

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

Injury No.: 00-167227

Employee: Regina Davis  
Employer: Skaggs Hospital  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)  
Date of Accident: Alleged November 20, 2000  
Place and County of Accident: Alleged Taney County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 14, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued April 14, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13<sup>th</sup> day of October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Regina Davis

Injury No. 00-167227

Dependents: N/A

Employer: Skaggs Hospital

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

Insurer: self-insured

Hearing Date: 11/9/04

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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
N/A
7. Did employer receive proper notice? N/A
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? N/A
10. Was employer insured by above insurer? N/A
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: N/A
14. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: REGINA DAVIS

Injury No. 00-167227

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

### 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 X 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 0 weeks, beginning  
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded:

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:

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Regina Davis

Injury No. 00-167227

Dependents: N/A

Employer: Skaggs Hospital

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

Insurer: self-insured

Hearing Date: 11/9/04

Checked by: MEH

The parties appeared before the undersigned administrative law judge on November 9, 2004, for a final hearing. The claimant appeared in person represented by J.T. Magness. The employer and insurer appeared represented by Patrick Platter. The Second Injury Fund appeared represented by Susan Colburn. Memorandums of law were filed by December 13, 2004.

The parties stipulated to the following facts. On or about November 20, 2000, SkaggsHospital 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 November 20, 2000, Regina Davis was an employee of the employer. The claimant was working subject to the Missouri Workers Compensation Law. The alleged accident occurred in Taney 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 \$490.81 for temporary disability

compensation and a compensation rate of \$314.26 for 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%. The claimant voluntarily dismisses the Second Injury Fund.

#### ISSUES:

1. Whether the claimant sustained an accident.
2. Whether the claimant gave the employer proper notice.
3. Whether the accident arose out of the course and scope of employment.
4. Whether the accident caused the injuries and disabilities for which benefits are being claimed.
5. Whether the employer is obligated to pay past medical expenses.
6. Any temporary total benefits owed to the claimant.
7. The nature and extent of permanent disabilities.

#### FINDINGS OF FACT:

The claimant went to work for the employer in 1989 as a Licensed Practical Nurse. Originally, she was a floor nurse. In 1998 she was transferred to the Homemaking Department, where she was a supervisor. When this program was discontinued due to a change in the Medicare program's hospice services, she was transferred to the Hospice Department. In 1991 or 1992 claimant had injured her back lifting a patient. She missed a few days, and the problem resolved. She was involved in a motor vehicle accident and injured her upper cervical spine, shoulders and neck. Claimant had a work-related injury on November 3, 1998. She slipped and fell on a wet parking lot. She injured her cervical spine in this injury. Claimant's prior back condition had affected her ability to handle patients, and Anita Allen testified the claimant told her she left the floor due to these problems.

The Hospice Department consisted of four full-time and three part-time employees. Sherry Vorhaben was the department supervisor; Debra Witt was her supervisor; and Anita Allen was the social worker. Claimant's job was in quality assurance, and she was responsible for visiting the patients in their homes. The routine of the department was that they would meet in the office in the morning and discuss the care of the patients and daily assignments. Then the claimant would travel to patients' homes.

On November 20, 2000, the claimant arrived about 8:00 a.m. Debra Witt was there, and Anita Allen arrived later. They discussed the day's work and claimant then went to visit patients. She had three patients to visit that day. The last one was a gentleman named Art. She examined him around 1:00. She testified that he was lying in a recliner. She said that when she bent over him to take his vitals, she felt an electrical type pain in her back which immediately shot down her left leg.

Claimant returned to the office, and Debra Witt and Anita Allen were there. Anita Allen testified that claimant looked uncomfortable and she asked her if she was okay. Ms. Allen also testified that Debra Witt was working on the computer and when she did that, she was often distracted and did not hear what was being discussed around her. Ms. Allen corroborated claimant's testimony that claimant told them that she was hurt. Ms. Witt told her to go on home, and she did so.

On the next day, Tuesday, November 21, 2000, the claimant came into work and told Debra Witt that her back hurt and she could not work. She did not tell her about the incident with Art. Claimant went home and did not work that day.

Claimant also missed work on Wednesday the 22nd. Ms. Witt testified that she did not recall claimant telling her about a work injury. Ms. Witt testified that she knew claimant had prior back problems and that she had left the floor due to these problems.

Thursday, November 23, 2000, was Thanksgiving. Claimant had a dinner in her home but did not cook it. Her children prepared it. She testified that she was in a lot of pain but did not want to go to the emergency room on the holiday.

On Friday, November 24, 2000, claimant went to the employer's emergency room. While in the waiting room waiting to be admitted, Dr. Sukman, a doctor she knew, saw her and realized she was in pain, took her into an exam room and gave her a shot of pain medication. Dr. Louis Mire then examined the claimant. Claimant did not give a history of any kind of accident to the emergency room. She told them her discomfort started on Wednesday with radiating pain into the left buttocks. She told Dr. Mire that she began having pain "two days ago with radiation down the left leg to her ankle." She was admitted to the hospital and placed on IV Demerol medication for the pain.

Dr. Peter Marcellus saw her in the hospital on November 24, 2000. She gave him a history of "beginning Wednesday afternoon-evening of left hip pain radiating down into the left thigh and to the left lower leg, at times clear to the ankle. It was throbbing in nature. She had taken Tylenol PM; placed heat on it, tried Aleve and Excedrin, and in spite of this was up all night Wednesday night. Yesterday was Thanksgiving and she stayed at home and had help with the Thanksgiving dinner with the kids, but continued to have throbbing pain which makes it difficult to get comfortable in any position. By today she just couldn't take it any longer and presented to the Emergency Room." A CT scan showed degenerative changes of the facet joints and bulging disk at L3-4 and L4-5. He prescribed medications, including IV pain medications and Physical Therapy.

Debra Witt testified that she was first aware the claimant was off work and injured on November 25, 2000, when she saw her name on a hospital census record showing she was admitted. She visited the claimant in the hospital that day but did not discuss her medical condition whatsoever. She testified that she did not know it was a work injury.

Dr. Patrick O'Brien saw her on November 27, 2000, while she was still in the hospital on referral from Dr. Marcellus. In his history he states "51-year old lady developed back and left lower extremity pain sometime around five days ago. She had not antecedent injury. It started out as an achiness and gradually crescendoed into severe pain that has rendered her fairly unable to function." He diagnosed herniated nucleus pulposus at L5-S1 on the left. He felt that with shrinkage of the bulge, she should get good relief. He ordered an epidural block. Dr. Joseph Taylor saw her on November 28, 2000. In his history he states: "patient is a 51-year old female referred for low back pain evaluation. The patient has a long history of back pain, but the pain has been in the thoracic area. Six days prior to this evaluation, she developed severe burning low back pain which radiated the left leg to the ankle." Dr. Taylor performed an epidural injection.

Claimant was discharged from the hospital on November 29, 2000. In the discharge summary, Dr. Marcellus states that the claimant had given a history of pain two days prior to admission and denied any injuries. Dr. Marcellus continued her on medications, and she was to follow up with Dr. O'Brien.

The claimant continued treatment with Dr. O'Brien. In mid January she received a bill for her hospital stay. When she was admitted, the records show her personal insurance as the payment source. On January 24, 2001, she discussed surgery at L5-S1 with Dr. O'Brien. The claimant then went to the employer's human resource department and spoke with Debby Crosby. Ms. Crosby had claimant fill out an accident report and referred her to Dr. Randall Cross for an evaluation to determine if the injury was work related. Ms. Crosby also contacted Debra Witt who responded that she knew nothing about the work-related injury alleged by claimant.

Dr. Cross examined claimant on January 24, 2001. He at first thought that Dr. O'Brien, rather than the employer, referred her. In his report he states: "The patient presents today ostensibly at the urging of Dr. Patrick O'Brien to determine

possible work compensability for an anticipated surgical procedure to her back. The patient denies that there has been any intervening acute traumatic events such as slips, falls or any single identifiable work-related injury where she has sustained lower back or leg pain. She indicates that she has had gradual progression of some lower back pain since before Thanksgiving with some radiating pain more recently down into the right buttocks and the right leg area. The only thing she can recall is assisting the Home Health office in the move from Forsyth to Branson in June or July of this past summer during which time she did lift and carry some boxes. We did review the history of her prior work-related fall, and the patient denies having leg pain at that time.” Dr. Cross diagnosed history of herniated nucleus pulposus, more than likely L5-S1, though there is a mixture of physical findings and history of previous cervical disc disease. He concluded that there was no specific event that would qualify this as a work-related injury. He referred her back to Dr. O’Brien for further care and treatment.

The employer notified the claimant on January 30, 2000, that they were denying her claim. Dr. O’Brien performed a microdiscectomy on the claimant on February 19, 2001. She performed physical therapy after surgery. Dr. O’Brien found her to be at maximum medical improvement on April 11, 2001. Claimant requests temporary total disability benefits for 25 weeks. She also requests unpaid medical expenses of \$24,345.12.

Dr. David Paff examined the claimant on May 9, 2001. She gave Dr. Paff a history of leaning over a patient in a low recliner when she felt pain in the low back area radiating down to the left heel. Dr. Paff opined that the claimant did sustain an injury in the course and scope of her employment. He further found that she has a 20% permanent partial disability to the body as a whole as a result of this injury.

#### CONCLUSIONS OF LAW:

After carefully considering all of the evidence, I find that the claimant did not sustain an accident that arose out of the course and scope of employment. This finding is primarily based on the lack of history of any accident as presented in the medical records to nurses and various doctors who treated her in the emergency room and after she was admitted to the hospital as well as Dr. O’Brien. As a result of this ruling, all other issues are moot.

Date: April 14, 2005

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

A true copy: Attest:

/s/ Patricia “Pat” Secrest  
Patricia “Pat” Secrest  
*Director*  
*Division of Workers' Compensation*