

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

Injury No.: 07-105987

Employee: Martin R. Squires
Employer: St. Louis County Government (Settled)
Insurer: Self-Insured (Settled)
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. We have reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the August 12, 2011, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the modifications and comments set forth below.

Discussion

Affirmative findings vs. summary of the evidence

The fact-finder in a workers' compensation case is required by statute to issue unequivocal affirmative findings and conclusions resolving each of the issues the parties identify as in dispute. Section 287.460.1 RSMo makes this clear when it states, as follows:

The division, through an administrative law judge, shall hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute by issuing the written award ... The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue, shall be filed with the record of proceedings ...

(emphasis added).

The courts have provided some clarification as to the meaning of the foregoing language:

Findings of fact are required by Secs. 287.460 and 287.480 ... Thus we think these statutory provisions contemplate an unequivocal affirmative finding as to what the facts are.

Michler v. Krey Packing Co., 363 Mo. 707, 718 (Mo. 1952) (emphasis added).

The courts have also provided some clarification as to the type of award that does not meet the statutory obligation to provide affirmative findings:

Here, there are literally pages of testimony summarization. There are also pages of substantial discussion of abstract legal theory. The ALJ certainly

Employee: Martin R. Squires

- 2 -

diligently summarized all of the evidence as an impartial and uncritical scrivener. No doubt it was a useful reference tool for the ALJ's own use in understanding the facts. But because of the absence of findings (that is, the lack of critical evaluation and the failure to draw pertinent inferences from the evidence), the summaries, with all due respect, are of little value to this court. The summaries cannot substitute for factual findings (along with conclusions of law) in the opinion itself.

Stegman v. Grand River Reg'l Ambulance Dist., 274 S.W.3d 529, 532 (Mo. App. 2008) (emphasis added).

Turning to the present case, after a careful review of the record, we ultimately agree with the result reached by the administrative law judge, and agree with the findings and conclusions she rendered in her well-reasoned award. However, we are concerned that by assigning the title "Summary of the Evidence" to the section of the award that begins on page 4 and extends to page 8, there arises a potential for confusion of the type identified by the court in *Stegman*. As the courts have consistently made clear over the years, affirmative findings are needed in these awards, and a summary of the evidence cannot substitute for them or fulfill the statutory mandate.

We believe that, here, this concern can be corrected by simply modifying the award to designate the section entitled "Summary of the Evidence" as "Findings of Fact," because the administrative law judge did, in that section of the award, make the requisite credibility determinations and rendered unequivocal findings derived from a critical analysis of the evidence.

Accordingly, in light of the foregoing considerations, we hereby modify the award of the administrative law judge as follows: the section beginning on page 4 and extending to page 8, entitled "Summary of the Evidence," is renamed "Findings of Fact."

Clerical error

On page 1 of the administrative law judge's award, in statement number 14, the award states that the nature and extent of employee's permanent disability is "30% PTD of the right wrist." This clearly was merely a clerical error, which we hereby correct as follows: on page 1, in statement number 14, the words "30% PTD" are replaced with the words "30% PPD."

Because we otherwise agree with the findings, conclusions, and analysis of the administrative law judge, we affirm and adopt the award in all other respects.

Award

We modify the award of the administrative law judge as set forth herein.

The Commission approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Employee: Martin R. Squires

- 3 -

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Suzette Carlisle, issued August 12, 2011, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this _____ 19th _____ day of June 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Martin R. Squires

Injury No.: 07-105987

Dependents: N/A

Employer: St. Louis County Government (Settled)

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional : Second Injury Fund

Insurer: Self Insured (Settled)

Hearing Date: May 17, 2011

Checked by:SC

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: November 1, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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:
Claimant tripped and fell off the curb as he attempted to throw a bag of trash onto a dump truck, and fractured his right wrist.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right wrist
14. Nature and extent of any permanent disability: 30% PTD of the right wrist (Settled)
15. Compensation paid to-date for temporary disability: \$627.60
16. Value necessary medical aid paid to date by employer/insurer? \$10,994.58

Employee: Martin Squires

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$549.15
- 19. Weekly compensation rate: \$366.10/366.10
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

52.5 weeks of permanent partial disability from Employer (Previously settled)

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
beginning January 15, 2009 and, thereafter, for Claimant's lifetime

TOTAL:

INDETERMINATE

23. Future requirements awarded: N/A

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Christopher Wagner

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Martin R. Squires

Injury No.: 07-105987

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: St. Louis County Government (Settled)

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

Additional : Second Injury Fund

Insurer: Self Insured (Settled)

PRELIMINARIES

The parties appeared before the undersigned administrative law judge on May 17, 2011 at the Division of Workers' Compensation (DWC), for a final hearing to determine the liability of the Second Injury Fund (SIF) at the request of Martin R. Squires (Claimant). Attorney Christopher Wagner represented Claimant. Assistant Attorney General Kristin Frazier represented the SIF. Venue is proper and jurisdiction lies with the DWC. The record closed after presentation of the evidence. Proposed awards were to be submitted by June 1, 2011.

The St. Louis County Government (Employer) is self-insured and previously settled the claim with Claimant for 30% permanent partial disability (PPD) of the right wrist, and did not participate in this proceeding.

STIPULATIONS

The parties stipulated that on or about November 1, 2007:

1. Claimant was employed by the Employer and sustained an accident which rose out of and in the course of employment in St. Louis County; Missouri;
2. The Employer and Claimant operated under the Missouri Workers' Compensation Law;
3. The Employer's liability was fully self-insured;
4. The Employer had notice of the injury;
5. The Claim for Compensation was timely filed;
6. Claimant's average weekly wage was \$549.15;
7. The rate of compensation is \$366.10 for temporary total disability (TTD), permanent total disability (PTD), and PPD;
8. The Employer paid TTD benefits totaling \$627.60 representing 1-5/7 weeks;
9. Employer paid medical benefits totaling \$10,994.58; and

10. Claimant achieved maximum medical improvement (MMI) on January 14, 2008

ISSUES

The issues to be determined are:

1. What is the nature and extent of permanent partial disability sustained by the Claimant from the primary injury, if any?
2. What is the nature and extent of SIF liability for PPD, if any?
3. What is the nature and extent of SIF liability for PTD, if any?

EXHIBITS

Claimant Exhibits A through D, and the SIF's Exhibit I were admitted without objection.

SUMMARY OF THE EVIDENCE

Only evidence necessary to support the award will be summarized. Any objections not expressly ruled on during the hearing or in this award are now overruled. To the extent that there are marks and highlights contained in the exhibits, those markings were made prior to becoming a part of this record and were not placed there by the undersigned administrative law judge.

Live Testimony

1. The Claimant testified live and his testimony was credible. At the time of the hearing, Claimant was 65 years old. Claimant dropped out of school in the ninth grade. At age 17, he joined the U.S. Navy and worked as a store keeper, then transferred to an aircraft carrier where he sailed to Vietnam. He earned a GED in the military, and received an honorable discharge after three years of service.
2. After discharge, Claimant worked at a packing house as a knocker for three years, where he killed cows and hung them up. For eleven years he drove a truck for Lakeshire Company. He worked as roofer for 5-1/2 years and as a bar tender for 10 to 15 years. For three years Claimant worked maintenance at a banquet hall where he set up and cleaned for special occasions.
3. In April 1995 Employer hired Claimant as a seasonal maintenance man for the St. Louis County Parks Department. After two years he was promoted to a full-time maintenance position at Jefferson Barracks, where he worked eight hours per day, forty hours per week, and was responsible for the upkeep of 450 acres. Claimant had additional duties at Jefferson Barracks.
4. Claimant cut grass, trimmed trees, cleaned restrooms, emptied trash, dug ditches, installed roofs, painted, shoveled snow, made minor repairs, maintained lawn equipment, completed time sheets, and performed other duties as assigned. The work required Claimant to stand, kneel, climb, squat and walk. He stood most of the time, except when he sat to mow the lawn.

5. To empty trash, he lifted liners from 55 gallon drums of trash. If a can was too heavy to lift, he sought help. He started using liners in 1998. He lifted up to 100 pounds on a daily basis.
6. While working for Employer, Claimant was self-employed part-time as a painter and a bartender in the summertime.
7. On November 1, 2007, Claimant tripped and fell off the curb as he attempted to throw a bag of trash onto a dump truck, and fractured his right wrist.
8. Claimant received emergency room treatment at St. Anthony's Hospital, and follow-up care with **David M. Brown, M.D.**, who inserted two external pins into the wrist. No surgery was performed due to Claimant's liver problems.
9. Dr. Brown removed the pins after they became infected, placed the wrist in a cast, prescribed physical therapy, and returned Claimant to work on light duty, with the use of the left hand only. Claimant returned to work but he did not perform any duties, with the consent of his supervisor. But on January 10, 2008, Claimant stopped working because he did not want his co-employees to carry his weight.
10. Dr. Brown released Claimant from care on January 14, 2008, however Claimant used sick leave and vacation time until it ran out on April 1, 2008. A short time later Claimant retired. Claimant did not receive additional treatment for his right wrist after Dr. Brown released him.
11. Claimant did not look for work because he could not lift the way he used to and did not believe he could perform the kind of work he had performed in the past. Currently, he receives Social Security Disability.
12. Claimant is right handed, but compensates with his left hand since the accident. He uses his left hand to open car doors, start the car ignition, and to steer. At home, he turns doorknobs with his left hand and kicks the door open with his left foot. Right wrist strength has decreased by 80 percent. He cannot pick up a pot of boiling water, and he has pain when he lifts an object straight up. Claimant can lift a gallon of milk from the ground but cannot set it on the table.
13. Claimant settled his claim with Employer for 30% PPD of the right wrist on August 21, 2008.¹
14. Claimant arrived for the hearing walking on a cane and his speech was slurred during his testimony.

Medical Treatment – Primary Injury

15. X-rays taken at St. Anthony's Medical Center revealed a comminuted intra-articular fracture of the right distal radius with severe dorsal angulation, and fracture of the ulnar styloid.

¹ Exhibit C, the Stipulation for Compromise Settlement, does not contain the Claimant's signature.

16. Dr. Brown performed a closed reduction and percutaneous pinning of the right distal radius fracture on November 8, 2007, ordered therapy and splinted the wrist. A closed procedure was performed because of Claimant's significant history of liver disease. Claimant was returned to one-handed duty on November 12, 2007.
17. On November 21, 2007, Dr. Brown diagnosed a pin track infection, removed the pins and placed Claimant in a splint.
18. Dr. Brown found Claimant had achieved MMI on January 14, 2008, and returned him to full duty, no restrictions, with a home exercise program.

Preexisting Disabilities

19. On January 20, 1997 Claimant fell on the ice at home and fractured the distal radius and ulna of his **left wrist**. He received treatment from John Cochran Hospital. On January 31, 1997, **Charles A. Goldfarb, M.D.**, surgically inserted two pins in his left wrist, and eventually released Claimant to work full duty.
20. Claimant returned to work however the wrist continued to have symptoms. His first assignment after he returned to work required him to paint trash cans which he painted with his right hand. The wrist improved but was never completely normal. Five years after the left wrist injury, the wrist continued to hurt but he improvised and worked through it. He has difficulty pulling up his socks.
21. He cannot extend his index and middle fingers completely, he cannot hold a cigarette with his left hand. When he returned to work after the left hand injury he adjusted the way he performed his duties and operated at 60 percent of his pre-injury ability. He cannot bend or twist his wrist.
22. In 2006, Claimant had difficulty operating a weed eater, push mower or any pull start equipment due to lack of strength. He asked a seasonal worker to start the equipment and then Claimant operated it. It became difficult to move tables. Also, Claimant's supervisor transferred him to the Lemay Park a year before the injury because the park was only 25 acres and less physically demanding than Jefferson Barracks.
23. In August 2007, **Dr. Barry Brown**, a liver specialist, diagnosed **cirrhosis** of the liver. Claimant developed the condition after years of consuming beer. He stopped drinking on September 1, 2007. Symptoms included swelling of his legs and stomach, and weakness. However, symptoms did not interfere with his daily work activities. He did not realize it was a serious problem.
24. **Brian J. Bergfeld, M.D.**, Claimant's primary physician, removed fluid from his abdomen on November 29, 2007, May 8, 2008, July 24, 2008, December 2, 2008, January 22, 2009, June 23, 2009, and September 22, 2009. No fluid has been drained from his abdomen since September 2009. The fluid accumulation has decreased; however, he continues to feel weak, which he contributes to his liver. He does not currently see a liver

specialist. Dr. Bergfeld is satisfied with the condition of his liver at this time. Claimant has no interest in receiving a liver transplant.

25. Claimant does not believe he can perform less strenuous work because his liver remains weak. He is not interested in being retrained for less physically demanding work because of weakness which he contributes to cirrhosis.

Expert Medical Opinion

26. **Thomas F. Musich, M.D.**, is board certified in family practice, and he performs industrial evaluations. Dr. Musich examined Claimant on June 3, 2008 and May 18, 2009, took history, and submitted reports at the request of Claimant's attorney.
27. In 2008, a bilateral upper extremity examination revealed decreased range of motion, weakness, and fatigue. Dr. Musich recommended a home exercise program and advised Claimant to refrain from activities that would negatively impact his symptoms.
28. Regarding cirrhosis, Dr. Musich noted muscle wasting, abdominal ascites (fluid buildup), edema and general malaise.
29. Dr. Musich rated 60% PPD of the right wrist, 40% PPD for the left wrist, and 25% PPD of the body for cirrhosis. He concluded that the combined disabilities are greater than their simple sum and will continue to create a hindrance to daily activities.
30. In 2009, Dr. Musich's upper extremity examination remained unchanged from the prior year. Dr. Musich rated 60% PPD of the right wrist, 40% PPD of the left wrist, and noted problems with hepatic cirrhosis, but did not provide a rating. Dr. Musich concluded that the combined disabilities are greater than their simple sum and will continue to be a hindrance to daily activities.
31. Dr. Musich testified that he did not provide a cirrhosis rating in 2009. He explained that between reports he hoped Claimant's endurance would increase to the point that he could return to work, but it did not. Dr. Musich assumed Claimant was PTD based on the progressive nature of the condition and the need to periodically remove abdominal fluid. Furthermore, the condition caused fatigued. Dr. Musich conceded that no updated liver tests were available to confirm Dr. Musich's assumption.
32. Dr. Musich concluded that Claimant is unemployable in the open labor market from a medical perspective, based on his age, education, and training, and work experience, lack of transferable skills, subjective complaints, hand problems, cirrhosis, and medical records.

Expert Vocational Opinion

33. **James M. England, Jr.**, is a certified rehabilitation counselor. At the request of the SIF, Mr. England performed a records review and wrote a report dated February 23, 2011 based upon Claimant's deposition and medical records.

34. Mr. England concluded Claimant had transferable skills in the medium level for truck driving and light level based on sales experience. Claimant's ability to mow the lawn placed him in the sedentary to light range at home.
35. Based on a lack of medical restrictions, Mr. England concluded nothing prevented Claimant from returning to work for Employer in his former capacity. But if he could not, Claimant could work in sedentary to light entry level jobs, i.e. parking lot cashier, courier, security, and retail sales clerk.
36. **Delores Elvira Gonzalez** is a vocational rehabilitation counselor who testified on behalf of Claimant. Ms. Gonzalez conducted an in person evaluation of Claimant on May 21, 2010. She also reviewed Claimant's deposition and medical records and administered a test.
37. Ms. Gonzalez administered the Wide Range Achievement Test-4 (WRAT-4) which Claimant scored in the 6.1 grade level in Word Reading, grade 6.8 in Spelling, and grade 4.9 in Math Computation. Based on Claimant's low academic scores, Ms. Gonzalez concluded it would be difficult for Claimant to learn a new task that required basic reading, spelling, and arithmetic. Furthermore, she opined that Claimant would have problems keeping up with peers when situations required thinking and reasoning ability, given his below average intellect. Furthermore, his deficiency is consistent with quitting school in the 9th grade.
38. Ms. Gonzalez further opined that Claimant had no transferable skills because of his age, eighth grade education, and GED. Also, Claimant performed 16 years of medium, unskilled work, and required more than minimal vocational adjustments in the workforce to tools, work processes, work settings, and the industry.
39. Ms. Gonzalez concluded Claimant was not employable as a result of his primary injury, preexisting left wrist injury and cirrhosis, advanced age, education, lack of transferable skills, and low academic achievement in reading spelling, and math computation.

RULINGS OF LAW

After giving careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find Claimant met his burden to show the SIF is liable for PTD benefits.

The Last Injury Alone

Claimant seeks PTD benefits from the SIF due to the combined effect of the primary and preexisting disabilities. The SIF contends Claimant is not PTD as no physician imposed medical restrictions on Claimant's activities.

An employee has the burden to prove by a preponderance of credible evidence all material elements of his claim. *Meilves v. Morris*, 422 S.W.2d 335, 339 (Mo. 1968). To award

SIF liability under Section 287.220 RSMo. requires the fact finder to make the findings below regarding disability:

- 1) There must be a determination that the employee has permanent disability resulting from the last injury alone which is compensable, and
- 2) There was a pre-existing permanent disability that was serious enough to constitute a hindrance or obstacle to employment or re-employment which combines with the disability from the compensable work-related injury to create a greater overall disability to the employee's body as a whole than the simple sum of the disability from the work injury and the pre-existing disability considered separately, and for PTD benefits to be awarded;
- 3) There must be a determination that all of the injuries and conditions combined, including the last injury, resulted in the employee being permanently and totally disabled.

However, if a claimant's last injury rendered him permanently and totally disabled, the SIF has no liability and the employer is responsible for the entire amount. *Hughey v. Chrysler Corp.* 34 S.W.3d 845, 847 (Mo. App. 2000). Therefore, the inquiry begins with the Employer's liability.

I find Claimant sustained disability from the right wrist fracture. Dr. Musich found decreased range of motion, fatigue and weakness, and rated 60% PPD of the right wrist. I find Claimant's testimony is credible. Claimant has decreased strength and compensates with his non-dominate left hand. The Claimant settled his case with the Employer for 30% PPD, although the SIF is not bound to the settlement. However, based upon credible testimony by the Claimant, Drs. Brown and Musich, and medical records, I find Claimant sustained 30% PPD of the right wrist for the primary injury.

Permanent Total Disability

I find Claimant is PTD due to the combination of the primary injury and preexisting disabilities for the reasons stated below.

Section 287.020.7 RSMo (2000) defines "total disability"...as the inability to return to any employment and not merely [the] inability to return to the employment in which the employee was engaged at the time of the accident. Any employment means any reasonable or normal employment or occupation; it is not necessary that the employee be completely inactive or inert in order to meet this statutory definition. *Kowalski v. M-G Metals and Sales, Inc.* 631 S.W.2d 919, 922 (Mo. App. 1982) (*Citations omitted*).

The test for permanent total disability in Missouri is a claimant's ability to compete in the open labor market. The central question is whether any employer in the usual course of business could reasonably be expected to employ claimant in his present physical condition. *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W.2d 173, 178 (Mo.App. 1995) (*Overruled by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.banc 2003).²

² Several cases herein were overruled by *Hampton* on grounds other than those for which the cases are cited. No further reference will be made to *Hampton*.

I find credible the opinions of Dr. Musich and Ms. Gonzalez that Claimant is PTD due to the combined impact of both wrist fractures and cirrhosis. Dr. Musich's explanation is credible that he hoped Claimant's endurance would increase between 2008 and 2009, to the point he could return to work, but it did not. Updated tests results were not available, however, Dr. Musich was familiar with the progressive nature of cirrhosis and assumed Claimant was PTD based on the need to remove abdominal fluid periodically, fatigued caused by the condition, and residual problems with both upper extremities. Dr. Musich was the only doctor that examined the impact of all the disabilities on Claimant's ability to work.

Ms. Gonzalez acknowledged that no medical restrictions were imposed on Claimant's ability to work. However, her decision was based on Dr. Musich's opinion of chronic complaints of diminished mobility, malaise, muscle atrophy, weakness, edema, and bowel distention. In addition, Ms. Gonzalez considered Claimant's advanced age, lack of education and transferable skills, and below average ability to learn new vocational skills. Ms. Gonzalez interviewed Claimant. She observed that Claimant was a "very thin, frail-looking man with a very distended abdomen, [who] looked very unhealthy. He would not present well in a job interview situation." Also, Ms. Gonzalez administered an academic test.

In contrast, Mr. England did not interview Claimant and no tests were administered. Mr. England based his opinion solely on a lack of medical restrictions contained in the records for the primary and preexisting conditions. He did not address age, transferable skills, academic ability or the impact of Claimant's primary and preexisting disabilities on his ability to work.

Claimant's testimony is credible that he cannot work due to fatigue and right arm limitations. He continues to retain fluid, although it has not been drained in almost two years. During the hearing, I observed Claimant's gait was unsteady, he walked with a cane, and his speech was slurred.

Based on credible testimony by Dr. Musich, Ms. Gonzalez, and Claimant, medical records and reports, Claimant's advanced age, and lack of transferable skills and education, I find no employer in the usual course of business could reasonably be expected to employ Claimant in his present physical condition. I find Claimant to be permanently and totally disabled due to a combination of his primary and preexisting medical conditions.

Commencement date of permanent total disability payments

In cases of permanent total ...disabilit[y], payment is due at the start of the disability. Thus, payment should have begun when the disability began. ***Kramer v. Labor & Indus. Relations Commission*** 799 S.W.2d 142, 145 (Mo. App. 1990).

Dr. Brown determined that Claimant reached MMI on January 14, 2008 and the parties stipulated that Claimant achieved MMI on that date. Therefore, I find Claimant reached MMI as of January 14, 2008, Claimant became PTD as of that date, and compensation should have started as of that date.

I previously found Claimant sustained 30% PPD of the right wrist as a result of the November 1, 2007 injury. Therefore, I find the SIF is liable for \$366.10 per week commencing

retroactively on January 15, 2009 for the remainder of Claimant's life. *Laturno v. Carnahan*, 640 S.W.2d 470 (Mo.App.1982).³

³ The rate of compensation is same for the Employer and the SIF, \$366.10. Therefore, Employer is liable for 52.2 weeks of disability (175 weeks x 30%), beginning January 14, 2008. The SIF's liability begins effective January 15, 2009.

CONCLUSION

Claimant is found to be permanently and totally disabled. SIF is liable for benefits. The issue of permanent partial disability benefits from the SIF is moot. Claimant's attorney is entitled to a 25% lien for legal services rendered.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation