

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

Injury No.: 01-129066

Employee: Lisa Earley

Employer: Dillard's

Insurer: Labor Ready Central, Inc.

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 12, 2012. The award and decision of Administrative Law Judge Suzette Carlisle, issued July 12, 2012, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Lisa Earley

Injury No.: 01-129066

Dependents: N/A

Employer: Dillard's

Additional : N/A

Insurer: Labor Ready Central, Inc., c/o ESIS

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Hearing Date: April 13, 2012

Checked by: SC

### 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: September 24, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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: Claimant felt a pop in her left shoulder when she hung a long, beaded dress.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left shoulder
14. Nature and extent of any permanent disability: 10% PPD of the left shoulder
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$2,119.78

Employee: Lisa Earley

Injury No.: 01-129066

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$408.75
- 19. Weekly compensation rate: \$272.50
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

23.2 weeks of permanent partial disability from Employer

22. Second Injury Fund liability: No

**TOTAL: \$6,322.00**

23. Future requirements awarded: None

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Daniel Gauthier

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

Employee:	Lisa Earley	Injury No.: 01-129066
Dependents:	N/A	Before the
Employer:	Dillard's	<b>Division of Workers'</b>
Additional	N/A	<b>Compensation</b>
Insurer:	Labor Ready Central, Inc. c/o ESIS	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri

### **STATEMENT OF THE CASE**

A hearing was held at the Missouri Division of Workers' Compensation (DWC), St. Louis office at the request of Lisa Earley (Claimant), on April 13, 2012, pursuant to Chapter 287 RSMo (2000).<sup>1</sup> Claimant seeks a final award for permanent partial disability benefits (PPD) against the Employer. Attorney Daniel Gauthier represented Claimant. Dillards (Employer) and Labor Ready Central, Inc. (Insurer) appear represented today by Attorney Lisa Henderson. The Second Injury Fund (SIF) is not a party to this proceeding. Venue is proper and jurisdiction lies with the Division of Workers' Compensation. The record closed after presentation of the evidence. The court reporter is Kathy Rethemeyer.

At the hearing, Claimant tried two injury numbers, 01-129066 and 04-039200. Some evidence will be discussed in both awards, however separate awards were issued.

### **STIPULATIONS**

The parties stipulated to the following, that on or about September 24, 2001:

1. Claimant was employed by the Employer; and sustained an accident which arose out of and in the course of employment in St. Louis County;
2. Employer and Claimant operated under the Missouri Workers' Compensation Law;<sup>2</sup>
3. Employer's liability was fully insured;
4. Employer had notice of the injury;
5. A claim for compensation was timely filed;
6. Claimant's average weekly wage was \$408.75 and the rate for PPD and temporary total disability (TTD) was \$272.50;
7. Employer paid no TTD benefits and;
8. Employer paid medical expenses totaling \$2,119.78.

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<sup>1</sup> All statutory references in this award are to the 2000 Revised Statutes of Missouri unless otherwise stated.

<sup>2</sup> All references in this award to the Employer also refer to the insurer unless otherwise stated.

### **ISSUE**

The sole issue for disposition is the nature and extent of the Employer's liability for PPD benefits.

### **EXHIBITS**

Claimant's Exhibits A through Q were admitted into evidence without objection. The exhibits refer to both injury numbers 01-129066 and 04-039200. Employer's Exhibits 1 through 3 were admitted without objection. SIF offered no additional exhibits. To the extent there are marks or highlights contained in the exhibits, they were made prior to being made part of this record, and were not placed there by the undersigned administrative law judge.

### **FINDINGS OF FACT**

All evidence was reviewed but only evidence which supports this award is discussed below. Any objections not ruled upon at the hearing or in this award are now overruled.

1. Claimant testified at the hearing and her testimony was credible. Claimant is a high school graduate. At the time of the hearing the Claimant was 50 years old.
2. Claimant worked for Employer as a salesclerk for eight years. Her job duties included customer service, inventory, cleaning dressing rooms, carrying large quantities of merchandise, bending, pulling, tugging and jerking on various items.
3. On September 24, 2001, Claimant was hanging a long, beaded dress when she felt a snap in her left shoulder. Prior to that injury she had no left shoulder problems.
4. Claimant was initially treated at SSM Healthcare, diagnosed with a left biceps strain, and prescribed medication and home exercises.
5. Russell C. Cantrell, M.D., diagnosed a left shoulder strain, prescribed medication and physical therapy, and recommended trigger point injections which Claimant declined.
6. Current complaints include shooting pain in the back of her shoulder with overhead activity, and hand numbness. Recently she aggravated her left shoulder washing windows.
7. On July 25, 2002, Dr. Cantrell performed an IME and found Claimant had achieved maximum medical improvement (MMI) for her left shoulder injury. On February 10, 2003, Dr. Cantrell rated 2% PPD of the left shoulder, and released Claimant without restrictions. Claimant received no additional treatment for her left shoulder.
8. Additional ratings for the left shoulder include: 25% PPD - Dr. Poetz in 2003 and 20% PPD for the same shoulder, same injury in 2006, Dr. Nogalski - 1% PPD of the shoulder in 2007, and Dr. Volarich - 25% PPD of the left shoulder in 2010.

**FINDINGS OF FACT and CONCLUSIONS OF LAW**

In a workers' compensation proceeding, the employee has the burden to prove by a preponderance of credible evidence all material elements of his claim, including Second Injury Fund Liability. *Meilves v. Morris*, 422 S.W.2d 335, 339 (Mo. 1968).

A permanent partial award is intended to cover claimant's permanent limitations from a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983).

I find Claimant's testimony is credible that she has problems with overhead activities. Dr. Cantrell prescribed therapy and medication, and rated 2% PPD of the left shoulder. Dr. Volarich rated 25% PPD of the left shoulder. Based on credible evidence by Drs. Cantrell and Volarich, and Claimant I find she sustained 10% PPD of the left shoulder.

**CONCLUSION**

The Employer is liable for permanent partial disability benefits. The award is subject to a lien in favor of Claimant's attorney of 25% for legal services rendered.

Made by: \_\_\_\_\_

**Suzette Carlisle**  
*Administrative Law Judge*  
*Division of Workers' Compensation*