

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

Injury No.: 07-044669

Employee: Garold Savage
Dependent: Cheryl Savage, Spouse
Employer: Breckenridge Materials (Settled)
Insurer: Liberty Mutual Insurance Company (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 June 17, 2009. The award and decision of Administrative Law Judge Kathleen M. Hart, issued June 17, 2009, 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 7th day of October 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Garold Savage

Injury No.: 07-044669

Dependents: Cheryl Savage

Before the
**Division of Workers'
Compensation**

Employer: Breckenridge Materials (previously settled)

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

Additional Party: Second Injury Fund (only)

Insurer: Liberty Mutual Insurance Company (previously settled)

Hearing Date: March 31, 2009

Checked by: KMH

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: May 3, 2007
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:
Claimant injured left knee during the course and scope of his employment.
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
14. Nature and extent of any permanent disability: 15% left knee previously paid by Employer and Permanent and Total Disability benefits from the Second Injury Fund beginning September 7, 2007, due to a combination of the primary injury and the pre-existing injuries and disabilities.
15. Compensation paid to-date for temporary disability: \$4,795.05
16. Value necessary medical aid paid to date by employer/insurer? \$6,744.98

Employee: Garold Savage

Injury No.: 07-044669

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$619.81/\$376.55
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

24 weeks of permanent partial disability from Employer (previously paid)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential of \$243.26 payable by SIF for 24 weeks beginning
September 7, 2007, and, thereafter, \$619.81 per week as provided by law

TOTAL: TO BE DETERMINED

23. Future requirements awarded:

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:

Michael Gerritzen

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Garold Savage

Injury No.: 07-044669

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Breckenridge Materials (previously settled)

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

Additional Party: Second Injury Fund (only)

Insurer: Liberty Mutual Insurance Company (previously settled)

Checked by: KMH

A hearing was held on the above captioned matter March 31, 2009. Garold Savage (Claimant) was represented by attorney Michael Gerritzen. The Second Injury Fund (SIF) was represented by Assistant Attorney General Kristen Frazier. The case against Employer was settled November 3, 2008.

All objections not expressly ruled upon in this award are overruled to the extent they conflict with this award.

Claimant submitted numerous certified medical records as exhibits. By agreement of the parties, Claimant's attorney returned to paginate these records and specify the relevant pages to offer into evidence. Claimant listed the pages he offered in a letter dated April 30, 2009, directed to the Court and to the SIF. The SIF reviewed these pages and responded they had no additional pages to be offered. Claimant's exhibits are all admitted into evidence. By agreement of the parties, only the following pages from these exhibits are considered as evidence:

- Exhibit B: Pages 8,9, 10 and 13
- Exhibit M: Pages 102 and 252
- Exhibit R: Pages 12 and 13
- Exhibit X: Pages 8 and 9
- Exhibit BB: Pages 5 and 6
- Exhibit CC: Pages 5-6, 14-17, 18-20, 21-23, 50-51, and 118-121
- Exhibit LL: Pages 5,9,13,46,and 47
- Exhibit RR: Pages 16-18
- Exhibit TT: Pages 10, 13-19, 54, 71-74, 193, 194, 198, 199, 203 and 204
- Exhibit UU: Pages 34, 35, 44, 45, 52, 53, 56 and 57

STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law on the date of the alleged injury.

2. Employer's liability was fully insured by Liberty Mutual Insurance Company.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was sufficient to entitle him to TTD/PPD rates of \$619.81/\$376.55.
5. Employer paid \$4,795.05 in TTD benefits. Additional TTD was paid with the settlement to account for an underpayment of TTD.
6. Employer paid \$6,744.98 in medical benefits.
7. Claimant and Employer reached a compromise settlement of 15% of the left knee plus an underpayment of TTD in the amount of \$6450.00. This settlement was approved by the Division of Workers' Compensation on November 3, 2008.

ISSUES

The parties stipulated the issues for trial are as follows:

1. Whether Claimant sustained an accident arising out of and in the course of his employment.
2. Whether Claimant's left knee condition was medically and causally related to his alleged work injury.
3. The nature and extent, if any, of Claimant's permanent disability.
4. The liability of the Second Injury Fund.

FINDINGS OF FACT

Based upon the competent and substantial evidence and my observations of Claimant at trial, and the reasonable inferences to be derived therefrom, I find:

1. Claimant is a 55 year-old male who attended school through the 10th Grade. He then earned his GED while serving in the Army from 1972-1974. He also attended truck driving school in 1976.
2. Claimant is married to Cheryl Savage, and they have no children.
3. While in the Army, Claimant received Basic and Generator Repairman training. His duties involved repairing field generators for camps and electric generators that supplied

power to the units. He was ranked E4 and earned an honorable discharge. Claimant did not pursue any electrical or mechanical work after his discharge. Claimant has not tried to get a job using his army training due to the advances in technology. He testified he does not even know how to do basic electrical work around his home.

4. After his discharge from the Army, Claimant was unemployed until he attended truck driving school. This was an eight week course where he learned the Department of Transportation regulations and became an over the road tractor/trailer driver.
5. Claimant worked for a trucking company from 1976-1979. He drove, picked up lumber and steel, and hauled freight throughout the Midwest. His routine was to check out a truck, load the truck, bind and tarp the load, complete the paperwork for the route and drive to the destination. In order to secure or bind the load, he climbed over the load and secured it with steel chains that weighed 100-125 pounds. The tarps weighed about 75 pounds. The ratchet binders weighed approximately 25-30 pounds. After the load was secured, Claimant often drove two to three days, typically six hours at a time behind the wheel.
6. Claimant was laid off as a truck driver and began working for the County Highway Department in 1980. He drove dump trucks, snow plows, performed general road maintenance and repair, and completed some paperwork. This job was more physical than his next job with Employer. He also had more paperwork to complete and did a lot more walking and standing than his job with Employer. Claimant was laid off from the Highway Department in 1992 and was unemployed for about ten weeks.
7. Claimant worked for Employer from 1992 through May 3, 2007. At the time he was hired, he passed the DOT physical without any difficulties. His prior right hand, neck and left shoulder injuries did not cause him any restrictions when he began working for Employer. He drove a concrete mixer. In the morning, he checked his truck and loaded it at the plant. To load the concrete mixer, he carried 100 pound sandbags and 50 pound cement bags up to 250 feet. He then drove to the job site, climbed the back of the truck, mixed and delivered the concrete. At the job site, he hooked the chutes onto the truck. The chutes weighed approximately 50-60 pounds. He poured out the concrete load, washed down the truck and chutes, and returned to Employer for another load. Claimant testified he spent one to two hours a day carrying 50 pounds or more. He also did light paperwork consisting of completing the load ticket, time, customer signatures, DOT inspection forms, and noting any truck deficiencies.
8. Claimant had a number of injuries before his 2007 work injury. In 1973 he injured his right hand when a tool broke. A bone in his hand came through the top of his hand behind his first knuckle. In 1979, while playing football, he fell and broke his right hand and sprained his wrist. Claimant is right handed. He still has difficulty making a tight fist and grasping. He uses his middle finger and thumb to grab objects. His hand gets tired and sore, and he can't write for a long time. These injuries affected his work and make grasping and holding tools tightly difficult. He had to use both hands to lift.
9. In 1984 he began having neck problems. He woke up with pain radiating into his left arm. He was admitted to the hospital and underwent a cervical manipulation under general anesthesia, injections, and physical therapy. This helped his pain somewhat, but

he still had discomfort, stiffness, decreased range of motion on the left, and pain in his left arm. He could not hold his arm overhead or reach his arm out at work. When driving, he had to turn his whole body to the left in order to look out the rearview mirror. Claimant aggravated this injury in 2008 when he stood up to stretch and developed increased pain in his neck and down his left arm.

10. Claimant has a number of prior left knee injuries.

- On July 10, 1992, Claimant injured his left knee when he climbed off a truck. He had surgery to repair a partial meniscus tear, physical therapy and returned to work.
- On November 23, 1993, Claimant injured his left knee again when he stepped off his truck into a rut. He had a second surgery to repair a partially torn medical meniscus. He had physical therapy and returned to work.
- On September 8, 1998, he again injured his left knee when carrying a chute to the back of the cement truck. He had physical therapy and returned to work.

11. These left knee injuries left him with pain, stiffness, soreness, difficulty going up and down steps, decreased strength and endurance, and difficulty using the clutch on his truck. He did not have effusion at this point. After the 1993 injury, he had a constant dull ache regardless of activity and began to have trouble climbing a ladder due to stiffness in his knee. His knee progressively worsened, and after the 1998 injury, he needed his co-workers to help him carry sandbags and hoses.

12. Claimant had a number of prior right knee injuries.

- On June 10, 1995, Claimant was carrying a mattress and fell twisting his right knee. He had surgery to repair a torn medial meniscus, physical therapy and returned to work.
- On August 8, 2003, Claimant was working and twisted his knee stepping off a dock. He had a chondroplasty and partial meniscectomy, physical therapy, and injections. Dr. Kostman found a significant amount of arthritis during surgery and opined Claimant would require a total knee replacement at some point. He continued to have significant pain and took Darvocet. Dr. Walentynowicz recommended a trial of Visco injections before undergoing a knee replacement.

13. These right knee injuries left him with an antalgic gait, significant pain and more restrictions in his right knee compared to his left knee. He had difficulty getting around because of problems with both knees and his neuropathy following his diabetes diagnosis in 2003.

14. On December 7, 1998, Claimant was carrying a thirty pound chemical jug to his truck. The jug slipped and he injured his right shoulder grabbing for the jug. He had shoulder arthroscopy consisting of bursectomy and repair of a torn labrum and torn rotator cuff. He had ongoing lifting limitations. He continued to have pain, restricted range of motion, and difficulty working overhead.

15. On April 20, 2001, he was doing work on a highway when a passing car lost its wheel. The wheel hit Claimant in the chest and left flank and knocked him over. He developed permanent pain from breathing in cold weather. This injury limited his ability to do jobs

outside. Claimant testified Employer took concrete jobs outside in the winter until the temperature was below zero.

16. Claimant has weighed close to 300 pounds since the late 1990s. He has tried unsuccessfully to lose weight by changes in diet and exercise. Claimant has difficulty exercising due to knee pain, left foot drop, shortness of breath, and congestive heart failure. His weight limited his activities and made it difficult for him to bend over. Since his 2007 work injury, his limitations have increased and he now weighs 357 pounds.
17. Claimant was diagnosed with diabetes in the late 1990s. He initially treated this with oral medications and became insulin dependent in 2003. He is often lightheaded and dizzy, and he is susceptible to infections. His diabetes caused neuropathy in his hands and feet. His hand neuropathy made it difficult for him to pick things up at work. He developed poor blood flow in his legs and had the distal portion of his right great toe amputated in March 2006. He also developed left foot drop in 2002 and had to wear a boot to sleep in order to increase circulation. His foot drop and toe amputation caused difficulty walking any distances, and he could not stand for any length of time. He began taking hydrocodone for his pain, foot drop and numbness. He later switched to Vicodin at night to relieve many of his aches and pains.
18. In 1998 he was diagnosed with hypertension. He is able to control this to some extent with medications and diet.
19. In 2001, Claimant was diagnosed with congestive heart failure. Claimant testified Dr. Baraducci told him he had a prior heart attack. He had a diagnostic catheterization and angioplasty. He was put on medications, restricted diet, and restricted activities. He began taking diuretics which cause the need to urinate every 15-20 minutes. He had to be careful not to be in the sun or extreme cold and had to limit his activities. He got tired easily and missed work because of the heart condition.
20. Claimant testified he was diagnosed with chronic obstructive pulmonary disease (COPD) in 2001. This caused shortness of breath and difficulty sleeping because of his breathing problems. He never felt rested and had trouble focusing at work.
21. Claimant testified he has had low back pain for many years. He was not able to bend over to pick anything up without pain. It was hard for him to lift and to climb in and out of the truck. In 2003, he had an MRI due to his back pain and pain into his left foot. The MRI showed mild facet osteoarthritis.
22. In the two years before May 2007, Claimant had some limitations at work as a result of all his injuries. He had constant left arm pain, left and right knee pain and restrictions, neuropathy in his hands and feet, back pain, and breathing difficulties. These all caused difficulty walking, an unusual gait, and soreness and stiffness. He often had to have help lifting and loading sand into his truck. He had to get help lifting the hose to the truck because he could not bend over without pain. Laborers at the job sites helped him carry the chutes and sandbags. He missed three to four days of work each month because his pain was so severe he had to take pain pills which meant he could not drive his truck.

His diabetes began to get worse. He testified he began having difficulties with Employer because he was missing too much work.

23. At the time of his 2007 injury, he was actively treating for his heart condition, diabetes, and right leg stiffness. Claimant testified Dr. Shaw told him to take it easy and gave him Vicodin for general pain.
24. On May 3, 2007, Claimant was washing his truck at the end of the day. He walked around the truck and slipped and fell. His left knee hit the concrete. He dropped the bucket he was holding, and was on all fours yelling for help. He testified his co-worker helped him up, and he told Employer he needed to go home. That evening, his left knee pain increased and he took Vicodin. By the next morning, his left leg was very swollen. Employer sent him to Concentra where he was treated with an immobilizer and therapy. An MRI showed additional damage to Claimant's knee. He had a complex tear of the medial meniscus, osteoarthritic changes, diffuse cartilage loss, and edema with additional cartilage erosion of the patellar articulation. Dr. Calvert ordered injections, physical therapy, and kept Claimant off work. He also saw Dr. VanRyn. Dr. Calvert and Dr. VanRyn imposed additional restrictions, recommended Claimant consider alternative work, and recommended total knee replacement. This is the first recommendation for left knee replacement. Claimant has not had the surgery due to concerns surrounding his poor circulation, neuropathy, and risk of infection due to diabetes.
25. In early 2008 Claimant aggravated his prior neck condition when stretching at home. His neck and left arm pain increased significantly. Tests revealed significant multi-level degenerative spondylosis and broad-based disc herniation. He underwent multi-level cervical discectomy, fusion and plating.
26. In May 2008 Claimant treated at the Sleep Disorder Center for a twenty plus year history of sleep difficulties. He was diagnosed with obstructive sleep apnea and given a CPAP breathing machine to wear at night.
27. Claimant has not tried to return to work since his 2007 injury. He continues to have pain on the inside of his left leg due to the 2007 injury. He is stiff and sore in both knees and can't walk any distance. He can't sit or stand more than 15 minutes, crawl, climb ladders, kneel, or walk more than one block. After 2007, he developed a significant limp and felt unsteady when walking. He testified Dr. Shaw advised him to use a cane.
28. Claimant believes since he stopped working his conditions collectively are getting worse from lack of activity. His left leg stiffness and pain have increased. His right leg is about the same.
29. Claimant received a Social Security Disability award dating back to May 3, 2007. He receives \$1,385.00 a month.
30. Claimant believes he cannot work because of a combination of all his injuries, his pain level, and his medications. He can't do many parts of the concrete driver's job. He can't climb in and out of the truck, climb up ladders to add chemicals, or hold down the clutch. He can't walk more than one block, and can't sit very long. He can't do any repetitive

lifting. He can't lift much more than a grocery bag. He needs to alternately sit, stand and lie down to get through the day. He has to extend or elevate his left leg when sitting. He left knee hurts more than his right knee. His feet are numb. He can't bend over. He avoids kneeling, squatting, and stairs. He continues to take pain pills to make it through the day.

31. Claimant's typical day involves having breakfast in the morning. He then reads the paper and watches television. He testified he takes seven pills and lounges around the house. He lays down two to three times a day because of his heart condition and pain from a combination of his injuries. He is unable to do any physical activity. He can ride the lawnmower 30-40 minutes. He no longer gardens, fishes, or hunts. He sleeps three to four hours at night and gets up to move around. He then returns to bed and sleeps another one to two hours. He spends at least 50% of his day reclining or sitting with his legs elevated. He has no social life anymore, and is unable to commit to events because he doesn't know if he will be having a good day. He has to get up after fifteen to twenty minutes at the movies. He is no longer able to help with laundry, gardening, or cleaning the house.
32. Claimant's medical expert, Dr. Poetz, examined him on numerous occasions and issued numerous reports. In his September 2004 report, Dr. Poetz notes Claimant had developed an antalgic gait since his 2000 examination. He opined Claimant might need a right total knee replacement. He noted Claimant's diabetes was advanced and poorly controlled even with medications.
33. At the time of his last examination in April 2008, Claimant complained of daily pain in his left knee, increased stiffness and swelling in his left knee, and an inability to hold down the clutch. He had shortness of breath, insulin dependent diabetes, diabetic neuropathy in his upper and lower extremities, foot drop, and an unsteady gait. Dr. Poetz opined Claimant's prognosis was guarded and recommended numerous restrictions. He noted Claimant is not able to be active because of his COPD, heart failure and multiple joint diseases. He opined Claimant's 2007 work injury caused the effusion, or fluid on the knee, that was found in the MRI. Although Claimant had restricted motion in his left knee before this injury, he opined this injury left Claimant with decreased range of motion in his knee. Dr. Poetz recommended Claimant use a cane. He opined Claimant is permanently and totally disabled as a result of a combination of all his injuries and he is unemployable in the open labor market.
34. Claimant's vocational expert, Jim England, opined Claimant has no transferable skills, is totally disabled from a vocational standpoint, and he is likely to stay that way. Mr. England believes Claimant's conditions are getting worse rather than better. He found Claimant has no experience with office machines, and he has never done shipping, receiving, scheduling, or supervising. His medical restrictions preclude him from returning to his prior medium to heavy level of work. He has no transferable skills at a sedentary level of exertion. Mr. England opined no employer observing the difficulty Claimant has in combination with his size would chose him over other job candidates for even entry-level types of employment. He opined the combination of Claimant's size, need to move around, sleep problems, heart failure, overall health, knee problems, and

extremity problems renders him totally disabled, and Claimant was totally disabled before his 2008 injuries.

35. The SIF's expert, Dr. Randolph, reviewed Claimant's medical records and issued a report. He opined Claimant should be able to function in a sedentary to light work demand category. He found with a knee replacement and proper medical management of his various conditions, Claimant could maintain employment. He agreed Claimant's peripheral disease is "a strike against him" in considering a knee replacement, and his obesity is a risk factor for early failure of knee replacement. He opined if Claimant could reduce some of his risk factors, he could return to gainful employment.
36. Claimant's prior injuries settled against the Employer and/or the SIF for a total of 50% of the left knee, 50% right knee, 20% right wrist, 25% right shoulder, 12 ½% neck, 12 ½% thoracic spine, 12 ½% lumbar spine, 12 ½% body as a whole referable to the heart, 12 ½% body referable to the heart, 12 ½% body referable to diabetes.
37. Claimant is credible. He testified in a straightforward and deliberate manner. He had obvious difficulty ambulating, and he appeared at trial using a cane. He sat with his legs extended and frequently shifted positions or stood during his testimony.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. Claimant sustained an accident arising out of and in the course of his employment on May 3, 2007.

Section 287.020 (RSMo 2005) defines an accident as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift." Claimant was performing his regular work duties May 3, 2007, when he slipped and fell onto his knees. He credibly testified he required assistance to get up off the ground. He testified he had immediate pain in his left knee, went home and took Vicodin, and he noticed swelling in the morning. He required medical treatment, and the medical records corroborate Claimant's testimony.

I find Claimant has established he sustained an accident May 3, 2007, arising out of and in the course of his employment.

2. Claimant's additional left knee symptoms and treatment following May 3, 2007, are medically and causally related to his work injury.

The law further provides "an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The

prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability." Section 287.020(3)(RSMo2005)

Claimant credibly testified his knee symptoms changed after his work accident, and his complaints worsened. This is corroborated by the treatment records and the opinions of numerous medical experts. While Claimant had arthritis and significant disability in his knee before this accident, the records document a change in condition following this accident. The treating doctors imposed permanent work restrictions after this accident, recommended Claimant seek alternate employment, and recommended a total knee replacement. No doctor had recommended a left knee replacement before this fall. Dr. Poetz opined Claimant exacerbated his prior arthritis and tore his meniscus again in this fall. Dr. Randolph testified the work injury caused additional disability.

Based on Claimant's testimony and the opinions of the medical experts, Claimant has established his 2007 work injury was the prevailing factor in causing additional disability and the need for additional treatment to his left knee.

3. Claimant sustained an additional 15% PPD to his left knee as a result of his 2007 work injury.

While the experts disagree on the extent of disability caused by the 2007 accident, Dr. Poetz and Dr. Randolph testified Claimant had some disability from the fall and could no longer perform medium to heavy work. Dr. Calvert and Dr. VanRyn imposed significant permanent restrictions after the fall and recommended he no longer work as a truck driver. The doctors noted limping and an antalgic gait now. Claimant testified he could not return to work because the additional problems with his knee from this injury made it impossible to use the clutch, and he needed a cane to ambulate.

Claimant settled this injury for 15% of his left knee. Based on his testimony and the medical records, I find this accurately represents the additional disability to his knee from the work accident.

4. Claimant is permanently and totally disabled as a result of the combination of his disabilities.

Section 287.220 RSMO provides that in cases of permanent total disability against the Second Injury Fund, there must be a determination of the following:

1. the percentage of disability resulting from the last injury alone;
2. that there was a pre-existing permanent disability that was a hindrance or obstacle to employment or to obtaining re-employment;
3. that all of the injuries and conditions combined, including the last injury, have resulted in the employee being permanently and totally disabled.

Claimant has established he has 15% PPD to his left knee as a result of his 2007 work injury.

Claimant had significant disability and limitations prior to 2007 from numerous work injuries and non work related medical conditions. Claimant credibly testified he missed time from work as a result of these prior injuries and treatment. He took numerous medications and the medical records document worsening of many of his conditions in the few years before his 2007 work accident. Dr. Walentynowicz and Dr. Kostman recommended a right knee replacement in 2004 and imposed some restrictions. Claimant's diabetes was not well controlled and caused neuropathy and foot drop. Claimant developed congestive heart failure which further limited his physical activities. Claimant's experts testified these conditions were hindrances and obstacles to his employment or re-employment.

I find Claimant's preexisting injuries medical conditions caused a hindrance or obstacle to his employment or to obtaining re-employment. The final question is whether the combination of Claimant's injuries rendered him permanently and totally disabled.

The test for permanent total disability is whether Claimant is able to adequately compete in the open labor market given his condition. *Messex v. Sachs Elec. Co.*, 989 S.W. 2d 206, 210 (Mo. App. E.D. 1999). The pertinent consideration in this test is the determination of whether any employer in the usual course of business would reasonably be expected to employ Claimant given his condition. *Carlson v. Plant Farm*, 952 S.W. 2d 369, 373 (Mo. App. W.D. 1997).

The SIF's expert, Dr. Randolph, indicated Claimant could return to work in a light or sedentary occupation. However, he did not have all Claimant's prior medical records. He was not aware of all Claimant's prior conditions, symptoms, limitations, and medications. He also testified he believed Claimant could work in a sedentary capacity after he had a knee replacement and if his various medical conditions were properly managed. He acknowledged Claimant has significant risk factors that could adversely impact the outcome of a knee replacement surgery.

Claimant credibly testified to his numerous restrictions as a result of all of his injuries. He has significant limitations in sitting, standing, walking, lifting, climbing, kneeling, and squatting. Mr. England credibly testified based on Claimant's limitations, his need to lie down during the day and elevate his legs, he could not work even in a sedentary capacity. He found Claimant is permanently and totally disabled. He opined given Claimant's obvious difficulty ambulating and his obesity, no employer would reasonably be expected to chose Claimant over other job applicants, and Claimant is unable to compete in the open labor market.

Claimant had additional injuries in 2008. It is not necessary to determine the impact of Claimant's 2008 injuries on his disability as I find he was permanently and totally disabled as a result of his 2007 work injury and his prior disabilities. He received TTD payments through September 6, 2007. He received compensation from Employer at \$376.55 per week for 24 weeks. The Second Injury Fund is hereby ordered to pay permanent total disability benefits at the differential rate of \$243.26 per week beginning September 7, 2007, during those 24 weeks, and thereafter \$619.81 per week for as long as provided by law. The amount accrued to date shall be paid forthwith with interest as provided by law.

An attorney lien of 25 percent of all compensation awarded herein is allowed Michael Gerritzen, Claimant's attorney, for necessary legal services rendered.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation