

Issued by THE LABOR AND INDUSTRIAL RELATIONS
COMMISSION

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

Injury No.: 07-117620

Employee: Michael Skinner
Employer: Donnie W. Morgan
d/b/a D & M Development, LLC
Insurer: Uninsured
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 February 24, 2009. The award and decision of Administrative Law Judge Karen Wells Fisher, issued February 24, 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 21st day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Michael Skinner

Injury No. 07-117620

Dependents: N/A

Before the

Employer: Donnie W. Morgan,
d/b/a D & M Development, LLC

**DIVISION OF WORKERS'
COMPENSATION**

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

Additional Party: Second Injury Fund

Insurer: N/A

Hearing Date: January 29, 2009

Checked by:

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: SEPTEMBER 29, 2007
5. State location where accident occurred or occupational disease was contracted: BARRY COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? UNINSURED
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
CLAIMANT WAS WORKING ON A ROOF TRUSS WHEN HE FELL FROM THE STRUCTURE CAUSING THE INJURIES
COMPLAINED OF
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: BODY AS A WHOLE INCLUDING HEAD AND NEUROLOGICAL SYSTEM
14. Nature and extent of any permanent disability: 15 PERCENT BODY AS A WHOLE
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

17. Value necessary medical aid not furnished by employer/insurer? \$254,708.20
18. Employee's average weekly wages: \$320.00
19. Weekly compensation rate: \$213.33
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$254,708.20

6 3/7 weeks of temporary total disability (or temporary partial disability)
9/29/07 through 11/12/07 totaling \$1,371.41

permanent partial disability from Employer - 15% body as a whole totaling \$12,799.80

-0- weeks of disfigurement from Employer

22. Second Injury Fund liability: YES -- \$254,708.20 past medical

Total: \$268,879.41

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 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

JEFFREY GOODNIGHT

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Michael Skinner

Injury No. 07-117620

Dependents: N/A

Before the

**DIVISION OF WORKERS'
COMPENSATION**

Employer: Donnie W. Morgan,
d/b/a D & M Development, LLC

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

Additional Party: Second Injury Fund

Insurer: N/A

Hearing Date: January 29, 2009

AWARD ON HEARING

Employee's Exhibits:

- A. Medical records - Cox Medical Center/Barry County Ambulance
- B. Medical records - Cox Medical Center
- C. Medical records - Ferrell-Duncan Clinic
- D. Medical records - Springfield Neurological & Spine Institute
- E. Medical Bills with summary
- F. Affidavit of Amy Frank, Division of Workers' Compensation, Insurance Section, Proof of Coverage
- G. Certified copy of the Articles of Incorporation of D&M Development LLC from Missouri Secretary of State

STIPULATIONS:

1. The parties stipulated that the accident occurred in Cassville, Barry County, Missouri and that the proper venue is in the Joplin Adjudication Office.

ISSUES:

- 1. Whether on or about September 29, 2007, Donnie Morgan, doing business as D&M Development, LLC, was an employer operating under the provisions of the Missouri Workers' Compensation laws;
- 2. Whether on or about September 29, 2007, Michael D. Skinner was an employee of Donnie Morgan, doing business as D&M Development, LLC, and was working under the provisions of the Missouri Workers' Compensation laws;
- 3. Whether Employer had notice of the alleged injury and whether the Claim for Compensation was filed within the time prescribed by law;
- 4. Whether on September 29, 2007 Claimant sustained an accident arising out of and in the scope and course of his employment with Donnie Morgan, doing business as D&M Development, LLC;
- 5. Whether the Claimant's average weekly wage is \$320.00, and the appropriate compensation rate for weekly benefits is \$213.33 for temporary total disability and \$213.33 for permanent partial disability benefits;
- 6. Whether Claimant is entitled to past medical benefits of \$254,708.20;
- 7. Whether Claimant is entitled to temporary total disability benefits from the period of September 29, 2007 through November 12, 2007, representing 6 3/7 weeks, for compensation totaling \$1,371.41;
- 8. The Employer's liability for the nature and extent of Claimant's permanent partial disability; and
- 9. Liability of the Second Injury Fund for uninsured benefits pursuant to RSMo. §287.230(5).

FINDINGS:

A hearing was held on January 29, 2009, before the Honorable Karen Fisher. Certified notice was sent to all parties. Claimant appeared in person and was represented by Jeffrey C. Goodnight. Employer failed to

appear. An additional employer, T.J. Buck, was dismissed by the claimant prior to the introduction of evidence. The Second Injury Fund was represented by Christina Hammers.

Medical Evidence

This claim centers upon an accident whereby claimant fell from a roof structure while he working on a truss, which occurred on September 29, 2007. Michael Skinner (hereinafter "Skinner") was working as a laborer for Donnie Morgan, d/b/a D & M Development, LLC (hereinafter "Morgan"). Skinner sustained a serious injury and was hospitalized until November 12, 2007.

Skinner fell from a roof structure on September 29, 2007. This fall occurred when he was working on a roof truss. He fell on a concrete slab and landed on his head. He sustained a Class 1 trauma from this fall and sustained a skull and rib fracture. Immediately following the fall, Skinner was taken by ambulance to the Cassville, Missouri, airport where he was taken by life flight to Cox Medical Center in Springfield, Missouri.

Upon admission to Cox Medical Center, Skinner was put on ventilation tube and remained unconscious until October 10, 2007. Thereafter, Skinner made gradual progress and was discharged on October 29, 2007. Dr. Charles Dunn noted the following diagnoses upon discharge:

15. Left basilar skull fracture with a small amount of pneumocephalus;
16. Left parietal skull fracture;
17. Evidence of contusions of the left hemisphere without evidence of epidural, subdural, and no significant midline shift;
18. Left pneumothorax and pulmonary contusion; and,
19. Left third and fourth rib fractures.

Dr. Dunn released Skinner to in-patient treatment at Cox Walnut Lawn, under the care of Dr. Rusty Bond.

Skinner stayed at the Cox Walnut Lawn facility from October 29, 2007, through November 12, 2007. Dr. Dunn noted a traumatic brain injury with a Glasgow Coma Scale of eight upon his admission. While he was at Cox Walnut Lawn Skinner made steady improvement. He was able to achieve independent skills with his activities of daily living. He was given discharge instructions to avoid using heavy equipment, driving, and he would require 24 hour supervision. He was to follow up with Dr. Dunn and Dr. Bond.

Skinner testified that he improved rapidly upon his discharge. He was able to care for himself and was able to ambulate well immediately following his discharge. He and his fiancée moved to Dallas, Texas, to be closer to her family. He is now working in Dallas, Texas.

Employee's Testimony

Skinner testified that he began working for Morgan shortly before his fall. He had originally worked for T.J. Buck as a laborer, but started working for Morgan. Skinner testified that Morgan picked him up at his home in Garfield, Arkansas, and transported him to the job sites. He was compensated \$8.00 per hour and worked 40 hours per week, generally, for Morgan. At the time of his injury, Morgan was the general contractor for a repair job to the Cassville Bowling Alley, and to build a shop at the home of the owner of the Cassville Bowling Alley. According to the testimony of Skinner, Morgan's jobs were all construction related.

Skinner testified that he was injured on September 29, 2007, while working on the roof of the owner of the Cassville Bowling Alley. He testified that he was attaching a truss to the roof when the truss shifted causing him to fall from the structure. He testified that he recalls the fall, but nothing after the fall until he was at Cox Medical Center in Springfield, Missouri.

Skinner testified that he was in the hospital and made gradual progress. He recalled being transferred to Cox Walnut Lawn, a rehabilitation hospital, and was there for a period time. He testified that he made good progress at Cox Walnut lawn and was able to perform his activities of daily living. He was discharged on November 12, 2007.

Upon his discharge, Skinner testified that he made rapid progress at home. He did not follow up with his doctors. He testified that he felt well and didn't want to follow up with the doctors. Skinner further testified that he has made good improvement but has noticed that he fatigues quicker than he did prior to the accident. He testified that he also has some pain and soreness, difficulty breathing with exertion, and is confused easily following the injury. Despite this, Skinner testified he feels he is able to work as a laborer, although he does not have the stamina that he did prior to the accident.

Testimony of T.J. Buck

T.J. Buck appeared in person. He testified that he was not the employer of Skinner on the day of his accident. He testified that he was a subcontractor for framing and dry wall jobs in the Cassville, Missouri, and Garfield, Arkansas, areas. He subcontracted for Morgan, among others. He had employed Skinner, but Skinner started working directly for Morgan shortly before his accident.

T.J. Buck was present at the jobsite on the day in question. He was present when the fall occurred and helped with Skinner's evacuation to Cox Medical Centers. T.J. Buck testified that Skinner was working in the roof of the structure attaching a truss when it shifted and Skinner fell from the roof to a concrete slab.

Testimony of David Moore

David Moore appeared in person and testified. David Moore is T.J. Buck's brother-in-law and works with T.J. Buck. He testified that Skinner had worked for T.J. Buck but had gone to work directly for Morgan shortly before his accident. David Moore was present at the job site on the day in question and heard the accident. He testified that Skinner was working in the roof of the structure attaching a truss when it shifted, causing Skinner to fall. David Moore helped with the medical evacuation of Skinner, as well.

RULINGS:

Donnie Morgan, d/b/a D & M Development, LLC, is an employer subject to the Missouri Workers' Compensation Law and Skinner was his employee

Section 287.030, RS Mo, provides that any employer who is in the construction business of erecting, demolishing, repairing, or improving shall be deemed an employer if they employ one or more employees. Skinner testified that Morgan hired him to work on construction jobs as a laborer. In particular, he was the general contractor for a job at the Cassville Bowling Alley and to erect a shop at the owner of the Cassville Bowling Alley's home.

Further, Section 287.020, RS Mo, provides that an employee shall be construed to mean every person in the service of any employer under any contract of hire whether oral or written. Skinner testified that he began working for Morgan shortly before his accident. He testified that he hired at the rate of \$8.00 per hour and that Morgan picked him up at his home to go to the job sites. This testimony was corroborated by T.J. Buck and David Moore.

Accordingly, I find that Morgan was employer subject to the Missouri Workers' Compensation Law because he operated in the construction business and was required to carry workers' compensation insurance

pursuant to that statute. I further find that Skinner was an employee of Morgan on the date in question.

Notice and Statute of Limitations

Section 287.420, RS Mo, requires that an employee give written notice of his or her injury within 30 days of the injury. This statute further provides that this requirement is waived if the employer is not prejudiced by the lack of written notice. In this case, the employer was present at the jobsite at the time of the injury, participated in calling 9-1-1 and arranging for Skinner's medical evacuation, and had knowledge of the time, place, and manner of the injury. Skinner was subsequently in a coma for nearly thirty days following the accident. The employer had notice of the injury and was not prejudiced by failing to receive written notice.

Section 287.430, RS Mo, provides that a claim for compensation must be filed within two years of the date of the injury. In this case, the claimant filed his claim for compensation well within the two year period.

Accident

Section 287.020, RS Mo, defines an accident an unexpected traumatic event identifiable by time and place of occurrence with resulting objective symptoms. In this case, Skinner fell from a roof while he was in the scope and course of his employment. He suffered immediate, objective symptoms, including loss of consciousness. I therefore find that Skinner sustained an accident in the scope and course of his employment.

Rate of Compensation

Section 287.250, RS Mo, provides for the method of computing an injured employee's average weekly earning that serve as the basis for compensation provided by the Workers' Compensation Act. Subsection (1) (4), provides for hourly wages to be computed by dividing the wages earned during the last thirteen calendar weeks by thirteen.

The employer has failed to provide a wage statement of Skinner's gross earning for the last thirteen weeks prior to the accident. Skinner testified that he was hired to work 40 hours per week at the rate of \$8.00 per hour. I find Skinner's average weekly wage to be \$320 per week, yielding a compensation rate of \$213.33 for both temporary total disability and permanent partial disability.

Liability for Past Medical Benefits

For the reasons set forth in the Findings of Fact and in these Rulings, the medical treatment reflected in Exhibit E is deemed to have been necessary and reasonable and related to this work-related accident and it is hereby ordered that the Employer shall pay these charges in the amount of \$254,708.20. See Martin v. Mid-America Farm Lines, 769 S.W.2d 105, 111-112 [7] (Mo. banc 1989).

Temporary and Total Disability

For the reasons set forth in the Findings of Fact and in these Rulings, the claimant is entitled to a period of temporary total disability from September 29, 2007, through November 12, 2004. This period equated to \$1,371.41. The Employer is hereby ordered to pay this amount to Skinner. See Goerlich v. TPS, Inc., 85 S.W.3d 724, 730-731 [6-12] (Mo. App. E.D. 2002).

Nature and Extent of Permanent Partial Disability

Having concluded that Skinner suffered a work related injury on September 29, 2007, it is within the province

of this Court to determine the extent of any permanent disabilities. See Landers v. Chrysler Corp., 963 S.W.2d 275 (Mo. App. E.D. 1998). Although Skinner has not produced a medical opinion concerning the extent of his disability, he has testified that he fatigues easily, has pain, and cannot perform work with the same stamina that he once did. I note the recent opinion of Bock v. City of Columbia, 2008 WL 5396499 (W.D. 2008), wherein the Western District held that an employee may testify to the extent of their disability. In this case, Skinner sustained a serious injury and has improved dramatically. It is reasonable, considering all the facts, to award 15% of the body for this injury. Further, there is no testimony which contradicts this finding. Therefore, I determine that Skinner has suffered a permanent partial disability of 15% of the body as a whole related to this date of injury. This equates to \$12,799.80. The Employer is ordered to pay this amount to Skinner.

Liability of the Second Injury Fund for Uninsured Benefits

Section 287.220, RS Mo, provides that if an employer fails to carry workers' compensation insurance, funds from the Second Injury Fund may be withdrawn to cover the reasonable and necessary expenses for medical care to cure and relieve the effects of an work related injury. According to the affidavit of Amy Frank, Exhibit F, the Division of Workers' Compensation failed to find any workers' compensation insurance for the employer on the date of this injury. I have previously determined that the Employer is was subject to the Missouri Workers' Compensation Act and was required to carry insurance accordingly. Because the Employer has failed to maintain required insurance, the Second Injury Fund is liable for Skinner's past medical benefits in the amount of \$254,708.20. Therefore, I order the Second Injury Fund to pay to the employee \$254,708.20, in past medical benefits pursuant to Section 287.220, RS Mo.

I order an attorney's fee of 25 percent paid to Jeffrey C. Goodnight. This shall constitute a lien upon all amounts ordered in this award.

Date: __February 24, 2009__

Made by: _____/s/ Karen Wells Fisher_____
Karen Wells Fisher
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____/s/ Peter Lyskowski_____
Peter Lyskowski
Acting Director
Division of Workers' Compensation