

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

Injury No.: 03-053449

Employee: Danny Coleman

Employer: Drake Corporation

Insurer: Virginia Surety Company, Inc. c/o Cambridge Integrated Services

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 April 20, 2009. The award and decision of Administrative Law Judge Maureen T. Tilley, issued April 20, 2009, 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 24th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Danny Coleman

Injury No. 03-053449

***Employer: Drake Corporation***

Additional Party: N/A

Insurer: Virginia Surety Company Inc. c/o Cambridge Integrated Services

Hearing Date: February 4, 2009

Checked by: MT/kh

**SUMMARY OF FINDINGS**

- Are any benefits awarded herein? Yes
- Was the injury or occupational disease compensable under Chapter 287? Yes
- Was there an accident or incident of occupational disease under the Law? Yes
- Date of accident or onset of occupational disease? June 6, 2003
- State location where accident occurred or occupational disease contracted: Jefferson County, MO
- Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
- Did employer receive proper notice? Yes
- Did accident or occupational disease arise out of and in the course of the employment? Yes

- Was claim for compensation filed within time required by law? Yes
- Was employer insured by above insurer? Yes
- Describe work employee was doing and how accident happened or occupational disease contracted: The employee testified that on June 6, 2003 he was carrying a saw blade weighing between 80 to 100 pounds when his foot slipped and he jerked backwards. The employee had symptoms of low back pain and head and neck pain.
- Did accident or occupational disease cause death? No
- Parts of body injured by accident or occupational disease: Cervical spine and lumbar spine
- Nature and extent of any permanent disability: See findings
- Compensation paid to date for temporary total disability: \$7,132.00
- Value necessary medical aid paid to date by employer-insurer: \$9,718.06
- Value necessary medical aid not furnished by employer-insurer: None
- Employee's average weekly wage: \$539.03
- Weekly compensation rate:

Temporary total disability rate and permanent total disability rate: \$359.35

Permanent partial disability rate: \$340.12

- Method wages computation: By agreement
- Amount of compensation payable: See Findings

- Second Injury Fund liability: N/A
- Future requirements awarded: None

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the employee 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 employee: Robert Miller

## **FINDINGS OF FACT AND RULINGS OF LAW**

On February 4, 2009, the employee, Danny Coleman, appeared in person and by his attorney, Robert Miller, for a hearing for a final award. The employer was represented at the hearing by its attorney, Drake Corporation. 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 the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS**

- Covered employer: Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act.
- Covered employee: On or about the date of the alleged accident the employee was an employee of Drake Corporation and was working under the Workers' Compensation Act.
- On or about June 6, 2003, the employee sustained an accident arising out of and in the course of his employment.
- Notice: Employer had notice of employee's accident.
- Statute of limitations: Employee's claim was filed within the time allowed by law.
- Average weekly wage and rate:

Average weekly wage: \$539.03

Temporary total disability rate and permanent partial disability rate: \$359.35

Permanent partial disability rate: \$340.12

- Temporary disability paid by employer-insurer: \$7,132.00
- There is not a claim for past or future medical aid or mileage.
- Medical aid furnished by employer-insurer: \$9,718.06 (This amount was stipulated to by both parties after the hearing).

### **ISSUES**

- Medical causation: Whether the employee's injury was medically causally related to accident or occupational disease.
- Permanent total disability

- Permanent partial disability

## **EXHIBITS**

The following exhibits were offered and admitted into evidence:

### **Employee's exhibits:**

- Dr. Yusuf Chaudhry records
- Jefferson Memorial Hospital MRI cervical spine
- Unity Corporate Health records
- St. Anthony's Medical Center records
- PRORehab physical therapy evaluation
- Dr. Alexander Beyzer and Dr. Faisal Albanna records
- Metro Imaging MRI of the lumbar spine
- Dr. Lang report
- Dr. Tate report
- The Work Center functional capacity evaluation
- Dr. Franz Wippold II records
- St. Louis Neurological Institute notes
- Vista Imaging of Jefferson County records
- Dr. Franz Wippold II records
- Dr. Barry Feinberg report
- Dr. Barry Burchett report
- Dr. Simpelo disability evaluation
- Dr. Seth Paskon records
- Dr. Robert Swarm pain management evaluation
- Dr. David Robson report
- Dr. David Robson report
- Dr. Davis Robson curriculum vitae

### **Employer-Insurer's Exhibits:**

- Report of Dr. Russell Cantrell
- Lumbar MRI from Metro Imaging
- Report of Dr. Sandra TATE
- Report from Dr. Simon Horenstein dated 9/4/07
- Report from Dr. Simon Horenstein dated 11/27/07

## **FINDINGS OF FACT**

### **Employee's testimony**

- The employee testified that on June 6, 2003 he was carrying a saw blade weighing between 80 to 100 pounds when his foot slipped and he jerked backwards. The employee stated that at that time he had symptoms of low back pain and head and neck pain.
- The employee saw his personal physician on June 10, 2003 who sent him for an MRI of his cervical

spine. The employee testified he has low back pain, pain in both legs, neck pain, shoulder and arm pain and headaches as a result of the incident on June 6, 2003. Prior to June 6, 2003 the employee worked 16 years for Drake Corporation.

- The employee testified that he now has pain symptoms to all parts of his body from head to toe. His pain in his mid back, shoulders, arms and his neck limit his daily activity. The pain limits his ability to drive, sit, walk and stand. He last worked on June 6, 2003. He has a social security disability hearing on February 24, 2009. He and his wife live on her Supplemental Security Income benefit.
- The employee testified that he can only walk 50 to 100 feet and he can only sleep two to three hours a night. He has a GED, has worked only as a laborer and completed the 10th grade. The employee testified that he is in too much pain to work at any job. His low back pain is a 10+ on a scale of 1 to 10 and his leg pain is a 9 to 10 on that scale. He takes Tylenol for his headaches and morphine prescribed by Dr. Chaudhry for his pain. He also has congestive heart failure, hypertension and elevated cholesterol.
- The employee has taken morphine since 2005.
- The employee now sits in his wheelchair much of the time. He also uses a walker and a cane.
- In 1995 to 2002 the employee had a business chopping wood. He could not cut wood in the fall of 2003. The employee does some chores around his house, such as laundry in his wheelchair using a floor grabber. He also cooks sandwiches and soup, makes cereal and gets cans from the pantry. His wife and two daughters do the dishes and clean up. He does no recreational activity except play his acoustic guitar. He does a home exercise program in bed by raising his hands and left leg and bending his back. The employee has not been able to lift his right leg since June 6, 2003.

#### Testimony of Rosemary Coleman

- The employee's wife, Rosemary Coleman testified that she and the employee were married in 1984 and that the employee supported his family until June of 2003.
- She and the employee sleep in the same room on separate hospital beds. The employee watches television and sleeps two to three hours a night.

#### Unity Corporate Health and Dr. Alexander Beyzer

- The employee first sought medical treatment at Unity Corporate Health on June 12, 2003. His initial complaints were of low back pain radiating into the right leg and heel. The employee gave a history of a fall six days prior with no history of back pain prior to the accident. The employee was diagnosed with an acute low back strain/sprain. Due to the severity of his complaints, the employee was referred to Dr. Beyzer for a neurosurgical consult.
- The employee was ordered to undergo a lumbar x-ray. The lumbar spine was viewed from five different angles. No fracture, dislocation, or bone destruction was found. The alignment of the vertebrae was found to be good. The x-ray was determined to be essentially normal.

#### Dr. Yusuf Chaudhry

- On June 12, 2003, the employee was referred by Dr. Yusuf Chaudhry to Jefferson Memorial Hospital for a cervical MRI.
- The MRI technician was given a history of neck stiffness for "1.5 years". The MRI showed discosteophyte complexes at all levels from C3-4 through C6-7. Mild mass effect was seen at all

above levels with no significant cord deformity or canal stenosis. Osteophyte complexes and degenerative changes led to mild foraminal narrowing on the left at C3-4 and the right at C4-5.

### Pro Rehab

- On June 23, 2003, the employee was evaluated for physical therapy by Pro Rehab.
- The employee described the weight of the saw blade that he was carrying at the time of his injury as being between 50-60 pounds. The employee described to the physical therapist constant pain over his "tailbone, pelvis, and 'last disk of my back'".
- The employee reported pain of 9-9.5/10 in his back since the incident. On the Oswestry Low Back Pain Disability Questionnaire, the employee scored 70%, indicating crippled perceived disability. The employee demonstrated a positive result in 3/5 Waddell categories, indicating a possible non-organic cause of his complaints. On the Inappropriate Symptoms Questionnaire, the employee scored 4/5.
- A June 27, 2003, note from Pro Rehab states that the employee's complaints had greatly decreased since his initial evaluation. The employee reported pain of only 2/10 and scored a 9% on the Oswestry test.

### Dr. Alexander Beyzer

- The employee was evaluated by Dr. Alexander Beyzer on June 30, 2003. The employee complained of neck and back pain dating back to the work injury.
- The employee stated that he had a pain of 7/10 in both his neck and back. The employee told Dr. Beyzer that his physical therapy had not helped. Due to the employee's continued complaints of pain, Dr. Beyzer ordered an MRI of the lumbar spine and an EMG of both lower extremities.
- Dr. Beyzer reviewed the MRI's of both the lumbar and cervical spines. He found the cervical MRI to be unremarkable. The lumbar MRI showed central disc bulging at L5-S1 with degeneration at that same level. Dr. Beyzer diagnosed cervicalgia, lumbago, degenerative disc, and myofascial pain.
- The employee was given a trigger point injection into the bilateral lumbosacral areas. The employee then received an epidural steroid injection from Dr. Faisal Albanna on July 24, 2003.
- The employee was again evaluated by Dr. Beyzer on August 4, 2003. At that time, the employee complained of low back pain, headaches and neck pain. A review of diagnostic films indicated degenerative changes at C3-4 through C5-6 and at L5-S1. The employee was again given an epidural steroid injection by Dr. Albanna and was ordered to continue physical therapy.

### Dr. David Lange

- On September 18, 2003, the employee was evaluated by Dr. David Lange of St. Louis Orthopedic Institute at the request of Employer.
- The employee told Dr. Lange of the fall and reported an injury to his neck and low back. He told Dr. Lange that his neck complaints had completely resolved with only mild headaches persisting. The employee stated that his low back pain was no better than it was immediately after the accident.
- The employee stated that he went to physical therapy twelve times and his symptoms never improved. The employee stated that the epidural injections caused "hypoglycemia".
- The employee stated that he could not bend or lift. He also reported several symptoms that Dr. Lange found unusual, including his legs trembling and feeling weak, his legs shaking during trivial activities, and a sensation of interruption of circulation in his legs.

- Dr. Lange agreed with Dr. Beyzer that employee had degenerative changes at L5-S1. Dr. Lange stated that these findings were not surprising because the employee was a thirty-eight year old male that smokes cigarettes.
- Dr. Lange stated that these factors virtually guaranteed some type of degenerative changes at the lumbosacral junction.
- Dr. Lange was unable to give a specific anatomic diagnosis because the films that he reviewed were all normal. Dr. Lange found that the employee was magnifying his symptoms.
- Dr. Lange did not believe that the employee was a candidate for any invasive treatment and suggested a short course of work hardening with a functional capacity evaluation to follow.

#### Dr. Sandra Tate

- On October 15, 2003, the employee saw Dr. Sandra Tate from St. Louis Orthopedic Institute.
- The employee stated that the weight of a blanket on his back was too much to stand. He reported sleeping only three to four hours at night, every night. The employee reported pain of 10/10 in his low back and neck.
- The employee scored a 90% on the Oswestry disability index, the highest score Dr. Tate had ever seen. This score placed employee's disability at "way more than crippling"
- The employee had a tremor during physical examination, which Dr. Tate found to be intentional as it disappeared when the employee was distracted.
- The employee demonstrated only 30 degrees of forward flexion during examination, but was able to get to 90 degrees easily when changing positions on the examination table. Dr. Tate noted that the employee would inconsistently limp on one leg, then the other, though he walked briskly out of the office.
- Dr. Tate found the employee to have high subjective complaints without objective findings. She found his symptom magnification to be "rather remarkable". She opined that the employee could probably work without restrictions, but suggested a functional capacity examination to be sure.
- A functional capacity examination was conducted, per Dr. Tate's request, at The Work Center. In his job description, the employee stated that his work with Drake Corporation would require him to lift between forty and sixty pounds.
- Dr. Tate saw the employee again on October 22, 2003. The employee stated that he continued pain in his back of 9-10/10, aggravated with all activities and his pain had not improved. On the date of this visit, the employee had recently participated in a functional capacity evaluation that was limited due to the employee not lifting more than 15 pounds. Dr. Tate noted a disparity between the activities the employee performed when being examined and those demonstrated while performing other tasks. Dr. Tate described highly suggestive complaints with no objective findings. Dr. Tate found the employee to be magnifying his symptoms because there was no evidence of a spinal cord or nerve root encroachment that would explain his complaints.
- Dr. Tate did not recommend any additional testing due to the employee's self-limiting behavior during his functional capacity exam. She found that no objective evidence pointed to the employee being a surgical candidate.

#### Dr. Franz Wippold

- On November 24, 2003, the employee was evaluated by Dr. Franz Wippold, II .
- Dr. Wippold reviewed a cervical MRI from June 12, 2003, and found evidence of subdural bleeding. He found at the C3 level and more noticeable at the C7 level, a thin collection of subdural blood posterior to the spinal cord. The blood was found to extend to the T4 level. Further, blood was reported to be

found in the T2 level. This is the first time that reference is made to subdural blood in the cervical or lumbar regions. Dr. Wippold provided no opinions regarding the cause or effect of his findings.

- The employee was sent to Vista Imaging for a repeat cervical MRI. The MRI was with and without contrast, on March 26, 2004. The film revealed no evidence of a chronic or acute hemorrhage. Only very minimal degenerative changes were identified. Similar tests were run on the lumbar spine, with the same results, no evidence of subdural blood and only mild degeneration noted. An MRI of the thoracic spine was also absent any evidence of hematoma.
- On May 26, 2004, the employee returned for evaluation by Dr. Wippold.
- Dr. Wippold compared the MRI from March 26, 2004, to those that he had previously reviewed. He found that the collection of subdural blood present on the previous exam had now resolved. The blood that had previously been noted in the thoracic and lumbar regions had also resolved. Dr. Wippold only found evidence of mild degenerative changes throughout the spine.

#### Dr. Barry Feinberg

- The employee was examined by Dr. Barry Feinberg with Injury Specialists in St. Louis on August 3, 2004.
- The employee stated that his chief complaints involved his back and legs. He stated that he had developed pain in his neck and, over the past few months, pain and numbness in his hands.
- The employee stated that his back pain was at least an 8.5/10, usually a 9/10, and at its worst hit 10/10.
- The employee stated that his pain increased with cold weather, which limited him to 1-2 hours of sleep.
- The employee stated that he had hand problems and numbness in his right arm.
- The employee told Dr. Feinberg that after a couple hours in the car, he is unable to sleep for three to four days afterwards.
- Dr. Feinberg reviewed the medical records and diagnosed the employee with spondylitic changes that are associated with facet and musculoskeletal pain radiation.

#### Dr. Barry Burchett

- On January 12, 2005 the employee was evaluated by Dr. Barry Burchett for the purposes of determining disability for state benefit purposes.
- The employee told Dr. Burchett that he had fallen backwards at work onto his back.
- Dr. Burchett noted that MRI's revealed subdurals in the spinal canal. He did not note that the subdurals in the spinal cord had resolved according to Dr. Wippold.
- Dr. Burchett noted that the employee had now developed incontinence for bowels and urine. He noted that the employee was no longer able to ambulate using a can and was forced to use a walker. He noted that the employee's only improvements came from taking narcotics.
- Dr. Burchett diagnosed arachnoiditis, with an expectancy that his symptoms will progress over time.

#### Dr. Robert Swarm

- On March 14, 2006, the employee was examined by Dr. Robert Swarm for a pain management evaluation.
- The employee stated that his neck and low back pain that was 8/10 at best; 10/10 at worst; with a 9/10 average; and a current score of 9/10.

- Dr. Swarm reviewed an MRI film of the lumbar spine from December 23, 2005. Dr. Swarm stated that the MRI showed no evidence of spinal stenosis. The MRI showed a central disc protrusion at L5-S1 with an annular disc tear- this is the first reference by any physician to an annular tear.
- Dr. Swarm suggested continued physical therapy and warned about a possible development of opioid dependency.

#### Dr. David Robson

- The employee was evaluated by Dr. David Robson of Spine Care Alliance in St. Louis on April 4, 2007. The employee's attorney sent the employee to Dr. Robson.
- The employee told Dr. Robson that he had slipped while carrying a 60 pound saw blade. He also told Dr. Robson that he could no longer walk and used a wheelchair or walker at all times. The employee also stated that he walked with a cane.
- The employee told Dr. Robson that he could not walk farther than 15 feet without assistance.
- Dr. Robson reviewed MRI's of the cervical, lumbar and thoracic spine dated March 26, 2004. He also reviewed a litany of medical records which are outlined in his report.
- Dr. Robson performed a physical exam on the employee. The employee did not participate in certain tests requested by Dr. Robson, including standing on his toes and his heels. Dr. Robson noted firing of the anterior tib tendon in his right leg when he asked the employee to stand, though the employee refused when he was asked to dorsiflex his right ankle. No atrophy of the quadriceps was found. Dr. Robson noted that "the neurological exam shows the patient attempting to show weakness of the right leg where it was not physiologic weakness and I could see firing of the anterior tib and quadriceps tendon in his effort to stand up. His reflexes were symmetrical at the knees and ankles. There was no evidence of any spasticity".
- Dr. Robson reviewed the diagnoses from all of the physicians that had examined the employee since his injury. He found that Dr. Wippold's diagnosis "made no sense". He found that it was "physiologically impossible" for there to be a mixture of subdural and epidural blood. Dr. Robson found no evidence of any subdural or subarachnoid blood and noted that Dr. Wippold himself could find no such evidence on any subsequent films.
- Dr. Robson made a statement regarding Dr. Burchett's diagnosis. Dr. Robson stated: "Dr. Burchett diagnosed arachnoiditis. There was no evidence anywhere in any medical record, any x-ray interpretation of arachnoiditis. In my opinion, there is no possibility that this patient has arachnoiditis".
- Dr. Robson opined that the employee had a low back strain. He found that there was an aggravation to the L5-S1 disk. He stated that the employee's symptom magnification caused the employee's complaints to go far beyond any findings on MRI. Dr. Robson stated that conservative measures for treatment of the employee's degenerative disk disease had been exhausted and no further treatment was recommended.
- On his intake form, the employee marked an "X" over the entire body diagram. This locale of pain was found to be non-physiological in nature. Dr. Robson suggested against any additional prescriptions for narcotics. He opined that there may be an underlying psychiatric issue that was causing the employee to report an injury far beyond any clinical diagnosis.
- In a follow-up report dated April 12, 2007, Dr. Robson indicated that he was unable to quantitate any neurological injury. He also had reviewed the curriculum vitae of Dr. Wippold which he found to be very impressive; Dr. Robson still did not agree with his diagnosis, however.

#### Dr. Russell Cantrell

- On April 28, 2008, the employee saw Dr. Russell Cantrell of Orthopedic and Sports Medicine, Inc. for

in independent medical examination on April 28, 2008.

- The employee told Dr. Cantrell that he injured himself while carrying an 80-100 pound saw blade.
- Dr. Cantrell reviewed records from all of the medical treatment the employee had undergone since his alleged injury. He found the employee's physical examination to be limited by subjective and inconsistent complaints. He found these complaints to be inconsistent with any findings on MRI.
- Dr. Cantrell noted that there were inconsistencies in the employee's history versus medical documentation. Dr. Cantrell stated that the employee had reported that he had had no prior back injury before this accident. Dr. Cantrell referenced the history given at Jefferson Memorial Hospital for the cervical MRI on June 12, 2003, as being "Neck Stiffness for 1.5 years"
- Dr. Cantrell stated that records from the employee's primary care physician made reference to the employee having low back pain with decreased motion in the lumbar spine on October 23, 2001. This was approximately twenty months prior to the employee's work accident.
- After Dr. Cantrell reviewed the employee's history and medical records and performed his own physical examination, Dr. Cantrell found no specific anatomic musculoskeletal diagnosis that would explain the employee's complaints. Dr. Cantrell stated that this finding was "based on the absence of any acute cervical or lumbar spinal pathology on the MRI scans available for my review, namely those from March 26, 2004, based on a clinical examination which in my opinion is unremarkable for any objective abnormalities that would reflect anatomic injury and on the presence of multiple nonphysiologic pain behaviors".
- Dr. Cantrell stated that it was his opinion, "within a reasonable degree of medical certainty, that Mr. Coleman's work injury of June 6, 2003 is neither a substantial nor prevailing factor in the cause of his current complaints and reported disability."
- Dr. Cantrell opined that the employee had reached maximum medical improvement and believed that he may have done so as early as late June, 2003.
- Dr. Cantrell found that the employee's care and treatment and diagnostic studies were reasonable, with the exception of Dr. Paskon's continued increase in narcotic medications. Dr. Cantrell did not believe that any treatment after June 26, 2003, was related to the employee's work accident due to the employee's reports of resolved pain, no problems with therapeutic intervention and multiple Waddell's signs.
- Dr. Cantrell found that the employee sustained no permanent disability as a result of his work accident on June 6, 2003.

## **APPLICABLE LAW**

- The burden is on the employee to prove all material elements of his claim. *Melvie v Morris*, 422 S.W.2d, 335(Mo.App.1968). The employee has the burden of proving that not only he sustained an accident that arose out of and in the course of his employment, but also that there is a medical causal relationship between his accident and the injuries and the medical treatment for which he is seeking compensation. *Griggs v A.B. Chance Company*, 503 S.W.2d 697(Mo.App.1973).
- Under the version of Section 287.020.2 RSMo., that was in effect at the time of the employee's accident, the term accident is defined to include only those injuries that are "clearly work related". Under this section 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".
- Section 287.020.7 RSMo. provides as follows:

The term "total disability" as used in this chapter shall mean the inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

- The phrase “the inability to return to any employment” has been interpreted as the inability of the employee to perform the usual duties of the employment under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kowalski v M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922(Mo.App.1992). The test for permanent total disability is whether, given the employee’s situation and condition, he or she is competent to compete in the open labor market. *Reiner v Treasurer of the State of Missouri*, 837 S.W.2d 363, 367(Mo.App.1992). Total disability means the “inability to return to any reasonable or normal employment”. *Brown v Treasurer of the State of Missouri*, 795 S.W.2d 479, 483(Mo.App.1990). An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Id.* The key is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person’s physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Reiner* at 365. See also *Thornton v Haas Bakery*, 858 S.W.2d 831,834(Mo.App.1993).

## **RULINGS OF LAW:**

### ***Issue 1. Medical causation and Issue 2. Permanent total disability***

Dr. Robson, a doctor the employee was sent to by his attorney, opined that the employee had a low back strain. He further stated that there was an aggravation to the L5 S1 disk. He stated that there was significant symptom magnification. Dr. Robson further opined that there may be an underlying psychiatric issue that was causing the employee to report an injury fare beyond any clinical diagnosis. There was not a single doctor who stated that the employee’s work accident was a substantial factor in causing the employee’s current complaints. After reviewing all of the evidence, including the employee’s testimony and the medical evidence, I find that the employee is not a credible witness. The employee was in a wheel chair at the hearing, however, after reviewing all of the evidence, it appears that the employee is magnifying his symptoms. Furthermore, I find that the employee did not meet his burden in proving that his current symptoms (which include the employee being in extreme pain and being confined to a wheel chair) were medically causally related to his accident. I also find that the employee’s work accident was not a substantial factor in the causing the employee’s current symptoms. However, I find that the employee sustained injuries to the cervical spine and the lumbar spine that are medically causally related to his work accident.

I previously found that the employee’s current symptoms of extreme pain and loss of mobility were not medically causally related to the employee’s work accident and that the employee’s work accident was not a substantial factor in causing the employee’s work accident. I further find that the employee is not permanently and totally disabled because of his work accident on June 6, 2003.

### ***Issue 3. Permanent partial disability***

I find that the employee sustained five percent (5%) permanent partial disability to the cervical spine at the 400 week level. The five percent disability is equal to 20 weeks. Accordingly, the employer and insurer, Virginia Surety Company Inc. c/o Cambridge Integrated Services, are therefore directed to pay the employee the sum of \$340.12 per week for 20 weeks for a total of \$6,802.40.

I find that the employee sustained five percent (5%) permanent partial disability to the lumbar spine at the 400 week level. The five percent disability is equal to 20 weeks. Accordingly, the employer and insurer, Virginia Surety Company Inc. c/o Cambridge Integrated Services, are therefore directed to pay the employee the sum of \$340.12 per week for 20 weeks for a total of \$6,802.40. The total amount the employer-insurer is directed to pay for both injuries is \$1,3604.80.

**ATTORNEY'S FEE**

Robert Miller, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

**INTEREST**

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: \_\_\_\_\_

Made by:

\_\_\_\_\_  
Maureen T. Tilley  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*