

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

Injury No.: 86-400024

Employee: William Schroeder, deceased  
Claimant: Lynda Schroeder, widow  
Employer: Hampton Envelope Company (Settled)  
Insurer: Fireman's Fund Insurance Company (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: December 15, 1986  
Place and County of Accident: City of St. Louis, 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 June 19, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John Howard Percy, issued June 19, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of November 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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Attest: John J. Hickey, Member

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Secretary

## AWARD

Claimant: Lynda Schroeder, surviving spouse Injury No. 86-400024

Employee: William Schroeder, deceased Before the  
**Division of Workers'**  
**Compensation**

Employer: N/A Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: N/A

Hearing Date: March 19, 2008 Checked by: JHP

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No, due to lack of subject matter jurisdiction of claim by surviving spouse for continuation of permanent total disability benefits following the death of employee on November 29, 2005

- Was the injury or occupational disease compensable under Chapter 287? N/A

3. Was there an accident or incident of occupational disease under the Law? N/A

- Date of accident or onset of occupational disease: N/A

- State location where accident occurred or occupational disease was contracted: N/A

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A

7. Did employer receive proper notice? N/A

8. Did accident or occupational disease arise out of and in the course of the employment? Yes

- Was claim for compensation filed within time required by Law? Not against the Second Injury Fund

10. Was employer insured by above insurer? N/A

11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A

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: N/A

- Nature and extent of any permanent disability: N/A

15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Claimant Lynda Schroeder, surviving spouse

Injury No. 86-400024

17. Value necessary medical aid not furnished by employer/insurer? N/A

- Employee's average weekly wages: \$730.00

19. Weekly compensation rate: \$261.19 PTD

20. Method wages computation: Stipulation

#### COMPENSATION PAYABLE

21. Second Injury Fund liability: No

None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

### FINDINGS OF FACT and RULINGS OF LAW:

Claimant: Lynda Schroeder, surviving spouse

Injury No. 86-400024

Employee: William Schroeder, deceased

Before the  
**Division of Workers'  
Compensation**

Employer: N/A

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

Additional Party: Second Injury Fund

Insurer: N/A

Checked by: JHP

#### PROCEDURAL HISTORY

On January 8, 1992 William Schroeder, employee, was awarded permanent total disability benefits against the Second Injury Fund in Injury No. 86-145915. On November 29, 2005 William Schroeder died of causes unrelated to his work injury. On April 20, 2006 the Labor and Industrial Relations Commission issued an order terminating further benefits under the award of January 8, 1992. The Second Injury Fund stopped paying all benefits pursuant to that order. On October 12, 2007 Lynda Schroeder, surviving widow of William Schroeder, filed a new claim for compensation and requested continuation of the prior benefits. The Second Injury Fund filed an Answer to the claim and raised certain affirmative defenses.

A hearing in this proceeding was held on March 19, 2008. Both parties submitted proposed awards, the last of which filed on May 1, 2008.

### **STIPULATIONS**

The parties stipulated that on or about December 15, 1986:

1. the employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation Law;
2. the employer's liability was insured by Fireman's Fund Insurance Company;
3. the employee's average weekly wage was \$730.00;
4. the rate of compensation for permanent total disability was \$261.19; and
5. the employee sustained an injury by accident arising out of and in the course of employee's employment with Hampton Envelope Company occurring in St. Louis City, Missouri.

The parties further stipulated that:

1. the employer had notice of the injury, and claims for compensation pertaining to the injury of December 15, 1986, were filed by William Schroeder against employer/insurer and the Second Injury Fund within the time prescribed by law.

### **ISSUES**

The issues to be resolved in this proceeding are:

1. whether the Division of Workers' Compensation has subject matter jurisdiction of the claim filed by Lynda Schroeder, surviving spouse of William Schroeder, deceased employee, against the Second Injury Fund for continuation of the permanent total disability benefits previously awarded to her husband for his lifetime;
2. if the Division has jurisdiction of this claim, whether the Claim for Compensation filed on October 12, 2007 was filed before the expiration of the period of limitations prescribed by Section 287.430 Mo. Rev. Stat. (2000);
3. if the Division has jurisdiction of this claim and if the period of limitations had not expired prior to the filing of the claim herein, whether this claim is barred by res judicata; and
4. if the Division has jurisdiction of this claim and if the claim is not barred by the statute of limitation or res judicata, who the dependents of William Schroeder, deceased are.

### **JURISDICTION**

On December 15, 1986 William Schroeder sustained an injury by accident arising out of and in the course of employee's employment with Hampton Envelope Company occurring in St. Louis City, Missouri. Mr. Schroeder filed claims against Hampton Envelope Company and Fireman's Fund Insurance Company, its insurer, and the Second Injury Fund under Injury No. 86-145915. Employee entered into a compromise lump sum settlement agreement with employer and insurer on September 25, 1989. (Claimant's Exhibit C, Page 1)

Following a hearing on the claim against the Second Injury Fund, Administrative Law Judge Edwin J. Kohner found on January 8, 1992 that Mr. Schroeder was permanently and totally disabled as a result of the combination of his preexisting disability and the disability caused by the 1986 work-related injury and ordered the Second Injury Fund to pay Mr. Schroeder the sum of \$261.19 per week for "the life of the claimant commencing March 2, 1988" less a credit of \$156.71 per week for 191-3/7 weeks for the permanent partial disability benefits paid by the employer and insurer under their settlement agreement with Mr. Schroeder. (Claimant's Exhibit C, Pages 3-4)

William Schroeder died of lung cancer on November 29, 2005. (Claimant's Exhibit A) On April 20, 2006 the Labor and Industrial Relations Commission issued an order terminating further benefits under the award of January 8,

1992. (Claimant's Exhibit E) The Second Injury Fund stopped paying all benefits pursuant to that award. Lynda Schroeder, surviving widow of William Schroeder, filed a new claim for compensation on October 16, 2007 and requested continuation of the prior benefits. (Claimant's Exhibit F) The Second Injury Fund filed an Answer to the claim and raised certain affirmative defenses. (Claimant's Exhibit I)

Claimant Lynda Schroeder, the surviving widow of William Schroeder, contends that the Division has jurisdiction of her claim pursuant to Section 287.230.2 Mo. Rev. Stat. (2000) which 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.

In Schoemehl v. Treasurer of State of Missouri, 217 S.W.3d 900 (Mo. 2007) the Supreme Court construed Section 287.230.2 and held that an employee's right to compensation for both accrued and unaccrued permanent total disability benefits survives to his dependents, notwithstanding language in Section 287.200.1 which provides that permanent total disability benefits shall be paid "during the continuance of such disability for the lifetime of the employee ...." The Supreme Court held that as Section 287.020.1 defines "employee" to include his or her dependents where the employee is dead, the dependents of a deceased employee become the "employee" within the meaning of Section 287.200.1. The Court construed the phrase "for the lifetime of the employee" to mean "for the lifetime of a deceased employee's dependent(s)." The Court explicitly construed the phrase "during the continuance of disability" to apply only where the employee recovers from his or her disability and implicitly to not apply at all where the employee dies from unrelated causes. Id. at 902-903.

Claimant contends that under the decision in Schoemehl, supra, she survived to her husband's permanent total disability compensation after his death from causes unrelated to the original injury.

A crucial distinction between Schoemehl, supra, and the instant claim is that the employee in Schoemehl died while his case was pending before the Division. No final award had been issued prior to Mr. Schoemehl's death. The hearing for a final award occurred after his death. The issue of survivorship benefits arose before the issuance of the final award. The ALJ found in the final award that employee was permanently and totally disabled, but all benefits terminated on the date of his death, thus denying any benefits to the surviving spouse. The Labor and Industrial Relations Commission affirmed the final award and the court of appeals affirmed the decision of the Commission. The Supreme Court reversed the award and held that employee's widow was entitled to payment of the unpaid, unaccrued balance of the permanent total disability award.

In the pending case the permanent total award to William Schroeder was final in 1992. By filing a new claim for compensation, Lynda Schroeder is seeking a new award. She requests findings that employee died of causes unrelated to the December 15, 1986 injury, that she is the sole dependent of William Schroeder, and that she survives to his rights under that award. In asking for a finding of dependency, Claimant is seeking to revise the 1992 award, which contained no finding as to who employee's dependents were. She is also seeking to revise the language of the award which limited the payment for "the life of the claimant." She is basically seeking enforcement of the 1992 award.

Two appellate decisions have recently decided that the Labor and Industrial Relations Commission does not have the statutory authority to reopen and review a final award more than thirty days after the final award was entered or make a new determination based on a theory of continuing jurisdiction over a final award. They have noted that the Division is an administrative tribunal created by statute and authorized to exercise only the power invested in it by legislative enactment and that it did not have the power to reopen and review a final award (after the time for appeal under Section 287.495 Mo. Rev. Stat. (2000) has elapsed) or to make a new determination of survivorship based on the widow's claim. Cox v. Treasurer of the State of Missouri, ED 89751 (Mo. App. May 13, 2008); Winberry v. Treasurer of Missouri, ED 89770 (Mo. App. May 13, 2008). In Winberry, the appellate court further noted that the Commission does not have the power to enforce a worker's compensation award.

In Buescher v. Missouri Highway and Trans. Comm'n, WD 67949 (Mo. App. March 18, 2008), the appellate court noted that pursuant to Section 287.495 Mo. Rev. Stat. (2000) the final award of the Labor and Industrial Relations Commission is “conclusive and binding” on the parties unless either party appeals to the appellate court within thirty days and that “once the time for appeal has expired the Commission has no authority to further delineate, expound upon, or enforce the award.” The court held that since the final award granted permanent total disability benefits only for the employee’s lifetime, the Commission did not have jurisdiction to subsequently consider whether employee’s widow had a right to survivorship benefits or to otherwise modify the award more than thirty days after the final award was entered.

The decisions in Buescher, supra, and Cox, supra, distinguished the decision in Schoemehl v. Treasurer of State of Missouri, 217 S.W.3d 900 (Mo. 2007) on the basis that Mr. Schoemehl died during the pendency of the original claim with the Division. Based on the foregoing decisions, I find that the Division does not have jurisdiction to determine the cause of the employee’s death and who the surviving dependents of William Schroeder are and to otherwise modify the final award which granted permanent total disability benefits for his lifetime. The claim is accordingly dismissed.

The new claim filed by Lynda Schroeder seeks to have new findings made concerning survivorship benefits which would have the effect of modifying the final award issued in 1992. The filing of a new claim also raises the question of whether this constitutes an impermissible collateral attack upon the 1992 final award.

“Where a judgment is attacked in other ways than by proceedings in the original action to have it vacated or reversed or modified or by a proceeding in equity to prevent its enforcement, the attack is a ‘collateral attack’.” Flanary v. Rowlett, 612 S.W.2d 47, 49 (Mo. App. 1981) (quoting the Restatement of Judgments, s. 11, Comment a) “A judgment rendered by a court having jurisdiction of the parties and subject matter ... is not open to collateral attack in respect of its validity or conclusiveness of the matters adjudicated.” State ex. Inf. Voigts v. City of Pleasant Valley, 453 S.W.2d 700, 704 (Mo. App. 1970)

In Barry Inc v. Falk, 217 S.W.3d 317 (Mo. App. 2007). the employer and insurer brought an action against claimant’s surviving spouse for a declaratory judgment alleging that the 1980 statutory cap on death benefits applied to a 1986 final award even though the award mistakenly referenced the 1978 statute which did not include a cap. The court of appeals held that the 1986 award was final and conclusive on the issues decided and could not be collaterally attacked by the action for declaratory judgment. Id. at 320.

Based on the foregoing decision, I find that the new claim filed Lynda Schroeder, which seeks to modify the 1992 final award, constitutes an impermissible collateral attack on the 1992 final award.

### **STATUTE OF LIMITATIONS**

The Second Injury Fund has asserted the affirmative defense that the claim is barred by the statute of limitations.

Section 287.430 Mo. Rev. Stat. (2000) provides that a claim against the Second Injury Fund must be filed “within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later.” Section 287.020.3 Mo. Rev. Stat. (2000) which defines “injury” does not include death.

Lynda Schroeder filed her original claim against the Second Injury Fund on October 16, 2007. The date of claimant’s injury was December 15, 1986. No new claim was filed against the employer or insurer. Thus, the new claim was not filed within two years after the date of injury or within one year after a claim was filed against the employer or insurer.

Claimant argues that her claim did not arise until the death of her husband on November 29, 2005 and that she filed her claim within two years of his death. However, Section 287.430 does not permit the filing of a claim against the Second Injury Fund within two years from the date of death.

As the claim against the Second Injury Fund was filed more than two years after the date of injury, I find that the claim against the Second Injury Fund was not filed within the time required by Section 287.430 Mo. Rev. Stat. (2000) and is therefore barred by limitations.

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

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

JOHN HOWARD PERCY

*Administrative Law Judge*

*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Jeffrey W. Buker

*Director*

*Division of Workers' Compensation*

There was no dispute that employee's death was unrelated to his injury of December 15, 1986.

As the Division lacks the power to enforce its awards, the parties must seek enforcement through the circuit court pursuant to Section 287.500 Mo. Rev. Stat. (2000). It is unclear whether in rendering "judgment in accordance" with the final award, the circuit court would have the power to modify the award by making findings concerning the cause of the employee's death and who the employee's surviving dependents were and by ordering the employer/insurer or the Second Injury Fund to continue permanent total disability payments in favor of those dependents. See Barry Inc v. Falk, 217 S.W.3d 317 (Mo. App. 2007).

While this interpretation of Section 287.430 may bar most "Schoemehl" survivorship claims against the Second Injury Fund, it further demonstrates the strengths of the dissents in Schoemehl.