

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

TERESA R. CARKEEK,

Appellant

v.

TREASURER OF THE STATE OF MISSOURI –
CUSTODIAN OF THE SECOND INJURY FUND.

Respondent

DOCKET NUMBER WD73377

DATE: October 11, 2011

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division Three

James Edward Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Mark E. Kelly, Liberty, MO
Kristi L. Pittman, Liberty, MO

Counsel for Appellant
Co-Counsel for Appellant,

Attorneys:

Andrew J. Dickson, Kansas City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**TERESA R. CARKEEK, Appellant, v. TREASURER
OF THE STATE OF MISSOURI - CUSTODIAN OF
THE SECOND INJURY FUND, Respondent**

WD73377

Labor and Industrial Relations Commission

Before Division Three Judges: Welsh, P.J., Smart, and Ellis, JJ.

Teresa R. Carkeek appeals the Labor and Industrial Relations Commission's decision denying her claim against the Second Injury Fund for permanent total disability benefits. The Commission found that Carkeek did not prove that either of the injuries she sustained in two different work accidents combined with her preexisting disabilities to render her permanently and totally disabled. Carkeek contends that the Commission's decision was not supported by substantial and competent evidence and that the Commission erroneously applied the law.

AFFIRMED

Division Three holds:

Competent and substantial evidence supports the Commission's determination that the combination of Carkeek's preexisting disabilities and her work injuries (whether it is the June 2006 work accident or the December 2006 work accident or both) did not render her permanently and totally disabled. The test for permanent total disability is whether the worker is able to compete in the open labor market. Carkeek failed to prove that she could not work and failed to prove that the Second Injury Fund was liable for permanent total disability benefits. The vocational rehabilitation counselor's testimony that Carkeek was employable as a cashier constituted sufficient competent and substantial evidence to support the Commission's determination that Carkeek was not permanently and totally disabled.

Opinion by James Edward Welsh, Presiding Judge

October 11, 2011

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