

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

Injury No.: 00-013741

Employee: Elizabeth Caccia-Nelson
Employer: Dierberg's Markets
Insurer: Self-Insured
c/o Corporate Claims Management
Date of Accident: February 11, 2000
Place and County of Accident: St. Louis, 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 December 23, 2005. The award and decision of Administrative Law Judge Margaret D. Landolt, issued December 23, 2005, 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 26th day of April 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Elizabeth Caccia-Nelson

Injury No.: 00-013741

Dependents: N/A

Employer: Dierberg's Markets

Additional Party: N/A

Insurer: Self-Insured c/o Corporate Claims Management

Hearing Date: November 10, 2005

Before the
**Division of Workers'
Compensation**

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

Checked by: MDL: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: February 11, 2000
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:
Employee was lifting a cauldron of icing when she felt pain in her low back and right hip.
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: Body as a whole referable to hip and low back
14. Nature and extent of any permanent disability: 5% permanent partial disability referable to the low back and hip
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$3,224.15

Employee: Elizabeth Caccia-Nelson

Injury No.:

00-013741

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$405.12
19. Weekly compensation rate: \$270.08/\$270.08
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

20 weeks of permanent partial disability from Employer

\$5,401.60

22. Second Injury Fund liability: No

TOTAL: \$5,401.60

23. Future requirements awarded: N/A

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:

David Plufka

FINDINGS OF FACT and RULINGS OF LAW:

| | | |
|-------------------|--|--|
| Employee: | Elizabeth Caccia-Nelson | Injury No.: 00-013741 |
| Dependents: | N/A | Before the Division of Workers' Compensation |
| Employer: | Dierberg's Markets | Department of Labor and Industrial |
| Additional Party: | N/A | Relations of Missouri Jefferson City, Missouri |
| Insurer: | Self-Insured c/o Corporate Claims Management | Checked by: MDL:tr |

PRELIMINARIES

A hearing was held on November 10, 2005, at the Division of Workers' Compensation in the City of St. Louis. Elizabeth Caccia-Nelson (Claimant) was represented by Mr. David Plufka. Dierbergs Markets (Employer) and its Insurer, Self c/o Corporate Claims, were represented by Ms. Loretta Simon. Mr. Plufka requested a fee of 25% of Claimant's award.

The parties stipulated that on or about February 11, 2000, Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of injury; and the claim was timely filed. The parties further stipulated that Claimant was earning an average weekly wage of \$405.12 resulting in rates of compensation of \$270.08 for temporary total disability benefits and \$270.08 for permanent partial disability benefits. Employer paid no temporary total disability benefits and paid medical benefits of \$3,224.15.

The issues for resolution by hearing are: medical causation; liability of Employer for past medical benefits; liability of Employer for temporary total disability benefits from February 12, 2003 through March 11, 2003; and nature and extent of permanent partial disability.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant is a 37-year-old woman who was employed by Employer as a cake decorator. Her job duties consisted of rolling large cauldron bowls of icing into the cake room, and tilting the bowls so that the icing would fill five-gallon buckets which were then sealed. She also decorated cakes, cleared the cake area, and loaded cakes into large trays. Claimant testified that she spent about two hours of her day lifting.

On February 11, 2000, Claimant was attempting to lift one side of a large, cauldron bowl of icing with a partner, when the rolling gurney underneath the bowl moved. She tried to keep the icing bowl from falling when she then heard a pop in her back and felt immediate pain in her lower back and right hip. Claimant was able to complete her shift, but later that day she began to have complaints of pain down her right leg.

Claimant testified she first received authorized treatment from Acute Care Center. The records note she treated with Dr. Prusacyk who diagnosed her with a lumbar and right hip strain. Claimant was prescribed medication, underwent lumbar and right hip x-rays, which were negative, and followed up for three visits to the Acute Care Center. Dr. Prusacyk also ordered a course of water therapy at the Aquatic Fitness Center. On March 2, 2000, she noted continued lumbar complaints with right sciatica. She was then referred to Dr. Samson.

Dr. Samson first examined Claimant on March 9, 2000. Dr. Samson diagnosed right sciatica and ordered an MRI of her back and her hip. The MRI was taken on March 9, 2000 and revealed mild mid-line degenerative disc change at L5-S1. Dr. Samson's report dated March 16, 2000 noted that the MRI revealed degenerative disc disease at L5-S1, but no disc herniation. An MRI obtained of Claimant's right hip was negative for any abnormalities. Dr. Samson diagnosed Claimant with a right hip and back strain on March 20, 2000.

Claimant did not return to Dr. Samson until July 12, 2000. Although she noted some complaints in her low back and right hip, Dr. Samson noted she really sought treatment that day due to chest pain. After examination, Dr. Samson had no further recommendations for care of her right hip or back, and he opined Claimant's chest pain was unrelated to the February 2000 incident. Dr. Samson diagnosed right hip and back strain and right anterior chest wall pain.

On November 13, 2000, Dr. Samson opined that Claimant has sustained a right hip and low back strain from the February 2000 incident. He assessed her with a 2% permanent partial disability based on her ongoing complaints.

Following her release from Dr. Samson, Claimant did not seek any additional medical treatment for her back and hip until March 2002, and other than two or three days immediately following her work accident, Claimant did not miss any time from work until February 2003, approximately three years after the accident.

Claimant continued to work as a cake decorator doing her normal job duties after February 11, 2000. Claimant had assistance putting the cake trays on the rolling cart. She also noted that the job duties of all the cake decorators changed, as they no longer had to lift the cauldrons of icing to place the icing into the buckets. However, she continued to lift on a daily basis in her job duties at Employer.

Claimant testified that she left her job at Employer because she wanted to move into management and make more money. In her application for employment at Home Depot, Claimant stated that she left her employment at Employer because she wanted to be closer to home. Neither her hearing testimony, nor her Home Depot application, mention that she left Employer due to continued back pain. The only record which notes she left her employment at Employer because of her work injury is in Dr. Gornet's medical record dated October 7, 2002, approximately two years after the incident.

When Claimant was hired at Home Depot, she signed a job profile for a department sales person on November 28,

2000. By signing this profile, she agreed that her job at Home Depot had physical requirements, including the need to climb ladders, bend, stoop, twist, reach, and climb. Her agreement also stated she may have to lift up to 95 pounds without assistance. By signing this document on November 28, 2000, Claimant agreed that she understood these requirements and was able to complete them.

At Home Depot, Claimant worked full time setting up a new store from December 2000 until January 10, 2001. She hung wallpaper, put out carpet samples, stocked shelves, and placed small tools in their appropriate locations. She constantly stacked and moved things during the set-up of the store. Claimant also agreed that she had to bend over and open boxes during this set up. Claimant did not miss any work during this time period nor did she seek any treatment for back or right hip pain.

Claimant also testified that after the Home Depot store opened, she continued to work in the wallpaper department as a sales associate, which required her to stock wallpaper. Claimant also moved a heavy cart stacked with boxes once per week. She testified that she never sought any treatment for her back or right hip while working in the wallpaper department.

Claimant also testified that Home Depot required the use of heavy machinery. She operated a forklift, a dolly, a handcart machine, and a picker machine. When using the forklift, Claimant had to scoot items onto or off a platform. These items included boxes of tile, toilets, vanities, and tub enclosures.

In addition to working in the wallpaper department, Claimant testified that she was first promoted to kitchen designer, then to a supervisor, and finally to an assistant store manager at Home Depot. When Claimant was promoted to supervisor at Home Depot, she signed a new agreement on August 20, 2001. By signing this agreement, she agreed that she could do things such as bend, stoop, lift, reach, and climb ladders. She noted that as a supervisor she would have to fill in for employees in other departments as needed, and that as a store manager she is on her feet all day.

Claimant also testified that she painted multiple walls in her home and put up wallpaper border in her kitchen and her son's bedroom in 2001. Her painting required her to use a ladder.

Claimant also played in one-half of a roller hockey game approximately 12 months after the accident at Employer. She stated she warmed up prior to the game and played as a goalie. As a goalie, Claimant testified that she wore a helmet, gloves, chest protector, and leg pads.

Additionally, Claimant testified to a subsequent accident at Home Depot on November 30, 2002 while moving toilet bowls. Claimant was sliding toilet bowls across a pallet, and there were approximately 20 toilets per pallet. While scooting the toilet bowls across the pallet, one fell on her foot and she sustained a toe fracture.

Claimant did not seek any further treatment for her low back or right hip after her release from Dr. Samson until her examination by Dr. Weis on March 22, 2002, more than two years after the incident in February 2000. Dr. Weis ordered a second MRI of the lumbar spine on April 1, 2002 which revealed disc desiccation and a disc protrusion at the L5-S1 level. Claimant then did not seek treatment until October 7, 2002, when she was examined by Dr. Gornet.

In Dr. Gornet's initial examination of Claimant on October 7, 2002, he noted Claimant had complaints of low back pain, as well as right leg pain and left leg numbness. There is no mention of left leg complaints in any prior medical records. He reviewed the April 2002 MRI, noting disc dehydration at L5-S1 and that she had a high intensity lesion not mentioned in the MRI report, which he opined was classic of an annular tear which was central and more toward the left. Dr. Gornet then recommended surgery for Claimant's lumbar spine.

Dr. Gornet obtained a third MRI of Claimant's lumbar spine on January 14, 2003. Dr. Gornet opined that the MRI scan revealed a high intensity zone lesion, loss of disc height and changes in disc hydration at L5-S1.

On February 12, 2003, approximately three years after the incident, Dr. Gornet performed an anterior decompression and lumbar fusion at L5-S1. Following her surgery, Claimant continued to follow up with Dr. Gornet. She missed work at Home Depot from February 12, 2003 through March 11, 2003 to recover from the surgery. Dr. Gornet also ordered a course of physical therapy. On April 22, 2005, Dr. Gornet opined that Claimant did not need to return for any follow-up visits for one year. In a report dated May 9, 2005, he opined that Claimant's February 2000 work injury was the substantial factor in causing her need for surgical treatment. The cost of the treatment rendered by Dr. Gornet totaled \$19,830,08.

Presently, Claimant testified that she notices numbness in her right leg when driving for long periods of time. She stated she continues to have some complaints of low back pain, but that her pain has decreased. She takes over the counter medications for pain.

On May 22, 2000, Dr. Margolis examined Claimant at the request of her attorney. On physical examination, he noted Claimant had full range of motion without spasm and that her straight leg raising was negative bilaterally. She had tenderness in the right hip. After examination of Claimant, her March 2000 MRI reports of the back and right hip, and both Acute Care's and Dr. Samson's records, Dr. Margolis provided a report dated June 26, 2000 where he opined claimant suffered a right hip sprain/strain and lumbar strain/sprain. He provided a permanent partial disability rating of 20% of the body as a whole for the low back, and 25% of the right lower extremity for the right hip. His report made no recommendations for further treatment.

Dr. Margolis saw Claimant three years after his evaluation and provided additional reports dated June 30, 2003 and August 3, 2004. He then related the surgery and need for treatment to the incident in February 2000. Dr. Margolis then issued a new permanent partial disability rating of 45% of the body as a whole for the low back injury.

Dr. Gornet testified on behalf of Claimant. He agreed that his initial examination of Claimant was two years and 8 months after the initial incident in February 2000. He also agreed that when Claimant received authorized treatment with Dr. Samson, he had diagnosed a right hip and back stain. Dr. Gornet testified that in his initial examination of Claimant she had left leg numbness. He agreed that Dr. Samson's medical records make no mention of left leg complaints and that this is a new complaint. He also agreed there was no mention of left leg numbness from the Aquatic Fitness Center records.

Dr. Gornet testified he felt he obtained an accurate history from Claimant. However, he agreed he did not ask Claimant how long she worked at Employer after the injury and was not aware of the extent of the physical demands of her present job.

Dr. Samson testified on behalf of Employer. Dr. Samson testified that he provided a supplemental report dated October 22, 2004, after Claimant had surgery with Dr. Gornet. Dr. Samson testified that, although Dr. Gornet indicates the surgery was needed due to the high intensity zone seen in the MRI, he opined that high intensity zones are not a constant, and difficult to provide the basis to perform surgery. His report noted he would not recommend a lumbar fusion for a high intensity zone, and opined the surgery performed by Dr. Gornet was not the result of the February 11, 2000 incident.

CONCLUSIONS OF LAW

Based upon the testimony, medical evidence, my observation of Claimant at hearing, and the application of Missouri law, I find:

Medical Causation

Claimant has failed to establish a causal connection between the incident at work on February 11, 2000, and the need for her back surgery on February 12, 2003. Any treatment Claimant received after her release by Dr. Samson in July 2000 is not causally related to her injury in February 11, 2000.

In this case, Drs. Margolis' and Gornet's medical opinions deserve less weight than those of employer's expert, Dr. Samson. Dr. Margolis admitted he normally treats back injuries in his regular practice. In his original examination in May 2000, Dr. Margolis agreed that he diagnosed Claimant with a lumbar strain/sprain and hip sprain/strain after physical examination after review of all of the previous records, including the March 2000 MRI. He agreed he recommended no additional testing, treatment, or work restrictions for Claimant.

However, Dr. Margolis admitted he then changed his opinion after Dr. Gornet performed lumbar surgery on Claimant. Dr. Margolis admitted that this subsequent evaluation of Claimant was not until June 2003, which was three and a half years after the incident in February 2000. Review of Dr. Margolis' deposition testimony shows that his conclusions were based on an incorrect and incomplete injury history.

Dr. Gornet's opinions also deserve less weight than the employer's medical expert, Dr. Samson. He agreed that his initial examination of Claimant was two years and 8 months after the initial incident in February 2000. Dr. Gornet's deposition testimony indicates his conclusions were based on an incorrect and incomplete injury history.

Additionally, Claimant underwent three MRIs of her lumbar spine after the incident at Employer in February 2000 providing different results. While receiving authorized treatment with Dr. Samson, she had an MRI on March 9, 2000 which revealed mild mid-line degenerative disc disease at L5-S1. There was no mention in the report of a disc herniation nor of an annular tear. A second MRI on April 1, 2002 at NYDIC, almost two years after her release by Dr. Samson, revealed disc desiccation and disc protrusion at L5-S1.

The opinions of Dr. Margolis and Dr. Gornet also deserve less weight than Dr. Samson due to Claimant's high activity level, and length of time following her release from authorized treatment up until her surgery with Dr. Gornet. Claimant continued to work full-time performing regular duties at Employer, and then sought new employment at Home Depot. At Home Depot, Claimant assisted in the set-up of a new store. She testified she stocked wallpaper, put out carpet samples, stocked shelves, and placed small tools in their appropriate locations. She agreed with her deposition testimony that she constantly stacked and moved things during the set-up of the store. Claimant also agreed that she had to bend over and open boxes during this set up. Claimant did not miss any work during this time period nor did she seek any treatment for back or right hip pain.

Following the opening of the store, Claimant continued to work at Home Depot. As a sales associate in the wallpaper department, she stocked and re-shelved wallpaper, operated heavy machinery, and had to bend and reach. Claimant continued to work as a supervisor and then assistant store manager. She admitted she was on her feet most of the day. She also agreed that she signed documents at Home Depot indicating she was able to perform the physical demands of her job. This included bending, stooping, lifting, reaching, twisting, and climbing ladders.

Besides her work activities, Claimant testified she painted and put up wallpaper border in multiple rooms in her house. Claimant stated that she personally climbed ladders to do the painting. She also played in a roller hockey game as a goalie.

Given the medical evidence and hearing testimony, Dr. Gornet's opinions, particularly as to medical causation are not credible. Dr. Gornet found that despite over a year and a half of regular work duties without any medical treatment, the February 2000 accident was the substantial factor in the need for her February 2003 surgery. There is no dispute that Claimant was able to carry out her regular duties at Employer and Home Depot without missing any work for over a year and a half. Additionally, Dr. Margolis' opinion in his subsequent report dated August 2004 is not credible. He previously provided opinions indicating the claimant sustained a sprain/strain from the work incident in 2000. It was not until Dr. Gornet recommended surgery that his opinion as to the nature of Claimant's injury from February 11, 2000 and her need for further treatment changed. Conversely, Dr. Samson found Claimant suffered a sprain/strain from the February 2000 incident. He provided conservative treatment for her complaints, and released her in July 2000. Claimant then continued with her regular activities and did not seek and any further treatment for over a year and a half.

Permanent Partial Disability

I find Claimant has sustained a permanent partial disability of 5% of the body as a whole due to her back and right hip sprain on February 11, 2000.

Claimant received authorized treatment at Acute Care Center and with Dr. Samson. She was diagnosed with a back sprain/strain and right hip sprain/strain. Claimant was provided with medication and aquatic therapy. Dr. Samson released her from authorized care on July 22, 2000. Claimant then did not seek any further treatment until her unauthorized examination by Dr. Weis in 2002, and then her unauthorized back surgery with Dr. Gornet in February 2003. As previously indicated, the medical evidence and testimony do not support a causal relationship between her injury in February 2000 and her subsequent back surgery in 2003. For a period of almost two years, Claimant continued to work full-time in a regular duty capacity at both Employer and Home Depot. She also participated in outside activities such as home redecorating, painting, and even played in a game of roller hockey as a goalie. Any subsequent treatment claimant underwent after her release by Dr. Samson is not related to the February 2000 incident. I find she sustained a sprain/strain of her back and right hip from the incident at Employer in February 2000.

Unpaid Medical Expenses

As previously noted, the medical evidence and testimony indicates claimant's treatment with Dr. Gornet is not causally related to the incident on February 11, 2000. Therefore, she is not entitled to past medical expenses for her

treatment with Dr. Gornet.

I find the medical bill admitted into evidence as reflected by Employee's Exhibit H to be unrelated to the injury on February 11, 2000. Based on the foregoing, I find Claimant is not entitled to an award of \$19,830.08 for unpaid medical aid, and payment is denied.

Temporary Total Disability Benefits

As found by the medical evidence and testimony, Claimant's need for back surgery is not causally related to the incident on February 11, 2000. As the lumbar surgery is not related to Claimant's injury in February 2000, her entitlement to any payment for time off of work after the surgery is not be related to the 2000 incident at Employer.

I find Claimant is not entitled to temporary total disability benefits from February 12, 2003 through March 11, 2003. Although Claimant was unable to work in the usual duties of her employment during this time period, she was not off of work as a result of the injury in February 2000 nor was she off of work as a result of treatment she was receiving for the February 2000 injury. Therefore, I find claimant is not entitled to temporary total disability benefits.

CONCLUSION

Accordingly, on the basis of the competent and substantial evidence contained within the whole record, I find Claimant sustained a 5% permanent partial disability as a result of the incident on February 11, 2000. Her subsequent surgical treatment with Dr. Gornet was not causally related to the February 2000 incident, and therefore, Claimant is not entitled to payment for past medical expenses nor payment for any temporary total disability benefits.

Date: _____

Made by: _____

Margaret D. Landolt
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation