

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

Injury No.: 06-127625

Employee: Betty Steinmetz  
Employer: Interstate Brands Corporation (Settled)  
Insurer: Self-insured (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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, read the briefs, 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 September 16, 2010, as supplemented herein.

**Introduction**

The issues stipulated in dispute at the hearing were (1) accident; (2) medical causation; and (3) the nature and extent of any Second Injury Fund liability.

The administrative law judge made the following findings: (1) employee sustained an accident on April 17, 2006, when she tripped at work; (2) the accident was the medical cause of employee's right rotator cuff tear and spine injuries; (3) as a result of employee's work injuries, she sustained a 20% permanent partial disability at the level of the right shoulder and a 7.5% permanent partial disability of the body as a whole referable to her neck and back; and (4) employee is permanently and totally disabled as a result of the injuries she sustained on April 17, 2006, in combination with her preexisting conditions of ill, and the Second Injury Fund is therefore liable for payment of permanent total disability benefits to employee for her lifetime.

The Second Injury Fund filed an Application for Review alleging the administrative law judge's award is not supported by substantial and competent evidence and is against the overwhelming weight of the evidence because: (1) the administrative law judge did not reconcile the discrepancies regarding the date of accident between employee's testimony, the medical records, her claim for compensation, and stipulation; (2) the administrative law judge did not resolve whether employee's work accident was the prevailing factor in her injuries; and (3) the administrative law judge placed the burden of proof on the Second Injury Fund to disprove employee's claim.

The Commission affirms the award of the administrative law judge as supplemented herein.

Employee: Betty Steinmetz

- 2 -

### **Discussion**

We agree with the result reached by the administrative law judge, but the award lacks certain critical findings as to the pertinent and contested facts.

Section 287.460.1 mandates that an award in a contested workers' compensation case be accompanied by findings of fact and conclusions of law. The Missouri Supreme Court has declared that such statutory requirements contemplate an unequivocal affirmative finding as to what the pertinent facts are.

*Stegman v. Grand River Reg'l Ambulance Dist.*, 274 S.W.3d 529, 533 (Mo. App. 2008) (citations omitted).

Medical causation of employee's injuries was a disputed issue at the hearing, but the administrative law judge failed to make findings that unequivocally resolve the issue. Section 287.020.3(1) RSMo defines "injury" in the context of the Missouri Workers' Compensation Law:

In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

"The determination of whether a particular accident is the prevailing factor causing an employee's condition ... is inherently a factual one ..." *Leake v. City of Fulton*, 316 S.W.3d 528, 532 (Mo. App. 2010). "[T]he question of causation is one for medical testimony, without which a finding for claimant would be based upon mere conjecture and speculation and not on substantial evidence." *Elliott v. Kan. City School Dist.*, 71 S.W.3d 652, 658 (Mo. App. 2002).

Dr. Eli Shuter opined that the accident of April 17, 2006, was the prevailing factor in causing employee's right shoulder and cervical and lumbar spine injuries and her resulting medical conditions and disabilities. The Second Injury Fund offered no evidence contra. We find Dr. Shuter credible.

We find that the accident of April 17, 2006, was the prevailing factor causing employee's right shoulder and cervical and lumbar spine injuries and her resulting medical conditions and permanent partial disabilities.

### **Decision**

We supplement the award of the administrative law judge with the foregoing findings and comments. In all other respects, we affirm the award.

Employee: Betty Steinmetz

- 3 -

The award and decision of Administrative Law Judge Matthew D. Vacca, issued September 16, 2010, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission further approves and affirms 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 26<sup>th</sup> day of May 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

John J. Hickey, Member

Attest:

---

Secretary

# AWARD

Employee: Betty Steinmetz

Injury No.: 06-127625

Dependents: N/A

Employer: Interstate Brands Corporation (Settled)

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: August 26, 2010

Checked by: MDV

## 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: April 17, 2006
5. State location where accident occurred or occupational disease was contracted: St. Louis 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 alleged employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant tripped over a stool while carrying a box of reports into the file room.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: Back, neck, right shoulder
14. Nature and extent of any permanent disability: 20% right shoulder, 7 ½% body as a whole
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? \$3,602.44

Employee: Betty Steinmetz

Injury No.: 06-127625

- 17. Value necessary medical aid not furnished by employer/insurer? 0
- 18. Employee's average weekly wages: \$560.00
- 19. Weekly compensation rate: \$365.00/\$365.00
- 20. Method wages computation: Agreed

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: Settled
- 22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
\$365.00 per week for Claimant's lifetime beginning January 19, 2009

**TOTAL:**

- 23. Future requirements awarded: See Award

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: David Hughes

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

Employee:	Betty Steinmetz	Injury No.:	06-127625
Dependents:	N/A	Before the	
Employer:	Interstate Brands Corporation (Settled)	<b>Division of Workers'</b>	<b>Compensation</b>
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
Insurer:	Self-insured	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	MDV

**ISSUES PRESENTED**

The issues presented for resolution by way of this hearing were accident, causation, the nature and extent of the primary injury and the nature and extent of the Second Injury Fund liability.

**FINDINGS OF FACT**

1. Claimant was born October 27, 1950. She will soon be 60 years old. She is married with one child of her own and two stepchildren. The stepchildren still live in Claimant's home.
2. Claimant lives in a one-level home with no basement or upstairs.
3. She has lived at #7 St. Louis Court in Cahokia, Illinois since the 1970s.
4. She is 5'2" tall, 195 pounds. She has lost weight recently.
5. Claimant has a high school education with two years of college including some computer classes acquired following a prior injury. She took her college classes in accounting at the Belleville Area Community College, but did not receive a degree. She left college to pursue a job rather than a degree because of the need to earn a living.
6. Claimant started her working career as a restaurant manager and worked in that capacity for 14 years. She was variously an assistant manager and injured her low back approximately 14 years ago while working for Shoney's. She changed her job duties to more of a clerical position due to the injury. She was no longer able to pursue long hours on her feet. This work injury resulted in a compromise lump sum settlement. Following this accident and the injuries, Claimant received physical therapy and the employer also sent her to take some computer courses so she could work as a route accountant clerk.
7. In 1992, Claimant went to work for Interstate Brands and worked there until the last date of August 2, 2007. In this capacity, she would check invoices from the various routes and restaurants. These had to be matched up and correlated with manual printouts from the

routes themselves. Later in her career, the printouts became computerized and although the technology helped, the weight load due to the computer printouts doubled. Claimant was required physically to keep her head down while working on these various reports.

8. Employees would pack these invoices in boxes and store them in a warehouse. An invoice box weighed as much as a square box of computer paper packed with several packages.
9. Claimant was required to bend, stoop, reach for files on the bottom of the file cabinets, and crawl under the desk looking for plug-ins and various computer interfaces. She performed some light overhead lifting but on a repetitive basis as she placed reports above her head for further processing. Claimant would get up to make copies and do filing as a respite from her all day sitting job.
10. Claimant's physical capabilities while working as a manager in the restaurant industry involved performing physical labor during inventories where cans had to be counted and boxes of bananas, food and other items had to be lifted and moved around in order to be counted.
11. Claimant suffered a spine injury in 1986, underwent extensive physical therapy, diathermy, electrical stimulation, and long courses of rehabilitative physical therapy. Between 1986 and the time of the injury herein, her back gave her constant problems and limited her hand and arm movement, walking especially bothered her and her neck hurt. She continued to receive prescriptions, injections, and continuing diagnoses regarding her spine up until the date of the injury which forms the subject of this claim.
12. Claimant injured her left knee in an auto accident and underwent arthroscopic surgery. She continued to have problems. The knee would lock up, give out, was weak and would often catch causing Claimant to fall forward.
13. Claimant was diagnosed with diabetes in 1992. She suffers from neuropathy and numbness. She currently utilizes an insulin pump and the condition continues to bother her with numbness, tingling and neuropathy.
14. In 2000 Claimant underwent bilateral carpal tunnel syndrome surgery. Her hands were painful and swelled. They hurt at night, were extremely painful and combined with her preexisting low back condition caused her to continue experiencing difficulties in her ability to lift, bend and maneuver at work.
15. Claimant underwent surgical hernia repairs in 2003, 2005 and 2006. These surgeries left her with an almost complete inability to get up using her abdominal muscles. She has to use her arms and legs to rise because of complete and total abdominal deconditioning.
16. Claimant underwent a nervous breakdown in 2005 because of ongoing anxiety, depression and problems at work. Claimant felt that co-employees were harassing her

because of a narcoleptic and sleep apnea condition. One co-employee was always watching Claimant and going to the supervisor to get her in trouble.

17. Employee was admitted for outpatient treatment for several weeks, prescribed medicine, but often finds that she retreats to the solitude of a locked room or locks herself in a car to get away from people.
18. Claimant was diagnosed with fibromyalgia in 2003. This condition often produces tremendous pain from her head to her toe. She was eventually diagnosed and a prescription was provided which helps the condition tremendously, but she does experience flare-ups that may last for days, weeks or months depending on the stress level of the events.
19. Claimant has a left shoulder arthritis condition that has made it difficult over the years to lift paperwork and handle papers or to deal with low files. Stress causes the arthritic condition to increase pain levels.
20. Claimant underwent a breast cancer lumpectomy in 2003 which produces ongoing right arm pain and an inability to lift. Her overall condition is impaired by that surgery and it causes her to fatigue and tire easier.
21. Claimant also suffers from asthma and COPD. She has difficulty breathing. She also suffers from hypertension which is controlled with a prescription.
22. As mentioned earlier, Claimant has sleep apnea and suffers from narcolepsy. She is currently on 18 units of air pressure using her BiPAP machine. Stress causes that number to go higher. Claimant was suffering from falling asleep at work and received some complaints from her supervisors and was disciplined at work for falling asleep.
23. On the date of the injury, April 17, 2006, Claimant tripped while carrying a box of reports into the file room. She tripped over a stool and as she fell forward she hit her knee. A coworker grabbed her by the wrist and pulled her up short. This motion caused a jerking upwards of her body as the lower part of the body fell to the ground and struck the floor anyway.
24. Claimant was initially cursorily treated and released after x-rays, provision of a prescription and ice were provided at Barnes-Jewish Hospital.
25. Claimant continued to complain following the injury and the Employer sent her to BarnesCare for treatment of pain in her back, left shoulder, and eventually for pain in her right shoulder also. She received physical therapy and the Employer was directed to put her on light duty, but did not actually do so.
26. Claimant went to see Dr. Tate who treated her with injections for her shoulder and back, diagnosed a tear in her rotator cuff and sent her to a surgeon for evaluation.

27. Dr. Nogalski was the surgeon, but he refused to do the surgery because of Claimant's prior breast cancer. Employee was released from surgical treatment and Dr. Tate also released her from pain management.
28. Finally, Claimant fell under the care of her private physician, Dr. Thomas Lee, and he referred her to Dr. Markenson who eventually performed an open rotator cuff repair followed by two months of physical therapy. Following this treatment, Claimant's neck and back got worse and her movements were limited because effort caused an increase in pain. She still undergoes pain management one to two times a month at the Komen Pain Management Clinic. The rotator cuff surgery provided a decrease in pain, but Employee still suffers from weakness.
29. Claimant cannot sit in one position for more than 5 to 15 minutes. She has to sit on cushions because her tailbone hurts. Standing causes an increase in pain. She can only lift 5 pounds and drive for about 20 minutes before she fidgets.
30. Claimant has received Social Security disability.
31. She carries her groceries on her wrists and arms, she cannot grip them in her hand.
32. Employee does not perform much sink, pots and pans or dish work because she has to sit on a stool and can only work at it for three to five minutes. Her husband performs the laundry, vacuuming and most of the household chores.
33. Employee tosses and turns most of the night and wakes up four to five times per night.
34. Dr. Nogalski on behalf of the Employer rated Claimant's shoulder at 2 percent permanent partial disability for injuries sustained at work on the date of the injury. Dr. Tate rated Claimant's back at zero percent disability. Dr. Shuter rated Claimant's disability at 35 percent of the shoulder for a right rotator cuff repair and 15 percent of the back for a lumbar syndrome resulting from the work injury.
35. Mr. England believes that Claimant is permanently and totally disabled from competing in the open labor market as a result of the combination of all of her injuries. The Second Injury Fund provided no evidence.

### **RULINGS OF LAW**

1. Claimant sustained an accident on April 17, 2006, wherein she tripped while filing a box of reports.
2. That accident was the medical cause of Claimant's right rotator cuff tear and spine injuries.
3. Claimant sustained a 20 percent permanent partial disability measured at the level of the right shoulder for injuries to her rotator cuff and a 7 ½ percent permanent partial disability

measured at the level of the body as a whole for injuries to her neck and back all received as a direct result of the work injury herein.

4. The last injury alone did not permanently and totally disable Claimant.
5. Following the last accident, however, Claimant did become permanently and totally disabled.
6. It was not the last injury alone that caused Employee's permanent and total disability, rather it was the last injury and prior injuries that caused Employee's permanent and total disability. Therefore, the Second Injury Fund is liable for payment of \$365.00 a week beginning January 19, 2009, and continuing thereafter for the rest of Claimant's lifetime.

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

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

Matthew D. Vacca  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*