

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

Injury No.: 00-154820

Employee: Rama Hitchcock
Employer: New Prime, Inc.
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: December 5, 2000
Place and County of Accident: Wyoming

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 October 5, 2005. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued October 5, 2005, 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 15th day of June 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Rama Hitchcock

Injury No. 00-154820

Dependents: N/A

Employer: New Prime, Inc.

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Insurer: Self-insured

Hearing Date: 2/25/05

Checked by: MEH

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: 12/5/00
5. State location where accident occurred or occupational disease was contracted: WYOMING
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 WAS INVOLVED IN A MOTOR VEHICLE ACCIDENT.
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: BODY AS A WHOLE
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
14. Compensation paid to-date for temporary disability: \$30,520.26
16. Value necessary medical aid paid to date by employer/insurer? \$88,155.86

Employee: RAMA HITCHCOCK

Injury No. 00-154820

17. Value necessary medical aid not furnished by employer/insurer? 0
18. Employee's average weekly wages: \$491.39
19. Weekly compensation rate: \$327.59
20. Method wages computation: ACCORDING TO LAW

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: 0

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning 3/20/02, for Claimant's lifetime

TEMPORARY TOTAL DISABILITY UNDERPAYMENT \$25.52 FOR 67 WEEKS.

22. Second Injury Fund liability: Yes No X Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits:

Permanent total disability benefits from Second Injury Fund:
weekly differential (N/A) payable by SIF for N/A weeks, beginning
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: PERMANENT TOTAL DISABILITY

Said payments to begin immediately 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 lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

PAUL REICHERT

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Rama Hitchcock Injury No. 00-154820

Dependents: N/A

Employer: New Prime, Inc.

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Insurer: Self-insured

Hearing Date: 2/25/05 Checked by: MEH

The parties appeared before the undersigned administrative law judge on February 25, 2005, and September 28, 2005, for a final hearing. The claimant appeared in person represented by Paul Reichert. The employer and insurer appeared represented by Warren Stafford. The Second Injury Fund appeared represented by Susan Colburn.

The parties stipulated to the following facts. On or about December 5, 2000, NewPrime, Inc., was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully self-insured. On the alleged injury date of December 5, 2000, Rama Hitchcock was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about December 5, 2000, the claimant sustained an accident

which arose out of and in the course and scope of employment. The accident occurred in Wyoming, the parties agree that the employee's contract of employment was made in Missouri, and the parties agree to venue in Springfield, Missouri. The claimant notified the employer of her injury as required by Section 287.420, RSMo. The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo. Temporary disability benefits have been paid to the claimant in the amount of \$30,520.26, which represents 67 weeks of benefits at the rate of \$302.39. The employer and insurer have paid medical benefits in the amount of \$88,155.86. The attorney fee being sought is 25%.

ISSUES:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed.
2. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
3. What is the proper rate.
4. Any underpayment of temporary total benefits owed to the claimant.
5. The nature and extent of permanent disabilities including permanent total disability.
6. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

FINDINGS OF FACT:

The claimant and her husband, Doyle Hitchcock, were co over-the-road truck drivers since 1998. The claimant's husband leased a truck and entered into an agreement to drive with New Prime, Inc., the employer. The claimant and her husband drove exclusively for the employer. The claimant was considered a co driver, and her payment came out of his settlements. They both drove equal amounts of time. They avoided hiring lumpers and both unloaded. Claimant was paid a check by the employer based on the miles she drove.

They usually ran seven days a week and could each run 70 hours in a week. They usually ran very close to this. Mr. Hitchcock testified that on claimant's wage statement, there were some weeks in which they had some sitting time and were not working. Wage statements were presented for 13 weeks showing a total paid of \$5,896.66. She was paid different amounts each week. Her husband testified that the week in which she was paid \$156 was a very short week consisting of two short trips. The week in which she earned \$36.85 was a four or five day week. The week she earned \$270 was a three and a half or four day week.

On December 5, 2000, claimant was driving the truck in Sweetwater, Wyoming, while her husband was asleep in the cab. She came upon an area of road that had a bowl or hollow to the left. A strong gust of wind caught the truck causing it to jackknife and ended up in the ditch. Claimant was restrained, and the seat belt either came loose or broke causing her to hit inside the cab of the truck. Her seat also bottomed out and broke the airbags in it. She also hit the steering wheel with her knees.

She experienced immediate pain in her neck, stomach, shoulders, left arm, left elbow, left wrist, low back, right knee, right ankle, and left knee. She was treated initially at Dr. Gil Mobley's clinic before being referred to Dr. Thomas Kelso. She was sent to Dr. James Jordon. She was referred to Dr. Brad Wyrsh who performed left cubital tunnel release, left ulnar nerve transplantation, and left carpal tunnel release on April 27, 2001. Dr. Jordan prescribed physical therapy, which caused her neck to worsen. She was sent to Dr. Salim Rahman who performed surgery to her neck at level C6-7 consisting of cervical microdiscectomy with fusion and fixation. Dr. Bradley Walz performed arthroscopic surgery to her right knee on April 17, 2002.

During this time the claimant was having nightmares about the accident. She would also have problems driving if

another driver got too close to her car.

Claimant was referred to Dr. Jeffrey Woodward. She was referred to Dr. Deborah Kukal, who saw her on June 17, 2002. Dr. Kukal diagnosed posttraumatic stress disorder. Claimant received psychotherapy from Dr. Kukal for one year.

In 1991 claimant was working in the state of Washington as an ambulance dispatcher. She had an accident in 1991 when she was working as an ambulance dispatcher. She received a call at approximately 3:00 a.m. When she was attempting to answer the phone, she fell, and as a result, injured her neck. As a result of this accident, she had three fusion surgeries to her neck at C5-6. A fourth surgery was recommended, but she chose to let it fuse on its own. It took her several years before her recovery was complete. After the third surgery she had some initial improvement but still had problems for about five years. She testified that her symptoms slowly improved and ultimately disappeared about 1997. Claimant also had low back complaints in 1991 for which she received injections. During this time she worked several different jobs including bartending, waitressing, raising dairy goats, and at a chicken plant. She also cared for her ailing mother. Claimant attended truckdriving school and graduated in 1997. On January 14, 1997, she returned to Washington to see her prior doctors to be released to attend school. The doctor's notes state the C5-6 cervical fusion was not complete, pain across neck, worse on left and numbness in hands. Low back pain worse on left and radiating in her left leg. She testified that these were the problems she had had earlier while her neck was fusing but that they had resolved prior to that time. She started driving a truck after that.

Currently she takes Zoloft, Norcotan, muscle relaxers and sleeping pills. She was taking the Zoloft prior to the accident.

She attempted to work at a fireworks stand owned by a friend. She testified that she could not do this for more than three days.

Claimant testified that her current daily activities consist of getting up at approximately 1:00 a.m.; doing some light housework, wake up her grandchildren at 6:30 a.m. They get themselves ready for school. She takes them about half the time. She then rests an hour or so before doing some more housework. She will work a few minutes and then sit a few minutes while doing housework. At 3:00 p.m. she gets the children and helps with homework and fixes dinner. Her best time of day is between 2:00 and 5:00 p.m. After her husband comes home from work, she lies down and falls asleep. She sleeps approximately 4 hours a night. She testified that she has problems with her memory, particularly with numbers. She also has problems with patience that she did not have in the past.

Mr. Hitchcock testified that the claimant's neck condition prior to December 2000 did not affect her ability to operate and load/unload the truck. Since the accident, he testified that she has lost ability to do many activities such as horseback riding, dancing, playing pool. They do not go out anymore, and it has affected her ability to do housework. He now does a lot of the housework such as dishes, laundry, and vacuuming. He now works local jobs so he can be home every night. Claimant lays down on an almost daily basis. Her sleep is interrupted by discomfort and severe nightmares. She limits her driving and only drives when she has to. She will garden and grow houseplants. This consists of plants in pots and what she can reach outside when she is sitting on the ground. Her husband and grandson help her with this.

Dr. James Jordan testified. He initially saw the claimant on March 13, 2001. The claimant complained of pain in the left elbow into her hand. Her right knee was tender. He testified that she did not complain of back or neck pain. He reviewed MRIs from 1992 and felt that they did not show any additional problems. Dr. Rahman fused her C6-7 level in September 2002. Dr. Jordan felt the osteophytes Dr. Rahman decompressed were preexisting the 2000 accident. In cross-examination he stated that he felt that the truck wreck was a cause of her neck symptoms. He felt that the bony spurs were already there and that the wreck made them symptomatic. He also did not think that the knee surgery performed by Dr. Walz

was caused by the work injury. He felt she had a prior meniscus tear that was made worse in the wreck. Dr. Jordan released claimant on June 5, 2003, and found she reached maximum medical improvement on June 17, 2003. He rated her with 7.5% disability at the neck from the truck accident and 7.5% preexisting; 5% permanent disability to the low back, 20% of which from the accident and 80% preexisting; 5% to the right knee, divided as 2% from the accident and 3% preexisting; none on the left elbow; 8% to left wrist; none to the right wrist and none for post traumatic stress syndrome. He imposed limits of no commercial truck driving, no carrying in front, no lifting over 20 pounds floor to waist and overhead lifting no more than 5-10 pounds. He felt claimant could do light duty-work. He also felt her preexisting disabilities kept her from functioning in jobs and would impair her from doing other jobs.

Dr. Jeffrey Woodward examined the claimant on March 28, 2003. He was asked to evaluate her spine problems. In her history to him, she complained of neck pain and headaches as well as in her shoulder blades. She also complained of lower back pain, worse on the right, intermittent leg numbness and tingling, worse on the left, as well as left arm and right knee conditions. Dr. Woodward rated her with prior disability of 15% of the cervical spine and prior 10% of the lumbar spine. Related to the December 2000 injury he rated permanent disability of 15% to the cervical spine, 5% to the lumbar spine, 10% to the knee, 10% to the left elbow, and 10% left wrist. Dr. Woodward imposed restrictions of full-time modified duty work with frequent lift, push pull 0-30 pounds maximum. He felt that the claimant "physically is capable of performing work duty within the permanent restrictions as I have described." He did not recommend further medical treatment.

Dr. Norbert Belz examined the claimant in September 2003. In his opinion, she had preexisting degenerative changes in her lumbar back but felt that the accident of December 2000 "is exactly appropriate to cause and /or substantially aggravate either of the above-noted entities." He found this resulted in "left greater than right lower-extremity radiculopathies; primarily, left L5 radiculopathy." He also diagnosed her with posttraumatic stress disorder caused by the injury. He also found occupational right knee contusion with right anterior cruciate ligament strain and right knee medical meniscus tear and a tear of the articular cartilage.

Dr. Belz rated the claimant with 12.5% permanent disability to her lumbar back as a result of this injury and 5% preexisting. He rated 25% permanent disability to her cervical spine for this injury and 18% preexisting. In addition, he rated 15% permanent disability to her knee, 20% to her left elbow, 15% to the left wrist for carpal tunnel syndrome, and 12.5% body as a whole for posttraumatic stress disorder.

Dr. Belz testified that her prior injuries were serious enough to constitute a hindrance or obstacle to employment. He felt that even without the prior injuries, her left wrist disability would be the same as related to the December 2000 accident and the back would be the same to a little less. He felt that the prior condition of the cervical spine made the 2000 injury more severe. He further testified that "If the priors didn't exist – as we talked about before, the priors certainly added some disability to the last, but the last is a rather significant injury in and of itself. And I believe that had the last occurred absent the priors, she would not be as disabled as she is but still not placeable in the open labor market and would be permanently and totally disabled from the last accident alone." He feels it is a combination of the neck, low back, right knee, post traumatic stress disorder, and left arm that causes her to be permanently disabled. He also stated that the posttraumatic stress disorder was stable and fixed and that it in and of itself does not keep her from working. He recommends further medical treatment consisting of Zoloft, medications, and 3 to 4 doctor visits a year. In his deposition, he was under the impression that the Zoloft started after the December 2000 injury and was unaware she was taking it at the time of the injury.

Wilbur Swearingin, a Certified Rehabilitation Counselor, testified. He interviewed the claimant and administered tests to her on July 2, 2004. He also reviewed the medical records and reports. Mr. Swearingin concluded that after the motor vehicle accident of December 5, 2000, the claimant could not compete in the open labor market and was permanently

and totally disabled. He further determined that although the claimant did have impairments which were vocationally disabling and created a hindrance or obstacle to employment prior to December 5, 2000, the last injury alone caused her to be permanently and totally disabled.

CONCLUSIONS OF LAW:

1. Whether the accident caused the injuries and disabilities for which benefits are being claimed.

Based on all of the medical evidence, I find that the accident of December 5, 2000, caused the injuries and disabilities for which benefits are being claimed. While the claimant did clearly have prior injuries, I find in accordance with Dr. Belz's opinion that the claimant suffered additional injuries that are the subject of this claim.

2. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

The only recommendation for future medical treatment being made is that by Dr. Belz for future medications, namely Zoloft, and doctor visits to monitor claimant. Dr. Belz was unaware that claimant was taking Zoloft at the time of the accident, as is shown in the medical records. I do not find, based on the medical records as a whole, that the claimant will need further medical treatment as a result of this injury. The claimant is not awarded any future medical treatment.

3. What is the proper rate.

Examination of the wage statement shows that there were three weeks in which the claimant earned under \$400, and the other weeks she earned between \$416.50 up to \$834.96. The claimant and her husband testified that the lower weeks were based on working fewer days. I find that the claimant missed at least 5 regular or scheduled days so the total earned should be divided by 12 rather than 13. Therefore, the average weekly wage is \$491.39, based on \$5,896.66 divided by 12. This provides a weekly rate of \$327.59.

4. Any underpayment of temporary total benefits owed to the claimant.

I find that the rate that temporary total disability was paid, \$302.39, was too low based on my ruling above. Therefore, the claimant is entitled to an underpayment of \$25.52 per week for 67 weeks for a total of \$1,709.84.

5. The nature and extent of permanent disabilities including permanent total disability.

I found the claimant and her husband to be credible witnesses. After carefully reviewing the medical opinions, the restrictions and rating imposed, as well as the opinion of Wilbur Swearingin, a certified vocational counselor, I find that the claimant is permanently and totally disabled as a result of the injuries she sustained in the work-related truck accident which occurred on December 5, 2000. The employer and insurer are ordered to pay permanent total disability benefits to the claimant in the amount of \$327.59 per week to claimant beginning March 20, 2002, for the remainder of her life. The date of March 20, 2002, is reached by noting that temporary total disability benefits were paid for 67 weeks.

6. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

Based upon my finding that the claimant is permanently and totally disabled from the last accident alone, I find that there is no liability on the part of the Second Injury Fund.

Attorney for the claimant, Paul Reichert, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: October 5, 2005

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secrest
Patricia "Pat" Secrest
Director
Division of Workers' Compensation