

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

Injury No. 95-059138

Employee: Carolyn Griffin  
Employer: Hallmark Cards (Settled)  
Insurer: Arrowood Indemnity Company (Settled)  
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. 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 May 21, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Lisa Meiners, issued May 21, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8<sup>th</sup> day of December 2015.

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

**FINAL AWARD**  
**As to the Second Injury Fund Only**

Employee: Carolyn Griffin Injury No. 95-059138  
Dependents: N/A  
Employer: Hallmark Cards (Settled)  
Insurer: Arrowood Indemnity Company (Settled)  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
Hearing Date: April 25, 2013 Checked by: LM/cy

**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? Yes
4. Date of accident or onset of occupational disease: March 9, 1995
5. State location where accident occurred or occupational disease was contracted: Jackson County, Missouri
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 right wrist and sustained a torn trachea during surgery for the work-related injury.
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: Right wrist and body as a whole.

14. Nature and extent of any permanent disability: 70% permanent partial disability
15. Compensation paid to-date for temporary disability: \$178,600.97
16. Value necessary medical aid paid to date by employer/insurer? \$451,200.69
17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$284.68/\$284.68
20. Method wages computation: By stipulation.

**COMPENSATION PAYABLE**

21. Amount of compensation payable: The Employer previously settled this claim for 70% permanent partial disability body as a whole.
22. Second Injury Fund liability: The Second Injury Fund is not liable to the employee for disability benefits.
23. Future requirements awarded: N/A

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

This award is subject to an attorney's lien in the amount of 25 percent in favor of the following attorney for necessary legal services rendered to the Claimant: William Spooner

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carolyn Griffin Injury No. 95-059138  
Dependents: N/A  
Employer: Hallmark Cards (Settled)  
Insurer: Arrowood Indemnity Company (Settled)  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
Hearing Date: April 25, 2013 Checked by: LM/cy

### FINDINGS OF FACT AND RULINGS OF LAW

The parties appeared on April 25, 2013 for a final hearing to determine the liability of the Second Injury Fund in the matter of Carolyn Griffin. Attorney William Spooner represented the Claimant. Assistant Attorney General Maureen Shine represented the Second Injury Fund. The Employer and its Insurer previously settled with Claimant and did not participate in the hearing.

### STIPULATIONS

The parties stipulated to the following:

- 1) That employer and employee were operating subject to Missouri Workers' Compensation Law on March 9, 1995;
- 2) That Ms. Griffin was their employee;
- 3) That Ms. Griffin sustained an accident that arose out of and in the course of her employment on March 9, 1995;
- 4) That jurisdiction was proper in Kansas City, Missouri;
- 6) That notice was properly given;
- 7) That the wage rates are \$284.68/\$284.68;
- 8) That the claim was filed within the time allowed by law;
- 9) That the employer had paid \$451,200.69 in medical expenses and \$178,600.97 for temporary total disability benefits or 627 weeks from the date of injury.

### ISSUE

The only issue to be determined by this hearing is the liability of the Second Injury Fund.

## FINDINGS OF FACT AND RULINGS OF LAW

Claimant, in March of 1995, developed right wrist pain from repetitively stuffing envelopes for her employer. Claimant was diagnosed with De Quervain's syndrome, along with radical neuritis. Claimant underwent a year of conservative care without success of alleviating his symptoms to her right upper extremity. As such, Claimant underwent surgery by Dr. Harris. Claimant's surgery of the right wrist greatly improved her symptoms, however, her trachea was torn during the intubation. As a result of the torn trachea, Claimant underwent approximately 30 surgical procedures to alleviate symptoms of difficulty breathing, swallowing and helping clear her airway obstructions.

Claimant was flown to Boston, Massachusetts so specialists could reconstruct her larynx, trachea, and vocal cords. Claimant, on April 27, 2000, was finally found to be at maximum medical improvement by Dr. Hof. At that time, Dr. Hof noted Claimant was hoarse and had to clear her throat repetitively. Claimant also experienced occasional panic attacks and occasionally choked on her own saliva and food causing her to vomit. Claimant also was on medication for depression over her physical condition and the numerous surgeries performed since 1995.

Claimant, after undergoing 30 surgeries to repair her airways, continued to experience stridor and airflow disruption. Dr. Hof stated her dependency at that time on bronchodilators and no protection from breakthrough attacks causes her to be totally disabled. He further added the asthma, emotions, poor speech, and the inability to speak for prolonged periods disables her from her previous sedentary position at Hallmark. Indeed, I infer Dr. Hof opined the asthma, panic attacks, depression, and speech limitations were causally related to the March 1995 accident.

On March 5, 2009, the Employer and the Employee reached a compromise settlement of 70% permanent partial disability body as a whole or \$315,000.00 for the March 1995 accident. The Employer paid a total of \$451,200.69 in medical expenses in order to cure and relieve the effects of the injury.

Claimant presently testified her conditions, as described by Dr. Hof in 2000, have improved. Claimant, who I find testified credibly, uses her bronchodilator or nebulizer about once a week, rather than several times a day. Claimant has learned what foods she may eat without causing her to choke and vomit. In 2000, Claimant would not leave her home for fear of catching an infection. Indeed, Claimant's immunity has strengthened so that she may go three to six months without development of a sinus infection or bronchitis. Claimant testified her depression is controlled with medication.

Regardless, Claimant continues to experience hindrances and obstacles due to the March 1995 accident. Claimant still has difficulty breathing due to scar tissue that developed from the numerous surgeries. Claimant is limited speaking for prolonged periods and on a sustained basis because her vocal cords tire easily. Claimant is unable to effectively communicate on a daily basis due to vocal cord fatigue. Claimant still experiences vertigo, bronchitis, and asthma that are related to the 1995 accident.

Claimant presented the testimony and opinion of Dr. Brent Koprivica. Dr. Koprivica opined Claimant sustained 70% permanent partial disability body as a whole due to the primary injury but did not find the 1995 injury in isolation to render her permanently and totally disabled. Dr. Koprivica instead found Claimant permanently and totally disabled based on a combination of 70% permanent partial disability from the last accident and a prior 1988 disability involving an anterior cervical discectomy and fusion at C5-C6. Dr. Koprivica found Claimant had a 25% permanent partial disability to her cervical condition that predated the 1995 accident.

I find based on Claimant's testimony and the evidence presented that Claimant sustained 70% permanent partial disability body as a whole due to the last accident. Although I find her condition has greatly improved over the years, I also find she is still greatly hindered as a result of the numerous surgeries performed on her airways.

Prior to 1995, Claimant sustained a work-related injury in 1988 that required a C5-C6 fusion. Claimant was off work approximately seven months. Claimant was released from care July 25, 1990 by Dr. Schoolman. At that time, Claimant continued to complain of radiating pain from her neck to her fingers of the right hand. As a result, Dr. Schoolman rated Claimant 28% permanent partial disability body as a whole. Another doctor, Dr. Reintjes, in 1991 rated Claimant 20% permanent partial disability body as a whole due to musculoskeletal complaints and the 1989 surgical intervention of the C5-C6 level.

Claimant, prior to 1995, had difficulties with overhead lifting, sustained neck postures and radiating pain from her neck into the right arm. Claimant stated she was reprimanded prior to 1995 for staying too long in the on-medical facility applying ice packs to her right shoulder and neck. As such, I find Claimant sustained 25% permanent partial disability body as a whole due to the hindrances and obstacles Claimant experienced prior to 1995.

The parties request this award address whether Claimant is permanently and totally disabled based on a combination of a 1988 cervical condition and the residual effects of the last accident. Claimant presented Dr. Koprivica, who found Claimant permanently and totally disabled based on the preexisting cervical condition, combining with the last accident. Dr. Koprivica stated that she is permanently and totally disabled on just those two conditions, excluding the progression of her cervical spine, lumbar and thoracic issues. Indeed, Claimant, after being released from maximum medical improvement in 2000, underwent another cervical surgery due to a diagnosis of a non-union fusion at C5-C6. This was diagnosed in 1996. Dr. Koprivica speculated the cervical symptoms prior to 1995 mirror complaints of a non-union fusion that was not diagnosed until 1996. However, he admits this opinion is speculative. Regardless, Dr. Koprivica's permanent and total disability opinion did not include Claimant's lumbar and thoracic fusions performed well after 2000.

Dr. Koprivica testified Claimant has issues with breathing, swallowing, hoarseness that limits her ability to perform light, medium and heavy work. Dr. Koprivica then stated her limited speaking ability limits even more sedentary positions and as such, the reason for 70% permanent partial disability body as a whole due to the last accident. I infer from Dr. Koprivica's testimony that Claimant is and could be permanently and totally disabled even from sedentary positions

based on the last accident alone and, therefore, I find his testimony contradicts his ultimate opinion that she is permanently and totally disabled based on a combination.

Another expert, Michael Dreiling, testified Claimant unemployable in the open labor market based on Dr. Koprivica's restrictions of the neck and the last accident. However, Dreiling also stated she is unemployable in her present physical condition. Therefore, I assume he also included the subsequent lumbar, thoracic, and left knee surgeries that occurred after 1995 and, therefore, with the facts in this case, I disregard Michael Dreiling's testimony for relying on subsequent orthopaedic problems.

Instead, I find Claimant is unable to work in the open labor market, but based on the last accident when taken in isolation. Indeed, Claimant's own experts admit the disability from the last accident cause a significant impact for her to function even at sedentary levels. Although Claimant has improved much from 2000, I still find in this case, with these particular facts, the limited ability to speak is enough to eliminate her from working in the open labor market.

Claimant settled her claim with the employer for 70% permanent partial disability body as a whole, which is further evidence Claimant is greatly restricted as a result of the last accident. Dr. Hof, an expert on behalf of the employer, supports this finding that Claimant is unable to work based on the last accident alone. Therefore, the Second Injury Fund is not liable to Claimant for permanent total disability benefits.

The award is subject to an attorney's lien in the amount of 25 percent in favor of the following attorney for necessary legal services rendered to the Claimant: William Spooner

Made by: \_\_\_\_\_  
Lisa Meiners  
Administrative Law Judge  
Division of Workers' Compensation