

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

Injury No. 12-067128

Employee: James DeWald  
Employer: Select Motors, Inc.  
d/b/a Select Transport  
Insurer: Missouri Employers Mutual

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 23, 2015. The award and decision of Chief Administrative Law Judge Grant C. Gorman, issued April 23, 2015, 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 8<sup>th</sup> day of October 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: James DeWald

Injury No. 12-067128

Dependents: None

Employer: Select Motors, Inc. D/B/A Select Transport

Additional Party: None

Insurer: Missouri Employers Mutual

Hearing Date: August 14, 2014

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: GCG/kr

### 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: August 24, 2012
5. State location where accident occurred or occupational disease was contracted: Franklin County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Ran after a rolling tele loader and jumped in to stop it and suffered a jarring impact.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Ribs, neck, and low back.
14. Nature and extent of any permanent disability: 5% BAW for neck and 7.5% BAW for low back.
15. Compensation paid to-date for temporary disability: \$11,827.01
16. Value necessary medical aid paid to date by employer/insurer? \$12,519.98

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$906.44
- 19. Weekly compensation rate: \$604.29 TTD/\$433.58 PPD
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: \$21,679.00

50 weeks of permanent partial disability from Employer

- 22. Second Injury Fund liability: No

TOTAL: \$21,679.00

- 23. Future requirements awarded: None

Said payments to begin as of the date of this Award 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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Michael Warner

Employee: James DeWald

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## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: James DeWald

Injury No: 12-067128

Dependents: None

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Select Motors, Inc. D/B/A Select Transport

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

Additional Party None

Insurer: Missouri Employers Mutual

Checked by: GCG/kr

### **PRELIMINARY STATEMENT**

A Hearing was held on August 14, 2014. The claimant was represented by attorney Michael Warner. The employer and insurer were represented by attorney Patrick N. McHugh. Claimant is seeking a final award for workers' compensation benefits associated with his Claim for Compensation. Mr. Warner is seeking attorney's fees in the amount of 25% of any benefits awarded.

### **STIPULATIONS**

The parties entered into the following stipulations:

1. That claimant was employed by Select Motors, Inc. a/k/a Select Transport (herein after referred to as "Select Transport") on the date of accident.
2. That Missouri Employers Mutual Insurance Company insured the employer's workers' compensation risk at the time and date of the alleged accident and that the employer was operating under and subject to the terms and provisions of the Missouri Workers' Compensation Law. The accident occurred in Franklin County, Missouri.
3. That on August 24, 2012, claimant sustained an accident arising out of and in the course of his employment with Select Transport.
4. That venue is proper in the St. Charles County, Missouri.
5. That timely notice of the injury was provided to the employer and a Claim for Compensation was filed within the time prescribed by statute.
6. That claimant's average weekly wage was \$906.44, resulting in applicable compensation rates of \$604.29 for temporary total disability benefits and \$433.58 for permanent partial disability benefits.

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7. That the employer has provided temporary total disability benefits in the amount of \$11,827.01 for the periods of time of 8/25/12 through 1/8/13, representing 19-4/7 weeks of benefits.
8. That the employer has provided medical treatment in the amount of \$12,519.98.

### **ISSUES**

1. The nature and extent of any permanent disability.
2. The employee's entitlement to future medical care.

### **EXHIBITS**

The following exhibits were offered and admitted into evidence:

A. Employee's Exhibits

1. Medical records from SSM St. Clare Health Center – 8/24/12 and 8/30/12.
2. Medical records from BarnesCare Westport – 8/27/12 through 9/12/12.
3. Medical records from Russell Cantrell, M.D. – 9/18/12 through 1/8/13.
4. Medical records from St. Luke's CDI Chesterfield – MRI of lumbar spine 12/19/12.
5. Medical records from Eureka Physical Therapy – 10/22/12 through 12/17/12.
6. Medical records from Aquatic Fitness, Inc. 9/20/12 through 10/11/12.
7. Report of Dwight Woiteshek, M.D. of 2/7/13 and CV.

B. Employer/Insurer's Exhibits

- A. Medical report of Russell Cantrell, M.D. – 9/24/13.

### **FINDINGS OF FACT**

**I. Testimony of James DeWald**

Employee, James DeWald, (claimant) currently lives in Kendallville, Indiana. He is not married and has one 20-year-old child dependent child. An outstanding child support lien was acknowledged. The claimant completed the 10<sup>th</sup> grade. He is currently employed as a truck driver for Evans Trucking.

Claimant testified he worked for Select Transport for two years prior to the accident. He had worked for this employer on and off in the past on two or three separate occasions. He worked as a truck driver involved in moving heavy equipment.

Claimant testified the accident occurred while he was attempting to unload a truck off the bed of a trailer. The truck began to roll backwards and towards a tele handler (forklift). Claimant jumped in the cab of the truck to stop it. Claimant stated the truck ran into the forks of the

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telehandler, which came through the windshield. Claimant was sitting in the driver's seat when this occurred with his foot on the brake. He said he had immediate symptoms of a loss of breath, as if he had been punched in the stomach. He also stated the blade of the telehandler struck his left upper arm. He went on to make his normal delivery and returned to the terminal about 4:00 a.m. He reported this to his boss and his boss told him to go home and take the day off. He testified his symptoms at that point were shortness of breath and a "massive" headache.

Claimant testified he went home and went to bed. He then went to SSM St. Clare Health Center and was told he had sprained his ribs. He testified his boss yelled at him for going to the hospital and acknowledged this was because he had not notified him before this visit. The employer then sent him to BarnesCare for further treatment. Claimant explained his symptoms during this course of treatment included left arm pain, numbness and tingling in his right hand and right foot, and rib pain. He also complained of pain in his neck and back. He returned to SSM St. Clare Health Center a week later (8/30/12) because he still had a headache and had trouble breathing. He stated he was given a full work up on this examination. He then continued treating with BarnesCare and was eventually referred to Dr. Russell Cantrell for further evaluation and treatment.

Claimant testified his treatment through Dr. Cantrell included a course of aquatic physical therapy (Aquatic Fitness, Inc.) followed by therapy at Eureka Physical Therapy. He stated the aquatic physical therapy did not help his condition. He acknowledged the therapy through Eureka Physical Therapy helped a little bit with his ribs but that he continued to have head, neck, and back pain. He testified it was his understanding he had a bulging disc at L5-6. He last saw Dr. Cantrell on 1/8/13 and he reported he was still having problems with his neck, back, arm, and right foot. He explained his neck would make a cracking noise when he turned his head and that he was still experiencing pain. He also said he was still having headaches. His low back pain also persisted. He complained of right hand numbness that went into his forearm. He was also experiencing numbness in his right foot to his calf that would occur "every now and then."

Claimant testified he was next evaluated by Dr. Woiteshek on 2/7/13. He stated he told Dr. Woiteshek he was continuing to have neck pain with popping and grinding noises, and low back with pain shooting down his leg. He stated Dr. Woiteshek did not suggest any additional medical treatment.

Claimant testified with regard to his current symptoms and restrictions. He stated he cannot sit in his driver's seat for long periods of time as his foot will go numb if he sits for more than one hour. He also experiences numbness in his leg. He testified his neck pops all of the time and his low back hurts him all of the time. He experiences numbness in his right hand, especially if he has to shift gears.

Claimant testified his only prior injury to his neck occurred when he was in a motor vehicle accident at age 14 or 15. He described the injury as "whiplash." He said he only had symptoms for about a week. He stated he never had any prior low back pain, symptoms of pain or numbness in his right hand or forearm, right foot or leg. He also denied prior headaches, other than sinus problems every now and then.

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Claimant stated he has not seen any doctors since his evaluation with Dr. Woiteshek. He said he has tried to get in to see at least ten doctors but none of them will take him because this is a workers' compensation case and he has no insurance.

Claimant testified on cross-examination that he is currently taking no prescription medications for his injuries. He does take Tylenol for pain.

Claimant testified he collected unemployment compensation for a short period of time after he was released from care by Dr. Cantrell. He then began working as an over-the-road truck driver for SDX beginning in February of 2013. He recalled having to pass a DOT physical prior to beginning work. He drove 40 to 60 hours per week for this employer and confirmed he drove approximately 400 miles per day. He admitted he had worked as an over-the-road truck driver for SDX on approximately five different occasions prior to the accident. He had also worked for Select Transport on several occasions as well. He admitted leaving these employers on each occasion due to him having disagreements with his bosses.

Claimant admitted he did not sustain any trauma to his head or loss of consciousness in this accident. He also has no specific memory of twisting his neck in any way when this accident occurred. He admitted he no longer has any symptoms or problems as a result of his rib fracture. He also confirmed he no longer has any problems with regard to his left arm.

Claimant was questioned regarding his treatment at Eureka Physical Therapy from 10/22/12 through 12/17/12. The records document he missed or cancelled seven physical therapy appointments (11/2, 11/7, 11/14, 11/21, 11/27, 11/28, and 11/30/12). He denied missing these appointments due to other employment and that he was off work and receiving TTD benefits during this therapy. He stated he missed these appointments due to sickness or having to reschedule due to other obligations.

Claimant admitted to pleading guilty to two felonies in the past. These included charges of first-degree tampering and first-degree burglary. He was in prison for one year in Oklahoma and one year in Missouri. He acknowledged he has an outstanding balance for past due child support.

## **II. Medical Evidence**

Claimant was seen as a walk in at SSM St. Clare Health Center at 8:25 a.m. on 8/24/12. The record documents claimant stated he ran to get into a rolling truck that was headed for a forklift at work and got pinned by the door of the truck at approximately 1:00 to 1:30 a.m. He was having pain to his right ribs, left arm, and low back. The record documents no loss of consciousness. The pain had been constant since the injury and was described as "mild." Claimant's history was negative for any numbness or tingling. X-rays taken of his left shoulder, forearm, and ribs were negative for fracture. The final clinical impression was "rib pain" and "chest wall pain." He was prescribed Norco 5/325 Mg for pain.

He was seen at SSM St. Clare Health Center emergency department on 8/30/12 with continuing complaints of right rib pain. He reported he had developed a headache and a sore throat

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the day before this admission. A CT scan of the chest revealed acute fractures of the fifth and sixth ribs. He was released with a primary diagnosis of “rib fractures.”

Claimant was treated at BarnesCare Westport from 8/27/12 through 9/12/12. It is noted on the initial visit that claimant was using a jack to raise the wheels of a parked truck when the truck came off the lift and started to roll through the yard. Claimant ran after the truck, pulled open the driver’s side door, and was climbing in when the truck hit a forklift, causing the truck door to slam and pin him between the truck door and the frame. His symptoms at the time of this first visit included pain in his left arm, right chest, right lower back, neck, and left shoulder. He described the severity of the pain as a 9 on a scale of 1/10. He denied head trauma or any symptoms of numbness or tingling. He was diagnosed with a sprain of the neck, lumbar region, left shoulder, and contusions of the left arm and right lower ribs. He was given work restrictions and physical therapy was ordered for two weeks, two times a week, to treat his neck, back, left shoulder, and right anterior rib conditions. Claimant returned on 9/5/12 and indicated he was feeling worse since the last visit. He had not started physical therapy, “...because he thought he would be exercised.” It was explained to him that he would receive ultrasound treatments to help his affected areas, except for the ribs. Symptoms of occasional numbness of the right hand and foot were noted on this visit. The physical therapy record of 9/10/12 documents claimant reported numbness that comes and goes from his right mid-forearm to his fingers circumferentially. He reported grinding and popping in his neck, aching across his low back, and shooting pain into his right lower extremity with numbness in his right foot and ankle. He also reported headaches in his right frontal area. It is noted the Oswestry completed on the initial evaluation was scored, indicating claimant's perception of his disability was “crippled.” His condition remained essentially the same as of the third PT visit on 9/12/12.

Dr. Cantrell initially evaluated claimant on 9/18/12. Claimant reported symptoms of numbness from his mid-forearm circumferentially involving the distal forearm and entirety of his right hand, with similar complaints in his distal lower leg and foot. He reported some right-sided low back pain and crepitus in the neck with associated pain. He also reported complaints consistent with his right-sided rib fractures and he prescribed Hydrocodone for this pain. Aquatic therapy was also prescribed. On 10/16/12, claimant reported a 70% reduction in his right chest wall complaints consistent with healing of the rib fractures. Claimant reported experiencing nausea and vomiting following each aquatic therapy session. Dr. Cantrell recommended land based physical therapy. Dr. Cantrell commented on claimant’s complaints of numbness in his right arm and leg in his report of 10/17/12. He concluded these symptoms were not consistent with a diagnosis of cervical or lumbar radiculopathy. He reviewed the SSM St. Clare Health Center ER record of 8/24/12 and noted claimant had normal neck range of motion and mild tenderness of the lumbosacral area. He stated that given the documentation from the date of injury, claimant may have suffered a lumbosacral strain or sprain and rib fractures in this accident. Claimant reported a new complaint of intermittent twitching in his right leg that occurs with prolonged sitting or driving on the 11/20/12 visit. It is noted on 12/18/12 that claimant was having minimal to no pain complaints in relation to his right “hip” (sic) injury, with the therapist documenting that he aggravated the area several days earlier “using a come-along to bring down a tree”. Dr. Cantrell ordered an MRI scan of the lumbar spine. This was performed at St. Luke’s CDI Chesterfield on 12/19/12. The MRI report documents mild posterior disc bulging at L5-S1 with a small left lateral foraminal disc protrusion and minimal posterior disc bulging at L4-5. Claimant returned to Dr. Cantrell on 1/8/13

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and reported a development of new symptoms in the past two weeks of twitching in his left upper extremity. He continued to report intermittent numbness in his right arm and hand and intermittent twitching in his right leg. Dr. Cantrell commented that the lumbar MRI did not show any evidence of lateralizing disc protrusions or herniations to the right that would explain his right lower extremity twitching. He also commented that the twitching in his left upper extremity would not be causally related to his work injury, "...given the only recent onset of twitching in his left arm and the absence of any myelopathic findings on his clinical examination explanatory for both upper and lower extremity complaints." Dr. Cantrell concluded claimant had reached maximum medical improvement and returned him to work without restrictions at that time.

Dr. Cantrell concluded claimant sustained 3% permanent partial disability of the body as a whole attributable to the lumbosacral strain and 0% to the cervical spine, noting that there was no causal connection between his subjective complaints of cervical pain and crepitus and the 8/24/12 work injury.

Claimant was evaluated at his attorney's request by Dr. Dwight Woiteshek on 2/7/13. Dr. Woiteshek documented claimant continued to have complaints of pain in his cervical spine and lumbar spine areas, with him rating pain at a 3-4/10, which intensifies to 6-7/10 with bending, lifting, and overhead work. He denied any continued problems with his right ribs. On examination, Dr. Woiteshek recorded loss of cervical range of motion from 20-25% in all planes. He recorded a 20% loss of range of lumbar range of motion in all planes. Sensory, motor, and reflex testing of both upper and lower extremities was normal. Dr. Woiteshek concluded the accident of 8/24/12 was the prevailing factor causing a traumatic left lateral foraminal disc protrusion and posterior disc bulging at L4-5, a traumatic cervical strain, and fractures of the fifth and sixth ribs. He noted the rib fractures were presently healed and asymptomatic. Dr. Woiteshek opined claimant sustained 25% PPD of the body as a whole rated at the lumbar spine and 15% PPD of the body as a whole referable to the cervical strain. He assessed 0% permanent partial disability of the body as a whole referable to the thoracic spine due to the traumatic fractures of the anterior lateral fifth and sixth ribs, which were healed and completely asymptomatic.

Dr. Woiteshek did not recommend any additional medical care to cure and relieve claimant of the effects of his work-related injuries.

### **RULINGS OF LAW**

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

#### **Permanent Partial Disability**

The medical evidence established claimant sustained acute fractures to his fifth and sixth ribs in this accident. Claimant submitted an opinion from his medical expert, Dr. Woiteshek, establishing the rib fractures had healed and were asymptomatic as of 2/7/13. Dr. Woiteshek concluded claimant sustained 0% permanent partial disability of the body as a whole as a result of these rib fractures. This opinion is consistent with the treatment records of Dr. Cantrell and

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claimant's testimony at hearing. Therefore, no permanent partial disability is assessed with regard to this injury.

The medical records confirm claimant sustained an injury to his low back. This was diagnosed as a lumbar strain during his initial course of treatment at BarnesCare. Dr. Cantrell also diagnosed a lumbar strain and had claimant undergo a course of physical therapy for this condition. Dr. Cantrell ordered a lumbar MRI to evaluate symptoms of right lower leg and foot circumferential numbness. This study revealed mild posterior disc bulging at L5-S1 with a small left lateral foraminal disc protrusion, and minimal posterior disc bulging at L4-5. Dr. Cantrell reviewed this film and commented there was no evidence of any lateralizing disc protrusions or herniations to the right that would explain his right lower extremity symptoms. He also commented these symptoms were not consistent with lumbar radiculopathy. Dr. Woiteshek did not identify any radiculopathy or related lower extremity symptoms. His assessment of 25% PPD of the body as a whole referable to the lumbar spine is based on what he describes as traumatic disc pathology at L4-5 and claimant's ongoing "discomfort, stiffness, and weakness in the lumbar spine area". This opinion is somewhat inconsistent as he attributes the L5-S1 pathology identified by the radiologist and Dr. Cantrell to the L-4 disc. Regardless, Dr. Woiteshek did not issue any permanent restrictions. Dr. Cantrell concluded claimant sustained 3% permanent partial disability of the body as a whole attributable to a lumbosacral strain. Claimant has returned to his occupation as a truck driver and has worked on a full-time basis as an over-the-road truck driver since his release from medical care. His primary complaint at hearing was that his right foot would go numb if he would sit in the driver's seat for more than an hour. There is no medical evidence suggesting this symptom is in any way related to the low back injury. Therefore, I find claimant sustained 7.5% PPD of the body as a whole referable to the low back as a result of a lumbar strain injury.

The initial BarnesCare record of 8/27/12 documents a diagnosis of a cervical strain. Claimant later reported symptoms of grinding and popping in his neck and symptoms of numbness in his right hand and into his forearm. Dr. Cantrell opined that these symptoms were not the result of a work-related injury. Dr. Woiteshek diagnosed a traumatic cervical strain, but makes no mention of any associated symptoms affecting the right upper extremity or popping or grinding of the neck. Neither Dr. Cantrell nor Dr. Woiteshek causally relates claimant's headaches to this cervical strain. Dr. Woiteshek assessed 15% PPD of the body as a whole referable to the cervical strain as a result of "discomfort, stiffness, and weakness in the cervical spine area." Dr. Cantrell opined claimant sustained 0% PPD referable to the cervical spine as he concluded claimant's symptoms of popping, grinding, and upper extremity complaints were not related to this accident. Neither medical expert concluded claimant had any permanent restrictions as a result of this injury. Claimant did not testify at hearing that this cervical condition affects his ability to perform his normal and customary job as a truck driver. Based on the competent and credible evidence, I award 5% permanent partial disability of the body as a whole referable to this cervical strain injury.

### **Future Medical Care**

Claimant has raised the issue of his entitlement to future medical care to cure and relieve him from the effects of the work-related injuries. A claimant must demonstrate a there is a "reasonable probability" future medical treatment is needed by reason of his work-related injury. Dean v. St. Luke's Hosp. 936 S.W.2d 601, 603 (Mo.App. 1997), overruled on other grounds by

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Hampton, 121 S.W.3d 227. As this issue involves a medical issue not within common knowledge or experience, claimant must offer competent and credible medical testimony to satisfy this burden of proof. See Brundige v. Boehringer Ingelheim, 812 S.W.2d 200 (Mo. App. 1991). However, claimant presented no medical evidence to support this claim. Neither Dr. Woiteshek nor Dr. Cantrell concluded claimant is in need of any additional medical treatment for injuries he sustained in this accident. Claimant failed to present any credible evidence sufficient to meet his burden of proof on this issue. Therefore, the claim for future medical care is denied.

### **CONCLUSION**

Based on the competent, substantial, and credible evidence in this case, I find claimant sustained 7.5% PPD of the body as a whole referable to a lumbar strain and 5% permanent partial disability of the body as a whole referable to a cervical strain. No permanent partial disability is awarded with regard to the rib fractures. The parties have stipulated to a PPD rate of \$433.58 and Claimant is awarded \$21,679.00 on his claim for PPD benefits. The claim for future medical care is denied. Mr. Warner is entitled to an attorney fee of 25% of the amount awarded for necessary legal services provided.

Made by: s/s \_\_\_\_\_  
Grant C. Gorman  
Chief Administrative Law Judge  
Division of Workers' Compensation