

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

SELMA LEWIS,

Appellant

v.

KANSAS UNIVERSITY MEDICAL CENTER;

Respondent

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

Respondent

---

DOCKET NUMBER WD73817

DATE: December 6, 2011

---

Appeal From:

Labor and Industrial Relations Commission

---

Appellate Judges:

Division One

Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

---

Attorneys:

Thomas Hill, Overland Park, KS.

Counsel for Appellant

---

Attorneys:

Joseph McMillan, Lenexa, KS.  
Benita Seliga, Kansas City, MO

Counsel for Respondent, KS. University Medical Center  
Counsel for Respondent, Treasurer of the State of MO

---

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

**SELMA LEWIS, Appellant, v. KANSAS UNIVERSITY  
MEDICAL CENTER, Respondent; TREASURER OF THE  
STATE OF MISSOURI-CUSTODIAN OF THE SECOND  
INJURY FUND, Respondent**

**WD73817**

**Labor and Industrial Relations**

Before Division One Judges: Ahuja, P.J., Newton, and Welsh, JJ.

Selma Lewis appeals the Labor and Industrial Relations Commission's decision denying her claim against the Second Injury Fund for permanent total disability benefits. Lewis contends that the Commission's decision was not supported by substantial and competent evidence. In particular, she asserts that under the case laws of *Kuykendall v. Gates Rubber Company*, 207 S.W.3d 694 (Mo. App. 2006), and *Garibay v. Treasurer of Missouri*, 930 S.W.2d 57 (Mo. App. 1996), the Commission could not arbitrarily cast aside or disregard the undisputed testimony of the vocational expert that Lewis was unemployable in the open labor market.

**AFFIRMED**

**Division One holds:**

The Commission's decision denying Lewis's claim against the Second Injury Fund for permanent total disability benefits was supported by substantial and competent evidence. The Commission did not arbitrarily cast aside or disregard the vocational expert's testimony that Lewis was unemployable in the open labor market in contravention of *Kuykendall* and *Garibay*, but instead the Commission based its decision upon competent and substantial evidence which indicated that Lewis was employable on the open market after the work accident and that it was a subsequent deterioration of Lewis's preexisting conditions in the years after the work accident that resulted in her unemployability.

Opinion by James Edward Welsh, Judge

December 6, 2011

\*\*\*\*\*

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**