

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

Injury No.: 01-164892

Employee: Sharon D. Gill
Employer: SSM Healthcare/SSM Rehab
Insurer: SSM Health Businesses c/o Sedgwick Claims Management Service
Date of Incident: October 22, 2001
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (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 (ALJ) 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 January 27, 2005, and awards no compensation in the above-captioned case.

The Commission finds that the ALJ correctly weighed and evaluated the lay and medical testimony in reaching his conclusions as to the issues presented. The Commission finds that the ALJ correctly found that the incident of October 22, 2001, wherein employee complained of injuries sustained while reaching for a parking ticket was a de minimus or innocuous event, had no real genesis in the employee's employment and was not a substantial factor in the subsequent medical events. *Reese v. Gary & Roger Link, Inc.*, 5 S.W. 3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001), *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. banc 2003).

The award and decision of Administrative Law Judge Matthew D. Vacca, issued January 27, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of July 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Sharon Gill Injury No.: 01-164892
Dependents: N/A Before the
Employer: SSM Healthcare/Rehab **Division of Workers'**
Additional Party:N/A Department of Labor and Industrial **Compensation**
Insurer: Sedgwick Claims Management Services Relations of Missouri
Hearing Date: October 25, 2004 Jefferson City, Missouri
Checked by: MDV:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: October 22, 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? No
7. Did employer receive proper notice? No
8. Did accident or occupational disease arise out of and in the course of the employment? No
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: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$13,206.90
16. Value necessary medical aid paid to date by employer/insurer? \$42,451.79

Employee: Sharon Gill Injury No.: 01-164892

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$804.45
19. Weekly compensation rate: \$536.30/\$329.42
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Sharon Gill	Injury No.: 01-164892
Dependents:	N/A	Before the
Employer:	SSM Healthcare/Rehab	Division of Workers'
Additional Party:	N/A	Compensation
Insurer:	Sedgwick Claims Management Services	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: MDV:tr

PREFACE

Claimant has had longstanding injury to her left shoulder. She had surgery with Dr. Roush on the shoulder on July 24, 2001. She was still undergoing physical therapy when on October 22, 2001 as she was entering a parking garage at SSM (Employer) in Clayton, Missouri her shoulder popped while reaching for a parking ticket. She then filed this Claim for Compensation alleging work injuries to that shoulder which she believes arose out of and in the course of employment. Claimant requests benefits in excess of \$552,000.00. I find for Employer and deny all compensation based on the finding that work was not a substantial factor in the development of the condition.

ISSUES

The issues presented for resolution by way of this hearing were accident, arising out of and in the course of employment, medical causation, past medical expenses, the nature and extent of any permanent partial disability and future

medical care.

FINDINGS OF FACT

1. When Claimant was seventeen years old she fell on ice at the Lincoln Academy in Kansas City. Claimant went to the emergency room and a physician manipulated the dislocated shoulder back into place.
2. Claimant was next working in Jefferson City at St. Mary's Hospital when she was lifting a patient and injured her left shoulder again. Dr. Domke injected the shoulder and placed Claimant in a sling for two to three weeks. Claimant's best estimate was that this injury took place in the 1990s.
3. Claimant also had a cervical strain in 1989 while in Jefferson City. Dr. Domke treated Claimant as did Dr. Cox. A myelogram was performed and Claimant missed several days of work.
4. Subsequently Claimant moved back to St. Louis and in September of 1999 was treating with Dr. McDonald, her primary care physician, with complaints she was having in her left shoulder. Dr. McDonald referred Claimant to Dr. Roush and an MRI was performed in October of 1999. Claimant was diagnosed with impingement syndrome and instability in the left shoulder. Claimant treated conservatively with Dr. Roush for her left shoulder complaints between October 27, 1999 and January 11, 2000 when she was discharged from further care with directions that she should return to him if she had any further problems.
5. Claimant started working at SSM Rehab in St. Louis in February of 2001.
6. On June 13, 2001 Claimant returned to see Dr. Roush because of recurrent pain in the left shoulder that did not let up. Claimant describes the shoulder pain as if something was impinging in the shoulder or it was getting "caught". Claimant also had neck pain when she saw Dr. Roush in June of 2001. Claimant was also experiencing intermittent numbness into the left arm as well as into the left leg on June 13, 2001.
7. Dr. Roush performed another MRI and again diagnosed impingement and instability.
8. The MRI of Claimant performed by Dr. Roush on July 11, 2001 showed a normal cervical spine and EMG with early carpal tunnel syndrome of the upper extremities on the left and equivocal findings of C5-6 nerve root irritation on EMG. Claimant by then had received conservative care including injections and physical therapy and therefore Dr. Roush decided to evaluate her by way of shoulder arthroscopy.
9. Dr. Roush performed an exploratory arthroscopic procedure to see the exact internal condition of the shoulder. Surgery was undertaken July 24, 2001 and Dr. Roush further performed an open acromioplasty with thermo-capsule shrinkage.
10. In the arthroscopic procedure, Dr. Roush found no intra-articular tears in the labrum or anterior capsular areas although the anterior drawer was lax. He performed an open acromioplasty for impingement and thermal capsular shrinkage of both the anterior and inferior capsules.
11. Dr. Roush started Claimant on another round of physical therapy and examined the Claimant again on October 3, 2001.
12. Claimant was in a sling up until the October 3, 2001 visit and she was undergoing physical therapy. On October 3rd, Dr. Roush allowed Claimant to start lifting up to five pounds with her left arm.
13. On October 22, 2001 Claimant was entering the parking garage at SSM in Clayton, Missouri and taking a parking ticket out of the dispensing machine at the garage when the shoulder popped.
14. Claimant was scheduled for physical therapy that day at SSM but did not keep that appointment. Claimant worked at the Hazelwood Village SSM Rehab location. This incident occurred at the Clayton location.
15. Claimant contends that she reported the injury to her supervisors but that no medical treatment was offered because Claimant was already treating with Dr. Roush for injuries to her left shoulder.
16. Where Claimant was actually scheduled for the physical therapy appointment on October 22, 2001, Clayton or Hazelwood, is unclear, but she missed that appointment. Claimant returned to physical therapy the following week and also saw Dr. Roush on October 31.
17. Dr. Roush was the first doctor Claimant saw after she tried to take the ticket from the parking lot machine. Claimant continued treating with Dr. Roush but wasn't getting any better so she sought out treatment on her own with Dr. Burns for a second opinion. Claimant did not specifically ask the Employer to provide medical care or for a second opinion.

18. On October 3, 2001 Dr. Roush thought Claimant was doing well in physical therapy and having less popping than she did pre-operatively. The plan was to extend physical therapy and return in four weeks.
19. Claimant returned to Dr. Roush on October 31, 2001 and reported that she was doing well until, as she was reaching out of her car into a parking lot getting a ticket, she felt something pop in the shoulder. Since then she had pain and feelings of tightness in her muscles in the posterior shoulder.
20. Claimant was not getting any better and by November 13, 2001 Dr. Roush wanted to try an injection but Claimant requested an MRI instead of the injection. Claimant did not follow up with Dr. Roush until a year later in November 2002. By then Claimant had seen multiple other physicians, orthopedic surgeons, and had a variety of pain clinic visits and neurologists visits. Based on Claimant's description of the parking incident, Dr. Roush thinks that the parking ticket activity seems to have caused the injury in question.
21. Following Dr. Roush's care, Claimant eventually underwent arthroscopic debridement and manipulation by Dr. Emanuel with findings of frozen shoulder and scar tissue. Dr. Emanuel performed surgery on November 15, 2002.
22. Claimant saw Dr. Schlafly in January of 2003 and May of 2004. Claimant's strength had gotten a little better by the time she saw Dr. Schlafly.
23. Claimant saw Dr. Burns on August 28, 2004 for an evaluation and Claimant told Dr. Burns she was having pain in the neck and in the shoulder, numbness into her arms and fingers and tingling pain in the leg. These are the same complaints she had when she saw Dr. Roush prior to the surgery of July 24, 2001.
24. Dr. Katherine Burns injected Claimant's shoulder. Dr. Katherine Burns referred Claimant to Dr. Jafri and Dr. Jafri repeated the MRI.
25. Claimant saw Dr. Harmeen Chawla in March of 2002. Dr. Chawla reduced Claimant to a three day a week work schedule.
26. Dr. Chawla diagnosed a cervical strain, left frozen shoulder, reflex sympathetic dystrophy, thoracic outlet syndrome, and fibromyalgia. Fibromyalgia is a catch all diagnosis used to denote pain with no objective pathology.
27. Dr. Chawla referred Claimant to Dr. Emanuel and Dr. Emanuel referred Claimant to Dr. Susan Mackinnon. Claimant was also referred to Dr. Sam Page for pain management.
28. Claimant's manager at SSM told her she would have to take medical leave and use her own time for treatment.
29. Claimant is on prescriptions for MS Contin, Neurontin, Zanaflex, Nortriptyline, Selexa and Lexapro, morphine sulphate, hydrocodone, Bextra, and Ambien.
30. As a result of the injury, Claimant alleges that she has unsteady walking and abnormal gait problems, numbness in the leg and foot, and that she only grows hair on one side of her leg. The pain that Claimant experiences has diminished her sex drive and has resulted in marital friction and her divorce.
31. Claimant expects to undergo future pain management, future massage therapy, future biofeedback therapy, future acupuncture therapy, and future physical therapy.
32. Claimant now works for United Healthcare as a risk manager at a desk job. Although she has not suffered a pay decrease, she has decreased her hours to part-time.
33. Claimant is depressed.
34. Claimant's primary care physician, Dr. Kim McDonald, doesn't note a history of the parking lot incident of October 22, 2001 until September 30, 2002 in an addendum to the September 24, 2002 note.
35. In notes taken by Dr. McDonald on August 21, 2002 and September 8, 2002 there is no mention of the parking lot incident although Dr. McDonald did then believe Claimant needed to be seen by a physiatrist and evaluated for thoracic outlet syndrome. Dr. McDonald's notes on November 1, 2001 indicates, "left shoulder [unintelligible] and healed".
36. Dr. Katherine Burns thought that Claimant had RSD as well as did Dr. Chawla and that Claimant had significant relief from a nerve block.

37. Dr. Kumar evaluated Claimant and she was also referred to Dr. Gray for help with cervical spine pain and spasms.
38. On December 7, 2001 Claimant had some numbness in her face and Dr. Burns was concerned that she had some other pathological process such as multiple sclerosis and sent her for workup regarding that.
39. Dr. Ahmed Jafri evaluated Claimant for twitching on the left side of her face and left arm pain and numbness.
40. Dr. Horenstein also consulted with Claimant for neurological complaints.
41. Dr. Page thought Claimant had RSD of the left upper extremity and in March of 2003 he considered stellate ganglion blocks and performed trigger point injections.
42. Dr. Mackinnon evaluated Claimant and offered no surgical procedures. A three-phase bone scan was negative for RSD but positive for shoulder pathology in July of 2002.
43. Dr. Galatz evaluated Claimant in July of 2002 and recommended against any further surgical procedures thinking that the thermal capsular shrinkage of a year earlier caused the shoulder instability and opined that often a shoulder is worse following this procedure than before.
44. Dr. Gahn evaluated Claimant in September of 2002 at the request of Dr. Chawla. He reports degenerative disc disease at C4-C5 and C5-C6.
45. Dr. Beyzer, at Albanna Consultants, performed a neurological consultation. He gave Claimant a Lidocaine patch and recommended against neurosurgery with Dr. Albanna.
46. As mentioned before, Dr. Emanuel performed a closed manipulation and arthroscopic debridement of the shoulder on November 15, 2002 and started physical therapy for range of motion function.
47. Dr. Kuhn examined Claimant in October of 2003.
48. Dr. Chawla believed Claimant sustained a compensable work accident on October 22, 2001. She believes that the Claimant was doing well from Dr. Roush's surgery until that point when she heard a pop and had more severe pain requiring further surgery after which she developed RSD and chronic pain syndrome. Dr. Chawla thought that the incident on October 22, 2001 was a substantial contributing factor to Claimant's condition and the surgery performed by Dr. Emanuel in December of 2002.
49. Dr. Schlafly diagnosed bursitis and adhesive capsulitis of the left shoulder, cervical strain and reflex sympathetic dystrophy as a result of the parking ticket incident on October 22, 2001. Dr. Schlafly opined that Claimant had a 10% permanent partial disability of the body as a whole referable to the neck for the cervical strain, 40% permanent partial disability of the left shoulder with 10% of that preexisting. He also believed that 30% was attributable to the injury of October 22, 2001. Dr. Schlafly believes that Dr. Emanuel's surgery in December of 2002 was reasonable and necessary and that she was at maximum medical improvement three months following Dr. Emanuel's surgery. He believes that Claimant needs to remain under the care of Dr. Bonner for prescription care and that she may need pain management treatment every three months.
50. Claimant requests \$32,952.00 in unpaid medical expenses, 189.6 weeks of permanent partial disability from Employer, \$95,925.00 for future medical treatment, and \$305,419.50 for future prescription medication. This would amount to \$496,754.53 not including the \$13,206.90 paid for temporary total disability and \$42,451.79 in medical benefits already paid.

RULINGS OF LAW

1. The incident on October 22, 2001 while reaching for a parking ticket was not a substantial factor in the development of all or any of Claimant's current complaints of ill being. The reaching out for the ticket may have been a triggering factor in some shoulder complaints but it was not a substantial factor in their development.
2. To be compensable under the Workers' Compensation Act, an injury must clearly be work related. *Kasl v. Bristol Care*, 984 S.W.2d 852, 853 (Mo.banc 1999). For the injury to be compensable the Claimant must show that work was a substantial factor in the cause of the injury or condition. §287.020.2 RSMo. The injury cannot come from a hazard or risk unrelated to the employment. §287.020.3(2)(d) RSMo (2004). A hazard or risk unrelated to the employment is one that is "idiopathic", those peculiar to the individual or innate. *Kasl*, 984 S.W.2d at 854.

3. Claimant was treating with Dr. Roush at the time she reached out of the car to take the parking ticket at the garage. Claimant at that time had an innate or individualized weakened left shoulder condition. The employment provided no enhanced risk to Claimant of injury of that shoulder. At best, the activity of reaching out to grab the garage ticket was merely a precipitating or triggering factor in the shoulder complaints. §287.020.2 RSMo (2004). *Abel v. Mike Russell Standard Service*, 924 S.W.2d 502, 504 (Mo.banc 1996).

-

DISCUSSION

There is no denying that Claimant has had severe preexisting left shoulder problems. The source of those left shoulder problems was falling on the ice when she was seventeen, lifting a patient while working in Jefferson City, progressive deterioration leading up to Dr. Roush's June 2001 visit and the July 2001 surgery itself. Dr. Galatz believes the thermo capsular procedure itself often causes more problems than it solves.

The ticket reaching incident in October of 2001 appears only coincidental. For example, Claimant was receiving physical therapy at SSM following Dr. Roush's surgery. She could just have easily been on her way to that physical therapy and experienced the same pop on entering the same parking garage for treatment as she did entering the parking garage for work. The work merely provided a place for the non-work related condition to present or manifest itself. The incident has no real genesis in the work itself.

There is no doubt that Claimant had a difficult course of treatment following Dr. Roush's July surgery. Problems ranged from scar tissue buildup to possible thoracic outlet syndrome, reflex sympathetic dystrophy, regional pain syndrome, bursitis, depression, pain, diminished sex drive and breakup of her marital relationship.

Nevertheless, I do not think that any of these conditions and medical and personal problems can be fairly traced to the work. The incident on October 22, 2001 was innocuous and the work cannot fairly be characterized as the cause of Claimant's shoulder condition.

The claim is for \$552,413.22 in total workers' compensation benefits. I am not persuaded that Claimant's work caused any damage to her, and certainly not damage of that magnitude.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation