

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 06-047549

Employee: Frances Bass
Employer: Webco Manor
Insurer: Missouri Nursing Home Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: May 6, 2006
Place and County of Accident: Webster County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated June 9, 2008.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued June 9, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Frances Bass Injury No. 06-047549
Dependents: N/A
Employer: Webco Manor
Additional Party: Second Injury Fund
Insurer: Missouri Nursing Home Insurance Trust
Hearing Date: 3/10/08 Checked by: MEH

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: 5/6/06
5. State location where accident occurred or occupational disease contracted: WEBSTER COUNTY, MO
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 happened or occupational disease contracted:
MOVING A BUCKET CONTAINING MOP WATER WITH HER LEFT FOOT.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Parts of body injured by accident or occupational disease: BODY AS A WHOLE
14. Compensation paid to-date for temporary disability: NONE
15. Value necessary medical aid paid to date by employer/insurer? N/A

16. Value necessary medical aid not furnished by employer/insurer? NONE

Employee: FRANCES BASS

Injury No. 06-047549

17. Employee's average weekly wages: \$484.75

18. Weekly compensation rate: \$323.17

19. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

20. Amount of compensation payable: SEE AWARD

Unpaid medical expenses: N/A

0 weeks of temporary total disability (or temporary partial disability)

FUTURE MEDICAL TREATMENT

Total: SEE AWARD

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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:

JOHN WISE

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Frances Bass

Injury No. 06-047549

Dependents: N/A

Employer: Webco Manor

Additional Party: Second Injury Fund

Insurer: Missouri Nursing Home Insurance Trust

Hearing Date: 3/10/08

Checked by: MEH

The parties appeared before the undersigned administrative law judge on March 10, 2008, for a temporary hardship hearing. The claimant appeared in person represented by John Wise. The employer and insurer appeared represented by Patrick Reidy. The Second Injury Fund did not appear. Memorandums of law were filed by March 31, 2008.

The parties stipulated to the following facts: On or about May 6, 2006, Webco Manor was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Missouri Nursing Home Insurance Trust. On the alleged injury date of May 6, 2006, Frances Bass was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. The employment occurred in Webster County, Missouri. The claimant notified the employer of her alleged injury as required by Section, 287.420, RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$484.75, which is sufficient to allow a compensation rate of \$323.17 for temporary total and permanent partial disability compensation. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid no medical benefits. The attorney fee being sought is 25%.

ISSUES:

1. Whether the claimant sustained an accident which arose out of the course and scope of employment.
2. Whether the accident caused the injuries and disabilities for which benefits are being claimed.
3. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

FINDINGS OF FACT:

The claimant worked for Webco Manor as a nurse's aid and housekeeper since November 1984. Her duties included general cleaning, linens, laundry, and patient care such as giving meals and baths. She is currently 70 years old.

On May 6, 2006, she had finished cleaning and was putting things away. There was a mop bucket in the floor. It was a 5 gallon bucket, approximately 1/2 to 2/3 full of water. She used the outside of her left foot to move it out of the way, approximately 2 – 3 feet. She had to strain to push the bucket. She did not feel pain as she moved the bucket but did feel pain 5 – 10 seconds later as she turned and walked out of the apartment and down the hall. She felt acute and severe pain down in the left lower back and the back of her left leg from the waist to the ankle.

Claimant told the medical aid, Diana Clift, that her leg was hurting. Claimant then went to her car where she had pain medication for a previous rotator cuff surgery. She used some of this medication.

This incident occurred about 3:30 p.m. Claimant worked until the end of her shift at 8:30 p.m. She continued to have pain. It worsened after she got home. The next day she sought medical treatment at St. John's emergency room.

St. John's records show that she was seen on May 7, 2006. She gave a history that her leg hurt and the pain had started the previous day. The nurse's notes state "no recent injury." The claimant testified that she was in such extreme pain that she does not remember anything that she told the staff in the emergency room, she just wanted to get relief from her pain.

Claimant went to Dr. Mestin, a chiropractor, the next day, May 8, 2006. The history given in Dr. Mestin's notes is "Pain started two days ago. Patient was walking at work and pain came on all of a sudden." This history was filled out by the nurse not by the claimant. Claimant testified that the history was accurate as her pain began as she began walking down the hall within a few seconds of moving the bucket.

Claimant testified that she discussed her injury with her supervisor on May 11, 2006. A report of injury was filled out on that date. Claimant said that when she notified her supervisor, Debby Ginetti, she told her that she felt her back and leg pain was related to her employment, and when asked what incident caused it she said she discussed moving a chair in the apartment she was cleaning and moving the bucket with her left foot. Claimant testified that she had no pain or problems doing her job before May 6, 2006. Claimant was sent to Dr. Dennis Robinson on May 11, 2006.

Dr. Robinson's notes show a follow-up from the emergency room. His notes state she "hurt her back last week." She received an injection to the left sacroiliac joint. She was also prescribed medications.

