

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

Injury No.: 06-082287

Employee: Florence Bills  
Employer: Express Scripts, Inc.  
Insurer: Sentry Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 19, 2009. The award and decision of Administrative Law Judge Margaret D. Landolt, issued February 19, 2009, 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 30th day of July 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

# AWARD

Employee: Florence Bills

Injury No.: 06-082287

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

Dependents: N/A

Employer: Express Scripts, Inc.

Additional Party: Second Injury Fund

Insurer: Sentry Insurance Co.

Hearing Date: December 3, 2009

Checked by: MDL

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
  - 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
  - Date of accident or onset of occupational disease: August 25, 2006
  - State location where accident occurred or occupational disease was contracted: St. Louis County Missouri
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
  - 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:  
Employee was exposed to 409 Cleaning Solvent used by a co-employee.
12. Did accident or occupational disease cause death? No

13. Part(s) of body injured by accident or occupational disease: Body as a whole – pulmonary system

- Nature and extent of any permanent disability: 0

15. Compensation paid to-date for temporary disability: None

16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Florence Bills

Injury No.: 06-082287

17. Value necessary medical aid not furnished by employer/insurer? \$11,115.55

- Employee's average weekly wages: \$474.02

19. Weekly compensation rate: \$316.01/\$316.01

20. Method wages computation: Stipulation

#### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$11,115.55
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22. Second Injury Fund liability: No

Total:	\$11,115.55
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23. Future requirements awarded: None

Said payments to begin 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: Mr. Thomas Gregory

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Florence Bills

Injury No.: 06-082287

Dependents: N/A

Before the

Employer: Express Scripts, Inc.

Additional Party: Second Injury Fund

Insurer: Sentry Insurance Co.

**Division of Workers'**

**Compensation**

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

Checked by: MDL

**PRELIMINARIES**

A hearing was held on December 3, 2008, at the Division of Workers' Compensation in the City of St. Louis, Missouri. This case was consolidated for trial with Injury No. 06-124716, which is the subject of a separate Award. Florence Bills ("Claimant") was represented by Mr. Thomas Gregory. Express Scripts, Inc. ("Employer"), and its Insurer Sentry Insurance Co., were represented by Mr. Mark Bates. The Second Injury Fund ("SIF") was represented by Assistant Attorney General Kareitha Osborne. Mr. Gregory requested a fee of 25% of Claimant's award.

The parties stipulated that on or about August 25, 2006, Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated Claimant was earning an average weekly wage of \$474.02 resulting in applicable rates of compensation of \$316.01 for Total Disability benefits and Permanent Partial Disability ("PPD") benefits. Employer denied liability for this claim and has paid no benefits.

The issues for resolution by hearing are: Whether Claimant sustained an accidental injury arising out of and in the course of employment on or about August 25, 2006; medical causation; liability of Employer for past medical benefits of \$11, 115.55; liability of employer for future medical care; nature and extent of permanent partial disability; whether Claimant is permanently and totally disabled; and liability of the SIF.

**FINDINGS OF FACT**

Claimant is a 46 year old woman who graduated from high school in 1979, and attended two years of college. She studied child care, and never obtained a college degree. From 1979 to 1983 she worked in a Day Care facility caring for abused children. In 1983 she took time off work to have a child, and returned to the work force in 1986. From 1986 to 1997 she worked in the banking industry in various positions.

In 1997, Claimant went to work for a cable company in Customer Service. From 1998 to 2002 she lived in Washington D.C. In 2002 she resigned and returned to St. Louis.

In October 2002 Claimant began working for Employer as a Pharmacy Technician. She sat in a cubicle which was in a maze of small cubicles, with approximately 200 people. The ventilation was poor.

Claimant has suffered from allergies since she was five years old. Over the years, her asthma attacks have been triggered by cold air, weather changes, grass, mold, chemicals, trees, cats and dogs. When she has an asthma attack, her chest becomes extremely tight and she begins to wheeze. When she has an asthma attack she takes her medications, and one of her three or four inhalers. She also has a nebulizer, and has occasionally taken it to work with her. Sometimes her attacks subside with the use of medications, and sometimes they do not. When they do not, she might have to call 911. Claimant has been hospitalized numerous times in the past, and has been intubated twice, once in 1997, and again in 2002.

Claimant has been hospitalized every year or two since she was a small child. In Washington, D.C., her asthma attacks increased, and she was hospitalized seven times. The increasing frequency of her asthma attacks was one of the reasons she returned to St. Louis.

In 2002, when she returned to St. Louis, she became an established patient of Dr. Kulczycki, an allergy

specialist at Barnes Hospital, and she continues to treat with him. Following her return to St. Louis, Claimant had the following asthma attacks which were serious enough to require hospitalization: In May 2004, Claimant was hospitalized at DePaul Hospital for four days after an asthma attack at work when exposed to 409 cleaning solvent. In July 2005, Claimant was hospitalized at DePaul when she was suffering from an upper respiratory illness. In September 2005, she was hospitalized at Christian Hospital Northeast. In January 2006, Claimant was admitted to Barnes Hospital for four days. In February and April 2006 Claimant was admitted to Barnes Hospital.

In early 2006, Claimant was moved to the work station of an employee who was on medical leave. The employee owned five cats and three dogs, and there was animal dander at the work station. Because her asthma attacks increased as a result of her exposure to animal dander at work, Dr. Kulczycki wrote the following letter to Employer:

“Ms. Bills is a patient under my care for allergic rhinitis, asthma, and recurrent sinusitis. She is extremely allergic to cats. It is critical for her health and work productivity that she have a work environment free of cat dander and irritants. I recommend that she not share desks, chairs, etc. with workers who have cats, nor work near them. As you may know, 30% of the U.S. population has a cat and cat dander is carried on peoples’ clothes. Also, she should not be near highly perfumed workers or cleaning chemicals.”

Claimant turned this letter into Employer’s Human Resources department. Claimant saw Dr. Kulczycki on August 21, 2006, and Dr. Kulczycki noted her symptoms were poorly controlled in some part due to her inability to eliminate environmental triggers and to poor control of her nasal allergy symptoms. He stated Claimant was on a good asthma regimen, and he continued some of her medications, and prescribed some additional medications.

On August 25, 2006, while working for Employer, Claimant suffered an asthma attack. Claimant was working and had her back towards the aisle, when she felt her chest tighten. She reached for her medication and started to use it. She turned around and saw 409 cleaner on the desk across from her. She asked her co-worker not to use the 409, and was told he had already used it. Claimant’s symptoms continued to worsen, and 911 was called. Claimant was taken to DePaul Hospital where she was admitted, and remained for treatment for two days.

The records from DePaul indicate Claimant complained of swelling, shortness of breath, and her throat closing with sudden onset of symptoms. She was administered IV steroids and an epi-injection in the Emergency Room, and diagnosed with acute bronchospasm most likely secondary to angiodema, allergic reaction to 409, and acute asthma exacerbation most likely attributed to an allergic reaction.

Claimant followed up with Dr. Kulczycki after her release from the hospital. She missed six weeks of work following that hospitalization, and received sick pay from Employer. A Report of Injury was filed indicating this was a work injury.

After she returned to work Claimant still had some wheezing and shortness of breath, but suffered no additional attacks until November 8, 2006, approximately one month after she returned to work. This incident occurred over two days. When Claimant got to work on November 7, 2006, she felt wheezing and chest tightness and had a productive cough. She was told there was painting going on in the building not near her, but the fumes were affecting her. She went home immediately, and when she checked with her supervisor, she was told to return the next day, because the painting would be completed.

Claimant returned to work on November 8, 2006, but the painting was still going on. She tried to work, but her symptoms began to worsen, and she developed wheezing, chest tightness, and shortness of breath, and she was taken by ambulance to DePaul Health Center where she was admitted and remained an inpatient from November 8, 2006 to November 12, 2006. During that hospitalization she was diagnosed with asthma exacerbation secondary to environmental exposure.

Claimant was off work for approximately one month, and she returned to work on December 11, 2006, and

was transferred to a different building. On that occasion, a co-worker had sprayed some perfume, which caused her to become symptomatic. She left work and sought treatment with Dr. Kulczycki. Claimant has not returned to work, and was terminated by Employer because they were unable to accommodate the environmental restrictions imposed by her doctor, and because she was missing too much time from work.

After her termination from Employer, Claimant received unemployment benefits for six months, from February 21, 2007 to August 21, 2007. She attempted to return to work in September 2007 with a security company. She worked three days a month for a period of about three months at a senior citizens home. She was terminated from that job in December 2007 because she was having difficulty with fatigue. She was outside her controlled environment which aggravated her symptoms, because she was in contact with people who were wearing perfumes, and because she was exposed to other outside stimuli. Claimant has not worked at any job since December 19, 2007.

Since her two exposures on August 25, 2006 and November 8, 2006, she continues to have episodes of wheezing, coughing, and shortness of breath. Since these exposures at work, she is much more sensitive, and being around flowers, which never used to bother her, recently brought on symptoms. She is taking Prednisone more frequently now, which has resulted in hair loss. Because of her asthma, she maintains a controlled environment in her house, and as much as possible when she goes out. She uses special soaps and cleaning products at home.

Claimant still has shortness of breath while walking, and averages four or five attacks a month, even in a controlled environment. She becomes fatigued easily with activity, and has to rest between activities. She paces herself with chores.

Dr. Robert Bruce, a board certified pulmonologist testified on behalf of Employer. Dr. Bruce ordered pulmonary function studies which were performed on October 2, 2007. Dr. Bruce testified the workplace exposures of August and November 2006 aggravated her underlying asthma, but they were not causative. He testified the workplace aggravation would be expected to be temporary, and once removed from the inciting agent he would expect the lung condition to return to where it was before the exposure within a matter of days to weeks. Dr. Bruce testified Claimant did not sustain any PPD as a result of the incidents of August 25 and November 8, and she did not need any additional medical treatment as a result of those specific exposures. He testified better control of her underlying asthma would allow her to return to the workplace, and she should avoid exposure to known triggers to her asthma.

At the time of his evaluation Dr. Bruce testified Claimant's asthma was so poorly controlled she was not employable for tasks for which she is suitably trained. He indicated there were several steps to bring her asthma under control, including better adherence to her asthma management plan, assessing her inhaler technique, and control of her gastro-esophageal reflux disease. Dr. Bruce testified if her bronchial asthma does not come under better control, she may be permanently disabled as a result of this condition.

Dr. Bruce testified if Claimant were to gain control of her underlying asthma, she would have to work at a job where she would have to avoid known triggers to her asthma, such as chemicals, perfumes, dust, cats, pollen, mold, ragweed, cold air, peanuts, second-hand smoke, and those things for which she tested positive with skin tests.

Dr. David Volarich testified on behalf of Claimant. Dr. Volarich examined Claimant on July 19, 2007. Dr. Volarich opined Claimant's August 25, 2006 work exposure to Formula 409 cleaning solution was the substantial contributing factor as well as the prevailing or primary factor in causing the acute allergic reaction and aggravation of her asthma that required considerable medical care. He testified Claimant sustained a 12.5% PPD of the body as a whole rated at the pulmonary system due to the aggravation of her asthma that required medical care. The rating accounted for the injury's contribution to increasing respiratory difficulties with wheezing, shortness of breath, fatigability, and need for more medications.

Dr. Volarich also testified the chemical exposure at work to paint fumes in the office on November 8, 2006, was the substantial contributing factor, as well as the prevailing or primary factor in causing another allergic reaction and aggravation of her asthma that required additional medical care. Dr. Volarich rated an additional 12.5% PPD of the body as a whole at the pulmonary system due to the aggravation of her asthma as a result of the November 8, 2006 incident. He testified the rating accounted for the injury's contribution to increased wheezing, shortness of breath,

fatigability, and the need for more medication.

Dr. Volarich rated 50% PPD of the body as a whole which preexisted the injury of August 25, 2006, due to her chronic asthma that required extensive medical care and medications leading up to August 25, 2006.

Dr. Volarich testified he was uncertain if Claimant could return to work because of her serious pulmonary difficulties, multiple extrinsic allergies causing frequent exacerbations of her asthmatic condition and need for more medication, as well as need for isolation. He recommended she undergo a vocational assessment to determine if she is able to return to the open labor market without significant accommodations because of her asthma. He testified she needed to be in essentially a sterile environment without exposure to chemicals, fumes, or extrinsic allergens including dander, dust, molds and the like. Dr. Volarich testified Claimant would require multiple daily medications to control her pulmonary symptoms, including multiple inhalers, oral bronchodilators, antibiotics and Prednisone in the future.

Dr. Volarich testified Claimant's pulmonary testing on December 11, 2006 after both exposures showed a significant change, and her reading dropped from the moderate impairment range to the moderate to severe impairment range. Dr. Volarich testified Claimant's pulmonary testing of October 2007 showed improvement in the forced vital capacity, but the forced expiratory volume had not improved and represented a 7% decrease from Claimant's pre-exposure testing. He testified these findings corroborate his opinion that these were permanent aggravations of her underlying chronic condition as opposed to temporary aggravations and he noted in addition to these tests, Claimant was symptomatically worse, and is now taking Prednisone on a more frequent basis, whereas, before she would have a couple of courses of Prednisone over the years, but nothing was required on an ongoing basis.

Dr. Volarich testified the medical bills for treatment in the amount of \$33,579.65 were reasonable medical expenses and were medically necessary to cure and relieve the effects of the two work exposures on August 25, 2006 and November 8, 2006.

Mr. James England, a vocational rehabilitation counselor, testified on behalf of Claimant. Mr. England testified Claimant is unemployable in the open labor market. Mr. England testified Claimant came across as bright and articulate, and has transferable skills to a sedentary level of exertion, but even at a sedentary level she had problems functioning because of her inability to control the air around her. Despite accommodations by Employer and multiple attempts to continue working, she reached a point where she had enough severe attacks within a short period of time that she was eventually terminated since she was unable to perform her regular job duties in a timely fashion. He noted Claimant was having four or five attacks on average per month despite not being in the workforce, and he did not believe she would be able to last in any type of regular job setting.

### **RULINGS OF LAW**

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law I find:

Claimant met her burden of proving she sustained an accident arising out of and in the course of employment on August 25, 2008, and the accident she sustained was the prevailing factor in causing both the medical condition and the disability. Dr. Volarich testified Claimant's exposure to Formula 409 spray was the prevailing factor in causing the acute allergic reaction and aggravation of her asthma. The medical records of DePaul Hospital indicate Claimant was diagnosed with acute bronchospasm, most likely secondary to angiodema, and allergic reaction to 409, and acute asthma exacerbation, most likely attributed to an allergic reaction.

Dr. Bruce testified Claimant's workplace exposures aggravated her underlying asthma, but did not cause it. However, the aggravation of a preexisting condition is a compensable injury if an employee establishes a direct causal link between his or her job duties and the aggravated condition. *Smith v. Climate Engineering*, 939 S.W.2d 429 (Mo. App. 1996)(overruled in part). Employer controlled Claimant's work environment, knew of Claimant's need to be protected from certain allergen triggers, yet allowed Claimant to be exposed to

these allergens. Outside a controlled work environment, Claimant would have been able to avoid the exposures. Performing her job duties in an environment Employer controlled establishes the direct causal link between her job duties and her aggravated condition, and Claimant has met her burden of proving she sustained a compensable work injury.

I find Claimant failed to prove she sustained any PPD as a result of the injury of August 25, 2006. There is insufficient evidence to show Claimant's condition worsened in the 3 months between injuries. It is clear her condition worsened after both incidents in August and November. Claimant testified after she returned to work she had some wheezing and chest tightness, but no additional attacks until the November accident. I find Dr. Bruce's testimony that Claimant sustained no PPD, with respect to the August 25 accident, to be more credible than Dr. Volarich's on that point.

Because I find Claimant sustained a work accident arising out of and in the course of employment on August 25, 2006, Employer is liable for past medical benefits of \$11,115.55. Dr. Volarich testified the medical bills for the hospitalization of August 25, 2006, were reasonable and necessary to cure and relieve the effects of the work exposure on August 25, 2006. Employer denied the claim, and no treatment was offered to Claimant. Employer forfeited its right to control medical treatment, and Claimant was free to seek treatment on her own.

There is insufficient medical evidence to find Employer responsible for future medical care. Dr. Bruce testified credibly that Claimant was not in need of any additional treatment as a result of the August and November accidents. Claimant testified she was taking essentially the same medications after the injury as she did before the work injuries occurred.

### CONCLUSION

Because Claimant sustained a compensable work injury on August 25, 2006, she is entitled to \$11,115.55 for medical expenses she incurred as a result of that work accident. Claimant is not entitled to future medical treatment or PPD benefits. The Claim against the Second Injury Fund is denied because no PPD was awarded with regard to the primary injury.

This award is subject to an attorney's lien in the amount of 25% in favor of Claimant's attorney Mr. Thomas Gregory.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

*MARGARET D. LANDOLT*  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
*Peter Lyskowski*  
*Acting Director*  
*Division of Workers' Compensation*

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

Injury No.: 06-124716

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Insurer: Sentry Insurance Company  
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LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Hickey, Member

Attest:

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Secretary

