

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

Injury No.: 00-117587

Employee: Jeri Burke

Employer: Heartland Health Systems

Insurer: Self-Insured

This workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the June 1, 2012, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The parties stipulate that we modify the administrative law judge's award as follows:

1. That paragraph 14 of the Findings of Fact and Rulings of Law of the June 1, 2012, Award be modified to a finding of permanent disability of 35% body as a whole.
2. That the second sentence of paragraph 21 of the Findings of Fact and Rulings of Law of the June 1, 2012, Award be modified as follows: 140 weeks of permanent partial disability from the Employer x \$314.26 = \$43,996.40. This results in the total compensation payable to Claimant by this Award to be increased to \$49,996.00.

We accept the stipulation and we modify the award accordingly.

We approve and affirm the administrative law judge's allowance of attorney's fee as being fair and reasonable.

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

The award and decision of Administrative Law Judge Nelson G. Allen, issued June 1, 2012, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 26th day of November 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Jeri Burke

Injury No. 00-117587

Employer: Heartland Health Systems

Insurer: Self Insured

Hearing Date: February 28, 2012

Checked by: NGA

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 28, 2000.
5. State location where accident occurred or occupational disease was contracted: Buchanan 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 occurred or occupational disease contracted: Employee was a nurse and while walking collided with a doctor.
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: Cervical Spine.
14. Nature and extent of any permanent disability: 30 percent body as a whole.

- 15. Compensation paid to-date for temporary disability: \$6,020.40
- 16. Value necessary medical aid paid to date by employer/insurer? \$50,928.63.
- 17. Value necessary medical aid not furnished by employer/insurer? None.
- 18. Employee's average weekly wages:
- 19. Weekly compensation rate: \$599.96 / 314.26.
- 20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. 10 weeks temporary total disability (or temporary partial disability) x \$599.96 = \$5,999.60

120 weeks of permanent partial disability from Employer x \$314.26 = \$37,711.20

TOTAL \$43,710.80

23. Future requirements awarded: None.

Said payments to begin one day after Employer receives this Award 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: **David W. Whipple.**

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jeri Burke

Injury No. 00-117587

Employer: Heartland Health Systems

Insurer: Self Insured

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Prior to presenting evidence, the parties stipulated the issues to be determined by this hearing are:

1. Whether the conditions the claimant is complaining of are medically causally related to claimant's injury on August 28, 2000.
2. Liability for past medical aid in the amount of \$43,352.06.
3. Liability for future medical aid.
4. Liability for past temporary total disability from February 10, 2001 through April 17, 2001 and from July 12, 2002 through July 14, 2002.
5. The nature and extent of claimant's permanent disability. The claimant is claiming to be permanently totally disabled.

The parties agreed that on August 28, 2000 Jeri Burke was an employee of Heartland Health systems. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Law and was an authorized self-insurer.

The parties also agreed that on August 28, 2000 the claimant sustained an injury by accident arising out of and in the course of her employment. The employer had proper notice of claimant's injury and a timely Claim for Compensation has been filed.

The parties further agreed the correct rate of compensation is \$599.96 per week for both temporary total disability and permanent total disability and \$314.26 per week for permanent partial disability. Compensation was paid in the amount of \$6,020.40 for January 7, 2001 through February 9, 2001. The claimant is asking for an additional 10-1/7 weeks of compensation from February 10, 2001 through April 17, 2001 and July 12, 2002 through July 14, 2002. Medical aid has been provided in the amount of \$50,928.63. The claimant is asking for an additional \$43,352.06 for past medical expense.

The claimant testified in person. She is 66-years old. The claimant is a registered nurse. On August 28, 2000 she was employed as a surgical step-down nurse. She provided total patient care to patients on critical care.

She was walking in a corridor and as she rounded a corner she collided with a doctor heading in the opposite direction. The doctor's shoulder struck Mrs. Burke on her jaw and neck. She was knocked to the ground.

Since the accident Mrs. Burke has had numerous complaints to her neck, throat and jaw. She has pain in her neck, shoulders and back with her neck and shoulder being her primary complaints. She also complains of pain in the back of her jaw.

The claimant returned to work on light duty. She changed positions for an easier job in February 2002. She continued to work until May 2007 when her pain became unbearable and she was no longer able to work. Note that this is nearly 7 years after her injury.

She said she now suffers from myofascial pain. She has muscle spasms that cause pain in her neck two-thirds of the way down through her shoulder blades. She has headaches. Her arms are weak. Her voice is weak. She has decreased motion in her neck. It is difficult for her to sleep because of neck pain. She is unable to use a pillow. Riding in a motor vehicle causes pain. She wears a cervical collar when she is not home and at night.

Mrs. Burke said she receives trigger point injections every two months. She has esophageal dilation to combat a chronic cricopharyngeal spasm from scarring caused by a laryngeal hemotoma. She said she requires medical treatment for her TMJ.

Dr. Preston Brent Koprivica testified by deposition taken on October 3, 2008 and admitted into evidence as Claimant's Exhibit No. Y. All objections thereto are hereby overruled.

Dr. Koprivica found the claimant suffered multiple trauma that included a right-sided thoracic temporomandibular joint syndrome, a chronic cervicothoracic strain with regional myofascial pain, injury to the larynx with hematoma that had been resolved but had resulted in a chronic cricopharyngeus spasm from scarring from the hematoma. He found that these were caused by her injury at work on August 28, 2000. He also noted that the claimant had developed a problem with depression.

Dr. Koprivica rated the claimant as having a global 35 percent permanent partial disability of the body as a whole.

Dr. Robert F. Thompson, M.D.'s report of December 7, 2002 admitted as Employer and Insurer's Exhibit No. 1 stated: "To date there is no objective information in my opinion that would suggest this patient has had an injury to the larynx or esophagus resulting in the symptoms that she discusses. The prominence of a cricopharyngeal muscle on barium esophagram is not an uncommon finding in asymptomatic patients". He was not convinced that this problem is in any way related to her trauma.

On June 4, 2002, the claimant was evaluated by Dr. Zarr who stated the claimant had reached maximum medical improvement for myofascial neck pain and rated her five percent whole body partial impairment.

On April 2, 2002 Dr. Zarr gave the claimant the following restrictions: (1) No lifting more than 15 pounds, and (2) Only "occasional" reaching of up to one-third of the time.

The claimant developed pain in her lower back . On July 24, 2007 the claimant filed for social security disability and gave spinal pain as her reason to receive disability. She did not mention her neck or throat or jaw. She also filed a lawsuit over her disability policy. Again, she did not mention her neck, throat or jaws.

The claimant said that in 2005 her back became painful but subsequently her back pain became not as severe as the pain in her throat, neck and jaws. They are now the main reason for her disability.

The claimant's husband Ray Sisson testified in person. They were married in September 2004. His testimony confirmed much of what the claimant had said about her condition but he did say he thought depression was more the cause of claimant's problems than anything else.

On January 31, 2001 Dr. Geoffrey I. Blatt, M.D. stated: "Based on her history, physical examination and imaging studies, I believe that Mrs. Burke suffered a whiplash injury with cervical strain and possible contusion to the pharynx on August 28, 2000. I do not see any evidence of ongoing radiculopathy or myelopathy. I suspect that Mrs. Burke may have developed a secondary depression manifested by difficulty sleeping and symptom magnification. I am not sure what part her father's death plays in this situation."

I agree with Doctors Thompson, Zarr and Blatt. I find that the claimant has failed to prove that her medical condition to her jaw, throat, esophagus, or her depression were medically causally related to her injury on August 28, 2000. The claimant has failed to prove she is permanently totally disabled as a result of her August 28, 2000 injury.

The claimant has submitted medical bills in the amount of \$43,352.06. I find that these bills were for services to treat medical conditions that were not medically causally related to her injury of August 28, 2000. Her accident on August 28, 2000 was not the significant factor in her need for this additional medical treatment. Claimant's request for past medical treatment is denied. Claimant's request for future medical treatment is also denied.

I do find that the claimant was unable to work from February 10, 2001 through April 17, 2001 a period of 9 and 4/7 weeks and from July 12, 2002 through July 14, 2002 a period of 3/7 week for a total of 10 weeks. I find that her inability to work for this time was the result of her injury. I order and direct the employer to pay to the claimant the sum of \$599.96 per week for 10 weeks for a total of \$5,999.60 for unpaid temporary total disability.

I find and believe from the evidence that claimant has sustained a permanent partial disability of 30 percent to her cervical spine and body as a whole as a result of her injury of August 28, 2000. I order and direct the employer to pay to the claimant the sum of \$314.26 per week for 120 weeks for a total of \$37,711.20.

This Award is subject to a lien in the amount of 25 percent of the amount in favor of David W. Whipple for necessary legal services provided claimant.

/s/ Nelson G. Allen

Nelson G. Allen

Chief Administrative Law Judge