

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

Injury No.: 02-056606

Employee: Harold Sartin

Employer: Paul Mueller Company

Insurer: Sentry Insurance Company

Date of Accident: June 12, 2002

Place and County of Accident: Greene County, Missouri

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 18, 2005. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued July 18, 2005, 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 24th day of March 2006.

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 join my fellow commissioners in awarding compensation in this claim. However, I would modify the award to increase the award of permanent partial disability.

Dr. Volarich believes that employee suffers a 20% permanent partial disability from his occupationally induced COPD. Dr. Belz believes employee suffers a 10% permanent partial disability, but he believes employee's

condition is non-occupationally induced asthma. The majority of the Commission award 7.5% permanent partial disability. Neither the administrative law judge nor the majority express that they disbelieve the testimony of Dr. Volarich or Dr. Belz or offer an explanation for concluding that the extent of employee's disability is less than opined by both medial experts.

I am cognizant that it is within the exclusive province of the Commission to determine matters of disability and the Commission is not bound by percentages of disability found by medical experts. See *Hayes v. Compton Ridge Campground, Inc.*, 135 S.W.3d 465, 470 (Mo. App. 2004). Nonetheless, the Commission may not arbitrarily disregard and ignore the competent, substantial and undisputed evidence of witnesses who are not shown by the record to have been impeached, and the Commission may not base its finding upon conjecture or personal opinion unsupported by sufficient competent evidence. *Houston v. Roadway Express, Inc.*, 133 S.W.3d 173, 179 (Mo. App. 2004).

Here the undisputed, unimpeached, and uncriticized evidence is that the extent of employee's permanent partial disability is at least 10% of the body as a whole. The majority errs in concluding it is lower than established by the medical experts. I conclude that the award should be modified to award permanent partial disability of 10% of the body as a whole.

For the foregoing reasons, I respectfully dissent from the portion of the decision of the majority of the Commission affirming the administrative law judge's conclusion regarding permanent partial disability.

John J. Hickey, Member

AWARD

Employee: Harold Sartin Injury No. 02-056606

Dependents: N/A

Employer: Paul Mueller Company

Additional Party: N/A

Insurer: Sentry Insurance Company

Hearing Date: 2/22/05 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: 6/12/02
5. State location where accident occurred or occupational disease was contracted: GREENE 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
- 11. Describe work employee was doing and how accident occurred or occupational disease contracted: WELDING AND PAINTING
- 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: BODY AS A WHOLE
- 14. Nature and extent of any permanent disability: 7.5%
- 14. Compensation paid to-date for temporary disability: NONE
- 16. Value necessary medical aid paid to date by employer/insurer? NONE

Employee: HAROLD SARTIN

Injury No.02-056606

- 17. Value necessary medical aid not furnished by employer/insurer? NONE
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: \$329.42
- 20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21.Amount of compensation payable:

Unpaid medical expenses: NONE

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

30 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

22. Second Injury Fund liability: Yes No X Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits:

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

TOTAL: SEE AWARD

23. Future requirements awarded: MEDICAL TREATMENT

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:

BILL FRANCIS

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Harold Sartin Injury No. 02-056606

Dependents: N/A

Employer: Paul Mueller Company

Additional Party: N/A

Insurer: Sentry Insurance Company

Hearing Date: 2/22/05 Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 22, 2005, for a final hearing. The claimant appeared in person represented by Bill Francis. The employer and insurer appeared represented by Ray Whiteaker. Memorandums of law were filed by March 28, 2005.

The parties stipulated to the following facts. On or about June 12, 2002, Paul Mueller Company was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Sentry Insurance Company. On the alleged injury date of June 12, 2005, Harold Sartin was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. The employment occurred in Greene County, Missouri. The claimant notified the employer of his injury as required by Section, 287.420 RSMo. The claim for compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged occupational disease, the claimant's average weekly wage was sufficient to allow a compensation rate of \$329.42 for permanent disability compensation. Temporary disability is not an issue. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid no medical benefits. The attorney fee being sought is 25%.

ISSUES:

1. Whether the claimant sustained an occupational disease which arose out of the course and scope of employment.

2. Whether the occupational disease caused the injuries and disabilities for which benefits are being claimed.
3. 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.
4. The nature and extent of permanent disabilities.
5. Whether costs should be assessed under Section 287.560 RSMo.
6. Whether a 15% penalty should be assessed against the employer and insurer for failure to follow safety procedures.

FINDINGS OF FACT:

The claimant graduated from high school, after which he has received training as a nurse and as a welder. The claimant has worked at Paul Mueller since 1995. Prior to his employment with the employer, he worked at Reliable Chevrolet in the body shop. He worked in an enclosed paint booth with a down draft system. He reports no pulmonary or respiratory problems during this time. He also held other positions in the healthcare field after this and reported no pulmonary or respiratory problems from any subsequent employment. The claimant testified that he has been a social smoker in the past smoking approximately 3 -4 cigarettes per year. At the time of the hearing, he could not recall the last time he had smoked a cigarette. He reports some allergies due to hay fever, but nothing that caused shortness of breath or fatigue.

In 1985 he was hired as a production worker with the employer. He was required to move from station to station wherever he was needed within the departments. He was then promoted to fabricator. His job duties entailed tinning, light welding, and painting. During his time with the fabrication and painting department, he was required to mix paint and fill paint guns. He would then paint approximately 4 - 6 hours daily, sometimes more. The claimant testified that he utilized a paint booth, which consisted of a curtained area within the workspace. He described the booth as a "shower type" set up. The curtains did not reach to the floor, nor were the curtains able to be shut fully. This allowed the paint fumes to escape the booth.

Claimant testified that during his paintwork with employer, he did wear a cartridge mask with open spaces around the nasal area. The mask did not create a vacuum allowing paint to be inhaled thru the mask. Once removed, he and other workers were able to see tracks of paint that had seeped thru the mask onto their faces. There was no temperature control within the building. In the summer, temperatures within the building would cause workers to sweat and thereby causing the masks to slip from the face and move around. He wears glasses and often would observe his glasses fog over due to the lack of seal around the nose. He also observed overspray on his glasses as well.

The claimant often had to spray paint outside the booth due to the excessive size of items to be painted. His supervisor, Steve Norris, authorized this procedure. However, the superintendent, Joe Gimson questioned the practice of painting outside the booth and ordered the claimant to stop. The claimant said that Mr. Gimson informed him that he was receiving complaints regarding the paint fumes. Co-workers also requested he cease

painting. They complained of the fumes bothering them. He was also requested to cease painting by people who met in an overhead meeting room within proximity of the paint booth and surrounding area. The attendees of the meeting complained of headaches due to the fumes.

The claimant presented several masks as examples of what he used during different tasks. The first mask (Claimants Exhibit G) he described would have been used during the "flux" process. He described the flux process as a chemical used to prepare metal to allow materials to adhere to the metal. When the heat would hit the flux the flux, would become a vapor rising into his face. As a result, the claimant requested a mask from the warehouse area.

The claimant testified that he also wore a mask for short arc welding (Claimants Exhibit H). The mask was used to protect the face from welding debris that could be inhaled if the face were unprotected. The claimant's job duties also included grinding, which caused excessive dust in the work area. He would use a mask (Claimants Exhibit I) while working in the grinding area. The claimant testified that the dust within the short arc welding and grinding area was excessive causing breathing difficulties.

The claimant testified that to his knowledge, no safety inspections were completed during his employment with employer. He said Ray Stanton, the safety inspector, would only look for safety violations but did not check for mask maintenance or safety. The claimant indicated that often co-workers would have to share masks and one could never be certain if the mask was fully functional or not. Co-workers would often have to repair their own masks and walk to the warehouse to retrieve new masks.

Claimant testified that while working with the paint, he would experience frontal headaches, sneezing and dry eyes from the overspray, which would cause a sleepy feeling. This feeling would cease upon exiting the paint area.

In 1997 - 2001, claimant underwent company ordered spirometry testing performed by Dr. Gil's medical office. All tests for the claimant during this time period returned normal. The testing was required in order to be fitted for a respirator mask. The claimant testified he never received a respirator mask after the testing was completed. Dr. Gil did note an abnormality on the test and ordered a chest x-ray. Gail Heinrichs, company nurse, informed claimant that a problem was present and he needed to see his personal doctor.

The claimant made an appointment with Dr. Monte Maska and presented on March 7, 2002, during which time Dr. Maska ordered complete pulmonary testing. The tests results revealed a mild obstructive lung defect, and the claimant was diagnosed with chronic obstructive pulmonary disease (COPD).

The employer then sent the claimant to see Dr. Norbert T. Belz for an independent medical examination. Dr. Belz requested that Dr. Maska perform a second spirometry. In April 2003, Dr. Maska performed a pulmonary function study and again reported an obstructive lung defect. This report was delivered to Dr. Belz for evaluation.

Ben Horton, co-worker of Harold Sartin, testified on behalf of the claimant. Mr. Horton testified that he has

been stationed next to the paint booth for one year and often uses a mask for the type of work he performs. Mr. Horton uses the mask for insulation work but often wears a half mask when shooting paint.

Gerald Clevenger, co-worker of Harold Sartin, testified on behalf of the claimant. Mr. Clevenger testified as to experiencing a bad taste in his mouth and how terrible the fumes were in the paint area. He indicated the employer had installed a vacuum canopy over the area; however, it was only made for one person and there could possibly be up to four people painting simultaneously. He indicated that due to the size of some materials, it was often impossible to paint within the booth. He testified that he often had to use canister masks and share with co-workers and that he has received complaints from those workers surrounding the paint area as to paint fumes and odor. Mr. Clevenger indicated that he had transferred from the paint department to a cleaner job as electrician.

Nolan Smith, co-worker of Harold Sartin, testified on behalf of the claimant. Mr. Nolan testified that he has worked for Paul Mueller for three years as a fabricator and wears a mask due to excessive dust within the work environment. He works approximately eight feet from the paint area. He has experienced fumes from the paint area. He indicated that when there is painting being performed, he is unable to do his job due to possible flash points from the fumes. He does wear a mask but can still smell the paint fumes. He testified that the employer, regarding the escaping fumes from the paint booth, has done nothing.

Dr. Monte Maska has been the claimant's doctor since May of 2001. Dr. Maska testified by deposition. The claimant presented for discussion of abnormal lung tests from Dr. Gil's Immediate Care. The claimant had been found to have an abnormal chest x-ray, abnormal lung function testing, and pulmonary function test by Dr. Gil. The claimant gave a history of being around toxins and believed he had inhaled the toxins. Dr. Maska indicated that he ordered a complete pulmonary function test with spirometry. The tests were performed on March 7, 2002, with results noted of mild obstructive lung defect. Dr. Maska indicated the claimant returned to his office on March 15, 2002, for discussion of the results. The claimant presented for examination and review of the test results and informed Dr. Maska that he felt better with the treatment of a bronchodilator and medication for ease of breathing. The claimant again returned to Dr. Maska for follow-up assessment April 7, 2003. Dr. Maska testified the diagnosis remained mild chronic obstructive pulmonary disease, and additional pulmonary function tests were ordered. The claimant was sent for pulmonary function tests with spirometry, pre and post bronchodilator. Dr. Maska testified the interpretation of the results indicated minimal obstructive lung defect.

Dr. Maska testified that the hand-writing on the test results (Employee's Deposition Exhibit 1) were made by him and indicated a copy of the report was for the workmen's compensation doctor and that the results confirmed mild COPD and the claimant would benefit from an inhaled steroid to help reduce loss of lung function. Palmacort, a metered dose inhaler, was then prescribed. Dr. Maska indicated the workers' compensation doctor should see the results because of the claimant's exposure to paint fumes, other toxins, and metal dust in his work environment. Dr. Maska testified that the results shown on the testing were caused by the claimant's work

environment exposure. Dr. Maska further indicated the condition, which the claimant suffers, is permanent. In Dr. Maska's opinion, the medical condition of the claimant is work-related. This opinion was based upon Dr. Maska's examination of the claimant as well as review of the test results.

Dr. David Volarich testified by deposition. Dr. Volarich examined the claimant on February 26, 2003. He testified that the claimant had exposure to multiple and different caustic agents and different types of acids. This included different types of halogenated hydrocarbons of the aromatic type. These are damaging to the upper respiratory tract. Dr. Volarich testified that he believed it was the combination of the claimant's exposure to work as well as his susceptibility to the environment that has caused the claimant's lung problems. The claimant presented with pulmonary function studies that were not 100 percent normal. The results did not show severe loss, but they did show losses in pulmonary function on a consistent basis. Dr. Volarich indicated that he believes the claimant has mild obstructive pulmonary disease. The effect is a cumulative effect due to the many years of exposure. Dr. Volarich testified that due to the fact the claimant has developed chronic obstructive pulmonary disease, he is more susceptible for injury and infection to his lungs such as bronchitis, upper airways infections, and sinus infections. He indicated the claimant's smoking history was minimal and remote. As a result, Dr. Volarich had no reason to believe the smoking caused any problems. Dr. Volarich believed the condition was work related. Dr. Volarich further testified the claimant did not have occupational asthma. Occupational asthma usually occurs from a compound such as polyvinyl chloride, ethylene dioxide, and toluene. Occupational asthma is a reversible obstructive airways disease; it is not fixed such as the chronic COPD the claimant has been diagnosed with. It is different from the way it is evaluated on pulmonary function status, responses to medication, onset and flare-up. It is possible the claimant had seasonal allergies coupled with the COPD. However, they are two very different conditions. Dr. Volarich testified that he believed the claimant's condition was stationary. He stated the claimant needs surveillance and continual medication such as a Serevent inhaler to keep symptoms under control. Dr. Volarich rated the claimant at 20% permanent partial disability to the body as a whole rated at the pulmonary system due to the exposure to multiple solvents and chemicals while performing his job duties at Paul Mueller. Dr. Volarich indicated his rating accounted for ongoing shortness of breath with vigorous activities and the need for daily medication to minimize bronchospasm.

Dr. Norbert T. Belz examined the claimant on December 2, 2002, on behalf of the Employer. Dr. Belz testified that the chronic obstructive pulmonary disease (COPD) with which Mr. Sartin has been diagnosed is not occupational COPD. Dr. Belz indicated that claimant has a mild case of asthma, which he considered reversible, and obtained and influenced by sources outside the workplace. Regarding the problems claimant presented with, Dr. Belz diagnosed the claimant with asthma. Dr. Belz disagrees with the opinions of Dr. Maska and Dr. Volarich.

Dr. Belz said that the claimant claimed the medications prescribed him by Dr. Maska were not beneficial and that his condition never improved, even when away from work.

Dr. Belz testified that he had been to Paul Mueller to observe the work environment and had seen Harold Sartin but did not observe him individually. Dr. Belz described his visit as a casual observation.

Dr. Belz assigned a 10% permanent partial rating to the body as a whole and recommended medication for asthma, inhaled steroids, and a bronchi dilator. Dr. Belz believed the case to be very mild and that the claimant would need a pulmonary function test on a normal basis to determine if medications were needed and for monitoring of all present medications. Dr. Belz indicated the claimant would not need the dilator or medication for the rest of his life, as he believes the condition is reversible. Dr. Belz recommended the claimant be evaluated by a physician to determine if medication was needed to cure and relieve him from asthma.

Claimant testified there were many discrepancies in the report and evaluation of Dr. Belz. Claimant testified that he had informed Dr. Belz that his condition was improved when away from work and that the medication he was taking did assist him but that he wished the medications were stronger. The claimant testified that he had not been subjected to any other type of stimulants that would cause his problems other than the work environment. He testified that he improved when away from work for periods of time. He informed Dr. Belz that Dr. Maska had placed him on Palmacort.

Claimant also testified that Dr. Belz's description of him running in practice with the team he coaches was incorrect. Claimant said that he cannot run as he becomes very winded. Dr. Belz incorrectly reported the claimant could walk up and down a flight of steps without stopping. Claimant indicated this was incorrect, that he would become very winded when stair climbing. Dr. Belz stated that claimant was a softball participant; this was also incorrect as claimant states he has not played since 1990. Dr. Belz referred to the claimant coaching two teams of football and baseball. The claimant testified this information was incorrect that he only coaches one team of football. Dr. Belz noted that stainless steel flux was the same as tin on copper flux. Claimant stated this was incorrect as these are two distinctly different types of flux. Dr. Belz stated the claimant smoked a pack a day of cigarettes or pipe. Claimant testified this was incorrect as he has never smoked a pack of cigarettes a day nor has he ever smoked a pipe. Claimant indicated that he has only smoked socially, maybe 3 cigarettes in one night over the last three years. Dr. Belz noted in his report the claimant works with paint at home. Claimant clarified this statement by testifying that he has worked with paint at home. However, the household paint does not contain paint solvents and no paint solvents are needed for household paint.

Claimant is currently prescribed Albuteral, which he normally takes 2 - 3 times per day, and Palmacort, which he takes daily. Claimant presently complains of difficulty breathing in high humidity or very cold temperatures. He indicates it often feels as if someone is sitting on his chest. Claimant does experience a mild shortness of breath, which is more prevalent in the summertime.

Gail Heinrichs, Paul Mueller company nurse testified that she has been employed as the company nurse for the past eleven years. Her duties and responsibilities are to take care of any injuries that occur and to monitor

employees in health situations. She has been involved with the medical investigation of the claimant. Ms. Heinrichs testified that she was first made aware of the claimant's respiratory problem when notified by Concentra at claimant's last pulmonary study of February 12, 2002. Darin Taylor, assistant to Dr. Gil, informed her there had been a change in the spirometry and requested a chest x-ray. Ms. Heinrichs authorized the chest x-ray and spoke with the claimant informing him of the change and his need to see a personal physician. She informed the claimant she would provide whatever medical records were necessary for the examining physician. She indicated the test results showed mild obstruction. She was supplied a copy of the April 18, 2003, report by Dr. Maska which contained the handwritten comments "confirm mild COPD". These test results were maintained in the workers' compensation file of claimant.

Ms. Heinrichs testified she followed up with Ray Stanton, Paul Mueller safety directory, regarding the changes in the spirometry test for the claimant. She and Ray Stanton discussed the situation and determined there had been no exposure. Ms. Heinrichs testified she received a copy of a pulmonary function test dated April 18, 2003, as ordered by Dr. Monte Maska. She reviewed the results but did not arrange for any further treatment of the claimant.

Ray Stanton, Safety Environmental Manager of Paul Mueller, testified. Mr. Stanton testified that his position of safety environmental manager includes keeping the company compliant with federal regulations and to ensure the safety of employees. Mr. Stanton testified that claimant had been exposed to materials that are listed as having a potential damaging effect to the respiratory system. Mr. Stanton indicated that he was familiar with the claimant's job duties but had never monitored the claimant's job to determine the amount claimant in particular was exposed to. Mr. Stanton testified the claimant had worked in areas prior to 2002 where he was exposed to toxic substances. Mr. Stanton also indicated that the paint area contained toxic content. Mr. Stanton testified that he was aware the claimant had been diagnosed with a minor obstruction after completing a pulmonary function test in 2002. Mr. Stanton testified that the medical questionnaire completed by the claimant was correct when claimant noted exposure to paints, solvents, or cleaners. Mr. Stanton testified that claimant had been exposed to those chemicals at work. He also testified that he had heard complaints of overspray in the area and discussed this with Gerald Clevenger. He also was part of a conversation that determined claimant should be removed from the area because of his lung condition and agreed with that decision.

Mr. Stanton testified that overspray from the paint area is to be sucked into filters and collected within an inline motor system which is connected to a three-prong system which pulls the air in and keeps the air in. This allows the fumes to remain low, and a draft system keeps the fumes from entering the outside work environment. The curtains surrounding the paint booth are 12 - 18" from the floor to allow air to be sucked in from outside and allow suction into filters. The painter then shoots toward a filtering system which draws the paint in at 23,000 cubic feet per minute. A volometer monitors the condition of the booth and measures vacuum.

Mr. Stanton testified the claimant was evaluated for possible exposure in 2002. The work area has not been monitored for quantity of exposure since that time. He testified that workers are exposed to toxins within the paint area that can affect the pulmonary system.

Mr. Stanton further testified that he was aware of the pulmonary function test results of the claimant in 2002. Mr. Stanton testified that he has never personally painted within the booth in order to observe the filtering system.

CONCLUSIONS OF LAW:

1. Whether the claimant sustained an occupational disease which arose out of the course and scope of employment.

After carefully considering all of the evidence, especially the medical opinions of Dr. Maska, Dr. Volarich and Dr. Belz, I find that the claimant did sustain an occupational disease. Based upon the opinions of Dr. Maska and Dr. Volarich, I find that the claimant has sustained occupational COPD as a result of the work he did welding, grinding and painting for employer.

2. Whether the occupational disease caused the injuries and disabilities for which benefits are being claimed.

I find Dr. Maska's opinion to be more persuasive than Dr. Belz on the issue of causation. Dr. Maska is the treating doctor and has a thorough knowledge of claimant's condition. Dr. Belz has made conclusions based on incorrect information; and therefore, I do not find his opinions controlling. I do find that the claimant's work, which exposed him to various substances such as flux, metal particles and paint, caused the occupational COPD that is the subject of this claim.

3. 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 claimant has reached maximum medical improvement, but Dr. Volarich states that the claimant would continue to require monitoring, including physical examinations and pulmonary function studies. I order the employer to provide further medical treatment as recommended by Dr. Volarich to cure and relieve the claimant of the effects of the chronic COPD.

4. The nature and extent of permanent disabilities.

I find that the claimant has sustained a permanent partial disability of 7.5% of the body as a whole as a result of this injury.

5. Whether costs should be assessed under Section 287.560 RSMo.

I do not find sufficient evidence to assess costs under Section 287.560 RSMo.

6. Whether a 15% penalty should be assessed against the employer and insurer for failure to follow safety procedures.

I do not find evidence to support an assessment of a penalty against the employer in this case.

Attorney for the claimant, Bill Francis, 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.

Date: July 18, 2005
Holden

Made by: /s/ Margaret Ellis

Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret
Patricia "Pat" Secret
Director
Division of Workers' Compensation