

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

Injury No.: 99-171511

Employee: Michael G. Gibbons

Employer: The Quaker Oats Company

Insurer: Self-Insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 30, 2009. The award and decision of Administrative Law Judge Lisa Meiners, issued September 30, 2009, 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 20th day of May 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Michael Gibbons

Injury No. 99 171511

Employer: Quaker Oats Co.

Additional Party

Insurer: Old Republic Insurance Co.

Hearing Date: February 22, 2001; submitted 4/10/2001 Checked by: NGA

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: December 7, 1999
5. State location where accident occurred or occupational disease contracted: Buchanan 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: Employee was removing a heavy vacuum pump from a machine and injured his back
12. Did accident or occupational disease cause death? No Date of death?
13. Parts of body injured by accident or occupational disease: Back and body as a whole
14. Compensation paid to date for temporary disability: None

15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? Not determined by this hearing
17. Employee's average weekly wages:
18. Weekly compensation rate: \$578.48/303.01
19. Method wages computation: By stipulation

COMPENSATION PAYABLE

20. Amount of compensation payable:

Employer is ordered and directed to provide such medical treatment as may be necessary to cure and relieve the claimant's condition.

TOTAL:

Each of said payments to begin _____ 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 COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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: JAMES NADOLSKI

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Michael Gibbons

Injury No. 99 171511

Prior to presenting evidence the parties stipulated that the issues to be determined by this hearing are:

1. Did the claimant sustain an injury by accident or occupational disease arising out of and in the course of his employment on or about December 7, 1999.
2. Is the claimant entitled to an award for additional medical aid.

The parties agreed that on December 7, 1999, Michael Gibbons was an employee of Quaker Oats. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation law and was insured by Old Republic Insurance Co.

The employer did not admit notice of claimant's injury, but did not raise notice as a defense. A timely Claim for Compensation has been filed.

The parties also agreed the correct rate of compensation is \$578.48 for temporary total disability and \$303.01 per week for permanent partial disability. No medical aid has been provided.

The claimant is asking that the amount of temporary total disability or past medical aid to not be determined by this hearing.

The first witness to testify was Scott Bergman. I find him to be a believable witness.

Mr. Bergman was an employee of Quaker Oats. He worked in the maintenance department. His shift was 7:00 a.m. until 3:00 p.m.

On the night of December 7, 1999, he received a telephone call at his home asking that he come to the Quaker Oats plant and help remove a vacuum pump. He arrived at the plant between 10:00 p.m. and 1:00 a.m. When he arrived at the plant he found the claimant trying to remove the vacuum pump. the pump weighed over 300 pounds.

Mr. Bergman said that the claimant was favoring his right leg. He said the claimant told him that something was wrong with the claimant's leg. It felt like pins and needles. He said the claimant attempted to pour oil into a machine and was not able to be stable.

The claimant testified in person. He had been employed at Quaker Oats for 13 ½ years, the last twelve years in the maintenance department.

On December 7, 1999, about 3:00 p.m. he started to remove a vacuum pump from a motor. The vacuum pump weighed about 350 pounds. He had done this seven or eight times previously. Normally it takes three people to remove the vacuum pump and replace it with a new one.

About eight or nine p.m. he was attempting to slide the vacuum pump on metal when he had a feeling in his leg that felt as if he had spilled hot oil on his leg. In a short period of time his leg quit burning and started tingling.

He said Scott Bergman arrived about 11:00 p.m. The claimant finished working on the machine about 4:30 a.m. and went home. He thought he had pulled a muscle.

The claimant said about three days later he was standing at a computer table at work and his right leg collapsed and he fell. This was about 9:00 p.m. on a Friday. The company nurse was not available.

He found a bump on his buttock. He said he was bewildered and was afraid because his right leg was not working. He did not associate this with what he thought was a pulled muscle in his right leg.

He said the pain became severe and he had an appointment Tuesday with Dr. Cathcart. He said he was afraid he had cancer and had tests for cancer.

He was referred to Dr. Mujica and had MRIs performed. After three visits he was referred to Dr. Freeman.

The claimant said he was in severe pain, couldn't sleep and was incontinent.

He was given a series of three epidural steroid shots. These gave him relief but he was still in pain.

He then was referred to Dr. Middleton who gave him bio-toxin injections. This was helpful. It cured his incontinence, relieved his pain and allowed him to sleep, but the bio-toxin relief only lasted four months.

He said by the end of December, 2000, his symptoms had returned. He said he is unable to function in the work place in his present condition.

The claimant admitted that prior to December 7, 1999, he had some problems with his low back. He denied telling Dr. Cathcart he had back pain for two months prior or telling Dr. Mujica that he had pain radiating in his right leg for three months.

Mr. Gibbons said he did not realize what the cause of his injury was until he was diagnosed by Dr. Freeman. Dr. Freeman told him of several possible causes of his condition. He said the moving of the vacuum pump on December 7, 1999, was the only thing that he had done that would have been a possible cause.

The claimant's wife testified. Her testimony conformed with what the claimant had testified about his condition.

David McDonald testified for the employer. I found him to be a believable witness. He is the occupational health nurse for Quaker Oats.

He said on October 26, 1999, the claimant had asked for back an over the counter medication used for back pain.

He said the claimant did not mention the vacuum pump incident until February 3, 2001. He said the claimant had blamed his condition on a tumor or cancer until January 2, 2000, when he found out it was not a tumor or cancer and told him it must be work related.

Dr. Kenton C Freeman, M.D. testified by deposition taken on January 26, 2001, and admitted into evidence as Claimant's Exhibit A. All objections thereto are hereby overruled.

Dr. Freeman is both a chiropractor and a doctor of medicine. He said his specialty was physical medicine and rehabilitation.

Dr. Freeman said he first examined the claimant on January 14, 2000. He said the claimant had been referred to him b Dr. Cathcart. He had received at least limited notes from Dr. Cathcart. He also took a history from the claimant.

Dr. Freeman said there was no history of prior symptoms. The only history that it corresponded or correlated with would be the ideology for which he had been given, which was the lifting incident.

Dr. Freeman diagnosed the claimant's condition as an exacerbation of his chronic right periformis syndrome with sciatica signs and symptoms.

Dr. Freeman said in his opinion that the most positive correlation with the symptoms he has relates back to the strain injury initially a few days before the onset of symptoms. He said the lifting of the vacuum pump was the only likely causation he was aware of.

The claimant went to the radiology department of Heartland Regional Medical Center on December 14, 1999, one week after his injury. The records were admitted as Employer/Insurer's Exhibit 1. The records noted:

"C/O right leg radiculopathy – 3 months, urinary incontinence, 1 week."

This was one week after his injury. The claimant denied any prior leg radiculopathy.

Employer/Insurer's Exhibit 2 is Dr. David W. Cathcart's records indicating claimant said he was having pain in his back for past two months and then it started radiating down his right leg into his foot. It then discusses the loss of control of his urine.

The report does not indicate when the pain radiating down his right leg started. By using the word "then" I believe he meant after the back pains of two months intermittently. It may have been December 7, 1999, or some other date. The same with his loss of control of his urine.

Employer/Insurer's Exhibit 3 is the records of Dr. Patricio H. Mujica. On the claimant's patient information the claimant wrote for date symptoms started: 6-3-99. The claimant said he is dyslexic with numbers and this was his ATM pin number.

The records of December 1;7, 1999, indicate his symptoms started insidiously approximately three months ago. and then approximately three weeks ago he started having some incontinence.

The real issue in this case is was Dr. Freeman's opinion believable because he had not been furnished copies of the radiology department of Heartland Regional Medical Center and the records of Dr. Mujica. He had been furnished records of Dr. Cathcart.

The records of the radiology department indicate that his urinary incontinence started one week prior, which was the date of his accident.

While Dr. Freeman was not given the reports he was questioned as to how prior injuries and symptoms would affect his opinion. He answered that "they could easily be two separate situations. There may be a weakness there that was there beforehand. If there was an improvement in symptoms and then this other event happened they could be two separate events."

He also said: "If the symptoms were exactly the same at that time and it had carried through and someone had followed up serially with him like I did and told me that there were the same findings that I had, I would say they were probably related."

The claimant has never denied that he had prior back pain. All of the evidence indicates at the very least his symptoms were worse after December 7, 1999. There was no evidence that his leg had been giving out prior to December 10, 1999. Even if he had some incontinence it became much more severe after December 7, 1999.

His symptoms were not exactly the same after the accident as they were prior to his moving the vacuum pump on December 7, 1999. This was the basis for Dr. Freeman's opinion.

I believe that it is important to note that Dr. Freeman found the lifting of the vacuum pump caused an exacerbation of his chronic right piriformis syndrome. This is an indication of Dr. Freeman's being aware of the claimant having a prior condition that had been exacerbated.

Dr. Freeman also found it would be appropriate for him to try some injections such as bio-toxin and if the symptoms still correlate then possibly a surgical relief and treatment for chronic pain syndrome.

I believe the opinion of Dr. Freeman who was the only doctor to testify. I find and believe from the evidence that on December 7, 1999, the claimant sustained an injury arising out of and in the

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course of his employment. As a result of this injury I order and direct the employer to provide such medical treatment as may be necessary to cure and relieve the claimant's condition.

James Nadolski is hereby assigned a lien in the amount of 25 percent of this award for necessary legal services provided claimant.

Dated: April 30, 2001

Made by: /s/ Nelson G. Allen

Administrative Law Judge
Div. of Workers' Compensation

A true copy: Attest:
/s/ Lawrence D. Leip

Lawrence D. Leip
Director
Division of Workers' Compensation