

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

Injury No.: 09-076735

Employee: Dennis F. Schenk
Employer: J. B. Hunt Transport, Inc.
Insurer: New Hampshire Insurance, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have read the briefs, reviewed the evidence and considered the whole record. We find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge by this supplemental opinion.

We offer this supplemental opinion to modify an incomplete finding in the administrative law judge's award. We modify the last sentence of the first paragraph on page 10 of the award to read:

It was Mr. Lalk's testimony that if Mr. Schenk's only medical condition was his left shoulder condition (from the primary injury), that Mr. Schenk "could probably find some work doing basic housekeeping in large buildings such as this."

In all other respects, we affirm and adopt the award of the administrative law judge.

We approve and affirm 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.

The August 14, 2013, award and decision of Administrative Law Judge Gary L. Robbins is attached hereto and incorporated herein by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

¹ Statutory references are to the Revised Statutes of Missouri 2009, unless otherwise indicated.

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Dennis F. Schenk Injury No. 09-076735
Dependents: N/A
Employer: J.B. Hunt Transport, Incorporated
Additional Party: Second Injury Fund
Insurer: New Hampshire Insurance, Incorporated
Appearances: Michael J. Payne, attorney for the employee.
Mark Kornblum, attorney for the employer-insurer.
Kevin Nelson, attorney for Second Injury Fund.
Hearing Date: May 16, 2013 Checked by: GLR/rlf

SUMMARY OF FINDINGS

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? September 24, 2009.
5. State location where accident occurred or occupational disease contracted: Lincoln, Illinois.
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 happened or occupational disease contracted: The employee fell off his truck injuring his left shoulder and body as a whole.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Left shoulder and body as a whole.
14. Nature and extent of any permanent disability: 50% permanent partial disability of the left shoulder. See Award.
15. Compensation paid to date for temporary total disability: \$39,156.00.
16. Value necessary medical aid paid to date by employer-insurer: \$44,458.33.
17. Value necessary medical aid not furnished by employer-insurer: \$0.
18. Employee's average weekly wage: \$978.90.
19. Weekly compensation rate: The employee's rate for temporary total and permanent total disability is \$652.60 per week. His rate for permanent partial disability is \$422.97 per week.
20. Method wages computation: By agreement.
21. Amount of compensation payable: Permanent partial disability. See Award.
22. Second Injury Fund liability: Permanent total disability. See Award.
23. Future requirements awarded: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the employee 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 employee: Michael J. Payne.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW

On May 16, 2013, the employee, Dennis F. Schenk, appeared in person and with his attorney, Michael J. Payne for a hearing for a final award. The employer-insurer was represented at the hearing by their attorney, Mark Kornblum. Assistant Attorney General Kevin Nelson represented the Second Injury Fund. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. J.B. Hunt Transport, Incorporated was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by New Hampshire Insurance, Incorporated.
2. On September 24, 2009, Dennis F. Schenk was an employee of J.B. Hunt Transport, Incorporated and was working under the Workers' Compensation Act.
3. On September 24, 2009, the employee sustained an accident arising out of and in the course of his employment.
4. The employer had notice of the employee's accident.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage is \$978.90, resulting in a compensation rate of \$652.60 for temporary total disability benefits and \$422.97 for permanent partial disability benefits.
7. The employee's injury was medically causally related to the accident or occupational disease.
8. The employer-insurer paid \$44,458.33 in medical aid.
9. The employer-insurer paid \$39,156.00 in temporary disability benefits.
10. The employee has no claim for previously incurred medical bills.
11. The employee has no claim for mileage.
12. The employee has no claim for future medical care.
13. The employee had no claim for any temporary disability benefits.
14. The parties agree that the medical bill of \$430.00 to Signature Health Services will be paid by the employer-insurer.
15. The parties agree that the employee reached maximum medical improvement as of November 18, 2010.

