

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 10-050345

Employee: Dawn Woods
Employer: Camdenton Windsor Estates
Insurer: Missouri Nursing Home Insurance Trust

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated July 12, 2011.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued July 12, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 14th day of November 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Dawn Woods

Injury No. 10-050345

Dependents: N/A

Employer: Camdenton Windsor Estates

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: N/A

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

Insurer: Missouri Nursing Home Insurance Trust

Hearing Date: May 17, 2011

Checked by: HDF/scb

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: July 1, 2010.
5. State location where accident occurred or occupational disease was contracted: Camdenton, Camden County, 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? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
See award.
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: Right ankle, left wrist, head, neck, and left upper extremity.
14. Compensation paid to-date for temporary disability: \$2,986.69.
15. Value necessary medical aid paid to date by employer/insurer? \$7,547.73.
16. Value necessary medical aid not furnished by employer/insurer? Unknown.

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17. Employee's average weekly wages:
18. Weekly compensation rate: \$426.67 for temporary total disability benefits.
19. Method wages computation: By agreement.

COMPENSATION PAYABLE

20. Amount of compensation payable: For temporary total disability benefits:
From August 20, 2010 through and including July 7, 2011 = 46 weeks
 $46 \times \$426.67 = \$19,626.82$.
TTD is ongoing.

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of temporary total disability benefits hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Randy Alberhasky.

Employee: Dawn Woods

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Dawn Woods

Injury No: 10-050345

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Camdenton Windsor Estates

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

Additional Party: N/A

Insurer: Missouri Nursing Home Insurance Trust

Checked by: HDF/scb

ISSUES DECIDED

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on May 17, 2011. Memoranda were submitted by June 1, 2011.

The parties stipulated that on or about July 1, 2010, the claimant, Dawn Woods, was in the employment of Camdenton Windsor Estates. The employer was operating under the provisions of Missouri's Workers' Compensation Law; workers' compensation liability was insured by the Missouri Nursing Home Insurance Trust. The employer had notice of the injury; a claim for compensation was timely filed. The appropriate compensation rate for temporary total disability benefits is \$426.67 per week.

Temporary disability benefits have been paid in the amount of \$2,986.69, representing seven weeks of benefits paid from July 2, 2010, through August 19, 2010, inclusively. Medical aid has been provided in the amount of \$7,547.73.

The issues to be resolved by hearing include 1) the occurrence of an accident, 2) whether the alleged accident arose out of and in the course of employment, 3) whether the injury complained of was caused by the alleged accident, 4) the liability of the employer/insurer for temporary total disability benefits from August 20, 2010, and 5) the appropriateness of a final award.

The parties stipulated that in the event of a favorable finding for the claimant on the three preliminary issues, the employer/insurer would be responsible for temporary total disability benefits from February 22, 2011, through the present. Liability for temporary total disability benefits for the period of August 20, 2010, through February 21, 2011, remains in dispute.

FACTS

The claimant, Dawn Woods, was employed as a night charge nurse at Camdenton Windsor Estates, a skilled nursing facility, working eight hour shifts, always the night shift, 40 hours a

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week. Ms. Woods testified that she is on her feet a lot while at work, spending about 75 percent of her time pushing and pulling carts, transferring residents, squatting, stooping, standing and walking. Ms. Woods printed off lab reports before the day shift arrived as part of her responsibilities. Ms. Woods fell at work on July 1, 2010, as she was backing away from the printer in the medication room where she had gone to retrieve lab reports before the day shift arrived and as she was reviewing the lab reports. Ms. Woods had immediate pain in her left wrist and right ankle. At the hearing, Ms. Woods testified that she tripped because the back of her foot caught on something, possibly a cabinet. Ms. Woods also testified at hearing that she had to back away from the printer because the area was tight, about two feet of clearance, and she was 40 pounds heavier in July of 2010 than on the date of hearing.

Ms. Woods received medical attention as well as temporary disability benefits for her right ankle.

Ms. Woods noticed increased neck and left shoulder pain as well as numbness in her left little finger in the days after the accident.

Ms. Woods saw Dr. Koprivica on October 13, 2010. Dr. Koprivica noted that Ms. Woods has recovered from her right ankle and left wrist sprains incurred in the July 1, 2010 accident. Dr. Koprivica went on to find that as the result of the July 1, 2010 fall, Ms. Woods injured her cervicothoracic region and has developed chronic cervicothoracic pain, including “neurologic complaints in her left upper extremity associated with the neck injury.” Dr. Koprivica recommended “evaluation with electrodiagnostic studies in the cervical paraspinals and the left upper extremity. I would also recommend an MRI scan of the cervical spine....My clinical suspicion is that Ms. Woods is suffering from a chronic cervicothoracic strain/sprain injury with the development of regional myofascial pain. The complaints in the left upper extremity, I believe, are related to active trigger points that are present on examination.... [O]bjective workup should be undertaken.” Dr. Koprivica opined that treatment would be determined by diagnosis. Dr. Koprivica also found Ms. Woods to be temporarily totally disabled “until appropriate evaluation and therapeutic intervention have been completed.”

Ms. Woods was initially seen by Dr. Komes on February 22, 2011. The notes of Dr. Komes from the Physical Medicine and Rehabilitation Clinic of the University of Missouri reflect his recommendation of an evaluation to determine “if there are any significant medical residuals from her work injury.” Dr. Komes agreed that an MRI and EMG would be appropriate. Dr. Komes stated that Ms. Woods’ “work activity on July 1, 2010, is the sole prevailing factor in the need for medical treatment and the resultant disability.” Dr. Komes restricted Ms. Woods from work during the interval between his initial appointment and her scheduled return appointment in two weeks. The MRI of Ms. Woods’ neck and left upper extremity ordered by Dr. Komes was performed on February 28, 2011, and the EMG was performed on March 8, 2011. On March 8, 2011, Dr. Komes restricted Ms. Woods to 25 pounds of lifting until the next appointment with him in approximately three weeks. A 20-pound lifting restriction was imposed on March 8, 2011, pending a surgical evaluation. According to Ms. Woods, Dr. Komes referred her to another physician who ordered physical therapy and an epidural steroid injection into the cervical spine. Apparently the epidural steroid injection was accomplished but the physical therapy has never been provided.

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A May 3, 2011 prescription from Dr. Kuhns of the Missouri Spine Center refers to Ms. Woods as the patient and notes that physical therapy for the cervical spine, twice a week for 6 weeks, an evaluation for home traction and a cervical tens unit are prescribed. Attached are two "return to work recommendations record work related injury request for medical, surgical or hospital aid" forms on which the names of the authorizing physicians and the dates are not legible; however the forms clearly indicate Dawn Woods as the patient and a "light work, lifting 20 lbs. max." restriction.

Ms. Woods currently complains of neck, left shoulder and left arm pain and numbness in the last three fingers of her left hand.

Ms. Woods alleges that she has not been able to return to work at Cambridge Windsor Estates. According to Ms. Woods and Tammy Nichols, the Director of Nursing at Camdenton Windsor Estates and Ms. Woods' supervisor, there is no light duty work available at Cambridge Windsor Estates for Ms. Woods.

Lake Regional Health System records document Ms. Woods' complaint of having tripped at work and falling backwards (July 1 and 2, 2010 records); Dr. Koprivica's report notes a history of Ms. Woods' tripping as she was backing out of a tight room (October 13, 2010); Dr. Komes' records include a reference to Ms. Woods' stepping backwards, getting her foot caught in a cord and falling (February 22, 2011); the Work Strategies' records note a history of injury while Ms. Woods was walking backwards and tripped over an object (March 22, 2011); the July 1, 2010 report to the employer filled out by Ms. Woods references a trip in the med room and a fall (July 1, 2010); the confidential report of event signed by Ms. Woods on the same date uses the same language as the employer report; the report filled out by Tammy Nichols on July 1, 2010, references Ms. Woods having tripped in the med room.

APPLICABLE LAW

RSMo, Section 287.020.2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

RSMo, Section 287.020.3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

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(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

This case is analogous to Pile v. Lake Regional Health System, 321 S.W.3d 463. In the Pile case, the employee, a nurse, injured her ankle as the result of excessive walking in the workplace. The court looked at section 287.020.3, performed a risk analysis and determined that it was the excessive walking that the claimant did at work that caused her injury.

AWARD

The claimant, Dawn Woods, has sustained her burden of proof that she was injured in an accident. There is no dispute that Ms. Woods fell at work on July 1, 2010, injuring her right ankle, left wrist, head, neck and left upper extremity.

Ms. Woods has sustained her burden of proof that the July 1, 2010 accident arose out of and in the course of employment. Again, there is no dispute regarding the sequence of events and the fact that the July 1, 2010 accident was the prevailing factor in causing Ms. Woods' head, neck and left upper extremity injury. The real issue is whether the activity of backing away from the printer while reviewing lab reports in a confined area and tripping is a hazard or risk unrelated to the employment to which Ms. Woods would have been equally exposed outside of and unrelated to her employment in normal nonemployment life. While the employer /insurer makes much of the fact that various accounts, both first and second hand, of Ms. Woods' accident cast doubt on her credibility and fail to establish that the accident was the result of an employment hazard, I find that the accounts are consistent in describing a trip while walking backwards in a confined area with lab reports she was reviewing. I find this activity to satisfy the relationship to employment test. While I believe that this analysis is sufficient to determine compensability, I also find that the activity of walking backwards in a confined area with lab reports Ms. Woods was reviewing is not a hazard to which she would have been equally exposed outside of her employment.

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Ms. Woods has sustained her burden of proof that she is entitled to temporary total disability benefits from August 20, 2010, through the date of this award and until she is released to return to work which Camdenon Windsor Estates can accommodate or reaches maximum medical improvement. Ms. Woods' condition pertaining to her head, neck and left upper extremity has been static or deteriorated since the date of injury. Ms. Woods testified to her inability to return to work at Camdenon Windsor Estates as did her supervisor, Tammy Nichols. Doctors Koprivica (October 13, 2010), Komes (February 22, 2011 through April 4, 2011) and Dr. Kuhns (likely May of 2011) all restricted Ms. Woods from work which prohibited her from returning to work at Camdenon Windsor Estates; all three of these doctors recommended additional testing or treatment for Ms. Woods and none of them determined that she had reached maximum medical improvement.

All other issues raised for resolution are hereby rendered moot.

Made by: _____
HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation