

TEMPORARY AWARD

Employee: Juliana Piper Injury No. 08-122242
Dependents: N/A
Employer: Stellar Fireworks
Insurer: Travelers Casualty & Surety Company
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: July 9, 2010 Checked by: LM/pd

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: July 4, 2008
5. State location where accident occurred or occupational disease was contracted: Last act of contract of employment occurred in Grain Valley, Missouri.
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 assembling a commercial fireworks display, Employee sustained injury when display exploded.
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: face, neck, hands and eyes
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$901.18
16. Value necessary medical aid paid to date by employer/insurer? \$300,000
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$526.94
20. Method wages computation: Section 287.250 (5) and 287.220 (8)

COMPENSATION PAYABLE

21. Amount of compensation payable -- Second Injury Fund liability: The Second Injury Fund is liable to Claimant for the loss of earnings from Dextera in the amount of \$13,157.58.
(\$493.60 + \$33.34 = \$526.94 x 26-6/7ths weeks = \$14,058.76, then \$14,058.76 - \$901.18 = \$13,157.58).
23. Future requirements awarded: N/A

Said payments to begin upon receipt of Award 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the Claimant: Christopher Smith

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On July 9, 2010, the parties appeared for a temporary hearing. The Employee, Juliana Piper, appeared in person and with counsel, Christopher Smith. The Second Injury Fund was the remaining party as this hearing was for second wage loss pursuant to Section 287.220.9, and the Second Injury Fund was represented by Eric Lowe.

STIPULATIONS

The parties stipulated that the Claimant has filed her claim within the time allowed by law as well as that the Employer has paid \$300,000 in medical and continues to provide medical treatment. The Employer has also paid temporary total disability benefits in the amount of \$901.18.

ISSUES

The issues to be resolved by this hearing are as follows:

- 1) whether Stellar Fireworks was an employer working subject to Missouri's Workers' Compensation Law;
- 2) whether Stellar Fireworks and Juliana Piper had an employer/employee relationship;
- 3) whether an accident occurred within the course and scope of Claimant's employment with Stellar Fireworks on July 4, 2008;
- 4) whether there is Missouri jurisdiction;
- 5) whether the Second Injury Fund is liable under Section 287.220.9 which is the second wage loss statute;
- 6) wage rate; and
- 7) whether the Employee provided proper notice as required by law.

Claimant in June of 2008 accepted a position to assist her boyfriend, Byron Essman, assembling commercial fireworks displays in Grain Valley, Missouri. Indeed, Byron Essman, a pyrotechnician for Stellar Fireworks, had authority to hire employees of Stellar and, in return, Stellar paid the new hires an hourly rate of \$8. Claimant received a \$50 check from Stellar Fireworks for 6.25 hours worked on July 4, 2008.

On July 4, 2008, Byron and Claimant picked up fireworks at Stellar Fireworks' office located in Kansas. There, Claimant observed approximately a dozen Stellar Fireworks employees working at Stellar Fireworks' office. Claimant and Byron then began assembling the commercial fireworks display in Andover, Kansas at approximately two p.m.

At approximately 8:25 p.m., Claimant sustained severe injury of her head, face, neck and hand when fireworks exploded. Claimant regained consciousness at Via Christi Regional. Her boyfriend, Byron, immediately reported the fireworks injury of Claimant to Stellar Fireworks. The Employer/Insurer provided approximately \$300,000 in medical treatment and continues to provide Claimant with medical care.

Claimant, prior to and including on July 4, 2008, worked for SI International/SIRCO, now known as Dextera Corporation, full time as a quality control inspector. In this capacity, she was paid \$18.51 per hour at 40 hours a week or \$740.40 per week. Since Claimant underwent multiple surgeries due to the fireworks explosion, Claimant missed 26-6/7ths weeks of work as a quality control inspector for Dextera Corporation.

Based on the evidence presented, I find the Employer, Stellar Fireworks, had five or more employees including Claimant working for them on July 4, 2008. Claimant, as a result of performing her job duties for Stellar Fireworks, sustained an injury that occurred within the course and scope of her employment on July 4, 2008. I find Missouri jurisdiction is proper since Claimant accepted the employment offer in Grain Valley, Missouri. Moreover, Employee and Stellar Fireworks as well as Dextera were all working and/or operating subject to the Missouri's Workers' Compensation Act.

I also find Claimant earned as an inspector for Dextera \$740.40 per week. Therefore, Claimant's wage rate for purposes of temporary total disability benefits is \$493.60. Claimant also earned \$50 at Stellar Fireworks. This is based on 6.25 hours at \$8 per hour or a temporary total disability rate of \$33.34. Indeed, Travelers Insurance paid temporary total disability to Claimant in the amount of \$33.84 for 26-6/7ths weeks or \$901.18. As such, pursuant to Section 287.250(5), I find the temporary total disability rate to be \$33.34.

I also find the Second Injury Fund liable to Claimant under Section 287.220.9 as Claimant sustained a compensable work-related injury as an employee of Stellar while she was also employed for Dextera as a quality control inspector. Indeed, Claimant lost 26-6/7ths weeks of wages as an employee of Dextera as a result of the July 4, 2008 accident. Claimant, during the healing period of 26-6/7ths weeks, only received \$33.34 per week for that time period. Therefore, the Second Injury Fund is liable to Claimant for the loss of earnings from Dextera in the amount of \$13,157.58. ($\$493.60 + \$33.34 = \$526.94 \times 26\text{-}6/7\text{ths weeks} = \$14,058.76$, then $\$14,058.76 - \$901.18 = \$13,157.58$).

This Award is subject to an attorney's lien in the amount of 25 percent for services rendered by Christopher Smith.

Date: _____

Made by: _____

Lisa Meiners
Chief Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this ____ day of _____, 2010 by:

Naomi Pearson
Division of Workers' Compensation