

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-035077

Employee: Pamela Collier
Dependent: Estelle Smith (Mother)
Employer: Board of Education for City of St. Louis
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: April 2004
Place and County of Accident: City of St. Louis

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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated January 5, 2006.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued January 5, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Pamela Collier Injury No.: 04-035077
Dependents: Estelle Smith (Mother) Before the
Division of Workers'
Employer: Board of Education for City of St. Louis **Compensation**
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Self-Insured
Hearing Date: October 14, 2005 Checked by: JED: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: April 2004
5. State location where accident occurred or occupational disease contracted: City of St. Louis
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 happened or occupational disease contracted:
Employee was exposed to abestosis at employer's building.
12. Did accident or occupational disease cause death? Terminal condition Date of death? N/A
13. Parts of body injured by accident or occupational disease: Right lung
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? Unknown

Employee: Pamela Collier

Injury No.:

04-035077

- 17. Employee's average weekly wages: \$58,796.40 per annum
- 18. Weekly compensation rate: \$662.55/\$347.05
- 19. Method wages computation: §287.250.1 RSMo (2000)

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses	Indeterminate
10 weeks of temporary total disability benefits	\$3,470.50

21. Second Injury Fund liability: No

TOTAL:	Indeterminate
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22. Future requirements awarded: Yes.

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:

Elbert Dorsey

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Pamela Collier

Injury No.: 04-035077

Dependents: Estelle Smith (Mother)

Before the
Division of Workers'
Compensation

Employer: Board of Education for City of St. Louis

Department of Labor and Industrial
Relations of

Additional Party: Second Injury Fund
Missouri

Jefferson City, Missouri

This case involves a disputed occupational disease alleged by Claimant with the reported onset date during April 2004. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is a party to this claim but remains open for a determination of liability at a future date. Employer paid no benefits to date. Both parties are represented by counsel.

Issues for Trial

1. incidence of occupational disease
2. liability for past medical expenses;
3. liability for future medical expenses;
4. nature and extent of temporary total disability;
5. nature and extent of permanent disability
6. liability of the Second Injury Fund;
7. dependence of Claimant's mother, Estelle Smith.

1. Claimant is approximately 57 years old and began work for Employer in 1970.
2. Claimant worked at many locations in the Employer's district and currently works at a building located at 801 North 11th Street location.
3. Employer's buildings are recognized as being in deplorable condition as evidenced by Claimant's testimony, court orders and common knowledge in the St. Louis area. The conditions include the traditional risks and costs accompanying building rehabilitation and toxic abatement.
4. Claimant described several sites where she worked alongside exposed pipes, damp ventilation from areas with exposed pipes and asbestos removal operations where Claimant apparently was not afforded protections from airborne irritants.
5. The condition of buildings specifically included asbestos abatement while Claimant was present in adjacent parts of the same building and work in spaces characterized by leaking and unwrapped plumbing and heating pipes.
6. At age 56, Claimant sought treatment for persistent breathing problems which was preliminarily diagnosed as recurrent pleural effusions accompanied by "nodular process." Claimant lost ten weeks of work attending her treatment (Exhibit E).
7. Differential diagnosis of pleural malignancy such as mesothelioma or infectious inflammation from fungal or tubercle disease culminated in a pathology report dated April 6, 2004.
8. The pathology was identified as pleural nodules, right lung with malignant mesothelioma, epithelial type (Exhibit C).
9. Claimant called Dr. Hans Reimer, a hematologist/oncologist who treated Claimant. Dr. Reimer testified that Claimant the cause of Claimant's condition was asbestos exposure.
10. Dr. Reimer's assumption of exposure was based on patient /employment history. He stated this pathology was mostly asbestos related and usually the conclusion "whenever" there is exposure to asbestos. Employer made no objection to this statement.

11. Dr. Reimer's prognosis was that Claimant's condition was terminal with median survival at thirteen months.
12. Dr. Reimer described treatment for Claimant's condition as largely palliative and supportive.
13. Claimant provides financial and domestic support for her mother Estelle Smith, age 92, who receives \$1800.00 per month as income and is otherwise dependent on her daughter, the Claimant, financially as well as for domestic care.

RULINGS OF LAW

1. Claimant was exposed to asbestos during her many decades of employment where she was assigned to work in dilapidated buildings that either exposed her to traditional sources of loose asbestos or directly placed her adjacent to asbestos removal operations.
2. Claimant's exposure was prolonged. Claimant did not work for any other employers.
3. Dr. Reimer's testimony was sufficient to predicate work related exposure to asbestosis which resulted in malignant mesothelioma.
4. Employer made no valid objections to his opinions and specifically made no objections to his opinion that "whenever" there is exposure to asbestos it is usually concluded to be the cause of the patient's pleural symptoms, clinical findings and malignancy.
5. Employer offered no evidence rebutting Claimant's evidence of exposure and offered no independent expert testimony. Claimant's opinion evidence was unimpeached.
6. Claimant's pulmonary condition is work related.
7. Exhibit B is admitted for the limited purpose of corroborating Claimant's exposure testimony.
8. Claimant's mother, Estelle Smith, is a partial dependent under Section 287.240(3) RSMo (2000). The evidence of Claimant's mother was credible and unrebutted.

Conclusion

Accordingly, on the basis of the substantial and competent evidence contained within the whole record, Claimant is found to have been exposed to asbestos in the work place and developed mesothelioma. Employer is directed to immediately tender benefits under Section 287.140.1 RSMo (2000) and seek to cure and relieve the effects of Claimant's exposure as describe herein. Employer shall immediately tender all supportive and palliative treatment as deemed necessary by Dr. Reimer together with any accompanying temporary total disability benefits.

Claimant is entitled to past due temporary total disability benefits accompanying lost time and all past due medical expenses correlative to the treatment record comprising Exhibit C. Claimant's attorney placed medical expenses in issue but offered no evidence liquidating that amount. Dr. Reimer testified that future treatment for this condition was palliative and supportive but described no attendant costs.

Claimant's attorney placed permanent disability in issue but offered no evidence thereof. Dr. Reimer offered no opinion on disability, temporary or permanent. These entitlements are deemed indeterminate.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation