

TEMPORARY OR PARTIAL AWARD

Employee: Monika Chrismer

Injury No.: 09-100519

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: First Student

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

Additional Party: Second Injury Fund

Insurer: New Hampshire Insurance

Hearing Date: April 19, 2011

Checked by: LBS

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: December 1, 2009
5. State location where accident occurred or occupational disease contracted: St. Louis County
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
10. Describe work employee was doing and how accident happened or occupational disease contracted:
Claimant developed bursitis/tendonitis in her right upper extremity as a result of manipulating bus door.
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 upper extremity
14. Compensation paid to-date for temporary disability: -0-
15. Value necessary medical aid paid to date by employer/insurer? \$345.25
16. Value necessary medical aid not furnished by employer/insurer? -0-

Employee: Monika Chrismer

Injury No.: 09-100519

- 17. Employee's average weekly wages: \$571.18
- 18. Weekly compensation rate: \$380.79/\$380.79
- 19. Method wages computation: Agreed

COMPENSATION PAYABLE

20. Amount of compensation payable:

Future medical expenses:

21. Second Injury Fund liability: Not determined

TOTAL:

22. Future requirements awarded:

See Award

Each of said payments to begin immediately 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% which is awarded above as costs of recovery of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Dean Christianson

FINDINGS OF FACT and RULINGS OF LAW:

| | | |
|-------------------|-------------------------|------------------------------------|
| Employee: | Monika Chrismer | Injury No.: 09-100519 |
| Dependents: | N/A | Before the |
| Employer: | First Student | Division of Workers' |
| | | Compensation |
| Additional Party: | Second Injury Fund | Department of Labor and Industrial |
| | | Relations of Missouri |
| | | Jefferson City, Missouri |
| Insurer: | New Hampshire Insurance | Checked by: LBS |

FINDINGS OF FACT

An evidentiary hearing was held before Administrative Law Judge Matthew Vacca in the above-referenced matter on April 19, 2011. Monika Chrismer (“Claimant”), appeared in person and was represented by her counsel, Dean Christianson. First Student (“Employer”), and its insurer, New Hampshire Insurance, were represented by counsel, Jeff Wright. The Second Injury Fund was left open, and therefore, was not present at the time of the Hearing. Judge Vacca did not enter an award in this matter prior to leaving the Division of Workers’ Compensation.

The attorneys for the parties appeared at the St. Louis Division of Workers’ Compensation on June 19, 2011, to discuss the disposition of this case. Counsel agreed on the record that the Award in this matter could be written by Administrative Law Judge Lee Schaefer. The parties also agreed that Judge Schaefer would have until October 6, 2011 to issue her Award in this matter.

STIPLULATIONS

The parties stipulated to the following facts:

1. Employee and Employer were operating under and subject to the provisions on the Missouri Workers’ Compensation Law;
2. On December 1, 2009 Claimant was making an average weekly wage of \$571.18, for a temporary total disability rate of \$380.79, and a permanent partial disability rate of \$380.79;
3. Employer has paid no temporary total disability;
4. Employer has paid \$345.25 in medical benefits;
5. Venue for the Hearing in this matter is proper at the St. Louis Office of the Missouri Division of Workers’ Compensation.

ISSUES

The issues to be resolved by the Hearing are:

1. Whether Claimant’s right shoulder complaints and conditions are medically casually related to her employer with Employer?
2. Whether Claimant is entitled to future medical treatment?

EXHIBITS

Claimant offered the following Exhibits into evidence:

- Exhibit A: Medical Report of Dr. Lichtenfeld
- Exhibit B: Medical records of Concentra treatment to Claimant’s right shoulder
- Exhibit C: Medical records from St. Anthony’s Medical Center
- Exhibit D: Medical records from Dr. Broyles
- Exhibit E: A letter dated April 23, 2010, from Claimant’s counsel to Employer’s counsel making a demand for treatment to Claimant’s right shoulder and arm.

Employer offered the following Exhibit into evidence:

- Exhibit 1: Deposition of Dr. James Emanuel

FINDINGS OF FACT

Testimony at Hearing

Based upon a review of the Transcript of Hearing, and the Exhibits introduced into evidence, I make the following Findings of Fact:

Claimant is a 46-year-old bus driver who has been employed by First Student and its predecessors for sixteen years. Claimant continued to work for Employer on the date of the hearing. Claimant works five days a week from mid-August through the end of May; she is off of work for Christmas Break and Spring Break. She normally begins work at approximately 6:25 a.m. and works three distinct shifts during the day. She is completes her work day at approximately 4:10 p.m. Her workweek is five days per week.

