

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

Injury No.: 07-108522

Employee: JoAnn Cooper
Employer: Ozarks Medical Center
Insurer: Self-Insured administered by Cannon Cochran Mgt.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 October 28, 2008.

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 David L. Zerrer, issued October 28, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 29th day of January 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: JoAnn Cooper

Injury No. 07-108522

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents:

Employer: Ozarks Medical Center

Additional Party:

Insurer: Self-insured administered by Cannon Cochran Mgt.

Hearing Date: September 11, 2008

Checked by: DLZ

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: October 30, 2007
5. State location where accident occurred or occupational disease contracted: West Plains, Howell 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? Self-insured
11. Describe work employee was doing and how accident happened or occupational disease contracted:
Claimant fell exiting elevator
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Parts of body injured by accident or occupational disease: Back; body as a whole

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? \$7,993.62

Employee: JoAnn Cooper

Injury No. 07-108522

17. Employee's average weekly wages: \$300.00
18. Weekly compensation rate: \$200.00
19. Method wages computation: Stipulation.

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses: \$7,993.62

3 weeks of temporary total disability (or temporary partial disability) - \$600.00

Total: \$8,593.62

Each of said payments to begin immediately, as set out in this award, 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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Randy C. Alberhasky

FINDINGS OF FACT and RULINGS OF LAW:

Employee: JoAnn Cooper

Injury No: 07-108522

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents:

Employer: Ozarks Medical Center

Additional Party

Insurer: Self-insured administered by Cannon Cochran Mgt.

Checked by: DLZ

On the 11th day of September, 2008, the parties appeared before the undersigned Administrative Law Judge for an emergency hearing. The Claimant appeared in person and by her attorney, Randy C. Alberhasky. The Employer appeared by its attorney, Daniel L. Doyle. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, is a party to this claim; however, the Treasurer has been excused from participation in this hearing by agreement of all parties.

The parties have entered into a stipulation as to certain facts which are not at issue in this claim as follows, to wit: On or about the 30th day of October, 2007, Ozarks Medical Center was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully self-insured, administered by Cannon Cochran Mgt.; on the alleged injury date of October 30, 2007, JoAnn Cooper was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the employment occurred in Howell County, Missouri, and the parties agree that Howell County, Missouri, is the proper venue for this hearing; the Claimant notified the Employer of the injury as required by Section 287.420; the Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident, Claimant's average weekly wage was \$300.00, sufficient to allow a compensation rate of \$200.00 for temporary total disability, permanent total disability, and permanent partial disability; no temporary disability benefits have been paid prior to the date of this hearing; no medical benefits have been paid prior to the date of this hearing; Claimant's attorney requests approval of an attorney fee of 25% of the amount of any award.

ISSUES

Whether the Claimant sustained an accident.

Whether the accident arose out of the course of and scope of employment.

Whether the accident caused the injuries and disabilities for which benefits are now being claimed.

Whether the Employer is obligated to pay for past medical expenses.

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries.

Whether temporary total benefits are owed to the Claimant.

Whether the Employer is entitled to a final award on the issues of accident and course and scope of employment.

DISCUSSION

No legal file was established for this hearing. The Claim for Compensation and the Employer's Answer were placed in evidence as exhibits.

The facts concerning Claimant's fall are not contested in this hearing. The cause of Claimant's fall, however, is contested, and whether or not Claimant's incident constituted an accident under the law is contested.

JoAnn Cooper, claimant herein, testified on her own behalf. Claimant testified that she is 48 years of age at the date of hearing, married with one child, age 14. Claimant graduated from high school and has attended one college class. Claimant has been a hospital unit secretary since 1986 having worked as such in intensive care units, cardiac units and for the present employer. Claimant was certified as a health unit coordinator in 1989.

Claimant was initially employed by Employer in October 2005. Claimant worked from time to time in various departments of the Employer in cardiac care, medical care, and surgical care. Claimant's job tasks involved handling patient charts, monitoring telemetry signals for monitors as well as keeping the medical supply room stocked, as well as, taking doctors' orders from charts for patient care.

On October 30, 2007, Claimant arrived at work, entered the front door of the hospital, and proceeded to the second floor of the hospital where she was scheduled to work that day. To reach the second floor, Claimant used an elevator located in the interior portion of the hospital. Claimant testified that she was carrying her purse and a lunch bag in her arms as she entered the elevator headed for the second floor. Claimant testified that she arrived at the hospital a little after 7:00 a.m. on October 30, 2007, for a shift that ran from 7:00 a.m. to 7:00 p.m.

Claimant rode the elevator to the second floor. She testified that when she arrived at the second floor she attempted to exit the elevator, still carrying her purse and her lunch bag in her arms. No one else was on the elevator,

and no one was around the elevator door on the second floor that she recalls. Claimant testified that as she exited the elevator her foot stuck at the door threshold, and the top of her body kept moving forward causing her to spin onto her left side falling to the floor of the hospital corridor. Claimant testified that she fell onto her buttocks, her left side and her head. Other employees of the Employer came to Claimant's aid as she was lying on the floor of the corridor. Eventually, Claimant was loaded onto a gurney and taken to the emergency room of the hospital.

While in the emergency room, Claimant was administered x-rays which did not indicate any fractures from the fall. Later the same day, Claimant was discharged from the emergency room for follow-up with Dr. Jordan on October 31, 2007.

Claimant testified concerning her office visit for treatment with Dr. Jordan. She testified that when she was seen by Dr. Jordan, that he did not perform any examination on Claimant. She further testified that Dr. Jordan did ask her what part of the building was defective that caused her to fall. Claimant testified that Dr. Jordan asked her several times what part of the building did Claimant think was defective that caused her to fall. Claimant testified that she told Dr. Jordan that she did not know what was defective, that she was exiting the elevator when her foot stopped and she kept moving. Dr. Jordan referred Claimant to her personal physician and took Claimant off work.

Claimant admitted Exhibit D, which were the medical records of Dr. Jordan from Ozark Works. Dr. Jordan's treatment notes support Claimant's testimony that he did refer Claimant to her personal physician and took her off work. The only recommendation made by Dr. Jordan was that Claimant was unable to work. Under the physical exam portion of the doctor's notes, there are no check marks or notations with the exception of a body diagram which shows tenderness in the area of the left lower back and left thigh. Dr. Jordan did issue a prescription for Percocet for pain. Dr. Jordan diagnosed contusion on left lower back and right and left buttock. He did not propose any treatment plan in the record.

Claimant testified that she talked to Ted Collins, the Employer's human resource person, who told Claimant to do whatever the doctors tell her to do in terms of receiving treatment for her injuries of October 30, 2007.

On November 1, 2007, Claimant presented for treatment at Burton Creek Rural Clinic and was seen by Dr. Bowles, Exhibit E. Claimant was referred to Ozarks Medical Center for MRI and urinalysis, as well as physical therapy. On November 2, 2007, Claimant's MRI of the left hip was unremarkable. Claimant did not receive any further treatment from Burton Creek Clinic. She did have physical therapy on November 9 and November 11, 2007. Claimant did not receive any further physical therapy treatments, and was discharged from physical therapy on January 8, 2008.

On November 5, 2007, Claimant presented for treatment at the Doctors Urgent Care Clinic, and was seen by Dr. Ireland who took Claimant off work for one week until follow-up. On November 12, 2007, Claimant was seen by Dr. Atilas of the same clinic. Dr. Atilas took Claimant off work for an additional week until November 19, 2007. Dr. Atilas ordered an MRI of the spine and cervical regions, which was performed on November 26, 2007, and December 14, 2007. Claimant's MRI of November 26, 2007, and December 14, 2007, showed degenerative changes with disc protrusions at L4/5, as well as disc protrusion at T4/5. Claimant testified that Dr. Atilas referred Claimant to Dr. Douglas Green for surgical consultation, but Claimant did not see Dr. Green because she had no insurance and no money to pay for any additional treatment.

Claimant testified that she voluntarily resigned from employment with Employer in January 2008, after a telephone conversation with Ted Collins of human resources of the Employer. Claimant testified that she was told she had missed too much work and would be terminated as of October 30, 2007, unless she resigned voluntarily, in which case the Employer would carry her health insurance until January 31, 2008. Claimant voluntarily resigned.

Claimant testified that presently she cannot reach shelves nor do laundry. Sexual activity is painful, and that she cannot adequately do many things in normal everyday life. Claimant further testified that walking and swimming help relieve constant pain but standing or sitting in one position increases the pain. Claimant further testified that she has become depressed because she does not like her house being a "mess" and she feels worthless and not able to do anything because she is in so much chronic pain since the injury of October 30, 2007.

Claimant testified that she has not worked since October 30, 2007, because her leg hurts and becomes numb, as well as her back hurting all the time.

Claimant identified Exhibit G as billing records of Doctors Urgent Care, which set out charges for treatment received by Claimant with regard to this injury, except for references to treatment for asthma. The total treatment costs for Claimant's care is \$976.00. The amount of out-of-pocket expenses for Claimant, not reimbursed by health insurance was \$485.00.

Claimant's deposition was placed into evidence as Exhibit 5. Claimant testified on September 8, 2007, in part as follows:

Q: ...Tell me what happened on October 30, 2007, that caused you to be injured?

A: I was coming into work on the first floor and entered the elevator to ride to the second floor, and upon coming out of the elevator as the door opened, I felt my, it would be my right foot got stuck into the elevator. And I had my purse and my lunch in front of me, and I just felt myself falling, and I swirled I guess clockwise and just sat down really hard and like tripped out of the elevator and landed on my rear end real hard. And I fell back and hit my head and had lost my lunch, and my purse fell out of my arms and stuff.

Q: Okay. Now which foot got caught?

A: I believe it was like the right one.

Q: It got caught where?

A: I don't know. On the threshold of the elevator or the floor. I just felt like my foot got held up, and that caused me to just kind of go airborne. And I think that's probably why I went to my left because then I was going to step onto the left foot. Then I swirled around and sat down. (Exhibit 5, Page 3 lines 15 thru 25 and page 4 lines 1 thru 13).

Claimant further testified in her deposition as follows:

Q: He wouldn't know anything. All right. And then it's your testimony that when the elevator stopped, nothing about the elevator and the floor was uneven, is that correct?

A: Again, I was looking forward when I was trying to head on out of there. I didn't look down.

Q: But you didn't ram into the floor like the floor was raised up and the elevator was down?

A: I can't—I don't know if that was the case or not. I just felt my right foot get hung up on something. (Exhibit 5, pages 41, line 25 thru page 42, line 10).

Claimant offered, and there was admitted into evidence as Exhibit L, the Independent Medical Evaluation of Dr. Truett Swaim. Dr. Swaim's report indicates that he reviewed the treatment records of Claimant, and performed a physical examination on the Claimant on March 12, 2008. Dr. Swaim's report reached several conclusions including a diagnosis, in part, of chronic cervicothoracic pain and lumbar radiculopathy involving the left leg with multilevel degenerative disc protrusions. Dr. Swaim opines that the accident of October 30, 2007, was the prevailing factor to cause the disc protrusion in the lumbar regions, and was the prevailing factor in causing the chronic cervical thoracic pain and low back pain with lumbar radiculopathy in the left leg.

Dr. Swaim's report indicates that Claimant is not at maximum medical improvement, and recommends additional treatment including the possibility of surgical intervention to improve her condition.

Employer introduced, and there was admitted, into evidence, Exhibit 1, which contained medical records from Ozarks Works and Ozarks Medical Center. The information contained in the records was basically the same as Claimant's Exhibits C and D. Employer's Exhibits 2, 3, and 4 were photographs of the elevator located in the hospital at the place where Claimant's fall occurred. Exhibit 4 depicts the scene from the inside of the elevator looking out of the elevator onto the corridor floor, including the point where Claimant fell.

FINDINGS OF FACT AND RULINGS OF LAW

Whether the Claimant sustained an accident.

Employer admits that Claimant fell while exiting the elevator on the second floor of the hospital that Employer operates. Those facts are not disputed. Employer contends that Claimant's injuries do not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life, pursuant to Section 287.020.3(2).

Claimant testified at the hearing and at her deposition that as she was exiting the elevator her right foot got "stuck" into the elevator. Claimant admitted that she does not know why her foot got stuck, but she does know that the result was that her right foot stopped moving while the top part of her body continued forward which resulted in Claimant spinning to her left and falling to the floor. There is no dispute that Claimant was where she was suppose to be at the time of the injury. There is no dispute that Claimant was carrying a purse and her lunch. There is no dispute that Claimant did not see her foot get "stuck" or stop moving. There is no evidence that the elevator was working properly or failed to work properly at the time of Claimant's injury.

Exhibit 4 depicts the threshold of the elevator and the corridor floor outside the elevator. The exhibit shows a black and yellow safety strip attached to the corridor side of the threshold indicating some sort of hazard condition. There is a space between the elevator threshold and the corridor threshold, the face of which contains the safety warning stripes mentioned above.

After a review of all the evidence presented at the hearing, both oral and written, and based on the record as a

whole, I find that the Claimant has sustained her burden of proof that an accident occurred. I further find that there is substantial and competent evidence that the condition of the elevator threshold and the condition of the corridor threshold was a sufficient hazard to establish a risk of employment greater than and different from that which affects the public generally. I further find that there was a rational connection between the work of Claimant, who was assigned to work on the second floor on the day of the injury, and the fact that Claimant fell while enroute to her work assignment.

I find this issue in favor of the Claimant.

Whether the accident arose out of the course of and scope of employment

The parties agree that Claimant was present at the hospital for the purpose of attending employment for the Employer. The parties also agree that Claimant was assigned to the second floor of the hospital on October 30, 2007, to perform her work duties. Claimant used the elevator for the purpose of transporting herself to her work assignment.

After a review of all the evidence presented at the hearing, both oral and written, and based on the record as a whole, I find that Claimant was at the hospital, in the elevator, and attempting to exit the elevator in order to arrive at her work station when the accident occurred, and therefore was in the course of her employment.

I further find that the fact that Claimant was assigned to work on the second floor of the hospital on October 30, 2007, and was in process of arriving at the place she was to perform her work duties is substantial and competent evidence that Claimant was in a place where the Claimant could reasonably be expected, and was engaged in the furtherance of the Employer's business at the time of the injury.

I find that Claimant was within the course of and scope of her employment at the time of her accident of October 30, 2007.

I find this issue in favor of Claimant.

Whether the accident caused the injuries and disabilities for which benefits are now being claimed.

The parties do not dispute that the Claimant fell while exiting the elevator and that the fall caused Claimant to be injured and to require treatment for her injuries. Dr. Jordan, although he formed an opinion that the Claimant's injuries were not work-related, recommended additional treatment for the Claimant, and took her off work until she received such additional treatment. Dr. Swaim opined that Claimant's fall of October 30, 2007, was the primary factor in Claimant's need for treatment.

After a review of all the evidence adduced at the hearing, both oral and written, I find there is substantial and competent evidence that Claimant's accident of October 30, 2007, caused the need for treatment; and further, caused the injuries and disabilities for which she now claims benefits.

I find this issue in favor of Claimant.

Whether the Employer is obligated to pay for past medical expenses.

Employer has rejected all requests for treatment made by Claimant. Claimant received treatment from several health care providers after her accident of October 30, 2007. Exhibits G, H, I, J, and K were admitted into evidence. Each exhibit contained billing statements of health care providers.

Exhibit G contains billing statements from November 5, 2007, through June 2008. Medical records contained in Exhibit B support treatment through November 19, 2007, in the sum of \$256.00.

Exhibit H contains billing statements for treatment administered November 1, 2007, which is supported by medical treatment records set out in Exhibit E, in the sum of \$162.00.

Exhibit I contains statement history which includes October 31, 2007, which is supported by medical treatment records set out in Exhibit D, in the sum of \$252.32.

Exhibit J contains billing statements for treatment from October 30, 2007, through March 24, 2008. Medical records contained in Exhibit C support treatment through December 14, 2007, in the sum of \$7,239.30.

Exhibit K contains a billing statement for treatment administered to Claimant November 6, 2007, which is supported by medical treatment records set out in Exhibit B, in the sum of \$84.00.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find there is substantial and competent evidence that the medical treatment received by Claimant was reasonable and necessary. Based on the findings and rulings set out above, I further find that the treatment administered to Claimant was the responsibility of the Employer. The total of Claimant's reimbursable medical expense is \$7,993.62

(\$256.00+162.00+252.32+7,239.30+84.00=\$7,993.62). Employer is hereby ordered to pay to Claimant the sum of \$7,993.62 as and for medical expense reimbursement.

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries.

Claimant testified in her deposition that Dr. Atilas referred her to Dr. Douglas Green, a neurosurgeon for evaluation. Claimant testified that she did not see Dr. Green because she no longer had health insurance and did not have the money to pay for any surgery. Dr. Swaim opined that Claimant was not at maximum medical improvement, and that she could benefit from additional conservative treatment and possibly surgery.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that there is substantial and competent evidence that Claimant requires additional evaluation and or treatment in order to cure and relieve the effects of the injuries. Employer has never offered any treatment to Claimant; including the fact that Claimant was billed by the Employer for the emergency room treatment she received on October 30, 2007. Therefore, I find that Employer has abandoned any right to direct medical care in this claim. Employer is hereby ordered to provide such medical care and or evaluation as may be recommended from time to time by Dr. Atilas or any physician to whom the Claimant is referred by Dr. Atilas, including surgery, if recommended, to cure and relieve the effects of this injury.

I find this issue in favor of Claimant.

Whether temporary total benefits are owed to the Claimant.

Claimant testified that she has not worked since the date of her injury. Dr. Jordan's records show that Claimant was taken off work on October 31, 2007. Medical records from Doctors Urgent Care show Dr. Ireland took Claimant off work until November 12, 2007, which was extended by Dr. Atilas until November 19, 2007. The medical records placed in evidence at the hearing do not contain any other reference to placing the Claimant in off-work status because of this injury.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that there is substantial and competent evidence that Claimant was temporarily totally disabled from October 30, 2007, through November 19, 2007. I find there is not sufficient evidence adduced at the hearing to sustain Claimant's burden of proof that she was temporarily totally disabled after November 19, 2007, until the date of the hearing.

The parties stipulated that Claimant's compensation rate is \$200.00. Employer is hereby ordered to pay to Claimant the sum of \$600.00 as and for temporary total disability benefits from October 30, 2007, through November 19, 2007, a period of 3 weeks (3 x \$200.00 = \$600.00).

I find this issue in favor of Claimant.

Whether Employer is entitled to a final award on the issues of accident and course and scope of employment.

Based on the findings and rulings set out above, I find that Employer is not entitled to a final award on the issue of accident or the issue of course and scope of employment. I find that Claimant suffered an accident as defined in Section 287.020.2 on October 30, 2007, and that the accident occurred while Claimant was in the course of and scope of her employment with the Employer.

I find this issue in favor of Claimant.

Claimant's attorney has requested approval of an attorney fee of 25% of the amount of any award. Claimant's attorney fee request is hereby approved. Claimant's attorney is awarded an attorney fee of 25% of the amount of this award. Claimant's attorney is hereby granted a lien on the proceeds of this award unless and until the attorney fee shall have been paid in full.

Date: October 28, 2008

Made by: /s/ David L. Zerrer
David L. Zerrer
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Jeffrey W. Buker
Jeffrey W. Buker
Director
Division of Workers' Compensation

