

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

Injury No.: 06-042666

Employee: Hiba Sadic
Employer: Semco Plastics Company, Inc.
Insurer: Missouri Employers Mutual
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 25, 2012, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Lee B. Schaefer, issued May 25, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this ___1st___ day of November 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Claimant: Hiba Sadic

Injury No.: 06-042666

Dependents: N/A

Employer: Semco Plastics Company Inc.

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund (open)

Insurer: Missouri Employers Mutual

Hearing Date: February 23, 2012

Checked by: LBS

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 4/04/06
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
6. Was above Claimant 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 Claimant was doing and how accident occurred or occupational disease contracted: Claimant was working for Employer on a production line.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right Shoulder
14. Nature and extent of any permanent disability: 0% of the right shoulder
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

- 17. Value necessary medical aid not furnished by employer/insurer? \$1,269.33
- 18. Claimant's average weekly wages: \$410.40
- 19. Weekly compensation rate: \$273.60/\$273.60
- 20. Method wages computation: By agreement and using the table

COMPENSATION PAYABLE

21. Amount of compensation payable

0 weeks of permanent partial disability from Employer: \$ 0

TOTAL: NONE

22. Second Injury Fund liability: Dismissed/None

23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Claimant:	Hiba Sadic	Injury No.:	06-042666
Dependents:	N/A		
Employer:	Semco Plastics Company Inc.		Before the Division of Workers' Compensation
Additional Party:	Second Injury Fund (left open)		Department of Labor and Industrial Relations of Missouri
Insurer:	Missouri Employers Mutual		Jefferson City, Missouri
Hearing date:	February 23, 2012		

An evidentiary hearing was held in the above-referenced matter on February 23, 2012. Hiba Sadic (“Claimant”) appeared in person and was represented by counsel, Mark Elhoffer. As Claimant has a poor grasp of English, there were two Bosnian interpreters present for the Hearing; one on behalf of Claimant and one on behalf of Employer/Insurer. Semco Plastics Company Inc. (“Employer”), and its insurer, Missouri Employers Mutual (“Insurer”), were represented by counsel, Pat McHugh. The Second Injury Fund was left open, and therefore, was not present at the time of the Hearing. However, it was stipulated that if this Award was not sufficient to reach the statutory thresholds for Second Injury Fund liability, the Fund would be dismissed.

STIPLULATIONS

The parties stipulated to the following facts:

1. Claimant and Employer were operating under, and subject to, the provisions of the Missouri Workers’ Compensation Law;
2. Claimant was an employee of Employer;
3. Employer was provided proper notice of Claimant’s injury;
4. Claimant filed her Claim for Compensation in a timely manner;
5. Claimant earned an average weekly wage of \$410.40, for temporary total and permanent partial disability rates of \$273.60;
6. Employer has not paid any benefits to date for this injury;
6. Venue for the Hearing in this matter is proper at the St. Louis Office of the Missouri Division of Workers’ Compensation.

ISSUES

The issues to be resolved at this Hearing are:

1. Whether Claimant sustained a compensable accident.
2. Whether Claimant's alleged accident arose out of and in the course and scope of her employment.
3. Whether there is a medical causal link between Claimant's injury and her employment.
4. Whether Employer is liable for past medical benefits in the amount of \$1,269.33. Claimant and Employer stipulated that, if this is found to be a compensable injury, Employer is liable for these past medical expenses.
5. If any, the amount of Claimant's permanent partial disability. Claimant and Employer stipulated that, if this case is found to be compensable, the permanent partial disability will fall in the range of 0-20% of the right shoulder.

EXHIBITS

Claimant offered, and had admitted into evidence, the following Exhibits:

- Exhibit A: Deposition of Dr. Shawn Berkin taken on March 31, 2011
- Exhibit B: Medical bills for treatment received by Claimant

Employer offered, and had admitted into evidence, the following Exhibits:

- Exhibit 1: Deposition of Dr. Mitchell Rotman taken on September 26, 2011

Claimant and Employer offered, and had admitted into evidence, the following Joint Exhibits:

- Exhibit I: Deposition of Hiba Sadic taken on July 10, 2007
- Exhibit II: Medical records from Washington University Orthopedics
- Exhibit III: Treatment records from various medical providers

SUMMARY OF THE TESTIMONY AND EVIDENCE

Based upon the relevant testimony of Claimant, and the Exhibits introduced into evidence, I make the following Summary of the Testimony and Evidence:

Live Testimony

Claimant testified through an interpreter that she came to the United States from Bosnia approximately 14 years ago. She is currently 51 or 52 years old.

For approximately four years, Claimant worked for Employer where her job duties included working on many different machines cutting pieces of plastic. Prior to working for Employer, Claimant worked as a housekeeper at a hotel near the Arch.

At Hearing, Claimant described her injury in April of 2006 as follows: Claimant was working on Machine 31. Her supervisor, John, sped up the machine so she had to work very quickly. Machine 31 made 1-1/2' square lids. The lids would come out of the machine four at a time. Claimant would take the lids off of the machine, and place them on a table where she would use a knife to cut off excess plastic on the lids. Once the excess plastic was removed, Claimant would lift the lids into a dryer that was next to the Machine 31. The lids were ultimately put in boxes. When a box was full of lids, Claimant would push it a distance of approximately five meters. Claimant testified that the boxes were very heavy and she had to use her back to move them.

When Claimant complained that Machine 31 was moving too fast, another supervisor named "Mark" slowed it down, however, John then increased the speed again. When Claimant reported to John that her shoulder was hurting because she had to work so quickly to keep up with the machine, John told her to go home if she could not keep up. The pain began in Claimant's shoulder when she was trimming the excess plastic (flesh) with a knife. Claimant demonstrated the motion necessary to trim the excess plastic; she was required to rotate her wrist and sharply pull her arm back toward her body. In addition to the knife, Claimant also used a tool and gas burner to remove the excess plastic from the lids.

Claimant attempted other treatments for her shoulder before undergoing surgery. She received shots in her shoulder and also took "very strong" pills for her shoulder. Eventually, however, she did undergo surgery on her right shoulder in June of 2009. The surgery did help Claimant's shoulder in that the pain in her shoulder was not as sharp following the surgery. However, her pain level both before and after surgery was around 7-8 on a Pain Scale of 1-10. Claimant's pain increases when it is raining or the weather changes.

As a result of this injury, Claimant cannot put her arm behind her back. She can only raise her right arm to shoulder height, but has to use her other hand and arm to support it. The back of her right hand feels numb, as does the back and front of her whole arm. Claimant said the numbness appeared after she had shots in her shoulder and underwent surgery. Claimant also testified that she first noticed the numbness in her arm about two weeks after the injury. Claimant cannot lift anything heavy with her right arm. Further, when she goes for a walk, she cannot let her right arm hang and must keep it flexed up against her body.

Claimant had no prior injuries to her right arm and no problems with pain in her right arm or shoulder before this incident. Claimant was involved in an automobile accident in May of 2006 and hurt her leg and back, however, she did not injure her right arm or shoulder in that automobile accident. Prior to the automobile accident, Claimant had already seen a doctor for her shoulder and undergone Physical Therapy.

On cross-examination, Claimant testified that the incident in which she injured her right shoulder occurred on March 17, 2006. Claimant testified that she had severe pain in her right

shoulder and arm from the day it was injured until she underwent surgery in June of 2009. Further, Claimant notified both John and Mark about the injury to her shoulder.

Deposition Testimony

Because Claimant's poor grasp of the English language made it difficult for her to testify, her Deposition was introduced as a Joint Exhibit. (Exhibit I) This Award will only recount the Deposition testimony that is relevant to the issues raised at Hearing.

Claimant is unable to read or write, either in Bosnian or English. She does know how to sign her name and can identify numbers. (Exhibit I, page 10)

In her deposition, Claimant described her injury as occurring on March 17, 2006 when she was working on Machine 31 and John increased the pace of the machine. (Exhibit I, pages 18-19) When she worked on Machine 31, a robot would place four lids on a table in front of her, Claimant would then have to cut the plastic with a knife. She had to cut four lids, five times a minute. (Exhibit I, Page 15) Claimant experienced severe pain in her shoulder blade when the injury occurred. Claimant had been working at the faster speed for four and a half hours when her pain began. (Exhibit I, page 19) Claimant reported her injury to her supervisor Mark who then said the pace of the machine should be decreased. (Exhibit I, page 20)

Claimant continued to work following the injury to her shoulder. (Exhibit I, page 21) She would report the continuing pain in her shoulder to both Mark and John, but they did not send her to a doctor. Barnes Jewish Hospital would not treat her because they wanted her to go to the company doctor. (Exhibit I, pages 22-23)

In her deposition, Claimant testified that she then had another injury to her shoulder on April 4, 2006. The April 4th injury occurred when Claimant was pushing some heavy boxes (150 to 200 pounds) and operating Machine 30. Claimant was trying to do everything with her left hand because her right arm was injured. However, she injured her right arm again. John, Claimant's supervisor, then told Claimant to go to the Emergency Room. Claimant went to the Emergency Room on Lindbergh/Lemay Ferry after the April 4th incident; this was the first time she had any treatment for her right arm. (Exhibit I, pages 23-25)

On April 5th, Claimant went to the company doctor; she was referred to the company doctor by the Emergency Room. However, when the company doctor called Employer for permission to treat Claimant, the owner (Jeannette) said not to treat her because she was not hurt at work. Claimant then went to Employer's factory to discuss getting medical treatment with Jeanette, but Jeanette again refused to provide medical treatment to Claimant and told her to go to Barnes Jewish Hospital for treatment. (Exhibit I, pages 25-26) Claimant went to Barnes Jewish Hospital and received medical treatment for her shoulder. (Exhibit I, pages 28-29) When Claimant was released by the doctor, she was told by she could not lift more than 10 pounds. Therefore, she never returned to work after her injury. (Exhibit I, page 13)

Medical Evidence

Claimant first received medical treatment at Barnes-Jewish Hospital on March 23, 2006. (Joint Exhibit III) Claimant reported a history of right shoulder pain for seven days. The records indicate that Claimant attributed the pain in her shoulder to "heavy lifting" six or seven days prior. The physician noted the shoulder pain was musculoskeletal in nature and prescribed medication. She was to return in one week if the pain persisted.

Claimant was seen in the Emergency Room of St. Anthony's Medical Center on April 5, 2006. (Joint Exhibit III) At that time, she reported that she was "pushing boxes" and developed right arm pain. She also reported that her pain started on March 17, 2006. Claimant said that her pain was severe, and that she had experienced a similar episode three weeks prior. X-rays were taken of Claimant's neck and right shoulder, and did not reveal any traumatic changes. Claimant was discharged with a diagnosis of "Radiculopathy".

On September 28, 2006, Claimant was examined by Ravi Bashyal, M.D. at the Surgery Specialty Clinics of Barnes-Jewish Hospital. Dr. Bashyal noted Claimant's history was taken through a Bosnian interpreter. The history in the record is recorded as follows: "Ms. Sadic states on March 17 of this past year she was at work and was hit by some sort of robotic machine in the right shoulder. She states that after this machine hit her shoulder she has had chronic severe right shoulder pain. She states that prior to being hit in the shoulder by the machine she did not have any problems with her shoulder." Claimant described her pain at that point as mostly around the medial border of the right scapula. Dr. Bashyal reviewed x-rays and an MRI of the right shoulder and diagnosed Claimant as having a "right rotator cuff partial-thickness tear through the supraspinatus, as well as scapulothoracic pain." He noted Claimant told him that she was there to see him as part of a work up for her workers' compensation litigation and wanted some documentation to be able to send her lawyer regarding her physical examination of her right shoulder. Surgical intervention was discussed but Dr. Bashyal indicated conservative management was the most reasonable course of treatment to follow.

On September 25, 2007, Claimant returned to the Barnes-Jewish Medical Center for evaluation of shoulder pain. It was noted she had been not been seen for over a year due to insurance problems. Claimant reported sharp pain in her right shoulder with weakness in her right hand. Claimant was diagnosed with a high grade tear of the anterior supraspinatus tendon and moderately severe tendonopathy of the anterior and central supraspinatus. Claimant was given medication and referred to physical therapy.

Claimant returned to the Barnes-Jewish Medical Center on October 23, 2007, and reported that it was extremely painful to exercise the right shoulder and that physical therapy had actually decreased mobility in the shoulder. A repeat MRI was performed on November 12, 2007 which showed an unchanged small, partial-thickness tear of the anterior supraspinatus tendon, without tendon retraction or muscle atrophy. Previous findings of bursitis had improved.

On December 27, 2007, Dr. Bryan Mackey conducted an orthopedic evaluation of Claimant's shoulder and provided a subacromial injection of the shoulder. When Claimant returned to the Orthopedic Clinic on February 28, 2008, Dr. Ganesh Kamath noted the injection at her last visit gave her no relief whatsoever and that she was still unable to do physical therapy

due to her symptoms. He reviewed the MRI and questioned whether the small partial-thickness tear of the rotator cuff was the true etiology of Claimant's symptoms. Dr. Kamath recommended that Claimant undergo a cervical MRI and a glenohumeral joint injection to determine if the her MRI findings were consistent with the root of her symptoms. Claimant underwent a cervical MRI on March 17, 2008, and a shoulder joint injection on March 21, 2008.

Claimant was seen by Dr. Jay Keener on May 4, 2009. (Exhibit II) Again, it was noted that all communication with Claimant was through an interpreter. Dr. Keener noted that Claimant was fairly hysterical while describing her history and said she was injured at work at a factory while doing some repetitive motions and felt immediate pain in the posterior scapular area. Dr. Keener's exam suggested persistent cuff inflammation and possible AC joint pain. A repeat shoulder MRI was revealed a progression of the rotator cuff tear; it was found to be a full-thickness, moderately retracted tear involving the supraspinatus tendon with mild atrophy. As a result of that finding, on June 12, 2009, Dr. Keener performed a right shoulder arthroscopic rotator cuff repair, subacromial decompression, and acromioplasty.

Claimant continued to follow up with Dr. Keener following her surgery. When she was seen by the doctor on November 23, 2009, she had persistent stiffness and activity related pain. However, clinically her repair was intact. Dr. Keener recommended activity as tolerated for Claimant to return if her shoulder got worse or failed to improve.

Claimant returned to Dr. Keener on November 8, 2010 reporting that she was reasonably happy with her shoulder, but her shoulder continue to feel weak and tired if she tried to use her arm. Claimant's primary complaint was numbness going down her arm. Claimant stated these symptoms had been going on for quite some time. Dr. Keener notes that the exam was hindered by the language barrier, however, he thought "much of her current symptoms have to do with possible peripheral nerve compression." He referred her to psychiatry for further evaluation and treatment.

Medical Evaluations

At the request of Claimant's attorney, Dr. Shawn L. Berkin, D.O. conducted an Independent Medical Evaluation of Claimant of November 14, 2006. His report of that examination was attached as an exhibit to his deposition which was taken on March 31, 2011. (Exhibit A) In his report, Dr. Berkin indicated that Claimant did not speak English and was accompanied by an interpreter, who assisted in his interview and examination of the patient. The report states that Claimant was being evaluated for an occupational injury that occurred on April 4, 2006, when Claimant was employer by Employer. In both his report and his testimony, Dr. Berkin indicated that Claimant provided the following history of her injury: "She had worked for SEMCO Plastics for 4 years and stated that she injured her right arm while pulling on a lever to her machine which lifted parts used in making grills. She indicated on the day of the injury she was required to work at a fast pace, which caused her to injure her shoulder." (Exhibit A, pages 10-11)

Dr. Berkin indicated that he discussed with Claimant the history of her injury that was contained in the Surgery Specialty Clinic records; that history reported that Claimant was injured

when she was hit in the right shoulder by a robotic machine. Dr. Berkin indicated that Claimant explained that she was never hit by the machine but was instead was “hit” by sharp pain to her shoulder while operating the machine.

Dr. Berkin concluded that: “I feel within a reasonable degree of medical certainty that the industrial accident that occurred in April of 2006, when the patient was pulling on a lever used to operate her machine, was the prevailing factor in causing a partial rotator cuff tear. She continues to remain symptomatic, and I feel she should be provided further treatment.” He also concluded that, if Claimant received no further treatment, this injury resulted in a permanent partial disability of 25% of the right upper extremity at the level of the shoulder. Dr. Berkin testified to these same opinions on direct examination. (Exhibit A, pages 5-6)

On cross-examination, Dr. Berkin confirmed he specializes in family practice, is not an orthopedic surgeon and has not performed surgeries. (Exhibit A, pages 7-8) Dr. Berkin testified he was not aware Claimant testified in her deposition that she was actually initially injured on 3/17/06. (Exhibit A, page 11) Although Dr. Berkin conceded he did not review the MRI film, he still testified that the findings on the MRI were, more likely than not, the result of an acute event. (Exhibit A, pages 15-16) He explained Claimant probably had some chronic changes and then experienced an acute injury and pain while working. (Exhibit A, pages 16-17)

On August 20, 2007, Dr. Rotman examined Claimant on behalf of Employer; he later provided a supplemental report dated February 3, 2011. Dr. Rotman was also deposed, and that deposition was introduced into evidence at Hearing by Employer. (Exhibit 1)

Dr. Rotman is a board certified orthopedic surgeon and specializes in treatment of shoulder, elbow and hand conditions. (Exhibit 1, pages 5-6) Dr. Rotman confirmed a translator was present to assist in the evaluation. According to Dr. Rotman, Claimant provided two different histories of her injury. First, Claimant told him that she injured herself on March 17, 2006, when the machine was going too fast and she had to cut six lids in at a time. Claimant reported that she was using a knife with her right hand to cut off the leftovers and to shape the plastic when she felt a sharp pain in her shoulder blade. Second, Claimant provided a history of an accident occurring on April 4, 2006, when she felt pain in her right shoulder while pushing one large box. (Exhibit 1, pages 7-8) At the time she was seen by Dr. Rotman, Claimant had complaints of pain on the top and outer aspect of her shoulder, pain around her shoulder blade and loss of mobility in the right arm and hand. (Exhibit 1, page 10)

Dr. Rotman reviewed Claimant’s x-rays and MRI and found that both revealed changes that were chronic, rather than traumatic, in nature. (Exhibit 1, pages 12-13) Dr. Rotman noted inconsistent findings on examination, including reports of pain in the back of her shoulder when he tested the tendon in front of the shoulder, poor strength with all maneuvers above the shoulder, “give-way weakness” on strength testing and lack of effort on grip strength testing. (Exhibit 1, pages 15-17) Although Dr. Rotman agreed that the radiology studies revealed fraying of the undersurface of the rotator cuff, tendinopathy, a high grade partial rotator cuff tear, a degenerative cyst and bone spurs, he could not correlate these findings to Claimant’s exam.

Regarding causation, Dr. Rotman concluded that neither Claimant’s operation of Machine 31 on March 17, 2006, nor her pushing the heavy box on April 4, 2006, was the prevailing factor

causing the right shoulder pathology. (Exhibit 1, pages 17-19) When presented with the history given by Claimant to Dr. Berkin, that of pulling a lever repeatedly, he noted that mechanism of injury was not found in any of the treatment records, and that the chronic problems seen on the MRI could not have been caused from pulling on a lever. (Exhibit 1, page 20) Dr. Rotman also concluded that the treatment Claimant had received was not reasonable or necessary to cure and relieve the effects of any work-related injury. (Exhibit 1, page 22) He also would not relate any permanent partial disability or impairment to her work because she did not do the type of work that could cause problems with her rotator cuff. (Exhibit 1, page 24)

On cross-examination, Dr. Rotman also acknowledged that although he didn't attribute any disability to any injury that occurred at work, she does have some disability to her shoulder. (Exhibit 1, pages 33-34) On re-direct examination, Dr. Rotman said he did not recommend surgery because he could not come up with a diagnosis and his concern of her being on disability for chronic depression. He indicated individuals that have that type of disability generally have poor outcomes from surgery. He again confirmed that he could not say with any degree of medical certainty that any of Claimant's symptoms or findings on examination were consistent or correlated with a partial rotator cuff tear. (Exhibit 1, pages 34-35)

FINDINGS OF FACT AND RULINGS OF LAW

In 2005 the definition of "accident", as contained in the Workers' Compensation Statute was amended to:

an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

Section 287.020.2. This change in the definition of "accident" was part of an overall legislative plan to raise the thresholds for obtaining Workers' Compensation benefits. *Duever v. All Outdoors, Inc*, slip op. at 6 (Mo.App., ED May 15, 2012) As a result of the 2005 amendments, the provisions of the statute are to be strictly construed, without any bias toward one party or the other. *Miller v. Mo. Hwy. & Transp. Comm'n*, 287 S.W.3d 671, 674 (Mo. banc 2009) In a Worker's Compensation case, the claimant has the obligation of proving all essential elements of her claim. *Bond v. Site Line Surveying*, 322 S.W.3d 165, 170 (Mo.App, 2010) Proof of an "accident", as defined by the statute, is part of that claim. *Arciga v. AT&T*, slip op. at 4-5 (Mo. App., WD May 9, 2012), citing *Tangblade v. Lear Corp.*, 58 S.W.3d 662, 666 (Mo.App. 2001)

In the present case, I find that Claimant failed to prove an "accident" that caused her right shoulder injury. The original and amended Claims for Compensation allege an accident date of "On or about 04/04/06" with no specific description of the accident, only that Claimant sustained injuries to her right arm, shoulder and neck while in the course and scope of her employment. Even considering language and translation issues, there were at least five different versions of how Claimant was injured; with two different dates of injury. First, Claimant testified she was injured when she was removing excess plastic with a knife on March 17, 2006. Second, the treatment records from Barnes-Jewish Hospital on March 23, 2006 indicate that Claimant reported a history of right shoulder pain for seven days that she attributed to "heavy lifting" for six or seven days. Third, when Claimant was seen at St. Anthony's Medical Center on April 5,

2006, the records reflect that she reported that she was “pushing boxes” and developed right arm pain. She also reported that her pain started on March 17, 2006. Fourth, when Claimant was first seen at the Barnes Jewish Clinic, the records reflect that Claimant was injured “on March 17 of this past year she was at work and was hit by some sort of robotic machine in the right shoulder. She states that after this machine hit her shoulder she has had chronic severe right shoulder pain.” Fifth, Dr. Berkin, Claimant’s rating physician, indicated that Claimant was injured on April 4, 2006 when she “injured her right arm while pulling on a lever to her machine which lifted parts used in making grills.” Last, Claimant told Dr. Rottman that she injured herself either on March 17, 2006, when the machine was going too fast and she had to cut six lids in at a time or on April 4, 2006, when she felt pain in her right shoulder while pushing one large box.

Thus, even though Claimant’s testified regarding an unexpected traumatic event or unusual strain, her identification of the date on which it occurred does not correspond with the Claim for Compensation. Further, the other evidence at Hearing serves only to confuse the issue of the manner and date of the “accident” even further; with several different versions of the injury and two differing dates of injury. Therefore, having found that Claimant failed to establish a compensable “accident”, this claim is denied. Having found that Claimant failed to prove a compensable “accident” under the statute, all other issues are moot.

Second Injury Fund Liability

As Claimant failed to establish that she sustained a compensable accident, her claim against the Second Injury Fund is dismissed.

Date: _____

Made by: _____

LEE B. SCHAEFER
Administrative Law Judge
Division of Workers' Compensation