ISSUES:

1. Permanent Partial Disability as to the Employer-Insurer.
2. Permanent Total Disability as to the Employer-Insurer.
3. Liability of the Second Injury Fund for Permanent Partial or Permanent Total disability.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee Exhibits:

- A. Second Amended Claim for Compensation.
- B. Medical records from Tesson Heights Orthopedics.
- C. Medical records from Premier Care – South Division.
- D. Medical records from St. Anthony’s Medical Center – May 25, 2010.
- E. Medical records from St. Anthony’s Medical Center – December 14, 2010.
- F. Medical bills from Tesson Heights Orthopedics.
- G. Medical bills from St. Anthony’s Medical Center.
- H. Medical records from Tesson Heights Orthopaedic & Arthroscopic Associate, P.C.
- I. Medical records from Ballas Radiology Group, Inc. – November 13, 2000.
- J. Medical records from St. Alexius Hospital – June 1, 2001.
- K. Medical records from St. Alexius Hospital – October 24, 2001.
- L. Medical records from St. John’s Mercy Medical Center – July 29, 2005.
- M. Medical records from St. Anthony’s Medical center – September 2, 2005.
- N. Medical records of Thomas K. Lee, M.D. and Tesson Heights Orthopaedic & Arthroscopic Associate, P.C. – August 9, 2005.
- O. Independent medical evaluation of David T. Volarich, D.O.
- P. Deposition of David T. Volarich, D.O.
- Q. Vocational Rehabilitation Evaluation of Timothy G. Lalk.
- R. Deposition of Timothy G. Lalk.
- S. Functional Capacity Evaluation Report – October 28, 2010.
- T. Stipulation for Compromise Settlement
- U. Independent Medical Report of Mark D. Miller, M.D.-Offer of Proof.

Employer-Insurer Exhibits

- 1. Deposition and medical records of Lawrence A. Kriegshauser, M.D.

The Second Injury Fund did not offer any exhibits.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

STATEMENT OF THE FINDINGS OF FACT:

The employee, Dennis F. Schenk was the only witness to personally testify at trial. All other evidence was presented in the form of written records, medical records or deposition testimony.

The employee was 55 years old at the time of the hearing. He was born on January 30, 1958 and presently resides in Byrnes Mill, Missouri. Mr. Schenk was not employed at the time of the hearing. He was last employed on September 24, 2009, working for J. B. Hunt Transport,

Incorporated/J. B. Hunt. He was a truck driver and drove an 18-wheel truck. This was local travel, primarily. His travels were taken to the Chicago area, Wisconsin, Indiana, Iowa, Arkansas and Tennessee. He began his employment with J. B. Hunt in December 2005. He testified that he worked 60 to 70 hours per week. After working 70 hours, he would receive a 34-hour break, per Federal Law. He worked as a subcontractor for Anheuser Busch, transporting shipments of beer. While he did drive the truck, he did not load or unload the truck. He did "strap" the load.

Mr. Schenk testified that on September 24, 2009, he was employed by J. B. Hunt. He was driving from Chicago, Illinois to the St. Louis, Missouri area. His truck had a faulty wiper blade. Mr. Schenk exited the highway to attempt to repair the blade. He was able to repair the blade, as he stood on the front, driver's side tire to repair the blade. However, he lost his footing and fell to the ground, landing on his left side, primarily the left shoulder. He testified his left arm sustained the impact of the fall. Immediately afterwards, he had difficulty breathing but was able to get up. He phoned his employer and reported the injury. The dispatcher asked him if he needed an ambulance, and Mr. Schenk indicated he did not. Although he was in pain, he was able to transport his truck back to the yard in St. Louis.

The trip from Lincoln, Illinois (the site of the accident) to St. Louis was 121 miles. The employee spoke with his dispatcher and was told to seek medical treatment with his primary physician. He went to an Urgent Care in Fenton, Missouri the next day, September 25, 2009. He was told to take Ibuprofen. When his condition did not improve, he was seen by an orthopedist, Dr. Fagan, on September 30, 2009. At that point, he could not lift his left arm. An MRI was recommended and was carried out on October 1, 2009. Following that, his employer advised him not to return to Dr. Fagan, but instead to see another orthopedist, Dr. Kriegshauser. Dr. Fagan had been prescribing Vicodin for pain. Dr. Kriegshauser informed the employee that he had a massive left rotator cuff tear. Mr. Schenk testified that his breathing did improve after about one to one-and-a-half months. No light duty was provided by the employer and Mr. Schenk continued to take Vicodin for pain.

On November 4, 2009, Mr. Schenk underwent arthroscopic left shoulder surgery by Dr. Kriegshauser. This consisted of an arthroscopic limited synovectomy, an open acromioplasty of the left shoulder and open repair of a large left rotator cuff tear and open excision of the left distal clavicle.

The employee testified that this was not a rotator cuff tear, but he did undergo a right distal clavicle resection. The operative report from St. Anthony's Medical Center confirms an endoscopic right shoulder acromioplasty and debridement of the labrum with open distal clavicle resection.

Mr. Schenk also sustained a left knee injury in 2003. He sustained a left tibial plateau fracture and underwent surgery on November 26, 2003 for an open reduction and internal fixation of the left tibial plateau. Mr. Schenk testified that a plate and screws were inserted and those remain in his knee to this day. In addition, he testified that his left knee was somewhat symptomatic prior to the left shoulder injury of September 24, 2009, but it clearly did affect his ability to perform as a mechanic, which was his line of work at that time. He testified that he left his employment at

Meineke primarily because of better benefits at J.B. Hunt, but also because working under vehicles, as a mechanic, would cause undue stress on his left knee.

With regard to the left shoulder, the employee has pain whenever he uses it. He tries to perform his home exercises. He has pain from the top of his shoulder down to his left elbow area. This is daily pain. He has difficulty sleeping, particularly if he tries to lie on his left side. He is able to perform his own grocery shopping, but uses his right arm, primarily, to carry items. He testified that he is unable to lift even a gallon of milk, with his left arm. He is left hand dominant. He does drive a vehicle, but primarily uses his right arm. He did admit to using his left arm, slightly, when he drives.

Mr. Schenk testified that he has given up hobbies due to the condition of his left shoulder. This would include horseshoes, fishing, hunting and canoeing. With regard to the left shoulder, he takes no medication, which he attributes primarily to the fact that he has no health insurance.

On behalf of the employee, Dr. Volarich testified that Mr. Schenk continues to have ongoing difficulties as a result of his injury of September 24, 2009. He has left shoulder pain which continues laterally along the left upper aspect of the deltoid muscle and superiorly along his shoulder girdle, into the left side of his neck. Use of the arm increases his pain. He can forward flex and abduct to barely above the waist height, with increased pain. He has difficulty reaching down and behind him and now carries his wallet on the other side in his front pocket. Reaching overhead is difficult.

Dr. Volarich further testified that Mr. Schenk continues to care for himself on a daily basis but that the left shoulder is aggravated when he picks up his arm to clean under it, while showering. He has difficulty dressing himself. He has difficulty sleeping. Cold weather affects his left shoulder symptoms.

Dr. Volarich further testified with regard to the employee's right shoulder, neck and left knee. With regard to the right shoulder and neck, Mr. Schenk did undergo surgeries to both body parts. On October 4, 1999, Mr. Schenk was involved in a motor vehicle accident. On March 7, 2000, Mr. Schenk underwent a cervical discectomy and fusion at C5-C6. His shoulder symptoms continued and on July 28, 2000, Mr. Schenk underwent a right shoulder arthroscopic acromioplasty, Mumford procedure and debridement of the glenoid labrum. Mr. Schenk returned to work on October 16, 2000. Dr. Volarich testified that Mr. Schenk informed him that his shoulder had improved after the surgery but he continued to have popping in the shoulder when he would pull on wrenches. He had to be careful with any pulling movements. His neck continued to have aches and some pain and this was worse when he extended his neck to look overhead. He would take occasional Aleve to relieve discomfort and stiffness. His neck worsened with cold weather and as a result he would lose a day or two, over the years, of work due to difficulty moving his neck while working. Despite these complaints, he had no specific physician-imposed restrictions.

Dr. Volarich also testified regarding Mr. Schenk's left knee. On November 22, 2003, the employee sustained a left knee injury and was diagnosed with a left lateral tibial plateau fracture.

This was initially treated with a splint. However, on November 26, 2003, Dr. Fagan performed an open reduction and internal fixation of the left tibial plateau fracture with placement of a plate and screws.

Dr. Volarich further testified that Mr. Schenk continued to have significant problems with his left knee leading up to the left shoulder injury of September 24, 2009. He could not kneel on the left knee without pain and did have pain medially distal to the knee, particularly with walking or using the leg due to using the clutch in his truck. X-rays showed osteoarthritis due to a tibial fracture. He found steps to be painful; however, it was easier going down the steps. He preferred ramps, when available. He had to be careful walking on uneven ground. He had some loss of extension and though his range of movement with flexion was near normal, it would cause some medial pain. He had had swelling at times. Many, if not most, nights he would take Tylenol for knee pain and particularly on days that he had to drive in heavy traffic which required that he do a lot of clutching. He had to be careful with his activities of daily living, particularly with ladders. In spite of these problems with his left knee, he was not missing time from work and had no physician-imposed restrictions, leading up to the left shoulder injury of September 24, 2009.

Dr. Volarich provided the following permanent partial disability ratings. For the injury of September 24, 2009, Dr. Volarich testified that Mr. Schenk has a permanent partial disability of 75% of the left shoulder. With regard to Mr. Schenk's injuries prior to September 24, 2009, Dr. Volarich testified as to the following pre-existing disabilities:

- 5% of the body as a whole, at the skull level, due to the skull fracture which required open reduction and internal fixation and placement of a plate. This rating would account for recurrent headaches and scalp pain.
- Dr. Volarich rated the right shoulder at 25% of the shoulder, due to continuing shoulder discomfort, crepitus and weakness in the non-dominant arm.
- In addition, Dr. Volarich testified that Mr. Schenk retains a pre-existing permanent partial disability of 30% of the body as a whole, rated at the cervical spine, due to the disc herniation at C5-6 that required anterior cervical discectomy with fusion and instrumentation at that level. Mr. Schenk had ongoing neck pain and lost motion in the neck prior to September 24, 2009.
- Dr. Volarich also testified that Mr. Schenk has a pre-existing permanent partial disability of 50% of the left knee, due to his prior left tibial plateau fracture and surgery which required open reduction and internal fixation of a plate and screws. This was based upon Mr. Schenk's left knee discomfort, crepitus and weakness in the left lower extremity.

Dr. Volarich further testified that Mr. Schenk does have permanent restrictions, in the left shoulder, which are medically causally related to the injury of September 24, 2009. He recommended that Mr. Schenk not use his left arm other than to try to perform activities of daily living.

With regard to the pre-existing injuries, Dr. Volarich testified that, with regard to the right shoulder, Mr. Schenk would be advised to limit use of the right arm or prolonged use of the right arm away from his body especially above chest level. He also advised Mr. Schenk to limit

pushing, pulling and particularly traction maneuvers with his right upper extremity. He was instructed on the proper ergonomic use of the right upper extremity. Dr. Volarich further advised that Mr. Schenk would have been advised to handle weight tolerance with the right arm extended away from his body, overhead or dependent assuming proper lifting techniques. Lastly, with regard to the right shoulder, Dr. Volarich testified that he advised Mr. Schenk to pursue an appropriate stretching, strengthening, and range of motion exercise program to tolerance daily for the right shoulder.

With regard to the pre-existing left lower extremity injury, Dr. Volarich testified that he advised Mr. Schenk to avoid stooping, squatting, crawling, kneeling, pivoting, climbing and all impact maneuvers. In addition, he advised Mr. Schenk to be cautious when navigating uneven terrain, slopes, steps, and ladders especially if he must handle weight. He could handle weight to tolerance. In addition, Dr. Volarich testified that he would advise Mr. Schenk to limit prolonged weight bearing including standing or walking, to 60 minutes or to tolerance, with regard to the left lower extremity. Also, if Mr. Schenk were to be on his knees for any reason, he should appropriately pad the surface upon which he is kneeling. Dr. Volarich also recommended appropriate strengthening, stretching and range of motion exercises for the left lower extremity.

With regard to the pre-existing condition in the cervical spine, Dr. Volarich testified that he would advise Mr. Schenk to limit repetitive bending, twisting, lifting, pushing, pulling, carrying, climbing and other similar tasks on an as needed basis. In addition, he had advised Mr. Schenk not to handle any weight greater than 50 pounds and to limit this task to an occasional basis, assuming proper lifting techniques. He also advised Mr. Schenk not to handle weight over his head or away from his body, nor should he carry the weight over long distances or uneven terrain. Also, Mr. Schenk was advised by Dr. Volarich to avoid remaining in a fixed position for any more than about two hours at a time, including both sitting and standing, due to his cervical spine difficulties. He was advised by Dr. Volarich to change positions frequently to maximize comfort and rest when needed. Lastly, Dr. Volarich advised Mr. Schenk to pursue an appropriate stretching, strengthening and range of motion exercise program in addition to non-impact aerobic conditioning such as walking, biking, or swimming to tolerance daily.

With regard to Mr. Schenk's ability to work, Dr. Volarich testified that the employee should undergo a vocational assessment to determine if he is able to return to the open labor market, in any capacity, in the greater St. Louis metropolitan region. Dr. Volarich further testified that if a vocational assessment is able to identify a job for which Mr. Schenk is suited, he would have no objection with him attempting to return to work based upon the stated limitations. However, if a vocational assessment were to be unable to identify a job for which Mr. Schenk is suited, then it would be Dr. Volarich's opinion that Mr. Schenk is permanently and totally disabled as a result of his work related injury of September 24, 2009 in combination with his pre-existing medical conditions.

On behalf of the employer-insurer, Dr. Kriegshauser testified with regard to Mr. Schenk's left shoulder. Dr. Kriegshauser treated the employee from October 5, 2009 until January 24, 2011. Treatment was limited strictly to the left shoulder. Dr. Kriegshauser testified as to the surgeries that he performed on November 9, 2009 and May 19, 2010, both involving the left shoulder.

Following Mr. Schenk's recovery from the second left shoulder surgery, Dr. Kriegshauser ordered a functional capacity evaluation. That evaluation confirmed that Mr. Schenk could not return to his previous duties as a truck driver. He testified that Mr. Schenk should avoid lifting above the left shoulder and to limit the weight to no more than 30 pounds on an occasional basis, below the shoulder.

Dr. Kriegshauser testified that Mr. Schenk's left upper extremity was neurovascularly intact. He did recommend that Mr. Schenk take only ibuprofen or Aleve on occasion. Furthermore, it was Dr. Kriegshauser's testimony that Mr. Schenk did not need any additional surgery and that the rotator cuff is intact. Dr. Kriegshauser provided a permanent partial disability rating of 25% of the left shoulder, all of that attributable to the injury of September 24, 2009.

The only vocational testimony in the case was that of Timothy Lalk, who evaluated Mr. Schenk on October 19, 2011. Mr. Lalk testified that Mr. Schenk has a limited ability to understand and answer the questions posed by Mr. Lalk. In Mr. Lalk's deposition testimony, he testified as to Mr. Schenk's difficulties with his cervical spine, right shoulder, skull fracture, left shoulder and depression. After he evaluated Mr. Schenk for 55 minutes, Mr. Schenk had to rise, complaining of pain in his left shoulder, neck and left knee. Mr. Lalk testified that Mr. Schenk avoids using his left arm and needs to sit down frequently because of symptoms in his knees and ankle. Mr. Schenk has extreme difficulties with his left upper extremity.

Per Mr. Lalk, Mr. Schenk did not complete the 9th grade and tried and failed to obtain a GED, twice. Mr. Lalk described Mr. Schenk as a poor reader. Mr. Schenk tested at a 5th grade level for math and reading and at a 6.7 grade equivalency on the Adult Basic Learning Exam. Mr. Lalk testified that Mr. Schenk would have difficulty with jobs involving reading and a large exchange of information. Mr. Schenk did not return to truck driving. Mr. Schenk does have knowledge of automobiles and perhaps could work in an auto parts store. He could not work as a dispatcher, due to the lack of his GED and his reading skills.

Mr. Lalk recounted the restrictions that were applied by Dr. Volarich and Dr. Kriegshauser. It was Mr. Lalk's opinion that Mr. Schenk is unable to compete in the open labor market, due to a combination of his injuries and disabilities involving the left shoulder, right shoulder, cervical spine and left knee.

In his cross-examination, Mr. Lalk admitted that no physician has restricted Mr. Schenk from working due to his left shoulder alone. Mr. Lalk agreed that Mr. Schenk's skull fracture left him with headaches. In addition, Mr. Schenk, prior to September 24, 2009, did not have full use of his right shoulder. He had some motion limitations. With regard to the left knee, Mr. Schenk told Mr. Lalk that his left knee injury resulted in an inability to kneel without pain and to use the clutch without pain.

