

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

Injury No.: 01-056086

Employee: Julia Browning (f/k/a Winkler)

Employer: A. B. Chance Company

Insurer: Self-Insured

Date of Accident: Alleged May 24, 2001

Place and County of Accident: Alleged Centralia, Boone 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. 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 May 15, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Robert J. Dierkes, issued May 15, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 29th day of August 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Julia Browning (f/k/a Julia Winkler)

Injury No. 01-056086

Dependents: N/A
Employer: A.B. Chance Company
Additional Party: None
Insurer: Self-Insured
Hearing Date: April 21, 2006

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri
Checked by: RJD/tmh

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No additional benefits awarded.
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: May 24, 2001.
5. State location where accident occurred or occupational disease was contracted: Centralia, Boone 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? Employer is self-insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Unknown.
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 shoulder.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: Unknown.
16. Value necessary medical aid paid to date by employer/insurer? Unknown.
17. Value necessary medical aid not furnished by employer/insurer? Unknown.
18. Employee's average weekly wages: \$447.16.
19. Weekly compensation rate: \$298.11.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Julia Browning (f/k/a Julia Winkler)

Injury No: 01-056086

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: A.B. Chance Company

Additional Party: None

Insurer: Self-Insured

Checked by: RJD/tmh

ISSUES

These three cases, Injury Nos. 01-056086, 02-151415, and 03-048259 were consolidated for hearing. The evidentiary hearing was scheduled for April 21, 2006. Employee, Julia Browning (formerly known as Julia Winkler), appeared *pro se*. Employer Hubbell Power Systems, Inc. (formerly known as A.B. Chance Company), appeared by counsel Rick Montgomery. The Second Injury Fund appeared by Assistant Attorney General Sarah Reichert.

Prior to the hearing, the undersigned administrative law judge advised Employee that she had the burden of proof on each and every contested issue. Each contested issue was specifically identified and Employee was again advised that she had the burden of proof on each issue. Employee orally requested a continuance. The undersigned administrative law judge asked Employee if she was requesting a continuance so she could hire an attorney; Employee stated that she would not be hiring an attorney. The undersigned administrative law judge advised Employee that he would continue the case to allow Employee to hire an attorney, but would not continue

the case for an unspecified reason. Employee again stated that she did not want to get an attorney and wished to proceed with the evidentiary hearing.

All three cases were called on the record. All parties announced ready for the evidentiary hearing. Employee then requested a continuance, which was opposed by Employer and by the Second Injury Fund. The undersigned administrative law judge again advised Employee that the request for continuance would be granted if Employee was requesting the continuance in order to hire an attorney. Employee stated that she would not be hiring an attorney. The request for continuance was overruled, and the hearing was commenced.

In Injury No. 01-056086, the parties stipulated to jurisdiction of the Division of Workers' Compensation, venue in Boone County, claim filed within the statute of limitations, covered employer and employee, accident on May 24, 2001, causation, and notice. The parties agreed that the only issue to be decided was the nature and extent of Employee's permanent partial disability, if any, due to the work-related accident of May 24, 2001. There was no Second Injury Fund claim in 01-056086.

In Injury No. 02-151415, the parties stipulated to jurisdiction of the Division of Workers' Compensation, venue in Boone County, covered employer and employee, and notice. The parties agreed that the contested issues were: accident, causation, statute of limitations, nature and extent (if any) of permanent partial disability, average weekly wage, and Second Injury Fund liability for permanent partial disability (if any).

In Injury No. 03-048259, the parties stipulated to jurisdiction of the Division of Workers' Compensation, venue in Boone County, claim filed within the statute of limitations, covered employer and employee, and notice. The parties agreed that the contested issues were: Accident, causation, nature and extent (if any) of permanent partial disability, average weekly wage, and Second Injury Fund liability for permanent partial disability (if any).

EVIDENCE

Employee testified on her own behalf. She testified that she hurt her neck in May 2001, and was placed on temporary light duty, during which time she was hit by a rack. Employee testified that she had cortisone shots. Employee testified that she hurt her right shoulder and low back in May 2002. She testified that she had physical therapy, which hurt her back even more. Employee testified that she saw two doctors in St. Louis for her right shoulder and eventually had surgery on her right shoulder. Employee testified that she hurt her left shoulder in May 2003, and was sent to see Dr. Chabot.

Employee offered Exhibit A (two pages of uncertified records from Dr. Michael Nogalski). Employer and Second Injury Fund objected to the admission of Exhibit A on hearsay grounds. The objections were sustained.

Employee offered Exhibit B (eight page report of Dr. Michael Chabot). Employer and Second Injury Fund objected to the admission of Exhibit B on hearsay grounds. The objections were sustained.

Employee offered Exhibit C (approximately 37 pages of uncertified records from various health care providers). Employer and Second Injury Fund objected to the admission of Exhibit C on hearsay grounds. The objections were sustained.

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FINDINGS OF FACT AND RULINGS OF LAW

I find that Employee failed to sustain her burden of proof on any of the contested issues in all three cases.

Therefore, in Injury No. 01-056086, the claim against Employer is denied, and no further benefits are awarded.

In Injury No. 02-151415, the claim against Employer is denied, and the claim against the Second Injury Fund is denied.

In Injury No. 03-048259, the claim against Employer is denied, and the claim against the Second Injury Fund is

denied.

Date: _____

Made by: _____

ROBERT J. DIERKES
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation