

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

Injury No.: 99-139203

Employee: Nancy Clayton
Employer: Langco Tool and Plastics, Inc.
Insurer: Fremont Insurance Co.
Missouri Insurance Guaranty Association
Date of Accident: Alleged October 26, 1999
Place and County of Accident: Scott 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 March 13, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Lawrence C. Kasten, issued March 13, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3rd day of November 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I believe the administrative law judge erred in concluding that employee failed to meet the burden of proof on the issues of

accident and medical causation.

“The fundamental purpose of the Workers' Compensation Law is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted, extending its benefits to the largest possible class. Questions as to the right of an employee to compensation are resolved in favor of the employee.” *Cochran v. Industrial Fuels & Resources, Inc.*, 995 S.W.2d 489, 492 (Mo.App. S.D. 1999).

Competent and substantial evidence supports a finding that employee suffered an injury on October 26, 1999. However, the administrative law judge found that employee did not have a work related accident on that day. There is no dispute that employee reported this injury to her supervisor and was instructed to complete an incident report. However, there is conflict over the contents of the Report of Injury, more specifically the reference to the “mat” as the cause of employee’s injury. Employee testified that she mentioned the mat as a source of discomfort, but reported a pop in her back after bending down to pick up a crate as the cause of her injury. The pop in employee’s back was not noted in the Report of Injury; however, the report was prepared and signed by employee’s manager, not employee. Employee was never given the opportunity to review the Report of Injury or verify its contents for accuracy. It is important to note that employee testified that she completed a handwritten account of the injury but this was never admitted into evidence.

The administrative law judge found employee lacked credibility due to the fact that employee gave varying accounts of her injury to her initial treating physicians. The exact detail in employee’s medical histories did vary, but this does not necessarily make employee not credible. A variation in some detail would be expected, especially considering employee’s medical histories were taken over the course of several years and by different physicians. The medical histories show that whether or not employee made specific reference to the pop in her back, she did divulge the aspects of her job that were the source of her back injury, whether it was lifting, twisting, and turning or reaching repetitively forward and upward. She also consistently reported an onset of symptoms that occurred following the October 1999 injury.

The fact that employee did not report low back pain that radiated across her hips and down her left leg prior to her October 1999 work injury, shows that the condition did not predate the work injury. Therefore, the administrative law judge’s suggestion that employee’s injury could have been caused by an auto accident at age 16 is not plausible. The administrative law judge further cites a strain in employee’s back while deer hunting as a potential source of injury. However, Dr. Varna’s records of November 26, 2001 state that employee may have strained her back while deer hunting, but no specific trauma was noted. At this point, employee was already diagnosed with the herniated disc at L3-4 and recommended surgery. Therefore, any subsequent strain was not the cause of employee’s back injury. Employee was suffering from an ongoing condition that could have been aggravated by other activities. This does not negate, but if anything reinforces the fact that she already had an established back condition.

The administrative law judge found that employee’s back condition was not medically causally related to the alleged accident. However, employee has established through the testimony of Dr. Palen that the work injury sustained on October 26, 1999, was the substantial factor in the cause of employee’s back injury. Dr. Palen’s testimony was persuasive as he gave a thorough and reasonable explanation for the expert medical opinion he rendered. Dr. Palen based his opinion on employee’s medical history and his examinations of employee. Most significantly, an MRI taken after the October 1999 injury showed a herniated disc at L3-4 and surgery was recommended by Dr. Ritter. Dr. Palen agreed with this assessment and the need for further treatment, specifically the surgery recommended by Dr. Ritter. Employee’s medical record does not contain any evidence of a herniated disc prior to October 26, 1999. This reinforces claimant’s credibility along with the fact that prior to the October 26, 1999 work injury, employee never complained of symptoms identical to those reported immediately following her work injury, but did so consistently thereafter.

Therefore, employee has met her burden by establishing that she suffered a work-related injury on October 26, 1999 and that her back condition is medically causally related to the work-related injury. Accordingly, I would reverse the decision of the administrative law judge and award compensation.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission to deny

compensation.

John J. Hickey, Member

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Nancy Clayton Injury No. 99-139203

Employer: Langco Tool and Plastics Inc.

Additional Party: N/A

Insurer: Fremont Insurance Co./ Missouri Insurance Guaranty Association

Hearing Date: December 5, 2005 Checked by: LK/kh

SUMMARY OF FINDINGS

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? No.
4. Date of accident or onset of occupational disease? N/A
5. State location where accident occurred or occupational disease contracted: N/A
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? No.
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 happened or occupational disease contracted: N/A.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: N/A.
14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to date for temporary total disability: \$3,480.53.
16. Value necessary medical aid paid to date by employer-insurer? \$4,118.91
17. Value necessary medical aid not furnished by employer-insurer? N/A.
18. Employee's average weekly wage: \$259.19

19. Weekly compensation rate: \$172.79.
20. Method wages computation: By agreement.
21. Amount of compensation payable: N/A

TOTAL: \$0.00

Second Injury Fund liability: Future requirements awarded: N/A.
Said payments to begin (see findings) and 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: N/A.

FINDINGS OF FACT AND RULINGS OF LAW

On December 5, 2005, the employee, Nancy Clayton, appeared in person and by her attorney, Steve Taylor for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Julie Petraborg. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. On or about October 26, 1999, Langco Tool and Plastics, Inc. was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was fully insured by Fremont Insurance Company/Missouri Insurance Guaranty Association.
2. On or about October 26, 1999, Nancy Clayton was an employee of Langco Tool and Plastics, Inc. and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's alleged accident.
4. The employee's claim was filed within the time allowed by law.
5. The average weekly wage was \$259.19. The rate of compensation is \$172.79.
6. The employer-insurer has paid a total of \$4,118.91 in medical aid.
7. The employer-insurer has paid a total of \$3,480.53 in temporary total disability payments representing 20 1/7 weeks of compensation. The time period covered was October 26, 1999 though March 14, 2000.

ISSUES:

1. Accident
2. Medical Causation
3. Claim for previously incurred medical including Medicaid lien
4. Claim for additional or future medical aid
5. Nature and extent of permanent partial disability

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical records
- B. Dr. Campbell's medical records
- C. The 2003 deposition of Dr. Palen
- D. The 2005 deposition of Dr. Palen

Employer-insurer's Exhibits

1. Letter from Dr. Ritter dated January 10, 2000 with correspondence from adjuster
2. Medical records of Dr. Campbell
3. Correspondence from Missouri Southern Healthcare dated December 16, 2005
4. Medical records of Missouri Southern Healthcare
5. Medical records of Kneibert Clinic
6. Medical records of Dr. Varma
7. Deposition of Dr. Lange
8. Medicaid Lien dated November 4, 2005

Judicial notice of the report of injury was taken.

WITNESSES: Nancy Clayton (Employee)

BRIEFS: The employer-insurer filed its brief on January 19, 2006. The employee filed her brief on January 20, 2006.

FINDINGS OF FACT:

When the employee was 16 year old, she was involved in a car accident and injured her low back.

The employee's testimony concerning the alleged accident was as follows: She worked for the employer for 6 months on several different machines including a leveling foot machine and a door scuff machine. The leveling foot machine job included lifting 80 pound crates of bolts onto a table two or three times a day. The job required bending, twisting, and stooping. Part of the job entailed putting bolt in slots, which required reaching overhead. She had to stand on crates to do this. While performing the leveling foot job, she had complaints of her leg and back aching. After working on that machine for a week she asked to be put on something easier because she was worn out from the lifting. She was placed on the door scuff machine. The first day she worked on that machine was October 26, 1999, the day of the alleged accident. That job required lifting 30-pound crates of parts from under the machine and putting them on a high table. She had to bend, twist, and stoop. There was a 2-inch thick hard mat with no give, which she did not like. She complained to her supervisor, Beth Fowler, about the mat being too hard which made her knee, hips and back hurt. She asked that they change the mat to a more "squishy" one. They would not let her change because they were trying to get rid of static electricity. After working for three and a half hours, she went to put a crate on the pallet and when she bent over she felt a pop in her lower back around the waist that sent immediate pain into her back and hip which ran down her left leg. That pain was different than what she had complained about earlier and it was a feeling that she never had before. She reported what happened to Beth Fowler, her supervisor. The employee testified that the pop in her back caused the problem with her back and it was not from standing on the mat. The employee testified that she was instructed to fill out an incident report the next day. She discussed her injury with Michelle McClendon on October 27 but does not recall saying that the mat caused the pain. She told Ms. McClendon that the pain happened when she bent down to put a crate on a pallet.

The Report of Injury was prepared on November 3, 1999 by Michelle McClendon, Assistant Manager and was filed with the Division on November 12. The employer was notified of the problems with the employee's low back on October 26. The report states that the employee's low back pain was caused by standing on a different mat from what she normally used.

The employee requested medical treatment from the employer and was sent to Dr. Campbell. The employee testified that she told Dr. Campbell about the mat because that is what first started her complaining. She also told him that when she bent over to put a crate on a pallet there was a pop that caused the pain. The employee saw Dr. Campbell on November 4, 1999. Dr. Campbell's handwritten notes on that day show that the employee hurt her back last week standing on a 1 ½" hard mat all night lifting, twisting and turning and the pain has progressively gotten worse.

On November 15, Dr. Campbell referred the employee to Dr. Raymond Ritter. The employee testified that Dr. Ritter took a history about how the injury occurred and she told him about standing on a mat and told him that she bent over and felt pain shooting down her leg and thought she told him about the pop in her back. The employee saw Dr. Ritter on November 16 due to pain in her back and left leg. The history given by the employee in his records was that around October 26, 1999 she was standing on a mat for about 10 hours during the day and developed pain during the day, which was much worse that night.

Dr. Ritter ordered an MRI, which was done on November 19. On November 24, Dr. Ritter stated that the MRI showed a fairly large disc protrusion at L3-4 and lesser disc protrusions at L4-5 and L5-S1. The major defect appeared to be at L3-4. Dr. Ritter assessed a herniated disc at L3-4 with left sciatica and discussed possible surgery. He referred her to Dr. August Ritter for possible surgery.

The employee saw Dr. August Ritter on December 2. The employee testified that she told Dr. August Ritter about the mat and that she felt pain when she bent over to put the crate on the pallet but does not know if she told him about the pop. In his medical records, Dr. Ritter noted that the past medical history was unchanged.

Dr. Ritter stated that the MRI showed a very prominent central disc herniation at L3-4 slightly more to the left than the right and no other abnormalities noted other than degenerative disc disease at multiple levels. After a second epidural in February of 2000, which failed to give relief, Dr. Ritter recommended a discectomy for the herniated disc at L3-4 on February 8, 2000.

In a January 10, 2000, letter responding to an inquiry by the insurance company, Dr. August Ritter stated that, “. . . there is certainly I think, some difficulty with accurately describing the onset of her disk herniation. Standing on a mat for 10 hours a day would not be a normally traumatic activity, although it may cause some low back pain, should not have caused a disc herniation by itself. However, lacking further history of other initiating event and her pain coming on by her history at least while at work, I think it is equivocal and would be difficult to put firm medical causation on any one particular activity”.

The employer sent the employee to Dr. Lange an orthopedic surgeon on March 14, 2000. The employee testified that she told Dr. Lange that she bent over and felt the pain shoot down her leg. Dr. Lange's medical records show that the employee claimed residual symptoms after working on October 26, 1999. Prior to that day, she had been noticing some aching across the low back while working. She told him that she was operating a machine one night when she began having difficulties. On October 26, the employee was standing on a thick mat reaching repetitively forward and upward and stated that she developed low back discomfort and also aching in the left leg without specific injury. The employee denied symptoms of a similar sort in the past.

Dr. Lange noted that there was no particular traumatic event involved in the precipitation of the back discomfort that she noticed prior to or the more significant symptoms on October 26, 1999. He stated that it would be hard to envision that there would be any causal relationship between the hard mat she was standing on and the significant lumbar problem. It was his opinion that her lumbar symptoms probably would have occurred whether she was standing on the mat or not and potentially also whether she was at work, at home or at some other location. Dr. Lange was also concerned as to the specific anatomic structure that might be causing her symptoms. She had wide spread complaints in a bilateral fashion and her neurologic exam really did not help localize a specific lesion. She does have a disc prominence at L3-4 but such prominences actually are fairly common due to degenerative changes.

The employee saw Dr. Tellow on November 7, 2000. The employee testified that she told Dr. Tellow about the mat but maybe not about the pop. In his records, Dr. Tellow noted that on October 26, 1999, the employee was working in a factory. There was no precipitating injury, but the employee started noticing pain in her low back with radiation into the posterior aspect of the left leg all the way into the ankle. This pain became much more severe later on when she went home. In the past history it showed intermittent mild back pain for several weeks before the severe pain in October of 1999. She attributed her problems to doing strenuous activity at work.

Dr. Palen saw the employee on January 4, 2001. The employee testified that she told Dr. Palen about the mat and bending over and the pain shooting down her leg but does not recall if she said anything about the pop. Dr. Palen's medical records show that the employee told Dr. Palen that she had been lifting large boxes overhead and placing them on a pallet when she developed pain and burning in her low back extending down her left leg to her ankle and then to her right leg.

The employee testified that her problems have been consistent since the injury. The medical records show that the employee started seeing Dr. Varma for back pain on June 8, 2001. She had complaints of some lower back pain that she has had for awhile with no recent trauma. The employee saw Dr. Varma in September and October of 2001 and he checked boxes in his report for no back pain or joint pain.

The employee testified that she does not recall an incident where she hurt herself while deer hunting in 2001. She did go out and try to walk but had to stop and sit and never made it to her destination. She possibly told Dr. Varma about it. On November 26, 2001, the employee saw Dr. Varma with the chief complaint of back pain for three days due to a recent trauma while she was out in the woods deer hunting. Dr. Varma's assessment was back pain and noted that the employee may have strained it while deer hunting. On December 10, Dr. Varma referred the employee to a pain clinic. On December 17, the employee saw Dr. Soeter at the Pain Management Center. In the history, it stated that the employee has had symptoms since October of 1999, but they have been getting worse lately. Recently the symptoms have reoccurred and are getting worse. Dr. Soeter treated the employee with lumbar epidural steroid injections, ordered another lumbar MRI, performed trigger point injections, and prescribed medication. He continued to treat her through September of 2002. At the end of October of 2002,

she noted that she had been very active in the last week cleaning out her house, which increased her back pain and also reported shooting pain to her left lower extremity. He continued to treat her with epidural steroid and trigger point injections. The medical records show treatment into 2003.

Dr. Palen's first deposition was taken on December 12, 2002. He reviewed the records from Dr. Campbell, Dr. Ritter, St. Francis Medical Center and Dr. Lange. It was his opinion based on his interview with the employee and a review of the medical records that the lifting was probably the proximate cause of the injury. Dr. Palen stated that it would be important for him to know about any prior injuries to her low back in terms of making an causation opinion. It was his understanding that the employee had no prior low back injuries. He did not recall the fact that in Dr. Ritter's record there was a reference to a prior low back injury due to a car accident. The employee did not tell him about any prior injuries. Dr. Palen stated that the disc degeneration with narrowing at L3-4, L4-5 and L5-S1 was probably not related to the box lifting at work. Dr. Palen stated that assuming prior to the date of the injury she had no back pain then it was his opinion that the lifting was the substantial cause of her injury.

The employee saw Dr. Palen again on May 3, 2005. Dr. Palen's second deposition was taken on August 30, 2005. Dr. Palen reviewed the records from Dr. Campbell, Orthopedic Associates, St. Francis Medical Center, Dr. Cleaver and Dr. Lange. It was Dr. Palen's opinion that the work related demand on October 26, 1999 was the substantial cause of her back injury. It was his impression that the employee had a herniated disc and would concur with Dr. Ritter recommending surgical intervention. Dr. Palen stated that the history contained in his May 9, 2005 report was identical to the history in the January 5, 2001 report. He concluded that the work injury of October 26, 1999 was a substantial factor in the cause of the employee's back injury. His understanding of the injury was that the employee was lifting large boxes overhead and placing them on a pallet when she developed a burning pain in her low back. She did not have any history of a prior back injury or problems. He agreed that the MRI film indicated that the employee was suffering from degenerative disc disease in her back. When asked if he agreed that the MRI findings of degenerative disc predated the work injury, Dr. Palen stated yes probably so. If it was determined that the employee did sustain a prior back injury that would be new information to him.

In his deposition of August 25, 2005, Dr. Lange noted that history given to him by the employee was that she began having achiness in her low back while working prior to October 26, 1999. On October 26, 1999, the employee was standing on a mat and repetitively reaching forward and upward when she developed back pain and left lower extremity discomfort. The left leg was first mentioned on October 26, 1999. She did not provide to him any history of a specific injury or a traumatic event. Dr. Lange stated that the MRI of the low back showed degenerative changes at the L3-4 disc with a central prominence that was hyperintense meaning that it wasn't necessarily due to typical degenerative changes. She had abnormalities at three different disc levels on the MRI. It was his opinion that it was unlikely that there was a significant correlation between her work activities and her low back condition. She did not have a particularly traumatic event at work and it was his opinion that the employee's work was not a substantial factor in the development of her back condition.

RULINGS OF LAW:

Issue 1. Accident and Issue 2. Medical Causation

The employer-insurer has denied that the employee sustained an accident arising out of and in the course of her employment on October 26, 1999 and denied that the employee's injury and need for medical treatment were medically causally related to the alleged accident.

The employee has the burden of proving both that there was an accident and that there is a medical causal relationship between the accident, the injuries, and the medical treatment for which she is seeking compensation. See Dolan v. Bandera's Café and Bar, 800 S.W.2d 163 (Mo. App. 1990). A claim for compensation may be decided solely upon a finding of lack of credibility of uncontradicted and unimpeached testimony. See Cox. General Motors Corporation, 691 S.W.2d 294 (Mo. App. 1985), Beyer v. Howard Construction Company, 736 S.W.2d 78 (Mo. App. 1987) and Alexander v. D.L. Sitton Motor Lines, 851 S.W.2d 525 (Mo. Banc. 1993).

Given these established principles, there are a number of evidentiary problems, which support a finding that the employee has failed to meet her burden of proof on the issues of accident and medical causation. These problems are addressed as follows:

The medical history given by the employee to the initial treating health care providers do not corroborate the testimony of the employee at the hearing regarding a specific incident.

The employee testified that on October 26, 1999, as she went to put a crate on a pallet she bent over and felt a pop in her lower back and had immediate pain in her back, hip and leg. On November 4, the employee reported to Dr. Campbell that she hurt her back last week standing on a 1 ½ " hard mat all night lifting, twisting and turning. On November 16, the employee reported to Dr. Ritter that she was standing on a mat for about 10 hours and developed pain in her back and leg.

The employee's version of the accident kept changing.

It is important to note the evolution of the employee's version of the accident. The first version was on November 3, 1999 from the Report of Injury that the employee's low back injury was caused by standing on a different mat from what she normally used. On November 4, 1999, the employee told Dr. Campbell that she hurt her back standing on 1 ½" hard mat all night lifting, twisting and turning. On November 16, 1999, the employee told Dr. Raymond Ritter that she was standing on a mat for about 10 hours and developed pain in her back and leg. The second version began in March of 2000, when the employee told Dr. Lange that prior to October 26, 1999, she had some achiness in her low back and that on October 26, she was standing on a thick mat and reaching repetitively forward and upward and developed low back discomfort and aching in the left leg without specific incident. In November of 2000, the employee told Dr. Tellow that as she was working she started noticing pain in her low back and leg in October of 1999 but did not have a precipitating injury. She also stated that she had had mild back pain several weeks before the severe pain. The third version began in January of 2001, when the employee told Dr. Palen she was lifting boxes overhead and placing them on a pallet when she developed pain and burning in her low back extending down to her left leg. The last version was on the day of the hearing when the employee testified that she come complaints of leg and back aching while working on a prior machine. On October 26, she went to put a crate on pallet and as she bent over she felt a pop in her lower back and had immediate pain in her back, hip and leg, which was different than her prior pain.

The employee's version of the alleged accident started from no specific incident but just standing on a mat; then to no specific incident but just standing on a mat doing repetitive reaching forward and upward with some prior low back symptoms; then to a specific incident lifting boxes overhead and placing them on pallet when she developed pain; and finally to bending over and feeling a pop in her lower back which caused immediate pain in her back, hip, and leg. The evolving version of the accident substantially affects the employee's credibility.

The employee's testimony is inconsistent with the other evidence.

The employee testified that on October 26, 1999, as she went to put a crate on a pallet she bent over and felt a pop in her lower back and had immediate pain in her back, hip and leg. There was no other evidence that corroborated the employee's version of a specific accident and injury.

The employee testified that on October 27 she told Michelle McClendon that her pain happened when she bent down to put a crate on a pallet and does not recall saying that the mat caused the pain. The Report of Injury prepared and signed by Ms. McClendon was that the employee's low back pain was caused by standing on a different mat from what she normally used and there was no mention that the pain happened when she bent down to put a crate on a pallet.

The employee testified that she told Dr. Campbell about the mat and that when she bent over to put a crate on a pallet there was a pop that caused the pain. Dr. Campbell's records reference the mat but nothing about bending over and a pop occurring.

The employee testified that she told Dr. Ray Ritter about how the injury occurred. She stated that she mentioned standing on a mat and when she bent over she felt pain shooting down her leg and thought she told him about the pop in her back. Dr. Ray Ritter's records mention the mat but nothing about bending over or a pop in her back.

The employee testified that she told Dr. August Ritter about the mat and bending over to put a crate on the pallet but does not know if she told him about the pop. Dr. August Ritter noted that the past medical history was unchanged.

The employee testified that she told Dr. Lange that as she bent over she felt pain shoot down her leg. Dr. Lange's records show that the employee was standing on a thick mat reaching repetitively forward and upward and she developed low back and leg pain without specific injury.

The employee testified that she told Dr. Tellow about the mat but maybe not about the pop. Dr. Tellow's records show that there was no precipitating injury

The employee testified that her problems have been consistent since the injury. Dr. Varma's medical records show no back pain in September or October of 2001. The records on November 26, 2001, show back pain for three days due to recent trauma. In December of 2001, Dr. Soeter's records show that her symptoms reoccurred and are getting worse. Dr. Soeter performed multiple injections and prescribed medications and another MRI. In October of 2002, the records show that the employee had increased back pain and she received additional treatment.

The employee testified that she does not recall an incident where she hurt herself deer hunting in 2001. She did try to go out but never made it to her destination and possibly told Dr. Varma about it. Dr. Varma's records of November 26, 2001 show that the employee had back pain for three days due to a recent trauma while deer hunting. Dr. Varma stated that the employee might have strained her back. Two weeks later, Dr. Varma referred the employee to Dr. Soeter a pain doctor for

more treatment.

These inconsistencies have an adverse effect on the credibility of the employee. Even a couple of inconsistencies are not fatal to a claim, however; in this case the overwhelming inconsistencies make the testimony of the employee not credible.

There are other possible causes for the employee's condition other than the alleged work accident and injury.

When she was 16, the employee was involved in a car accident and injured her low back. Dr. Palen stated that the disc degeneration at L3-4, L4-5 and L5-S1 pre-existed the injury. In November of 2001, Dr. Varma stated that the employee had a recent trauma to her back while deer hunting and may have strained her back. Within about two weeks Dr. Varma referred the employee to Dr. Soeter a pain management doctor. In mid December, Dr. Soeter stated that recently the employee's symptoms have been getting worse. Dr. Soeter performed epidural and trigger point injections and an MRI. In October of 2002, the employee's back pain increased after cleaning out her house, and she was given more treatment including injections by Dr. Soeter.

All of these prior and subsequent injuries, incidents and conditions could have caused the employee's condition and need for medical treatment and/or aggravated the employee's condition and need for medical treatment.

There is insufficient medical evidence to support a finding that the employee's back condition is medically causally related to the alleged October 26, 1999, accident.

The employee testified that the pop in her back caused the problem with her back and leg and it was not from standing on the mat.

It was Dr. Palen's opinion that the work related injury on October 26, 1999 was a substantial factor in the cause of the employee's back injury. It is important to note that the employee did not tell Dr. Palen that her back popped. Dr. Palen stated that when making an causation opinion it was important for him to know about any prior injuries to the low back and that it was his understanding that the employee had no prior injuries. I find that Dr. Palen's opinion is substantially affected by the fact that he was not aware of the employee's prior back injury, the subsequent November of 2001 trauma to her low back, the records that the employee's symptoms had gotten worse in 2001, the subsequent worsening of her symptoms in October of 2002, and the subsequent medical treatment in 2001, 2002, and 2003, by Dr. Varma and Dr. Soeter.

It was Dr. Lange's opinion that standing on a mat and repetitively reaching forward and upward was not a substantial factor in the development of her back condition. The employee did not give a history of a specific injury or a traumatic event. It was his opinion that it was unlikely that there was a significant correlation between her work activities and her low back condition. He stated it would be hard to envision any causal relationship between the hard mat she was standing on and the significant lumbar problem. It was his opinion that her lumbar symptoms probably would have occurred whether she was standing on the mat or not and potentially whether she was at work, at home or at some other location.

It was Dr. August Ritter's opinion that standing on a mat for 10 hours a day would not be a normally traumatic activity and although it may cause some low back pain it should not have caused a disc herniation.

Based on a review of all the evidence, I find that the opinions of Dr. Lange and Dr. Ritter are more credible than Dr. Palen on the issue of medical causation. I find that there is insufficient medical evidence to support a finding that the employee's back condition is

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medically causally related to the alleged accident on October 26, 1999. I find that the employee's version of her alleged work accident of October 26, 1999 is neither credible nor persuasive.

Based on a thorough review of the evidence including the cumulative affect of the medical history given by the employee to the initial treating health care providers not corroborating the testimony of the employee regarding a specific incident at work, the fact that the employee's version of the accident kept changing, the employee's testimony being inconsistent with the other evidence which has an adverse effect on her credibility, the fact that there are other possible causes for the employee's condition other than the alleged work injury, and the insufficient medical evidence to support a finding that the employee's back condition is medically causally related to the alleged October 26, 1999 accident, I find that the employee has failed to satisfy her burden of proof on the issues of accident and medical causation. I find that the

employee did not have a work-related accident on October 26, 1999 and that the employee's back condition is not medically causally related to the alleged accident on October 26, 1999.

Given the employee's failure to prove that she sustained an accident and her failure to prove a medical causal connection between her back condition and the alleged October 26, 1999 accident, the employee's claim for compensation is denied. Given the denial of the employee's claim the remaining issues are moot and will not be ruled upon.

Date: _____

Made by:

Lawrence C. Kasten
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Patricia "Pat" Secret
Director
Division of Workers' Compensation