

FINAL AWARD ALLOWING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge  
with Supplemental Opinion)

Injury No.: 04-113294

Employee: Linda Westerfield  
Employer: City of St. Louis (Settled)  
Insurer: Self-Insured (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: October 19, 2004  
Place and County of Accident: Franklin County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 12, 2007 with this supplemental opinion. The award and decision of Administrative Law Judge Joseph E. Denigan, issued September 12, 2007, is attached and incorporated by this reference.

The only issue presented to the administrative law judge was liability of the Second Injury Fund pursuant to section 287.220 RSMo. The administrative law judge determined the Second Injury Fund to be responsible and liable for 7.35 weeks of permanent partial disability pursuant to section 287.220 RSMo.

The issue on appeal was whether or not employee met her burden of proof that her pre-existing disability satisfied the statutory threshold set forth in section 287.220.1 RSMo.

The administrative law judge determined that the pre-existing statutory threshold of 15% permanent partial disability of a major extremity was proven.

The Commission notes that the only expert medical opinion in evidence was the opinion of Dr. Shuter, a board certified neurologist. The opinion of Dr. Shuter was as follows: based on his examination of employee on September 14, 2005, employee's medical condition was degenerative arthritis of her right knee, which in the opinion of Dr. Shuter represented a permanent partial disability of 35% of the right knee, of which 20% permanent partial disability is due to aggravation resulting from the work related accident occurring October 19, 2004, and 15% permanent partial disability pre-existed the injury of October 19, 2004.

The opinion of Dr. Shuter is unimpeached and in fact was bolstered by the lay testimony of the employee concerning her symptoms, complaints, problems at work performing her duties, all preceding the accident

occurring October 19, 2004. The Commission finds Dr. Shuter's opinion credible and reliable.

Accordingly, based on the testimony of the employee as well as the medical expert opinion proffered by Dr. Shuter, the Commission affirms the conclusion of the administrative law judge that employee had a pre-existing disability of 15% permanent partial disability of the right knee immediately preceding the work related injury occurring October 19, 2004.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued September 12, 2007, is affirmed and 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 11th day of March 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