

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CHRISTOPHER PETSINGER</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>CHET'S LOCK &amp; KEY</b>	)	
Respondent	)	Docket No. 1,045,680
	)	
AND	)	
	)	
<b>CINCINNATI CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

**STATEMENT OF THE CASE**

Claimant requested review of the October 28, 2009, Award entered by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on February 2, 2010. Daniel L. Smith, of Overland Park, Kansas, appeared for claimant. D'Ambra M. Howard, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The Administrative Law Judge (ALJ) found that claimant had a 9.5 percent functional impairment, which was the average between the rating opinions of Drs. Joseph Galate and Daniel Zimmerman. The ALJ further found that claimant was entitled to a work disability. The ALJ computed claimant's wage loss to be 39 percent. However, the ALJ found that the record did not show a credible task loss opinion and, therefore, found claimant had a 0 percent task loss. Accordingly, the ALJ found that claimant had a 19.5 percent general work disability, the average of the 39 percent wage loss and the 0 percent task loss.

The Board has considered the record and adopted the stipulations listed in the Award. On appeal, neither party disputes the ALJ's findings concerning claimant's average weekly wage, percentage of functional impairment and wage loss.

### ISSUES

Claimant requests review of the ALJ's finding that the record did not show a credible task loss opinion. Claimant contends the record contains substantial competent evidence that he sustained at least a 73 percent task loss performing ability and, therefore asks the Board to find that he has at least a 56 percent permanent partial general body disability as a result of his work-related injury.

Respondent contends the ALJ correctly determined that both task lists were inaccurate and incomplete and, as a result, the task loss opinions based on those lists are also inaccurate and incomplete. Accordingly, respondent asks that the Board affirm the ALJ's Award. In the alternative, respondent asserts that claimant sustained a permanent partial general body disability of 39.2 percent based upon a 39.4 percent task loss and a 39 percent wage loss.

The issue for the Board's review is: Did claimant meet his burden of proving a task loss? If so, what is his permanent partial disability?

### FINDINGS OF FACT

Claimant began working for respondent on June 30, 2008, as a locksmith trainee and general laborer. The job required physical exertion and included lifting and carrying items weighting from 100 to 125 pounds. On August 25, 2008, claimant was driving the company van on a highway when the van was rear-ended. Claimant was able to drive the van from the collision scene back to respondent's shop. Darryl Whitebread, one of respondent's owners, told him he looked pale and told him to go home. When claimant woke up the next morning, he felt like his right leg was jammed into his hip and his low back hurt. He did not go to work that day. He called Mr. Whitebread and told him he was going to get checked out and went to the emergency room at Providence Medical, where x-rays were taken of his upper back, neck, low back and hips. He was given Flexeril and pain medication.

Claimant did not attempt to go back to work for several days. When he returned to work, he was put on light duty working the front desk. He brought a stool up so he could change positions and sit down. Every hour or so he would go into the back and lie down for about 45 minutes. He continued this process of standing, sitting and lying down throughout the course of an 8-hour day for awhile. He started receiving temporary total disability benefits on September 7, 2008.

Respondent eventually referred claimant to Dr. Joseph Galate. Dr. Galate treated him from January 7, 2009, through March 13, 2009. On February 13, claimant was released to return to work with no restrictions. Claimant went back to work for respondent on February 24, 2009, and continued on light duty, working at the front counter and making

keys. He continued with his sitting-standing-lying down routine. About four hours later, Mr. Whitebread told him that since he could not perform the job, he had to let him go.

Claimant began looking for work about a week after his termination. He was unable to find anything until August 24, 2009, when he began working for Andrew Bers, P.A., a real estate company in Florida. Claimant testified that he earns \$8 per hour and works a 40-hour week with no overtime. He does not receive any fringe benefits. His job involves working on a computer doing internet advertising. It is a sedentary job, but he is able to change positions and sit and stand as needed.

On July 22, 2009, claimant was interviewed over the telephone by Mary Titterington, a vocational rehabilitation counselor, at the request of respondent. Claimant testified that he did not believe that Ms. Titterington understood when he was explaining his jobs. He said she would cut him off when he was trying to explain to her his tasks. He reviewed the job task report that Ms. Titterington prepared and testified there were discrepancies between what is set out in the report and what he told her. Specifically, claimant testified:

(1) In regard to his job at respondent, Ms. Titterington did not list his tasks of loading doors and tools into the truck and other shop duties such as painting, sweeping, and moving items that weighed up to 100 pounds;

(2) on task No. 4, she indicated he programmed and cut keys on a computer when he, instead, manually cut automotive keys and used the computer to program the key and manual cut; also task No. 4 required him to bend;

(3) on task No. 5, he did not diagnose problems as was indicated, and also Ms. Titterington left out that the task involved crawling, climbing and bending;

(4) task No. 8 required him to perform frequent bending rather than occasional to frequent, and also he would lift up to 40 pounds, not 20 pounds;

(5) on task No. 9, he repetitively climbed 25 steps rather than 3;

(6) tasks Nos. 10 and 12 required him to frequently lift 20 to 60 pounds rather than just 20;

(7) tasks Nos. 13 and 14 required him to sit occasionally and stand frequently, which was not indicated on the task list;

(8) task No. 20 indicated he would lift up to 30 pounds instead of 100 pounds;

(9) on task No. 24, he would also load the truck with rebar, concrete monuments, a lathe, and a 5-gallon water cooler, and the task would require him to lift up to 100 pounds;

(10) on task No. 27, he would be required to lift 5 to 100 pounds rather than just 5 pounds;

(11) in his job at the restaurant, he performed an additional task of mopping, sweeping, cleaning grease traps and dumping grease, which required him to lift buckets of grease weighing up to 40 pounds; and

(12) on task No. 28, he would do constant bending rather than occasional bending.

Claimant testified that he reviewed the task list prepared by Michael Dreiling, who interviewed him on June 16, 2009, at the request of his attorney. Claimant said Mr. Dreiling's task list was complete and the tasks were accurately described. However, on cross-examination, claimant stated:

(1) Claimant's job at respondent required him to drive about 2 hours a day, and this was not listed as a task on Mr. Dreiling's task list;

(2) he failed to tell Mr. Dreiling about his job at the restaurant and his task list does not indicate that he performed tasks such as lifting buckets of grease and mopping and sweeping;

(3) he could not remember if he told Mr. Dreiling that his task of cutting keys required him to bend; and

(4) he failed to mention to Mr. Dreiling the task of painting at respondent. He assumed the tasks of sweeping, moving items weighing up to 100 pounds, and installing shelving were on Mr. Dreiling's list as part of his job at respondent, but those tasks are not included on Mr. Dreiling's report.

Claimant admitted that Mr. Dreiling's list was not a complete record of his 15-year vocational record. He testified he found Mr. Dreiling's list to be complicated and hard to understand. He stated that, in contrast, he was able to look at Ms. Titterington's list and point out in detail the ways in which her list was not accurate.

Dr. Galate is board certified in physical medicine and rehabilitation and in pain management. He provided medical treatment to claimant, seeing him first on January 7, 2009. When he initially evaluated claimant, he was complaining of low back pain. Dr. Galate treated claimant conservatively with medication, physical therapy, facet injections and a trigger point injection. Dr. Galate sent claimant for a functional capacity examination (FCE) and imposed temporary work restrictions of no repetitive bending, twisting or lifting, and no lifting over 10 pounds.<sup>1</sup>

Claimant had the FCE on February 10, 2009. Dr. Galate saw claimant again on February 13, at which time he diagnosed him with right gluteal pain, preexisting degenerative changes, and lumbar strain. The FCE indicated claimant met the requirements to return to work full duty, so Dr. Galate told him to return to work to see how he did.<sup>2</sup> Dr. Galate next saw claimant on March 13, 2009. Claimant had no change in regard to the pain in his low back. His physical examination showed claimant's

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<sup>1</sup> This weight limit was raised to 15 pounds on February 6, 2009.

<sup>2</sup> Dr. Galate later agreed that there were discrepancies between the job duties outlined by the respondent in R.H. Trans., Cl. Ex. 2, and the job duties as outlined in the FCE, and that based on the respondent's outline of claimant's job duties, claimant would not meet the requirements to return to work at full duty. Galate Depo. at 33-34.

neurological examination was unchanged and normal. Dr. Galate released him from treatment as being at maximum medical improvement. He did not assign any permanent restrictions. The FCE, however, indicated that claimant should avoid frequent or repetitive bending, and Dr. Galate recommended that as a permanent restriction. Dr. Galate also testified that claimant should be able to stand one to two hours per day cumulatively and that a restriction limiting claimant's walking to one to two hours per workday would be appropriate. Dr. Galate rated claimant as being in diagnosis related estimate (DRE) Category II, for a 5 percent permanent partial impairment of the whole body.<sup>3</sup>

Dr. Galate reviewed the task list prepared by Mary Titterington. Based on his examination and the restrictions recommended by the FCE, out of the 28 tasks, he identified 4 that claimant would be unable to perform, for a 14 percent task loss. On cross-examination, Dr. Galate was given a list of tasks corresponding to Ms. Titterington's list prepared by claimant's attorney and was asked to review that list and identify any task claimant would be unable to perform. Those that claimant agreed he would be able to perform were already indicated on the form with a "Y". On the task list prepared by claimant's attorney, Dr. Galate indicated that claimant would be unable to perform 19 of the 28 tasks for a 68 percent task loss.

Dr. Galate also reviewed the task list prepared by Michael Dreiling. He was then given a list of tasks based on the list prepared by Mr. Dreiling modified by claimant's attorney in a manner similar to the one he had drawn up using Ms. Titterington's identified tasks. After review of that document, he opined that of the 19 tasks on that list, claimant would be unable to perform 17 for an 89.5 percent task loss.

A review of the task lists compiled by the claimant's attorney indicates that the list of tasks identified by Mr. Dreiling still does not include any tasks performed at the restaurant job testified to by claimant and does not list tasks at respondent of driving, painting, sweeping, moving items that weighed up to 100 pounds, or installing shelving. It also does not indicate, per claimant's testimony, that he lifted and carried from 100 to 150 pounds on task No. 1. On claimant's attorney's list of tasks using the list by Ms. Titterington, the list does not include many of the changes claimant testified should be made. The list does not include the shop duties at respondent, including painting, sweeping, moving items weighing up to 100 pounds, or installing shelving. It does not include the tasks of mopping, sweeping, cleaning grease traps, and emptying buckets of grease. The list also does not include many of the weights that claimant testified were wrong on Ms. Titterington's list.

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<sup>3</sup> Dr. Galate did not testify, nor did his medical record indicate, that he based his impairment rating on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). Neither party brought this up as an issue in this appeal; and this appeal is on the sole issue of whether the ALJ correctly found that claimant did not prove a task loss.

Dr. Daniel Zimmerman is a certified independent medical examiner. He examined claimant on May 6, 2009, at the request of claimant's attorney. Claimant gave him a history of having been involved in a motor vehicle accident in August 2008 when the vehicle he was driving was rear-ended. Dr. Zimmerman reviewed claimant's medical records and performed a physical examination. Based on the *AMA Guides*,<sup>4</sup> Dr. Zimmerman opined that claimant sustained a 14 percent permanent partial impairment to his body as a whole as a result of the August 25, 2008, motor vehicle accident, for a permanent aggravation of claimant's lumbar disc disease. He believed that claimant was capable of lifting 20 pounds on an occasional basis and 10 pounds frequently. He said claimant should avoid frequent flexing of the lumbosacral spine and, therefore, should avoid frequent bending, stooping, squatting, crawling, kneeling, and twisting activities at the lumbar level. Dr. Zimmerman reviewed the FCE restrictions as were enumerated in Ms. Titterington's report and said that those restrictions would be acceptable to him.

Dr. Zimmerman reviewed Mr. Dreiling's task list. Of the 19 tasks on that list, Dr. Zimmerman opined that claimant has lost the ability to perform 11 tasks for a 58 percent task loss. If Dr. Zimmerman assumed the restrictions set forth in the FCE that limit claimant's standing and walking to one to two hours per day, claimant would have a 100 percent task loss. Dr. Zimmerman also reviewed Ms. Titterington's task list. He first indicated which tasks claimant could not perform based on his restrictions, and in that calculation claimant could not perform 12 of the 28 tasks for a 43 percent task loss. However, if he assumed the restrictions set forth in the FCE, there would be 20 tasks claimant could not perform, 1 task claimant could perform, and 7 tasks marked with a question mark. (These figures are in Zimmerman deposition, Exhibit 4, but are somewhat different from Dr. Zimmerman's deposition testimony.)<sup>5</sup>

Michael Dreiling, a vocational rehabilitation consultant, interviewed claimant on June 16, 2009, at the request of claimant's attorney. From that interview, he identified various tasks that he performed in the 15-year period before the accident. He opined that claimant would be unable to return to any of the employments he identified in the 15 years before his injury.

Mr. Dreiling said that claimant gave him no information that he had worked as a dishwasher in a restaurant. He agreed that washing pots and pans, mopping, sweeping, and cleaning grease traps would be consistent with tasks performed by a dishwasher in a restaurant. Mr. Dreiling said that Ms. Titterington's list had only one task under dishwasher, washing pots and pans. He would have included one other task, perform general cleanup of kitchen area, which would include mopping, sweeping, and cleaning

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<sup>4</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

<sup>5</sup> See Zimmerman Depo. at 33-34 and Ex. 5.

grease traps. Thus, had he known about the dishwashing job, he would have added two tasks to his task list.

Mr. Dreiling agreed that claimant's job with respondent included driving. He testified that he typically tried to avoid listing driving as a task because claimant was not hired to drive, he was hired to go to a job site and do repair work. In order to get to the job site, he had to drive, but Mr. Dreiling took driving and lumped it into other components of claimant's job functions. Further, claimant did not indicate to him that his job at respondent included general cleanup duties, including painting and sweeping. Mr. Dreiling said if those duties were a regular part of claimant's job at respondent, he would consider them additional tasks. But if they were performed only every once in awhile, he would not include them as tasks.

Mary Titterington, a vocational rehabilitation counselor, interviewed claimant by telephone on July 22, 2009, at the request of respondent. She prepared a list of tasks claimant had performed in the 15-year period before his accident. Ms. Titterington said that driving was a separate task claimant performed for multiple hours sometimes in a day.

Ms. Titterington testified that on the task of setting up and carrying equipment in claimant's surveying job, she assigned the element of lifting and carrying as 5 to 50 pounds. She said she did not get that information from claimant but from the DOT and her knowledge of the job. Claimant indicated to her that he carried 150 pounds. In her experience, instrument technicians are not required to carry 150 pounds. Therefore, in regard to tasks Nos. 24 through 27, the weights claimant indicated to her were greater than she reported. She testified that the only time she deviated from claimant's description of his job tasks was his surveying job where claimant was so extreme in variance with the standard references and her knowledge of that field. Ms. Titterington testified that claimant did not tell her that he placed monuments in conjunction with his job at the surveying company. Claimant told her he placed points and that involved weights up to 100 pounds.

In reviewing the task list of Mr. Dreiling, Ms. Titterington noted that his list did not show claimant lifting in excess of 100 pounds in performing any task for the surveying company. Mr. Dreiling's list shows that 75 pounds was the most claimant lifted in that job. Thus, she stated it appeared that both she and Mr. Dreiling offered opinions regarding the weight lifting requirements of the surveying job that differed from claimant's testimony.

#### **PRINCIPLES OF LAW**

K.S.A. 2008 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "Burden of proof means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510e(a) states in part:

Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.

#### ANALYSIS

The permanent partial general disability of an injured worker is measured, in part, by the loss of his ability to perform work tasks. After the physical requirements of each task are identified, they are analyzed by a physician who compares those physical requirements to the recommended permanent restrictions, thereby coming up with an opinion as to each task of whether the claimant retains the ability to perform the task. The Kansas Workers Compensation Act does not define work tasks. It is accepted, however, that a work task is not the same as a job. In general, a work task can be described as being the essential functions of a job. The only tasks we are concerned about are: (1) those that claimant performed in a job that would be considered to be substantial gainful employment, and (2) those that claimant performed in a job within the 15-year period next preceding his date of accident.<sup>6</sup> In this case, claimant's accident occurred on August 25, 2008, when claimant was 28 years old. The earliest job claimant performed that has been identified in this record is that of a dishwasher. Ms. Titterington included the dishwasher job in her task list as a single task. Mr. Dreiling did not include the dishwasher job in his list. Claimant does not think he mentioned the dishwasher job to Mr. Dreiling. Ms. Titterington testified that claimant performed the job for several months in 2000.<sup>7</sup> Neither her task list nor her interview notes, however, have any date for this job, and her notes indicate claimant only performed that job for a "couple months."<sup>8</sup>

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<sup>6</sup> Generally, duplicate tasks are eliminated when arriving at a percentage of tasks lost.

<sup>7</sup> Titterington Depo. at 18-19.

<sup>8</sup> Titterington Depo., Ex. Nos. 2 and 4.

In workers compensation litigation, the task of separating jobs into their various tasks is usually done by a vocational expert, although there is no requirement that an expert be utilized for this purpose. K.S.A. 44-510e requires that the extent of task loss be in the opinion of a physician. There is no corresponding requirement that what is a job task be in the opinion of a vocational expert. The Legislature apparently considered the making of a task list to be within the realm of ordinary people. The Board agrees that vocational experts are not the only ones capable of making a credible task list. Furthermore, the workers themselves, their coworkers, and the employers are the best sources for determining what tasks a job required. In workers compensation, we are concerned with what tasks the claimant actually performed in his actual jobs, not with what some expert thinks the job required or what some book says is the accepted definition of a job title. In several instances, Ms. Titterington's task list deviated from claimant's description of his job duties because she believed he was exaggerating or his description of the physical demands of the job did not comport with her understanding of such jobs or with the definition contained in the DOT. In other instances, claimant's disagreements with the task lists prepared by both of the vocational experts were the result of miscommunication or memory lapse. When claimant's recollection of jobs and job tasks changed, the previously compiled task lists were rendered less complete and less reliable.

Such variances and inconsistencies in task lists are not uncommon in workers compensation cases. Often the vocational experts themselves do not agree on what jobs constitute substantial gainful employment or what work activities comprise a task. In this case, however, the disagreements are particularly sharp. The incompleteness and discrepancies in the task lists as compared to each other and as compared to claimant's testimony led the ALJ to conclude that no list was accurate and, as such, the record failed to contain a credible task loss opinion.

The claimant offered testimony from Dr. Zimmerman that the claimant has a 58% task loss. Dr. Zimmerman gave his opinion from a work task history compiled by vocational expert, Michael Dreiling. The respondent offered testimony from Dr. Galate that the claimant has a 14% task loss. Dr. Galate used a work task history compiled by vocational expert, Mary Titterington. Both parties argued that the work task history compiled by the other side's vocational expert was inaccurate and incomplete. Both parties were correct.

The claimant testified to inaccuracies in the work tasks described by Mary Titterington. He said Titterington failed to note the actual lifting requirements for several of the tasks involved in his work for the respondent and also failed to record correctly the requirements of tasks involved in previous work for a lumber yard and for a land surveying company. On cross examination, the claimant admitted that Michael Dreiling's task list also failed to record some of the requirements correctly.

Either the claimant gave the vocational experts inaccurate information about his work history, or the vocational experts recorded his information incorrectly. Either way, both task lists were inaccurate and incomplete, so the task loss opinions

based on those lists are also considered inaccurate and incomplete. The record does not show a credible task loss opinion, therefore 0% task loss was proved, see *Voorhies v. Cobalt Boats*, [Docket No. 1,000,243, 2004 WL 3094633 (Kan. WCAB Dec. 22, 2004)].<sup>9</sup>

The Board understands the ALJ's frustration with this record. Nevertheless, the Board does not view the task lists as so flawed as to lack adequate foundation. No task list is a perfect recitation of claimant's job duties. But task lists are never perfect. The Board agrees with claimant's argument that the differences between the weight lifting requirements in Ms. Titterington's and Mr. Dreiling's task lists versus claimant's testimony are irrelevant if all exceed the restrictions. If claimant is restricted to lifting 20 pounds, then it does not matter whether a particular task required lifting up to 50 pounds versus 100 pounds or 150 pounds. The issue is whether claimant has lost the ability to perform the task and under all scenarios, the answer is yes. Furthermore, vocational experts can disagree on whether and under what circumstances a particular activity such as driving becomes a separate task. Such disagreements do not necessarily invalidate the task lists. Sometimes the most reasonable approach to such differences is not to decide which task list is right and which is wrong but, instead, to treat them both as reasonable interpretations of the same thing and give weight to both by finding the percentage of task loss somewhere between the two opinions.

The omission of jobs, however, presents a different and a more significant problem. In his brief and in oral argument to the Board, claimant's counsel argued that the dishwashing job was part time and that claimant was a minor and a student at the time he worked at the restaurant. Were that true, the Board might not find the job to be substantial and gainful employment, and its omission from the task list would be appropriate. However, such evidence or testimony is not in the record. Therefore, the omission of that job from Mr. Dreiling's task list is error. The Board will add the task from the dishwasher job to Mr. Dreiling's list and will compute the percentages of task loss of Drs. Zimmerman and Galate based on their opinions as to whether claimant could perform that task.

Using the list originally prepared by Ms. Titterington as modified by claimant, Dr. Galate opined that claimant lost the ability to perform 19 out of 28 tasks for a 68 percent task loss. As claimant bears the burden of proof, tasks on which Dr. Galate was uncertain are treated as tasks which claimant retains the ability to perform. Using the task list initially prepared by Mr. Dreiling and modified by claimant, Dr. Galate opined that claimant has lost the ability to perform 17 out of 19 tasks. Dr. Galate opined that claimant was unable to perform the task of washing pots and pans when reviewing Ms. Titterington's list, and when that task is added to Mr. Dreiling's list, his opinion would be that claimant has lost the ability

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<sup>9</sup> ALJ Award (Oct. 28, 2009) at 3-4. See *Cunningham v. Love Box Co.*, Docket No. 1,029,678, 2009 WL 1588617 (Kan. WCAB May 7, 2009).

to perform 18 out of 20 tasks for a 90 percent task loss. The average of these two opinions is 79 percent.

Dr. Zimmerman reviewed the task lists prepared by Ms. Titterington and Mr. Dreiling. Using his own restrictions as opposed to the restrictions contained in the FCE report, Dr. Zimmerman opined that claimant's percentage of tasks lost were 43 percent using Ms. Titterington's list and 58 percent using Mr. Dreiling's list. Dr. Zimmerman opined that claimant would be able to perform the task of washing pots and pans. When that task is added to Mr. Dreiling's list, Dr. Zimmerman's opinion would be that claimant is unable to perform 11 tasks out of 20, for a task loss of 55 percent. The average of these two opinions is 49 percent.

Giving approximately equal weight to the opinions of Dr. Galate and Dr. Zimmerman, the Board finds claimant suffered a task loss of 64 percent.

#### CONCLUSION

Claimant has proven a 64 percent task loss.

#### AWARD

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated October 28, 2009, is modified to find:

From August 25, 2008, through September 6, 2008, claimant has a functional impairment of 9.5 percent.

From September 7, 2008, through August 23, 2009, claimant has a work disability of 82 percent (100 percent wage loss and 64 percent task loss).

From August 24, 2009, forward, claimant has a work disability of 51.5 percent (39 percent wage loss and 64 percent task loss).

Claimant is entitled to 24 weeks of temporary total disability compensation at the rate of \$347.19 per week or \$8,332.56, followed by 1.71 weeks of permanent partial disability compensation at the rate of \$347.19 per week or \$593.69 for a 9.5 percent functional disability, followed by 50.14 weeks of permanent partial disability compensation at the rate of \$347.19 per week or \$17,408.11 for an 82 percent work disability, followed by 157.24 weeks of permanent partial disability compensation at the rate of \$347.19 per week or \$54,592.16 for a 51.5 percent work disability, making a total award of \$80,926.52.

As of February 11, 2010, there would be due and owing to the claimant 24 weeks of temporary total disability compensation at the rate of \$347.19 per week in the sum of

\$8,332.56 plus 52.42 weeks of permanent partial disability compensation at the rate of \$347.19 per week in the sum of \$18,199.70 for a total due and owing of \$26,532.26, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$54,394.26 shall be paid at the rate of \$347.19 per week for 156.67 weeks or until further order of the Director.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February, 2010.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Daniel L. Smith, Attorney for Claimant  
D'Ambra M. Howard, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge