

TEMPORARY AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No. 14-025821

Employee: Tammy Stieferman
Employer: Optima Graphics, LTD
Insurer: Federal Insurance Company

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 allowing compensation to the employee.

We note that the proceedings in this matter were consolidated, by agreement of the parties and order of the Commission, with those in Injury No. 14-035591 for all purposes. Pursuant to 8 CSR § 20-3.050, we hereby designate Injury No. 14-025821 as the "master proceeding." Also pursuant to that regulation, we have issued a separate award in Injury No. 14-035591.

The award and decision of Administrative Law Judge Suzette Carlisle, issued November 3, 2015, is attached and incorporated by this reference.

This award is only temporary or partial. It 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 § 287.510 RSMo.

Given at Jefferson City, State of Missouri, this 20th day of June, 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee:	Tammy Stieferman	Injury No.:	14-025821
Dependents:	N/A		Before the
Employer:	Optima Graphics, LTD		Division of Workers'
Additional Party:	N/A		Compensation
Insurer:	Federal Insurance Company c/o Gallagher Bassett Services		Department of Labor and Industrial
Hearing Date:	August 26, 2015		Relations of Missouri
			Jefferson City, Missouri
		Checked by:	SC

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 7, 2014
5. State location where accident occurred or occupational disease contracted: St. Louis County
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 happened or occupational disease contracted: Claimant tripped over a roll of fabric and injured her right shoulder.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Right shoulder
14. Compensation paid to-date for temporary disability: \$0
15. Value necessary medical aid paid to date by employer/insurer? \$360.65
16. Value necessary medical aid not furnished by employer/insurer? N/A

Employee: Tammy Stieferman

- 17. Employee's average weekly wages: \$656.49
- 18. Weekly compensation rate: \$437.68/\$437.68
- 19. Method wages computation: Stipulated

COMPENSATION PAYABLE

- 20. Amount of compensation payable:

TOTAL: TO BE DETERMINED

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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: Michael Korte

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Tammy Stieferman	Injury No.: 14-025821
Dependents:	N/A	Before the
Employer:	Optima Graphics, LTD	Division of Workers'
Additional Party:	N/A	Compensation
Insurer:	Federal Insurance Company c/o Gallagher Bassett Services	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri

STATEMENT OF THE CASE

On August 26, 2015, the parties appeared for a hearing for a temporary award at the Missouri Division of Workers' Compensation ("Division") Office in St. Louis, at the request of Tammy Stieferman ("Claimant") for medical treatment, and to determine whether Optima Graphics LTD, ("Employer") and Federal Insurance Company, ("Insurer") are liable for additional medical care. Attorney Michael Korte represented Claimant. Attorney Ryan Weltz represented the Employer and Insurer. The record closed after presentation of the evidence. Court reporter Maria Krawat transcribed the proceeding. The Second Injury Fund is not a party to this case.

Injury Number 14-05591 is a second claim filed by Claimant. Some of the evidence applies to both claims and will be discussed in both awards.

STIPULATIONS

The parties stipulated that on April 7, 2014:

1. Claimant was an employee of Employer in St. Louis County;
2. Claimant sustained an accident that arose out of and in the course of employment;
3. Employer and Claimant operated under the Missouri Workers' Compensation Law;¹
4. The Employer's liability was fully insured;
5. The Employer had proper notice of the injury;

¹ All references in this award to the Employer also refer to the Insurer unless otherwise stated. Statutory references in this award are to the Revised Statutes of Missouri 2005 unless otherwise stated.

6. A claim for compensation was timely filed;
7. Claimant's average weekly wage was \$656.49 with a rate of \$437.68 for temporary total disability ("TTD") benefits;
8. Employer paid no TTD benefits;
9. Employer paid medical benefits totaling \$360.65; and
10. Employer agrees to pay TTD benefits if ordered by the Court and the authorized treating physician takes Claimant off work or Claimant cannot return to accommodated employment.

ISSUES

The parties identified two issues for disposition:

1. Was the accident the prevailing factor in causing Claimant's injury?
2. Is medical treatment needed to cure and relieve the effects of a work-related injury?

EXHIBITS

Claimant's Exhibits 1 through 6 and Employer's Exhibits A through D were offered and received into evidence with no objections. Any objections made during the hearing or contained in the depositions, but not ruled on during the hearing or in this award are now overruled. To the extent there are marks or highlights contained in the exhibits, they were made prior to becoming a part of this record and were not placed there by the undersigned administrative law judge.

FINDINGS OF FACT

All evidence was reviewed but only evidence that supports this award is discussed below.

1. Employer hired Claimant to work as a seamstress making trade show banners. At the time of the hearing, Claimant still worked for Employer. Claimant operates several machines, some standing, and others sitting. She works with large, heavy pieces of fabric. Banners are sewn together and placed on a frame. Frames can span more than two stories tall. The work is labor intensive and requires strength.

Primary injury

2. On April 7, 2014, Claimant's leg became tangled with a roll of fabric and she fell with her right arm extended over her head and she heard and felt a "tremendous pop." Claimant could not push herself up from the floor. She is right-hand dominant.

3. Claimant's supervisor drove her to get medical care. On the way, Claimant's supervisor assured her the rolls of fabric would be relocated. The fabric was not relocated. Unfortunately, the fabric was not relocated.
4. St. Luke's Urgent Care took x-rays, prescribed medication, ordered three physical therapy visits, and imposed the following restrictions: no lifting more than 5 pounds, and no overhead lifting. X-rays were difficult to take because Claimant could not move her arm as requested.
5. Prior to this fall, Claimant had no problems or treatment for her right shoulder.

Subsequent injury

6. On April 21, 2014, Claimant's leg became caught on the same roll of fabric again and she fell on the right side of her back and injured her right lower back and her right shoulder. She felt a "shockwave" pass through her body that generated pain.
7. Claimant treated at St. Luke's Urgent Care where an MRI was ordered and she was referred to Dr. Hobbs. Dr. Hobbs informed Claimant her right shoulder had atrophied from a right shoulder injury more than a year ago; therefore, he released her from the work injury at maximum medical improvement ("MMI").
8. Between the two work accidents, Claimant continued to have right shoulder pain.
9. Claimant did not have low-back pain until after the right shoulder pain decreased after the second injury. She has not had any low-back treatment.
10. Claimant has ongoing right shoulder pain and cracking. At least once a week, pain makes it difficult for Claimant to lift her arm or use it. When sleeping, Claimant has pain with certain movements. She sleeps with her arm on a pillow to protect it. Changes in weather fatigue her.
11. Claimant continues to work full duty to tolerance. Her supervisor allows her to avoid climbing ladders and overhead work.

Medical evidence for the primary injury

12. Claimant treated at an urgent care where x-rays were taken and medication and physical therapy were prescribed. (medical records are not in evidence) On April 17, 2014, Claimant reported 75% improvement after she attended three physical therapy sessions prescribed by Linda Winterberger, D.O.
13. On May 5, 2014, Mercy Corporate Health-Fenton returned Claimant to restricted duty with "no lifting/carrying right arm. Pushing and pulling should be limited to 10 pounds or less right arm. Above shoulder level work may not be performed with the affected side."

Expert Medical Evidence

14. Micah C. Hobbs, M.D., is a board certified orthopedic surgeon, who primarily performs knee and shoulder surgery. Dr. Hobbs reviewed medical records, examined Claimant on May 9, 2014, wrote a report and testified at the Employer's request for the first time in Missouri as an expert witness in a workers' compensation case.
15. Examination showed rotator cuff weakness. After examination of Claimant and review of Claimant's MRI images and records, Dr. Hobbs diagnosed a retracted full thickness tear of the supra and infraspinatus tendon with retraction of the supraspinatus to the glenohumeral joint, atrophy of the supra and infraspinatus tendons², and degeneration of the subscapularis with mild glenohumeral osteoarthritis. Dr. Hobbs testified that retraction occurs over months or years as a tendon tears. Finding no acute injury on the MRI, Dr. Hobbs concluded the tear predated the April 7 and April 21 work injuries.
16. Dr. Hobbs further concluded the two April 2014 falls exacerbated Claimant's underlying condition, but was not the prevailing factor that caused the right shoulder condition. Dr. Hobbs opined the falls may have caused further damage to the already damaged tendon, causing it to become symptomatic. He noted many patients have torn rotator cuffs and are asymptomatic.
17. Dr. Hobbs explained the x-rays reveal changes that developed over time, including a positive right shoulder impingement, sclerosis, fragmentation of the greater tuberosity, moderate AC joint arthritis, and mild superior migration of the humeral head in relation to the glenoid.
18. Dr. Hobbs testified it is hard to identify acute injury changes, but the following findings on Claimant's x-rays are consistent with chronic rotator tears: a) Migration of the humeral head, b) Decreased distance between the acromion and humeral head, and c) Sclerosis and fragmentation. Dr. Hobbs concluded these findings represent chronic changes to the bone that attaches to the rotator cuff which occurs in the presence of pre-existing rotator cuff disease.
19. Dr. Hobbs noted it was difficult to tell from the MRI what, if anything, was made worse by the falls because there is no MRI before the falls to compare.
20. Dr. Hobbs found Claimant had reached MMI because her current symptoms were related to her preexisting condition. Dr. Hobbs advised her to seek treatment for the rotator cuff tear if she chose to do so. However, he did not recommend any treatment for the work injuries and released Claimant to work full duty with no restrictions.

² Dr. Hobbs defined atrophy as "a decrease in the size and the thickness of the tendon." He estimated it took several months to years to develop atrophy.

21. James P. Emanuel, M.D., reviewed the May 1, 2014 MRI scan of the right shoulder, examined Claimant on November 11, 2014 for an independent medical examination, wrote a report, and testified at the request of Claimant's attorney.
22. Dr. Emanuel diagnosed a complete tear of the rotator cuff with retraction, joint arthritis, subacromial bursitis, and bicipital tendinitis.
23. Dr. Emanuel opined Claimant most likely had an asymptomatic full thickness rotator cuff tear before the April 7 fall. The fall was the prevailing factor that caused the complete rotator cuff tear when Claimant's arm flew overhead and popped. After the fall, Claimant's inability to move her arm away from her body demonstrated an acute large rotator cuff injury.
24. The shoulder responded somewhat to conservative treatment until it was re-aggravated by a second fall on April 21. Now, she has decreased range of motion, decreased rotator cuff strength, and pain, and is non-responsive to conservative care.
25. Dr. Emanuel concluded the April 21 fall aggravated Claimant's right shoulder but did not tear it due to the mechanism of injury. Claimant fell on her back and not on her outstretched arm or shoulder.
26. Dr. Emanuel concluded the rotator cuff tear increased after the April 7 fall because:
 - a) Claimant became symptomatic after her arm flew over her head,
 - b) The shoulder popped,
 - c) She had immediate inability to raise the arm, and
 - d) The MRI did not reveal any fatty infiltration or fatty atrophy in the massive tear, which suggests the massive tear, was not chronic.
27. Dr. Emanuel acknowledged cystic changes were found in the greater tuberosity and there was migration of the humeral head, consistent with rotator cuff tear. However, Dr. Emanuel concluded the April 7, 2014 fall was the prevailing factor that caused the need for surgery and follow-up treatment.
28. Dr. Emanuel suggested a second MRI to determine the extent of damage from the second fall. He recommended an arthroscopy with subacromial decompression or distal clavicle resection and repair of the massive rotator cuff tear. Recovery time would be four to six months. If the tear can only be partially repaired, Dr. Emanuel recommended a marginal convergence procedure which would require a three to four month recovery time.
29. Dr. Emanuel returned Claimant to work with the following restrictions: no lifting more than 5 pounds floor to waist, 2 pounds waist to chest, and no lifting above shoulder level.

FINDINGS OF FACT and RULINGS OF LAW

After careful consideration of the entire record, Claimant's demeanor during the hearing, competent and substantial evidence presented, and the applicable law of the State of Missouri, I make the following findings:

1. The April 7, 2014 fall injured Claimant's right shoulder

Claimant asserts the April 7 fall increased her preexisting right rotator cuff tear and caused it to become symptomatic. Employer contends Claimant had a preexisting massive tear of the right rotator cuff which was not caused by falls on April 7 and April 21 based on a lack of objective findings on the x-rays or MRI. Employer concludes there is no diagnosis and no compensable injury.

Section 287.020.3(1) defines "injury" as one 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.

However, for an injury to be compensable, Section 287.020.3(1) requires that the work-related injury be the 'primary factor' in causing the disability at issue, not the sole factor. *Maness v. City of De Soto*, 421 S.W.3d 532, 540 (Mo.App. 2014) (Citations omitted). The mere presence of pre-existing degeneration of an employee's body at the location of an otherwise compensable injury will not disqualify the injury from compensation pursuant to The Workers' Compensation Law: *Id.* at 41.

Where the right to compensation depends upon which of two conflicting medical theories should be accepted, the issue is peculiarly for the [fact finder] to decide. *Spencer v. Sac Osage Elec. Co-op., Inc.*, 302 S.W.3d 792, 800 (Mo.App.2010). "Determinations about causation and work-relatedness are questions of fact to be ruled upon by [fact finders], and the reviewing court may not substitute its judgment on the weight of the evidence or on the credibility of witnesses for that of the [fact finder]. *Id.*

Claimant has the burden to prove all of the elements of the claim to a reasonable probability. *Hoven v. Treasurer of State*, 414 S.W.3d 676, 678 (Mo. App. 2013). 'Probable' means founded on reason and experience which inclines the mind to believe but leaves room for doubt. *Mathia v. Contract Freighters, Inc.* 929 S.W.2d 271, 277 (Mo.App. 1996). In this case, I find Claimant met her burden.

Both experts agree that prior to April 7 Claimant had a right rotator cuff tear, sclerosis and fragmentation. However, they disagree on whether the April 7 or April 21 falls increased the size of the preexisting rotator cuff tear. I find Dr. Emanuel's causation opinion is more persuasive than Dr. Hobbs' opinion for the reasons stated below.

Dr. Emanuel relied on several factors to conclude the April 7 fall increased Claimant's preexisting rotator cuff tear despite degenerative changes and the absence of acute findings on the MRI.

First, he looked at the mechanism of injury. When Claimant fell, her right arm flew over head, her shoulder popped, and she became symptomatic. Dr. Hobbs acknowledged Claimant may have been asymptomatic before the April 7 fall and the shoulder pop may have caused pain, but he disagreed that Claimant's symptoms represented a torn rotator cuff. Dr. Hobbs agreed, however, the fall may have damaged the tendon. Dr. Emanuel further supported his conclusion based on Claimant's immediate inability to raise her arm or get up from the floor without help.

Second, both doctors agree Claimant has tendon atrophy. They also agree that the presence of fatty infiltration may suggest a chronic condition. However, they disagree on whether fatty infiltration occurred. Dr. Emanuel testified it can develop within four weeks of a large rotator cuff tear but it was not seen on Claimant's MRI. Therefore, he concluded the MRI was not chronic. However, Dr. Hobbs testified not all MRI facilities go into the muscle belly of the supra, infraspinatus and subscapularis where fatty infiltration can be revealed, but he did not testify that Claimant's MRI failed to go far enough.

Third, based on each doctor's experience, they disagreed on the length of time needed to develop a rotator cuff retraction and whether it can be a traumatic. Dr. Emanuel testified a rotator cuff tear may be acute with retraction which can occur within one month of a large tear. Dr. Emanuel based his opinion on years of experience working with patients that have work injuries and non work-related injuries. Also, he became board certified in orthopedics in 1991, recertified in 2011, and has performed over 11,000 shoulder surgeries. In contrast, Dr. Hobbs has only seen retractions that took months or years to develop. Dr. Hobbs became board certified in orthopedics in 2013 and it is not clear from the record how many shoulder surgeries he has performed.

Finally, the doctors disagree on how long it takes for the humeral head to migrate. Dr. Emanuel testified it could happen right away, but according to Dr. Hobbs the smaller the distance between the acromion and humeral head, the longer the rotator cuff has been torn. Dr. Hobbs conceded there may be other reasons that the humeral head can migrate that are unrelated to chronic rotator cuff injury.

Both doctors concluded Claimant sustained more injury after the falls. Dr. Hobbs conceded there may be more tendon damage and Dr. Emanuel found more tearing of the rotator cuff.

I find Claimant's testimony was credible that after the April 7 fall, her x-rays had to be delayed for a week while she took ibuprofen 800 milligrams for limited mobility and discomfort. Also, before April 7, Claimant performed heavy lifting without pain and did not seek any treatment for her right shoulder.

Therefore, based on persuasive testimony by Dr. Emanuel and Claimant, medical records in evidence, and less than persuasive testimony by Dr. Hobbs, I find the April 7 fall was the prevailing factor that caused Claimant's injury.

1. Medical treatment is needed to cure and relieve the effects of a work-related injury

Dr. Emanuel recommended one of two surgical options to repair the rotator cuff tear, an arthroscopy with subacromial decompression, distal clavicle resection and repair of the massive rotator cuff tear. If the tear can only be partially repaired, Dr. Emanuel recommended a marginal convergence procedure. As discussed above, Dr. Emanuel concluded the April 7, 2014 fall was the prevailing factor that caused Claimant's need for surgery and post-surgery recovery.

In contrast, Dr. Hobbs concluded the falls may have caused more damage to the tendons but he did not recommend treatment. He did suggest that patients with massive rotator cuff tears can seek treatment if they choose to do so.

Section 287.140.1 states in part: ... [T]he employee ... shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, *to cure and relieve from the effects of the injury*. (Emphasis added), *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511 (Mo. Ct. App. 2011).

The 2005 amendments to The Workers' Compensation Law did not, however, incorporate a "prevailing factor" test into the determination of medical care and treatment required to be afforded for a compensable injury by section 287.140.1. In fact, the 2005 amendments left section 287.140.1 virtually unchanged, adding only inconsequential language unrelated to the standard to be applied to determine whether medical treatment must be afforded an injured employee. *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 519 (Mo.App. 2011).

The existing case law at the time of the 2005 amendments to The Workers' Compensation Law instructs that in determining whether medical treatment is "reasonably required" to cure or relieve a compensable injury, it is immaterial that the treatment may have been required because of the complication of pre-existing conditions, or that the treatment will benefit both the compensable injury and a pre-existing condition. *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 519 (Mo.App. 2011) (citing *Bowers v. Hiland Dairy Co.*, 188 S.W.3d 79, 83 (Mo.App. 2006)). Rather, once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury. *Id.* The fact that the medication or treatment may also benefit a non-compensable or earlier injury or condition is irrelevant. *Id.*

I previously found the April 7, 2014 accident was the prevailing factor that caused Claimant's injury. Based on persuasive testimony by Dr. Emanuel about medical treatment options, I further find Employer liable for medical treatment to cure and relieve the effects of Claimant's fall at work on April 7, 2014.

CONCLUSION

Claimant's fall on April 7, 2014 was the prevailing factor that caused her right shoulder injury and need for treatment. This is a temporary award in favor of Claimant.

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation