

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

Injury No.: 02-046486

Employee: Mary Donohue  
Employer: Moresource, Inc.  
Insurer: Virginia Surety Company, Inc.  
Date of Accident: April 15, 2002

Place and County of Accident: St. Charles County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 23, 2005.

The award and decision of Administrative Law Judge Kevin Dinwiddie, issued December 23, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 2<sup>nd</sup> day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

Attest: \_\_\_\_\_  
John J. Hickey, Member

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Mary Donohue

Injury No. 02-046486

Dependents: N/A

Employer: Moresource, Inc.

Additional Party:N/A

Insurer: Virginia Surety Company, Inc.

Hearing Date: 10/28/05; finally submitted 11/18/05

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: KD/bfb for yg

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? See Award
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: 4/15/02
5. State location where accident occurred or occupational disease was contracted: St. Charles County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee was flipping fry baskets of French fries and injured her left upper extremity
12. Did accident or occupational disease cause death? No Date of death? ----
13. Part(s) of body injured by accident or occupational disease: left upper extremity at the level of the wrist
14. Nature and extent of any permanent disability: See Award
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$4,606.32
  
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$407.99
19. Weekly compensation rate: \$271.99/\$271.99
20. Method wages computation: by agreement of the parties

### COMPENSATION PAYABLE

21. Amount of compensation payable: None See Award. The issue as to need for future medical care found in favor of the employer and insurer

Unpaid medical expenses: N/A

22. Second Injury Fund liability N/A

TOTAL: ----

23. Future requirements awarded: None. See Award

Said payments to begin ---- and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of ---- of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

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

Employee: Mary Donohue

Injury No: 02-046486

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: N/A

Employer: Moresource, Inc.

Additional Party N/A

Insurer: Virginia Surety Company, Inc.

Checked by: KD/bfb for yg

The claimant, Ms. Mary Donohue, and the employer and its insurer, Moresource, Inc. and Virginia Surety Company, Inc., appeared at hearing by and through their counsel and entered into certain stipulations and agreements as to the issues and evidence to be presented in this claim for compensation. The original claim having been pleaded as against the employer Campus Hospitality, Attorney Kevin H. Dunaway advised at hearing that he represents Moresource, Inc., a company that provides staffing by contract with companies such as Campus Hospitality. Attorney Dunaway acknowledged

at hearing that by agreement Moresource, Inc. provided workers' compensation insurance and is the liable employer for the injury at issue. By agreement of the parties, Attorney Gary Sanguinet for the employee amended his claim at hearing to include Moresource, Inc and Virginia Surety Company as the liable employer and insurer.

The parties agreed to hold a joint hearing in this matter with a companion claim, Injury Number 02-140656, involving the same employee, employer, and insurer as to an injury occurring on or about 12/3/02.

In the matter of Injury Number 02-046486, the employee, Ms. Donohue, and the employer and insurer agree that on or about 4/15/02 the claimant suffered an injury by accident arising out of and in the course of employment. The parties agreed at hearing that the only issues to be resolved at hearing as to the injury on 4/15/02 are future medical care, and the nature and extent of permanent partial disability.

Ms. Donohue appeared at hearing and testified on her own behalf. The employer and insurer submitted the depositions of Shawn L. Berkin, D.O., and of the claimant, Ms Donohue. The parties offered certain medical reports, and waived hearsay objection as to the various expert opinions contained within those reports.

## **EXHIBITS**

The following exhibits are in evidence:

### **Claimant's Exhibits**

- A. Curriculum Vitae of Jack C. Tippett, M.D.
- B. Medical report of Jack C. Tippett, M.D., with attached medical records

### **Employer and Insurer's Exhibits**

1. Receipt and Notice of Termination of Compensation in Injury Number 02-140656
2. Medical Records of SSM Corporate Health Services from 4/15/02 through 5/7/02
3. Medical records of SSM Corporate Health Services from 12/4/02 through 12/23/02
4. SSM Physical Therapy records
5. St. Joseph Health Center MRI left shoulder MRI report dated 12/20/02
6. DePaul Health Center Chest x-ray report dated 1/14/03, 2 pages
7. Medical records of George R. Bradbury, III, M.D.
8. Medical records of Eddie L. Paulk, D.O.
9. Curriculum Vitae of Mitchell B. Rotman, M.D.
10. Independent Medical Examination of Mitchell B. Rotman dated 1/24/05
11. Rating report of Shawn L. Berkin, D.O., dated 7/22/04
12. Deposition of Shawn L. Berkin, D.O., dated 4/12/05
13. Deposition of Mary Donohue taken on 10/06/05

## **FINDINGS OF FACT AND RULINGS OF LAW**

Ms. Mary Donohue is not currently employed, and last worked as a line cook in the Lindenwood College cafeteria. Ms. Donohue worked in the grill and pasta bar area, cooking and stocking fried foods such as French fries. The claimant would spend as much as two and one half to three hours a day cooking French fries in a fry basket. On or about 4/15/02 the claimant suffered pain into her left wrist and arm while lifting and turning fry baskets.

Claimant treated with Dr. Covert that same day at SSM Corporate Health Services (See Employer and Insurer's Exhibit No. 2). Claimant was provided pain medication, a splint to wear on the affected hand, and was to begin physical therapy for what was diagnosed as an acute tenosynovitis. Claimant continued to work restricted duty, using the left hand only as a helper hand with a lifting restriction. Claimant had several follow up appointments with Dr. Covert. On 5/7/02 Dr. Covert performed an examination of the left wrist and forearm; concluded that a strain of the left forearm had resolved; and released the claimant to full duty.

Thereafter Ms. Donohue continued to work in the same area of the cafeteria, performing the same duties, and received no further treatment for left upper extremity complaints until such time as she suffered a second injury by accident on or about 12/03/02. Claimant was pulling open a box of french fries, and while tugging on the box flap, suffered severe pain from the tip of her fingers in her left hand to her shoulder, and with a burning sensation in her left arm and shoulder.

Ms. Donohue was returned to Dr. Covert for evaluation and treatment of her complaints. On 12/4/02, Dr. Covert notes, in part, the following history:

She has similar symptoms with regard to the left wrist about six to seven months ago. At that time, she was seen here and treated for acute tenosynovitis. She was referred for physical therapy and made a nice recovery. Her pain today in the wrist is similar to what she had back then. The shoulder, however, is a new complaint. (See Employer and Insurer's Exhibit No. 3)

Dr. Covert diagnosed the claimant as suffering from an acute strain of the left shoulder, wrist, and forearm. Claimant was provided with a thumb spica splint, a prescription for Vioxx, and was instructed not to use the left arm for any lifting while undergoing physical therapy.

The physical therapist noted that the claimant complained of "excruciating pain in her left thumb, shoulder, and upper trap region". (See Employer and Insurer's Exhibit No. 4). The therapist suspected a possible rotator cuff tear and an acute tenosynovitis of the 1<sup>st</sup> digit extensor tendons. On 12/11/02 Dr. Covert noted the physical therapist's concerns, performed a physical examination of the shoulder, and ordered an MRI scan. An MRI taken at St. Joseph Health Center on 12/20/02 was interpreted as showing a rotator cuff tear (See Employer and Insurer's Exhibit No. 5).

Dr. Covert referred the claimant to Dr. Bradbury with a diagnosis of de Quervain's tenosynovitis and left rotator cuff tear. Dr. Bradbury performed his initial examination of Ms. Donohue on 1/09/03, and on 1/21/03 performed an open left rotator cuff repair, and a de Quervain's release of the left first dorsal compartment. Ms. Donohue had follow up appointments with Dr. Bradbury, and on 1/29/03 Dr. Bradbury released the claimant for a return to work effective 2/17/03, limited to sedentary work with the right hand only. Claimant returned to work at the cafeteria, and worked a sedentary duty, checking student passes at the door.

Ms. Donohue was prescribed further physical therapy at SSM Rehab. On 3/7/03 the physical therapist reported that the claimant had attended 6 visits post her surgeries, and noted "She is experiencing pain along the superior border of the left shoulder and is only having mild tenderness in the left thumb and wrist with gripping". Claimant was further noted to experience "excruciating pain with end range PROM of the left shoulder."

Ms. Donohue met with Dr. Bradbury on 3/07/03. Dr. Bradbury notes, in part, "She is doing well. She denies any numbness or tingling. No fever or chills. She has been doing formal therapy. She says the shoulder is making progress. She still continues to complain of some weakness with overhead activity but overall she says she is doing okay". Claimant was advised at that time to continue with sedentary duty, physical therapy, and her home exercise program.

On 4/4/03 Dr. Bradbury performed an examination of the shoulder and wrist, and determined that the claimant should continue with physical therapy while returning to work with a restriction of no work above chest height.

On 5/2/03 the physical therapist noted that the claimant had been seen for a total of 18 visits post surgery, and noted, in part, as follows: "Ms. Donohue has met all PT goals. Her left shoulder and wrist ROM are normalizing and equal to the right. Her strength is improving within the left shoulder. She is independent with her HEP and can continue on her own". The physical therapist then recommended that the claimant be discharged from physical therapy.

Ms. Donohue had follow up appointments with Dr. Bradbury on 5/28/03 and again on 7/09/03. On 7/09/03 Dr. Bradbury noted that the claimant was five and a half months post her surgeries to the shoulder and wrist, and performed another physical examination. Dr. Bradbury further notes the following history as provided to him: "She says that she is doing very well. She is quite pleased with her progress. She says her wrist does not bother her at all. Her shoulder occasionally pops, but she has no baseline pain or weakness." Dr. Bradbury found the claimant to be at maximum medical improvement, and released her from his care without any work restrictions.

Through the course of her deposition testimony, Ms. Donohue disputed much of the history of complaint or lack thereof that was recorded by Dr. Bradbury in his notes. For example, Ms. Donohue agreed that biceps pain was relieved after surgery, but disputes ever having suggested that a pins and needles sensation was resolved. Ms. Donohue further disputes that she ever suggested that there was no baseline pain or weakness in her shoulder. (See Employer and Insurer's Exhibit No. 13. pp. 77-82). At hearing Ms. Donohue testified that since her surgery she has suffered a worsening of shoulder and neck complaints, with pins and needles sensations in the fingers to the forearms of both upper extremities, noting that she has difficulty holding things and sleeping at night.

Claimant had her employment terminated and did not return to work for the fall semester of classes at Lindenwood in 2003. Ms. Donohue testified by deposition that she has not returned to any employment since her termination from employment.

Ms. Donohue testified that she made repeated attempts to see Dr. Bradbury thereafter, and that he did not agree to see her again until early in 2004. A contrary history is contained in the medical note of Dr. Paulk, who elicited complaints from Ms. Donohue on or about 10/28/03 (See Employer and Insurer's Exhibit No. 8) In his note, Dr. Paulk notes as follows: "Lots of problems; L arm and hand-Using her arm, even reading a newspaper hurts. Had surgery earlier this year but doesn't want to see him again. Discussed another orth. Says pain feels very similar to that of her rotator cuff tear."(Emphasis added).

There are no medical records in evidence to suggest that the claimant went to an orthopedist of her own choosing prior to seeing Dr. Bradbury again on 2/04/04. In his note concerning the examination he performed that date, Dr. Bradbury

concluded that he was perplexed by claimant's symptomatology, and wanted an MRI of the neck to rule out a cervical radiculopathy as the cause of her complaints.

Although copies of the diagnostics are not in evidence, subsequent reports from Drs. Bradbury, Berkin, and Rotman suggest that the claimant had a cervical MRI on 3/16/04 that was reported as normal, and nerve studies from 1/3/05. Dr. Rotman notes that the nerve studies indicated right carpal tunnel, no evidence of any radiculopathy and no evidence of problems with the left upper extremity. (See Employer and Insurer's Exhibit No. 10).

Dr. Bradbury performed his last examination of Ms. Donohue on 3/22/04. Dr. Bradbury noted that a cervical MRI showed no evidence of cervical disc disease or degenerative changes or nerve entrapment. He examined the left shoulder, and noted that the claimant declined to have the necessary injection to further evaluate the shoulder by means of arthrogram to rule out recurrent rotator cuff tear.

