

IN THE NEBRASKA WORKERS' COMPENSATION COURT

EVA K. GRAUER,

Plaintiff,

vs.

YOUR PRECIOUS PETS LLC and
AMERICAN FAMILY INSURANCE
COMPANY, Its Workers'
Compensation Carrier,

Defendants.

DOC: 210 NO: 1272

AWARD

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AND FILED

JUN 22 2011

NEBRASKA WORKERS'
COMPENSATION COURT

APPEARANCES:

Plaintiff: Michael W. Khalili
Knudsen, Berkheimer, Richardson & Endacott, LLP
3800 Ver Maas Place, Suite 200
Lincoln, NE 68502

Defendants: Joseph C. Bradley
Timmermier, Gross & Prentiss
8712 West Dodge Road, Suite 401
Omaha, NE 68114

This cause came on for hearing before the Nebraska Workers' Compensation Court at Lincoln, Lancaster County, Nebraska, on April 14, 2011, on the petition of the plaintiff, answer of the defendants and on the evidence, Judge Laureen Van Norman, one of the judges of said court, presiding. Plaintiff appeared in person and was represented by counsel. Defendants were represented by counsel. Testimony was taken, evidence adduced, cause submitted with the receipt of briefs on April 28, 2011, and the Court being fully advised in the premises finds as follows:

I.

On January 26, 2010, the plaintiff was in the employ of the first-named defendant as a dog bather, and while so employed and on said date and while engaged in the duties of her employment she suffered injuries to her right hand as a result of an accident arising out of and in the course of her

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employment due to the repetitive nature of the plaintiff's tasks; as a result of said accident and injury the plaintiff was temporarily totally disabled from and including April 1, 2010, through April 29, 2010, and thereafter sustained a 2 percent permanent impairment of her right hand.

II.

The plaintiff is entitled to benefits as provided under the Nebraska Workers' Compensation Act.

III.

At the time of said accident and injury, the plaintiff was receiving an average weekly wage of \$297.30 being sufficient to entitle her to benefits of \$198.18 per week for 4 weeks for temporary total disability and thereafter and in addition thereto a like sum each week for 3.5 weeks for a 2 percent permanent impairment to her right hand.

IV.

The defendants should pay for and on behalf of the plaintiff the medical expenses set forth in Exhibit 5 as follows:

Provider	Amount
Associated Anesthesiologists	\$390.00
Dr. Donald Burge	\$624.00
Jim's Home Health Supplies	\$28.36
Lincoln Surgical Hospital	\$4,129.31
Prairie Shoulder, Elbow & Hand Center	\$3,837.00
Walgreen Pharmacy	\$30.81

The plaintiff and her husband's health insurance carrier have paid various expenses and the defendants should reimburse both the plaintiff and Blue Cross Blue Shield as their interest may appear.

V.

The defendants should pay to the plaintiff a 50 percent waiting time penalty as provided in Nebraska Revised Statute 48-125. Specifically, the plaintiff is entitled to a penalty in the amount of

\$396.36 plus interest for 4 weeks of temporary total disability. The plaintiff is also entitled to \$346.82 for a penalty on the unpaid permanent partial impairment to which she is entitled.

VI.

The defendant should pay to the plaintiff mileage expenses in the total sum of \$59.98 (E5, p. 2).

VII.

As noted above, the Court has found the plaintiff entitled to waiting time penalties and interest. The Court specifically finds there to be no reasonable controversy and finds the defendants have failed to pay any of the plaintiff's medical expenses. The defendants shall therefore pay to and on behalf of the plaintiff an attorney's fee in the amount of \$5,302.50 as set forth in Exhibit 10.

VIII.

The defendants have denied compensability of the plaintiff's injury herein. The evidence before the Court shows that plaintiff began to work for the first-named defendant as a dog bather at the defendant's grooming business. She testified she bathed and hand-dried a number of large dogs each day beginning in August 2009. She testified that in approximately October 2009, she began to have pain and swelling in her right hand. She mentioned the same to her employer on several occasions and in January 2010 told the employer she wanted to report an injury.

The plaintiff first sought medical treatment with her family physician, Dr. Burge, on January 26, 2010 (E4). He diagnosed her with carpal tunnel syndrome and prescribed a splint. Dr. Burge then referred the plaintiff to Dr. Patrick T. Hurlbut at Prairie Shoulder, Elbow & Hand Center (E3). The plaintiff was first seen by Dr. Hurlbut on March 17, 2010. After diagnostic testing, Dr. Hurlbut scheduled the plaintiff for surgery which occurred on April 1, 2010, at Lincoln Surgical Hospital. The plaintiff underwent a right carpal tunnel release along with a right wrist Dequervain's syndrome release.

The plaintiff was given restrictions for 2 weeks of light duty post surgery and lesser restrictions for the following 2 weeks at which time she was released to regular duty. In so finding the plaintiff's entitlement to temporary total disability, the Court relies upon Dr. Hurlbut's opinion in a letter dated April 27, 2010. The plaintiff was found to be at maximum medical improvement on December 2, 2010, and assigned a 2 percent permanent partial impairment of her right hand on December 29, 2010. She was given no permanent restrictions.

The defendants have generally denied the plaintiff's claim but have presented no controverting medical evidence. Nor is there really any significant departure between the parties on the facts leading up to the plaintiff's claim. It is clear that the defendant was in possession of the medical records which provide the basis of the plaintiff's claim no later than September 16, 2010 (E6). While it is true the plaintiff left the employ of the first-named defendant on less than ideal terms, her claim is nonetheless credible and supported by a preponderance of the medical evidence.

The only stipulation entered into at trial was the fact of the plaintiff's employment making it necessary for the plaintiff to present evidence on virtually every element of her claim. The Court finds, therefore, that the attorney's fee claimed by plaintiff's counsel in Exhibit 10 is reasonable and should be awarded.

As noted above, the parties did not agree to average weekly wage. The Court has reviewed the wage summaries presented in Exhibit 1 and Exhibit 7 and agrees with the analysis presented by plaintiff's counsel in Exhibit 1 and finds the plaintiff's average weekly wage to be \$297.30.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that:

1. The defendants pay to the plaintiff the sum of \$198.18 per week for 4 weeks and thereafter and in addition thereto a like sum each week for 3.5 weeks for a 2 percent impairment of her right hand.
2. The defendants shall pay the medical expenses as set forth in paragraph IV above.
3. The defendants shall pay to the plaintiff the total sum of \$59.98 for mileage expenses.
4. The defendants shall pay to the plaintiff waiting time penalties together with interest as more fully set forth in paragraph VII above.
5. The defendants shall pay to and on behalf of plaintiff an attorney's fee in the amount of \$5,302.50.

Dated at Lincoln, Lancaster County, Nebraska, on this 22nd day of June, 2011.

NEBRASKA WORKERS' COMPENSATION COURT



Laureen Van Norman
COPY

JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Award was sent by ordinary United States mail, first class postage prepaid, on this 22nd day of June, 2011, addressed as shown below, to the following:

Michael W. Khalili
Jeanelle R. Lust
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Clerk, Nebraska Workers' Compensation Court