

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

Injury No.: 06-085092

Employee: Nancy Brooks
Employer: Research Medical Center
Insurer: Zurich American Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

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 September 5, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Paula A. McKeon, issued September 5, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of April 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Nancy Brooks

Injury No. 06-085092

Dependents: N/A

Employers: Research Medical Center

Insurers: Zurich American Insurance Company

Hearing Date: August 13, 2008

Checked by: PAM/cg

FINDINGS OF FACT AND RULINGS OF LAW

- Are any benefits awarded herein? No.
- 2. 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.
- 4. Date of accident or onset of occupational disease: July 7, 2006
- 5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson 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? No.
- 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: N/A
- 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: N/A
- 14. Nature and extent of any permanent disability: N/A
- 15. Compensation paid to-date for temporary disability: None
- 16. Value necessary medical aid paid to date by employer/insurer? None
- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: \$718.87/\$376.55

- Method wages computation: By agreement.

21. Amount of compensation payable: None.
22. Second Injury Fund Liability: N/A.
22. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Nancy Brooks Injury No. 06-085092

Dependents: N/A

Employers: Research Medical Center

Insurers: Zurich American Insurance Company

Hearing Date: August 13, 2008 Checked by: PAM/cg

On August 13, 2008, Employee and the Employer appeared for a hearing. The Division had jurisdiction to hear this case pursuant to 287.110. Employee Nancy Brooks appeared in person and was represented by Mr. Michael Stang. Employer and Insurer appeared by and through their attorney Ms. Michelle Haskins.

STIPULATIONS

The parties stipulated that:

- On or about July 7, 2006, Research Medical Center was an Employer operating subject to the Missouri Workers' Compensation Law and its liability was fully insured by Zurich American Insurance Company;
- Ms. Brooks was its Employee and was working subject to the Law in Kansas City, Jackson County, Missouri;
- Ms. Brooks filed her claim within the time allowed by law;
- Ms. Brooks had a compensation rate of \$718.87/\$376.50;

ISSUES

The parties requested the Division determine:

- whether Nancy Brooks sustained an accident arising out of and in the course of employment on or about July 7, 2006;
- whether Nancy Brooks is entitled to medical care to cure and relieve the effects of her July 7, 2006 injury;
- whether Nancy Brooks is entitled to past temporary total disability from September 20, 2006 to date;
- whether Research Medical Center received notice of Nancy Brooks' July 7, 2006 injury.

• **FINDINGS AND RULINGS**

• Nancy Brooks seeks medical treatment and temporary total disability benefits for a shoulder injury she sustained on or about July 7, 2006. Ms. Brooks, a registered nurse, testified that she was working a Friday night shift that was particularly busy. Ms. Brooks did not have time for breaks or dinner. She did not have help with patients. The patients she did have required more assistance than usual. She did complete her Friday night shift. She also completed her regularly scheduled Saturday night shift. By the time she got home on Sunday she "ached all over." Ms. Brooks soaked in the tub to help reduce her complaints. Ms. Brooks was still aching by the next Friday evening shift. Ms. Brooks did complete her Friday night shift. During her Saturday shift, Ms. Brooks experienced chest complaints which mimicked a prior cardiac event. Ms. Brooks was admitted to the hospital for cardiac evaluation and was unable to complete her Saturday work shift.

• It was during her hospitalization that Ms. Brooks specifically was able to identify cervical and shoulder complaints.

• Ms. Brooks was evaluated by Dr. Forrester, internist, on July 31, 2006. Ms. Brooks complained of left shoulder pain of 20 to 30 day duration. Ms. Brooks related a shoulder injury from six years prior. Dr. Forrester's medical records do not indicate work activities as a source of her problems. Dr. Forrester referred Ms. Brooks to Dr. Collins, an orthopedist.

• Dr. Collins saw Ms. Brooks on August 2, 2006. Ms. Brooks notes on intake forms that she had cervical and left shoulder pain with a "? 2006" for an injury date. Ms. Brooks writes "none" in the "other" box as opposed to "work" or "auto accident." Ms. Brooks also writes "feet slipped on steps – arm was on wall – hyperextended back to neck area." Ms. Brooks does not mention any work activities as the source of her problems even though Dr. Collins' notes reflect that driving a vehicle does aggravate her symptoms.

• Dr. Collins referred Ms. Brooks for an MRI for her cervical spine and subsequently for her left shoulder.

- Physical therapy notes from August 7, 2006 reflect Ms. Brooks' mechanism of injury as "she slipped on stairs."
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- Dr. Park, neurosurgeon, evaluated Ms. Brooks on August 15, 2006 for her neck and shoulder complaints. Dr. Park's notes reflect the onset of Brooks' problems to the fall several years earlier. Dr. Park's notes detail Ms. Brooks' specific complaints as well as the duration of complaints. Dr. Park's notes do not reflect any work activities as the source of Ms. Brooks' complaints.
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- Ms. Brooks was ultimately diagnosed with a rotator cuff tear, impingement syndrome and cervical disc syndrome by Dr. Collins in September 2006.
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- Ms. Brooks notified Research Hospital on September 6, 2006 that she was having shoulder problems she thought were work related.
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- Ms. Brooks was evaluated by Dr. Stuckmeyer on December 2, 2006. Dr. Stuckmeyer opines that the repetitive nature of Brooks' work activities were the prevailing factor in her need for treatment.
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- There was no dispute that Ms. Brooks is in need of medical treatment. The primary issue is whether Ms. Brooks' work activities of July 7, 2006 was the prevailing factor in her need for treatment.
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- Ms. Brooks testified that she wasn't really sure about what her diagnosis was prior to September 2006, therefore she couldn't relate her symptoms to her work activities. Ms. Brooks testified that since she was sore ever since the heavy work shift in July 2006, it must be the source of her injury. Ms. Brooks' version of events simply is not supported by the evidence.
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- Ms. Brooks did not reference any work activities in the history she provided the doctors. None of the medical records reflect work activities as the source of her symptoms.
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- Ms. Brooks' testimony regarding her shoulder problems is not consistent. Ms. Brooks described a persistent knot in her shoulder from a fall down stairs in her home. The medical records also support this version of events. It is not until September 2006 that Ms. Brooks claims her injury is from an extremely heavy work shift on July 7, 2006.
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I find Ms. Brooks' testimony regarding her work activities of July 7, 2006 to be credible. Despite that, I do not find those activities produced the shoulder and cervical problems Ms. Brooks complains of. Ms. Brooks' testimony, medical records and reports do not support her claim for compensation. Accordingly, her claim for compensation is denied.

Date: _____

Made by: _____

Paula A. McKeon
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeff Buker
Director
Division of Workers' Compensation

