

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

Injury No.: 01-002737

Employee: Shelly McIntire  
Employer: T. J. Swift House, Inc.  
Insurer: Missouri Employers Mutual Insurance Company  
Date of Accident: January 2, 2001  
Place and County of Accident: Oregon 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 October 3, 2006. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued October 3, 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 6<sup>th</sup> day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Shelly McIntire

Injury No. 01-002737

Dependents: N/A

Employer: T.J. Swift House, Inc.

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance Company

Hearing Date: 6/30/06

Checked by: MEH

### 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: 1/2/01
5. State location where accident occurred or occupational disease was contracted: OREGON 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: CLAIMANT SPRAINED HER ANKLE WHILE HELPING TRANSFER A CLIENT FROM A WHEELCHAIR TO A VEHICLE AND SUBSEQUENTLY DEVELOPED A SEVERE STAPH INFECTION.
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: LEFT LOWER EXTREMITY
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
14. Compensation paid to-date for temporary disability: NONE
16. Value necessary medical aid paid to date by employer/insurer? NONE

Employee: SHELLY MCINTIRE

Injury No. 01-002737

17. Value necessary medical aid not furnished by employer/insurer? \$10,587.05
18. Employee's average weekly wages: \$361.50
19. Weekly compensation rate: \$241.00
20. Method wages computation: BY AGREEMENT

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$10,587.05

113 4/7 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning MARCH 18, 2003, for Claimant's lifetime

22. Second Injury Fund liability: Yes No  Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:  
weekly differential (N/A) payable by SIF for 0 weeks, beginning N/A  
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: PERMANENT TOTAL DISABILITY

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:

DAVID RAY

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Shelly McIntire Injury No. 01-002737

Dependents: N/A

Employer: T.J. Swift House, Inc.

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance Company

Hearing Date: 6/30/06 Checked by: MEH

The parties appeared before the undersigned administrative law judge on June 30, 2006, for a final hearing. The claimant appeared in person represented by David Ray. The employer and insurer appeared represented by Michael Mayes. Memorandums of law were filed by July 24, 2006.

The parties stipulated to the following facts. On or about January 2, 2001, T.J. Swift House, Inc., was an employer operating subject to The Missouri workers' compensation law. The employer's liability was fully insured by Missouri Employers Mutual Insurance Company. On the alleged injury date of January 2, 2001, Shelly McIntire was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about January 2,

2001, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in Oregon County, Missouri. The claimant notified the employer of her injury as required by Section, 287.420, RSMo. The claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$361.50, which is sufficient to allow a compensation rate of \$241.00 for temporary total, permanent partial and permanent total disability compensation. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid no medical benefits. The attorney fee being sought is 25%.

#### ISSUES:

1. Whether the accident disease caused the injuries and disabilities for which benefits are being claimed.
2. Whether the employer is obligated to pay past medical expenses.
3. Any temporary total benefits owed to the claimant.
4. The nature and extent of permanent disabilities.
5. The validity of the lien for past medical expenses filed by Medicaid.

#### FINDINGS OF FACT:

The Claimant worked for the Employer, providing home health care and personal care assistance. On January 2, 2001, Claimant was assisting an established client and was in the process of lifting him from a wheelchair to an automobile. As she lifted the client and turned with him, she felt her ankle "give". Claimant completed the day's activities, but did not lift anymore because her ankle bothered her.

Her ankle continued to hurt, but did not swell the first evening. The following day Claimant was in the course of taking a client to see physician Uzma Khan, and Claimant informally asked the doctor to look at the ankle, which continued to hurt and had some swelling. The doctor thought it might be tendonitis. The Claimant continued to work the rest of the week and through the following Tuesday, January 9, 2001. During that time, the ankle was swollen, painful, felt better when elevated and held near heat; and the Claimant used a heating pad to alleviate pain.

On January 10, 2001, Claimant's condition had worsened; and she appeared at the Ozarks Medical Center Urgent Care Clinic after informing the secretary at Employer's offices and obtaining insurance papers to present at the clinic. The records of the Urgent Care Clinic dated January 10 reflect that the accident happened "yesterday", a mistake which Claimant attributes to an error of the clinic in noting the accident as happening on Tuesday (January 9) when Claimant meant the preceding Tuesday, January 2. At Urgent Care Clinic, she was noted to be very tender over the left heel area, and complained of heel pain, some swelling, and some bruising. An x-ray was performed which showed no fracture. It was recommended that she take ibuprofen, place ice on the ankle, keep her leg elevated; and exercises were prescribed.

Claimant described the exercises given as ones to stretch the back of her lower leg by wrapping a towel around the front portion of her foot and pulling upward, along with similar exercises. The Claimant performed those exercises at home that evening. Her condition soon became markedly worse. Pain and swelling increased, and over the ensuing weekend she was unable to walk without the assistance of crutches or a walker. On Monday, January 15, she returned to Dr. Khan who noted swelling and tenderness, but diagnosed the condition as gout. Dr. Khan issued prescriptions and directed the patient to return in two days.

Claimant's condition continued to deteriorate. She developed a fever and chills, and the swelling and bruising increased. On Wednesday, January 17, 2001, she returned to Dr. Khan who ordered blood tests and determined that Claimant had developed an infection. She issued prescriptions to address the infection and scheduled Claimant to see Dr. Crum, orthopedic surgeon of West Plains, the following day.

On Thursday, January 18, 2001, Claimant was seen by Jerry Crum, M.D. Her ankle was very swollen, red, tender, and painful with any motion. A large blood blister had formed. Dr. Crum concluded that septic arthritis had developed and immediately admitted Claimant to the hospital for emergency arthroscopic washout of the infection. She was followed in the hospital by Dr. Crum's partner, Rick B. Walker, D.O. Claimant was hospitalized until January 23, 2001. The discharge summary of Ozarks Medical Center reflected that Claimant related the history of her injury as stated above. While hospitalized, she underwent arthroscopy of the left ankle with debridement, irrigation and placement of irrigation egress tubes, and began a regimen of antibiotics. She complained of severe pain the first two days following surgery, but was more comfortable on the third. She reported effects from her medication on day four and was scheduled to have a catheter surgically inserted for the administration of antibiotics; and this was done by Dr. Eck. Blood cultures determined the infection to be a staph aureus. She was discharged on January 23 with instructions as to dressings and attention to the wound. She was to use crutches or a walker with no weight bearing for six weeks. She had prescriptions for pain medications, antibiotics, and was directed to follow up at the clinic of Crum and Walker in three days on January 26.

On January 26, 2001, Claimant returned to Dr. Crum. Large amounts of bloody drainage were noted, skin was peeling, and Claimant related that she had been running a low grade temperature. Dr. Crum noted moderate swelling, the draining of bloody fluid, and a large area of superficial necrotic tissue. There was moderate tenderness and warmth in the ankle. Dr. Crum's impression was that Claimant had septic arthritis. His plan for care included wound care, dressing changes and, if conditions worsened, to admit for antibiotic, whirlpool, dressing changes and possible debridement. Claimant was to follow up with Dr. Walker on Monday, January 29.

Claimant's condition continued to worsen soon after seeing Dr. Crum on January 26. On the following day, she presented at the Emergency Department of Ozarks Medical Center. There was a worsening of the necrotic

tissue, and bloody fluid was oozing from the wound. She was admitted for continuation of her antibiotic therapy and to begin wound debridement and daily whirlpool. Doctors Crum and Walker thought there was significant necrosis in the wound that needed to be debrided and that Claimant might also need a skin flap for coverage or at least a skin graft. After options were discussed with the Claimant and her family, the decision was made for Claimant to be transferred to Springfield to Dr. Geter, a plastic surgeon.

Claimant was admitted to St. John's Regional Health Care Center on January 28, 2001, where she remained until February 9. She was treated by Doctors Geter and Mahnken with antibiotics and debridement to clean the wound, remove necrotic tissue, and promote healing.

During this hospitalization, a nuclear medicine consultation was made which involved a bone scan of the affected ankle. The bone scan suggested a likely fracture of the left interior portion of the calcaneus tuberosity (an ankle bone), which fracture had not previously been discovered by x-rays.

Over the year that followed Claimant's hospitalizations, the necrotic open wound did not heal. Claimant was under the care of Doctors Mahnken and Geter, as well as home care providers through Riverways Health Care and therapy. She was also under the care of wound specialist Dr. Sterchi of West Plains. Claimant developed osteomyelitis of her left ankle and underwent skin flap procedures which were unsuccessful. During 2001 a portion of the calcaneus bone remained exposed. During this time she also came under the care of Dr. Robert Swords, an infectious disease specialist at St. John's Physicians and Clinics. The records of Doctors Mahnken, Geter, Swords and Riverways Health Care reflect that Claimant's wound closed and reopened while under ongoing care. Claimant finally underwent a skin graft using skin harvested from her scalp, and this procedure resulted in the closing of the wound in early 2002. Claimant was followed by Dr. Swords and Dr. Mahnken in 2002.

In early 2003 Claimant returned to her original orthopedic surgeon, Dr. Jerry Crum, who had since relocated his practice to Rolla, Missouri. Dr. Crum noted edema, or fluid accumulation, in the calcaneus and did diagnostic CT scans, x-rays, and blood work. These tests were reviewed with the Claimant on March 18, 2003. Dr. Crum testified that as of March 18, 2003, Claimant had severe limitation of her range of motion, making it hard to walk. Inversion of her left foot was very limited, affecting balance. She walked with her foot pointed outward. They discussed options for treatment, including ankle fusion or total ankle replacement. Neither of the procedures was recommended by Dr. Crum due to the weakened condition of the ankle bones and the concern that the infection would become released or activated, which would be a "disaster". It was Dr. Crum's opinion as related in his deposition, that Claimant's ankle condition directly resulted from the injury to her ankle which became infected, and that the ankle injury was a direct, substantial cause in the development of the infection.

The Claimant testified that from and after January 10, 2001, the day she presented at the Urgent Care Clinic in West Plains, she has been unable to work. At this time, her ankle is always painful and sometimes

throbs. She does not walk normally and has a pronounced limp. She testified that she uses a walking cane at times. If she is unable to elevate her ankle, it becomes swollen and more painful. Her household activities are limited by these conditions and the lack of motion in her ankle and foot. She does not drive substantial distances because of the need to elevate her leg. She receives Social Security Disability payments because of her condition.

Claimant voluntarily sought vocational rehabilitation services in the summer of 2005. Claimant testified that she did so in hopes of finding an occupation, or being trained for an occupation which would allow her to have gainful employment. She began a testing and evaluation procedure at vocational rehabilitation services in West Plains, which she described as involving tests and interviews during a two-day process. Claimant did not complete the vocational evaluation, stating that her ankle and leg pain was such that she could not focus on the tests or interviews. She became emotional, cried, and could not complete the evaluation process.

The Claimant testified that her condition has not significantly changed since the wound healed. She continues to experience pain and takes pain medications. She does not now receive treatment for her injury, except for the maintenance of prescriptions for pain medication.

Four physicians have advanced opinions related to the source of the infection.

Dr. Crum, one of the orthopedic surgeons that treated Claimant, suspected that a staph germ was present in the Claimant's body and the ankle sprain resulted in ligament tears, providing an accumulation of blood where the infection was deposited and developed. Dr. Crum also provided a "Report to Employer", in which he summarized the injury and the effects which followed, concluding "infection most likely a result of injury at that time. No other source is suggested".

Dr. Crum testified with a reasonable degree of medical certainty that her ankle condition that she has now directly resulted from the injury to her ankle, which later became infected. He said, "I have no way to prove it, but my suspicion was that she probably had a Staph infection or an open wound somewhere in her body when – and maybe some of that was in her blood stream when she sprained her ankle. With a severe enough ankle sprain, blood will accumulate there. Ligaments tear, they bleed. People who have severe ankle sprains tend to have a lot of bruising that's from the bleeding from the injury. And if she had any bacteria in her blood, it very well could have been deposited there, and it is not a place where white blood cells would have a good chance to fight that bacteria. I would develop in a pocket or a hematoma in that area."

Dr. Walker, another orthopedic surgeon who treated Claimant, wrote a letter to the Workers' Compensation Insurer in which he gave an opinion that he did not feel the septic arthritis was related to the initial injury.

Dr. Gary Schmidt, an orthopedic surgeon, was retained by the Employer/Insurer for an Independent Medical

Examination. Dr. Schmidt felt the ankle injury did not cause the infection. He said septic arthritis can be caused one of two ways, "one is direct inoculation, which is certainly the most common. Obviously, that would be either a puncture wound or surgery when you open up a joint. Second is a hematogenous spread. If they have a concomitant infection elsewhere. This is extremely rare. More common in children, very very uncommon in adults." He further felt that the claimant did not sustain an ankle sprain as in her words she described it as "developed a funny feeling in her ankle while lifting a patient." He further testified that if she had an infection as a result of the January 2, 2001, injury she would have had symptoms within an hour or two, extreme pain, swelling, high fever, and would have had to have been tended to immediately. He felt that she could not have gone until the 18<sup>th</sup> of January. In his testimony, Dr. Schmidt did not relate the infection to the fracture of the calcaneus tuberosity because he doubted there was a fracture and maintained the calcaneus was not part of the ankle. Dr. Schmidt offered no opinion as to the nature and extent of disability.

Claimant was seen by Dr. Shane Bennoch, an emergency room physician, for an Independent Medical Evaluation. Dr. Bennoch made the following diagnoses: Hyper-dorsiflexion injury to the left foot, secondary to lifting a patient; fracture of the calcaneal tubercle; soft tissue infection and septic joint of the ankle; arthroscopic irrigation and debridement of the ankle; incision and debridement and drainage of the left ankle; osteomyelitis of the foot; fascial cutaneous flap surgery; and, ankylosis of the ankle.

Dr. Bennoch explained that the calcaneus tubercle was at the site of the injury, and is the point of attachment of tendons and ligaments which were disrupted when Claimant twisted her ankle. It was Bennoch's opinion that the fracture of the calcaneus tuberosity was caused by Claimant's accidental work injury, stating that it is "a perfectly logical explanation as to how this injury occurred".

Dr. Bennoch also addressed the issue of the development of the infection, stating that the calcaneus fracture and disruption of soft tissue created a physical environment for the infection to occur. In his opinion, the initial injury most likely caused bleeding, or at least enough soft tissue and ligament injury to create fluid accumulation and swelling. The lack of blood flow in the area caused an environment that would increase the likelihood of bacteria accumulating and leading to an infection. Dr. Bennoch testified that an individual may have bacteria present that normally will not do anything, but if the circumstances are right to set up an abnormal area, they may trigger an infection. These infections in the early stages may not cause a lot of problems, and the symptoms may be just from the specific area itself.

Dr. Bennoch testified "it doesn't take long for bacteria to begin to multiply. And you don't go obviously from no infection to raging infection. Okay? It takes awhile for the bacteria to multiply and begin to bother you." He felt that she had an infection on the 10<sup>th</sup> which was missed. He said, "I think that since she was very tender in that area and she had a fever, then it's reasonable to assume that prior to that visit, with the preexisting pain that was

already there, that she was probably infected at that point. It wasn't a big raging infection. It just went – it progressed. So that by the 15<sup>th</sup>, it was much more on its way than it was on the 10<sup>th</sup>. I don't think you can say when – you know, it's just a gradual progression at some point.”

He said that her current condition is caused by arthritis. He explained that if a joint is manipulated or violated, the chance of arthritis developing increase. He explained that “in her case, this joint was about as violated as you can get because it had severe infection to that area...so that causes tremendous damage to that whole ankle area, and she now has significant arthritic changes.” This he further explained, can cause a joint to fuse, and “because of all this damage, her joint in many ways is fused.”

As to the nature and extent of disability, Bennoch indicated that the Claimant is unable to lift or carry, is limited in standing, walking, sitting, pushing and pulling, and has postural limitations. Dr. Bennoch rated Claimant's impairment at 45% to the body as a whole based on these physical limitations; however, he recommended a vocational evaluation to determine capability, or not, of accessing the open labor market.

The Employer has paid no medical expenses. Claimant received Medicaid benefits and the State of Missouri has asserted a lien of \$8,483.33. In addition, Claimant remains responsible for medical expenses not paid by any source, being the sum of \$2,025.00 owed to Southern Missouri Orthopedics (Crum and Walker), and \$78.72 owed to Durable Medical Equipment.

Claimant has incurred mileage as follows:

Year	Mileage	Rate	Total
01/02/2001 - 06/30/2001	2995.7	29.5¢	\$871.93
07/01/2001 - 06/30/2002	3893.5	31.5¢	\$1,226.45
07/01/2002 - 03/18/2003	778.8	33.5¢	\$260.90
	TOTAL		\$2,359.28

#### CONCLUSIONS OF LAW:

1. Whether the accident disease caused the injuries and disabilities for which benefits are being claimed.

After carefully considering all of the evidence, especially the medical testimony, I find that the injury of January 2, 2001, was a substantial factor in the cause of Claimant's injury, including the subsequent infection that developed in her ankle. In reaching this conclusion, I base my findings on the opinions of Dr. Crum and Dr. Bennoch.

2. Whether the employer is obligated to pay past medical expenses, and 5. The validity of the lien for past medical expenses filed by Medicaid.

I find that the medical treatment received by Claimant was reasonable and necessary to cure and relieve her of the effects of the injury. Some of these bills have been paid by the claimant; and some of these bills have been paid State of Missouri, Division of Social Services, in the form of Medicaid benefits. The employer is,

therefore, ordered to pay the Claimant the sum of \$2,103.72, and reimburse Medicaid the sum of \$8,483.33, for which a lien filed has been filed for expenses paid on claimant's behalf as a result of this injury.

Further, Employer and Insurer are to reimburse Claimant for the mileage she has incurred in obtaining treatment. This amount, as calculated above by year and the appropriate mileage rate for the times incurred, totals \$2,359.28.

3. Any temporary total benefits owed to the claimant.

The Claimant was unable to return to work after January 10, 2001. I find that she reached maximum medical improvement on March 18, 2003. I find that the claimant was temporarily and totally disabled for this time period. Employer and Insurer are to pay temporary total disability benefits from January 11, 2001, to March 18, 2003, which represents 113 4/7 weeks at the rate of \$241.00 for a total of \$27,370.37.

4. The nature and extent of permanent disabilities.

Based on the doctors' testimony as to the Claimant's limitations, her testimony, and the fact that she voluntarily attempted Vocational Rehabilitation, but was unable to participate due to the pain and problems with her ankle, I find that the claimant is unable to compete in the open labor market as a result of her injury. Therefore, Claimant is found to be permanently and totally disabled as a result of her work injury of January 2, 2001. Employer and Insurer are to pay her weekly benefits of \$241.00 for the remainder of her lifetime.

Attorney for the claimant, David Ray, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: October 3, 2006

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Patricia "Pat" Secrest  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*