

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

Injury No.: 04-147352

Employee: Petty Cheung

Employer: Hong Kong Tea House Incorporated

Insurer: Hartford Fire Insurance Company

Date of Accident: October 25, 2004

Place and County of Accident: Independence, Jackson County, Missouri

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 October 11, 2007. The award and decision of Administrative Law Judge Paula A. McKeon, issued October 11, 2007, 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 15th day of April 2007.

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: Petty Cheung

Injury No. 04-147352

Employers: Hong Kong Tea House Incorporated

Insurers: Hartford Fire Insurance Company

Hearing Date: September 12, 2007

Checked by: PAM/cg

### FINDINGS OF FACT AND RULINGS OF LAW

- 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: October 25, 2004.
- 5. State location where accident occurred or occupational disease was contracted: Independence, 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? 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. Petty Cheung injured her right shoulder, collarbone and neck due to repetitive lifting and carrying trays.
- 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: Body as a whole.
- 14. Nature and extent of any permanent disability: 28% body as a whole referable to the right shoulder, collarbone and neck.
- 15. Compensation paid to-date for temporary disability: None.
- 16. Value necessary medical aid paid to date by employer/insurer? \$888.00
- 17. Value necessary medical aid not furnished by employer/insurer? \$29,982.74, which includes \$3,034.00 awarded

herein by temporary award dated July 11, 2006.

18. Employee's average weekly wages: \$300.02
19. Weekly compensation rate: \$200.01
20. Method wages computation: By agreement.

### **COMPENSATION PAYABLE**

21. Amount of compensation payable:
  - a. \$29,982.74 in past medical expenses;
  - b. \$3,922.00, which doubles the temporary award of compensation herein for noncompliance therewith; Section 287.510;
  - c. \$22,401.12; 28% permanent partial disability, body as a whole = 112 weeks X \$200.01.
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None.

Said payments to begin upon receipt of Award.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the Claimant: Mr. Christopher Smith.

Christopher Smith is further awarded an attorney fee and case expenses totaling \$2,007.01 for services rendered to the Claimant relative to the Temporary Award made herein on July 11, 2006.

### **FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Petty Cheung	Injury No. 04-147352
Employers:	Hong Kong Tea House Incorporated	
Insurers:	Hartford Fire Insurance Company	
Hearing Date:	September 12, 2007	Checked by: PAM/cg

On September 12, 2007, the parties appeared for a hearing. The Employee, Petty Cheung, appears in person and with counsel Christopher Smith. The Employer, Hong Kong Tea House, and its Insurer, Hartford Accident and Indemnity Co., are represented by Tom Hill.

### **STIPULATIONS**

At the hearing, the parties stipulated to the following:

- That Petty Cheung sustained an accident arising out of and in the course of her employment on October 25, 2004;
- That the Employer and Employee were operating under the Missouri Workers' Compensation Act. Employer's liability was fully insured by Hartford Insurance;
- That the Employer had notice of the claim and timely claim for compensation was filed;
- That the Employee's compensation rate is \$200.01/\$200.01;
- That past medical benefits have been provided by the Employer totaling \$888.00.

### ISSUES

The parties requested the Division to determine:

- Whether Petty Cheung is entitled to past medical expenses totaling \$29,982.74;
- Whether Petty Cheung is entitled to an additional \$3,922.00 pursuant to Section 287.510;
- The nature and extent of permanent disability;
- Whether Petty Cheung is entitled to future medical care to cure and relieve the effects of the October 25, 2004 injury.
- Whether Petty Cheung is entitled to costs and attorney fees from the Temporary Hearing.

### FINDINGS AND RULINGS

The Temporary Award made on July 11, 2006, including all provisions thereof, is incorporated herein as if fully set forth. The Temporary Award was the result of a hearing on June 27, 2006.

At the temporary hearing, Cheung introduced Exhibit H which outlined the attorney fees and costs totaling \$2,007.01 which she incurred in pursuing the Employer/Insurer for medical treatment. Exhibit H was admitted in evidence. Exhibit H was reintroduced and readmitted in evidence at the final hearing as Exhibit M. Because the Employer/Insurer did not provide an treatment or evaluation to cure and relieve the effects of Cheung's work-related injuries, Cheung is awarded fees and costs pursuant to 287.560 and the *Landman* decision [*Landman v. Ice Cream Specialties, Inc.*, 103 S.W. 3d 240 (2003)] in the sum of \$2007.01.

Contemporaneous with temporary hearing, Cheung was under the care of Dr. Rosenthal. The medical bills that she incurred for the treatment totaled \$3,922.00 and included Dr. Rosenthal's office visit charge of \$120.00, charges of Menorah Medical Center for x-rays of \$768.00 and the Pinnacle Therapy Services' charges of \$3,034.00 for physical therapy Dr. Rosenthal ordered. The sum of \$3,922.00 was awarded to Cheung in the Temporary Award.

Aside from the medical bills Cheung incurred contemporaneous with the temporary hearing in 2006, beginning in 2004, Cheung began to incur bills for medical treatment that the Employer/Insurer refused to provide. The bills are summarized in Exhibit N which was introduced and admitted in evidence. The summary includes the \$3,922.00 previously awarded. The bills of Dr. Rosenthal in the amount of \$120.00 and Menorah Medical Center in the amount of \$768.00 have been paid by the Employer/Insurer. The total charges reflected in Exhibit N are \$30,870.74. The Employer/Insurer paid a total of \$888.00 of the total charges. Accordingly, total charges of \$29,982.74 remain unpaid by the Employer/Insurer, and, pursuant to Exhibit N, Cheung is awarded \$1,417.38 for her out-of-pocket expenditures for medical treatment, the Employer/Insurer is ordered to pay the total amount due of \$16,627.88 to the providers listed and is further ordered to indemnify and hold Cheung harmless for the total charges in the amount of \$29,982.74.

In the Temporary Award, Cheung was awarded the sum of \$3,922.00 for unpaid medical bills. At the time of the final hearing, of the \$3,922.00, the sum of \$3,044.00 remained unpaid. Therefore, pursuant to Section 287.510, the Employer/Insurer was noncompliant with the Temporary Award, and Cheung is awarded \$7,844.00 (double

\$3,922.00).

Dr. Rope evaluated Cheung for the October 25, 2004 injuries and assigned a disability rating of 28% permanent partial disability of the body as a whole. Exhibits C and D, the reports of Dr. Rope dated March 15, 2007 and March 21, 2007, respectively, were introduced and admitted in evidence. At trial, Cheung's credible testimony regarding continuing pain, weakness and limitation in range of motion is consistent with Dr. Rope's rating. The Employer/Insurer did not introduce evidence of nature and extent of permanent partial disability. The stipulated weekly compensation rate is \$200.01. Therefore, Cheung is entitled to and awarded permanent partial disability of 28% of the body as a whole which has a value of \$22,410.12.

Cheung requests future medical treatment from the October 25, 2004 injuries. An Award of future medical benefits must be supported by the evidence. *Sullivan v. Masters Jackson Paving Company*, 35 S.W. 2d 277, 879 (Mo.App. S.D. 2001); *Mathia v. Contract Freighters Company, Inc.*, 929 S.W. 2d 277 (Mo.App. 1996).

While Dr. Rope opined that, "[s]hould [Cheung] continue to lose ground insofar as pain, weakness and loss of motion, ... she would need to be evaluated in that case for an arthroscopic subacromial decompression or other operative procedure which might be indicated to improve her functional ability at the right shoulder," Cheung's testimony does not support an award of future medical treatment, and accordingly, none is made.

The Award of compensation against Employer/Insurer is subject to a lien in the amount of 25% plus expenses to Christopher Smith for necessary legal services rendered to the Claimant.

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

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

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

A true copy: Attest:

\_\_\_\_\_  
Jeff Buker  
*Acting Deputy Director*  
*Division of Workers' Compensation*