

FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-076580

Employee: Cindy Reynolds-Byers  
Employer: Blue Cross and Blue Shield of Missouri  
Insurer: Zurich North American Insurance  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: Alleged June 14, 2004  
Place and County of Accident: Alleged Springfield, Greene County, Missouri

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 March 20, 2008, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Victorine R. Mahon, issued March 20, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of September 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## FINAL AWARD

Employee: Cindy Reynolds-Byers

Injury No. 04-076580

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

Dependents: N/A

Employer: Blue Cross and Blue Shield of Missouri

Additional Party: Treasurer of Missouri as custodian of  
The Second Injury Fund

Insurer: Zurich North American Insurance

Hearing Date: January 17, 2008

Checked by: VRM/meb

### 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: Alleged June 14, 2004.
5. State location where accident occurred or occupational disease was contracted:  
Alleged to have occurred in Springfield, Greene 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? 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 was contracted: Claimant was talking on the phone and entering data in a computer.

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: Alleged neck/left shoulder.

- Nature and extent of any permanent disability: Not applicable.

15. Compensation paid to date for temporary disability: \$1,252.28.

16. Value necessary medical aid paid to date by employer/insurer? \$2,885.57.

17. Value necessary medical aid not furnished by employer/insurer? None.

18. Employee's average weekly wages: \$469.59.

19. Weekly compensation rate: \$313.07.

20. Method wages computation: By agreement of the parties.

#### **COMPENSATION PAYABLE**

21. Amount of compensation payable: None.

22. Second Injury Fund liability: None.

Total: None.

23. Future requirements awarded: None.

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

Employee: Cindy Reynolds-Byers

Injury No. 04-076580

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: N/A

Employer: Blue Cross and Blue Shield of Missouri

Additional Party: Treasurer of Missouri as custodian of  
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## INTRODUCTION

**Cindy Reynolds-Byers (Claimant) alleges that she injured her neck and left shoulder while she was working in customer service for Blue Cross and Blue Shield of Missouri, an employer insured with Zurich North American Insurance (hereinafter referred jointly as the Employer). Employer denies liability. Chief Administrative Law Judge Victorine R. Mahon conducted a final hearing in this case on January 17, 2008. Claimant appeared in person and by her attorney John Newman. Attorney Jerry Harmison represented Employer. Susan Colburn represented the Second Injury Fund. Without objection, the record was left open until January 24, 2007, for the receipt of Dr. Volarich's deposition, which was received and designated as Exhibit E. The parties stipulated to the following facts:**

## SITPULATIONS

**On June 14, 2004, Claimant was a covered employee of Blue Cross and Blue Shield of Missouri, an employer subject to the Missouri Workers' Compensation Act. Employer was fully insured by Zurich North American Insurance. There is no issue with respect to notice, statute of limitations, jurisdiction, or venue. Claimant's average weekly wage was \$469.59, yielding a compensation rate for Temporary Total Disability and Permanent Partial Disability of \$313.07. Employer has paid at least four weeks of Temporary Total Disability in the amount of \$1,252.28. Employer furnished medical aid in the amount of \$2,885.57.**

## ISSUES

- 1. Did Claimant sustain an accident/occupational disease arising out of and in the course of her employment with Employer?**
- 2. Is Claimant's condition medically and causally related to her work for Employer?**
- 3. What is the nature and extent of Claimant's permanent disability, if any?**
- 4. Does the Second Injury Fund have any liability?**

## EXHIBITS

**The following exhibits were admitted on behalf of Claimant:**

- Exhibit A Curriculum Vitae – Dr. David Volarich**
- Exhibit B Medical Report – Dr. David Volarich**
- Exhibit C Medical Records**
- Exhibit D Medical Expenses**
- Exhibit E Deposition – Dr. David Volarich**

**The following exhibits were admitted on behalf of the Employer:**

- Exhibit 1 Deposition – Cindy Reynolds – 2004**

**Exhibit 2      Deposition – Cindy Reynolds - 2006**

**Exhibit 3      Photographs**

**Exhibit 4      Report – Dr. Thomas Corsolini**

**Exhibit 5      Deposition – Dr. Thomas Corsolini**

**Deposition objections are overruled unless specifically addressed in this Award.**

## **FINDINGS OF FACT**

Claimant has held several jobs in the customer service industry. She began working as a customer service representative for Employer three years prior to her alleged injury/occupational disease. Claimant was required to enter data into a computer while simultaneously using a headset to speak with complaining customers. Claimant referred to several manuals while performing her job duties. Claimant generally stayed in her cubicle unless she was on a break.

Employer provided its workers with two 15-minute work breaks each day, one in the morning and one in the afternoon. This was in addition to a 30-minute lunch break. Although employees could be “out of adherence” for taking breaks other than at the times scheduled by Employer, there was a significant deviance allowed for each employee.

Her job for Employer gave Claimant no problems until Employer changed her work station. Claimant believed that is when her neck and left shoulder began hurting. Claimant asserted that her new work station was uncomfortable because it was too high and the desk return pressed or pinched her left arm. She had to reach overhead to obtain the manuals she used in her work. Eight photographs of the Claimant’s work station and equipment, as well as the testimony of Employer’s Human Resources manager, reveal that Claimant’s chair and keyboard were adjustable. The keyboard could be swiveled. The chair was provided specially for Claimant and could be raised and lowered. Manuals could have been placed anywhere in the cubicle and were not required to be stored overhead. And, contrary to Claimant’s testimony, employees could stand or vary their positions in order to accommodate their needs. Employer’s specially trained ergonomics team also looked at Claimant’s work station and apparently had no specific suggestions on how the work station could be improved.

Claimant performed her regular work activities on Monday, June 14. She claimed to have experienced neck tightness and left arm numbness with pain, along with migraine headaches, beginning June 14, 2004. On Tuesday June 15, Claimant again felt stiffness and she called in sick. She worked on Wednesday and Thursday. She went to the emergency room on Thursday evening. She did not work on Friday, but returned to work the following Monday and informed the Human Resources manager, Judy Miller, that she was having severe spasms in her left arm and she thought it was a workers’ compensation issue. Ms. Miller authorized Claimant to go to the Family Medical Walk In Clinic. Claimant affirmed that she received authorized conservative care at the Clinic and with Dr. Corsolini while her physical situation was being assessed. The physician at the Clinic took Claimant off work and Claimant received Temporary Total Disability during that time period. She made attempts to return to work, but was not successful. She eventually separated from her employment in September 2004, and has not worked since or attempted to return to work. Claimant admitted that she no longer is receiving treatment for her neck and no physician has made a recommendation for additional treatment.

Up until June 2004, Claimant bowled and tended a vegetable garden, and performed the bulk of the housework. Claimant and her husband both indicated that Claimant never had any problems with household chores prior to June 2004.

## **Medical Evidence**

While Claimant’s alleged work incident was being investigated, Employer provided conservative care and Temporary Total Disability benefits. Claimant eventually was diagnosed with a herniation at C5-6. Based on the opinion of Employer’s physician that the herniation was not work related, Employer ceased the payment of benefits.

Claimant subsequently was treated surgically through her health insurance. Neither of the experts in this case suggest that the herniated disc was work related.

### **1. Dr. David Volarich**

Dr. David Volarich performed an independent medical examination of Claimant. He was given the impression that Claimant had experienced cervical problems off and on for several years prior to 2004, but sometime in May of that year it really started bothering her. (Volarich Depo, p. 24). Dr. Volarich opined that Claimant suffered from cervical syndrome and a herniated disc at C5-6, but he found only the cervical syndrome to be work related, assigning a 15 percent Permanent Partial Disability for that condition due to neck pain and loss of motion (Volarich Depo. p. 10). He also found that Claimant suffered a 15 percent Permanent Partial Disability of the right upper shoulder girdle due to chronic right girdle shoulder strain. He believed the combination of these disabilities was greater than the simple sum and a loading factor should be added.

Dr. Volarich admitted that he was the only physician to diagnose a cervical syndrome. He made such diagnosis without seeing the photographs of the work station. He opined that medical treatment received for the neck prior to August 5, 2004, would be attributable to the cervical strain. From that date forward, which is when Dr. Rahman decided that Claimant needed a surgical repair due to the herniation, the medical bills would be unrelated to work for Employer.

### **2. Dr. Thomas Corsolini**

Dr. Corsolini testified that in the absence of any history of trauma to Claimant's head or neck, her work activity did not consist of a sufficient degree of strain, motion, or effort that would pose any threat of injury to her. Unlike Dr. Volarich, Dr. Corsolini did review photographs of Claimant's work station. Regarding Dr. Volarich's diagnosis of a cervical syndrome, Dr. Corsolini testified that such diagnosis is a non-specific term that is subject to interpretation. Dr. Corsolini opined that the herniated disc was the cause of Claimant's physical complaints, and that condition was not work related.

## **CONCLUSIONS OF LAW**

Claimant bears the burden of proving a causal relationship between the accident and the claimed injury. *Griggs v. A.B. Chance, Co.*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1973). Medical causation, not within common knowledge or experience, must be established by scientific or medical evidence demonstrating the cause and effect relationship between the complained of condition and the asserted cause. *Brundage v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo. App. W.D. 1991). Where the opinions of medical experts conflict, the fact finding body determines whose opinion is the most credible. *Kelly v. Banta & Stude Construction Co., Inc.*, 1 S.W.3d 43, 48 (Mo. App. E.D. 1999). The fact finder may reject all or part of one party's expert evidence, which it does not consider credible and accept as true the contrary evidence presented by the other litigant. *George v. Shop n Save Warehouse Foods, Inc.*, 855 S.W.2d 460, 462 (Mo. App. E.D. 1993).

Here, the parties offer conflicting medical opinions on the issue of the alleged cervical syndrome. Based on all of the evidence, I find and conclude that Dr. Corsolini's testimony is more credible in this instance. Dr. Corsolini was more familiar with Claimant's work station. He reviewed the pictures of the cubicle and equipment that Claimant used. His opinion was that Claimant's work activity did not constitute a sufficient degree of strain, motion, or effort that would have posed a threat of injury. This appears credible in light of the fact that Claimant was not required to sit in a fixed position, was given reasonable work breaks, could alter the height and angle of her equipment, and could modify the arrangement of her manuals to suit her preferences.

Based on all of the evidence in the record, I find and conclude that Claimant did not suffer an accident or occupational disease in the course and scope of her employment that resulted in a cervical strain or herniated disc. I further conclude that there is no medical causation between Claimant's current physical condition and her work. Employer has no liability for Permanent Partial Disability or other benefits. The Second Injury Fund also has no liability. The claim for benefits under the Workers' Compensation Act is denied.

Victorine R. Mahon  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Jeffrey W. Buker  
Jeffrey W. Buker  
*Division of Workers' Compensation*

Claimant made several complaints in deposition about Dr. Volarich. Among other things, she said that Dr. Volarich did not even examine her, but left the examination in the hands of his assistants. It is unusual that a Claimant would complain about her own rating physician. Such testimony, if believed, could raise a significant question as to the reliability of Dr. Volarich's opinion. But, Dr. Volarich vehemently disagreed with Claimant's deposition testimony regarding Claimant's experience at his office. Moreover, at hearing, Claimant conceded that Dr. Volarich had performed an examination, albeit short. This change in testimony reflects poorly on Claimant's own credibility.