Mr. Lalk further testified that prior to September 24, 2009, Mr. Schenk would have had difficulties with limitations involving the left knee, such as climbing ladders. He agreed with all of the limitations set forth by Dr. Volarich, which include the left shoulder, right shoulder, cervical spine and left knee.

In further cross-examination, Mr. Lalk testified that Mr. Schenk could be employed in the open labor market if his only medical condition was his left shoulder. If not for the difficulties with the right shoulder, cervical spine and left knee, Mr. Schenk would still be able to walk, stop, bend and use one good arm. It is Mr. Lalk's testimony that Mr. Schenk could probably find work in large buildings.

RULINGS OF LAW:

Permanent Partial Disability as to the Employer-Insurer.

Permanent Total Disability as to the Employer-Insurer.

Liability of the Second Injury Fund for Permanent Partial or Permanent Total disability.

The testimony of Dr. Kriegshauser was limited solely to the left shoulder. Dr. Kriegshauser set forth his opinions regarding the employee's left shoulder restrictions and his permanent partial disability. The only physician, other than Dr. Kriegshauser, who testified as to Mr. Schenk's ability to work was Dr. Volarich. It was Dr. Volarich's opinion that if a vocational assessment could not find a position for which Mr. Schenk could work, based upon all of his medical limitations, than Mr. Schenk would be permanently and totally disabled as a result of the combination of the disabilities involving the left shoulder, right shoulder, cervical spine and the left knee.

The only vocational assessment was that of Mr. Lalk. Mr. Lalk testified that if Mr. Schenk does not return to work in any capacity, then he is permanently and totally disabled as a result of the September 24, 2009 injury and the pre-existing disabilities involving the right shoulder, cervical spine and left knee.

The Second Injury Fund offered no contrasting expert opinion to comment upon, contrast or attach the credibility and opinions of Dr. Volarich and Dr. Kriegshauser, as well as the vocational assessment of Mr. Lalk. The Second Injury Fund did not send the employee for an evaluation or have an expert conduct a records review.

The Court found the employee to be credible but did conclude that he is not the best historian of his medical history and disabilities. In the Court's opinion, there is no question that the employee is permanently and totally disabled. He has offered more than ample evidence to meet his burden of proof and support of his position. The Court also found the testimony of Dr. Volarich and Mr. Lalk to be credible and to be supported by the medical evidence in this case.

The ultimate question presented is whether the employee is permanently and totally disabled due to the last accident alone or a combination. The evidence clearly indicated that the employee is permanently and totally disabled due to a combination of the disabilities from the September 24, 2009 and his pre-existing disabilities. As there are no opinions other than those of Dr. Kriegshauser and Dr. Volarich as well as the only vocational opinion from Mr. Lalk, the Court finds that the employee is permanently and totally disabled in combination.

Based upon a consideration of all of the evidence in this case, the Court finds that the employee is permanently and totally disabled due to a combination of disabilities involving the left shoulder, right shoulder, cervical spine and left knee. The employee is not employable in the open labor market and no employer is likely to hire him.

The Court orders that the employer-insurer pay the amount of \$49,064.52, representing a permanent partial disability of 50% of the left shoulder, due to the injury of September 24, 2009. The Court further finds that the employee is not employable in the open labor market and that the Second Injury Fund is ordered to pay permanent-total disability benefits to the employee. The parties agreed that the employee reached maximum medical improvement as of November 18, 2010. The Court so finds. The Second Injury Fund's liability for permanent total disability does not begin until February 8, 2013. Permanent total disability benefits are ordered at the rate of \$652.60 per week. These payments for permanent total disability benefits shall continue for the remainder of the employee's lifetime or until suspended if the employee is restored to his regular work or its equivalent as provided in Section 287.200. RSMo.

Section 287.200.3 mandates that the Division shall keep the file open in the case during the lifetime of an injured employee who has received an award of permanent total disability. Based on this section, the Division and the Commission shall maintain an open file for purposes of reviewing the status of the employee's permanent disability.

ATTORNEY'S FEE:

Michael J. Payne, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Gary L. Robbins
Administrative Law Judge
Division of Workers' Compensation