

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

Injury No.: 04-126721

Employee: Gerald Steinkamp  
Claimant: Debra L. Steinkamp  
Employer: American Airlines (Settled)  
Insurer: American Home Assurance (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 § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 3, 2014. The award and decision of Administrative Law Judge Margaret D. Landolt, issued February 3, 2014, 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 24<sup>th</sup> day of September 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Gerald Steinkamp

Injury No.: 04-126721

Dependents: N/A

Employer: American Airlines (Settled)

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

Additional Party: Second Injury Fund

Insurer: American Home Assurance (Settled)

Hearing Date: November 5, 2013

Checked by: MDL

### 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 5, 2004
5. State location where accident occurred or occupational disease was contracted: 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:  
Employee was lifting heavy bags.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right shoulder and low back
14. Nature and extent of any permanent disability: 15.5% PPD of the right shoulder and 5% PPD of the body as a whole referable to the low back previously settled with Employer.
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Gerald Steinkamp

Injury No.: 04-126721

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$533.33/\$354.05
- 20. Method wages computation: By stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:	SETTLED
22. Second Injury Fund liability: Yes	
30.442 weeks of permanent partial disability from Second Injury Fund	\$10,777.99
TOTAL:	\$10,777.99
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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Joseph Montecillo

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

Employee: Gerald Steinkamp

Injury No.: 04-126721

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: American Airlines (Settled)

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

Additional Party: Second Injury Fund

Insurer: American Home Assurance (Settled)

Checked by: MDL

### **PRELIMINARIES**

A hearing was held on November 5, 2013 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Gerald Steinkamp ("Claimant") was represented by Mr. Joseph Montecillo. Claimant did not appear at the hearing because he was in a hospice program due to his medical condition of stage four lung cancer. Claimant's testimony was received by deposition. American Airlines ("Employer") and its insurer previously settled their liability with Claimant, and this matter proceeded to a hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General Joye Hudson. Mr. Montecillo requested a fee of 25% of Claimant's award.

The parties stipulated that on or about November 5, 2004, Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant's rates of compensation are \$533.33 for Temporary Total Disability ("TTD") and Permanent Total Disability ("PTD") benefits; and \$354.05 for Permanent Partial Disability ("PPD") benefits.

The issues to be determined are whether the SIF is liable for PPD or PTD benefits, and on what date did Claimant reach maximum medical improvement.

### **SUMMARY OF EVIDENCE**

Claimant is a 62 year old man with a high school diploma and a three month course at airline school where he learned to work in reservations, ticketing, weight and balance of the aircraft, and loading and unloading aircraft. For his entire working career, except for a short tour of duty in the Army, Claimant worked for Employer, first when it was known as Ozarks Airlines, then later, TWA, then finally American Airlines.

Claimant initially worked as a customer service agent, which encompassed ticketing, working the ticketing counter, gates, ramp, and loading and unloading cargo and freight. Since

1986 Claimant worked the ramp only, which was a more physically demanding job than ticketing.

### **PRIOR INJURIES**

In September 1997, Claimant sustained a work related injury when he fell off an airplane and landed on his buttocks. Claimant was hospitalized for two days, and was diagnosed with an L1 compression fracture. Claimant was put in a body brace for approximately 3 months, followed by physical therapy. Claimant was released to light duty in March 1998, and full duty in May 1998. He also complained of pain in both wrists. Claimant was treated with a brace on his right wrist and physical therapy. Claimant was released from his wrist injury in December 1998. Claimant settled his claim with Employer for 12.5% PPD of the body as a whole referable to the back, and 15% PPD of the right wrist. After his 1997 injury until 2004, Claimant was in pain, and developed tingling in the toes on his left foot. He had to limit himself and ask for help with heavy lifting. He tried to take more work outside the cargo area of the aircraft, which was less physically demanding because it did not require him to crawl around inside the belly of the plane. At home, he had difficulty mowing the yard and trimming the bushes. He had difficulty gardening because it was painful for him to bend over. Before his 1997 accident he enjoyed hunting and fishing. After his 1997 accident, and leading up to his 2004 injury, he was no longer able to deer hunt from a stand, and had to hunt from the ground. He limited his fishing because he had difficulty sitting in a boat for any length of time. With respect to his wrist, leading up to 2004, Claimant had pain with hyperextension, he wore a wrist brace, and he had difficulty working effectively with his right hand.

Claimant testified he had memory problems prior to 2004. Claimant was diagnosed with sleep apnea prior to 2004, and slept with a CPAP machine.

In July 1999, Claimant was injured at work when he was driving a tug with an attached cart, was rear ended, and sustained a whiplash type injury; with associated increase in back pain. The pain was so intense he rolled out of the tug onto the tarmac. He landed on his left knee and developed an increase in low back pain as well as neck pain. Claimant treated with the company doctor, and his own chiropractor, and underwent physical therapy. Following his injury, and leading up to 2004, Claimant had occasional neck stiffness, occasional light headedness, and suffered from headaches once a month. He reported constant back pain, different from the back pain from his September 1997 injury, because it was lower. Claimant settled his claim with Employer for 5% PPD of the body as a whole referable to the back.

In August 2004, Claimant sought treatment for his right knee. He indicated he had knelt down about two months earlier and had some fluid on the outer aspect of his right knee, and a burning feeling. Radiographs of the right knee revealed no evidence of any fractures, dislocations, or other bony abnormalities.

### **PRIMARY INJURY**

On November 5, 2004, Claimant was lifting heavy bags when he felt a pop in his back and shoulder, and felt instant numbness in his shoulder, arm, and back. Claimant received conservative treatment from Employer and was released to return to work when he injured his

low back again on December 28, 2004 when he was lifting a kennel onto an airplane. Claimant filed a claim for compensation for the December 2004 injury alleging injuries to his low back, left knee, right knee and body as a whole, but dismissed the claim as part of his settlement in the primary injury. Claimant never returned to work after his December 2004 injury.

Dr. Browdy provided treatment for Claimant's low back, and diagnosed a severe low back strain on February 1, 2005. Claimant gave Dr. Browdy a history of injuring his low back during two separate incidents at work in November and December. He reported being evaluated by Employer's physician, then receiving two weeks of physical therapy. Dr. Browdy diagnosed a severe strain on the lumbar spine. He indicated Claimant had physical therapy after the November injury but had a recurrent injury in late December, and did not have any treatment during the month of January. Claimant was prescribed a different anti-inflammatory medication and physical therapy. Claimant was released to work with permanent restrictions by Dr. Browdy on April 26, 2005. Although Dr. Browdy stated in writing on May 31, 2005 that Claimant was at maximum medical improvement, this was simply a response letter to the insurance carrier, and the last time Dr. Browdy examined Claimant was on April 26, 2005.

Claimant also received conservative treatment from Dr. Nogalski for his right shoulder. On January 18, 2005, Dr. Nogalski reviewed a January 11, 2005 right shoulder MRI and diagnosed right shoulder rotator cuff tendinitis and a possible tear of the subscapularis. He returned Claimant to work with restrictions. On February 1, 2005 Dr. Nogalski altered his diagnosis to right shoulder pain, right shoulder subscapular partial thickness tear vs. tendinosis. On February 15, 2005, Dr. Nogalski noted that he explained to Claimant that the type of tear he had was not a type of tear that is typically considered a surgical problem. Additional physical therapy was ordered. On March 1, 2005, Dr. Nogalski recommended a functional capacity evaluation. Claimant was released to work on March 14, 2005 with a restriction of no use of his right arm overhead.

While Claimant was treating for his November and December injuries he was also treating with Dr. Berni for bilateral knee complaints. Dr. Berni performed a right knee arthroscopy with chondroplasty of the medial femoral condyle and partial medial meniscectomy of the anterior horn on February 2, 2005. The Preoperative History and Physical stated Claimant's right knee difficulties began in December of 2004 after crawling around in the belly of an airplane, which is consistent with the December 28, 2004 claim for compensation that was dismissed by Claimant. Claimant continued to have left knee complaints, and Dr. Berni offered a left arthroscopy on March 10, 2005.

A functional capacity evaluation was performed on April 19, 2005. While this FCE was performed with respect to the low back and right shoulder, Claimant had undergone a right knee surgery two and half months before this FCE, and a left knee surgery had been recommended one month before. Claimant performed at the physical demand level of medium for occasional lifting. On April 26, 2005, Dr. Browdy provided work restrictions of no lifting or carrying greater than 40 pounds on an intermittent basis.

Dr. Berni performed a left knee arthroscopy with chondroplasty of the medial femoral condyle and partial lateral meniscectomy on May 25, 2005.

Dr. Nogalski last examined Claimant on October 2, 2005, at which time Claimant was pushing for surgery. Dr. Nogalski opined that Claimant's symptoms did not correlate with any specific objective findings, and he did not feel Claimant was a surgical candidate. This was Claimant's last appointment with Dr. Nogalski.

Claimant continued to seek treatment for his low back and right shoulder. On November 15, 2005, Claimant told Dr. Vernon that his low back pain had been worsening over the last year. Dr. Vernon suggested the possibility of a pain clinic referral. Due to continued right shoulder pain, Dr. Vernon ordered a right shoulder MRI. That MRI was performed on December 8, 2005.

Claimant underwent a second FCE on February 1, 2007 which concluded Claimant was capable of functioning in the sedentary physical demand level.

In addition to bilateral knee surgeries, Claimant also received treatment or diagnoses for other illnesses and conditions after November 5, 2004. Claimant treated for left elbow pain and tendinitis in October 2005. On February 12, 2008, Claimant was diagnosed with cervical spine degenerative disc disease, idiopathic peripheral neuropathy and chronic lymphocytic leukemia. Claimant testified he was diagnosed with ITP, a blood cancer, in the summer of 2007. After the November 5, 2004 date of injury, Claimant also underwent a number of surgeries, including a splenectomy, placement of a vena cava filter, surgery to the left ankle and toe, a cholecystectomy and a high pressure port-a-cath. He was also diagnosed with metastasized to back bone.

Dr. Raymond Cohen examined Claimant on October 2, 2008 and prepared a report. Claimant told Dr. Cohen he retired in November 2006, and has not worked since. As a result of the November 4, 2004 injury, Dr. Cohen diagnosed symptomatic multi level lumbar degenerative joint disease. As a result of the injury of December 28, 2004, Dr. Cohen diagnosed aggravation of lumbar spine degenerative spine disease, status-post right knee surgery for medial meniscus tear and aggravation of chondromalacia, and status-post left knee surgery for lateral meniscus tear and aggravation of chondromalacia. Dr. Cohen diagnosed pre-existing conditions of 1997 L-1 vertebral fracture, 1999 low back musculoskeletal injury with chronic low back pain and right wrist ganglion cyst. Dr. Cohen also diagnosed subsequent conditions of chronic lymphocytic leukemia, cervical spine degenerative disc disease and chronic polyneuropathy. Dr. Cohen provided separate ratings for Claimant's November 5, 2004 injury and December 28, 2004 injuries. He opined Claimant had overall disability of 52.5% PPD of the body as a whole with 17.5% pre-existing, 20% due to the November 5, 2004 injury, and 15% due to the work injury of December 28, 2004.

Dr. Cohen opined Claimant had pre-existing 15% PPD of the right wrist, and his pre-existing conditions or disabilities combined with the primary work related injury to create a greater overall disability than their simple sum. He opined due to Claimant's combination of disabilities Claimant is permanently and totally disabled, and not capable of gainful employment in the open labor market, and his pre-existing conditions or disabilities were a hindrance or obstacle to his employment or re-employment. He found no disability at the right shoulder level, since Claimant was asymptomatic, and had no findings at that level. He deferred any rating regarding Claimant's memory loss or depression to a mental health professional.

Dr. Matthew Pelikan evaluated Claimant on January 15, 2013, more than eight years after the November 5, 2004 date of injury. Dr. Pelikan prepared a report and testified on behalf of Claimant. Dr. Pelikan diagnosed aggravation of degenerative disc disease of the lumbar spine and right shoulder strain and aggravation of degenerative disease of the right shoulder as a result of the November 5, 2004 injury. Dr. Pelikan also agreed that the degenerative diseases of both the lumbar spine and right shoulder could have progressed in the eight years between Mr. Steinkamp's November 5, 2004 injury and his January 15, 2013 examination.

Dr. Pelikan did not provide any ratings. He testified he included several subsequent injuries, illnesses and condition in his list of pre-existing conditions, including the bilateral knee surgeries, left elbow pain and tendinitis, cervical degenerative changes with radicular symptoms, chronic lymphatic leukemia, and sensory motor neuropathy. Dr. Pelikan also testified he did not review any medical records prior to November 5, 2004 diagnosing Claimant with any memory issues.

Mr. James England, a vocational expert, examined Claimant on December 1, 2010 and prepared a report. Mr. England opined Claimant is permanently and totally disabled. He included the December 28, 2004 work related injury in his analysis, and relied upon the February 1, 2007 FCE, which showed a marked reduction in Claimant's physical demand level when compared to the April 19, 2005 FCE. Mr. England also relied upon the October 2, 2008 report provided by Dr. Cohen. This report clearly contemplated both the November 5, 2004 injury, as well as the subsequent December 28, 2004 work injury.

### **FINDINGS OF FACT AND RULINGS OF LAW**

Based upon a comprehensive review of the evidence, and the application of Missouri law, I find:

Claimant reached maximum medical improvement for the primary work injury on April 25, 2005, when Dr. Browdy gave permanent restrictions after a functional capacity evaluation. Although Dr. Browdy's MMI note is dated May 31, 2005, this was simply his written response to the insurance carrier. He did not examine Claimant that day. He last examined Claimant on April 26, 2005. Claimant did not receive any additional treatment between April 26, 2005, and May 31, 2005, and his condition had not changed in that time period.

"The Second Injury Fund compensates injured workers who are permanently and totally disabled by a combination of past disabilities and a primary work injury." *Carkeek v. Treasurer of the State of Missouri, as Custodian of the Second Injury Fund*, 352 S.W.3d 604, 608 (Mo. Ct. App. W.D. 2011) (internal quotation marks and citation omitted).

"The test for permanent total disability is whether the worker is able to compete in the open labor market." *Carkeek*, 352 S.W.3d at 608. A worker is totally disabled if they are unable to return to any normal or reasonable employment; the worker is not required to be inert or completely inactive. *Id.* The key question is whether any employer in the ordinary course of business would reasonably be expected to hire the worker in his or her current physical condition. *Id.*

For the Second Injury Fund to be liable, the claimant's preexisting disability and disability from a subsequent injury must combine in one of two ways: "(1) the two disabilities combined result in a greater overall disability than that which would have resulted from the new injury alone and of itself; or (2) the preexisting disability combined with the disability from the subsequent injury to create permanent total disability." *Uhlir v. Farmer*, 94 S.W.3d 441, 444 (Mo. Ct. App. E.D. 2003).

Claimant is not permanently and totally disabled as a result of the November 5, 2004 work injury in combination with his pre-existing injuries. Claimant suffered a back strain and unoperated right shoulder partial subscapular interstitial tear, which Dr. Nogalski stated was not the type of tear that typically is surgically repaired. Claimant treated for a very short time, and was released to return to work when he suffered another work related injury on December 28, 2004.

Claimant is permanently and totally disabled, but it is not due to the November 5, 2004 work injury in combination with his pre-existing injuries. Claimant continued to work after his November 2004 injury until December 2004 when he sustained his second injury. In addition, Claimant's overall condition subsequently deteriorated after November 5, 2004, as evidenced by the two functional capacity examinations which were performed. Permanent and total disability due to subsequent deterioration is not the liability of the Second Injury Fund.

The Second Injury fund is liable for PPD benefits. Claimant sustained 15.5% PPD of the right shoulder and 5% of the body as a whole referable to the low back as a result of the primary injury of November 5, 2004. Claimant settled his Claim with Employer for that amount, and the evidence supports that level of disability. At the time of the primary injury, Claimant had pre-existing disability of 17.5% of the body as a whole – low back and 15% of the right wrist. The pre-existing injuries were a hindrance or obstacle to Claimant's employment or re-employment and combined synergistically with the November 5, 2004 low back injury, and a loading factor of 20% shall apply. The SIF liability is calculated as follows: 15.5% of the right shoulder and 5% of the body as a whole – back (55.96 weeks) for the primary injury + 17.5% of the body as a whole (70 weeks) + 15% of the right wrist (26.25 weeks) pre-existing = 155.21 weeks x loading factor of 20% = 30.442 weeks of PPD benefits x \$354.05 = \$10,777.99.

### **CONCLUSION**

I find Claimant is not permanently and totally disabled as a result of the November 5, 2004 injury in combination with his pre-existing injuries. Therefore, the SIF has no liability for PTD benefits. I find the SIF is liable for PPD benefits in the amount of \$10,777.99.

This award is subject to an attorney's lien of 25% in favor of Claimant's attorney, Mr. Joseph Montecillo.

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

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

MARGARET D. LANDOLT  
*Administrative Law Judge*  
*Division of Workers' Compensation*