

FINAL AWARD DENYING COMPENSATION
(Reversing Temporary or Partial Award and Decision of Administrative Law Judge)

Injury No.: 03-098240

Employee: Edna Claunch
Employer: Degree of Honor Protective Association
Insurer: United Fire & Casualty Company
Date of Accident: July 29, 2003
Place and County of Accident: St. Louis 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 must be reversed. Pursuant to section 286.090 RSMo, the Commission reverses the temporary or partial award and decision of the administrative law judge dated August 27, 2004, and issues a final award and decision denying compensation in the above-captioned case.

Procedural Background

Edna Claunch, employee, filed a request to have the claim tried on a hardship basis. The issues stipulated to be tried were notice and arising out of and in the course of employment. The administrative law judge found both of these issues in employee's favor and issued a temporary or partial award ordering further medical care and payment of temporary total disability benefits because the nature and extent of employee's disability was not a stipulated issue to be tried. The administrative law judge also concluded that employer/insurer defended the claim without a reasonable basis and assessed costs pursuant to section 287.560 RSMo.

We reverse the administrative law judge's findings and conclusions. Because the issue of notice was a stipulated issue, was fully tried by the parties, and is dispositive of the outcome of this case, we issue a final award and decision denying all compensation in this claim. We find employee did not provide timely notice to employer, either written or verbal, and she has failed to demonstrate that employer/insurer was not prejudiced by the failure to provide timely notice. We further find that she did not have good cause for her failure to timely provide notice to employer. The award of past and future medical care, temporary total disability benefits, and sanctions against employer/insurer for an unreasonable defense is reversed.

Findings of Fact

Employee worked as a regional director for Degree of Honor Protective Association, employer. Employer is a fraternal life insurance association that is set up under a lodge system. The lodges hold monthly meetings and perform "fraternal" work or benevolent acts by assisting elderly or disabled individuals/members with various needs or by raising money. Employee's duties included visiting with various lodges in the states of Missouri, Iowa, Nebraska, and Texas either by telephone or in person to make sure the lodges were doing audits. Employee's office was located in her home and she was provided with a computer. Employer reimbursed employee for expenses incurred performing her job duties, including reimbursement for mileage for driving her personal vehicle. Employee was required to submit a monthly itinerary to employer at the end of the previous month or beginning of the new month setting forth the month's planned activities. Additionally, employee was required to submit expense reports at the end of the month or beginning of the following month requesting reimbursement for expenses for the month's activities. She was additionally required to submit an itinerary at the end of the month or beginning of the following month setting forth what activities she had actually done for that particular month on behalf of employer.

On July 29, 2003, employee was involved in a motor vehicle accident. Her vehicle was struck by a dump truck, causing her to hit her head against the side window of the car and causing her vehicle to swerve out of control, strike a guardrail, and swerve into other lanes of traffic. No other vehicles were involved in the accident and employee was able to get her vehicle off to the side of the road. Employee was taken to a hospital and released the same day. She continued to experience neck pain and eventually underwent a cervical fusion from C4-7 on September 29, 2003.

Employee alleges that the accident occurred on her way home from Alice Hummelsheim's home, where she and Ms. Hummelsheim were discussing employer business regarding a Christmas party, a yearbook, and other matters, involving employer's business. Ms. Hummelsheim is the state president for the State of Missouri and is the president of the Walnut Park Lodge. Employee initially testified that Mr. Hummelsheim participated in the meeting. She later testified that he was actually reading a newspaper when she and Ms. Hummelsheim were talking. Ms. Hummelsheim also testified that employee and she discussed these business matters on July 29, 2003. Although three state members are necessary to constitute a quorum to conduct employer business, Ms. Hummelsheim was the only state officer participating in the meeting. Employee is not considered a state officer.

This meeting was not listed on employee's itinerary for the month of July 2003, nor did employee claim reimbursement for mileage for this meeting when she submitted her expense report for the month of July 2003, three to four days after the accident. Additionally, employee did not list this meeting when she completed the required report setting forth her business activities conducted for the month of July. Employee and Ms. Hummelsheim had attended a state convention together in Indiana from July 11 through 13, 2004, and spent a substantial amount of time together. Employee and Ms. Hummelsheim are friends who socialize with each other in addition to discussing employer's business. Employee and Ms. Hummelsheim had last met on July 26, 2003, at Ms. Hummelsheim's home when she hosted a lodge meeting.

