

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

Injury No.: 02-106864

Employee: Donna White
Employer: United Parcel Service
Insurer: Liberty Mutual Fire Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged September 17, 2002
Place and County of Accident: Alleged St. Louis, 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. 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 August 1, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued August 1, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Dependents: N/A
Employer: United Parcel Service
Additional Party: Second Injury Fund
Insurer: Liberty Mutual Fire Insurance Co.
Hearing Date: April 28, 2005

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

Checked by: MDL: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? Yes
4. Date of accident or onset of occupational disease: September 17, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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? No
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee, while on Employer's premises, slipped and fell.
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: Alleged body as a whole, neck, shoulders, and back
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$99.04

Employee: Donna White Injury No.: 02-106864

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: -0-
22. Second Injury Fund liability: No

TOTAL:

-0-

23. Future requirements awarded: N/A

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: | Donna White | Injury No.: 02-106864 |
| Dependents: | N/A | Before the Division of Workers' Compensation |
| Employer: | United Parcel Service | Department of Labor and Industrial |
| Additional Party: | Second Injury Fund | Relations of Missouri Jefferson City, Missouri |
| Insurer: | Liberty Mutual Fire Insurance Co. | Checked by: MDL:tr |

PRELIMINARIES

A hearing was held on April 28, 2005, at the Division of Workers' Compensation in the City of St. Louis. Donna White ("Claimant") was represented by Mr. Harry Nichols. United Parcel Service ("Employer") and its Insurer, Liberty Mutual Fire Insurance Co., were represented by Ms. Maureen Cary. Injury Numbers 02-106864 and 03-053844 were consolidated for hearing. Mr. Nichols requested a fee of 25% of Claimant's award.

With regard to Injury Number 02-106864, the parties stipulated that on or about September 17, 2002, Claimant sustained an accidental injury arising out of and in the course of employment; and Employer paid \$99.04 in medical benefits. With regard to both injuries, the parties stipulated that Claimant was an employee of Employer; Employer received proper notice of the injury; and Claimant's rates of compensation are \$649.32 for total disability benefits and \$340.12 for permanent partial disability benefits.

The issues for determination by hearing with regard to Injury Number 02-106864 are: Is there a medical causal connection between Claimant's work accident of September 17, 2002, and her current disability and alleged need for medical treatment; is Employer liable for future medical treatment for Claimant; what is the nature and extent of permanent partial disability sustained by Claimant; and is the claim barred by the statute of limitations?

The issues for determination by hearing with regard to Injury Number 03-053844 are: Whether Claimant sustained an occupational disease arising out of and in the course of employment; is there a medical causal connection between Claimant's alleged occupational disease and her current disability and alleged need for medical treatment; is Employer liable for future medical care; and what is the nature and extent of permanent partial disability sustained by Claimant?

Many of the exhibits submitted to the Court contained markings and handwritten notes that appeared to have been made by Claimant or her attorney. The Court did not make any markings or comments in the exhibits. The Court did not consider any such comments in reaching its decisions. All handwritten comments and notations were disregarded by the Court.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant has been employed by Employer for 24 years, and has been a package car driver since 1997. As a package car driver, she works full time from forty to forty-eight hours per week driving a commercial route which encompasses a forty-five to fifty mile region. She picks up, delivers, and loads packages onto trucks and off docks. She handles packages that range in weight from ounces up to seventy pounds. If a package weighs over seventy pounds, she receives assistance lifting. She delivers 300 packages in an average day. Most of her deliveries are on docks. She receives some help from her customers at these docks. Claimant testified she is constantly moving while working. She is constantly reaching overhead for packages. In a normal eight-hour day, Claimant receives a one-hour lunch break, but can break it up if she chooses.

On September 17, 2002, Claimant was on her lunch break inside the hub. It had been raining and the pavement was wet. Claimant slipped on some oil and fell under the truck. She fell flat on her back, but she did not hit her head. She complained initially of a sore low back. At that time, she had no complaints to any other body part.

The First Report of Injury for the September 17, 2002, date of injury documents Claimant felt pain in the hip and the low back. Claimant testified that when she reported the September 17, 2002, date of injury, she did not report complaints to the left shoulder, left arm or neck. At the time of the September 17, 2002, injury Claimant did not ask Employer to pay for or provide medical treatment for her.

Claimant continued to work from September 17, 2003, until May 2003, and lost no time from work. According to Claimant, she had been taking Vioxx for her knee, and when she stopped taking it in April 2003, she started noticing numbness in her upper back that radiated into her arm.

Claimant first sought medical treatment on May 30, 2003, when she went to her private medical doctor, Dr. Arthur Gale, because the numbness in her arm had gotten so bad she thought she was having a stroke. She presented to Dr. Gale on that date with complaints of pain "since early this week" in the upper anterior chest above the breast, left shoulder blade, that radiated down into her fingers. Claimant was on vacation between May 16, 2003, and June 2, 2003. Claimant did not provide Dr. Gale with a history of the September 17, 2002, fall at the time she first sought treatment for these complaints. When Claimant returned to Dr. Gale's office on June 20, 2003, she mentioned falling on her back on pavement seven months before. Dr. Gale's impression was left cervical radiculitis. Dr. Gale ordered an MRI of the neck on June 20, 2003, which revealed desiccation affecting some of the cervical discs but no evidence of disc herniation or spinal stenosis. Claimant did not return to Dr. Gale's office after June 20, 2003.

Claimant was evaluated by Dr. Allen of Orthopedic Specialists on June 9, 2002, at the request of Employer. Dr.

Allen's records document a history that Claimant's left arm, left shoulder and neck complaints began approximately two weeks prior to the June 9, 2003, exam, and that Claimant presented to her personal medical physician with these complaints thinking she had had a stroke. Dr. Allen diagnosed a left shoulder and trapezius strain and hand parasthesias, but did not feel her complaints were work related. Claimant agreed that Dr. Allen did not provide medical treatment to her, and referred her to her private medical doctor.

Claimant next sought treatment approximately one year later with Dr. Lipede on June 21, 2004, with a history of complaints in the shoulder and mid sternum for two months. She also described neck pain. The June 21, 2004, history in Dr. Lipede's report and x-ray report suggests Claimant was in an automobile accident. Claimant testified that she did not tell Dr. Lipede about the September 17, 2002, injury at work, but said her complaints were from getting in a car. On June 21, 2004, a cervical x-ray report reflects the reason for the neck x-ray is that Claimant was in a motor vehicle accident. Claimant admitted she purposely avoided telling Dr. Lipede she thought her complaints were work related because he probably wouldn't want to see her. Claimant testified she was afraid to file a workers' compensation claim because she didn't want to jeopardize her employment. Claimant treated with Dr. Lipede through January 25, 2005.

At the request of her attorney, Claimant presented to Dr. Barry Feinberg on October 29, 2003. She complained of back pain, primarily on the lower left side, mid-back pain, and upper back pain, primarily on the right side. Claimant provided a history that her complaints were a result of an injury occurring on September 17, 2002, when she fell underneath a truck.

Dr. Feinberg diagnosed low back syndrome, thoracic spinal pain, non-vertebrogenic and non-discogenic, spondylitic change in thoracic spine without evidence of myelopathy, myofascial pain syndrome, and sacroiliitis. Dr. Feinberg felt that Claimant would benefit from a course of physical therapy at some point in the future.

Dr. Feinberg opined Claimant's complaints are a result of the work-related injury that Claimant suffered in September 2002. Dr. Feinberg opined that Claimant's mid-back pain and upper back pain are causally related to the September 17, 2002, work injury, and that Claimant aggravated her preexisting low back pain in the same injury. Dr. Feinberg rated Claimant's disability at 10% permanent partial disability of the thoracic spine, and 10% permanent partial disability of the lower back and sacroiliac joint as a result of the September 17, 2002, injury.

Administrative notice is taken of the claim filed by Claimant for Injury Number 02-106864, the September 17, 2002, date of injury. The formal claim was filed on October 22, 2004, alleging injuries to the neck, shoulders, and back.

Administrative notice is taken of Employer's First Report of Injury for Injury Number 02-106864. It was filed on October 3, 2002, for the September 17, 2002, injury.

Ms. Denise McKibben testified on behalf of Liberty Mutual Insurance Company regarding the payments made by Liberty Mutual Insurance Company as the carrier for Employer on the September 17, 2002, claim. Ms. McKibben has been handling claims for Liberty Mutual Insurance Company for twenty-two years. Ms. McKibben is familiar with the record keeping regarding medical payments made by Liberty Mutual Insurance Company. Ms. McKibben testified that Liberty Mutual Insurance Company paid \$99.06 for the visit to Dr. Allen on June 9, 2003 for the September 17, 2002 claim. The payment was issued by Liberty Mutual Insurance Company on August 6, 2003. No other payments to any other medical providers were issued by Liberty Mutual Insurance Company on behalf of Claimant.

Claimant had a January 29, 1999, work injury to her low back which she settled in November 2001 for 17.5% permanent partial disability of the body as a whole referable to the low back.

A March 25, 1999, MRI of the lumbar spine reveals degenerative disc disease at L4-5 with disc protrusion, mild disc bulging at L5-S1 and degenerative changes. There is also a March 9, 2000, MRI of the lumbar spine showing degenerative changes at L4-5 and L5-S1. Both MRI reports document a history of low back pain, left hip, and left leg pain. The records of Dr. Anthony Guarino from February 23, 2000, to August 11, 2002, document the treatment Claimant had for her low back, hip, and leg complaints for the January 29, 1999, low back injury.

Claimant is seeking medical treatment to address the pain in her left shoulder and arm, because it is getting worse.

RULINGS OF LAW

Based upon by observations of the witnesses, my comprehensive review of the evidence, and the application of Missouri law, I find:

Statute of Limitations

The Claim for Compensation is barred by the statute of limitations. Section 287.430 RSMo states as follows:

“Except for a claim for recovery pled against the Second Injury Fund, no proceeding for compensation under this chapter shall be maintained unless a claim therefore is filed with the Division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of injury or death is not filed by the employer as required by Section 287.380, the claim for compensation may be filed within three years after the date of injury, death or last payment made under this chapter on account of the injury or death”.

Employer filed a timely First Report of Injury for the September 17, 2002, injury at issue, which triggers a two-year statute of limitations within which Claimant must file her Claim for Compensation. The formal claim for the September 17, 2002, injury was filed on October 22, 2004.

The time within which to file a timely claim was not extended by the payment of the medical bill by Liberty Mutual Insurance Company for the examination performed by Dr. Allen on June 9, 2003. The testimony of Ms. Denise McKibben and Employer/Insurer's Exhibit 8, document that the only medical provider paid for the September 17, 2002, claim was Orthopedic Associates (Dr. Allen) for the date of service of June 9, 2003, in the amount of \$99.06. Missouri Courts hold that examinations conducted merely to allow an employer to determine questions of causation or liability are not considered medical treatment, which toll the statute of limitations. *Bryant v. Montgomery Ward*, 416 S.W.2d 195 (Mo.App. 1967) (overruled on other grounds).

In the present case, Dr. Allen examined Claimant and obtained a history. She concluded Claimant's condition was not work related, and referred Claimant to her personal physician. No tests or x-rays were ordered and no treatment was given. Claimant admitted Dr. Allen provided no treatment for her.

The only medical provider paid by Employer and Insurer was the \$99.06 bill to Dr. Allen of Orthopedic Associates for the date of service of June 9, 2003. Payment of this medical bill does not toll the statute of limitations in this case. The formal claim was filed on or about October 22, 2004. With a timely first report filed by Employer, the formal claim for the September 17, 2002, date of injury was filed out of time so Claimant's claim is time barred.

Claimant's attorney's reliance upon the case of *Crites v. Missouri Dry Dock*, 348 S.W.2d 621 (Mo.App. 1961) is misplaced. That case interpreted a 1949 statute of limitations which is no longer in effect, and its holding does not apply to the facts in the instant case.

Medical Causation

Claimant also failed to meet her burden of proving that her current complaints regarding her neck and left shoulder and arm are causally related to her work accident of September 17, 2002. Claimant sustained an injury within the course and scope of her employment on September 17, 2002, when she slipped and fell while stepping into her package car. Her initial complaints were to the low back and left hip. Claimant did not ask Employer to pay or provide medical treatment for her complaints, nor did she seek treatment on her own at the time of the injury.

Claimant did not report any complaints about her upper back, left shoulder, or arm until over eight months

later when she presented to Dr. Gale's office because she thought she was having a stroke. She did not mention her work accident of September 17, 2002 to him until her next visit on June 20, 2003. Furthermore, when Claimant saw Dr. Allen on June 9, 2002, his records reflect she gave a history that her left arm, shoulder, and neck complaints began two weeks before that date.

In a report dated October 29, 2003, Dr. Feinberg found Claimant's upper back, low back, and thoracic spine complaints were due to the September 17, 2002, injury. Dr. Feinberg's opinion is simply not supported by the credible medical evidence.

Because I find the claim is barred by the statute of limitations, and Claimant failed to meet her burden of proof regarding medical causation, the remaining issues are moot.

The claim against the Second Injury Fund is dismissed.

Date: _____

Made by: _____

Margaret D. Landolt
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 03-053844

Employee: Donna White
Employer: United Parcel Service
Insurer: Liberty Mutual Fire Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged May 1, 2003
Place and County of Accident: St. Louis 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. 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 August 1, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued August 1, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

| | | |
|-------------------|-----------------------------------|------------------------------------|
| Employee: | Donna White | Injury No.: 03-053844 |
| Dependents: | N/A | Before the |
| Employer: | United Parcel Service | Division of Workers' |
| Additional Party: | Second Injury Fund | Compensation |
| Insurer: | Liberty Mutual Fire Insurance Co. | Department of Labor and Industrial |
| Hearing Date: | April 28, 2005 | Relations of Missouri |
| | | Jefferson City, Missouri |
| | | Checked by: MDL:tr |

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
3. 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
6. Date of accident or onset of occupational disease: N/A
7. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? No
10. 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:
Employee alleged occupational disease from repetitive movements.
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: N/A
15. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Donna White Injury No.: 03-053844

17. Value necessary medical aid not furnished by employer/insurer? N/A
19. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: -0-
22. Second Injury Fund liability: No
- TOTAL: -0-
23. Future requirements awarded: N/A

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: Donna White Injury No.: 03-053844
Dependents: N/A
Employer: United Parcel Service
Additional Party: Second Injury Fund
Insurer: Liberty Mutual Fire Insurance Co.

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

Checked by: MDL:tr

PRELIMINARIES

A hearing was held on April 28, 2005, at the Division of Workers' Compensation in the City of St. Louis. Donna White ("Claimant") was represented by Mr. Harry Nichols. United Parcel Service ("Employer") and its Insurer, Liberty Mutual Fire Insurance Co., were represented by Ms. Maureen Cary. Although the Second Injury Fund is a party to this case it did not participate at the hearing. Injury Numbers 02-106864 and 03-053844 were consolidated for hearing. Mr. Nichols requested a fee of 25% of Claimant's award.

With regard to Injury Number 02-106864, the parties stipulated that on or about September 17, 2002, Claimant sustained an accidental injury arising out of and in the course of employment; and Employer paid \$99.04 in medical benefits. With regard to both injuries, the parties stipulated that Claimant was an employee of Employer; Employer received proper notice of the injury; and Claimant's rates of compensation are \$649.32 for total disability benefits and \$340.12 for permanent partial disability benefits.

The issues for determination by hearing with regard to Injury Number 02-106864 are: Is there a medical causal connection between Claimant's work accident of September 17, 2002, and her current disability and alleged need for medical treatment; is Employer liable for future medical treatment for Claimant; what is the nature and extent of permanent partial disability sustained by Claimant; and is the claim barred by the statute of limitations?

The issues for determination by hearing with regard to Injury Number 03-053844 are: Whether Claimant sustained an occupational disease arising out of and in the course of employment; is there a medical causal connection between Claimant's alleged occupational disease and her current disability and alleged need for medical treatment; is Employer liable for future medical care; and what is the nature and extent of permanent partial disability sustained by Claimant?

Many of the exhibits submitted to the Court contained markings and handwritten notes that appeared to have been made by Claimant or her attorney. The Court did not make any markings or comments in the exhibits. The Court did not consider any such comments in reaching its decisions. All handwritten comments and notations were disregarded by the Court.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant has been employed by Employer for 24 years, and has been a package car driver since 1997. As a package car driver, she works full time from forty to forty-eight hours per week driving a commercial route which encompasses a forty-five to fifty mile region. She picks up, delivers, and loads packages onto trucks and off docks. She handles packages that range in weight from ounces up to seventy pounds. If a package weighs over seventy pounds, she receives assistance lifting. She delivers 300 packages in an average day. Most of her deliveries are on docks. She receives some help from her customers at these docks. Claimant testified she is constantly moving while working. She is constantly reaching overhead for packages. In a normal eight-hour day, Claimant receives a one-hour lunch break, but can break it up if she chooses.

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The First Report of Injury for the September 17, 2002, date of injury documents Claimant felt pain in the hip and the low back. Claimant testified that when she reported the September 17, 2002, date of injury, she did not report complaints to the left shoulder, left arm or neck. At the time of the September 17, 2002, injury Claimant did not ask Employer to pay for or provide medical treatment for her.

Claimant continued to work from September 17, 2003, until May 2003, and lost no time from work. According to Claimant, she had been taking Vioxx for her knee, and when she stopped taking it in April 2003, she started noticing numbness in her upper back that radiated into her arm.

Claimant first sought medical treatment on May 30, 2003, when she went to her private medical doctor, Dr. Arthur Gale, because the numbness in her arm had gotten so bad she thought she was having a stroke. She presented to Dr. Gale on that date with complaints of pain "since early this week" in the upper anterior chest above the breast, left shoulder blade, that radiated down into her fingers. Claimant was on vacation between May 16, 2003, and June 2, 2003. Claimant did not provide Dr. Gale with a history of the September 17, 2002, fall at the time she first sought treatment for these complaints. When Claimant returned to Dr. Gale's office on June 20, 2003, she mentioned falling on her back on pavement seven months before. Dr. Gale's impression was left cervical radiculitis. Dr. Gale ordered an MRI of the neck on June 20, 2003, which revealed desiccation affecting some of the cervical discs but no evidence of disc herniation or spinal stenosis. Claimant did not return to Dr. Gale's office after June 20, 2003.

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At the request of her attorney, Claimant presented to Dr. Barry Feinberg on October 29, 2003. She complained of back pain, primarily on the lower left side, mid-back pain, and upper back pain, primarily on the right side. Claimant provided a history that her complaints were a result of an injury occurring on September 17, 2002, when she fell underneath a truck.

Dr. Feinberg diagnosed low back syndrome, thoracic spinal pain, non-vertebrogenic and non-discogenic, spondylitic change in thoracic spine without evidence of myelopathy, myofascial pain syndrome, and sacroilitis. Dr. Feinberg felt that Claimant would benefit from a course of physical therapy at some point in the future.

Dr. Feinberg opined Claimant's complaints are a result of the work-related injury that Claimant suffered in September 2002. Dr. Feinberg opined that Claimant's mid-back pain and upper back pain are causally related to the September 17, 2002, work injury, and that Claimant aggravated her preexisting low back pain in the same injury. Dr. Feinberg rated Claimant's disability at 10% permanent partial disability of the thoracic spine, and 10%

permanent partial disability of the lower back and sacroiliac joint as a result of the September 17, 2002, injury.

Administrative notice is taken of the claim filed by Claimant for Injury Number 02-106864, the September 17, 2002, date of injury. The formal claim was filed on October 22, 2004, alleging injuries to the neck, shoulders, and back.

Administrative notice is taken of Employer's First Report of Injury for Injury Number 02-106864. It was filed on October 3, 2002, for the September 17, 2002, injury.

Ms. Denise McKibben testified on behalf of Liberty Mutual Insurance Company regarding the payments made by Liberty Mutual Insurance Company as the carrier for Employer on the September 17, 2002, claim. Ms. McKibben has been handling claims for Liberty Mutual Insurance Company for twenty-two years. Ms. McKibben is familiar with the record keeping regarding medical payments made by Liberty Mutual Insurance Company. Ms. McKibben testified that Liberty Mutual Insurance Company paid \$99.06 for the visit to Dr. Allen on June 9, 2003 for the September 17, 2002 claim. The payment was issued by Liberty Mutual Insurance Company on August 6, 2003. No other payments to any other medical providers were issued by Liberty Mutual Insurance Company on behalf of Claimant.

Claimant had a January 29, 1999, work injury to her low back which she settled in November 2001 for 17.5% permanent partial disability of the body as a whole referable to the low back.

A March 25, 1999, MRI of the lumbar spine reveals degenerative disc disease at L4-5 with disc protrusion, mild disc bulging at L5-S1 and degenerative changes. There is also a March 9, 2000, MRI of the lumbar spine showing degenerative changes at L4-5 and L5-S1. Both MRI reports document a history of low back pain, left hip, and left leg pain. The records of Dr. Anthony Guarino from February 23, 2000, to August 11, 2002, document the treatment Claimant had for her low back, hip, and leg complaints for the January 29, 1999, low back injury.

Claimant is seeking medical treatment to address the pain in her left shoulder and arm, because it is getting worse.

RULINGS OF LAW

Based upon by observations of the witnesses, my comprehensive review of the evidence, and the application of Missouri law, I find:

Occupational Disease

Claimant failed to meet her burden of proving she sustained an occupational disease resulting in injury to her neck, left shoulder, left arm, or low back in May 2003. Claimant did not provide any medical evidence to support a finding that she sustained an occupational disease. Dr. Feinberg's report attributes all of Claimant's symptoms to her work accident of September 17, 2002, not to an occupational disease occurring in May 2003. The medical records of Dr. Gale, Dr. Allen, and Dr. Lipede do not support a claim for occupational disease.

The remaining issues with regard to Injury Number 03-053844 are moot. The claim against the Second Injury Fund is dismissed.

Date: _____

Made by: _____

Margaret D. Landolt
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation