

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

Injury No. 14-035591

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 and awards no compensation in this case.

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. 14-025821 for all purposes. Pursuant to 8 CSR § 20-3.050, we hereby designate Injury No. 14-025821 as the "master proceeding," and we issue this separate award herein because we agree, based on the evidence before us at this time, with the administrative law judge's finding that employee's injuries and need for treatment result from the accident alleged in Injury No. 14-025821.

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

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Tammy Stieferman Injury No.: 14-035591  
Dependents: N/A Before the  
Employer: Optima Graphics, LTD **Division of Workers'**  
Additional Party: N/A **Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Insurer: Federal Insurance Company c/o Gallagher Bassett Services  
Hearing Date: August 26, 2015 Checked by: SC

### 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? Yes
4. Date of accident or onset of occupational disease: April 21, 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? \$0
16. Value necessary medical aid not furnished by employer/insurer? \$0

Tammy Stieferman

Injury No.: 14-035591

- 17. Employee's average weekly wages: Sufficient for the rate listed in number 18 below.
- 18. Weekly compensation rate: \$430.15/\$430.15
- 19. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

20. Amount of compensation payable:

TOTAL:

NONE

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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Attorney Michael Korte

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

Employee: Tammy Stieferman

Injury No.: 14-035591

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Optima Graphics LTD

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

Additional Party: N/A

Insurer: Federal Insurance Company c/o Gallagher Bassett Services

**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 14-025821 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 21, 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 her employment;
3. Employer and Claimant operated under the Missouri Workers' Compensation Law;<sup>1</sup>
4. The Employer's liability was fully insured;
5. The Employer received proper notice of the injury;
6. A claim for compensation was timely filed;

<sup>1</sup> 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.

7. Claimant's average weekly wage was \$645.19 which resulted in a temporary total disability ("TTD") and permanent partial disability ("PPD") rate of \$430.15;
8. Employer paid no TTD or medical benefits; and
9. Employer agreed 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.

### **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.

### **ISSUES**

The parties identified two issues for disposition:

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

### **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. Claimant still worked for Employer at the time of the hearing. Claimant operates several machines, some standing, others sitting. She works with large, heavy pieces of fabric. First, 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.

#### ***April 7, 2014 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. Claimant 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.
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.

***Primary injury – April 21, 2014***

6. On April 21, 2014, Claimant's leg became caught on the same roll of fabric again and she fell and injured her right lower back and her right shoulder.
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.
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 tendons<sup>2</sup>, 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 preexisting 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.
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.

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<sup>2</sup> 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.

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, 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 and popped after she fell on April 7,
  - 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, 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 and CONCLUSION**

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 finding:

Having found the April 7, 2014 fall was the prevailing factor that caused Claimant's injury and need for treatment, the request for treatment is denied under injury number 14-035591.

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

Suzette Carlisle

*Administrative Law Judge*

*Division of Workers' Compensation*