

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

Injury No.: 10-087056

Employee: Georgia Goriola  
Employer: Alma Cook Union Manor  
Insurer: Farmers Insurance Company

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 December 9, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued December 9, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 12th day of April 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Georgia Goriola

Injury No.: 10-087056

Dependents: N/A

Employer: Alma Cook Union Manor

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

Additional Party: N/A

Insurer: Farmers Insurance Company

Hearing Date: November 22, 2011

Checked by: LJW

### 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: Alleged as July 19, 2010
5. State location where accident occurred or occupational disease was contracted: St. Louis City, 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? 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? Not verified
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleges she was attacked by a facility resident.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged head injury.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Issued by DIVISION OF WORKERS' COMPENSATION

Employee: Georgia Goriola

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$136.00
- 19. Weekly compensation rate: \$90.67 / \$170.00 (30 hour rule)
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

21. Amount of compensation payable: - 0 -

TOTAL: - 0 -

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

Employee:	Georgia Goriola	Injury No.:	10-087056
Dependents:	N/A	Before the	
Employer:	Alma Cook Union Manor	<b>Division of Workers'</b>	
Additional Party:	N/A	<b>Compensation</b>	
		Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Farmers Insurance Company	Checked by:	LJW

### **PRELIMINARIES**

A hearing for final award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on November 22, 2011. The case was taken under submission at the close of testimony. Georgia Goriola (Claimant) represented herself as a pro se litigant. Alma Cook Union Manor (Employer) is insured by Farmers Insurance Company, and represented by Attorney Hope Whitehead. The Second Injury Fund is not a party to the claim.

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: accident; arising out of and in the course and scope of employment; and notice. The parties seek issuance of a partial award deciding these issues. The parties were advised if Claimant failed to prevail on any of the issues placed in dispute, a final award would issue. Claimant offered Exhibits A-C, and Exhibits A-B were admitted. Employer offered Exhibit 1-5, which were admitted over objections. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

### **FINDINGS OF FACT**

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be reviewed and summarized.

1. Claimant worked the 11 pm-7 am shift (night shift) for Employer. Claimant testified she was attacked by Employer's resident during July 2010. Claimant does not recall the exact date she was attacked. Claimant alleged the resident jumped on her back knocking her to the ground, knocking off her glasses and beating her. Claimant alleged after the attack her face was bruised, swollen and scratched. Claimant testified shortly after the attack, she encountered a co-worker, Katherine Bush, and Ms. Bush was able to view her injuries. At the change of shift, Claimant alleged she notified Valerie Smith, the facility manger, of the attack and she completed an incident report for Ms. Smith. Claimant testified she requested medical care but was informed by Ms. Smith "she was on her own." Claimant alleged Ms. Bush was present when Ms. Smith was informed of the attack. Approximately one week after the attack, Claimant testified she began to

experience headaches and dizziness, and she sought medical care at a local emergency room. As of hearing, Claimant testified she was terminated by Employer during September 2010, and continues to experience headaches and dizziness, but she can't afford to fill the prescriptions given to treat her injuries.

2. Ms. Katherine Bush testified she worked for Employer for a portion of July 2010 on the night shift. Ms. Bush was terminated by Employer in late July 2010. Ms. Bush testified she didn't work on July 19, 2010, but did work on July 9, 2010, and Claimant also worked that night. Ms. Bush testified on July 9<sup>th</sup>, Claimant told her "something bad happened," but she did not witness the event nor did she see any sign of facial injury to Claimant. Ms. Bush testified Claimant later told her she had reported the attack to Ms. Smith, but Ms. Bush denied overhearing the conversation held between Ms. Smith and Claimant.<sup>1</sup>

3. Ms. Valerie Smith has been a manager of Employer's facility for the past ten years. Ms. Smith denies being informed by Claimant of the attack. Ms. Smith testified she was first informed of Claimant's alleged attack when the Missouri Division of Workers' Compensation notified Employer of Claimant's claim. Ms. Smith testified had she known of the attack, the resident would have been transferred to a hospital for further evaluation, as the resident would pose a safety risk to other residents and staff. Ms. Smith testified the resident accused of the attack has resided at the facility for 4-5 years, and did not have a history of this type of behavior. Using facility time sheets, Ms. Smith demonstrated Claimant did not work on July 19, 2010. The time sheets did demonstrate Claimant and Ms. Bush worked on July 9<sup>th</sup>. (Exhibit 5) Ms. Smith also demonstrated the resident was present in the facility on July 9<sup>th</sup>, but neither Claimant nor Ms. Bush indicated on their Resident Shift Report that any resident problems occurred on their shift. (Exhibits 3&4)

### **RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS**

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

#### **Issues relating to accident**

Claimant bears the burden of establishing the essential elements of her claim. Included in the essential elements, is establishing a work accident occurred. The Missouri Workers' Compensation law was amended during the 2005 legislative session. Included in the 2005 amendments to Chapter 287, was the express intent of the legislature rejecting and abrogating established case law that had defined "accident," and changing statutory construction to strict construction. *Pile v. Lake Regional Health System*, 321 S.W.3d 463 (Mo.App. 2010) (citations omitted) Section 287.020.2 RSMo., 2005,<sup>2</sup> now provides: The word "accident" as used in this chapter shall mean 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

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<sup>1</sup> Ms. Bush's recollection regarding the alleged conversation between Claimant and Ms. Smith changed multiple times during testimony, but upon close questioning Ms. Bush denied being present or overhearing Claimant's conversation with Ms. Smith.

<sup>2</sup> Unless otherwise indicated all further references are to RSMo Supp.2005.

event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

Claimant is unable to state what date the alleged injury occurred, although according to Employer's records, the likely date would be July 9, 2010. The event was un-witnessed. Claimant relied on her co-worker, Ms. Bush, to corroborate her assertion the attack produced evidence of injury in the form of swelling, bruising and scratches on her face. However, Ms. Bush testified she did not see any injury to Claimant's face. Further, the Resident Shift Report prepared by Claimant and Ms. Bush on July 9, 2010, indicated there had been no problems with any resident during their shift. Based on the evidence presented, I find Claimant failed to meet her burden to demonstrate that a work accident occurred.

**CONCLUSION**

Claimant failed to establish an accident occurred. Employer owes no benefits. As Claimant failed to establish accident, the remaining issues in dispute are moot.

Date: \_\_\_\_\_

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

LINDA J. WENMAN  
*Administrative Law Judge*  
*Division of Workers' Compensation*