

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 05-827768
LT-ACC-OSIF-COV
PCN: 2080231 Mary E. Baker

Claims Heard: 05-
01-

MARY E. BAKER
10915 SHARONDALE RD
CINCINNATI OH 45241

Date of Injury: 5/11/2005

Risk Number:

This matter was heard on 07/29/2008, before Staff Hearing Officer Norman W. Litts, Jr., pursuant to the provisions of Ohio Revised Code Section 4121.35(B)(1) on:

IC-2 App For Compensation Of Permanent Total Disability filed by Injured Worker on 01/17/2008.

Issue: 1) Permanent Total Disability

Notices were mailed to the injured worker, the employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date, and the following were present at the hearing:

APPEARANCE FOR THE INJURED WORKER: Injured Worker, Mr. Martini

APPEARANCE FOR THE EMPLOYER: Ms. McMillan

APPEARANCE FOR THE ADMINISTRATOR: N/A

It is the finding of the Staff Hearing Officer that this claim has been allowed for: SPRAIN OF NECK; AGGRAVATION OF DEGENERATIVE DISC DISEASE AT C3-4; SPRAIN THORACIC REGION.

The Staff Hearing Officer has reviewed all medical and vocational evidence on file, as well as that submitted at hearing, and bases this decision on the evidence and reasons cited to in the following order.

After full consideration of the issue, it is the order of the Staff Hearing Officer that the injured worker's IC-2 Application for Permanent and Total Disability Compensation, filed 01/17/2008, be denied.

The injured worker is a 59 year old female who has two separate workers' compensation claims. Claim number 05-827768 is predicated upon an industrial accident which occurred on 05/11/2005 when the injured worker injured her neck and upper back while preventing a child from falling. Claim number 01-410013 is predicated upon an industrial accident which occurred on 07/06/2001 when the injured worker bent her right thumb backwards while opening a beer cooler.

Dr. D. Ann Middaugh examined the injured worker on 03/05/2008. Dr. Middaugh examined the injured worker on the allowed conditions and concludes that the allowed conditions have reached maximum medical improvement. Dr. Middaugh further finds that the injured worker is capable of performing sustained remunerative employment with the restrictions of no repetitive motions of the neck, no static flexion of the neck and limited use of the upper extremities overhead.

Dr. Middaugh further finds that the injured worker has multiple medical and orthopedic problems which are unrelated to this claim and which may further restrict the injured worker's ability to return to work. However, Dr. Middaugh clearly indicates that the injured worker is capable of performing sustained remunerative employment with the above listed restrictions when

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only the allowed conditions are considered.

Dr. Thomas Forte examined the injured worker on 04/23/2008 at the request of the Industrial Commission. Dr. Forte examined the injured worker on the allowed conditions and concludes that the allowed conditions have reached maximum medical improvement.

Dr. Forte further finds that the injured worker retains the functional capacity to perform sedentary employment. Sedentary employment includes the ability to exert ten pounds of force one-third of the time, negligible force two-thirds of the time and sedentary work is performed while sitting most of the time.

Dr. Gary Ray examined the injured worker on 03/27/2007 at the request of the Bureau of Workers' Compensation. Dr. Ray examined the injured worker on the allowed conditions and concludes that the allowed conditions have reached maximum medical improvement.

Dr. Ray further finds that the injured worker retains the functional capacity to perform sedentary to light employment. Light work includes the ability to exert 20 pounds of force one-third of the time, ten pounds of force two-thirds of the time and negligible force constantly. Light work may also include jobs which require walking or standing to a significant degree and jobs which require working at a production rate.

Based on the reports of Drs. Middaugh, Ray and Forte, the Staff Hearing Officer finds that all allowed conditions have reached maximum medical improvement.

The Staff Hearing Officer further finds that the injured worker retains the functional capacity to perform sustained remunerative employment when the impairments arising out of the allowed conditions are considered based on the reports of Drs. Middaugh, Ray and Forte.

Additionally, when the injured worker's impairments arising out of the allowed conditions are considered in conjunction with the injured worker's non-medical disability factors, the Staff Hearing Officer finds that the injured worker retains the functional capacity to perform sustained remunerative employment and is therefore not permanently and totally disabled.

Mr. Craig Johnston performed a vocational assessment of the injured worker on 06/21/2008. Mr. Johnston considered the injured worker's impairments arising out of the allowed conditions, as well as the injured worker's age, education and work history, and concludes that the injured worker retains the functional capacity to engage in sustained remunerative employment.

The Staff Hearing Officer finds that the injured worker's age, 59 years old, constitutes a moderate barrier to re-employment. However, pursuant to State ex rel. Moss v. The Industrial Commission (1996) 75 Ohio St. 3rd 414, age alone does not constitute an absolute barrier to re-employment. Rather, the injured worker's age must be considered in conjunction with all other relevant factors.

The Staff Hearing Officer finds that the injured worker is a high school graduate. The Staff Hearing Officer finds that the injured worker's educational history demonstrates that the injured worker can read, write and perform basic math skills, as would be expected of an individual with the injured worker's level of formal education. Further, a high school diploma ordinarily qualifies the injured worker for semi-skilled to skilled employment. See Ohio Administrative Code 4121-3-34(B)(3)(b)(iv). Accordingly, the Staff Hearing Officer finds that the injured worker's educational history constitutes a positive vocational asset which enhances the injured worker's ability to gain re-employment.

The Staff Hearing Officer finds that the injured worker's IC-2 Application

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for Permanent and Total Disability indicates that the injured worker has previously been employed as a day care worker, a cashier and a clubhouse employee at a golf course.

The Staff Hearing Officer finds that these jobs required the injured worker to fill out daily reports, operate a cash register, train new employees, prepare and operate a grill, restock shelves and read and follow recipes.

Importantly, the Staff Hearing Officer finds that the injured worker's work history demonstrates that the injured worker was capable of learning how to perform these duties by way of on-the-job training.

Accordingly, the Staff Hearing Officer finds that the injured worker has the transferable skills, such as the ability to learn from on-the-job training, read and follow directions, prepare written reports and operate simple machinery, necessary to perform sedentary employment. Therefore, the Staff Hearing Officer finds that the injured worker's work history constitutes a positive vocational asset which enhances the injured worker's ability to gain re-employment.

Based on these non-medical disability factors, the Staff Hearing Officer finds that the injured worker has the vocational ability, intellect and literacy ability to perform sustained remunerative employment.

Further, when the injured worker's non-medical disability factors are considered in conjunction with the injured worker's impairments arising out of the allowed conditions, the Staff Hearing Officer finds that the injured worker retains the functional capacity to perform sustained remunerative employment and is therefore not permanently and totally disabled.

Accordingly, the injured worker's IC-2 Application for Permanent and Total Disability Compensation, filed 01/17/2008, is denied.

This order is based on the report of Dr. Middaugh dated 03/05/2008, the report of Dr. Ray dated 03/27/2008, the report of Dr. Forte dated 04/23/2008, the vocational assessment of Mr. Johnston dated 06/21/2008 and the non-medical disability factors.

Typed By: kad
Date Typed: 07/31/2008
Date Received: 01/23/2008
Findings Mailed: 08/05/2008

Norman W. Litts, Jr.
Staff Hearing Officer

Electronically signed by
Norman W. Litts, Jr.

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

05-827768
Mary E. Baker
10915 Sharondale Rd
Cincinnati OH 45241

ID No: 13471-90
James C. Martini
830 Main St Ste 607
Cincinnati OH 45202-2123

Risk No: 395049-0
Knowledge Learning Corporation
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Claim Number: 05-827768

ID No: 21846-91
Reminger & Reminger Co., LPA
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Cincinnati OH 45202-3150

ID No: 9992-05
BWC, Law - Governor's Hill
Attn: Roxanna Baker
8650 Governors Hill Dr Fl 4
Cincinnati OH 45249-1372

ID No: 4000-05
BWC - DWRP Section
30 W Spring St
Columbus OH 43215-2264

BWC, LAW DIRECTOR

NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT www.ohioic.com. ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK I.C.O.N. AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).
