

FINAL AWARD DENYING COMPENSATION

Injury No.: 07-133762

Employee: Lisa Meinczinger
Employer: Harrah's Casino
Insurer: Zurich American Insurance Co.
Additional Party: Treasurer of Missouri as Custodian
of the Second Injury Fund (Dismissed)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ Having reviewed the evidence, read the briefs, heard oral argument and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award of the ALJ dated March 2, 2011, by issuing a separate opinion denying compensation in the above-captioned case.

Preliminaries

The ALJ heard this matter to consider whether the Division of Workers' Compensation (Division) had jurisdiction over employee's alleged claim.

The ALJ found that it had jurisdiction to hear this claim. With regard to the merits, the ALJ found that the injury was not compensable because employee was not an employee of employer on the date of the alleged injury, nor was employee in the course and scope of employment when the alleged injury occurred.

The ALJ went on to find that the 2007 injury flowed as a natural consequence of her 2002 injury. The ALJ found that the Division no longer has jurisdiction over employee's 2002 injury because it was settled with employer on October 29, 2008.

Based upon the foregoing, the ALJ dismissed employee's Second Injury Fund claim and deemed all remaining issues moot.

Employee appealed to the Commission alleging that the ALJ erred as a matter of law in concluding that employee is denied benefits based on a finding that employee was not an employee of employer nor engaged in the scope and course of her employment at the time of the injury.

Findings of Fact

On August 12, 2002, employee suffered a left knee injury while employed at Harrah's Casino (employer). Employee testified that she was subsequently discharged by employer sometime in early 2003. Employee filed a Claim for Compensation on October 29, 2003, regarding the August 12, 2002, injury. The Division assigned the

¹ Statutory references are to the Revised Statutes of Missouri 2007 unless otherwise indicated.

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2002 injury with Injury Number 02-115229. Employee alleged in her claim that “while in the course and scope of her employment, [she] fell over raised manholes[,] sustaining injuries to [her left lower extremity and left knee].”

On July 11, 2008, employee filed an original Claim for Compensation alleging a right knee and left hip injury in August 2007. Employee asserted in her 2007 claim that “while in the course and scope of her employment, [she] fell over a raised manhole sustaining injuries to the left lower extremity and left knee. Because of the injury on her left knee, [she] compensated by placing stress on the right knee and left hip causing injury to the same.” Employee alleged the place of accident at Harrah’s Casino in Maryland Heights, Missouri. The Division assigned this claim Injury Number 07-133762.

On October 29, 2008, employee settled the 2002 injury for 50% permanent partial disability referable to her left knee. There was no mention of employee’s alleged 2007 injury in the settlement.

On May 1, 2009, employee filed an Amended Claim for Compensation for the 2007 injury, alleging a right knee and left hip injury. Employee alleged in said claim that “while receiving physical therapy for a work-related injury to [her] left knee, her right knee, and left hip were injured.” Employee alleged a date of injury as August 2007 and a place of accident at 263 Center Pointe Drive, St. Peters, Missouri 63376.

Employee alleges she injured her right knee and left hip while attending physical therapy for the 2002 injury. However, employee filed her original Claim for Compensation for the right knee and left hip while the left knee claim remained open.

Conclusions of Law

Employee concedes that her theory of recovery is based on the argument that the 2007 injury flowed as a natural consequence of the 2002 injury. In *Wilson v. Emery Bird Thayer Co.*, 403 S.W.2d 953 (Mo. App. 1966), the court held that “[w]hen the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant’s own intentional conduct.” *Id.* at 958.

As employee’s alleged 2007 injury arose out of and in the course of her employment from 2002, and the primary injury occurred in 2002, employee should have filed an Amended Claim for Compensation to Injury Number 02-115229. Employee had the opportunity to do so as Injury Number 02-115229 remained open at the time employee alleges she injured her right knee and left hip. Instead, employee filed a separate Claim for Compensation for an injury that is only compensable by relating back to Injury Number 02-115229. Employee then settled Injury Number 02-115229 without accounting for her 2007 injury in the settlement.

In denying employee’s claim for benefits, the ALJ relied in part on the fact that employee was not an employee of employer when the 2007 injury occurred. While we agree with

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the ALJ's denial of benefits, we disagree with her emphasis on the employment relationship between employee and employer at the time of the 2007 injury.

We find that employee's claim should be denied because it is based on an injury that flowed as a natural consequence of the 2002 injury, which was settled on October 29, 2008. "When a settlement is approved, the jurisdiction of the Commission is exhausted, and the matter is at an end so far as the Commission is concerned." *Derby v. Jackson County, Missouri, Circuit Court*, 141 S.W.3d 413, 416 (Mo. App. 2004). We do not have jurisdiction over the 2002 injury because it was settled. We have no authority to award additional benefits for a claim over which we have no jurisdiction. Therefore, we deny employee's claim for benefits.

Award

We affirm the ALJ's denial of benefits for the reasons set forth herein.

The award and decision of Administrative Law Judge Linda J. Wenman, issued March 2, 2011, is attached and incorporated to the extent it is not inconsistent with this final award.

Given at Jefferson City, State of Missouri, this 2nd day of September 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee:	Lisa Meinczinger	Injury No.:	07-133762
Dependents:	N/A		Before the
Employer:	Harrahs Casino		Division of Workers'
			Compensation
Additional Party:	Second Injury Fund - dismissed		Department of Labor and Industrial
			Relations of Missouri
Insurer:	Zurich American Insurance Co.		Jefferson City, Missouri
Hearing Date:	November 23, 2010	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: August 31, 2007, alleged
5. State location where 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? No
7. Did employer receive proper notice? N/A
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: Employee alleges while participating in physical therapy ordered due to an August 12, 2002 injury, she injured her right knee and left hip.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged right knee and left hip.
14. Nature and extent of any permanent disability: Unknown
15. Compensation paid to-date for temporary disability: None for this injury
16. Value necessary medical aid paid to date by employer/insurer? None for this injury

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- 17. Value necessary medical aid not furnished by employer/insurer? None for this injury
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: Unknown
- 20. Method wages computation: N/A

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: - 0 -

23. Future requirements awarded: No

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Lisa Meinczinger	Injury No.:	07-133762
Dependents:	N/A	Before the	
Employer:	Harrahs Casino	Division of Workers'	Compensation
Additional Party:	Second Injury Fund - dismissed	Department of Labor and Industrial	Relations of Missouri
		Jefferson City, Missouri	
Insurer:	Zurich American Insurance Co.	Checked by:	LJW

PRELIMINARIES

A hearing for a temporary award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on November 23, 2010. The case proceeded to trial with the understanding of the parties that if benefits were denied a final award would issue. Post-trial briefs were submitted by December 23, 2010. Attorney Kenneth Leeds represented Lisa Meinczinger (Claimant). Attorney Peggy Hecht represented Harrahs Casino (Employer), and its insurer Zurich American Insurance Company. The Second Injury Fund (SIF) did not participate, and due to findings made in this award, SIF is dismissed.

Prior to the start of the hearing, the parties identified the issues for disposition in this case: whether the Division of Workers' Compensation (Division) had jurisdiction over the alleged claim; and if a temporary award was issued, should the temporary award be designated as a §287.203 RSMo., temporary award. Hearing venue is correct, and jurisdiction to conduct this trial properly lies with the Missouri Division of Workers' Compensation. Claimant offered Exhibits A-C, and Employer offered Exhibits 1-5. All exhibits were admitted without objection. Any objections not expressly ruled on in this award are overruled. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit.

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 August 12, 2002, Claimant fell over a raised manhole cover at work injuring her left knee.
2. At the beginning of 2003, Employer terminated Claimant.
3. On October 29, 2003, Claimant filed a claim for compensation regarding the August 12, 2002 injury.

4. On July 11, 2008, Claimant filed an original claim for compensation alleging injury to her right knee and left hip due to the extra stress placed on these body parts by the 2002 injury to her left knee. The Division designated the claim as injury number 07-133762.

5. On October 29, 2008, Claimant settled her left knee case with Employer for 50% PPD referable to her left knee, forever closing out her claim “with the exception of treatment of [her] left knee,” leaving medical open by indicating on the stipulation for compromise settlement the following: “medical remains open on the left knee for 5 years as parties continue to negotiate lump sum payment for future medical on left knee.” As of hearing, no agreement has been reached by the parties regarding a future medical buyout.

6. On May 1, 2009, Claimant amended her July 11, 2008 claim, indicating she suffered injury to her right knee and left hip while attending physical therapy for “a work related injury to her left knee.”

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

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

Section 287.410 RSMo., provides in part:

The division shall have and exercise such powers and functions of the commission in the administration of the workers’ compensation law as the commission may by regulation prescribe . . .

Additionally, §287.450 RSMo., provides in part:

If the employer and employee or his dependents do not agree in regard to compensation payable under this chapter, either party may make application for a hearing in regard to the matters at issue and for a ruling thereon . . .

On July 11, 2008, Claimant filed an original claim for compensation alleging injury. After the claim was filed, the Division properly acquired jurisdiction of this claim. As such, any disputes the parties are unable to resolve become ripe for adjudication before the Division. Accordingly, I find I have jurisdiction to hear the claim filed by Claimant on July 11, 2008.

Is Claimant’s claim compensable?

Claimant has the burden to prove the essential elements of her claim. Among her burdens is to establish she was an employee of Employer on the date of injury, and that the injury occurred while she was in the course and scope of her employment. Claimant alleges she was injured on August 31, 2007. By her own admission, on August 31, 2007, Claimant was not an employee of Employer as her employment had terminated shortly after her 2002 injury. Also, on the day when the injury occurred, Claimant’s amended claim stated she was injured while

participating in physical therapy ordered as treatment for her August 12, 2002, left knee injury. Performing physical therapy was not a function of Claimant's job when she was employed by Employer. I find Claimant was not an employee of Employer on the date of alleged injury, nor was Claimant in the course and scope of employment when the alleged injury occurred.

Although Claimant's alleged injury occurred during August 2007, these injuries flow from her August 12, 2002 work injury. Claimant settled her August 12, 2002 injury with Employer on October 29, 2008, but left medical care open for five years or until a future medical buyout agreement was reached. The parties agree no buyout agreement has been reached. The Division no longer has jurisdiction over the 2002 injury or settlement. Whether the alleged 2007 injuries are covered by the open future medical must be raised before a court with appropriate jurisdiction.

CONCLUSION

Claimant was not an employee of Employer, nor was she in the course and scope of her employment on the date of injury alleged on her claim. Claimant's SIF claim is dismissed. The Division no longer has jurisdiction over Claimant's 2002 injury. All remaining issues are moot.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation