

TEMPORARY OR PARTIAL AWARD  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-061243

Employee: Charlotte K. Stone  
Employer: Dixon Nursing & Rehabilitation LC  
Insurer: Mo. Nursing Home Insurance Trust  
Date of Accident: March 31, 2005  
Place and County of Accident: Pulaski County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated January 25, 2007.

This award is only temporary or partial, 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 section 287.510 RSMo.

The award and decision of Administrative Law Judge David L. Zerrer, issued January 25, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 16<sup>th</sup> day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Charlotte K. Stone

Injury No. 05-061243

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents:

Employer: Dixon Nursing & Rehabilitation LC

Additional Party:

Insurer: Mo. Nursing Home Insurance Trust

Hearing Date: October 24, 2006

Checked by: DLZ

### 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: March 31, 2005
5. State location where accident occurred or occupational disease 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 happened or occupational disease contracted:  
Claimant had bilateral shoulder pain with exacerbations on April 2005, and May 30, 2005
12. Did accident or occupational disease cause death? No Date of death? N/a
13. Parts of body injured by accident or occupational disease: Shoulders bilaterally
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? \$2,969.39

Employee: Charlotte K. Stone

Injury No. 05-061243

- 17. Employee's average weekly wages: \$297.50
- 18. Weekly compensation rate: \$198.33
- 19. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

- 20. Amount of compensation payable:

Unpaid medical expenses: \$2,969.39

59-4/7 weeks of temporary total disability (or temporary partial disability)

TOTAL: \$14,784.19

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: Kimberly Lowe

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

Employee: Charlotte K. Stone

Injury No: 05-061243

Before the  
**DIVISION OF WORKERS'**

**COMPENSATION**

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

Dependents:

Employer: Dixon Nursing & Rehabilitation LC

Additional Party

Insurer: Mo. Nursing Home Insurance Trust

Checked by: DLZ

On the 24<sup>th</sup> day of October, 2006, the parties appeared before the undersigned Administrative Law Judge for an emergency hearing. The Claimant appeared in person and by her attorney, Kimberly Lowe. The Employer appeared by its corporate representative, Susan Williamson, and by its attorney, Patrick M. Reidy. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, has been excused from participation in this hearing; and no evidence adduced at this hearing will be held to prejudice the issues of this claim with regard to the Second Injury Fund.

The parties have entered into a stipulation pertaining to certain facts which are not at issue in this claim, as follows, to wit: On or about the 31<sup>st</sup> day of March, 2005, Dixon Nursing and Rehabilitation LC was an Employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully self-insured through the Missouri Nursing Home Insurance Trust; on the alleged injury date of March 31, 2005, Charlotte Stone was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the employment occurred in Laclede County, Missouri, and the parties have agreed that Laclede County, Missouri, is the proper venue for this hearing; Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident/occupational disease, Claimant's average weekly wage was \$297.50, sufficient to allow a compensation rate of \$198.33 for temporary total disability and permanent partial disability; no temporary disability benefits have been paid prior to the date of this hearing; the Employer has paid no medical benefits prior to the date of this hearing; the Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award.

**ISSUES**

Whether the Claimant sustained an accident/occupational disease.

Whether the Claimant gave the Employer proper notice.

Whether the accident/occupational disease caused the injuries and disabilities for which benefits are now being

claimed.

Whether the Employer is obligated to pay for past medical expenses.

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.

Any temporary total benefits owed to the Claimant.

Whether the Claimant is entitled to the costs of these proceedings pursuant to Section 287.560.

## **DISCUSSION**

A legal file was established for this hearing which consisted of the following documents, to wit: Claim for Compensation filed by the Claimant with the Division; Answer to Claim for Compensation filed by the Employer with the Division; Request for Hardship Hearing filed by the Claimant with the Division.

The Claimant, Charlotte Stone, is 52 years of age, having been born on January 18, 1954. On October 2, 2000, Claimant accepted employment with Dixon Nursing Home & Rehabilitation LC. Claimant worked as a Certified Nurses Aid (CNA) and a Registered Nurses Aid (RNA) from the period of October 24, 2000, through May 30, 2005. Her job duties included, but were not limited to, lifting and transferring an average of 30 patients twice a day for meals, transferring and/or otherwise lifting patients for showering, restroom use, and exercise. Claimant also had to turn bedfast patients at least twice a day and exercise their arms and legs.

Claimant testified that during late December 2005 she began to develop persistent bilateral shoulder pain. In April 2005, Claimant was assisting a resident and felt a pop in her right shoulder. She continued to work because her pain was manageable. On April 6, 2005, she was seen by Dr. Sugarbaker with complaints of bilateral shoulder pain. Dr. Sugarbaker prescribed Lidoderm patches for both shoulders and upper arms, and Darvocet for general pain.

On May 30, 2005, Claimant was lifting a patient from a bath when she felt a “pop” in her left shoulder. Claimant experienced immediate pain and some numbness. She took Tylenol and finished her shift. While at home after that workday, Claimant’s pain and numbness continued; so she continued to take Tylenol through the night.

On June 1, 2005, Claimant called the Employer to report that her shoulder continued to hurt from the incident of May 30, 2005. Claimant reported to supervisory personnel what occurred on May 30, 2005, and the fact that her shoulder was in a considerable amount of pain which would prevent her from working on June 1, 2005. She was not offered any medical treatment by Employer at that time. On June 1, 2005, Claimant made an appointment with Benny Thomas, D.O. for that day. She was seen by Dr. Thomas with complaints of left arm pain shooting down into the forearm and down her back. Dr. Thomas suggested an x-ray of the left shoulder and scheduled an MRI for June 3,

2005.

On June 3, 2005, Claimant was seen by Dr. Sugarbaker for a follow-up visit for her bilateral shoulder pain and to refill her pain medication. Claimant had a follow-up appointment with Dr. Sugarbaker on June 9, 2005, to discuss the MRI results. The MRI of June 7, 2005, indicated a left shoulder tear of the distal rotator cuff tendon anteriorly. At that time, Dr. Sugarbaker requested that Claimant consult with an orthopedic surgeon, Dr. Weissfeld.

Claimant testified that she notified the Employer about her injury on June 10, 2005, and June 16, 2005, and filed her written report of injury on June 24, 2005, and the Employer did not offer any treatment.

On June 28, 2005, Claimant had a follow-up appointment with Dr. Sugarbaker. At that time she complained of her arm pain being worse. The pain in the left shoulder was increasing, and the pain in her right shoulder was stable. An MRI on July 20, 2005, indicated a right shoulder rotator cuff tear through the rotator cuff interval region with both supraspinatus and subscapularis tendon involvement.

On August 8, 2005, Claimant had a consultation with Dr. Weissfeld. Dr. Weissfeld's medical records, admitted into evidence, indicate that during that appointment the MRI results and treatment options and recommendations were discussed. Dr. Weissfeld's recommendation for the Claimant was to try cortico steroid injections on the right shoulder to see if Claimant could achieve pain relief and surgical intervention for the left shoulder. Dr. Weissfeld's records indicate his recommendations and the fact that those recommendations were forwarded to Dr. Stephen Sugarbaker and the Employer.

Claimant continued to have follow-up appointments with Dr. Sugarbaker monthly from September 26, 2005 to February 27, 2006, for checkups and pain medication refills. Claimant has not received any medical treatment from the Employer or Insurer.

Claimant remained in off-work status, per Dr. Sugarbaker and Dr. Weissfeld's recommendations, from June 1, 2005, to August 1, 2006. Claimant attempted to obtain a light-duty schedule with the Employer; but was told that there was no light-duty work available.

Dr. Steven Weissfeld testified on behalf of Claimant by deposition. Dr. Weissfeld testified that he is a board-certified orthopedic surgeon. He testified that he first examined the Claimant on August 8, 2005. Dr. Weissfeld reported that the Claimant indicated she had two separate injuries, one involving the right shoulder and one involving the left shoulder. Claimant's history was that the left shoulder was significantly worse than the right shoulder for pain. Claimant reported to Dr. Weissfeld that the left shoulder had night pain which the doctor indicated was significant for a finding of rotator cuff injury.

Dr. Weissfeld testified that the Claimant reported she was placed in off-work status by Dr. Sugarbaker since the

date of the Claimant's second injury on May 30, 2005. Dr. Weissfeld testified that an MRI of the Claimant's left shoulder was administered on June 7, 2005, and that it was reported as abnormal.

Dr. Weissfeld further testified that an MRI was performed on the Claimant's right shoulder on July 20, 2005; and it also was reported abnormal. Dr. Weissfeld testified that the Claimant's history was that she performed activities at work -- helping patients move to bed, helping them in and out of the showers, helping them to dress, and other activities of daily living. Dr. Weissfeld testified that the Claimant reported feeling "popping" symptoms from time to time in her shoulders.

Dr. Weissfeld testified that the Claimant's right-shoulder symptoms showed a limited range of motion with moderate subacromial impingement. Dr. Weissfeld testified that, in his opinion, the Claimant's right shoulder rotator cuff was catching underneath the acromion bone and underneath the acromioclavicular joint known as the AC joint.

Dr. Weissfeld testified that, as to the Claimant's left-shoulder symptoms, that the range of motion was more restricted in the left than on the right, and that the Claimant had tenderness over the anterior front part of the shoulder joint with moderate impingement within the shoulder; muscle strength was weaker on the left than on the right.

The results of the MRI showed a tear of the supraspinatus tendon of the rotator cuff in the interval area. The MRI also showed some involvement of the subscapularis area with significant osteoarthritis in the area of the AC joint where the clavicular bone runs into the acromion. Dr. Weissfeld further testified that the MRI showed that there were spurs impinging on the supraspinatus which were irritating and eventually tearing the other rotator cuff.

Dr. Weissfeld testified that the MRI results of the left shoulder showed a tear of the rotator cuff involving the supraspinatus tendon and that the tendon appeared to have pulled away from the normal bone of attachment.

Dr. Weissfeld testified that the longer that the Claimant went without treatment for this medical condition, particularly on the left shoulder, the worse the symptoms would become.

Dr. Weissfeld testified that, in his opinion, Claimant suffered from bilateral shoulder pain secondary to rotator cuff strains with probable tears with subacromial impingement syndrome of both shoulders and primary osteoarthritis of both shoulders at the AC joints. Dr. Weissfeld testified that his plan of treatment was to administer cortico steroid injections to the right shoulder since it was demonstrating less pain symptoms than the left. The plan of treatment for the left was to perform surgery on the shoulder to repair the damage from the rotator cuff tear. Dr. Weissfeld continued to opine during his testimony, including cross-examination, that he recommended surgery to the left shoulder with physical therapy and an injection for the right shoulder.

Dr. Weissfeld admitted that it was his opinion that the Claimant's rotator cuff tears on the left and the right shoulders were both work related, and that he based that opinion on the Claimant's use pattern of upper extremity

motions of pushing, pulling, lifting, and placing stress and strain on each of the Claimant's shoulders. Dr. Weissfeld further testified that, in his opinion, the work activities performed by the Claimant were substantially causative to impingement syndrome and also tears to the rotator cuffs. Dr. Weissfeld further testified that, in his opinion, the work-related activities carried on by the Claimant were the prevailing factor in causing the current need for treatment of the Claimant.

Susan C. Williamson testified on behalf of the Employer. Ms. Williamson testified that she was employed by the Employer as the facility manager where the Claimant's alleged injuries occurred. Ms. Williamson indicated there were approximately 50 employees which she supervised. Ms. Williamson testified concerning orientation of new employees. She testified that the orientation program was dependent on which department the worker would be working. She also testified that in this particular claim the Claimant was working in the nursing department; therefore, she would have received two days of training in Lebanon, Missouri, to obtain a certified nurses aide (CNA) training certificate. Ms. Williamson testified that she did not recall attending the Claimant's orientation, but that there was normally a four-hour in-house orientation for new employees where the subject of workers' compensation and insurance benefits were discussed with new employees. Ms. Williamson testified that the Employer posted signs in each facility which explained and set out the rights and requirements of employees who were injured in the workplace.

Mrs. Williamson testified that she was notified on June 01, 2005, by a telephone call from the Claimant that Claimant was having trouble with her shoulder. She stated that the Claimant told her that she needed a few days because she was unable to move in bed. Ms. Williamson testified that the Claimant denied that her condition was work related. Ms. Williamson further testified that, if an employee calls in to say that they would not be working because of a work-related injury, that there should be a note made as to the purpose of the call, and that there was no such notation with regard to Claimant's telephone call of June 01, 2005. Ms. Williamson further testified that the Claimant advised her that she would not be able to work until June 06, 2005, because she was scheduled to have an MRI performed on her shoulder. Ms. Williamson testified that on June 4, 2005, the Claimant contacted the Employer and spoke with Stephanie King, one of the staff employees, to advise that her MRI was postponed until June 7, 2005. Ms. Williamson further testified that on June 10, 2005, the Claimant contacted the Employer to advise that she had a rotator cuff tear and that she could not come into work. Ms. Williamson testified that she gave the Claimant the necessary paperwork for family medical leave act (FMLA) time off for a nonwork-related medical condition. Ms. Williamson further testified that the Claimant made no mention on June 10, 2005, of her shoulder conditions being related to anything that happened at work.

Ms. Williamson testified that on June 16, 2005, the Claimant met with an Employer staff person named

Shannon to discuss short-term disability, and that ,when the Claimant told the Employer that her medical condition was work related, she was told that she could not claim that the condition was work related and still collect short-term disability. Ms. Williamson testified that the next time the Claimant had contact with the Employer was June 20, 2005. Ms. Williamson testified that she told the Claimant she could not claim both work-related injury and short-term disability and that the Claimant had to decide which caused the medical condition. Ms. Williamson testified that the Claimant then returned to the Employer on June 24, 2005, to fill out papers concerning the incident of May 30, 2006, and that the Claimant continued to state that the medical condition of her shoulders was caused by work-related incidents.

Ms. Williamson testified that, after she reported the injury to the insurance company for the Employer, she had no further involvement in the Claimant's injury claim. Ms. Williamson denied that she ever recommended or told the insurer that the Claimant's claim should be denied. Ms. Williamson testified that she does not recall the Claimant requesting light duty, although she was aware of the Claimant's restrictions.

On cross-examination Ms. Williamson admitted that Employer's Exhibit 4 was created as part of an insurance packet to be sent to the insurance company after the Claimant continued to indicate that her condition was work related. Ms. Williamson admitted that she does not recall any specific orientation of the Claimant with regard to rights and responsibilities of injured workers. Ms. Williamson further admitted that, as far as she knew, the job description to which Claimant testified was accurate and that Ms. Williamson was not aware of how many patients were transferred by the Claimant each day in the normal course of her duties. Ms. Williamson further admitted on cross-examination that she never attempted to contact the Claimant with regard to whether the Employer's insurer had contacted the Claimant or provided treatment.

## **FINDINGS OF FACT AND RULINGS OF LAW**

**Whether the Claimant sustained an accident/occupational disease.**

**Whether the accident/occupational disease caused the injuries and disabilities for which benefits are now being claimed.**

**Whether the accident/occupational disease arose out of the course of and scope of employment.**

Claimant's testimony and the medical records admitted into evidence present a consistent history from the Claimant with regard to her symptoms and complaints. Claimant continued to perform repetitive-type tasks at work until May 30, 2005, which placed strain on her shoulders bilaterally. Dr. Weissfeld's testimony supported the fact that the type of work activities performed by Claimant was consistent with what can cause rotator cuff tears from overuse.

Claimant testified that she suffered a specific incident at work on May 30, 2005, involving her left shoulder which caused her immediate pain and for which she sought treatment on her own from Dr. Thomas and Dr. Sugarbaker. Dr. Sugarbaker referred Claimant to Dr. Weissfeld, board-certified orthopedic surgeon, who recommends conservative treatment for Claimant's right shoulder condition and surgical intervention to repair the rotator cuff tear of Claimant's left shoulder. There was no medical evidence at the hearing contrary to or opposing the medical evidence propounded by the Claimant.

After reviewing all the evidence presented at the hearing, both oral and written, and based on the record as a whole, I find that there is substantial and competent evidence that Claimant's job tasks of repeated pushing, pulling, lifting, and use of both shoulders, and the fact that these were repeated activities, were a substantial factor in causing the need for treatment requested by the Claimant and recommended by Dr. Weissfeld. I further find that Claimant's job tasks performed over a period of time were a substantial factor in Claimant's condition and such facts constitute an accident and/or occupational disease. I further find that Claimant's incident of May 30, 2005, constitutes an accident and was sufficient to cause or was a substantial factor in causing Claimant's need for treatment at the present time, and that such incident was within the course of scope of Claimant's employment.

I find these issues in favor of the Claimant.

**Whether the Claimant gave the Employer proper notice.**

Claimant testified that she had several conversations with the Employer through at least two representatives concerning her incident of June 30, 2005, and the need for treatment. Employer presented evidence concerning a conversation on June 1, 2005, where Claimant allegedly never mentioned that her need for treatment was work related. However, both Claimant and Employer presented evidence that during the remaining month of June 2005 there were conversations regarding Claimant's need for treatment and the fact that such need for treatment may have been work related. Ms. Williamson admitted that she discussed Claimant's need for treatment and that Claimant was told that she could not claim her need for treatment was work related because too much time had passed. In addition, Claimant's Exhibit H sets out a letter from Claimant's attorney which makes demand for treatment from the Employer.

After a review of all the evidence presented at the hearing, both oral and written, and based on the record as a whole, I find there is substantial and competent evidence that Claimant gave the Employer proper notice pursuant to Chapter 287, and, more specifically, pursuant to Section 287.420. Claimant's incident of May 30, 2005, was sufficient to rise to the definition of an accident. Notwithstanding whether Claimant's incident of May 30, 2005, was an accident, I find there is substantial and competent evidence that Claimant's injury to both shoulders was an occupational disease and that, although Claimant may have received treatment on her own prior to May 30, 2005, she

continued to perform the same repeated tasks involving use of her shoulders bilaterally until May 30, 2005.

I further find that, if the Claimant did fail to give the Employer notice of her injury in a timely manner, there is not sufficient substantial and competent evidence adduced at the hearing to show that Employer was prejudiced by Claimant's failure to give proper notice. The medical treatment administered to Claimant during June, 2005, prior to the date of any official notice in writing to the Employer would have been reasonable and necessary if authorized by the Employer.

**Whether the Employer is obligated to pay for past medical expenses.**

Claimant's Exhibit M sets out various charges of care providers for treatment administered to the Claimant between April 2005 and February 2006. The total amount of charges levied by care providers after June 1, 2005, not reimbursed by insurance, is \$2,969.39 (\$521.39, \$513.00, \$1,935.00).

After a review of all the evidence presented at the hearing, both oral and written, and based on the record as a whole, and based on the findings and rulings set out above, I find that the treatment administered to the Claimant after June 1, 2005, was reasonable and necessary in order to cure and relieve the Claimant of the effects of her injuries. Claimant is entitled to reimbursement of medical expenses advanced and/or incurred by the Claimant in the sum of \$2,969.39. Employer is hereby ordered to pay to Claimant the sum of \$2,969.39 as and for medical expense reimbursement. I find this issue in favor of Claimant.

**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.**

Based on the findings and rulings set out above as to accident, causation, and course and scope of employment, and further based on the testimony of Dr. Weissfeld and the medical opinions of Dr. Weissfeld, all of which are uncontroverted by any evidence adduced at the hearing, I find that Claimant requires further medical treatment in order to cure and relieve the effects of her injuries. Employer is hereby ordered to provide such medical treatment as may be recommended by Dr. Weissfeld, or any physician to which Claimant may from time to time be referred by Dr. Weissfeld, until Claimant shall have attained maximum medical improvement.

I find this issue in favor of Claimant.

**Any temporary total benefits owed to the Claimant.**

Claimant testified that she has not worked for the Employer since May 30, 2005. Claimant's Exhibit E sets out, in part, an off-work status slip, dated June 9, 2005, ordered by Dr. Sugarbaker, placing the Claimant in off-work status until the Claimant was evaluated by an orthopedic surgeon. Claimant's Exhibit B sets out, in part, an off-work status slip, dated August 8, 2005, ordered by Dr. Weissfeld placing the Claimant in off-work status until Claimant received

surgery on her left shoulder and physical therapy on her right shoulder. Claimant urges that she is entitled to temporary total disability benefits from June 9, 2005, through August 1, 2006, when Claimant accepted other employment, notwithstanding her off-work status.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that Claimant was unemployable in the open labor market from June 9, 2005, up and including July 31, 2006, a period of 59-4/7 weeks. The stipulated compensation rate for temporary total disability is \$198.33. Employer is hereby ordered to pay to Claimant the sum of \$11,814.80 (59-4/7 weeks x \$198.33 = \$11,814.80), as and for temporary total disability benefits. Employer is hereby further ordered to pay temporary total disability benefits to the Claimant for any off-work period of recovery after medical treatment is provided as awarded herein, and as ordered by Dr. Weissfeld or any physician to whom the Claimant is referred by Dr. Weissfeld.

I find this issue in favor of the Claimant.

**Whether the Claimant is entitled to her costs of these proceedings pursuant to Section 287.560.**

Claimant urges that Employer has no reasonable grounds to defend this claim. The evidence adduced at the hearing was that Claimant first sought treatment around the first part of April 2005 for her right shoulder pain and the Claimant also complained of bilateral shoulder pain. The evidence adduced at the hearing is that Claimant's condition worsened after her incident at work of May 30, 2005. Claimant filed one claim for both shoulder injuries. If this claim were bifurcated or filed as two claims and the Division found that Claimant's condition was, in fact, two separate injuries rather than one occupational injury with an exacerbating event, the Employer may have successfully argued that at least part of this injury failed for lack of notice. Notwithstanding the fact that this claim is found to be an occupational injury, after a review of all the evidence adduced at the hearing, both oral and written, I find that Claimant is not entitled to costs of these proceedings pursuant to Section 287.560.

I find this issue in favor of Employer.

Claimant's attorney has requested approval of an attorney fee of 25% of the amount of any award. Claimant's attorney fee request is hereby approved and Claimant's attorney is hereby granted a lien on the proceeds of this award unless and until the attorney fee shall have been paid in full.

Date: January 25, 2007

Made by:

/s/ David L. Zerrer  
David L. Zerrer  
*Administrative Law Judge*

A true copy: Attest:

/s/ Patricia "Pat" Secrest

Patricia "Pat" Secrest

*Director*

*Division of Workers' Compensation*