

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

Injury No.: 03-054669

Employee: Lakeishia Winford  
Employer: Renaissance Grand Hotel  
Insurer: Insurance Company of the State of Pennsylvania  
Date of Accident: Alleged April 11, 2003  
Place and County of Accident: Alleged St. Louis City

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 5, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Grant C. Gorman, issued July 5, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8<sup>th</sup> day of December 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Dependents: Not Applicable

Employer: Renaissance Grand Hotel

Additional Party: None

Insurer: Insurance Company of the State of Pennsylvania

Hearing Date: April 7, 2006

Before the  
**Division of Workers'**

**Compensation**

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

Checked by: GCG

### **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: Alleged April 11, 2003
5. State location where accident occurred or occupational disease was contracted: Alleged St. Louis City
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? No
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:  
Employee allegedly stepped on a nail that penetrated through her shoe into her foot.
12. Did accident or occupational disease cause death? No Date of death? Not Applicable
13. Part(s) of body injured by accident or occupational disease: Alleged Left Heel
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? None

Employee: Lakeishia Winford

Injury No.: 03-054669

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: Unknown
20. Method wages computation: Not Applicable

### **COMPENSATION PAYABLE**

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

TOTAL: \$0

23. Future requirements awarded: None

Said payments to begin and to be payable and be subject to modification and review as provided by law.

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Lakeishia Winford	Injury No.: 03-054669
Dependents:	Not Applicable	Before the
Employer:	Renaissance Grand Hotel	<b>Division of Workers'</b>
Additional Party:	None	<b>Compensation</b>
Insurer:	Insurance Company of the State of Pennsylvania	Department of Labor and Industrial
Hearing Date:	April 7, 2006	Relations of Missouri
		Jefferson City, Missouri
		Checked by: GCG

### INTRODUCTION

This case was heard by the undersigned Administrative Law Judge on April 7, 2006. Lakeishia Winford (Employee) appeared pro se. Renaissance Grand Hotel (Employer) and its insurer Insurance Company of the State of Pennsylvania were represented by Mark Kornblum. Prior to evidence being adduced, Employee was advised that she could obtain counsel to represent her in this proceeding, and that she would be granted a continuance to do so if she so desired. Employee indicated she wished to proceed to hearing unrepresented.

The parties made no factual stipulations prior to hearing. The parties did not identify which issues were in dispute for purposes of the hearing; therefore leaving all elements of the claim open.

### SUMMARY OF THE EVIDENCE

Only evidence pertinent to the issues addressed in this award is summarized and reviewed. Employee testified on her own behalf. She stated that she had other witnesses she intended to call to testify, however, none of the witnesses were present. She was given an opportunity to try to contact these witnesses by telephone, after which she announced that she was unsuccessful, and had no other witnesses to present.

Employee testified that she worked as a restaurant server for Employer, and that she frequently worked ten to twelve hour shifts. She testified that while at work, she injured her left heel. She testified that while serving, she stepped on a nail that went through her shoe and into her foot, and she then went to the hostess stand and called a Dr. Brown. She further testified that she informed a supervisor that she had hurt her foot, but that she was not allowed to leave and get medical treatment, but that she went to the emergency room after her shift.

Employee stated that has not worked since working for Employer. She stated, "I almost lost my foot." She was under nursing care for 8 months. She can no longer wear shoes with heels. She previously had two lawyers representing her, but both have withdrawn.

Employee brought several exhibits she attempted to introduce into evidence. Objections were made at hearing to the exhibits; ruling on the objections was deferred, and will be made in this award. Employee sought to introduce the following:

Exhibit A: A pair of shoes. Counsel objected to Exhibit A, based on a lack of foundation. The objection to Exhibit A is overruled, and Exhibit A is received into evidence.

Exhibit B: A picture of a foot injury. Counsel objected to Exhibit B, based on a lack of foundation. The objection to Exhibit B is overruled, and Exhibit B is received into evidence.

Exhibit C: Records of Dr. Willie Brown. Counsel objected to Exhibit C as hearsay, that the records were not certified, and that Exhibit C had not been previously provided to counsel. The objection to Exhibit C is sustained, the exhibit will not be received into evidence.

Exhibit D: Letter to Employee from Attorney John J. Larsen, Jr. Counsel objected to Exhibit D as hearsay. The objection is sustained, the exhibit will not be received into evidence.

Exhibit E: Letter to Employee from Attorney John J. Larsen, Jr. Counsel objected to Exhibit E as hearsay. The objection is sustained, the exhibit will not be received into evidence.

Exhibit F: A printed copy of an email from Kristen Lewis. Counsel objected to Exhibit F based on authenticity. The objection is sustained, the exhibit will not be received into evidence.

Exhibit G: Records of Mederi/United. Counsel objected to Exhibit G as hearsay, that the records were not certified, and that Exhibit G had not been previously provided to counsel. The objection to Exhibit G is sustained, the exhibit will not be received into evidence.

Under cross-examination, Employee conceded that she did not file a written report of injury with Employer. She also stated that she did not recover the nail and does not know what kind of nail she stepped on. She also conceded that there does not appear to be a hole in the sole or interior of the shoe. She responded by saying it could be a skinny nail like a safety pin and that you could not see a "little skinny hole."

Mr. Jeff Sirocky testified on behalf of Employer. Mr. Sirocky testified that he is the director of human resources for Employer. He testified further about personnel policies, employee training procedures and the content of the written materials employees receive when they begin work with Employer.

Employer attempted to introduce two exhibits into evidence. Employee objected to these, and ruling was deferred until the time of the award. The exhibits are as follows:

Exhibit 1: Disciplinary record of Employee. Employee objected to Exhibit 1 based on relevance. The objection is sustained, Exhibit 1 is not received into evidence.

Exhibit 2: Note from Dr. Willie Brown. Employee objected to Exhibit 2. Insofar as the exhibit is hearsay, and an uncertified medical record, the objection is sustained, Exhibit 2 is not received into evidence.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the competent and substantial evidence, including the testimony of Employee and my observation of Employee, I find the following:

Employee's testimony regarding the alleged work injury is not credible. There is no evidence of a nail penetrating her shoe. There are no obvious nail holes in the soles of the shoes (Exhibit A). The soles of the shoes themselves are very

worn, and there are areas that it would have been possible for a nail to breach. However, a nail would have to have gone through these areas at an angle that would not have led it straight into her foot. Further, there is no evidence of nail penetration through the inside of the shoe or the insole. There is also no evidence of blood on the interior of the shoe. It would seem that a wound of the magnitude depicted in Exhibit B, and testified to by Employee, would have required a significant piercing of the skin, which would have produced blood.

Employee's explanation of the why the nail was not recovered is also not credible. If a nail penetrated the sole of the shoe and the tissue in her foot, she could have immediately stopped, removed the shoe and recovered the nail. Her testimony that the nail was just gone was not convincing. Although this incident allegedly occurred in a restaurant with other employees, she produced no witnesses to corroborate her account of the incident.

It is axiomatic that the employee bears the burden of proving all elements of his claim for compensation, including whether his injury arose out of and in the course of his employment. **Duncan v. Springfield R-12 School District**, 897 S.W.2d 108, 114 (Mo.App. 1995). In this case, Employee has failed to prove that she suffered any injury that occurred at work.

Further, Employee has not adduced any admissible evidence regarding treatment received for the alleged injury. She has also failed to adduce any evidence regarding nature and extent of claimed permanent partial disability, the applicable wage rate, the cost of any medical treatment received, or the need for future medical care.

### CONCLUSION

Employee has failed to prove any element of her claim with competent and substantial evidence. The claim for compensation is denied.

Date: July 5, 2006

Made by: /s/ GRANT C. GORMAN  
Grant C. Gorman  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*