

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

Injury No.: 01-128865

Employee: Margaret Grubbs

Employer: Ford Motor Company

Insurer: Self-Insured

Date of Accident: October 11, 2001

Place and County of Accident: Claycomo, Clay 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 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 May 12, 2006. The award and decision of Administrative Law Judge Carl Mueller, issued May 12, 2006, 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 \_\_\_\_18<sup>th</sup>\_\_\_\_ day of August 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**FINAL AWARD**

Employee: Margaret Grubbs

Injury No: 01-128865

Dependents: N/A  
Employer: Ford Motor Company  
Additional Party: N/A  
Insurer: Self-Insured  
Hearing Date: May 2, 2006 Checked by: RCM/rm

### 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: October 11, 2001
5. State location where accident occurred or occupational disease was contracted: Claycomo, Clay 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: Employee was struck by a car.
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 and left upper extremities at the 232-week level, right lower extremity at the 160-week level, and back (body as a whole).
14. Nature and extent of any permanent disability: twenty one and one-half percent (21½%) disability of the left upper extremity at the 232-week level; twenty seven and one-half percent (27½%) disability of the right upper extremity at the 232-week level; twenty percent (20%) of the right lower extremity at the 160-week level; and, five percent (5%) whole body disability for her back injury.
15. Compensation paid to-date for temporary disability: \$31,804.38
16. Value necessary medical aid paid to date by employer/insurer? \$56,152.52.
17. Value necessary medical aid not furnished by employer/insurer? \$0.00
18. Employee's average weekly wages: Sufficient to result in the maximum weekly compensation rates.
19. Weekly compensation rate: \$628.90 for temporary total and \$329.42 for permanent partial disability compensation.
20. Method wages computation: By stipulation.
21. Amount of compensation payable:  

<u>Permanent Partial Disability</u>	
21½% disability of left upper extremity at the 232-week level...	\$16,431.47
27½% disability of right upper extremity at the 232-week level.....	21,017.00
20% disability of the right lower extremity at the 160-week level	\$10,541.44
5% whole body disability	<u>\$6,588.40</u>
<b>TOTAL AWARD</b>	<b><u>\$54,578.31</u></b>
22. Second Injury Fund liability: N/A

23. Future requirements awarded: None

Said payments to begin as of date of this award 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 twenty-five percent (25%) lien totaling \$13,644.58 in favor of Winton Huston, Attorney, for reasonable and necessary attorney's fees pursuant to MO.REV.STAT. §287.260.1.

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

Employee: Margaret Grubbs Injury No: 01-128865  
Dependents: N/A  
Employer: Ford Motor Company  
Additional Party: N/A  
Insurer: Self-Insured  
Hearing Date: May 2, 2006 Checked by: RCM/rm

On May 2, 2006, the employee and employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Ms. Margaret Grubbs, appeared in person and with counsel, Winton Huston. Ford Motor Company appeared through Jim Humphrey. The Second Injury Fund was not a party to the case. The only issues the parties requested the Division to determine were whether Ms. Grubbs suffered any disability as a result of her work accident and if that disability resulted from her accident. For the reasons noted below, I find that Ms. Grubbs sustained twenty one and one-half percent (21½%) disability of the left upper extremity at the 232-week level; twenty seven and one-half percent (27½%) disability of the right upper extremity at the 232-week level; twenty percent (20%) of the right lower extremity at the 160-week level; and, five percent (5%) whole body disability for her back injury.

### **STIPULATIONS**

The parties stipulated that:

1. On or about October 11, 2001 ("the injury date"), Ford Motor Company ("Ford") was an employer operating subject to Missouri's Workers' Compensation law with its liability fully self-insured;
2. Ms. Grubbs was its employee working subject to the law in Claycomo, Clay County, Missouri;

3. Ms. Grubbs sustained an accident arising out of and in the course of employment;
4. Ms. Grubbs notified Ford of her injury and filed her claim within the time allowed by law;
5. Ms. Grubbs earned an average weekly wage sufficient to result in the maximum weekly compensation rates of \$628.90 for temporary total disability ("TTD") and \$329.42 for permanent partial disability ("PPD") compensation;
6. Ford provided Ms. Grubbs with medical care costing \$56,152.52; and,
7. Ford Motor paid Ms. Grubbs TTD totaling \$31,804.38.

## ISSUES

The parties requested the Division to determine:

1. Whether Ms. Grubbs suffered any disability and, if so, the nature and extent of the Employee's disability?
2. Whether the accident caused the disability the employee claims?

## FINDINGS

Ms. Grubbs testified on her own behalf and presented the following exhibits, which were admitted into evidence without objection:

- |   |   |  |
|---|---|--|
| A | - | Liberty Hospital and Ford Medical Records                          |
| B | - | Medical Records  |
| C | - | Medical Records, Drs. Weed, Reintjes, Zarr and St. Luke's Hospital |
| D | - | Report and CV, Theodore L. Sandow, M.D.                            |
| E | - | Amended Claim for Compensation                                     |

Although the employer did not call any witnesses, it did present the following exhibits, all of which were admitted into evidence without objection:

- |   |   |                                     |
|---|---|-------------------------------------|
| 1 | - | Daniel D. Weed, MD, Reports and CV  |
| 2 | - | Stephen Reintjes, MD, Report and CV |
| 3 | - | Zarr, MD, Report and CV             |

Based on the above exhibits and the testimony of Ms. Grubbs, I make the following findings. Ms. Grubbs is a 65-year old female, who lives in Raytown, Missouri. She was employed 26 years by Ford Motor Company in the paint repair department.

On October 11, 2001 Ms. Grubbs was working at the Ford Motor Company assembly plant in Claycomo, Clay County, Missouri when a vehicle driven by a co-employee hit another vehicle on the assembly line, which, in turn, struck Ms. Grubbs. Ms. Grubbs immediately felt pain in her right knee and left shoulder. Ms. Grubbs was taken by ambulance to Liberty Hospital. The initial treatment records on the day of injury reflect that Ms. Grubbs complained that:

I was working and a car came across the line and hit my left side and knocked [sic] me up against the table next to the wall. I have an old back injury at L4-5 bulging disc now my back and neck hurt and I think my right arm hurt[ts].

See, Claimant's Exhibit A at 46

These initial treatment records - again, made the day of the injury - further reflect that:

Back as area of worst pain aslo [sic] reports some stiffness in the neck and some right arm pain.

*Id.* at 46.

Ms. Grubbs underwent several X-rays. Robert A. MacNaughton, II, MD concluded that while Ms. Grubb did not have any fractures, she did have “left hip pain following trauma” and “left shoulder pain following trauma”. *Id.* at 51-52. Ms. Grubbs underwent physical rehabilitation beginning October 15, 2001. Her “chief complaint” listed in the rehabilitation record is “left lower back stiffness . . . shoulder pain and stiffness . . . left neck pain and . . . left hip pain.” *Id.* at 53. The “pain location” was identified as “middle lower back, left upper shoulder and neck.” *Id.*

Ford referred Ms. Grubbs to Daniel D. Weed, M.D. on January 14, 2002. *See*, Employer’s Exhibit 1 at 3. Dr. Weed examined the employee and recorded that her complaints were limited to her right knee and left shoulder. *Id.* at 6. He commented that:

The patient is obese and it is very hard for her to get around. I almost find it hard to believe that she could work at the Ford Plant . . . Right knee paid and left shoulder pain. I think these are both just bruises. I don’t think that this is significant. I don’t think either one of these injuries is significant.

*Id.*

Dr. Weed’s initial speculation that Ms. Grubb’s injuries were “just bruises” proved to be grossly incorrect. Ultimately, Dr. Weed performed the following surgeries on Ms. Grubbs:

- February 28, 2002: right knee arthroscopy (medial and lateral meniscus tears)
- March 19, 2002: left shoulder rotator cuff
- October 8, 2002: right shoulder rotator cuff
- March 20, 2003: closed manipulation of the right shoulder

*Id.* at 3.

Dr. Weed noted, on August 19, 2002 that “the patient states that her right rotator cuff is torn” (*Id.* at 10) and that this is the “First documented claim of right shoulder pain”. *Id.* at 3. Dr. Weed also noted that February 12, 2003 was the “first documented complaint of back pain since the injury of October 11. *Id.* at 3. Ford provided Ms. Grubbs with treatment costing \$56,152.52.

On May 30, 2003, Dr. Weed rated Ms. Grubb’s “impairment” at thirteen percent (13%) of the “left shoulder”, ten percent (10%) of the right knee, and fifteen percent (15%) of the “right shoulder”. Dr. Weed did not think the latter was attributable to her October 11, 2001 injury. *Id.* at 3. He did believe her back condition was at “MMI” (presumably maximum medical improvement) as she still has radiculopathy, but, also did not think it was related to her Ford injury. *See*, Claimant’s Exhibit C at 7.

Ford authorized Ms. Grubbs on August 5, 2003 to receive treatment from James S. Zarr, M.D. for her back complaints. *Id.* at 22. Dr. Zarr prescribed a “trial with a TENS unit and then work hardening”. *Id.* at 23. Dr. Zarr restricted Ms. Grubbs from working until his follow up examination of her on September 3, 2003 when he then opined that she had reached maximum medical improvement. *See*, Employer’s Exhibit 3 at 3. Dr. Zarr opined that “I do feel she has suffered some permanent impairment from this work related condition and I am rendering a 5% whole body permanent impairment rating for the low back part of her injury.” Further, he gave her permanent restrictions of no lifting greater than five pounds, no work greater than eight hours per day, only “occasional” pushing, pulling, standing, walking, stair climbing, stooping, and reaching. *Id.* at 3.

Ms. Grubbs was a very forthright and plainspoken person. I find her to be a very truthful witness. She admitted quite openly that she had received back treatment many years before her accident. In fact, she reported to Ford’s rehabilitation center specialists that she had received epidurals seven to eight years before her injury. *See*, Claimant’s Exhibit A at 53. However, her back complaints had resolved and she was able to work full time ten hours per day at Ford until her injury. Her injury resulted in her back pain recurring and, together with her other injuries, resulted in her retiring from Ford.

Ms. Grubb’s back and right arm continue to bother her significantly. Her back pain is constant, and is aggravated by sitting, walking, bending, twisting or lifting. I note she walks with a slight limp. Her left arm has recuperated more fully

except she still has significant loss of strength. She admitted that her right knee "is in pretty good shape." She has not received surgery - or even a recommendation for surgery - to her back. Unlike her back, she did not have any shoulder complaints before her injury. Mrs. Grubb noted that her left arm hurt considerably more than her right arm and that perhaps that is why most of the medical records reference her left arm complaints.

Theodore L. Sandow, Jr., M.D. examined the employee on November 17, 2003 at her attorney's request. In addition to his examination, Dr. Sandow reviewed all of the medical records contained in Exhibits A, B and C. Dr. Sandow noted that Ms. Grubbs underwent an MRI on May 14, 1999 that showed "fairly significant spinal stenosis". See, Claimant's Exhibit D at 3. Dr. Sandow opined that Ms. Grubb's October 11, 2001 injury was a substantial contributing factor to cause her injuries to her back, right knee, and bilateral shoulders which have resulted in her current pain complaints. *Id.* at 7. Dr. Sandow rated Ms. Grubb's disability at:

- 35% whole body disability at the 400-week level;
- 40% of the right upper extremity at the 232-week level;
- 30% of the left upper extremity at the 232-week level;
- 30% of the right lower extremity at the 160-week level;

Dr. Sandow apparently attributed all of Ms. Grubbs' back disability to the October 11, 2001 injury, as he did not reference any pre-existing disability.

## RULINGS

Dr. Weed provided Ms. Grubbs with most of the treatment for her injuries including operating on both of her shoulders and her right knee. Therefore, one would expect him to be more informed about her complaints and condition than other doctors who provided one-time examinations. However, "familiarity breeds contempt" as the saying goes. Dr. Weed noted - erroneously - that Ms. Grubbs' "First documented claim of right shoulder pain" was August 19, 2002. If correct, this would have been significant given the more than ten-month delay it would have represented between her injury and the appearance of her shoulder complaints. However, Liberty Hospital's initial treatment records made on the day of her injury clearly state - twice - that Ms. Grubbs' immediately complained of "right arm pain". Dr. Weed initially diagnosed Ms. Grubb as having suffered nothing more than "just bruises". However, even he eventually diagnosed Ms. Grubbs as having suffered torn rotator cuffs in both shoulders. Dr. Weed does not opine on the cause of her right shoulder injury, and, indeed he does not need to, as it is the employee's burden to prove causation.

However, Dr. Sandow did opine that Ms. Grubbs' October 11, 2001 injury was a substantial factor in causing both her shoulder injuries, her knee injury and her back disability. I find Dr. Sandow's causation opinions credible and believable and adopt them as fact. And, while Dr. Sandow offered disability opinions as well, he did not state whether Ms. Grubbs' pre-existing back complaints resulted in any disability. For this reason, I choose not to even consider Dr. Sandow's opinion on Ms. Grubbs' back disability. Plaster v. Dayco Corp., 760 S.W.2d 911 (Mo.App. S.D. 1988).

I find that Ms. Grubbs suffered twenty one and one-half percent (21½%) disability of the left upper extremity at the 232-week level; twenty seven and one-half percent (27½%) disability of the right upper extremity at the 232-week level; twenty percent (20%) of the right lower extremity at the 160-week level; and, five percent (5%) whole body disability for her back injury. Altogether, these disability percentages result in an award of 166.68 weeks of disability for compensation totaling \$54,578.31. Ms. Grubbs's attorney requested a fee equal to twenty five percent (25%) of all amounts awarded. I find that such request is fair and reasonable and order a lien attach to this award for \$13,644.58 until paid in full.

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

Carl Mueller  
*Administrative Law Judge*

A true copy: Attest: *Division of Workers' Compensation*

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*