

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-052572

Employee: Brenda Adams for Kenneth Adams, deceased

Employer: McBride & Son Enterprises

Insurer: Amerisure Companies

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 7, 2009. The award and decision of Administrative Law Judge Margaret D. Landolt, issued December 7, 2009, is attached and incorporated by this reference.

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 13th day of May 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Brenda Adams for Kenneth Adams (Deceased)

Injury No.: 02-052572

Dependents: N/A

Employer: McBride & Son Enterprises

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Amerisure Companies

Hearing Date: September 10, 2009

Checked by: MDL

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: May 30, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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 was lifting heavy doors when he felt low back pain
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: body as a whole – low back
14. Nature and extent of any permanent disability: 30% PPD of the body as a whole referable to the low back
15. Compensation paid to-date for temporary disability: \$10,960.83
16. Value necessary medical aid paid to date by employer/insurer? \$21,042.01

Employee: Brenda Adams for Kenneth Adams (Deceased)

Injury No.: 02-052572

- 17. Value necessary medical aid not furnished by employer/insurer? \$84,738.27
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$628.90/\$329.42
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$84,738.27
28 weeks of temporary total disability	\$17,609.20
120 weeks of permanent partial disability benefits	\$39,530.40
TOTAL:	\$141,877.87

23. Future requirements awarded: None

Said payments to begin 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 20% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Ms Ann Dalton

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Brenda Adams for Kenneth Adams (Deceased)

Injury No.: 02-052572

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: McBride & Son Enterprises

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

Additional Party: N/A

Insurer: Amerisure Companies

Checked by: MDL

PRELIMINARIES

A hearing was held on September 10, 2009 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Kenneth Adams ("Employee"), died since this claim was filed, and his widow Brenda Adams ("Claimant") was substituted as a party for Employee. Claimant was represented by Ms. Ann Dalton. McBride & Son Enterprises ("Employer") and its insurer Amerisure Companies were represented by Ms. Nanci Martin. Ms. Dalton requested a fee of 20% of Claimant's award.

The parties stipulated that on or about May 30, 2002, Claimant sustained an accident arising out of and in the course and scope of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; and the claim was timely filed. The parties further stipulated to rates of \$628.90 for Temporary Total Disability ("TTD") benefits, and \$329.42 for Permanent Partial Disability ("PPD") benefits.

The issues for determination by hearing are medical causation with regard to the need for a lumbar fusion; liability of Employer for past medical benefits of \$84,738.27; liability of Employer for past TTD benefits of \$17,609.20; and liability of Employer for PPD benefits.

FINDINGS OF FACT

Claimant was married to Employee on May 30, 2002, when he sustained a work related injury. On that date Claimant came home complaining of severe back pain. He complained of pain in his lower back, and pain going down his leg. His symptoms became more severe over time, and continued leading up to surgery which was performed by Dr. Piper in April, 2003.

After his back surgery, Employee was uncomfortable, had problems sleeping, and was unable to work around the house. He was not allowed to lift. He was unable to sit for long, and lied down throughout the day. After his surgery, Employee's back complaints lessened, but he took pain medications. If he missed a dose it would take him half of the next day to catch up with the pain. Claimant had to help Employee tie his shoes and wash his hair. Employee never returned to work after his back surgery. Claimant testified Employee improved following

surgery. Claimant also testified Employee did not have treatment for low back pain, and did not miss time from work for back pain before May 30, 2002.

The medical records reflect Employee was moving 200 pound steel doors in May, 2002, when he began to experience low back pain radiating down his right leg. Dr. Pearson diagnosed acute low back pain with right lower radicular component on June 3, 2002. He prescribed medication and physical therapy, and put Employee on light duty. An MRI of the lumbar spine performed on June 27, 2002, showed degenerative changes with minimal annular disc bulge at L2-3, L3-4, and L4-5, with minimal annular disc bulge at L1-2 and small disc protrusion at L5-S1.

Dr. Raskas examined Employee on July 10, 2002, and diagnosed mechanical low back pain. Additional physical therapy and light duty were recommended. Following physical therapy, Employee was sent to work hardening. When Employee did not improve, facet blocks were performed by Dr. Gresick, followed by aquatic therapy. On October 30, 2002, Dr. Raskas found Employee to be at maximum medical improvement and released him to full duty. He rated 3% PPD of the spine secondary to lumbar sprain which caused facet syndrome. At that point, Employer terminated authorized treatment, and Employee sought additional medical treatment on his own.

A second MRI of the lumbar spine performed on November 27, 2002, revealed degenerative changes with facet arthropathy and multiple level disc bulges without spinal canal stenosis or neural foraminal narrowing. Epidural steroid injections were administered. Discography and a post discogram CT were performed, and revealed a radial tear of the annulus at L5-S1.

Dr. John Wagner, a board certified orthopedic surgeon examined Employee on March 31, 2003. Dr. Wagner diagnosed degenerative disc disease at L5-S1 with a back sprain. Dr. Wagner opined Claimant's low back pain was the result of a sprain injury occurring in May 2002, and he felt no surgery should be considered until after Employee had been worked up for a possible central nervous system problem. Dr. Wagner felt that operating on Employee would be fraught with problems.

On April 9, 2003, Dr. Piper performed an anterior and posterior discectomy at L5-S1, anterior lumbar interbody fusion at L5-S1 with allograft and autograft with instrumentation. Post operatively, Employee underwent aquatic therapy.

In July, 2003, Employee underwent a cervical fusion, which is unrelated to his work injury of May 30, 2002. Following his cervical fusion, Employee was diagnosed with Amyotrophic Lateral Sclerosis ("ALS"), and died in 2006.

In April 2008, Dr. Wagner prepared a report for Employer. He reviewed the medical treatment records related to the lumbar fusion performed by Dr. Piper, as well as treatment records related to Employee's ALS. Dr. Wagner noted that the ALS was not diagnosed until after the lumbar fusion was performed. He stated that had the ALS been diagnosed before the fusion, perhaps surgery would not have been recommended due to the mortality rate of ALS.

Dr. Wagner testified Employee's ALS is not related at all to his lumbar or cervical problems, nor did it cause his lumbar or cervical problems. The lumbar and cervical problems, and the ALS, are completely independent, and have no relationship at all to each other. Dr. Wagner rated Employee's disability at 10% PPD of the body as a whole at the lumbar spine, with 5% preexisting, and 5% due to the sprain injury of May, 2002.

Dr. Wagner testified it was not unreasonable or unnecessary for Dr. Piper to have performed the lumbar fusion on Employee, although Dr. Wagner thought the patient should have been treated more conservatively, and should have been evaluated for his other problems.

Dr. Volarich examined Employee on December 8, 2004. Dr. Volarich diagnosed lumbar syndrome secondary to internal disc derangement syndrome at L5-S1 with annular tear and aggravation of degenerative disc disease and bulging at L2-3, L3-4, and L4-5 without radiculopathy, as a result of the work related injury of May 30, 2002. Dr. Volarich opined the work injury of May 30, 2002 was the substantial contributing factor causing the internal disc disruption syndrome at L5-S1 that required anterior and posterior fusions with instrumentation. He further indicated the injury also aggravated the degenerative disc disease and bulges at L2 through L5. Dr. Volarich rated 45% PPD of the body as a whole at the limbo-sacral spine due to the internal disc disruption syndrome at L5-S1 that required the fusion.

CONCLUSIONS OF LAW

Based upon a comprehensive review of the evidence, and the application of Missouri law, I find:

The lumbar fusion performed by Dr. Piper on April 9, 2003, was causally related to the work injury of May 30, 2002. Employee sustained an accident at work which resulted in immediate low back pain and radiculopathy. These complaints were not improved by conservative treatment measures, which ultimately led a qualified surgeon to perform surgery that improved his symptoms. Dr. Wagner, Employer's expert, testified the surgery was reasonable, although, he would have tried other conservative measures first. Dr. Wagner testified Claimant's ALS is in no way related to, nor did it cause his lumbar complaints. Dr. Volarich opined Employee's surgery was a result of his work related injury.

Although the examining physicians disagree as to whether Employee's ALS condition should have been given greater weight when considering Employee as a surgical candidate, because Employee's work accident was the cause of his symptoms and need for surgery, I find Employer is liable for Employee's medical expenses in the amount of \$84,738.27, and unpaid TTD benefits of \$17,609.20.

I also find Claimant sustained 30% PPD of the body as a whole related to the lumbar spine for the disc protrusion with annular tear with internal disc disruption syndrome, which resulted in surgery for an anterior and posterior fusion at L5-S1 with hardware placement.

This award is subject to an attorney's lien in the amount of 20% in favor of Claimant's attorney, Ann Dalton.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation