

FINAL AWARD ALLOWING COMPENSATION

(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 99-088662

Employee: Patricia Palmer  
Employer: St. Anthony's Medical Center  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: July 22, 1999

Place and County of Accident: St. Louis

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 6, 2007. The award and decision of Administrative Law Judge Margaret D. Landolt, issued July 6, 2007, 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 25th day of February 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

# AWARD

Employee: Patricia Palmer

Injury No.: 99-088662

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: St. Anthony's Medical Center

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

Additional Party: Second Injury Fund

Insurer: Self-Insured

Hearing Date: April 19 and 24, 2007

Checked by: MDL:tr

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
  - 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
  - Date of accident or onset of occupational disease: July 22, 1999
  - State location where accident occurred or occupational disease was contracted: St. Louis
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
  - 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 was walking into work when she tripped and fell.
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 knee
  - Nature and extent of any permanent disability: 30% PPD of the left knee against Employer; Permanent total disability against the Second Injury Fund due to combination of primary injury and preexisting condition.
15. Compensation paid to-date for temporary disability: \$54,537.94
16. Value necessary medical aid paid to date by employer/insurer? \$81,801.74

Employee: Patricia Palmer

Injury No.: 99-088662

17. Value necessary medical aid not furnished by employer/insurer? \$12,968.34

- Employee's average weekly wages: \$808.80

19. Weekly compensation rate: \$539.23/\$303.01
20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses	\$837.60
142 1/7 weeks of temporary total disability (or temporary partial disability)	\$76,647.69
48 weeks of permanent partial disability from Employer	\$14,544.48

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
 weekly differential (\$236.22) payable by SIF for 48 weeks beginning  
 June 15, 2006, and thereafter \$539.23 for Claimant's lifetime \*

(\* represents an indeterminate lifetime amount)

Total: \$92,029.77 \*

23. Future requirements awarded: Future medical treatment pursuant to Award

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:

Mr. Dean Christianson

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

Employee:	Patricia Palmer	Injury No.: 99-088662
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	St. Anthony's Medical Center	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: MDL:tr

**PRELIMINARIES**

The second hearing in this matter was held on April 19, 2007, at the Division of Workers' Compensation in the City of St. Louis. Patricia Palmer (Claimant) was represented by Mr. Dean Christianson. St. Anthony's Medical

Center, who is self-insured, was represented by Mr. Patrick Patterson. The Second Injury Fund was represented by Assistant Attorney General Carol Barnard. Mr. Christianson requested a fee of 25% of Claimant's award.

The first hearing in this case was held on July 21, 2004, before ALJ Vacca. On August 27, 2004, Judge Vacca entered a Temporary Award granting additional medical and temporary total disability benefits to Claimant.

The parties stipulated that on or about July 22, 1999, Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated Claimant was earning an average weekly wage of \$808.80 resulting in rates of compensation of \$539.23 for total disability benefits and \$303.01 for permanent partial disability benefits. Employer paid TTD benefits in the amount of \$1,925.82 pursuant to the award entered by ALJ Vacca. In addition, Employer paid TTD benefits of \$52,612.50 from June 21, 2004 to June 15, 2006. Employer paid medical benefits of \$3,201.00 prior to the issuance of the first award by ALJ Vacca. Employer also paid \$20,967.33 in medical expenses pursuant to the award of ALJ Vacca; and \$57,633.41 up to the time of trial.

The issues for resolution by hearing are: medical causation; liability of Employer for past medical benefits in the amount of \$12,968.34; future medical care; whether Claimant is entitled to TTD benefits from September 25, 2001 to July 21, 2004; nature and extent of permanent disability; whether Claimant is permanently and totally disabled; liability of the Second Injury Fund; whether the prior Temporary Award should be doubled; and whether Employer is entitled to credits for TTD benefits paid after Claimant reached maximum medical improvement.

Any markings contained within any exhibits were present when received, and the markings were not considered by the Court in arriving at its decision. All evidence submitted was reviewed, but only the evidence to support this award will be summarized.

### **FINDINGS OF FACT**

Based upon a comprehensive review of the substantial and competent evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

- ALJ Vacca's Findings of Facts and Rulings of Law dated August 27, 2004 are incorporated herein by reference.
- Claimant is a 44 year old woman with a BS in Nursing. Claimant worked as a Cardiac/ICU Nurse in Alabama for four years before relocating to St. Louis in 1989. Claimant began working for Employer in May 1999, two months before the primary injury.
- Claimant has a significant preexisting psychiatric history, and has been under psychiatric treatment or counseling since 1989. When Claimant was 28 years old she had her first inpatient hospitalization for psychiatric treatment. Claimant was out of work for approximately one year. In 1991, Claimant worked for Jewish Hospital as an RN, but was terminated for excessive absences related to her psychiatric condition. Claimant was hospitalized in 1992 for depression and anxiety, and in 1993 attempted suicide. Claimant also had periods of employment for Jewish Hospital and Favorite Nurses. Since 1993, Claimant has been under some form of psychiatric treatment. The numerous diagnoses have varied and include major depression, severe with psychotic features; borderline personality disorder; OCD; and bipolar, among others. Before the primary injury, Claimant sometimes had work absences due to stress and depression, and her psychiatric condition interfered with her ability to work and maintain employment.
- Claimant had back and knee complaints which predated her primary injury of July 22, 1999. Claimant

had a childhood injury to her tailbone which caused intermittent pain in her tailbone area. Before 1999, Claimant experienced some back strains while nursing. Claimant also saw Dr. Fox, an orthopedist, before the primary injury, for longstanding bilateral knee pain, tailbone, and left hip pain.

- On July 22, 1999, Claimant fell while walking into the hospital and injured her left knee. Initially, Claimant's knee was treated conservatively. While treating for her knee, Claimant was admitted to DePaul Hospital for psychiatric care. In September 2000, Claimant underwent an arthroscopy of her left knee. The post-operative diagnosis was chondromalacia and interarticular ganglion cyst, left knee. The ACL was intact. Subsequently, she underwent a left knee rhizotomy in 2003. Claimant received pain management with regard to her knee problems. Dr. Lichtenfeld rated Claimant's disability at 40% of the left knee.
- Claimant believes she injured her back while undergoing a Functional Capacity Evaluation on behalf of Employer in late September 1999. Claimant gave conflicting histories with regard to her back to various medical providers. According to Claimant, she began to walk with an altered gait which started to cause pain in her right leg because of favoring her left leg. Claimant's back and right hip also became symptomatic. Claimant contends her back problems were exacerbated by her altered gait. An MRI of Claimant's back performed in December 2001 revealed a posterior central disc protrusion at L5-S1 and mild disc annulus bulging at L2-L4 and T-10-T12 and L1.
- In 2007, Dr. Lee diagnosed lumbar degenerative disc disease with L5-S1 disc protrusion and myofascial back pain not medically causally related to her work injury of July 22, 1999. Dr. Lee did not find Claimant's gait abnormality was sufficient to change the level of symptoms she experienced in her back. He did not find any correlation between her knee and back complaints. Dr. Lee also diagnosed status post left knee contusion related to the work accident of July 22, 1999, and rated her disability at 9% PPD. He imposed a 35 pound lifting restriction, and stated Claimant should change positions between sitting and walking or standing every 15 to 20 minutes, and avoid working in cold environments.
- After Claimant's first hearing, at the direction of Employer, she treated with Dr. Stacy Smith, a psychiatrist, until November 2006. Dr. Smith provided therapy and medications. Dr. Smith tried numerous medications to treat Claimant's psychiatric condition. While treating with Dr. Smith Claimant incurred out of pocket medical expenses for prescription medications for a period from May 24, 2005 through July 9, 2005 in the amount of \$837.60. Dr. Smith referred Claimant to Dr. Katz, a physiatrist, for her complaints of back and knee pain.
- Dr. Katz prescribed medications and physical therapy. Dr. Katz ordered a peddler device for Claimant and recommended water aerobics. Claimant quit using the peddler device and did not want to attend aqua therapy because she did not feel comfortable being seen in public in a bathing suit. On September 8, 2005, Dr. Katz felt Claimant's subjective complaints were not supported by objective findings and released her at MMI.
- Dr. Smith found Claimant to be at maximum medical improvement on November 9, 2006, but testified Claimant had reached MMI one-half to two thirds of the way through treatment. Employer terminated TTD benefits on June 15, 2006 under the argument that Claimant had reached MMI. Dr. Smith did not believe Claimant was in need of any ongoing psychiatric treatment as a result of the July 22, 1999 work injury. Dr. Smith opined Claimant had no PPD related to her psychiatric condition resulting from the July 22, 1999 accident. Dr. Smith testified it is unlikely Claimant could sustain employment.
- Claimant continued to treat with various medical providers after she was released from treatment by Drs. Smith and Katz, and incurred significant medical expenses including out of pocket expenses for numerous medications.

- Currently, Claimant has chronic pain in her left knee which is exacerbated by cold, standing, walking, or bending the knee. Claimant also reports constant back pain which is aggravated by activity. Claimant's back complaints have worsened since the previous hearing.
- Claimant has psychiatric complaints which she relates to the July 22, 1999 accident. She has anxiety which interferes with her daily activities making it difficult for her to be around people and to concentrate. Claimant suffers from depression. According to Claimant, her depression has worsened since the first hearing.
- Claimant has a valid driver's license and she drives to the store, church, Weight Watchers, and to doctors appointments. Claimant is involved in church activities such as bible study, choir, and teaching Sunday school. She tries to attend as many Weight Watchers meetings as she can. She does grocery shopping at a Schnuck's near her house and goes to Starbuck's. She is able to handle her own finances.
- Timothy Lalk, a vocational expert, opined Claimant is unable to secure and maintain employment in the open labor market and is not able to compete for any employment. Dr. Wayne Stillings, a psychiatrist, found Claimant to be permanently and totally disabled from a psychiatric standpoint due to a combination of her preexisting condition as well as the work injury of July 22, 1999.

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**RULINGS OF LAW**  
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- Claimant sustained an injury to her left knee arising out of and in the course and scope of her employment on July 22, 1999. As a result of her left knee injury, Claimant sustained a 30% permanent partial disability of the left knee.
- Claimant's back condition is not medically causally related to the accident which occurred on July 22, 1999. Claimant had back complaints prior to July 1999. Dr. Lee credibly diagnosed lumbar degenerative disc disease with an L5-S1 disc protrusion and myofascial back pain, but did not find they were related to Claimant's work event. He found her complaints were related to her preexisting degenerative disc disease and degenerative fascia disease. I am persuaded by Dr. Lee who found no connection between Claimant's knee injury and back complaints.
- Claimant failed to prove her current psychiatric condition was caused by her July 22, 1999 accident. Claimant's work injury temporarily aggravated her psychiatric problems. After receiving the treatment provided by Employer, Claimant's mental condition returned to her pre-accident state. I am persuaded by the testimony of Dr. Smith that the work accident did not produce any additional permanent partial disability with regard to Claimant's psychiatric condition.
- Claimant is entitled to temporary total disability benefits from September 25, 2001, which is the last day she worked, until June 15, 2006, the date upon which Claimant reached maximum medical improvement. Judge Vacca determined at the first hearing that Claimant was in need of additional medical treatment and that she was not at MMI. Judge Vacca did not award past TTD at the time of the first award as an incentive for Claimant to return to work. Employer has already paid TTD benefits from June 21, 2004 to June 15, 2006. Therefore, Employer is ordered to pay TTD benefits from September 26, 2001 until June 20, 2004, or 142 1/7 weeks of TTD benefits. Employer is not entitled to a credit for TTD benefits.
- Claimant failed to prove she is entitled to compensation for past medical expenses incurred after she was released from treatment by Drs. Smith and Katz. Claimant is entitled to reimbursement of \$837.60

for medications prescribed by Dr. Smith from May 24, 2005 through July 9, 2005 as enumerated in Exhibit GGG. The medical bills incurred since the date of the temporary hearing were incurred at the expense of Claimant, and were not authorized medical expenses incurred at the direction of Employer. While Claimant was perfectly free to seek treatment on her own, she bears the burden of paying for such treatment.

- Claimant is entitled to future medical treatment for her knee only. The medical care is limited to medications. Dr. Lee credibly testified Claimant might continue to require pain medication for her left knee complaints. Claimant is not awarded any future medical care for physical therapy, pain management, or surgical intervention for her left knee complaints. Employer shall select a physician who is qualified to prescribe pain medication as needed for Claimant's left knee.
- Claimant is not entitled to any future medical care with regard to her back or her psychiatric condition. Her work injury was not a substantial factor in causing her back complaints. Although Claimant has an ongoing psychiatric condition, her current need for such treatment is related to her preexisting psychiatric condition, and not the work accident of July 22, 1999.
- The overwhelming medical and vocational evidence establish Claimant is permanently and totally disabled and unable to compete in the open labor market. If Claimant were successful in obtaining a job, she would be unable to sustain employment.
- Claimant's permanent total disability is a result of a combination of the primary work related knee injury and her significant preexisting psychiatric condition. Claimant's preexisting psychiatric condition was a hindrance or obstacle to employment. Claimant had a large period of unemployment due to her psychiatric problems before she was hired by Employer. Claimant lost a job at Jewish Hospital because her psychiatric problems caused her to be absent from work. Claimant now has significant disability with regard to her left knee. Claimant has chronic pain for which she will require ongoing pain medication, and now has significant work restrictions. The Second Injury Fund is liable for Claimant's permanent total disability benefits due to a combination of the primary injury to her left knee and her preexisting psychiatric condition.
- This award shall not be doubled. The Court declines imposing its discretionary power to double the award. Employer complied with the Temporary Award, and the Final Award is not completely in accord with the Temporary Award.

### CONCLUSION

Claimant is awarded 30% PPD with regard to the left knee as a result of the primary work related injury. Claimant is awarded past TTD benefits of 142 1/7 weeks or \$76,647.69 from Employer. Claimant is awarded permanent total disability benefits from the Second Injury Fund beginning on June 15, 2006, the date upon which Claimant reached maximum medical improvement.

This award is subject to an attorney's lien in the amount of 25% in favor of Claimant's attorney, Mr. Dean Christianson.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Margaret D. Landolt  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

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Lucas Boling  
*Acting Director*  
*Division of Workers' Compensation*