



In the Missouri Court of Appeals Eastern District

DIVISION THREE

JOSEPH SALVICCIO,)	No. ED97862
)	
Respondent,)	Appeal from the Labor and Industrial
)	Relations Commission
vs.)	
)	
TREASURER OF THE STATE OF)	
MISSOURI, AS CUSTODIAN OF THE)	
SECOND INJURY FUND,)	
)	
Appellant.)	FILED: September 11, 2012

The Second Injury Fund ("Fund") appeals from the final award of the Labor and Industrial Relations Commission ("Commission"), finding the Fund liable to Joseph Salvicchio ("Claimant") for 12.3 weeks of permanent partial disability ("PPD") enhancement. We would reverse that portion of the Commission's decision that finds the Fund liable for PPD enhancement on preexisting PPDs that do not individually meet the statutory thresholds; however, because of the general interest and importance of the issues, we transfer to the Missouri Supreme Court pursuant to Rule 83.02.

I. BACKGROUND

Claimant worked in the employ of Western Supplies Company ("Employer") for approximately 25 years when, on November 21, 2008, he suffered a twisting injury to his left knee while moving pieces of metal at his workstation. Following a successful surgery to repair

the injured knee, Claimant filed a workers' compensation claim against Employer. The claim was settled for 20% PPD of the left knee. Claimant then sought compensation from the Fund, alleging the disability from his November 2008 primary injury combined with his preexisting disabilities to create additional disability payable from the Fund. His claim was initially heard on December 7, 2010, before an Administrative Law Judge ("ALJ") within the Division of Workers' Compensation.

At the hearing before the ALJ, the following evidence was adduced regarding Claimant's preexisting disabilities. First, in 1995, Claimant injured the little finger of his left hand while moving bars of steel at work. Surgery was performed, but Claimant's finger suffered permanent flexion contracture and remains bent 90 degrees at the proximal joint (the larger middle joint of the finger) and 45 degrees at the distal joint (the joint nearest to the finger tip). Claimant testified that he learned how to work around the injury and reached a workers' compensation settlement with Employer for 59% of the left finger at the proximal joint (or 22-week level).

Claimant also suffered ventral hernias in 1999 and 2005. Dr. Kenneth Bennett surgically repaired both hernias at the time they were discovered, although the 2005 hernia also required an abdominal wall reconstruction. Claimant settled his hernia claims with Employer for 4% of the body as a whole referable to the 1999 hernia and 3.5% of the body as a whole referable to the 2005 hernia. Claimant testified that, due to the hernias, he is now more cautious when lifting is required because he experiences increased abdominal pressure when lifting.

The last of Claimant's preexisting disabilities discussed before the ALJ was Claimant's diabetes. Claimant was diagnosed in 1995 with non-insulin dependent diabetes. However, sometime around 2007, Claimant began an insulin regimen, which he remained on as of the date

of the hearing. Symptomatically, while Claimant had not been diagnosed with diabetic neuropathy, it was noted that he did experience parathesia of his extremities due to the diabetes.

In further support of Claimant's position, the deposition testimony of Dr. Thomas Musich ("Dr. Musich"), a family practice physician, was presented at the hearing. On November 2, 2009, at the request of Claimant's attorney, Dr. Musich performed a physical examination of Claimant and reviewed Claimant's medical records. Dr. Musich then assigned disability ratings to all of Claimant's aforementioned disabilities. In regards to Claimant's November 2008 primary injury to his left knee, Dr. Musich assigned a 45% PPD rating. For Claimant's preexisting disabilities, Dr. Musich assigned the following ratings: 25% PPD referable to the left hand, 15% PPD of the body as a whole referable to both the 1999 and 2005 hernias, and 20% PPD of the body as a whole referable to Claimant's diabetes. Overall, Dr. Musich opined that Claimant's primary injury combined with his preexisting disabilities to produce a synergistic effect resulting in a significantly greater overall disability than the simple sum of those disabilities.

On March 8, 2011, the ALJ entered her Award and Decision finding no Fund liability because none of Claimant's preexisting injuries rose to the level necessary to satisfy the statutory thresholds outlined in Section 287.220.1, RSMo.¹ The ALJ found that although Claimant's injury to his left little finger impacts the use of his hand, it does not rise to the minimum of 15% PPD required to be considered for a Fund claim when the injury is to a major extremity. In support, she noted that Claimant is right-hand dominant, his grip strength in his left hand is only 20 pounds less than his uninjured right hand, and that Claimant taught himself how to lift without using the injured finger. The ALJ further determined that Claimant's diabetes failed to rise above the required 50 weeks of compensation for body as a whole injuries due to the lack of

¹ All further statutory citations are to RSMo Cum. Supp. 2010.

sufficient medical evidence concerning Claimant's prior treatment and whether Claimant had experienced any complications due to the diabetes beyond symptoms of paresthesia. Similarly, the ALJ dismissed Claimant's two hernias as not rising to the 50 weeks of compensation necessary to implicate Fund liability.

Claimant appealed the ALJ's decision to the Commission and, on December 8, 2011, the Commission reversed the ALJ's decision and entered a Final Award Allowing Compensation from the Fund. In its decision, the Commission concluded that because Claimant had more than a single preexisting PPD, it was necessary to convert all of Claimant's preexisting disabilities to weeks of compensation and combine them to see if they met or exceeded the 50 weeks of compensation threshold. The Commission found Claimant's preexisting disabilities yielded: 11 weeks for the finger injury on the left hand, 16 weeks for the 1999 hernia, 14 weeks for the 2005 hernia, and 50 weeks for the diabetes. Combined, the Commission found Claimant had 91 weeks of preexisting PPD, thus meeting the 50-week threshold. The Commission then took those 91 weeks and added the 32 weeks of PPD attributable to the primary injury, resulting in 123 weeks. That 123-week sum was then multiplied by the 10% load factor attributable to the synergistic effect the primary injury had on Claimant's preexisting injuries and the Fund was held responsible for 12.3 weeks of PPD enhancement. The Fund now appeals.

II. DISCUSSION

In its sole point on appeal, the Fund argues the Commission erred in reversing the decision of the ALJ and finding the Fund liable for 12.3 weeks of PPD enhancement. Specifically, the Fund contends the Commission misapplied Section 287.220.1 by not ensuring that each of Claimant's preexisting injuries met the threshold requirements laid out therein. We agree.

Standard of Review

Pursuant to Section 287.495.1, on appeal this Court may modify, reverse, remand, or set aside the Commission's award only upon the following grounds:

- (1) That the commission acted without or in excess of its powers;
- (2) That the award was procured by fraud;
- (3) That the facts found by the commission do not support the award;
- (4) That there was not sufficient competent evidence in the record to warrant the making of the award.

We will defer to the Commission on issues of fact, the credibility of witnesses, and the weight given to conflicting evidence. Hager v. Syberg's Westport, 304 S.W.3d 771, 773 (Mo. App. E.D. 2010). This Court, however, is not bound by the Commission's conclusions of law or its application of the law to the facts. Difatta-Wheaton v. Dolphin Capital Corp., 271 S.W.3d 594, 595 (Mo. banc 2008).

On review, we evaluate the whole record to determine if sufficient competent and substantial evidence supports the Commission's decision. Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 222-223 (Mo. banc 2003); Townser v. First Data Corp., 215 S.W.3d 237, 241 (Mo. App. E.D. 2007). We will only set aside the Commission's award in those rare instances where the award is contrary to the overwhelming weight of the evidence. Hampton, 239 S.W.3d at 223.

Analysis

At its core, this case is one of statutory interpretation and, as such, is a matter of law, not fact. Wilcut v. Innovative Warehousing, 247 S.W.3d 1, 5 (Mo. App. E.D. 2008). We therefore interpret the statute independently, with the primary aim of "ascertain[ing] the intent of the legislature, as expressed in the words of the statute, and giv[ing] effect to that intent whenever possible." Grubbs v. Treasurer of Mo. as Custodian of Second Injury Fund, 298 S.W.3d 907,

911 (Mo. App. E.D. 2009). In Missouri, the general principle is to give a liberal construction to the workers' compensation statute in favor of the claimant. Motton v. Outsource Int'l, 77 S.W.3d 669, 672 (Mo. App. E.D. 2002). However, we must guard against extending that principle "so far as to destroy what we believe to be a clearly indicated intent of the legislature." Id. (quoting Staples v. A.P. Green Fire Brick Co., 307 S.W.2d 457, 463 (Mo. banc 1957) (internal quotations omitted)). Our construction of a statute is "not to be hyper-technical, but instead is to be reasonable and logical and to give meaning to the statute[]." Gash v. Lafayette County, 245 S.W.3d 229, 232 (Mo. banc 2008) (quoting Donaldson v. Crawford, 230 S.W.3d 340, 342 (Mo. banc 2007)).

In this case, the relevant statute is Section 287.220.1 and it provides, in pertinent part:

1. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if

any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for.

In its densely written third and fourth sentences, Section 287.220.1 sets out the prerequisites for both establishing and calculating Fund liability. Therefore, in order to better navigate this statutory thicket, we will divide Section 287.220.1 into two portions. The first portion sets out the requirements a claimant's PPD must meet in order to implicate Fund liability. The second portion then describes the calculations necessary in determining the compensation liability of the Fund and the employer. We will address each portion in turn.

A. The Preexisting PPD Thresholds of Section 287.220.1

In 1993, Section 287.220.1 was amended to limit PPD awards against the Fund to cases where both the preexisting disabilities and primary work injury are more than *de minimus*. To that effect, the legislature abolished the judicially created standard that preexisting disabilities must have resulted in "industrial disability," and replaced it with the requirement that a preexisting disability be a "hindrance or obstacle to employment." Suarez v. Treasurer of Mo., 924 S.W.2d 602, 603 (Mo. App. W.D. 1996). Additionally, the legislature implemented certain thresholds, above which a claimant's preexisting injury must fall in order to qualify for Fund recovery—15% PPD if a major extremity injury, or 50 weeks of compensation if a body as a whole injury. Section 287.220.1.

1. Each Preexisting PPD Must be a "Hindrance or Obstacle"

Section 287.220.1 sets out a series of benchmarks that each preexisting PPD must satisfy before the establishment of Fund liability. The first benchmark prescribes that each preexisting PPD to be "of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment." Section 287.220.1; Pursley v. Christian Hosp. Northeast/Northwest,

355 S.W.3d 508, 515 (Mo. App. E.D. 2011). Ascertaining whether a preexisting PPD constitutes a hindrance or obstacle to employment requires the Commission to focus on the "potential that the preexisting injury may combine with a future work related injury to result in a greater degree of disability than would have resulted if there was no such prior condition." Concepcion v. Lear Corp., 173 S.W.3d 368, 371 (Mo. App. W.D. 2005). If the preexisting PPD is found to be an obstacle or hindrance to the claimant's ability to work, then the analysis proceeds to the numerical thresholds. However, if the preexisting PPD is not considered an obstacle or hindrance to the claimant's ability to work, the analysis immediately ceases for that preexisting PPD and Fund liability is not triggered. See Pursley, 355 S.W.3d at 515.

In this case, the Commission categorized each of Claimant's preexisting PPDs as a "hindrance or obstacle to employment." Because the Fund does not contest the Commission's finding on this issue, we do not disturb the finding of "hindrance or obstacle" and the analysis proceeds to the numerical thresholds for all four of Claimant's preexisting PPDs.

2. Each Preexisting PPD Must Satisfy the Numerical Thresholds

The relevant segment of Section 287.220.1 that sets forth the numerical thresholds for preexisting PPDs requires that:

[T]he permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation

After evaluating that language, the Commission, in its Final Award, outlined two alternative avenues through the statutory thresholds—one for a single major extremity injury, and the other as a catchall for all other types and combinations of preexisting disabilities. The 15% PPD standard, the Commission held, is only applicable when a claimant is asserting a preexisting injury to a single major extremity. In all other instances (i.e., an injury to multiple

major extremities, or any number of body as a whole injuries), the Commission determined that a claimant must show the injury exceeds the body as a whole threshold of 50 weeks of compensation. Importantly, in regards to the latter threshold, the Commission noted that a claimant is permitted to combine various preexisting disabilities to exceed the 50-week requirement.

The Commission founded its limited interpretation of the 15% PPD threshold in a desire for simplicity. Particularly, the Commission noted that when a claimant has more than one preexisting PPD, "the simplicity [inherent in the 15% PPD threshold for a major extremity] cannot be achieved." The Commission derived its emphasis on simplicity from an earlier statement of this Court, where we noted, "the legislature intended to make a simple 15% disability to a major extremity the threshold rather than attempt a more complex formula based on weeks of disability to various body parts at various levels." Motton v. Outsource Int'l, 77 S.W.3d 669, 675 (Mo. App. E.D. 2002). From that statement, the Commission extrapolated that a method was needed to "combine the various disabilities to determine the claimant's overall preexisting disability as of the moment of the primary injury." That method, according to the Commission, was the weeks of compensation measure applicable to body as a whole injuries.

Furthermore, in order to buttress its interpretation, the Commission extricated the phrase "if a major extremity only" from the statute and looked to that wording as support for its interpretation that the 15% PPD requirement only applies where a claimant has a preexisting PPD of a single major extremity. These conclusions by the Commission are in error.

First, by citing Motton as support for its broad interpretation of the thresholds, the Commission disregards that case's primary holding. The Motton court was asked to determine whether Section 287.220.1 was ambiguous in its requirement that a major extremity be measured

against the 15% disability requirement. See 77 S.W.3d 669. This Court found the statute unambiguous and stated that the "legislature's decision not to measure disability to a major extremity by weeks of compensation indicates that it did not intend to do so." Id. at 675. Put another way, if the legislature desired major extremity injuries to be measured using weeks of compensation in certain instances, it would have included that option in the statute. It did not.

Second, by extracting the phrase "if a major extremity only," and evaluating it individually, the Commission seeks to derive support by removing context. When viewed within the flow of the statute, the legislature's use of "major extremity only" is more apparent. See Gash, 245 S.W.3d at 232 (statutory interpretation is to be logical, not "hyper-technical"). Employing the word "only" in conjunction with a major extremity injury does not limit the applicability of that threshold. Instead, it is apparent that the legislature was merely distinguishing an injury that is localized to a major extremity and set out in the Schedule of Losses in Section 287.190.1, from an injury to the body as a whole. Because the threshold for a body as a whole injury precedes the threshold for a major extremity injury in the statute, the use of "only" in this simply differentiates the inherent plurality of a body as a whole injury from the singularity of an injury to a major extremity.

Taken as a whole, our review of the statute leads us to conclude that Section 287.220.1 requires each preexisting PPD that has been deemed a "hindrance or obstacle," be measured against the statutory threshold corresponding to its respective classification. If the preexisting PPD is a body as a whole injury, then it must be a minimum of 50 weeks of compensation.²

² Calculating the number of weeks of compensation requires the Commission to determine the degree of PPD expressed as a percentage figure. Motton, 77 S.W.3d at 674. That percentage is then multiplied by 400 weeks, (400 weeks being the maximum number of weeks of compensation set out in Section 287.190.3). The resulting sum is the amount of PPD expressed in weeks of compensation for a body as a whole injury. If the sum is greater than or equal to 50 weeks, then that particular PPD may be utilized in calculating Fund liability.

Section 287.220.1. Alternatively, if the preexisting PPD is an injury to a major extremity, then it must be assigned at least a 15% PPD rating in order to implicate Fund liability. Section 287.220.1; see, e.g., Nance v. Treasurer of Mo., 85 S.W.3d 767, 771 (Mo. App. W.D. 2002) ("A mere cursory reading of § 287.220.1 makes it clear that an employee/claimant must establish that he or she sustained a compensable injury and that the injury caused the requisite level of permanent partial disability as part of his or her claim against the Fund.") (overruled on other grounds by Hampton, 121 S.W.3d at 220); Culp v. Lohr Distrib. Co., 898 S.W.2d 613, 614 (Mo. App. E.D. 1995) ("The preexisting disability must be of sufficient seriousness as to hinder employment plus, in the case of [PPD], be of sufficient significance as to be susceptible of measurable rating at least equal to the minimums set forth in the statute.").

3. Stacking Preexisting Unrelated Body as a Whole Injuries and Stacking Body as a Whole Injuries with Major Extremity Injuries is Disallowed by Section 287.220.1

Concomitant with the Commission's broad utilization of the weeks of compensation measure was its belief that combining or "stacking" different preexisting injuries is permissible to meet the thresholds. In particular, the Commission concluded that when the preexisting injuries amount to more than a single major extremity injury, Section 287.220.1 permits stacking body as a whole injuries with each other, and/or combining them with major extremity injuries. We disagree.

There are limited instances when stacking injuries is allowable under the statute. In the case of a claimant that has multiple injuries to a major extremity at various levels, this Court has held that "it may be appropriate, depending on the facts and circumstances, to rate the percentage of disability to the entire major extremity." Shipp v. Treasurer of State, 99 S.W.3d 44, 53 (Mo. App. E.D. 2003) (acceptable to combine preexisting PPD of the right wrist and right shoulder into resulting 15% PPD of the right arm). The propriety of allowing stacking in those limited

circumstances is rooted in the language of Section 287.220.1. Though various injuries to a single major extremity may be categorized at the different compensation levels set forth in Section 287.190.1, such categorization does not alter the fact that those injuries still constitute the same major extremity. See id.

The statute makes no allowance, however, for combining body as a whole injuries together or combining a body as a whole injury with a major extremity injury. We derive the legislature's intent from the words used and do not assume the legislature meant something it did not say. Parktown Imports, Inc. v. Audi of Am., Inc., 278 S.W.3d 670, 673 (Mo. banc 2009). Had the legislature intended to allow for that type of stacking and its resultant circumvention of the thresholds, it would have done so. It did not, and we will not give the statute a "broader application than is warranted by its plain and unambiguous terms."³ Sell v. Ozarks Med. Ctr., 333 S.W.3d 498, 506-07 (Mo. App. S.D. 2011). Accordingly, we find that the type of stacking advanced by the Commission is precluded by the language of Section 287.220.1.

4. Only Claimant's Preexisting Diabetes Satisfies the Thresholds of Section 287.220.1

Applying Section 287.220.1, we find that only one of Claimant's preexisting PPDs was sufficient to incur Fund liability. After finding each of Claimant's preexisting PPDs constituted a hindrance or obstacle to Claimant's employment, the Commission assigned the following ratings to each of Claimant's PPDs: 3.5% of the body as a whole referable to the 2005 hernia, 4% of the body as a whole referable to the 1999 hernia, 12.5% of the body as a whole referable to diabetes, and 50% of the little finger on his left hand at the proximal joint. It is the province of the

³ Missouri's Workers' Compensation laws are subject to strict construction. See Section 287.800.1 ("Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter strictly.").

Commission to assign disability ratings and we defer to its determinations. Cardwell v. Treasurer of Mo., 249 S.W.3d 902, 907 (Mo. App. E.D. 2008).

Claimant's diabetes is a body as a whole injury and, as such, is converted into weeks of compensation. The result of that conversion is 50 weeks. Claimant's preexisting PPD of the body as a whole referable to his diabetes satisfies the 50 weeks of compensation threshold and can be included in calculating Fund liability.

Similarly, Claimant's hernias are converted into weeks of compensation. However, the result is 14 weeks of compensation for the 2005 hernia and 16 weeks for the 1999 hernia. Neither hernia satisfies the 50 weeks of compensation threshold.

Lastly, Claimant's injury to the little finger on his left hand was rated at 50% at the proximal joint/22-week level. The question then is whether such an injury qualifies as a "major extremity" within the meaning of Section 287.220.1. Because the statute fails to define a "major extremity," we must look to the case law.

In Motton, this Court set out to determine whether an arm is a "major extremity." To do so, the Court turned to the dictionary definitions and concluded that an "extremity" is either: "1. [an] extremitas, 2. an upper or lower limb; see membrum., [or] 3. a hand or foot." Motton, 77 S.W.3d at 673 (quoting *Dortland's Illustrated Medical Dictionary* 638 (29th ed.)). "Major" was defined as "greater in number, extent, or importance." Id. at 674 (citing *Webster's New Int'l Dictionary* 1484 (2d. ed.)). The Motton court found that an arm was clearly a "major extremity." Id. Moreover, in line with that holding, this Court has also held that injuries to the arm at the wrist and the arm at the elbow qualify as injuries to a "major extremity." Shipp, 99 S.W.3d at 53. An injury resulting in a 15% PPD at the 110-week level of the foot has also been found to be

an injury to a "major extremity." Palazzolo v. Joe's Delivery Serv., Inc., 98 S.W.3d 645, 648 (Mo. App. E.D. 2003).

Under the definitions set forth in Motton and the plain language of the statute, it is clear that an injury to the little finger at its proximal joint is not an injury to a "major extremity." When converted to weeks of compensation, Claimant's injury to his left little finger amounted only to 11 weeks of compensation. The injury fails to satisfy the thresholds.

B. Only Preexisting Injuries that Satisfied the Thresholds May Be Included in Calculating Fund Liability

The final major contention made by the Commission is that the language of the fourth sentence of Section 287.220.1 requires the inclusion of all preexisting injuries when calculating Fund liability. Following the lengthy sentence establishing the thresholds, Section 287.220.1 goes on to say:

After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, **the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined** by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for.

(Emphasis added). The Commission interpreted this sentence as allowing injuries that otherwise would not satisfy the thresholds to be included in calculating Fund liability, so long as at least one of the preexisting PPDs meets the thresholds. We disagree with this interpretation.

Similar to the Commission's interpretation of "a major extremity only," the Commission's reading of this portion of the statute eliminates proper context. This sentence does not stand alone. Instead, it follows the third sentence of Section 287.220.1, which requires that each

preexisting PPD must be a "hindrance or obstacle" and meet the thresholds for the severity of the injury. Following the Commission's interpretation would undermine the entire purpose of the thresholds by allowing the inclusion of otherwise insufficient preexisting PPDs in the calculation of Fund liability. There is a clear incongruity in screening *de minimus* injuries out in one sentence, and then requiring their calculation in the next. We reject that interpretation and hold that only those preexisting injuries and conditions that have satisfied the previously outlined thresholds may be considered in the calculation of Fund liability.⁴

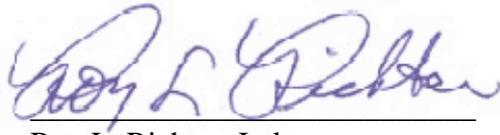
In this case, only Claimant's diabetes satisfied the thresholds and only those 50 weeks of compensation attributable to the diabetes may be carried forward into the calculations. The first step in calculating the liability of the Fund requires the 50 weeks attributable to Claimant's preexisting PPD be added to the 32 weeks of compensation attributable to Claimant's November 2008 primary injury. The sum is 82 weeks. Next, we look to whether Claimant's preexisting conditions combined with the effects of his November 2008 injury to result in a greater disability than their simple sum. The Commission believed the testimony of Claimant's expert, Dr. Musich, and concluded that Claimant's primary injury had a synergistic effect on his preexisting PPD and assigned a 10% load factor. When the 82 total weeks is multiplied by the 10% load factor, the result is 8.2 weeks of PPD enhancement due from the Fund.

III. CONCLUSION

For the foregoing reasons, we would reverse that portion of the Commission's decision finding the Fund liable for PPD enhancement due to Claimant's two hernias and the injury to his left little finger and would remand to the Commission to enter an award finding the Fund liable

⁴ Furthermore, we reject Claimant's contention that so long as one preexisting PPD satisfies the thresholds, then the thresholds are satisfied for all preexisting PPDs. Permitting such a construction is akin to an amusement park ride that only permits riders over 48 inches tall, that nevertheless allows a group of smaller children to ride simply because one adult that accompanies them exceeds the height requirement. The plain language of Section 287.220.1 makes clear that each preexisting PPD must first satisfy the thresholds.

for 8.2 weeks of PPD enhancement. However, because of the general interest and importance of the issues, we transfer to the Missouri Supreme Court pursuant to Rule 83.02.

A handwritten signature in blue ink, reading "Roy L. Richter". The signature is written in a cursive style with a horizontal line underneath the name.

Roy L. Richter, Judge

Robert G. Dowd, Jr., Concur
Angela T. Quigless, J., Concur