OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

LARRY ABT,	)	No. ED99779
	)	Appeal from the Labor and
Claimant/Appellant,	)	Relations Commission
vs.	)	
	)	
MISSISSIPPI LIME COMPANY,	)	
	)	
Employer/Respondent,	)	
	)	
and	)	
	)	
TREASURER OF MISSOURI AS	)	
CUSTODIAN OF THE SECOND INJURY	)	
FUND,	)	
	)	
Additional Party/Respondent.	)	Filed: February 18, 2014

The claimant, Larry Abt, appeals the final award of the Labor and Industrial Relations Commission denying him permanent total disability (PTD) benefits and reimbursement for certain past medical expenses. The Commission determined that the claimant suffered only permanent partial disability as a result of his primary work injuries combined with his pre-existing disabilities, and awarded benefits accordingly against the employer, Mississippi Lime Company, and the Second Injury Fund. In addition, the Commission awarded the claimant reimbursement for some of his past medical expenses, but denied reimbursement for certain other expenses.

REVERSED AND REMANDED IN PART AND AFFIRMED IN PART.

DIVISION TWO HOLDS: Because the Commission previously decided that the claimant was permanently and totally disabled, and because that determination went unchallenged in the prior appeal to this Court, the fact that the claimant is permanently and totally disabled was conclusively decided and has become the law of the case. 1) The claimant is permanently and totally disabled as a result of the combination of his 2001 primary injuries and pre-existing conditions. We reverse the Commission's award denying compensation for the claimant's permanent total disability, and remand to the Commission with instructions to calculate the liability of the employer and the Second Injury Fund and to award compensation for permanent total disability benefits accordingly. 2) The Commission's denial of reimbursement for medical expenses incurred in connection with medical aid provided in October and November 2005 by Ste. Genevieve County Memorial Hospital and Mid America Rehab is not supported by substantial and competent evidence. 3) The claimant established that his medical aid obtained in

October and November 2005 from Ste. Genevieve County Memorial Hospital and Mid America Rehab was causally linked to the January 2001 primary injuries, that the claimant requested additional medical aid, and that the employer waived its right to direct the claimant's treatment when it then failed or neglected to provide the necessary medical aid. We reverse the Commission's denial of reimbursement of $10,859.57 for medical expenses incurred in connection with medical aid provided in October and November 2005 by Ste. Genevieve County Memorial Hospital and Mid America Rehab. We order the Commission to award the claimant $10,859.57 from the employer as reimbursement for these medical expenses. 4) We affirm the Commission's denial of reimbursement of $1,551.00 for medical aid provided by Dr. Pearson in 2005 and 2006.

Opinion by: Lawrence E. Mooney, P.J. Robert G. Dowd, Jr., J., and Sherri B. Sullivan, J., concur.

Attorney for Appellant: Robert J. Lenze

Attorney for Respondent: Matthew M. Mocherman

Attorney for Second Injury Fund: Gregg N. Johnson

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.