

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 99-036272

Employee: Velma Aaron
Employer: Lutheran Senior Services, Inc.
Insurer: Royal Indemnity Company
Date of Accident: April 1, 1999
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 25, 2006. The award and decision of Administrative Law Judge Cornelius T. Lane, issued January 25, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 28th day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Velma Aaron

Injury No.: 99-036272

Dependents: N/A
Employer: Lutheran Senior Services, Inc.
Additional Party: N/A
Insurer: Royal Indemnity Company
Hearing Date: December 8, 2005

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: CTL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: April 1, 1999
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant was pulling a container from a wall when the container shifted in its weight and Claimant felt pain in her right shoulder and neck area.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Right thoracic area and right shoulder
14. Nature and extent of any permanent disability: 5% of the body as a whole related to the back and right shoulder
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$2,997.04

Employee: Velma Aaron Injury No.: 99-036272

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$251.00
19. Weekly compensation rate: \$167.33 PPD
20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

20 weeks of permanent partial disability from Employer

\$3,346.60

22. Second Injury Fund liability: No

TOTAL: \$3,346.60

23. Future requirements awarded: N/A

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jerome Lefton

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Velma Aaron	Injury No.: 99-036272
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Lutheran Senior Services, Inc.	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Royal Indemnity Company	Checked by: CTL:tr

PREFACE

A hearing was held in the above-mentioned matter on December 8, 2005. The Claimant, Velma Aaron, was represented by Attorney Jerome Lefton. The Employer/Insurer was represented by Attorney Kenneth Alexander.

ISSUES

1. Medical causal relationship;
2. Nature and extent of past temporary total disability benefits; and
3. Nature and extent of any permanent partial disability benefits.

EXHIBITS

The Claimant offered the following exhibits:

- Exhibit A. Records from SSM Corporate Health Services.
- Exhibit B. Records from St. Louis Orthopedic Institute, Inc.
- Exhibit C. Records from Dr. Carlyn Porter-Small.
- Exhibit D. Report of Dr. Berkin.
- Exhibit E. Records from Dr. Eric Washington.
- Exhibit F. Records from Unity Health.
- Exhibit G. Records from Ferguson Family Practice.
- Exhibit H. Records from Northland Mid-American Orthopedics.
- Exhibit I. Records from DePaul Health Center.
- Exhibit J. Report of Dr. Berkin.

The Employer/Insurer offered the following exhibits:

- Exhibit 1. Records from Dr. Bernard Randolph.
- Exhibit 2. Deposition of Dr. Randolph.
- Exhibit 3. Records from SSM Corporate Health.
- Exhibit 4. Certified Records of Dr. Frederic Simowitz.

FINDINGS OF FACT

1. At the time of the hearing Claimant was 48 years of age with a tenth grade education and raising three children.
2. Claimant, on April 1, 1999, while at work for the Employer, was pulling a container from a wall and the container shifted in its weight and Claimant states that she felt immediate pain in her right shoulder and neck area.
3. Claimant went to SSM Corporate Health Services for treatment and took off three days. When she returned to work she was on light duty.
4. Claimant, while working on light duty, on May 2, 1999, was pulling some glasses in a container in an overhead position and when she pulled them down she experienced pain in her shoulder and neck area.
5. Claimant, as a result of the April 1, 1999 incident, came under the care of Dr. Randolph who felt that as a result of the April 1, 1999 incident suffered a sprain/strain of the right shoulder.
6. Dr. Randolph also treated the Claimant as a result of the May 2, 1999 incident. Although the doctor's records do not indicate that the Claimant had told him of the May 2, 1999 incident at work.
7. Claimant came under the care of her own doctor, Dr. Porter-Small, who gave her medication and some therapy and took the Claimant off work from January 19, 2000 to January 25, 2000.
8. Dr. Randolph gave the Claimant a 2% permanent partial disability of the body as a whole relating to the Claimant's back and shoulder as a result of the injury of April 1, 1999 and felt that she had reached maximum medical improvement as of June 18, 1999.
9. Claimant continued under the care of Dr. Randolph and complained to him of tenderness in the shoulder and neck area and the doctor again found her at maximum medical improvement as of March 28, 2000 and had stated that his diagnosis was she had a thoracic and right shoulder sprain/strain.
10. The Claimant's attorney referred the Claimant to Dr. Simowitz who, after his examination of the Claimant, felt that she had sustained a muscle strain of some type during one or both of her injuries of April 1, 1999 and May 2, 1999 and also felt that her complaints of pain are inconsistent and felt that she may be engaging in symptom magnification.
11. Claimant was also sent to Dr. Berkin by her attorney for further evaluation and stated that when he examined the Claimant she had complaints of pain and tenderness in her mid and upper back as well as pain and tenderness in her right arm and shoulder and that any lifting aggravated the pain in her shoulder.
12. Dr. Berkin gave a disability rating for the Claimant as to the April 1, 1999 as 10% of the body as a whole at the level of the thoracic spine for the thoracic strain and 10% permanent partial disability of the right upper extremity at the level of the shoulder for the right shoulder strain and further Dr. Berkin felt that Claimant had permanent partial disability of 15% of the body as a whole at the level of the thoracic spine and 15% permanent partial disability of the right upper extremity at the shoulder as a result of the May 2, 1999 injury.

- 13. Claimant stopped working for the Employer in August of 2002 to find a job that was less strenuous and began working as an assembler at the Wonder Bread Company. At Wonder Bread she does a lot of repetitive and overhead work which she says aggravates her condition.
- 14. Claimant underwent arthroscopic surgery at DePaul Health Center on March 8, 2004 due to a diagnosis of impingement syndrome. There is no medical evidence that this was connected to either the work injuries of April 1, 1999 or May 2, 1999.

RULINGS OF LAW

I find from the substantial weight of the evidence:

- 1. As a result of the incident at work on April 1, 1999, Claimant sustained a strain/sprain injury to her right thoracic and right shoulder area and as a result of those injuries she sustained a 5% permanent partial disability of the body as a whole.
- 2. With regard to the May 2, 1999 incident, I feel that there should not be any award of permanent partial disability.
- 3. I do not feel that the Claimant is entitled to any temporary total disability benefits from January 19, 2000 to January 25, 2000 and October 3, 2003 to August 7, 2004.
- 4. The above findings are made because I do not feel that there was sufficient medical evidence to make any other findings.

Employee: Velma Aaron Injury No.: 99-036272

Date: _____ Made by: _____
Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 99-173743

Employee: Velma Aaron
Employer: Lutheran Senior Services, Inc.
Insurer: Royal Indemnity Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: Alleged May 2, 1999
Place and County of Accident: Alleged St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 25, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, Jr., issued January 25, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 28th day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee:	Velma Aaron	Injury No.:	99-173743
Dependents:	N/A		
Employer:	Lutheran Senior Services, Inc.		
Additional Party:	N/A		
Insurer:	Royal Indemnity Company		
Hearing Date:	December 8, 2005	Checked by:	CTL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
3. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
6. Date of accident or onset of occupational disease: alleged May 2, 1999
7. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes

- 7. Did employer receive proper notice? Yes
- 8. Did accident or occupational disease arise out of and in the course of the employment? Yes
- 10. Was claim for compensation filed within time required by Law? Yes
- 10. Was employer insured by above insurer? Yes
- 11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant claims she was reaching overhead and removing a tray with glasses when she felt a strain in her right shoulder and cervical area.
- 12. Did accident or occupational disease cause death? No Date of death? N/A
- 13. Part(s) of body injured by accident or occupational disease: alleged right shoulder, cervical sprain
- 15. Nature and extent of any permanent disability: -0-
- 15. Compensation paid to-date for temporary disability: Unknown
- 16. Value necessary medical aid paid to date by employer/insurer? Unknown

Employee: Velma Aaron Injury No.: 99-173743

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 19. Employee's average weekly wages: \$251.00
- 19. Weekly compensation rate: \$167.33/\$167.33
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable: None
- 22. Second Injury Fund liability: No
- TOTAL: -0-
- 23. Future requirements awarded: N/A

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Velma Aaron Injury No.: 99-173743
Dependents: N/A Before the
Employer: Lutheran Senior Services, Inc. **Division of Workers'**
Compensation
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri
Additional Party: N/A
Insurer: Royal Indemnity Company Checked by: CTL:tr

PREFACE

A hearing was held in the above-mentioned matter on December 8, 2005. The Claimant, Velma Aaron, was represented by Attorney Jerome Lefton. The Employer/Insurer was represented by Attorney Kenneth Alexander.

ISSUES

4. Medical causal relationship;
5. Nature and extent of past temporary total disability benefits; and
6. Nature and extent of any permanent partial disability benefits.

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15. At the time of the hearing Claimant was 48 years of age with a tenth grade education and raising three children.
16. Claimant, on April 1, 1999, while at work for the Employer, was pulling a container from a wall and the container shifted in its weight and Claimant states that she felt immediate pain in her right shoulder and neck

area.

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21. Claimant came under the care of her own doctor, Dr. Porter-Small, who gave her medication and some therapy and took the Claimant off work from January 19, 2000 to January 25, 2000.
22. Dr. Randolph gave the Claimant a 2% permanent partial disability of the body as a whole relating to the Claimant's back and shoulder as a result of the injury of April 1, 1999 and felt that she had reached maximum medical improvement as of June 18, 1999.
23. Claimant continued under the care of Dr. Randolph and complained to him of tenderness in the shoulder and neck area and the doctor again found her at maximum medical improvement as of March 28, 2000 and had stated that his diagnosis was she had a thoracic and right shoulder sprain/strain.
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25. Claimant was also sent to Dr. Berkin by her attorney for further evaluation and stated that when he examined the Claimant she had complaints of pain and tenderness in her mid and upper back as well as pain and tenderness in her right arm and shoulder and that any lifting aggravated the pain in her shoulder.
26. Dr. Berkin gave a disability rating for the Claimant as to the April 1, 1999 as 10% of the body as a whole at the level of the thoracic spine for the thoracic strain and 10% permanent partial disability of the right upper extremity at the level of the shoulder for the right shoulder strain and further Dr. Berkin felt that Claimant had permanent partial disability of 15% of the body as a whole at the level of the thoracic spine and 15% permanent partial disability of the right upper extremity at the shoulder as a result of the May 2, 1999 injury.
27. Claimant stopped working for the Employer in August of 2002 to find a job that was less strenuous and began working as an assembler at the Wonder Bread Company. At Wonder Bread she does a lot of repetitive and overhead work which she says aggravates her condition.
28. Claimant underwent arthroscopic surgery at DePaul Health Center on March 8, 2004 due to a diagnosis of impingement syndrome. There is no medical evidence that this was connected to either the work injuries of April 1, 1999 or May 2, 1999.

RULINGS OF LAW

I find from the substantial weight of the evidence:

5. As a result of the incident at work on April 1, 1999, Claimant sustained a strain/sprain injury to her right thoracic and right shoulder area and as a result of those injuries she sustained a 5% permanent partial disability of the body as a whole.
6. With regard to the May 2, 1999 incident, I feel that there should not be any award of permanent partial disability.
7. I do not feel that the Claimant is entitled to any temporary total disability benefits from January 19, 2000 to January 25, 2000 and October 3, 2003 to August 7, 2004.
8. The above findings are made because I do not feel that there was sufficient medical evidence to make any other findings.

Employee: Velma Aaron

Injury No.:

99-173743

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation