

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

Injury No.: 04-122794

Employee: Christopher King
Employer: Metromedia Steakhouse
d/b/a Ponderosa
Insurer: ACE American Insurance Co.
Date of Accident: On or about November 30, 2004
Place and County of Accident: Hannibal, 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 August 16, 2006. The award and decision of Administrative Law Judge Ronald F. Harris, issued August 16, 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 20th day of November 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Christopher King

Injury No. 04-122794

Dependents: N/A
Employer: Metromedia Steakhouse d/b/a Ponderosa
Additional Party: N/A
Insurer: ACE American Insurance Co.
Hearing Date: Aug. 7, 2006

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri
Checked by: RFH/tmh

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: On or about November 30, 2004.
5. State location where accident occurred or occupational disease was contracted: Hannibal, 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 cooking when a bucket of hot grease fell, and the grease splashed on his right foot/ankle.
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 ankle/foot.
14. Nature and extent of any permanent disability: 5% PPD of right ankle at the 155 week level
15. Compensation paid to-date for temporary disability: \$168.43, approximately 1 3/7 weeks.
16. Value necessary medical aid paid to date by employer/insurer? \$1,503.75.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$168.43.
19. Weekly compensation rate: \$112.34/\$112.34.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: \$870.64 (5% PPD right ankle at 155 week level = 7.75 weeks x \$112.34)
22. Future requirements awarded: None.

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: Dean Christianson

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Christopher King

Injury No: 04-122794

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: Metromedia Steakhouse d/b/a Ponderosa

Additional Party: N/A

Insurer: ACE American Insurance Co.

Checked by: RFH/tmh

PRELIMINARIES

The above referenced Workers' Compensation claim was heard by the undersigned Administrative Law Judge on August 7, 2006. Attorney Dean L. Christianson represented Christopher King (Claimant). Metromedia Steakhouse d/b/a Ponderosa (Employer) and Ace American Insurance Company (Insurer) were represented by Attorney Patricia Musick. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

Prior to the start of the hearing the parties identified the following as the only disputed issues for disposition in this case: nature and extent of permanent partial disability (PPD) and future medical treatment.

Claimant/Employee offered Exhibits A, B, C, and D and all were admitted into evidence (Exhibit D admitted over objection). Employer/Insurer offered Exhibit 1, which was admitted into evidence. Any objections not specifically addressed

in this award are overruled.

FINDINGS OF FACT AND RULINGS OF LAW

Only testimony necessary to support this award will be reviewed and summarized.

Claimant testified that his date of birth was September 30, 1987, and that he had been working for the employer for approximately two months prior to the incident on November 30, 2004.

Claimant performed a variety of duties for the employer and on November 30, 2004, was cooking and preparing food for the buffet. Claimant was carrying a bucket of grease, heated to 400+ degrees, when the bucket handle broke causing the hot grease to spill on Claimant's right foot and ankle. The employer's manager called claimant's father who then came and took Claimant to the emergency room at the Hannibal Regional Hospital. Claimant was treated for 1st degree burns and 2nd degree blisters to the lateral aspect of the right foot and ankle with the application of Silvadene cream, bandaging and was released to go home (Employee's Exhibit A).

Claimant had a follow up visit on December 2, 2004, with Dr. Melissa Rendlen at the Hannibal Clinic. Dr. Rendlen noted 1st and 2nd degree burns with no evidence of infection, no edema and commented that the ankle appeared to be healing well. Claimant was instructed to continue to redress the ankle and to return for follow up in 3-4 days. On the return visit with Dr. Rendlen on December 7, 2004, the doctor noted the blisters had opened and were healing with no sign of infection but there were some areas that appeared to be staying a little too moist. Claimant was instructed to continue to use the Silvadene cream without wrapping the ankle unless he was going to be up on his foot and to return to the doctor in two days. Claimant returned to the Hannibal Clinic on December 13 and was seen by Dr. Leslie McCoy who noted no drainage or infection and released the Claimant without restrictions further noting the Claimant was "healed totally" (Employee's Exhibit C).

There is no indication Claimant either sought or received any additional treatment between his release on December 13, 2004, and November 28, 2005, when he saw Dr. David Volarich for the purpose of obtaining an IME.

Dr. Volarich noted Claimant's complaints to be a constant burning, aching pain in the area of the medial malleolus with constant itching and sweating. Claimant stated to the doctor that the sweat was very malodorous and a constant source of discomfort and embarrassment. There were no complaints of pain into the toes or above the ankle or of any paresthesias. Claimant indicated his symptoms would increase with cold, damp weather or when immersed in water, whether warm or cold, and that his symptoms would be severe at the end of the day if he had been up on his feet. Dr. Volarich performed a physical examination of Claimant and noted Claimant was able to walk without foot drop, limp, or ataxia. Claimant was also able to stand on either leg and hop on either leg without difficulty. The doctor also noted full range of motion of the ankle but did note a mild hypopigmentation of the skin along the medial border of the foot and ankle and that the skin was very moist and malodorous. The doctor also felt there was diminished pinprick sensation. Dr. Volarich opined that Claimant had a 15% permanent partial disability at the right ankle to account for autonomic skin changes due to damage of the intradermal structures including sweat glands, hair follicles, and sensory nerves resulting in increased sweating, loss of hair growth, and paresthesias with diminished pinprick (Employee's Exhibit A).

Claimant was next seen by Dr. Russell Cantrell on April 19, 2006, at the employer/insurer's request, for purposes of an IME. Dr. Cantrell noted Claimant reported intermittent paresthesias in the medial aspect of the foot with prolonged standing, as well as complaints of a deep pain in his foot with exposure to water. Claimant additionally described hyperhidrosis and consequently malodor associated with that.

Dr. Cantrell performed an examination of Claimant and noted no difficulty ambulating, no abnormalities of the foot, no visible or palpable scarring, or tenderness. Muscle testing revealed normal strength with no reproduction of pain complaints. There was normal sensation to the touch with no loss of sensation and no hyperpathia. Additionally, Dr. Cantrell noted no evidence of hypopigmentation and no evidence of excessive sweating at the time. On direct examination regarding what the doctor would expect to find if there had been damage to the sweat glands, Dr. Cantrell responded as follows:

Answer. "Well if there had been physical damage to the sweat glands as a result of his burn injury, then you might expect to see a reduction in sweat output rather than an increase. In fact, that's a concern of patients who have burn injuries over much of their body where they have the inability to regulate their body temperature because of the lack of sweat production." (Employer/Insurer's Exhibit 1 p. 9).

Dr. Cantrell opined Claimant had a 1% permanent partial disability of the right ankle as the result of subjective complaints, which the doctor felt had no specific anatomic correlation (Employer/Insurer's Exhibit 1).

Claimant testified that his foot sweats and stinks all the time; that a change in temperature affects it (Claimant described that as being "annoying"); the foot itches most of the day and that it would burn when he puts it in water. Claimant testified that he uses two different types of over-the-counter creams on his foot and ankle. These creams cost

between \$4 and \$6 “for both” and they last about a week. Dr. Cantrell felt claimant was in need of no additional medical treatment. Dr. Volarich indicated Claimant would need on going medication for pain, muscle relaxants, physical therapy and that Claimant should continue to use appropriate lotions, emollients, and moisturizers.

At the hearing, Claimant was asked to remove both shoes and socks so that a visual comparison could be made. While I generally find Dr. Cantrell’s findings and observations to be more credible than Dr. Volarich’s findings and opinions to the contrary, the visual inspection at the hearing did reveal some mild hypopigmentation and scarring along the medial malleolus. While that is not significant in terms of disfigurement since disfigurement to the foot is not compensable, it is important when considering credibility and the weight to be given to the evidence. Additionally, visual inspection did not reveal any obvious sweating or odor.

Nature and extent of Permanent Partial Disability

The ratings provided by Drs. Cantrell and Volarich have previously been summarized and will not be repeated here. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds). Claimant obviously suffered a serious burn from the November 30, 2004, incident but he appears to have recovered reasonably well. I find Claimant does still have some residual problems with his ankle, specifically a diminished sensation to touch along the medial malleolus as well as increased sensitivity to either cold or hot water as well as weather changes resulting from the burn injury. Consequently, I find Claimant has a 5% PPD of his right foot at the level of the ankle. Employer/Insurer is directed to pay Claimant the sum of \$870.64, which represents: 5% disability of the right ankle at the 155 week level or 7.75 weeks of compensation at the agreed upon compensation rate of \$112.34.

Future Medical Treatment

Dr. Cantrell did not recommend any additional treatment. Dr. Volarich listed several things he would recommend but upon questioning at his deposition seemed to indicate he did so in the event Claimant would happen to need it. Specifically, on direct examination by Claimant’s Counsel regarding the need for any additional medical care the following exchange occurred (see Claimant’s Exhibit A pgs. 11-12):

Answer: “I think for any pain syndrome he might have, he needs something like an anti-inflammatory medication to help control that. I mentioned some other things in case he gets stiffness or more problems in the ankle such as physical therapy. I don’t think he would ever need narcotics, but I listed that just to cover it in case he did have a significant pain problem that developed”.

Question: “And when you’re talking about other things he might use, you’re talking about your reference in there to lotions or sun block?”

Answer: “That’s - - yeah, those are things that I tell any patient with a significant burn because any time there’s burned skin exposed to the sun, it’s subject to extreme sensitivity to ultraviolet light and can burn very easily. It’s like going out in very intense sunlight with no sun block on the rest of your body. This area would burn in a very short period of time. It would cause, you know, more pain.”

The Claimant has the burden of proof of all material elements of the claim. *Thorsen v. Sachs Electric Company*, 52 S.W.3rd 611 (Mo. App. 2001). While the Claimant is not required to prove with absolute certainty the need for future medical treatment arising from the injury, speculation is not sufficient. I find Claimant has failed to meet his burden of proof regarding future medical care.

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CONCLUSION

In summary, Claimant sustained an injury on or about November 30, 2004, that arose out of and in the course of his employment with Employer. Employer is liable for PPD as outlined in this award. Claimant's request for future medical care is denied. Claimant's attorney is entitled to a 25% lien.

Date: _____

Made by: _____

RONALD F. HARRIS
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation