

CORRECTING AWARD

Injury No.: 06-026997

Employee: Deborah Beatrice
Employer: University of Missouri
Insurer: Self-Insured

We issue this award to correct our award of August 1, 2013. The August 1, 2013 award is superseded in its entirety by this Correcting Award.

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 26, 2012. The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued November 26, 2012, 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 2nd day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Deborah Beatrice

Injury No. 06-026997

Dependents:

Employer: Curators of the University of Missouri

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Boone Hospital Center (Health Care Provider)

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

Insurer: Self-Insured

Hearing Dates: July 24, 2012 and August 23, 2012

Checked by: RJD/ga

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: March 28, 2006
5. State location where accident occurred or occupational disease was contracted: Columbia, Boone 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? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Employer is self-insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee, a nurse, was assisting a difficult birth, the bed was raised up high, and Claimant, who is 5'2" tall, was holding the patient's head for an extended period of time, causing Employee to experience back pain.
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: Low back.
14. Nature and extent of any permanent disability: 23% permanent partial disability of the body as a whole.
15. Compensation paid to-date for temporary disability: \$390.12
16. Value necessary medical aid paid to date by employer/insurer? \$28,258.45

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- 17. Value necessary medical aid not furnished by employer/insurer? \$122,713.72
- 18. Employee's average weekly wages: \$1,024.00
- 19. Weekly compensation rate: \$682.68 for temporary total disability; \$365.08 for permanent partial disability.
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

From Employer:

92 weeks of permanent partial disability benefits	\$33,587.36
Medical expenses	\$122,713.72
17 weeks of temporary total disability benefits	\$11,605.56
<u>TOTAL</u>	<u>\$167,906.64</u>

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:

William Rotts and Cullen Cline

Employee: Deborah Beatrice

Injury No. 06-026997

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Deborah Beatrice

Injury No: 06-026997

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Curators of the University of Missouri

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

Additional Party: Boone Hospital Center (Health Care Provider)

Insurer: Self-Insured

Checked by: RJD/ga

FINDINGS OF FACT and RULINGS OF LAW:

ISSUES DECIDED

The evidentiary hearing in this case was held on July 24, 2012 in Columbia. Claimant, Deborah Beatrice, appeared personally and by counsel, William Rotts and Cullen Cline; Employer, University of Missouri (self-insured), appeared by counsel, Richard Montgomery. Boone Hospital Center did not appear. The record in the case was left open until August 23, 2012 for submission of the medical report and *curriculum vitae* of Dr. James Coyle. The parties requested leave to file post-hearing briefs, which leave was granted. The case was submitted on October 24, 2012. The hearing was held to determine the following issues:

1. Whether Employee, Deborah Beatrice, suffered an “injury” as defined by Chapter 287, RSMo;
2. Whether the work-related accident of March 28, 2006 was the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
3. The nature and extent of Claimant’s permanent disability, if any;
4. Whether medical treatment obtained by Claimant was reasonable and necessary to cure and relieve Claimant from the effects of the work-related accident of March 28, 2006;
5. Whether Employer shall be ordered to reimburse Claimant for any or all of the medical charges in question;
6. Whether the temporary or partial award of September 15, 2008 shall be doubled for Employer’s alleged failure to comply therewith;
7. Whether costs and attorney’s fees shall be ordered payable pursuant to Section 287.560; and
8. Whether additional temporary total disability (“TTD”) shall be awarded, and if so, for what period(s) of time.

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STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over this case;
2. That venue for the evidentiary hearing is proper in Boone County;
3. That the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;
4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That Claimant's average weekly wage is \$1,024.00, resulting in compensation rates of \$682.68 for temporary total disability benefits and \$365.08 for permanent partial disability benefits;
6. That Claimant, Deborah Beatrice, sustained an accident arising out of and in the course of her employment with the University of Missouri on March 28, 2006;
7. That the notice requirement of Section 287.420 is not a bar to Claimant's Claim for Compensation herein;
8. That the University of Missouri was an authorized self-insured for Missouri Workers' Compensation purposes at all relevant times;
9. That Employer-Insurer paid \$28,258.45 in medical benefits and \$390.12 in temporary total disability ("TTD") benefits; and
10. That Employee Exhibits A through G and Employer Exhibits 1 through 9, which were admitted at the August 7, 2008 hearing, are admitted into evidence.

EVIDENCE

The evidence consisted of the transcript of the August 7, 2008 hearing; the testimony of Claimant, Deborah Beatrice, the exhibits admitted at the August 7, 2008 hearing (pursuant to the parties' stipulation); additional medical records; the transcript of the deposition testimony of Dr. Thomas R. Highland taken October 20, 2011; the *curriculum vitae* of Dr. Anthony H. Guarino; the October 27, 2008 discogram report of Dr. Anthony Guarino; the August 13, 2012 medical

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report and *curriculum vitae* of Dr. James Coyle which was admitted on August 23, 2012; attorneys' time and expense records; payment summary.

DISCUSSION

As noted above, this case was previously heard by the undersigned administrative law judge on August 7, 2008 and a TEMPORARY OR PARTIAL AWARD was issued in this case on September 15, 2008. The evidence submitted at the July 24, 2012 hearing (including the additional evidence submitted on August 23, 2012) was consistent with the TEMPORARY OR PARTIAL AWARD. Therefore, the TEMPORARY OR PARTIAL AWARD is affirmed in its entirety, and same is incorporated herein by reference.

The TEMPORARY OR PARTIAL AWARD contained the following ORDER:

Employer and Insurer are ordered to provide Claimant with all such medical, surgical and other treatment as may reasonably be required to cure and relieve her from the effects of the work accident of March 28, 2006, including, but no (sic) limited to, the lumbar discograms extending from L3 to S1 with post-discogram CT recommended by Dr. Michael Chabot.

No application for review was taken from the September 15, 2008 TEMPORARY OR PARTIAL AWARD.

After the TEMPORARY OR PARTIAL AWARD was issued, Employer scheduled Dr. Anthony Guarino to perform the discogram on October 27, 2008. Claimant contacted Dr. Guarino's office prior to the procedure to inform them that she had previously had an allergic reaction to the dye/contrast normally used in these procedures and other similar procedures (such as CT scans) requiring contrast, so that pre-medication precautions could be taken. No pre-medication or other precautions were taken and the procedure was done without the dye/contrast. Dr. Guarino's report of October 27, 2008 does not address the fact that contrast was not used, nor does it discuss why contrast was not used. Dr. Guarino's conclusions were as follows:

This patient has lumbar degenerative disc disease. Dr. Chabot asked for a discogram to be performed to help clarify a specific area that could be treated by him. No specific site was identified during the procedure today. No controls were found. Dr. Chabot will decide what to do with this information when the patient presents for further evaluation this day.

Dr. Chabot prepared a report dated October 27, 2008, indicating that the discogram reproduced pain at every level of the lumbar spine and no control level was ever established. Dr. Chabot indicated that the origin of complaints was poorly defined, and with Claimant's history of

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depression, he felt there was a strong component of psychosocial issues at play in her subjective complaints. Dr. Chabot recommended Claimant be evaluated for consideration of placement of a spinal cord stimulator as Dr. Street had previously considered, but before doing so, recommended a MMPI to determine if Claimant was actually a candidate for that procedure.

Per Dr. Chabot's recommendation, Employer scheduled an appointment with Dr. Wayne Stillings for MMPI testing and evaluation, but Ms. Beatrice did not attend at her attorney's recommendation.

What transpired after this point is well-summarized by Dr. Highland's deposition testimony as follows:

Q. Doctor, I'm going to pick up where I think we left off in November of 2007. I understand that after that deposition, there was a request by Deborah to revisit your services. And she came back to actually meet with you – let's see—in 2008, seeking your services to perform a surgery that you were thinking might be possible, but hadn't reached a final conclusion yet, is that true?

A. Yes, I believe you are talking about May 19th, 2008.

Q. Let's see.

A. Actually, there was a phone call on May 12th, 2008 --.

Q. That's right.

A. --that started that discussion about possible surgery.

Q. Doctor, it was your opinion that she was in need of additional diagnostic testing?

A. Yes.

Q. And at least if I understand correctly, a hearing was conducted before the Division of Workers' Compensation, and a discogram with dye was ordered. Were you aware of that?

A. Yes.

Q. And she did, in fact, go to have a discogram prepared at the employer's expense, but it was a discogram without dye?

A. Correct.

Q. That was supplied to you – the results of that exam. Did you have occasions to review those – the discogram without dye results?

A. I had –well, the only thing to review was the report by the physician who performed the discogram. And I did have a chance to review that.

Q. Was that adequate for your purposes in determining whether she was a surgical candidate or not?

A. No.

Q. The dye is important?

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- A. Well, there is two issues. One, the dye is very important; and two, you want to have a control disc, meaning you want to do a disc that is normal and does not cause the patient any pain. And I do not believe that discogram done by the physician in St. Louis had a normal control level.
- Q. So there are actually two deficiencies to the discogram that you reviewed?
- A. In my opinion, yes.
- Q. I understand that Deborah Beatrice came back and actually had the discogram done again, but here, locally?
- A. She did.
- Q. Was that with Dr. Tiede?
- A. Yes.
- Q. And I think one of the problems that apparently had surfaced was that Deborah Beatrice indicated that she was having difficulties with the dye, that she may have had an adverse reaction in an earlier discogram?
- A. Well, I'm not sure what kind of study or test it was, but she had a history of some type of reaction to the dye, yes.
- Q. But there's –
- A. I don't think it was to a discogram, however.
- Q. Okay. But there is an alternative to the dye that is traditionally used in a discogram with dye?
- A. Well, no. But you can prepare the patient so that they don't react to the dye. You just have to give them medication beforehand, and then they won't react to the dye.
- Q. All right. That was done correctly then with the discogram with dye that was done by Dr. Tiede?
- A. That is correct.
- Q. And that was done in October of 2009?
- A. That's correct. Dr. Tiede sent me a report dated October 30th, 2009, when he – and in that report, he relayed to me the results of the discogram that he did.
- Q. Can you summarize what those findings would have been?
- A. First of all, he did the L3-4 disc, which was a control disc, and it caused the patient no pain. He then did a –he then did the L4-5 disc. The L4-5 disc reproduced her back pain and some of the left hip pain. He did the L5-S1 disc, and that also reproduced back pain and pain in her left leg. So in summary, the patient's pain was reproduced at the L4-5 and L5-S1 disc, and the disc above that did not cause her any pain.
- Q. Did that lead you to any conclusion with regard to whether she would be a candidate for surgery?
- A. It was my opinion that based on the results, that surgery would be beneficial for this patient.

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Q. Would that have been a two-level fusion?

A. Yes.

Q. And an anterior fusion. True?

A. Yes.

Q. Of what disc levels?

A. At L4-5 and L5-S1.

Q. And so, you – After that conclusion, did you, in fact perform the surgery on Deborah?

A. Yes.

Q. I would like to direct you to your surgical notes of June 2nd, 2010.

A. I have the operative report of the surgery on my computer in front of me. It is dated June 2nd, 2010.

Q. Could you explain for the benefits of the record what procedures you went through that day and your findings?

A. Yes. I did an anterior approach to L4-5, L5-S1. This is done with a general surgeon by the name of Dr. John Adams.

The general surgeon does the approach and exposes the front of the vertebrae or spine, and then entered the disc, removed the entire disc material, including any bulging disc. And then, do a fusion by putting in a cadaver bone, and then put a plate – this – and this was done at both L4-5 and L5-S1.

