

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

Injury No.: 05-040703

Employee: Marlene Maness
Employer: Old Country Buffet
Insurer: Ace American Insurance Company
Date of Accident: April 26, 2005
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.: 05-040703

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Old Country Buffet

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

Additional Party: N/A

Insurer: 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? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: April 26, 2005
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? 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: While removing trash from under a table, Claimant's right middle finger was stuck with a diabetic testing lancet.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right middle finger
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? \$1,048.35

Employee: Marlene Maness

Injury No.: 05-040703

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.: 05-040703

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Old Country Buffet

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

Additional Party: N/A

Insurer: Ace American Insurance Company

Checked by: LJW

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 #03-148026, and #05-144512. Marlene Maness (Claimant) appeared pro se. Old Country Buffet (Employer) is insured by 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; and nature and extent of permanent partial disability.

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. On April 26, 2005, Claimant was working for Employer, and while removing trash located under a customer table, Claimant's right middle finger was stuck by a diabetic testing lancet.

2. On May 3, 2005, Claimant was examined at St. Johns Mercy Corporate Health at the request of Employer. The examining physician noted the right finger wound was healed and nonvisable. Claimant was tested for HIV, hepatitis B&C, and her liver function was checked. Additionally, Claimant was offered HIV prophylaxis medication, which she declined. Claimant was returned to full work duty.

3. From June 7, 2005 until October 18, 2005, Claimant was followed at St. Johns Mercy Corporate Health with routine HIV testing, hepatitis B&C testing, and liver functions remaining normal. Claimant was discharged on October 18, 2005.

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).

Employer raised accident and medical causation as issues to be determined. The medical record is clear, Claimant was stuck in her right middle finger with a lancet while busing a table. Employer provided appropriate medical care and treatment. I find Claimant has met her burden to establish accident and medical causation.

Issues related to PPD benefits

Employer also questions whether Claimant sustained permanent injury due to the lancet stick. A permanent partial disability award is intended to cover claimant’s permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). The examining physician at St. Johns Mercy Corporate Health examined Claimant over a six month period. From the date of first examination the physician indicated Claimant’s wound was “healed and nonvisable.” Claimant offers no contrary expert medical opinion. Based on the competent evidence presented, I find Claimant sustained no permanent disability with this injury.

CONCLUSION

Claimant was accorded a full opportunity to be heard, present witnesses and evidence. Claimant declined to participate. Based on the evidence presented, Claimant sustained an injury by accident on April 26, 2005. Employer has supplied all necessary medical treatment for this injury. Claimant sustained no permanency in regard to this injury. Employer owes no additional 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