

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

Injury No.: 03-102245

Employee: Earl Cozart
Employer: St. Louis Public Schools
Insurer: Board of Education City of St. Louis c/o CCMSI
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged August 11, 2003
Place and County of Accident: St. Louis City, 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 June 19, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued June 19, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Dependents: n/a

Employer: St. Louis Public Schools

Additional Party: Second Injury Fund

Insurer: Board of Education City of St. Louis c/o CCMSI

Hearing Date: March 29, 2007

Before the
**Division of Workers'
Compensation**

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

Checked by: KMH

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 August 11, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis City
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant alleges he fell while taking inventory at work.
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: alleged low back, hips and lower extremities
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Earl Cozart

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17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$520.38
19. Weekly compensation rate: \$346.92/\$346.92
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

None

22. Second Injury Fund liability: No

TOTAL: NONE

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 n/a of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Earl Cozart

Injury No.: 03-102245

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: St. Louis Public Schools

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

Additional Party: Second Injury Fund

Insurer: Board of Education City of St. Louis c/o CCMSI

Checked by: KMH

A hearing was held on the above captioned matter March 29, 2007. Attorney Steve Walsh represented Earl Cozart (Claimant). Attorney Eric Christensen represented St. Louis Public Schools (Employer). Assistant Attorney General Kevin Nelson represented the Second Injury Fund (SIF).

STIPULATIONS

The parties stipulated to the following:

1. Claimant alleges he was injured on or about August 11, 2003, while in the course and scope of his employment for Employer.

2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation Law.
3. Employer's liability was fully insured by the Board of Education City of St. Louis.
4. A claim for compensation was timely filed.
5. Claimant's average weekly wage on the alleged injury date was \$520.38 yielding a TTD and PPD rate of \$346.92.
6. Claimant has been paid no compensation or medical benefits to date.

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ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Whether Claimant was injured by accident arising out of and in the course of his employment on August 11, 2003.
2. Whether Employer had notice of the alleged accident.
3. Whether Claimant's complaints are medically and causally related to the alleged accident.
4. Liability for \$7,105.00 in past medical expenses.
5. Liability for future medical care.
6. Liability for TTD benefits.
7. Nature and extent of Claimant's PPD or PTD, if any.
8. Liability of the Second Injury Fund.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

1. Claimant is a 53 year-old male who lives with his wife and 13 year-old son. He is a high school graduate and earned an Air Conditioning Certification in 1982. He also attended some classes at Florissant Valley Community College. He has been employed full-time with Employer since 1984. He has worked in the warehouse for the majority of his employment. His duties include shipping, receiving, inventory of food service stocks and assembling orders to be sent to the schools. This involves significant walking and lifting on a daily basis.
2. Prior to Claimant's alleged work injury, he had undergone two cervical spine fusions, had a history of low back pain and had left knee surgery.
3. In 1989, Claimant had surgery on his left knee. He returned to work a few weeks after surgery and physical therapy. He continues to have pain and almost constant swelling in his knee. His knee pops and locks occasionally, and he limits his activities. His knee does not bother him as much as his neck and back.

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4. Claimant first had complaints of low back pain in 1990. He had no specific injury, just the gradual onset of pain from lifting. Until the time of his 2003 accident, Claimant had pain and stiffness in his low back. He tried to use his arms more when lifting in order to ease the pressure on his low back. He got assistance from his co-workers if he

had heavy items to lift, and he tried to pick up fewer and smaller pieces. He had no quotas at work, and sometimes he had to slow his pace to accommodate his back pain.

5. Claimant's first neck fusion was in December 1999. Claimant treated with Dr. Gold. Following this treatment, he was able to return to work full-time with few symptoms. He continued working until his 2001 neck injury.
6. In 2001, Claimant re-injured his neck in a motor vehicle accident. He again treated with Dr. Gold. Claimant had a lumbar and cervical myelogram in early 2002. The admission note indicates Claimant had a two year history of low back pain and pain in his right lower extremity making it difficult for Claimant to lift his legs and tie his shoes. He also had bilateral hip and knee pain at that time. The note also indicates Claimant's back and right hip pain were worse than his neck pain and had increased over the last several months. Standing and sitting caused most of his pain, and he took medication almost every night.
7. Claimant's 2002 lumbar myelogram revealed diffuse bulging at L4-5 and L5-S1 and osteoarthritic changes at each level. His 2002 lumbar MRI revealed an annular tear at L4-L5 with a possible small central protrusion, osteoarthritis and mild foraminal narrowing at L5-S1.
8. In February 2002, Dr. Gold recommended Claimant proceed with a second neck fusion and see a pain management specialist for his low back complaints. If pain management did not relieve his symptoms, Dr. Gold thought low back surgery should be considered.
9. Claimant had a second neck fusion in June 2002. He was able to return to work, but he was not able to work at the same level. He had to be more careful with his lifting. He no longer lifted more than one box at a time. He had neck pain and occasional tingling depending on how much he lifted during the day. He had some range of motion restrictions and extensive pain if he moved his head too far to the left.
10. On Monday, August 11, 2003, Claimant was taking inventory in the warehouse. He had to climb skids to view hidden items. Claimant testified that as he was climbing, some of the boxes collapsed and he fell approximately 5-6 feet. Claimant hit his right side on the boxes and landed on his feet. He had sharp pain down his right hip and low back to his right knee. He reported the incident to his supervisor, Janice Holland. Claimant took some Ibuprofen and continued working.
11. Claimant testified the following day his low back, hip and knee pain increased, but he continued to work taking inventory.

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12. On Wednesday, August 13, 2003, Claimant and his co-workers were moving furniture in one of the schools. They moved desks and chairs from the third floor down to a moving truck. Claimant testified this caused an increase in his pain, so he switched jobs with a co-worker. This allowed him to work at the truck lifting furniture thereby avoiding the stairs. After this work, his pain increased. He did not feel a pop or any new injury.
13. Claimant testified he reported his increased pain to Janice Holland on August 14th. He testified he requested treatment, and she advised him to go to the Emergency Room. He later spoke to someone else in the office who did not send him to a doctor. There is no evidence Claimant went to the Emergency Room.
14. Claimant was off work the next two weeks. He was called in to work for a meeting August 29th. At that meeting, everybody was laid off. Claimant agreed this was not related to his injury. He has not worked since.
15. Due to his lay off, Claimant's insurance ended at the end of August 2003.
16. Claimant saw his personal doctor, Dr. Caldwell, August 14, 2003. He complained of pain in his right leg from the right hip to the right knee. He also complained of pain in his left hip. Dr. Caldwell noted Claimant's pain originated from his low back. He diagnosed low back pain and ordered x-rays of Claimant's low back, both hips, and right knee.
17. There is no mention of a work injury in Dr. Caldwell's August 2003 records.
18. X-rays taken August 14, 2003, revealed degenerative changes in the low back and symmetric degenerative changes at the hips.
19. Claimant saw Dr. Gold August 26, 2003. This appointment was scheduled prior to his work accident. He complained to Dr. Gold of hip, leg and knee pain. Dr. Gold reviewed the recent x-rays and suspected an incomplete fusion of the spinous process and noted a spina bifida at S1. Dr. Gold again ordered a lumbar MRI. This showed bulging degenerative discs at L4-5 and L5-S1. Dr. Gold was unable to determine the cause of Claimant's right leg pain and

he referred Claimant to pain management.

20. There is no mention of a work injury in Dr. Gold's August 26, 2003 or September 2, 2003 records.
21. Claimant treated at the People's Clinic a few times in 2004 and 2005. These records are not in evidence. Claimant testified he was given medications and sent to a specialist who suggested back surgery.
22. Claimant had no other treatment until 2006 when he became eligible for Medicare.

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23. Claimant then saw Dr. Caldwell, his personal physician, in February and March of 2006. Dr. Caldwell diagnosed chronic back pain and hip pain and recommended an MRI.
24. There is no mention of a work injury in Dr. Caldwell's 2006 records.
25. On March 3, 2006, Claimant underwent an MRI which showed disc degeneration at L4-5 and L5-S1 with diffuse protrusions at those levels, and it suggested an annular tear at each level. Dr. Caldwell referred Claimant to Dr. Scodary.
26. Claimant saw Dr. Scodary March 15, 2006. He complained of bilateral hip pain with radiation to his thigh. He had numbness and weakness in his legs which had progressed over the last 2 years. Dr. Scodary noted Claimant denied any trauma and opined Claimant's pain is from his degenerative disc disease. He recommended physical therapy and injections with surgery as a last option.
27. Claimant then saw Dr. Smith, a pain management specialist. He complained of constant bilateral hip and leg pain for the last 3 years. Dr. Smith notes this began without injury or event. He recommended nerve root blocks and diagnosed lumbar spondylosis, lumbar spinal stenosis and degenerative disc disease. Claimant testified the nerve root blocks gave temporary relief, but the pain returned in a few weeks.
28. Claimant has made a few attempts to seek other employment but believes he will not physically be able to work due to his pain. He did get calls about other jobs from unemployment, but felt these jobs "weren't in the area he was looking for".
29. Claimant's current complaints are pain in his right hip, leg and knee along with low back and neck pain. He takes over the counter medications. Sitting, standing, and strenuous activity cause pain. Sometimes simply moving around causes pain. Claimant is only able to sleep a few hours at a time due to pain. His legs get numb and give out, and he has to change positions every 15-20 minutes to relieve his pain. The pain starts at the base of his back and goes into his right hip, knee and ankle. It does not radiate like that on his left side.
30. A normal day now consists of taking his son to school. He does some housework and only a little yard work before his pain becomes unbearable. He is able to be a passenger in a car for longer periods of time than when he is driving because there is less stress on his neck. He is not able to walk more than ½ block without pain radiating into his legs. He sometimes uses a cane. He frequently sits with his legs up during the day to reduce pressure. He is no longer able to mow the grass. He has difficulty putting his socks on and can't tie his shoes because lifting his legs up causes pain to shoot up his hip to his back. He is no longer able to participate in recreational activities.

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RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

- 1. Claimant did not have an accident arising out of and in the course of his employment.**

Claimant went to his personal physician, Dr. Caldwell, within three days of his alleged injury. While Claimant testified he told his supervisor he had a work injury, there is nothing in Dr. Caldwell's records to corroborate this claim. Claimant complained to Dr. Caldwell of pain in his right leg and left hip, but he does not mention a work injury. Dr. Caldwell diagnosed back pain and ordered x-rays.

Claimant went to Dr. Gold, another doctor of his own choosing, on August 26, 2003. He had this appointment scheduled before the alleged work accident. Dr. Gold's records mention Claimant was experiencing changes at work. He used to be a warehouseman. He was being asked to load and unload trucks, which was difficult for him. He advised Dr. Gold he was taking vacation time due to pain in his right and left leg. There is no mention of a work accident in this record or in the record of Claimant's September 2, 2003, visit to Dr. Gold.

Claimant also saw Dr. Scodary and Dr. Smith in 2006. Both of these doctors indicate Claimant had a history of bilateral hip pain which had progressed over the last few years. Dr. Scodary notes Claimant denied any trauma. Dr. Smith notes Claimant's pain began without injury or event.

I find it compelling Claimant saw two doctors of his own choosing within days of his alleged injury, yet there is no mention of an accident in the records. It stands to reason that had Claimant reported an acute injury, such as a fall at work, the doctors would have investigated his back more thoroughly. Nevertheless, Dr. Gold's treatment is consistent with a chronic, long-standing condition. Accordingly, I find Claimant fails to meet his burden to show a work accident occurred.

2. Claimant's current complaints are not medically and causally related to his work.

Even if Claimant had satisfied his burden and proven a work accident, he has not proven his complaints are the result of a compensable injury.

Section 287.020 RSMo (2000) states an injury is not compensable merely because work was a triggering or precipitating factor. An injury is compensable if work was a "substantial factor" in the cause of the resulting medical condition or disability. Expert testimony is required where the cause and effect relationship is not within the realm of common knowledge. *McGrath v. Satellite Sprinkler Systems*, 877 S.W. 2d 704, 708 (Mo.App. 1994).

Claimant's expert, Dr. Poetz, is board certified in family medicine. He simply concludes Claimant's back and hip complaints are related to his fall at work because that is when his complaints started. He also testified he understood Claimant was not under treatment or management of his low back problems prior to August 2003. The medical records prove otherwise.

Employer's expert, Dr. Chabot, is a board certified orthopedic spine surgeon. He reviewed Claimant's prior treatment records and test results, and he opined Claimant's spine and hip pathologies are not work related and were not exacerbated by a work injury. He found Claimant has a long history of chronic back and hip pain dating at least to 2000. He had significant functional restrictions before 2003, as Claimant's testimony corroborates. Dr. Chabot opined Claimant had advanced degenerative disease involving both hips which predated 2003 and is responsible for the majority of his current complaints and his prior complaints. In support of this opinion, Dr. Chabot testified advanced hip arthritis can produce back pain and symptoms into the legs like sciatica. In addition, Claimant's tests in 2002 show longstanding degenerative problems, and there was no change in the test results from 2002 to those taken in 2003.

I find the opinion of Dr. Chabot well reasoned and more persuasive than that of Dr. Poetz.

I find Claimant has failed to meet his burden of proof and has not proven he sustained a compensable injury on August 11, 2003. Claimant's medical evidence did not establish that he sustained a new injury or that he aggravated his pre-existing back and hip conditions.

CONCLUSION

I find Claimant has failed to prove he had a work related accident or injury, and I deny his case. All remaining issues are moot. Employer is not responsible for the medical bills in issue or for any temporary or permanent disability. Since I have found Claimant did not have a compensable injury, his Second Injury Fund claim is hereby dismissed.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Lucas Boling
Acting Director
Division of Workers' Compensation

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