

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

Injury No.: 03-086027

Employee: Kristy Sanborn

Employer: Jackson Clay D/B/A Post Cab Company

Insurer: Travelers Commercial Casualty Insurance

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 February 24, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge David L. Zerrer, issued February 24, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3rd day of April 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Kristy Sanborn

Injury No. 03-086027

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents:

Employer: Jackson Clay D/B/A Post Cab Company

Additional Party:

Insurer: Travelers Commercial Casualty Insurance

Hearing Date: February 2, 2009

Checked by: DLZ

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: August 20, 2003
5. State location where accident occurred or occupational disease was contracted: Pulaski 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:
Motor vehicle accident
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:
 - Nature and extent of any permanent disability:
15. Compensation paid to-date for temporary disability: \$7,658.16
16. Value necessary medical aid paid to date by employer/insurer? \$6,194.73

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

18. Employee's average weekly wages: \$226.37

19. Weekly compensation rate: \$166.49

- Method wages computation: Employer agreed

COMPENSATION PAYABLE

21. Amount of compensation payable: None

Unpaid medical expenses: None

-0- weeks of temporary total disability (or temporary partial disability)

-0- weeks of permanent partial disability from Employer

-0- weeks of disfigurement from Employer

22. Second Injury Fund liability: Yes No Open

Total: None

23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kristy Sanborn

Injury No: 03-086027

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents:

Employer: Jackson Clay D/B/A Post Cab Company

Additional Party

On the 2nd day of February, 2009, the date specifically set for final hearing of the above-referenced claim, the claim was called for final hearing. Claimant, Kristy Sanborn, failed to appear for the hearing. Employer appeared by its attorney, Mary Thompson. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, is not a party to this claim.

Employer admitted that temporary disability benefits have been paid in the amount of \$7,658.16, prior to the date of this hearing. Employer admitted that it paid medical benefits in the amount of \$6,194.73, prior to the date of this hearing. Employer further stated that the parties had earlier agreed to an average weekly wage of \$226.37, with a compensation rate of \$166.49, said agreement having been reached at a time when Claimant was represented by counsel.

ISSUES

Whether the accident caused the injuries and disabilities for which benefits are now being claimed.
Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries.
What is the proper rate.
Whether temporary total benefits are owed to the Claimant.
The nature and extent of any permanent disabilities.

DISCUSSION

On the date of final hearing, Claimant contacted the Division office in Springfield, Missouri, and made an oral motion for continuance without the presence or knowledge of Employer. Administrative Law Judge Mahon overruled Claimant's request for continuance. Judge Mahon notified Claimant that she would be required to attend the final hearing in Lebanon, Missouri, on that date. Neither Claimant nor any legal representative of Claimant appeared at the final hearing.

A legal file was established consisting of the following documents, to wit: Report of Injury, Claim for Compensation, Answer to Claim for Compensation, Notice of Hearing, Receipt for Certified Mail No. 70031010000253813914.

Since the Claimant failed to appear, there were no stipulations as to facts not at issue in this claim.

The record was opened to establish which parties were present and ready for hearing. Claimant's case in chief was called. No person or representative appearing on behalf of Claimant, no evidence was adduced on behalf of Claimant in her case in chief.

Case in chief on behalf of Employer was called. Employer stands on its Answer heretofore filed and the admissions and statements made with regard to compensation rate, amount of temporary total disability benefits paid, and amount of medical expense paid prior to the hearing.

FINDINGS OF FACT AND RULINGS OF LAW

Whether the accident caused the injuries and disabilities of which benefits are now being claimed.

The report of injury states that Claimant was in an auto accident and injured her forehead. The Claim for Compensation states that Claimant was operating a cab for the Employer when she was involved in an accident resulting in injury to the Claimant. The Answer to Claim for Compensation admits that Claimant was involved in an accident which arose out of and in the course of her employment but denies that Claimant suffered any disability as a result of the accident.

There is no further evidence adduced at the hearing which would be considered competent and substantial evidence that Claimant's accident was the cause of Claimant suffering any permanent disability.

After a review of all the evidence adduced at the hearing, including the legal file adopted herein, and based on the record as a whole, I find that Claimant has failed in her burden to prove, within reasonable probability, that Claimant's accident of August 20, 2003, caused the injuries and disabilities which Claimant claims in her Claim for Compensation. There are no medical treatment records placed in evidence, notwithstanding the fact that Employer

admitted that it provided medical treatment in the amount of \$6,194.73. The record is devoid of any specific evidence to establish what treatment Claimant received as a result to the accident of August 20, 2003, that caused any disabilities.

I find this issue in favor of Employer.

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries.

There is no evidence adduced at the hearing as to whether the need for further or future medical treatment will be necessary for the Claimant. After a review of all the evidence adduced at the hearing, I find that Claimant has failed in her burden to prove, by reasonable probability, that Claimant will require future medical care in order to cure and relieve the Claimant of the effects of the injuries.

I find this issue in favor of the Employer.

What is the proper rate.

The only evidence as to proper compensation rate adduced at the hearing is a statement by Employer's counsel that, prior to date of the hearing, at a time after the claim was filed and Claimant was represented by counsel, the parties agreed that the average weekly wage as of the Claimant's date of injury should be \$266.37, and the compensation rate should be \$166.49. The Report of Injury states that Claimant's rate is \$200.00 but does not delineate if that rate is the average weekly wage or the compensation rate. The Claim for Compensation alleges that the average weekly wage is \$450.00; however, that claim is denied by the Employer's answer. There was no oral evidence and no other written evidence adduced at the hearing with regard to the proper compensation rate.

After a review of all the evidence adduced at the hearing, and based on the record as a whole, I find that there is substantial and competent evidence to establish a compensation rate. I further find that the proper compensation rate for this claim is \$166.49 per week.

Whether temporary total benefits are owed to the Claimant.

The Employer admitted that \$7,658.16 in temporary total disability benefits were paid to the Claimant prior to the hearing date. There is no evidence adduced at the hearing, other than Employer's attorney statement, with regard to payment of or entitlement to temporary total disability payments.

After a review of the evidence adduced at the hearing, I find that Claimant has failed in her burden to prove, by reasonable probability, that there is competent and substantial evidence that Claimant is entitled to any temporary total disability benefit, other than that which has been paid to her prior to the date of this hearing.

I find this issue in favor of Employer.

The nature and extent of any permanent disabilities.

Employer's Answer denied that Claimant suffered any permanent disability from the accident of August 20, 2003. Neither Claimant nor any representative for Claimant presented any evidence of permanent partial or permanent total disability which may have resulted from this accident.

After a review of the evidence adduced at the hearing, and based on the record as a whole, I find that Claimant has failed in her burden to prove, by reasonable probability, that Claimant has suffered any permanent disability as a result of her injury of August 20, 2003.

I find this issue in favor of Employer.

Based on the above findings of fact and rulings of law, it is hereby ordered that Claimant shall be denied any further benefits as a result of her accident and injury of August 20, 2003.

David L. Zerrer
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Peter Lyskowski
Peter Lyskowski
Acting Director
Division of Workers' Compensation