

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge
by Separate Opinion)

Injury No.: 99-064468

Employee: Jody Durbin
Employer: Ford Motor Company
Insurer: Self-Insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have heard oral argument, reviewed the evidence and briefs, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge (ALJ) dated October 18, 2010, by issuing a separate opinion allowing compensation in the above-captioned case.

Preliminaries

The ALJ heard this matter to consider the following issues: 1) nature and extent of temporary total disability; 2) nature and extent of permanent partial disability; 3) past medical expenses; and 4) future medical care.

With regard to the nature and extent of employee's permanent partial disability resulting from the June 16, 1999, injury, the ALJ had inconsistent findings. In the body of the award, the ALJ found that employee sustained permanent partial disability of the body as a whole "in the range of [15%]." However, in the conclusion of the award, the ALJ found that employee sustained 17.5% permanent partial disability of the body as a whole.

The ALJ's findings with regard to the other issues were clear. The ALJ denied employee's claims for additional temporary total disability benefits, reimbursement for past medical expenses, and future medical care.

Employee appealed to the Commission alleging that the ALJ erred in denying her claims for reimbursement of past medical expenses and future medical care.

Findings of Fact

On June 16, 1999, employee sustained an injury while working on an assembly line at Ford Motor Company (employer). Employee testified that when the accident occurred she was installing casing into a car for seat mounting. This required her to be bent over in the vehicle in order to attach the "slider" mechanism. At some point, the vehicle in which she was working "jumped off the line" and approximately five vehicles struck it from behind. The striking vehicles caused employee's body to be jarred, resulting in immediate pain.

After the accident occurred, employee reported that day to employer's occupational medical clinic. Employee was subsequently referred to SSM medical clinic and then to physical

¹ Statutory references are to the Revised Statutes of Missouri 1998 unless otherwise indicated.

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therapy. Employee was taken off work and paid temporary total disability benefits for the period from June 29, 1999 to December 14, 1999. During this period, employee received medical treatment, as selected by employer, from HealthSouth, Dr. Jones, Dr. Samudrala, Dr. Sosnoff, and Dr. Weis.

On August 6, 1999, Dr. Samudrala diagnosed employee with chronic muscle strain in the mid-thoracic area and gave employee her first trigger point injection into the left paraspinal muscles in the mid-thoracic area. Employee was then referred to Dr. Sosnoff who administered additional trigger point injections.

Employee returned to work in mid-December 1999. Employee testified that she continued to experience pain and had significant symptoms of tightness and pressure in her mid-back and torso area. Employee returned to employer's medical clinic with continued complaints, and requested additional treatment. Employer's medical department did not place employee off work, but sent her to Dr. Randolph, who performed an independent medical evaluation on March 28, 2000. Dr. Randolph diagnosed employee with nonspecific mid-back pain with a component of myofascial pain being present and opined that employee was at maximum medical improvement. Dr. Randolph limited employee to lifting 30 pounds occasionally. Lastly, Dr. Randolph opined that employee sustained no more than 3% permanent partial disability of the body as a whole as a result of the June 16, 1999, injury. No further medical benefits related to employee's thoracic spine were provided by employer after Dr. Randolph's March 28, 2000, examination report.

On April 10, 2000, employee returned to employer's medical clinic with complaints of pain and discomfort. Employee testified that upon asking employer for additional treatment for her back injuries, she was told that she was on her own. Employee then sought additional medical treatment from several different medical providers. These treatments included chiropractic manipulations, massage therapy, trigger point injections, and other invasive pain management treatments.

Employee offered into evidence medical bills incurred after March 28, 2000, in the stipulated amount of \$163,422.61.

Dr. Musich was retained by employee to provide an independent medical evaluation. Dr. Musich reviewed employee's medical records and performed physical examinations of employee on October 7, 2004 and October 13, 2008. In Dr. Musich's October 7, 2004, report, he opined that employee sustained 25% permanent partial disability of the body as a whole as a result of the June 16, 1999, injury. However, in Dr. Musich's October 13, 2008, report, he opined that employee sustained 50% permanent partial disability of the body as a whole as a result of the same injury.

Dr. Musich opined that all of the treatment that employee received for her back and neck injuries, including treatments after March 28, 2000, were causally related to the work injury in June 1999. Dr. Musich also opined that employee will continue needing pain medication indefinitely into the future.

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Dr. Wilkey provided testimony regarding an independent medical evaluation he performed on July 14, 2009. Dr. Wilkey reviewed employee's medical records and performed a physical examination of employee. Dr. Wilkey testified that employee demonstrated about five of seven non-physiologic findings that indicated there was some non-physiologic overlay in her presentation. However, Dr. Wilkey opined that the treatment up to his examination was reasonable and causally related to the work injury on June 16, 1999. Dr. Wilkey testified that employee sustained 6% permanent partial disability due to chronic low back pain associated with the June 1999 injury. Lastly, Dr. Wilkey opined that employee may need pain medications for the rest of her life.

Employee testified that she still has lifting restrictions due to her cervico-thoracic back pain. She is unable to kneel, squat, or stoop without pain.

Conclusions of Law

Permanent Partial Disability

Although neither employee nor employer raised the issue of the nature and extent of employee's permanent partial disability on appeal, we find it necessary to address this issue in light of the ALJ's inconsistent findings. As mentioned above, the ALJ stated in the body of the award that employee sustained 15% permanent partial disability of the body as a whole referable to the June 16, 1999, injury, but later stated in the conclusion that employee sustained 17.5% permanent partial disability of the body as a whole.

The experts' ratings range from no more than 3% to 50% permanent partial disability of the body as a whole.

We find that the 50% permanent partial disability rating by Dr. Musich is the most unreliable. This opinion was given more than nine years after the injury (October 2008). It in no way reflects employee's history of being able to return to work in December 1999 or the other experts' opinions and records. In addition, this 50% rating is inconsistent with Dr. Musich's own prior rating of 25% permanent partial disability, given in October 2004. We find that Dr. Musich's 50% permanent partial disability rating far exceeds employee's actual permanent disability sustained as a result of the June 1999 injury.

While we find that Dr. Musich's 50% permanent partial disability rating far exceeds employee's actual permanent disability sustained as a result of the June 1999 injury, we also find that Dr. Randolph's rating of "no more than 3% permanent partial disability" and Dr. Wilkey's rating of 6% permanent partial disability do not adequately account for employee's ongoing complaints and restrictions.

We find that in light of the medical records, medical reports, medical testimony, employee's testimony, and the record as a whole that the ALJ's initial finding of 15% permanent partial disability of the body as a whole is fully supported by the competent and substantial evidence. Therefore, we find that at the time of the November 22, 2002, accident, employee suffered from 15% permanent partial disability of the body as a whole.

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Past Medical Expenses

Section 287.140.1 RSMo provides, in relevant part:

[E]mployee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment ... as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

The Courts have held that the claimant “bears the burden to prove an entitlement to benefits for such care and treatment.” *Rana v. Landstar TLC*, 46 S.W.3d 614, 622 (Mo. App. 2001), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). In order to prove an entitlement to reimbursement for past medical expenses, a claimant must prove by competent and substantial evidence that the past medical treatment flows from the work-related injury. *Bowers v. Hiland Dairy Co.*, 188 S.W.3d 79, 87 (Mo. App. 2006).

In this case, we find that employee failed to prove that the past medical expenses incurred after March 28, 2000, flowed from the work-related injury.

We find Dr. Randolph’s opinion regarding employee’s maximum medical improvement date to be most credible. Dr. Randolph evaluated employee on March 28, 2000 (within one year of the injury), and determined that she had attained maximum medical improvement on that date. Dr. Randolph’s evaluation is much more contemporaneous than Drs. Musich or Wilkey, who did not evaluate employee until 2004 and 2009, respectively. We find that the amount of time that passed between employee’s injury and Drs. Musich’s and Wilkey’s evaluations may have clouded employee’s recollection of the June 1999 injury and subsequent treatment such that Drs. Musich’s and Wilkey’s opinions are not as credible as Dr. Randolph’s.

While both Drs. Musich and Wilkey summarily concluded that all of employee’s medical treatment was reasonable and causally related to the June 16, 1999, injury, we find that Dr. Randolph’s opinions more accurately reflect employee’s treatment records regarding employee’s recovery from the injury.

For the foregoing reasons, we find that employee attained maximum medical improvement on March 28, 2000, and employee failed to prove that any medical expenses incurred after that date flowed from the June 16, 1999, injury.

Employee’s claim for reimbursement of past medical expenses, in the stipulated amount of \$163,422.61, is denied.

Future Medical Care

In order for an employee to be awarded future medical care, he must show by a reasonable probability that he is in need of additional medical treatment by reason of his work-related accident or injury. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo. App. 1998). Like past medical expenses, future medical care must flow from a work-related accident before the employer is to be held responsible. *Id.*

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As stated above, we do not find Drs. Musich's and Wilkey's opinions to be credible and, therefore, we find that employee has failed to prove by a reasonable probability that she is in need of additional medical treatment by reason of her work-related injury.

Employee's claim for future medical care is denied.

Award

The parties stipulated that employee's permanent partial disability rate is \$294.73.

As stated above, we find that employee sustained 15% permanent partial disability of the body as a whole as a result of the June 16, 1999, work injury. Therefore, we award from employer to employee permanent partial disability benefits of \$17,683.80.²

Employee's claims for past medical expenses and future medical care are denied.

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.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued October 18, 2010, is attached.

Given at Jefferson City, State of Missouri, this 1st day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

CONCURRING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

² 60 x \$294.73 = \$17,683.80.

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CONCURRING OPINION

I write separately to disclose the fact that I did not participate in the April 6, 2011, oral argument in this matter. I have reviewed the evidence, read the briefs of the parties, and considered the whole record. I concur with the decision of the majority of the Commission.

Curtis E. Chick, Jr., Member