

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

Injury No.: 00-137324

Employee: Rose Anaemereibe
Employer: Barnes-Jewish Hospital
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: November 8, 2000
Place and County of Accident: St. Louis, Missouri

On October 5, 2004, employer/insurer filed a motion to strike employee's Application for Review. The Labor and Industrial Relations Commission (Commission) deferred ruling on the motion to strike until the final award is issued. The Commission, having considered the motion, denies the motion and accepts review of the case.

Employer/insurer also filed a motion to strike employee's brief for failure to comply with 8 CSR 20-3.030(5). Although employee's brief is not in full compliance with our regulation, we deny the motion to strike and consider her brief for what it is worth.

The above-entitled workers' compensation case is submitted to the 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 must be modified. Pursuant to section 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge dated August 30, 2004.

Finding of fact number 1 on page one of the administrative law judge's award and decision states that no benefits are awarded; however, the administrative law judge awarded 2.5% permanent partial disability. We correct finding number 1 to state that benefits are awarded. Additionally, finding of fact number 14 on page one of the administrative law judge's award and decision incorrectly states "none" to the nature and extent of any permanent partial disability. The administrative law judge awarded 2.5% permanent partial disability. We modify the amount of permanent partial disability awarded to 5% permanent partial disability and correct finding of fact number 14 to reflect our award of permanent partial disability.

We find the percentage of permanent partial disability awarded by the administrative law judge is too conservative regarding employee's permanent disability. Employer rearranged claimant's workstation on November 7, 2000. On November 8, 2000, she was trying to sit, she tripped over a wire and fell. She injured her low back, right shoulder, right hand and neck/head. She was sent to BJC where she was treated with muscle relaxants and physical therapy. She was released from care on December 1, 2000. She was diagnosed with resolved contusions of the right shoulder, right hand, right flank, and head. Additionally, she was diagnosed with resolved right cervical strain, right trapezius strain, and lumbosacral strain. She was released to return to work without restrictions. She was instructed to continue doing range of motion exercises. Her examination was normal, but she continued to have subjective complaints of low back pain.

Dr. Robert Poetz examined employee at her attorney's request on September 12, 2002. He noted that employee did not have complaints regarding her right shoulder, but she did report right-sided lower back and hip pain on occasion, particularly when bending. He diagnosed her with a cervical/lumbar strain and assessed 20% permanent partial disability. He did not afford a rating for the right shoulder because she had no shoulder

complaints when he saw her. Employee informed Dr. Poetz that she had experienced increased symptoms in the low back in April 2001, after gardening. He determined that the gardening incident was an exacerbation of the original injury because she experienced the same pain to the same area of the body. We find Dr. Poetz's rating excessive.

Dr. Sandra Tate examined employee on behalf of employer/insurer on August 27, 2003. Employee informed Dr. Tate that her right shoulder complaints had resolved until she recently swatted a fly with some force, which caused right shoulder symptomology for seven days. Employee believes that the flare up of her right shoulder problems is due to the work accident. Dr. Tate concluded that the swatting incident was an intervening event and claimant's current right shoulder complaints are not due to the work accident. Dr. Tate stated that her physical examination revealed no objective findings. Employee had subjective complaints of low back pain. Dr. Tate assessed 0% permanent partial disability. We do not find Dr. Tate's rating of no disability credible.

Employee testified that she no longer has any problems with her right hand. She indicated that she has headaches, which were different after the accident than prior to the accident, but she stated that the headaches were not related to the work accident. She stated that she has low back and right hip pain when she bends over to touch her toes or when she sits in a low chair. She stated her right shoulder has a dull pain that does not go away. She stated if she moves it fast with force, the shoulder hurts worse. Normal activities do not bother her. She continues to take muscle relaxants as needed.

We agree with the administrative law judge that employee is focusing on this incident and overlooking prior symptoms to the same body parts. However, based upon the medical records and employee's ongoing symptoms, we find employee has sustained 5% permanent partial disability. Employer/insurer shall pay employee \$3,999.40 in permanent partial disability benefits.

The Commission further approves and affirms said administrative law judge's allowance of attorney's fee herein as being fair and reasonable. However, the fee is limited to what was awarded by the administrative law judge. Employee filed her appeal to the Commission pro se. Her attorney is not entitled to any fees on the additional amount of compensation awarded by the Commission.

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

The award and decision of Administrative Law Judge Matthew D. Vacca, issued August 30, 2004, are attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 14th day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Rose Amaemereibe Injury No.: 00-137324
Dependents: N/A Before the
Employer: Barnes-Jewish Hospital **Division of Workers'**
Additional Party: Second Injury Fund **Compensation**
Department of Labor and Industrial
Relations of Missouri
Insurer: Self-Insured Jefferson City, Missouri
Hearing Date: July 7, 2004 Checked by: MDV:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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: November 8, 2000
5. State location where accident occurred or occupational disease was contracted: St. Louis
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:
Fell while getting up from desk.
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: Shoulder, head, and right hand
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$1,427.98

Employee: Rose Anaemereibe Injury No.: 00-137324

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$299.95
19. Weekly compensation rate: \$199.97/\$199.97
20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable:

10 weeks of permanent partial disability

\$1,997.97

22. Second Injury Fund liability: Dismissed

TOTAL:

\$1,997.97

23. Future requirements awarded: None

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:

Danelle Duffy

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Rose Anaemereibe

Injury No.: 00-137324

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Barnes-Jewish Hospital

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self-Insured

Checked by: MDV:tr

PREFACE

This claim was tried before the undersigned Administrative Law Judge on July 7, 2004. Danelle Duffy represented the Claimant. Robert Hinson represented the Employer. Dana Bodenschatz was the court reporter that transcribed the testimony.

The issue presented for resolution by way of this hearing was the nature and extent of permanent partial disability.

SYNOPSIS

Claimant is an extremely pleasant woman who worked for Employer as a medical records assistant. In November of 2000, Claimant's workspace was rearranged by her supervisor. Claimant was not happy with the rearrangements because it made it awkward for her to get out of the space. On the date of the accident Claimant was getting up and trying to avoid a

rack behind her head when she caught her leg and fell in the chair and fell over injuring her shoulder, head, and right hand.

Claimant was treated with x-rays, physical therapy and prescriptions, some time off, took some sick leave and has some headaches. She had some prior injuries and workers' compensation settlements. Dr. Poetz rated Claimant at 20% permanent partial disability measured at the level of the body as a whole and Claimant requests an award of permanent partial disability of 15 to 20%. Employer believes the case is worth perhaps 2 ½ to 5%.

FINDINGS OF FACT

1. Claimant was born on May 25, 1962, she is 5 feet, 3 inches tall and weighs 140 pounds. She became divorced as of the date of the hearing and has four children under the age of 18. She has an associate's degree in chemical technology.
2. Claimant has worked in the past as a home health care private duty nurse and then as an office clerk. She was last employed by Employer keeping records, employee files, keeping contact with clients and maintained contact with the physicians and health care plans.
3. Claimant worked for the Employer for eight years, seven in home health care and one in the office. She performed quite a bit of writing and phone work in the last year of her full time position.
4. Claimant last worked in April of 2001 when she was terminated.
5. As a home health care worker she would help out handicapped individuals with the activities of daily living such as taking baths, tending to their beds, cooking, cleaning and other hygiene aspects of their care.
6. On Monday, November 7, 2000, Claimant did not work. She came to work on Tuesday next and someone had rearranged her desk space. She went to her supervisor to complain and the supervisor would not let Claimant change her workspace back the way it was.
7. The wires and cords of clocks and other items were exposed in the new arrangement where they used to be in or flat against the wall. There was also a rack behind Claimant's back and she would hit her head on it. She left the space as is because her supervisor wanted her to try it.
8. The supervisor was trying to make more space for Claimant but Claimant did not like the configuration.
9. The next day Claimant was arising when she caught her leg and fell backwards in her chair and then the chair fell over. Claimant struck her shoulder, right hand, and head.
10. Two employees, Wendy McVeigh-Hudsel and Christine McCret, helped Claimant arise. Her hand hurt right away as did her neck and shoulder. Her low back began to become symptomatic the next day.
11. Claimant was off from November 8 to November 15. She did not see the doctor during this time period and took sick leave. Later, she saw a doctor and underwent x-rays, physical therapy, and prescription treatment.
12. Claimant now experiences a dull pain which increases upon certain movements such as bending. She can't perform gardening anymore and experiences an increase in pain while bending over on an average of once every two weeks.
13. In 1996 or 1997 she was involved in an automobile accident where she injured her neck and back and underwent physical therapy.
14. Claimant complains of headaches that are associated with the onset of her menstrual cycle but the headaches are different than they were before the incident. Quick movements of the shoulder cause an increase in pain. Low back pain increases upon bending. Claimant no longer has right hand problems.
15. Dr. Tate finds no permanent partial disability. Dr. Poetz finds 20%.

RULINGS OF LAW

1. Claimant has sustained a 2.5% permanent partial disability measured at the level of the body as a whole arising out of the incident that took place on November 8, 2000.

DISCUSSION

Claimant was an extremely pleasant woman. She appeared very credible but the injury seems *de minimus*. She seems to be focusing on this incident and overlooking some prior symptoms to the same parts of the body. This is only

natural, but it is not all the responsibility of the Employer. Dr. Poetz's rating does not seem very credible.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Reneé T. Slusher
Director
Division of Workers' Compensation