

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

Injury No.: 07-117843

Employee: Phillip Connor
Employer: Missouri House of Representatives
Insurer: C A R O
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480, RSMo.¹ We have reviewed the evidence and briefs and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award of the administrative law judge (ALJ) dated January 18, 2013.

Preliminaries

The ALJ heard this matter to consider: 1) whether appropriate notice was provided, 2) the causation of the injuries alleged, 3) the liability of the employer/insurer for past medical bills in the amount of \$71,507.05, 4) the liability of the employer/insurer for past temporary total disability benefits from November 7, 2007, through December 28, 2007, 5) the nature and extent of permanent disability, and 6) the liability of the Second Injury Fund.

The ALJ found that employee failed to meet his burden of proof that he sustained a work-related injury. The ALJ deemed all other issues moot and issued a final award denying employee's claim for benefits.

Employee appealed to the Commission, alleging: 1) employee sustained his burden of proof that he suffered a work injury on May 22, 2007, 2) employee sustained his burden of proof that the work injury was the prevailing factor in causing/aggravating his cervical spine condition and disability, and 3) employee is entitled to benefits for permanent partial disability, total temporary disability, and past medical expenses.

Findings of Fact

The findings and stipulations of the parties recounted in the award of the ALJ are adopted and incorporated by the Commission to the extent that they are not inconsistent with the findings listed below.

Nature and Extent of Work-Related Injury

The parties stipulated to the fact that on May 22, 2007, employee sustained an injury by accident while employed by employer.

¹ All statutory references are to the Revised Statutes of Missouri (2006) unless otherwise indicated.

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On March 30, 2007, two months prior to the work injury, employee had a routine physical exam with his physician, Dr. Byam. Dr. Byam's notes state that on that date employee felt well with no complaints, he exhibited no symptoms of neck pain, and he had full range of motion of his head and neck.

Employee testified that after his May 22, 2007, accident he initially was going to "tough it out" but after three months he sought medical treatment because the pain had gotten so bad. Employee first sought treatment with Dr. Byam for his injury on August 31, 2007. According to Dr. Byam's notes, employee presented with complaints of numbness in his upper left and right extremities, hands, and fingers as well as occasional dizziness. Employee also presented with back pain, decreased range of motion, joint pain, muscle pain, muscle spasm, and neck pain. Accordingly, Dr. Byam ordered x-rays and MRI of the cervical and thoracic spine.

The MRIs were completed on September 10, 2007. The reading radiologist, Dr. Bonnie Smith, found that there are compression deformities at C5 and C6 with loss of vertebral height. Dr. Smith found that an "[a]bnormal signal within the C6 vertebral body suggests that this may be a recent injury. Additional abnormal signal within the superior end plate of C7 also suggests microtrabecular injury."

Dr. Byam then referred employee to Dr. Rodgers. On September 18, 2007, Dr. Rodgers notes show that employee has a three month history of pain in his neck radiating down his right arm with some numbness and tingling. Dr. Rodgers notes that the MRI read as showing compression fractures, although he opined that instead it showed degenerative changes. Dr. Rodgers also noted that employee had pressure on his spinal cord. On November 7, 2007, Dr. Rodgers performed a surgery to fuse C5-7.

Employee testified that the surgery helped initially, but the pain has since returned. Dr. Rodger's notes from February 7, 2008, show that employee stated his neck pain had resolved. On July 29, 2008, Dr. Rodger's notes show that employee complained of a trigger point in his neck. On November 7, 2008, Dr. Rodger's notes show that employee was continuing to experience pain in his neck.

On April 21, 2011, Dr. Reinsel evaluated employee and issued a report at the request of employer. Dr. Reinsel stated that employee complains of pain and his cervical fusion never successfully healed. In response to a question regarding whether the May 2007 work injury was the prevailing factor in employee's medical condition and disability, Dr. Reinsel stated "No. There is insufficient evidence pointing to any possible work injury. Clearly the patient did have lower back problems prior to May 2007 document [sic] by the primary care physician's notes from January. No specific injury or event his [sic] described by his family physician, nor is any injury described by his surgeon, Dr. Rodgers." He also stated that "the need for any additional treatment is not related to any possible work injury." Finally, Dr. Reinsel stated he would give a 0% disability rating "simply because it's not clear that there was any particular injury as described."

On July 13, 2011, Dr. Meyers evaluated employee and issued a report at the request of employee. Dr. Meyers stated that employee continues to have significant symptoms

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which affect his neck on a daily basis, and he has occasional numbness in his upper extremities. The severity of the pain is related to the intensity and duration of his activities at both home and work. His symptoms are aggravated at work with lifting, pulling, pushing, and carrying heavy items. The symptoms interfere with his sleep. Dr. Meyers observed a decreased range of motion in Employee's neck which causes pain.

Dr. Meyers diagnosed employee with acute exacerbation of neck pain with aggravation of pre-existing degenerative disc disease of the of the cervical spine producing spondylosis with radiculopathy and stenosis requiring fusion with continuing post-operative symptoms of pain radiculopathy involving the upper extremities. Dr. Meyers opined with a reasonable degree of medical certainty that the work injury from May 2007 was the prevailing and substantial factor in causing him to develop acute aggravation of his pre-existing cervical disc disease with persisting symptoms. Dr. Meyers provided a 40% disability rating for the body as a whole, with 5% due to pre-existing degenerative disc disease in the neck. He also found pre-existing disability ratings of 25% right knee and 30% left knee, with a 10% load factor. Dr. Meyers noted that his findings were based on his examination of employee as well as his past medical records.

With respect to the differing opinions regarding the results of the September 2007 MRI, we find that it is more persuasive that it showed a recent injury. Dr. Rodger's opinion that it merely showed degenerative changes is less persuasive because he fails to account for why employee had a sudden onset of symptoms relating to his cervical spine in conjunction with the May 2007 work injury.

With respect to the vastly different opinions of Dr. Reinsel and Dr. Meyers, we find that Dr. Meyers's opinions and disability ratings are more credible. We note that Dr. Reinsel's findings are based on an incorrect assumption that there was no injury in May 2007, when in fact the parties in this case stipulated that there was a work related injury at that time. Further, we note that Dr. Reinsel's opinions are based on an analysis of employee's lower back symptoms, which are not at issue in this workers' compensation claim.

Extent of Prior Injuries

Employee testified that he injured his right knee in 1996 when he fell out of a tree. As a result, he had a surgery to put in a steel plate and screws. Employee testified that after recovery he continued to experience tingling symptoms in his right knee when lifting and going up and down stairs. Employee also testified that his right knee sometimes locks up.

Employee also testified that in 1998 he had arthroscopic surgery on his left knee to alleviate pain he was experiencing when squatting, lifting, and walking stairs. Employee suffered no specific injury to his left knee. Employee testified that the surgery did not alleviate the pain. Employee testified that his left knee strength is diminished, the left knee sometimes locks up, and the left knee sometimes gives out.

Employee testified that he cannot bend his knees fully without pain. If he goes down to a squat, he cannot get back up. Employee testified that after the injury, lifting caused him to have pain in his neck and his knees, and it brought on headaches and tingling in

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his hands. He also experiences trouble cutting the grass and walking up and down steps in that both activities cause pain in his knees, neck, and headaches.

Based on Employee's testimony, which is undisputed in the record, we find Dr. Meyer's pre-existing disability ratings of 25% in the right knee and 30% in the left knee to be credible.

Past Medical Expenses

The parties stipulated in this case that medical aid has been provided in the amount of \$1,525.29 and that an issue to be resolved is the liability of employer for past medical bills in the amount of \$71,507.05. In its brief to the Commission, employee argues that the \$71,507.05 does not include the \$1,525.29 that was paid by employer. Employee, through its brief, speculates that the \$1,525.29 was paid by employer to its medical expert, Dr. Reinsel. The record does not show any payments made by employer, nor does it include any fees owed or paid to Dr. Reinsel. Therefore, we find that \$71,507.05 represents the total amount of unpaid past medical expenses.

Notice

Employee testified that on the day he injured himself at work, he reported the injury to three people in Human Resources – Patty, Judy, and Megan. Employee told them that he hurt his neck while lifting a desk at work. None of the three HR personnel offered to send him for medical treatment or direct him to any type of professional treatment. Employee also notified his supervisor, Brad Werner, that he had injured his neck on the day of the accident. Mr. Werner also failed to direct him to follow any procedures for workers' compensation. Finally, prior to seeing Dr. Byam for the first time three months later, employee notified Keith Sappington, a supervisor above Mr. Werner. Employee told Mr. Sappington that he had hurt himself lifting and needed to go to a doctor. Mr. Sappington did not indicate to employee that he should see some other type of doctor or health care professional. Employee's testimony is not rebutted anywhere in the record, thus we find it credible.

Conclusions of Law

Notice

Section 287.420 RSMo provides, as follows (emphasis added):

No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, *unless the employer was not prejudiced by failure to receive the notice. ...*

The appellate court has analyzed the 2005 legislative changes to the above statute in *Sell v. Ozarks Medical Center*, 333 S.W.3d 498 , 510-511 (Mo. App. S.D. 2011) (internal citations omitted):

Strict statutory construction demonstrates that section 287.420 contains an exception to the written notice requirement – when the employer is not prejudiced by the failure to receive written notice – and the application of

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case law related to the evidentiary basis for supporting the factual existence of that exception provides that actual notice to a supervisory employee is imputed to the employer. ...

The purpose of section 287.420 is to give the employer timely opportunity to investigate the facts surrounding the accident and, if an accident occurred, to provide the employee medical attention in order to minimize the disability. However, the failure to give timely written notice may be excused if the Commission finds ... that the failure did not prejudice the employer. A claimant may demonstrate lack of prejudice where evidence of actual notice was uncontradicted, admitted by the employer, or accepted as true by the fact-finder. ...

[T]he burden of proving [the employer's] lack of prejudice in not receiving written notice rested on [the claimant]. Once [the claimant] presented substantial evidence that [the employer] had actual notice of the relevant injury, however, the burden of showing prejudice then shifted to [the employer].

In this case, employee's uncontradicted testimony shows that he informed three HR personnel and his supervisor about the accident on the day it occurred, and employee informed another supervisor prior to obtaining medical treatment. We find that employee met his burden in proving that employer had actual notice of the accident. The burden then switches to employer to prove that it was prejudiced by not receiving written notice. Employer failed to present any evidence that it suffered from prejudice as a result of employee's failure to give written notice of the injury pursuant to § 287.420. Therefore, we find that employer failed to meet its burden, thus employer was not prejudiced by failing to receive timely written notice of the accident.

Medical Causation

Section 287.020.2 RSMo defines "accident" as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift."

Section 287.020.3 RSMo provides, as follows:

(1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

We have credited the findings and opinions of Dr. Meyers, and we are persuaded that the September 2007 MRI showed a recent injury. We are especially persuaded because employee did not exhibit any neck pain or radiating numbness or tingling in his upper extremities, arms, or hands prior to the 2007 accident. We believe that the sudden onset

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and continuing persistence of employee's symptoms, including the need for surgery, are directly and primarily a result of a change in the pathology of employee's cervical spine caused by his work injury in May 2007. Given our findings, we conclude that the May 2007 accident was the prevailing factor in causing employee's resulting medical condition of a new cervical spine injury and associated disability with persisting symptoms.

Past Medical Expenses

Section 287.140.1 RSMo provides, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

The courts have made clear that "once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury. The fact that the medication or treatment may also benefit a non-compensable or earlier injury or condition is irrelevant." *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 519 (Mo.App. 2011).

Dr. Rodgers recommended surgery to relieve employee's neck pain and radiculopathy symptoms in November 2007. We have already concluded that employee's neck pain and radiculopathy symptoms were the result of the May 2007 work injury. Accordingly, employee is entitled to recover past medical expenses in the amount of \$71,507.05.

Past Temporary Total Disability

Section 287.170 RSMo provides for temporary total disability benefits to cover the employee's healing period following a compensable work injury. The test for temporary total disability is whether, given employee's physical condition, an employer in the usual course of business would reasonably be expected to employ him during the time period claimed. *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App. 1997).

The record shows that employee had surgery on his cervical spine on November 7, 2007, and was not released to return to work until after December 28, 2007. We have already concluded that the surgery flowed from the work injury. Therefore, employee is entitled to recover temporary total disability benefits for seven weeks and two days at the stipulated rate of \$349.23 per week. We conclude, therefore, that employer is liable for \$2,544.39 in temporary total disability benefits.

Nature and Extent of Permanent Disability

Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee's compensable work injury. We have found Dr. Meyers's findings and opinions credible that the May 2007 work injury resulted in a disability rating of 40% for the body as a whole referable to the cervical spine with 5% due to employee's pre-existing degenerative disc disease in the neck. This amounts to 140 weeks of

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permanent partial disability at the stipulated rate of \$349.23 per week. We conclude, therefore, that employer is liable for \$48,892.20 in permanent partial disability benefits.

Second Injury Fund Liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in “all cases of permanent disability where there has been previous disability.” As a preliminary matter, the employee must show that he suffers from “a preexisting partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed... “. *Id.* The statute also sets out:

If any employee who has a preexisting permanent partial disability ... of such seriousness as to constitute a hindrance or obstacle to employment ... receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability... caused by the combined disabilities is substantially greater than that which would have resulted from the last injury... the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined ... the degree or percentage of employee’s disability that is attributable to all injuries or conditions existing at the time the last injury was sustain shall then be determined ... and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury... shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of ... the second injury fund.

Missouri courts have articulated the following test for determining whether a preexisting disease constitutes a “hindrance or obstacle to employment” in *Knisley v. Charleswood Corp.*, 211 S.W.3d 629, 637 (Mo. App. 2007) (internal citation omitted):

[T]he proper focus of the inquiry is not on the extent to which the condition has caused difficulty in the past; it is on the potential that the condition may combine with a work-related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition.

We have already found that Dr. Meyers’s disability ratings are credible. Dr. Meyers found that employee had pre-existing disability ratings of 25% in the right knee and 30% in the left knee, with a 10% load factor. Therefore, we conclude that the Second Injury Fund is liable for employee’s pre-existing disabilities for 22.8 weeks at the stipulated rate of \$349.23 per week, for a total liability in the amount of \$7,962.44.²

² Body as a whole (400 weeks x 35% = 140 weeks) + Right knee (160 weeks x 25% = 40 weeks) + Left knee (160 weeks x 30% = 48 weeks) = 228 weeks. 228 weeks x 10% enhancement = 22.8 weeks

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Award

We reverse the award of the administrative law judge. Employer is liable for \$71,507.05 in past medical expenses, \$2,544.39 in past temporary total disability benefits, and \$48,892.20 in permanent partial disability benefits. The Second Injury Fund is liable for \$7,962.44 in enhanced permanent partial disability benefits.

This award is subject to a lien in favor of Scott P. Holwitt, Attorney at Law, in the amount of 25% for necessary legal services rendered.

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued January 18, 2013, is attached for reference.

Given at Jefferson City, State of Missouri, this 7th day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Phillip Connor

Injury No.: 07-117843

Dependents: N/A

Employer: Missouri House of Representatives

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Treasurer of the State of Missouri,
Custodian of the Second Injury Fund

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

Insurer: Self-Insured (Central Accident Reporting Office)

Hearing Date: November 19, 2012

Checked by: HDF/scb

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: May 22, 2007
5. State location where accident occurred or occupational disease was contracted: Cole County, 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:
See award
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: - 0 -
16. Value necessary medical aid paid to date by employer/insurer? \$1,525.29

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- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$523.84
- 19. Weekly compensation rate: \$349.23
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

- 21. Amount of compensation payable: - 0 -
- 22. Second Injury Fund liability: - 0 -
- 23. Future Requirements Awarded: None

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Phillip Connor

Injury No: 07-117843

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Missouri House of Representatives

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

Additional Party: Treasurer of the State of Missouri,
Custodian of the Second Injury Fund

Insurer: Self-Insured (Central Accident Reporting Office)

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on November 19, 2012. Memoranda were submitted by December 7, 2012.

The parties stipulated that on or about May 22, 2007, the claimant, Phillip Connor, was employed by the Missouri House of Representatives and sustained an injury by accident. The employer was operating under the provisions of Missouri's workers' compensation law; liability for workers' compensation was self insured through the state of Missouri. A claim for compensation was timely filed. The compensation rate for all benefits is \$349.23 per week based on an average weekly wage of \$523.84. No temporary disability benefits have been paid. Medical aid has been provided in the amount of \$1,525.29.

The issues to be resolved by hearing include 1) whether appropriate notice was provided, 2) the causation of the injuries alleged, 3) the liability of the employer/insurer for past medical bills in the amount of \$71,507.05, 4) the liability of the employer/insurer for past temporary total disability benefits from November 7, 2007, through December 28, 2007, 5) the nature and extent of permanent disability, and 6) the liability of the Second Injury Fund.

FACTS

The claimant, Phillip Connor, was 60 years old as of the date of hearing. Mr. Connor retired from his position as a clerk with the Missouri House of Representatives (the House) in May of 2012 after 12 years of service. Mr. Connor described his duties with the House as varied, including mail sorting and delivery, bill clerk, newspaper delivery, moving furniture, and maintenance duties. Mr. Connor testified that on May 22, 2007, he injured his neck when he was moving a heavy desk by getting under it and lifting it off the ground with his head, neck, and shoulders. Mr. Connor relayed that as he was lifting the desk in this manner, he felt a pop in his neck and had a mild headache. Mr. Connor was working with Rob Nilges at the time of the accident. Mr. Connor testified that he went to the human resources section of the House to report his injury that same day and spoke with Patty, Judy, and Meghan, identifying

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the room in which he got hurt and stating that his neck was injured. No one advised Mr. Connor to fill out a report. Mr. Connor said that he sought no medical treatment and none was offered. Mr. Connor also said that he told his supervisor, Brad Werner, about the injury on or about the date of the accident, saying that he thought he would be "okay." Again, according to Mr. Connor, Mr. Connor was not directed to fill out a report of a work injury or directed to medical treatment. Finally, Mr. Connor said that he told Keith Sappington, whom Mr. Connor described as the head of the House, that he needed medical treated; Mr. Connor was not sure when that conversation occurred, but described it as occurring between May and August of 2007. Mr. Sappington failed to direct Mr. Connor for medical care.

Three months later, according to Mr. Connor, he saw his personal doctor, Dr. Byam, about his neck pain. Mr. Connor described the symptoms of headaches and neck pain at that point as unbearable. Mr. Connor testified that he described his May 22, 2007 work injury to Dr. Byam as well as numbness in his arms and hands. Dr. Byam initially treated Mr. Connor with prescription medication and then referred him to Dr. Rodgers. Mr. Connor stated that he relayed his history of a work injury to Dr. Rodgers who recommended surgery. Mr. Connor told Brad Werner, Keith Sappington, and Carol Althoff, human resources director for the House, simultaneously at a meeting that he would be away from the office due to his need for surgery. Mr. Connor said that no one asked him why he needed the surgery or mentioned workers' compensation coverage for the surgery. Mr. Connor testified that he assumed that Mr. Werner, Mr. Sappington, and Ms. Althoff all knew why he needed the surgery.

Mr. Connor testified to surgery with Dr. Rodgers in November of 2007, and that he was off work for about seven weeks after surgery. Mr. Connor described initial relief after surgery but then a gradual recurrence of the pain. Currently Mr. Connor has symptoms in his neck and arms consistent with those he had pre-surgery. Mr. Connor takes medications for his daily head and neck pain prescribed by the physician who is treating him for cancer in his liver.

Prior to 2007, Mr. Connor had surgery for a right knee injury after a fall out of a tree in 1996. Mr. Connor had a plate and screws inserted during the surgery performed by Dr. Turnbaugh. Currently Mr. Connor experiences pain in his right knee and has difficulty walking up and down steps and lifting as the result of the right knee injury. In 1998, Mr. Connor had arthroscopic surgery in his left knee; prior to 2007, Mr. Connor described squatting, lifting, and going up and down steps as causing pain in his left knee.

Medical records include the notations of Dr. Byam of JCMG. Dr. Byam initially saw Mr. Connor after May 22, 2007, on August 31, 2007. At that time, the notes of Dr. Byam reflect Mr. Connor's complaints of numbness in his upper extremities beginning about three months prior with onset described as "gradual, spontaneously, and sudden." (Dr. Byam records) Dr. Byam's notes of August 31, 2007, also reflect Mr. Connor's complaints of lumbar back pain with a gradual onset and "occurring in a persistent pattern for years" after a fall from a truck a year prior. (Dr. Byam records) The "review of systems" section of Dr. Byam's report describes Mr. Connor as presenting with "back pain, decreased range of motion, joint pain, muscle pain, muscle spasm and neck pain." (Dr. Byam records) The "global assessment" of Mr. Connor's "head and neck" is described as "atraumatic." (Dr. Byam records) Dr. Byam's recommendations for Mr. Connor on August 31, 2007

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included x rays and MRIs of the cervical and thoracic spine. The next record of Mr. Connor's visits with Dr. Byam is for September 14, 2007, and focuses on Mr. Connor's right elbow, arm, and side pain and edema for the past two to three months, as well as bilateral hand numbness. There is also a reference to thoracic and cervical pain and the referral to Dr. Rodgers for treatment. When Dr. Byam saw Mr. Connor on September 27, 2007, Dr. Byam noted that Mr. Connor was seen by Dr. Rodgers for his neck and upper back pain and that surgery was scheduled for October 9, 2007.

Medical records from Dr. Rodgers reflect that Dr. Rodgers saw Mr. Connor on September 18, 2007, for a three-month history of neck pain with numbness and tingling in the right arm for the past three weeks. Dr. Rodgers noted that Mr. Connor's "MRI is reviewed and radiographs are obtained of his cervical and lumbar spine. There are degenerative changes in the cervical spine with stenosis. I reviewed the MRI. This is read as showing edema from compression deformities. In reality, I think this is degenerative edema, and I do not think he has compression fractures but rather arthritis of the area." (Spine Midwest, Inc., records) Dr. Rodgers' notes reflect that surgery was planned for Mr. Connor. Dr. Rodgers next record reflects that Mr. Connor was seen in his office on November 20, 2007; the corresponding notation describes Mr. Connor as "status post C5 thru C7 anterior discectomy and fusion." (Spine Midwest, Inc., records) The December 2007 and February 2008 records of Dr. Rodgers' treatment indicate resolving neck pain and concerns regarding the lumbar spine. In July of 2008, Dr. Rodgers' notes reflect that he addressed Mr. Connor's low back pain, as well as a trigger point in the neck, which was injected.

Dr. Jerry Meyers evaluated Mr. Connor on July 13, 2011. Dr. Meyer diagnosed Mr. Connor with an "acute exacerbation of neck pain with aggravation of pre-existing degenerative disc disease of the cervical spine producing spondylosis with radiculopathy and stenosis requiring fusion with continued post-operative symptoms of painradiculopathy involving the upper extremities" as well as an aggravation of pre-existing lumbar degenerative spine disease. (Dr. Meyers' report August 4, 2011) Dr. Meyers opined that "the occupational injury which Mr. Connor sustained in May of 2007, when he injured his neck and back while lifting heavy furniture while employed by the Missouri House of Representatives, was the prevailing and substantial factor in causing him to develop acute aggravation of both pre-existing cervical degenerative disc disease and lumbar degenerative disc disease with persisting symptoms requiring surgical treatment of his cervical disc pathology and continuing symptoms and impairment involving his lumbar spine." (Dr. Meyers' report August 4, 2011)

Dr. Tom Reinsel evaluated Mr. Connor on April 21, 2011. Dr. Reinsel opined that a review of the medical records did not reflect sufficient evidence of a possible work injury to Mr. Connor's neck or low back.

APPLICABLE LAW

RSMo Section 287.020.3.(1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting

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medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

AWARD

The claimant, Phillip Connor, has failed to sustain his burden of proof that he sustained an injury to his cervical spine as the result of an accident at work in May of 2007. Both treating physicians, Dr. Byam and Dr. Rodgers, refer to degenerative changes in Mr. Connor's cervical spine as well as his lumbar spine. Mr. Connor's complaints regarding a specific lifting incident in May 2007 are not recorded in either treating physician's notes while Dr. Byam's notes contain a very specific reference to a report by Mr. Connor of an incident of falling out of a truck a year earlier in conjunction with Mr. Connor's low back pain. The two evaluating physicians have opposing opinions regarding the cause of Mr. Connor's symptoms, but neither physician relies on any objective evidence in reaching his conclusion. Dr. Meyer, who evaluated on behalf of Mr. Connor, concludes not only that Mr. Connor's cervical complaints are caused by the May 2007 lifting incident, but that lumbar complaints are related to the May 2007 accident as well without any discussion as to how the May 2007 accident could have caused these neck and low back complaints or conditions. Dr. Meyer acknowledged Mr. Connor's preexisting degenerative disc disease but concluded that the May 2007 accident exacerbated the degenerative disc disease. Dr. Meyer's testimony

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regarding the May 2007 accident as the prevailing factor in causing Mr.Connor's cervical condition is not credible.

All other issues raised for resolution are hereby rendered moot.

Made by: _____

HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation