

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

Injury No.: 01-046332

Employee: Fred Schoemehl, deceased  
Dependent: Annette Schoemehl, widow  
Employer: Cruiser Country, Inc. (Settled)  
Insurer: Missouri Employers Mutual (Settled)  
Date of Accident: May 11, 2001  
Place and County of Accident: Camden 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 April 4, 2005. The award and decision of Administrative Law Judge Robert J. Dierkes, issued April 4, 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 9<sup>th</sup> day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

SEPARATE OPINION FILED

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

SEPARATE OPINION  
CONCURRING IN PART AND DISSENTING IN PART

I must respectfully dissent from the award and decision of the majority of this Commission affirming the award and decision of the administrative law judge. I have reviewed and considered all of the competent and substantial

evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified.

The administrative law judge concluded that Mr. Schoemehl's widow, the claimant herein, is not entitled to permanent disability benefits for any periods after January 2, 2004, the date of Mr. Schoemehl's death. Claimant's well-reasoned brief convinces me the administrative law judge erred.

Section 287.230.2 RSMo provides:

Where an employee is entitled to compensation under this chapter for an injury received and death ensues for any cause not resulting from the injury for which he was entitled to compensation, payments of the unpaid accrued compensation shall be paid, but payments of the unpaid unaccrued balance for the injury shall cease and all liability therefor shall terminate unless there are surviving dependents at the time of death.

"Clearly, under [the predecessor to §287.230.2], the right of the employee to compensation for disability, accrued and unaccrued, survives to his dependents." *Nations v. Barr*, 43 S.W.2d 858 (Mo. App. 1931). "If the words of the section raise doubt as to its meaning, the doubt has been resolved in favor of the person seeking the benefits of the act and this is in accord with Section 287.800." *Henderson v. National Bearing Div. of American Brake Shoe Co.*, 267 S.W.2d 349, 353 (Mo. App. 1954).

The administrative law judge awarded the unpaid accrued compensation and I agree with that portion of the award. The only question to be determined herein is: *is there any unpaid unaccrued compensation?* If so, the balance shall be paid to the claimant.

The first step in analyzing the applicability of § 287.230.2 is to determine the nature and duration of the "compensation" awarded to Mr. Schoemehl. After a determination that an employee is permanently and totally disabled, permanent total disability shall be paid (1) during the continuance of the disability (2) for the lifetime of the employee. See § 287.200.1 RSMo. The first clause acts as a limitation on liability for benefits in the event the employee becomes no longer disabled. The second clause acts as a limitation on liability for benefits in the event the disabled employee dies.

Second Injury Fund (SIF) argues that the first clause is applicable in the event of death, reasoning that all disabilities cease upon death. I think it is absurd to discuss "disability" after the date of death but I must point out the flaw in the SIF argument.

"Disability" is defined as "inability to do something"; "deprivation or lack of esp. of physical, intellectual, or emotional capacity or fitness"; "the inability to pursue an occupation or perform services for wages because of physical or mental impairment"; "a physical or mental illness, injury, or condition that incapacitates in any way." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976).

*Loven v. Greene County*, 63 S.W.3d 278, 284 (Mo. App. 2001).

Mr. Schoemehl's disability was a "total disability," defined as the "inability to return to any employment." §287.020.7 RSMo. Mr. Schoemehl's passing did not lift this disability.

SIF's next argument is more compelling but, as will be seen, cannot prevail under the plain language of the statute. SIF argues that, pursuant to §287.200.1, permanent total disability benefits were only due for the lifetime of Mr. Schoemehl. SIF fails to apply the § 287.020.1 definition of "employee," when reading § 287.200.1 (ironically, while condoning the application of the definition to § 287.190.1 RSMo).

Section 287.020.1 provides that, "any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable." Reading §§ 287.020.1 and 287.200.1 together in the context of this matter, permanent total disability shall be paid [1]...for the lifetime of surviving widow.

Returning to § 287.230.2, the key question can be answered. Because permanent total disability benefits are due surviving widow for her lifetime, there was unpaid unaccrued compensation as of January 2, 2004. Pursuant to § 287.230.2 RSMo, SIF liability for such compensation did not terminate because Mr. Schoemehl is survived by his dependent widow. See *Bone v. Daniel Hamm Drayage Co.*, 449 S.W.2d 169, 174 (Mo. 1970) (overruled on other grounds), establishing that § 287.230.2 applies to benefits due from SIF.

Claimant's brief highlights another failing of the majority award. In both *Nations* and *Henderson*, supra, the court awarded permanent partial disability benefits to surviving dependents beyond the injured employee's date of death. By adopting the reasoning of the SIF, the majority implicitly concludes that the legislature intended that the dependents of an employee who is partially disabled recover full compensation for a work injury, but the dependents of an employee who is totally disabled – an employee who suffered a greater disability – not recover full compensation for the injury. The legislature surely did not intend to provide less to the dependents of the totally disabled than it provided to the dependents of the partially disabled for such a result would be absurd. We should "not construe the statute so as to work unreasonable, oppressive, or absurd results." *Elrod v. Treasurer of Mo.*, 138 S.W.3d 714, 716 (Mo. 2004).

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission to deny employee's widow compensation beyond the date of Mr. Schoemehl's death.

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John J. Hickey, Member

## AWARD

Employee: Fred Schoemehl (deceased)

Injury No. 01-046332

Claimant: Annette Schoemehl (spouse)

Before the  
DIVISION OF WORKERS'  
COMPENSATION  
Department of Labor and  
Industrial Relations of Missouri  
Jefferson City, Missouri

Employer: Cruiser Country, Inc. (settled)

Additional Party:

Second Injury Fund

Hearing Date: February 24, 2005

Checked

by: RJD/tmh

### 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 11, 2001.
5. State location where accident occurred or occupational disease was contracted: Camden County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer?
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
12. Did accident or occupational disease cause death? No. Date of death?
13. Part(s) of body injured by accident or occupational disease: Left knee.
14. Nature and extent of any permanent disability:
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$391.88.
19. Weekly compensation rate: \$261.26.
20. Method wages computation: Stipulation.

#### COMPENSATION PAYABLE

21. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund: 4 3/7 weeks, totaling \$1,157.01

23. Future requirements awarded: None.

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: Dean Christianson

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Fred Schoemehl (deceased)

Injury No: 01-046332

Before the  
DIVISION OF WORKERS'  
COMPENSATION  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Claimant: Annette Schoemehl (spouse)

Employer: Cruiser Country, Inc. (settled)

Additional Party: Second Injury Fund

Insurer:

Checked by: RJD/tmh

### **FINDINGS OF FACT AND RULINGS OF LAW**

The parties stipulated to all jurisdictional issues and to all of the essential facts of the case.

At issue is the liability of the Second Injury Fund.

The facts of the case are simple and uncontested. Claimant Annette Schoemehl is the surviving spouse of Fred Schoemehl. On May 11, 2001, Fred Schoemehl ("Employee") sustained a work-related injury to his left knee while in the employ of Cruiser Country, Inc. ("Employer"). Employer provided necessary medical treatment for Employee's left knee injury, and paid temporary total disability benefits, at the rate of \$261.26 per week, through February 26, 2003. Employee was unable to return to work after the May 11, 2001, injury. Employee was rendered permanently and totally disabled as a result of the May 11, 2001, injury in combination with his preexisting disabilities.

On January 2, 2004, Employee died of causes totally unrelated to his work-related left knee injury. Claimant Annette Schoemehl filed an amended claim for compensation against Employer, listing herself as claimant and successor to her deceased husband's interests. On December 8, 2004, Claimant settled her claim with Employer for a 25% permanent partial disability of the left knee, representing 40 weeks of benefits at the rate of \$261.26 per week. Claimant

was thus compensated with full weekly benefits from Employer through December 2, 2003. The Second Injury Fund is therefore liable for permanent total disability benefits from December 3, 2003, through Claimant's death on January 2, 2004. This results in 4 3/7 weeks of benefits, at the rate of \$261.26, totaling \$1,157.01.

Claimant claims that she is entitled to additional weekly benefits of \$261.26, after January 2, 2004 for *her* lifetime. Claimant was not the injured employee, her husband was. Section 287.200.1, RSMo, states: "Compensation for permanent total disability shall be paid during the continuance of such disability **for the lifetime of the employee** at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made." (Emphasis added.) Fred Schoemehl is the employee who was injured; his lifetime (hence the payment of permanent total disability compensation) ended on January 2, 2004.

Second Injury Fund is ordered to pay Claimant the sum of \$1,157.01 for permanent total disability benefits through the date of Employee's death.

Claimant's attorney, Dean Christianson, is allowed 25% of the amount awarded to Claimant hereunder as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon. Interest shall accrue as per applicable law.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

ROBERT J. DIERKES  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*

[1] As explained above, I reject the SIF argument that the clause "during the continuance of such disability" applies in this case. However, if it did, the statutes read together would dictate that permanent total disability shall be paid during the continuance of Mr. Schoemehl's inability to work for the lifetime of surviving widow.