

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

Injury No.: 05-017199

Employee: Jeffrey Hampton
Employer: Randy Hampton
Insurer: Travelers Commercial Casualty

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 April 13, 2011. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued April 13, 2011, 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 2nd day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Jeffrey Hampton Injury No. 05-017199
Dependents: N/A
Employer: Randy Hampton
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
Insurer: Travelers Commercial Casualty
Hearing Date: 12/13/10 & 1/12/11 Checked by: MEH

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: 2/10/05
5. State location where accident occurred or occupational disease was contracted: GREENE 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? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted: LIFTING A PATIO DOOR WHEN THE OTHER PERSON LIFTING IT DROPPED IT.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: BACK AND BODY AS WHOLE
14. Nature and extent of any permanent disability: 10%
15. Compensation paid to-date for temporary disability: \$14,277.25
16. Value necessary medical aid paid to date by employer/insurer? \$13,752.58

Employee: Jeffrey Hampton

Injury No. 05-017199

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$680
- 19. Weekly compensation rate: \$453.33/\$354.05
- 20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: NONE

56 3/7 weeks of temporary total disability (or temporary partial disability) AT \$200.44 PER WEEK FOR AN UNDERPAYMENT

40 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

- 22. Second Injury Fund liability: Yes No Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:
weekly differential (0) payable by SIF for 0 weeks, beginning N/A
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

- 23. Future requirements awarded: NONE

Said payments to begin immediately and to be payable and 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:

MARK MORELAND

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jeffrey Hampton Injury No. 05-017199
Dependents: N/A
Employer: Randy Hampton
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
Insurer: Travelers Commercial Casualty
Hearing Date: 12/13/10 & 1/12/11 Checked by: MEH

The parties appeared before the undersigned administrative law judge on December 13, 2011, for a final hearing. The record was left open for 30 days and closed on January 12, 2011. The claimant appeared in person represented by Mark Moreland. The employer and insurer appeared represented by Jeffrey Deane and Douglas O'Neill. Memorandums of law were filed by February 15, 2011.

The parties stipulated to the following facts: On or about February 10, 2005, Randy Hampton was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Travelers Commercial Casualty. On the alleged injury date of February 10, 2005, Jeffrey Hampton was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about February 10, 2005, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in Greene County, Missouri. The claimant notified the employer of his injury as required by Section, 287.420 RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$680, which is sufficient to allow a compensation rate of \$453.33 for temporary total disability compensation, and a compensation rate of \$354.05 for permanent partial disability compensation. Temporary disability benefits

have been paid to the claimant in the amount of \$14,277.25, representing 56 3/7 weeks in disability benefits, at the rate of \$252.89. The employer and insurer have paid medical benefits in the amount of \$13,752.58. The attorney fee being sought is 25%.

ISSUES:

1. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
2. Any temporary total benefits owed to the claimant.
3. The nature and extent of permanent disabilities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The claimant is 53 years old. He graduated from high school in 1975. He did not attend college or take any vocational training except auto body classes in high school. During the course of his life he has had on the job training in carpentry. He does not know how to use a computer and does not have one in his home. He is divorced with two children. He lives alone in a trailer outside of Fulton, Missouri.

The claimant has worked off and on during the past 20 years for his brother, Randy Hampton, the employer in this claim. Randy Hampton performs construction work consisting of remodeling or building new homes. Claimant has also worked as self employed contractor; for Sinclair Science doing maintenance work; he performed various construction jobs including building patios, pouring concrete; and for Grime Busters cleaning hoods and vents in restaurants.

Prior to February 10, 2005, the claimant would have occasional pain in his back, neck, and shoulders. He testified that he would get chiropractic manipulations and these problems would resolve. He said he went to Dr. Donald Shoup, an osteopath, and Dr. Roger Morrison, a chiropractor.

On February 10, 2005, claimant and his brother were lifting a large patio door. As they were completing the lift, his brother dropped his side of the door. The claimant was still holding his side of the door. The claimant testified that when the door hit the ground he felt his left hip give and snap back. He felt a pop in his low back and pain radiating from it. He could not continue working and his brother took him to Dr. McDonnell, a chiropractor in Springfield, Missouri. The claimant returned home to Fulton, Missouri and contacted Dr. Morrison, his chiropractor.

Claimant saw Dr. Morrison on February 18, 2005, at which time he was having low back pain with pain radiating into his left leg. He had six to seven treatments with Dr. Morrison. On February 21, 2005, he went to the University of Missouri Emergency Room where he was prescribed over the counter NSAIDs, Flexeril, and instructed to follow up with his doctor. On February 22, 2005, he went to Boone Hospital Center with back pain. He was prescribed Vicodin and Flexeril by Dr. Larry Scroggins who ordered an MRI on March 7, 2005, which showed a central disc herniation at L5-S1.

The workers' compensation insurance company referred him to Dr. Matt Thornburg at Columbia Orthopedic Group. He prescribed physical therapy for approximately three to three and one half weeks. Dr. Thornburg returned him to work with restrictions of limited bending, stooping, and alternate sit and stand. The claimant did not return to work with these restrictions. Dr. Thornburg ordered work hardening. The claimant stopped after two days because of back pain. On August 9, 2005, Dr. Thornburg notes that he had treated the claimant conservatively and "I had a lengthy discussion with Mr. Hampton. This is a fairly difficult situation. He has been fairly non-compliant with my recommendations. He is not interested in an epidural steroid injection. His story has seemed somewhat inconsistent throughout treatment. With all this, I

believe I've done everything I can for him. I would recommend that he be rated and released today." Dr. Thornburg released him from treatment.

Claimant on his own then went to Dr. David Robson, an orthopedic surgeon, in September 2005. Dr. Robson diagnosed internal disc derangement at L5-S1. He recommended a disc replacement. He thought this was a better option than a fusion because the claimant worked as a laborer. This surgery was not performed because claimant had an abscess of his tooth, then he next developed some intestinal disease, and in the end the claimant decided he did not want the surgery performed. Dr. Robson released the claimant on June 13, 2007. He imposed a 30 pound weight limit with no repetitive bending, stooping, twisting, or awkward positions. Dr. Robson imposed a 10% permanent partial disability. Dr. Robson testified that he kept the claimant off work while the surgery was pending and until he released him from treatment. Dr. Robson testified that the claimant was able to work under the restrictions he imposed. Regarding the time he had him off work, Dr. Robson testified: "I would have kept him off work until surgical decisions were clear, you know, which would be March of '06. So when I saw him September of '05 to March of '06, when I was working him up, I probably would have him off work unless there was desk work. But once the decision was made not to have surgery, then I had to come up with some parameters that I think he could function in and that is when I did the restrictions." He said that things were not happening very quickly with the claimant and that "he would disappear for like three months and then come back on my door step, so to speak. So taking care of him was a little different than a person I say we need surgery and I'll just keep you off until I do it in a couple weeks."

Dr. Thomas Musich examined the claimant at his request in November 2007. Dr. Musich noted paresthesia to light touch and pin prick over the L5-S1 dermatome on the left side, a positive Faber test and a positive left pyriformis test. Dr. Musich did not believe the claimant

was at maximum medical improvement and also recommended surgery. He also recommended a nerve conduction test and a discography. Dr. Musich testified that he believed if surgery was not performed he would do pain management as an alternative. He did say that when he talked to the claimant he was allergic to every pain medication he took and had a reaction so pain medication was not an alternative. Dr. Musich stated that claimant “is unable to perform activities that require operating power tools or equipment, driving any commercial vehicles, repetitively lifting any weight greater than 20 lbs. and should refrain from any activities that require digging, repetitive squatting, kneeling, or bending, or repetitively climbing any ladders, or stairs. Mr. Hampton is also unable to sit in 1 position for any length of time over 30 minutes without movement, or change in positioning.”

The claimant testified that he turned down the surgery recommended by Dr. Robson. He was afraid he might be worse than he was before and he felt he had poor health and might not live through the surgery. He testified that he still does not want any surgery. He said he turned down the injections by Dr. Thornburg because he had heard from people they got worse pain after these than they had before.

Claimant testified that he was allergic to a lot of medications, had lost a lot of weight and was extremely weak. He said his low back and leg have not changed significantly since he was hurt. He describes currently having severe pain in his back, leg and foot. He said it is not severe all the time, he has mild pain every day and it increases several times a week. He said he also has numbness in his leg which worsens with any movement or activity. He said on average he lifts the heaviest weight of eight pounds, a gallon of water. He said that bending, sitting, standing, reaching, climbing stairs, and walking causes an increase in pain.

Claimant said the only place he has worked since the date of the accident was for three days, three hours each day. He washed windows and cleaned up some brush. He has not applied for any jobs and did not request any help from the vocational counselors who interviewed him.

Claimant was evaluated by two vocational experts, Gary Weimholt, at his request, and Terry Cordray, at the request of the employer and insurer.

Claimant saw Gary Weimholt, a certified vocational counselor on April 14, 2008, at the claimant's request. Mr. Weimholt noted that the claimant presented very unkempt with long hair and a beard. The claimant stated that he had not slept in several days and had a great deal of pain at the interview. Claimant also told Mr. Weimholt that he was on nine medications, three for his stomach and the rest from his psychiatrist. Mr. Weimholt said that the claimant had trouble determining his age and he could not remember his zip code.

Mr. Weimholt reviewed the restrictions imposed by Dr. Thornburg, Dr. Robson, and Dr. Musich and noted they were similar in that the claimant should refrain from repetitive bending, twisting, or stooping, and avoid awkward positions. The lifting restrictions were between 20 – 30 pounds.

Mr. Weimholt administered the reading section of the Wide Range Achievement Test. He noted that the claimant was very slow at reading and did also note that “it is not clear if this was a true test of Mr. Hampton's reading ability since he expressed continual severe symptoms, visual problems and complained of sleep deprivation at the time of the interview.” Further testing was deferred. Mr. Weimholt also noted that the claimant has no computer skills.

It was Mr. Weimholt's opinion that based on his restrictions the claimant could not return to carpentry or construction work. He concluded that the claimant had no transferable skills to light or sedentary work. He noted the claimant was not computer literate and had not worked in an office or customer service setting. Mr. Weimholt testified that he looks at workplace

competencies based on surveys conducted by the State of Missouri which look at the kind of jobs employers are hiring for. He said that in addition to education and specific skills such as reading and math, there are other competencies such as interpersonal skills, good work habits, leadership, skills, computer skills, literacy skills, other specific job skills that a person might have. When asked how claimant's punctuality and personal hygiene impacted his employability, Mr. Weimholt said: "I think looking at his behavior in the interview, his restrictions on him, the kind of pain behavior that he exhibits, I don't think he would be able – be someone who would be able to maintain good work habits; in other words, get their work done at work and manage their time wisely at work without the need for more breaks or slowdowns at work. I don't believe this is an individual, either from his work history or from his presentation, that you could say has good interpersonal skills. That's not been demonstrated in any of his jobs."

Mr. Weimholt concluded that the claimant was unemployable in the open labor market as a result of the work injury of February 10, 2005. On cross-examination he testified that "the restrictions from the back alone combined with this person's particular profile was sufficient to take him out of the labor market."

Terry Cordray, a vocational rehabilitation counselor, examined the claimant on October 1, 2009, at the request of the employer and insurer. At the time of this interview, the claimant was no longer taking the medications he had when he saw Mr. Weimholt. He had taken Trazadone the night before to help him sleep. Mr. Cordray also described the claimant as dirty and disheveled; he was exhibiting pain behaviors such as moaning and rubbing his neck. He had difficulty rising from the chair and walking to the meeting room. Mr. Cordray stated that once the interview commenced, the claimant stopped exhibiting these behaviors. He also noted that the interview started at 8:35 and ended at 11:20. Other than a five minute break when claimant

stood and got a drink of water, he sat for one and one half hours at time for two episodes during the meeting.

Mr. Cordray interviewed the claimant, reviewed medical records, and performed vocational testing. He noted claimant graduated from high school, had some auto body and welding classes in high school, had on-the-job training in carpentry, has a chauffeur's license in the state of Missouri, and that the fact he had lost his license was not a vocational impairment as he only needed to pay back child support to get it reinstated.

Vocational testing performed by Mr. Cordray showed claimant at the low average range in reading, borderline range in arithmetic, and deficient in spelling. He also concluded that claimant would not be successful with "book learning" but would do better learning through demonstration.

