

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

Injury No.: 05-021868

Employee: Charles Rose
Employer: TransWood, Inc. (Settled)
Insurer: Great West Casualty (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 March 21, 2011. The award and decision of Administrative Law Judge Matthew D. Vacca, issued March 21, 2011, 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 11th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Charles Rose

Injury No.: 05-021868

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: TransWood, Inc. (Settled)

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

Additional Party: N/A

Insurer: Great West Casualty (Settled)

Hearing Date: January 25, 2011

Checked by: MDV

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: March 4, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis
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 occurred or occupational disease contracted: Injured while working on cement truck.
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: Back
14. Nature and extent of any permanent disability: 12.5% BAW
15. Compensation paid to-date for temporary disability: \$11,667.63
16. Value necessary medical aid paid to date by employer/insurer? \$13,528.64

Employee: Charles Rose

Injury No.: 05-021868

- 17. Value necessary medical aid not furnished by employer/insurer? -0-
- 18. Employee's average weekly wages: \$798.05
- 19. Weekly compensation rate: \$532.06/\$354.05
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

50 weeks of permanent partial disability from Employer	Previously settled
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22. Second Injury Fund liability: Yes No Open

\$178.01 for 50 weeks beginning August 6, 2005 and \$532.06 thereafter for life	*
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(* denotes an uncertain contingent future benefit)

TOTAL:

23. Future requirements awarded: None

Said payments to begin 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: John J. Johnson, Jr.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Charles Rose	Injury No.: 05-021868
Dependents:	N/A	Before the
Employer:	TransWood, Inc. (Settled)	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Great West Casualty (Settled)	Checked by: MDV

ISSUES

The issues presented for resolution by way of this hearing are the nature and extent of Second Injury Fund liability.

FACTS

1. Claimant was 61 years old at the time of the incident which forms this claim. Claimant was 66 years old at the time of trial. The Claimant has an 11th grade education.
2. Claimant is a truck driver for cement trucks. He was employed by TransWood, Incorporated, the employer herein, delivering cement for approximately ten years prior to the accident which forms the subject of this claim.
3. On the date of the injury the hose was hung up on the light box on the cement truck Claimant was driving. Claimant yanked on the hose and his foot slipped injuring his back. Claimant’s back immediately began hurting and he went to Pike Medical Center and saw several doctors and a nurse. Claimant saw Dr. Peoples, several neurologists and then was seen at Urgent Care in O’Fallon, Missouri. He underwent injections, took exercises and physical therapy. Claimant was eventually diagnosed with a pinched nerve in his lower back and the pain radiated down into his right leg. The right leg would give out and cause Claimant to fall. The injury causes pain 24 hours a day, 7 days a week from the right hip down into the right leg. Claimant has a right foot drop and wears a brace as a result of that injury. The right leg is weak and sometimes it is difficult to climb up stairs when the leg “flops.”
4. The Claimant cannot drive with his right leg.
5. Claimant received Social Security disability.

6. Claimant has prior injuries in that in 1967 his left leg was broken in a motorcycle accident when he sideswiped a car. Claimant had pins and plates inserted in the leg and eventually underwent 11 surgeries over 8 years of treatment.
7. Claimant sustained several infections in the leg and was eventually restricted to no climbing of ladders, no digging of ditches or using a wheel barrel. He was in four casts over the course of a year and worked for himself driving a dump truck.
8. The back injury and the left leg injury complicate each other, according to Claimant.
9. Claimant sustained angina prior to the accident which cause him to be tired and sleepy. Claimant was awarded Social Security based on the injuries to his left leg. Following that injury he returned to work but was unable to be on his feet, could not engage in any lifting, could not work on a ladder.
10. Before the injury herein, Claimant could climb ladders and walk on hills and uneven ground but now he finds that difficult. He can no longer use the clutch in a vehicle.
11. As a result of the primary work injury on March 4, 2005, Claimant has a foot drop and wears a brace on his right leg.
12. He takes pain medication and has difficulty walking especially on slopes and stairs. Claimant can no longer drive a truck.
13. His back pain prevents him from sitting or standing for extended periods.
14. In 1967, Claimant had a motorcycle injury that involved his left ankle.
15. Claimant exhibited a mangled left lower extremity. This was the result of the motorcycle accident. He had a pin placed in the ankle and due to infection it was removed. Later a plate was placed into it which was removed at the end of the 1970s or early 1980s. As a result of that injury, Claimant has always had trouble walking on slopes or using ladders. Claimant has been substantially hindered in his choice of employments as a result of that left leg injury.
16. When Claimant first started driving a truck he avoided using his left foot on the clutch.
17. Claimant's left ankle swells every day and has done so since the date of the motorcycle injury.
18. Claimant was diagnosed with diabetes and this caused him to become very tired at work.

19. Dr. Volarich rated a 35% permanent partial disability of the body as a whole measured at the level of the lumbosacral spine as a result of the accident which forms the subject of this claim.
20. Dr. Volarich finds that the accident caused the aggravation of his lumbar syndrome including degenerative disk disease, degenerative joint disease, and spondylolisthesis at L5-S1 as well as the development of both L4 and L5 right leg radiculopathy with foot drop. His rating takes into account Claimant's low back pain syndrome and loss of range of motion.
21. Pre-existing the injury of March 4, 2005, Dr. Volarich found Claimant suffers from a 25% permanent partial disability of the body as a whole rated at the spine due to spondylolisthesis at L5-S1 and severe degenerative disc disease and degenerative joint disease at L5-S1 with degenerative disc disease at L4-5. This rating also accounts for back pain syndrome including lost range of motion and lower extremity paresthesias all existing prior to the March 4, 2005 injury.
22. Dr. Volarich finds 75% permanent partial disability measures at the level of the left lower extremity rated at the level of the knee due to the tibia/fibula fractures. Those injuries required open reduction internal fixation complicated by osteomyelitis and poor skin healing which required a series of approximately 11 surgical repairs.
23. His rating takes into account significant deformity, weakness, lost range of motion at the ankle and difficulty with weight bearing.
24. Dr. Volarich also finds 10% permanent partial disability relative to the face due to mandibular fractures causing temporomandibular joint dysfunction.
25. He also has 15% permanent partial disability of the right hand due to lacerations and a mallet deformity of the little finger causing hand pain, stiffness and diminished grip strength.
26. There is also 15% permanent partial disability of the body as a whole due to his noninsulin dependent diabetes that requires medical and diet therapy. This rating takes into account mild visual changes prior to March 4, 2005.
27. Dr. Volarich finds that the combination of disabilities creates a substantially greater disability than the simple sum total of each separate injury and that a loading factor should be added.
28. It is his opinion that Claimant is permanently and totally disabled from engaging in any substantial gainful activity and that he cannot be expected to perform in any ongoing work capacity in the future. He believes that Claimant is permanently and totally disabled from competing in the open labor market for any work that he would reasonably be expected to perform on an ongoing basis eight hours a day five days a week.

FINDINGS OF FACT

1. As a result of the primary injury herein Claimant sustained 12.5% permanent partial disability measured at the level of the low back.
2. Following rendition of treatment and healing from that injury Claimant thereafter became permanently and totally disabled from competing in the open labor market.
3. This permanent total disability is a result of the primary injury working in conjunction with the prior injuries. The last injury in and of itself did not cause Claimant to become permanently and totally disabled, therefore, the Second Injury Fund has liability for this permanent and total disability.

DISCUSSION

The only testimony was that the pre-existing conditions in the back and left leg combine with the primary injury to make the Claimant permanently and totally disabled. The only testimony was that Claimant was not disabled solely by the primary injury but as the result of the combination of pre-existing disabilities and the primary injury.

Claimant was a credible witness.

Date: _____

Made by: _____

MATTHEW D. VACCA
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation