three joints of the finger. Dr. Schlafly did not provide any work restrictions when he last saw employee.

In this case, employee's injury was limited to his finger. However, in addition to awarding employee 110% permanent partial disability benefits at the level of the distal phalanx of

¹ Statutory references are to the Revised Statutes of Missouri 2003 unless otherwise indicated.

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the right index finger, the ALJ also awarded employee 2.5% permanent partial disability at the level of the right wrist, and an additional 4 weeks of compensation for disfigurement. Employee alleges that this award is insufficient and that, at the very least, employee should be awarded 15% permanent partial disability benefits at the level of the right wrist in accordance with Dr. Schlafly's opinions.

We find that the ALJ's award is supported by competent and substantial evidence.

Dr. Strege's rating of 30% permanent partial disability at the "level of the right index finger" is too broad because he does not specify as to what level of the right index finger the 30% rating applies. For this reason, we do not find Dr. Strege's rating opinion persuasive.

We find Dr. Schlafly's rating of 100% permanent partial disability of the right index finger at the distal joint is fully supported by the record. However, we find, in light of employee's testimony, the medical expert opinions, and the record as a whole, that Dr. Schlafly's rating of 15% permanent partial disability to the right hand at the level of the wrist greatly exceeds employee's disability at that level. Employee was released to work without any restrictions. Therefore, we find that the ALJ's award of 2.5% permanent partial disability is a more accurate assessment of employee's disability at that level.

In addition to the aforementioned, we find that Dr. Schlafly's rating of 40% permanent partial disability at the metacarpal joint is in no way supported by the record. Any disability employee suffered beyond the distal phalanx of the right index finger is fully accounted for by the ALJ's award of 2.5% permanent partial disability of the wrist.

One other issue we would like to address concerns a clarification of the ALJ's Findings of Fact. Employee argued in his brief and at oral argument that the ALJ mischaracterized the evidence when stating that employee currently "paints in his own company." After reviewing employee's testimony, we find that while employee did testify that he has started his own company, he stated at the time of the hearing that he had not had any work for nearly a year. This clarification does not affect our aforementioned conclusions.

The Commission affirms the award and decision of the ALJ, as supplemented herein.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued June 21, 2011, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees herein as being fair and reasonable.

We advise the parties that Division of Workers' Compensation (Division) records reveal that on various dates the Director of the Division mailed to necessary parties Notice(s) of Lien(s) on Workers' Compensation Benefits in accordance with § 454.517.5 RSMo. Consequently, this award may be subject to a lien or liens in favor of the Director of the Family Support Division, Missouri Department of Social Services pursuant to the provisions of §§ 454.517 and 287.260 RSMo.

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Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 18th day of January 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

NOT SITTING
James Avery, Member

CONCURRING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Anthony Rolens

CONCURRING OPINION

I write separately to disclose the fact that I did not participate in the October 26, 2011, oral argument in this matter. I have reviewed the evidence, read the briefs of the parties, and considered the whole record. I join Chairman Ringer in the Commission's decision.

Curtis E. Chick, Jr., Member