

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**WELDON POARCH,  
APPELLANT**

**vs.**

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

---

DOCKET NUMBER WD74219

DATE: MAY 1, 2012

---

Appeal from:

The Labor and Industrial Relations Commission

---

Appellate Judges:

Division Three: Thomas H. Newton, P.J., James M. Smart, Jr. and Victor C. Howard, JJ.

---

Attorneys:

Jerrold Kenter, for Appellant

Eric W. Lowe, for Respondent

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**WELDON POARCH, APPELLANT**

**v.**

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

WD74219

Labor and Industrial Relations

Before Division Three: Thomas H. Newton, P.J., James M. Smart, Jr., and Victor C. Howard, JJ.

Weldon Poarch filed a claim against the Second Injury Fund alleging that he had been exposed to muriatic acid while doing maintenance work on one of his employer's rental properties. Poarch alleged that he had suffered a heart attack as a result of the exposure. The Commission found that Poarch had not presented any credible evidence to show that he was exposed to muriatic acid or that he suffered a heart attack. Therefore, the Commission found that Poarch had failed to meet his burden of proving that he had sustained a compensable injury and denied his claim against the Second Injury Fund. Poarch appeals.

**AFFIRMED.**

**Division Three holds:**

Poarch contends that once he presented unimpeached evidence in support of his claim, section 287.808 mandated that the Second Injury Fund present evidence to prove its defense. Contrary to Poarch's argument, section 287.808 does not require the Second Injury Fund to present evidence; rather, it merely sets out the burden of proof for the Second Injury Fund if it chooses to establish a defense. Where section 287.808 states that the claimant has the burden of proving his entitlement to compensation, the Second Injury Fund could choose not to present evidence and rely on the possibility that the Commission would find that Poarch failed to meet his burden of proof. Where the Second Injury Fund was not required to present evidence, the Commission did not err in denying Poarch's claim on the basis that he failed to meet his burden of proof.

**Opinion by: Victor C. Howard, Judge**

Date: May 1, 2012

**This summary is *UNOFFICIAL* and should not be quoted or cited.**