

TEMPORARY OR PARTIAL AWARD

Injury No.: 02-146112

Employee: Georgia Ratchford  
Employer: Price Chopper  
Insurer American & Foreign Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Settled)  
Date of Accident: December 26, 2002

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. Although denominated a Final Award, the award of the administrative law judge did not resolve all issues between the parties. The Commission modifies the award and decision of the administrative law judge dated October 5, 2005, to designate the award as a temporary or partial award.

#### Discussion

On August 26, 2005, the administrative law judge held an evidentiary hearing. During the hearing, the administrative law judge announced that "we're going to leave the issue of the Medicare claim for payment for determination after this hearing." On that date, the administrative law judge approved a complete settlement of the Second Injury Fund claim. The administrative law judge also approved a partial settlement of the claim against employer/insurer. The settlement states, "[t]his Compromise does not settle the issue of future medical which will be tried at hearing."

On October 5, 2005, the administrative law judge issued an award in the above-captioned matter awarding future medical treatment for employee's right hip as directed by employer-authorized physicians. On October 12, 2005, employee filed an Application for Review from the administrative law judge award. Employee subsequently amended the Application for Review on October 24, 2005. Employee's sole allegation is that the, "Administrative Law Judge indicated on the record that the issue of unpaid medical would be addressed at a later date and therefore [employee] did not present evidence of unpaid medical expenses." The Commission held the matter in abeyance at the request of the parties until October 18, 2007.

We have reviewed the allegations contained in the Application for Review. We have reviewed the transcript. The administrative law judge clearly informed the parties that the issue of the Medicare claim for payment would be determined after the hearing. The record does not reveal that the issue has been resolved. Because the issue is not resolved, the award is not a final award but rather a temporary or partial award pursuant to section 287.510 RSMo. See *Muller v. St. Louis Housing Authority*, 175 S.W.3d 191 (Mo. App. 2005).

#### Other Matters

Employee has filed a Motion to Submit Additional Evidence to the Commission. Employer/insurer has filed its Reply objecting to employee's Motion. Because we have determined that the award is temporary or partial, we deny the Motion at this time. The parties may present their evidence and evidentiary objections

to the administrative law judge at the final hearing on the claim.

**Award**  
This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo. The matter is returned to the Division of Workers' Compensation for further proceedings. The award and decision of Administrative Law Judge Carl J. Mueller issued October 5, 2005, is attached and incorporated to the extent it is not inconsistent with our modifications herein.

Given at Jefferson City, State of Missouri, this 3<sup>rd</sup> day of January 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

**FINAL AWARD**

Employee: Georgia Ratchford Injury No. 02-146112  
Dependants: N/A  
Employer: Price Chopper (Settled August 26, 2005)  
Insurer: American & Foreign Insurance Company (Settled August 26, 2005)  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
(Settled August 26, 2005)  
Hearing Date: August 26, 2005  
Submitted Date: September 23, 2005 Checked by: RCM/bi/rcm

**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: December 26, 2002.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson 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:  
Employee tripped over grocery bags at the Price Chopper in which she worked injuring her right hip and low back.
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: Right hip and low back, body as a whole.
14. Nature and extent of any permanent disability: 40 percent whole body disability referable to the right hip and low back (as per compromise settlement).
15. Compensation paid to-date for temporary disability: \$12,273.13 representing 62 and 1/7 weeks.
16. Value necessary medical aid paid to date by employer/insurer? \$97,565.09.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$299.86.
19. Weekly compensation rate: \$197.91 for both temporary total and permanent partial disability.
20. Method wages computation: By stipulation.

#### **COMPENSATION PAYABLE**

21. Amount of compensation payable: Not applicable – parties settled disability compensation issues.
22. Second Injury Fund liability: Not applicable – parties settled disability compensation issues.
23. Future requirements awarded: Ongoing medical treatment for the Employee's right hip only as directed by Robert C. Gardiner, M.D.

No fees additional to those earned from the Claimant's settlements is awarded to Mrs. Ratchford's attorney (see Award).

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

Employee: Georgia Ratchford Injury No. 02-146112

Dependants: N/A

Employer: Price Chopper (Settled August 26, 2005)

Insurer: American & Foreign Insurance Company (Settled August 26, 2005)

Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
(Settled August 26, 2005)

Hearing Date: August 26, 2005 Checked by: RCM/bi/rcm

On August 26, 2005, the Employee and Employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Mrs. Georgia Ratchford, appeared in person and with her attorney, Keith Yarwood. The Employer, Price Chopper, and its Insurer, American & Foreign Insurance, appeared through counsel, Tim Piatchek. Immediately prior to hearing, Mrs. Ratchford settled her claim with the Second Injury Fund as to all issues and with the Employer on all issues except as to whether Price Chopper must provide her with additional medical care. For the reasons noted below, I find that the Employer must provide Mrs. Ratchford with additional medical care for her right hip only.

### **FINDINGS AND RULINGS**

Mrs. Georgia Ratchford testified on her own behalf and presented the following exhibits, which were admitted into evidence without objection:

- A - Deposition, P. Brent Koprivica, MD, August 12, 2005
- B - Medical Records
- D - Letter dated from Keith Yarwood to Centers for Medicare and Medicaid Services dated August 4, 2005

Although offered, Claimant's Exhibit C, a Centers for Medicare and Medicaid Services Claim Reimbursement Summary, was not admitted upon proper objection.

The Employer did not call any witnesses, but did offer Employer's Exhibit 1, Mrs. Ratchford's April 30, 1998 settlement for injury number 95-048994 (complete with a medical report) for an April 23, 1995 injury to her left hip.

Regarding Mrs. Ratchford's "current" injury, on December 26, 2002, she worked as a Price Chopper cashier in Kansas City, Jackson County, Missouri. A new "sacker" assisted her; after Mrs. Ratchford scanned items the sacker

bagged them and was supposed to place the filled bags in a shopping cart. However, the new sacker placed the bags -- approximately 15 -- on the floor. Mrs. Ratchford walked away from her cashiering position and tripped over the bags; she did not expect them to be on the floor, as they should have been placed in a cart. Mrs. Ratchford "flew up in the air" and fell injuring her right hip.

Price Chopper accepted her injury as compensable and ultimately provided her with medical care costing \$97,565.09; the Employee also received 62 and 1/7 weeks of temporary total disability. The settlement between Mrs. Ratchford and Price Chopper paid Mrs. Ratchford a \$31,665.60 lump sum based upon approximate disability of forty percent 40% whole body disability to her right hip and low back. Mrs. Ratchford's settlement with the Second Injury Fund paid her a \$30,000 lump sum settlement for her alleged total disability. Her attorney received a fee equal to twenty-four percent (24%) of both settlements.

As noted, the only issue to be resolved by this hearing is whether Price Chopper must provide Mrs. Ratchford with additional medical care.

Mrs. Ratchford's injury resulted in two surgeries:

1. Hip surgery: Stanley Bowling, M.D., performed a right femoral head replacement on December 28, 2002. *See* Claimant's Exhibit B at 18.
2. Back surgery: Robert Sean Jackson, M.D., performed a decompressive laminectomy at L4 with bilateral foraminotomies and fusion at L4-L5 with a left posterior iliac crest bone graft on November 26, 2003. *Id.* at 184.

Apparently following up on complaints Mrs. Ratchford had regarding her hip, the Insurer's case manager asked Dr. Bowling if there were any other options for her. Dr. Bowling replied on June 14, 2004:

At this point the only two options she has available are to leave her femoral head replacement in and do a more sedentary job or, if the pain becomes significant, then the only other thing that she would benefit from would be a revision to a total hip arthroplasty. That would only be dictated by her ability to manage her pain.

*Id.* at 2.

Mrs. Ratchford received additional follow-up care for her right hip injury from Robert C. Gardiner, M.D. Dr. Gardiner noted on August 18, 2004 that Mrs. Ratchford reported having groin and weight bearing pain. He stated: "At this point in time will observe. If she becomes more symptomatic would consider a conversion of bipolar to total hip." *Id.* at 1.

Regarding Mrs. Ratchford's back treatment, the Employer-authorized surgeon, Sean Jackson, M.D., declared her to be at maximum medical improvement on June 8, 2004. *Id.* at 176.

Mrs. Ratchford's attorney referred her to P. Brent Koprivica, M.D., for evaluation. Dr. Koprivica evaluated Mrs. Ratchford on October 16, 2004. He authored a lengthy and comprehensive report of the same date. However, Dr. Koprivica's fifteen (15) page report included only six (6) sentences that touched on any possible future medical issues:

It is medically likely that Mrs. Ratchford will have ongoing, indefinite treatment needs. Currently she is being given medication for chronic pain management purposes. She should be provided appropriate monitoring as well as appropriate medications. There is a risk of needing to revise her femoral head replacement to a total hip arthroplasty. She is also at increased risk for needed surgery at the level above or below the L4-L5 fusion. Her clinical course will dictate these needs in the future.

*Id.* at B-14 to B-15.

Dr. Koprivica repeated this opinion in his deposition testimony. *See*, Claimant's Exhibit A at 25:4-9.

In addition - apparently trying to "cover all the bases" and to still be able to issue a rating for a claimant he indicated might need additional treatment - Dr. Koprivica somewhat contradictorily opined that:

I would consider Mrs. Ratchford to be at maximum medical improvement as of the last evaluation by Dr. Gardiner on June 18, 2004.

*See* Claimant's Exhibit B at B-12.

Dr. Koprivica repeated this opinion in his deposition testimony. *See*, Claimant's Exhibit A at 20:13-15.

As noted above, both of the Employer-authorized treating physicians who examined Mrs. Ratchford and opined on her hip condition agreed that she may need additional surgery. *See* Exhibit B at 1 and 2. Dr. Koprivica also concurred. *Id.* at B-15, and Claimant's Exhibit A at 31.

However, Dr. Jackson - the Employer-authorized treating physician for Mrs. Ratchford's back condition - parts company with Dr. Koprivica regarding her back condition. Dr. Jackson released her at maximum medical improvement with permanent restrictions on June 8, 2004. *See* Exhibit B at 176. While Dr. Jackson did not reference any future medical treatment for Mrs. Ratchford's back, Dr. Koprivica merely stated that she was "At increased risk for needing surgery at the level above or below the L4-L5 fusion. *See* Exhibit B at B-15. He was given another opportunity to elaborate on this opinion at his deposition, but did not. *See*, Claimant's Exhibit A at 32:7-13.

Over two years have elapsed since Mrs. Ratchford sought or received any treatment for her back condition. Dr. Koprivica's 15-page report contained only one sentence that even hinted at Mrs. Ratchford needing additional back treatment. And, Dr. Koprivica failed to state or substantiate why she might be "at increased risk" for additional back surgery. I find that his opinion fails to meet the minimum standard required to support an award for additional medical treatment, and that the Claimant fails her burden of proof on this issue.

In contrast, both of the Employer-authorized treating physicians who opined on Mrs. Ratchford's right hip condition (and Dr. Koprivica) agreed that she *may* need additional surgery. Therefore, I order that medical remain open for Mrs. Ratchford's right hip condition. Any further treatment for Mrs. Ratchford's right hip will be at the direction of Employer-authorized physicians as the need may arise.

Counsel appeared at court ready to try all issues, not just the issue regarding future medical care. However, the Claimant then settled with the Fund on all issues, and with the Employer on all issues except future medical care, thereby leaving only at the last minute that sole issue for resolution. Had this been a situation where all parties had prepared for a hearing that had been set only for resolution of the issue of future medical, I may have awarded a fee for Mrs. Ratchford's attorney's success on that question. However, that was not the case, and her counsel earned fees of almost \$15,000.00 from the two settlements. I find that the fees already earned by counsel provided sufficient compensation for the legal services rendered and, thus, decline to award any additional fee.

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

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

R. Carl Mueller, Jr.  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secest  
*Director*

