

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

Injury No.: 03-009211

Employee: David Bruno

Employer: City of Brentwood

Insurer: St. Louis Area Insurance Trust c/o Bierman Condray

Date of Accident: January 23, 2003

Place and County of Accident: St. Louis County, 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 award and decision of the administrative law judge dated November 2, 2004. The award and decision of Administrative Law Judge Matthew D. Vacca, issued November 2, 2004, 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 25th day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: David Bruno

Injury No.: 03-009211

Dependents: N/A Before the
Division of Workers'
Employer: City of Brentwood **Compensation**
Department of Labor and Industrial
Additional Party: N/A Relations of Missouri
Jefferson City, Missouri
Insurer: St. Louis Area Insurance Trust c/o Bierman Condray
Hearing Date: September 22, 2004 Checked by: MDV:tr

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: January 23, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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:
Firefighter/paramedic fell off porch.
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 and ankle
14. Nature and extent of any permanent disability: 30% body as a whole; 30% of ankle
15. Compensation paid to-date for temporary disability: Not provided
16. Value necessary medical aid paid to date by employer/insurer? \$4,821.37

Employee: David Bruno Injury No.: 03-009211

17. Value necessary medical aid not furnished by employer/insurer? \$17,322.46
18. Employee's average weekly wages: \$1,241.94
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation:

COMPENSATION PAYABLE

21. Amount of compensation payable:

Future medical benefits *

14 4/7 weeks of temporary total disability

(September 30, 2003 to January 9, 2004) \$9,461.52

166.5 weeks of permanent partial disability from Employer \$56,629.98

(* denotes an uncertain future lifetime medical benefit)

22. Second Injury Fund liability: No

TOTAL: \$83,413.96 *

23. Future requirements awarded: Future lifetime medical treatment including but not limited to that outlined in the Award.

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:

Michael Corrigan

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	David Bruno	Injury No.: 03-009211
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	City of Brentwood	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	St. Louis Area Insurance Trust c/o Bierman Condray	Checked by: MDV:tr

PREFACE

The issues presented for resolution by way of this hearing were past medical expenses, temporary total disability and permanent partial disability.

SYNOPSIS

Claimant is a firefighter/paramedic for the Brentwood Fire Department. On the date of the injury he stepped over some equipment and fell off of a residential porch injuring his back and fracturing his ankle. The accident was reported and treatment was undertaken. The injury was the type that was capable of ending his career as a fireman, so Claimant made a concerted effort to treat the injury conservatively without surgical intervention. Nevertheless, the symptomology of the back continued to deteriorate and Claimant experienced increasing pain on an ongoing basis. Claimant experienced an epiphany of pain while bending over to pick up a newspaper which quite painfully and strikingly revealed to Claimant that he could no longer function and needed more aggressive back treatment. The Insurer treated this newspaper incident as a new accident and denied further benefits. I find for the Claimant and award past and future medical expenses, temporary total disability

and permanent partial disability.

FINDINGS OF FACT

1. Claimant is a 37-year-old firefighter/paramedic who has worked for the last twelve years for the City of Brentwood achieving the rank of lieutenant. Claimant would work every other day for three days and then be off for four days.
2. On the date of the accident Claimant was on the porch of a home to which the Brentwood Fire Department was called when he fell stepping over a stretcher.
3. The fire department was responding to a citizen in cardiac arrest. Claimant was going back out to the fire truck to retrieve some equipment. He stepped over the stretcher and off the porch and into a hole, twisted his ankle, fell down off the porch and rolled down several levels of retaining wall made of railroad ties.
4. Claimant got up in pain, retrieved and took the equipment into the house and later actually drove the ambulance to the hospital. Another call came in relative to the Galleria shopping complex. By the time the unit returned to the firehouse after the second call, Claimant was able to get his boot off. His ankle was tremendously swollen and he was treated at St. Mary's Hospital. X-rays were normal.
5. By February 5, 2003, Claimant's ankle and back pain were getting much worse and he was seeking out treatment at St. Luke's Hospital emergency room. Claimant originally thought that the back pain was related to his altered gait as a result of the ankle.
6. X-rays were taken which revealed the ankle was fractured and Claimant was placed in an orthopedic boot.
7. A CT scan of the back showed a protruding disc. Claimant treated with Dr. Chabot for the rest of February. The disc protrusion was lateralizing to the left at L5-S1. Dr. Chabot documented pain in the left buttock region and a radicular symptomology into the left lower extremity. Claimant experienced numbness and tingling in the feet and the symptoms were worse with sitting and tended to be improved upon standing. The CT scan evidenced a posterior disc protrusion at L5-S1 asymmetric to the left.
8. Claimant wanted to avoid surgery on his back at all costs. He feared surgery might lead to the end of his career.
9. Claimant was treated conservatively with anti-inflammatory medication and muscle relaxants, placed on limited work duties and ordered to lift no more than 25 pounds. Claimant was not allowed to climb ladders and was not to transport clients. Claimant was sent for physical therapy treatments and ordered to return in late February.
10. Claimant was improved by late February and continued on with his exercises and progressed until he was seen in April of 2003, where Dr. Chabot records that he could return to regular duties and was doing very well.
11. Claimant returned to work but experienced constant back pain. His co-workers carried the heavier work. Everyone knew Claimant was in back pain. The pain was increasing. Claimant tried to work through the pain. Claimant was trying to avoid surgery.
12. Through the summer of 2003, Claimant was taking prescription drugs for pain, inflammation in the back and for sleep. Claimant experienced excruciating pain upon minor exertion. An example is upon picking up the newspaper one day in August he felt excruciating pain.
13. This was not a new accident but a gauge of the level of deterioration in the back. This incident revealed to Claimant that he was not getting better and he was not going to be able to simply work through this injury with conservative treatment.
14. In October of 2003 Dr. Chabot saw Claimant where Dr. Chabot recorded an increase in back pain since the visit in April of 2003.
15. Claimant saw Dr. Livingston in August of 2003 and a CT of the lumbar spine was performed and compared to the February study. By now the disc had become larger and Dr. Heim, a neurosurgeon at St. Luke's, recommended an MRI because he felt there was neural compression.
16. Dr. Chabot saw Claimant one more time in October of 2003 and recorded complaints of moderate to severe back pain radiating into the left lower extremity.
17. Dr. Chabot compared the February 5, 2003 CT scan with the October 3, 2003 MRI and determined that the

posterior disc protrusion had significantly increased in size. The back pain with radiculopathy in October was similar to that recorded in February by Dr. Chabot.

18. Claimant experienced loss of sensation along the L5 nerve root distribution and weakness involving the EHL-4 extensor hallucis longus muscle. These symptoms were significant changes compared to when Claimant was discharged from Dr. Chabot's care in April of 2003 but not dissimilar to those in January and February.
19. Dr. Chabot believes that Claimant was suffering from a mere back sprain in February of 2003 and that by October of 2003 he was suffering from a herniated nucleus pulposus with sciatica.
20. Dr. Chabot admits Claimant complained of back pain radiating into the legs in February. Dr. Chabot also admits that Claimant complained in February of numbness and tingling into the feet. Dr. Chabot admits Claimant was experiencing moderate to excruciating pain pertaining to the lower extremities in February.
21. The Brentwood City fire chief and three of the Claimant's co-firefighters testified that Claimant was in consistent regular back pain from the time he returned to work after the original accident up until the time that he had surgery in October of 2003 for the herniated disc.
22. The medical records indicate that as of August 27, 2003 Claimant was taking Darvocet, Percocet, Soma and Prednizone. (Exhibit F). These powerful drugs seem to corroborate Claimant's contention that he had been experiencing back pain on an ongoing and chronic basis for several months prior to the newspaper incident.
23. Dr. Chabot's testimony is internally contradictory. Dr. Chabot asserts it is impossible to scientifically relate protruding discs evident on the CT scan in February of 2003 to Claimant's falling off the porch. After that accident Claimant had excruciating pain, numbness and tingling into the feet. (Exhibit 1, pg. 28). Yet, Dr. Chabot was capable of relating the disc in October of 2003 to the innocuous event where Claimant bent over to pick up a newspaper. (Exhibit 1, pg. 26 and 27). Dr. Chabot was able to relate the October herniated disc to the August incident because Claimant had excruciating pain, numbness and tingling in his feet after the newspaper incident. I reject this evidence on the issue of causation as internally inconsistent and contradictory on its face. It twists the facts in a ludicrous fashion. I reject this opinion and give it little weight.
24. Dr. Volarich, on behalf of the Claimant, interprets the CT scan of the February 5, 2003 to reveal a small posterior disc protrusion of the left L5-S1. The MRI performed in October of 2003 revealed a moderate disc herniation central and to the left at L5-S1 with posterior disc bulging and central disc protrusion at L4-L5. Dr. Volarich believes that the work related injury on January 23, 2003 was a substantial contributing factor in causing the herniation at L5-S1, the required discectomy and the fracturing and twisting of Claimant's right ankle. This opinion is consistent with the facts and deserves weight.
25. Dr. Volarich rates the back injury at 30% permanent partial disability of the body as a whole referable to the disc herniation and 30% permanent partial disability at the ankle due to the tarsal navicular fracture.
26. Dr. Volarich advised Claimant to limit repetitive bending, twisting, lifting, pushing, pulling, carrying, climbing and other similar tasks, that he should not handle weights greater than fifty pounds using proper lifting techniques, and he should not handle weight over his head or away from his body or carry weights over long distances or on uneven terrain. Dr. Volarich advised Claimant to avoid remaining in a fixed position for more than one hour to include both sitting and standing and should frequently change positions to maximize comfort and rest. Claimant was advised to continue his stretching, strengthening and range of motion exercise programs and non-impact aerobic conditioning such as walking, biking, or swimming on a daily basis.
27. Past medical benefits are claimed in the amount of \$17,322.46. Claimant requests temporary total disability from September 30, 2003 to January 9, 2004. Claimant requests future medical care for orthotic inserts in his shoes and permanent partial disability to be assessed for both the back and the ankle.
28. Claimant was a credible witness.
29. Dr. Volarich was a credible witness.

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RULINGS OF LAW

1. On January 23, 2003 Claimant sustained an accident which arose out of and in the course of his employment with the City of Brentwood.

2. On that date, while stepping over a stretcher on the porch of a residential emergency call, Claimant fell off the porch breaking his right ankle and injuring his low back. He was initially treated so as to conserve his ability to remain a firefighter.
3. The injuries sustained to Claimant's low back progressed over the course of the next several months until the protruded disc which occurred as a direct result of that accident herniated. That herniation was a direct result of the original accident. The original accident is "a" substantial, if not "the" substantial factor in the eventual herniation of the disc and the need for discectomy surgery.
4. Claimant is entitled to past medical benefits in the amount of \$17,322.46 to be paid directly to Claimant.
5. Claimant is entitled to future medical care to include several orthotic inserts for his shoes, a minimum of two for work, two for leisure and one for dress for a total of five orthotic inserts at all times. He is also entitled to all and any surgery, prescription and over-the-counter anti-inflammatory medications, analgesics, muscle relaxants, physical therapy, massage therapy and chiropractic therapy which might relieve his pain.
6. Claimant is entitled to 30% permanent partial disability measured at the level of the body as a whole and 30% permanent partial disability measured at the level of the ankle for the permanent injuries that he sustained as a result of the injury while working for Brentwood Fire Department.
7. Claimant was a credible witness.
8. Dr. Volarich was a credible witness.
9. Dr. Chabot was not a credible witness.

DISCUSSION

Claimant was an extremely credible witness and his testimony was corroborated by four other firefighters as well as the medical records. The insurance company took the newspaper incident out of context and used Claimant's explanatory statement regarding that incident to deny this claim. The adjuster did not bother to testify at hearing.

The reasonable and natural consequences of the original injury have clearly led to the current condition. It is not factually correct to elevate the innocuous newspaper incident to the same significance as falling off a wall and tumbling down a hill. There is certainly nothing wrong with attempting conservative treatment initially, but it is improper to ignore the genesis of the back condition.

Dr. Chabot's incongruous medical testimony cannot change the fact that Claimant's back condition was caused by the February 5, 2003 accident and he continued to need treatment as a result thereof well into 2004. He will continue to need treatment to cure and relieve into the future.

Date: _____ Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary J. Estenson
Acting Director
Division of Workers' Compensation