

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

Injury No.: 98-179096

Employee: Suzanne Stecher
Employer: Dr. Donald Oliver (Settled)
Insurer: N/A
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence and briefs, and we have considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated October 22, 2008.

Preliminaries

Employee settled her claim against employer for 37.5% permanent partial disability of the body as a whole with regard to her cervical spine and proceeded to final hearing against the Second Injury Fund. The administrative law judge heard this matter to consider what, if any, is the nature of Second Injury Fund liability.

The administrative law judge “felt” that Dr. Volarich’s rating of 20% permanent partial disability of the body as a whole rated at the neck was too high. He further stated that employee’s preexisting injuries, amount to less than the required 12.5% permanent partial disability of the body as a whole, or 15% permanent partial disability of an extremity, which is required to trigger Second Injury Fund liability. Therefore, the administrative law judge found that there was no Second Injury Fund liability.

On November 12, 2008, employee appealed to the Commission alleging that the administrative law judge erred in finding that employee’s preexisting injuries did not meet the Second Injury Fund threshold. Specifically, employee argued that the administrative law judge’s opinion rested upon his personal opinion unsupported by sufficient or competent evidence.

On April 7, 2009, we remanded the matter to the administrative law judge with directions to make more specific findings of fact regarding why he did not accept the expert opinion of Dr. Volarich regarding the nature and extent of employee’s preexisting permanent disabilities.

On remand, the administrative law judge made additional findings of fact. Specifically, the administrative law judge found that “Dr. Volarich’s and [Mr.] England’s credibility is uncertain due to the fact that subsequent to the primary injury and prior disabilities that [employee] had at the time of the hearing were in the experts viewpoint reason for [employee] being permanent[ly] and totally disabled.” He was referring to employee’s

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right carpal tunnel surgery and employee having had both knees operated on. The administrative law judge stated that he “think[s] those injuries and surgeries and the problems subsequent to those surgeries certainly would have a great deal to do with the unemployability of the employee.” For the foregoing reasons, he reiterated his finding that employee is only permanently partially disabled and that there is no Second Injury Fund liability referable to this claim.

Therefore, the primary issue currently before the Commission is the nature and extent of any Second Injury Fund liability.

Findings of Fact

Employee was working as an orthodontic assistant for Dr. Oliver on November 2, 1998, when her feet became entangled in some wires and she tripped and fell, causing injuries to her neck.

Employee testified that before this injury occurred she was having problems with her cervical arthritis for which she had physical therapy and anti-inflammatory drugs. In a medical report dated March 16, 1998, (before the primary injury) and prepared by Drs. Patricia Naslund and Richard Sohn, they provide a history of employee's preexisting problems which included severe headaches, frequent numbness in her hand, and low back pain. Dr. Naslund found a decreased range of motion in her neck, as well as spasms in both her trapezius muscles and neck muscles. Dr. Sohn, in reviewing cervical spine films and MRI/CT scans, noted severe degenerative disc disease and a cervical bulging disc, but no definite compression of her root or spinal cord.

Employee testified that after her accident on November 2, 1998, her neck problems continued with severe soreness and terrible headaches and muscle spasms in her upper shoulders. She stated that she wore a neck collar at work sometimes and had to leave work on occasion because the pain was too unbearable.

On October 29, 2002, Dr. Krettek operated on employee's neck, performing an anterior arthrodesis at C4 and C5; an extensive discectomy/spondylectomy/decompression at C4-5; and a structural allograft at C4-5 and C5-6 with screws and plates. Then on February 16, 2005, Dr. Riew operated on employee's neck performing an anterior cervical discectomy at C2-3, C3-4; an anterior fusion at C2-2, C3-4 and removal of anterior cervical plate from C4-6; and anterior cervical plating at C3-4.

Employee returned to Dr. Riew with continuing neck complaints and Dr. Riew told her that she needed to have a fusion done from the base of her skull with rods all the way down to her thoracic level.

Dr. Volarich opined that as a direct result of employee's November 2, 1998, accident she is 50% permanently partially disabled of the body as a whole, rated at the cervical spine. Dr. Volarich further opined that, prior to the primary injury, employee was 20% permanently partially disabled of the body as a whole rated at her cervical spine, 5%

Employee: Suzanne Stecher

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permanently partially disabled of the body as a whole rated at her lumbar spine, and 10% permanently partially disabled of the right upper extremity rated at her right wrist. Dr. Volarich stated that all of said preexisting disabilities posed a hindrance to her employment or reemployment.

There was no contradicting expert opinion, expert testimony, or medical records submitted concerning employee's disabilities.

Conclusions of Law

Under Missouri Workers' Compensation law, any preexisting injury, which could be considered "a hindrance or obstacle to employment or to obtaining reemployment..." should trigger Second Injury Fund liability. *Leutzinger v. Treasurer of Missouri Custodian of the Second Injury Fund*, 895 S.W.2d 591, 593 (Mo. App. 1995) (citations omitted).

In finding that there is no Second Injury Fund liability, the administrative law judge made a determination that is not supported by substantial and competent evidence. The testimony from employee and Dr. Volarich, in addition to the medical records, are all consistent in showing that employee had serious work affecting preexisting conditions of her cervical spine. The Second Injury Fund did not offer any witnesses, expert evidence, or medical records to rebut employee's evidence.

The medical records submitted by employee include multiple complaints about her neck, back, and wrist. In addition, the medical records include multiple diagnostic procedures, physical therapy, traction, and prescriptions confirming employee's degenerative disk disease of her neck and back.

The administrative law judge's award seems to rest upon his personal opinion that Dr. Volarich's 20% rating is too high. However, he does not provide any evidence in support of said opinion. This is not allowed under Missouri Workers' Compensation law when there is undisputed evidence in the record. In fact, the Commission is prohibited from deciding in this manner under *Houston v. Roadway Express, Inc.*, 133 S.W.3d 173 (Mo. App. 2004) (citations omitted). In *Houston*, the court stated:

The Commission may not arbitrarily disregard and ignore competent, substantial and undisputed evidence of witnesses who are not shown by the record to have been impeached, and the Commission may not base their findings upon conjecture or their own mere personal opinion unsupported by sufficient competent evidence.

The administrative law judge stated in his "Additional Findings of Fact" that he believed Dr. Volarich and Mr. England's opinions were not credible. However, the only basis he states for this contention is that he believes that employee's subsequent surgeries and carpal tunnel release affected their opinions. He does not provide any support for this presumption, nor does he offer a percentage he believes employee's preexisting permanent partial disability should be.

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In sum, the administrative law judge's award is not supported by the competent and substantial evidence. Dr. Volarich's rating of 20% preexisting permanent partial disability of the body as a whole rated at the cervical spine was not contradicted. The administrative law judge merely "felt" that rating was too high, but did not cite to any of the voluminous medical records or provide any affirmative support whatsoever for this "feeling."

For the foregoing reasons, we reverse the administrative law judge's award and find that employee was 20% permanently partially disabled of the body as a whole due to preexisting injuries to her cervical spine. This 20% preexisting permanent partial disability and employee's primary injury, which resulted in a disability of 37.5% permanent partial disability, combined to result in an enhancement of 10% permanent partial disability of the body as a whole. The Second Injury Fund shall be liable for this 10% (or 23 weeks) enhancement, which amounts to a total of \$6,778.79 (23 weeks x \$294.73 PPD rate).

The award and decision of Administrative Law Judge Cornelius T. Lane, issued October 22, 2008, and Additional Findings of Fact, are attached hereto for reference.

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

Given at Jefferson City, State of Missouri, this 24th day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Suzanne Stecher

Injury No.: 98-179096

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Dr. Donald Oliver (settled)

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

Additional Party: Second Injury Fund

Insurer: N/A

Hearing Date: August 14, 2008

Checked by: CTL:td

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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 2, 1998
5. State location where accident occurred or occupational disease was contracted: St. Louis 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Fell at work
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: Neck
14. Nature and extent of any permanent disability: With regard to primary injury was settled for 37.5% of the neck as body as a whole
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Suzanne Stecher

Injury No.: 98-179096

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$562.67/\$294.73
20. Method wages computation: By agreement of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: \$0.00 (Primary case was settled)
22. Second Injury Fund liability: No

TOTAL: \$ 0.00

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Suzanne Stecher	Injury No.:	98-179096
Dependents:	N/A		Before the
Employer:	Dr. Donald Oliver (settled)		Division of Workers'
Additional Party:	Second Injury Fund		Compensation
			Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Insurer:	N/A	Checked by:	CTL:td

PREFACE

A hearing was held in the above mentioned-matter on August 14, 2008. Claimant, Suzanne Stecher, was represented by Assistant Attorney James B. Kleinschmidt. The Second Injury Fund was represented by Assistant Attorney General Joseph Diekemper.

STIPULATIONS

The parties stipulated to the following:

1. Claimant sustained a compensable injury arising out of and in the course of her employment with Employer, Dr. Donald Oliver, on November 12, 1998;
2. Claimant's compensation rate for permanent total disability is \$562.67, for permanent partial disability is \$294.73 per week.

ISSUE

1. What, if any, is the nature and extent of Second Injury Fund liability?

EXHIBITS

Claimant offered exhibits A-O, which were accepted into evidence. No exhibits were offered by the Second Injury Fund.

FINDINGS OF FACT

Based on competence, substantial evidence I find:

1. Claimant, Suzanne Stecher, on November 2, 1998, while in the employment of Dr. Donald Oliver, where she worked as an orthodontic assistant for many years, injured herself when Claimant's feet became entangled in some wires and she tripped and fell and injured her neck. Eventually on October 29, 2002, Dr. Krettek performed surgery on her neck for anterior arthrodesis at the C4-C5 and C5-C6 level. Claimant in her primary

case settled, injury of the neck, for 37.5% permanent partial disability of body as a whole.

- 2. Prior to Claimant injury of November 2, 1998, her prior disabilities which were testified to was essentially was she had neck problems and was diagnosed with cervical degenerative disk disease in the neck and Dr. Volarich rated it at 20% with body as a whole. I feel the rating is too high and the prior injury would be less than the required 12.5% body as a whole as require by the law of Missouri with regard to "preexisting injuries". With regard to Dr. Volarich's opinion that prior to her injury on November 2, 1998, she had a 5% permanent partial disability of lumbar spine degenerate disk disease, I feel that this does not reach threshold. Claimant's prior injury of mild unoperated carpal tunnel syndrome which Dr. Volarich rated at 10%, does not meet requirements that are considered in our statue. Claimant's disability from her preexisting conditions that were just mentioned, do not meet 12.5% for injuries of body as a whole or 15% for extremity.

RULINGS OF LAW

That Claimant's disability from preexisting conditions does not meet the Second Injury Fund threshold of 12.5% injury body as a whole or 15 % for extremities. So there is no Second Injury Fund liability.

Date: _____

Made by: _____

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

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation

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

Injury No.: 01-033259

Employee: Suzanne Stecher
Employer: Dr. Edmund L. Yopez (Settled)
Insurer: Harford Insurance Company (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence and briefs, and we have considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated October 22, 2008.

Preliminaries

Employee settled her claim against employer for 35% permanent partial disability of the body as a whole with regard to the lumbar spine and proceeded to final hearing against the Second Injury Fund. The administrative law judge heard this matter to consider the nature of Second Injury Fund liability.

The administrative law judge “felt” that Dr. Volarich’s and Mr. England’s opinions that employee is permanently and totally disabled as a result of the primary and prior injuries were affected by employee’s subsequent surgeries to her knees and carpal tunnel release. Therefore, the administrative law judge found that “[t]he synergistic effect of the combination of [employee’s] preexisting and primary injuries consist of 290 weeks [= 150 weeks (37.5% PPD for 1998 primary injury) + 140 weeks (35% PPD for 2001 primary injury)] with a load factor of 40% for a total of 116 weeks of permanent partial disability to the combination disability at the rate of \$314.26 per week for a payment by the Second Injury Fund of \$36,454.16.

On November 10, 2008, employee appealed to the Commission alleging that the administrative law judge erred in finding that employee is not permanently totally disabled and that employee’s preexisting injuries do not meet the Second Injury Fund threshold. Specifically, employee argued that the administrative law judge’s opinion rested upon his own personal presumptions of the thought processes of Dr. Volarich and Mr. England.

On April 7, 2009, we remanded the matter to the administrative law judge with directions to make more specific findings of fact regarding why he did not accept the expert opinions of Dr. Volarich and Mr. England and why he determined that they considered post-accident worsening of employee’s conditions in reaching their opinions regarding the nature and extent of employee’s resulting permanent disability.

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On remand, the administrative law judge made additional findings of fact. Specifically, the administrative law judge found that “Dr. Volarich’s and [Mr.] England’s credibility is uncertain due to the fact that subsequent to the primary injury and prior disabilities that [employee] had at the time of the hearing were in the experts viewpoint reason for [employee] being permanent[ly] and totally disabled.” He was referring to employee’s right carpal tunnel surgery and employee having had both knees operated on. The administrative law judge stated that he “think[s] those injuries and surgeries and the problems subsequent to those surgeries certainly would have a great deal to do with the unemployability of the employee.” For the foregoing reasons, he reiterated his finding that employee is only permanently partially disabled, not permanently totally disabled.

Therefore, the primary issue currently before the Commission is the nature and extent of Second Injury Fund liability.

Findings of Fact

Employee was working as an orthodontist assistant for Dr. Yopez on January 13, 2001, when she slipped and fell on ice in the parking lot, causing injuries to her lower back.

Before this 2001 accident occurred, employee suffered a prior work-related injury to her cervical spine on November 2, 1998. Employee settled this 1998 claim with her previous employer, Dr. Oliver, for 37.5% permanent partial disability of the body as a whole rated at the cervical spine. Employee testified that even before the 1998 injury occurred she was having problems with her cervical arthritis for which she had physical therapy and anti-inflammatory drugs. In a medical report dated March 16, 1998, (before the 1998 accident) and prepared by Drs. Patricia Naslund and Richard Sohn, they provide a history of employee’s preexisting problems which included severe headaches, frequent numbness in her hand, and low back pain. Dr. Naslund found a decreased range of motion in her neck, as well as spasms in both her trapezius muscles and neck muscles. Dr. Sohn, in reviewing cervical spine films and MRI/CT scans, noted severe degenerative disc disease and a cervical bulging disc, but no definite compression of her root or spinal cord.

Employee testified that after her accident on November 2, 1998, her neck problems continued with severe soreness and terrible headaches and muscle spasms in her upper shoulders. She stated that she wore a neck collar at work sometimes and had to leave work on occasion because the pain was too unbearable.

Employee testified that after her neck injury on November 2, 1998, and up until her lower back injury on January 13, 2001, her headaches had gotten better but she continued to experience muscle spasms in her upper shoulder and if she did anything with her arms such as vacuuming or her duties at work as an orthodontist assistant, she would have pain and headaches. She also stated that during that time period she would have to lay down on ice at night to manage the pain.

Employee testified that after the January 13, 2001, accident, she had trouble walking, could not bend her back, could not bend down or get on the floor to get equipment out

Employee: Suzanne Stecher

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of the drawers at work, and had to depend on another employee to do this for her. Employee stated that she finally reached a point where she could no longer work in October of 2002.

On October 29, 2002, Dr. Krettek operated on employee's neck, performing an anterior arthrodesis at C4 and C5; an extensive discectomy/spondylectomy/decompression at C4-5; and a structural allograft at C4-5 and C5-6 with screws and plates. On February 24, 2004, Dr. Boland performed a fusion on employee's lower back at L4 and L5. Then on February 16, 2005, Dr. Riew operated on employee's neck performing an anterior cervical discectomy at C2-3, C3-4; an anterior fusion at C2-2, C3-4 and removal of anterior cervical plate from C4-6; and anterior cervical plating at C3-4.

Employee testified at the hearing that she recently returned to Dr. Riew with continuing neck complaints and Dr. Riew told her that she needed to have a fusion done from the base of her skull with rods all the way down to her thoracic level.

Dr. Volarich opined that as a direct result of employee's November 2, 1998, accident she is 50% permanently partially disabled of the body as a whole, rated at the cervical spine. Dr. Volarich further opined that, prior to the 1998 injury, employee was 20% permanently partially disabled of the body as a whole rated at her cervical spine, 5% permanently partially disabled of the body as a whole rated at her lumbar spine, and 10% permanently partially disabled of the right upper extremity rated at her right wrist. Dr. Volarich stated that all of said preexisting disabilities posed a hindrance to her employment or reemployment.

Dr. Volarich testified that employee has a 35% permanent partial disability of the body as a whole rated at the lumbosacral spine due to her lumbar radicular syndrome that required L4-5 decompression laminectomy, posterior fusion with bone grafting and instrumentation. He stated that this rating accounts for the injury of January 13, 2001 and its contribution to employee's back pain, lost motion, continual or extremity paresthesias and weakness.

Dr. Volarich testified that employee is permanently and totally disabled as a direct result of the work-related injuries of November 2, 1998 and January 13, 2001, in combination with each other as well as in combination with all of her preexisting medical conditions before those two dates. Dr. Volarich also placed numerous restrictions on employee concerning her neck, back, and right wrist.

Mr. James England, a board certified Rehabilitation Counselor, testified that after reviewing numerous medical records and meeting with employee, it was his opinion that employee would not be able to successfully continue in her career or compete successfully for alternative employment. Mr. England based his opinion upon the neck and back injuries and conditions and Dr. Volarich's restrictions.

There was no contradicting expert opinion, expert testimony, or medical records submitted concerning employee's disabilities.

Employee: Suzanne Stecher

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Conclusions of Law

First, there is no questioning that employee suffered from preexisting disabilities prior to the January 13, 2001, accident. Second, there is no questioning that the January 13, 2001, accident resulted in permanent partial disability to employee's body as a whole. The only issue concerning this case is what the nature and extent of employee's permanent disability is resulting from the combination of these disabilities.

Permanent and total disability is defined by section 287.020.7 RSMo, as the "inability to return to any employment"

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

Gordon v. Tri-State Motor Transit Company, 908 S.W.2d 849, 853 (Mo.App. 1995) (citations omitted).

The testimony of employee, Dr. Volarich, and Mr. England, along with the supporting medical records and reports, are all consistent in showing that employee suffered from serious preexisting disabilities that, when combined with this primary injury, result in her permanent and total disability. Dr. Volarich, the only medical expert who testified and/or provided a thorough independent medical evaluation, placed numerous restrictions on employee and ultimately concluded that employee is permanently totally disabled. Mr. England, the only vocational and rehabilitation expert who testified and/or provided a vocational assessment, buttressed the opinion of Dr. Volarich and concluded that employee would not be able to successfully continue in her career or compete successfully for alternative employment. The Second Injury Fund did not offer any witnesses, expert evidence, or medical records to rebut employee's evidence.

In finding that employee is merely permanently partially disabled and not permanently totally disabled, the administrative law judge made a determination that is not supported by substantial and competent evidence. The administrative law judge's award seems to rest upon his personal opinion that Dr. Volarich and Mr. England's opinions were "affected by [employee's] subsequent surgeries to her knees and carpal tunnel release." However, he does not cite to or reference any evidence from the record to support this presumption. Deciding cases based upon personal opinions is not allowed under Missouri Workers' Compensation law. In fact, the Commission is prohibited from deciding in this manner under *Houston v. Roadway Express, Inc.*, 133 S.W.3d 173 (Mo. App. 2004) (citations omitted). In *Houston*, the court stated:

The Commission may not arbitrarily disregard and ignore competent, substantial and undisputed evidence of witnesses who are not shown by the record to have been impeached, and the Commission may not base

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their findings upon conjecture or their own mere personal opinion unsupported by sufficient competent evidence.

In sum, the administrative law judge's award is not supported by the competent and substantial evidence. Dr. Volarich's and Mr. England's opinions regarding the nature and extent of employee's permanent disabilities are supported by the voluminous medical records and are not contradicted by any evidence in the record. The administrative law judge merely "felt" that the experts' opinions were affected by employee's subsequent surgeries to her knees and carpal tunnel release, but did not provide any support for this theory.

For the foregoing reasons, we reverse the administrative law judge's award and find that employee is permanently and totally disabled as a direct result of the combination of her injuries. We find that the primary injury, which occurred on January 13, 2001, resulted in 35% permanent partial disability of the body as a whole rated at the lumbar spine, the November 2, 1998 injury, resulted in 37.5% permanent partial disability of the body as a whole rated at the cervical spine, and that employee had disabilities preexisting the November 2, 1998, injury of: 20% permanent partial disability of the body as a whole rated at the cervical spine, 10% permanent partial disability of the right upper extremity rated at the right wrist, and 5% permanent partial disability of the body as a whole rated at the lumbar spine. We further find that employee reached maximum medical improvement on December 19, 2006 (the date of Dr. Volarich's independent medical evaluation).

The award and decision of Administrative Law Judge Cornelius T. Lane, issued October 22, 2008, and Additional Findings of Fact issued April 21, 2009, are attached hereto for reference.

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

Given at Jefferson City, State of Missouri, this 24th day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Suzanne Stecher Injury No.: 01-033259
Dependents: N/A Before the
Employer: Dr. Edmund L. Yopez (settled) **Division of Workers'**
Compensation
Additional Party: Second Injury Fund Department of Labor and Industrial
Relations of Missouri
Insurer: Hartford Insurance Company Jefferson City, Missouri
Hearing Date: August 14, 2008 Checked by: CTL: TD

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: January 13, 2001
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 at work.
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: Lumbar spine
14. Nature and extent of any permanent disability: 35% of the body as a whole related to lumbar spine.
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Suzanne Stecher

Injury No.: 01-033259

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: 434.96/314.26
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable: N/A

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)

weeks of permanent partial disability from Employer

weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning , for
Claimant's lifetime

- 22. Second Injury Fund liability: Yes

116 weeks of permanent partial disability from Second Injury Fund at the rate of \$314.26.

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:
weekly differential () payable by SIF for weeks beginning
and, thereafter, for Claimant's lifetime

TOTAL: \$36,454.16

- 23. Future requirements awarded:

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 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:

Employee:	Suzanne Stecher	Injury No.:	01-033259
Dependents:	N/A	Before the	
Employer:	Dr. Edmund L. Yopez (settled)	Division of Workers'	
Additional Party:	Second Injury Fund	Compensation	
		Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Hartford Insurance Company	Checked by:	CTL: TD

PREFACE

A hearing was held on the above mentioned-matter on August 14, 2008. Claimant, Suzanne Stecher, was represented by Attorney James B. Kleinschmidt. The Second Injury Fund was represented by Assistant Attorney General Joseph Diekemper.

STPIULATIONS

The parties stipulated to the following:

1. Claimant sustained a compensable injury arising out of and in the course of her employment with Employer, Dr. Edmund Yopez, on January 13, 2001;
2. Claimant's compensation rate for permanent total disability is \$434.96 for permanent partial disability is \$314.26 per week.

ISSUE

1. What, if any, is the nature and extent of Second Injury Fund liability?

EXHIBITS

Claimant offered exhibits A-O, which were accepted into evidence. No exhibits were offered by the Second Injury Fund.

FINDINGS OF FACT

Based on competence, substantial evidence I find:

1. At the time of the hearing Claimant, Suzanne Strecher, was 64 years of age. On January 13, 2001, Claimant was injured at her Employer, Dr. Edmund Yopez, when she fell in the parking lot at his place of business. Claimant, as a result of the injury, injured her back and underwent surgery by Dr. Boland on February 24, 2004, for a L4-L5 decompressive laminectomy with posterior lumbar interbody fusion with instrumentation and a placement of autologous bone graft iliac crest plug.
2. Claimant still has many problems with her back and lack of ability to move it. Claimant experiences pain in her back down into her legs as a result of her injury. Claimant settled against her employer on April 23, 2008 for 35% of the body as a whole with regard to the lumbar spine.
3. Claimant, prior to her injury of January 13, 2001, sustained an injury on November 1, 1998, when she was working for Dr. Donald Oliver. She tripped over some wires in the doctor's office and injured her neck. As a result of her fall she sustained injury to her neck. Claimant underwent surgery which required anterior and posterior fusions to C2-C6.
4. Claimant, as a result of her neck injury, has neck pain, loss of motion, and myofascial symptoms. Claimant's injury of November 2, 1998, was settled for 37 ½% of the body as a whole with regard to the neck.
5. Claimant, subsequent to her injury of January 13, 2001, underwent a right total knee replacement in May 2006 and a left knee total replacement on August 2006. Claimant also underwent right carpal tunnel release in 2004.
6. Dr. Volarich was of the opinion that Claimant was permanently total disabled as a result of the primary and prior injuries, but I think his opinions regarding disability had to be affected by Claimant's subsequent surgeries to her knees and carpal tunnel release.
7. Mr. James England, a vocational rehabilitation expert, testified that he felt Claimant was permanently and totally disabled and unable to obtain employment. I feel, at the time Mr. England saw Claimant when she underwent all the medical surgery on her knees and her right wrist. I feel his opinions of Claimant being totally disabled had to take into consideration Claimant's subsequent operations January 13, 2001, to wit, knee surgeries, and carpal tunnel surgeries.

RULINGS OF LAW

Claimant, as a result of the primary injury of January 13, 2001, sustained 35% permanent partial disability body as a whole referable to the lumbar spine which amounts to 140 weeks of permanent partial disability at \$314.26 per week for a total of \$43,994.40. As a result of the previous injury on November 2, 1998, Claimant sustained 37½ % body as a whole relating to the neck for a total of 150 weeks of permanent partial disability at the rate of \$314.26 for a total of \$47,139.00. The synergistic effect of the combination of Claimant's pre-existing and primary injuries consist of 290 weeks with a load factor of 40% for a total of 116 weeks of permanent partial disability attributable to the combination disability at the rate of \$314.26 per week for a payment by the Second Injury Fund of \$36,454.16.

Date: _____

Made by: _____

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

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation