

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

Injury No.: 03-148026

Employee: Marlene Maness
Employer: Old Country Buffet
Insurer: Fidelity & Guaranty Insurance Underwriters
Ace American Insurance Company
Date of Accident: Alleged November 10, 2003
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 April 23, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued April 23, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 30th day of July 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Marlene Maness Injury No.: 03-148026
Dependents: N/A Before the
Employer: Old Country Buffet **Division of Workers'**
Additional Party: N/A **Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri
Insurer: Fidelity & Guaranty Insurance Underwriters
Ace American Insurance Company
Hearing Date: April 16, 2008 Checked by: LJW

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: Alleged as November 10, 2003
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? N/A
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges injury to her left knee and immune system after receiving a Hepatitis A vaccine at her employment.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged left knee and immune system.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Marlene Maness Injury No.: 03-148026

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$94.50
19. Weekly compensation rate: \$63.00 / \$63.00
20. Method wages computation: By calculation

COMPENSATION PAYABLE

21. Amount of compensation payable: None
- Total: - 0 -

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Marlene Maness	Injury No.: 03-148026
Dependents:	N/A	Before the
Employer:	Old Country Buffet	Division of Workers'
Additional Party:	N/A	Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Fidelity & Guaranty Insurance Underwriters	Checked by: LJW
	Ace American Insurance Company	

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on April 16, 2008. The case was submitted on the date of hearing. This case was tried with companion cases #05-040703, and #05-144512. Marlene Maness (Claimant) appeared pro se. Old Country Buffet (Employer) is insured by Fidelity & Guaranty Insurance Underwriters and Ace American Insurance Company, and was represented by attorney Vicky Anthony. Second Injury Fund was not a party to the claim.

Prior to the start of hearing Claimant announced she would not participate in the hearing, and she declined to dismiss her claims. After being advised the hearing would proceed as scheduled, and a final award would issue based on the testimony and evidence presented at hearing, Claimant left the courtroom and did not return during the trial. Employer identified the following issues for disposition: accident; medical causation; nature and extent of permanent partial disability; and a statute of limitations defense.

Employer offered Exhibits 1-2. The exhibits were admitted into the record without objection. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be reviewed and summarized.

1. Claimant's family physician is Dr. Uchiyama. Dr. Uchiyama specializes in rheumatology and internal medicine.
2. Claimant was examined by Dr. Uchiyama on September 14, 2005, complaining of left knee pain caused by a hepatitis A vaccine she received at work during 2003-2004. Bilateral knee x-rays were obtained demonstrating possible mild patellofemoral degenerative joint disease of her left knee. Dr. Uchiyama diagnosed mild osteoarthritis and chondromalacia. Dr. Uchiyama recommended a follow-up MRI, but Claimant declined the study.
3. On March 15, 2006, Dr. Uchiyama aspirated fluid from Claimant's left knee, and cystology indicated a recent infection. Claimant was administered a cortisone injection and placed on oral steroids.
4. On January 9, 2007, Claimant presented with recurrent left knee pain and mild swelling. Dr. Uchiyama opined "I do not feel her left knee pain is related to [a] hepatitis A vaccination. I do not feel that [a] MRI of the left knee would help at this time." Claimant declined an x-ray of her left knee.

FINDINGS OF FACT & RULINGS OF LAW

Having given careful consideration to the entire record, based upon the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to accident & medical causation

Section 287.020 RSMo.(2000), defines accident as an unexpected or unforeseen event or series of events that occur suddenly, without fault, and produce objective symptoms of an injury. The injury must be "clearly work related", and that term is defined as work being a substantial factor in the resulting medical condition. Further, an injury is not compensable merely because work was a triggering or precipitating factor. To be medically causally related the work must be a substantial factor in the cause of the resulting medical condition or disability. §287.020.2 RSMo A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998) (overruled on other grounds). Further, there is no minimum percentage set out in the Workers' Compensation Law defining "substantial factor." *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. 1999) (overruled on other grounds). Determinations of this kind require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds).

Claimant bears the burden of proof in establishing the essential elements of her case. Establishing accident and medical causation are essential elements. For Employer to be held liable, Claimant must produce evidence which reasonably links her injury to the alleged work accident. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo.App. 1973). Claimant has failed to meet her burden. According to the medical records, Claimant believes a hepatitis A vaccine administered by Employer in 2003-2004 caused her subsequent knee problems. This belief is clearly refuted by her personal physician, Dr. Uchiyama, and Claimant offers no contrary expert medical opinion. As accident and medical causation are not established, all other issues presented are moot.

CONCLUSION

Claimant was accorded a full opportunity to be heard, and to present witnesses and evidence. Claimant declined to participate. Based on the evidence presented, Claimant has failed her burden to establish accident and medical causation. All other issues are moot. Employer owes no benefits regarding this injury.

Date: _____

Made by: _____

LINDA J. WENMAN

*Administrative Law Judge
Division of Workers' Compensation*

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation