

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

Injury No. 08-107881

Employee: William Rose  
Employer: Par Electric Contractors, Inc.  
Insurer: Old Republic 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. 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 9, 2014. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued December 9, 2014, 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 28<sup>th</sup> day of May 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: William Rose Injury No. 08-107881  
Dependents: N/A  
Employer: Par Electric Contractors Inc.  
Additional Party: N/A  
Insurer: Old Republic Insurance Company c/o Gallagher Bassett Services, Inc.  
Hearing Date: 8/6/14 & 9/5/14 Checked by: MEH

### 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: 10/30/08
5. State location where accident occurred or occupational disease was contracted: MCDONALD 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? 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: CLAIMANT FELL ONTO HIS LEFT KNEE.
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: LEFT KNEE AND LEFT SHOULDER
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
15. Compensation paid to-date for temporary disability: \$204,830.81
16. Value necessary medical aid paid to date by employer/insurer? \$122,038.39

Employee: William Rose

Injury No. 08-107881

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: \$772.53/\$404.66
- 20. Method wages computation: BY AGREEMENT

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses: N/A

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning 3/18/14, for Claimant's lifetime

22. Second Injury Fund liability: Yes No  Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:  
weekly differential (0) payable by SIF for N/A weeks, beginning N/A  
and, thereafter, for Claimant's lifetime

**TOTAL: SEE AWARD**

23. Future requirements awarded: SEE AWARD

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:

STACEY PAGE

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee: William Rose Injury No. 08-107881  
Dependents: N/A  
Employer: Par Electric Contractors Inc.  
Additional Party: N/A  
Insurer: Old Republic Insurance Company c/o Gallagher Bassett Services, Inc.  
Hearing Date: 8/6/14 & 9/5/14 Checked by: MEH

The parties appeared before the undersigned administrative law judge on August 6, 2014, for a final hearing. The record remained open for 30 days and closed on September 5, 2014. The claimant appeared in person represented by Stacey Page. The employer and insurer appeared represented by William Lemp. Memorandums of law were filed by October 17, 2014.

The parties stipulated to the following facts: On or about October 30, 2008, Par Electric Contractors, Inc. was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Old Republic Insurance Company c/o Gallagher Bassett Services, Inc. On the alleged injury date of October 30, 2008, William Rose was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about October 30, 2008, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in McDonald County, Missouri. The parties agree to venue in Greene County, Missouri, and the hearing is held in Springfield, Missouri. The claimant notified the employer of his injury as required by Section, 287.420 RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged accident, the claimant's average weekly wage

was sufficient to allow a compensation rate of \$772.53 for temporary and permanent total disability compensation, and a compensation rate of \$404.66 for permanent partial disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$204,830.81, representing 265 1/7 weeks in disability benefits, from January 29, 2009, to March 17, 2014. The employer and insurer have paid medical benefits in the amount of \$122,038.39. The attorney fee being sought is 25%. The parties agree that the outstanding bills from Dr. Sharon Smith are to be paid by the employer. The parties further agree that future medical treatment will remain open.

#### ISSUES:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed to the left shoulder only.
2. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries. The parties agree the employer and insurer are to provide future medical treatment, with the exception of that the left shoulder condition is disputed.
3. The nature and extent of permanent disabilities, including permanent total disability.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Claimant, William Rose, is 53 years of age. He is married to Lisa Rose and is a resident of Oregon. There are no children or grandchildren dependent on Mr. Rose at the time of this award.

Mr. Rose's work history is comprised primarily in the Lineman industry. Prior to working for PAR Electric, Inc., Mr. Rose mainly worked through the union with various electric companies. In 1979, Mr. Rose received his high school diploma. In 2004, Mr. Rose injured his left knee; however was able to return to work with no restrictions.

The claimant and his wife both testified at the hearing. I find them both to be very credible witnesses.

On October 30, 2008, Mr. Rose testified that he was working as a Lineman and lost his footing on some rocks and fell on his left knee on the concrete. He reported the injury to his Employer and was treated by Dr. Marjorie Parks at a clinic in Neosho, Missouri. Mr. Rose was then referred to an orthopedic surgeon, Dr. Jonathan Grantham, who performed a left knee chondroplasty of the medial femoral condyle and left knee partial lateral menisectomy on May 4, 2009. Mr. Rose received physical therapy; however, he continued to have pain in the left knee. On June 12, 2009, Dr. Grantham decided to perform an OATS procedure. This surgery did not go well and Mr. Rose continued to have pain and swelling in left knee and foot. Mr. Rose was then referred to another orthopedic surgeon, Dr. Richard Rende, for a second opinion who diagnosed Complex Regional Pain Syndrome (“CRPS”) or what has been formerly known as Reflex Sympathetic Dystrophy. Dr. Rende also recommended another surgery to correct the previous surgery.

In May of 2010, Mr. Rose was then referred to another orthopedic surgeon, Dr. Daniel Stechschulte, in Overland Park, Kansas who performed another surgery to clean up the scar tissue. This surgery did not alleviate his knee pain and Mr. Rose continued to have problems with swelling, discoloration of the leg, and hypersensitivity to touch. He was prescribed multiple pain medications and developed depression and anxiety related to his injury.

Subsequently, Mr. Rose was not able to return to work and moved to Springfield, Oregon, to be closer to family. The Claimant was treated at Slocum Orthopedics in Eugene, Oregon. Dr. Craig Mohler performed a bone scan and confirmed the diagnosis of CRPS. He did not recommend any further surgeries. A pain management expert at Slocum, Dr. Gregory Phillips,

managed Mr. Rose's narcotic medications which included Fentanyl patches (morphine based), Lyrica, and Trazadone.

Due to his depression and anxiety, Mr. Rose treated with Dr. Terri Lechnyr at the Pain Management and Behavioral Medicine Clinic in Eugene, Oregon from September through March 2011 at the request of Dr. Phillips. Dr. Lechnyr diagnosed Mr. Rose with "post-traumatic stress disorder" secondary to his injury and resulting medical interventions. Additional psychological treatment has been with Sharon Smith Ph.D. from March 12, 2013 through the present time. Mr. Rose testified that Dr. Smith helps him to cope with his pain and depression related to the primary injury and CRPS. The Employer/Insurer has not paid for his sessions since June 10, 2014 as was referenced in Exhibit E. At the hearing the parties agreed that the Employer/Insurer would pay all outstanding bills from Dr. Smith.

On September 19, 2013, Mr. Rose was sent for an Independent Medical Evaluation by Claimant's attorney to an orthopedic surgeon, Dr. Garth Russell. Dr. Russell testified by deposition. He noted that Mr. Rose's lower extremity revealed discoloration and moderate, chronic edema. The discoloration would disappear with pressure but would take several seconds to return to its previous state. Mr. Rose did complain with any touching of his left leg. Dr. Russell also stated that Mr. Rose walked with a cane with a moderate limp. Mr. Rose had also reported to Dr. Russell that he had fallen at home when his left leg gave out and he injured his left shoulder to break the fall. Dr. Russell noted the four (4) surgeries to the left leg and resulting CRPS with chronic, severe pain, the left shoulder as well as Post Traumatic Stress Disorder, Chronic, with Moderate to Severe Psychological Reaction requiring extensive treatment are related to the primary injury of 10/30/08. He also determined that Mr. Rose has been temporarily and totally disabled since the primary injury up until the date of his examination and is totally disabled from the primary injury. Dr. Russell rated the left shoulder at 10%, the left

knee at 60%, and 60% to the body as a whole for the CRPS. He further determined that Mr. Rose was at Maximum Medical Improvement (“MMI”) and would need future medical treatment in the form of medical and physical management of his CRPS and psycho physiological treatment for the remainder of his life. Dr. Russell testified that Mr. Rose is permanently and totally disabled and would not be able to work due to his chronic pain and narcotic medications which would impair his ability to work on a consistent basis.

Consequently, on September 26, 2013, the Employer/Insurer sent Mr. Rose to Dr. Ted Lennard, who is a physiatrist at Springfield Neurological & Spine Institute, for an Independent Medical Evaluation. Dr. Lennard testified by deposition. Dr. Lennard notes that Mr. Rose is on the Fentanyl 12.5 mcg patch every 72 hours as well as Tramadol, Lyrica, Lorazepam and Trazodone. Mr. Rose reported that the Lorazepam “makes me feel like a zombie.” Dr. Lennard states in his report that Mr. Rose’s left leg “appears shiny”, “slightly cooler to touch when compared to the right”, “sluggish capillary refill on dorsal foot” and “slight swelling noted in the anterior left and ankle.” In the deposition transcript of Dr. Lennard, he testified that all of these symptoms are consistent with CRPS. Dr. Lennard also stated that the side effects of Mr. Rose’s medication could cause “respiratory problems”, “various cognitive problems”, “fatigue”, and “drowsiness.” Dr. Lennard concludes that the work accident was the “prevailing factor” in the onset of left knee pain and the CRPS and depression/anxiety can be attributed to the work accident. Dr. Lennard rated Mr. Rose’s left lower extremity at 50% at the 160 week level with 10% attributed to preexisting degenerative changes. Dr. Lennard does not believe that Mr. Rose’s left shoulder complaints are attributable to the primary injury. Dr. Lennard opined that Mr. Rose may work with a “seated position with an opportunity to elevate the left leg, avoid activities that require squatting, climbing, prolonged standing (>15 minutes in one position, prolonged walking (>10 minutes consecutively) and no lifting >15 lbs.” He recommends future

medical treatment of managing his medication on an indefinite basis which will require quarterly visits. In his deposition, Dr. Lennard stated that he would defer to a vocational expert to determine if Mr. Rose was employable with these restrictions.

On October 22, 2013, Mr. Rose was seen by a Certified Rehabilitation Counselor Phillip Eldred, M.S., C.R.C., for a vocational consultation and evaluation. Mr. Eldred testified at the hearing, and I find his testimony to be credible. Mr. Rose discussed his past medical history regarding the October 30, 2008 primary injury to his left knee and leg which resulted in 3 surgeries along with his diagnosis of CRPS and severe depression. Regarding obstacles to employment, Mr. Eldred performed several tests of Mr. Rose and opined that he would not be employable for competitive, gainful employment due to his constant pain and use of narcotic medication. Furthermore, Mr. Rose is 53 years of age which puts him in the category of such persons who when they can no longer perform past relevant work and who have no transferable skills, will have little prospect of competitive employment. At trial, Mr. Eldred concluded that Mr. Rose was also unemployable due to the side effects of his medication which include fatigue, loss of concentration, and having to elevate his left leg during the day. Mr. Eldred stated that Mr. Rose is permanently and totally disabled as a result of the primary injury in isolation.

On July 31, 2014, a deposition was taken of the Employer/Insurer's vocational expert, Ms. Michelle Sprecker. She did not meet with Mr. Rose and only reviewed his medical records in formulating her opinions. She concluded that Mr. Rose could perform three sedentary jobs: cashier, telemarketer and surveillance monitor. When asked if Ms. Sprecker factored in the limitations from Dr. Russell, she testified that she only factored in Dr. Lennard's limitations. She also stated that she did not factor in the side effects of Mr. Rose's medications and the impact upon his memory and concentration. Also, she did not know if these jobs would accommodate his need to elevate his leg.

Before this primary injury, Mr. Rose testified that he was very active outdoors participating in hunting, fishing, playing sports, and riding his motorcycle. His wife, Lisa, also testified that they used to go camping and dancing and now their lives have completely changed since the primary injury. Mr. Rose has high anxiety in public places in fear of someone bumping his leg. There are some days that he does not want to leave the house and has severe pain in the left leg. Mr. Rose also stated that the medications that he is taking impair his ability to fully concentrate, make him feel “groggy”, and fatigued. Since he does not sleep very well at night, he may lie down or take naps during the day.

Mr. Rose also testified that his pain ranges from a 5/6 to a 10 depending on the day and it feels like someone “put lighter fluid in his left leg and lit it.” He has to use his heavy narcotic medication to control his pain and to even function on a daily basis. He testified that this medication increases his irritability as well as making him drowsy. It also affects his core temperature and he is very heat sensitive and he cannot take a hot shower. He takes a shower every third day when it is time to change his medication patch. The medication also affects his concentration and memory, causing him difficulty staying on track while having a conversation with someone. He also has to lie down and nap during the day. Mr. Rose also testified that he has developed severe depression related to his CRPS and his inability to work. He also has difficulty being in public places in fear of someone hitting his left leg and that he must elevate it throughout the day or it will swell and become discolored.

Mr. Rose testified that he fell while using his cane and injured his shoulder. This injury was noted in the records and testimony of Dr. Russell. The Claimant said the he felt like his shoulder “tore and dislocated” when he fell. He said that he has performed home exercises on his shoulder and it continues to improve. In addition, I find Dr. Garth Russell’s testimony to be credible. Dr. Russell is an orthopedic surgeon and performed a physical examination and

reviewed all medical records as they related to Mr. Rose's medical treatment. He determined that as a result of the primary injury that Mr. Rose suffered a 60% permanent partial impairment to his left knee due to three surgeries, 60% to the body as a whole due to the CRPS, and 10% to the left shoulder. As for the prior injury to the left knee, Dr. Russell did assign 10% to the knee, but determined that the last injury alone is what made Mr. Rose permanently and totally disabled. He was able to work without any restrictions after the prior knee surgery in 2004 up until the primary injury.

The following are my findings with regard to Certified Rehabilitation Counselor Phillip Eldred. On October 22, 2013, Mr. Eldred conducted an interview and vocational consultation with Mr. Rose. The Employer/Insurer's vocational expert, Ms. Sprecker, only did a review of Mr. Rose's medical records, never met him in person, and relied upon the testing of Mr. Eldred in formulating her conclusions. Moreover, Mr. Eldred testified that his opinions were based on a comprehensive analysis of the functional limitations imposed by Mr. Rose's physicians, his 25 years of professional experience working for the Missouri Division of Vocational Rehabilitation, and Mr. Rose's own complaints. Accordingly, I find Mr. Eldred's conclusions are supported by the evidence and more credible than Ms. Sprecker's opinions.

After carefully considering all of the evidence, I make the following rulings:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed to the left shoulder only.

I find that the claimant's injury to his left shoulder was caused by the need to use a cane as a result of his knee injury. Therefore, I find his left shoulder injury work related as it occurred due to the effects of the accident.

2. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries. The parties agree the employer and

insurer are to provide future medical treatment, with the exception of that the left shoulder condition is disputed.

I do not find any evidence that the claimant is need of future medical treatment for his shoulder injury. Pursuant to the agreement of the parties, as for his knee injury and his condition resulting from this injury, his future medical shall remain open as it relates to managing of his pain medication, his psychological counseling, and other medical visits as deemed necessary by his treating physicians.

3. The nature and extent of permanent disabilities, including permanent total disability.

Claimant testified at length as to the limitations and chronic pain that he suffers on a daily basis due to the primary injury and his CRPS. The medical records corroborate this testimony. Dr. Russell further corroborated the claimant's testimony with his conclusions that based upon the work injury of October 30, 2008, that Mr. Rose was "permanently and totally disabled." Mr. Eldred also concluded that based on the severity of his limitations (especially the CRPS), Mr. Rose is essentially precluded from any type of sedentary occupation and is permanently and totally disabled due to the last injury in isolation.

Mr. Rose is unable to compete in the open labor market and I find that no reasonable employer would hire him. The Claimant is restricted to sedentary or less than sedentary work level. Due to his use of need to elevate his leg, lie down during the day, lack of transferable skills, and his use of narcotic pain medication, I find he could not obtain or maintain employment in the open labor market. Based on the credible testimony of Mr. Rose, his wife, the medical records in evidence, and the credible opinions of Dr. Garth Russell and Mr. Phil Eldred, I find that claimant was rendered permanently and totally disabled as a result of the October 30, 2008, injury to his left knee and leg and resulting CRPS condition which requires ongoing psychological counseling and pain management in the future. Although I find the claimant's

shoulder injury work-related, I find his shoulder condition is irrelevant in determining whether Mr. Rose is permanently and totally disabled, as his knee condition and the subsequent conditions caused by his knee injury, would be sufficient to prevent Mr. Rose from competing in the open labor market independent of his shoulder injury.

I find Mr. Rose permanently and totally disabled since March 17, 2014, the date he was last paid temporary total disability benefits. He is entitled to weekly permanent total disability benefits from March 18, 2014, to the present and into the future for as long as he remains permanently and totally disabled.

Attorney for the claimant, Stacey Page, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*