

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

Injury No.: 05-006810

Employee: Dale Skyles  
Employer: Laclede Gas Company (Settled)  
Insurer: Self- Insured (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 July 22, 2010. The award and decision of Administrative Law Judge Cornelius T. Lane, issued July 22, 2010, 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 29<sup>th</sup> day of March 2011.

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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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: Dale Skyles Injury No.: 05-006810  
Dependents: N/A Before the  
Employer: Laclede Gas Company (previously settled) **Division of Workers'**  
**Compensation**  
Additional Party: Second Injury Fund Department of Labor and Industrial  
Relations of Missouri  
Insurer: Self-Insured Jefferson City, Missouri  
Hearing Date: May 3, 2010 Checked by: CTL:ms

### 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: February 1, 2005
5. State location where accident occurred or occupational disease was contracted: City of St. Louis, 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Attempting to break two pipes lose.
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: Right shoulder and lumbar spine.
14. Nature and extent of any permanent disability: 22 ½% permanent partial disability of the right shoulder and 5% permanent partially disability of the body as a whole referable to the low back previously paid by Employer, and permanent and total disability benefits from the Second Injury Fund beginning November 1, 2005.
15. Compensation paid to-date for temporary disability: \$2, 220.81
16. Value necessary medical aid paid to date by employer/insurer? \$24, 987.76

Employee: Dale Skyles

Injury No.: 05-006810

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages:
- 19. Weekly compensation rate: \$675.90/354.05
- 20. Method wages computation: Agreement of parties

**COMPENSATION PAYABLE**

- 21. Primary injury of February 1, 2005, was settled with the Employer for \$25,000.00.

TOTAL:

- 22. Second Injury Fund liability: Claimant is awarded weekly compensation from the Second Injury Fund in the amount of \$675.90 for the period of November 2, 2005 and thereafter in accordance with the Workers' Compensation Law.

Weekly differential of \$321.85 payable by the Second Injury Fund for 72.2 weeks beginning November 2, 2005, and thereafter \$675.90 per week as provided by law.

TOTAL: TO BE DETERMINED

- 23. Future requirements awarded: 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 20% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Ann G. Dalton

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Dale Skyles	Injury No.:	05-006810
Dependents:	N/A	Before the	
Employer:	Laclede Gas Company (previously settled)	<b>Division of Workers'</b>	
Additional Party:	Second Injury Fund	<b>Compensation</b>	
		Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Self-Insured	Checked by:	CTL: ms

### **PREFACE**

A hearing was held in the above mentioned matter on May 3, 2010. The Claimant, Steven Zundel, was represented by Attorney Ann G. Dalton. The primary case against Claimant's Employer, Laclede Gas Company, was previously settled. The Second Injury Fund was represented by Assistant Attorney General Lacy Fields.

### **STIPULATIONS**

1. That Claimant on February 1, 2005, sustained an accident arising out of and during the course of his employment with his employer, Laclede Gas Company.
2. Claimant's Workers' Compensation rate was \$675.90/354.05.
3. Claimant reached maximum medical improvement on August 2, 2005.
4. Claimant's primary case against his Employer, Laclede Gas Company, was settled for 22 ½ percent permanent partial disability of the right shoulder, and 5 percent permanent partial disability of the body as a whole referable to his low back.

### **ISSUE**

1. Liability of the Second Injury Fund.

### **EXHIBITS**

The Claimant offered the following exhibits into evidence:

- Exhibit A: Chronological treatment records for Primary Injuries of February 1, 2005.
- Exhibit B: Physical Therapy records related to Primary Injury of February 1, 2005.
- Exhibit C: Second Injury Fund records for pre-existing right shoulder.
- Exhibit D: Second Injury Fund records for pre-existing left knee
- Exhibit E: Second Injury Fund records for pre-existing diabetes

- Exhibit F: Second Injury Fund records for pre-existing right elbow and neck.
- Exhibit G: Second Injury Fund records for pre-existing right wrist and left knee.
- Exhibit H: Second Injury Fund records for pre-existing low back.
- Exhibit I: Second Injury Fund records for pre-existing neck.
- Exhibit J: Second Injury Fund records for pre-existing right trigger thumb.
- Exhibit K: Second Injury Fund records for pre-existing left elbow and right small finger.
- Exhibit L: Second Injury Fund records for pre-existing left toe/foot.
- Exhibit M: Second Injury Fund records for pre-existing left hand.
- Exhibit N: Deposition of Dr. Volarich.
- Exhibit O: Deposition of James England.

The Second Injury Fund offered the following exhibits into evidence:

- Exhibit I. Progress notes from Dr. Gary Vickers.
- Exhibit II. May 4, 1992 note regarding knee

All Exhibits were accepted into evidence.

### **FINDINGS OF FACT**

Based on competent and substantial evidence, I find as follows:

1. Claimant was a high school graduate, who after high school went into the Navy and was honorably discharged in 1971. Later in life, he graduated from college majoring in Human Resources. Claimant at the time of the hearing was 59 years of age.
2. Claimant worked for Laclede Gas Company for a number of years and was a pipe fitter/technician. Claimant testified his physical activity included standing, walking, sitting, carrying, bending, stooping, kneeling, squatting, climbing, pushing and pulling.
3. On February 1, 2005, Claimant while working for his Employer sustained an injury to his right shoulder and low back. As a result of the primary injury of February 1, 2005, Claimant underwent surgery involving an open right rotator cuff repair on April 4, 2005, and then received treatment thereafter. By agreement of the parties the Claimant reached maximum medical improvement on August 2, 2005. The doctor who operated on the Claimant, Dr. Markinson, felt that the Claimant had sustained 20 percent permanent partial disability to his right shoulder with 10 percent pre-existing his primary injury.

### **PRE EXISTING INJURIES**

- A. NECK. Claimant had neck problems and as a result of the neck problems he had surgery performed under the direction of Dr. Albana, who performed an anterior cervical microdiscectomy and osteophyctectomy and fusion at the C5-6, C6-7/T1. Claimant also had suffered a disc herniation at C4-C5. As a result of his neck problems the Claimant testified very credibly that he had problems through the years with his neck, headaches, etc.

- B. **KNEE PROBLEMS.** Also in the 1980s the Claimant had knee problems and he underwent a left knee debridement of the anterior synovitis and excision of the plica and excision of anterior horn of the medial meniscus. On April 29, 2005, the Claimant sustained a work injury in which he hurt his left knee which resulted in a left lateral ligament tear. Claimant testified very credibly that as a result of his knee problems it was difficult for him to stoop, squat, or crawl.
- C. **LEFT FOOT.** The Claimant prior to his primary injury of February 1, 2005, had problems with his left foot and underwent a fusion of the left metatarsal phalangeal joint of the left foot on August 5, 2005.
- D. **WRISTS.** Claimant prior to the primary injury of February 1, 2005, had undergone bilateral carpal tunnel releases after having struck his right elbow sometime in 1985.
- E. **RIGHT SHOULDER.** Claimant had right shoulder surgery prior to his primary injury of February 1, 2005, when the surgery involved open rotator cuff repair.
- F. **BACK.** Claimant prior to his primary injury of February 1, 2005, had back problems which caused pain going down his right leg to his foot. Claimant was treated conservatively then eventually underwent a partial laminectomy from L2 through L5, subtotal laminectomy at L3, L4, and L5, a discectomy L4-5, inner body fusion L4-5, posterior lateral fusion L4-L5 with instrumentation at L4-L5.
1. Claimant after his primary injury of February 1, 2005, testified that he last worked on November 1, 2005.
  2. According to the agreement of the parties Claimant was placed at maximum medical improvement on August 2, 2005.
  3. Dr. Volarich testified on behalf of the Claimant, and testified very credibly that Claimant, he felt, sustained 35 percent permanent partial disability of the right shoulder and 10 percent permanent partial disability of the low back as a result of the injury of February 1, 2005, his primary injury. Also, Dr. Volarich was of the opinion that Claimant had a 25 percent permanent partial disability of the right shoulder and 50 percent permanent partial disability of the low back, as well as 50 percent pre-existing permanent partial disability of the neck as well as 30 percent pre-existing permanent partial disability of the left knee, 25 percent pre-existing permanent partial disability of the left foot, 15 percent pre-existing permanent partial disability of the right foot, and he also felt that Claimant had 35 percent pre-existing permanent partial disability of the right wrist, 35 percent pre-existing permanent partial disability of the left wrist, and was of the opinion that due to the combination of these primary as well as the pre-existing injuries Claimant was permanently and totally disabled.
  4. The vocational counselor, Mr. James England, felt that because of Claimant's primary injury of February 1, 2005, as well as his pre-existing problems that he would be unable to be employable.

- 5. Claimant testified very credibly that as a result of his primary injuries and all of his pre-existing problems he continued to work, but had many, many problems, and felt that he was unable to work any longer and went on to retire.

**RULINGS OF LAW**

I find from all the evidence that the Claimant is permanently and totally disabled and is unable to work in the open labor market, and thus Second Injury Fund is liable for permanent and total disability benefits for the Claimant because of the combination of Claimant's primary injury of February 1, 2005, along with his pre-existing problems.

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

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

**Cornelius T. Lane**  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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