

## FINAL AWARD ALLOWING COMPENSATION

Injury No.: 06-001605

Employee: Walter Glanz  
Employer: City of St. Louis  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this opinion modifying and supplementing the award of the administrative law judge. The award and decision of Administrative Law Judge Joseph E. Denigan, issued May 16, 2011, is attached and incorporated only to the extent it is not inconsistent with our findings, conclusions, and analysis herein.

### **Preliminaries**

After carefully considering the evidence, we agree with the result reached by the administrative law judge but cannot adopt his medical causation analysis because it includes a number of factual errors, typographical mistakes, and problematic comments. We issue this separate opinion on the issue of medical causation.

### **Discussion**

#### Medical causation

The chief contention in this matter is over the question of medical causation. The parties dispute whether an intervening injury in June 2006 broke the chain of medical causation. We wish to clearly and plainly express that we find Drs. Doll and Coyle (employer's experts) to be more credible on the question than Drs. Levy and Ruyle (employee's experts). Dr. Levy's testimony in this matter strikes us as somewhat tentative and ultimately unconvincing when compared with the testimony from Dr. Doll, while Dr. Ruyle focused narrowly on his reading of the MRIs and did not appear to take into account employee's dramatic change in symptoms in June 2006 or the history employee provided Dr. Doll of a new injury, and ultimately agreed, on cross-examination, that there was a change in the June 2006 MRI (specifically, that the right L3 exiting nerve root appeared slightly thickened and inflamed), and that this change could be the result of a new injury.

We do not adopt any finding of the administrative law judge characterizing expert medical testimony as "unconventional," in order to avoid appearing to substitute our own lay opinions on the subject of medical causation, nor do we adopt any finding that faults Dr. Ruyle for providing addendum notes on the MRIs or suggesting the doctor had some improper motive for doing so. Finally, we do not adopt any finding that characterizes doctor testimony as "disingenuous." Both parties provided testimony from

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well-qualified experts in this matter. Our task is to discern what testimony is most credible. We find Dr. Doll and Dr. Coyle most credible. For this reason, we adopt the finding of the administrative law judge that employee sustained a new injury in June 2006 which resulted in a change in employee's symptoms, physical pathology, and overall medical condition. We find employee reached maximum medical improvement from the effects of the January 2006 work injury on May 22, 2006, his last day treating with Dr. Doll for the condition caused by the work injury. We find employee sustained a 20% permanent partial disability of the body as a whole as a result of the work injury.

Because employee's claims for additional compensation are dependent upon a finding that his condition after June 2006 was a result of the work injury, no other compensation is awarded.

#### Preexisting conditions

On page 10 of his award, the administrative law judge found employee suffered a 25% preexisting permanent partial disability of the low back based on factors he believed "would normally comprise the foundation for an opinion of preexisting PPD," despite noting that no medical expert in this case provided an opinion that would support such a finding. The administrative law judge went on to apportion the disability he believed was related to this preexisting condition as against the effects of the work injury.

We do not adopt this finding, as it is unsupported by the record. We discount any finding, analysis, or conclusion resting upon the administrative law judge's lay opinion as to the existence of preexisting low back disability or its apportionment as against the effects of the work injury.

#### Second Injury Fund liability

On page 11 of his award, the administrative law judge applied the 15% "major extremity injury only" threshold for triggering Second Injury Fund liability under § 287.220.1 RSMo. We disagree with this analysis. At the time of the work injury, employee had undergone bilateral hip surgeries referable to blocked arteries, so we conclude the 50 weeks (or 12.5%) "body as a whole" threshold is appropriate.

Applying the 12.5% threshold, we find employee failed to meet his burden of establishing Second Injury Fund liability. Dr. Levy was the only expert to assign permanent partial disability to employee's bilateral vascular conditions, but he did not credibly explain his rating, and acknowledged that he didn't review any medical records from before January 2006. Employee testified he didn't have any problems with either leg after his surgeries, other than he has to take medications. We find that employee sustained a 2.5% permanent partial disability of the body as a whole referable to each surgery. We find employee also sustained a 2.5% permanent partial disability of the body as a whole referable to the memory loss he experiences as a result of the stroke he suffered during surgery. This amounts to a total 7.5% preexisting permanent partial disability of the body as a whole. This is insufficient to meet the 12.5% threshold under § 287.220.1.

For these reasons, employee's claim against the Second Injury Fund is denied.

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**Award**

Based upon the foregoing, we affirm the award of the administrative law judge to the extent it is not inconsistent with our findings, conclusions and analysis herein.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

The award and decision of Administrative Law Judge Joseph E. Denigan, issued May 16, 2011, is attached and incorporated only to the extent it is not inconsistent with our findings, conclusions, and analysis herein.

Given at Jefferson City, State of Missouri, this 15<sup>th</sup> day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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James Avery, Member

DISSENTING OPINION FILED

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

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### **DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I disagree with the majority's choice to limit employee's recovery in this matter to 20% permanent partial disability of the low back.

On January 4, 2006, employee was changing a tire on a runway sweeper when he felt a sudden sharp pain in his lower back. Employer sent employee for treatment with its workers' compensation doctors, who diagnosed a lumbar strain and provided conservative treatment. Employee treated with Dr. Doll from February 8, 2006, through June 28, 2006. Throughout, employee consistently complained of right lower extremity pain and low back pain. Lumbar injections provided fleeting relief but did not cure the pain. Eventually, employer's doctors decided employee had reached the limits of what conservative care could provide in terms of relief from the effects of the work injury, and began the process of sending employee back to work.

In July 2006, employer saw a chance to cut off employee's treatment when employee came in complaining of increased back pain following an incident at home moving landscaping bricks. Employee had been participating in rehab and work hardening and so had been performing activities that were at least as strenuous as moving the landscape bricks, but employer and its doctors chose to consider this event an "intervening injury" with the result that employer cut off his treatment and temporary total disability benefits on June 28, 2006. Because employer's doctors never released him to return to full-duty work, and because employee's continuing symptoms from the work injury prevented him from returning to work, employer ultimately went on to discharge employee, with the effect he is now without workers' compensation benefits or a job.

I disagree with the majority's credibility determination. I find Dr. Levy and Dr. Ruyle more credible than Dr. Doll and Dr. Coyle. In my view, employer has seized on the minute difference in the June 2006 MRI in order to unfairly deny compensation in this matter. All of the doctors agree that the only change in the June 2006 MRI is a 1 mm increase in protrusion at L3-4, a disc that was already protruding as a result of the work injury. As Dr. Ruyle explained, this is not a "new" condition, but merely a continuation of the work injury. I find Dr. Ruyle's testimony most logical and persuasive.

Seeking relief from his debilitating low back pain, employee ultimately underwent surgery on August 10, 2006. His symptoms continued. Employee underwent a second surgery on December 28, 2006. Employee has been unable to return to work. Sherry Browning, the vocational expert, testified on behalf of employee that the combination of his age, significant physical limitations, back and hip disability, lack of transferable skills, and memory problems were of such magnitude as to render employee permanently and totally disabled and unable to compete in the open labor market. Ms. Browning opined employee would be permanently and totally disabled given the effects of the January 2006 work injury considered in isolation. Dr. Levy agreed. I find Dr. Levy and Ms. Browning credible. I find employee is permanently and totally disabled as a result of the January 2006 work injury.

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I would modify the award of the administrative law judge and enter an award granting employee's past and future medical benefits, temporary total disability, and the permanent total disability benefits to which I believe employee is entitled.

Because the majority has determined otherwise, I respectfully dissent from the decision of the Commission.

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Curtis E. Chick, Jr., Member