

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

Injury No.: 02-112703

Employee: Cordia Anderson
Employer: Owens Brockway
Insurer: AIG National Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: September 24, 2002
Place and County of Accident: St. Louis City, Missouri

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 22, 2005. The award and decision of Administrative Law Judge Matthew D. Vacca, issued April 22, 2005, 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 7th day of October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Cordia Anderson Injury No.: 02-112703

Dependents: N/A Before the
Division of Workers'
Employer: Owens Brockway **Compensation**
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: AIG National Insurance Company
Hearing Date: February 4, 2005 Checked by: MDV: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: September 24, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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:
Injured back dumping 55-gallon drum.
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: Back
14. Nature and extent of any permanent disability: Permanent total disability
15. Compensation paid to-date for temporary disability: \$10,493.79
16. Value necessary medical aid paid to date by employer/insurer? \$74,094.17

Employee: Cordia Anderson Injury No.: 02-112703

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$649.35
19. Weekly compensation rate: \$432.90/\$340.12
20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable:

Underpaid temporary total disability per agreement \$1,373.62

Permanent total disability benefits from Employer beginning September 18, 2003 at \$432.90 per week for Claimant's lifetime *

22. Second Injury Fund liability: No

TOTAL: \$1,373.62 *

(* = a contingent lifetime benefit)

23. Future requirements awarded: None

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:

James Guirl

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Cordia Anderson	Injury No.: 02-112703
Dependents:	N/A	Before the
Employer:	Owens Brockway	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
Insurer:	AIG National Insurance Company	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: MDV:tr

ISSUES PRESENTED

The issues presented for resolution by way of this hearing were the nature and extent of any permanent partial disability. The Second Injury Fund is an additional party.

PREFACE

Claimant is a 42-year-old manual laborer. She worked since 1991 as a bottle manufacturer for Owens Brockway. At the time of the injury Claimant was lifting a 55-gallon drum of rejected material into a hopper when she strained her back. She underwent conservative treatment and ultimately was diagnosed with a herniated nucleus pulposus at L5-S1 and underwent a laminectomy and fusion. Claimant went to physical therapy which was terminated early due to her inability to perform it. Claimant returned to work with restrictions and tried on several occasions to perform the work but was unable to do so. Claimant was eventually terminated from her position at Owens Brockway because she was unable to perform her

job. Claimant treated with Dr. Stillings until 2004 and further restrictions were placed on her. Claimant treated with Dr. Piper at BJC in St. Peters for pain. She continues to have back problems and radiculopathy into her back. She is unable to sit, stand or walk for prolonged periods and is unable to bend or stoop.

Claimant contends that she is permanently and totally disabled as a result of this injury and some preexisting injuries.

The Employer admits the accident but contends that the single level disc herniation and fusion created a situation where she should be able to return to some work. There is no nerve impingement and no radiculopathy and the level of complaints should not prevent the Claimant from working.

The Second Injury Fund contends there are no prior injuries and therefore it has no liability.

FINDINGS OF FACT

1. Claimant is 45 years old born on July 17, 1959. She was 42 years old on the date of the injury and last worked on September 21, 2003. The date of the accident is September 24, 2002. Claimant has a twelfth grade education graduating in 1977 from West Tallahatchee High School in Mississippi. She has no follow up, vocational or specialized training.
2. Following graduation from high school she got her first job at the Ballwin Plastic plant in Greenwood, Mississippi cleaning parts. Following that she worked wiping parts on pianos.
3. Claimant went to work for Siegel Roberts Plating in 1988 and worked there as a parts packer of car parts, grills and lights and was laid off.
4. Claimant went to work for Owens Brockway. When she went to work there she had no prior back injuries. She first worked as a packer of parts of detergent bottles working in that capacity for three to four years. Following that Claimant ran a machine as a machine operator for nine years. In this position she would operate a blow-mold bottle-making machine and would be required to climb, lift, bend, stoop, and squat to perform her duties. She was working in this capacity 48 to 60 hours a week when she sustained an accident.
5. On the date of the accident she was lifting a 55 pound bottle of rejected material to dump it into a grinder and as she was setting down the container, she twisted her back. At that time Claimant felt a sharp pain into her left leg going into her foot. She stood there in pain for about 10 to 15 minutes and got help and reported the injury to her supervisors. She finished her shift at 1:00 a.m., but did not continue to work for the remainder of that shift.
6. Claimant was treated at Barnes Care with prescription medicine and then physical therapy. When the pain got worse she was provided with an MRI. The MRI was interpreted as disclosing a bulging disc and she was sent to Dr. Robson on December 2.
7. Dr. Robson gave Claimant prescription medicine, NSAIDS, and the condition worsened. A myelogram was performed followed with physical therapy and ultimately surgery.
8. The steroid injections did not provide any relief to Claimant.
9. The surgery performed was a lumbar fusion. Disc material was removed and a bone graft was placed along with hardware.
10. Dr. Kennedy assisted in this surgery which took place March 31, 2003.
11. The surgery did not help Claimant's condition and she felt worse after the surgery than before the injury. She had low back pain radiating into the left with numbness and tingling into the left leg.
12. The Claimant followed up with Dr. Robson who sent her to physical therapy and teamwork physical therapy. She went about nineteen times and the physical therapy was no help. She was then sent for physical therapy at the Aquatic Fitness Center but that didn't help either. There has been no further MRI or diagnostic tests performed.
13. Dr. Robson released Claimant on September 18, 2003 with restrictions of no stooping, bending or twisting at the waist, and no lifting. Claimant worked for three days but was unable to work for very long. Now she can't stand for very long, can't stand for longer than ten minutes, has to sit down often, can only walk for about ten minutes and then starts to limp and then has to recline with her legs up. Claimant testified that sleeping is difficult. Claimant's regular physician is Dr. Sill.

14. Dr. Sill has referred her to Dr. Piper and Dr. Piper has her on a pain management regime with Dr. Jerr.
15. Claimant believes she has gotten worse after all of her treatment. The pain now is worse going all the way down the left leg and through the buttocks. She takes Oxycontin, Percocet, Skelaxin, Neurontin, was placed on Prozac a month ago, takes a water weight diuretic and has become depressed over her physical condition and lack of medical improvement.
16. Claimant has not looked for work. She doesn't believe she is able to work because she is sleepy, in pain, drowsy, and "doped-up" most of the time. She is in constant pain even with the prescriptions and alternately has to stand, lie down, sit or walk.
17. Prior to this injury Claimant suffered from a hammertoe on her right foot. Dr. Stein performed surgery and clipped the bone.
18. Claimant believes that the back injury is the reason that she is unable to work.
19. When Claimant returned to work her supervisor wanted her to mop and bend but she was unable to do so. She said she cannot do her job and when Dr. Robson gave her permanent restrictions the Employer had no work within those restrictions so Claimant was terminated.
20. The Claimant has not applied for unemployment insurance benefits although she has been granted social security disability benefits in the amount of \$634.00 per month.
21. Dr. Musich and Mr. England, a vocational counselor, believe Claimant is permanently and totally disabled from competing in the open labor market.
22. Dr. Robson placed a rather drastic 10 pound lifting restriction on Claimant with no bending, stooping, twisting or awkward positions and brief position changes every 30 minutes.
23. Dr. Robson did not believe Claimant could perform her old job. He also did not believe she was magnifying her complaints. He agrees that he is not familiar with Claimant's technical, educational or job training skills. He thought Claimant sustained a 20% permanent partial disability as a result of the injury.

RULINGS OF LAW

1. Claimant became permanently and totally disabled as a result of the back injury and the associated depression resulting therefrom occurring on September 24, 2002 at Owens-Brockway.

DISCUSSION

Mr. England's vocational assessment was un rebutted and was sufficiently probative to support the findings herein. Claimant suffers from continuing radiculopathy, depression and prescription drug side effects.

The physical restrictions on movement by Employer's physician are severe and support the award.

Date: _____ Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

 Patricia "Pat" Secret

Director
Division of Workers' Compensation