

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

Injury No.: 01-163164

Employee: Milanka Vucak
Employer: Holiday Inn South
Insurer: Ohio Casualty Insurance Co.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)

Date of Accident: October 6, 2001

Place and County of Accident: St. Louis County

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 June 6, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued June 6, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of January 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Milanka Vucak

Injury No.: 01-163164

Dependents: N/A
Employer: Holiday Inn South
Additional Party: Second Injury Fund (Dismissed)
Insurer: Ohio Casualty Insurance Co.
Hearing Date: March 16, 2006

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: MDV:tr

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? No
4. Date of accident or onset of occupational disease: October 6, 2001
5. State location where accident occurred or occupational disease was 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? No
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: N/A
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: None
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Milanka Vucak Injury No.: 01-163164

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$240.01
19. Weekly compensation rate: \$160.01/\$160.01
20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

23. Future requirements awarded: None

Said payments to begin N/A 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:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Milanka Vucak	Injury No.: 01-163164
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Holiday Inn South	Department of Labor and Industrial
Additional Party:	Second Injury Fund (Dismissed)	Relations of Missouri Jefferson City, Missouri
Insurer:	Ohio Casualty Insurance Co.	Checked by: MDV:tr

PREFACE

This claim involves Claimant's heart attack on October 6, 2001. Claimant is an émigré from Bosnia. She was working as a maid at Holiday Inn South in St. Louis on October 6, 2001, when she suffered a heart attack. Claimant avers that work related stress and anxiety over the receipt of medical insurance benefits caused her to suffer the heart attack on October 6, 2001. Employer denies that the heart attack was work related.

ISSUES PRESENTED

The average weekly wage is \$240.01 and the compensation rates are \$160.01 for all benefits. Employer has paid no temporary total disability benefits and no medical benefits. The issues for resolution by way of the hearing are accident, arising out of and in the course of employment, temporary total disability benefits, past medical bills in the amount of \$29,647.89, the nature and extent of any permanent disability, future medical benefits and medical causation. The Second Injury Fund was an additional party to the claim but was dismissed prior to the commencement of the hearing.

FINDINGS OF FACT

1. Claimant was born in Sarajevo, Bosnia and Herzegovina. Claimant and her husband came to the United States during the Bosnian war. They first settled in Lafayette, Louisiana.
2. Claimant worked in a Chinese restaurant and later in an Italian restaurant there. The couple visited St. Louis one Easter weekend and decided to move here. Claimant's husband had family here.
3. Claimant obtained a job in St. Louis first. She was a housekeeper at Holiday Inn South. Claimant understood she could get health insurance three months after beginning work for Holiday Inn, the Employer herein. She began working for Holiday Inn in May of 2001.
4. Claimant has smoked, according to the medical records, a pack of cigarettes a day for twenty years. At trial, the testimony from Claimant and her husband and nephew was that she smoked 5 to 10 cigarettes a day for twenty years.
5. Claimant has no atherosclerotic plaque buildup in her heart.
6. Claimant testified that on October 6, 2001 she went to talk with "Patty" in the Employer's management office about getting her medical benefits. Patty purportedly told Claimant that, "There was nothing and at that moment there was no insurance". Claimant contends that this information upset her. She denies that there was an argument. Neither Claimant nor Patty raised their voices in the conversation that is said to have occurred on October 6 in the management office of Holiday Inn South.
7. Claimant did not eat lunch or go smoke a cigarette, as she would normally do during lunch break, she just immediately went to her assigned rooms and started cleaning the remaining hotel rooms.
8. Claimant testified she has a memory problem following the heart attack. She says she cannot make a telephone call, that her brain is not in order, that she can sometimes bathe herself, that she has trouble putting on clothes, and that she cannot socialize with people. She does no shopping and she does not drive a car as she did before the heart attack. Claimant says she cannot remember to complete tasks such as preparing meals. She contends that because her brain does not work, she has lost the ability to speak English and understand written English.
9. Claimant does not know how long after her talk with Patty that she had the heart attack.
10. Claimant says she was not told how to apply for health insurance benefits at her initial employment interview.
11. Claimant admitted that she could understand Employer's Exhibit 3 at the time she signed it in May of 2001, but she does not understand the document now. Exhibit 3 clearly indicates Claimant had to fill out paperwork to get insurance. It clearly indicates the place to go is human resources to get insurance.
12. Claimant had two written disciplinary warnings for not thoroughly cleaning rooms, one five days before her heart attack.
13. Claimant contends the conversation on October 6 was the tenth time she had conversations with Employer regarding her insurance. Her nephew testified it was her third time.
14. The nephew testified that Claimant was depressed at lunch break on October 6 with tears in her eyes and was not feeling good because "she didn't get any no insurance". He contends that Claimant did not eat lunch, did not drink, did not smoke and simply went upstairs to clean her rooms. The nephew admits that it was odd that Claimant did not smoke on October 6, 2001, but he may have backtracked on this testimony when he said, "Yeah she went on smoke break."
15. Claimant's husband testified that Claimant and he had insurance in Lafayette. He testified Claimant was the first family member to get a job in St. Louis. Husband now works at President Casino and CK Plastic and originally got a job at Nordyne, but it was only temporary. Husband testified that when Claimant and he were working in an Italian restaurant they paid for insurance themselves. Claimant's husband testified that Claimant can remember things from 20 years ago, but she does not have good recent memory. He cited an incident where she started to cook and the food burned in a pot.
16. Employer's representative, Renea Thompson, testified that Claimant needed to fill out forms in the human resources department to obtain health benefits. This is corroborated by Exhibit 3. Claimant testified she never filled out those forms in human resources. Renea Thompson is the only other person that Claimant would have talked with regarding health benefits, but she was not working on October 6, 2001, the date of

Claimant's heart attack. Ms. Thompson had an assistant, Patty, who had no responsibility regarding health benefits. Claimant says she spoke with Patty on October 6.

17. The parties dispute whether Claimant declined health benefits on September 21, 2001, the date of her 90-day probationary review. Employer's witness Thompson testified that the review was not exactly 90 days after Claimant's hire date, but that it was her first opportunity to do the review.
18. Claimant did not need Renea Thompson's permission to go to human resources. She could simply go and apply for insurance after 90 days. Renea Thompson did not need a translator to speak with Claimant because Claimant's English was good enough to communicate. Claimant would have to pay a part of the cost of the insurance.
19. Dr. Schuman, a pulmonary specialist, testified on behalf of Employer. Dr. Schuman testified that an employee might experience two distinctly different types of stress. One is existential anxiety involving a fear of loss of life or limbs, such as being involved in a car accident or a near miss or surviving a plane crash or surviving an armed robbery. It could trigger a heart attack. Another type of anxiety is called anticipatory anxiety and that type would not cause an acute cardiac event. It involves worrying or anticipation of bad news. Dr. Schuman believes that Claimant did not experience existential anxiety, but merely experienced anticipatory type anxiety.
20. Dr. Schuman believes Claimant suffered from a primary ventricular fibrillation cardiac arrest with resulting acute anterolateral myocardial infarction or it's possible that she experienced the anterolateral myocardial infarction and then the ventricular fibrillation cardiac arrest. Either way, Dr. Schuman believes that the most likely cause is cigarette smoking producing a coronary spasm. He notes that Claimant did not have any atherosclerotic buildup and no plaquing.
21. Claimant presented the testimony of Dr. Musich. Dr. Musich understood Claimant to be in a heated discussion and argument with her supervisor regarding her work and her compensation for work and that she was extremely upset, felt stress and that argument caused her heart attack. Dr. Musich did not feel that cigarette smoking contributed to the heart attack. Dr. Musich admitted that if Claimant did not have a heated argument, that perhaps he would change his opinion regarding the cause of the heart attack.
22. The medical records indicate that when Dr. Gary Marklin, M.D. examined Claimant on October 7, 2001 in the hospital for a ventilation consultation that he was provided with a history of back surgery and a history of a laparotomy. As Claimant was in a coma at that time, the information had to have been provided by her husband. The information also indicated that Claimant smoked a pack of cigarettes a day for 20 years.
23. The nursing admission form of October 6, 2001 indicates Claimant had a history of hypertension and was a pack a day smoker.
24. The nutritional assessment performed by Emily Smith, a dietician, on October 7, 2001 also indicates a history of high blood pressure.
25. Claimant also saw Dr. Bragan Svrakic, M.D., PhD, a psychiatrist, about one year after the heart attack. A note indicates under social family history, that Claimant "worked as a housekeeper" "had returned or retired" "now on disability" for what appears to be the phrase "impaired memory". (Exhibit C).
26. The record indicates Claimant is experiencing impaired memory.
27. In the original Claim for Compensation filed on May 20, 2002, Claimant alleged she slipped and fell injuring her head and body as a whole. The claim was amended on April 19, 2004 when she alleged a work related heart problem.

RULINGS OF LAW

1. Claimant has not sustained her burden of proof in demonstrating that the heart attack she suffered on October 6, 2001 arose out of and in the course of her employment, was medically causally related to anything that occurred at her employment, or that she sustained an accident that day.

DISCUSSION

Claimant testified that her brain does not work and that she has problems with her short-term memory. This makes her testimony unreliable and not substantial. She contends a conversation that preexisted her heart attack by two hours on the date in question is what precipitated her heart attack.

Claimant is a long-term smoker and was purportedly upset by this conversation, yet she chose to forego taking a

smoke break immediately after the upsetting news. Her nephew's testimony is unclear but may indicate she did smoke during that lunch hour. Claimant and her husband deny any heart problems, yet the medical records indicate Claimant had a history of high blood pressure. Claimant's psychiatrist's medical records indicate that Claimant is on disability for impaired memory.

I find the testimony of Dr. Schuman to be the most credible testimony on the cause and effect of the type of heart condition from which Claimant suffered on October 6. He clearly delineates the difference between anticipatory anxiety and existential anxiety and rules Claimant's described experience precluded from producing the cardiac event. He points to cigarette smoking as the likely culprit, yet Claimant and her witnesses downplay the contribution of cigarette smoking and deny that she even smoked prior to the heart attack on the day in question. This testimony struck me as contrived. Dr. Musich believes there was a heated argument, which is contrary to the evidence and key to his opinion.

To find in Claimant's favor, I would have to credit the unreliable testimony of Claimant who has an impaired memory and the misinformed testimony of her expert. I would also have to ignore Exhibit 3. The expectation of receiving medical benefits without filling out the forms in human resources is not reasonable or credible.

Claimant has not presented substantial evidence that it is reasonably probable that she sustained a work injury. The burden of proof is hers and I am not inclined by the probabilities to find the heart attack work related. See, *White v. Henderson Implement Co.*, 879 S.W.2d 575 (Mo.App. 1994); *Griggs v. AB Chance Co.*, 503 S.W.2d 697 (Mo.App. 1994).

Dr. Schuman has testified regarding the distinction between existential and anticipatory anxiety in the past. *Compton v. Nationsway Transport*, No. 95-162470 (L&IRC Jan. 20, 1997) was a case of existential anxiety. His testimony was rejected in *Thompson v. Kelly Electric*, No. 94-146402 (L&IRC July 13, 1998) on the distinction between existential and anticipatory stress. I find it persuasive in the instant case.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Employee: Milanka Vucak

Injury No.:

01-163164