

FINAL AWARD ALLOWING COMPENSATION

Injury No.: 02-101407

Employee: Leif Yelverton

Employer: Kuna Food Service (Settled)

Insurer: Commerce & Industry Insurance Company (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.¹ We have read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record. We find that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation law, except as modified herein. Pursuant to § 286.090, we issue this final award and decision modifying the award and decision of the ALJ. We adopt the findings, conclusions, decision, and award of the ALJ to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Discussion

The ALJ found that employee is not permanently and totally disabled (PTD), crediting the testimonies of Dr. Cantrell, Dr. Ritchie, and Mr. England. The ALJ explained that vocational expert Mr. England was more credible than vocational expert Ms. Browning because Ms. Browning changed her opinion after reviewing additional medical records from Dr. Shuman. Specifically, in April 2006, Ms. Browning opined that employee was still employable based on her examination of employee and the medical records available to her at the time. Ms. Browning testified that employee complained to her about his back pain, but she did not have any independent validation of a back disability at that time. Subsequently, Ms. Browning received medical records from employee's primary care doctor, which described employee as having severe chronic back pain, and from Dr. Schuman, who did an MRI and found a problem at L5-S1. Due to those additional records, Ms. Browning wrote an addendum to her opinion in August 2007 stating that because of the independent validation of employee's back pain, she believes employee is not capable of competing in the open labor market due to a combination of employee's primary and pre-existing disabilities.

We disagree that Ms. Browning's change of opinion due to newly obtained information is any reason to find the witness less credible. We note that Mr. England also issued a second report admitting that if we were to believe Dr. Volarich's findings, employee would be permanently and totally disabled due to a combination of the results of the primary injury and employee's previous back disability. Similarly, we do not find Mr. England's change in opinion to be a reason to find him not credible.

¹ Statutory references are to the Revised Statutes of Missouri 2002, unless otherwise indicated.

Employee: Leif Yelverton

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As for the medical experts, we disagree with the ALJ's findings that Dr. Cantrell and Dr. Ritchie were the most credible regarding the extent of employee's disabilities. Dr. Ritchie admitted that he did not take employee's back complaints into consideration when forming his opinion. Dr. Cantrell performed an examination of employee at employer's request, however the examination was limited to the scope of employee's work injury so he did not examine employee's back.

Dr. Volarich was the only doctor who physically examined employee's back, and we feel he is the best qualified expert to speak to employee's back disability.

Extent of disability

In his appeal to the Commission, employee alleges the ALJ erred in not finding employee permanently and totally disabled due to the combination of employee's disabilities. As stated in *Shipp*:²

Under section 287.020.7, "total disability" is defined as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident. The test for permanent and total disability is whether a claimant is able to competently compete in the open labor market given his or her condition and situation. The pivotal question is whether an employer can reasonably be expected to hire the claimant, given the claimant's present physical condition, and reasonably expect the claimant to successfully perform the work.

Ms. Browning testified that "Because [employee] can't sit and he can't stand and he can't walk ... he can't do those things for a long period of time and he is in pain ... I don't see how he would be able to sustain work." Mr. England testified that in considering the restrictions imposed by Dr. Volarich including the need to lie down at times, "that could certainly prevent him from being able to sustain any kind of regular work." Thus, in considering the credible restrictions and disability according to Dr. Volarich, both vocational experts opined that employee is unable to work. We find that employee's disabilities prevent him from competing in the open labor market. Therefore, we conclude that employee is permanently and totally disabled.

Second Injury Fund liability

"For a claimant to demonstrate Fund liability for PTD, he must establish (1) the extent or percentage of the PPD resulting from the last injury only, and (2) prove that the combination of the last injury and the preexisting disabilities resulted in PTD."³ "The question of whether [employee] is PTD is determined based on whether [he] is able to compete in the open labor market with the indicated restrictions."⁴ "The critical question is whether an employer could reasonably be expected to hire [employee] given [his] physical condition and the expectations of the job."⁵

² *Shipp v. Treasurer of State*, 99 S.W.3d 44, 50-51 (Mo. App. E.D. 2003) (internal citations omitted).

³ *Lewis v. Treasurer of the State of Missouri*, Mo. App. No. ED100657 at *20-21 (June 30, 2014).

⁴ *Ball-Sawyers v. Blue Springs School Dist.*, 286 S.W.3d 247, 254 (Mo. App. W.D. 2009).

⁵ *Id.*

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First, we affirm the ALJ's finding that employee sustained an 85% disability to his right knee as the result of the primary injury alone.

Next, we must determine whether employee had a preexisting permanent partial disability (PPD). Employee had complained about his back to numerous doctors before the primary injury. Dr. Schuman had noted that employee experienced difficulty sitting due to a herniated disc in his low back. She ordered an MRI in 2001, which revealed a disc bulge at L3-4, central disc protrusion at L4-5, a large left paracentral disc herniation at L5-S1 which compressed the left S1 nerve root, and degenerative disc disease at L2-3 through L5-S1. We find that these injuries were permanent and of such seriousness as to constitute a hindrance or obstacle to employee's employment. Employee has met his burden of proof.

As indicated above, we must next determine whether the employee's pre-existing PPD combines with the primary injury to result in PTD. Dr. Vierling, who performed the last surgery on employee's leg, released employee with a long list of permanent restrictions pertaining to the primary disability including limited standing, walking, and lifting. As Dr. Schuman indicated, employee experienced difficulty sitting due to the prior disability. Dr. Volarich testified that:

Because of the severity of the left leg injury in the past, the fracture, the mechanical problems from that, and the back injury with the neurologic problems to the left lower extremity, I don't think that can be ignored. That's why he can't get around on a consistent basis right now. At least he used to be able to walk around in the past before the right leg injury.

If you take the whole back, the whole back syndrome, the ruptured disc, the radicular symptoms, and the fracture out of the equation and just look at that leg, as long as he has got reasonable pain control, which he is pretty much doing on his own without having to take medications, he can do something sedentary. But now, we add the back to it, he can't sit for a prolonged period of time. So my answer is no, I think it's a combination. I think it has to be all of the injuries combined together.

Dr. Volarich's opinion is supported by the medical records and impressions of Dr. Vierling and Dr. Shuman. We find Dr. Volarich's testimony logical and persuasive. We are convinced that employee's previous disability in combination with the primary disability render employee unable to compete in the open labor market, and no employer would be reasonably expected to hire employee in his condition. Therefore, we conclude that employee is permanently and totally disabled as a result of the combination of these disabilities.

In conclusion, the Second Injury Fund is liable for PTD benefits at the rate of \$332.33 per week beginning 136 weeks⁶ after December 17, 2003, the date employee reached

⁶ 85% PPD at the 160 week level.

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maximum medical improvement, which shall continue for employee's lifetime or until modified by law.

This award is subject to a lien in favor of Nile Griffiths, employee's attorney, in the amount of 25% for necessary legal services rendered.

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

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 22, 2013, is attached for reference.

Given at Jefferson City, State of Missouri, this 18th day of July 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Leif Yelverton

Injury No.: 02-101407

Dependents: N/A

Employer: Kuna Food Service (Settled)

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Commerce & Industry Insurance Company

Hearing Date: July 23, 2013

Checked by: MDL

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 28, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
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:
Employee was driving a pallet jack when his right leg was pinned against a forklift.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right leg
14. Nature and extent of any permanent disability: 85% PPD of the right knee as a result of the primary injury (Employer and Claimant previously settled for a different amount) which combines with pre-existing PPD of 20% of the left knee and 25% of the body as a whole – low back.
15. Compensation paid to-date for temporary disability: \$21,221.57
16. Value necessary medical aid paid to date by employer/insurer? \$98,452.26

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Leif Yelverton

Injury No.: 02-101407

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Kuna Food Service (Settled)

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

Additional Party: Second Injury Fund

Insurer: Commerce & Industry Insurance Co. (Settled)

Checked by: MDL

PRELIMINARIES

A hearing was held on July 23, 2013 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Leif Yelverton ("Claimant") was represented by Mr. Nile Griffiths. Kuna Food Service ("Employer") and its insurer previously settled their liability with Claimant, and this matter proceeded to a hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General Kevin Nelson. Mr. Griffiths requested a fee of 25% of Claimant's award.

The parties stipulated that on or about September 28, 2002 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant's average weekly wage at the time of injury was \$498.50 which yielded a rate of \$332.33 for both total disability benefits and Permanent Partial Disability ("PPD") benefits; Employer paid TTD benefits of \$21,221.57 for the period from September 28, 2002 until July 10, 2003; and in the event Claimant is found to be permanently and totally disabled benefits should commence on December 17, 2003.

The issue to be determined is whether the SIF is liable for PTD or PPD benefits.

SUMMARY OF EVIDENCE

Claimant is a 33 year old man with a GED. Claimant worked for Employer on September 28, 2002. Claimant worked in the warehouse operating a forklift.

After dropping out of high school Claimant worked in the fast food industry, worked at a tire company changing, balancing, and rotating tires, and also worked for his father's landscaping and house rehabilitation business performing labor.

PRIOR INJURIES

When Claimant was 7 years old he was riding his bicycle and was hit by a truck and dragged 20 feet. He treated at Cardinal Glennon's Children's Hospital. Claimant was diagnosed with a closed head trauma and near total avulsion of his left ear, fracture of his left tibia, compression fracture of L1, L2, and L3, and 6 cm laceration of the left temporal area with fistula. Claimant underwent surgery for a closed reduction and splinting of his left tibia. He also underwent a debridement and reconstruction of his left ear and debridement of his left temporal laceration with primary closure and split-thickness skin graft from his left thigh. Claimant underwent another surgery which consisted of a debridement of his left ear, reconstruction of his ear, superficial temporal fascia flap and full thickness skin grafting.

Claimant testified as a result of his bicycle accident, and leading up to September 28, 2002, he had back pain, reduced strength in his left leg, and trouble kneeling on his left leg.

In April 2001 Claimant was referred to Dr. Shuman for chronic back pain. Dr. Shuman evaluated Claimant on May 10, 2001 and noted Claimant had low back pain for one year. She diagnosed scoliosis and chronic back pain. She ordered an MRI of his lumbar spine which on June 6, 201 showed L3-4 minimal disc bulge, L4-5 small central disc protrusion, L5-S1 large left paracentral disc herniation which compressed the transversing left S1 nerve root and degenerative disc disease L2-3 through L5-S1. Epidural steroid injections were recommended.

Leading up to and continuing beyond the injury of September 28, 2002, Claimant had ongoing difficulties with his low back and pain that radiated down the back of his left leg. His back pain increased with heavy lifting, stooping, prolonged walking, or bending. He did not take time off work, but took Aleve for pain and received chiropractic treatments. He had difficulty maintaining a fixed position for over two hours. At work he got breaks and he could change positions during his breaks which helped to alleviate his symptoms somewhat. He had flare-ups on a weekly basis, took Aleve and rested.

PRIMARY INJURY

On September 28, 2002, Claimant was driving a pallet jack when his right leg was impaled on the blades of a forklift. Claimant was transported to St. Anthony's Emergency Room where examination noted open injuries on the lateral side of his leg, and multiple lacerations of the medial side of his leg. X-rays showed an open tibia and fibula fracture of his left leg. There were signs of posterior tibial nerve injury and possible vascular injury due to the absence of posterior pulses. He was admitted to the hospital and on September 28, 2002, Dr. Vierling performed an irrigation and debridement, and placed an external fixator.

Dr. Olivier evaluated the Claimant on September 29, 2002, reaching the same diagnoses as to the fractures and confirming the nerve and vascular damage. Dr. Vierling performed surgery on September 30, 2002 and performed an intermedullary nailing of the tibial fracture and removal of the fixator. Dr. Olivier then performed an exploration of the right leg, and repair of the soleus and peroneus muscles. Dr. Olivier operated again on October 4, 2002, performing a second exploration and debridement of the right leg wounds. On October 7, 2002 Dr. Olivier

and Dr. Howard performed a right leg reconstruction, taking part of the Claimant's abdominal muscles for a right leg skin graft. Claimant was discharged on October 1, 2002.

On October 17, 2002 Dr. Olivier noted right leg swelling and erythema around the flap and adjacent to the sutures at the medial aspect of the right leg. He readmitted Claimant to the hospital on October 18, 2002 for strict leg elevation and antibiotic treatment. Dr. Slom from infectious disease performed an evaluation on October 19, 2002 and diagnosed cellulitis of the right anterior tibial area associated with recurrent muscle flap and skin graft closure. Claimant was discharged on October 21, 2002 with a diagnosis of cellulitis of his right leg.

Dr. Vierling and Dr. Olivier continued to follow Claimant. Claimant complained of right leg pain, with swelling and discoloration after weight bearing and physical therapy. Continued dressing changes, compression stockings, elastic support for his shoes, and the wearing of high top tennis shoes were recommended to relieve his symptoms. Nerve conduction studies performed on December 11, 2002 showed severe right posterior tibial neuropathy and right peroneal neuropathy. On January 14, 2003 Dr. Oliver noted a flexion deformity in his second toe. Claimant was referred to Dr. Visser, a podiatrist, and later to Dr. Mackinnon for his posterior tibial nerve injury.

Dr. Mackinnon evaluated Claimant on January 29, 2003. She recommended an exploration of the right tibial nerve with a release of four distal compartments. Dr. Schmidt saw Claimant on February 17, 2003 and noted compartment syndrome. He recommended releases which could be done at the same time Dr. Mackinnon performed the nerve repair. On February 28, 2003 Dr. Vierling recommended the use of a cane.

On April 4, 2003 Dr. Mackinnon performed right tarsal, medial plantar, lateral plantar, and calcaneus tunnel releases. Dr. Schmidt performed a flexor halucis longus release, flexor digitorum longus release, and short intrinsic release. Dr. Mackinnon released him from care on May 30, 2003. Dr. Schmidt referred Claimant to work hardening on June 13, 2003.

Dr. Cantrell performed an independent medical evaluation on June 23, 2003. He took a medical history, reviewed records, and performed a physical examination. He noted ongoing pain from the work-related multiple fractures, and significant pain secondary to a posterior tibial neuropathy. He found no symptoms of peroneal neuropathy. He prescribed Neurontin, and increased the dosage on July 7, 2003. Dr. Schmidt released Claimant to full duty on July 1, 2003. Dr. Schmidt stated on July 28, 2003 that Claimant told him he could not work more than 2-3 hours due to pain. Dr. Schmidt placed him at MMI from an orthopedic point of view.

An August 21, 2003 Functional Capacity Evaluation (FCE) indicated Claimant could work his job at the full-duty level. On August 28, 2003 Dr. Cantrell reviewed the FCE. He placed a 75 pound lifting limit, and Claimant be allowed to sit for 30 minutes every two hours. He also recommended tapering off of the Neurontin.

Dr. Aubuchon performed an independent medical evaluation on September 2, 2003. He imposed permanent restrictions of a 15 minute sit down break every two hours, limited climbing of stairs and ladders, no walking on uneven terrain, and no lifting greater than 25 pounds. He placed Claimant at MMI.

Dr. Cantrell saw Claimant on December 16, 2003. He stated his previous restrictions were permanent and placed the Claimant at MMI.

Dr. Vierling performed surgery for removal of the right leg rod and screws on June 24, 2004. He noted some limitations with walking endurance but less curling of the right toes. He placed permanent restrictions of standing or walking 30 minutes at a time which he could do six times in an eight hour work shift; lifting no more than 25 pounds occasionally from a standing position; no heavy squat lifting; carry up to 25 pounds occasionally over short distances; use of the left foot for repetitive motions; restricted use of the right foot; no kneeling, squatting or crawling; occasional stair climbing without a load, and occasional walking on uneven surfaces.

Dr. Cantrell saw Claimant for a reevaluation on October 4, 2005, noting some additional treatment. He continued his diagnoses and restrictions.

Dr. Ritchie performed independent medical evaluations on May 15, 2009 and March 28, 2011, and testified on behalf of Employer. He felt Claimant had a very bad injury and had made a good recovery considering its severity. He felt Claimant was employable. He rated the work injury at 35% impairment of the right leg. Claimant told Dr. Ritchie his back problems were one of the other reasons he should be on disability. When asked how he injured his back he told Dr. Ritchie he had injured it in a truck accident. He told Dr. Ritchie it was his back as much as his leg that makes him unable to work. Dr. Ritchie stated Claimant's history had not changed over the two years since he had seen him last, and reiterated his opinion that Claimant was employable.

Claimant saw Dr. Volarich for an independent medical evaluation on December 22, 2011. Dr. Volarich took a history, reviewed records, and performed a physical examination, and testified on behalf of Claimant. He provided PPD ratings of 85% of the right knee and 7.5% of the abdominal wall due to the work injury, and pre-existing disabilities of 30% of the left knee, and 35% of the lumbar spine, which constituted a hindrance to his employment or re-employment. Dr. Volarich opined the combination of Claimant's disabilities creates a substantially greater disability than the simple sum or total of each separate injury/illness, and loading factor should be added. He reviewed vocational assessments, and testified Claimant was permanently and totally disabled due to a combination of impairments.

Dr. Volarich testified he did not think Claimant was able to perform even entry level jobs unless he had the ability to move at will, and rest when needed, including resting in a recumbent fashion because of his lumbar radicular syndrome. He testified Claimant was unable to tolerate standing for any more than about 20 or 30 minutes because of ongoing right lower extremity pain.

Dr. Cantrell reviewed additional records and depositions of Drs. Volarich and Ritchie. He issued a report dated February 20, 2013. These additional materials did not change his previous opinions. He stated that the August, 2003 FCE would be reflective of Claimant's physical capabilities inclusive of his right leg and prior impairments.

Claimant saw Sherry Browning for a vocational assessment on April 3, 2006. She issued a report dated August 7, 2007. Ms. Browning reviewed medical records, and took educational, family, social, and vocational histories from the Claimant. She gave Claimant the Woodcock

Johnson, Tests of Achievement-III to assess his reading and mathematical skills. He also took the Self-Directed vocational interest test. Based upon Claimant's age, education and functional abilities, she stated Claimant could potentially work in a limited number of security guard and entry level customer service positions that include on-the-job-training. She said he would need a security job that would permit him to sit and stand as needed.

Ms. Browning testified on behalf of Claimant. She testified she changed her opinion to one of total disability based upon Claimant's last injury and his pre-existing back condition after a review of additional records from Dr. Shuman.

Claimant saw James England at the Employer's request on March 14, 2008 for a vocational assessment. He issued a report on April 2, 2008. Mr. England reviewed medical records, and took educational, family, social and vocational histories. Mr. England administered the Wide-Range Achievement Test, Revision 3 (WRAT). Claimant's scores on the test were judged adequate for a variety of vocational alternatives. Claimant also took the Career Assessment Inventory to indicate his likes and dislikes with regard to general activities, school subjects, and specific occupations. Mr. England opined Claimant could either pursue entry level service employment such as some security positions, customer service work, or cashiering positions, or he could acquire additional skills through the help of the State Division of Vocational Rehabilitation. He saw nothing in the medical records to indicate the Claimant was totally disabled from all forms of employment.

Mr. England issued a second report on July 10, 2013 after reviewing additional records. He noted that if one assumes what Dr. Volarich indicated with regard to Claimant's low back pain and the possible need to lie down periodically, that could preclude his ability to work. If this were the case, Claimant's total disability would be due to a combination of prior back problems and the last injury.

FINDINGS OF FACT & RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

The starting point for Second Injury Fund liability is found in §287.220.1 RSMo. This Chapter provides that:

“if the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for body as a whole injury or major extremity shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under Section 287.200 out of a special fund known as the Second Injury Fund.”

Thus, to determine if Second Injury Fund exists, “the first determination is the degree of disability from the last injury considered alone.” *Landman v. Ice Cream Specialties*, 107 S.W.3d 240 248 (Mo. banc 2003). For this reason, “pre-existing disabilities are irrelevant until the employer’s liability for the last injury is determined.” *Id.* If the employee’s last injury in and of itself rendered the employee permanently and totally disabled, the Second Injury Fund has no liability, and the employer is responsible for the entire amount of compensation.” *Id.*

For Second Injury Fund liability, a pre-existing disability must combine with a disability from a subsequent injury in one of two ways: (1) the two disabilities combined result in greater overall disability than that which would have resulted from the new injury alone and of itself; or (2) the pre-existing disability combined with the disability from the subsequent injury to create permanent total disability. *Uhlir v. Farmer*, 94 S.W.3d 441, 444 (Mo. App. E.D. 2003).

According to §287.020.7, “total disability is the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident. *Fletcher v. Second Injury Fund*, 922 S.W.2d 402, 404 (Mo. App. W.D. 1996). An employee must prove that their pre-existing medical conditions were of such seriousness so as to constitute an obstacle or hindrance to employment or reemployment. *Lammert v. Vess Beverages, Inc.*, 968 S.W.2d at 724-25.

I find Claimant sustained 85% PPD of the right knee as a result of the primary injury of September 28, 2002. This finding is the result of the ongoing difficulties with weight bearing, neuropathic pain, lost motion, weakness, and swelling in Claimant’s right lower extremity.

I find Claimant is not permanently and totally disabled. I find the testimony of Mr. England more credible than that of Ms. Browning. Ms. Browning originally wrote in her report that Claimant was employable. After reviewing Dr. Shuman’s five pages of records for the lumbar spine, which indicates she saw the Claimant once, Ms. Browning changed her opinion to that of total disability. Consistent with Mr. England’s opinion, as well as the medical opinions of Drs. Cantrell and Ritchie, I find Claimant is capable of competing in the open labor market.

Although I find Claimant is not permanently and totally disabled, I find at the time of the primary injury of September 28, 2002, Claimant had pre-existing disabilities that were a hindrance to employment or re-employment. I find Claimant had pre-existing PPD of 20% of the left knee due to the spiral tibial fracture that required reduction and immobilization, and 25% of the body as a whole rated at the lumbar spine due to the disc herniation at L5-S1 to the left causing left leg radiculopathy. I find the combination of the primary and pre-existing injuries creates a substantially greater overall disability than their simple sums, and a loading factor of 20% shall apply.

The SIF liability is calculated as follows: 85% PPD of the right knee for the primary injury (136 weeks) + 20% PPD of the left knee pre-existing (32 weeks) + 25% PPD of the body as a whole pre-existing (100 weeks) = 268 weeks of overall disability x a 20% loading factor = 53.6 weeks x \$332.33 = \$17,812.89.

This award is subject to an attorney’s lien of 25% in favor of Claimant’s attorney, Mr. Nile Griffiths.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation