

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

Injury No.: 03-049729

Employee: Keith Bales
Employer: Missouri Department of Corrections
Insurer: Missouri Office of Administration
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Carl W. Strange, issued December 7, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 15th day of April 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Keith Bales

Injury No. 03-049729

Dependents: N/A

Employer: Missouri Department of Corrections

Additional Party: Second Injury Fund

Insurer: Missouri Office of Administration

Hearing Date: October 26, 2009

Checked by: CS/rf

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? Denied (See Findings)
3. Was there an accident or incident of occupational disease under the Law? Denied (See Findings)
4. Date of accident or onset of occupational disease? Alleged May 9, 2003
5. State location where accident occurred or occupational disease contracted: Alleged Bonne Terre, St. Francois County, 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? See Findings
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 happened or occupational disease contracted: Employee alleged he was walking in the power plant to check his meter readings on the air compressor when he slipped on a wet floor falling on his buttocks and tail bone injuring his back, shoulder, and body as a whole.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Alleged body as a whole referable to his back and shoulder.
14. Nature and extent of any permanent disability: Denied (See Findings)
15. Compensation paid to date for temporary total disability: \$0.00
16. Value necessary medical aid paid to date by employer-insurer: \$111.21
17. Value necessary medical aid not furnished by employer-insurer: None
18. Employee's average weekly wage: \$530.00
19. Weekly compensation rate:
 - \$353.33 for temporary total disability
 - \$340.12 for permanent partial disability
20. Method wages computation: By Agreement
21. Amount of compensation payable: Denied (See Findings)
22. Second Injury Fund liability: N/A
23. Future requirements awarded: N/A

FINDINGS OF FACT AND RULINGS OF LAW

On October 26, 2009, the employee, Keith Bales, appeared in person and by her attorney, Robert Miller, for a hearing for a final award. The employer-insurer was represented at the hearing by Assistant Attorney General Gregg Johnson. The Second Injury Fund did not appear. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about May 9, 2003, Missouri Department of Corrections was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was a self-insured employer through the Missouri Office of Administration.
2. On or about May 9, 2003, the employee was an employee of Missouri Department of Corrections and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. The employer had notice of employee's accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage was \$530.00, his rate for temporary total disability and permanent total disability is \$353.33, and his rate for permanent partial disability is \$340.12.
6. The employer has furnished \$111.21 in medical aid to employee.
7. The employer has paid no temporary total disability benefits to the employee.

ISSUES:

1. Accident
2. Medical Causation
3. Nature and Extent
4. Liability of the Fund
5. Child Support Lien

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical Records of Arjun Singh, MD;
- B. Medical Records of Alexander Beyzer, MD & Faisal Albanna, MD;
- C. Medical Records of Mitchell Mirbaha, MD;
- D. Medical Records of Jefferson Memorial Hospital;
- E. Medical Records of Dennis Sumski, DO;

- F. Medical Records of Gurpreet Padda, MD;
- G. Medical Records of Parkland Health Center;
- H. Medical Records of Daniel Reiter, DC;
- I. Medical Records of Edward Pepper, MD;
- J. Medical Records of St. Louis University Hospital;
- K. Medical Records of Parkland Health Clinic;
- L. Plant Log Book Records of Missouri Department of Corrections;
- M. Inter-office Communications of Missouri Department of Corrections;
- N. Accident/Incident Cause Evaluation of Missouri Department of Corrections;
- O. Deposition of Dr. Frederic M. Simowitz; and
- P. Deposition of David Henry Walls.

APPLICABLE LAW

- The burden is on the claimant to prove all material elements of his claim. *Melvies v Morris*, 422 S.W. 2d 335 (Mo.App.1968). The employee has the burden of proving not only that he sustained an accident that arose out of and in the course of employment, but also that there is a medical causal relationship between his accident and the injuries and the medical treatment for which he is seeking compensation. *Griggs v A.B. Chance Company*, 503 S.W. 2d 697 (Mo.App.1973).

FINDINGS OF FACT & RULINGS OF LAW:

Issue 2. Medical Causation

Keith Bales (hereinafter “employee”) has requested an award of compensation from the Missouri Department of Corrections (hereinafter “employer”) for injuries that he claims he sustained in an alleged accident that occurred on May 9, 2003. According to his claim for compensation, the employee alleged he was walking in the power plant to check his meter readings on the air compressor when he slipped on a wet floor falling on his buttocks and tail bone injuring his back, shoulder, and body as a whole. Additionally, the employee alleged under section 10 of his claim for compensation that he had previous injuries to his upper back and left shoulder. At the time of the hearing, the employee testified on cross-examination that he did get into a fight in the past but no chair was broken over his upper back, and he had no prior upper back pain.

The employee’s medical records are extensive and revealing as to his medical condition prior to May 9, 2003. With regard to his low back, it is clear that the employee had been having pain since 1997 and was actively treating for a low back condition since August 21, 2001 (Employee Exhibit A, Pages 25-40). On August 21, 2001, Dr. Arjun Singh, MD noted that the employee had back pain and identified the lumbar {L/S} and thoracic spines {T/Spine} in his records (Employee Exhibit A, Page 34). Additionally, the employee had lower back pain radiating down both legs sufficient enough to have a consultation with Dr. Singh on April 4, 2003 and a subsequent referral appointment with Dr. Albanna scheduled for May 12, 2003 (Employee Exhibit B, Page 31). With regard to his left shoulder, the employee had a September 5, 1996, left shoulder arthroscopic surgery to repair a superior labrum tear (Employee Exhibit J).

The employee also had been actively treating and taking medication for shoulder pain with Dr. Arjun Singh and Dr. Mitchell Mirbaha since approximately February 17, 2003 (Employee Exhibit C) (Employee Exhibit A, pages 25-31). An MRI taken on February 24, 2003, indicated that the employee had at least a partial rotator cuff tear (Employee Exhibit C, Page 1). In addition to Dr. Singh's August 21, 2001 note and the employee's claim for compensation noting prior upper back problems, Dr. Dennis Sumski noted on May 30, 2003, that the employee indicated that he had ongoing complaints of upper back pain for years due to working on an oil rig and a chair being broken over his upper back in a fight (Employee Exhibit E). Just a few months prior to that, Dr. Mirbaha noted on February 17, 2003, that the employee had numerous complaints all over his body. On March 3, 2003, Dr. Mirbaha also indicated that the employee was trying to obtain disability for his other multiple problems (Employee Exhibit C).

Based on these facts and the evidence, I find that the employee is not credible and has failed to satisfy his burden of proof on the issue of medical causation. There is no credible evidence to support a finding that an alleged slip and fall incident was a substantial factor in causing the employee's current back, shoulder, and body as a whole injuries; however, there is sufficient credible evidence to support a finding that these conditions were pre-existing the alleged May 9, 2003 accident. The employee's claim for compensation is therefore denied.

Given the denial of the employee's claim based on medical causation, the remaining issues are moot and shall not be ruled upon.

Based on the denial of the employee's underlying claim against the employer, the employee's claim against the Second Injury Fund is also denied.

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation

Date: _____

A true copy: Attest:

Ms. Naomi Pearson