

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

Injury No.: 06-062787

Employee: Brenda James  
Employer: GGNSC Dexter LLC  
Insurer: Insurance Company of the State of Pennsylvania  
(TPA: Constitution States Service Company)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: Alleged June 12, 2006  
Place and County of Accident: Dexter, Stoddard County, 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 April 25, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Carl W. Strange, issued April 25, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of September 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**AWARD**

Employee: Brenda James

Injury No. 06-062787

Dependents: N/A

Employer: GGNSC Dexter LLC

Additional Party:

Insurer: Insurance Company of the State of Pennsylvania  
(TPA: Constitution States Service Company)

Hearing Date: March 19, 2007

Checked by: CS/kh

## SUMMARY OF FINDINGS

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease? Alleged June 12, 2006
5. State location where accident occurred or occupational disease contracted: Dexter, Stoddard 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? No
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: EE alleged she was pushing the medicine cart and swung it around when she felt her back pop.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Alleged Low Back
14. Nature and extent of any permanent disability: Claim denied
15. Compensation paid to date for temporary total disability: \$76.31
16. Value necessary medical aid paid to date by employer-insurer: \$1,912.94
17. Value necessary medical aid not furnished by employer-insurer: Claim denied
18. Employee's average weekly wage: \$760.74
19. Weekly compensation rate:  
    \$507.16 for temporary total disability
20. Method wages computation: By agreement.
21. Amount of compensation payable: Claim denied
22. Second Injury Fund liability: Left Open (By Agreement)
23. Future requirements awarded: None.

## **FINDINGS OF FACT AND RULINGS OF LAW**

On March 19, 2007, the employee, Brenda James, appeared in person and by her attorney, Gary Matheny, for a hearing for a temporary award. The employer-insurer was represented at the hearing by its attorney, Stephen Doherty. The employee's claim against the Second Injury Fund was left open. By agreement of the parties, this award was made a final award since the ALJ did not find for the employee on the issue of accident. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

### **UNDISPUTED FACTS:**

1. On or about June 12, 2006, GGNSC Dexter LLC was operating under and subject to the provisions of the Missouri Workers' Compensation Act.
2. On or about June 12, 2006, the employee was an employee of GGNSC Dexter LLC who is insured by Insurance Company of the State of Pennsylvania with a third party administrator of Constitution States Service Company.
3. The employer had notice of employee's accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage was \$760.74 and her rate for temporary total disability is \$507.16.
6. The employer has furnished \$1,912.94 in medical aid to employee.
7. The employer has paid temporary total disability benefits for 1/7<sup>th</sup> weeks at a rate of \$507.16 per week for a total of \$76.31.

### **ISSUES:**

1. Accident
2. Medical Causation
3. Previously Incurred Medical Aid
4. Future or Additional Medical Aid
5. Additional Temporary Total Disability

### **EXHIBITS:**

The following exhibits were offered and admitted into evidence:

#### Joint Exhibits:

1. Medical Records of Missouri Southern Healthcare
2. Medical Records of Reza Jalal, M.D.
3. Medical Records of Benjamin Soeter, M.D.
4. Independent Medical Examination Report of Shawn Berkin, D.O.
5. Medical Records of Dr. Dorothy Munch
6. Medical Records of Jibben Medical
7. Medical Records of Dexter Internal Medicine Group
8. Medical Records and Billing of Bluff Radiology Group
9. Medical Records and Billing of Cape Radiology Group
10. Reports of Andrew Wayne, M.D.
11. Medical Records of Dr. Monte Penrod
12. Medical Records of Dr. Alan Chen

#### Employee's Exhibits

- A. Report of Injury
- B. Temporary Total Disability Pay Stub
- C. Demand Letters for Additional Medical Care
- D. List of Employee's Previously Incurred Medical Bills
- E. Employee's Weekly Earnings Schedule
- F. Email dated May 29, 2006

#### Employer-Insurer's Exhibits

- I. Employee's Employment Records and Job Description

### **FINDINGS OF FACT:**

Based on the testimony of the witnesses and the other evidence admitted, I find as follows:

On June 12, 2006, Brenda James (hereinafter “employee”) was employed as the Director of Staff Development by GGNCS Dexter LLC (hereinafter “employer”) formerly known as Beverly Health and Rehab. At the time of the hearing, the employee testified that on that day she was turning the medicine cart around and felt a pop in her back. The employee stated that she immediately felt pain and had to rest against the wall. Further, she noted that no one saw the incident and that she went ahead and finished her shift.

On the morning after her accident, the employee recalls being incontinent and in bed all day. As a result, the employee noted that on the very next day she called Tina Gunter and reported that she would be out of work. The work schedule and pay history indicated that the employee did not work on June 12, 2006, and that Tina Gunter did not work the next day (Employer-Insurer Exhibit I, page 17 & 65). For the entire next week, the employee did not work and claimed that she had low back pain radiating down her leg and incontinence. At the day of the hearing, the employee recalled that her bed and carpet were ruined due to the urine running down her legs.

The employee finally went to Dr. Munch on Monday, June 19, 2006. Dr. Munch contacted the employer who indicated that the employee had not reported the injury. The employee was then referred to the employer to report her accident to Kristi Jordan and to come back the following day for treatment (Joint Exhibit 5, page 5). As a result, an investigation report (Employer-Insurer Exhibit I, page 52) and report of injury (Employee Exhibit A) were filled out.

Instead of waiting to return to Dr. Munch, the employee went to the emergency room at Missouri Southern Healthcare. At that time, she reported that she had low back pain as a result of “twisting a large med cart” (Joint Exhibit 1, page 11). During her course of treatment, the employee was treated and evaluated for her low back problems by Dr. Jalal, Dr. Soeter, Dr. Berkin, Dr. Munch, Jibben Medical, Dexter Internal Medicine Group, Bluff Radiology Group, Cape Radiology Group, Dr. Wayne, and Dr. Chen. Additionally, the employee was paid for one day of temporary total disability benefits covering June 22, 2006 in the amount of \$76.31.

At the time of the hearing, the employee testified that she was experiencing significant pain in the low back and had a terrible problem with incontinence. The employee even went into detail concerning how the incontinence ruined her carpet and bed. Additionally, she testified that she was unable to properly take care of herself. During the hearing, the employee routinely gasped and moaned in apparent pain. She also testified that she had very little problems with her low back, no excruciating pain, and no incontinence.

As early as December 16, 2004, the employee’s medical records indicate that she was experiencing low back pain and incontinence (Joint Exhibit 12, page 21). According to Monte Penrod’s records, the employee complained that she was experiencing constant pain 24/7 that had gotten progressively worse for 30 years (Joint Exhibit 11, page 4). The employee saw Monte Penrod, a chiropractor, for four treatment visits concerning full spine pain from October 2005 to February 2006. At that time, the employee noted that the pain interferes with work, sleep, and daily routine and that she has trouble standing, sitting and walking (Joint Exhibit 11, page 10). Consequently, Monte Penrod diagnosed her with several ailments including a lumbar strain and lumbar subluxation. The employee later sought treatment for low back pain from Dr. Munch on February 16, 2006 (Joint Exhibit 12, page 14). On March 3, 2006, the employee again saw Dr. Munch who noted that the Lasix she was taking caused some “dribbling and incontinence during the day” (Joint Exhibit 5, page 6).

During the course of her treatment for this injury, the employee also obtained a MRI. The MRI was conducted on August 11, 2006 and indicated that the employee had degenerative changes in the discs and endplates and disc osteophyte intrusion at L3-4. Further, there were modest bulges at L4-L5 and L5-S1 with degenerative changes (Joint Exhibit 9, page 8).

## **APPLICABLE LAW**

- Under section 287.020.2 the word “accident” is defined to mean “an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor”.
- Section 287.020.3(1) defines the term “injury” to be “an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. ‘The prevailing factor’ is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and the disability.”
- Section 287.020.3(2) provides “an injury shall be deemed to arise out of and in the course of the employment only if:
  - (a) It is reasonably apparent, upon consideration of all of the circumstances, that the accident is the prevailing factor in causing the injury; and
  - (b) It does not come from a hazard or risk unrelated to the employment to which workers’ would have been equally exposed outside of and unrelated to the employment in normal non-employment life”.

- The employee has the burden to prove all material elements of his claim. **Melvies v Morris**, 422 S.W.2d 335 (Mo.App.1968). The employee has the burden of proving not only that he sustained an accident that arose out of and in the course of his employment, but also that there is a medical causal relationship between his accident and the injuries and the medical treatment for which he is seeking compensation. **Griggs v A B Chance Company**, 503 S.W.2d 697 (Mo.App.1973).

## RULINGS OF LAW

### *Issue 1. Accident*

The ruling on the issue of accident boils down to a question of credibility. The employee testified that she hurt her back while turning a medicine cart, but neither the medical records nor the other evidence corroborate the employee's version of a work related accident until June 19, 2006. The employee testified that no one saw her have the accident and that she did not report it to anyone on June 12, 2006. Further, she stated that she finished her shift even though she was in a lot of pain. Despite her knowledge of the reporting procedures as the Staff Developer, the employee did not report her alleged accident to the employer until June 19, 2006.

The employee further damaged her credibility by not being truthful concerning her previous medical history. First, the employee complained of incontinence due to this injury and even went into detail concerning her carpet and bed that were ruined. Although she testified that she never had any prior incontinence of the bowel or bladder, she saw Dr. Munch on March 3, 2006 and noted that the Lasix she was taking caused some "dribbling and incontinence during the day" (Joint Exhibit 5, page 6). Further, as early as December 16, 2004, Dr. Munch's notes indicate that the employee had a problem with incontinence (Joint Exhibit 12, page 21).

The employee also testified that she had very little problems with her back in the past, but they always worked out. The medical evidence tends to indicate that her back problems were more of an issue for the employee. As early as December 16, 2004, the employee was already complaining of back problems to Dr. Munch (Joint Exhibit 12, page 21). In October of 2005, the employee complained of full spine pain that was 24/7 and constant when she saw the Monte Penrod, a chiropractor. Further, the employee noted that it interferes with work, sleep, and daily routine and that she has trouble standing, sitting and walking. As a result, the chiropractor diagnosed her with a lumbar strain and lumbar subluxation (Joint Exhibit 11, page 10). Despite her complaints, the employee only attended 4 visits. On February 16, 2006 the employee even complained of low back pain to Dr. Munch (Joint Exhibit 12, page 14). It is also important to note that the MRI of August 11, 2006 indicated that the employee had degenerative changes in the discs and endplates and disc osteophyte intrusion at L3-4 (Joint Exhibit 9, page 8).

The most damaging evidence, however, was the employee's choice of dates to allege that the accident occurred. Even when put back on the stand as a rebuttal witness, the employee stuck with her story that the accident occurred on Monday, June 12, 2006 and not one day later. A review of employer-insurer's exhibit 1 quickly disposes of the rest of employee's credibility with regard to her accident. It would be impossible for the accident to have occurred on Monday, June 12, 2006 for 2 reasons. First, the employee did not work on Monday, June 12, 2006, but did work the next day according her pay records (Employer-Insurer Exhibit 1, page 65). Second, the employee testified that she called in to Tina Gunter on June 13, 2006 that she would not be working. According the schedule, Tina Gunter requested off and did not work on June 13, 2006.

Based on the inconsistencies and lack of corroborating evidence, I find that the employee's version of a work related accident and injury to her low back is not credible. The employee has failed to satisfy her burden of proof on the issue of accident, and her claim for compensation is therefore denied.

Based on this denial, the remaining issues are moot and shall not be ruled upon.

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

Made by:

\_\_\_\_\_  
Carl Strange  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Ms. Patricia "Pat" Secest  
Director  
Division of Workers' Compensation

