

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

Injury No.: 05-033784

Employee: Lisa Conway  
Employer: Lester E. Cox Medical Centers  
Insurer: Self-Insured  
Date of Accident: Alleged January 15, 2005  
Place and County of Accident: Greene 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 October 5, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued October 5, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 2<sup>nd</sup> day of February 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Lisa Conway

Injury No. 05-033784

Dependents: N/A

Employer: Lester E. Cox Medical Centers

Additional Party: N/A

Insurer: Self-insured

Hearing Date: 7/7/06

Checked by: MEH

### 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? NO
4. Date of accident or onset of occupational disease: ALLEGED 1/15/05
5. State location where accident occurred or occupational disease was contracted: GREENE COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? NO
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 occurred or occupational disease contracted: N/A
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: NONE
14. Compensation paid to-date for temporary disability: NONE
16. Value necessary medical aid paid to date by employer/insurer? NONE

Employee: LISA CONWAY

Injury No. 05-033784

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$184.88
20. Method wages computation: BY AGREEMENT

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: 0

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

22. Second Injury Fund liability: Yes No  Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits:

Permanent total disability benefits from Second Injury Fund:  
weekly differential (0) payable by SIF for 0weeks, beginning N/A  
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: NONE

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

TODD NEWCOMB

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Lisa Conway Injury No. 05-033784  
Dependents: N/A  
Employer: Lester E. Cox Medical Centers  
Additional Party: N/A  
Insurer: Self-insured  
Hearing Date: 7/7/06 Checked by: MEH

The parties appeared before the undersigned administrative law judge on July 7, 2006, for a final hearing. The claimant appeared in person represented by Todd Newcomb. The employer and insurer appeared represented by Michael Mayes.

The parties stipulated to the following facts. On or about January 15, 2005, Lester E. Cox Medical Centers was an employer operating subject to The Missouri Workers' Compensation Law. The employer's liability was fully self-insured. On the alleged injury date of January 15, 2005, Lisa Conway was an employee of the employer. The claimant was working subject to the Missouri Workers Compensation Law. The employment occurred in Greene County, Missouri. The claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was sufficient to allow a compensation rate of \$184.88 for temporary total and permanent

disability compensation. No temporary disability benefits have been paid. The employer and insurer have paid no medical benefits. The attorney fee being sought is 25%.

#### ISSUES:

1. Whether the claimant gave the employer proper notice.
2. Whether the claimant sustained an accident which arose out of the course and scope of employment.
3. Whether the accident caused the injuries and disabilities for which benefits are being claimed.
4. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

#### FINDINGS OF FACT:

The claimant was employed with Lester E. Cox Hospital as a PCA, a nurse's aide type of position. She worked on the cardiac floor. The claimant testified that on January 15, 2005, one of the patients was being combative and was to be restrained. The patient was climbing over the bed rails, and the claimant lifted her to put her back in bed. The claimant says that she then felt a back strain. She said she heard a pop. She did not report any injury on that day. She continued to work for the employer about two more weeks. She quit because of her school schedule.

After leaving the employer, she stayed home one to two weeks cleaning house. She then went to work for Microtech in telephone sales. She did no lifting but sat a great deal. She worked there approximately two months.

On April 20, 2005, she went to St. John's Hospital emergency room and gave a history of back pain for one week. The claimant testified that she considered this to be a work injury at this time. After the emergency room, she has treated with a Health Department physician who has recommended an MRI. She has had some pain injections.

The first notice the employer received of the injury was the Claim for Compensation filed by the claimant on April 25, 2005. Claimant admitted that she told no one at the employer about her injury. She said that she knew that the employer would not want her to treat at a different hospital. She said that even after she went to the emergency room, she said nothing to anyone at the employer. She also admitted that when she went to work for the employer, she was told to report injuries and knew that she was supposed to do that. The claimant testified that she did not give notice sooner because she thought it would get better on its own.

After leaving Microtech, she did not work until the summer. She has worked as a waitress and at an assisted living facility. She continues to work at an assisted living facility, and her duties include passing out medications, transporting patients, and other light duties.

Dr. Shane Bennoch performed an independent medical examination of claimant on November 7, 2005, at claimant's request. He diagnosed traumatic injury to the low back secondary to a lifting injury at work and lumbar disc disease, most likely at L5-S1 with radiculopathy. He felt that she was not at maximum medical improvement. He found that the accident of mid January 2005 caused the claimant's back injury. In his opinion, the claimant needs to have an MRI of her lumbar spine and follow-up neurosurgical evaluation.

Dr. Ted Lennard performed an independent medical evaluation of claimant June 19, 2006, at employer's request. He found inconsistencies in the claimant's history, namely the one week prior history given to St. John's Hospital emergency room. On examination he found that she had mild limits in her lumbar motion but had a normal neurologic examination. He found everything else normal, including x-rays taken on the day of his evaluation. He diagnosed claimant with low back and lower extremity pain, possibly radiculopathy, and secondly a history of depression, anxiety and irritable bowel syndrome. He felt like she needed an MRI of her lower back and possibly physical therapy, depending on the findings. He did not feel that any of her diagnosis arose in a substantial manner from the incident of January 2005. Hefurther testified that if the only incident that occurred was the alleged lifting incident in January 2005, he would not expect to see a delay in symptoms for two to two and a half months.

#### CONCLUSIONS OF LAW:

After carefully reviewing all of the evidence, I do not find that an accident occurred on January 15, 2005, that arose out of the course and scope of claimant's employment. I also want to add that even in the event that I did find that a compensable accident occurred this claim would be denied based on the lack of notice pursuant to Section 287.420 RSMo., which requires written notice of the injury be given to the employer by the employee within 30 days of the date of the injury unless there is good cause for failure to give the notice or that the employer was not prejudiced by the lack of notice. I find that neither exception is met here. There is no good cause for the claimant to have failed to notify the employer. Furthermore, the employer, a hospital, was indeed prejudiced by the claimant seeking treatment at another hospital. This denied the employer the ability to direct the medical treatment or to control the costs of the treatment.

Therefore, for the aforementioned reasons, the claimant's claim is hereby denied.

Date: October 5, 2006

Made by: /s/ Margaret Ellis Holden  
Margaret Ellis Holden  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Patricia "Pat" Secret  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*