I then turn the patient prone and then go into the back side of her back and did partial laminectomies to make sure that there was no residual nerve compression left in her back.

Q. In your opinion, was the surgery a success?

A. Yes.

Q. Did your visual observation of her disc and vertebrae conform with what was presented in the early CT discogram with dye?

A. It conformed and confirmed what was seen on MRI scans, on the myelogram, and the discogram as well.

Q. Now, by the time the surgery was performed, Deborah, was she reporting to you difficulties that she was experiencing before the surgery?

A. Yes.

Q. Do you remember what she would have been telling you were her circumstances the months preceding – the immediate months preceding her surgery?

A. Well, I think you referred to the symptoms she was having with her bladder. She began to have incontinence of urine. She also had an occasional incontinence of her bowels. And she was, in general, having increasing back and leg pain as well.

Q. She was experiencing difficulties in movement?

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- A. She was having more difficulty walking, yes.
- Q. And reporting constant pain?
- A. Yes.
- Q. At a high level?
- A. Yes.
- Q. Would that have been consistent with the type of spinal issues that you determined in the disc problems at L4-5, L5-S1?
- A. Yes. And it was also confirmed by a urologist who saw Ms. Beatrice previously, who confirmed that her urinary problems were from her back pain.
- Q. This added to the impression that you formed that the surgery would be helpful?
- A. Yes.
- Q. Doctor, we talked about the type of injury that she had – the annular tear. Is that something that you can only see through a discogram with dye?
- A. Very often it is the only way you can see it. Occasionally, you can see it on an MRI scan as well, but it is – that is seen on a discogram, yes.
- Q. So that might explain why the MRIs might reveal normal results, while this diagnostic test showed a tear?
- A. That's possible, yes.
- Q. When you performed your surgery, did you, in fact, confirm that there was that tear?
- A. Yes.
- Q. Now, after the surgery, I understand that she went through rehabilitative therapy?
- A. Yes.
- Q. And also has been monitored by – it was then Dr. Tiede, was it not? I believe he has now left.
- A. Dr. Tiede has left.
- Q. But in any event, I am taking you to the fact that she has relocated to the East Coast.
- A. At this point, she has relocated to the East Coast due to a family situation.
- Q. And so, have you really seen her since the surgery?
- A. Well, I saw her September 28th of 2010, which would be only three and half months after the surgery. And that was the last time I saw her.
- Q. Was she reporting improvement?
- A. Yes.
- Q. What did she tell you?
- A. She told me that her back still caused her some discomfort if she did a lot of walking or a lot of lifting. Her left leg pain was much improved; almost

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- totally gone. She now had control of her bladder and bowels, and the back pain she did have was – was less than what she had prior to the surgery.
- Q. And did that conform with what you would expect as being a result from this type of surgery with a successful result?
- A. Yes.
- Q. Now, I think it has already been mentioned before, but may I ask again, Doctor: Is it your opinion that the injury that you operated on June 2nd, 2010 – the two-level fusion being your procedure – is that that, to a reasonable degree of medical certainty, has been caused by the injury that she described to you as having suffered on March 28th, 2006, and then the aggravation of March 29th of 2006, while working as a nurse at the University of Missouri Hospital and Clinics?
- A. Yes.
- Q. Do you remember what she described to you as being the mechanics of her injuries on those two days?
- A. I just remember she was having to deal with a patient that was either – I guess I don't – I know it is in the record here, and I can look it up. I don't recall off the top of my head the exact – she has it written down her on her first, and I – let me pull that up. I can tell you what --.
- Q. Doctor, let me hand you Exhibit 2, which was a report that you furnished me on February 8th, 2011, when I asked you to provide a rating, if you could.
- A. She was pushing a bed with a patient in it, when she had an acute onset of back and left leg pain.
- Q. Now, Are these the type of circumstances that can lead to that type of lumbar injury?
- A. Yes.
- Q. And so, would it be to your medical opinion, to a reasonable degree of medical certainty, that that injury event was the prevailing factor that leads to this injury that you actually treated and performed the fusion with respect to on June 2nd, 2010?
- A. Yes.
- Q. Doctor, you did. In fact, perform a rating?
- A. I did.
- Q. And do you remember that rating?
- A. I believe it was 23 percent to the body as a whole as it related to her low back.
- Q. And again, is that to a reasonable degree of medical certainty?
- A. Yes.
- Q. And it's reflected in Exhibit 2, the letter that you wrote to that effect?
- A. Yes.

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Q. Did you impose any restrictions on Deborah?

A. Yes.

Q. What were her restrictions, if any?

A. I limited her lifting to 20 pounds, and I also limited her to prolonged standing or frequent bending, and the lifting not to be over 20 pounds.

Q. Doctor, I know you are no longer supervising her care at this time, but are you aware that she is receiving continuing care on the East Coast?

A. Yes. I know that she is seeing a pain management physician for her residual back pain that she has.

Q. And has she advised you or are you aware of what type of treatment she is now receiving?

A. Not specifically, but she relayed to me that she is seeing pain management and also doing physical therapy.

After Claimant moved to the East Coast, the next record of treatment was at Franklin Surgical Center in New Jersey on June 7, 2011. Claimant was complaining of left low back pain and underwent a left sacroiliac joint injection. She had a second injection on June 21, 2011. Dr. Michal Rudman then saw Claimant on July 7, 2011 at which time she was still complaining of left lower back pain consistent with sacroiliac dysfunction. She was referred to a neurologist. Claimant underwent left sacroiliac joint radiofrequency lesioning through the S1, S2, and S3 nerves on August 23, 2011. She returned to Dr. Rudman on December 5, 2011, complaining of left leg radicular pain that began about 3 weeks earlier without precipitating event. She complained of pain in the left back region that radiates down her left posterior thigh, occasionally sharp and shooting into her left foot.

Dr. James Coyle performed a record review and issued his report of August 13, 2012. Dr. Coyle last examined Claimant in May 2007. Dr. Coyle concluded as follows:

In summary, the notes indicate that despite the reservations of Dr. Bridwell, Dr. Chabot, and myself, Ms. Beatrice underwent a lumbar fusion procedure at L4 through S1. I have not had the opportunity to evaluate her, but based on the medical record, she is at least as debilitated and in all likelihood more debilitated than she was prior to surgery. She is taking narcotics on a daily basis. She is taking muscle relaxers on a daily basis. No CT scan has been obtained postoperatively to assess the integrity of her fusion.

I have reviewed the discograms, and I disagree with Dr. Highland's assessment that the discogram performed by Dr. Guarino was not valid. I disagree for the following reasons:

1. "There was no control level despite the fact that two levels were injected proximal to L4-5." The reason there was no control level is that the patient was symptomatic at every level injected by Dr. Guarino.

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2. A discogram is not particularly helpful in deciding what levels to operate on when a patient has no radiographic evidence of neural compression and no objective findings on an EMG nerve conduction study.
3. Dr. Highland critiqued the fact that dye was not used. This ignores the fact that multiple MRIs and CT myelograms were obtained, which adequately image neural compression from a disc as well as the character of the annulus and nucleus of the disc. No annular tears, fissures, or disruptions were seen on any of the radiographic studies obtained prior to surgery. In fact, Dr. Highland obtained an MRI of the lumbar spine in the month prior to performing the L4 through S1 fusion, and it showed no evidence of neural compression or disc pathology at the levels operated on.

In summary, unfortunately, the postoperative results of Ms. Beatrice's fusion appear to validate the reservations, which multiple doctors had for Ms. Beatrice's outcome following this surgery. Prior to surgery, she was deemed capable of working with a twenty to twenty-five point lifting restriction. The most recent notes do not indicate whether or not she is working, but if she is barely able to transfer from a sitting to standing position, it appears that she is, in all likelihood, disabled.

There are two competing narratives in this case. One is that Claimant sustained a simple back strain in the accident and that, apparently due to her mental makeup, she has consistently complained of inordinate pain. In this narrative, Claimant's complaints of urinary incontinence and bowel incontinence are caused by her use of narcotic medication to address the inordinate pain complaints. The second narrative is that Claimant sustained injury to the L4-5 and L5-S1 discs in the accident, which is the source of the pain as well as the incontinence.

At the August 7, 2008 hearing, I obtained certain impressions of Claimant. One impression was that she was in pain and wanted a cure. Another was that she wanted to work and was not interested in being considered disabled. A third was that she was emotional and overwrought over her situation. It is this third impression, which lent plausibility to the first narrative. However, it was also clear at the first hearing that Claimant was having urinary incontinence and that from a medical standpoint it was probable that Claimant had a neurogenic bladder caused by her back injury; this fact gave credence to the second narrative.

Claimant has now undergone the L4 through S1 discectomy and fusion recommended and ultimately performed by Dr. Highland. While Claimant has had incomplete resolution of her pain, she has had complete resolution of her incontinence problems. The post-surgical resolution of the incontinence problems, in my view, strongly supports the validity of the second narrative. While the incomplete resolution of Claimant's pain post-surgery may also give some support to the first narrative (or suggests an alternative source for some of Claimant's current pain complaints), it is interesting to note that, due to the continued pain, Claimant has continued to

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narcotic medication, yet has no incontinence problems. It is thus difficult to accept the use of narcotic medication as the source of Claimant's incontinence. The outcome of the L4 to S1 fusion surgery does strongly suggest the truth of the second narrative and tends to debunk the first narrative.

In coming to a conclusion on the competing narratives, it is not my intention to disparage Drs. Coyle, Chabot or Guarino. I think that all the physicians have professionally endeavored to determine the cause of Claimant's problems in this difficult case. But "the proof of the pudding is in the eating"; the fusion surgery has resolved Claimant's incontinence problems. Therefore, I find Dr. Highland's testimony, quoted above, to be credible.

I find that Claimant did, indeed, suffer an injury in the March 28, 2006 accident, an L4-5 disc bulge and an L5-S1 annular tear, and I find that the March 28, 2006 accident was the prevailing factor in the cause of the L4-5 disc bulge and L5-S1 annular tear, . I further find that the medical treatment rendered in Columbia, Missouri after the September 15, 2008 TEMPORARY OR PARTIAL AWARD was reasonable and necessary to cure and relieve Claimant from the effects of the injury sustained in the March 28, 2006 accident. Claimant has not proven that the treatment she has undergone since leaving Missouri was reasonable and necessary to cure and relieve her from the effects of the injury sustained in the March 28, 2006 accident. Further, most of that treatment has been for sacroiliac joint and sacral nerve problems, which have not been proven to have been injured in the March 28, 2006 accident.

Employer argues that Claimant is responsible for the treatment rendered after the TEMPORARY OR PARTIAL AWARD, except for the treatment specifically authorized by Employer. I find that argument to be without merit in this case. The TEMPORARY OR PARTIAL AWARD ordered Employer "to provide Claimant with all such medical, surgical and other treatment as may reasonably be required to cure and relieve her from the effects of the work accident of March 28, 2006". As noted above, the surgery recommended by, and performed by, Dr. Highland was reasonably required to cure and relieve Claimant from the injury she sustained in the March 28, 2006 accident. Employer refused to provide that. Claimant had already received an Order from the Division of Workers' Compensation; under Employer's argument, Claimant would have been required to go through multiple trials and awards in order to receive the necessary treatment. Therefore, I find Employer liable for reimbursement of the following medical bills totaling \$122,713.72:

Boone Hospital Center	\$81,967.60
Columbia Orthopaedic Group	\$22,889.00
Columbia Radiology	\$512.00
Radiology Consultants	\$722.00
Mid-America Anesthesia Consultants	\$2,320.00
Columbia Interventional Pain Center	\$7,144.00

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	Columbia Surgical Associates, Inc.	\$6,158.62
	Liberator Medical Supply, Inc.	\$1,000.50

Regarding Claimant's permanent disability, I note that Dr. Highland opined that Claimant sustained a permanent partial disability of 23% of the body as a whole as the result of the March 28, 2006 accident and injury. I find Dr. Highland's opinion in this regard to be accurate, and I adopt same.

I do not believe the temporary award should be doubled. I do not believe a penalty is justified in this case. As noted above, the physicians chosen by Employer did their best in this difficult case. Likewise, I do not find grounds for awarding attorney's fees and costs. Neither party has brought, prosecuted or defended this action without reasonable grounds.

I find that Claimant is entitled to temporary total disability benefits for the period from and after the fusion surgery, i.e. from June 2, 2010 through September 28, 2010, a total of 17 weeks.

Boone Hospital Center has filed an APPLICATION FOR DIRECT PAYMENT in this case. Although notified of the hearing, Boone Hospital Center did not appear and prosecute the APPLICATION FOR DIRECT PAYMENT. Therefore, the APPLICATION FOR DIRECT PAYMENT is denied in full.

FINDINGS OF FACT AND RULINGS OF LAW

In addition to those facts and legal conclusions to which the parties stipulated, I find the following facts and make the following rulings of law:

1. Claimant sustained an "injury", as defined by Chapter 287, RSMo, in the work accident of March 28, 2006, the injury being an L4-5 disc bulge and an L5-S1 annular tear;
2. The work accident of March 28, 2006 was the prevailing factor in the cause of the L4-5 disc bulge and L5-S1 annular tear;
3. On June 2, 2010, Claimant underwent an anterior discectomy and fusion at L4-5 and L5-S1, performed by Dr. Thomas Highland;
4. Prior to June 2, 2010, Claimant was experiencing urinary incontinence for many months and was also experiencing bowel incontinence immediately prior to June 2, 2010;
5. The surgery of June 2, 2010 resulted in complete resolution of Claimant's urinary incontinence and bowel incontinence, but resulted in only partial resolution of her pain complaints;

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6. The surgery of June 2, 2010 was reasonable and necessary to cure and relieve Claimant from the effects of the work-related accident of March 28, 2006;
7. Employer is responsible for the charges for the reasonable and necessary medical treatment in the amount of \$122,713.72;
8. The injuries sustained by Claimant in the March 28, 2006 accident resulted in 23% permanent partial disability of the body as a whole;
9. Claimant is entitled to temporary total disability benefits for the period from and after the fusion surgery, i.e. from June 2, 2010 through September 28, 2010, a total of 17 weeks;
10. There are insufficient grounds for imposing a penalty of doubling the TEMPORARY OR PARTIAL AWARD issued in this case on September 15, 2008;
11. Neither Claimant nor Employer has brought, prosecuted or defended this action without reasonable grounds; and
12. Although notified of the hearing, Boone Hospital Center did not appear and prosecute its APPLICATION FOR DIRECT PAYMENT.

ORDER

Employer is ordered to pay Claimant the sum of \$33,587.36 for permanent partial disability benefits, the sum of \$11,605.56 for temporary total disability benefits, and the sum of \$122,713.72 for medical benefits.

Claimant's attorneys, William Rotts and Cullen Cline, are allowed 25% of all benefits awarded herein as and for necessary attorney's fees, and the amount of such fees shall constitute a lien on those benefits.

The APPLICATION FOR DIRECT PAYMENT filed herein by Boone Hospital Center is denied in full.

Any past due compensation shall bear interest as provided by law.

Made by: _____

ROBERT J. DIERKES
Chief Administrative Law Judge
Division of Workers' Compensation