

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

Injury No.: 05-049495

Employee: Stacy Vernon

Employer: Cedar Hill Manor

Insurer: Missouri Nursing Home Insurance Trust  
c/o T/P/A Maxim Insurance Solutions, L.C.

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

Date of Accident: April 13, 2005

Place and County of Accident: Jefferson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 18, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Lawrence Kasten, issued July 18, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 27th day of January 2009.

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

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Stacy Vernon

Injury No. 05-049495 & 05-142896

Dependents: N/A

Employer: Cedar Hill Manor

Additional Party: Second Injury Fund

Insurer: Missouri Nursing Home Insurance Trust c/o T/P/A Maxim Insurance Solutions, L.C.

Appearances: Daniel Gauthier for the employee  
Patrick Reidy for the employer-insurer

Hearing Date: Commenced March 12, 2008  
Completed April 18, 2008

Checked by: LK/kh

**SUMMARY OF FINDINGS**

- Are any benefits awarded herein? Yes in 05-142896 (December 13, 2005)  
No in 05-049495 (April 13, 2005)
- Was the injury or occupational disease compensable under Chapter 287? Yes: 05-142896  
No: 05-049495
- Was there an accident or incident of occupational disease under the Law? Yes: 05-142896  
No: 05-049495
- Date of accident or onset of occupational disease? December 13, 2005- 05-142896  
N/A: 05-049495
- State location where accident occurred or occupational disease contracted: Jefferson County, Missouri: 05-142896 N/A: 05-049495
- Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes in both cases.
- Did employer receive proper notice? Yes in both cases.
- Did accident or occupational disease arise out of and in the course of the employment? Yes in 05-142896 No in 05-049495.

- Was claim for compensation filed within time required by law? Yes in both cases.
- Was employer insured by above insurer? Yes in both cases.
- Describe work employee was doing and how accident happened or occupational disease contracted: N/A in 05-049495. The employee twisted her left ankle assisting a patient in 05-142895.
- Did accident or occupational disease cause death? No in both cases.
- Parts of body injured by accident or occupational disease: N/A in 05-049495. Left ankle in 05-142895.
- Nature and extent of any permanent disability: N/A in 05-049495. 7.5% of the ankle at the 155 week level in 05-142896.
- Compensation paid to date for temporary total disability: None in either case.
- Value necessary medical aid paid to date by employer-insurer: \$1,107.19 in 05-049495. None in 05-142896.
- Value necessary medical aid not furnished by employer-insurer: None in 05-049495. \$775.00 in 05-142896.
- Employee's average weekly wage: \$325.71 in both cases.
- Weekly compensation rate: \$217.14 in both cases.
- Method wages computation: By agreement.
- Amount of compensation payable: 05-049495: None

05-142896: \$ 775.00 in medical bills.  
\$2,524.25 for permanent partial disability.  
 Total \$3,299.25

- Second Injury Fund liability: None. Second Injury Fund Claim in each case was denied.
- Future requirements awarded: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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: Dan Gauthier.

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

On March 12, 2008, the employee, Stacy Vernon, appeared in person and by her attorney, Daniel Gauthier, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Patrick Reidy. The employee's claims against the Second Injury Fund were left open. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS**

- In both cases the employer, Cedar Hill Manor was operating under and subject to the provisions of the Missouri

Workers' Compensation Act and was duly qualified as a self-insured employer through the Missouri Nursing Home Insurance Trust c/o T/P/A Maxim Insurance Solutions, L.C.

- On April 13, 2005 and December 13, 2005, Stacy Vernon was an employee of Cedar Hill Manor and was working under the Workers' Compensation Act.
- On December 13, 2005 the employee sustained an accident arising out of and in the course of her employment.
- The employer had notice of the employee's accident on December 13, 2005 and the employee's alleged accident on April 13, 2005.
- The employee's claims were filed within the time allowed by law.
- In both cases, the employee's average weekly wage was \$325.71. The rate of compensation is \$217.14 per week.
- The employee's injury was medically causally related to the December 13, 2005 accident.
- The employer-insurer paid a total of \$1,107.19 for the alleged April 13, 2005 accident (Injury Number 05-049495).
- The employer-insurer has not paid any medical expenses in the December 13, 2005 case (Injury number 05-142896).
- The employer-insurer has not paid any temporary disability in either case.

## ISSUES

- Accident in injury number 05-049495 (Alleged April 13, 2005 accident).
- Medical causation in injury number 05-049495 (Alleged April 13, 2005 accident).
- Claim for previously incurred medical benefits in injury number 05-049495 (Alleged April 13, 2005 accident).
- Claim for previously incurred medical benefits in injury number 05-142896 (December 13, 2005 accident).
- Nature and extent of permanent partial disability in injury number 05-049495 (Alleged April 13, 2005 accident).
- Nature and extent of permanent partial disability in injury number 05-142896 (December 13, 2005 accident).

## EXHIBITS

The following exhibits were offered and admitted into evidence:

### Employee's Exhibits

- Medical report of Dr. Volarich
- St. John's Hospital bill in the amount of \$1,039.25 for injury number 05-049495 (Alleged April 13, 2005 accident).
- Medical records from St. John's Hospital in injury number 05-049495 (Alleged April 13, 2005 accident.)
- St. Anthony's Medical Center bill in the amount of \$775.00 for Injury Number 05-142896 (December 13, 2005 accident).
- Medical records from St. Anthony's Medical Center in injury number 05-142896 (December 13, 2005 accident).
- Concentra medical records for injury number 05-049495 (Alleged April 13, 2005 accident).

### Employer-Insurer's Exhibits

- Report of injury in injury number 05-049495 (Alleged April 13, 2005 accident).

Judicial notice of the contents of the Division's files was taken.

**Witness:** Stacy Vernon, the employee

At the hearing, the employee amended her claim by interlineation in injury number 05-049495 changing the date

of the alleged accident to April 13, 2005. At the hearing, the employer-insurer filed an amended Answer to Claim for Compensation in injury number 05-049495.

The employee filed an amended claim with the Division on March 12, 2008 in injury number 05-142896, the December 13, 2005 accident. The record was left open for the employer-insurer to file an amended Answer to the Claim for Compensation in injury 05-142896. The amended Answer was filed with the Division on April 18, 2008, and the record was closed.

**Briefs:** The employee's brief was received on March 24, 2008. The employer-insurer's brief was received on April 2, 2008.

#### **FINDINGS OF FACT IN INJURY NUMBER 05-049495 (ALLEGED APRIL 13, 2005 ACCIDENT):**

The employee testified that she had an accident at approximately 6:15 p.m. on April 13, 2005. A co-employee had a 300 pound resident in a shower chair. The shower chair broke and the co-employee called for help. The employee testified that she went into the shower room and helped hold up the broken shower chair in a squatting position with her left knee under the shower chair to brace it and her right leg was behind her and was pushed back up by the door to brace herself. A third employee got a hoist lift to get the resident out of the broken chair. After the resident was situated, the employee walked out of the room, went about 4 steps, her right leg gave out and she fell to the floor. She had a bad strain feeling,

The employee testified that she reported her injury to charge nurse, Lucinda Brands who called Kim Craig the Director of Nursing. The employee spoke to Ms. Craig. Ms. Craig told the employee to get medical where she needed to go. Due to the pain, the employee could not drive and the employee's mother in law picked her up and took her to St. John's Emergency Room.

The employee testified that on April 14, she filled out an incident report with Shelia Huskey, the administrator. Ms. Craig also filled out paperwork but the employee has not seen what she had filled out. The employee testified that she was truthful with Ms. Craig on how the injury happened.

The report of injury filed by the employer for the alleged April 13, 2005 accident was prepared by Ms. Craig. In the space that listed specific activity the employee was engaged in when the accident occurred, listed was "walking down the hall". In the space that listed work process the employee was engaged in when the accident occurred listed was "getting items for O2 concentration". In the space that listed the equipment, material or chemicals the employee was using when the accident occurred, listed was "none". In the space that listed the sequence of events and to include any objects or substances that directly injured the employee listed was "none".

The employee testified when she was at St. John's Mercy she was truthful regarding how the injury happened.

The employee went to St. John's Mercy Hospital emergency room on April 13, 2005, and saw Dr. Judge for right leg pain. In the history, it stated that the employee was walking at work and had the acute onset of right leg pain in the inner aspect of her right thigh. She denied any other known precipitating factors. On exam, the employee pointed to the inner aspect of the right thigh as the area of pain. Dr. Judge did not see any soft tissue swelling or deformity. X-rays of the pelvis, hip and femur were negative. The employee was diagnosed with a right thigh muscle strain. The nurse's note in the chief complaint and history stated that the employee had right groin pain that radiated down the right leg with no known trauma.

The employee testified that she had not reviewed the medical records from St. John's which show that the employee was walking at work and had the acute onset of right thigh pain and denied any other known precipitating factors. The employee testified that she did not tell the physician that.

The employee testified that she was truthful and accurate with Dr. Homan and the physical therapist at Concentra regarding how the injury happened.

The employee saw Dr. Homan on April 14, 2005 for her right leg and reported that her injury was on April 13. The patient's statement was 'I was walking down hall right leg gave, I couldnt put and weight on it ended up on left knee when tried to get back up I felt extreme pulling and trigger of pain. Instead of relaxing I help transfer residents which aggravated more'

The history of present illness stated that the pain was located in the right inguinal region and it began abruptly. The employee was walking and stated she had her leg "go out" and then had a sharp pain in the inguinal area. She denied a slip, trip or fall. The employee had a positive Patrick's sign, pain on motion, and was having trouble bearing weight. Dr. Homan diagnosed a groin strain and scheduled therapy 3 times a week for 2 weeks. He put her on modified duty with only sitting and using crutches. The employee testified that what Dr. Homan said in the history that the employee's pain began abruptly when she was walking and her right leg went out was not correct.

The April 14, 2005 initial therapy evaluation and history of present condition stated that the employee related her chief complaint to walking and her leg gave out. The sharp and constant pain began abruptly and was located in the right groin.

On April 28, 2005, the employee saw Dr. Homan. He diagnosed a groin strain. The therapy was helping and the employee was improved. He continued therapy and upgraded her restrictions to minimal squatting and kneeling. The employee was discharged from therapy on May 5 after four visits. The employee saw Dr. Homan on May 12, 2005 with much improved symptoms and only intermittent minimal pain. Dr. Homan released the employee from care and placed her on regular activity.

The employee had no prior problems with her right thigh. The employee testified that her current complaints are to the inside of her right thigh. She had tightness up to three times a week. Her leg will give out and she will have spasms. This has affected her daily life. She cannot play softball or run. It has affected her ability to work to the point where she will ask for help with residents. She has resumed her regular duties but is more careful with her patients. The employee testified that she requested more medical treatment and it was denied. She was told that her case was closed. She has not received any more treatment since May of 2005.

The employee saw Dr. Volarich on August 27, 2007. In the history of the alleged April 13, 2005 injury, the employee stated that a co-worker was giving a shower to an approximate 250 pound patient. The shower chair broke and the co-worker called for help. The employee partially squatted down and planted her left foot against a wall and placed her right thigh underneath the shower chair to support the patient's weight. After another employee came to help, they got the patient to the bed. The employee got up to retrieve an item and as she was walking in the hall, her right lower extremity buckled at the groin level. She fell to the ground and experienced severe groin pain. Dr. Volarich stated that the emergency room records indicated that the employee was walking when the injury occurred. The employee agreed but stated that she believed that the injury occurred when she was supporting the patient's weight in the shower. Dr. Volarich diagnosed a right groin adductor muscle strain.

It was Dr. Volarich's opinion that the work accident of April 13, 2005 when the employee placed her right lower thigh just above the knee under the shower chair to keep the patient from falling off while in a partially squatted position after which she experienced pain in the right groin and thigh was the substantial contributing factor as well as the prevailing factor causing the right groin adductor muscle strain injury. It was Dr. Volarich's opinion that as a result of the April 13, 2005 accident that the employee sustained a 20% permanent partial disability of the right lower extremity rated at the hip due to the adductor groin strain injury causing recurrent pain and occasional lock up.

#### **RULINGS OF LAW IN INJURY NUMBER 05-049495 (ALLEGED APRIL 13, 2005 ACCIDENT):**

##### ***Issue 1. Accident in Injury Number 05-049495 and Issue 2. Medical Causation in Injury Number 05-049495.***

The employer is disputing that on April 13, 2005 the employee sustained an accident arising out of and in the course of her employment and that the employee's injury was medically causally related to the alleged April 13, 2005 accident.

The employee's version of the accident at the hearing was that she helped hold up the shower chair with her left knee

under the chair while in a squatting position with her right leg pushed back up by the door to brace herself. After the resident was situated, the employee walked out of the shower room and went about four steps. At that time her right leg gave out and she fell to the floor. It was her contention that the activity in the shower room caused the injury.

There are several evidentiary problems that support a finding that the employee's version of the injury is not accurate.

The employee's testimony at the hearing is inconsistent with the other evidence.

The employee testified that she told Kim Craig, the Director of Nursing how the injury happened. The report of injury prepared by Ms. Craig listed walking down the hall as the activity the employee was performing when the injury happened. There was no equipment or object that the employee was using when the accident happened, and the work process was getting items for O2 concentration. The "shower chair" incident was not mentioned.

Dr. Judge's records on April 13, 2005, from St. John's Mercy show that the employee was walking at work, had the acute onset of right leg pain, and she denied any other known precipitating factors. The employee testified that she did not tell Dr. Judge that. The nurse notes state that there was no known trauma that caused the employee's right groin and leg pain.

The employee testified that she was truthful and accurate with both Dr. Homan and the physical therapist at Concentra regarding how the injury happened. Dr. Homan's notes from April 14, show that the employee told him that she was walking down the hall, and her right leg gave out. A different section in the records show that the employee was walking and had her leg "go out", and then had a sharp pain in the inguinal area. The employee testified that what Dr. Homan put in the history was not correct. The April 14 therapy evaluation and history of present condition stated that the employee was walking and her leg gave out.

At the hearing, the employee testified that her left knee was under the shower chair and her right leg was against the door. The employee told Dr. Volarich that her right thigh was underneath the shower chair and her left foot was against the wall.

These inconsistencies affect the employee's credibility regarding the injury.

The medical history given by the employee to the treating health care providers does not corroborate the testimony of the employee at the hearing regarding the injury.

The medical history given by the employee to the health care providers on the day of the injury, and the day after the injury, did not mention anything about the "shower chair" incident that the employee testified to at the hearing. On the day of the injury, the employee told Dr. Judge that she was walking at work and had the acute onset of right leg pain and denied any other known precipitating factors. The nurse's notes from that visit show that the employee had right groin pain with no known trauma. On the day after the injury, the employee told Dr. Homan that she was walking in the hall and her right leg gave out. A different section in the records state that the employee was walking and her leg went out. The employee told the therapist that she was walking and her leg gave out. None of the four health care providers that the employee saw within a day of the accident put the "shower chair" incident in their medical records. The first time it was included in any medical record was in the August 27, 2007 evaluation and rating report of Dr. Volarich.

Based on a review of the evidence, I find that the employee's testimony concerning how she injured her right thigh and groin is not credible or persuasive. I find that what the employee told the emergency room personnel on the day of the accident; and what she told the health care providers and the Director of Nursing the day after the injury, has greater weight; and is credible and more persuasive than the employee's testimony as to what happened on April 13, 2005. I find that the employee's right groin and thigh condition occurred while she was walking and her right leg gave out and did not occur during the alleged "shower chair" incident.

Based on this finding, the legal issue which must be decided is whether the employee's injury to her right groin and thigh occurred as a result of an accident that arose out of and in the course of her employment and whether it was medically causally related to her work.

The general rule is that an injury "arises out of" the employment if it is a natural and reasonable incident thereof, and it is "in the course of employment" if the accident occurs within the period of employment at a place where the employee may reasonably be fulfilling the duties of employment. I find that the injury was in the course of employment since it occurred at Cedar Hill Manor during her work shift. The terms "arising out of" and "in the course of" employment are two separate tests, and both must be met before one is entitled to compensation. To have an injury arising "out of" the employment, there must be a causal connection between the nature of the employee's duties or conditions under which she is required to perform them and the resulting injury. See Automobile Club Inter-Insurance Exchange v. Bevel, 663 S.W. 2d 242, 245 (Mo. Banc. 1984).

The employee has the burden of proving that an accident occurred which arose out of and in the course of her employment, and that there was a medical causal relationship between the accident and the injuries for which the employee is seeking compensation. See Griggs v. A. B. Chance Company, 503 S.W.2d 697 (Mo. App. 1973).

Dr. Volarich's opinion on medical causation is substantially affected by the history given to him regarding how the injury occurred. I find that Dr. Volarich's opinion on medical causation is not credible since it was based on an inaccurate history of how the injury occurred. I find that the employee has failed to meet her burden of proof on the issue of medical causation.

It has long been accepted that there is a distinction between an injury alone and an accident. To receive compensation, the employee must prove that not only did she have an injury, but an injury which was caused by an accident, which arose out of and in the course of her employment. Thus, the "accident" is the cause, and the "injury" is the result. See Errante v. Fisher Body Div., General Motors Corp., 374 S.W. 2d 521 (Mo. App. 1964).

The Supreme Court of Missouri in Alexander v. D. L. Sitton Motor Lines, 851 S.W. 2d 525 (Mo. Banc. 1993) held that it is well settled that an accident arises "out of" the employment "when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury." The Court further held "that the proper test of 'causal connection', simply put, is whether the conditions of employment caused or contributed to cause the accident . . . an idiopathic injury or condition that precipitated an accident is not compensable, and without question, there is no recovery for a wholly idiopathic incident . . . that is not brought on by the conditions of employment."

The Supreme Court in Able v. Mike Russell Standard Service, 924 S.W. 2d 502 (Mo. Banc. 1996) held that the indispensable requirement of recovery is a condition of the work place that bears a causal connection to the employee's injury. The condition of the work place bears a causal connection to the injury only when the condition is unique to the work place or is a common condition that is exacerbated by the requirements of employment. The Court further held that a claimant must show that her injury arises out of and in the course of her employment as a condition precedent to recovery. It is not enough to show that the employee suffered an injury while working. The Supreme Court in Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo. banc 1999) held that accidents to be compensable must be clearly work related which means that they must be "unique" to the work.

The Court of Appeals in Wheaton v. Reiser Company, 419 S.W. 2d 497 (Mo. App. 1967), Kunce v. Junge Baking Company, 432 S.W. 2d 602 (Mo. App. 1968) and Boos v. Grey Eagle Distributors, Incorporated, 745 S.W. 2d 837 (Mo. App. 1988), held that not every injury occurring at work is compensable but only injuries which arise out of employment are compensable. A causal connection between the employment and the injury must be found. See Pierce v. St. Joe Minerals, 807 S.W.2d 110 (Mo. App. 1990) where the employee's case was denied. The employee was climbing up a flight of stairs when his legs gave way underneath him. The event was insufficient to sustain a claim of a job related injury.

The mere fact that the employee's injury occurred at work is not sufficient to create a compensable workers' compensation case. The evidence does not support a finding that the employee's right groin and thigh condition had a

causal connection to the conditions of her employment. I find that her job did not cause the injury. I find that the employee's injury was clearly not work related and that her work was not a substantial factor in the cause of the employee's resulting medical condition. I find that the employee's injury was a wholly idiopathic incident that was not brought on, caused by, contributed to or exacerbated by the conditions of her employment. The evidence does not support a finding that the employee sustained a compensable accident and injury which arose out of her employment. I find that the employee has failed to satisfy her burden of proof on the issues of accident and medical causation. The employee's claim for compensation is denied.

Based on the denial of the employee's claim on the issue of accident and medical causation, the employee's claim for previously incurred medical benefits in Issue 3 and for permanent partial disability in Issue 5 for the alleged April 13, 2005 accident is denied.

Second Injury Fund Claim: Based upon the denial of the employee's claim against the employer, the employee's claim against the Second Injury Fund in Injury Number 05-049495 is denied.

### **FINDINGS OF FACT IN INJURY NUMBER 05-142896 (DECEMBER 13, 2005 ACCIDENT):**

The employee testified that on December 13, 2005, as she was helping a co worker with a resident her left foot rolled which caused pain and swelling. She reported it to Julie O'Dell, the Assistant Director of Nursing who took her to Shelia Huskey, the administrator to report the injury. As a result of a conversation between Shelia Huskey and Julie O'Dell, Ms. O'Dell drove the employee to St. Anthony's Hospital emergency room and waited while she was treated.

The employee went to St. Anthony's Medical Center on December 13 for left ankle pain that started earlier that day when she twisted it at work. The employee had a prior ankle injury including ligament damage. The employee was diagnosed with an ankle sprain and osteochondritis dissecans. In the nursing history/assessment, it is noted that the employee was at work when she was moving a patient and her ankle turned the wrong way and there was slight swelling. The employee was discharged. The employee asked for further treatment which was denied.

Dr. Volarich stated that with regard to the December 13, 2005 injury, the employee reported that prior to the accident she had twisted her ankle multiple times while playing softball. She did not ever recall having any treatment but her ankle was a little bit unsteady at times prior to her current work injury. The employee told Dr. Volarich that the December 13, 2005 accident aggravated the underlying difficulties. On examination, the employee had full range of motion of the ankle. Pain occurred when palpating the lateral compartment along the anterior talofibular ligament. One + clicking and crepitus were noted. Trace swelling was seen in the lateral compartment. The employee has weather related aches and weakness in her left ankle. The left ankle twists easily on uneven terrain. Dr. Volarich diagnosed pre-existing chronic left ankle lateral compartment strain syndrome and an aggravation of left ankle sprain syndrome from the December 13, 2005 accident and injury.

It was Dr. Volarich's opinion that the employee had a pre-existing 15% permanent partial disability of the left lower extremity at the ankle due to the chronic strain injury causing recurrent discomfort and weakness. It was Dr. Volarich's opinion that as a result of the December 13, 2005 accident that the employee sustained a 15% permanent partial disability of the left lower extremity at the ankle due to the recurrent strain injury and aggravation of her pre-existing left ankle syndrome.

The employee testified that in the past, she played softball and had hurt her ankle and had ankle sprains. The employee testified that the work injury was different because she has clicking and more weakness in the ankle. She will wrap the ankle due to the weakness. She watches what she does and is very conscious of safety at work.

### **RULINGS OF LAW IN INJURY NUMBER 05-142896 (DECEMBER 13, 2005 ACCIDENT):**

#### ***Issue 4. Claim for previously incurred medical benefits in injury number 05-142896.***

The employee is claiming \$775.00 in medical bills for the December 13, 2005 emergency room visit to St. Anthony's Hospital. The employer is disputing the authorization of this medical bill. The employer is not disputing

the reasonableness, the necessity or the causal relationship of the bill.

The employee's uncontradicted and credible testimony was that after she reported the injury to the Administrator; Julie O'Dell, the Assistant Director of Nursing drove her to St. Anthony's Hospital for treatment. I find that the treatment was authorized by the employer. I therefore find that the employer-insurer is responsible for and is directed to pay the employee the sum of \$775.00 for the medical bill to St. Anthony's Hospital.

***Issue 6. Nature and extent of permanent partial disability in injury number 05-142896 .***

Based on a review of the medical evidence including the medical records and Dr. Volarich's examination and permanent partial disability rating; and the testimony of the employee, I find that as a direct result of the accident, the employee has sustained a 7.5% permanent partial disability of the left ankle at the 155 week level. The employer is ordered to pay to the employee 11.625 weeks of compensation at the rate of \$217.14 per week for a total award of permanent partial disability of \$ 2,524.25.

**Second Injury Fund Claim:** Based on my ruling of 7.5% permanent partial disability, I find that the injury to the employee's left ankle does not meet the threshold statutory level of 15% of a major extremity for the Second Injury Fund. I therefore find that the employee's claim for compensation against the Second Injury Fund in Injury Number 05-049495 is denied.

**ATTORNEY'S FEE:** Daniel Gauthier, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

**INTEREST:** Interest on all sums awarded hereunder shall be paid as provided by law.

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

Made by:

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Lawrence Kasten  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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Mr. Jeff Buker  
*Division Director*  
*Division of Workers' Compensation*