

CORRECTING AWARD

FINAL AWARD ALLOWING COMPENSATION  
(Modifying the Award and Decision of Associate Administrative Law Judge)

Injury No.: 01-154605

Employee: Elbert Hicks  
Employer: Wire Rope Corporation of America  
Insurer: Missouri Private Sector Individual  
Self-Insurers Guaranty Corporation  
Date of Accident: December 10, 2001  
Place and County of Accident: Kansas City, Missouri

The above-entitled 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 briefs of the parties, and considered the entire record. Pursuant to §286.090 RSMo, the Commission modifies the award and decision of the administrative law judge dated January 31, 2008.

I. Preliminary Matters

The Commission affirms all findings and conclusions of law made by the administrative law judge, but for the determination concerning the issue of past medical expenses. As to the liability of the employer/insurer, the administrative law judge awarded unpaid medical expenses of \$35,789.24. The Commission modifies that determination, by concluding employee is entitled to reimbursement for medical expenses in the sum of \$32,697.58.

II. Past Medical Expenses

We disagree with the administrative law judge's determination as to unpaid medical expenses. A sufficient factual basis to award past medical expenses exists when employee identifies all of the medical bills as being related to and the product of his work related injury and the medical bills are shown to relate to the professional services rendered by medical records in evidence. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. banc 1989). When employee "presents testimony and evidence relating medical bills to an injury and places in evidence the accompanying medical bills and records, the burden of going forward with the evidence shifts to the employer or insurance carrier to prove that such medical bills were unreasonable and unfair." *Esquivel v. Day's Inn*, 959 S.W.2d 486, 489 (Mo.App S.D. 1998).

Employee satisfied his burden of proof with regard to the past medical expenses for treatment received from Dr. MacMillan, including the L5-S1 lumbar interbody fusion performed on June 3, 2005, as he properly offered into evidence medical bills pertaining to such treatment and testified that the medical bills and treatment were related to and the product of his work-related injury. Employer/Insurer failed to produce any evidence or testimony to establish that those medical bills were not reasonable and fair.

We agree with the unpaid medical expenses awarded by the administrative law judge from Doctors Hospital totaling \$32,327.58. However, we disagree with the administrative law judge's finding that employee is entitled to expenses from: Dr. Anthony Lasalle (\$386.54); Cushing Medical (\$2,108.27 and \$28.23); Midwest Radiology (\$111.64); and Research Medical CE (\$826.98). None of these medical records are in evidence and therefore an award of medical expenses for these amounts is not supported. The total of the unsupported medical expenses is \$3461.66.

Employee has demonstrated that medical bills, excluded by the administrative law judge, were medically causally related to an effort to cure and relieve the employee from the effects of the work-related injury as required by §287.140 RSMo. We find that the medical record supports a causal relationship between the work injury and medical bills for treatment received from Dr. MacMillan from October 21, 2004 through February 15, 2005 (\$370), excluding the L-S x-rays (\$110.00) taken on October 21, 2004 as those medical records are not in evidence. The total amount employee is entitled to for past medical expenses is \$32,697.58.

### III. Conclusion

Based on the above modification, we find employer/insurer is liable to employee for past medical expenses in the amount of \$32,697.58.

The award and decision of Administrative Law Judge Lisa Meiners issued January 31, 2008, as modified, 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 3rd day of July 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

NOT SITTING  
\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

## **FINAL AWARD**

Employee: ELBERT HICKS

Injury No. 01-154605

Dependents: N/A  
Employer: WIRE ROPE CORPORATION OF AMERICA  
Insurer: MISSOURI PRIVATE SECTOR INDIVIDUAL SELF-INSURORS GUARANTY CORPORATION  
Additional Party: N/A  
Hearing Date: JANUARY 7, 2008  
Checked by: LM/pd

### **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 10, 2001.
5. State location where accident occurred or occupational disease was contracted: Kansas City, 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 occurred or occupational disease contracted: Claimant injured his low back attempting to move a 1,000-pound spool.
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: low back.
14. Nature and extent of any permanent disability: 25 percent permanent partial disability body as a whole.
15. Compensation paid to-date for temporary disability: Unknown.
16. Value necessary medical aid paid to date by employer/insurer? \$14,836.92
17. Value necessary medical aid not furnished by employer/insurer? \$39,377.88
18. Employee's average weekly wages: N/A.
19. Weekly compensation rate: \$329.42
20. Method wages computation: By stipulation.

### **COMPENSATION PAYABLE**

21. Amount of compensation payable:

unpaid medical expense..... \$35,789.24  
100 weeks for permanent partial disability from employer..... 100 x \$329.42 = \$32,942.00

TOTAL: \$68,731.24

22. Future requirements awarded: No. The Employee did not sustain his burden of proof.

Said payments to begin upon receipt of Award 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 24 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Keith Yarwood.

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: ELBERT HICKS Injury No. 01-154605  
Dependents: N/A  
Employer: WIRE ROPE CORPORATION OF AMERICA  
Insurer: MISSOURI PRIVATE SECTOR INDIVIDUAL SELF-INSURORS GUARANTY CORPORATION  
Additional Party: N/A  
Hearing Date: JANUARY 7, 2008 Checked by: LM/pd

On January 7, 2008, the parties appeared for hearing. The Employee, Elbert Hicks, appeared in person and was represented by Keith Yarwood. The Employer, Wire Rope Corporation of America and through its Insurer, Missouri Private Sector Individual Self-Insurers Guaranty Corporation, was represented by Ann Wickliffe.

### STIPULATIONS

At this hearing, the parties stipulated to the following:

- 1) that Employer and Employee were working subject to the law in Kansas City, Missouri;
- 2) that the Missouri self-insured Guaranty Corporation was its insurer;
- 3) that the Claimant filed his claim within the time allowed by law;
- 4) that the Employee gave notice as required by law;
- 5) that the Employer has paid \$14,836.92 in medical expenses and approximately 7 days of temporary total disability benefits;
- 6) that Claimant's permanent partial disability rate is \$329.42.
- 7) that the parties agree that an accident occurred within the course and scope of his employment on December 10, 2001 but dispute medical causation and medical treatment received after Claimant reached maximum medical improvement on August 5, 2002.

## ISSUES

The issues to be determined by this hearing are as follows:

- 1) whether the medical treatment of the low back received after August 5, 2002 was causally related to the December 10, 2001 date of injury;
- 2) whether the Employer is liable to Claimant for past medical expenses of \$39,377.88;
- 3) whether the Employer is liable to Claimant for future medical care; and
- 4) whether the Claimant sustained any injury and, if so, the nature and extent of that injury.

The parties agree that Claimant sustained injury to his low back on December 10, 2001 that occurred within the course and scope of his employment. However, the parties disagree that Claimant's physical symptoms of his low back after Dr. Ebelke found him at maximum medical improvement on August 5, 2002 are causally related to the work injury of December 10, 2001. The parties also dispute whether the medical treatment, including a fusion performed by Dr. MacMillan after August 5, 2002, was causally related to the December 10, 2001 injury.

Claimant began employment with Wire Rope in 1971. He worked performing various job duties that required heavy repetitive activity. Claimant did not have any back problems that were hindrances or obstacles to his employment prior to December 10, 2001.

On December 10, 2001, Claimant felt a sharp pain of his low back when attempting to move a 1,000-pound spool. The Employer immediately sent him for treatment. An MRI taken revealed degenerative disk disease at L5-S1 and a herniated disk at L3-4. Dr. Ebelke recommended a series of epidural injections. Thereafter, on March 29, 2002, Dr. Ebelke recommended surgery at the L5-S1 and L3-4 levels.

The Employer then sent Claimant to Dr. MacMillan who opined Claimant was a candidate for lumbar fusion. Dr. Ebelke advised against the fusion procedure and released Claimant at maximum medical improvement on August 5, 2002. However, Dr. Ebelke also noted, "I have no objections to him returning to see Dr. MacMillan if he still wishes to pursue the possibility of surgery." (See Dr. Ebelke's report of August 5, 2002.)

Claimant continued to work at Wire Rope after August 5, 2002. Claimant on many occasions requested additional treatment of his low back but was denied by his Employer. Claimant then sustained bilateral shoulder injuries that required surgical intervention. Claimant reached maximum medical improvement of his left shoulder on July 17, 2003 and reached maximum medical improvement of his right shoulder in June of 2004. Despite receiving treatment on his shoulders, Claimant, through his attorney, continued to demand medical care of his low back based on Dr. MacMillan's recommendations. His Employer denied the request.

In September of 2004, Claimant was involved in a motor vehicle accident. Claimant sustained injury to his neck and his left upper extremity. Claimant received treatment of those areas and eventually the neck and left upper extremity resolved. Claimant testified the pain of his low back remained the same as it did prior to the motor vehicle accident.

Thereafter, Claimant sought treatment of his low back on his own. He received epidural injections by a Dr. Aks in November 2004 without relief. On June 3, 2005, Claimant went to Dr. MacMillan, who performed a fusion as recommended in April of 2002.

Several doctors' opinion were admitted into evidence regarding medical causation of Claimant's low back condition after August 5, 2002 (the date of maximum medical improvement). The Employer's experts are Dr. Ebelke, Dr. MacMillan and Dr. Parmet. Dr. Ebelke, Dr. MacMillan and Dr. Parmet agree Claimant had a herniated disk and severe degenerative disk disease of his low back. In 2002, Dr. Ebelke noted the degenerative disk disease was pre-existing and that the only condition related to the December 10, 2001

accident was a disk herniation at the L3-4 level. On the other hand, Dr. Parmet, who evaluated Claimant in 2007, opined the following of Claimant's condition as "an acute injury exacerbating the extensive pre-existing disease." Parmet also found that Claimant continued to progress with degenerative changes in 2004. Dr. MacMillan did not issue an opinion regarding causation, but it should be noted he performed the same procedure as recommended in April of 2002.

The Employee's experts were Drs. Koprivica and Stuckmeyer. Dr. Koprivica opined that as a result of the December 10, 2001 injury, Claimant sustained a herniated disk at the L3-4 level. Koprivica felt the December 10, 2001 injury caused Claimant's asymptomatic degenerative disease of his low back to become symptomatic. However, Dr. Stuckmeyer found Claimant sustained both an acute injury on December 10, 2001 but that an occupational injury over a 30-year timeframe caused the degenerative disk disease.

I find based on Claimant's testimony as well as Dr. Koprivica and Dr. Parmet that the December 10, 2001 injury was a substantial contributing factor to Claimant's medical condition of symptomatic degenerative disk disease of his low back as well as a herniated disk at the L3-4 level. Indeed, there was no evidence presented showing Claimant had pre-existing disabilities of his low back prior to December 10, 2001. Indeed, I find the December 10, 2001 injury aggravated a pre-existing non-disabling condition/disease of his low back.

It has long been the law of this state that disability sustained by the aggravation of a pre-existing non-disabling condition or disease caused by a work-related accident is compensable, even though the accident would not have precipitated the injury in a person not having the condition. See Smessex v. Sachs Electric Company, 989 S.W.2d 206, pps. 214-215 (Mo.App. 1999); Kelley v. Banta and Stude Construction Co., Inc., 1 S.W.3d Ed. 43 (Mo.App. 1999).

While Claimant undoubtedly had degenerative disk disease prior to December 10, 2001, the evidence compels me to find that the condition produced no degree of permanent disability until December 10, 2001 and would not have been disabling but for the accident of December 10, 2001. The Employer is liable for the entire extent of a disabling condition where such condition is dormant until aggravated by work-related activities. See Miller v. Wefelmeyer, 890 S.W.2d 372 (Mo.App. 1994).

I also find the surgery and medical treatment of Claimant's low back to be reasonably necessary and causally related to the December 10, 2001 injury. Indeed, Dr. MacMillan, as an authorized doctor and prior to Claimant reaching maximum medical improvement of the December 10, 2001 injury recommended a fusion. Dr. MacMillan performed the exact procedure in 2005 as recommended in 2002. Therefore, the Employer is liable to Claimant for past medical expenses of \$35,789.24.

Claimant also sustained permanent partial disability as a result of the December 11, 2001 injury. Claimant is unable to sustain prolonged sitting, standing and walking that he did not experience prior to December 11, 2002. Claimant has weakness and pain of his low back and left leg.

Several doctors issued rating reports regarding permanent partial disability. Dr. Koprivica assigned a 35 percent permanent partial disability body as a whole due to failed back syndrome attributed to the December 10, 2001 injury. Dr. Parmet found Claimant sustained 5 percent permanent partial disability as a result of the December 11, 2001 work injury. Another Employer's expert, Dr. Ebelke, gave Claimant 7 percent permanent partial disability body as a whole assignment to the December 10, 2001 injury. Lastly, Dr. Stuckmeyer issued a 15 percent permanent partial disability of Claimant's low back as a result of Claimant's occupational duties. I find, based on Claimant's testimony, medical records and rating reports, Claimant sustained a 25 percent permanent partial disability body as a whole as a result of the December 10, 2001 injury.

Claimant also requests that future medical be left open. It is the burden of Claimant to show a reasonable

probability that future medical is needed as a result of the December 11, 2001 injury. I find that Claimant did not meet his burden of proof. Dr. Parmet and Claimant's own expert, Dr. Stuckmeyer, do not find future medical care is needed as a result of the December 11, 2001 injury. Therefore, the Employer is not liable to Claimant for future medical care as a result of the December 11, 2001 injury.

The Employer is liable to Claimant for 25 percent permanent partial disability body as a whole as a result of the December 10, 2001 injury or 100 weeks of compensation. This equals \$32,942. The Employer's also responsible for past medical expenses in the amount of \$35,789.24 as it relates to treatment received as a result of the December 10, 2001 injury. This Award is subject to an attorney's lien in the amount of 24 percent for services rendered by Keith Yarwood.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Lisa Meiners

*Administrative Law Judge*

*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Jeffrey Buker

*Director*

*Division of Workers' Compensation*