

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

Injury No.: 96-137088

Employee: Annie Dicus
Employer: Hobbs Pizza, Inc. d/b/a Dominos and Daily Journal
Insurer: Travelers and Employers Insurance of Wausau
Dates of Accident: August 20, 1996 & February 20, 1997
Place and County of Accident: St. Francois 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 April 15, 2005. The award and decision of Chief Administrative Law Judge Jack H. Knowlan, Jr., issued April 15, 2005, 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 16th day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Annie Dicus

Injury Nos. 96-137088 and 97-496131

Dependents: N/A

Employer: Hobbs Pizza, Inc., d/b/a Dominos and Daily Journal

Additional Party: None

Insurer: Travelers and Employers Insurance of Wausau

Hearing Date: November 4, 2004 (hearing completed December 23, 2004) Checked by: JK/sm

SUMMARY OF FINDINGS

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 20, 1996 and February 20, 1997
5. State location where accident occurred or occupational disease contracted: St. Francois 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 happened or occupational disease contracted:
 - August 20, 1996 accident – employee slipped and fell while delivering a pizza
 - February 20, 1997 accident – employee was involved in a motor vehicle accident while delivering newspapers
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Back
14. Nature and extent of any permanent disability: 10% of the body as a whole for the August 20, 1996 claim and 10% of the body as a whole for the February 20, 1997 claim
15. Compensation paid to date for temporary total disability: None
16. Value necessary medical aid paid to date by employer-insurer: None paid on 1996 claim and \$2,443.00 paid by employer-insurer on 1997 claim
17. Value necessary medical aid not furnished by employer-insurer: \$1,833.93 to be paid by Hobbs Pizza, Inc., and Travelers and \$1,833.93 to be paid by the Daily Journal and Employers Insurance of Wausau (see findings)
18. Employee's average weekly wage: \$150.00 per week for 1996 claim and \$142.50 per week for 1997 claim
19. Weekly compensation rate: \$100.00 per week for 1996 claim and \$94.99 per week for 1997 claim
20. Method wages computation: By agreement
21. Amount of compensation payable:

a. Hobbs Pizza, Inc., d/b/a Dominos and Travelers:
Unpaid medical expenses: \$1,833.93
40 weeks of permanent partial disability (\$4,000.00)
TOTAL: \$5,833.93

b. Daily Journal and Employers Insurance of Wausau:
Unpaid medical expenses: \$1,833.93
40 weeks of permanent partial disability (\$3,799.60)
TOTAL: \$5,633.53

22. Second Injury Fund liability: N/A

23. Future requirements awarded: None

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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 (excluding medical expenses) in favor of the following attorney for necessary legal services rendered to the claimant:

Mr. Evan Beatty (see also lien for costs in favor of Michael L. Maynard under Issue 4)

FINDINGS OF FACT AND RULINGS OF LAW

On November 4, 2004, the employee, Annie Dicus, appeared in person and by her attorney, Mr. Evan Beatty, for a hearing for a final award. Hobbs Pizza, Inc., and Travelers, the employer-insurer under Injury Number 96-137088, were represented at the hearing by attorney, Steve Prospero. The Daily Journal and Employers Insurance of Wausau, the employer-insurer under Injury Number 97-496131, were represented at the hearing by attorney, Debbie Hellmann. Although the employee's 1996 and 1997 claims involved different employers with different insurance companies, the parties requested a consolidated evidentiary hearing because both claims involved injuries to the employee's back and the evidence to be submitted was felt to be identical for both claims.

Prior the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute for both claims. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

Injury 96-137088

1. On or about August 20, 1996, Hobbs Pizza, Inc., d/b/a Dominos Pizza, was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Travelers.
2. On or about August 20, 1996, Annie Dicus was an employee of Hobbs Pizza, Inc., d/b/a Dominos, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about August 20, 1996, the employee sustained an accident which arose out of and in the course of her employment.
4. The employer had notice of the employee's accident.
5. The employee's claim for compensation was filed within the time allowed by law.
6. The employee's average weekly wage was \$150.00 per week and her rate of compensation for permanent partial disability is equal to \$100.00 per week.
7. The employee's injury to her back was medically causally related to her August 20, 1996 accident.
8. No medical aid was furnished by the employer-insurer.
9. No temporary total disability benefits were paid by the employer-insurer.

Injury Number 97-496131

1. On or about February 20, 1997, the Daily Journal was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Employers Insurance of Wausau.
2. On or about February 20, 1997, Annie Dicus was an employee of the Daily Journal, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about February 20, 1997, the employee sustained an accident which arose out of and in the course of her employment.

4. The employer had notice of the employee's accident.
5. The employee's claim for compensation was filed within the time allowed by law.
6. The employee's average weekly wage was \$142.50 per week, and her rate of compensation for permanent partial disability is \$94.99 per week.
7. The employee's injury to her back was medically causally related to her accident.
8. The employer-insurer paid medical expenses in the amount of \$2,443.00.
9. No temporary total disability benefits were paid.

ISSUES:

(96-137088 and 97-496131)

1. Medical causation as to any injuries to the employee's neck or cervical spine
2. Additional medical aid – past and future
3. Nature and extent of permanent partial disability
4. Attorney's lien

SUMMARY OF THE EVIDENCE:

At the time of the hearing, the employee, Annie Dicus, was 36 years-old, and was working part time for Disabled Citizens Alliance. The employee was also receiving Social Security Disability benefits that were awarded starting in 1999, with net benefits of \$522.00 per month. The employee left school after the eighth grade, but later took some basic classes at a junior college. She does not have her GED.

The employee's first accident occurred on August 20, 1996. She was delivering pizzas for Hobbs Pizza, Inc., when she tripped and fell. The employee landed on a concrete sidewalk and felt pain in her back and left hip.

Although she was able to finish her shift, the employee's pain got worse and she sought treatment at the Washington County Memorial Hospital in Potosi (Employee's Exhibit A). Her follow-up care was provided by Dr. Timothy Wulfert, who is a chiropractor in Farmington (Employee's Exhibit B). When Dr. Wulfert's treatment failed to improve her symptoms, the employee asked her employer to send her to a medical doctor. The employee's request was denied and she was later terminated.

The employee's second accident occurred on or about February 20, 1997. The employee was delivering newspapers for the Daily Journal when a cargo van backed into the vehicle she was driving. Although her back was still hurting from her 1996 accident, the motor vehicle accident in 1997 caused her back pain to increase. The employee also began to experience pain down her leg.

After reporting her injury to the Daily Journal and requesting treatment, her claim was denied, and she subsequently lost her job. The employee sought treatment on her own. A partial list of health care providers that furnished treatment after her second accident included Parkland Health Center, Dr. Frank Luechtefeld of Northland Orthopedic Group, Dr. Seth Paskon of the Potosi Medical Center, and Dr. David Wilkinson, who is a neurosurgeon in St. Louis, Missouri (Employee's Exhibits C, D, E, F and G).

Although both the employee's testimony and the medical records confirm that the employee continued to complain of significant pain in her back, multiple MRIs and a myelogram-CT scan failed to reveal any disc herniations or nerve impingements in her thoracic or lumbar spine. The employee also developed pain in her cervical spine and had surgery for a herniated disc at the C6-7 level in January of 2001. There is no evidence, however, to support a finding that the employee's herniated disc was related to either of her work accidents.

Notwithstanding the lack of any objective findings of a herniated disc in her back, the employee has continued to experience significant pain and limitations as a result of the injuries to her mid and low back. The employee testified that she has severe pain every day with burning in her left hip and left foot. She noted that her foot feels like it has a big thorn in it. The employee has problems sitting or standing for extended periods of time, and any physical activity causes her back pain to increase. The employee is no longer able to do heavy lifting, and has been forced to limit her activities at home and at work. The employee also has problems sleeping due to her back pain.

In addition to the employee's testimony and the medical records, the employee also offered medical reports from Dr. Shawn Berkin dated March 18, 1998 and July 19, 2002. In his first report, Dr. Berkin diagnosed the employee with a "recurrent thoracolumbar strain." Dr. Berkin rated the employee as having a 30% permanent partial disability, and attributed 15% of this total to the August, 1996 injury and 15% to the February, 1997 injury (Employee's Exhibit H).

In Dr. Berkin's July 19, 2002 report, his diagnosis for the 1996 injury was thoracolumbar strain, and his diagnosis for the 1997 injury was "recurrent thoracolumbar strain with left-sided radiculopathy." Dr. Berkin rated the employee as having

a 15% permanent partial disability for the August 20, 1996 injury, and a 20% permanent partial disability for the February 20, 1997 injury. Under the heading "treatment recommendations," Dr. Berkin recommended nonsteroidal antiinflammatory medications and muscle relaxers and a home exercise program. He also indicated that the employee might benefit from epidural steroid injections at a pain management clinic, and recommended a 10-pound lifting restriction. He felt the employee should avoid repetitive bending, twisting, turning, stooping, pulling, pushing and lifting (Employee's Exhibit I).

The two employers and their insurance companies offered reports by Dr. Robert S. Kramer and Dr. Russell C. Cantrell. In Dr. Kramer's report of October 18, 1999, he concluded the employee was suffering from a chronic lumbar strain. Dr. Kramer felt the employee had reached her maximum level of medical improvement, and believed she was capable of performing her full occupational duties without any limitations. Dr. Kramer assigned a 2.5% permanent partial disability for each of the employee's claims for a total of 5% of the body as a whole (Employer-insurer Joint Exhibit 1).

Dr. Russell C. Cantrell's report was dated March 29, 2004. Dr. Cantrell did an extensive review of the employee's treatment records. This review points out that after Dr. Berkin's 2002 report, the employee received several epidural steroid injections in 2003 and 2004. Dr. Cantrell concluded that the employee was suffering from a chronic lumbar strain. Dr. Cantrell gave the employee a 6% permanent partial disability rating, and assigned 3% of that total to her 1996 injury and 3% to her 1997 injury. Dr. Cantrell did not believe any of her neck complaints or the surgery to her cervical spine were causally related to either of her work injuries (Employer-insurer Joint Exhibit 2).

At the conclusion of the hearing on November 4, 2004, both of the attorneys representing the employer-insurers requested that the hearing be continued and the record left open to allow the submission of a supplemental report from Dr. Russell Cantrell on the issue of future medical. Dr. Cantrell's report dated November 22, 2004, was received and admitted as Employer-insurer's Joint Exhibit 3 on December 23, 2004.

In his supplemental report, Dr. Cantrell disagreed with Dr. Berkin's conclusion that the employee should have a lifting restriction, and he did not believe it would be beneficial for the employee to be referred to a pain management clinic. He did agree, however, that the employee should be taken off narcotic medication and should participate in a home exercise program (Employer-insurer Joint Exhibit 3).

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical records of Washington County Memorial Hospital
- B. Medical records of Wulfert Chiropractic Clinic
- C. Medical records of Parkland Health Center
- D. Medical records of Northland Orthopedic Group (Dr. Frank Luechtefeld)
- E. Medical records of Potosi Medical Center (Dr. Seth Paskon)
- F. Additional medical records of Dr. Seth Paskon
- G. Medical records of Dr. David Wilkinson
- H. Medical report of Dr. Shawn Berkin dated March 18, 1998
- I. Medical report of Dr. Shawn Berkin dated July 19, 2002

Joint Employer-Insurer's Exhibits

1. October 18, 1999 report of Dr. Robert Kramer
2. March 26, 2004 report of Dr. Russell C. Cantrell
3. Supplemental report of Dr. Russell C. Cantrell dated December 23, 2005

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. Medical Causation

The two employer-insurers in this case admitted that the employee's back complaints were caused by her two work injuries, but denied medical causation as to the employee's neck. Although the employee made limited complaints of neck pain immediately after the August 20, 1996 accident, the remaining treatment records focus on the employee's back complaints. Dr. Berkin did not diagnose or rate any work related injury to the employee's neck, and Dr. Cantrell concluded the employee's neck problems were not related to either work injury.

Based on this evidence, I find that the employee cervical problems and the surgery performed in January of 2001 were not medically causally related to either the August 20, 1996 accident or the February 20, 1997 accident.

Issue 2. Additional Medical Aid – Past and Future

The employee has requested an award for previously incurred medical expenses and future medical aid. On the issue of previously incurred medical expenses, both employers and their insurance companies stipulated that they would each pay half of the following medical bills:

<i>Health care providers</i>	<i>Amount</i>
Washington County Memorial Hospital	\$ 1,000.00
Smith Imaging	136.00
Parkland Health Center	2,076.00
Out of pocket expenses related treatment by Dr. Luechtefeld	249.00
Prescription from the Medicine Shoppe	19.18
Medicaid lien (Division of Social Services)	<u>187.67</u>
TOTAL	\$ 3,667.85

Based on this stipulation, Hobbs Pizza, Inc., and Travelers are directed to pay to the employee one-half of the total medical expenses or \$1,833.93. The Daily Journal and Employers Insurance of Wausau are directed to pay to the employee the remaining one-half of the total medical expenses of \$1,833.93.

The employee's attorney announced at the hearing that he was waiving any claim for attorney's fees as to these medical expenses. The employee's attorney is therefore directed to deposit the money received from the employer-insurers for medical expenses in his firm's trust account, and to pay the specified amount of the medical liens and other expenses directly to the Division of Social Services, the health care providers or the employee.

The employer-insurers shall be entitled to a credit against the amount awarded for previously incurred medical expenses if the Medicaid lien or other medical expenses have been paid prior to the date payments are made to the employee under the provisions of this award.

On the issue of future medical aid, the employee has failed to introduce any credible evidence to support a finding that she requires additional medical treatment to cure and relieve her from the effects of her work-related injuries. Although Dr. Berkin reported in July of 2002 that the employee might benefit from pain management, Dr. Cantrell's report indicates the employee received a series of epidural injections in 2003 and 2004 that failed to improve her symptoms. Dr. Berkin's report also indicated the employee needed antiinflammatory and muscle relaxers, but there is no current medical evidence to support a finding that the employee still needs medication for her 1996 and 1997 back strains.

It is also significant that Dr. Paskon's records confirm that the employee is suffering from a number of other health problems, including pain in her neck, migraine headaches, numbness in her hands, anxiety and depression. A "patient medication list" dated November 22, 2002, indicates the employee was taking 22 different medications at the time, and there is no medical evidence to allow a determination as to which of these medications, if any, may have been related to the employee's work injuries to her back.

Based on this lack of medical evidence and the November 22, 2004 report of Dr. Cantrell, I find that the employee has failed to satisfy her burden of proof on the issue of future medical aid. The employee's claim for future medical aid is therefore denied.

Issue 3. Nature and Extent of Disability – Permanent Partial Disability

The employee has requested an award for permanent partial disability for both her 1996 and 1997 accidents. The ratings range from a low of 2.5% for each accident to a high of 15% for the 1996 accident and 20% for the 1997 accident.

Based on the testimony of the employee and the medical evidence, I find that as a direct result of her August 20, 1996 accident, the employee suffered a chronic strain of her mid and low back. As a result of this chronic back strain, I further find that the employee has a 10% permanent partial disability of her body as a whole. Hobbs Pizza, Inc., and Travelers are therefore directed to pay to the employee the sum of \$100.00 per week for 40 weeks for a total of \$4,000.00.

The evidence also supports a finding that the employee's February 27, 1997 accident caused an additional strain and sprain of the employee's back that caused additional permanent partial disability equal to 10% of the body as a whole. The Daily Journal and Employers Insurance of Wausau are therefore directed to pay to the employee the sum of \$94.99 per week for 40 weeks for a total of \$3,799.60.

Issue 4. Attorney's lien of Michael L. Maynard on the August 20, 1996 claim

The employee originally hired Michael L. Maynard of Maynard and Associates in Park Hills, Missouri to represent

her on the 1996 claim. On July 29, 1999, Mr. Maynard was granted leave to withdraw, but requested a lien in the amount of \$333.15 for "costs incurred regarding this claim." No evidence or comments were offered at the hearing to indicate that the amount of this lien is disputed.

Based on his lien letter, Mr. Michael L. Maynard is allowed a lien for costs in the amount of \$333.15. This lien is in addition to the 25% attorney fees and costs incurred by the employee's present attorney, Mr. Evan Beatty.

To satisfy this lien, Hobbs Pizza, Inc., and Travelers is directed to send a separate check for the amount of the lien to Michael L. Maynard at his current address in Park Hills, Missouri. The remaining balance of the amount awarded against Hobbs Pizza and Travelers shall be made payable to the employee and her present attorney, Evan Beatty. The 25% attorney fee of Evan Beatty shall be based on the total amount awarded for permanent partial disability prior to deducting the costs incurred by Mr. Maynard.

ATTORNEY'S FEE:

Mr. Evan Beatty, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award (excluding previously incurred medical expenses) for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____ Made by:

Jack H. Knowlan, Jr.
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Pat Secrest
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 97-496131

Employee: Annie Dicus
Employer: Hobbs Pizza, Inc. d/b/a Dominos and Daily Journal
Insurer: Travelers and Employers Insurance of Wausau
Dates of Accident: August 20, 1996 & February 20, 1997
Place and County of Accident: St. Francois 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 April 15, 2005. The award and decision of Chief Administrative Law Judge Jack H. Knowlan, Jr., issued April 15, 2005, 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 16th day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Annie Dicus

Injury Nos. 96-137088 and 97-496131

Dependents: N/A

Employer: Hobbs Pizza, Inc., d/b/a Dominos and Daily Journal

Additional Party: None

Insurer: Travelers and Employers Insurance of Wausau

Hearing Date: November 4, 2004 (hearing completed December 23, 2004) Checked by: JK/sm

SUMMARY OF FINDINGS

22. Are any benefits awarded herein? Yes
23. Was the injury or occupational disease compensable under Chapter 287? Yes
24. Was there an accident or incident of occupational disease under the Law? Yes
25. Date of accident or onset of occupational disease? August 20, 1996 and February 20, 1997
26. State location where accident occurred or occupational disease contracted: St. Francois County, Missouri
27. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes

28. Did employer receive proper notice? Yes
29. Did accident or occupational disease arise out of and in the course of the employment? Yes
30. Was claim for compensation filed within time required by Law? Yes
31. Was employer insured by above insurer? Yes
32. Describe work employee was doing and how accident happened or occupational disease contracted:
- August 20, 1996 accident – employee slipped and fell while delivering a pizza
- February 20, 1997 accident – employee was involved in a motor vehicle accident while delivering newspapers
33. Did accident or occupational disease cause death? No
34. Parts of body injured by accident or occupational disease: Back
35. Nature and extent of any permanent disability: 10% of the body as a whole for the August 20, 1996 claim and 10% of the body as a whole for the February 20, 1997 claim
36. Compensation paid to date for temporary total disability: None
37. Value necessary medical aid paid to date by employer-insurer: None paid on 1996 claim and \$2,443.00 paid by employer-insurer on 1997 claim
38. Value necessary medical aid not furnished by employer-insurer: \$1,833.93 to be paid by Hobbs Pizza, Inc., and Travelers and \$1,833.93 to be paid by the Daily Journal and Employers Insurance of Wausau (see findings)
39. Employee's average weekly wage: \$150.00 per week for 1996 claim and \$142.50 per week for 1997 claim
40. Weekly compensation rate: \$100.00 per week for 1996 claim and \$94.99 per week for 1997 claim
41. Method wages computation: By agreement
42. Amount of compensation payable:
- a. Hobbs Pizza, Inc., d/b/a Dominos and Travelers:
- Unpaid medical expenses: \$1,833.93
- 40 weeks of permanent partial disability (\$4,000.00)
- TOTAL: \$5,833.93
- b. Daily Journal and Employers Insurance of Wausau:
- Unpaid medical expenses: \$1,833.93
- 40 weeks of permanent partial disability (\$3,799.60)
- TOTAL: \$5,633.53
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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 (excluding medical expenses) in favor of the following attorney for necessary legal services rendered to the claimant:

Mr. Evan Beatty (see also lien for costs in favor of Michael L. Maynard under Issue 4)

FINDINGS OF FACT AND RULINGS OF LAW

On November 4, 2004, the employee, Annie Dicus, appeared in person and by her attorney, Mr. Evan Beatty, for a

hearing for a final award. Hobbs Pizza, Inc., and Travelers, the employer-insurer under Injury Number 96-137088, were represented at the hearing by attorney, Steve Prosperi. The Daily Journal and Employers Insurance of Wausau, the employer-insurer under Injury Number 97-496131, were represented at the hearing by attorney, Debbie Hellmann. Although the employee's 1996 and 1997 claims involved different employers with different insurance companies, the parties requested a consolidated evidentiary hearing because both claims involved injuries to the employee's back and the evidence to be submitted was felt to be identical for both claims.

Prior the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute for both claims. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

Injury 96-137088

10. On or about August 20, 1996, Hobbs Pizza, Inc., d/b/a Dominos Pizza, was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Travelers.
11. On or about August 20, 1996, Annie Dicus was an employee of Hobbs Pizza, Inc., d/b/a Dominos, and was working under the provisions of the Missouri Workers' Compensation Act.
12. On or about August 20, 1996, the employee sustained an accident which arose out of and in the course of her employment.
13. The employer had notice of the employee's accident.
14. The employee's claim for compensation was filed within the time allowed by law.
15. The employee's average weekly wage was \$150.00 per week and her rate of compensation for permanent partial disability is equal to \$100.00 per week.
16. The employee's injury to her back was medically causally related to her August 20, 1996 accident.
17. No medical aid was furnished by the employer-insurer.
18. No temporary total disability benefits were paid by the employer-insurer.

