

TEMPORARY AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
by Supplemental Opinion)

Injury No.: 10-052868

Employee: Donald Fairley
Employer: Embarq/Century Link
Insurer: XL Specialty Insurance Company

This 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, read the briefs, 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, as supplemented herein.

Discussion

We agree with the administrative law judge that employee met his burden of proving he suffered compensable injuries as a result of the accident of June 10, 2010, and that employer is liable for his medical care. However, we note that the administrative law judge failed to render any credibility determinations in connection with the conflicting expert testimony on the issue of medical causation, and that the administrative law judge also failed to make any specific findings as to the injuries she believes employee sustained in the accident. Instead, the administrative law judge merely stated in summary fashion that she believed employee met his burden on the disputed issues.

Especially where, as here, the parties have presented sharply divergent testimony from various medical experts on the topic of what injuries employee sustained in the accident, and are disputing the specific treatments that employer is obligated to provide, we are concerned that the administrative law judge's award leaves the parties with little guidance going forward. To remedy these concerns, we write this supplemental opinion in order to provide clear and affirmative findings on the issues of medical causation, and specific conclusions as to employer's obligation to provide medical treatment.

Conflicting expert testimony

The parties presented conflicting expert testimony on the issue of what injuries or medical conditions (if any) resulted from the accident of June 10, 2010. Employee presents Drs. Cohen and Robson, while employer presents Drs. Wayne, Hogan, and Lange. We consider the opinions of each below.

Dr. Cohen

Dr. Cohen believes the accident of June 2010 was the prevailing factor in causing employee to suffer symptomatic L5-S1 spondylolisthesis, left lumbar radiculopathy, symptomatic cervical spondylosis, post-traumatic headaches, and possible cognitive dysfunction secondary to a closed head injury. Dr. Cohen opined that employee is in need of additional medical treatment. Dr. Cohen recommends a surgical consultation for

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both the cervical and lumbar conditions. If employee is determined not to be a surgical candidate, Dr. Cohen recommends medications, injections, and pain management consultation. Dr. Cohen also recommended that employee see a headache specialist, receive appropriate medications, and undergo a neuropsychological assessment for memory problems.

Dr. Robson

Dr. Robson believes that the June 2010 accident is the prevailing factor causing employee to develop symptomatic cervical and lumbar spondylosis. With regard to the cervical spine, Dr. Robson explained that the accident caused a bulge or herniation at C5-6 with impingement, and a mild flattening of the anterior aspect of the spinal cord with moderate central canal narrowing. Dr. Robson disagreed with Dr. Lange's diagnosis (described below) of a "chronic cervical strain." Dr. Robson does not believe that such a condition exists, because a strain implies a muscular injury which should resolve over time, while employee continues to be symptomatic.

Dr. Robson also believes that the June 2010 accident caused employee to develop a condition he described as pre-myelopathy. Dr. Robson pointed to a positive Hoffman's sign, a test performed on physical examination wherein the doctor flicked employee's middle finger and observed employee's thumb flexing in response. Dr. Robson explained that a positive Hoffman's sign indicates spinal cord injury or impingement. Dr. Robson also pointed to brisk reflexes on exam, employee's recent history of dropping things, and the mild spinal cord flattening indicated on the July 6, 2010, MRI as pre-myelopathic signs.

Dr. Robson recommends a cervical discectomy and fusion at C5-6 to address the spinal cord flattening and impingement. Dr. Robson explained that this procedure will alleviate employee's symptoms by addressing the impingement of the nerves in employee's cervical spine, relieving the pain employee has from the bone spurs at C5-6, and stopping the progressive deterioration of employee's cervical spine, which could lead to the serious condition of myelopathy. Dr. Robson also recommends continued observation and treatment of the lumbar spine, to include physical therapy and, if needed, injections.

Finally, Dr. Robson opined that he would be happy to evaluate employee again, in light of the fact he was the only doctor to find a positive Hoffman's sign on examination. Dr. Robson agreed, on cross-examination, that his finding that employee shows signs of a pre-myelopathic condition may have been a mere "variant." Dr. Robson opined that a follow-up exam may be indicated to be absolutely certain of the urgency of the surgical procedure he recommends. In light of this testimony, it appears that Dr. Robson's belief that employee is pre-myelopathic forms the basis for Dr. Robson's opinion that surgery is urgent and should not be postponed in favor of more conservative treatment. Dr. Robson has not seen employee since June 23, 2011.

Dr. Wayne

Dr. Wayne, on the other hand, believes employee's complaints are caused by a preexisting cervical spondylosis at C5-6. Dr. Wayne believes the June 2010 accident caused a cervical strain which was temporary and lasted only 6-8 weeks, and opined that the accident was not the prevailing factor causing employee's ongoing symptoms.

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Dr. Wayne believes there is no evidence of a superimposed lesion, such as a disc herniation, related to the June 2010 accident; Dr. Wayne reasoned that if the June 2010 accident did cause a significant disruption of employee's preexisting degenerative condition, that employee would have experienced more severe symptoms. On examination, Dr. Wayne noted that employee complained of dropping things and having trouble with manual dexterity.

As to employee's low back complaints, Dr. Wayne opined employee suffers from significant L5-S1 spondylolisthesis with advanced degenerative disc disease and foraminal narrowing; Dr. Wayne believes this condition also preexisted the June 2010 accident. Dr. Wayne opined that it is highly unlikely that employee's low back was asymptomatic prior to the June 2010 accident considering the extent of the disease.

Dr. Wayne provided a supplemental report wherein he agreed that employee should be reevaluated in light of Dr. Robson's findings pertinent to pre-myelopathy. Dr. Wayne maintained that surgical intervention should not be considered until conservative measures have been exhausted. Dr. Wayne also reiterated his belief that any problems employee currently has with respect to his cervical or lumbar spine (including the possibly pre-myelopathic findings) are caused by preexisting degenerative conditions rather than the June 2010 accident.

Dr. Hogan

In his relatively brief report, the neurologist Dr. Hogan registered his belief that the June 2010 accident is the prevailing factor in causing a lumbar strain which would have lasted 2-3 weeks, but that the accident does not have any relationship to the spondylolysis or spondylolisthesis in the low back or the cervical spondylosis at C5-6. Dr. Hogan noted employee did not complain of any pain radiating from his neck or paresthesias in his arms. Dr. Hogan does not believe employee has any need for further treatment to cure and relieve the effects of the June 2010 accident.

Dr. Lange

We turn finally to the opinions of employer's expert Dr. Lange, who disagrees with both Dr. Hogan and Dr. Wayne, in that he believes the June 2010 accident is the prevailing factor in causing employee's current complaints. Dr. Lange opined that the accident caused post-traumatic headaches (which the doctor found to have resolved at the time of his examination), an aggravation of a preexisting degenerative disc at C5-6, and a herniation at T12-L1 and associated lumbar discomfort. Dr. Lange was unable to point to any specific anatomic pathology of employee's cervical spine resulting from the June 2010 accident, but instead described employee's condition as a chronic strain of the cervical spine.

With respect to cervical spine surgery, Dr. Lange opined that employee's symptoms did not warrant surgical intervention. Dr. Lange believes that radicular pain (which employee does not have) is the primary reason to consider cervical spine surgery, followed by (in order of importance) motor weakness, incapacitating dysesthesia, and neck pain. Dr. Lange took issue with Dr. Robson's description of employee's condition as "pre-myelopathic." Dr. Lange opined that there is no such concept in spinal surgery. Dr. Lange

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found no significant spinal cord compression, did not find a positive Hoffman's sign, and opined that the other indicators of myelopathy were normal on examination.

With respect to the need for additional medical treatment, Dr. Lange opined that there is no treatment that will alleviate employee's neck pain because too much time has passed since the injury. Dr. Lange opined that there is no good treatment for neck pain, but that treatment may include physical therapy, traction, over-the-counter medications, and nonsteroidal anti-inflammatory agents.

We are tasked with resolving the conflicting testimony from these experts. After careful consideration, we find Drs. Robson, Lange, and Cohen more credible than Drs. Wayne and Hogan on the question whether the June 2010 accident is the prevailing factor in causing employee's current symptoms and complaints. We further find Dr. Robson more credible than Dr. Lange on the question of the specific diagnoses or pathology of the cervical spine.

Medical causation

Having rendered the foregoing credibility determinations, we proceed to analyze the issue under the appropriate statutory provision. Section 287.020.3(1) RSMo sets forth the standard for medical causation applicable to this claim and provides, in relevant part, as follows:

An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

We have credited the testimony from Drs. Robson, Cohen, and Lange over that offered by Drs. Wayne and Hogan on the issue whether the June 2010 accident is the prevailing factor causing employee's current complaints and symptoms. We have further credited Dr. Robson over Dr. Lange as to the particular diagnoses or pathology suffered by employee with respect to his cervical spine.

Accordingly, we conclude that the June 2010 accident is the prevailing factor causing employee's headaches and symptomatic cervical and lumbar conditions. Specifically, with respect to the cervical spine, we conclude that the June 2010 accident is the prevailing factor causing the resulting medical conditions of a bulge or herniation at C5-6 with impingement, mild flattening of the anterior aspect of the spinal cord with moderate central canal narrowing, and the pre-myelopathic findings Dr. Robson noted on exam. With respect to the lumbar spine, we conclude that the June 2010 accident is the prevailing factor causing the resulting medical conditions of symptomatic lumbar spondylosis, symptomatic grade I spondylolisthesis at L5-S1, herniation at T12-L1, and a mild disc bulge at L4-5.

Medical treatment under § 287.140 RSMo

Because employee sustained a compensable injury, employer is obligated to provide his medical treatment under § 287.140 RSMo, which provides, as follows:

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In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

Employer disputes the issue of what treatments may reasonably be required to cure and relieve the effects of employee's injuries. Specifically, employer points out that the question whether employee is a surgical candidate was vigorously contested by the doctors. It appears the administrative law judge may have credited Dr. Robson over Dr. Lange on this issue, but her summary findings do not adequately resolve the issues identified by the parties.

As described above, Dr. Robson and Dr. Lange disagree with respect to the need for cervical spine surgery. It appears to us that Dr. Robson's opinion that surgery is urgent stems from his belief that employee exhibits a pre-myelopathic condition that could quickly deteriorate. We note also that when Dr. Robson was pressed on cross-examination with the fact that no other diagnostician described such pre-myelopathic findings, the doctor ultimately opined that he would be happy to reevaluate employee to determine whether the pre-myelopathic findings could be reproduced.

Meanwhile, Dr. Lange's opinion that surgery is not indicated stems from his view that no such condition as "pre-myelopathy" exists, that the spinal cord impingement seen on the July 6, 2010, MRI is insignificant, and that radicular pain, motor weakness, and dysesthesia are necessary findings before one considers cervical spine surgery. We note Dr. Lange's testimony that, although he did not have anything in his report suggesting employee complained of dropping things, he remembered seeing such complaints in the treatment notes; Dr. Lange conceded on cross-examination that this was a significant finding from a neurological standpoint. We note also that employee testified that he still experiences problems handling objects and dropping things a few times per day. We find employee's testimony credible.

Both doctors are well-qualified, and both provide in-depth explanations for their opinions. But after careful consideration, we find Dr. Robson's testimony more persuasive than that of Dr. Lange with regard to the issue whether surgery may reasonably be required to cure and relieve the effects of employee's cervical spine injury.

We conclude employee is in need of immediate evaluation by Dr. Robson to determine whether Dr. Robson still believes employee suffers from a myelopathic or pre-myelopathic condition, and that employer is obligated to provide such treatment. If upon such evaluation, Dr. Robson determines that surgery or other treatments are warranted to cure and relieve such conditions (or any other condition of employee's cervical spine which we have determined to have resulted from the June 2010 accident) we conclude that employer is obligated to provide such treatment and surgery.

We also credit Drs. Cohen and Robson with regard to the medical treatment reasonably required to cure and relieve employee's lumbar spine injuries. We conclude employer is

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obligated to provide continued treatment for the lumbar spine, including physical therapy, medications, injections, and if needed, surgery.

Finally, we note that although Dr. Lange believed employee's post-traumatic headaches had resolved at the time he evaluated employee, we note employee's credible testimony that he continues to experience those headaches on an intermittent basis. We credit Dr. Cohen's testimony that employee is in need of evaluation by a headache specialist and further treatment in connection with this condition. We conclude employer is obligated to provide ongoing treatment that may reasonably be required in connection with employee's headaches.

In sum, we conclude that further treatment is reasonably required to cure and relieve the effects of employee's head, cervical, and lumbar spine injuries sustained in the June 2010 accident. Employer is ordered to provide that treatment.

Decision

We affirm and adopt the findings, conclusions, decision, and award of the administrative law judge to the extent they are not inconsistent with this supplemental opinion.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued October 18, 2012, is attached and incorporated by this reference.

Any past due compensation shall bear interest as provided by law.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

Given at Jefferson City, State of Missouri, this 21st day of March 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Donald Fairley

Injury No. 10-052868

Dependents: N/A

Employer: Embarq/Century Link

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: None

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

Insurer: XL Specialty Insurance Company
TPA: Broadspire Services, Inc.

Hearing Date: August 22, 2012

Checked by: HDF/scb

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: June 10, 2010
5. State location where accident occurred or occupational disease was contracted: Cole 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:
See award
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: Cervical and lumbar spine
14. Compensation paid to-date for temporary disability: - 0 -
15. Value necessary medical aid paid to date by employer/insurer? \$6,405.66
16. Value necessary medical aid not furnished by employer/insurer? Unknown

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17. Employee's average weekly wages: ----
18. Weekly compensation rate: \$360.00 for all benefits
19. Method wages computation: By agreement

COMPENSATION PAYABLE

20. Amount of compensation payable: Unknown

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

Employee: Donald Fairley

Injury No. 10-052868

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Donald Fairley

Injury No: 10-052868

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Embarq/Century Link

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

Additional Party: None

Insurer: XL Specialty Insurance Company
TPA: Broadspire Services, Inc.

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on August 22, 2012. Memoranda were submitted by September 7, 2012.

The parties stipulated that on or about June 10, 2010, the claimant, Donald Fairley, was employed by Embarq/Century Link (Century Link). The employer was operating under the provisions of Missouri's workers' compensation law. The employer was insured for workers' compensation liability by XL Specialty Insurance Company; the third party administrator is Broadspire Services, Inc. The employer had notice of the injury. A claim for compensation was timely filed. The appropriate compensation rate is \$360.00 per week for all benefits. No temporary disability benefits have been provided. Medical aid has been provided in the amount of \$6,405.66.

The issues to be resolved by hearing include 1) the occurrence of an accident, 2) the causation of the injuries alleged, and 3) the liability of the employer/insurer for additional medical treatment.

FACTS

The claimant, Donald Fairley, 48 years old as of the date of hearing, worked for Century Link from May to August of 2010, in sales. On June 10, 2010, a Thursday, Mr. Fairley was sitting in a cubicle at Century Link when his chair seat separated from the base of the chair causing Mr. Fairley to fall back, hitting his head on the cubicle wall and then falling forward hitting his chin on his chest. An ambulance was called and Mr. Fairley went to St. Mary's Hospital where x-rays were taken and he was given pain medication and muscle relaxants. Mr. Fairley remained off work until the following Wednesday. On the Saturday following the fall, Mr. Fairley still had pain in his neck, upper and lower back, hips, and arms and sought chiropractic treatment. On June 14, 2010, Mr. Fairley saw Dr. Dodson, his family physician, who noted neck and back complaints and prescribed Flexeril and Naprosyn and released Mr. Fairley to return to work. Mr. Fairley saw Dr. Folz as a referral from Dr. Dodson on November 2, 2010, for neck and low back pain. Dr. Folz took a history of five months of pain with an onset of falling backward on his chair striking his neck and the back of his head. Dr. Folz diagnosed cervical and lumbar spondylosis. Dr. Folz referred Mr. Fairley for physical therapy.

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Mr. Fairley saw Dr. Cox at the request of the employer/insurer on June 21, 2010. Dr. Cox diagnosed a cervical sprain superimposed on previous cervical spondylosis and low back pain. Dr. Cox recommended MRIs of the low back and neck. The MRIs were performed on July 6, 2010, and revealed 1) "Moderate lumbar spine spondyloarthropathy and discogenic disease" as well as "[a]t L5-S1, grade I/II spondylolisthesis is present with associated bilateral L5 spondylolysis. Moderate severe bilateral neural foraminal stenosis is present at this same level" and 2) "[a]t C5-6, a broad disc osteophyte complex is noted to abut and mildly flatten the anterior aspect of the cord with moderate resulting central canal narrowing. Moderate bilateral neural foraminal narrowing is present at this same level." (Jefferson City Medical Group records)

Mr. Fairley testified that he was involved in a motor vehicle accident in 1982, when he was rear ended by another driver. Mr. Fairley received emergency room treatment for a whiplash injury. Mr. Fairley stated that he was symptom free from that accident in the years leading up to the 2010 work accident. The records of the University of Missouri-Columbia Hospitals and Clinics record an accident date of January 22, 1983; Dr. Even's records of April 6, 1983, pertaining to that accident reflect that Mr. Fairley had "no residual pain or range of motion problems... [and] no concerns today." Mr. Fairley was rear ended again in 2007 and suffered another whip lash injury to his neck for which he received emergency room treatment and one follow up visit. Mr. Fairley again stated that this accident left him symptom free at the time of the 2010 accident. During cross-examination Mr. Fairley also admitted to neck pain after a 1990 accident in which a paint box fell hitting him in the left shoulder; Mr. Fairley said that he received no medical treatment for the shoulder injury.

Currently, Mr. Fairley complains of neck and head pain as well as occasional headaches brought on by severe neck and head pain. Mr. Fairley stated that the neck pain will radiate into his shoulders as well as into his upper arms. Additionally, Mr. Fairley complained of dropping objects held in his hands. Mr. Fairley also complained of pain in his low back radiating into his upper thighs.

Dr. Robson, orthopedic spine surgeon, testified by deposition that he saw Mr. Fairley on June 23, 2011. Dr. Robson opined that Mr. Fairley's June 2010 accident caused the injury to Mr. Fairley's cervical spine. Dr. Robson recommended a cervical discectomy and fusion at the C5 and C6 levels. Dr. Robson recommended observation of the lumbar spine. Dr. Robson opined that the June 10, 2010 accident was the prevailing factor in leading to both of Dr. Robson's diagnosis pertaining to Mr. Fairley's cervical spine and lumbar spine. Dr. Robson stated that surgery on Mr. Fairley's cervical spine is appropriate despite the lack of radicular symptoms. Dr. Robson found cervical spine surgery to be necessary to avoid myelopathic changes which could be irreversible. During cross-examination Dr. Robson defined an osteophyte complex as denoting a bone spur and a disc bulge and stated that the radiologist who interpreted the July 6, 2010 MRI found not only the bone spur and disc bulge but also the abutment and flattening of the spinal cord. Dr. Robson said that he disagreed with Dr. Wayne's opinion that Mr. Fairley does not have a lesion in the cervical spine. Dr. Robson further stated that although Mr. Fairley had degenerative changes in his neck, the June 10, 2011 incident "caused the superimposed bulge or herniation to escalate his condition to the point where I think significant treatment is indicated, where it wasn't prior to the incident." (Robson depo) Dr. Robson admitted that Mr. Fairley's spondylolisthesis predated June 10, 2011.

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Dr. Cohen, neurologist, evaluated Mr. Fairley and issued a report based thereon dated December 13, 2010. Dr. Cohen found Mr. Fairley to have complaints of neck and low back pain, headaches and memory issues. According to Dr. Cohen, Mr. Fairley described “his major problem subsequent to the work injury ... [as] his lumbar spine.” (Cohen report) As the result of the June 10, 2011 accident, Dr. Cohen found spondylolisthesis at L5-S1 to have become active, left lumbar radiculopathy, symptomatic cervical spondylosis, post traumatic headaches, and possible cognitive dysfunction secondary to a closed head injury. Dr. Cohen opined that Mr. Fairley needed to be evaluated by a surgeon for both the lumbar and cervical spine symptoms.

Dr. Lange, orthopedic spine surgeon, testified by deposition that he evaluated Mr. Fairley on October 20, 2011, and prepared a corresponding report on that same date. Dr. Lange opined that Mr. Fairley has a degenerative disc at C5-6 and “thought that it was not unreasonable that he had aggravated that level as far as the chronic cervical strain.” (Lange depo) Dr. Lange described an osteophyte complex as a disc that has increased in size as the result of dryness and is turning to bone. With regard to the lumbar spine Dr. Lange diagnosed preexisting spondylolisthesis at the L5-S1 level. Dr. Lange opined that Mr. Fairley’s symptoms were consistent with a herniated disc at the T12-L1 level. Dr. Lange opined that Mr. Fairley’s accident on June 10, 2011 was the prevailing factor in causing the T12-L1 herniation and associated lumbar complaints as well as his cervical complaints at the C5-6 level. While Dr. Lange acknowledged that Mr. Fairley had preexisting degenerative changes at the C5-6 level, Dr. Lange still opined that the June 10, 2011 accident is the prevailing factor in Mr. Fairley’s chronic cervical strain symptoms. Dr. Lange found Mr. Fairley to be at maximum medical improvement. Dr. Lange opined that surgery for the cervical spine is not appropriate for Mr. Fairley’s degenerative condition of his cervical spine and would be prophylactic in nature. Dr. Lange opined to permanent disability as the result of the June 10, 2011 accident as follows: 1) suboccipital and occipital headaches, no permanent disability since the headaches have resolved, 2) L5-S1 spondylolisthesis, no permanent disability due to lack of symptoms, 3) chronic cervical strain, five percent of the body, and 4) herniation at the T12-L1 level, five percent of the body.

During cross-examination, Dr. Lange stated that Mr. Fairley’s degenerative condition of the spine at C5-6 is not causing his symptoms of neck pain and pain into the shoulders. Dr. Lange stated that “[w]e usually don’t have a way of pinpointing why people have neck pain with accidents anatomically.” (Lange depo) Dr. Lange went on to respond that Mr. Fairley’s symptoms are the result of his accident when a chair collapsed.

Dr. Wayne, orthopedic and sports medicine, evaluated Mr. Fairley on January 11, 2011, and issued two reports pertaining to his evaluation, dated January 4, 2011 and October 4, 2011. Dr. Wayne found Mr. Fairley to have “cervical spondylosis at C5-6 without evidence of cervical radiculopathy” and recommended anti-inflammatory medication. (Wayne report) Dr. Wayne stated that “invasive management” is not warranted. (Wayne report) Dr. Wayne further found Mr. Fairley to have “significant chronic degenerative process of Grade I-Grade II L5-S1 isthmus spondylolisthesis with advanced degenerative disc disease and foraminal narrowing” of the lumbar spine. (Wayne report) Dr. Wayne found neither the cervical spondylosis nor the lumbar spondylolisthesis to be work related and specifically pointed out the absence of a lesion in both the cervical and lumbar spine.

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Dr. Hogan, neurologist, evaluated Mr. Fairley on March 22, 2011, and authored a report pertaining to his evaluation on that same date. Dr. Hogan found Mr. Fairley to have cervical spondylosis at C5-6 and lumbar spondylolisthesis at L5 bilaterally, both not work related. Dr. Hogan found Mr. Fairley to be at maximum medical improvement and in no need of additional treatment related to the June 10, 2010 accident. Dr. Hogan did note that Mr. Fairley had a lumbar strain that Dr. Hogan said should have lasted two to three weeks and is no longer present. Dr. Hogan rated the permanent disability in the lumbar spine at ten percent of the body noting that the disability is the result of a congenital condition and rated the permanent disability in the cervical spine at ten percent of the body noting that six to seven percent would be preexisting to Mr. Fairley's June 10, 2010 accident.

APPLICABLE LAW

RSMo Section 287.020.2 The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

RSMo Section 287.140.1 In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where the requirements are furnished by a public hospital or other institution, payment therefor shall be made to the proper authorities. Regardless of whether the health care provider is selected by the employer or is selected by the employee at the employee's expense, the health care provider shall have the affirmative duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to communicate shall constitute a disciplinary violation by the provider subject to the provisions of chapter 620. When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer. In case of a medical examination if a dispute arises as to what expenses shall be paid by the employer, the matter shall be presented to the legal advisor, the administrative law judge or the commission, who shall set the sum to be paid and same shall be paid by the employer prior to the medical examination. In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment.

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In *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 512 (W.D.App. 2011), the Missouri Appeals Court held that once the prevailing factor test is applied to the question as to whether an employee has a compensable injury, an employer is obligated to provide “such medical, surgical, chiropractic and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability to cure and relieve from the effects of the injury.” *Tillotson* at 518. “The 2005 amendment to the workers’ compensation law did not, however, incorporate a “prevailing factor” test into the determination of medical care and treatment required to be afforded for a compensable injury by §287.140.1” *Id.* at 519.

AWARD

The claimant, Donald Fairley, has sustained his burden of proof that an accident occurred on June 10, 2010, when the chair he was sitting in broke, causing him to hit his head and fall to the floor. Mr. Fairley was seen at the emergency room immediately thereafter with cervical and head complaints of pain. X-rays were taken and medication was prescribed.

Mr. Fairley has similarly sustained his burden of proof that the June 10, 2010 accident caused the injuries to Mr. Fairley’s cervical and lumbar spine. Mr. Fairley had significant complaints with regard to the neck and the low back within days of the accident. Mr. Fairley had no complaints regarding his spine in the months preceding the June 10, 2010 accident. Dr. Robson and Dr. Cohen both opined to the relationship between the accident and the injuries to the cervical and lumbar spine. Dr. Lange admitted that Mr. Fairley’s symptoms in the cervical spine are as a result of the June 10, 2010 accident. Dr. Wayne and Dr. Hogan do not explain the current symptomology in Mr. Fairley’s back, stating only that both his cervical and lumbar spine conditions pre-exist the 2010 accident.

Finally, Mr. Fairley has sustained his burden of proof that he is entitled to the medical treatment outlined by Dr. Robson. Mr. Fairley has proven that he was injured in a work-related accident and is now entitled to appropriate medical care for that injury.

Made by: _____
HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation