

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

Injury No. 11-022817

Employee: Dawn Stovall
Employer: Convergys
Insurer: Fidelity & Guaranty Insurance
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 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 November 5, 2015, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued November 5, 2015, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of February 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Dawn Stovall

Injury No.: 11-022817

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Convergys

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

Additional Party: Second Injury Fund (SIF)

Insurer: Fidelity & Guaranty Insurance

Hearing Date: August 20, 2015

Checked by: KMH

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? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: February 27, 2011
5. State location where accident occurred or occupational disease was contracted: St. Louis
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:
Claimant injured her right lower extremity in the course and scope of her employment.
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: right lower extremity
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$6,283.26

Employee: Dawn Stovall

Injury No.: 11-022817

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$265.30 for PPD
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

0 weeks of permanent partial disability from Employer None

22. Second Injury Fund liability: None

0 weeks of permanent partial disability from Second Injury Fund

TOTAL: NONE

23. Future requirements awarded: n/a

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 n/a% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Dawn Stovall

Injury No.: 11-022817

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Convergys

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

Additional Party: SIF

Insurer: Fidelity & Guaranty Insurance

Checked by: KMH

A hearing was held on the above captioned matter August 20, 2015. Dawn Stovall (Claimant) was represented by attorney Todd Boehlje. Convergys (Employer) was represented by attorney Loretta Simon. The SIF was represented by Assistant Attorney General Kristen Frazier.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Employer's exhibits A-D were admitted into evidence.

STIPULATIONS

The parties stipulated to the following:

1. Claimant sustained an injury by accident to her right lower extremity while in the course and scope of her employment in St. Louis, and alleges an injury to her low back from that accident.
2. Employer and Claimant were operating under the provisions of the Missouri worker's compensation law on the date of accident.
3. Employer's liability was fully insured by Fidelity & Guaranty Insurance Company.
4. Employer had notice of the injury and a Claim for Compensation was timely filed.
5. Claimant's average weekly wage yields a rate of \$265.30 for PPD benefits.
6. Claimant received \$6,283.26 in medical benefits and no TTD benefits.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Whether Claimant sustained an injury to her low back arising out of and in the course of her employment.
2. Whether Claimant's low back symptoms are medically and causally related to her work injury.
3. The nature and extent of PPD.
4. The nature and extent of SIF liability.

FINDINGS OF FACT

Based on the competent and substantial evidence and the reasonable inferences to be drawn therefrom, I find:

1. Claimant injured her right lower extremity in the course and scope of her employment for Employer February 27, 2011.
2. Employer made numerous settlement offers to Claimant, including an offer the morning of this trial. None of the offers were accepted.
3. Claimant's case was set for trial December 3, 2014, but was continued when Claimant requested time to obtain additional evidence.
4. Claimant's case was set for trial March 23, 2015, but was continued again at Claimant's request.
5. Claimant's case was set for trial June 22, 2015. It was continued again at Claimant's request for time to get additional evidence. The minute sheet reflects Claimant stated she was not ready to try the case and wanted more treatment. The judge noted the case would be tried or dismissed at the next setting.
6. The minute entries reflect Claimant has requested additional medical treatment since August 2012. Claimant never provided medical evidence substantiating her request for additional medical treatment.
7. Claimant's case was set for trial August 20, 2015. The notice of trial was sent by certified mail indicating an award may be entered by default if any party fails to appear.
8. Claimant's attorney, Employer's attorney, and SIF's attorney all appeared for trial on August 20, 2015, at 9:30.
9. Claimant did not appear for trial. Her attorney advised the court Claimant called him before trial stating she would be in court by 10:00.
10. At 10:00, Claimant's attorney advised the court Claimant said she was fifteen minutes away.

11. At 10:30, Claimant's attorney advised the court Claimant said she was still waiting for the bus. The parties agreed to delay the beginning of trial to 11:00.
12. At 10:45 Claimant's attorney advised the court Claimant said she would be in court within the next half an hour.
13. The case proceeded to trial at 11:06, and Claimant did not appear. Employer and SIF requested a dismissal. Claimant's attorney requested a delay stating Claimant said she would be in court by 11:15.
14. Employer objected to a continuance stating they have waited since 9:30 and through three prior trial settings. Claimant had been advised after the June 2015 trial setting that if she did not appear for today's trial, her case would be dismissed. This was not refuted by Claimant's attorney.
15. Claimant did not appear by 11:15 and did not appear after the trial concluded.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. Claimant failed to establish a compensable injury

Claimant bears the burden of proving all essential elements of her claim.

Claimant was given ample time and a number of continuances, dating back to 2012, to allow her to obtain additional medical evidence. Claimant has not provided Employer/Insurer or this Court with a medical causation report. Claimant did not appear for any of the four scheduling hearings. Notice of the August 20, 2015, hearing was sent via certified mail to Claimant. Claimant knew about the hearing, and was in contact with her attorney multiple times the morning of hearing alleging she was on her way to court.

Claimant elected not to appear for her scheduled hearings and failed to meet her burden of proof. Claimant's case is denied and no benefits are awarded.

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation