

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

Injury No.: 07-076565

Employee: Willie White

Employer: University of Missouri, Kansas City  
Curators of the University of Missouri

Insurer: Self-Insured c/o Corporate Claims Management, Inc.

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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 16, 2010. The award and decision of Administrative Law Judge Lisa Meiners, issued September 16, 2010, 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 26<sup>th</sup> day of May 2011.

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

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

Injury No.: 07-133443

Employee: Willie White

Employer: University of Missouri, Kansas City  
Curators of University of Missouri

Insurer: Self-Insured c/o Corporate Claims Management, Inc.

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

The above-captioned workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs of the parties and having reviewed the evidence and considered the whole record, the Commission modifies the award and decision of the administrative law judge dated September 16, 2010, pursuant to § 286.090 RSMo. This Commission adopts the findings, conclusions, decision and award of the administrative law judge to the extent that they are not inconsistent with the decision set forth below.

We agree with and adopt the decision of the administrative law judge with respect to the award of permanent partial disability benefits to employee from employer and the award of permanent total disability benefits to employee from the Second Injury Fund.

On the other hand, the administrative law judge misunderstood and misstated the law concerning the application to this case of *Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. banc 2007). *Schoemehl* was explained in the subsequent case of *Tilley v. USF Holland Inc.*, 325 S.W.3d 487, 494 (Mo. App. E.D. 2010) (internal citations omitted), as follows:

Under *Schoemehl*, decided on March 20, 2007, the surviving dependent of an injured worker who has been awarded permanent total disability benefits is entitled to the unpaid, unaccrued balance of benefits for the duration of the dependent's life. The holding has been abrogated by Section 287.230.3, RSMo Cum. Supp. 2009, which became effective June 26, 2008 and says, "[i]n applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate the holding in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo.2007), and all cases citing, interpreting, applying, or following this case." The amended statute is not retroactive and will only apply to claims initiated after the effective date of the amendment. Thus, recovery under *Schoemehl* is limited to claims for permanent total disability benefits that were pending between January 9, 2007, the date the Missouri Supreme Court issued its decision in *Schoemehl*, and June 26, 2008, the effective date of [the amendment to Section 287.230.3].

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Employee: Willie White

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Employer misinterprets *Strait v. Treasurer of Missouri*, 257 S.W.3d 600 (Mo. banc 2008), to say that *Schoemehl* only applies to cases that were pending before the Commission or pending on appeal. We do not find that limited holding in our reading of *Strait*. In *Strait*, the question before the court was whether the claim was "final--or still pending." [Emphasis added.]

Here, the administrative law judge equally reads *Schoemehl* too restrictively. She held that employee's claim does not qualify for application of the *Schoemehl* case because the claim was originally filed as one for permanent partial disability benefits and was only amended to a claim for permanent total disability benefits after June 26, 2008. We disagree.

*Schoemehl* did not address and did not terminate the dependent's rights based upon whether the claim originated as one for permanent partial disability benefits versus one for permanent total disability benefits. As indicated above in *Tilley*, the key is whether "the claim" was pending between January 9, 2007 and June 26, 2008. Thus, we are persuaded that the fact that employee's claim was not amended to one for permanent total disability benefits until after the expiration of the *Schoemehl* time window is irrelevant.

Accordingly, we make the following additional findings of fact. As of the time of the hearing, employee testified that he had been married for 35 years and was still married to and living with that same woman. Her name is Gail Marie White.

Therefore, we modify the award to hold that employee's claim qualifies for application of the *Schoemehl* case.

The award and decision of Administrative Law Judge Lisa Meiners, as modified, is attached and incorporated by 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 26<sup>th</sup> day of May 2011.

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