

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

Injury No.: 01-031265

Employee: Renee Fischer
Employer: Ste. Genevieve Country Mart
Insurer: Benchmark Insurance Company
Date of Accident: March 1, 2001
Place and County of Accident: Ste. Genevieve 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 September 15, 2005. The award and decision of Chief Administrative Law Judge Jack H. Knowlan, Jr., issued September 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 7th day of February 2006.

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: Renee Fischer

Injury No. 01-031265

Dependents: N/A

Employer: Ste. Genevieve Country Mart

Additional Party: None

Insurer: Benchmark Insurance Company

Hearing Date: May 2, 2005 (hearing completed June 2, 2005)

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? March 1, 2001
5. State location where accident occurred or occupational disease contracted: Ste. Genevieve 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: The employee had just finished mopping a concrete floor in the deli at Ste. Genevieve Country Mart, when she walked on to a tile floor with wet tennis shoes and slipped, injuring her low back.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Low back
14. Nature and extent of any permanent disability: 30% of the body as a whole
15. Compensation paid to date for temporary total disability: \$525.81
16. Value necessary medical aid paid to date by employer-insurer: \$7,007.77
17. Value necessary medical aid not furnished by employer-insurer: \$72,149.27 (see findings)
18. Employee's average weekly wage: \$183.00
19. Weekly compensation rate: \$122.00
20. Method wages computation: By agreement
21. Amount of compensation payable:

Unpaid medical expenses:	\$ 71,867.54	
Medical mileage and travel expenses:		281.73
Temporary total disability benefits:	2,684.00	
Temporary partial disability benefits:	260.51	
120 weeks of permanent partial disability:		<u>14,640.00</u>

TOTAL: \$ 89,733.78

22. 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 in favor of the following attorney for necessary legal services rendered to the claimant:

Mr. Robert Butler

FINDINGS OF FACT AND RULINGS OF LAW

On May 2, 2005, the employee, Renee Fischer, appeared in person and by her attorney, Mr. Robert Butler, for a hearing for a final award. Although the employee's attorney requested that the employee's Second Injury Fund claim be left open, the Division's file indicates that no claim has been filed against the Second Injury Fund. The employer-insurer was represented at the hearing by its attorney, Mr. Bradley Young. Prior to the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. 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:

1. On or about March 1, 2001, Ste. Genevieve Country Mart was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by Benchmark Insurance Company.
2. On or about March 1, 2001, Renee Fischer was an employee of Ste. Genevieve Country Mart, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about March 1, 2001, the employee sustained an accident that 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 \$183.00 per week and the parties stipulated to a rate of compensation equal to \$122.00 per week.
7. The employer-insurer paid medical expenses in the amount of \$7,007.77.
8. The employer-insurer paid temporary total disability benefits in the amount of \$525.81. These payments covered 4 3/7 weeks commencing on March 10, 2001 and ending on April 13, 2001.

ISSUES:

1. Medical causation
2. Additional medical aid
3. Nature and extent of disability
4. Medicaid lien
5. Child support lien
6. Direct pay medical fee dispute

SUMMARY OF THE EVIDENCE:

At the time of her accident on March 1, 2001, the employee was working for Ste. Genevieve Country Mart as a deli assistant. The employee's accident occurred after she had mopped a concrete floor in the deli. When the employee walked from the concrete floor to the tile floor, she slipped and injured her back. Although she caught herself on a table and did not fall to the floor, the employee felt immediate pain in her low back.

Although the employee did not report her injury at the time, within a few days, her back pain got worse and she began experiencing pain in her right hip and right leg. After reporting the accident to her supervisor, the employer-insurer authorized treatment with Dr. Russell Cantrell at Orthopedic and Sports Medicine in St. Louis, Missouri.

Dr. Cantrell, who specializes in physical medicine and rehabilitation, examined the employee on March 22, 2001. Dr. Cantrell felt the employee's subject complaints of lumbar back pain were "significantly out of proportion to her objection examination," and did not believe she had any evidence of neurologic deficits. Based on his examination, Dr. Cantrell did not order additional diagnostic studies. He also felt the employee was "exaggerating her symptomatology." Notwithstanding these conclusions, Dr. Cantrell felt it was possible the employee might have strained her lumbar spine, and recommended physical therapy and prescription pain medication. Dr. Cantrell concluded his examination by noting, "given her multiple non organic findings on clinical examination, it is not likely that her subjective symptoms will respond positively to physical therapy or the antiinflammatory medication. I anticipate her reaching maximum medical improvement within three to five weeks of today's visit" (Employer-insurer Exhibit 2).

After several physical therapy sessions, the employee returned for a final visit with Dr. Cantrell on August 12, 2001. In the first paragraph of his April 12, 2001 report, Dr. Cantrell notes the employee was continuing to complain of low back pain with no improvement after the physical therapy. He then noted that she had discussed her condition with her attorney who had suggested she might need an MRI in order to evaluate her complaints. Although the workers' compensation insurance carrier had apparently authorized the MRI, Dr. Cantrell indicated that based on his initial clinical examination, he did not feel further diagnostic studies were necessary. Dr. Cantrell then concluded by stating, "she has been referred back to her attorney whom she has consulted with in the past for further medical recommendations" (Employer-insurer Exhibit 4).

Based on Dr. Cantrell's report, the employer-insurer denied further medical treatment, and the employee's attorney scheduled the employee for an evaluation by Dr. David Robson. Dr. Robson is an orthopedic surgeon with a fellowship in spine surgery who practices with St. Louis Spine Care Alliance.

Dr. Robson first examined the employee on May 16, 2001. At the time of this examination, she was complaining of low back pain, bilateral buttock pain and right leg radiating pain (Employee's Exhibit A, page 4). Dr. Robson initially diagnosed a lumbosacral strain, but recommended an MRI because of her radicular complaints of leg pain (Employee's Exhibit A, page 6). The MRI performed July 25, 2001 confirmed the employee had degenerative disc disease with a posterior central herniation of the L5/S1 disc with migration of a small disc fragment (Employee's Exhibit A, page 7).

After reviewing the MRI, Dr. Robson concluded it was not a large disc herniation, and recommended conservative treatment (Employee's Exhibit A, page 7). At the time Dr. Robson recommended conservative treatment on August 14, 2001, the employee was no longer working for Ste. Genevieve Country Mart, and had decided to go back to school. In an Office Visit Report, Dr. Robson indicated the employee was available for sedentary, light duty work, or school (Employee's Exhibit C). Although Dr. Robson's notes indicate he was hoping to obtain approval from the employer-insurer to proceed with conservative treatment, the employer-insurer responded by sending the MRI to Dr. Cantrell for a supplemental opinion. In a letter dated August 13, 2001, Dr. Cantrell agreed that the MRI showed a central disc protrusion at the L5/S1 level. He concluded that the herniated disc was not "substantially caused by her reported work injury from March 1, 2001." He added, "this opinion is based on the fact that Ms. Fischer has had two prior episodes of sciatic nerve pain, one occurring six years ago with pregnancy and the second occurring one-and-a-half years ago" (Employer-insurer Exhibit 6).

Based on this letter, the employer-insurer refused to authorize the suggested treatment by Dr. Robson. The employee testified that she had no income, no health insurance and was living on student loans and assistance from HUD to pay her rent.

The employee's next visit with Dr. Robson occurred on January 22, 2002. Dr. Robson reported that the employee was "slightly better, but still complaining of severe right buttock pain and low back pain" (Employee's Exhibit A, page 9). Dr. Robson felt the employee had made no progress, and recommended a C/T myelogram. After the C/T myelogram was completed on January 29, 2002, Dr. Robson reiterated that the employee had a herniated disc at the L5/S1 level lateralizing to the right, but noted that the C/T myelogram indicated that the disc herniation appeared to be "more prominent" than it had been at the time of the MRI, and showed displacement of the S1 nerve root (Employee's Exhibit A, page 12).

After reviewing the C/T myelogram with the employee on February 5, 2002, Dr. Robson recommended a micro-discectomy to relieve the nerve compression (Employee's Exhibit A, page 11). At the time of his February 5, 2002 visit, Dr. Robson indicated that he felt the employee could continue sedentary duty if it was available, but noted that the employee was still attending school (Employee's Exhibit A, page 11).

Dr. Robson's next visit with the employee occurred on September 3, 2002. Dr. Robson's record from that date indicates the employee's condition had not changed, and he was still recommending surgery. Since the employee had not obtained approval for the surgery, Dr. Robson renewed her medications and indicated she should continue to limit her activities to sedentary work or school (Employee's Exhibit C).

The employee was next seen by Dr. Robson on February 19, 2003. At the time of that visit, the employee advised Dr. Robson that she had gone to Missouri Baptist Medical Center on February 17, 2003. An MRI performed at the emergency room showed a large herniated disc at the L5/S1 on the right side (Employee's Exhibit B, page 7). Dr. Robson indicated that the disc was slightly larger in size, but was in the same location as her initial disc rupture (Employee's Exhibit B, page 7). Dr. Robson felt that the increase or progression of the herniated disc was causally related to her March 1, 2001 work injury

(Employee's Exhibit B, page 8).

Although Dr. Robson was aware that the employee had no health insurance, he recommended an immediate surgical procedure and readmitted the employee to the hospital through the emergency room for surgery on March 17, 2003 (Employee's Exhibit B, page 8). Dr. Robson's records confirm that he performed a lumbar microdiscectomy at the L5/S1 on the right side (Employee's Exhibit C). Following the surgery, Dr. Robson kept the employee off work until April 9, 2003. From April 9, 2003 through June 18, 2003, Dr. Robson limited the employee to sedentary work for four hours per day (Employee's Exhibit C).

Both Dr. Robson's records and the employee's testimony indicate she was doing significantly better after the surgery. On June 18, 2003, Dr. Robson noted the employee was doing "reasonably well," and her leg pain was gone except with increased activity. The employee still experienced back pain with increased bending and stooping. At the time of her June 18, 2003 visit, Dr. Robson released the employee to regular duty with a 40 pound lifting limit (Employee's Exhibit A, page 10 and Employee's Exhibit C). Based on a subsequent telephone conversation, Dr. Robson later changed the weight restriction to 30 pounds occasionally and 25 pounds repetitively (Employee's Exhibit B, page 11).

Although Dr. Robson anticipated that the employee would not require further treatment, on October 2, 2003, she returned to his office and gave a one month history of increased pain in her low back and leg. The employee gave no history of a specific injury, but noted her pain was at a higher level. Based on her complaints, Dr. Robson ordered a repeat MRI that was taken on October 24, 2003. This MRI confirmed that the employee had reruptured her disc in the same spot at the L5/S1 level. Dr. Robson noted that this recurrent herniated disc occurs in about five percent of the cases (Employee's Exhibit B, page 13).

Based on these findings, Dr. Robson recommended a discectomy and fusion at the L5/S1 level. Dr. Robson performed this surgery on December 29, 2003 (Employee's Exhibit B, page 14). Following her second surgery, Dr. Robson noted that the employee did "pretty well," and after going through therapy and rehabilitation, he felt the employee was functioning at a reasonable level (Employee's Exhibit B, page 15).

During the time of her second surgery, Dr. Robson noted that he had kept the employee off work from October 2, 2003 through January 29, 2004. Dr. Robson's record from that date indicates he released the employee for sedentary work for four hour work days. This restriction continued until March 18, 2004. As of that date, Dr. Robson gave the employee a 25 pound weight limit, and noted she could slowly increase her work days to eight hours per day (Employee's Exhibit C and Employee's Exhibit B, page 16 and 17). As of June 10, 2004, Dr. Robson released the employee with a permanent 25 pound weight limit and no repetitive bending, stooping or twisting (Employee's Exhibit B, page 17).

On the issue of causation, Dr. Robson testified that the employee's initial L5/S1 disc herniation, the subsequent increase in size of the disc herniation and the two surgeries that were performed were all causally related to the employee's work injury on March 1, 2001 (Employee's Exhibit A, page 11 and Employee's Exhibit B, page 8, 12 and 17). Dr. Robson further testified that all of the treatment he had provided for the employee was reasonable and necessary (Employee's Exhibit B, page 18). On the issue of permanent disability, Dr. Robson testified that the employee had a 25% permanent partial disability of her body as a whole (Employee's Exhibit B, page 19).

At the time of the hearing, the employee identified the medical bills which were admitted as part of Employee's Exhibit J. The employee testified that all of these bills were related to treatment she received for her low back. The bills included services provided by Missouri Baptist Medical Center, Spine Care Alliance, Open MRI of St. Louis, Jefferson Memorial Hospital, Midwest Radiology Associates, Crystal City E.R. Services, and Goldsmith Pharmacy. The total amount of the bills submitted by the employee is equal to \$71,867.54.

In addition to her medical bills, the employee also testified that she had not been paid for her mileage or travel expenses as reflected in the mileage log admitted as Employee's Exhibit K. These trips included the two visits to Dr. Cantrell and her physical therapy at Pro Rehab. The total distance traveled by the employee for this treatment was 955 miles.

When questioned about the condition of her back at the time of the hearing, the employee indicated that she still experiences pain or an aching sensation in her low back. Although the pain no longer goes down into her right foot, the employee said she still experiences pain in her mid thigh with numbness that goes down the back of her leg to her foot. She emphasized that she has the numbness in her leg all of the time, and the pain increases with certain activities. She noted that she experiences an increase in pain if she does housework, yard work, excessive walking, or stands or sits more than 45 minutes. Although the employee acknowledged that she can bend, stoop or squat, she noted that if she does it too much she will "pay for it."

The employee also testified that her low back pain makes it difficult for her to sleep at night. The employee attempts to alleviate her low back pain by changing from her bed to her couch every three or four hours. The employee has no problem driving for an hour or less, but does have difficulty feeling the pedals with her right foot. The employee has given up several hobbies because of back pain, but is still able to do her household chores. Although the employee did not feel she would be able to do the type of physical work she had done prior to her accident, she agreed that she has been able to work four hours per day plus attending classes at school for approximately 14 hours per week.

During the time she was being treated by Dr. Robson, the employee agreed that she had been attending classes and was working part time for Associated Appraisal Service. The employee started “doing the books” for Associated Appraisal Service sometime in December of 2002. The employee was working approximately 16 hours per week at \$10.00 per hour. The employee noted that her employer accommodated her, and allowed her to lie down and rest as needed. The employee’s testimony indicates that she was able to perform the bookkeeping work during the time she was released for sedentary work after her two surgeries.

The employer-insurer’s evidence included the medical reports and deposition testimony of Dr. Russell Cantrell and a videotape of the employee taken in January of 2005.

As noted previously, Dr. Cantrell’s initial position in April of 2001 was that the employee had no neurological deficits, was exaggerating her symptoms and did not need an MRI or further diagnostic testing (Employer-insurer Exhibit 9, page 10 and Employer-insurer Exhibit 3). After the MRI requested by Dr. Robson established that Dr. Cantrell’s initial position was erroneous, Dr. Cantrell’s fallback position was that the employee’s herniated disc was not “substantially caused” by her March 1, 2000 work injury because of her two prior episodes of sciatic nerve pain (Employer-insurer Exhibit 6 and Employer-insurer Exhibit 9, page 15). Dr. Cantrell’s deposition testimony makes it clear that he was under the mistaken impression that these two prior episodes of low back pain included complaints of radicular symptoms. Based on this assumption, Dr. Cantrell concluded that the employee had “discogenic pathology predating the work injury leading to possible intermittent neurocompression” (Employer-insurer Exhibit 7 and Employer-insurer Exhibit 9, page 15). Although Dr. Cantrell did not believe the employee’s herniated disc was related to her March 1, 2001 accident, he did acknowledge in his March 25, 2003 letter that “... a lumbar microdiscectomy at the L5/S1 level would be considered a reasonable treatment option for Ms. Fischer in regard to her ongoing complaints of low back pain ...” (Employer-insurer Exhibit 7).

After completing Dr. Cantrell’s depositions on October 17, 2001 and November 13, 2002, the employer-insurer’s attorney provided Dr. Cantrell with additional records from the employee’s 1994 pregnancy and asked for a supplemental opinion. In a letter dated February 18, 2004, Dr. Cantrell acknowledged that the emergency room records from Jefferson Memorial Hospital dated February 5, 1994 disclosed that the employee was pregnant and was complaining of “intermittent numbness in both of her arms, particularly the left arm, and complaints of pain in her left knee, as well as what was described as some intermediate numbness also in her left leg. Dr. Cantrell also noted that subsequent records from Dr. Wadia confirmed that the employee was complaining of numbness in both arms and in her left leg. Based on these additional records, in the last paragraph of his letter, Dr. Cantrell acknowledged that “this does not appear to be a symptom that was obviously attributable to a lumbar back condition, particularly given the multiple extremity involvement” (page 2 of February 18, 2004 letter admitted as Employer-insurer Exhibit 12).

Given this new information about the employee’s 1994 complaints during her pregnancy, Dr. Cantrell’s final position on the issue of causation was much more equivocal than his initial proclamation. In the second to last paragraph of his February 18, 2004 letter, Dr. Cantrell stated:

While it is certainly possible that the described disc protrusion/herniation at the L5/S1 level could be considered by some to be causally related to the March, 2001 reported work injury, I do not feel that there is sufficient information to definitely consider this causally related to the described work injury. This is based on the fact that Ms. Fischer has had localized back complaints on an intermittent and long term basis preceding her reported work injury which could be attributable to discogenic abnormalities and a disc herniation without neuro compression that has predated her reported work injury.

(Employer-insurer Exhibit 12).

Other than the complaints made during her pregnancy in 1994, the only other evidence the employer-insurer had of preexisting back pain was a physical therapy evaluation dated May 12, 2000. This record from Ste. Genevieve County Memorial Hospital indicates the employee gave a history of intermittent low back problems for six years. The employee also indicated she was involved in a motor vehicle accident one year prior to that date, and had experienced intermittent pain since. The employee advised the therapist that her pain had gotten worse over the past two weeks. The employee indicated that she had slightly bent to her right to pick up something and felt severe pain across her right lower back. The therapist noted that her chief complaint was “pain across the low back, right greater than left.” It is important to note that the employee denied any lower extremity symptoms with SLR testing.

When the employee was questioned about this physical therapy record during cross-examination, she agreed that she had experienced intermittent back pain for approximately six years prior to the physical therapy evaluation. Although she agreed that she was in a motor vehicle accident, she emphasized that she had not experienced any low back pain as a result of the motor vehicle accident. Two weeks prior to her physical therapy evaluation, the employee agreed that she had experienced an increase in back pain after bending over. During her direct examination, the employee emphasized that the back pain she experienced in the spring of 2000 was not near as bad as the pain she had experienced in March of 2001, and had never gone down her leg. The employee noted that she received a little therapy in May of 2000 and was finished with treatment. She added that no diagnostic testing had been performed at that time.

During questioning by the administrative law judge, the employee indicated that during the three or four month time period prior to March 1, 2001, she had no symptoms at all in her low back and had not been taking any medication for back pain.

In addition to the medical reports of Dr. Cantrell, the employer-insurer also offered a surveillance videotape of the employee. The videotape was admitted as Employer-insurer's Exhibit Number 11 on June 2, 2005. The videotape is approximately 20 minutes long, and was taken on January 16, January 18 and January 19 of 2005. For the most part, the video depicts the employee walking to and from her house and other buildings to her minivan. In these sections, the employee appears to be walking at a normal pace and gait. Although the employee is never seen carrying anything heavier than her purse, there is one occasion where the employee stopped while walking from her house to the minivan and appeared to be either moving or picking up something from the floor of her front porch. Later, on January 19, 2005, the employee squatted by the side of her minivan, and made several attempts to push the sliding door of the minivan into a closed position.

After reviewing the videotape, it does not appear to disclose any activities that are either inconsistent with or that contradict the employee's testimony of her current activities and limitations.

At the conclusion of the hearing on May 2, 2005, the employer-insurer requested that the record be left open and the hearing continued for the submission of the videotape. Both attorneys also requested leave to submit briefs on the disputed issues. As previously noted, the videotape was received and admitted on June 2, 2005, and the record was closed and the hearing completed as of that date. The employee's brief was filed with the Division on May 23, 2005, and the employer-insurer's brief was received on June 2, 2005.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. February 21, 2002 deposition of Dr. David Robson
- B. April 21, 2005 deposition of Dr. David Robson
- C. Office notes of Dr. David Robson
- D. Medical records from Missouri Baptist Medical Center
- E. Surgical records from Missouri Baptist Medical Center
- F. Medical records (diagnostic test results) of Missouri Baptist Medical Center
- G. July 25, 2001 MRI radiology report
- H. Ste. Genevieve County Memorial E.R. records from March 13, 2001
- I. Jefferson County Memorial Hospital E.R. records from March 6, 2001
- J. Medical bills
- K. Mileage log

Employer-Insurer's Exhibits

1. May 12, 2000 physical therapy evaluation
2. March 22, 2001 letter from Dr. Russell Cantrell
3. April 12, 2001 letter from Pro Rehab to Dr. Russell Cantrell
4. April 12, 2001 letter from Dr. Russell Cantrell
5. August 14, 2001 report of Dr. David Robson
6. August 13, 2001 letter from Dr. Russell Cantrell
7. March 25, 2002 letter from Dr. Russell Cantrell
8. July 17, 2003 letter from Dr. Russell Cantrell
9. October 17, 2001 deposition of Dr. Russell Cantrell
10. November 13, 2002 deposition of Dr. Russell Cantrell
11. Surveillance videotape
12. February 18, 2004 letter from Dr. Russell Cantrell

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. Medical Causation

The employer-insurer's defense of the employee's claim is based solely on the opinion of Dr. Russell Cantrell. A careful reading of Dr. Cantrell's records and testimony in conjunction with those of Dr. Robson, make it clear that his positions were erroneous and are not credible.

At the time of his initial examination, Dr. Cantrell concluded the employee had no neurologic deficits, was guilty of exaggerating her symptoms and would be completely healed within three to five weeks. He reached these conclusions without the benefit of any diagnostic testing, and also predicted that the employee would not respond to therapy or

antiinflammatory medications.

This last prediction turned out to be true, but not for the reasons suggested by Dr. Cantrell. Dr. Robson examined the employee and ordered an MRI because her low back pain was radiating into her leg. The positive findings of an L5/S1 disc herniation established that the employee was not exaggerating her symptoms as suggested by the therapist and Dr. Cantrell, and also confirms that Dr. Cantrell was wrong in not ordering any further diagnostic testing. Ironically, it appears that Dr. Cantrell's sarcastic comment in which he referred the employee back to her attorney for more medical advice turned out to be a good suggestion.

When Dr. Cantrell was confronted with the objective findings of the MRI, he failed to offer any reasonable explanation for the fact that he had misdiagnosed the employee's condition and failed to offer a reasonable course of treatment to cure and relieve the employee from the effects of her injury. Dr. Cantrell rather offered a secondary position that the employee's herniated disc was not "substantially caused" by her work injury. Dr. Cantrell's basis for this conclusion was his assumption that the employee had two prior episodes of sciatic pain with radiculopathy. Once again, Dr. Cantrell's assumptions proved to be erroneous. When Dr. Cantrell was provided with the medical records from the employee's 1994 pregnancy, he was forced to acknowledge that this prior episode did not include any complaints of intermittent pain and radiculopathy in to the employee's right lower extremity. Although the May, 2000 physical therapy record indicates the employee did have intermittent back pain for several years prior to that therapy session, a careful review of the record confirms that the employee made no complaints of pain radiating into either lower extremity.

Faced with these additional records, Dr. Cantrell was forced to withdraw from his initial position to the point where his opinion is basically meaningless. As previously noted, Dr. Cantrell ultimately reached the point where he stated, "while it is certainly possible that the described disc protrusion/herniation at the L5/S1 level could be considered by some to be causally related to the March, 2001 reported work injury, I do not feel that there is sufficient information to definitely consider this causally related to the described work injury." While Dr. Cantrell is clinging to the position that the evidence does not definitely support a causal connection, no court has ever held that to be the appropriate burden of proof.

In contrast to Dr. Cantrell, Dr. Robson reviewed all of the records relating to the employee's preexisting complaints of back pain and still concluded that her herniated disc and the resulting two surgical procedures were all causally related to her March 1, 2001 injury at work. The conclusions of Dr. Robson are corroborated by the employee's testimony. The employee testified that for several months prior to her accident, she had not been experiencing any symptoms of low back pain. Both her testimony and the medical records confirm that after her March 1, 2001 accident, she experienced excruciating pain that radiated into her right lower extremity. This pain was very disabling and precluded her from performing her duties at work. Other than the flawed conclusions of Dr. Cantrell, the employer-insurer has offered no credible evidence to support a finding that the employee was suffering from a herniated disc at the L5/S1 level prior to her March 1, 2001 accident.

Based on this evidence, I find that the opinions of Dr. David Robson on the issue of medical causation are more credible than the opinions of Dr. Russell Cantrell. I therefore find that the employee's March 1, 2001 accident was a substantial factor in causing the herniated disc in her low back. I further find that all of the treatment and medical expenses reflected in the bills and records submitted by the employee and her resulting permanent partial disability are all medically causally related to the employee's March 1, 2001 accident.

Issue 2. Additional Medical Aid

The employee has submitted medical expenses totaling \$71,867.54. The employer-insurer denied medical treatment after the employee was released by Dr. Cantrell and is therefore not disputing these bills on the basis of authorization. The employer-insurer is also not disputing the reasonableness of these medical bills. The employer-insurer is, however, disputing these bills based on causal relationship and medical necessity.

Based on the finding under Issue Number 1, the employer-insurer's defense that the bills are not causally related to the employee's accident must also be rejected. Although the employer-insurer has superficially argued that the two surgeries performed by Dr. Robson were not medically necessary, there is no evidence to support that position. The employee testified that after her second surgery, she noticed a significant improvement in her low back pain. Both Dr. Robson's testimony and his medical records also support a finding that the treatment offered by Dr. Robson was medically necessary to cure and relieve the employee from the effects of her work injury. It is significant to note that even Dr. Cantrell admitted that a lumbar microdiscectomy at the L5/S1 level would be considered a reasonable treatment option for the employee (Employer-insurer Exhibit 7).

Based on this evidence, I find that the medical bills submitted by the employee in Employee's Exhibit J were causally related to her accident and were medically necessary to cure and relieve the employee from the effects of her injury. The employer-insurer is therefore directed to pay to the employee the sum of \$71,867.54 for previously incurred medical expenses. The amount awarded for medical expenses shall be subject to a 25% attorney's fee, and payment of the remaining 75% to the designated health care providers shall be considered as payment in full, and shall relieve the employee of any further liability.

In addition to the medical bills, the employee has also requested an award for medical mileage or travel expenses

pursuant to Section 287.140 RSMo. Both the employee's testimony and the medical records indicate the employee was required to travel outside of her local or metropolitan area for treatment by Dr. Cantrell and for therapy at Pro Rehab. The total mileage for these trips was 955 miles, and the state mileage rate in effect at the time was \$.295 per mile. The employer-insurer is therefore directed to pay to the employee the sum of \$281.73 for medical travel expenses.

Issue 3. Nature and Extent of Disability

Although the employee has requested a much broader time period of temporary total disability or temporary partial disability benefits, the medical records of Dr. Robson indicate that the employee was capable of performing sedentary work during most of the gaps in treatment during the time she had no insurance or other ability to pay for the treatment. The employee was also a full-time student attending classes after August of 2001, and was working part-time as a bookkeeper for an appraisal service.

The records of Dr. Robson, however, do support an award of temporary total disability and temporary partial disability during designated time periods after both of the employee's surgeries. Based on Dr. Robson's testimony and medical records, I find that the employee was temporarily totally disabled after her first surgery from March 17, 2003 through April 9, 2004. The employer-insurer is therefore obligated for 4 6/7 weeks of temporary total disability after the employee's first surgery at the rate of \$122.00 a week for a total of \$592.57.

Dr. Robson's records also confirm that the employee was entitled to temporary partial disability from April 10, 2003, through June 18, 2003. During that time the employee was restricted to sedentary work for no more than four hours per day. Based on the testimony of the employee, I find that the employee, in the exercise of reasonable diligence, was able to work 16 hours per week at the rate of \$10.00 per hour during the time period in which she was released for sedentary work by Dr. Robson. Under Section 287.180, the employee is therefore entitled to 66 2/3% of the difference between her average earnings prior to the accident and the \$160.00 per week that she earned between April 10, 2003, and June 18, 2003. The employee is therefore entitled to 10 weeks of permanent partial disability at the rate of \$15.32 per week (average weekly wage of \$183.00 minus \$160.00 equals \$23.00 times 66.66% equals \$15.32). The employer-insurer is therefore directed to pay to the employee the sum of \$153.20 for temporary partial disability covering the 10 weeks from April 10, 2003 through June 18, 2003.

The medical records of Dr. Robson also support an award of temporary total disability and temporary partial disability following her second surgery. The employee was taken off work by Dr. Robson from October 2, 2003 through January 29, 2004 for a total of 17 1/7 weeks. The employer-insurer is therefore directed to pay to the employee the sum of \$122.00 per week for 17 1/7 weeks for a total of \$2,091.43.

Dr. Robson also restricted the employee to sedentary work of no more than four hours per day from January 30, 2003 through March 18, 2004 for a total of 7 weeks. Based on the employee's testimony, I find that the employee, in the exercise of reasonable diligence, was able to earn \$160.00 per week during this period when she was restricted to sedentary work. The employer-insurer is therefore directed to pay the employee 2/3 of the difference between her average earnings prior to the accident and the \$160.00 per week that she earned during this time period. The employer-insurer is therefore directed to pay to the employee the sum of \$15.33 per week (66.66% of \$23.00) for 7 weeks for a total award of temporary partial disability equal to \$107.31).

The employer-insurer is therefore liable to the employee for temporary total disability benefits equal to \$2,684.00 and temporary partial disability benefits equal to \$260.51 for a total award of temporary total disability and temporary partial disability equal to \$2,944.51.

In addition to her request for temporary total disability and temporary partial disability benefits, the employee has also requested an award for permanent partial disability.

Based on the credible testimony of the employee and the rating and medical records of Dr. Robson, I find that the employee, as a direct result of her March 1, 2001 accident, has suffered a 30% permanent partial disability of her body as a whole. The employer-insurer is therefore directed to pay to the employee the sum of \$122.00 per week for 120 weeks for a total award of \$14,640.00.

Issue 4. Medicaid lien

Although the parties indicated there was a Medicaid lien, the Division file fails to reveal any Medicaid lien filed at the time of the hearing (the parties may have been referring to the direct pay medical fee dispute addressed under Issue 6 below).

Issue 5. Child support lien

The Division files indicate that the employee had two child support liens filed, but both of these liens appear to have been released. An October 28, 2000 letter from the Division of Child Support Enforcement indicates a lien was filed in the

matter of Alpha Graham versus Renee Fischer for \$1,409.24. The Division file contains a letter from the Division of Child Support Enforcement indicating that this lien was released on March 11, 2003.

The Division file also indicates the Division of Child Support Enforcement filed a lien in the matter of Michael Fischer versus Renee Fischer with delinquent child support totaling \$3,021.01. The Division file, however, contains a release of lien dated June 11, 2003 that indicates that the lien filed in the matter of Michael Fischer versus Renee Fischer was released as of June 11, 2003.

Based on this correspondence from the Division of Child Support Enforcement, it appears that both of the liens filed against the employee have been released. Both parties, however, are encouraged to check with the Division of Child Support Enforcement to confirm that there are no current liens which should be deducted from the amount of the compensation awarded to the employee.

Issue 6. Direct pay medical fee dispute

The Division's file contains a Notice of Services Provided and Request for Direct Payment dated April 26, 2004, that was filed by Goldsmith Pharmacy of 3009 North Ballas Road in St. Louis, Missouri. The notice filed by Goldsmith Pharmacy indicates the medicine which was provided for the employee was prescribed between the dates of June 25, 2002 through December 4, 2003. Under the direct pay medical fee statute, request for the direct payment of medical bills can only be ordered if the services provided were authorized by the employer-insurer. Based on the testimony of the employee and the medical records, it appears that the employer-insurer did not authorize any medical treatment after April 12, 2001. The pharmaceutical bills from Goldsmith Pharmacy all appear to be dated during the time when the employee was receiving treatment from Dr. David Robson. Since these bills were not authorized by the employer-insurer, the Division cannot order direct payment under this statute.

Notwithstanding this ruling, the employee and her attorney are encouraged to pay the amount of these bills plus the other medical bills listed in Employee's Exhibit J in order to avoid the risk of lawsuits being filed in circuit court to recover directly from the employee. As previously noted, the amount awarded for the previously incurred medical expenses is subject to a 25% attorney's fee.

ATTORNEY'S LIEN

Mr. Robert Butler, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein. The Division file also contains a letter from Brown and Crouppen in which they requested a lien for "reasonable attorney's fees." Brown and Crouppen recently advised the employee's attorney, Robert Butler, that it is seeking reimbursement for \$2,010.30 of litigation expenses. Based on this correspondence, the employee's attorney is directed to reimburse Brown and Crouppen for litigation expenses in the amount of \$2,010.30. No additional amount has been requested or awarded as attorney's fees to Brown and Crouppen.

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