

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

Injury No.: 10-084670

Employee: Craig Wingbermuehle
Employer: City of St. Louis (Settled)
Insurer: Self-Insured (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 August 28, 2013. The award and decision of Administrative Law Judge Joseph E. Denigan, issued August 28, 2013, 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 11th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary



STATE OF MISSOURI
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION



3315 WEST TRUMAN BLVD, P.O. BOX 58, JEFFERSON CITY, MO 65102 (573) 751-4231

AUGUST 28, 2013

10-084670

Scan Copy

142

Injury No : 10-084670
Injury Date : 09-16-2010
Insurance No. : 10062B429289

*Employee : CRAIG WINGBERMUEHLE
08855254 8 3324 NORMA COURT
ST LOUIS, MO 63139
#Asst Atty General: ATTY GENERAL CHRIS KOSTER
815 OLIVE ST
STE 200
ST LOUIS, MO 63101

*Employee Attorney: JAMES J SIEVERS
8131 MANCHESTER RD
BRENTWOOD, MO 63144

Denotes that the Division sent a copy of the Award by electronic mail to the email address that the party provided. The Certificate of Service for this document is maintained in the Division's records.

Enclosed is a copy of the Award on Hearing made in the above case.

Under the provisions of the Missouri Workers' Compensation Law, an Application for Review of the decision of the Administrative Law Judge may be made to the Missouri Labor and Industrial Relations Commission within twenty (20) days of the above date. If you wish to request a review by the Commission, application may be made by completing an Application for Review Form (MOIC-2567). The Application for Review should be sent directly to the Commission at the following address:

Labor and Industrial Relations Commission
PO Box 599
Jefferson City, MO 65102-0599

If an Application for Review (MOIC-2567) is not postmarked or received within twenty (20) days of the above date, the enclosed award becomes final and no appeal may be made to the Commission or to the courts.

Please reference the above Injury Number in any correspondence with the Division or Commission.

DIVISION OF WORKERS' COMPENSATION

Please visit our website at www.labor.mo.gov/DWC

WC-142 (08-12)
AWARD ON HEARING
TK

Issued by DIVISION OF WORKERS' COMPENSATION

AWARD

Employee:	Craig Wingbermuehle	Injury No.:	10-084670
Dependents:	N/A		
Employer:	City of St. Louis (settled)		Before the Division of Workers' Compensation
Additional Party:	Second Injury Fund		Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured (settled)		
Hearing Date:	May 29, 2013	Checked by:	JED

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: September 16, 2010 (stipulated)
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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:
Claimant sustained injury while installing drywall, taping, sanding, and painting at apartment complexes.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: left knee
14. Nature and extent of any permanent disability: 30% PPD of left knee; 37.32 weeks PPD from SIF.
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

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- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$418.58 PPD
- 19. Method wages computation: Stipulation.

COMPENSATION PAYABLE

20. Amount of compensation payable:		
48 weeks PPD from Employer		(settled)
21. Second Injury Fund liability: Yes		
weeks PPD from the SIF		\$15,621.41
	TOTAL:	\$15,621.41
22. Future requirements awarded: None		

Said payments to begin immediately 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:

James J. Sievers

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Craig Wingbermuehle	Injury No.:	10-084670
Dependents:	N/A	Before the	
Employer:	City of St. Louis (settled)	Division of Workers'	
Additional Party:	Second Injury Fund	Compensation	
Insurer:	Self-Insured (settled)	Department of Labor and Industrial	
Hearing Date:	May 29, 2013	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	JED

This case involves a stipulated left knee injury resulting to Claimant with the reported accident date of September 16, 2010 with allegations of synergistic disability against the Second Injury Fund ("SIF"). Employer and its insurer previously settled their risk of liability. Both parties are represented by counsel. The single issue for trial is the liability of the SIF. The parties tried the case on some stipulated facts.

FINDINGS OF FACT

The parties stipulated Claimant sustained a current PPD of 30% of the left knee as a result of the reported injury and that Claimant's right knee injury pre-existed the reported injury herein and has a 30% percent PPD.

Claimant has been a firefighter for 21½ years. He works out of a firehouse on large fire trucks with crew. He continues to work but does not work alone. He has increasing problems that he experiences on a daily basis. He has particular problems climbing. His job requires him to climb conventional ladders and automated high-rising ladders. He has problems crawling, carrying tools and equipment (on ladders), and climbing large apparatus. His basic gear and boots represent an additional load on his legs.

Claimant offered the narrative report of Dr. David Volarich, admitted as Exhibit A. Dr. Volarich examined Claimant in September 2011 and reviewed the medical record. He made physical findings of the primary and pre-existing injuries that form the basis of PPD assignment in each injury. Dr. Volarich noted marked bilateral patellofemoral crepitus and patellar mistracking. He also noted bilateral quadriceps and hamstring weakness, more so on the left. Calves were strong bilaterally. The left knee is painful. Dr. Volarich also reviewed radiological studies consistent with these physical findings.

Dr. Volarich rated the left knee at 50 percent PPD (for the *current* PPD) and the right knee at 45 percent (*pre-existing*) PPD. He stated Claimant's pre-existing disability combines with the disability caused by the primary injury to create an increased overall disability that is greater than the simple sum of the disabilities. This opinion evidence is probative and un rebutted.

RULINGS OF LAW

Nature and Extent of Permanent Disabilities

The stipulated PPD for the current disability on the reported (primary) injury is 48 weeks. The stipulated PPD for the pre-existing PPD item equates to 48 weeks. These stipulations are easily supported by the medical history and Dr. Volarich's findings and opinions.

Liability of the SIF

Synergy is the concept in which the current PPD and the pre-existing PPD are found, in combination, to create a "substantially greater" disability, or an increased overall disability, and for which the employer should not be held liable. The significance of PPD assignments is predicated by the statutory minimum thresholds for injuries to the extremities and injuries to the body as a whole. Section 287.220.1 RSMo (2000). Here, Claimant's primary injury and prior disability, while stipulated, are found to synergize resulting in additional PPD which is recognized as common *opposing limb* synergy. The synergistic bilateral knee disability represents serious carrying, lifting, stability and climbing deficits. The primary and pre-existing disabilities are found to be hindrances and obstacles to employment.

While Claimant is still working, he experiences ongoing pain and weakness in both knees. It may be reasonably inferred that Claimant's work with crewmembers permits Claimant to obtain relief as necessary and avoid some of the more difficult tasks requiring greater leg strength and exertion. The opinion evidence and other evidence suggest Claimant's combined PPD equates to increased overall PPD of one-third of a body, or thirty-three and one-third percent of a body (133.32 weeks). Thus, after the pre-existing PPD plus the current PPD are deducted from the combined disability, the synergistic effect results in an additional 37.32 weeks of PPD liability against the SIF.

Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have sustained an additional 37.32 weeks PPD as a result of the combination between the primary injury and the synergistic pre-existing PPD, for which the SIF is responsible.

I certify that on 8/28/13,
I delivered a copy of the foregoing award
to the parties to the case. A complete
Date: _____ record of the method of delivery and date
of service upon each party is retained with
the executed award in the Division's case file.
By: [Signature]

