

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

Injury No.: 02-156654

Employee: Betty Logsden
Employer: Des Peres Hospital
Insurer: American Home Assurance
c/o Specialty Risk Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: July 1, 2002
Place and County of Accident: St. Louis County, 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 July 5, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued July 5, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4th day of December 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Betty Logsden

Injury No.: 02-156654

Dependents: N/A
Employer: Des Peres Hospital
Additional Party: Second Injury Fund
Insurer: American Home Assurance c/o
Specialty Risk Services
Hearing Date: April 11, 2007

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: CTL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: N/A
5. State location where alleged accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? No
8. Did accident or occupational disease arise out of and in the course of the employment? No
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: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Betty Logsden Injury No.: 02-156654

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$624.25
19. Weekly compensation rate: \$416.17/\$340.12
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

23. Future requirements awarded: N/A

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Betty Logsdan	Injury No.: 02-156654
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Des Peres Hospital	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	American Home Assurance c/o Specialty Risk Services	Checked by: CTL:tr

PREFACE

On April 11, 2007, a hearing was held in the above-captioned matter. The Claimant was represented by Attorney Mark Akers. The Employer/Insurer was represented by Attorney Karie Casey.

STIPULATIONS

1. The Claimant's average weekly wage was \$624.25.
2. The PPD/TTD rate is \$340.12/\$416.17.
3. Employer/Insurer paid no temporary total disability to the Claimant.
4. Employer/Insurer paid no medical payments.

ISSUES

1. Whether Claimant sustained an accident or occupational disease arising out of and in the course and scope of her employment;
2. Medical causation;
3. Nature and extent of permanent partial disability
4. Temporary total disability
5. Future medical treatment.

EXHIBITS

The following exhibits were offered and admitted into evidence by the Claimant:

- Exhibit A. Deposition of Dr. Barry Feinberg.
- Exhibit B. Records of Des Peres Hospital.
- Exhibit C. Records of Des Peres Hospital.
- Exhibit D. Records of Dr. Rustico Simpelo.
- Exhibit E. Records of Dr. Rustico Simpelo.
- Exhibit F. Records of Dr. Barry Feinberg.
- Exhibit G. Records of Dr. Demetrius Politis.

The following exhibits were offered and admitted into evidence by the Employer/Insurer:

- Exhibit 1. Deposition of Dr. Sherwyn Wayne.
- Exhibit 2. Claimant's Family Medical Leave (FMLA) Paperwork.

FINDINGS OF FACT

1. The Claimant testified she is 59 years of age and she went to work for Des Peres Hospital as a radiology transcriptionist from October 2000 to August 2002. When Claimant started working at the hospital, she worked with approximately six radiologists. About half of them transcribed their own reports. Up until the spring of 2002 she had a part time assistant who helped her in her work in the afternoons and on weekends. In the spring of 2002, the part time worker left and the Claimant became the sole transcriptionist.
2. Claimant testified as to the workstation in which she had two computers and one of the computers was directly in front of her and the other computer was to the right. She also had duties of answering the telephone. The Claimant testified that most of her job was typing, and turning her head and shoulders between the two screens on the computer.
3. Claimant testified that her pain in which she claimed a repetitive motion injury was a result in the increase of her workload over a period of approximately six weeks from July 1, 2002 to August 16, 2002.
4. Claimant testified that because of the increase in workload she developed pain in her shoulders, neck and upper back. On July 16, 2002, Claimant went to see Dr. Politis and she complained to the doctor of severe neck and upper back pain. Dr. Politis' records indicated Claimant had a history of osteopenia and a prior lumbar compression fracture. He ordered x-rays which were negative except for mild arthritis.
5. Dr. Politis advised the Claimant to have physical therapy at Des Peres Hospital which the Claimant said was not very helpful.
6. Dr. Politis' records of August 6, 2002, stated that Claimant had moderate to severe pain in her cervical and thoracic region, more in the cervical area, lateralizing more to the left. It was Dr. Politis' opinion that the Claimant had cervical radiculopathy and osteoarthritis in the thoracic and lumbar

spine. He also noted the cervical spine x-rays were negative.

7. Claimant testified that her problems were an occupational disease arising out of and in the course of her employment and started in July 2002 and continued until she left her employment on August 16, 2002.
8. Claimant testified that she left her employment with Des Peres Hospital on August 16, 2002 because of complaints in her cervical and thoracic areas as well as in her arms. Claimant has not worked since August 16, 2002, and she testified her pain is the same at it was when she left her employment.
9. Claimant has a brother-in-law, Dr. Simpelo, who she has sought treatment from according to the doctor's records from November 19, 1979 through September 2004.
10. Prior to Claimant's alleged occupational disease arising out of and in the course of her employment in July through August of 2002, she had made complaints to Dr. Simpelo of low back pain, pain in her neck, upper back, left shoulder, thoracic and cervical spine pain. He diagnosed osteoarthritis, osteopenia, compression fracture deformity, osteopenia in both shoulders, and osteoporosis.
11. On June 26, 2002, Dr. Politis diagnosed the Claimant with osteoarthritis and osteopenia and prescribed medication. Claimant saw Dr. Politis on July 16, 2002, and complained of left and right cervical and thoracic pain. It was mentioned in the medical records of Claimant having osteopenia and possible compression fractures.
12. Claimant saw Dr. Politis on August 6, 2002, and the doctor had ordered x-rays and his diagnosis of Claimant was that she had cervical radiculopathy and osteoarthritis, thoracic and lumbar spine.
13. Dr. Sherwyn Wayne, who testified by deposition for the Employer, testified very credibly. Dr. Wayne performed an evaluation and examination, and saw Claimant on April 20, 2006. Dr. Wayne testified that he took a history from the Claimant and reviewed extensive medical records. Dr. Wayne stated that the Claimant told him about chronic cervical, shoulder problems, and upper back problems. Dr. Wayne found through the interview with the Claimant as well as the medical records and all of the various exams and x-rays, that Claimant had longstanding osteopenia and degenerative changes prior to July of 2002, as well as problems of cervical and thoracic complaints going back as far as 1999.
14. Dr. Wayne was of the opinion within a reasonable degree of medical certainty that the Claimant demonstrated no objective evidence of any pathology directly or substantially aggravated as a result of the alleged work related activities in July through August 2002.
15. Dr. Wayne felt that Claimant's complaints with regard to the cervical and the thoracic areas of her body was probably related to osteopenia.
16. Dr. Wayne found no existence of permanent partial disability involving the cervical, thoracic, or shoulder area as a result of work related activity in July and August of 2002 as well as no relationship to low back complaints.

RULINGS OF LAW

1. Claimant's claim of sustaining injuries to her neck, upper back and shoulders as a result of an occupational disease arising out of and in the course of her employment with the Employer is denied. Thus, the other issues as to nature and extent of permanent partial disability, entitlement to temporary total disability benefits, and entitlement to future medical are moot.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Lucas Boling
Acting Director
Division of Workers' Compensation