

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

Injury No.: 06-033122

Employee: Donald Vandervort

Employer: D & D Distributors LLP (Settled)

Insurer: Commerce & Industry Insurance Co. (Settled)

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: January 5, 2006

Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by §287.480 RSMo. Pursuant to §286.090 RSMo, subsequent to reviewing the evidence, hearing oral arguments and considering the entire record, the Commission modifies the award and decision of the administrative law judge dated February 4, 2008. The award and decision of Administrative Law Judge Joseph E. Denigan, issued February 4, 2008, is attached and incorporated by this reference to the extent it is consistent with this modification.

The administrative law judge awarded the employee permanent partial disability enhancement from the Second Injury Fund pursuant to §287.220.1 RSMo, in the amount of 26.66 weeks as a result of the combination effect of disabilities between the primary injury and the pre-existing disabilities.

The employee timely filed an application for review with the Commission principally alleging the award of the administrative law judge was erroneous in that the employee was entitled to additional weeks of permanent partial disability enhancement from the Second Injury Fund resultant of the combination of disabilities between the primary injury and the pre-existing disabilities.

The Commission agrees with the contention set forth by the employee in his application for review and, consequently, modifies the award and decision of the administrative law judge by concluding that benefits due employee from the Second Injury Fund total 84.32 weeks permanent partial disability enhancement.

The Commission finds the employee to be credible, and the Commission principally relies on the medical opinion of Dr. Musich as well as employee's Exhibit B, a prior award issued by Administrative Law Judge Vacca on May 11, 2005, in reaching its determination of permanent partial disability enhancement.

The Commission affirms the conclusion made by the administrative law judge in the body of the award that the primary injury resulted in 30% permanent partial disability of the right shoulder.

The Commission further finds, principally relying on the medical opinion of Dr. Musich, the testimony of the employee, and the previous award issued by Administrative Law Judge Vacca (employee's Exhibit B), that

the following permanent partial disabilities pre-existed the primary injury: 25% permanent partial disability of the left shoulder; 30% permanent partial disability of the body as a whole referable to the lumbar spine; 30% permanent partial disability of the left knee; 35% permanent partial disability of the right knee; 20% permanent partial disability of the right hand and 20% of the left hand. The Commission concludes that each of these pre-existing disabilities were hindrances or obstacles to employment and each of these disabilities met the requisite statutory thresholds. Section 287.220.1 RSMo. These pre-existing disabilities also synergistically combine to create substantial greater disability in excess of the simple sums of the disabilities.

Accordingly, employee is entitled to permanent partial disability enhancement from the Second Injury Fund. The Commission concludes that the synergistic effect is best represented by a loading factor of 20%.

Utilizing a loading factor of 20%, the Commission determines that the amount due the employee from the Second Injury Fund attributable to permanent partial disability enhancement is 84.32 weeks or \$30,783.55 (84.32 weeks x \$365.08). All remaining findings of fact and conclusions of law are affirmed.

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 25th day of July 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary