OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

BRUCE KRYSL,	)	No. ED108958
	)	
Respondent,	)	
	)	
vs.	)	Appeal from the Labor and
	)	Industrial Relations Commission
TREASURER OF MISSOURI AS	)	
CUSTODIAN OF SECOND INJURY FUND,	)	
	)	
Appellant.	)	Filed: December 22, 2020

The Second Injury Fund (the "Fund") appeals the Labor and Industrial Relations Commission's (the "Commission") decision reinstating the decision of the Administrative Law Judge ("ALJ") and awarding Bruce Krysl ("Claimant") permanent partial disability benefits under section 287.220.2 upon remand after this Court's decision in *Krysl v. Treasurer of Missouri as Custodian of the Second Injury Fund*, 591 S.W.3d 13 (Mo. App. E.D. 2019) ("*Krysl I*").

In Point I, the Fund argues the Commission misinterpreted this Court's mandate in *Krysl I* by refusing to consider its argument that Claimant was not entitled to benefits under section 287.220.2 because his preexisting disability had not reached permanency before the date of his primary injury. The Fund asserts our remand of *Krysl I* was a general remand which would allow the Commission to address the 287.220.2 issue. In the alternative, in Point II, the Fund argues the Commission erred in following this Court's mandate in *Krysl I* because its reinstatement of the ALJ's award of benefits "stripped the Fund of its right to appeal." In Point III, the Fund argues the Commission erred in reinstating the ALJ's award of benefits because Claimant's preexisting disability was not permanent before the date of his primary injury, as required to be considered in an award of permanent partial disability benefits under section 287.220.2.

REVERSED AND REMANDED.

DIVISION IV HOLDS: The Commission did not misinterpret this Court's mandate in *Krysl I*. *Krysl I*'s mandate and opinion was specific and did not allow the Commission to consider whether Claimant was entitled to benefits under section 287.220.2 before issuing its award upon remand. Nor did the Commission err in following this Court's mandate in *Krysl I*. When an appellate court issues a remand with specific instructions, the lower body has no power to modify, alter, amend or deviate from the appellate court's instructions. *State ex rel. Cty of St. Charles v. City of St. Peters*, 876 S.W.2d 46, 47-48 (Mo. App. W.D. 1994).

However, our opinion and mandate in *Krysl I* should have allowed the Commission to consider its award of benefits, given the Fund's undecided challenge to the permanency of Claimant's preexisting disability under section 287.220.2. Our instruction "to reinstate the ALJ's award of permanent partial disability benefits" was inadvertent error that denied the Fund due process. We, therefore, remand this case to the Commission to allow the Fund to be heard on its challenge to the permanency of Claimant's preexisting disability under section 287.220.2. *See Student Loan Marketing Ass'n v. Raja*, 914 S.W.2d 825, 830 (Mo. App. W.D. 1996); *Laclede Inv. Corp. v. Kaiser*, 596 S.W.2d 36, 41 (Mo. App. E.D. 1980).

Opinion by: Philip M. Hess, J.
Gary M. Gaertner, Jr., P.J. and Michael E. Gardner, J. concur.

Attorney for Appellant: Madalyn J. Campbell

Attorney for Respondent: Thomas J. Gregory

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.