

Missouri Revised Statutes

Chapter 287 Workers' Compensation Law Section 287.190

August 28, 2006

Permanent partial disability, amount to be paid--permanent partial disability defined--permanent total and partial total disability require certification by physician on compensability--award reduced when.

287.190. 1. For permanent partial disability, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with sections 287.170 and 287.180, respectively, the employer shall pay to the employee compensation computed at the weekly rate of compensation in effect under subsection 5 of this section on the date of the injury for which compensation is being made, which compensation shall be allowed for loss by severance, total loss of use, or proportionate loss of use of one or more of the members mentioned in the schedule of losses. SCHEDULE OF LOSSES

Weeks

- (1) Loss of arm at shoulder 232
- (2) Loss of arm between shoulder and elbow 222
- (3) Loss of arm at elbow joint 210
- (4) Loss of arm between elbow and wrist 200
- (5) Loss of hand at the wrist joint 175
- (6) Loss of thumb at proximal joint 60
- (7) Loss of thumb at distal joint 45
- (8) Loss of index finger at proximal joint 45
- (9) Loss of index finger at second joint 35
- (10) Loss of index finger at distal joint 30

- (11) Loss of either the middle or ring finger at the proximal joint 35
- (12) Loss of either the middle or ring finger at second joint 30
- (13) Loss of either the middle or ring finger at the distal joint 26
- (14) Loss of little finger at proximal joint 22
- (15) Loss of little finger at second joint 20
- (16) Loss of little finger at distal joint 16
- (17) Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb 207
- (18) Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb 160
- (19) Loss of one leg at or above ankle and below knee joint 155
- (20) Loss of one foot in tarsus 150
- (21) Loss of one foot in metatarsus 110
- (22) Loss of great toe of one foot at proximal joint .. 40
- (23) Loss of great toe of one foot at distal joint 22
- (24) Loss of any other toe at proximal joint 14
- (25) Loss of any other toe at second joint 10
- (26) Loss of any other toe at distal joint 8

(27) Complete deafness of both ears 180

(28) Complete deafness of one ear, the
other being normal 49

(29) Complete loss of the sight of one eye 140

2. If the disability suffered in any of items (1) through (29) of the schedule of losses is total by reason of severance or complete loss of use thereof the number of weeks of compensation allowed in the schedule for such disability shall be increased by ten percent.

3. For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

4. If an employee is seriously and permanently disfigured about the head, neck, hands or arms, the division or commission may allow such additional sum for the compensation on account thereof as it may deem just, but the sum shall not exceed forty weeks of compensation. If both the employer and employee agree, the administrative law judge may utilize a photograph of the disfigurement in determining the amount of such additional sum.

5. The amount of compensation to be paid under subsection 1 of this section shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to forty-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, but before August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-two percent of the state average weekly wage;

(5) For all injuries occurring on or after August 28, 1992, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to fifty-five percent of the state average weekly wage.

6. (1) "Permanent partial disability" means a disability that is permanent in nature and partial in degree, and when payment therefor has been made in accordance with a settlement approved either by an administrative law judge or by the labor and industrial relations commission, a rating established by medical finding, certified by a physician, and approved by an administrative law judge or legal advisor, or an award by an administrative law judge or the commission, the percentage of disability shall be conclusively presumed to continue undiminished whenever a subsequent injury to the same member or same part of the body also results in permanent partial disability for which compensation under this chapter may be due; provided, however, the presumption shall apply only to compensable injuries which may occur after August 29, 1959.

(2) Permanent partial disability or permanent total disability shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

(3) Any award of compensation shall be reduced by an amount proportional to the permanent partial disability determined to be a preexisting disease or condition or attributed to the natural process of aging sufficient to cause or prolong the disability or need of treatment.

(RSMo 1939 § 3705, A.L. 1947 V. II p. 438, A.L. 1951 p. 620, A.L. 1953 p. 530, A.L. 1955 p. 588, A.L. 1957 p. 560, A.L. 1959 S.B. 167, A.L. 1961 p. 423, A.L. 1965 pp. 397, 414, A.L. 1967 p. 384, A.L. 1969 p. 393, A.L. 1971 H.B. 25 & 364, A.L. 1974 S.B. 417, A.L. 1975 H.B. 196, A.L. 1978 H.B. 1260, A.L. 1979 H.B. 496, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1983 H.B. 243 & 260, A.L. 1990 S.B. 751, A.L. 1998 H.B. 1237, et al., A.L. 2005 S.B. 1 & 130)

Prior revision: 1929 § 3315

(1972) Where claimant whose little, ring and middle fingers and all but stub of index finger had been amputated in industrial accident could write and use hand as a prop and for pushing and prying he did not sustain complete loss of his hand and was not entitled to ten percent increase in compensation for complete disability as provided in subdivision 2. *Martin v. Star Cooler Corporation (A.)*, 484 S.W.2d 32.

(1972) Court will take judicial notice that workman with only part of his major hand remaining would be at disadvantage in labor market and this will support award for disfigurement to claimant whose little, ring and middle fingers and all but stub of his index finger had been amputated in industrial accident as provided in subdivision 4. *Martin v. Star Cooler Corporation (A.)*, 484 S.W.2d 32.