



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

T.H.,)	No. ED98507
)	
Respondent/Cross-Appellant,)	
)	Appeal from the Labor and
vs.)	Industrial Relations Commission
)	06-135802
SONIC DRIVE IN OF HIGH RIDGE,)	
)	
Appellant/Cross-Respondent.)	Filed: December 18, 2012

OPINION SUMMARY

Sonic Drive In of High Ridge ("Employer") appeals the portion of the decision of the Labor and Industrial Relations Commission affirming and adopting the Administrative Law Judge's (the "ALJ") award of permanent partial disability benefits to T.H. ("Claimant") for psychiatric injuries she suffered as a result of being sexually assaulted at work. Claimant cross-appeals the portion of the Commission's decision modifying the ALJ's award with respect to the applicable rate of compensation. The Commission found the applicable rate of compensation for the award was \$40.00 per week.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

Division One holds:

- (1) There was sufficient competent evidence to support the award of permanent partial disability benefits to Claimant.
- (2) Employer has not demonstrated that it was prejudiced as a result of the admission of Claimant's assailant's criminal record.

- (3) There was not sufficient competent evidence in the record to support the Commission's finding that the applicable rate of compensation for Claimant's award was \$40.00 per week. Claimant's allegation in her claim for compensation that her average weekly wage was "max rate" was a factual allegation deemed admitted by Employer's untimely answer. Therefore, Claimant is entitled to the maximum rate of compensation for permanent partial disability benefits allowable under section 287.190.5(5) RSMo Supp. 2006, which is \$376.55 per week.

Opinion by: Glenn A. Norton, J. Clifford H. Ahrens, P.J. and Sherri B. Sullivan, J., concur.

Attorneys for Appellant: Stephen A. McManus

Attorney for Respondent: Mark A. Canton

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