

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

Injury No.: 07-015507

Employee: William Bisby

Employer: Labor Ready Central, Inc.

Insurer: Self-Insured

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 April 21, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued April 21, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: William Bisby

Injury No.: 07-15507

Dependents: N/A

Employer: Labor Ready Central, Inc.

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Labor Ready Central, Inc. (Self-Insured)

Hearing Date: March 3, 2011

Checked by: MDL

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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? Yes
4. Date of accident or onset of occupational disease: January 5, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant was riding on the back of a garbage truck that was involved in a motor vehicle accident
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left leg
14. Nature and extent of any permanent disability: 0
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? \$40

Employee: William Bisby

Injury No.: 07-015507

- 17. Value necessary medical aid not furnished by employer/insurer? 0
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: Unknown
- 20. Method wages computation: N/A

COMPENSATION PAYABLE

21. Amount of compensation payable: 0

TOTAL: 0

23. Future requirements awarded: None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: William Bisby

Injury No.: 07-015507

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Labor Ready Central, Inc.

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

Additional Party: N/A

Insurer: Labor Ready Central, Inc. (Self-Insured)

Checked by: MDL

PRELIMINARIES

A hearing was held on March 3, 2011 at the Division of Workers' Compensation in the City of St. Louis, Missouri. William Bisby ("Claimant"), appeared pro se. Labor Ready Central, Inc., ("Employer") which is self-insured, was represented by Mr. Thomas Liese. The parties stipulated that on or about January 5, 2007, Claimant sustained an accidental injury arising out of and in the scope of employment; Claimant was an employee of Employer; venue is proper in the city of St. Louis, Missouri; and the claim was timely filed. Employer paid medical benefits of \$40.

The issues for resolution are: medical causation; liability of Employer for past medical benefits; liability of Employer to provide future medical treatment; whether Claimant is entitled to past Temporary Total Disability ("TTD") benefits; nature and extent of PPD sustained by Claimant; and what are the applicable rates of compensation?

SUMMARY OF EVIDENCE

CLAIMANT'S TESTIMONY

Claimant injured his left leg when he was involved in an accident on January 5, 2007. Claimant was riding on the back of a garbage truck that was involved in a motor vehicle accident. Claimant was taken by ambulance to the Emergency Room at St. John's Medical Center. Upon examination, Claimant's back was not tender. His pelvis was stable, and his hips were not tender. There was no evidence of trauma to his extremities, and they were within normal range of motion. X-rays of Claimant's left leg were negative, and he was diagnosed with an abrasion and contusion of the left leg.

The next day Claimant returned to work, and was in pain. Claimant testified he continued to have problems holding things, loss of grip, and difficulty walking because of the accident. Employer denied him medical treatment. Claimant testified he was fired.

Ms. Beverly Ashbrook, Claimant's friend, testified on behalf of Claimant. Ms. Ashbrook testified Claimant was in constant pain, he has difficulty gripping, and he drops a lot of tools. Ms. Ashbrook testified Claimant has tried to find work, but people do not want to hire him because he has ongoing medical problems.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Claimant bears the burden of proving all the essential elements of the claim and must establish a causal connection between the accident and the injury. *Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute*, 793 S.W.2d 195, 198 (Mo.App. E.D.1990). The claimant does not, however, have to establish the elements of his case on the basis of absolute certainty. *Id.* It is sufficient if he shows them by reasonable probability. *Id.* "Probability means founded on reason and experience which inclines the mind to believe but leaves room for doubt." *Id.* at 198-99; *Ellis v. Western Elec. Co.*, 664 S.W.2d 639 (Mo.App.1984). *Cook v. Sunnen Products Corp.*, 937 S.W.2d 221, 223 (Mo. App. 1996)(overruled in part).

Claimant failed to meet his burden of proving his current symptoms were caused by the work accident of January 5, 2007. There is no expert medical testimony in this case to establish that Claimant's complaints arose out of the work accident of January 5, 2007.

Without expert testimony, the Court cannot find Claimant's current complaints are causally related to his work accident of January 5, 2007. Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 [5] (Mo.App.1991). This requires Employee's medical expert to establish the probability Employee's injuries were caused by the work accident. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo.App.1992) *McGrath v. Satellite Sprinkler Systems Inc.*, 877 S.W.2d 704, 708 (Mo.App. E.D. 1994) (both overruled on other grounds by *Hampton v. Big Boy Steel Erection* 121 S.W.3d 220 (Mo.2003))

Claimant has a multitude of physical complaints. He complains of loss of grip strength, difficulty holding things, and difficulty walking. These complaints were not mentioned at the time he reported to the emergency room on the date of the accident. Without any evidence from a medical professional, the court has no way of knowing whether there is a connection between his current complaints and the accident of January 5, 2007. The only complaints Claimant made at the emergency room were of pain in his lower left leg. Claimant was diagnosed with a contusion of the lower extremity. Without medical evidence the court would have to make a medical conclusion it is not qualified to make.

Because the Claimant failed in proving medical causation, the remaining issues are moot. The claim for compensation is denied.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation