

AWARD ALLOWING COMPENSATION
(Pursuant to the Mandate of the Missouri Court of Appeals, Southern District)

Injury No.: 02-055128

Employee: Robert Stonecipher
Employer: Poplar Bluff R I School District
Insurer: Missouri United School Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: June 7, 2002

On November 14, 2006, the Missouri Court of Appeals for the Southern District issued an opinion reversing a portion of the March 10, 2006, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case. In particular, the Court reversed that part of the Commission's Final Award setting aside the administrative law judge's findings regarding employee's permanent total disability and the Second Injury Fund's liability therefor. By mandate issued December 1, 2006, the Court remanded this matter to the Commission for further proceedings all consistent with the November 14, 2006, opinion of the Court. *Stonecipher v. Poplar Bluff R1 School District*, 205 S.W.3d 326 (Mo. App. S.D. 2006). In all other respects, the award of the Commission was undisturbed by the Court.

Pursuant to the Court's opinion and mandate, we issued an award on March 12, 2007, reading in part:

Second Injury Fund Liability:

The administrative law judge awarded permanent total disability benefits against the Second Injury Fund. The Second Injury Fund did not file an Application for Review requesting Commission review of the award of permanent total disability. We affirm the administrative law judge's award of permanent total disability benefits against the Second Injury Fund.

On or about July 3, 2007, employee filed a Motion for Informal Conference and to Enforce Award (Motion). Employee requested that the Commission enter an "order requiring the Second Injury Fund to pay in accordance with the order of the Industrial Commission requiring Permanent Total Disability benefits to be paid from the Second Injury Fund to the Claimant." On or about July 10, 2007, the Second Injury Fund filed its Answer in opposition to the Motion. Believing we had no statutory authority to consider the Motion filed by employee, we dismissed the Motion on July 19, 2007. Employee appealed our dismissal.

By opinion dated April 24, 2008, the Missouri Court of Appeals for the Southern District affirmed our July 19, 2007 dismissal. *Stonecipher v. Treasurer of the State of Missouri, as Custodian of the Second Injury Fund*, No. 28658 (Mo. App. S.D., April 24, 2008). In its opinion the Court stated:
The Commission's initial award adopted parts of the ALJ's award and modified others. After the *Stonecipher I* remand, the Commission entered another final award -- incomplete on its face without reference to the

earlier award, but not incorporating it by reference -- which reinstated some (but not all) previously modified parts of the ALJ's award. The unintended result is a series of documents that, even considered together, no longer fully and expressly identify "who is entitled to what from whom" (*Highley*), and particularly "from whom the employee is entitled to recover" (*Mikel*) all of his PTD award. Since the Commission is required to so indicate, and to rule upon every issue pertaining to a determination of liability (*Mikel*, 896 S.W.2d at 626; *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 280 (Mo. 1942)), it erred as a matter of law and acted without or in excess of its jurisdiction in failing to enter a complete award. This failure was inadvertent and appears easily curable on remand. We remand for rehearing so the Commission can state with particularity from whom Claimant is entitled to recover all of the PTD benefits heretofore awarded by the Commission. The Court issued its Mandate May 12, 2008.

In accordance with the Court's mandate we issue this award. For completeness, we attach the following documents:

1. The March 1, 2005, administrative law judge award;
2. The March 10, 2006, Commission award;
3. The November 14, 2006, opinion of the Missouri Court of Appeals for the Southern District;
4. The March 12, 2007, Commission award;
5. The April 24, 2008, opinion of the Missouri Court of Appeals for the Southern District.

The March 1, 2005, administrative law judge award, the March 10, 2006, Commission award, and the March 12, 2007, Commission award are incorporated herein to the extent they have not previously been modified and to the extent that they are not inconsistent with this award.

Permanent Total Disability Benefits

As found by the administrative law judge and affirmed by the Commission, employee reached maximum medical improvement on March 18, 2003. As found by the Commission in our March 10, 2006, award, employer is liable to employee for 40 weeks of permanent partial disability benefits at the rate of \$329.42. The 40 week period began on March 19, 2003, and ended on December 23, 2003.

As found by the administrative law judge and affirmed by the Commission in our March 12, 2007, award, the Second Injury Fund is liable to employee for permanent total disability benefits. The Second Injury Fund shall pay to employee the differential between employee's permanent total disability rate (\$338.87) and his permanent partial disability rate (\$329.42) for the period employer is paying permanent partial disability. *Laturno v. Carnahan*, 640 S.W.2d 470 (Mo. App. 1982). That is, for the 40-week period, March 19, 2003 through December 23, 2003, the Second Injury Fund is liable to employee for the weekly differential of \$9.45. Beginning December 24, 2003, the Second Injury Fund is liable to employee for weekly permanent total disability benefits in the amount of \$338.87.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees 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 12th day of June 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

(Attachments not posted.)