

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

Injury No.: 01-152270

Employee: Joseph Zimmerman
Employer: City of Richmond Heights
Insurer: St. Louis Area Insurance Trust
Date of Accident: November 14, 2001

On June 30, 2006, the Missouri Court of Appeals for the Eastern District issued an opinion reversing the November 4, 2005, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case. By mandate issued July 26, 2006, the Court remanded this matter to the Commission with directions to enter a new award finding employee is permanently and partially disabled and determine the percentage of disability based upon testimony presented in accordance with the Court's June 30, 2006, opinion. *Zimmerman v. City of Richmond Heights and St. Louis Area Insurance Trust*, ED87319. (Mo. App. E.D., June 30, 2006) (Mandate issued July 26, 2006).

Pursuant to the Court's opinion and mandate, we issue this new award.

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, except as modified herein.

The medical evidence presented at trial established that employee was disabled because of the seizure he suffered while working for employer on November 14, 2001. The evidence is sufficient to meet employee's burden of proof making him eligible for disability compensation.

Dr. Cohen testified that employee sustained a permanent partial disability of 2% of the body as a whole as a result of the seizure he experienced on November 14, 2001. Dr. Feinberg testified that employee suffered a permanent partial disability of 8% of the body as a whole as a result of the seizure.

After considering the expert opinions of Dr. Cohen and Dr. Feinberg, we conclude that employee suffered a permanent partial disability of 5% of the body as a whole as a result of the seizure of November 14, 2001, and we award same.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued February 15, 2005, is attached and incorporated by this reference, to the extent it is not inconsistent with this Final Award.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 22nd day of August 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

CONCURRING IN PART AND DISSENTING IN PART

John J. Hickey, Member

Attest:

Secretary

CONCURRING IN PART AND DISSENTING IN PART

By separate opinion dated November 4, 2005, I respectfully dissented from the majority's denial of permanent partial disability benefits to this employee, concluding that the majority's decision on this point was contrary to the overwhelming weight of the medical evidence. The Missouri Court of Appeals for the Eastern District has reached the same conclusion.

I stand by my conclusion that based upon the overwhelming weight of the medical evidence in the record, employee sustained a permanent partial disability of 8% of the body as a whole. I respectfully dissent from the portion of the majority's decision awarding employee permanent partial disability of only 5% of the body as a whole.

John J. Hickey, Member

AWARD

Employee: Joseph Zimmerman Injury No.: 01-152270

Dependents: N/A Before the
Division of Workers'

Employer: City of Richmond Heights Compensation
Department of Labor and Industrial

Additional Party: N/A Relations of Missouri
Jefferson City, Missouri

Insurer: St. Louis Area Insurance Trust

Hearing Date: November 17, 2004 Checked by: MDL:tr

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: November 14, 2001
5. State location where accident occurred or occupational disease was contracted: Clayton, 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:
Employee had a seizure as a result of sleep deprivation.
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: -0-
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Joseph Zimmerman Injury No.: 01-152270

17. Value necessary medical aid not furnished by employer/insurer? \$214.75
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$314.26 for permanent partial disability benefits
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$214.75

22. Second Injury Fund liability: No

TOTAL: \$214.75

23. Future requirements awarded: N/A

Said payments to begin immediately 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Mr. Mark Akers

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Joseph Zimmerman Injury No.: 01-152270

Dependents: N/A

Employer: City of Richmond Heights Compensation

Additional Party: N/A

Before the
Division of Workers'

Department of Labor and Industrial

Relations of Missouri
Jefferson City, Missouri

Insurer: St. Louis Area Insurance Trust

Checked by: MDL:tr

PRELIMINARIES

A hearing was held on November 17, 2004 at the Division of Workers' Compensation in the City of St. Louis. Joseph Zimmerman ("Claimant") was represented by Mr. Mark Akers. The City of Richmond Heights ("Employer") and its Insurer, St. Louis Area Insurance Trust, were represented by Ms. Julie Hovermale. Mr. Akers requested a fee of 25% of Claimant's award.

The parties stipulated that on or about November 14, 2001, Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of injury; and that the claim was timely filed. The parties further stipulated that Claimant's rate of permanent partial disability benefits is \$314.26. Employer has paid no benefits.

The issues for determination by hearing are whether Claimant sustained an accident arising out of and in the course of his employment; medical causation; liability of Employer for past medical expenses of \$214.75; and nature and extent of permanent partial disability sustained by Claimant.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

On November 14, 2001, Claimant was working the night shift as a street patrol officer for Employer. On the evening of November 13, Claimant worked the overnight shift, and got off work at 7:00 a.m. on November 14, 2001. The night of November 13 was the tenth day in a row that Claimant had been working the night patrol. On the morning of November 14, Claimant drove home, got ready for bed, and went to sleep between 8:15 and 8:30 a.m. Claimant was only able to sleep briefly because he had been subpoenaed to testify at a trial at the courthouse in Clayton, Missouri at 1:30 p.m. Claimant got up about 10:30 a.m., ate lunch at home, and then drove his personal car to the police department so that he could ride to court with one of the detectives.

Claimant reported to the assigned courtroom, and walked to a bench to wait to be called to testify. Walking to the bench is the last thing Claimant remembers until he awoke in the emergency room.

Claimant was taken by ambulance to the emergency room where he remained for a few hours. Claimant was told that he had a seizure. Claimant never had a seizure before November 14, 2001. Claimant stayed in the emergency room until 5:00 or 6:00 in the evening, and his wife drove him home. Following his seizure, Claimant required light duty because he was not allowed to drive for six months, and Employer had no light duty job that did not require driving. Claimant did not work anywhere from November 14, 2001 until May of 2002, and was paid full salary during that time period. Employer advised Claimant to see his primary care physician. Claimant's primary care physician referred him to Dr. Logan, a neurologist.

Claimant testified that after six months he returned to full duty. Claimant is concerned about his condition because he had hoped to apply for a job in federal law enforcement and he is concerned now about whether the federal government would hire him. Claimant saw Dr. Logan twice and hasn't been to his office since his last visit. No treatment has been provided to Claimant as a result of his seizures and he has not had any seizures since. Claimant is taking no medications for his seizures. Claimant has never applied for, or been rejected for any position.

The records of Dr. Logan reflect that Claimant saw him on November 16, 2001. An EEG and MRI of Claimant's brain were negative. Dr. Logan's impression was that Claimant had a single tonic clonic seizure. Dr. Logan expressed the opinion that there was no specific defining cause found for Claimant's seizure, although certainly his sleep deprivation, which was related to his job, was quite likely a contributory factor.

Dr. Raymond Cohen, a board certified neurologist, testified on behalf of Employer. Dr. Cohen performed a neurological examination on Claimant on March 14, 2003, which was normal. Dr. Cohen diagnosed a history compatible with a tonic/clonic generalized seizure on or about November 14, 2001 with a normal neurological exam on March 13, 2003. Dr. Cohen testified that Claimant's seizure on November 14, 2001 was related to his employment with Employer. It was his medical opinion that the seizure was from his work, but was not a substantial factor from the work. Dr. Cohen testified that Claimant's seizure occurred while he was at work, and he had worked the night before and did not have enough sleep, so in part it was from the work, and in part it was "bad luck", but that certain people are predisposed. Dr. Cohen testified that if one does not have enough sleep, the seizure threshold in the brain becomes lowered in certain circumstances, and sleep deprivation can lower the seizure threshold. Dr. Cohen testified that he felt in part it was work related in that he was at work, but since it was a minor part, and that the seizure threshold is simply there in the individual, it can be lowered from certain factors, but the work was not a substantial factor. He testified that it was a precipitating factor. Dr. Cohen did not feel that Claimant needed any additional treatment, and that Claimant suffered a permanent partial disability related to the seizure on November 14, 2001 of 2% of the body as a whole. Dr. Cohen's opinion was that Claimant's seizure was from a triggering event and was not a substantial factor.

Dr. Barry Feinberg testified on behalf of Claimant. Dr. Feinberg testified that he examined Claimant on January 6, 2004. Dr. Feinberg testified that Claimant had a history of a single isolated seizure that appeared to be situational and related to his sleep deprivation. Dr. Feinberg testified that the situation of Claimant's sleep deprivation was the substantial factor in Claimant developing his seizure on November 14, 2001. Dr. Feinberg rated Claimant's disability at 8% permanent partial disability of the body as a whole.

RULINGS OF LAW

Medical Causation

Based upon my examination of the entire record, Claimant's testimony and the applicable law of the State of Missouri, I find:

Claimant's work as a police officer was a substantial factor in his having a single seizure on November 14, 2001. Although Dr. Cohen's conclusion is that Claimant's sleep deprivation was a triggering or precipitating factor and not a substantial factor in causing Claimant's seizure on November 14, 2001, his testimony is clear that had it not been for Claimant's sleep deprivation, which was caused by his work, he would not have had the seizure.

Dr. Feinberg testified that Claimant's work was a substantial factor, and although Dr. Cohen's opinion would seem to state otherwise, the two doctors actually do not disagree that Claimant's seizure was caused by sleep deprivation.

Permanent Partial Disability/Past Medical

Although I find Claimant's seizure was caused by his work, I do not feel that Claimant has met his burden of proving he sustained any permanent partial disability as a result of the seizure. The only testimony from Claimant regarding disability is that he has thought about applying for a job with the federal government and is afraid he may not get hired. Claimant did not physically injure any part of his body. The MRI and EEG of Claimant's brain were normal. Claimant is on no medication, and has had no treatment as a result of his seizure. There is no evidence that Claimant has sustained any permanent partial disability whatsoever as a result of his seizure.

Because I find Claimant's work was a substantial factor in causing his seizure, Claimant is awarded \$214.75 for the emergency room bill he incurred following his seizure.

Although I find Claimant's seizure resulted from the sleep deprivation brought on by his employment, Claimant has failed to show that he has sustained any permanent partial disability resulting from that seizure. Accordingly, no permanent partial disability benefits are awarded.

This award is subject to a lien in the amount of 25% in favor Claimant's attorney Mark Akers.

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

Made by: _____

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation