

## Second Injury Fund Benefits

By Ann Dalton & Bob Mandava

Did you know that even if you obtain the compensation that you deserve for a work injury from your employer, you might still be entitled to additional compensation from a Second Injury Fund? Even if you are one of the informed few who know that the Second Injury Fund exists, you still probably have a lot of questions. Both Missouri and Illinois created a Second Injury Fund to encourage employment of the physically disabled. However, there is a big difference between the Second Injury Fund in Missouri and the Second Injury Fund in Illinois.

### Missouri Second Injury Fund

In Missouri, "the Fund", as it is referred to for short, receives its money from an annual charge on the insurance companies doing business in Missouri. If a work injury results in a permanent disability, the Fund *may* be liable for additional benefits. The amount can vary greatly and will depend on the seriousness of the work injury and the pre-existing medical conditions. The compensation from the Fund comes from the state of Missouri *and not the employer*.

The most common Second Injury Fund benefit in Missouri is compensation for *pre-existing* permanent disability. There are other instances that the Fund pays benefits in Missouri, such as if the employer is uninsured or if the work injury results in lost income from a second job, but these are much less common.

The Fund may be liable for benefits to an injured worker if the work injury and any number of pre-existing injuries or disabilities combine to create a greater overall disability. The work injury and the pre-existing injuries or conditions must meet minimally required levels of disability, or thresholds. The exact amount paid will depend on a number of factors, including the seriousness of your disabilities, and the ability to document or prove the existence of these

disabilities. Normally, this requires relevant medical records and an expert opinion of a doctor. The Fund becomes especially important in cases where an individual may be permanently and totally disabled.

The biggest misunderstanding about the role of the Fund is in assuming that only prior work-related injuries qualify. The reality is that as long as the most recent injury is work related, the pre-existing disability can be from non work-related events such as playing softball, or a slip and fall on your own driveway. The pre-existing disability could also involve vision or hearing loss, or a heart condition. Many other types of conditions may qualify.

As an example, assume Mr. Jones injured his right knee while playing basketball in high school. As a result, he had arthroscopic surgery to repair a torn ligament but naturally the surgery did not result in a 100% improvement of his knee. Twenty years later, Mr. Jones slips and falls at work, injuring his left knee. As a result of this work injury, Mr. Jones has arthroscopic surgery to repair torn ligaments but this surgery also does not result in a 100% improvement of his left knee. Mr. Jones now has two bad knees. In this situation, Mr. Jones would receive compensation from his employer for the permanent disability in his left knee. And, Mr. Jones would also likely be entitled to compensation from the Second Injury Fund due to the combination of his right and left knee disabilities *if* they both satisfy the thresholds. It is extremely important to consider the Fund portion of the case *before* resolving the case against the Employer.

#### Illinois Second Injury Fund

In Illinois, the "Special Fund", as it is called, is more limited than the Fund in Missouri. The Special Fund is applicable only in cases where the injured employee has previously lost an extremity or lost sight in one eye and thereafter sustains loss of another extremity or sight in the

other eye in a work accident. In this instance, the employee would be entitled to permanent total disability benefits. These benefits would be paid by the Special Fund.

For example, assume Mr. Jones is born blind in his right eye. As a result of a work injury, he loses the sight in his left eye. Following the work injury, Mr. Jones is entitled to compensation from his employer for the loss of vision in his left eye AND Mr. Jones is entitled to permanent total disability benefits from the Special Fund (a monthly benefit) for life.

There are many situations that trigger Second Injury Fund benefits. The benefits differ greatly between Missouri and Illinois and the amount of the benefit can vary greatly. Every case should be evaluated for the possibility of additional recoveries from a Second Injury Fund as soon as a work injury occurs.

For questions involving the Second Injury Funds in Missouri and Illinois, or other workers' compensation related issues, we offer a confidential advice call service (314-727-1015), free of charge, to the members of Local 1439.

\*Ann Dalton is a partner with Hammond, Shinnors, Turcotte, Larrew & Young. She has practiced in the area of Workers' Compensation for over 15 years. With her partner, Joe Larrew, and Bob Mandava, the three attorneys have over 50 years of combined experience in representing injured workers in Missouri and Illinois. Bob Mandava also has important insight into the Missouri Second Injury Fund as a result of defending the Fund for the Missouri Attorney Generals' Office for many years before joining the firm.