

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

Injury No.: 08-065056

Employee: Melody Hannon

Employer: Regal Beloit Corporation

Insurer: Travelers Indemnity Company of America

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 13, 2010. The award and decision of Administrative Law Judge Vicky Ruth, issued October 13, 2010, 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 24th day of June 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Melody Hannon

Injury No. 08-065056

Dependents: N/A

Employer: Regal Beloit Corporation

Additional Party: N/A

Insurer: Travelers Indemnity Company of America

Hearing Date: July 13, 2010

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

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: April 15, 2008.
5. State location where accident occurred or occupational disease was contracted: Miller 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:
The employee repetitively lifted motors into a cart, injuring her right shoulder.
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 shoulder.
14. Nature and extent of any permanent disability: Permanent partial disability of 20% of the right shoulder.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? See Award.
18. Employee's average weekly wages: N/A; see Award.

19. Weekly compensation rate: N/A; see Award.
20. Method of wages computation: N/A.

COMPENSATION PAYABLE

21. Amount of compensation payable from employer: 46.40 weeks of PPD (20% of 232 weeks); 27 weeks of TTD; and \$22,775.96 in unpaid medical bills.
22. Second Injury Fund liability: N/A.
23. Future medical awarded: N/A.

Said payments to begin immediately and to be payable and 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: Tom Pirmantgen.

Employee: Melody Hannon

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Melody Hannon

Injury No: 08-065056

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Regal Beloit Corporation

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

Additional Party: N/A

Insurer: Travelers Indemnity Company of America

On July 13, 2010, Melody Hannon, Regal Beloit Corporation, and Travelers Indemnity Company of America appeared for a final award hearing. Melody Hannon, the claimant, was represented by attorney Tom Pirmantgen. Attorney Kevin Johnson represented Regal Beloit Corporation/Travelers Indemnity Company of America. The claimant and Debbie Shirk testified in person at the hearing. Dr. Michael Snyder, Sherry Haynes, Tami Frazee, and Dr. Edwin Roeder testified by deposition. The parties submitted briefs on August 3, 2010.

STIPULATIONS

The parties stipulated to the following:

1. On or about April 15, 2008, claimant was an employee of Regal Beloit Corporation (the employer).
2. The parties were operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was self-insured in care of Travelers Indemnity Company of America.
4. The Missouri Division of Workers' Compensation has jurisdiction, and venue in Miller County is proper.
5. A Claim for Compensation was timely filed.
6. No temporary disability benefits have been paid to claimant.
7. The employer/insurer did not provide any medical care.

ISSUES

The parties agreed that the following issues were to be resolved in this proceeding:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability.

Employee: Melody Hannon

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4. Notice.
5. Non-payment of temporary total disability.
6. Unpaid medical bills.
7. Average weekly wage/compensation rate.¹

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence without objection:

Exhibit 1	Deposition of Dr. Michael Snyder.
Exhibit 2	Deposition of Sherry Haynes.
Exhibit 3	Deposition of Tami Frazee.
Exhibit 4	Deposition of Dr. Edwin Roeder.
Exhibit 5	Medical bills.
Exhibit 6	Rating report of Dr. Joanna Mace.
Exhibit 7	<i>Curriculum vitae</i> of Dr. Mace.
Exhibit 8	<i>Curriculum vitae</i> of Dr. Snyder.
Exhibit 9	Records of Dr. Snyder.
Exhibit 10	Records of Lake Regional Health System (physical therapy).
Exhibit 11	Records of Dr. Debra King.
Exhibit 12	Records of Capital Region Medical Center.
Exhibit 13	Records of Dr. Osvaldo Acosta-Rodriguez.
Exhibit 14	Records of St. Marys Health Center.

On behalf of the employer/insurer, the following exhibits were admitted into the record without objection:

Exhibit A	Deposition of Dr. Edwin Roeder.
Exhibit B	Records of Dr. Osvaldo Acosta-Rodriguez.
Exhibit C	Final Impairment Rating of Dr. Roeder.
Exhibit D	DVD depicting job.
Exhibit E	Invensys Motor Systems Job Description.
Exhibit F	Letter from Dr. Debra King.
Exhibit G	Record of Dr. Miriam Borden.
Exhibit H	Record from Allied Benefits.
Exhibit I	Claim for Compensation form.
Exhibit J	Stipulation for Compromise Settlement, Injury No. 06-108790.
Exhibit K	Records of Capital Regional Medical Clinic.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence.

¹ The parties essentially withdrew this issue during the trial and stated that they would resolve the average weekly wage/compensation rate issue themselves.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

1. Claimant was born on March 8, 1956. She graduated from high school and completed some technical school classes in printing and graphic arts.
2. On the date of the alleged injury, April 15, 2008, claimant was employed by Regal Beloit Corporation/FASCO (hereinafter, the employer). Her title was Back-up Winder and Lead Liner. Claimant testified that the employer made electric motors, such as blower motors, refrigerator motors, and ceiling fan motors.
3. On April 15, 2008, claimant experienced a sudden burning pain in her right shoulder while transferring motors from a cart. Claimant testified that the job activity she was performing at the time required her to lift her arms, reach over the edge of a cart, and then lift motors out of the cart to work on and then transfer to another cart. She indicated that this activity required her to lift her arms away from her body, and upward above her shoulder joint.
4. Claimant's co-worker, Debbie Shirk, testified that on April 15, 2008, she could see that claimant's shoulder suddenly starting hurting, and that claimant was unable to carry on with the job duties that she had been performing only minutes before. This required Ms. Shirk to complete the tasks that claimant had been doing that day before she was hurt. Ms. Shirk indicated that before April 15, 2008, claimant had been able to perform all of her job duties, including reaching up and pulling lead lines, and lifting and transferring motors. After that shift, however, claimant was not able to perform her job duties for several months, pending surgery and physical therapy.
5. Ms. Shirk testified that claimant's shoulder was still hurting her later that same day, when claimant was a passenger in Ms. Shirk's car. Claimant had to reach across her body with her left hand to close the car door because her right shoulder hurt.
6. Claimant testified that she had never had this type of pain or this intensity of pain in her right shoulder before transferring the motors. Consistent with that testimony, Ms. Shirk did not recall seeing claimant suffer the pain and difficulty with her right shoulder before April 15, 2008. Ms. Shirk indicated that she had worked many shifts with claimant before that date.
7. Ms. Shirk was a credible eye witness to the sudden onset of claimant's pain, and to the severity of that pain and its debilitating effect, as compared to the other aches and pains that claimant may have had on previous occasions.
8. Claimant acknowledged that she had experienced shoulder pain on occasions before April 15, 2008. She testified, however, that the previous pain was more of a soreness,

ache, or discomfort than a sharp, debilitating pain like the pain that accompanied her torn rotator cuff.

9. After the injury, claimant saw her general physician, Dr. Debra King, for her right shoulder pain. An MRI report dated April 24, 2008, describes the injury as follows:

. . . supraspinatus tendinopathy with a partial thickness articular surface tear involving approximately 50% of the tendon thickness. The torn tendon fibers are retracted by approximately 1.5 cm from the distal insertion. In the AP direction this partial tear measures approximately 1 cm. There is a minimal focal partial thickness surface tear involving the superior fibers of the infraspinatus tendon.... There is a mild partial tear of the biceps longus tendon....²

The only mention of any degenerative process in the MRI report relates to “mild degenerative hypertrophy of the acromioclavicular joint” and “[t]he superior and anterior glenoid labrum are slightly irregular and abnormal in signal, probably reflecting degenerative graying of the labrum.”³

10. Dr. King’s office note from April 21, 2008, indicates that Ms. Hannon “does not recall any previous trauma to the area. The pain seemed to come on after last Tuesday or Wednesday PM when she had worked hard all night at work. She states that due to the amount of pain she is having in her shoulder she had to rest her R-elbow on a table and then she would use her L-arm to kind of help move motors.”⁴ This is consistent with the testimony of claimant and Ms. Shirk. Nonetheless, Dr. King concluded that claimant’s rotator cuff tear was degenerative and not related to her employment. Dr. King referred claimant for an evaluation by an orthopedic specialist.
11. Dr. Michael Snyder, a board-certified orthopedic surgeon, performed surgery on or about May 23, 2008, to repair claimant’s rotator cuff tear. Dr. Snyder testified that eighty-five percent of his practice focuses on knees and shoulder.⁵ He has performed over a thousand rotator cuff surgeries similar to claimant’s surgery. Dr. Snyder does very little medical/legal work, estimating that it comprises less than one percent of his practice.⁶
12. Dr. Snyder used an arthroscope to perform the surgery on claimant. He testified that an arthroscope is “essentially like a television camera.”⁷ With the arthroscope, he was able to actually see the tissues in claimant’s shoulder. He pointed out that “MRIs are great tests, but they are not as sensitive as looking in there, probing in there.”⁸ With an arthroscope, Dr. Snyder is able to “look at all aspects of the shoulder. We look at the

² Claimant’s Exh. 11.

³ *Id.*

⁴ Claimant’s Exh. 12.

⁵ Claimant’s Exh. 1.

⁶ *Id.* at pp. 28-29.

⁷ *Id.* at p. 8.

⁸ *Id.* at pp. 8-9.

surfaces of the joint, the labrum, the ligaments, the biceps and the rotator cuff, to diagnostically confirm” the problem. He testified that the arthroscopic surgery is “the gold standard. You’re looking at every nook and cranny.”⁹

13. Dr. Snyder’s records indicate that the shoulder joint itself showed normal articular surfaces. The anterior and superior labrum were normal in appearance. There was no evidence of tearing or degeneration noted. The biceps complex was normal in appearance without evidence of tearing. There was no evidence of SLAP lesions. The posterior labrum and inferior labrum were inspected and no tears or degeneration noted. As for the rotator cuff, the one abnormality that Dr. Snyder saw was a complete focal tear through the supraspinatus tendon. Dr. Snyder explained that the supraspinatus tendon is the top muscle of the rotator cuff; it runs from the shoulder blade to the top portion of the ball of the humerus. The humerus is responsible for overhead actions of the shoulder. It performs what is called abduction, essentially pulling your elbow away from your body. Dr. Snyder further explained that he saw that claimant had a tear through the anterior portion of the tendon, which is where rotator cuffs tear.¹⁰ He noted that there was some detachment there, and the rest of the rotator cuff essentially looked normal – “no tears, no degeneration, nothing going on.”¹¹
14. When asked about the etiology of the injury, Dr. Snyder testified that “it’s traumatic repetitive activity . . . it looked like a normal tear that has come about over doing repetitive activities, overhead lifting, traumatic event, something like that. **I saw nothing in here that looked like it was a degenerative tear.** I mean, I make that reference multiple times through my operative note.”¹² [Emphasis added.]
15. Dr. Snyder further testified that claimant’s workplace activities were the prevailing factor in causing her rotator cuff tear. He based this conclusion on claimant’s history of what she did at work, on her exam, on the MRI, and as documented by his operative note.¹³
16. Dr. Snyder stated that when he looked inside claimant shoulder, he did not see anything that looked degenerative.¹⁴ He testified that if claimant’s rotator cuff tear was caused by some degeneration, he would have expected to see evidence of that.
17. Dr. Snyder referred claimant for physical therapy, and he saw her a few times post-operatively. The last time he saw her was on September 17, 2008, approximately four months after her surgery. Claimant’s main complaint at that time was soreness and stiffness. Claimant’s motion was normal, but she still had a little weakness in her rotator cuff, which is not abnormal at four months.¹⁵ Dr. Snyder’s records indicate that he gave her a “return to work” on October 21, 2008; his records do not indicate that he imposed

⁹ *Id.* at p. 9.

¹⁰ *Id.* at pp. 11-12.

¹¹ *Id.* at p. 12.

¹² *Id.*

¹³ *Id.* at pp. 12-13.

¹⁴ *Id.* at pp. 14-15.

¹⁵ *Id.* at p. 30.

any permanent work restrictions on claimant.¹⁶ Dr. Snyder also noted that with this type injury, it is normal to be authorized to return to work in four to six months.¹⁷

18. Dr. Snyder testified that the medical bills for claimant's rotator injury, including the operation, postoperative visits, and physical therapy, were reasonable and necessary to cure and relieve claimant's rotator cuff tear.

19. On cross-examination, Dr. Snyder explained that claimant's osteoarthritis is a degenerative disease; it is a degenerative arthritic condition of the joint of the articular surface as it wears down. He indicated that her fibromyalgia is a condition of pain involving the soft tissues.¹⁸ He also noted that myofascial pain syndrome is more of a descriptive term of the severity of the fibromyalgia – it is a pain of the soft tissues, the myofascia. It can make the soft tissue around the joint hurt. I find that it is reasonable to conclude that claimant's pain associated with these conditions was the underlying cause of her previous complaints of shoulder pain. Claimant testified credibly that none of these conditions had the effect of causing so much pain that she was unable to lift her right arm as happened after April 15, 2008.

20. Dr. Snyder's testimony was thorough, well-reasoned, and credible.

21. On behalf of the employer/insurer, Dr. Roeder prepared an Independent Medical Evaluation on or about April 29, 2009.¹⁹ Although the doctor acknowledges that "it would appear" that claimant had a rotator cuff tear, "[c]ausation is a more difficult issue."²⁰ He indicates that it is difficult for him to conclude, with any degree of medical certainty, to what degree work versus activities at home may have contributed to the condition. He does believe that the surgery was warranted to address the rotator cuff tear. He also indicated that all medical care reflected in the records was reasonable, and that the bills associated with that care were reasonable in amount and related to that care. He believed that the claimant was at maximum medical improvement, and that there was some impairment.

22. In his supplemental report, dated August 3, 2009, Dr. Roeder made the following observation:

Furthermore, I see no evidence of objective tests such as MRI or physical examination findings that would lead me to believe that her shoulders were a significant problem at that time. Her pain, on those visits, seems to be attributable to "chronic pain syndrome" and "fibromyalgia..." It does not seem that she at any point in any of those visits had findings directly referable to her glenohumeral joint.

¹⁶ *Id.* at p. 31.

¹⁷ *Id.* at p. 34.

¹⁸ *Id.* at pp. 21-22.

¹⁹ Employer/insurer Exh. A.

²⁰ *Id.*

This is consistent with claimant's claim that the tear did not exist until April 15, 2008, and that is why there are no complaints of sharp or burning right shoulder pain preceding the work-related injury.

23. Dr. Roeder opined that claimant had a 7% permanent partial disability of the right shoulder.
24. In his deposition, Dr. Roeder testified that in reaching his opinions, he relied to a greater extent on the DVD purporting to depict claimant's activities at the time of the injury than on claimant's description of the activities. This is significant because both claimant and Ms. Shirk testified that the DVD does not depict the activities that claimant was engaged in at the time of the injury. Ms. Shirk was present when the filming of the DVD took place, and she testified that she informed the video crew that the activity was different but the crew continued filming. This inconsistency is significant and reduces the accuracy of Dr. Roeder's opinions.
25. Dr. Roeder also testified that there is no mention of right shoulder pain in the records of Dr. Acosta-Rodriguez. He explained that if the tear were degenerative, there would typically be some complaints of pain for a period of time before the date of injury; those records, however, contain no such complaints.²¹
26. Claimant testified that that on or about April 15, 2008, she mentioned her shoulder pain to Mike Henley, her supervisor. Claimant did not testify about what she told Mr. Henley, or whether she told him that she believed that her pain was work-related. Claimant testified that the employer's nurse, Sherry Haynes, was not in her office on April 15, 2008. When claimant returned to work the next day (Wednesday), Ms. Haynes was not available. On Thursday, claimant did not work due to a migraine. On Friday, claimant went to work but was unable to do anything because of the pain; consequently, she told Ms. Haynes that she was hurt. Claimant testified that Ms. Haynes yelled at her during this conversation. Claimant testified that she was informed that the employer would not provide medical care.
27. Claimant testified that one or two years before, she had had two previous workers' compensation cases, one involving severe tendonitis in her elbows and hand and one involving a hearing loss. Claimant testified that she had also had elbow pain. In addition, she had previously been diagnosed with fibromyalgia and osteoarthritis.
28. Claimant testified that since the employer would not provide treatment for her right shoulder, she sought treatment on her own. As noted above, claimant initially treated with Dr. King, who referred her to Dr. Snyder.
29. Claimant testified that she was not able to participate in all of the physical therapy sessions prescribed by Dr. Snyder because she did not have insurance.

²¹ Employer/insurer Exh. A, pp. 18-22.

30. Claimant testified that before April 15, 2008, she had some right shoulder pain but it was drastically different. That previous pain was more of an ache, whereas the pain after the April 2008 injury was sharp and burning and prevented her from lifting her arm.
31. Claimant acknowledged that she filled out paperwork for short-term disability benefits due to the right shoulder injury. She alleged that Ms. Haynes and "Tammy" would not allow her to note on the form that her disability was due to a worker-related injury.
32. Claimant testified that the DVD that purports to depict her job shows work that was very different from what she had been doing at the time she was hurt. The DVD showed employees working on the smallest motor the employer had, and did not show all the work claimant did regarding putting leads and such on, nor did it reflect the task of transferring motors from cart to cart.
33. Dr. Mace opined that claimant suffered a permanent partial impairment of 30% of the shoulder. Dr. Mace assigned zero percent disability to claimant's pre-existing shoulder problems (osteoarthritis acromioclavicular joint, right).
34. Nurse Sherry Haynes, an employee of the employer, testified that claimant notified her of the alleged work injury on or about April 18, 2008. Nurse Haynes prepared a written report at that time. In addition, Nurse Haynes determined that the injury was not work-related and authorized claimant to continue treating on her own.
35. The evidence shows that the following bills for treatment of claimant's work injury are outstanding: Lake Ozark Rehabilitation, \$1,266; St. Marys Health Center, \$17,878.29; and Dr. Snyder, \$3,631.67. Thus, there is \$22,775.96 in outstanding medical bills. The evidence also shows that the \$1,085 bill from Capital Region Medical Center and the \$134 bill from Dr. King have been either paid or written off by the providers.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

The injury in this case occurred on April 15, 2008. Thus, the substantive changes that became effective in August 2005 apply to this case. The Workers' Compensation law is now to be strictly construed and the administrative law judge is to weigh the evidence impartially, without giving the benefit of a doubt to any party when weighing evidence and resolving factual conflicts.

Issues 1 & 2: Accident or occupational disease/medical causation

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.²² Proof is made only by competent and substantial evidence, and may not rest on speculation.²³ Medical causation not within lay understanding or experience requires expert medical evidence.²⁴ When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.²⁵

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.²⁶ Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.²⁷

Claimant testified credibly that she injured her shoulder while working on April 15, 2008. Although she had experienced some shoulder pain before, that pain was of a very different nature and intensity. She testified that the sharp, burning pain that occurred on April 15, 2008, was so severe that she was unable to complete her job tasks. Ms. Shirk, claimant's co-worker, was a credible eye witness to the sudden onset of claimant's pain on April 15, 2008.

Dr. Snyder testified credibly and convincingly that work was the prevailing factor in causing claimant's right rotator cuff injury. His testimony was knowledgeable and thorough.

I find that claimant has proven by substantial and competent evidence that the torn rotator cuff in her right shoulder is an injury arising out of and in the course and scope of her employment with the employer. I also find that work was the prevailing factor causing claimant's April 15, 2008 injury

Issue 3: Permanent partial disability

The issue of the extent of claimant's permanent partial disability relating to her right shoulder is complicated by her pre-existing upper extremity conditions and pain. Dr. Mace opined that claimant suffered a permanent partial impairment (PPD) of 30% of the shoulder because of the work injury. Dr. Roeder opined that claimant's PPD is 7%. The competent and credible evidence establishes that claimant sustained a PPD of 20% of the right shoulder due to the work injury.

Issue 4: Notice

²² *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

²³ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).

²⁴ *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

²⁵ *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).

²⁶ *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).

²⁷ *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

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The employer/insurer argues that the claimant did not provide timely notice of her occupational disease, as required by section 287.420, RSMo. 2005. This section provides, in relevant part, as follows:

No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove that the employer was not prejudiced by failure to receive the notice.

The purpose of Section 287.420 is to give the employer timely opportunity to investigate the facts surrounding the accident or occupational disease, and to provide the employee with medical attention in order to minimize the disability.²⁸

On April 18, 2008, claimant went to the office of the employer's nurse, Sherry Haynes, and told her that she was having trouble with her right arm.²⁹ Ms. Haynes testified in her deposition as follows:

When [claimant] came in on April the 18th she told me that her shoulder was hurting so bad that day that she couldn't work, and she had already talked to her own doctor and they were setting up an MRI.

And I said, "How did you hurt it?"

And she said, "I don't know," but she said, "I had to have hurt it here because I don't do anything at home."

Well, to be Workmen's Comp it has to be a specific injury, a specific time. And also, she had another ongoing claim that was related to upper extremities that we had also denied.

Nurse Haynes provided additional details regarding this encounter later in her deposition:

Q: Did Ms. Hannon ask you to process a workers' compensation claim?

A: Well, just when she came in she said she thought it happened on the job, so we told her no, we weren't going to process it at that time.

Q: And also not going to send her to a doctor?

A: Right.

²⁸ *Messersmith v. University of Missouri-Columbia*, 43 S.W.3d 829, 832 (Mo. banc 2001).

²⁹ Claimant Exh. 2, pp. 7-8.

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Q: Have you talked to any of Ms. Hannon's co-employees about her claim of shoulder injury?

A: No.

Q: Did Ms. Hannon tell you that her shoulder was stinging or burning when she came to you initially?

A: Possibly, because I didn't write down every word she said.

Q: What did you write down as far as what she said? If you could, just read that into the record, please:

A: "Shortly after nine o'clock a.m., Melody Hannon came in my office and said she was having trouble with her right arm. She could not raise her arm, and she thought she had a torn rotator cuff. She said her arm started hurting Wednesday and she has called Dr. King, her personal doctor, and they are going to set up an MRI. She wants us to pay for it as Workmen's Comp. She said she had to have hurt it here because she does not do anything at home, mostly she sets [sic] in a chair as she is too tired to do anything else.

I told her, as she had already contacted her doctor and set up the MRI, she could continue. I did not send her as Workmen's Comp. She said that is why she came to see me so I could set it up with another doctor if I wanted to.

* * * * *

I told Melody she could proceed on her own.³⁰

Thus, the nurse employed by the employer prepared a written report containing the time, place, and nature of the injury, as well as the name of the person injured. This report was prepared less than thirty days after the accident. So whether this is a traumatic accident or repetitive trauma on April 15, 2008, the employer had written notice prepared by its own nurse. Moreover, that nurse affirmatively directed claimant to continue seeking her own medical care.

It is clear that the employer received actual notice of the work injury, and this actual knowledge is sufficient to provide the employer timely opportunity to investigate the claim and provide medical attention. Substantial evidence of actual notice makes a prima facie showing of absence of prejudice, which shifts the burden to the employer to show prejudice.³¹ The employer did not submit any evidence demonstrating that it was prejudiced in any way by the notice issue. To the contrary, the employer could have easily investigated the claim by speaking with

³⁰ Claimant's Exh. 2, pp. 12-14.

³¹ *Doerr v. Teton Trans., Inc.*, 258 S.W.3d 514 (Mo. App. 2008).

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Ms. Shirk, and it could have directed treatment. Instead, the company nurse declared that the injury was not a work injury and affirmatively directed the claimant to continue to seek treatment on her own.

I find that claimant meet her burden of proof regarding the issue of notice.

Issue 5: Temporary Total Disability

The purpose of temporary disability benefits (TTD) is to cover the employee's hearing period.³² There was limited evidence on this issue. Claimant testified credibly that she was unable to return to work until released by Dr. Snyder on October 21, 2008. Dr. Snyder, the treating surgeon, testified that a four to six month period of disability is expected, with four months being a minimum. His records indicate that he released claimant as of October 21, 2008.

I find that claimant is entitled to 27 weeks of TTD benefits, for the period of April 15, 2008, through October 21, 2008.³³

Issue 6: Unpaid medical bills

There is no dispute that the bills found in claimant's Exhibit 5 were related to the treatment of claimant's rotator cuff tear, and that they reflect reasonable charges for necessary care. Both Dr. Snyder and Dr. Roeder testified to that effect.

The employer/insurer argues that claimant did not present any evidence that the bills were actually outstanding at the time of the hearing. Claimant argues that in connection with the issue of her liability for the bills, the Missouri Supreme Court has explained that "[i]t is a defense of [the employer] to establish that [employee] was not required to pay the billed amounts, that her liability for the disputed amounts was extinguished, and that the reason that her liability was extinguished does not otherwise fall within the provision of section 287.270."³⁴ The employee's burden is to show the amount of the past medical expenses, and the connection between those expenses and the workplace injury.³⁵ Here, the amounts for medical treatment are undisputed, and both Dr. Snyder and Dr. Roeder causally connect the bills to the treatment of claimant's rotator cuff tear.

Claimant has met her burden on this issue. The evidence shows that claimant owes the following amounts to medical providers for this injury:

³² *Birdsong v. Waste Management*, 147 S.W.3d, 132, 140 (Mo. App. S.D. 2004).

³³ Although claimant requested 26 weeks of TTD, she did not explain how she reached her calculation. By my calculations, the relevant period of 27 weeks.

³⁴ *Farmer-Cummings v. Personal Pool of Platte County*, 110 S.W.3d 818, 823 (Mo. banc 2003).

³⁵ *Id.* at 822.

Employee: Melody Hannon

Injury No. 08-065056

Lake Ozark Rehabilitation	\$ 1,266.00
St. Marys Health Center	\$17,878.29
Dr. Snyder	<u>\$ 3,631.67</u>
Total:	\$22,775.96

Thus, the employer/insurer is ordered to pay \$22,775.96 for past due medical bills.

Issue 7: Average weekly wage/compensation rate

Although the parties initially indicated that the average weekly wage/compensation rate was an issue, during the trial they agreed that they would resolve this issue on their own. Therefore, this issue is moot.³⁶

Summary

I find that claimant sustained a work injury on April 15, 2008, and that the injury arose out of and in the course of her employment with the employer. I also find that her injury and need for treatment was medically causally related to the work injury. I find that she sustained a permanent partial disability of 20% of the right shoulder. I find that claimant prevails on the notice issue. In addition, the employer/insurer is liable for 27 weeks of temporary total disability. Finally, the employer/insurer owes \$22,775.96 for past due medical expenses.

Any pending objections not expressly ruled on in this award are overruled.

This Award is subject to a lien in the amount of 25% of the payments hereunder in favor of the claimant's attorney, Tom Pirmantgen, for necessary legal services rendered to the claimant.

Date: _____

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

³⁶ Although the parties did not notify the administrative law judge (ALJ) as to their resolution of the average weekly wage/compensation rate issue, the ALJ notes that in her brief, claimant uses a compensation rate for TTD benefits of \$251.20. Whether or not this is the amount the parties agreed to is not, however, discussed in the briefs of either the claimant or the employer/insurer.