Employee had been instructed by employer to cut back on expenses, including travel, due to the loss of membership employer was experiencing. Employee was encouraged to use the telephone as much as possible to conduct business because the cost of using the telephone versus reimbursing for mileage was substantially less. Employee admitted that any business conducted with Ms. Hummelsheim could have been conducted by telephone instead of in person. Employee's supervisor testified that she would not have approved an in-person meeting with Ms. Hummelsheim because of costs and the fact that employee and Ms. Hummelsheim had met during the month of July 2003, on several occasions.

Notice of Accident

Section 287.420 RSMo, provides:

No proceedings for compensation under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and name and address of the person injured, have been given as soon as practicable after the happening thereof but not later than thirty days after the accident, unless the division or the commission finds that there was good cause for failure to receive the notice. No defect or inaccuracy in the notice shall invalidate it unless the commission finds the employer was in fact misled and prejudiced thereby.

Accident is defined as "an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury." Section 287.020.2 RSMo. Employee's accident occurred on July 29, 2003. Although she did not learn of the true nature and extent of her injuries until later, the motor vehicle accident occurred violently and suddenly and produced at that time objective symptoms of an injury for which she was transported to a hospital. Employee had thirty days from July 29, 2003, to provide notice of the accident.

Employee alleged that she telephoned her supervisor, Jacqueline A. Felling, the next day after the accident. She believes that she told her supervisor that she was on her way home from "Alice's," but she admitted that her supervisor might not have caught that statement. Ms. Felling admitted that she knew on August 1, 2003, that employee was involved in a car accident on July 29, 2003, but denied that she was put on notice that the accident was work related.

The fact that employer was aware that an accident occurred does not impute notice that the accident was work related. As stated in *Gander v. Shelby County*, 933 S.W.2d 892 (Mo. App. 1996);

[i]t is not enough, however, that the employer, through its representatives be aware that the claimant "feels sick," or has a headache, or fell down, or walks with a limp, or has a pain in his back, or shoulder, or is in the hospital, or has a blister, or swollen thumb, or has suffered a heart attack. There must in addition be some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case might involve a potential compensation claim.

Id. at 896, quoting 2B A. Larson, *the Law of Workers' Compensation* section 78.31(a)(2).

Ms. Felling testified that she returned employee's call on August 1, 2003. Employee stated that she was in a car accident, but not that she was returning from Ms. Hummelsheim's home when the accident occurred. Ms. Felling testified

that employee stated that she was concerned about her car because it was totaled. Based upon the conversation, Ms. Felling had no reason to believe that employee had a potential work related accident or that she had ongoing medical problems. The next conversation Ms. Felling had with employee was the first week of September 2003. Employee stated that her doctor was referring her to a specialist and she was working with her daughter to coordinate transportation. She indicated that she was going to attend as many functions as possible in September and would let Ms. Felling know what the doctor said. Employee said nothing about the accident being work related. Ms. Felling testified that employee did not inform her that the accident was work related until September 23, 2003, when Ms. Felling asked employee whether the accident was work related and employee responded that it was. Employee previously attended employer events in August and September 2003.

We find Ms. Felling's testimony credible. We do not find employee's testimony credible. There were many inconsistencies in employee's testimony at the hearing from her deposition testimony, and with her witness' testimony, her actions, and the affidavit she filed with the Division of Workers' Compensation (Division) in order to get a hardship hearing.

Employee filed an affidavit with the Division swearing that her "ability to obtain needed medical treatment is causing me to endure unnecessary pain and suffering." She also swore in her affidavit that she was forced to postpone diagnostic testing and consultations because employer/insurer refused to provide medical care. She also swore that employer/insurer has refused to provide temporary total disability benefits; thus, causing her financial hardship. When questioned about this at the hearing, employee admitted that neither statement regarding her ability to obtain medical care was true. She had not been denied medical treatment nor had she been turned away from receiving any medical treatment. She underwent the recommended cervical fusion on September 29, 2003, which was deemed necessary after diagnostic testing. She was continuing to receive medical care without delay at the time of the hearing. Additionally, although employer/insurer did not pay temporary total disability benefits, her employer was paying her full salary during the time she was off work pursuant to vacation time she had requested or through short-term disability benefits.

Her actions in this case are also inconsistent with her testimony. Employee hired an attorney in August 2003. She continued to submit her medical bills through her group medical insurance. She did not indicate to any of the treating physicians that her accident was work related and on a patient questionnaire dated September 4, 2003, she checked that she was filing a lawsuit but did not check that she was filing a workers' compensation claim. It was not until Ms. Felling asked her on September 23, 2003, whether the accident was work related that employee responded that it was. Her testimony that she was unaware that she could claim workers' compensation benefits and that she was on pain pills or in too much pain to take certain actions, such as claim mileage reimbursement for the trip on July 29, 2003, or report that she was on her way home from Ms. Hummelsheim's home after discussing business is inconsistent with her actions taken after the accident. She had the presence of mind to hire an attorney as a result of the accident, which demonstrates her knowledge that she had some legal rights as a result of the accident.

Additionally, employee initially testified that Mr. Hummelsheim participated in this meeting on July 29, 2003. She later corrected this testimony by admitting that he was actually reading the paper and not participating in the meeting. In her deposition, which was admitted without objection, employee testified that Ms. Hummelsheim called her on Sunday, July 27, 2003, and requested to set up a meeting. Employee asked if Monday, July 28, 2003 was convenient and Ms. Hummelsheim replied that she could not meet Monday, but was available to meet on Tuesday, July 29, 2003. Ms. Hummelsheim testified that she called employee on Sunday, July 27, 2003, and requested to set up a meeting for Monday, July 28, 2003, but employee stated she could not meet Monday, but could meet Tuesday, July 29, 2003. While such minor details may not normally be persuasive on the issue of credibility, when the conflicts in the details are coupled with filing an affidavit with knowingly false statements in it and other facts presented in the claim, minor conflicts do have impact on a credibility finding.

Even if we were to assume as true, that employee stated to Ms. Felling that she was returning from "Alice's" home when the accident occurred, employer had no reason to suspect that employee was meeting with Ms. Hummelsheim for business purposes on July 29, 2003. Employee submitted her expense report and itinerary for the month of July 2003, three to four days after the accident. She failed to claim mileage for reimbursement for the trip to Ms. Hummelsheim's home and failed to report that she had a meeting with Ms. Hummelsheim on July 29, 2003. Ms. Hummelsheim and employee had met the previous Saturday, July 26, 2003, and had attended a three-day conference in Indiana from July 11 through 13, 2003, which is further reason for the supervisor not to have reason to suspect that the meeting would have had a business purpose. We find employee did not notify employer that her car accident might have been work related until September 23, 2003, when she provided actual notice.

Employee argues that employer admitted it had knowledge of a work related accident on August 24, 2003, because the

chief financial officer wrote that the date employer was notified of the accident on the report of injury filed with the Division was August 24, 2003. The chief financial officer credibly testified that employer was not aware that employee was claiming that the accident was work related until September 23, 2003, which is when he completed the report of injury. He explained that he used the date of August 24, 2003, on the report of injury because that was the first date that employee's accident was reported in writing; however, there was no indication on that writing that employee was claiming that the accident was work related.

Because she failed to provide actual notice within thirty days of the date of the accident, the next determination involves whether she had good cause for her failure to provide notice. *Brown v. Douglas Candy Co.*, 277 S.W.2d 657 (Mo. App. 1955).

Employee stated that she was not familiar with the workers' compensation laws and was not aware that she should report it. We do not find this constitutes good cause for her failure to report the accident. Employee knew to report she was involved in an accident. It does not require any degree of expertise in workers' compensation laws to also report to her supervisor that she was returning from Ms. Hummelsheim's home after discussing employer business. Nor is any degree of expertise required to submit an expense report claiming mileage for a business meeting on July 29, 2003, or to report the meeting on an itinerary submitted for the month of July 2003 when compiling the activities she had done for the month of July 2003. She was aware she had the accident and that she was injured. The fact that she did not realize the extent of her injuries does not constitute good cause for her failure to provide notice to employer. *Id.* See also *Soos v. Mallinckrodt Chemical Co.*, 19 S.W.3d 683 (Mo. App. 2000).

Failure to provide timely notice, either written or actual, may also be excused if employee demonstrates that employer was not prejudiced by the failure to provide timely notice. *Id.*; *Willis v. Jewish Hospital*, 854 S.W.2d 82 (Mo. App. 1993) (overturned on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003)); and, *Gander*, 933 S.W.2d 892 (Mo. App. 1996). The purpose of giving employer notice of a potentially work related accident is to allow the employer the opportunity to timely investigate the accident and to minimize any resulting disability from the accident by providing medical attention. *Soos*, 19 S.W.3d at 686. Prejudice to an employer may be presumed when notice is not given of a potentially work related accident until two months after the accident because the employer is deprived of the opportunity to timely investigate the facts surrounding the accident. *Willis*, 854 S.W.2d at 85. See also *Gander*, 933 S.W.2d at 896-897.

We find employer was prejudiced by employee's failure to provide notice that she was claiming her car accident on July 29, 2003, was work related until September 23, 2003. A period of just shy of two months had passed. Employer was deprived of its opportunity to timely investigate the facts surrounding the accident. As stated in *Willis*, 854 S.W.2d 82:

Claimant argues that because the employer did not investigate after it knew that claimant was alleging a work-related injury that it was not prejudiced. This argument misses the point. The reasoning behind the thirty day notice rule is to give the employer the opportunity for a timely investigation. The prejudice had already occurred when the employer received notice of the work-related injury. Any reference to what employer did or did not do two months after the alleged injury is irrelevant to the issue of whether employer had the opportunity to conduct a timely investigation.

Id. at 85.

As in *Willis*, the prejudice here to employer had already occurred when employee gave notice.

Conclusion

Employee's claim for benefits is denied pursuant to section 287.420 RSMo. Because the notice issue is dispositive of the claim, we do not address the issue of arising out of and in the course of employment. The administrative law judge's assessment of costs against employer/insurer for defending the claim unreasonably, which was inappropriate to begin with given the facts in this case, is reversed. No costs are assessed against employer/insurer. Employee's request for costs and fees filed with the Commission is denied. Employer/insurer's defense was completely reasonable and justifiable. Employee's request to strike issue number three of employer/insurer's brief is denied.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued August 27, 2004, are attached, but in no way are his findings and conclusions to be construed as being incorporated by this reference.

Given at Jefferson City, State of Missouri, this 30th day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

Attest: John J. Hickey, Member

Secretary

DISSENTING OPINION

I have reviewed and given consideration to all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be affirmed. Therefore, I adopt the award and decision of the administrative law judge as my decision in this matter.

Employee testified live before the administrative law judge. He specifically found her to be a very credible witness. He had a better vantage point to assess her credibility than the Commission. The ultimate determination of credibility of witnesses rests with the Commission, but the Commission should take into consideration the credibility determinations made by the administrative law judge, particularly, where the administrative law judge "had before him [live witnesses] and was thus in a position which gave him a great vantage ground over members of the Commission who afterwards had [only] the opportunity of reading [a transcript of] the testimony." *Davis v. Research Medical Center*, 903 S.W.2d 557, 569 (Mo. App. 1995) (overturned on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003)).

Even if I did not defer to the administrative law judge on his credibility assessment of employee, I find the record establishes that she is a credible witness. She worked for this employer since 1977. She is a long-term and faithful employee. She has never had a workers' compensation injury in that entire time. Her lack of knowledge of the intricacies of the workers' compensation laws is understandable. She reported to her supervisor that she had been involved in an accident on her way home from Alice Hummelsheim's home. The supervisor knew who Ms. Hummelsheim was and her position. Additionally, employee kept her supervisor informed of the medical treatment that she was receiving.

Employee's argument that this is sufficient to provide actual notice to employer of potential work related accident is reasonable. The workers' compensation laws do not impose an onerous burden on employee to use talismanic language in reporting a potential work related accident. She should not be deprived of benefits that she is entitled to receive based on her supervisor's lack of knowledge of the workers' compensation laws. She gave employer actual notice of the accident and placed the impetus upon employer to show that it was prejudiced based upon lack of written notice. It has failed to demonstrate that it was prejudiced.

I additionally agree with the administrative law judge's assessment of costs and fees against employer/insurer for defending this claim upon unreasonable grounds. I would further assess costs and fees against employer/insurer for filing this Application for Review with the Commission and compounding its frivolous actions to delay paying the benefits and providing the medical care that this unfortunate employee deserves.

Because my fellow Commissioners reverse the award and decision of the administrative law judge, I respectfully dissent.

John J. Hickey, Member
TEMPORARY OR PARTIAL AWARD

Employee: Edna Mae Claunch Injury No.: 03-098240
Dependents: N/A Before the
Employer: Degree of Honor Protective Assoc. **Division of Workers'**
Compensation
Department of Labor and Industrial
Additional Party: N/A Relations of Missouri
Jefferson City, Missouri
Insurer: United Fire & Casualty Company
Hearing Date: August 4, 2004 Checked by: CTL:tr

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: July 29, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
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:
Automobile collision.
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: Neck and low back
14. Nature and extent of any permanent disability: To be determined
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Edna Mae Claunch Injury No.: 03-098240

17. Value necessary medical aid not furnished by employer/insurer? \$73,228.54
18. Employee's average weekly wages: \$706.69
19. Weekly compensation rate: \$471.13
20. Method wages computation: Exhibit I

COMPENSATION PAYABLE

21. Amount of compensation payable: To be determined

22. Second Injury Fund liability: No

TOTAL: TO BE DETERMINED

23. Future requirements awarded:

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:

David S. Corwin

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Edna Mae Claunch	Injury No.: 03-098240
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Degree of Honor Protective Assoc.	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	United Fire & Casualty Company	Checked by: CTL:tr

PREFACE

A hardship hearing in the above-captioned matter was conducted on Wednesday, August 4, 2004. The Claimant was represented by Attorney David S. Corwin and the Employer/Insurer was represented by Attorney Duane L. Coleman.

STIPULATIONS

1. The Employer and Claimant were operating under and subject to the provisions of the Missouri Workers' Compensation law on July 29, 2003.

2. United Fire & Casualty Company was the insurer for the Employer.
3. Employer/Insurer have not paid compensation or any medical benefits to the Claimant.
4. The medical bills submitted by Claimant (Claimant's Exhibit D) are related to the injuries Claimant sustained on July 29, 2003 and are fair and reasonable.

ISSUES

1. Did Claimant's injury arise out of and in the course of her employment;
2. Notice;
3. What, if any, temporary total disability benefits would Claimant be entitled to;
4. What, if any, medical bills should be paid by Employer/Insurer; and
5. Whether Claimant's attorney is entitled to legal fees and costs in connection with this hardship hearing.

EXHIBITS

The Claimant offered the following exhibits:

Exhibit A.	Job Description.
Exhibit B.	Report of Injury.
Exhibit C.	Medical Records.
Exhibit D.	Medical Bills.
Exhibit E.	Dr. Hanaway's Deposition.
Exhibit F.	Claunch Transcript Charge.
Exhibit G.	Ramshaw Deposition Transcript Charge and Travel Expenses.
Exhibit H.	Hanaway Invoice and Transcript Charge.
Exhibit I.	Wage Information.
Exhibit J.	Contract with Law Office of Gretchen Myers.
Exhibit K.	List of Activities prepared by Alice Hummelsheim.

The Employer offered the following exhibits:

Exhibit 1.	July 2003 Monthly Report.
Exhibit 2.	July 2003 Expense Report.
Exhibit 3.	July 2003 Monthly Report.
Exhibit 4.	Past Monthly Itineraries.
Exhibit 5.	Past Expense Reports.
Exhibit 6.	J. Felling's E-mail to Edna Claunch dated February 7, 2002.
Exhibit 7.	Analysis of Itineraries and Expense Reports.
Exhibit 8.	List of Missouri State Officers (2003-2007).
Exhibit 9.	DOH State Director Job Description.
Exhibit 10.	J. Felling's November 19, 2003 Letter, Re: Expense Budget.
Exhibit 11.	J. Felling's January 22, 2004 E-mail requesting Minutes.
Exhibit 12.	J. Felling's February 7, 2003 E-mail, Re: Meeting Dates.
Exhibit 13.	Collection of E-mails To and From J. Felling.
Exhibit 14.	J. Huser's Fax to United Fire dated September 26, 2003 with Report of Injury Form.
Exhibit 15.	J. Huser's E-mail to Edna Claunch dated September 23, 2003.
Exhibit 16.	Request for Hardship Hearing.
Exhibit 17.	J. Huser's E-mail to Edna Claunch dated June 11, 2003.
Exhibit 18.	J. Huser's E-mail to Edna Claunch dated January 7, 2004.
Exhibit 19.	J. Felling's Letter to Edna Claunch dated November 17, 2003.
Exhibit 20.	Deposition of Edna Claunch with attached Exhibits.
Exhibit 21.	Deposition of Jane Ramshaw with Exhibit.
Exhibit 22.	Edna Claunch's E-mail dated August 24, 2003 to Diane Stores.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

1. Claimant was involved in a motor vehicle accident on July 29, 2003.
2. Claimant testified that she was 54 years of age at the time of the hearing.
3. Claimant is a regional director at the Degree of Honor Protective Assoc., the Employer, which is a fraternal insurance company charged with coordinating fraternal and volunteer activities for policy holders.
4. Claimant is the regional director for the Employer in four different states including Missouri and as a regional director for the Employer she must attend lodge meetings, make audits, keep track of fraternal activity, and make sure that they are civic projects.
5. Claimant, in order to do her work, used her personal vehicle as well as had an office for the Employer in her home in St. Charles, Missouri.
6. On July 29, 2003 Claimant went to Alice Hummelsheim, the Missouri state president for the Employer, a volunteer, to discuss the Employer's business. The Claimant and Alice Hummelsheim spoke about the Degree of Honor yearbook, the convention, the Christmas party, etc. The meeting of the two was in accordance with the job duties of the Claimant.
7. Claimant, after having left Alice Hummelsheim's, was going to her home and office when she was involved in a motor vehicle accident in St. Charles, Missouri.
8. The Claimant very credibly testified that she called her supervisor, Jackie Felling, the CEO for the company, and informed her that she had been involved in a automobile accident and was on her way home from the home of Alice Hummelsheim and that she would need medical treatment.
9. The Claimant, as a result of the automobile collision, underwent surgery at Barnes Jewish Hospital in St. Louis, Missouri on September 29, 2003 and the operation involved anterior cervical corpectomy of C5, anterior cervical discectomy at the C6 and 7 level, an anterior cervical fusion C4 and C5, an anterior cervical fusion at C5-6 and C6-7 level, an anterior cervical plating with cross-slotted plate at the C4-C7 level, a structural allograft fibular grafting, bone grafting plus BMP and microscope visualized corpectomy, discectomy and fusion.
10. After the September 29, 2003 surgery the Claimant did not return to work full time until January 1, 2004.
11. Claimant accepted the Employer's wish to pay her full salary as opposed to any temporary total disability from workers' compensation, but Claimant was entitled to temporary total disability benefits of eight weeks and one day at \$457.21 per week and four weeks at \$228.61 per week for a total of \$2,758.52.
12. I find if the Employer did not receive notice that it was actually a workers' compensation case until after the 30-day limitation, the Employer was not prejudiced in any matter by what they alleged as being late notice. The Employer, CEO, as well as CFO, were unaware of the workers' compensation law due to the fact that this was the first workers' compensation case they have had with their company in over 100 years.

RULINGS OF LAW

1. Insurer is to pay the Employer the sum of \$2,758.52 which represents the temporary total disability that should have been payable to the Claimant, but Employer continued to pay the Claimant her full wages during the temporary total disability time period.
2. Employer is required to pay the medical costs to cure and relieve Claimant of the effects of her injuries and is to pay the past medical bills in the amount of \$73,228.54.
3. Claimant is entitled to future medical and rehabilitative care with physicians of her choice to cure and relieve the effects of her work related injury.
4. Employer and Insurer denied liability for this accident on no reasonable grounds and cause should be awarded in this matter to wit: Employer/Insurer to pay the Law Offices of Gretchen Myers, P.C. expenses in the amount of \$1,433.87.
5. The Law Offices of Gretchen Myers, P.C. is entitled to a fee of 25% of recovery in this matter as well as 25% of the total medical bills.
6. On July 29, 2003 Claimant sustained an accident which arose out of and in the course of her employment with the Employer.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Reneé T. Slusher
Director
Division of Workers' Compensation