Claimant’s job duties include preparing her bus for the day, picking up students in the morning and dropping them off at school, and then reversing the procedure in the afternoon. Claimant also drives a shift in the middle of the day in which she picks up kindergarten students and drops them off. Claimant is assigned to the same bus, unless there is a maintenance issue or it is broken down, in which cases she would switch buses. She has been driving the same bus since 2008; it is an 84 passenger bus with power steering and an automatic transmission.

When she picks up or drops off students, Claimant is required to perform several actions with her right arm. First, Claimant applies the airbrake, which requires pulling the brake lever with her right arm; the airbrake often vibrates as it is being applied. Next, Claimant must open the door to allow students to enter or exit. Claimant's bus has a manual door opener which requires her to lift the lever up, and then pull, to open the door. Claimant testified that the door in her current bus is harder to open than the prior bus door. Claimant's prior bus had a door opening mechanism that was "looser", making it easier to operate.

Once the students are in their seats, or clear of the bus, Claimant releases the airbrake, engages the transmission, and proceeds to her next stop. The pain in Claimant's right shoulder makes it difficult for her to engage the transmission. Claimant sometimes hears a pop in her right shoulder when she engages the transmission. In a usual day, Claimant estimated that she has 84 morning stops, 84 afternoon stops, and 22 stops at lunchtime when she drives the kindergarten children.

Claimant's shoulder problems began in the Fall of 2009. Claimant's shoulder feels as though there is "gas" stuck in her shoulder; sometimes she feels pain radiating down to her elbow. Although Claimant could not give an exact date that her problems began, she knows her shoulder began hurting when she began driving the newer bus. As time went on, the symptoms in Claimant's shoulder worsened.

During the period of time she worked for First Student, Claimant also had a job in which she helped care for an Alzheimer's patient. She would help with cleaning, cooking and ambulating; this work did involve the use of her arms.

On December 9, 2009, Claimant was examined by Dr. Broyles, who had previously been her husband's physician. Dr. Broyles gave Claimant pain medicine and told her that her shoulder condition was related to repetitious activity at work. Following her visit to Dr. Broyles, Claimant told Employer about her shoulder complaints and that she believed her complaints were related to her work. Employer referred Claimant to Concentra where she was seen on one occasion. Claimant did not receive any treatment at Concentra and has had no further treatment to her shoulder since that visit.

At the time of the Hearing, Claimant had tingling in her arm from the shoulder to the elbow. She has difficulty sleeping because of discomfort in her shoulder and treats her condition with heat and ice. She also has headaches due to her shoulder and she takes Tylenol.

Medical Evidence

Claimant was seen in the Emergency Room of St. Anthony's Medical Center on July 31, 2009 following a fall off of a horse. (Claimant's Exhibit C) Claimant complained of pain in the back of her head, her forehead and her low back. Claimant underwent X-rays and CT scans of her head, spine and pelvis; all of which were negative. Claimant was diagnosed as suffering from a head injury and a cervical strain.

Claimant was seen by Dr. Damon Broyles, a family practitioner, on August 3, 2009. (Claimant's Exhibit D) Claimant reported that she had been thrown from a horse and continued

to experience pain over her right buttock and neurologic symptoms such as dizziness, nausea and headaches. Dr. Broyles diagnosed her as suffering from a headache and contusion to the buttock. The doctor further noted that Claimant's symptoms appeared to be improving.

Claimant returned to see Dr. Broyles on September 9, 2009. It was noted that Claimant continued to limp and have bad hip pain. Claimant reported that her neurologic symptoms had improved. The doctor recommended an MRI scan of the lumbar spine to rule out a disc herniation. The MRI was performed on September 11, 2009 and revealed a bulging disc at L4-5 without focal disc herniation.

When Claimant returned to Dr. Broyles on December 9, 2009, she complained of bladder control issues, vertigo and right shoulder pain. Claimant reported that it hurt to lift or move her shoulder. The doctor also noted that Claimant was a bus driver. Doctor Broyles prescribed Naprosyn to treat Claimant's shoulder complaints.

On December 11, 2009, Claimant was seen by Dr. Joseph Homan at Concentra Medical Center. Claimant gave a history of injuring her shoulder on November 1, 2009. She reported that her doctor told her that her shoulder problem was due to "repeative (sic) movement." Claimant reported that her shoulder had begun to ache six weeks prior and was exacerbated by her work. Claimant said her shoulder was "extremely painful" and sometimes "does a popping sound." Claimant did link her shoulder complaints to opening the door of the bus which she reported doing approximately 60 times a day. Claimant told the doctor that the doors of her bus were "not that difficult to open or close" and that she drove a new bus that had no malfunctions.

Dr. Homan examined Claimant's right shoulder and discovered crepitus. However, the crepitus was minimal and was noted to be evident in both shoulders. Claimant had tenderness to palpation in the right shoulder, but had normal range of motion in the right shoulder. There was minimal discomfort on abduction and on flexion. All other testing was negative. X-rays were taken of Claimant's right shoulder and were read as being "Unremarkable." Dr. Homan diagnosed Claimant as having "Shoulder pain." Claimant was instructed to take over-the-counter Aleve and was released from care to full duty. Dr. Human did note that he told Claimant to see her PCP as he felt this was a "non-work-related condition."

Claimant has received no other medical treatment for her right shoulder since her visit with Dr. Homan on December 11, 2009.

The medical report of Dr. Mark Lichtenfeld (Claimant's Exhibit A) was admitted into evidence. Dr. Lichtenfeld noted that Claimant had been working as a bus driver since approximately 1995. Claimant reported that she drove five routes per day and that her job involved "repetitive work." Claimant told the doctor that she stopped her bus "87 times" between her five routes. Claimant described the mechanism of stopping the bus and opening and closing the door to Dr. Lichtenfeld. Claimant told Dr. Lichtenfeld that in "November or December of 2009" she began developing pain in her right shoulder which came on gradually. She related this to "repetitive activity" using the right arm to open and close doors, as well as other procedures when she was driving the bus. She told the doctor that Dr. Broyles told her that her problem was due to "repetitive use of opening and closing the doors."

Claimant reported to Dr. Lichtenfeld that she had pain all over her right shoulder, including the front, back and side. Claimant further reported that she had tingling in her shoulder and she had pain when she raised her arm to the side. Claimant also complained of occasional popping in her right shoulder. Claimant stated that the pain was constant, although it would wax and wane in severity. Claimant mentioned that the pain in her shoulder would improve on the weekend, but it would return when she went back to work driving the bus. Claimant reported that almost all activities with her arm cause pain in her right shoulder.

On physical exam, Dr. Lichtenfeld did not detect any crepitus in Claimant's right shoulder. On examination, Claimant reported marked tenderness in her shoulder. Dr. Lichtenfeld found that Claimant exhibited limited range of motion in her right shoulder. Dr. Lichtenfeld diagnosed Claimant as having right bicipital tendonitis, right subacromial bursitis, right subdeltoid bursitis and right rotation cuff tendonitis. Dr. Lichtenfeld further found that the prevailing factor in causing these diagnoses was the repetitive trauma incurred by Claimant during her work as a bus driver for Employer.

Dr. Lichtenfeld indicated that Claimant needed further medical treatment, including pain and anti-inflammatory medication. He also suggested that physical therapy modalities would help the pain and restricted motion in her right shoulder. Further, if her symptoms persisted, Claimant might benefit from a steroid injection. Last, Dr. Lichtenfeld recommended that if Claimant's symptoms persist, an MRI scan should be obtained if her symptoms persisted to determine if there was any surgical pathology in the shoulder. Further, as Claimant was continuing to work as a bus driver, Dr. Lichtenfeld recommended that she only operate buses with an air power doors and that she avoid repetitive activity with the right shoulder. Claimant was also told that she should not work with her arms outstretched or overhead and she should not lift more than 10 pounds and should avoid all overhead lifting.

Employer introduced the deposition testimony of Dr. James Emanuel (Employer's Exhibit 1). Dr. Emanuel is an orthopedic surgeon. Dr. Emanuel took a history from Claimant in which she reported that her condition began in October of 2009. Claimant related that she woke up with pain in her right shoulder and was uncertain whether or not she had slept on her shoulder wrong; she let it go for several days and then went to her family physician. Her family physician told her that her shoulder pain was related to work, especially opening and closing the door of her school bus. Claimant told Dr. Emanuel she makes approximately 89 stops per day. She denied any specific traumatic injury to her right shoulder at work.

Claimant told Dr. Emanuel that once she began having pain in her right shoulder, she also began having difficulty opening and closing the bus door. Claimant also noted that the pain in her shoulder made it difficult to reach up and operate the radio that was at shoulder height in the bus.

Dr. Emanuel noted that Claimant was seen by a doctor at Concentra and that the Concentra doctor thought that when Claimant went on a scheduled one-week vacation her symptoms would diminish. Claimant said that her symptoms did diminish when she went on vacation, but her right shoulder symptoms returned when she went back to work. Claimant indicated that her right *shoulder* condition improved when she was off work during the summer. Claimant reported that she had never had any right shoulder complaints prior to October of 2009.

Dr Emanuel examined Claimant's right shoulder. Dr. Emanuel found that Claimant had restricted range of motion in her right shoulder. She also complained of tenderness in the shoulder. Although Claimant did have full passive range of motion in her right shoulder, she had pain with the extreme ranges. Claimant exhibited some signs of bursitis with impingement, including a positive Hawkins test and positive crossover test. Dr. Emanuel's examination of Claimant's left shoulder was entirely normal.

Based on his examination, Dr. Emanuel diagnosed Claimant as having shoulder pain with subacromial bursitis, bone spurs and arthritis. Dr. Emanuel took x-rays of Claimant's right shoulder and found an *os acromiale* with evidence of a spur in the front portion of the acromion, as well as early arthritic changes in the shoulder joint. The doctor states that an *os acromiale* is a rare, congenital defect of the shoulder where growth centers of the acromion do not fuse together and form one solid piece of bone. *Os acromiale* only occurs in 8% to 10% of the population and can cause problems because there is a nonunion of the bone which allows stressing and movement by the deltoid muscle to cause the bone to tilt downwards. The tilt downwards causes pressure on the rotator cuff and then inflammation of the bursa resulting in the development of chronic bursitis, impingement and also rotator cuff pathology. Additionally, he said the spur, which is also in the area of the acromion, can come into contact with not only the bursa but also the rotator cuff.

After reviewing medical treatment records, the doctor stated Claimant suffered from an *os acromiale*, and acromial spur and arthritic changes in the shoulder joint, as well as subacromial bursitis with impingement. He also noted that Claimant might have a partial thickness, if not small full thickness, tear of her rotator cuff. The doctor concluded that the *os acromiale* was the prevailing factor in causing the bursitis with impingement, possible rotator cuff tear and rotator cuff tendonitis. While Dr. Emanuel did find that work might have aggravated Claimant's shoulder, he did not believe, to a reasonable degree of medical certainty, that Claimant's work was the prevailing factor or cause of any of these conditions.

Dr. Emmanuel did believe that Claimant would require further medical treatment for her right shoulder. First, she should have an injection in her shoulder in the subacromial space. If that did not relieve Claimant's symptoms, she should undergo an MRI scan of her shoulder to determine whether there is a rotator cuff tear. Following the MRI scan, the doctor found that the most likely treatment would be an arthroscopic surgery on Claimant's right shoulder. Dr. Emmanuel did not assign any permanent partial disability to Claimant's shoulder because he did not find that she developed any disability as a result of her employment as a bus driver.

RULINGS OF LAW

Under Workers' Compensation, the claimant bears the burden of proving that an accident or occupational disease occurred and resulted in injury. For an injury by occupational disease to be compensable, the occupational exposure must be the prevailing factor of both the medical condition and the resulting disability. The "prevailing factor" is defined as the "primary factor, in relation to any other factor" that could cause the occupational disease. Section 287.067.2 RSMo 2005. There is a two part analysis to determine whether a claimant has sustained a

compensable occupational disease. First, the claimant must have a greater or different exposure to the disease than the general public. Second, there must be a link between the claimant’s job and the disease. *Greenlee v. Dukes Plastering Company*, 75 S.W.3d 273, 277 (Mo banc 2002) When causation is in question, a single expert’s opinion is sufficient to support the award of benefits in an occupational disease case. *Kent v. Goodyear Tire and Rubber Company*, 147 S.W.3d 865, 868-869 (Mo.App WD 2004) When the opinions of two medical experts differ as to the cause of an alleged occupational disease, it is up to the fact finder to determine whose opinion is more credible. *Townser v. First Data Corp.*, 215 S.W.3d 237, 242 (Mo. App. ED 2007)

The dispute in this matter is not whether Claimant utilized her right arm in her employment as a bus driver, rather, the dispute focuses on Claimant’s lifetime use of her right arm in conjunction with a preexisting *os acromiale* and spur in her right shoulder. After careful review of facts, I find Claimant met her burden and proved that the use of her right arm in her employment up to and including December 1, 2009, was the prevailing factor in the cause of her right shoulder condition. While the claimant might have been predisposed to developing problems in her right shoulder due to the *os acromiale*, I do not believe her right shoulder condition would have arisen without the repetitive work duties relative to the right arm. I find Dr. Lichtenfeld’s findings regarding causation more credible than those of Dr. Emanuel, especially considering the 25-year span in which Claimant had no shoulder problems, despite the congenital condition, until she engaged in repetitive work with Employer.

Claimant met her burden of proof that her job driving a bus for Employer medically caused her right shoulder bursitis and impingement. Once a medical condition is found to be compensable, the employer is required to provide medical treatment as is reasonably necessary to “cure and relieve the effects of the injury.” Section 287.140.1 R.S.Mo. 2005. Therefore, based on the testimony at hearing, the treatment records, and the testimony of the experts, I find that Claimant’s right shoulder conditions, including bursitis and impingement, are medically causally related to her job duties with Employer. As such, Employer is ordered to provide the medical treatment and related benefits including TTD, necessary to cure and relieve the effects Claimant’s shoulder injury.

Date: _____

Made by: _____

Lee B. Schaefer

*Administrative Law Judge
Division of Workers' Compensation*