### **FUTURE MEDICAL CARE**

An award of future care to cure or relieve, per section 287.140 RSMo, is not necessarily inconsistent with a finding that the claimant may have achieved maximum medical improvement. Mathia v. Contract Freighters, Inc., 929 S.W.2d 271 (Mo.App. S.D. 1996). Further, the claimant is not obliged to present evidence of specific medical treatment or procedures that would be necessary in the future in order to receive an award for medical care. Bradshaw v. Brown Shoe Co., 660 S.W.2d 390 (Mo.App.1983). It is sufficient to show "by reasonable probability" the need for additional medical treatment as a result of the work injury. Sifferman v. Sears, Roebuck and Co., 906 S.W.2d 823,828 (Mo.App. S.D. 1995).

Treatment records reveal that after her injury on 4/15/02, Dr. Covert treated Ms. Donohue for what he describes as an acute tenosynovitis. Claimant had conservative care, missed no time from work, and was able to be returned to work, performing the same duties as a line cook, without any work restrictions. Dr. Berkin performed a disability evaluation on 7/1/04, and concluded that hand intensive activities at work in April of 2002 caused the claimant to suffer a de Quervain's tenosynovitis of the left wrist. Dr. Rotman performed a disability evaluation on 1/24/05, and concluded, in part, "Her de Quervain's seemed to be a consistent problem with regards to her care. This is more clearly related to her work activities". (Employer and Insurer's Exhibit No. 10, at page 6).

Dr. Berkin further opined that the claimant suffered a recurrent tenosynovitis of the left wrist while opening a box in December of 2002. The medical in the matter persuades that after the injury on or about 12/03/02, a surgery was necessary to cure and relieve of the effects of the recurrent de Quervain's tenosynovitis. Dr. Rotman does not believe the claimant is in need of any further medical care with respect to her injury claims as to her left upper extremity. Dr. Berkin makes various treatment recommendations, but does not offer an opinion as to a medical causal relationship between the injury on 4/15/02 and the need for ongoing treatment. There is nothing in the history of complaint provided by Ms. Donohue to persuade or suggest that she had any ongoing problems with the use of her left hand at the wrist in need of treatment once she had been released from care by Dr. Covert. To the contrary, the treatment records of Dr. Covert suggest that her complaint as to the left wrist were resolved, and Dr. Rotman opines categorically that the claimant is in no need of further treatment as to her left upper extremity.

The claimant has failed to persuade, as a matter of a reasonable probability, that she is in need of further medical treatment as a result of the tenosynovitis of the left wrist suffered in April of 2002. The issue as to future medical care is found in favor of the employer and insurer.

### **PERMANENT PARTIAL DISABILITY**

Dr. Berkin offered the opinion that both the de Quervain's tenosynovitis suffered in April of 2002 and the recurrent de Quervain's tenosynovitis suffered on December 3<sup>rd</sup> of 2002 resulted in a permanent and partial disability, and provided his rating of disability accordingly. Dr. Berkin opines that the injuries on 4/15/02 and on 12/03/02 resulted in permanent partial disability equivalent to 15% and 30% of the left upper extremity at the level of the wrist respectively.

The treatment records in the matter suggest that the tenosynovitis suffered by Ms. Donohue resolved after treatment, and that she was able to return to work without restriction. There is nothing in the testimony of Ms. Donohue to suggest that her left wrist was in any way disabling to her prior to her subsequent injury on 12/3/02, and the surgery by Dr. Bradbury on 1/21/03 that included a de Quervain's release.

While proof of cause of injury is sufficiently made on reasonable probability, proof of permanency of injury requires reasonable certainty. Griggs v. A.B. Chance Company, 503 S.W.2d 697 (Mo.App.). The employee has failed to make the requisite proof as to permanency with respect to the injury to her left upper extremity at the wrist suffered on or about 4/15/02. The issue as to permanent partial disability is found in favor of the employer and insurer, and the claim for permanent and partial disability must be denied.

KEVIN DINWIDDIE  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST  
PATRICIA "PAT" SECREST  
Director  
Division of Workers' Compensation