

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

Injury No.: 03-112481

Employee: Rosalind Hawkins
Employer: American Airlines
Insurer: American Home Assurance
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

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, read the briefs, 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 October 19, 2009, as supplemented herein.

Preliminaries

The administrative law judge found that, as a result of the accident on June 15, 2003, employee sustained a 40% permanent partial disability of the right shoulder at the 232 week level for 92.8 weeks at \$340.12 a week for a total of \$31,563.14 as compensation for permanent partial disability. Further, the administrative law judge found that employee will not benefit from and is not entitled to any future medical care.

Although the Commission agrees with the administrative law judge's conclusion, it is not clear from the award exactly how the administrative law judge arrived at an award of 40% permanent partial disability. For this reason, we provide the following supplementation.

Findings of Fact

The stipulations of the parties were accurately recounted in the award of the administrative law judge and are adopted by the Commission.

Employee worked for TWA/American Airlines (employer) for 36 years. When she last worked for employer she was a Flight Service Manager/Purser. On June 15, 2003, employee was standing next to the cockpit door and her arm was caught between the parts of the bi-fold door. Later that day, on a different flight, a similar occurrence took place. The captain pushed the bi-fold door open several times. Employee's right arm was again pinched in the folds of the bi-fold door.

Employee: Rosalind Hawkins

- 2 -

When employee returned from her trip, she went to in-flight services and was sent for treatment. When she was seen at Barnes Care, employee had a significant amount of pain in the elbow and shoulder.

On September 24, 2003, Dr. Haupt performed surgery on employee's right shoulder and an arthroscopic intraarticular debridement of partial thickness rotator cuff tear, and excision of the CA ligament and distal clavicle excision. After surgery, Dr. Haupt had employee follow up with physical therapy and tried to increase her activities. On December 1, 2003, Dr. Haupt released employee to work with the following restrictions: no lifting greater than 15 lbs from the floor to knuckle level; no lifting greater than 10 lbs from knuckle level to shoulder level; and no lifting of any weight above shoulder level. Dr. Haupt did not think that employee could return to her previous work as a flight attendant with lifting and pushing unless someone was there to help her.

Employee next went to see Dr. James Walentynowicz, who diagnosed employee with ongoing adhesive capsulitis and recommended re-manipulation of the shoulder. Employee then went to see Dr. Zehnder, who after examining employee, felt that she was at maximum medical improvement and needed no further treatment.

Employee then treated with Dr. Miller, who felt that employee had a postoperative frozen shoulder. Dr. Miller ordered an MRI Arthrogram. After reviewing the MRI, Dr. Miller felt employee had partial thickness rotator cuff tears that were damaged enough that there would likely be some permanent weakness. Dr. Miller opined that employee could be treated conservatively.

On January 18, 2005, employee was seen by Dr. Emanuel for an Independent Medical Evaluation (IME). Dr. Emanuel diagnosed employee with right shoulder pain, partial thickness rotator cuff tear, with possible focal full thickness rotator cuff tear, early degeneration of the glenohumeral joint, status post arthroscopic debridement of glenoid labrum and rotator cuff tear. Dr. Emanuel recommended the following restrictions: no lifting more than 10 lbs. from floor to waist level; no lifting of any weight from waist level to shoulder level; no pushing or pulling more than 25 lbs. on a four wheel cart; no pushing or pulling more than 10 lbs. if the weight is not on a cart; and no repetitive use of the shoulder. Dr. Emanuel testified that he believes that, as a result of the June 15, 2003, injury, employee's upper right extremity is 5 – 7.5% permanently partially disabled at the level of the shoulder.

Employee was also seen by Dr. Volarich for the purpose of an IME. Dr. Volarich found that as a result of employee's injury on June 15, 2003, she had right shoulder internal derangement, S/P arthroscopic subacromial decompression, excision of the coracoacromial ligament, acromioplasty, distal clavicle excision as well as debridement of the labrum and partial thickness rotator cuff tear. Dr. Volarich opined that employee's injury caused a 50% permanent partial disability of the right upper extremity at the shoulder as well as 20% permanent partial disability of the right upper extremity at the elbow due to a contusion. Dr. Volarich testified that employee is at maximum medical improvement and is not in need of future medical care.

Employee: Rosalind Hawkins

- 3 -

Employee testified that she is right arm dominant. Employee stated that as a result of the injury she is unable to return to work as a flight attendant. Employee stated that she can lift a gallon of milk and her dog with her right arm, but she does not believe she can lift more than 8 lbs. One of employee's hobbies was playing the piano, but after this injury she is no longer able to even play a full piece. She stated that her shoulder is never comfortable and that her pain increases with increased activity. Employee testified that she cannot lift anything with her arm extended and that it is very difficult for her to dress herself. Employee claims that her pain is never below a 6 on a scale of 1 – 10 and that she has passed out 14 times due to the pain. Employee also stated that she cannot tolerate for her elbow to be touched.

Conclusions of Law

In light of the parties' stipulations, there is no dispute that employee sustained an accidental injury on June 15, 2003, while in the course and scope of employment with employer. Therefore, the only real issue concerns nature and extent of employee's permanent partial disability.

Dr. Volarich rated employee at 50% permanent partial disability of the right upper extremity at the shoulder as well as 20% permanent partial disability of the right upper extremity at the elbow due to a contusion. On the other hand, Dr. Emanuel testified that he believes employee's permanent partial disability of the right upper extremity at the shoulder is between 5 – 7.5%.

We find, as did the administrative law judge, that 5 – 7.5% permanent partial disability is not an accurate rating considering employee's aforementioned restrictions and current complaints. And while we find that Dr. Volarich's rating of 50% permanent partial disability of the right upper extremity at the shoulder is more persuasive than Dr. Emanuel's rating, we also find, in considering the record as a whole, that Dr. Volarich's rating is slightly overstated. Lastly, we find that while employee subjectively complains of problems with her elbow, the objective medical findings do not support an award of permanent partial disability with respect to her elbow.

We find, as did the administrative law judge, that although neither doctors' ratings of permanent partial disability for employee's right shoulder are fully supported by the record, Dr. Volarich's rating is more persuasive than Dr. Emanuel's. Therefore, we agree with the administrative law judge and find that employee is 40% permanently partially disabled of the right shoulder. We also find, as did the administrative law judge, that employee did not suffer permanent partial disability for her elbow. In addition, we find that employee will not benefit from, and is not entitled to, any future medical care.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued October 19, 2009, is affirmed, and is attached and incorporated by this reference.

Employee: Rosalind Hawkins

- 4 -

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees 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 20th day of July 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary