

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

Injury No.: 09-089438

Employee: Judith Randazzo
Employer: Maxim Health Care Services
Insurer: American International Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Future medical treatment

The parties disputed whether employee has a need for future medical treatment to cure and relieve the effects of the work injury. The administrative law judge concluded that employee met her burden of proof with regard to this issue, and ordered employer to provide future medical treatment in accordance with § 287.140 RSMo. Employee filed an application for review, arguing that the administrative law judge limited the award of future medical treatment to medications only, and asking the Commission to modify the administrative law judge's award to order employer to provide additional future medical treatment.

We disagree with employee's reading of the administrative law judge's award. In our view, the administrative law judge did not limit employee's award of future medical treatment to medications only:

Employer and Insurer are further ordered to provide [employee] with future medical benefits, *including prescription medications*, in accordance with Section 287.140, RSMo.

Award, page 10 (emphasis added).

We do agree that an award of future medical treatment limited to any specific treatment modality is not, generally speaking, appropriate; instead, we have long held that an award of future medical treatment should track the language of § 287.140 RSMo and require the employer to provide any and all treatments that may reasonably be required to cure and relieve the effects of the work injury. This is because a more specific award would require the fact-finder to speculate as to what treatments may reasonably be required in an unknown future.

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In the interest of clarity, we will supplement the administrative law judge's award as follows: employer and insurer are ordered to provide employee with that future medical care and treatment that may reasonably be required to cure and relieve the effects of the work injury. That treatment shall include—but shall not be limited to—prescription medications.

Conclusion

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Robert J. Dierkes, issued February 1, 2016, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm 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 26th day of August 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Judith Randazzo

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Dependents:

Employer: Maxim Health Care Services

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Second Injury Fund (deferred)

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

Insurer: American International Insurance Company

Hearing Date: December 22, 2015

Checked by: RJD/cs

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: October 29, 2009.
5. State location where accident occurred or occupational disease was contracted: Boone County, 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 performing her duties as an emergency room nurse, Employee slipped in blood 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: Multiple parts, including right and left hands.
14. Nature and extent of any permanent disability: 22.5% permanent partial disability of the right hand; 5% permanent partial disability of the left hand.
15. Compensation paid to-date for temporary disability: \$18,313.12.
16. Value necessary medical aid paid to date by employer/insurer? \$30,010.83.
17. Value necessary medical aid not furnished by employer/insurer? \$93.29.

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- 18. Employee's average weekly wages: \$1555.20.
- 19. Weekly compensation rate: \$422.07 for permanent partial disability.
- 20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. From Employer:

48.125 weeks of permanent partial disability benefits	\$20,312.12
3 weeks of disfigurement benefits	\$1,266.21
Reimbursement of past medical expenses	\$93.29
TOTAL:	<u>\$21,671.62</u>

22. Second Injury Fund liability:

Deferred for future adjudication.

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:

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Employee: Judith Randazzo

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FINDINGS OF FACT AND RULINGS OF LAW:

Employee: Judith Randazzo

Injury No. 09-089438

Dependents:

Employer: Maxim Health Care Services

Additional Party: Second Injury Fund (deferred)

Insurer: American International Insurance Company

Hearing Date: December 22, 2015

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

ISSUES DECIDED

The hearing in this case was held in Columbia on December 22, 2015. Judith Randazzo (“Claimant”) appeared personally and by counsel, Dean Christianson. Maxim Health Care Services (“Employer”) appeared by counsel, John Emerson. American International Insurance Company appeared by counsel, John Emerson. The Second Injury Fund did not appear; the claim against the Second Injury Fund was deferred. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on January 15, 2016. The hearing was held to decide the following:

1. Whether the work-related accident of October 29, 2009, is the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
2. Employer’s liability, if any, for permanent partial disability benefits;
3. Employer’s liability, if any, to reimburse Claimant for past medical expenses;
4. Employer’s liability, if any, to provide Claimant with future medical benefits; and
5. What additional sums, if any, are to be awarded for disfigurement.

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers’ Compensation has jurisdiction over this case;
2. That venue is proper in Boone County;
3. That the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;

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4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That the average weekly wage is \$1,555.20, with a compensation rate for permanent partial disability benefits of \$422.07;
6. That the notice requirement of Section 287.420, RSMo, is not a bar to this action;
7. That American International Insurance Company fully insured the Missouri Workers' Compensation liability of Maxim Health Care Services at all relevant times;
8. That Claimant sustained an accident arising out of and in the course of her employment with Maxim Health Care Services on October 29, 2009; and
9. That Employer-Insurer has paid \$30,010.83 in medical benefits and \$18,313.12 in temporary total disability benefits.

EVIDENCE

This case was previously heard on a hardship hearing basis on July 8, 2013 by the undersigned administrative law judge, and a Temporary or Partial Award was issued on August 13, 2013. At the request of the parties, the evidence adduced at the July 8, 2013 was made part of the record in this hearing. That prior evidence included testimony of Judith Randazzo, as well as the deposition testimony of Dr. Bruce Schlafly taken July 21, 2010 and March 27, 2013; narrative report of Dr. Bruce Schlafly dated May 25, 2010; medical records; a document entitled "EMPLOYEE INCIDENT REPORT"; narrative report of Dr. Christian Linz dated December 2, 2009; narrative report of Dr. David Brown dated August 9, 2010; narrative report of Dr. James Doll dated December 21, 2009; narrative reports of Dr. David Haueisen dated April 18, 2011 and February 21, 2012; medical records; and Claimant Judith Randazzo's professional resumé.

Claimant, Judith Randazzo, testified again at the December 22, 2015 hearing; the deposition testimony of Dr. Bruce Schlafly taken July 8, 2015 was also introduced into evidence, as well as additional medical records and receipts for prescription medications. The deposition testimony of Dr. David Haueisen taken October 26, 2015 was also introduced into evidence at the December 22, 2015 hearing.

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DISCUSSION

Judith Randazzo (“Claimant”) was born on February 22, 1950. Claimant is a registered nurse with extensive experience in operating room nursing. In October 2007, Claimant began working for Employer. Employer is a temporary staffing company for the medical profession. Claimant has also had a “mini-farm” for ten years. Prior to the October 29, 2009 accident she regularly bucked hay bales, repaired fences and worked with and saddled horses.

As stipulated, Claimant sustained a work-related accident on October 29, 2009. She was working at the University of Missouri Hospital in Columbia as an operating room nurse. She had relieved another nurse in mid-surgery. The surgery was very bloody. After the surgery was over and she had completed documentation, Claimant returned to the operating room where housekeeping personnel were cleaning. Claimant noticed that there were electrical cords very close to a large amount of blood on the floor. Claimant got a dry towel and bent down to disconnect the cords to prevent anyone from getting shocked. As she was standing back up, her right foot slipped on blood and other fluid on the floor and began to fall. She grabbed a rail on the operating table with her left hand, hitting her left elbow on the table in the process. Claimant’s left knee hit the floor first, then her right knee, and she continued to fall onto the floor. Claimant’s right hand hit the floor, and then her left hand, which had been holding the operating table rail, hit the floor last.

Claimant completed an “Employee Incident Report” in her own handwriting on November 2, 2009. Claimant’s initial pain complaints were to her left elbow and shoulder, left knee, neck and back. The first medical record regarding right hand/wrist/thumb pain is Dr. Christian Linz’s record of Claimant’s first and only visit to him on December 2, 2009. Dr. Linz noted that Claimant’s “right hand hurts over the thenar eminence at the base of the thumb and is especially worse with gripping type activities”.

Claimant testified that, after the temporary award was issued, she was provided with medical treatment by Employer-Insurer through the office of Dr. David Haueisen. He performed surgery on her right hand, which is her dominant hand. Dr. Haueisen described the surgery as follows:

It’s sort of the most common procedure that’s done for advanced thumb basal joint arthritis. So that involves taking out the trapezium, which is a small bone at the base of the thumb, and then that leave a space. And then to help fill and stabilize that space a strip of tendon is taken from one of the wrist flexor tendons, and then that’s threaded through the bone to sort of provide alignment and stability. (Deposition, page 9).

Claimant showed the scarring on her hand and arm; Claimant has three different surgical scars. After the surgery she underwent therapy. After the therapy she continued with her own treatment at home, which has included using an exercise ball, clamps, paraffin baths, and practice on her dexterity.

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Claimant identified Exhibit T regarding the prescriptions she had obtained. These were prescriptions for the Ketoprofen that she had received from Dr. Haueisen. She said that she paid for these prescriptions herself. The total paid by Claimant for these prescriptions was \$93.29.

Claimant testified that she is currently taking Aleve and Ketoprofen for the pain in her hands. Aleve is an over the counter medication which she takes when she is working. She takes Ketoprofen at other times. She does not take Ketoprofen when she works because she is not sure what her reaction would be to Ketoprofen while she is working. Dr. Haueisen last refilled Claimant's Ketoprofen prescription four weeks prior to the hearing.

Claimant testified about the ongoing complaints she is having in her hands. In her right hand her pain was reduced by the surgery. She now no longer has a constant pain, but does have occasional pain at a level of a "1" or a "2" on a scale of 1 to 10. She stated that she has lost grip strength and is no longer able to open jars. She has a hard time holding surgical instruments because she has problems with dexterity. She cannot tie a suture. At home she is not able to do the craft work that she did before, having a hard time with the fine manipulation work. She has not been able to get back to doing her actual surgery work because of the loss in grip strength and dexterity. She complains that she drops things and there are times when she gets cut or burned because of this. She can no longer work with her horses like she did before. It is difficult for her to put a halter on the horse and to saddle them. She is limited in her ability to feed them and can no longer lift bales of hay. She has problems with writing and has a boney prominence on her thumb from changing the way she holds a pen. She complains that she has dropped and broken a lot of dishes.

With regard to her left hand, Claimant feels that it has gotten worse. She says she is having a greater amount of pain and loss of grip strength in the left hand.

Causation – right hand/wrist. The evidence regarding causation of the right hand condition has not changed from the July 2013 hearing. **Dr. Bruce Schlafly** testified that Claimant had "painful osteoarthritis and subluxation of the carpometacarpal joint at the base of the right thumb". He testified that "the work injury of October 29, 2009, is the prevailing factor in the cause" thereof. Dr. Schlafly elaborated: "she took the impact of a fall at this involved joint on the right side, and that type of injury can cause a torn ligament at the CMC joint which then leads to subluxation, and in this case I think it probably did." He testified that "subluxation" of the joint meant a "partial dislocation" of the joint due to weakening of the ligament due to stretch or trauma on the ligament.

Dr. David Haueisen's report states: "(t)he single fall itself would not have caused the actual arthritis, but caused it to become symptomatic". He also states: "I would not feel that the fall was the primary factor in causing thumb basal joint arthritis, but this may have been one of the initiating factors." He further stated:

In summary, the development of thumb basal joint degenerative arthritis is partly on the basis of age, genetic predilection, and forceful use. Trauma is generally only of a secondary concern with regards to etiology, and may have been more of an inciting factor

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as opposed to a causative factor. I do not feel that her fall at work would be considered the prevailing factor for the development of her thumb basal joint degenerative arthritis.

In my temporary award issued on August 13, 2013, I stated:

I find Dr. Schlafly's analysis to be persuasive. Claimant's right hand/thumb/wrist was asymptomatic prior to the fall. I believe the fall did cause a ligament tear which quickly led to subluxation of the CMC joint. While some of the arthritic changes would have preexisted the fall, the recommended surgery is primarily to address the ligament tear and instability of the joint, which I find were clearly caused by the fall. Therefore, I find that the work accident of October 29, 2009, was the prevailing factor in the cause of a ligament tear and subluxation of the CMC joint at the base of Claimant's right thumb.

No evidence was adduced at the final hearing to warrant a change in that previous finding.

Causation – left hand/wrist. Dr. Schlafly testified that the work-related fall also caused an aggravation of preexisting arthritis in Claimant's left hand at the base of the thumb. "(A)n employer is liable where a work injury aggravates a preexisting, non-disabling condition and the condition escalates the level of disability." *Sickmiller v. Timberland Forest Products*, 407 S.W.3d 109 (Mo. App. S.D. 2013), footnote 8, citing *Rader v. Werner Enterprises*, 360 S.W.3d 285, 298 (Mo. App. E.D. 2013). As evidenced by Claimant's activity level prior to the 10-29-2009 accident, as well as her ability to perform all of the duties of an operating room nurse prior to the accident, it is clear that Claimant's left hand arthritis was non-disabling prior to the accident, and that the accident caused it to become disabled.

Permanent partial disability. Dr. Bruce Schlafly testified that he evaluated Claimant after the surgery which was performed on her right hand. In his examination he found decreased mobility in the right thumb at the carpal metacarpal joint. (Deposition page 7). He also found an increase in Claimant's hyperextension at the MCP joint, which he attributed to the CMC joint problems. (Deposition p. 9). He found Claimant's pinch strength to be decreased in the right hand, where she was measured at six pounds (dominant hand) compared with eleven pounds in the left hand. (Deposition p. 9). He testified that the eleven pound pinch strength in the left hand was also reduced from normal. (Deposition p. 10). He testified as well that grip strength was reduced in both hands, though more so in the right hand. (Deposition p. 10). The range of motion was reduced in both wrists, though more so on the right side. (Deposition p. 10). He continued to feel that Claimant has painful osteoarthritis and subluxation of the CMC joint in the thumb of each hand, causally related to the accident of October 29, 2009. He found continuing and permanent disability of 30% of the right wrist and 15% of the left wrist.

Dr. David Haueisen also testified prior to the final award hearing. He testified that Claimant has pain due to the fact that the right thumb joint was rebuilt, and when it is stretched to the limits it causes pain. (Deposition p. 24). He found Claimant to have a lag in the motion of the right thumb joint. He also found pinch strength of six pounds in the right hand, and said that normal pinch strength would be ten to twelve pounds. (Deposition p. 25). He testified that he did not examine the left thumb or hand. He concluded that Claimant has continuing permanent disability of 15% of the right thumb.

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Considering all the evidence, I find that Claimant has sustained a permanent partial disability of 22.5% of the right hand at the 175-week level, and has further sustained a permanent partial disability of 5% of the left hand at the 175-week level.

Disfigurement. Claimant has three small, distinct scars: one at the base of the right thumb, one on the right wrist, and one on her right forearm (graft donor site). I find that Claimant is entitled to an additional three weeks of permanent partial disability benefits for the disfigurement.

Reimbursement for medical (prescription) bills. Claimant is clearly entitled to be reimbursed \$93.29 for the Ketoprofen medication prescribed after Claimant's right arm surgery by Dr. Haueisen (the surgeon authorized by Employer-Insurer).

Future medical benefits. Section 287.140, RSMo, requires an employer/insurer to provide medical treatment as reasonably may be required to cure and relieve an employee from the effects of the work-related injury. To "cure and relieve" means treatment that will give comfort, even though restoration to soundness is beyond avail. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 249 (Mo. banc 2003). The claimant must prove the need for treatment by "reasonable probability" rather than "reasonable certainty." *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo. App. W.D. 1995), *overruled on other grounds Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). "Probable" means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. *Sifferman v. Sears, Roebuck & Co.*, 906 S.W.2d 823, 828 (Mo.App.S.D.1995), *overruled on other grounds Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

Claimant testified that she continues to take anti-inflammatory medication which is beneficial to relieving her symptoms. This medication, Ketoprofen, is still being provided by Dr. Haueisen, the authorized treating physician. At page 13 of his deposition, Dr. Haueisen stated that it would be normal for Claimant to have some aching pains for which she would take anti-inflammatory medication. When asked if the need for anti-inflammatory medication is medically causally related to the work injury, Dr. Haueisen replied: "It would be related to having had surgery for that condition."

Claimant has clearly met her burden of proof on future medical needs in the form of prescription anti-inflammatory medications.

FINDINGS OF FACT AND RULINGS OF LAW

In addition to those facts and legal conclusions to which the parties stipulated, I find the following:

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1. The work-related fall sustained by Claimant on October 29, 2009, was the prevailing factor in the cause of subluxation of the carpometacarpal joint at the base of Claimant's right thumb;
2. The subluxation of the carpometacarpal joint at the base of Claimant's right thumb, caused by the work-related accident, required the surgery performed by Dr. David Haueisen;
3. Prior to October 29, 2009, Claimant had arthritis at the base of her left thumb, which was non-disabling and did not affect Claimant's ability to work;
4. The work-related fall sustained by Claimant on October 29, 2009, was the prevailing factor in the cause of aggravation of the preexisting arthritis at the base of Claimant's left thumb;
5. Dr. Haueisen has prescribed an anti-inflammatory medication, Ketoprofen, to relieve Claimant from the effects of the work-related injury; Claimant has been required to pay for that prescription medication;
6. Employer-Insurer had the responsibility, under Section 287.140, RSMo, to provide and pay for that medication, and is thus responsible to reimburse Claimant for the cost of that medication in the sum of \$93.29;
7. Claimant continues to need prescription anti-inflammatory medications to cure and relieve her from the effects of her work-related injury;
8. As a direct result of the work-related injuries to Claimant's right and left hands, Claimant has sustained a permanent partial disability of 22.5% of the right hand and 5% of the left hand, resulting in 48.125 weeks of permanent partial disability benefits at the rate of \$422.07, totaling \$20,312.12; and
9. As a result of permanent scarring of Claimant's right upper extremity, Claimant is entitled to an additional three weeks of permanent partial disability benefits for disfigurement, in accordance with Section 287.190.4, RSMo, totaling \$1,266.21.

ORDER

Employer and Insurer are ordered to pay Claimant the sum of \$20,312.12 for permanent partial disability benefits, the additional sum of \$1,266.21 for disfigurement, and \$93.29 for reimbursement of medical expenses.

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Employer and Insurer are further ordered to provide Claimant with future medical benefits, including prescription medications, in accordance with Section 287.140, RSMo.

Claimant's attorney, Dean Christianson, is allowed 25 percent of the amounts awarded as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon, until paid.

Interest shall accrue as per applicable law.

Made by _____
/s/ Robert J. Dierkes 2-1-2016
Chief Administrative Law Judge
Division of Workers' Compensation