

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHARLES MICHAEL ANGUS

APPELLANT,

**v.
SECOND INJURY FUND**

RESPONDENT.

**DOCKET NUMBER WD72141
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 12, 2010

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,
Judges

Attorneys:

Donald T. Taylor and Joseph A. Dewoskin, Kansas City, MO, for appellant.

Richard C. Wiles, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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No. WD72141

Labor and Industrial Relations Commission

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

Charles Angus worked for ATK Alliant Techsystems (“Employer”) as a bullet inspector at an ammunition plant in Independence, Missouri. Angus's duties were physically demanding in that it required bending, squatting, stooping, and lifting items that would weigh up to fifty pounds and pushing carts that could weigh up to 1000 pounds.

Because of a litany of joint issues, Angus began seeking medical treatment in 2002, which led his doctors to recommend that his work be restricted. On September 30, 2003, Angus filed a formal injury report, and he continued to work for Employer on a restricted basis. Doing these work assignments caused Angus agonizing pain, particularly in his knees, because he had a hard time bending and straightening both knees. In January of 2004, Employer discharged Angus from employment because he could not complete the required work tasks, and Angus has not worked since.

On December 18, 2008, Angus settled his workers' compensation claim as it pertained to Employer based upon approximate disability of 18% of body as a whole.

On August 31, 2009, the ALJ held a hearing on Angus's claim as it pertained to the Second Injury Relief Fund (Fund). On September 4, 2009, the ALJ issued an Award that concluded that Angus should receive no workers' compensation benefits from the Fund because he did not sustain a compensable injury, accident, or occupational disease arising out of and in the course of his employment. Thereafter, the Commission issued its Final Award on January 22, 2010. The Final Award denied compensation to Angus, adopting the findings of the ALJ. Angus now appeals.

REVERSED AND REMANDED.

Division Three holds:

It is undisputed that Angus is permanently and totally disabled or that Angus's injury to his knees was caused by arthritis and that this resulted in his total permanent disability. The sole issue in dispute was whether his arthritis was work related and thus a compensable injury.

Angus suffers from two types of arthritis, (1) rheumatoid arthritis and (2) degenerative osteoarthritis. The only medical testimony established that rheumatoid arthritis is an autoimmune disease and is unrelated to Angus's work. On the other hand, degenerative osteoarthritis would be a compensable injury because this type of arthritis has a causal relationship to the biomechanical stressing from his work with progression based on the work exposure.

In rejecting Angus's claim, the Commission found that Angus's *rheumatoid* arthritis and the profound affect it has had upon him *alone* renders him permanently and totally disabled. The Commission's conclusion in this regard expressly disregards the *sole medical testimony* that Mr. Angus's total disability results from the *combined effect* of rheumatoid arthritis and osteoarthritis. While the Commission found that this medical testimony "lacks credibility," there is no expert medical testimony whatsoever to support the Commission's specific medical finding as it pertains to medical causation. The commission may not substitute an administrative law judge's personal opinion on the question of medical causation of an injury for the uncontradicted testimony of a qualified medical expert.

The issue of Angus's dueling types of arthritis is a complex *medical* issue not within the expertise of an administrative law judge or the Commission. Ultimately, it is the Commission's medical conclusion that "Mr. Angus's rheumatoid arthritis . . . alone renders him permanently and totally disabled" that is divorced from both the law and facts applicable to this case. The Commission's conclusion in this regard is also troubling because *all* the medical evidence before it contradicted the Commission's ultimate medical conclusion. Specifically, three medical doctors evaluated Angus, and the Commission heard uncontradicted evidence that each one of these doctors opined that *both* types of arthritis caused Angus's disability. Even the doctor hired by the Employer opined that Angus had osteoarthritis that was exacerbated to some extent by his occupation. In short, there is absolutely no evidence in the record to support the Commission's finding that "Angus's rheumatoid arthritis and the profound affect it has had upon him alone renders him permanently and totally disabled." Therefore, the award is not supported by substantial, competent evidence and is contrary to the overwhelming weight of the evidence.

The judgment of the Commission, denying Angus's workers' compensation claim, is hereby reversed and remanded.

Opinion by: Gary D. Witt, Judge

October 12, 2010

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