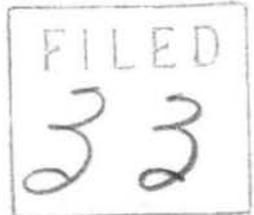


WORKMEN'S COMPENSATION: An employer, under the terms of Section 3707, Laws of Missouri, 1945, page 1998, must pay the sum of \$100.00 into the Second Injury Fund, where an employee suffers the total, permanent loss of the use of an eye, resulting from two accidental injuries.

June 29, 1948



Honorable Spencer H. Givens
Director
Division of Workmen's Compensation
Jefferson City, Missouri

Dear Mr. Givens:

This will acknowledge your request to this Department, for an opinion construing Section 3707, Article 2, Chapter 29, R.S. Mo. 1939, as re-enacted, Laws of Missouri, 1945, page 1996, l.c. 1998, with respect to the payment by an employer of the sum of one hundred dollars (\$100.00) into the Second Injury Fund, upon the total, permanent loss of the use of, an eye, a foot, a leg, an arm or a hand by an employee, for the total or permanent loss of the use of any such member.

Your letter states that your Department is considering a case where an employee has lost the total and permanent vision and use of one eye. The facts, as you state them, reveal that the employee by reason of a previous injury suffered the loss of 12% of the use of one eye, and that by a subsequent second injury, the employee has suffered, and does now suffer, 88% loss of the vision and use of the same eye.

Your letter is as follows:

"In connection with the Second Injury Fund provision of the Missouri Workmen's Compensation Law (Section 3707, Revised Statutes of Missouri, 1939), I ask your opinion on the following problem:

"Should the payment of \$100 into the Fund be requested in the case of an employee who has lost 88 per cent of the vision of an eye due to an accidental injury, the 12 per cent loss

of vision having been sustained previous to the injury in question.

"I am concerned because the section covering the Second Injury Fund seems to limit payments only to when the resultant injury is 'total, permanent loss of use of' the members listed due to any one accident. On the hypothetical case above, on which my question is premised, the fact is that the employee has completely lost the sight of one eye and is, therefore, a potential permanent total disability (considering the fact his other eye might be lost). This is the type of case that the Second Injury Fund is set up to take care of. Apparently, however, in spite of this fact a contribution into the Fund is not indicated.

"As I view it, there may be one of three conclusions: (1) no payment due at all; (2) total payment of \$100; (3) payment on a pro rata basis, i.e., 88 per cent of \$100 or \$88. "

Your difficulty appears to be that you assume, under the terms and meaning of said Section 3707, the total and permanent loss of one eye by this employee must have been the result of one accident before the employer may be required to pay the said sum of one hundred dollars (\$100.00) for the Second Injury Fund mentioned in said Section 3707.

Section 3707, R.S. Mo. 1939, Laws of Missouri, 1945, page 1996, l.c. 1998, states, in part, the following:

"(a) All cases of permanent disability where there has been previous disability shall be compensated as herein provided.
* * * "

We thus observe that in the first sentence of Section 3707, which we may very appropriately denominate

the "Second Injury Fund Statute", the Legislature designed and effected its intent to provide compensation for cases of permanent disability coming under the Second Injury Fund Statute, and that to effect such event there must have been a previous injury. It is conceivable of course that a total, permanent loss of the use of any member named in the statute might result from one accident, but if so, it could not come within the terms of the Second Injury Fund Statute, either as to the payment of compensation to the employee, or as to the payment of the one hundred dollars (\$100.00) by an employer for the benefit of said fund on account of it being a total, permanent loss of the use of such member. The Second Injury Fund Statute and its full conditions and terms are necessarily based upon there having been a previous injury.

Section 3707, Laws of Missouri, 1943, page 1068, as a re-enactment of Section 3707, R.S. Mo. 1939, repealed, does not say, nor does the present enactment of Section 3707, Laws of Missouri, 1945, l.c. 1998, say that the "Total, permanent loss of the use of" the member named must be due to any one accident, as presupposed in your letter. That part of said Section 3707 covering the subject upon which your request for this opinion is based, requiring the payment of the sum of one hundred dollars (\$100.00) for the Second Injury Fund, states:

"* * * Every employer in every case of total, permanent loss of the use of, one eye, one foot, one leg, one arm, or one hand, in addition to the compensation as provided for in this act shall pay into the Second Injury Fund provided for herein, the sum of one hundred dollars for the total or permanent loss of the use of any such member; * * *".

This presupposes, and in fact conclusively demands, when read in connection with the first sentence of Section 3707 above quoted, that there must be a second injury, in order to constitute a "total, permanent loss of the use of" any such member before the payment of one hundred dollars (\$100.00) is required.

You state very clearly in your letter that the employee in the case being considered has sustained a total, permanent loss of the use of one eye due to two accidents,

in the first of which he suffered a loss of 12% of the vision of his eye and in the second injury he has suffered the loss of 88% of the vision of the same eye, the two constituting a total, permanent 100% loss of the use of the eye. This, we believe, makes a conclusive state of facts, under said Section 3707, requiring the payment by the employer of the sum of one hundred dollars (\$100.00) for the Second Injury Fund.

We note in your letter that you seem to fear that there could only be a total, permanent disability here in the event the employee mentioned should lose the vision of his other eye. We think you should not be concerned about such a possible state of facts. If the employee should lose his other eye, it might involve many other conditions than those involved here, upon, perhaps, an entirely different injury, and, indeed, the application of another statute than the one being here considered.

Here, however, we do have a total, permanent loss of the use of "one eye" by the employee as the result of two accidents. That is sufficient, and all that is necessary, under said Section 3707, to require the employer to pay the sum of one hundred dollars (\$100.00) for the Second Injury Fund.

We also note in your letter that you believe there might be a total payment of less than one hundred dollars (\$100.00) upon the determination and finding of fact that an employee has suffered a percentage of loss of a member mentioned in the statute of less than 100%. Said Section 3707 does not provide for any percentage payment of less than one hundred dollars (\$100.00), nor does it provide for the payment of any sum by an employer into the Second Injury Fund by the employer unless the loss of the use of one of the members mentioned in said Section 3707 be a total or permanent disability.

The Appellate Courts of this State have in many decisions held that the compensation laws of this State shall be liberally construed. Our Springfield Court of Appeals in the case of Daugherty vs. City of Monett, et al., 192 S.W. (2d) 51, l.c. 55, on that question said:

"* * * Compensation laws must be given a liberal construction in favor of the employee. * * *".

Our St. Louis Court of Appeals in the case of Ries vs. Plumbing Co., 186 S.W. (2d) 488, l.c. 489, on the question of the principles to be considered in the construction of compensation laws, said:

"* * * and the further principle that the law should be liberally construed with a view to the public welfare."

The Workmen's Compensation Laws of this State are designed to relieve an injured employee of the burden and necessity of bearing the cost and consequences of disability caused to employees by reason of accidental injuries suffered by them while in the course of their employment, and to place the burden of compensation therefor upon industry. The Second Injury Fund as provided for in said Section 3707 is a permanent fund made up of payments by employers under certain conditions fixed by said Section 3707, to be held in the custody of the State Treasurer of this State, and as compensation to be distributed by the Compensation Commission under justifiable and lawful conditions of fact. These laws have become, and are, representative of the public policy of this State, in regard to Workmen's Compensation, and are to be liberally construed to effectuate the intent of the Legislature in passing such laws.

Said Section 3707 prescribes the basic facts upon which the payment of the named sums into the Second Injury Fund shall be made by employers. One is that, when the total, permanent loss of the use of any one member named therein shall be suffered by an employee from a second injury, his employer shall pay into the Second Injury Fund the sum of one hundred dollars (\$100.00) for such total or permanent loss of the use of such member. This, we believe, is that sort of case.

CONCLUSION

It is, therefore, the opinion of this Department that an employer must pay the sum of one hundred dollars (\$100.00) into the Second Injury Fund, as provided in Section 3707, Laws of Missouri, 1945, page 1998, for the total or permanent loss of the use of any such member, where an employee suffers the total, permanent loss of the use of an eye, such employee having lost 12% of the vision

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of an eye by a previous accidental injury, and the loss of 88% of the vision of the same eye by reason of a second accidental injury.

Respectfully submitted,

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APPROVED:

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