

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 06-109354

Employee: Brenda Bolen
Employer: Orchard Farm School District
Insurer: Missouri United School Insurance Co.
Date of Accident: August 23, 2006
Place and County of Accident: St. Charles County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated May 28, 2008.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Grant C. Gorman, issued May 28, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of September 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Brenda Bolen

Injury No. 06-109354

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: None

Employer: Orchard Farm School District

Additional Party: None

Insurer: Missouri United School Insurance Co.

Hearing Date: February 27, 2008

Checked by: GCG/ch

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: August 23, 2008
5. State location where accident occurred or occupational disease contracted: St. Charles 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
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 happened or occupational disease contracted: Claimant's right leg became stuck in the course and scope of her employment, and she twisted her knee.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Parts of body injured by accident or occupational disease: Right lower extremity at the knee.

14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? Undetermined

Employee: Brenda Bolen

Injury No. 06-109354

17. Employee's average weekly wages: \$698.91
18. Weekly compensation rate: \$465.96/TTD \$376.55/PPD
19. Method wages computation: Stipulation

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses: undetermined

13 6/7 weeks of temporary total disability: \$6,456.87

Total: \$6,456.87

21. Future requirements awarded: Medical treatment as described in Award.

Each of said payments to begin as of the date of this award, and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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:

Lynn Barnett

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Brenda Bolen

Injury No: 06-109354

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: None
Employer: Orchard Farm School District
Additional Party None
Insurer: Missouri United School Insurance Co.

Checked by: GCG/ch

PRELIMINARY STATEMENT

The parties appeared for evidentiary hearing on February 27, 2008 at the Division of Workers' Compensation in St. Charles County, Missouri. Claimant was present in person, and represented by Mr. Lynn Barnett. Orchard Farm School District (Employer) and MUSIC c/o Gallagher Bassett (Insurer) were represented by Ms. Karen Mulroy. Mr. Barnett requested a fee of 25% on any monetary award. The Second Injury Fund is not a party to this claim. Claimant requests the issuance of a temporary award and Employer requests issuance of a final award.

The parties stipulated to the following at the hearing:

1. Claimant was an employee of Employer.
2. Venue is proper in St. Charles County.
3. The claim was filed within the time allowed by law.
4. The average weekly wage at the date of injury was \$698.91, resulting in compensation rates of \$465.96 for temporary total disability (TTD), and \$376.55 for permanent partial disability (PPD).
5. Employer has not paid any benefits to date.

The following issues were presented for determination at hearing:

1. Notice.
2. Accident.
3. Medical causation.
4. Claimant's entitlement to future medical care and treatment.
5. Claimant's entitlement to TTD benefits from September 29, 2006 to February 15, 2007.

All other issues are left open for future determination. The exhibits offered by the parties were all received into evidence without objection. Any objections not expressly ruled on during the hearing or in this award are now overruled. Any markings on the exhibits were present at the time the exhibits were offered into evidence, and were ignored by the undersigned Administrative Law Judge while reaching any decision made in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the competent and substantial evidence presented in this case, including the testimony of Claimant

and other witnesses, deposition testimony of expert witnesses, records received into evidence, and my personal observations, I find:

1. Claimant sustained a compensable work injury on August 23, 2006.
2. Claimant gave notice of injury on September 28, 2006; 36 days after the injury.
3. Between August 23, 2006 and September 28, 2006, Claimant did not seek medical treatment, nor did the condition of her knee change.
4. The timing of notice, as given by Claimant, did not result in prejudice to Employer.
5. The August 23, 2006 work injury is the prevailing factor in causing the medial meniscus tear in the right lower extremity.
6. Claimant is entitled to TTD benefits from November 10, 2006, the date she was ordered off work by Dr. Rogalsky, until February 15, 2006, the date she was released from active care by Dr. Rogalsky; or 13 weeks and 6 days, which equals \$6,456.87.
7. Claimant is entitled to receive future medical care and treatment consistent with the opinion of Dr. Milne (Claimant's Exhibit D and Employer's Exhibit 4).

Analysis

Claimant's testimony regarding the accident of August 23, 2006 is credible. No contradictory evidence was presented.

Section 287.420 R.S.Mo. (2005) states, in pertinent part:

No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice.

Claimant gave notice in 36 days as opposed to 30 days. However, Claimant's supervisor, Diana Stout, testified during Claimant's case-in-chief that in her opinion, Employer was not prejudiced by the 36 day notice.

Employer, in its case, elicited evidence regarding the rationale for timely notice, including, ability to conduct investigation, ability to direct medical care, and minimization of the injury. These are examples of prejudice which could occur; not of prejudice which actually did occur. Claimant did not begin medical treatment until after she had reported the injury and her request for treatment was denied. There was no medical evidence presented indicating the condition of her knee worsened. Although notice was given 36 days after the work accident, Employer was not prejudiced, and Claimant is entitled to worker's compensation benefits.

The report of Dr. Milne, Employer's medical expert, indicates that the mechanism of injury as described by Claimant caused the injury to Claimant's knee as diagnosed and treated by Dr. Rogalsky. Dr. Milne further opines that Claimant needs additional diagnostic studies and treatment if warranted.

All other issues not addressed by this Award are left open for future determination.

Attorney Lynn Barnett is entitled to a lien in the amount of 25% of all sums recovered as and for attorney fees for necessary legal services provided.

Date: May 28, 2008

Made by: /s/ GRANT C. GORMAN
GRANT C. GORMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ JEFFREY W. BUKER
JEFFREY W. BUKER
Director
Division of Workers' Compensation