

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

Injury No.: 00-177750

Employee: Ahdenah Fulcher-Tate
Employer: St. Louis County Government
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 1, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued July 1, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of March 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Ahdenah Fulcher-Tate Injury No.: 00-177750
Dependents: N/A Before the
Employer: St. Louis County Government **Division of Workers'**
Compensation
Additional Party: Second Injury Fund Department of Labor and Industrial
Relations of Missouri
Insurer: Self-insured Jefferson City, Missouri
Hearing Date: June 4, 2013 Checked by: LJW

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Alleged as July 30, 2000
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Not determined
8. Did accident or occupational disease arise out of and in the course of the employment? No
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: Employee alleges she injured her low back after moving furniture during a contraband search.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged low back.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$3,062.20

Employee: Ahdenah Fulcher-Tate

Injury No.: 00-177750

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Disputed
- 19. Weekly compensation rate: Disputed
- 20. Method wages computation: Disputed

COMPENSATION PAYABLE

21. Amount of compensation payable: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Ahdenah Fulcher-Tate	Injury No.: 00-177750
Dependents:	N/A	Before the
Employer:	St. Louis County Government	Division of Workers' Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-insured	Checked by: LJW

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on June 4, 2013. The case was taken under submission at the close of testimony. The case was heard with companion case injury number 01-160735. Ahdenah Fulcher-Tate (Claimant) represented herself as a pro se litigant. St. Louis County Government (Employer) is self-insured and represented by Attorney Linda Wasserman. The Second Injury Fund (SIF) was represented by Assistant Attorney General Rachael Houser.

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: accident; arising out of and in the course and scope of employment; notice; medical causation; liability of Employer for past medical expenses; liability of Employer for past temporary total disability (TTD); future medical care; rate; liability of Employer or SIF for permanent total disability (PTD); and liability of Employer and SIF for permanent partial disability (PPD) benefits. Administrative Judicial Notice was taken of the Division's file, and Administrative Judicial Notice was taken of any unreleased attorney liens that were filed.

Claimant offered Exhibits A-R, Employer offered Exhibits 1-3, and SIF offered no exhibits. Objections to Claimant's Exhibits A-E, H, K-M, and Q-R were sustained. Claimant also offered Exhibits E-G and J to which objections of attorney/client privilege, relevancy, and hearsay were voiced. The admissibility of the exhibits was reserved to be ruled on in this award. Employer's objections as to attorney/client privilege and relevancy are overruled.¹ However, Employer's objection as to hearsay is sustained, and Claimant's Exhibits E-G and J are inadmissible.² All other exhibits were admitted into the record without objection. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

¹ Employer waived its right to attorney/client privilege when it released the documents to Claimant's prior attorneys.

² Claimant's Exhibits E-G and J are business records and as such are subject to hearsay exception, however, the records are not certified and no proper foundation was laid for the admission of the documents.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be summarized.

Claimant's Testimony

Claimant testified in narrative form. Claimant testified regarding six separate incidents she believed injured her low back.³ In regard to injury number 00-177750, Claimant testified that shortly after she began working for Employer,⁴ she was taking part in a contraband search, and after moving a piece of furniture during the search she developed low back pain. Claimant initially thought her low back pain was due to menstrual cramping, but following her menstrual cycle her back pain remained, and she sought medical care in a local emergency room.⁵ During her emergency room visit, Claimant was informed she had a back injury. Claimant testified she notified Employer she had injured her back, and she was referred for medical treatment at Barnes Care.⁶ During the next several years, Claimant was told by several doctors she needed low back surgery, but Employer denied her workers' compensation case and the surgery was not performed. Claimant testified she has a high pain tolerance, she continued to work despite the pain, but ultimately underwent low back surgery during 2007.⁷ Claimant testified she did not improve after surgery, was told she needed a second surgery, and eventually she had the second surgery performed in North Carolina.⁸ Claimant testified she has improved since the second surgery. Claimant reports she has out of pocket medical expenses that have never been reimbursed, but she doesn't know the amount.

Employer's Evidence

Employer produced the medical report and deposition testimony of Dr. Robert Bernardi, a board certified spinal neurosurgeon. Dr. Bernardi examined Claimant on October 21, 2009, and reviewed Claimant's medical records provided by Employer. Dr. Bernardi noted on July 9, 2007, Claimant had undergone an L4-5 decompression and fusion, but was still undergoing medical care in North Carolina.⁹ Dr. Bernardi's noted in his review of Claimant's medical records the following:

9/11/2000 – Claimant was seen in the emergency room at Missouri Baptist Hospital complaining of groin and leg pain. X-rays demonstrated degenerative L4-5 spondylolisthesis with L5-S1 facet disease. Dr. Bernardi noted “there is nothing in this ER note

³ The Division records reveal only two reports of injury that match two formal claims filed on behalf of Claimant by her prior attorneys. The two formal claims are the subjects of the hearing held on June 4, 2013. For purposes of this decision, the remaining testimony surrounding the other four alleged injuries is disregarded, but preserved in the record for any future appeal.

⁴ From the available admissible record, it appears Claimant worked for Employer at Lakeside (a juvenile detention facility) as an adolescent care specialist.

⁵ Claimant provided no testimony or documentary evidence regarding the emergency room location or the date of her visit.

⁶ No medical records from Barnes Care were introduced into evidence at trial.

⁷ No medical records leading up to or after her surgery were introduced into evidence at trial.

⁸ Claimant moved to N.C. for the second surgery so she would have family help during recovery. These medical records are also not in evidence. Claimant continues to reside in N.C.

⁹ It appears Dr. Bernardi examined Claimant after her first surgery, but before her second surgery.

to suggest that her complaints might be work related.” Dr. Bernardi also noted Claimant had reported her symptoms had been present “for months” and were worsening.

9/13/2000 – Claimant returned to the emergency room complaining of buttock and leg pain that had been present for one month. Dr. Bernardi noted the emergency room record recorded Claimant’s symptoms were not the result of any recent injury, and there was no mention the symptoms were work related.

9/14/2000 - A MRI of the lumbar spine demonstrated L4-5, L5-S1 degenerative disc and facet disease with severe spinal stenosis at L4-5, and L4-5 spondylolisthesis. On September 20, 2000, Claimant underwent a lumbar epidural steroid injection.

10/3/2000 – Claimant was seen by Dr. Dave (pain management), who noted Claimant had experienced the onset of low back pain and bilateral leg pain at work, but she did not recall any specific incident. A second epidural steroid shot was administered, and a third injection was given on November 6, 2000.

12/04/2000 – Claimant was evaluated by Dr. Krettek, a neurosurgeon. Dr. Krettek had noted Claimant reported her symptoms had started after “an overnight some three months ago, she was moving furniture, going up and down stairs, and carrying a heavy time clock.” On the day of examination Claimant had completed a questionnaire and reported her symptoms had been present for approximately three months, the symptoms had developed at work, and she “had gone straight to the emergency room.” Surgery was recommended.

1/11/2005 – At her request, Claimant was examined by Dr. Margolis, a neurologist. Claimant told Dr. Margolis her injury occurred at work on July 30, 2000, she had experienced immediate back and bilateral leg pain, and she had gone to the emergency room. Dr. Margolis opined Claimant’s work injury had caused her preexisting spinal stenosis to become symptomatic, and rated her injury at 30% BAW PPD.

7/03/06 – At Employer’s request, Claimant was examined by Dr. Mirkin, an orthopedic spine surgeon. Dr. Mirkin opined Claimant’s degenerative condition preexisted her work injuries, but the condition was made symptomatic by the work injuries.

12/20/08 – At her request, Claimant was seen by Dr. Shuter, a neurologist. Dr. Shuter opined Claimant’s work injury had aggravated her preexisting degenerative spine disease, and he rated her injury at 70% BAW PPD.

Dr. Bernardi noted Claimant had been requested to complete a Zung Depression Index prior to his examination, but had only answered one question. Following his examination and record review, Dr. Bernardi opined Claimant’s back problems couldn’t “logically [be] attributed to her employment.” Dr. Bernardi opined Claimant’s spinal abnormalities were degenerative and not caused by any work related injuries that Claimant had described. Dr. Bernardi conceded while it is possible lumbar spine related radicular symptoms may be aggravated by a work injury, one would have to believe Claimant was providing an accurate history to reach that conclusion, and Dr. Bernardi found Claimant to be such a poor historian as to not be credible. During deposition testimony Dr. Bernardi testified as follows:

So I think it is possible that a traumatic incident could have aggravated her stenosis. But in that situation everything hinges upon the patient's history because they are describing their symptoms as occurring as the result of a singular event, an accident. And so the person's history has to be consistent and it has to be believable and it has to be reliable across time and the different examiners that she sees. And I just did not believe that Miss Fulcher-Tate was a credible historian. (Exhibit 2, pg.18)

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

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

Issues related to accident and medical causation

Claimant alleges on or about July 30, 2000, she sustained an injury by accident to her low back while performing a contraband search. Section 287.020.2 RSMo 2000¹⁰ defined the term "accident" as follows:

The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable because work was a triggering or precipitating factor.

As stated above, for an "accident" to be compensable under §287.020.2 RSMo the work must *be a substantial factor in the cause of the resulting medical condition and disability*. This requirement involves an element of medical causation and necessitates expert medical opinion. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds).

Very limited admissible medical evidence is available for review, and all admissible medical evidence was provided by Employer through the report and deposition of Dr. Bernardi. In his report, Dr. Bernardi recites contrary opinions of several medical doctors who also examined Claimant, and relied upon the history she provided when formulating their opinions.

¹⁰ Unless otherwise indicated, all further references will refer to §287.020 RSMo 2000.

To relate the alleged work injury to causing Claimant's lumbar spinal stenosis to become symptomatic, Dr. Bernardi opined that Claimant *must* be found to be a credible historian. In his report, Dr. Bernardi goes to great length to demonstrate the discrepancies in Claimant's memory and reporting. As noted by Dr. Bernardi:

Even more baffling is the fact that in the months immediately after the accident, Ms. Fulcher-Tate could not remember that she was hurt at work or when her injury had occurred. When seen in the emergency room at Missouri Baptist Hospital on 09/11/2000, approximately two-and-a-half months after her alleged injury, there is really no mention of her having any back pain and there is no mention that her symptoms were work related. When seen on 09/13/2000 in the emergency room at Missouri Baptist Hospital, there is no mention that her leg and buttock symptoms were work related either.

When Ms. Fulcher-Tate saw Dr. Dave on 10/3/2000, she reported that her symptoms had developed while she was at work. However, she could not recall any traumatic/precipitating incident. She also said that her symptoms had been present for approximately six weeks. This would place the onset of her pain in mid-August. It is not until she saw Dr. Krettek on 12/04/2000 that Ms. Fulcher-Tate's history started to take its final form. Even then, she said that her symptoms started in early September.

(Exhibit 1, pg.11)

After reviewing the available medical records and observing Claimant at hearing, I agree with Dr. Bernardi and find Claimant to be an extremely poor historian and not credible.

Additionally, §287.020.2 RSMo also requires that *the work not be a triggering or precipitating factor*. Even if the contraband event occurred as described by Claimant, given the severity of Claimant's spinal stenosis, that event could only be described as a triggering or precipitating factor in her development of back pain.

The trier of fact determines whether medical evidence is accepted or rejected, and the trier may disbelieve uncontradicted or unimpeached testimony. *Alexander v. D.L. Sitton Motor Lines*, 851 S.W. 2d 525, 527 (MO banc 1993). Based on the foregoing discussion, I find the opinion of Dr. Bernardi to be credible and persuasive, and do not find Claimant has established she suffered a compensable accident on or about July 30, 2000.

CONCLUSION

Claimant's claim is not compensable under §287.020 RSMo. Employer and SIF owe no benefits. The remaining issues in dispute are moot. The attorney liens are dismissed.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

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

Injury No.: 01-160735

Employee: Ahdenah Fulcher-Tate
Employer: St. Louis County Government
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 1, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued July 1, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of March 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee:	Ahdenah Fulcher-Tate	Injury No.:	01-160735
Dependents:	N/A		Before the
Employer:	St. Louis County Government		Division of Workers'
Additional Party:	Second Injury Fund		Compensation
Insurer:	Self-insured		Department of Labor and Industrial
Hearing Date:	June 4, 2013		Relations of Missouri
			Jefferson City, Missouri
		Checked by:	LJW

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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: January 26, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Not determined
7. Did employer receive proper notice? Not determined
8. Did accident or occupational disease arise out of and in the course of the employment? Not determined
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: Employee injured her low back after her car slid off an icy driveway.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: \$587.40
16. Value necessary medical aid paid to date by employer/insurer? \$509.34

Employee: Ahdenah Fulcher-Tate

Injury No.: 01-160735

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Disputed
- 19. Weekly compensation rate: Disputed
- 20. Method wages computation: Disputed

COMPENSATION PAYABLE

21. Amount of compensation payable: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Ahdenah Fulcher-Tate	Injury No.:	01-160735
Dependents:	N/A		Before the
Employer:	St. Louis County Government		Division of Workers'
			Compensation
Additional Party:	Second Injury Fund		Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Insurer:	Self-insured	Checked by:	LJW

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on June 4, 2013. The case was taken under submission at the close of testimony. The case was heard with companion case injury number 00-177750. Ahdenah Fulcher-Tate (Claimant) represented herself as a pro se litigant. St. Louis County Government (Employer) is self-insured and represented by Attorney Linda Wasserman. The Second Injury Fund (SIF) was represented by Assistant Attorney General Rachael Houser.

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: accident; arising out of and in the course and scope of employment; notice; medical causation; liability of Employer for past medical expenses; liability of Employer for past temporary total disability (TTD); future medical care; rate; liability of Employer or SIF for permanent total disability (PTD); and liability of Employer and SIF for permanent partial disability (PPD) benefits. Administrative Judicial Notice was taken of the Division's file, and Administrative Judicial Notice was taken of any unreleased attorney liens that were filed.

Claimant offered Exhibits A-R, Employer offered Exhibits 1-3, and SIF offered no exhibits. Objections to Claimant's Exhibits A-E, H, K-M, and Q-R were sustained. Claimant also offered Exhibits E-G and J to which objections of attorney/client privilege, relevancy, and hearsay were voiced. The admissibility of the exhibits was reserved to be ruled on in this award. Employer's objections as to attorney/client privilege and relevancy are overruled.¹ However, Employer's objection as to hearsay is sustained, and Claimant's Exhibits E-G and J are inadmissible.² All other exhibits were admitted into the record without objection. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

¹ Employer waived its right to attorney/client privilege when it released the documents to Claimant's prior attorneys.

² Claimant's Exhibits E-G and J are business records and as such are subject to hearsay exception, however, the records are not certified and no proper foundation was laid for the admission of the documents.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be summarized.

Claimant's Testimony

Claimant testified in narrative form. Claimant testified regarding six separate incidents she believed injured her low back.³ In regard to injury number 01-106735, Claimant testified while working for Employer,⁴ on January 26, 2001 she was driving to work, turned into Employer's driveway and her car began to slide due to ice on the drive. Claimant's car landed in a ditch, and while attempting to exit her car she developed low back pain. Claimant testified she notified Employer she had injured her back, and she was referred for medical treatment at Barnes Care.⁵ During the next several years, Claimant was told by several doctors she needed low back surgery, but Employer denied her workers' compensation case and the surgery was not performed. Claimant testified she has a high pain tolerance, she continued to work despite the pain, but ultimately underwent low back surgery during 2007.⁶ Claimant testified she did not improve after surgery, was told she needed a second surgery, and eventually she had the second surgery performed in North Carolina.⁷ Claimant testified she has improved since the second surgery. Claimant reports she has out of pocket medical expenses that have never been reimbursed, but she doesn't know the amount.

Employer's Evidence

Employer produced the medical report and deposition testimony of Dr. Robert Bernardi, a board certified spinal neurosurgeon. Dr. Bernardi examined Claimant on October 21, 2009, and reviewed Claimant's medical records provided by Employer. Dr. Bernardi noted on July 9, 2007, Claimant had undergone an L4-5 decompression and fusion, but was still undergoing medical care in North Carolina.⁸ Dr. Bernardi's noted in his review of Claimant's medical records the following:

9/11/2000 – Claimant was seen in the emergency room at Missouri Baptist Hospital complaining of groin and leg pain. X-rays demonstrated degenerative L4-5 spondylolisthesis with L5-S1 facet disease. Dr. Bernardi noted “there is nothing in this ER note to suggest that her complaints might be work related.” Dr. Bernardi also noted Claimant had reported her symptoms had been present “for months” and were worsening.

³ The Division records reveal only two reports of injury that match two formal claims filed on behalf of Claimant by her prior attorneys. The two formal claims are the subjects of the hearing held on June 4, 2013. For purposes of this decision, the remaining testimony surrounding the other four alleged injuries is disregarded, but preserved in the record for any future appeal.

⁴ From the available admissible record, it appears Claimant worked for Employer at Lakeside (a juvenile detention facility) as an adolescent care specialist.

⁵ No medical records from Barnes Care were introduced into evidence at trial.

⁶ No medical records leading up to or after her surgery were introduced into evidence at trial.

⁷ Claimant moved to N.C. for the second surgery so she would have family help during recovery. These medical records are also not in evidence. Claimant continues to reside in N.C.

⁸ It appears Dr. Bernardi examined Claimant after her first surgery, but before her second surgery.

9/13/2000 – Claimant returned to the emergency room complaining of buttock and leg pain that had been present for one month. Dr. Bernardi noted the emergency room record recorded Claimant's symptoms were not the result of any recent injury, and there was no mention the symptoms were work related.

9/14/2000 - A MRI of the lumbar spine demonstrated L4-5, L5-S1 degenerative disc and facet disease with severe spinal stenosis at L4-5, and L4-5 spondylolisthesis. On September 20, 2000, Claimant underwent a lumbar epidural steroid injection.

10/3/2000 – Claimant was seen by Dr. Dave (pain management), who noted Claimant had experienced the onset of low back pain and bilateral leg pain at work, but she did not recall any specific incident. A second epidural steroid shot was administered, and a third injection was given on November 6, 2000.

12/04/2000 – Claimant was evaluated by Dr. Krettek, a neurosurgeon. Dr. Krettek had noted Claimant reported her symptoms had started after “an overnight some three months ago, she was moving furniture, going up and down stairs, and carrying a heavy time clock.” On the day of examination Claimant had completed a questionnaire and reported her symptoms had been present for approximately three months, the symptoms had developed at work, and she “had gone straight to the emergency room.” Surgery was recommended.

1/26/01 – Claimant was seen at Barnes Care for an injury she experienced that day. Claimant denied prior back injuries. X-rays were performed, and she was provided conservative medical care including medications.

1/29/01 – Claimant was re-evaluated at Barnes Care. She reported improvement and was released to limited work. Limited physical therapy was ordered.

1/31/01 – 2/5/01 – Claimant attended two sessions of physical therapy.

2/05/2001 – Claimant was seen at Barnes Care. Claimant complained of low back pain that radiated into her legs. She reported that the pain she was having was identical to the pain she had previously experienced. She was advised to follow-up with Dr. Krettek.

1/11/2005 – At her request, Claimant was examined by Dr. Margolis, a neurologist. Claimant told Dr. Margolis her injury occurred at work on July 30, 2000, she had experienced immediate back and bilateral leg pain, and she had gone to the emergency room. Dr. Margolis opined Claimant's work injury had caused her preexisting spinal stenosis to become symptomatic, and rated her injury at 30% BAW PPD.

7/03/06 – At Employer's request, Claimant was examined by Dr. Mirkin, an orthopedic spine surgeon. Dr. Mirkin opined Claimant's degenerative condition preexisted her work injuries, but the condition was made symptomatic by the work injuries.

12/20/08 – At her request, Claimant was seen by Dr. Shuter, a neurologist. Dr. Shuter opined Claimant's work injury had aggravated her preexisting degenerative spine disease, and he rated her injury at 70% BAW PPD.

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

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

Issues related to permanent partial disability

Claimant alleges on January 26, 2001, she sustained an injury by accident to her low back on Employer’s icy driveway. Claimant reported the injury and Employer provided medical care. Employer asserts Claimant suffered no permanent disability in regard to the injury. Section 287.190.6 RSMo 2000⁹ defined the term “permanent partial disability” as follows:

“Permanent partial disability” means a disability that is permanent in nature and partial in degree. . . .

Very limited admissible medical evidence is available for review, and all admissible medical evidence was provided by Employer through the report and deposition of Dr. Bernardi. Dr. Bernardi’s report noted Claimant’s January 26, 2001 injury was treated at Barnes Care, and she was released and returned to the care of her neurosurgeon, Dr. Krettek, when she told the Barnes Care physician her current symptoms were *identical* to the symptoms she had prior to the driveway injury.

The trier of fact determines whether medical evidence is accepted or rejected, and the trier may disbelieve uncontradicted or unimpeached testimony. *Alexander v. D.L. Sitton Motor Lines*, 851 S.W. 2d 525, 527 (MO banc 1993). Based on the foregoing discussion, I find the information contained in Dr. Bernardi’s report to be credible. Employer provided all necessary medical care required for the injury, Claimant’s low back/leg symptoms returned to baseline after the injury, and accordingly I find Claimant has no permanency related to the January 26, 2001 injury.

CONCLUSION

Claimant suffered no permanency following the January 26, 2001 injury. Employer has fulfilled all obligations. As there is no permanency to this injury SIF owes no benefits. The remaining issues in dispute are moot. The attorney liens are dismissed.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

⁹ Unless otherwise indicated, all further references will refer to §287.020 RSMo 2000.

