

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

Injury No.: 05-107570

Employee: Connie Johnson

Employer: Associated Electric Cooperative, Inc.

Insurer: Self-Insured (Cannon Cochran Management Services, Inc.)

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge (ALJ).

Preliminaries

On October 9, 2005, employee injured her lower back while lifting a table at work. Employee filed a claim for compensation alleging she is permanently and totally disabled as a result of the work injury.

The ALJ awarded employee past medical expenses, future medical care, and PTD benefits.

Findings of Fact

The findings of fact and stipulations of the parties were accurately recounted in the award of the ALJ and, to the extent they are not inconsistent with the findings listed below, they are incorporated and adopted by the Commission herein.

Dr. Mattson noted that the October 24, 2005, MRI was “unremarkable,” but recommended a second opinion for employee. Dr. Mattson noted that he had his “concerns of possible secondary gain but ... [wanted] to give her the benefit of doubt that there is something real going on....” Dr. Mattson released employee from his care at that point.

Employee treated with Dr. Woods from November 1, 2005, through May 2, 2006. On January 23, 2006, employee reported to Dr. Woods improvement in her back and leg pain. Dr. Woods released employee to work regular duty for four hours per day. On March 27, 2006, employee reported her back and/or leg pain as a 3 on a scale of 0 to 10. Dr. Woods noted that employee indicated during this March 27th visit that “she feels as if she can dance on the walls....” Dr. Woods indicated that employee could perform 10 hour days of unrestricted work and was instructed to return for a visit in four weeks.

On April 18, 2006, employee reported to Dr. Woods that she aggravated her back when she bent over to pick up a piece of paper. Employee rated her pain at 7 on a scale of 0 to 10.

¹ Statutory references are to the Revised Statutes of Missouri 2005 unless otherwise indicated.

Employee: Connie Johnson

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On May 2, 2006, employee returned to Dr. Woods for her final visit. Employee indicated to Dr. Woods that she was doing really well. Employee reported that she painted all weekend and did not have any pain from it. Employee had continued working full-time and tolerating that well. Employee reported that she was no longer taking any medications. Employee rated her pain a 0-1 on a scale of 0 to 10. Dr. Woods indicated that employee had reached maximum medical improvement (MMI) and gave employee a rating of 0%. Dr. Woods' assessment/diagnosis was mechanical low back pain due to a lumbar strain. Employee was allowed to return to work with no restrictions. This was the last authorized treatment for employee's work-related injury.

Following her release from Dr. Woods' care, employee treated with her primary care physician, Dr. Deline. Dr. Deline saw employee on June 19, 2006, June 26, 2006, and August 2, 2006, with no complaints of low back pain. During those visits, Dr. Deline primarily treated employee's degenerative joint disease in her neck. Dr. Deline's records do not indicate any complaints of low back pain until January 31, 2007 – nearly 9 months after employee was released at MMI by Dr. Woods – during a “well woman exam.”

On March 27, 2007, employee's attorney at the time sent employee to Dr. Carr for the purpose of an independent medical evaluation. Dr. Carr opined that as a result of employee's October 9, 2005, work injury she sustained 15% PPD of the body as a whole rated at the lumbar spine due to chronic low back pain. Dr. Carr further opined that based on the treatment rendered she had reached MMI.

Employee returned to Dr. Deline on May 25, 2007, with no mention of low back pain. On June 8, 2007, employee saw Dr. Deline and complained of low back and cervical pain. Employee indicated during that visit that she was cleaning houses and that she could hardly move after cleaning a house the day before. Dr. Deline's assessment was degenerative joint disease of the low back.

On June 22, 2007, employee returned to see Dr. Deline and indicated that she was cleaning houses and that her back pain was a 10 on a scale of 0 to 10. Dr. Deline ordered a repeat MRI. The June 28, 2007, MRI revealed degenerative changes at L-2 and L-3 with degenerative discs at the L2-L3 and L4-L5 levels. The records reveal that at the L4-L5 level there was a concentric disc bulge with a possible small lateral herniation but no significant stenosis. Another MRI scan was performed on September 25, 2007, which also indicated a disc bulge at L4-L5. That MRI also showed degenerative disc disease at T-11 through L3-L4 and L4-L5. The disc bulge was not present in the MRI taken in October 2005.

With regard to the disc bulge revealed in the 2007 MRIs, Dr. Deline testified that “[n]obody can tell as far as I know when these disc bulges (sic) happened.”

Dr. Meyer began treating employee on August 17, 2007. Dr. Meyer testified, based on the last time he saw employee, that she is not permanently and totally disabled.

Neither Dr. Volarich nor Mr. England's reports indicate that at the time of their evaluations employee was working part-time cleaning houses. Employee was in fact

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cleaning houses at the time of those evaluations, but testified that she did not recall if she informed Dr. Volarich or Mr. England of the same.

Ms. Blaine was aware that employee was cleaning houses at the time of her evaluation.

Discussion

Following employee's release from Dr. Woods' care on May 2, 2006, there is only a brief mention of low back pain in a well woman exam by Dr. Deline (on January 31, 2007) before employee reported extreme low back pain in June 2007. We find that employee's low back pain complaints in June 2007 are unrelated to the October 9, 2005, work injury.

The competent and substantial evidence supports a finding that employee sustained a lumbar strain injury on October 9, 2005, as a result of a work accident. Employee was subsequently treated for this injury by Dr. Mattson and Dr. Woods and released at MMI on May 2, 2006. At the time of this release, the only MRI scan on file was "unremarkable," employee had reported to Dr. Woods that she was no longer taking medication, and employee had returned to work and tolerated it well. Employee's own attorney even sent her to Dr. Carr for an independent medical evaluation on March 27, 2007. Dr. Carr concluded, as Dr. Woods previously had, that employee had reached MMI.

We find Dr. Deline's treatment records more probative than his and employee's testimony that she continually complained about low back pain between June 2006 and June 2007. Dr. Deline's notes indicate that he questioned employee about all bodily complaints during this period and that she did not have any serious complaints of low back pain until over 13 months after Dr. Woods released employee at MMI. Employee was cleaning houses part-time when she began complaining of this extreme low back pain. Following these pain complaints, Dr. Deline ordered an MRI and it revealed a concentric disc bulge at L4-L5, which was not present in the October 2005 MRI.

Section 287.190.6(2) RSMo provides, in relevant part:

In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings.

We find that the objective medical findings from the 2005 and 2007 MRIs prevail over the subjective medical findings attributing all of employee's low back problems to the October 9, 2005, work injury. The objective medical findings from the October 2005 MRI were unremarkable. The June 2007 MRI revealed a concentric disc bulge after employee had admittedly been working part-time cleaning houses. The objective medical findings suggest that a subsequent intervening injury occurred to employee's lumbar spine between October 2005 and June 2007. Based on the objective medical findings and the record as a whole, we find that employee reached MMI from the October 9, 2005, work injury on May 2, 2006, and that her complaints of extreme low back pain in June 2007 are unrelated to that injury.

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With regard to the nature and extent of employee's permanent disability, the ALJ found that employee is permanently totally disabled as a result of the October 9, 2005, work injury. Contrary to our above findings, the ALJ arrived at this conclusion of PTD by finding that all of employee's low back pain complaints and treatment following May 2, 2006, were attributable to the October 9, 2005, work injury. Obviously, we disagree with the ALJ's inclusion of employee's subsequent complaints and treatment in arriving at her permanent disability determination, but even if we included them in our determination, we still would not find employee permanently totally disabled.

Section 287.020.6 RSMo defines "total disability" as the "inability to return to any employment...."

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

Gordon v. Tri-State Motor Transit Company, 908 S.W.2d 849, 853 (Mo.App. 1995) (citations omitted).

None of the medical experts that treated or evaluated employee concluded that she is permanently and totally disabled. In fact, the highest disability rating employee received was Dr. Volarich's rating of 40% PPD of the body as a whole, and even he concluded that she could return to work with restrictions. The only expert who concluded that employee is totally disabled is Mr. England; however, the record indicates that Mr. England was not even informed at the time of his evaluation that employee was then currently employed part-time cleaning houses. The other vocational expert, Ms. Blaine, was aware that employee was cleaning houses and she concluded that employee is employable. We find Ms. Blaine's vocational expert opinion more credible than Mr. England's.

Award

Based on our findings above and the record as a whole, we find Dr. Carr's assessment of employee's permanent disability most credible. However, based on our review of the record, we find Dr. Carr's rating of 15% PPD of the body as a whole slightly insufficient. We find that as a result of the October 9, 2005, work injury employee suffered 20% PPD of the body as a whole rated at the lumbar spine.

We further find that employee's claims for past medical expenses and future medical care are denied. Employee failed to prove that the unpaid medical expenses and need for future medical care was caused by the October 9, 2005, work injury.

The award and decision of Administrative Law Judge Hannelore Fischer is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

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The Commission further approves and affirms the administrative law judge's allowance of attorney's fee as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 24th day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer

James Avery, Member

DISSENTING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Connie Johnson

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 believe the decision of the ALJ should be affirmed with supplementation and without modification.

I believe the ALJ's determination that employee is permanently and totally disabled as a result of the October 9, 2005, work injury is supported by the competent and substantial evidence.

The majority points to the lack of medical evidence showing low back complaints from May 2, 2006, through June 2007 as its primary basis in finding that employee truly reached MMI on May 2, 2006. I find this lack of medical documentation insignificant when considering employee's testimony and the testimony of employee's primary care physician, Dr. Deline.

Employee testified that from the time of her injury she was not without pain and limitations related to her low back and legs. Employee testified that she discussed those issues with Dr. Deline after being released by Dr. Woods. Dr. Deline confirmed that though they were not noted in his chart, he had conversations with employee about her low back pain in 2006 and the pain had been chronic since her 2005 injury.

The majority's conclusion that employee reached MMI on May 2, 2006, is illogical when considering Dr. Woods' note from employee's immediately preceding visit on April 18, 2006. On April 18, 2006, employee rated her pain at a 7 on a scale of 0 to 10. Employee indicated that she could not even stand upright after bending over to pick up a piece of paper. As Dr. Deline observed, it is unlikely that a patient with the presentation and objective findings that employee had on April 18, 2006, was pain free and at MMI a little more than two weeks later.

The majority focuses on the objective medical findings of the 2005 and 2007 MRIs in concluding that a subsequent intervening event caused employee's disc bulge. However, as the ALJ pointed out, Dr. Meyer credibly testified that an injury to a disc might not immediately show up on an MRI scan. Dr. Meyer stated, "whether there is actually a sign on that MRI scan of an obvious injury to the disc or not is really not 100 percent relevant."

With regard to the vocational expert opinions, I strongly disagree with the majority's conclusion that Ms. Blaine's opinion is more credible than Mr. England's. While Mr. England may not have been made aware of employee's part-time house cleaning at the time of his evaluation, Ms. Blaine based her opinion on the understanding that employee was cleaning houses "several days per week," when in actuality employee was only cleaning two houses every other week. Mr. England based his opinion on employee's symptoms as well as the restrictions imposed by Dr. Volarich and found that employee is unable to compete in the open labor market.

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The competent and substantial evidence supports the ALJ's decision that employee's October 9, 2005, work injury resulted in her permanent and total disability. Employee suffered immediate pain on October 9, 2005, and said pain has been constant ever since. The majority's conclusion that employee reached MMI on May 2, 2006, is entirely inconsistent with employee's testimony, employee's medical treatment records, the medical expert opinions, and the credible vocational expert opinions. For the foregoing reasons, I find that the ALJ's award should be affirmed as supplemented herein.

Because the Commission majority has decided otherwise, I respectfully dissent.

Curtis E. Chick, Jr., Member

AWARD

Employee: Connie Johnson

Injury No. 05-107570

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Associated Electric Cooperative Inc.

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party:

Insurer: Self-Insured (Cannon Cochran Management Services, Inc.)

Hearing Date: May 19, 2011

Checked by: HDH/sb

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: October 9, 2005
5. State location where accident occurred or occupational disease was contracted: Randolph County.
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: See Award.

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: Permanent total disability
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$7,302.32
17. Value necessary medical aid not furnished by employer/insurer? \$90,672.47
18. Employee's average weekly wages:
19. Weekly compensation rate: \$365.081/\$521.07
20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable: PTD from September 4, 2006 through
July 11, 2011 = \$131,830.70
22. Second Injury Fund liability: None

TOTAL: \$131,830.70

23. Future Requirements Awarded: \$521.07 per week for life.

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: Thad Mulholland

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Connie Johnson

Injury No. 05-107570

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Associated Electric Cooperative Inc.

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party:

Insurer: Self-Insured (Cannon Cochran Management Services, Inc.)

PRELIMINARIES

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on May 19, 2011 pursuant to a remand order from the Labor and Industrial Relations Commission dated March 7, 2011. Memoranda were filed by June 17, 2011.

The parties stipulated that on or about October 9, 2005, the claimant was in the employment of Associated Electric Cooperative, Inc. The employer was operating under the provisions of Missouri's workers' compensation law and the employers' liability for workers' compensation was self-insured by Cannon Cochran Management Services, Inc. The employer had timely notice of the alleged injury; a claim for compensation was timely filed. The compensation rate is \$365.08 per week for permanent partial disability benefits and \$521.07 per week for temporary and permanent total disability benefits.

No temporary total disability benefits have been paid to the claimant to date. Medical aid has been provided in the amount of \$7,302.32.

The issues to be resolved by hearing include 1) the occurrence of an accident, 2) the causation of the injuries alleged, 3) the liability of the employer/insurer for past medical expenses in the amount of \$90,672.47, 4) the nature and extent of permanent disability (permanent and total disability as of May 2, 2006 is claimed), 5) the liability of the employer/insurer for future medical treatment.

The parties stipulated that in the event of a finding favorable to the claimant on the issues of accident and causation, that the liability of the employer/insurer for medical treatment in the amount of \$90,672.47 is acknowledged

The Second Injury Fund claim was dismissed at the inception of the original hearing of this matter on July 8, 2010.

FACTS

The claimant, Connie Johnson, completed the 11th grade in high school and has taken a very limited number of college classes. After high school, Ms. Johnson worked for a bread company, eventually becoming the national advertising director for the bread company. Ms. Johnson did not work for a period of years after having a child and then owned and operated a bar with her former spouse and another couple. As a bar owner/operator, Ms. Johnson put in over 60 hours of work a week at the bar, doing everything from waitressing to completing the inventory. Ms. Johnson has also owned several restaurants where she put in over 80-hour weeks. Ms. Johnson started a cleaning business in 1999 or 2000, cleaning both residential and commercial buildings, again working many hours each week. In August 2002, Ms. Johnson began working at Associated Electric Cooperative, Inc., as a custodian.

On October 9, 2005, while working for Associated Electric Cooperative, Inc., Ms. Johnson was lifting a 98-pound, seven to eight foot long and three foot wide table with a co-worker when she felt a stabbing sensation in her lower back accompanied by what Ms. Johnson described as "several pops." Ms. Johnson reported her injury to her supervisor and said that she would take some Tylenol and sit down. Ms. Johnson's pain increased but she was able to complete her shift. The next morning both of Ms. Johnson's legs felt numb and she was sent to Dr. Mattson.

Dr. Mattson treated Ms. Johnson from October 10, 2005, through October 24, 2005. Dr. Mattson found Ms. Johnson to have continuing complaints of low back pain with pain radiating into both legs and numbness in the left leg; an MRI performed at Dr. Mattson's request was described by Dr. Mattson as "unremarkable." The actual MRI report refers to "Early dehydration L2-3, L4-5 disk spaces suggesting mild degenerative disk disease." Ms. Johnson treated with Dr. Brenda Woods for about six months, beginning on November 1, 2005. Dr. Woods released Ms. Johnson to return to work without restrictions on March 7, 2006, and released Ms. Johnson from all treatment on May 2, 2006. Dr. Woods testified in her deposition that Ms. Johnson's low back and leg pain were caused by her October 9, 2005 lifting incident; however, Dr. Woods opined that Ms. Johnson's low back injury while lifting the table did not constitute an accident compensable under Missouri's workers' compensation law.

Ms. Johnson testified that when she was released from Dr. Woods' care in May of 2006, that she was still suffering from chronic low back pain and that she was still taking pain medication. Ms. Johnson's employment with Associated Electric Cooperative, Inc., was terminated in August of 2006. Ms. Johnson continued to treat with her family physician, Dr. Deline, for her low back pain. Dr. Deline testified that although his records indicate that Ms. Johnson first mentioned her low back pain after her release from Dr. Woods to Dr. Deline in

January of 2007, that actually Ms. Johnson had complained of low back pain to him prior to that date in conjunction with visits to him for other complaints.

Dr. Deline referred Ms. Johnson to Dr. Meyer, a pain management specialist. Dr. Meyer testified by deposition that he is a board certified anesthesiologist and that pain medicine is his primary practice area. Dr. Meyer first saw Ms. Johnson on August 17, 2007, for pain across her low back and down both legs. Dr. Meyer treated Ms. Johnson with five epidural steroid injections, only four of which provided only temporary relief. Dr. Meyer referred Ms. Johnson to Dr. Ryan who implanted a permanent spinal stimulator. Dr. Meyer testified that the October 9, 2010 accident was the prevailing factor in causing the injury to Ms. Johnson's discs at the L4-5 and L5-S1 levels and that the injury to the discs at these levels was consistent with a lifting injury. Dr. Meyer testified that the treatment which he provided to Ms. Johnson and the treatment provided to Ms. Johnson by Dr. Ryan was necessary to cure and relieve Ms. Johnson from the effects of the October 9, 2005 accident and injury and that the total cost of this treatment is \$90,672.47. Dr. Meyer also testified that Ms. Johnson would need to have the batteries in her spinal stimulator replaced, depending on the type of battery and its frequency of use, and that the spinal stimulator itself might need replacement in the future.

When asked about the lack of significant findings on the MRI performed on October 24, 2005, compared to the later June of 2007 MRI which showed modic degenerative changes at the L2-3 disc and a possible small lateral herniation at L4-5, Dr. Meyer stated that "You can have an injury to a disc and it's not going to show up on an MRI scan. And then only later on will you see signs of the degeneration or bulging or giving way or whatever. So, whether there is actually a sign on that MRI scan of an obvious injury to the disc or not is really not 100 percent relevant."

Ms. Johnson testified that she only uses the spinal stimulator when she is active. Ms. Johnson uses the spine stimulator to allow her to work; when the pain is above a "10", Ms. Johnson uses narcotic medication.

Currently, Ms. Johnson does some light cleaning and companionship work for two couples who are friends of hers. Ms. Johnson cleans for each couple every other week, taking a day for each job, Wednesday and Friday, respectively. Ms. Johnson is paid \$50 by one couple and \$80 by the other for her work for a day. Ms. Johnson does no cooking, heavy cleaning, laundry or mopping. Ms. Johnson has had her husband help her in the past and now has a sister-in-law who assists her. Ms. Johnson testified that she takes significant percocet and valium on the days she cleans and then must spend the following day sleeping because she has taken so much medication.

Ms. Johnson described her days as punctuated by the need to take naps since she can sleep only three to four hours a night. Ms. Johnson described having to alternate sitting with standing to alleviate her pain. Ms. Johnson has pain radiating from her low back into her left leg; the left leg also "goes out" on Ms. Johnson causing her to stumble or fall.

Dr. David Volarich, osteopathic physician and surgeon and board certified as an independent medical examiner, testified by deposition that he evaluated Ms. Johnson on December 9, 2008, and authored his report regarding the evaluation on that same date. Dr. Volarich opined that it was Ms. Johnson's accident of October 9, 2005, in which she injured her back while lifting a table with a coworker, which was the prevailing factor in causing her disc bulge at L4-5 to the right and her disc bulge at L2-3 centrally as well as aggravation of previously asymptomatic degenerative disc disease. Dr. Volarich rated Ms. Johnson's disability at 40 percent of the back and recommended a vocational assessment.

Mr. James England, rehabilitation counselor, testified by deposition that he evaluated Ms. Johnson on April 20, 2009, and authored a report pertaining to his evaluation dated two days later. Mr. England opined that Ms. Johnson is not employable as the result of her "only getting a few hours of sleep and whose thinking process is dulled by the effect of the medication or who may actually end up having to lay down, assuming that level of functioning, I don't see how she would be able to go out and last in any kind of a work setting.I think the problem is from my understanding of what I observed and what she told me and what Dr. Volarich indicated, she's not going to be able to be up on her feet the majority of the day, and in fact, has to change positions about every twenty to thirty minutes." With regard to secretarial work, Mr. England said "even there, you still have to be awake, alert, pay attention to detail. I don't think a job even that level of employment would allow somebody to doze off or to lie down periodically during the day or if the person had trouble thinking clearly because of either lack of sleep or side effect of medication."

Ms. June Blaine, rehabilitation counselor, evaluated Ms. Johnson on May 14, 2010, and issued a report pertaining to that evaluation on June 21, 2010. Ms. Blaine testified by deposition that she believed that Ms. Johnson is employable. Ms. Blaine relied heavily on Ms. Johnson's description of her part time work doing light cleaning for friends and determined that Ms. Johnson could find employment as a "companion."

APPLICABLE LAW

287.020 Definitions--intent to abrogate earlier case law.

2. The word "accident" as used in this chapter shall 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.
3. (1) In this chapter the term "injury" is hereby defined 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 disability.

- (2) 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 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 nonemployment life.
- (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

AWARD

The claimant, Connie Johnson, has sustained her burden of proof that she sustained an accident compensable under Missouri's workers' compensation law and that the injury Ms. Johnson sustained to her low back as the result of the accident is a compensable injury as well. Ms. Johnson's uncontradicted description of a pop or crack in her back accompanied by immediate pain while she was lifting a 100 pound table with a co-worker fits squarely within the legal definition of an accident. Dr. Meyers, Dr. Volarich and even Dr. Woods all acknowledged that it was the lifting of the table that caused the pain that Ms. Johnson experienced. Likewise, Ms. Johnson has sustained her burden of proof that she sustained an injury to her low back as the result of the lifting injury. While Dr. Meyer and Dr. Volarich both identified the accident while lifting the table as the prevailing factor in causing the disc bulges in Ms. Johnson's low back as well as her permanent disability resulting there from, Dr. Woods also identified the lifting incident as the mechanism of both Ms. Johnson's resulting condition and disability, differing only in her legal analysis as to what constitutes an accident under Missouri's workers' compensation law.

CONCLUSION

Ms. Johnson has sustained her burden of proof that the employer/insurer are liable for the payment of medical expenses in the amount of \$90,627.47.

Ms. Johnson has sustained her burden of proof that she is entitled to permanent and total disability benefits as the result of her accident and injury of October 9, 2005. Mr. England carefully evaluated Ms. Johnson and the restrictions imposed on her in assigning permanent total disability status. Ms. Blaine's assessment of Ms. Johnson's abilities was colored by her mistaken belief that Ms. Johnson was engaged in a house cleaning business, while, in reality, Ms. Johnson has been doing some light cleaning and companionship work amounting to no more than twenty

percent of the work week for two families and with the assistance of Ms. Johnson's own family members.

Finally, Ms. Johnson has sustained her burden of proof that she is entitled to future medical care for the maintenance and replacement of her spinal stimulator. Dr. Meyer's testimony regarding the spinal stimulator and its maintenance and longevity support this award of future medical treatment.

Made by: _____

Hannelore Fischer
Administrative Law Judge
Division of Workers' Compensation