

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

Injury No.: 03-104208

Employee: Marcus Bentley
Employer: Lincoln University
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged October 16, 2003
Place and County of Accident: Alleged Jefferson 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 amended award and decision of the administrative law judge dated July 7, 2005, and awards no compensation in the above-captioned case.

The amended award and decision of Administrative Law Judge Hannelore D. Fischer, issued July 7, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13th day of October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

(Amended)
AWARD

Employee: Marcus Bentley

Injury No. 03-104208

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Lincoln University

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: May 25, 2005

Checked by: HDF/cs

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No. Claimant failed to prove that his physical complaints are related to a work incident.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law?
4. Date of accident or onset of occupational disease: Alleged - Oct. 16, 2003.
5. State location where accident occurred or occupational disease was contracted: Jefferson City, 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?
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:
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, body as a whole.
14. Nature and extent of any permanent disability: N/a.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? \$5,228.65.
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages:
19. Weekly compensation rate: \$165.00 for all benefits.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: (None.)

22. Second Injury Fund liability: Open

TOTAL:

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Marcus Bentley

Injury No: 03-104208

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents:

Employer: Lincoln University

Additional Party

Insurer: Self-insured

Checked by: HDF/cs

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on May 25, 2005. Memoranda were filed by June 24, 2005.

The parties stipulated that on or about October 14, 2003, the claimant was in the employment of Lincoln University; the claimant sustained an injury by accident; the accident arose out of and in the course of employment; the employer was operating under the provisions of the Missouri workers' compensation law; the employer's liability was self-insured; the employer had notice of the injury and a claim for compensation was filed within the time prescribed by law; the claimant's rate of compensation on the date of accident was \$165.00 per week for all benefits; no temporary disability benefits have been paid to the claimant; medical aid has been

provided in the amount of \$5,228.65.

The issues to be resolved by hearing include 1) the causation of the injuries allegedly in need of medical treatment and causing disability, 2) the liability of the employer/insurer for past and further temporary total disability benefits (as of April 30, 2004) and 3) the liability of the employer/insurer for further medical treatment.

FINDINGS OF FACT

The claimant, Marcus D. Bentley, was 42 years old as of the date of the hearing. Mr. Bentley was working as a custodian for Lincoln University on October 14, 2003, when, while moving some wet bags of trash, he hurt his low back on the left side. Mr. Bentley was taken to St. Marys Health Center in Jefferson City. An x-ray of the lumbar spine showed evidence of degenerative joint disease at the L4-L5 level and low back pain with radiation was diagnosed. Mr. Bentley had approximately three sessions of physical rehabilitation, ending on October 24, 2003. Mr. Bentley was then treated through St. Marys Health Care West - Occupational Medicine through the beginning of December 2003 for low back pain.

Mr. Bentley said that he was able to return to his job as a custodian at Lincoln University until his workload increased and he was unable to handle the additional three buildings for which he was made responsible. In April of 2004, Mr. Bentley's services at Lincoln University were terminated.

In 1995 Mr. Bentley injured his low back while working in a grocery store. Mr. Bentley has had two surgeries to his low back and settled his 1995 workers' compensation claim based on a permanent partial disability of 15 percent of the body.

Currently, Mr. Bentley complains of pain from his low back to his left testicle. Mr. Bentley states that he has difficulty walking and can only sit about 20 minutes before experiencing pain in his left hip. Mr. Bentley takes Oxycontin twice daily for his back pain.

Dr. Truett Swaim, M.D., board certified orthopaedic surgeon, testified by deposition that he examined Mr. Bentley on February 11, 2004, with regard to low back pain from the lumbar area of the back to the left foot. The findings "potentially attributable" to the October 2003 incident which Dr. Swaim found are "disc bulging at the L4-5 level, which would be an increase over the protrusion he had before and then the disc bulging at the L2-3 level with a disc dessication at that level." Dr. Swaim found Mr. Bentley's left hip to be his primary problem and believed him to have a vascular necrosis, based on Mr. Bentley's "age and history of alcohol consumption and multiple steroid injections." Dr. Swaim opined to an aggravation of the hip condition by the October 2003 accident. Dr. Swaim recommended a bone scan to determine possible treatment avenues for the left hip and epidural steroid injections for the back as the first step in determining nerve impingement.

With regard to Mr. Bentley's complaints of tenderness or pain in his testicles, Dr. Swaim recommended an evaluation by a urologist, but stated that the testicular complaints are probably not the result of a workplace injury.

Dr. Sherwyn Wayne, M.D., examined Mr. Bentley on December 8, 2003. Because of Mr. Bentley's complaints regarding his left hip, an MRI scan of the pelvis was done on the date of the examination. Dr. Wayne reviewed the December 8, 2003 MRI scan of the pelvis and found "bilateral hip degenerative arthritis greater on the left side. The left femoral head demonstrated a subchondral cystic lesion possibly associated with a small focus of a vascular necrosis."

Dr. Wayne concluded that Mr. Bentley's hip complaints are the result of degenerative arthritis and not attributable to his October 14, 2003 accident.

Boone Hospital Center records reflect a lengthy history of Mr. Bentley's treatment for back pain. Just a few of the entries are noted in this award. In February of 1990 Mr. Bentley was treated for a back sprain after lifting a patient at the Boone Retirement Center. Following his work-related back injury in 1995, Mr. Bentley had a discectomy at the L5-S1 level on August 3, 1995. Multiple steroid injections followed the 1995 surgery and a second back surgery at the L5-S1 level was performed in 1998. Complaints of low back pain radiating into the left hip, left leg and left testicle are documented through November of 2002.

APPLICABLE LAW

Section 287.020.2 provides as follows:

The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective

symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

AWARD

The claimant, Marcus Bentley, has failed to sustain his burden of proof that his current complaints of injury to his low back, left hip and left testicle are related to his accident of October 14, 2003. While Mr. Bentley's current complaints of pain are potentially significant and may need to be addressed medically, they are no different from his pre-October 14, 2003 complaints. Furthermore, the physicians who evaluated Mr. Bentley, Dr. Swaim and Dr. Wayne, found him to have underlying lumbar and left hip degenerative conditions. In addition, the evaluating physicians pointed to the left hip as the primary source of Mr. Bentley's complaints. While Dr. Swaim found an "aggravation" of the left hip condition as the result of the October 14, 2003 accident, he cited age, alcoholism and steroid injections as the cause of the left hip complaints. Dr. Wayne reviewed Mr. Bentley's MRI of the hips and concluded that his degenerative condition is the cause of his left hip complaints. Thus, in the absence of evidence that the October 14, 2003 accident was the substantial factor causing Mr. Bentley's current condition, Mr. Bentley has failed to prove that his current complaints of lower back, left hip and left testicle pain were caused by his October 14, 2003 accident.

All other issues raised for resolution are hereby rendered moot.

Date: July 7, 2005

Made by: /s/Hannelore D. Fischer
HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/Patricia "Pat" Secret
Patricia "Pat" Secret, *Director*
Division of Workers' Compensation