

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

Injury No.: 96-144924

Employee: Brenda Horton
Employer: Board of Education City of St. Louis
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: December 13, 1996
Place and County of Accident: St. Louis, Missouri

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 9, 2005 with this supplemental opinion. The award and decision of Administrative Law Judge Cornelius T. Lane, issued February 9, 2005, is attached and incorporated by this reference.

We offer this supplemental opinion to explain in some detail our agreement with the conclusions of the administrative law judge.

In the instant claim, the injured employee is alleging that she is entitled to permanent total disability benefits on account of her workers' compensation injury. Employee contends that either her alleged permanent total disability is solely the responsibility of the employer as the last injury in and of itself rendered the employee permanently and totally disabled; or, rather, the Second Injury Fund is liable for workers' compensation benefits in that the injured employee's preexisting disability or disabilities combined with the disability from the subsequent injury to create permanent total disability.

The administrative law judge awarded the following: (1) 15 weeks of temporary total disability; (2) 160 weeks of permanent partial disability; (3) unpaid medical expenses in the amount of \$1,750.00; and (4) no Second Injury Fund liability.

The employee appealed the award issued by the administrative law judge. As mentioned above, employee alleges she is permanently totally disabled, and either the employer or the employer in combination with the Second Injury Fund is liable. No other issues were appealed by any of the parties.

The Commission agrees with the findings and conclusions of law made by the administrative law judge, and agrees that the injured employee has been fully compensated for the work related accident.

Employee contends on appeal that she presently has a medical condition, psychiatric in nature, that renders her permanently totally disabled, when combined with the physical injury and resultant disabilities attributable to the accident occurring December 13, 1996.

After thoroughly reviewing the entire record the Commission does not agree with the contention of the employee, that she is permanently totally disabled due to this work related injury, and we affirm the decision of the administrative law judge.

Employee contends that she is permanently and totally disabled due in part to a psychiatric disorder, i.e., somatoform disorder. Mental conditions are compensable pursuant to the Missouri Workers' Compensation Act provided the mental condition is shown to have been directly and proximately caused by a work related accident. However, proof of a mental condition is not proof of causation. *Wilhite v. Hurd*, 411 S.W.2d 72 (Mo. 1967).

The employee may now be totally disabled due to her psychiatric condition, somatoform disorder, but the Commission agrees with the conclusion made by the administrative law judge that the employee has failed to prove and/or convince the Commission that this psychiatric condition was caused, precipitated or aggravated by the accident occurring December 13, 1996.

As to the issue of employee's psychiatric disorder, and any relationship to the employee's accident, the Commission finds the most credible, persuasive and cogent medical opinions produced at the hearing were the medical opinions rendered by Dr. Bassett.

Dr. Bassett thoroughly explains the employee's psychiatric disorder, the cause of such, and any possible relationship between the employee's psychiatric disorder and the accident occurring December 13, 1996.

Dr. Bassett unequivocally is of the opinion that the employee's somatoform disorder was a preexisting condition, independent of the accident occurring December 13, 1996. Dr. Bassett thoroughly discusses the employee's "strange" and "eccentric" behavior and is unequivocally of the opinion that the employee's psychiatric disorder is not attributable to her work related accident occurring December 13, 1996.

On cross-examination, the opinions of Dr. Bassett were not neutralized. Following are excerpts from questions and answers elicited on cross-examination:

Q Doctor, do you have an opinion whether the incident on December 13, 1996 caused or triggered an increase in the symptoms that she experienced from those condition – the psychiatric conditions that you've diagnosed?

A Yes.

Q What is that opinion?

A My opinion is that the incident of December, 1996 does not account for the severity of symptomatology that we see at this time.

Q I think actually my question – I'm not sure it answered the question. Let me try it a different way. Do you have an opinion whether the incident was a triggering or a trigger for an increase in the symptoms that she experienced from the conditions that you diagnosed?

A In my opinion, it was not a triggering event for the conditions that I diagnosed.

Q And that's not the question really.

A Okay. Sorry.

Q Not for the conditions themselves. I understand your testimony to be that these conditions preexisted the incident on December 13, 1996, but you agree that before that she was able to work, she worked full-time, she was able to function in her employment. Since then she has been unable to do so, and my question is do you agree that the incident was a triggering mechanism for an increase in her symptoms which have rendered her unable to return to work?

A No, I can't say that.

Q Okay. Are you aware of any other occurrence in her life that would – could be a possible cause for the increase in the symptoms that she experienced from those psychiatric conditions that you've diagnosed that would account for the problems that she's had since then?

A Her conditions themselves can account for that. The nature of her conditions is such that it can account for everything that we're seeing now.

Q So am I correct then, Doctor, that it's your testimony that the – the incident had no effect on her symptomatology from the psychiatric conditions that you diagnosed?

A The incident represents a point in time, but to call it a triggering event, my concern about committing to those words that I think you presented to me is that they may have a meaning that I'm not – a legal meaning that I'm not certain of.

Q And it appears that there was an incident that Brenda was involved in which has had a tremendous impact in her ability to work because of the increase in her symptoms that she has experienced from the psychiatric disorders that she had apparently at the time of the incident, and that the – to say that the incident is not a cause of the increased symptoms that she's experienced would be a statement that it was a coincidence or something, and I just – I don't see any other cause. I'm asking you if there is something else, please let me know. Otherwise, it appears to me that this is the event that triggered the increased symptoms that she's had.

A Coincidence is a distinct possibility with someone like Miss Horton, and I suppose I'm comfortable with the idea of triggering event, but again, I would take issue with causing her to be this ill because that isn't really what I'm trying to say.

Q That's why I phrase the question specifically the way I do, not in terms of causing the illness or the severity of the illness that she had, but in terms of causing the increase in symptoms that she has had since the date of that incident. I don't know and I'm not sure that people in the psychiatric field can say how ill she was as of the date of the incident and whether or not the incident caused an increase in her level of illness per se, but certainly I think it's fair to say, and I'm asking you whether you agree that the incident – or a result of the incident is that she has experienced substantial increase in her symptoms as a result of the incident. Do you agree with that?

A Again, with the caveats that, like you said, it doesn't necessarily account for how severe things became, sure, I can agree that the correlation in time represents a potential trigger.

The Commission is convinced from the medical expert testimony of Dr. Bassett, in conjunction with a review of employee's testimony and the entire record, that employee's psychiatric condition in dispute existed at the time of the accident occurring December 13, 1996, and subsequently has blossomed into a disability, independent of the accident. The preexisting disability necessary to trigger Second Injury Fund liability in a workers' compensation case is permanent partial disability existing at the time the work related injury was sustained. The Second Injury Fund is not responsible for progression of preexisting conditions or new conditions that develop after and unrelated to the work injury. *Wilhite v. Hurd*, 411 S.W.2d 72 (Mo. 1967).

As to employee's psychiatric disorder and liability of the employer, the Commission does not believe that this condition was caused, precipitated, or aggravated by the accident occurring December 13, 1996. The employee's psychiatric disorder preexisted the accident; is independent of the accident and injury; the accident did not cause, precipitate or trigger the condition; and the employee's current level of disability, problems and symptomatology, concerning her psychiatric disorder, are not attributable to the work accident occurring December 13, 1996.

In conclusion, the Commission agrees with the award issued by the administrative law judge that employee's psychiatric disorder was not attributable to or caused by the work accident occurring December 13, 1996, nor was the accident a substantial factor in any progression of the disorder since there is no medical causal relationship between the psychiatric disorder and the accident occurring December 13, 1996.

Accordingly, as to employee's psychiatric disorder, neither the employer nor the Second Injury Fund is liable for any workers' compensation benefits. There is a lack of a medical causal relationship between her psychiatric disorder and the accident occurring December 13, 1996. The employer has no liability or responsibility for the psychiatric disorder since the accident was not a substantial factor in causing or aggravating the psychiatric conditions; and the Second Injury Fund has no liability since the Second Injury Fund is not responsible for progression of a preexisting condition, i.e., the injured employee's psychiatric condition, which progression is unrelated to the work injury.

Furthermore, the injured employee testified she had no preexisting psychological or psychiatric problems nor had she ever been treated for a psychiatric disorder prior to the accident occurring December 13, 1996. Second Injury Fund liability is only triggered by a finding of the presence of an actual and measurable disability at the time the

work injury is sustained. There is no discernible psychiatric disability preceding the work related accident.

As to the physical injuries the injured employee did not testify as to any serious preexisting permanent conditions or injuries that would combine with the primary injury in a synergistic fashion, to render the Second Injury Fund liable.

The Commission finds that the administrative law judge correctly weighed and evaluated the lay and medical testimony in reaching conclusions as to disability and causation. The employee has been fully compensated for the work related accident.

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 5th day of October, 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

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|-------------------|---------------------------------------|------------------------------------|-----------|
| Employee: | Brenda R. Horton | Injury No.: | 96-144924 |
| Dependents: | N/A | Before the | |
| Employer: | Board of Education, City of St. Louis | Division of Workers' | |
| Additional Party: | Second Injury Fund | Compensation | |
| Insurer: | CCMSI Insurance Services Co. | Department of Labor and Industrial | |
| Hearing Date: | January 4, 2005 | Relations of Missouri | |
| | | Jefferson City, Missouri | |
| | | Checked by: | CTL:tr |

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 13, 1996
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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:
Claimant, a school teacher, was knocked to the school room floor by two students who were wrestling.
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: Head, neck and back
14. Nature and extent of any permanent disability: 15% of the body as a whole referable to the neck and 25% of the body as a whole referable to the back
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer? Unknown

Employee: Brenda R. Horton Injury No.: 96-144924

17. Value necessary medical aid not furnished by employer/insurer? \$1,750.00 (Hoffman Chiropractic)
18. Employee's average weekly wages:
19. Weekly compensation rate: \$513.01/\$268.72
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:

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| 15 weeks of temporary total disability (or temporary partial disability) | \$7,695.15 |
| 160 weeks of permanent partial disability from Employer | \$42,995.20 |

22. Second Injury Fund liability: No

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| TOTAL: | \$52,440.35 |
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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:

Kurt Hoener and William Goldstein

FINDINGS OF FACT and RULINGS OF LAW:

| | | |
|-------------------|---------------------------------------|---|
| Employee: | Brenda R. Horton | Injury No.: 96-144924 |
| Dependents: | N/A | Before the Division of Workers' Compensation Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri |
| Employer: | Board of Education, City of St. Louis | |
| Additional Party: | Second Injury Fund | |
| Insurer: | CCMSI Insurance Services Co. | Checked by: CTL:tr |

PREFACE

On January 4, 2005, a hearing was held in the above-mentioned matter. The Claimant, Brenda R. Horton, was represented by Attorneys William Goldstein and Kurt Hoener. The Employer, Board of Education, City of St. Louis, was represented by Attorney Robin Jefferson. The Second Injury Fund was represented by Assistant Attorney General Jennifer Chestnut.

ISSUES

1. The nature and extent of permanent disability resulting from Claimant's injuries arising out of her accident on December 13, 1996;
2. Permanent total disability;
3. Future medical care;
4. Liability, if any, of the Second Injury Fund; and
5. Unpaid medical bills.

STIPULATIONS

Claimant's TTD/PPD rates are \$513.01/\$268.72.

EXHIBITS

The Claimant offered the following exhibits:

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| Exhibit A. | Medical Records of HealthLine. |
| Exhibit B. | Medical Records of Hoffman Chiropractic. |
| Exhibit C. | Itemized Statement of Hoffman Chiropractic. |
| Exhibit D. | Medical Records of Hoffman Chiropractic. |

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| Exhibit E. | Medical Report of Dr. Llewellyn Sale, Jr. |
| Exhibit F. | Medical Report of Dr. J.H. Morrow, Jr. |
| Exhibit G. | Medical Evaluation of Kirkwood Psychological Group. |
| Exhibit H. | Medical Records of Psych Care Consultants. |
| Exhibit I. | Psychological Testing. |
| Exhibit J. | Medical Report of Dr. Richard Wetzel. |
| Exhibit K. | Vocational Report of Dr. Samuel Bernstein. |
| Exhibit L. | Supplemental Report of Dr. Samuel Bernstein. |
| Exhibit M. | Medical Report of Dr. Wayne Stillings. |
| Exhibit N. | Deposition of Dr. Samuel Bernstein. |
| Exhibit O. | Deposition of Dr. Wayne Stillings. |
| Exhibit P. | Deposition of Dr. Wayne Stillings. |

The Employer offered the following exhibits:

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|------------|---------------------------------------|
| Exhibit 1. | Deposition of Brenda Horton |
| Exhibit 2. | Medical Report of Dr. Gregg Bassett. |
| Exhibit 3. | Medical Report of Dr. Richard Wetzel. |
| Exhibit 4. | Personal Injury Interpretive Report. |
| Exhibit 5. | Deposition of Dr. Gregg Bassett. |

The Second Injury Fund did not offer any exhibits.

FINDINGS OF FACT

1. Claimant has worked as an art teacher for the City of St. Louis public schools since 1980. Claimant at the time of the hearing was 49 years of age.
2. Claimant, on December 13, 1996, while in the schoolroom, was knocked over by two students who were wrestling. As a result the Claimant fell on her back and struck the back of her head.
3. Claimant was involved in an automobile accident in 1980 and stated she hurt her low back.
4. Claimant went to see Dr. Hoffman, a chiropractor, in September of 1996 for pain in her low back and was given manipulation and hot packs up to the time of her fall in December 1996.
5. Claimant stated she has asthma and an enlarged heart.
6. Claimant, as a result of her December 13, 1996 fall, went to HealthLine Corporate Health Services and on that date was diagnosed with a low back strain and headache and given some pain medicine.
7. After Claimant's fall of December 13, 1996, she continued to see her chiropractor, Dr. Hoffman, as well as visits to HealthLine which further diagnosed low back strain, closed head injury with headaches, and a cervical strain.
8. Claimant kept under the care of HealthLine up until March 26, 1997, and at which time Dr. Randolph stated on his report that he felt Ms. Horton, as a result of the December 13, 1996 fall, had sustained a strain and contusions to the lumbar spine and cervical spine and felt that there should not be a diagnosis of a closed head injury because there was no evidence of the Claimant having lost consciousness as a result of her fall. Dr. Randolph further found that Claimant's multiple signs of various injuries were a result of symptom magnification.
9. Dr. Randolph further found that the Claimant was capable of working full duty and had reached maximum medical improvement as of March 26, 1997.
10. Dr. Bassett was of the opinion that from the psychological testing he administered to the Claimant and his evaluation of the Claimant from Claimant's description of some rather unusual physical symptoms which she alleges to flow from her back strain, that the Claimant has a somatoform disorder. Somatoform disorders are waxing and waning conditions where an individual experiences symptoms in the absence of or in excess of findings on either physical examination or diagnostic testing. Further, it was Dr. Bassett's opinion within a reasonable degree of medical certainty that the December 13, 1996 incident not occurred Claimant would have sooner or later developed somatoform symptoms which could be perceived as incapacitating.
11. Although many of the doctors who examined the Claimant since the December 13, 1996 incident were of the opinion that Claimant could not return to work is because of the somatoform diagnosis.

12. It is the opinion of the Court that Claimant had some preexisting conditions, to wit: back problems, enlarged heart, asthma, etc. as well as having suffered a fall on December 13, 1996, for which the Claimant sustained injury to her neck and low back.
13. The Claimant has received social security benefits as a result of her being unable to return to work because of previous physical conditions as well as psychiatric conditions.

RULINGS OF LAW

1. The Employer is to pay 15 weeks of temporary total disability, December 13, 1996 to March 26, 1997, at the rate of \$513.01 for a total of \$7,695.15.
2. The Employer is to pay the Claimant 15% of the body as a whole referable to the neck and 25% of the body as a whole referable to the back for a total of 160 weeks permanent partial disability at the rate of \$268.72 for a total of \$42,995.20.
3. The Employer is to pay the Claimant the sum of \$1,750.00 for medical bills from Dr. Hoffman, her chiropractor.
4. There is no Second Injury Fund liability.
5. There will be no future medical benefits to be paid by the Employer.

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Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation