

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

Injury No.: 01-165321

Employee: Selma Lewis
Employer: KU Medical Center
Insurer: Arrowood Indemnity Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 6, 2010. The award and decision of Administrative Law Judge Lisa Meiners, issued October 6, 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 31st day of March 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Selma Lewis Injury No. 01-165321
Dependents: N/A
Employer: KU Medical Center
Insurer: Arrowood Indemnity Company
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: August 25, 2010 Checked by: LM/cy

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 6, 2001
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson 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 sustained a low back injury assisting a patient while employed for KU Medical Center.
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 (thoracic and low back).

14. Nature and extent of any permanent disability: 15% permanent partial disability, body as a whole.
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$11,072.66
17. Value necessary medical aid not furnished by employer/insurer? \$0
18. Employee's average weekly wages: Approximately \$531.92
19. Weekly compensation rate: \$354.63/\$329.42
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: 15% permanent partial disability body as a whole or \$19,765.20.
22. Second Injury Fund liability: 14 weeks of compensation or \$4,611.88
23. Future requirements awarded: N/A

AMOUNT: \$24,377.08

This compensation awarded to the Claimant shall be subject to a 25% lien in favor of Tom Hill, Attorney at Law, for reasonable and necessary attorney's fees pursuant to Mo. Rev. Stat. §287.260.1.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Selma Lewis Injury No. 01-165321
Dependents: N/A
Employer: KU Medical Center
Insurer: Arrowood Indemnity Company
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: August 25, 2010 Checked by: LM/cy

On August 25, 2010, the parties appeared for hearing. The Claimant, Selma Lewis, appeared in person and was represented by Tom Hill. The Employer, KU Medical Center, and its Insurer, Arrowood Indemnity Company, was represented by Joseph McMillan. The Second Injury Fund was also a party and represented by Assistant Attorney General Benita Seliga.

STIPULATIONS

At the hearing, the parties entered into the following stipulations:

1. that the employer and employee were working subject to Missouri Workers' Compensation Law;
2. that its liability was fully insured by Arrowood Insurance;
3. that Selma Lewis was its employee and working subject to the law, as the contract of employment was made in Missouri;
4. that employee notified the employer of the injury as required by law;
5. that claimant sustained an injury by accident that arose out of and in the course of her employment;
6. that she filed her claim within the time allowed by law;
7. that claimant's average weekly wage was \$531.92 making the temporary total disability rate \$354.63 and the permanent partial disability rate of \$329.42;
8. that the employer had not paid any temporary total disability benefits but has paid medical expenses in the amount of \$11,072.66.

ISSUES

The issues to be determined by the hearing are as follows:

- 1) whether claimant sustained any disability and if so, the nature and extent of that disability;
- 2) the liability of the Second Injury Fund.

On or about October 6, 2001, Claimant felt a pop and pull sensation of her low back assisting a patient while working for KU Medical Center. Claimant reported the injury to her employer. On October 11, 2001, Claimant was admitted to the hospital due to concerns of a heart attack. Testing ruled out myocardial infarction.

Regardless, Claimant continued to complain of thoracic and low back pain and, therefore, MRIs were performed. The MRI of the thoracic area revealed congenitally small spinal canal with epidural lymphotosis, no disk bulges noted. The MRI of the lumbar region revealed an L4/5 central protrusion. Five days later, Claimant was released from the hospital with the diagnosis of lumbar and thoracic sprains.

On October 29, 2001, Claimant returned to work while receiving conservative care until Dr. Edward Wilson released her on May 29, 2002. Dr. Wilson released Claimant with the restrictions of no lifting greater than 20 pounds, no repetitive bending or twisting. Claimant worked within those restrictions entering data, performing secretarial work and monitoring suicidal patients until her last day of employment on February 6, 2003.

Medical records after May of 2002 reveal Claimant continued to complain of intermittent low back and thoracic pain. Claimant, in the summer of 2002, began complaining of neck pain. An MRI revealed disk protrusion at the C4-5 level and a disk bulge at the C5-6 level. Subsequent MRIs of the neck showed progressive degeneration and swelling compared to the July 2002 MRI. Subsequent MRIs of the lumbar and thoracic regions revealed no new abnormalities compared with the 2001 MRIs. After May 2002, Claimant also was hospitalized on several occasions for chest pains.

The parties request that this award address whether Claimant sustained any disability and if so, the nature and extent of that disability as a result of the October 6, 2001 accident. I find Claimant sustained a thoracic and lumbar strain as a result of the October 6, 2001 accident. This finding is based on medical records and Dr. Wilson's medical report.

Two doctors issued ratings in this matter. Dr. Wilson opined Claimant sustained a 2% permanent partial disability body as a whole due to the October 6, 2001 injury. On the other hand, Dr. Koprivica opined Claimant sustained 25% permanent partial disability body as a whole due to the October 6, 2001 accident. Indeed, Dr. Koprivica found the neck injury was casually related to the October 6, 2001 accident. I disagree with Dr. Koprivica since medical records and reports generated close in time to the date of injury up to the Claimant's release from care on May 29, 2002 do not reveal Claimant sustained injury of her neck on October 6, 2001. Regardless, Claimant was placed on stringent lifting restrictions of 20 pounds along with no repetitive bending or twisting activities. As such, I find Claimant sustained 15% permanent partial disability body as a whole as a result of the October 6, 2001 accident. The employer is liable to Claimant for \$19,765.20.

The parties also request this Award address whether the Second Injury Fund is liable to Claimant for either permanent partial disability or permanent total disability benefits. In 2007, Dr. Koprivica, and in 2003 vocational expert, Mary Titterington, found Claimant unemployable in the open labor market based on the last accident and Claimant's coronary artery disease and diabetes. I disagree with these experts.

Although I disagree Claimant is permanently totally disabled, I find Claimant's diabetic condition as it preexisted October 6, 2001 was a hindrance or obstacle to her employment. Claimant missed work due to complications of her diabetic condition. Due to her insulin dependence, one hospitalization included placing an insulin pump and the other to correct hemorrhages of her eyes.

However, I do not find the coronary artery disease, although a preexisting condition, to be a hindrance or obstacle to performing her job duties prior to October 6, 2001. Indeed, Claimant denied having hindrances or obstacles to performing her job duties after a stint placement. Dr. Koprivica found Claimant sustained 50% permanent partial disability body as a whole due to the coronary artery disease and diabetes. However, I find, based on Claimant's diabetic condition alone as it existed prior to October 6, 2001, Claimant sustained 20% permanent partial disability body as a whole.

Lastly, I do not find Claimant unemployable in the open labor market based on the last accident and preexisting diabetes. Indeed, Claimant worked full-time in the open labor market beginning October 29, 2001 until February 6, 2003. Claimant demonstrated she could work sedentary positions for almost 1 ½ years. In this case, I do not find performing data entry, answering phones or monitoring suicidal patients to be such accommodated work duties as to render her unemployable. Instead, I find those positions she performed to demonstrate her ability to work in the open labor market.

Furthermore, medical records, along with Claimant's testimony, reveal Claimant's physical condition deteriorated since October 6, 2001. Claimant was hospitalized in 2004 due to diabetic complications. In 2005, Claimant was hospitalized for pericarditis. Since 2002, Claimant's neck condition appears to have deteriorated to the extent a surgeon offered a cervical fusion. Therefore, I do not find Claimant to be permanently totally disabled based on a combination of back strains and preexisting diabetes, rather, her unemployability appears to be from subsequent deterioration.

However, I find Claimant sustained permanent partial disability. Indeed, I find the combination of back strains with the preexisting diabetic condition create a synergistic effect greater than the simple sum. The Second Injury Fund is liable to Claimant for 140 weeks combined with a 10% load factor or 14 weeks of compensation.

The employer is liable to Claimant for 15% permanent partial disability body as a whole or \$19,765.20. The Second Injury Fund is liable to Claimant for 14 weeks of compensation or \$4,611.88.

This Award is subject to an attorney's lien for services rendered by Tom Hill in the amount of 25%.

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this _____ day of _____, 2010, by:

Naomi Pearson
Division of Workers' Compensation