

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STANCIE MOLDER,

Respondent,

v.

**TREASURER OF THE STATE OF MISSOURI -- CUSTODIAN OF THE SECOND
INJURY FUND,**

Appellant.

DOCKET NUMBER WD72977

Date: June 14, 2011

Appeal from:
Labor and Industrial Relations Commission

Appellate Judges:
Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

Attorneys:
Kimberly C. Fournier, Kansas City, MO, for appellant.
James W. Humphrey, Jr. and John R. Humphrey, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

STANCIE MOLDER

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Stancie Molder began working at Bank of America as a data entry processor in 1991, and remained employed in that position until she was laid off in 2007. In 2002, she began to experience symptoms of bilateral carpal tunnel syndrome, and underwent bilateral carpal tunnel release surgeries in 2006 and 2007.

Molder filed a workers' compensation claim against Bank of America related to her primary carpal tunnel injury, and settled that claim in December 2008. Molder also asserted a claim against the Second Injury Fund, alleging that her carpal tunnel injury combined with the effects of a series of prior injuries to render her permanently and totally disabled.

An Administrative Law Judge within the Division of Workers' Compensation rejected Molder's claim against the Fund, concluding that, because Molder was employed part-time in a highly accommodated position at the time of the administrative hearing, she was necessarily employable in the open labor market, and therefore could not be considered permanently and totally disabled. Molder applied for review to the Labor and Industrial Relations Commission, which concluded that the ALJ had misapplied the law, and that Molder was in fact permanently and totally disabled, despite her limited post-injury employment.

The Second Injury Fund appeals.

AFFIRMED.

Division One holds:

The Fund's Point Relied On argues that the Commission erred in reversing the ALJ's decision which found no permanent and total disability, because the ALJ's decision was supported by competent and substantial evidence. Framing the issue in this way fundamentally misconceives the nature of our judicial review, however. The Commission owes no deference to

the decisions of its ALJs when Commission review is sought. Instead, the Commission essentially reviews cases *de novo*, and makes its own independent decisions. Therefore, whether substantial evidence supported the ALJ's decision is irrelevant; the relevant issue on judicial review is whether substantial evidence supported *the Commission's decision*, even if the opposite decision would also have been supported by the evidence.

Here, sufficient competent evidence, in the form of the opinions of two physicians and a vocational expert, support the Commission's determination that Molder was permanently and totally disabled due to the physical limitations caused by the series of prior injuries she had suffered.

The fact that Molder worked sporadically in a highly accommodated job at the time of the administrative hearing does not preclude a permanent and total disability award. Prior cases have recognized that such limited, highly accommodated employment is not disqualifying, but is merely a factor for the Commission to consider in determining whether the employee is in fact permanently and totally disabled. Here, the evidence indicates that Molder's part-time employment is in fact highly accommodated, and her vocational expert testified that those accommodations were not representative of employment in the open-labor market. Substantial competent evidence thus supports the Commission's determination that Molder's limited employment did not disqualify her from obtaining permanent and total disability benefits.

Before: Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

June 14, 2011

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