

TEMPORARY AWARD ALLOWING COMPENSATION

Injury No.: 05-141082

Employee: Karen Doyle
Employer: Lakeland Regional Hospital
Insurer: Travelers Indemnity Company of America
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission affirms the temporary or partial award of the administrative law judge (ALJ) dated May 25, 2011, by issuing a separate opinion allowing compensation in the above-captioned case.

Preliminaries

The ALJ heard this matter to consider: 1) whether employee sustained an accident or occupational disease arising out of and in the course of her employment; and 2) whether employee gave employer proper notice.

The ALJ found that employee sustained transverse myelitis as a result of being given a flu vaccine. The ALJ further found that employee's transverse myelitis arose out of and in the course of her employment. With respect to notice, the ALJ found that although employee did not notify employer of the accident or occupational disease in writing, there was no prejudice to employer. The ALJ found that employee calling her supervisor and the human resources director to inform them of her injury was sufficient notice.

Employer appealed to the Commission, alleging: 1) the ALJ did not properly address the issues in dispute; 2) the ALJ incorrectly applied the law in reference to what constitutes an accident; and 3) the ALJ's decision is against the overwhelming weight of the evidence.

Findings of Fact

The findings of fact and stipulations of the parties were accurately recounted in the temporary or partial award of the administrative law judge and are adopted and incorporated by the Commission herein.

Conclusions of Law

While we agree with the ALJ's ultimate conclusions in this case, we issue this separate opinion to provide a more thorough analysis with regard to the issue of whether employee sustained an injury due to an accident arising out of and in the course of her employment.

¹ Statutory references are to the Revised Statutes of Missouri 2005 unless otherwise indicated.

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Section 287.020.2 RSMo defines “accident” as “an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.”

Section 287.020.3 RSMo provides, as follows:

(1) In this chapter the term ‘injury’ is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. ‘The prevailing factor’ is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does 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.”

In this case, the inoculation was not an accident in and of itself because employee requested the inoculation and was expecting the nurse to provide her with the same. The inoculation was not an unexpected traumatic event. However, the reaction employee had as a result of the inoculation (transverse myelitis) was the unexpected traumatic event, identifiable by time and place of occurrence, producing objective symptoms of an injury, caused by a specific event, during a single work shift. We find that the reaction employee had from the inoculation satisfies the requirements of § 287.020.2 RSMo and, therefore, was an accident.

Having found that an accident occurred, we must now turn to the issue of whether the injury arose out of and in the course of employment.

With regard to § 287.020.3(2)(a), there is no dispute that the reaction employee had from the inoculation was the prevailing factor in causing her injury, transverse myelitis. Therefore, we find that the accident is the prevailing factor in causing the injury.

The primary issue lies in whether the injury satisfies § 287.020.3(2)(b).

Employee was administered the inoculation by an agent of employer, on employer’s premises, and during employee’s work shift. Receiving the inoculation was not a condition of employment, but employer offered inoculations to employees on a voluntary basis. Employer offered these voluntary inoculations because: 1) the Centers for Disease Control (CDC) and the Missouri Department of Health recommend vaccines for health care workers, such as employee; and 2) the inoculations are a method to help prevent infections in not only patients, but also employees.

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Receiving annual inoculations of this sort is extremely important for employees working in a health care facility. Employer's health care professional, Christina Bennash Haley, testified as to the greater likelihood of contracting infection in a health care facility than other public or private areas. Ms. Haley's testimony, along with the recommendations from the CDC and the Missouri Department of Health, demonstrate that the complications resulting from a flu vaccine are a hazard or risk related to employee's employment. For these reasons, we find that the risk of developing transverse myelitis came from a hazard related to the employment.

The conditions of her employment, a health care provider, created the need for the flu vaccine to prevent infections with both patients and employees. The flu vaccine was the cause of her injury. Therefore, there is a clear nexus between employee's work and the injury.

Having found that there is a clear nexus between the work and the injury, the requirements of § 287.020.3(2)(b) are satisfied and there is no need to consider whether the worker would have been equally exposed to the risk in normal non-employment life." *Pile v. Lake Reg'l Systems*, 321 S.W.3d 463, 467 (Mo. App. 2010).

For the foregoing reasons, we find that employee's transverse myelitis arose out of and in the course of her employment. The Commission agrees with the conclusions reached by the administrative law judge and affirms by this separate opinion. The temporary or partial award of Administrative Law Judge Margaret Ellis Holden, issued May 25, 2011, is affirmed, and is attached and incorporated by this reference.

This award is only temporary or partial. It 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 § 287.510 RSMo.

In accordance with the ALJ's award, attorney fees are deferred for further proceedings.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 8th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

DISSENTING OPINION FILED

Alice A. Bartlett, Member

CONCURRING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Karen Doyle

DISSENTING OPINION

I have reviewed and considered 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 ALJ should be reversed because employee's injury did not arise out of and in the course of her employment.

I agree with employer's contention that the ALJ incorrectly distinguished the instant case from this Commission's decision in *Pichainarong v. Ford Motor Company*, 2009 WL 1904573 (Mo. Lab. & Ind. Rel. Comm'n., July 1, 2009). In that case, the employee worked for Ford who offered free flu vaccines to its employees and he received a vaccine to which he had an adverse reaction. The Commission upheld the ALJ's denial of benefits in *Pichainarong*, finding that the fact that the employee was exposed to a risk greater than the risk the general public was exposed to was not in and of itself sufficient to make the connection between work and the injury.

Like the employee in *Pichainarong*, the employee in the instant case was offered and received a vaccine on employer's premises; the vaccine had been offered free of charge annually for many years; employees were notified of the availability of the vaccine; members of the general public were not able to get a vaccine from the employer; and the employer did not require its employees to receive the vaccine.

The ALJ distinguished the instant case by focusing on the different types of business – manufacturing versus a health care facility. As employer pointed out in its brief, there is no evidence that this particular employer actually had a greater interest in providing the vaccine. Employer did not require the vaccine of any of its employees. In fact, employer did not even order enough vaccines for every employee.

The majority concluded that the conditions of the employment created the need for the flu vaccine to prevent infections with both patients and employees. However, this is an incorrect application of § 287.020.3 RSMo. The nexus must be between the employee's job duties and the accident and injury, not between the job duties and employer's business.

The application of § 287.020.3(2)(b) RSMo, involves a two-step analysis. *Pile v. Lake Reg'l Health Systems*, 321 S.W.3d 463, 467 (Mo. App. 2010).

The first step is to determine whether the hazard or risk is related or unrelated to the employment. Where the activity giving rise to the accident and injury is integral to the performance of a worker's job, the risk of the activity is related to employment. In such a case, there is a clear nexus between the work and the injury. Where the work nexus is clear, there is no need to consider whether the worker would have been equally exposed to the risk in normal non-employment life. Only if the hazard or risk is unrelated to the employment does the second step of the analysis

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apply. In that event, it is necessary to determine whether the claimant is equally exposed to this hazard or risk in normal, non-employment life.

Id.

I do not find that employee receiving the flu vaccine (i.e., the activity giving rise to the accident and injury) is integral to the performance of employee's job. Although it did not come up at the hearing, I am assuming that employee preventing herself from getting the flu was not part of her job duties. While it may be beneficial to the performance of her job to remain healthy during the flu season, it is not logical to conclude that her receiving a preventative vaccine is **integral** to the performance of her job. For this reason, I conclude that the risk of the activity is not related to her employment.

Moving to the second step in the analysis, I find that an adverse reaction to a flu vaccine is a risk that everyone who receives the vaccine faces (i.e., a risk that employee is equally exposed to in normal, non-employment life). In other words, employee receiving this inoculation at work did not create a greater risk of her reaction than she would have had if she had received the inoculation on her own time at a place other than employer's facility.

Because the hazard or risk of the reaction to the flu vaccine was unrelated to her employment and because she was equally exposed to the reaction in her normal non-employment life, I do not find that the injury arose out of and in the course of her employment.

For the foregoing reasons, I disagree with the ALJ's conclusion that this is a compensable injury. As such, I would reverse the temporary or partial award of the ALJ and issue a final award denying compensation.

I respectfully dissent from the decision of the majority of the Commission.

Alice A. Bartlett, Member

Employee: Karen Doyle

CONCURRING OPINION

I write separately to disclose the fact that I did not participate in the October 26, 2011, oral argument in this matter. I have reviewed the evidence, read the briefs of the parties, and considered the whole record. I concur with the decision of the majority of the Commission.

Curtis E. Chick, Jr., Member

TEMPORARY OR PARTIAL AWARD

Employee: Karen Doyle Injury No. 05-141082
Dependents: N/A
Employer: Lakeland Regional Hospital
Additional Party: Second Injury Fund
Insurer: Travelers Indemnity Company of America
Hearing Date: 2/24/11 Checked by: MEH

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: 11/10/05
5. State location where accident occurred or occupational disease contracted: GREENE 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 happened or occupational disease contracted:
ADVERSE REACTION TO FLU VACCINE
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Parts of body injured by accident or occupational disease: BODY AS A WHOLE
14. Compensation paid to-date for temporary disability: 0
15. Value necessary medical aid paid to date by employer/insurer? 0
16. Value necessary medical aid not furnished by employer/insurer? N/A

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- 17. Employee's average weekly wages: N/A
- 18. Weekly compensation rate: N/A
- 19. Method wages computation: N/A

COMPENSATION PAYABLE

20. Amount of compensation payable: SEE AWARD

Unpaid medical expenses: N/A

N/A weeks of temporary total disability (or temporary partial disability)

TOTAL: SEE AWARD

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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

TERRY TOLBERT

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Karen Doyle Injury No. 05-141082
Dependents: N/A
Employer: Lakeland Regional Hospital
Additional Party: Second Injury Fund
Insurer: Travelers Indemnity Company of America
Hearing Date: 2/24/11 Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 24, 2011, for a temporary hardship hearing. The claimant appeared in person represented by Terry Tolbert. The employer and insurer appeared represented by Christina Madrigal and Catherine Collins. The Second Injury Fund appeared represented by Cara Harris and Eric Cummings. Memorandums of law were filed by March 14, 2011.

The parties stipulated to the following facts: On or about November 10, 2005, Lakeland Regional Hospital was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Travelers Indemnity Company of America. On the alleged injury date of November 10, 2005, Karen Doyle was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. The employment occurred in Greene County, Missouri. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid no medical benefits. The parties agree to defer issues including attorney fees, average weekly wage and rate, permanency, temporary disability, and medical bills.

ISSUES:

1. Whether the claimant sustained an accident or occupational disease which arose out of the course and scope of employment.
2. Whether the claimant gave the employer proper notice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Lakeland Regional Hospital, the employer, is a residential juvenile psychiatric facility. The claimant worked for the employer in November 2005 as a supervisor working twelve hour shifts on the 2 North wing. She worked on a prn, or as needed, basis with shifts that were scheduled a month in advance. Her shifts were often during the overnight hours.

On the 2 North wing claimant was responsible for 20 male residents. This was a lockdown unit to which boys from 13 to 17 lived. These residents were violent, and the unit was secured by a double lock system and with barred Plexiglas on the windows. The claimant worked 7 a.m. to 7 p.m. Claimant would work at a nurse's station where the boys would walk up to a line on the floor before approaching. The bedrooms were in an L shape around it with cameras and mirrors.

The employer made flu shots available to their employees. They posted a poster stating "Flu shots available! Flu shots are free to all Lakeland employees and available at cost to all Allied Health Professionals. The flu vaccine is the #1 way to prevent the flu. October is an excellent time to get the flu shot. Get your shot while supplies last. Call 3412 to reach the Employee Health office (in the annex) or the Nursing Supervisors office at 3267 to receive the shot."

The claimant testified that she believed that the flu shot was a requirement of continued employment, and that November 10 was the last day for her to receive the shot to continue to be

scheduled for work. This was incorrect as the employer did not require their employees to have the shot to continue employment.

David England, the Human Resource Director for Lakeland Regional Hospital testified. He went to work for the employer in June 2008, subsequent to claimant working there. He said the flu shots were available to employees and had been for approximately 20 years. While they were offered to employees they were not offered to the general public. He testified that no one has been taken off the schedule or fired for not getting a vaccine.

Christina Haley, the Infection Prevention Employee Health Nurse, testified that she oversees the flu shot program for employees. She purchases the flu vaccine, provides education and administers the vaccines. She testified that the shots are recommended by the Center for Disease Control for health care workers. The Joint Commission of the State of Missouri's Department of Health and Senior Services do not require the vaccine but also recommend it. She testified that they offer the vaccine because of the State's recommendation. She also said that the main ways to prevent infection is hand washing, sanitizer, cover when cough and vaccine. She testified that this benefits Lakeland because they don't want employees and patients sick and they want their patients in the best health possible. On cross-examination she admitted that one was more likely to contract an infection in a health care setting than in other public places, and the vaccines were for the prevention of infection in patients as well as the employees.

She further said that approximately 50% of the employees obtain the vaccine. She said a nurse can call and come to the office or can be accommodated and someone will come to the floor they are working and give them the shot there.

On November 10, 2005, the claimant was working on 2 North. She called the night nurse supervisor and asked her to bring a vaccine to her. Danielle Miller was the nurse who brought her the shot. Claimant testified that she did sign Exhibit W, a consent form. She said that she

circled the (a) over 50 years old and (c) a household member of an individual in a high risk group, but not section (b) stating she has a health problem. Claimant received the shot at approximately 2 a.m. between the drug room and the nurses' station. Ms. Miller gave her the shot in the left upper arm. The claimant was not on a break; she could not leave her unit. When she got the shot she was still working, monitoring the patients and doing her regular duties.

Claimant testified that she first noticed a problem before she finished her shift. She was not feeling well, and when she went home she initially thought she was just tired from her shift. She was having a headache and felt nauseated. She went to bed. She soon started noticing that if she was holding something in her left hand and looked away she would drop it. In addition to her headache, she also developed dizziness, her left arm became numb, and her left leg did not "feel right."

Claimant did not work after November 10, 2005.

Claimant called her personal physician, Dr. Lester Conduff. She saw him on November 18, 2005. He diagnosed a probable viral syndrome and noted she was concerned about the flu shot. On November 21, 2005, Dr. Conduff ordered an MRI of the brain and MRA, both of which were negative. He prescribed a Medrol Dose Pak. On December 2, 2005, he ordered an MRI of the cervical spine. This showed spurring on C5-6 on the right and an ill defined lesion involving the spinal cord at C4. Differential diagnosis for this lesion was multiple sclerosis, transverse myelitis, infarction or low grade glioma. Claimant continued to have problems, so Dr. Conduff referred her to Dr. Kenneth Sharlin, a neurologist.

Dr. Sharlin examined the claimant on December 21, 2005. He diagnosed Transverse Myelitis. This is a condition in which the myelin sheath of the spinal cord is damaged. He found that this was described clinically following an influenza vaccine and by MRI findings. He noted

no trauma. He also ruled out glioma and multiple sclerosis. He prescribed 5 days of intravenous methylprednisolone, occupational therapy, and EMG/NCV studies.

Claimant testified that this was the first time she had information that this was related to the shot, and she called her nurse supervisor, Rena, a couple of times and told her. She also said that she called and talked to Kay, the Human Resources Director. Claimant testified that Kay said she would notify their carrier. Claimant admitted that she only notified the employer by phone and did not notify them in writing.

Dr. Sharlin's notes in February 2006 note that the claimant is dropping things with her left hand and had developed back and left leg pain. Claimant continued to treat with Dr. Sharlin and Dr. Conduff. In August 2006, Dr. Sharlin also notes claimant having increased problems with her left arm and her left leg, including one episode of falling. In October 2006 she had a new complaint of right eye pain and blurred vision.

In March 2007 claimant was referred to Dr. Manuel Comejo, an OB/GYN for abnormal bleeding. Claimant received a D&C and endometrial hydrothermal ablation for this condition. Claimant continued treatment with Dr. Sharlin.

Dr. Robert Paul examined the claimant on October 3, 2007. He concluded that the claimant's current complaints of head, neck, left arm, back and legs was proximately caused by the on-the-job injury of November 10, 2005. He recommended further treatment, and found claimant temporarily and totally disabled.

Dr. Carlo Tornatore, a neurologist at Georgetown University Hospital, reviewed the claimant's medical records and issued a report dated February 13, 2008. Dr. Tornatore agreed with the diagnosis of post vaccine transverse myelitis. He found no evidence of any alternative cause for her condition. He said the symptoms reported to Dr. Conduff eight days after her vaccine were within an appropriate temporal relationship to the vaccine and were the initial

manifestation of the disease. He concluded in his report that “It is my opinion to a reasonable degree of medical probability that the influenza vaccine caused or substantially contributed to Karen Doyle’s transverse myelitis.”

Dr. Daniel Hinthorn, professor of Internal Medicine, Pediatrics and Family Medicine and Director of Infectious Diseases, along with Dr. Dana Hawkinson, Fellow in the Division of Infectious Division at the University Of Kansas Medical Center in Kansas City, Missouri, examined the claimant and issued a report on August 18, 2008. Their impression was possible transverse myelitis following influenza immunization. They concluded that: “It is not obvious transverse myelitis was directly caused by influenza immunization though the time course does tend to support this. The brief interval seems a bit soon for onset of symptoms. Spinal cord swelling would be expected, and the steroids she received would be ordinarily be expected to help clear the condition. In this case, there was a cord lesion but no swelling of the spinal cord was recognized. The patient does have lack of reflexes in the left arm which could correlate with the cord lesion on the MRI.” They further concluded the claimant was totally disabled and would not be able to function in her previous capacity as a registered nurse.

Dr. Hinthorn and Dr. Hawkinson recommended other studies and laboratories they would like to obtain, and have an independent neurologist evaluate her for the purpose of confirming that the claimant did have transverse myelitis.

After carefully considering all of the evidence, I address the following issues:

1. Whether the claimant sustained an accident or occupational disease which arose out of the course and scope of employment.

Based upon the opinions of Dr. Sharlin, Dr. Tornatore and Dr. Paul, I conclude that the claimant sustained transverse myelitis as a result of the influenza vaccine she received on

November 10, 2005, while working at Lakeland Regional Hospital. It is also necessary to determine whether this is an injury which arose out of the course and scope of her employment.

The employer and insurer argue that the claimant was not required to have this vaccination as a condition of her employment, and that the vaccination was not a sufficient nexus between the vaccine and her employment. In support they cite *Pichainarong v. Ford Motor Company*, (2009 WL 1904573). In this case a production line employee at Ford was offered and received a flu vaccine free of charge from his employer. The shots were the product of a joint venture between the union and Ford's health insurance carrier. When he received his shot, Mr. Pichainarong was not on the line, he was not performing his duties, and the shot was administered by Ford's group health insurer, not by Ford's nurses. The vaccine was administered to him while on a break while he was working on the employer's premises. Employees were notified the shots were available but not required to get a vaccine, and members of the general public were not able to obtain these vaccines. Retirees and employees' spouses could also receive a vaccine, on a different day.

The LIRC adopted the finding of the ALJ that found that the Mr. Pichainarong was not performing his regular duties when he received the shot. And, although the vaccine benefited the employer as was the employee, as there would be fewer absences from work if workers were vaccinated, there was an insufficient nexus between the employee's job duties and the vaccine, and benefits were denied.

I find that the *Pichainarong* case is similar but that it is distinguishable in the nature of the employer's business and the nature of the duties of the employees. In this case, the employer operates an inpatient psychiatric hospital treating juvenile patients. The claimant worked as a nurse in a secure hall with 20 male patients. Christina Haley, the Infection Prevention Employee Health Nurse who oversaw these vaccines, admitted in cross-examination that one is more likely

to get infected in a health care setting than other public areas, and that the vaccines were for the prevention of infection in patients as well as the employees.

There is a significant difference between the direct relationship the health of a nurse in a hospital setting has on her work and the health of an automotive worker on a production line in making cars. The nexus between their duties and the direct benefit to the employer is significantly different in each situation. I find that the claimant's injury she sustained as a result of the being given the flu vaccine did arise out of and in the course of her employment. While it was in the interest of the employer to not only keep their employees healthy to prevent absence, it was imperative to also prevent infection of, and to keep their juvenile patients physically healthy, while they were treated for their psychiatric condition. I find that the claimant receiving a flu vaccine was important in preventing infections of the patients and therefore there is sufficient nexus between her duties and the employer's business to support finding claimant's injury compensable.

2. Whether the claimant gave the employer proper notice.

I find that although this claim was pleaded as an accident, the nature of the injury is as an occupational disease. While the claimant suspected that the vaccine was related to her illness, this was not confirmed until December 21, 2005, by Dr. Sharlin. Claimant had no basis to report this as a work injury until this time. Claimant testified that she called Rena, her supervisor, and Kay, the Human Resources Director, and told them both. Neither of these individuals testified, and there is no evidence to refute claimant's testimony. The claimant did not notify the employer in writing. That alone will not defeat her claim if the employer was not prejudiced by the lack of notice.

I find that there was no prejudice to the employer. They were notified when the claimant became aware of her injury, and there is no evidence that the claimant received any treatment that

was inappropriate or that the employer was in any way prejudiced by not knowing of her condition within 30 days of November 10, 2005, the date the vaccine was actually administered.

Attorney fees are deferred for further proceedings. Interest shall be paid as provided by law.

This is a temporary award so the matter will remain open and may be reset at the request of either party.

Date: May 25, 2011

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Naomi Pearson
Naomi Pearson
Division of Workers' Compensation