In reviewing the medical records he noted the physicians have recommended similar physical restrictions. Dr. Musich imposed restrictions of repetitive lifting greater than 20 pounds, and no digging, repetitive squatting, kneeling, or bending or repetitively climbing any ladders or stairs. He said he could not sit over 30 minutes without changing positions. Dr. Robson limited claimant to 30 pounds with no repetitive bending, stooping, twisting or awkward positions. Dr. Thornburg limited him to no lifting over 25 pounds, no prolonged sitting or standing, or no repetitive bending, twisting or stooping. In his report Mr. Cordray states: "Therefore it appears from a review of the medical records that as far back as May 3, 2005, Mr. Hampton retained the capacity to perform light work that did not require repetitive bending, kneeling, twisting, or stooping." He also noted that the claimant had been advised he could not return to his previous work as a carpenter, cement finisher, or laborer. He also noted the claimant retained his ability to perform work as a truck driver and that he could drive locally in such jobs as parts delivery, food delivery or flower delivery. He further notes that the claimant

had not attempted to secure any type of work since February 2005, although the restrictions would have allowed him to work in the light unskilled category.

Mr. Cordray concluded that the claimant was not totally disabled. In his opinion, if the claimant made an effort he could obtain entry level unskilled jobs, that these jobs exist in the open labor market, and that it would be reasonable for an employer to hire claimant if he would maintain a full-time effort to secure employment. He felt the claimant was inconsistent in his vocational testing compared to being a high school graduate, and that he was inconsistent in his pain behaviors.

In his deposition he stated: "He's a high school graduate. It's my opinion that based upon the objective medical evidence of the ability to lift between 20 and 30 pounds provided by the doctors, the fact that he's a high school graduate, that he can certainly perform unskilled light occupations that would not require repetitive bending or extensive amounts of sitting or extensive amounts of standing. Those jobs are light janitorial work, cashiers, a retail salesperson, light delivery driver, and a forklift operator. Those jobs do exist in the labor market in larger communities such as Jefferson City and Columbia. Those jobs typically pay between eight and \$10 an hour."

Regarding claimant's interpersonal skills, Mr. Cordray testified, "I agree that he lacks those skills. I disagree that those skills are necessary in unskilled entry level, low level types of jobs such as cashiering or as a janitor. I really don't think that there's that much of managing time or interpersonal skills. Obviously all employers want their employees to be punctual and they want them to have good hygiene, and this man has the ability to do that."

1. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

The claimant has refused treatment recommended by the various treating doctors, including medications, injections and surgery. While there have been recommendations of future treatment, I find that the claimant has been given an opportunity to have these provided and has declined. I do not find that there is any further obligation on the part of the employer to provide this treatment. Therefore, no future medical treatment is ordered.

2. Any temporary total benefits owed to the claimant.

The claimant was paid temporary disability for 56 $\frac{3}{7}$ weeks at the rate of \$252.89. The parties agree that the appropriate rate is \$453.33. Therefore the claimant is entitled to an underpayment of \$11,310.53 based on 56 $\frac{3}{7}$ weeks at \$200.44. I do not find any further temporary disability owed to the claimant.

3. The nature and extent of permanent disabilities.

After carefully considering all of the evidence, I do not find the claimant permanently and totally disabled. The medical restrictions imposed by all of the physicians are very similar and put claimant in a light work category. I give more weight to and find the opinion of Mr. Cordray more convincing. The claimant was taking nine medications and was having difficulty functioning on a very basic level when he saw Mr. Weimholt. This prevented Mr. Weimholt from getting a realistic impression of the claimant and prevented him from adequately testing the claimant. In fact he had to stop the testing because he felt claimant could not continue. Furthermore, the factors which appear to have the biggest impact on the claimant's employability are his interpersonal skills; his personal hygiene, his punctuality, and his actually seeking employment are all things that are within the claimant's control, not a result of his injury.

Therefore, based upon the opinion of Dr. Robson, claimant has sustained a permanent partial disability of 10% of the body as a whole as a result of the work injury of February 10, 2005.

Attorney for the claimant, Mark Moreland, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: Approved 4/13/11

Made by: /s/ Margaret Ellis Holden

Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Naomi Pearson

Naomi Pearson
Division of Workers' Compensation