

Issued by THE LABOR AND INDUSTRIAL RELATIONS
COMMISSION

FINAL AWARD ALLOWING COMPENSATION

(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-127622

Employee: Jerri Courtney

Employer: Skaggs Community Hospital

Insurer: Self-Insured

Date of Accident: September 20, 2005

Place and County of Accident: Taney 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 May 31, 2007. The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued May 31, 2007, 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 14th day of February 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Jerri Courtney

Injury No. 05-127622

Dependents: N/A

Employer:
Hospital

Skaggs Community

Insurer: Self-insured

Additional Party: N/A

Hearing Date: March 16, 2007

Checked by: LTW

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? YES
2. Was the injury or occupational disease compensable under Chapter 287? YES
3. Was there an accident or incident of occupational disease under the Law? YES
4. Date of accident or onset of occupational disease: SEPTEMBER 20, 2005
5. State location where accident occurred or occupational disease was contracted: TANEY 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? 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:
PERFORMING FOUR-MAN LIFT ON PATIENT
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: LOW BACK
14. Nature and extent of any permanent disability: 15 PERCENT BODY AS A WHOLE
14. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? \$7,174.43

- 18. Employee's average weekly wages: \$491.60
- 19. Weekly compensation rate: \$327.75
- 20. Method wages computation: STIPULATION

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$7,164.43

8 5/7 weeks of temporary total disability (\$2,856.10)

6 6/7 weeks of temporary partial disability: (\$224.82)

60 weeks of permanent partial disability from Employer \$19,665.00

N/A weeks of disfigurement from Employer

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

22. Second Injury Fund liability: No

Total: \$29,910.35

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.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

DAVID TUNNEL

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jerri Courtney

Injury No. 05-127622

Dependents: N/A

Employer:
Hospital

Skaggs Community

Insurer: Self-insured

Additional Party: N/A

Hearing Date: March 16, 2007

Checked by: LTW

AWARD

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on March 16, 2007. The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about April 10, 2007.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about September 20, 2005 Skaggs Community Hospital was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully self-insured.
- (2) On the alleged injury date of September 20, 2005 Jerri Courtney was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged accident occurred in Taney County, Missouri. The parties agree to venue lying in Taney County, Missouri. Venue is proper.
- (4) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (5) At the time of the alleged accident the employee's average weekly wage was \$491.60, which is sufficient to allow a compensation rate of \$327.75 for temporary disability compensation, and a compensation rate of \$327.75 for permanent disability compensation.
- (6) Temporary disability compensation and medical care have not been provided to the employee by the employer.

The sole issues to be resolved by hearing include:

- (1) Whether the employee sustained an accident on or about September 20, 2005; and, if so, whether the accident arose out of and in the course of the employee's employment with the employer?
- (2) Whether the employee gave the employer proper notice of the injury, if applicable?
- (3) Whether the alleged accident September 20, 2005 caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer is obligated to pay for certain past medical care and expenses in the amount of \$7,411.43?
- (5) Whether the employee is entitled to temporary disability benefits?

The employee seeks payment of temporary total disability compensation, payable for the following periods:

- November 15, 2005 through December 16, 2005;
- February 3, 2006 through February 28, 2006; and
- August 20, 2006 through October 31, 2006.

The employee seeks payment of temporary partial disability compensation, payable for the period of

December 17, 2005 through February 2, 2006. Also, the employer asserts that, prior to the period for which he claims entitlement to temporary disability compensation, the employee reached MMI.

In addition, the parties stipulate that the employee obtained unemployment compensation for the period of March 1, 2006 through August 19, 2006.

(6) Whether the employee sustained any permanent disability as a consequence of the alleged accident; and, if so, the what is the nature and extent of the disability?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. In addition, the employee offered for admission the following exhibits:

Exhibit A. Complete Medical Report from Shane L. Bennoch, M.D. Exhibit B Deposition of Shannen Hodgins
Exhibit C..... Deposition of Julie Dubinsky

Exhibit D..... Deposition of Renee Denton

Exhibit E..... Deposition of Cheryl Morrissey

Exhibit F..... First Incident Report

Exhibit G... Skaggs Community Health Center Accident Investigation Report

Exhibit H..... Supervisor's Report of Injury

Exhibit I..... Medical Expense List

Exhibit J..... Medical Bills

Exhibit K..... Medical Records from Lynn E. Allison, M.D.

Exhibit L..... Medical Records from Skaggs Community Health Center

Exhibit M..... Medical Records from Chris Weber, M.D.

Exhibit N..... Medical Records from Skaggs Community Health Center –
Physical Therapy

Exhibit O..... Medical Records from Cox Health Systems –
Regional Center for Sports Medicine and Rehabilitation

Exhibit P..... Medical Records from Skaggs Community Hospital -- ER

Exhibit Q Medical Records from Skaggs Occupational Health & Urgent Care Plus

Exhibit R..... Skaggs Community Health Center – Radiology Report

The exhibits were received and admitted into evidence .

The employer and insurer did not present any witnesses at the hearing of this case. The employer

and insurer, however, offered for admission the following exhibits:

- Exhibit 1 Skaggs Community Health Center – Rules for Work Related Injuries
- Exhibit 2 Skaggs Community Health Center – Accident Investigation Report
- Exhibit 3..... Skaggs Community Health Center – Medical Authorization
- Exhibit 4 Skaggs Community Health Center – Acknowledgement of Rules & Policies
- Exhibit 5..... Skaggs Community Health Center – Confidentiality Statement
- Exhibit 6..... Skaggs Community Health Center – Physical Requirements
- Exhibit 7... Skaggs Community Health Center – Application for Employment
- Exhibit 8. Skaggs Community Health Center – FMLA Initial Response Form
- Exhibit 9. Skaggs Community Health Center – Time Card for Renee Denton
- Exhibit 10..... Skaggs Community Health Center – Jerri Courtney
- Exhibit 11..... Calendar for September through December 2005
- Exhibit 12..... Website Materials of Skaggs Community Health Center

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

- Minute Entries
- Request for Hearing
- Notice of Hearing
- Answer to Claim for Compensation
- Claim for Compensation
- Report of Injury

DISCUSSION

The employee Jerri Courtney is 47 years of age, having been born on August 17, 1959. Ms. Courtney is a resident of Kirbyville, Missouri.

In January 2003, Ms. Courtney obtained employment with Skaggs Community Health Center ("Skaggs"), working as a Certified Nurse's Assistant ("CNA"). Ms. Courtney continued in this employment until February 28, 2006, upon termination by Skaggs.

On September 20, 2005, while working in her capacity as a CNA for Skaggs, and in Unit 400 of the hospital, Ms. Courtney provided patient care for an individual who "coded" (Code Blue -- vital signs quit). This medical concern generated an emergency, which required Ms. Courtney and three other individuals to perform a "four-man lift" to move the patient from a chair to a bed, and to enable life-saving measures to be performed on the patient. Notably, the individuals performed this "four-man lift" by physically lifting the patient from the chair to the bed; one person lifts the patient from behind by grabbing the patient under the arms, while the others assist in lifting the hips and the legs. The four Skaggs employees involved in performing the "four-man lift" were Ms. Courtney, Renee Denton, Kelli Kelley, and a physical therapist assistant (Patrick).

On September 20, 2005, Renee Denton, who was the director of Unit 400, served as the supervisor of the entire Unit 400, and served as Ms. Courtney's supervisor. In performing the "four-man lift", according to Ms. Courtney, she lifted one of the patient's legs, moving in a twisting motion to place the patient on the bed. Further, according to Ms. Courtney, during the "four-man-lift", while twisting, she heard and felt a pop in her back.

According to Ms. Courtney, she orally notified Renee Denton of the injury to her back within approximately fifteen (15) minutes of the "four-man-lifting" incident. Further, according to Ms. Courtney, Renee Denton then instructed her to obtain an incident report from the nurse's station and to "fill it out." Thereafter, Ms. Courtney notes that she went to the nurse's station and asked Cheryl Morrissey, the ward clerk, to give her a form for reporting the injury. Upon making this request, Cheryl Morrissey provided Ms Courtney with a form, which Ms. Courtney completed and filed with Skaggs. This completed and signed form is Exhibit F. (Cheryl Morrissey referred to this form as an "event report;" while Renee Denton referred to this form as an "incident report".)

Exhibit F is handwritten, and in Ms. Courtney's handwriting. (The parties redacted Exhibit F in order to remove information that could identify the patient involved in the incident.) Exhibit F identifies the patient's name and room [redacted for hearing], and further identifies Jerri Courtney as the person who is involved in the incident, and Jerri Courtney as the person preparing the report. Additionally, Renee Denton signed Exhibit F, which identifies her as the supervisor. Finally, in describing the event, Exhibit F reads as follows:

"DESCRIBE THE EVENT: (Name the drug, treatment, device, etc.)

Pt. in Rm. [redacted room number] had a severe reaction stiffened straight (sic) out, was going to fall out of chair. Kellie RN, Patrick PTA, Renee (Director) and myself had to pick pt. up to put in bed. I over extended my back when lifting pt. Lower back keeps spasming severly (sic). L ("L" is circled) leg goes numb."

Subsequent to completing and signing Exhibit F, Ms. Courtney gave the document to Renee Denton. Thereafter, on September 20, 2005, according to Ms. Courtney, she placed Exhibit F on Renee Denton's desk. Renee Denton testified that she received Exhibit F from Ms. Courtney on the day of the injury or the day after the injury. Upon her receipt of Exhibit F, according to Ms. Denton, she forwarded Exhibit F to Lou Smith, who is the Risk Management Safety Officer in the Quality Improvement Department of employer. In this regard, Exhibit F contains a rubber stamp impression, which reads: "RECEIVED SEP 26 2005 QUALITY IMPROVEMENT".

Ms. Courtney testified that, following her submission of Exhibit F to her supervisor, Renee Denton,

she believed that Skaggs would refer her to a medical provider for treatment of her injuries. Skaggs, however, did not offer any medical treatment. And, after waiting for a period of time with no offer of medical treatment forthcoming, Ms. Courtney directed an inquiry to Skaggs' Human Resources office. Upon presenting to the Human Resources office, Ms. Courtney spoke with Julie Dubinsky, who was Skaggs' Organization Development Specialist, and told Ms. Dubinsky that she had gotten hurt.

Notably, at the time of this claim of injury, the process of reporting and administering a workers' compensation case by Skaggs was complicated by the absence of Debbie Crosby, Skaggs' Worker's Compensation Liaison, who is responsible for administering / handling Skaggs' workers' compensation files.

In this regard, in many instances, Ms. Crosby meets with an injured employee reporting the injury, and initiates the process of working a workers' compensation case file. However, on September 25, 2005, and at the time Ms. Courtney presented to the Human Resource Office, Debbie Crosby was on vacation, resulting in Ms. Crosby speaking with Ms. Dubinsky, and not Ms. Crosby. Further, Ms. Dubinsky failed to provide Ms. Courtney with the form Skaggs utilizes for their employees reporting work-related injuries.

Eventually, Ms. Crosby became aware of Ms. Courtney claiming a workers' compensation injury, resulting in her contacting Renee Denton, and informing Ms. Denton of the use of the wrong form. Additionally, following Ms. Crosby's subsequent involvement, Ms. Courtney obtained and forwarded to Renee Denton for processing an "Accident Investigation Report" (Exhibit G) form and a "Supervisors Report of Injury" (Exhibit H) form utilized by Skaggs in the reporting of workers' compensation injuries by employees. Upon receipt of these two forms, Renee Denton then completed and signed the two reports. In relevant part, Exhibit G, which identifies Ms. Courtney as the employee sustaining a work-related incident on September 20, 2005, reads:

"Specific activity/work process the employee was engaged in when incident occurred: *Assisting lifting patient back into bed during code blue.*"

"Describe the sequence of events and any objects or substances related to this accident: *Administration of pain medication with [(abbreviated as a "c" with a straight line over it)] anaphylatic [sic] reaction.*"

"Describe the injury sustained: *Strained back by overextending.*"

Although Exhibit G is dated September 20, 2005, Renee Denton testified that she completed and signed Exhibit G after Debbie Crosby informed her that Exhibit F was not the correct form, but was unsure as to the specific date. Yet, Ms. Denton noted, Exhibit G was completed and signed a minimum of several days after the injury, and possibly weeks after the injury. Additionally, Ms. Denton testified that she dated her signature "9-20-05" because that was the date of the injury.

In addition, Renee Denton testified that she completed and signed Exhibit H on the same date and at the same time she completed and signed Exhibit G. Similar to Exhibit G, Exhibit H identifies Ms. Courtney as the Skaggs' employee suffering a work-related incident on September 20, 2005 contains, in relevant part, the following information (preprinted portions of the form are in regular type, handwritten portions are in *italic* type): "Supervisor's Report of Injury"

EMPLOYEE *Jerri Courtney*

LOCATION *Unit 400 REFERRED TO DR. To ER*

OCCUPATION OF INJURED **CNA** AGE **47**

INJURY DATE **9-20-05** TIME []AM [] PM

NATURE OF INJURY (SCRATCH, CUT, BRUISE, ETC.) **Muscle Strain**

PART OF BODY INJURED (LEFT RING FINGER, RIGHT ANKLE, ETC.) **Back**

DID INJURED RETURN TO WORK? [] YES [] NO TIME [] AM [] PM

WHERE AND HOW DID ACCIDENT HAPPEN? *Room [redacted room number] – Pt. code blue – 4 man lift to place on bed – caused overextension of back*

WHAT WAS EMPLOYEE DOING AT TIME OF ACCIDENT? *Assisting with [(abbreviated as a “c” with a straight line over it)] placement of patient*

WITNESSES *Renee Denton, Patrick (PT) Kelli Kelle*

SUPERVISOR'S SIGNATURE *Renee Denton [(signature of Renee Denton)]*

DATE *9-20-05*

Subsequent to completing Exhibits G and H, Ms. Denton delivered them to Ms. Courtney in order to allow Ms. Courtney to deliver them to Skaggs's Human Resources department, which did occur. Notwithstanding, Skaggs refused to authorize any medical treatment for Ms. Courtney, premised on its belief that Ms. Courtney had missed her window of opportunity for workers' compensation benefits, insofar as Ms. Courtney did not give written notice of her injury on the forms prescribed by Skaggs within thirty (30) days after the injury. The precise date Exhibit G and Exhibit H were received in the Human Resources department is not clear. However, the "Report of Injury" filed by employer with the Division of Workers' Compensation states that employer was notified of the injury on "2005-11-16".

In light of Skaggs refusing to provide any medical treatment, Ms. Courtney arranged for medical treatment on her own, resulting in her presenting to Dr. Lynn Allison on November 15, 2005. Subsequently, Dr. Allison diagnosed Ms. Courtney with "low back pain secondary to possible strain" and stated that she believed Courtney had a "bad sprain". Further, at the time of this examination, on November 15, 2005, Dr. Allison took Ms. Courtney off work.

Notably, at the November 15, 2005 examination, Dr. Allison ordered diagnostic studies in the nature of an X-ray, and prescribed physical therapy. Skaggs Community Health Center, as a health care provider, performed the X-ray study of Ms. Courtney on November 16, 2005. In addition, Ms. Courtney attended twelve sessions of aquatic and land physical therapy at Skaggs Community Health Center from November 17, 2005 through December 30, 2005. On November 22, 2005, Dr. Allison recommended that Ms. Courtney continue physical therapy and referred her to Dr. Weber.

On December 5, 2005, Courtney presented to Dr. Chris Weber, MD. Dr. Weber diagnosed Ms. Courtney with lumbar pain with intermittent radiculopathy. Further, Dr. Weber ordered additional diagnostic study in the nature of an MRI, which occurred on December 9, 2005. The MRI study of the lumbar spine revealed circumferential bulging disk at the level of L4-L5, with some disk desiccation and good preservation of disk height. On December 16, 2005, Ms. Courtney returned to Dr. Weber, and in light of the MRI findings, Dr. Weber permitted Ms. Courtney to return to work with a restriction of no lifting over five (5) pounds.

On January 6, 2006, Ms. Courtney presented to Dr. Weber for a follow-up examination. At the time of this examination, Dr. Weber diagnosed Ms. Courtney with an annular tear of the lumbar spine at the level of L4-L5, with mild hypertrophy of the lower lumbar spine and muscle spasm. In addition, in noting that Ms. Courtney would be governed by restrictions and that a Functional Capacity Evaluation might be necessary in order to secure a job description change for Ms. Courtney, Dr. Weber prescribed or ordered a Functional Capacity Evaluation for Ms. Courtney.

On February 6, 2006, Ms. Courtney presented to Cox Health Systems for a Functional Capacity Evaluation. The results of this evaluation indicates that Ms. Courtney is capable of working within the U.S. Department of Labor LIGHT physical demand level, and that she meets all but one of the physical requirements listed in her job description. Notably, the job description requirement that is not met, is the requirement for Ms. Courtney to be able to perform an “occasional maximum lift over 50 pounds.” Thereafter, following the FCE, on February 9, 2006, Ms. Courtney returned to Dr. Weber, who placed Ms. Courtney on “light duty”, with a 25 pounds or less, “occasionally/maximally” weight restriction. Additionally, Dr. Weber scheduled a two-month follow-up examination, which did not occur.

On October 17, 2006, Ms. Courtney presented to the Skaggs Community Hospital Emergency Room complaining of low back pain. The attending physician administered Tordol and Norflex injections. Again, on October 18, 2006, Ms. Courtney presented to Skaggs Occupational Health and Urgent Care Plus with complaints of back spasms, resulting in Ms. Courtney receiving a prescription for Darvocet.

Thereafter, on October 19, 2006 Ms. Courtney returned to see Dr. Weber, presenting with thoracic back pain, in addition to her chronic low back pain. In light of this examination, relative to the new complaints, Dr. Weber offered a differential diagnosis of “subacute, right, lower thoracic strain versus pleurisy” with “possible anxiety issues and stressors.” Notably, at the time of this examination, Dr. Weber did not release Ms. Courtney from his care, but rather prescribed medication for the pain and muscle spasm, ordered additional diagnostic studies, and scheduled a follow-up examination.

The diagnostic studies ordered by Dr. Weber on October 19, 2006 were obtained on the same day and revealed remote granulomatous disease throughout both lungs, but the heart and medastinum were unremarkable. Additionally, the thoracic spine studies were unchanged from the thoracic spine exam of November 16, 2005.

During the period of November 15, 2005 through October 19, 2006, and in light of the employer declining to provide Ms. Courtney with medical care, Ms. Courtney incurred medical care and expenses that the employer did not pay or provide reimbursement to Ms. Courtney. The evidence indicates that Ms. Courtney incurred expenses in the amounts and as follows:

Health Care Provider	Treatment Period	Expenses
Branson Clinic (Lynn E. Allison, M.D.)	11-15-05 & 11-22-06	\$ 99.70
Skaggs Community Health Center	11-16-05 & 12-09-05	\$ 1,810.00

X-ray: Thoracic & Lumbar

MRI: Lumbar

Richard S. Makuch, M.D.

Scott Rossow, D.O.

Lakes Region Imaging, LLC	11-16-05 & 12-09-05	\$ 461.00
Physical Medicine & Rehab. (Chris Weber, M.D.)	12-05-05 – 10-19-06	\$ 595.76
Skaggs Community Health Center – Physical Therapy	11-17-05 – 12-31-05	\$ 2,920.00
Lakes Region Imaging, LLC	11-16-05 & 12-09-05	\$ 461.00
Physical Medicine & Rehab. (Chris Weber, M.D.)	12-05-05 – 10-19-06	\$ 595.76
Cox Health Systems – Outpatient Rehabilitation Services	02-06-06	\$ 529.80
IWS Functional Capacity Evaluation		
Branson Drug	11-16-05 – 12-16-05	\$ 101.30
LeCox Home Support (TENS Unit)	01-03-06	\$ 61.93
Skaggs Comm. Health Centertr – Emergency Room		
Clinton R. Loy, M.D.	10-17-06 & 10-18-06	\$ 473.94
		-
Skaggs Occupational Health & Urgent Care	10-18-06 & 10-19-06	
Michael P. Henry, D.O.		<u>\$ 111.00</u>
Total:		\$ 7,164.43

Shane L. Bennoch, M.D., who is a physician that performs independent medical evaluations through his office, Missouri Independent Medical Evaluations, L.L.C., testified in behalf of the employee through the submission of his medical report. Dr. Bennoch performed an independent medical examination of Ms. Courtney on August 22, 2006. At the time of this examination, Dr. Bennoch took a history from Ms. Courtney, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of the Ms. Courtney, Dr. Bennoch opined that the September 20, 2005 accident was the prevailing factor in causing Ms. Courtney to suffer an injury to low back, which is in the nature of a

traumatic lumbar disc with annular tear and nerve impingement. Dr. Bennoch further opined that, relative to the injury sustained on September 20, 2005 accident, Ms. Courtney is at maximum medical improvement. In addition, Dr. Bennoch opined that, as a consequence of the September 20, 2005 accident, Ms. Courtney sustained a permanent partial impairment of 20 percent to the body as a whole, referable to the lumbar spine.

Finally, Dr. Bennoch noted that, prior to September 20, 2005, Ms. Courtney suffered from a pre-existing injury and disability referable to her right ankle. Notably, this injury involved a severe injury that necessitated surgical care requiring a prosthetic right ankle. In rendering an assessment of disability referable to this pre-existing injury, Dr. Bennoch opined that, prior to September 20, 2005; Ms. Courtney suffered from a permanent partial impairment of 30 percent, referable to the right ankle. Dr. Bennoch further opined that the disability referable to the September 20, 2005 injury, in combination with the pre-existing injury referable to the right ankle, creates "a substantially greater impairment that the total of each separate injury" and a loading factor should be added in rendering an assessment of her overall disability.

FINDINGS AND CONCLUSIONS

The Workers' Compensation Law for the State of Missouri underwent substantial amendment on or about August 28, 2005. This change governs the underlying workers' compensation case, which involves an accident date of September 20, 2005.

I.

Accident

On September 20, 2005, while working in her capacity as a CNA for Skaggs, and in Unit 400 of the hospital, Ms. Courtney provided patient care for an individual who "coded" (Code Blue -- vital signs quit). This medical concern generated an emergency, which required Ms. Courtney and three other individuals to perform a "four-man lift" to move the patient from a chair to a bed, and to enable life-saving measures to be performed on the patient. Notably, the individuals performed this "four-man lift" by physically lifting the patient from the chair to the bed; one person lifts the patient from behind by grabbing the patient under the arms, while the others assist in lifting the hips and the legs. In performing the "four-man lift", Ms. Courtney lifted one of the patient's legs, moving in a twisting motion to place the patient on the bed. Further, during the "four-man-lift", while twisting, Ms. Courtney heard and felt a pop in her back.

After consideration and review of the evidence, I find and conclude that, on September 20, 2005, the employee Jerri Courtney sustained an injury to her back while performing a "four-man lift." I further find and conclude that this incident (accident) arose out of and in the course of her employment with the employer Skaggs Community Health Center.

II.

Notice

An employee who sustains a workers' compensation injury in Missouri is required to provide his or her employer with timely written notice of the injury, and the failure to provide such notice may result in the

employee not being able to maintain a proceeding for compensation. The notice provision is set forth in Section 287.420, RSMo (2006), which, in relevant part, states,

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 recent change in the law from the former statute, relative to this case, appears minimal. The former statute, stated the following:

No proceedings for compensation under this chapter shall be maintained unless written notice of the time, place and nature of the injury ... has been given to the employer as soon as practicable after the happening thereof but not later than thirty days after the accident, unless ... the employer was not prejudiced by failure to receive notice.

Section 287.420, RSMo

In light of the similarity between the two statutes, I am persuaded that the new statute does not change the purpose of the underlying notice requirement. Namely, the notice requirement is twofold – to enable the employer to conduct an accurate and thorough investigation of the facts surrounding the injury; and to ensure that the employer has the opportunity to minimize the employee’s injury by providing prompt medical treatment. *Messersmith v. Missouri – Columbia / Mt. Vernon*, 43 S.W.3d 829 (Mo.banc 2001). See also, *Seyler v. Spirtas Industrial*, 974 S.W.2d 536 (Mo.App. E.D. 1998). However, I am similarly persuaded that, as in the past, giving notice is not an unconditional prerequisite to recovery. The failure to give timely written notice may be excused if it is determined that (1) there was good cause for the failure to provide timely notice, or (2) the failure to provide timely notice did not prejudice the employer. The evidence in the record need not be overwhelming or uncontroverted. *Id.*

Further, in the context of determining whether the employer has been prejudiced by the lack of timely written notice, several familiar principles applicable to the former statute bear reprise. The burden is upon the claimant to demonstrate that the employer did not suffer any prejudice. Actual notice of the accident within 30 days is a *prima facie* showing that the employer was not prejudiced by the lack of the requisite notice. *Seyler at 538*. Upon a *prima facie* showing, the burden shifts to the employer to demonstrate that it was prejudiced by the failure of the notice to be in writing. *Id.* In the absence of the employer having actual notice of the accident within 30 days, the burden is upon the claimant to produce evidence demonstrating that the employer was not prejudiced in its ability to conduct an accurate and thorough investigation of the facts surrounding the injury; and the employer was not prejudiced in its ability to minimize the employee’s injury. *Id.* In the context of this issue, I am persuaded that these principles may similarly guide construction and application of Section 287.420, RSMo (2006) to the facts of this case.

The evidence presented in this case reveals that the employee, Jerri Courtney, injured her back on September 20, 2005, while assisting or working with three other employees in lifting a patient who had suffered a “code blue.” The four Skaggs employees involved in performing the “four-man lift” were Ms. Courtney, Renee Denton, Kelli Kelley, and a physical therapist assistant (Patrick). Notably, Renee Denton, who was the director of Unit 400, served as the supervisor of the entire Unit 400, and served as Ms. Courtney’s immediate and primary supervisor.

Further, the evidence presented in this case reveals, and I find and conclude

that, within approximately 15 minutes of the lifting incident, Ms. Courtney orally notified her supervisor Renee Denton of the injury to her back. Upon hearing of this concern, Renee Denton then instructed Ms. Courtney to obtain an incident report from the nurse's station and to "fill it out." Thereafter, Ms. Courtney went to the nurse's station and asked Cheryl Morrissey, the ward clerk, to give her a form for reporting the injury. Upon making this request, Cheryl Morrissey provided Ms Courtney with a form, which Ms. Courtney completed and filed with Skaggs. This completed and signed form is Exhibit F. (Cheryl Morrissey referred to this form as an "event report;" while Renee Denton referred to this form as an "incident report".)

Exhibit F is handwritten, and in Ms. Courtney's handwriting. (The parties redacted Exhibit F in order to remove information that could identify the patient involved in the incident.) Exhibit F identifies the patient's name and room [redacted for hearing], and further identifies Jerri Courtney as the person who is involved in the incident, and Jerri Courtney as the person preparing the report. Additionally, Renee Denton signed Exhibit F, which identifies her as the supervisor. Finally, in describing the event, Exhibit F reads as follows:

"DESCRIBE THE EVENT: (Name the drug, treatment, device, etc.)

Pt. in Rm. [redacted room number] had a severe reaction stiffened straight (sic) out, was going to fall out of chair. Kellie RN, Patrick PTA, Renee (Director) and myself had to pick pt. up to put in bed. I over extended my back when lifting pt. Lower back keeps spasming severely (sic). L ("L" is circled) leg goes numb."

Subsequent to completing and signing Exhibit F, Ms. Courtney gave the document to Renee Denton. Thereafter, on September 20, 2005, Ms. Courtney placed Exhibit F on Renee Denton's desk. Renee Denton received Exhibit F from Ms. Courtney on the day of the injury or the day after the injury. Upon her receipt of Exhibit F, Ms. Denton, forwarded Exhibit F to Lou Smith, who is the Risk Management Safety Officer in the Quality Improvement Department of employer. In this regard, Exhibit F contains a rubber stamp impression, which reads: "RECEIVED SEP 26 2005 QUALITY IMPROVEMENT".

Later, upon being informed that Exhibit F is a form used by Skaggs, as a health care provider, and is not the form Skaggs prescribes for its employees to use in reporting injuries, Ms. Courtney retrieved from Human Resources the forms (Exhibits G and H) prescribed by Skaggs. Thereafter, Ms. Denton completed and signed Exhibits G and H, and Ms. Courtney, upon signing Exhibit G, submitted the forms to Skaggs' Human Resources Department. It is unclear when, specifically, Skaggs' Human Resources Department received Exhibits G and H. However, the Report of Injury filed by Skaggs with the Division of Workers' Compensation identifies November 16, 2005 as being a notification of injury date.

The employer Skaggs declined to provide Ms. Courtney with medical care, contending that she did not file the correct form within 30 days. Notably, the absence of Debbie Crosby, who is Skaggs' Workers' Compensation Liaison, and is responsible for administering / handling Skaggs' workers' compensation files, complicated the process of reporting and administering benefits by Skaggs. In contrast to the usual custom and practice of Ms. Crosby meeting with an injured employee reporting the injury, and initiating the process of working a workers' compensation case file, at the time Ms. Courtney presented to the Human Resource Office, Debbie Crosby was on vacation, resulting in Ms. Courtney speaking with Ms. Dubinsky, and not Ms. Crosby. Further, Ms. Dubinsky failed to provide Ms. Courtney with the form Skaggs utilizes for their employees reporting work-related injuries.

The employer argues that Ms. Courtney did not comply with the notice requirement because it did not

satisfy the requirement of providing in writing notice of the time, place and nature of the injury. The employer further argues that, while notice may be imputed to the employer by notice to the supervisor, the supervisor in the underlying case, Renee Denton, lacked trustworthiness and is antagonistic to Skaggs' defense.

After consideration and review of the evidence, I find and conclude that the employee Jerri Courtney provided the employer Skaggs Community Health Center with timely and actual notice of her accident and injury. Further, on the same day of the injury, or the day after, the employee and her supervisor confirmed the incident in writing, which identified the nature and place of the injury. Admittedly, Ms. Courtney did not utilize the form prescribed by Skaggs until more than 30 days after the incident, and the initial form utilized by Ms. Courtney to report the injury did not identify the time of the incident or Ms. Courtney's address. Yet, the employer Skaggs, through its supervisor, Ms. Denton, possessed all the requisite information on the day of the injury to investigate and initiate the process of authorizing and providing Ms. Courtney with medical care.

The Workers' Compensation Law of Missouri does not require an employee to report an injury on a specific form, including any form specifically mandated by an employer. The form utilized by Ms. Courtney, in combination with her supervisor, Ms. Denton, afforded to the employer Skaggs all requisite information to equip itself of investigating the incident and initiating the process of providing benefits. The actions of Ms. Courtney and Ms. Denton, in submitting a written report of Ms. Courtney's injury on the date of injury, even if on a wrong form, are suggestive of the employee sustaining an incident on September 20, 2005 and taking action to notify the employer of her injury. The employer Skaggs is responsible for the actions of Ms. Denton, not Ms. Courtney, as Skaggs placed Ms. Denton in the supervisory position, and the person responsible for receiving notice of Ms. Courtney's injury.

The employee Jerri Courtney provided the employer Skaggs Community Health Center with notice of the injury, as required by Section 287.420, RSMo. The lack of providing written notice of injury on Skaggs' prescribed forms is not prejudicial to Skaggs, and is not justification for Skaggs to avoid providing medical care and the benefits owed under Chapter 287, RSMo.

III.

Medical Care

The accident of September 20, 2005 caused Ms. Courtney to sustain an injury to her low back, which is in the nature of a strain with an annular tear of the L4-L5 disk. The injury necessitated receipt of medical care, which the employer did not provide. As a consequence of sustaining this injury, and the failure of the employer to provide Ms. Courtney with medical care, Ms. Courtney incurred medical care and expenses in the amount of \$ 7,164.43.

An employer, with notice of the injury, may not merely stand back and fail to select the health care providers, and then claim it is not liable to pay for the treatment eventually sought by the employee. *Hammitt v. Nooter Corp.* 264 S.W.2d 915, 919 (Mo.App., St.L.D. 1954); *Stephens v. Creve Trucking, Inc.*, 446 S.W.2d 772, 777-778 (Mo. 1969). Similarly, an employer may not deny liability and then claim that medical treatment is at the personal expense of the employee. *Beatty v. Chandeysson Electric Co.*, 190 S.W.2d 648, 655 (Mo.App., St.L.D. 1945).

Accordingly, the employer is ordered to pay to the employee, Jerri Courtney, the sum of \$7,164.43, which represents reasonable and necessary medical care and expenses incurred as a consequence of the accident of September 20, 2005.

IV.

Temporary Disability Compensation

In light of prescribed physician orders, Ms. Courtney did not work from November 15, 2005 through December 16, 2005. Then, from December 17, 2005 through February 2, 2006, Skaggs provided Ms. Courtney with work accommodations, allowing her to work part-time in Skaggs' Human Resources department. Notably, during the period of December 17, 2005 through February 2, 2006, Ms. Courtney worked 23-24 hours per week, payable at her standard rate of pay, \$12.29 per hour.

In February, however, Skaggs ceased being able to provide Ms. Courtney with accommodations sufficient to meet her weight restrictions. Consequently, from February 3, 2006 through February 28, 2006, Ms. Courtney continued to be in Skaggs employment but not able to work, and did not receive any employment compensation. Then, on February 28, 2006, Skaggs terminated Ms. Courtney from their employment, effective February 28, 2006. Thereafter, Ms. Courtney sought and obtained unemployment benefits.

The record is not particularly clear when Ms. Courtney reached maximum medical improvement. The employee argues that, she was temporarily and totally disabled for the periods of November 15, 2005 through December 16, 2005, February 3, 2006 through February 28, 2006, and August 20, 2006 through October 31, 2006; and she was temporarily and partially disabled for the period of December 17, 2005 through February 2, 2006. The employee acknowledges receiving unemployment compensation during the period of March 1, 2006 through August 19, 2006. The employer appears to concede that, during part of the claimed period, Ms. Courtney was "temporarily and totally disabled"; but she reached maximum medical improvement prior to the total period claimed by the employee.

Notably, Dr. Weber, as a treating physician, did not specifically release Ms. Courtney from his care, and continued to schedule follow-up examinations following his examination and treatment of Ms. Courtney on February 9, 2006. Similarly, he continued to schedule follow-up treatment subsequent to his examination of Ms. Courtney on October 19, 2006. Yet, it is clear that, on August 22, 2006, Ms. Courtney presented to Dr. Bennoch for an independent examination and evaluation, and specifically addressed this concern. Relative to this concern Dr. Bennoch opined that, Ms. Courtney was at maximum medical improvement at the time of his examination; but she was "temporarily totally disabled" during the period following her injury in September 2005 until his examination of August 22, 2006.

After consideration and review of the evidence, I find and conclude that on or about August 22, 2006 the employee, Jerri Courtney reached maximum medical improvement. I further find and conclude that, during the periods of November 15, 2005 through December 16, 2005, February 3, 2006 through February 28, 2006, and August 20, 2006 through August 22, 2006, (8 5/7 weeks) Ms. Courtney was temporarily and totally disabled. I further find and conclude that, during the period of December 17, 2005 through February 2, 2006 (6 6/7 weeks) Ms. Courtney was temporarily and partially disabled, as she engaged in employment with the employer and earned during this period \$2,022.60. (The earnings during the TPD period is premised on Ms. Courtney working 24 hours per week and earning \$12.29 per hour. $\$12.29 \times 24 = \$294.96 \times 6 \frac{6}{7} = \$2,022.60$.)

Accordingly, in light of the foregoing, the employer is ordered to pay to the employee temporary total disability compensation in the amount of \$2,856.10, which represents 8 5/7 weeks of temporary total disability compensation. ($\$327.75 \times 8 \frac{5}{7} = \$2,856.10$) The employer is further ordered to pay to the employee temporary partial disability compensation in the amount of \$224.82. ($6 \frac{6}{7}$ TTD = \$2,247.42 & $6 \frac{6}{7}$ TPD period earnings = \$2,022.60. $\$2,247.42$ minus $\$2,022.60 = \224.82 in TPD.) The sum of temporary

total disability compensation and temporary partial disability compensation is \$3,080.92.

V.

Permanent Disability Compensation

The accident of September 20, 2005 caused Ms. Courtney to sustain an injury to her low back, which is in the nature of a strain with an annular tear of the L4-L5 disk. Further, the injury causes Ms. Courtney to be governed by permanent work restrictions, which precluded her from continuing in her employment with Skaggs Community Health Center.

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the September 20, 2005 accident, Ms. Courtney sustained a permanent partial disability of 15 percent to the body as a whole, referable to the low back. Therefore, for the foregoing reasons, the employer and insurer are ordered to pay to the employee the sum of \$19,665.00, which represents 60 weeks of permanent partial disability compensation, payable at the applicable rate of \$327.75 per week.

VI.

Costs

The employee argues that the employer denied liability and defended the case without reasonable ground, and thus seeks an award for costs under Section 287.560, RSMo. The employer's denial of liability, relative to the issue of notice, is being made under the new law. In light of the sweeping statutory change, the undersigned is not prepared to state that the employer's defense in this case is without reasonable ground. Therefore, the request for costs is denied.

The award is subject to modifications as provided by law.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Date: _____

Made by:

L. Timothy Wilson

Chief Administrative Law Judge

Division of Workers' Compensation

(Signed May 24, 2007)

A true copy: Attest:

Patricia "Pat" Secret

Director

Division of Workers' Compensation

Judge's Signature 5/24/07

Award to Jeff City 5/24/07

Award Tracked 5/24/07

Director's Signature 5/31/07

Moved to I-Drive 7/10/07