Claimant was referred to Dr. Scarrow, a neurosurgeon. On May 18, 2006, she had an MRI of the lower back

which showed multilevel degenerative changes; a central disc protrusion at L4-5 with moderate to severe degenerative disc disease; and small left foraminal disc protrusion at L2-3 without nerve root compression. Claimant continued to treat with Dr. Robinson and received treatment at the pain clinic through the summer of 2006. Dr. Scarrow performed three epidural steroid injections. She said these would help for 2 – 3 days. She also had physical therapy. The physical therapy initially helped, and Dr. Robinson returned her to work on August 28, 2006. Her duties were the same as before. She continued to work until June 2007.

Dr. Shane Bennoch examined the claimant on October 30, 2006. Dr. Bennoch testified by deposition. He diagnosed her with “acute onset of low back pain with radiculopathy, most likely nerve impingement secondary to disc disease; and onset of left calf pain and muscle spasm, persistent, uncertain etiology, possibly related to an S1 radiculopathy.” Dr. Bennoch testified that within a reasonable degree of medical certainty, the incident of May 6, 2006, when claimant pushed the mop bucket with her foot, was the prevailing factor in causing the injuries. He further testified that when he used the term “uncertain etiology” he did not mean that he was uncertain that the May 6, 2006, incident was the prevailing factor; rather, he was referring to the uncertainty whether the pain was coming from a torn muscle in the calf or radiating from the back. Dr. Bennoch testified that she had not reached maximum medical improvement in the area of the calf since she is still having persistent pain, but found the overall severity of the pain in her back had improved. Dr. Bennoch recommended a repeat MRI of the lumbar spine. If this did not disclose a reason for the calf pain then would find an MRI of the calf muscles helpful to see if it is something like a torn muscle.

Dr. Bennoch testified that pushing the bucket with her foot was an appropriate mechanism of injury. He also said that it was not unusual for an individual to have a delayed onset of acute pain shortly after such an incident. Dr. Bennoch also testified that the S1 radiculopathy was distinct from the degenerative changes shown on the MRI taken May 18, 2006.

Claimant testified that although physical therapy helped, she currently experiences severe pain in the back and down the left leg; this causes problems for her walking or sitting more than 30 minutes and squatting. She also has problems with daily activities such as vacuuming and reaching. She still has problems with the left leg as it hurts in the morning. This pain was in the back of the leg, and it was worse in the calf. She cannot do things that require bending and reaching, such as into a cabinet. She stopped working because of the daily pain. She felt she could not continue without pain medication.

CONCLUSIONS OF LAW:

1. Whether the claimant sustained an accident which arose out of the course and scope of employment.

After carefully considering all of the evidence, I conclude that the claimant sustained a compensable accident on May 6, 2006. I find that this accident arose out of the course and scope of her employment as a housekeeper at Webco Manor, when, in a single specific incident, involving an unusual strain, she moved the bucket of mop water with her left foot and felt acute symptoms of pain within the next 5 – 10 seconds when she turned to leave the apartment and began to walk down the hall.

2. Whether the accident caused the injuries and disabilities for which benefits are being claimed.

Dr. Bennoch’s opinion is the only medical evidence presented. He diagnosed her with “acute onset of low back pain with radiculopathy, most likely nerve impingement secondary to disc disease; and onset of left calf pain and muscle spasm, persistent, uncertain etiology, possibly related to an S1 radiculopathy.”

Dr. Bennoch testified that within a reasonable degree of medical certainty, the incident of May 6, 2006, when claimant pushed the mop bucket with her foot, was the prevailing factor in causing the injuries. In his opinion, pushing the mop bucket with her left foot was an appropriate mechanism of injury. Commenting on the 10 seconds between the push and her experiencing pain, he testified that it was not unusual for there to be a delayed onset of pain shortly after such an incident. He further testified that when he used the term “uncertain etiology” he did not mean that he was uncertain that the May 6, 2006, incident was the prevailing factor; rather he was referring to the uncertainty whether the pain was coming from a torn muscle in the calf or radiating from the back.

Based on the uncontradicted testimony of Dr. Bennoch, I find that the claimant’s injuries were caused by the accident of May 6, 2006. I find that based on the medical opinion of Dr. Bennoch, pushing the bucket of water with her left foot was the prevailing factor in causing her injuries.

3. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

Dr. Bennoch testified that claimant has not reached maximum medical improvement in the area of the calf since she is still having persistent pain, but found the overall severity of the pain in her back had improved. Dr. Bennoch

recommended a repeat MRI of the lumbar spine. If this did not disclose a reason for the calf pain, he recommends an MRI of the calf muscles to see if claimant has a torn muscle.

Based on the opinions and testimony of Dr. Bennoch, I find that the claimant has sustained injuries that will require future medical care in order to cure and relieve the effects of the injuries. Because the employer has refused to provide the claimant with any medical treatment, I find that the employer has waived their right to direct medical treatment. Therefore, the employer shall provide the treatment recommended with Dr. Bennoch or with such other medical providers as directed by him.

Attorney for the claimant, John Wise, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

This is a temporary award so the matter will remain open and may be reset at the request of either party.

Date: June 9, 2008

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Jeffrey W. Buker
Jeffrey W. Buker
Director
Division of Workers' Compensation