

FINAL AWARD ALLOWING COMPENSATION  
(Pursuant to the Mandate of the Missouri Court of Appeals, Western District)

Injury No.: 04-102704

Employee: Barbara J. Vickers

Employer: Missouri Department of Public Safety, Missouri Veterans Commission

Insurer: Central Accident Reporting Office

On April 28, 2009, the Missouri Court of Appeals, Western District (Court), issued an opinion (No. WD 69233) that reversed the January 2, 2008, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case (confirmed in the Court's May 20, 2009, Mandate) and determined that employee had provided sufficient proof that her claim for benefits was compensable and that she was, therefore, "eligible for benefits."

Accordingly, the Court remanded this matter to the Commission "to determine the amount of temporary and permanent benefits as well as the extent of medical payments due to the claimant."

After having reviewed the whole record and in satisfaction of the Court's opinion and Mandate, we issue the following award.

temporary Total Disability

Employee is entitled to temporary total disability benefits to cover healing periods to be paid prior to the time when the employee can return to work, her condition stabilizes, or her condition has reached a point of maximum medical progress. *Schuster v. Division of Employment Security*, 972 S.W.2d 377, 381 (Mo. App. E.D. 1998).

Employee last worked on Friday, September 10, 2004. She checked into the emergency room on September 12, 2004, and ultimately underwent surgery to address her clostridium difficile. It was necessary to remove most of her colon and create an opening to which she has to attach external bags to collect intestinal waste. Employee was sufficiently stable to leave the hospital on September 23, 2004. On March 28, 2005, the following notations are found in employee's medical chart: "6 mo po total colectomy, colostomy working good . . . . 'I think I'll leave it like it is' stoma fine."

Therefore, we conclude that employer/insurer are liable for temporary total disability benefits from September 12, 2004, through March 28, 2005. The parties stipulated that the appropriate compensation rate is \$229.69 per week.

PERMANENT TOTAL DISABILITY

[T]he term "total disability" is defined as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident. It does not require that the claimant be completely inactive or inert. To determine if claimant is totally disabled, the central question is whether, in the ordinary course of business, any employer would reasonably be expected to hire claimant in his present physical condition.

*Pavia v. Smitty's Supermarket*, 118 S.W.3d 228, 234 (Mo. App. S.D. 2003) (internal citations omitted).

Since the time of employee's release from the hospital, she has been subject to recurring stomach pain, lack of sleep, and depression; becomes easily fatigued and requires frequent periods of rest; has to change colostomy bags approximately every hour or two; cannot lift weights over five or ten pounds; requires help cleaning her house; must be careful not to traumatize, inflame, or infect her surgically created ileostomy; and has not worked.

Employee's medical expert and her vocational expert testified that claimant can no longer perform manual labor, that she has no typing or computer skills, that she completed only ninth grade and has no GED; and that she is a poor candidate for re-training. They testified that as an employee, she would tend to be irritable and unreliable. Based on this evidence, we conclude that employee is permanently and totally disabled and that employer/insurer are liable for permanent total disability benefits beginning March 29, 2005, at the stipulated compensation rate of \$229.69 per week.

#### FUTURE MEDICAL EXPENSES

In cases involving the award of future medical benefits, the medical care must flow from the accident in order for the employer to be held responsible. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo. App. E.D. 1997).

In the case before us, the Court has held that employee's clostridium difficile and the surgery necessary to address that condition were the result of employee's work for employer. As a result of her surgery, employee now requires periodic doctor visits, medications, and the equipment and supplies connected with her ileostomy and the bags that collect her intestinal waste.

Accordingly, employer/insurer are liable to provide employee with such medical care, as indicated above, as is necessary and reasonable to cure and relieve her from the physical and psychological effects of her work disabilities.

#### PAST MEDICAL EXPENSES

Employee made neither a request for nor presented any evidence regarding past expenses paid in connection with this matter.

#### DECISION

Employee is permanently totally disabled. Employer/insurer shall pay employee temporary total disability benefits of \$229.69 for the period from September 12, 2004, through March 28, 2005. Employer/insurer shall pay employee weekly permanent total disability benefits of \$229.69 from the period beginning March 29, 2005.

Employer/insurer must provide future medical care as outlined above.

The parties indicated at trial that employee was obligated to reimburse her attorney certain litigation expenses before application of their 25% fee arrangement. Accordingly, Mark J. Murphy, employee's attorney, is allowed a fee of 25% of the benefits (net of reimbursed expenses) awarded for necessary legal services rendered to employee, which shall constitute a lien on such compensation.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 28th day of July 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

Although employee's exhibit "K" shows total expenses of \$5,026.51, the expenditures listed total only \$4,882.06.