

**FINAL AWARD DENYING COMPENSATION**  
(Reversing Award and Decision of Administrative Law Judge)

Injury No.: 09-087668

Employee: Brenda Woods

Employer: EFCO Corporation,  
a Pella Corporation, a/k/a Pella Corporation

Insurer: Sentry Insurance Company

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

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard oral arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we reverse the award and decision of the administrative law judge dated May 11, 2011.

**Preliminaries**

The parties stipulated the following issues for determination by the administrative law judge: (1) whether employee sustained an injury by accident or occupational disease; (2) medical causation; (3) nature and extent of permanent disability; and (4) Second Injury Fund liability for permanent partial disability.

The administrative law judge made the following findings and conclusions: (1) employee sustained a single injury via both accident and occupational disease; (2) "work" was the prevailing factor in causing employee's injury and disability; (3) employee suffered a 30% permanent partial disability of the right shoulder at the 232-week level as a result of the work injury; and (4) the Second Injury Fund is liable for 20 weeks of compensation for enhanced permanent partial disability resulting from the combination of employee's preexisting conditions of ill with the effects of the work injury.

Employer filed a timely Application for Review arguing: (1) the administrative law judge erred in issuing a single award encompassing two different injury numbers with the result it appears employer/insurer owe multiple times for the same injury; (2) employee failed to sustain her burden of proof on the issue of medical causation; and (3) employee is not entitled to permanent partial disability.

For the reasons set forth herein, we reverse the decision of the administrative law judge.

**Findings of Fact**

In this claim, employee alleges an occupational disease culminating on or about April 12, 2009, arising out of repetitive work for employer. This case was heard together with employee's claim for Injury No. 09-026255, in which she alleged an accident occurring on April 13, 2009. Employee claims essentially the same right shoulder injury

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and disability in both claims, and clearly filed both claims in order to preserve her ability to pursue her right to compensation under alternative theories of injury.

In our award in employee's claim for Injury No. 09-026255, we have determined that employee suffered an accident on April 13, 2009, and that this accident was the prevailing factor causing her to suffer the claimed compensable injury consisting of a rotator cuff tear and subsequent disability. We have also awarded permanent partial disability benefits against the employer in our award in that matter. Obviously, we are persuaded that employee's compensable work injury was a result of that accident and not the claimed occupational disease.

We acknowledge that Drs. Hartman and Swaim and employee herself each provided testimony that might be argued to support a claim for occupational disease arising out of employee's repetitive work for employer. But because we have determined that employee's right shoulder disability was caused by the accident on April 13, 2009, we are not persuaded that employee sustained a compensable occupational disease culminating on or about April 12, 2009. To the extent Drs. Hartman, Swaim, and employee testified otherwise, we find them lacking credibility.

We find that employee's occupational exposure was not the prevailing factor causing her to sustain the claimed right shoulder injury and disability.

### **Conclusions of Law**

#### Medical causation

The issue of medical causation is determinative in this matter, given our findings of fact set forth above. The standard for medical causation for an occupational disease is set forth in § 287.067.2 RSMo, which provides, in relevant part, as follows:

An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Employee has failed to meet her burden of proving she sustained a compensable occupational disease. We have found that employee's occupational exposure was not the prevailing factor causing her claimed right shoulder injury and disability in this matter.

We conclude employee's occupational exposure was not the prevailing factor in causing both her resulting medical condition of a right shoulder rotator cuff tear and the resulting disability. It follows that employee cannot sustain her burden of proof against the Second Injury Fund because she has failed to demonstrate that she sustained a compensable primary injury in this matter.

Accordingly, we deny employee's claim in this matter as against both the employer and the Second Injury Fund.

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**Conclusion**

Based on the foregoing, the Commission concludes and determines that employee failed to demonstrate that she sustained a compensable occupational disease in this matter. Employee's claim against both the employer and the Second Injury Fund in this matter is denied.

The award and decision of Administrative Law Judge Robert H. House, issued May 11, 2011, is attached solely for reference.

Given at Jefferson City, State of Missouri, this   1<sup>st</sup>   day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
James Avery, Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Brenda Woods Injury No. 09-087668  
09-026255  
Dependents: N/A Before the  
Employer: EFCO Corporation, **DIVISION OF WORKERS'**  
a Pella Corporation, a/k/a, Pella Corporation **COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Additional Party: Second Injury Fund  
Insurer: Sentry Insurance Company  
Hearing Date: April 8, 2011 Checked by:

### 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: APRIL 13 2009
5. State location where accident occurred or occupational disease was contracted: BARRY COUNTY, MO
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:  
CARRYING ALUMINUM WINDOW FRAMES
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: RIGHT SHOULDER
14. Nature and extent of any permanent disability: See Award
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$12,365.89

- 17. Value necessary medical aid not furnished by employer/insurer? -0-
- 18. Employee's average weekly wages: \$514.46
- 19. Weekly compensation rate: \$342.97
- 20. Method wages computation: STIPULATION

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses: -0-

N/A weeks of temporary total disability (or temporary partial disability)

69.6 weeks of permanent partial disability (69.6 x \$342.97) from Employer for a total of \$ 23,870.71

N/A weeks of disfigurement from Employer

- 22. Second Injury Fund liability: 20 weeks of compensation (20 x \$342.97) for a total of \$6,859.40

TOTAL: \$30,730.11

- 23. Future requirements awarded: NO

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 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

TOM CARLTON

Employee: Brenda Woods

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## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Brenda Woods

Injury No. 09-087668  
09-026255

Dependents: N/A

Before the

Employer: EFCO Corporation,  
a Pella Corporation, a/k/a, Pella Corporation

**DIVISION OF WORKERS'  
COMPENSATION**

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Sentry Insurance Company

Hearing Date: April 8, 2011

Checked by:

### **AWARD**

The parties presented evidence at a hearing on April 8, 2011. Claimant appeared in person and with her attorney, Tom Carlton. Employer, EFCO Corporation, a Pella Corporation, a/k/a, Pella Corporation, and its insurer, Sentry Insurance Company, appeared through their attorney, Karen Johnson. The Second Injury Fund appeared through its attorney, Christina Hammers. The parties presented four issues for determination:

1. Whether claimant sustained an injury by accident or occupational disease.
2. Whether claimant's current physical condition was caused by her alleged injury at work.
3. The nature and extent of permanent partial disability.
4. The liability of the Second Injury Fund with claimant alleging permanent partial disability benefits being due from the Fund.

The parties agreed to venue of the case for the purpose of the hearing being in Joplin, Newton County, Missouri. Additionally, the parties agreed that claimant's average weekly wage was \$514.46, which resulted in a workers' compensation rate of \$342.97 for all purposes. Employer/insurer paid \$12,365.89 in medical benefits and no benefits for temporary total disability.

Claimant testified at the hearing. She presented medical information including the deposition testimony and report of Dr. Truett Swaim, an orthopedic surgeon. Employer/insurer presented the deposition testimony of Dr. Michael Hartman, an orthopedic surgeon.

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Claimant has been an employee of the employer since August 25, 2003. She worked for the employer doing repetitive duties involving the use of both arms while standing. Her duties included carrying bundles of aluminum that weighed up to 80 pounds, but which generally were around 50 pounds. She would carry those on her shoulder alone or at times with the help of another employee. She additionally would saw aluminum using her right arm to pull the saw while cutting. She would carry up to 2500 pieces of aluminum a day to her station and to co-employees. She would normally carry the aluminum in bundles on her shoulder. Additionally, there were times when she would carry an entire window frame which also would weight approximately 80 pounds.

On April 13, 2009, claimant was throwing trash into a bin as part of her regular duties of cleaning up at the end of her work day. She felt immediate pain and heard a pop in her right shoulder as she threw the trash bag in the bin. She had not heard a pop nor had pain in her right shoulder before that event. Previously she had felt fatigue at work in both shoulders during the month before her April 12, 2009, injury. The fatigue was in both hands and shoulders, but there was no sharp pain and no popping. Claimant has had no prior treatment for her right shoulder and has had no prior right shoulder injury.

Claimant was treated for her injury, with the bulk of her treatment with Dr. Michael Hartman. She also had physical therapy. Employer/insurer paid for all of her medical care. Claimant rejected a surgical procedure on her shoulder since Dr. Hartman advised her that the likelihood of successful treatment was low. In his deposition, Dr. Hartman testified that surgery was unlikely to relieve claimant's symptoms, and Dr. Swaim also believed that surgery was not an appropriate option.

Claimant continues to have problems with her right shoulder. She continues to have pain and weakness along with a burning sensation in her right shoulder. She has difficulty holding onto items because of her shoulder condition. She has difficulty pulling items toward her. She has difficulty lifting because of her shoulder's condition, and she cannot use her right arm overhead. She believes her condition has remained the same since the end of her treatment and since her evaluation by Dr. Swaim.

Dr. Hartman in his report and testimony opined that claimant had a chronic rotator cuff tear which was of a longstanding nature based upon a finding of significant atrophy and fatty infiltration of the rotator cuff along with a retracted tendon. He believed that claimant had an acute or new injury on April 13, 2009, which added to the chronic tear. His diagnosis was, "acute-on-chronic" tearing. He was unsure as to increased tearing from the last event at work. Dr. Hartman opined that the event on April 13, 2009, was not the prevailing factor in causing her symptoms or her condition. He believed that there was no way of knowing the nature of the tear from the April 13, 2009, event. He opined that a rotator cuff injury could be caused by normal wear and tear and that no specific trauma was necessary in order for that to occur. Nevertheless, on cross-examination Dr. Hartman opined that because claimant was asymptomatic prior to that last event at work, he would have to believe that some of claimant's shoulder tearing was acute. Dr. Hartman was not aware of any prior medical treatment or problems claimant had with her

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right shoulder prior to the April 13, 2009, event. Nevertheless, Dr. Hartman had a difficult time believing that she didn't have any prior symptoms because of the size of the tear.

Dr. Hartman stated that he was not fully aware of claimant's job duties. He also noted on cross-examination that it was possible for repetitive work involving activities where arms are extended out and away from your body to cause damage to the shoulder and specifically the rotator cuff. He also found that it was possible that exposure to repetitive force of arms above shoulder height could cause damage to the rotator cuff. Dr. Hartman's ultimate conclusion was that claimant had an acute tear that was in addition to an already existing chronic tear. Dr. Hartman did not address in his report or testimony whether claimant sustained an injury by occupational disease based upon repetitive trauma but merely that repetitive trauma possibly could cause shoulder injuries generally and specifically could cause a rotator cuff injury.

Dr. Truett Swaim, the examining physician for claimant, addressed both injury by accident and injury by occupational disease. Dr. Swaim, upon reading claimant's MRI, found "that she does have a large tear of the rotator cuff and I don't think you can say absolutely that that was there prior. There's no indication of that. Now, it does say that she's got tendinopathy of the subscapularis, tendinopathy of the biceps tendon. And tendinopathy is an indication of a long standing process where there's abnormality in the tendon itself, and this would be consistent with long-term impingement syndrome."

Dr. Swaim's ultimate conclusion was that:

Within a reasonable degree of medical certainty, her occupational activities, which I call occupational trauma here, accumulative trauma, just to kind of comply with the way the legal system is, I believe that those activities caused her to develop an impingement syndrome and the -- and in the midst of the impingement syndrome what happened was she got a natural thinning of the rotator cuff.

You got some inflammation in the tendons and that -- and I think that this impingement syndrome, and at least some of the changes at -- at arthroscopy -- I mean by MRI scan, were pre-existing, but my believe that the incident that occurred on April 13, 2009, caused or was a prevailing factor to cause her to develop a rotator cuff tear.

Dr. Swaim based his opinion on the fact that there was never any preexisting problem with her shoulder and consequently that the tear actually occurred at that time. However, Dr. Swaim also concluded, "there might have been a small tear or there might have been one that's propagating at the time, but the real rotator cuff tear that made her become symptomatic is related to that incident of April 12, 2009." Dr. Swaim believed that there was no way to say absolutely whether there was a rotator cuff tear prior to that date. Dr. Swaim's ultimate conclusion was that claimant's work activities prior to April 13, 2009, contributed significantly to her ultimate shoulder condition. Indeed, Dr. Swaim opined that he could separate what he called "the two causations" from her condition. He believed that the cumulative trauma that led to her impingement syndrome contributed to or caused the rotator cuff tear and the April 13, 2009, specific event caused her to become symptomatic; "and to explain that is, she was

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asymptomatic before that and I -- I don't know if absent this injury she would have become symptomatic. So the -- my assessment is that the disability is really related to the straw that broke the camel's back."

As noted above, Dr. Hartman bases his opinion on the fact that "usually with a large tear, it's been there quite a while as opposed to a small tear." Nevertheless, Dr. Hartman admitted that if claimant were asymptomatic, then he would have to believe that some of the tear was acute or caused by her injury on April 13, 2009. He also admitted the possibility of repetitive actions and the nature of her work possibly causing shoulder problems in the nature of her injuries.

Thus, the opinions of Dr. Truett Swam are somewhat similar to those of Dr. Hartman. Dr. Swaim admits there may well have been a preexisting tear along with a preexisting impingement syndrome. Nevertheless, Dr. Swaim believes that because claimant was asymptomatic before her April 13, 2009, injury, that even caused an acute tear. Dr. Swaim believes that there is no way to determine whether there was a tear prior to that event in 2009. Dr. Swaim concludes that claimant had significant impingement and possibly a tear caused by her repetitive work. This is somewhat mirrored in Dr. Hartman's opinion that there was a "acute-on-chronic rotator cuff tear." The main difference is that Dr. Hartman believes that claimant had a significantly large chronic tear without determining whether that was specifically related to her repetitive activities, whereas Dr. Swaim believes that claimant may or may not have had a preexisting tear but certainly had an impingement syndrome and thinning of rotator cuff with a possible tear as a result of her repetitive activities specifically and a newly symptomatic condition following her April 13, 2009, event.

Based upon claimant's testimony that she was asymptomatic in her right shoulder prior to her injury of April 13, 2009, and based upon both Dr. Hartman and Dr. Swaim indicating that because of her being previously asymptomatic, it is likely that she had an acute tear on that date, I find that there was an acute injury on that date. However, I find, based upon the testimony of claimant and the specific testimony of Dr. Swaim, that claimant's repetitive activities over time caused her impingement syndrome and a thinning of her rotator cuff and possibly a prior tear, that she sustained an occupational disease process that concluded with the final trauma on April 13, 2009, causing her condition to become symptomatic and painful, with a pop audibly heard by claimant at the time, which resulted in weakness, burning, pain, and limited range of motion. Consequently, I find and conclude that claimant's work was the prevailing factor in causing her to have an injury both by accident and occupational disease. Under the circumstances of this case I do not find it necessary to distinguish whether all of the problems were caused specifically by the event on April 13, 2009, or over time with the culminating event being April 13, 2009. Work caused her condition. There is no evidence of any other factors causing her shoulder injury. It appears based upon both the testimony of Dr. Hartman and Dr. Swaim that claimant at least had some, to a large amount of, acute injury on April 13, 2009, but that she had significant preexisting problems that in all likelihood from the testimony of claimant and Dr. Swaim were a result of the repetitive trauma at work. In effect, the event of April 13, 2009, was the final event in a long series of repetitive traumas causing her shoulder injury.

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This case is somewhat similar to the quandary presented to the Court in *Smith v. Climate Engineering*, 935 SW2d 429 (Mo.App. E.D. 1996). The Court in that case decided it made no difference whether the case was decided under occupational disease or accident theories since work was substantial factor in causing the injury. The definitions of occupational disease and accident have changed since that case and have been abrogated by the 2005 changes to the workers' compensation law. No longer is "a substantial factor" the standard; instead, "the prevailing factor" must be used to determine accident or occupational disease. The issue of whether this case could be decided by accident or occupational disease remains the same and has not been abrogated by the change in the 2005 law. I find and conclude that claimant's injury and her current physical condition was caused by her work and that the prevailing factor in causing that injury was the repetitive nature of her work over time causing cumulative trauma and an occupational disease which culminated in her long-standing impingement syndrome with rotator cuff tearing as a result of a thinning of the rotator cuff ultimately resulting in an acute tear from the April 13, 2009. Since work was the prevailing factor in causing both her injury and her disability, I find that the employer and its insurer are responsible for claimant's injuries. There is no other cause addressed by either Dr. Hartman or Dr. Swaim. Indeed, claimant's asymptomatic condition prior to the April 13, 2009, event along with no history of prior injury or trauma lead me to no other conclusion than that work was the prevailing factor in causing in both her injury and her disability. Since she was asymptomatic prior to the April 13, 2009, event, I cannot find that she suffered from any disability prior to that date. Her condition was not diagnosed nor was it symptomatic prior to her throwing the bag of trash on April 13, 2000, at work. As a result, I find that claimant sustained an injury by accident on August 13, 2009, and also suffered an injury by occupational disease as a result of the repetitive trauma of her work ending with the specific injury by accident on April 13, 2009. In effect, as testified by Dr. Swaim, there are two causations that are interdependent and result in claimant's injuries.

Dr. Swaim's rating of 40 percent to the right shoulder is the only rating in this case. Claimant has testified concerning her symptoms which are set out above. Dr. Hartman did not rate claimant and released her from care, finding that surgery would not benefit her. Dr. Swaim has agreed that surgery would not benefit claimant, and he has addressed her disability as being 40 percent permanent partial disability to the right arm at the 230-week level and has restricted her to light to medium work, "with the ability to exert up to 30 pounds occasionally, and/or up 15 pounds frequently, and/or a negligible amount of force up to five pounds of force constantly, to move objects. He also opined that claimant should avoid using the right upper extremity above shoulder height or away from her body. Dr. Swaim has based his rating upon those restrictions along with claimant's ongoing pain, weakness, decreased motion of the right shoulder all of which will progressively worsen with time. Claimant has also indicated that she has a burning sensation in her shoulder along with difficulties in pulling objects toward her, lifting objects and sharp pain. It is clear that claimant has a significant disability from her work-related injury. Although there is no rating contrary Dr. Swaim's rating, I find that Dr. Swaim's rating somewhat overstates what I believe claimant's disability to be. Claimant can work, albeit at a different job than before. She is classified by Dr. Swaim in the light to medium duty category, although with limited use of her right arm. I find, based upon the testimony of claimant along with claimant's condition as described by both Dr. Hartman and Dr. Swaim, that claimant has a permanent partial disability of 30 percent to the right shoulder at the 232-week level. Consequently, I order employer/insurer to pay claimant 30 percent of the right shoulder at the 232-week level for a total

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of 69.6 weeks of compensation at the agreed upon workers' compensation rate of \$342.97 per week for a total of \$23,870.71.

It is also clear from claimant's testimony and the report and testimony of Dr. Swaim that claimant had preexisting disability. Claimant had two prior surgeries to her right knee and still has problems with her right knee of grinding, catching and pain. She has difficulty going up and down stairs and walking and standing for long periods. She also had a previous left ankle injury from a bicycle accident as a child which resulted in a fracture which had to be casted. She additionally injured her left ankle at her employer which required an air cast. At that time it was determined that she had degenerative joint disease. She was also diagnosed as having a Charcot joint problem on her left ankle which causes her difficulty. Claimant settled her bilateral wrist injuries for 10 percent to the body as a whole following surgery for both wrists from a work-related occupational disease for carpal tunnel with the settlement being reached in 1996. Dr. Swaim noted claimant's continuing bilateral hand problems and weakness as a result of her carpal tunnel syndrome. He rated her disability as 25 percent to the right arm and 20 percent to the left arm as a result of her bilateral wrist condition. He additionally rated claimant's preexisting disability at 40 percent to the right leg at the 160-week level and a 50 percent permanent partial disability of the left leg at the 155-week level for her preexisting injuries. From claimant's testimony and the findings of Dr. Swaim it is clear that claimant does have preexisting disabilities. Dr. Swaim finds that the combined effects of the disabilities with the last injury create an enhanced disability of 12 percent to the body as a whole. I again find that Dr. Swaim has overstated claimant's disability. Claimant somewhat confusingly testified as to the nature of her preexisting disabilities continuing yet at the end of her testimony she testified that she may not have been bothered by her preexisting disabilities as much as she had stated in her earlier testimony.

Nevertheless, based upon the entire nature of her testimony along with that of Dr. Swaim and the analysis of his report, I find that claimant has sustained a preexisting disability for her carpal tunnel syndrome at 12.5 percent to the body as a whole. Dr. Swaim has noted that claimant has severe thenar atrophy and weakness on the right and moderate thenar atrophy and weakness on the left. I find that her carpal tunnel condition has worsened since her 1996 settlement.

Concerning claimant's prior right knee injury, she had two surgeries and has testified that she has continuing problems where her right knee will grind and catch and have pain, that she has difficulty going up and down stairs, and problems walking or standing for long periods of time. I find that claimant does have disability as a result of her preexisting right knee problems. There is no disability rating in addition to Dr. Swaim's rating; however, I find that his assessment of disability is somewhat excessive based upon claimant's concluding testimony at trial. I find that her disability for preexisting right knee is 25 percent to the right lower extremity at the 160-week level.

Claimant's left ankle problem was a result of a fracture from a bicycle accident when she was young and included an additional problem where her left leg had been air casted following an injury at work long with a diagnosis of a Charcot joint problem. Claimant has daily problems walking with a "scattered gait" and has pain in the left ankle and difficulty walking long

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distances or standing for long periods of time. Nevertheless, I find Dr. Swaim's uncontradicted rating of 50 percent to the left ankle to be excessive, and I find claimant's disability to the left lower extremity at the 155-week level to be 25 percent.

Claimant has established a right to recover from the Second Injury Fund. In order for a claimant to recover against the SIF, she must prove that she sustained a compensable injury, referred to as "the last injury," that resulted in permanent partial disability. Section 287.220.1 RSMo. A claimant also must prove that she had a pre-existing permanent partial disability, whether from a compensable injury or otherwise, that: (1) existed at the time the last injury was sustained; (2) was of such seriousness as to constitute a hindrance or obstacle to her employment or reemployment should she become unemployed; and (3) include a minimum of 50 weeks of compensation for injuries to the body as a whole or 15% from major extremities. *Dunn v. Treasurer of Missouri, as Custodian of the Second Injury Fund*, 272 S.W.3d 267, 272 (Mo. App. 2008). In order for a claimant to be entitled to recover permanent partial disability benefits from the Second Injury Fund, she must prove that the last injury, combined with her pre-existing permanent partial disabilities, causes greater overall disability than the independent sum of the disabilities. *Elrod v. Treasurer of Missouri, as Custodian of the Second Injury Fund* 138 S.W.3d 714,717-18 (Mo. banc. 2004). Claimant has met the burden imposed by law. I find that claimant has an enhanced disability or disability greater than the simple sum of the disabilities taken separately is considered to the extent of an enhanced disability of 20 weeks of compensation. As a result, I order the Second Injury Fund to pay to claimant 20 weeks of compensation at the agreed upon rate of \$342.97, for a total of \$6,859.40.

Claimant's attorney has requested a 25 percent attorney's fee which I find to be reasonable. As a result, I allow claimant's attorney, Tom Carlton, an attorney's fee of 25 percent of all amounts awarded herein, which shall constitute a lien upon this award.

Date: March 11, 2011

Made by: /s/ Robert H. House

Robert H. House  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Naomi Pearson  
Naomi Pearson  
*Division of Workers' Compensation*