Injury Number 97-496131

10. On or about February 20, 1997, the Daily Journal was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Employers Insurance of Wausau.
11. On or about February 20, 1997, Annie Dicus was an employee of the Daily Journal, and was working under the provisions of the Missouri Workers' Compensation Act.
12. On or about February 20, 1997, the employee sustained an accident which arose out of and in the course of her employment.
13. The employer had notice of the employee's accident.
14. The employee's claim for compensation was filed within the time allowed by law.
15. The employee's average weekly wage was \$142.50 per week, and her rate of compensation for permanent partial disability is \$94.99 per week.
16. The employee's injury to her back was medically causally related to her accident.
17. The employer-insurer paid medical expenses in the amount of \$2,443.00.
18. No temporary total disability benefits were paid.

ISSUES:

(96-137088 and 97-496131)

5. Medical causation as to any injuries to the employee's neck or cervical spine
6. Additional medical aid – past and future
7. Nature and extent of permanent partial disability
8. Attorney's lien

SUMMARY OF THE EVIDENCE:

At the time of the hearing, the employee, Annie Dicus, was 36 years-old, and was working part time for Disabled Citizens Alliance. The employee was also receiving Social Security Disability benefits that were awarded starting in 1999, with net benefits of \$522.00 per month. The employee left school after the eighth grade, but later took some basic classes at a junior college. She does not have her GED.

The employee's first accident occurred on August 20, 1996. She was delivering pizzas for Hobbs Pizza, Inc., when she tripped and fell. The employee landed on a concrete sidewalk and felt pain in her back and left hip.

Although she was able to finish her shift, the employee's pain got worse and she sought treatment at the Washington County Memorial Hospital in Potosi (Employee's Exhibit A). Her follow-up care was provided by Dr. Timothy Wulfert, who is a chiropractor in Farmington (Employee's Exhibit B). When Dr. Wulfert's treatment failed to improve her symptoms, the employee asked her employer to send her to a medical doctor. The employee's request was denied and she was later terminated.

The employee's second accident occurred on or about February 20, 1997. The employee was delivering newspapers for the Daily Journal when a cargo van backed into the vehicle she was driving. Although her back was still hurting from her 1996 accident, the motor vehicle accident in 1997 caused her back pain to increase. The employee also began to experience pain down her leg.

After reporting her injury to the Daily Journal and requesting treatment, her claim was denied, and she subsequently lost her job. The employee sought treatment on her own. A partial list of health care providers that furnished treatment after her second accident included Parkland Health Center, Dr. Frank Luechtefeld of Northland Orthopedic Group, Dr. Seth Paskon of the Potosi Medical Center, and Dr. David Wilkinson, who is a neurosurgeon in St. Louis, Missouri (Employee's Exhibits C, D, E, F and G).

Although both the employee's testimony and the medical records confirm that the employee continued to complain of significant pain in her back, multiple MRIs and a myelogram-CT scan failed to reveal any disc herniations or nerve impingements in her thoracic or lumbar spine. The employee also developed pain in her cervical spine and had surgery for a herniated disc at the C6-7 level in January of 2001. There is no evidence, however, to support a finding that the employee's herniated disc was related to either of her work accidents.

Notwithstanding the lack of any objective findings of a herniated disc in her back, the employee has continued to experience significant pain and limitations as a result of the injuries to her mid and low back. The employee testified that she has severe pain every day with burning in her left hip and left foot. She noted that her foot feels like it has a big thorn in it. The employee has problems sitting or standing for extended periods of time, and any physical activity causes her back pain to increase. The employee is no longer able to do heavy lifting, and has been forced to limit her activities at home and at work. The employee also has problems sleeping due to her back pain.

In addition to the employee's testimony and the medical records, the employee also offered medical reports from Dr. Shawn Berkin dated March 18, 1998 and July 19, 2002. In his first report, Dr. Berkin diagnosed the employee with a "recurrent thoracolumbar strain." Dr. Berkin rated the employee as having a 30% permanent partial disability, and attributed 15% of this total to the August, 1996 injury and 15% to the February, 1997 injury (Employee's Exhibit H).

In Dr. Berkin's July 19, 2002 report, his diagnosis for the 1996 injury was thoracolumbar strain, and his diagnosis for the 1997 injury was "recurrent thoracolumbar strain with left-sided radiculopathy." Dr. Berkin rated the employee as having a 15% permanent partial disability for the August 20, 1996 injury, and a 20% permanent partial disability for the February 20, 1997 injury. Under the heading "treatment recommendations," Dr. Berkin recommended nonsteroidal antiinflammatory medications and muscle relaxers and a home exercise program. He also indicated that the employee might benefit from epidural steroid injections at a pain management clinic, and recommended a 10-pound lifting restriction. He felt the employee should avoid repetitive bending, twisting, turning, stooping, pulling, pushing and lifting (Employee's Exhibit I).

The two employers and their insurance companies offered reports by Dr. Robert S. Kramer and Dr. Russell C. Cantrell. In Dr. Kramer's report of October 18, 1999, he concluded the employee was suffering from a chronic lumbar strain. Dr. Kramer felt the employee had reached her maximum level of medical improvement, and believed she was capable of performing her full occupational duties without any limitations. Dr. Kramer assigned a 2.5% permanent partial disability for each of the employee's claims for a total of 5% of the body as a whole (Employer-insurer Joint Exhibit 1).

Dr. Russell C. Cantrell's report was dated March 29, 2004. Dr. Cantrell did an extensive review of the employee's treatment records. This review points out that after Dr. Berkin's 2002 report, the employee received several epidural steroid injections in 2003 and 2004. Dr. Cantrell concluded that the employee was suffering from a chronic lumbar strain. Dr. Cantrell gave the employee a 6% permanent partial disability rating, and assigned 3% of that total to her 1996 injury and 3% to her 1997 injury. Dr. Cantrell did not believe any of her neck complaints or the surgery to her cervical spine were causally related to either of her work injuries (Employer-insurer Joint Exhibit 2).

At the conclusion of the hearing on November 4, 2004, both of the attorneys representing the employer-insurers requested that the hearing be continued and the record left open to allow the submission of a supplemental report from Dr. Russell Cantrell on the issue of future medical. Dr. Cantrell's report dated November 22, 2004, was received and admitted as Employer-insurer's Joint Exhibit 3 on December 23, 2004.

In his supplemental report, Dr. Cantrell disagreed with Dr. Berkin's conclusion that the employee should have a lifting restriction, and he did not believe it would be beneficial for the employee to be referred to a pain management clinic. He did agree, however, that the employee should be taken off narcotic medication and should participate in a home exercise program (Employer-insurer Joint Exhibit 3).

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee’s Exhibits

- A. Medical records of Washington County Memorial Hospital
- B. Medical records of Wulfert Chiropractic Clinic
- C. Medical records of Parkland Health Center
- D. Medical records of Northland Orthopedic Group (Dr. Frank Luechtefeld)
- E. Medical records of Potosi Medical Center (Dr. Seth Paskon)
- F. Additional medical records of Dr. Seth Paskon
- G. Medical records of Dr. David Wilkinson
- H. Medical report of Dr. Shawn Berkin dated March 18, 1998
- I. Medical report of Dr. Shawn Berkin dated July 19, 2002

Joint Employer-Insurer’s Exhibits

- 4. October 18, 1999 report of Dr. Robert Kramer
- 5. March 26, 2004 report of Dr. Russell C. Cantrell
- 6. Supplemental report of Dr. Russell C. Cantrell dated December 23, 2005

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. Medical Causation

The two employer-insurers in this case admitted that the employee’s back complaints were caused by her two work injuries, but denied medical causation as to the employee's neck. Although the employee made limited complaints of neck pain immediately after the August 20, 1996 accident, the remaining treatment records focus on the employee's back complaints. Dr. Berkin did not diagnose or rate any work related injury to the employee's neck, and Dr. Cantrell concluded the employee's neck problems were not related to either work injury.

Based on this evidence, I find that the employee cervical problems and the surgery performed in January of 2001 were not medically causally related to either the August 20, 1996 accident or the February 20, 1997 accident.

Issue 2. Additional Medical Aid – Past and Future

The employee has requested an award for previously incurred medical expenses and future medical aid. On the issue of previously incurred medical expenses, both employers and their insurance companies stipulated that they would each pay half of the following medical bills:

<i>Health care providers</i>	<i>Amount</i>
Washington County Memorial Hospital	\$ 1,000.00
Smith Imaging	136.00
Parkland Health Center	2,076.00
Out of pocket expenses related treatment by Dr. Luechtefeld	249.00
Prescription from the Medicine Shoppe	19.18
Medicaid lien (Division of Social Services)	<u>187.67</u>
TOTAL	\$ 3,667.85

Based on this stipulation, Hobbs Pizza, Inc., and Travelers are directed to pay to the employee one-half of the total medical expenses or \$1,833.93. The Daily Journal and Employers Insurance of Wausau are directed to pay to the employee the remaining one-half of the total medical expenses of \$1,833.93.

The employee's attorney announced at the hearing that he was waiving any claim for attorney’s fees as to these medical expenses. The employee's attorney is therefore directed to deposit the money received from the employer-insurers for medical expenses in his firm’s trust account, and to pay the specified amount of the medical liens and other expenses directly to the Division of Social Services, the health care providers or the employee.

The employer-insurers shall be entitled to a credit against the amount awarded for previously incurred medical

expenses if the Medicaid lien or other medical expenses have been paid prior to the date payments are made to the employee under the provisions of this award.

On the issue of future medical aid, the employee has failed to introduce any credible evidence to support a finding that she requires additional medical treatment to cure and relieve her from the effects of her work-related injuries. Although Dr. Berkin reported in July of 2002 that the employee might benefit from pain management, Dr. Cantrell's report indicates the employee received a series of epidural injections in 2003 and 2004 that failed to improve her symptoms. Dr. Berkin's report also indicated the employee needed antiinflammatory and muscle relaxers, but there is no current medical evidence to support a finding that the employee still needs medication for her 1996 and 1997 back strains.

It is also significant that Dr. Paskon's records confirm that the employee is suffering from a number of other health problems, including pain in her neck, migraine headaches, numbness in her hands, anxiety and depression. A "patient medication list" dated November 22, 2002, indicates the employee was taking 22 different medications at the time, and there is no medical evidence to allow a determination as to which of these medications, if any, may have been related to the employee's work injuries to her back.

Based on this lack of medical evidence and the November 22, 2004 report of Dr. Cantrell, I find that the employee has failed to satisfy her burden of proof on the issue of future medical aid. The employee's claim for future medical aid is therefore denied.

Issue 3. Nature and Extent of Disability – Permanent Partial Disability

The employee has requested an award for permanent partial disability for both her 1996 and 1997 accidents. The ratings range from a low of 2.5% for each accident to a high of 15% for the 1996 accident and 20% for the 1997 accident.

Based on the testimony of the employee and the medical evidence, I find that as a direct result of her August 20, 1996 accident, the employee suffered a chronic strain of her mid and low back. As a result of this chronic back strain, I further find that the employee has a 10% permanent partial disability of her body as a whole. Hobbs Pizza, Inc., and Travelers are therefore directed to pay to the employee the sum of \$100.00 per week for 40 weeks for a total of \$4,000.00.

The evidence also supports a finding that the employee's February 27, 1997 accident caused an additional strain and sprain of the employee's back that caused additional permanent partial disability equal to 10% of the body as a whole. The Daily Journal and Employers Insurance of Wausau are therefore directed to pay to the employee the sum of \$94.99 per week for 40 weeks for a total of \$3,799.60.

Issue 4. Attorney's lien of Michael L. Maynard on the August 20, 1996 claim

The employee originally hired Michael L. Maynard of Maynard and Associates in Park Hills, Missouri to represent her on the 1996 claim. On July 29, 1999, Mr. Maynard was granted leave to withdraw, but requested a lien in the amount of \$333.15 for "costs incurred regarding this claim." No evidence or comments were offered at the hearing to indicate that the amount of this lien is disputed.

Based on his lien letter, Mr. Michael L. Maynard is allowed a lien for costs in the amount of \$333.15. This lien is in addition to the 25% attorney fees and costs incurred by the employee's present attorney, Mr. Evan Beatty.

To satisfy this lien, Hobbs Pizza, Inc., and Travelers is directed to send a separate check for the amount of the lien to Michael L. Maynard at his current address in Park Hills, Missouri. The remaining balance of the amount awarded against Hobbs Pizza and Travelers shall be made payable to the employee and her present attorney, Evan Beatty. The 25% attorney fee of Evan Beatty shall be based on the total amount awarded for permanent partial disability prior to deducting the costs incurred by Mr. Maynard.

ATTORNEY'S FEE:

Mr. Evan Beatty, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award (excluding previously incurred medical expenses) for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____

Made by:

Jack H. Knowlan, Jr.
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Pat Secrest
Director
Division of Workers' Compensation