

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

Injury No.: 08-034784

Employee: David Woods  
Employer: Village Green Management Company (Settled)  
Insurer: Accident Fund Insurance (Settled)  
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.

Together with the Application for Review, employee and the Second Injury Fund filed a Joint Motion to Amend Award. The motion notes that employer paid a disfigurement benefit to employee of \$2,786.60, and that the Second Injury Fund should not be liable to duplicate such benefit. The motion requests only that the Commission change the award and decision to delete the Second Injury Fund's liability for this amount.

Based on such motion, the Commission modifies the award and decision to reflect no liability for the Second Injury Fund regarding disfigurement benefits. Accordingly, the Second Injury Fund liability is calculated as follows: 26.25 weeks for the last injury + 50 weeks for preexisting injuries = 76.25 weeks X 10% load = 7.625 total weeks of overall greater disability. Since employee's weekly compensation rate was \$278.66, the Second Injury Fund is liable to employee for a total of \$2,124.78 in permanent partial disability benefits.

In all other respects, we affirm and adopt the award and decision of the administrative law judge.

David G. Hughes, Attorney at Law, is allowed a fee of 25% of the benefits awarded herein for necessary legal services rendered to employee, which shall constitute a lien on said compensation.

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Suzette Carlisle issued October 31, 2012, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of December 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T  
Chairman

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

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: David Woods Injury No.: 08-034784  
Dependents: N/A Before the  
Employer: Village Green Management Company (Settled) **Division of Workers' Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Additional Party: Second Injury Fund  
Insurer: Accident Fund Insurance (Settlement)  
Hearing Date: August 6, 2012 Checked by: SC

**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 8, 2008
5. State location where accident occurred or occupational disease contracted: St. Louis County, Missouri
6. Was the 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 happened or occupational disease contracted: Employee was injured in the course and scope of his employment as a maintenance worker when he attempted to enter an apartment and was attacked by a dog.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left wrist
14. Nature and extent of any permanent disability: 15% left wrist and 10 weeks disfigurement (Settled)
15. Compensation paid to-date for temporary total disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer: \$9,169.88

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Employee: David Woods

Injury number: 08-03784

- 17. Value necessary medical aid not furnished by employer/insurer: N/A
- 18. Employee's average weekly wage: \$418.00
- 19. Weekly compensation rate: \$278.66
- 20. Method wages computation: By Agreement

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: Employer settled prior to Hearing.
- 22. Second Injury Fund liability:
  - 7.625 weeks of permanent partial disability from the Second Injury Fund, and \$2,124.78
  - 10.000 weeks disfigurement \$2,786.60
- TOTAL: \$4,911.38**
- 23. 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 employee shall be subject to a lien in the amount of 25% of all payments hereunder in favor of his attorney David G. Hughes for necessary legal services rendered to the employee.

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

Employee:	David Woods	Injury No.: 08-034784
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b> Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Employer:	Village Green Management Company (Settled)	
Additional Party:	Second Injury Fund	
Insurer:	Accident Fund Insurance Company of America (Settled)	
Hearing Date:	August 6, 2012	Checked by: SC

**PRELIMINARIES**

The parties appeared before the undersigned administrative law judge on August 6, 2012 for hearing for a final award to determine the liability of the Second Injury Fund ("SIF") at the request of David Woods ("Claimant"). Attorney David Hughes represented Claimant. Assistant Attorney General Kevin Nelson represented SIF. The Employer, Village Green Management Company, and its Insurer, Accident Fund General Insurance, previously settled with Claimant for 15% permanent partial disability (PPD) of the left wrist plus 10 weeks disfigurement, and did not participate in the hearing.

The parties stipulated that on or about April 8, 2008, Claimant David Woods was employed by Village Green Management Company and sustained an accident arising out of and in the course of employment in St. Louis County, Missouri. The parties further stipulate that the employer was fully insured, proper notice was given, the claim for compensation was filed in the time required by law, and the PPD rate was \$278.66.

The issue to be determined is the nature and extent of SIF liability for PPD benefits, if any.

*Exhibits*

Employee's Exhibit A	Eli R. Shuter, M.D.'s report dated 7/01/08
Employee's Exhibit B	4/08/08 Stipulation for Compromise Settlement
Employee's Exhibit C	10/06/06 Stipulation for Compromise Settlement
Employee's Exhibit D	St. John's Mercy Medical Center Certified Records

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Employee's Exhibit E	Concentra Medical Center Certified Records
Employee's Exhibit F	Midwest Plastic & Hand Surgery, Inc. Certified Records
Employee's Exhibit G	Christian Hospital Northeast-Northwest Certified Records
Employee's Exhibit H	Patrick Hogan, M.D./Clinical Neurology Certified Records
Joint Exhibit I/I	Letter from SIF attorney Mr. Kevin Nelson

Claimant's Exhibits A through I and Joint Exhibit I/I were admitted into evidence without objection. SIF offered no additional exhibits.

*Live Testimony*

1. Claimant testified live and his testimony was credible. For thirty years Claimant performed manual work, most frequently as a maintenance worker.
2. On April 8, 2008, Claimant attempted to enter an apartment to work and was attacked by a dog. He sustained bites to his forehead, head, arms, left hand, right side of his chest and right knee. Claimant sustained an accidental injury arising out of and in the course of employment that resulted in injury to Claimant's left upper extremity and significant scarring and disfigurement.
3. Claimant received medical care as described in Exhibits D through F.
4. Claimant and employer settled the workers' compensation claim for 15% disability of his left wrist and 10 weeks of disfigurement.
5. Claimant's current complaints from the last injury include weakness and pain when gripping with his dominant left hand, decreased sensation, and pain.
6. Prior to the date of injury, Claimant had the following disabling injury:
  - a. On October 6, 2006, Claimant sustained a head injury. Claimant received medical care as described in Exhibit G. Claimant settled his workers' compensation claim arising out of the injury for 12.5% of the body due to the head injury. The injury was disabling and constituted a hindrance or obstacle to employment.

*Opinion Evidence*

7. Dr. Eli Shuter examined Claimant, took a history, and issued a report. He found Claimant sustained an accident arising out of and in the course of employment that resulted in injury to Claimant. He provided the following ratings of permanent partial disability:
  - a. With respect to the primary injuries: 20% of the left upper extremity at the level of the wrist;
  - b. With respect to the preexisting disability, which constituted a hindrance and obstacle to employment, 15% of the body due to head injury (post-concussive syndrome)
  - c. Dr. Shuter opined the preexisting disability created a hindrance or obstacle to obtaining and maintaining employment.
  - d. Dr. Shuter further opined the combination of the last injury and the preexisting disability create a synergistic effect.

### **FINDINGS OF FACT & RULINGS OF LAW**

Claimant has established a right to recover from the Second Injury Fund. A claimant in a workers' compensation proceeding has the burden of proving all elements of his claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo.App. 2008). In order for a claimant to recover against the SIF, he must prove that he sustained a compensable injury, referred to as "the last injury," which resulted in permanent partial disability. Section 287.220.1 RSMo. A claimant must also prove that he 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 his employment or reemployment should he become unemployed; and (3) equals a minimum of 50 weeks of compensation for injuries to the body as a whole or 15% for major extremities. *Dunn v. Treasurer of Missouri as Custodian of Second Injury Fund*, 272 S.W.3d 267, 272 (Mo.App. 2008) (Citations omitted). In order for a claimant to be entitled to recover permanent partial disability benefits from the Second Injury Fund, he must prove that the last injury, combined with his 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.

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

1. Claimant sustained a compensable last injury which resulted in permanent partial disability equivalent to 15% of the left wrist (26.25 weeks) plus 10 weeks for disfigurement.
2. As of the time the last injury was sustained, Claimant had the following preexisting permanent partial disabilities, which meet the statutory thresholds and were of such seriousness as to constitute a hindrance or obstacle to employment or reemployment:

- a. 12.5% of the body (head injury) (50 weeks).
- 

Total weeks for preexisting disabilities: 50

3. The credible evidence establishes that the last injury, combined with the pre-existing permanent partial disabilities, causes 10% load greater overall disability than the independent sum of the disabilities.
4. The Second Injury Fund liability is calculated as follows: 26.25 weeks for the last injury + 50 weeks for preexisting injuries = 76.25 weeks x 10% load = 7.625 weeks of overall greater disability, plus 10 weeks disability for disfigurement for a total of 17.625 weeks.

CONCLUSION

The Second Injury Fund is liable to Claimant for \$4,911.38 in permanent partial disability benefits. Attorney for Claimant shall be entitled to an attorney fee of 25% of this award.

Made by: \_\_\_\_\_

Suzette Carlisle

*Administrative Law Judge  
Division of Workers' Compensation*