

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

Injury No.: 08-123293

Employee: Judy Flack
Employer: St. John's Mercy Medical Center
Insurer: Self-Insured

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 November 16, 2012. The award and decision of Administrative Law Judge Kathleen M. Hart, issued November 16, 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 13th day of February 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Judy Flack

Injury No.: 08-123293

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: St. John's Mercy Medical Center

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

Additional Party: n/a

Insurer: Self-insured

Hearing Date: August 30, 2012

Checked by: KMH

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: March 1, 2008
5. State location where accident occurred or occupational disease was contracted: 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 occurred or occupational disease contracted:
Claimant injured her neck when she tripped over electrical cords taped to the floor.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: Neck
14. Nature and extent of any permanent disability: 25% BAW referable to the neck
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$2,500.00

Employee: Judy Flack

Injury No.: 08-123293

- 17. Value necessary medical aid not furnished by employer/insurer? \$1,104.01
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$742.72 for TTD; \$389.04 for PPD
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$1,104.01
13 5/7 weeks of temporary total disability (or temporary partial disability)	\$10,185.87
100 weeks of permanent partial disability from Employer	\$38,904.00

22. Second Injury Fund liability: No

TOTAL: \$50,193.88

23. Future requirements awarded: None

Said payments to begin immediately 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:

SAM EVELAND

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Judy Flack

Injury No.: 08-123293

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: St. John's Mercy Medical Center

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

Additional Party: n/a

Insurer: Self-insured

Checked by: KMH

A hearing was held on the above captioned matter on August 30, 2012. Judy Flack (Claimant) was represented by attorney Sam Eveland. St. John's Mercy Medical Center (Employer) was represented by attorney Maurice Early. The Second Injury Fund (SIF) was voluntarily dismissed prior to trial.

STIPULATIONS

The parties stipulated to the following:

1. Claimant was injured by accident March 7, 2008 while in the course and scope of her employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was sufficient to entitle her to a TTD rate of \$742.72 with a corresponding PPD rate of \$389.04.
6. Employer paid no TTD and paid medical benefits of \$2,500.00.
7. The outstanding medical bills related to Claimant's neck surgery total \$1,104.01

ISSUES

The parties stipulated the issues to be resolved by trial are as follows:

1. Past medical expenses of \$1,104.01.
2. TTD.
3. PPD.

FINDINGS OF FACT

Based upon the competent and substantial evidence and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 49 year-old female who worked as a nurse for eight years with Employer. Claimant's duties involved caring for patients in the different departments, including the trauma and pediatric intensive care units. While working for Employer on March 1, 2008, Claimant tripped over a television cord that was taped to the floor. Claimant fell and injured her neck, back, knees and right foot.
2. Claimant received treatment that day at St. John's Mercy Medical Center emergency room. X-rays of her right foot were negative and Claimant was discharged with prescriptions for naproxen and Skelaxin. Claimant was seen by Corporate Health in follow up. Claimant complained of neck pain, mild low back and knee pain, and right foot pain. Neck x-rays were obtained and showed no fracture or subluxation, normal soft tissues and evidence of anterior cervical decompression and fusion from C5-7 with hardware present. Claimant was returned to work full duty with no restrictions on March 10, 2008, but her neck complaints persisted.
3. Claimant previously underwent neck surgery performed by neurosurgeon Dr. Charles Wetherington on March 18, 2002, prior to working for Employer. Claimant returned to work full duty after this surgery. She testified that after the 2002 surgery she had some muscle spasms that improved over time. She was able to run and lift weights. Claimant also experienced problems with the muscles in her left foot which improved once she was able to work out and run again.
4. After being released from Corporate Health in March 2008, Employer denied Claimant's request for additional treatment. Claimant sought treatment with her own physician, Dr. Cheryl Faber for multiple sclerosis (MS) and increasing pain in her neck. Dr. Faber ordered a cervical spine MRI, which showed postsurgical changes and a disc protrusion causing canal stenosis at the C4-C5 level, above her prior fusion.
5. Claimant sought treatment from Dr. Wetherington on June 3, 2008 for her recent neck complaints. Dr. Wetherington recommended Claimant first undergo steroid injections to try to determine the etiology of her symptoms. He opined if Claimant were to achieve

short-lasting good relief, he would consider surgery to extend her cervical spine fusion, and if she would not achieve relief at all, he would be concerned for exacerbation of her MS symptoms.

6. Dr. Steven Granberg treated Claimant with cervical epidural steroid injections on June 3, 2008 and June 16, 2008. Claimant obtained some relief of her neck pain, but it was not significant. Dr. Wetherington felt that surgical intervention was reasonable.
7. Claimant underwent surgery by Dr. Wetherington again on July 25, 2008. Dr. Wetherington performed a cervical discectomy and decompression of spinal canal and nerve root at C4-5, as well as a fusion, plating, and bone grafting at the same level. Although bony fusion had not yet completed as of October 30, 2008, Dr. Wetherington allowed Claimant to return to work.
8. Claimant also returned to Dr. Faber on October 30, 2008 in follow up for MS and her fusion surgery. Claimant reported she was experiencing good results with the surgery and was participating in physical therapy.
9. On May 23, 2009, Claimant was involved in a motor vehicle accident. While stopped waiting to yield onto a highway, her vehicle was struck from behind by another vehicle traveling at approximately 10 miles per hour. Claimant was taken to the emergency room at St. John's with complaints of headache, shoulder pain and neck pain.
10. Claimant then returned to Dr. Wetherington with complaints of neck stiffness and a left frontal headache and right shoulder pain. Dr. Wetherington recommended a right shoulder MRI and follow up with an orthopedic surgeon. He also recommended exercises to help with Claimant's neck pain and stiffness.
11. Dr. Faber saw Claimant again on August 18, 2009. Dr. Faber noted Claimant was having complications with her lower extremities due to MS, as well as involuntary spasms involving Claimant's neck, right shoulder and trapezius. Dr. Faber felt Claimant would benefit from botulinum injections similar to those she had performed in the past for the lower extremities and cervical problems due to MS.
12. Dr. Daniel Sohn saw Claimant on March 1, 2010 for a pain management consultation. Claimant described her pain as between 4/10 and 10/10, averaging 6/10. She reported the pain on sitting, standing, walking and lying down. Some of the medications left her drowsy. Dr. Sohn's diagnosis was cervicgia post C4 to C7 fusion. He prescribed Tramadol, Zanaflex as needed and Mobic, and would consider other options as Claimant's response dictated. Dr. Sohn also recommended exercises and advised Claimant to resume her normal activity.
13. Claimant's medical expert, Dr. Dwight Woiteshek, reviewed the records and examined Claimant on May 1, 2010. Dr. Woiteshek opined Claimant's neck injury sustained when she tripped on a wire while working for St. John's as a nurse was the prevailing factor in causing her traumatic C-4-5 injury, the need for medical treatment, including the surgery performed on July 25, 2008, and permanent disability.

14. Dr. Woiteshek concluded Claimant had reached maximum medical improvement (MMI). He rated her disability at 40% PPD of the BAW at the cervical spine level due to ongoing discomfort, stiffness and weakness in the cervical spine area. He opined this disability is a hindrance to her employment or reemployment. Dr. Woiteshek assigned a 5% PPD of the BAW due to the previous cervical surgery performed in 2002, which was relatively asymptomatic. Dr. Woiteshek further rated a 2% PPD of the BAW due to Claimant's stable MS.
15. At the request of the Employer, Dr. James Coyle reviewed the records and examined Claimant on September 28, 2011. Dr. Coyle noted there was no evidence Claimant was experiencing neck symptoms prior to her fall. He issued a report opining the 2008 fall was the prevailing factor in causing Claimant's neck pain.
16. Dr. Coyle concluded Claimant had reached MMI. He noted Claimant has marked reduction of cervical rotation, flexion, and extension. A 2009 MRI showed nonunion of the fusion, and Dr. Coyle opined Claimant could consider additional surgery if her symptoms warranted. He rated Claimant's neck disability from the March 1, 2008 injury at 15% of the BAW at the cervical spine level.
17. Claimant testified she missed work from July 25, 2008 to October 30, 2008 (13 5/7 weeks) due to the second neck surgery. She was paid no TTD benefits.
18. Claimant initially returned to work in a light duty capacity, but later stopped working for St. John's Mercy Medical Center because she was physically unable to do perform the same duties as she had in the past, including heavy lifting or pushing beds.
19. Claimant now works for the Missouri Department of Mental Health. She began her employment there working as a nurse, and currently works in the main office supervising other nurses. This job is less physically demanding and accommodates her significant physical restrictions.
20. Claimant testified her neck problems continue. She has a deep, constant ache in her upper neck. She experiences muscle tightness and spasms and can only rotate her head a few degrees. Claimant takes muscle relaxers for the tightness and spasms. Claimant testified strong medications help with the pain, but she cannot work when she takes those medications. She continues to seek medical treatment with her neurologist and also sees a chiropractor.
21. Claimant continues to experience problems with her daily activities. She is no longer able to work in the yard or maintain a garden. She has difficulties performing housework. She no longer runs or lifts weights. Claimant is unable to enjoy outdoor activities with her children. Claimant has had difficulty becoming acclimated to sleeping on her back, and so she does not sleep well.
22. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the stipulations of the parties, the competent and substantial evidence presented and the applicable law, I find the following:

1. Claimant is entitled to 13 5/7 weeks of TTD, totaling \$10,185.87.

Claimant seeks temporary total disability compensation for the period of July 25, 2008 through October 30, 2008. The employer and insurer stipulated no temporary total disability payments were paid.

RSMo § 287.270 provides that an injured employee is to be paid compensation during the continuance of a temporary total disability for up to a maximum of 400 weeks. Total disability is defined in § 287.020.6 as “the inability to return to any employment and not merely . . . [the] inability to return to the employment in which the employee was engaged at the time of the accident.”

Both medical experts opine Claimant’s fall was the prevailing factor in causing her injury. Dr. Woiteshek further opined her treatment and surgery was reasonable and necessary to treat the injury, and his opinion is unrefuted.

Claimant went out of work on July 25, 2008, the date of her neck surgery. Temporary total disability benefits are intended to cover healing periods. *Williams v. Pillsbury Co.*, 694 S.W.2d 488, 489 (Mo.App. 1985). Her surgeon, Dr. Wetherington, released her back to work (partially upon Claimant’s request) on October 30, 2008. An employee receives compensation until her condition reaches the point where she is not further expected to improve. *Vinson v. Curators of Univ. of Missouri*, 822 S.W.2d 504 (Mo.App. 1991).

Employer is ordered to provide Claimant TTD in the amount of \$742.72 per week for 13 and 5/7 weeks for TTD benefits to cover the healing period associated with her surgery. Claimant’s surgery was performed on July 25, 2008 and Dr. Wetherington released her to work on October 30, 2008. Employer is therefore liable for \$10,185.87 in TTD benefits for this period.

2. Claimant is entitled to 25% PPD to her cervical spine, totaling \$38,904.00.

Claimant also seeks permanent partial disability benefits. RSMo § 287.190.6(1) defines PPD as a disability “that is permanent in nature and partial in degree.” Section 287.190.6(2) further provides such disability is to be “demonstrated and certified by a physician,” whose

opinion addresses the compensability and disability within a reasonable degree of medical certainty. Dr. Woiteshek and Dr. Cole agree Claimant has PPD referable to her neck injury of 2008, but disagree as to the percentage.

Dr. Woiteshek found Claimant has 50% of normal ROM with a 40% PPD, while Dr. Coyle determined Claimant has only 20% of normal ROM but rated her at 15% PPD. Claimant continues to experience constant aching and stiffness in her neck and problems with sleep. She would like to work in a hospital as she once did, but cannot due to her condition. I find Dr. Woiteshek's opinion more persuasive. His opinion takes into account Claimant's problems with physical activities as well as her continuing symptomology. While Dr. Coyle notes Claimant's neck symptoms persist, he merely states she encounters no difficulties as it pertains to her work in a supervisory capacity.

I find Claimant sustained PPD of 25% of the body as a whole referable to her neck. Employer is therefore liable in the amount of \$38,904.00 representing 100 weeks of PPD benefits at the 400-week level.

3. Employer is liable for past medical expenses of \$1,104.01.

The parties stipulated Claimant paid \$1,104.01 in co-pays for her medical treatment. Dr. Woiteshek's credible and undisputed opinion found Claimant's medical treatment was necessary, including the surgery performed by Dr. Wetherington in July 2008. Employer is therefore ordered to reimburse claimant for the expenses incurred in obtaining such treatment.

Made by: _____
KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation