

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

Injury No.: 08-069747

Employee: Violet Lawrence  
Employer: Modine Manufacturing  
Insurer: Sentry Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 August 12, 2011. The award and decision of Administrative Law Judge Hannelore D. Fischer, issued August 12, 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 27<sup>th</sup> day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Violet Lawrence

Injury No. 08-069747

Dependents: N/A

Employer: Modine Manufacturing

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: State Treasurer, Custodian of the Second  
Injury Fund

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

Insurer: Sentry Insurance Company

Hearing Date: June 6, 2011

Checked by: HDF/lw

### 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: March 27, 2008
5. State location where accident occurred or occupational disease was contracted: Camdenton, Camden 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? 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: 25% of the body as a whole.
15. Compensation paid to-date for temporary disability: - 0 - .
16. Value necessary medical aid paid to date by employer/insurer? \$3789.37

Employee: Violet Lawrence

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17. Value necessary medical aid not furnished by employer/insurer? \$113,750.98

18. Employee's average weekly wages: --

19. Weekly compensation rate: \$397.51/\$389.04

20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

21. Amount of compensation payable: Medical: \$113,750.98  
TTD: \$13,799.25  
PPD (er/ins): \$38,904.00

22. Second Injury Fund liability: PPD (SIF) \$4,668.48

23. Future Requirements Awarded: See Award

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 with the exception of future medical in favor of the following attorney for necessary legal services rendered to the claimant: Timothy McDuffey.

Employee: Violet Lawrence

Injury No. 08-069747

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Violet Lawrence

Injury No: 08-069747

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Modine Manufacturing

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

Additional Party: State Treasurer, Custodian of the Second  
Injury Fund

Insurer: Sentry Insurance Company

Checked by: HDF/lw

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

### **ISSUES DECIDED**

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on June 6, 2011. Memoranda were received by June 20, 2011.

The parties stipulated that on or about March 27, 2008, the claimant, Violet Lawrence, was in the employment of Modine Manufacturing (Modine). On or about that date, Ms. Lawrence sustained an injury by accident; the accident arose out of and in the course of employment. The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was insured by Sentry Insurance Company. The employer had timely notice of the injury. A claim for compensation was timely filed. The agreed upon rate of compensation pertaining to the date of injury is \$397.51 per week for temporary total disability benefits and \$389.04 per week for permanent partial disability benefits.

No temporary total disability benefits have been paid to date. Medical aid has been provided in the amount of \$3789.87.

The issues to be resolved as the result of hearing include 1) the causation of the injuries alleged, 2) the liability of the employer/insurer for past medical treatment, 3) the liability of the employer/insurer for past temporary total disability benefits, 4) the nature and extent of permanent disability, 5) the liability of the employer/insurer for future medical treatment, and 6) the liability of the Second Injury Fund.

Employee: Violet Lawrence

Injury No. 08-069747

### **FACTS**

The claimant, Violet Lawrence, was employed by Modine Manufacturing (Modine) on March 27, 2008, when she injured her low back while trying to maneuver a 200 pound cart full of tubes. Ms. Lawrence had radicular pain into her right leg shortly after the accident and injury. Ms. Lawrence reported her injury and received medical attention from Dr. Jordan, who determined that she was suffering from arthritis and did not have a work-related injury. Ms. Lawrence delivered a "work related injury follow-up questionnaire" on which Dr. Jordan had written that Ms. Lawrence was to seek follow up care with her regular doctor to the human resources department at Modine. Modine offered her no additional medical treatment for her back. Ms. Lawrence then sought medical care from her own doctor resulting in a referral to Dr. Rodgers who ultimately performed three back surgeries on Ms. Lawrence. Ms. Lawrence missed work from June 30, 2008 through November 3, 2008 for the initial two surgeries and from June 17, 2009 through October 12, 2009 for the last surgery. Ms. Lawrence identified medical bills in the amount of \$113,750.98 as the result of her treatment for her back, including the three surgeries.

Currently, Ms. Lawrence has returned to full duty work but limits her lifting to less than 30 pounds, lifting primarily five to six pound weights. Ms. Lawrence has increased back pain after a stressful day at work and has radiating pain into her right leg approximately three days a week. Ms. Lawrence takes vicodin for pain once or twice a day and also takes ibuprofen for pain.

Ms. Lawrence testified to weakness in her right wrist as the result of a fractured wrist from a car accident in 2004. Ms. Lawrence also testified to difficulties with grip as the result of a smashed left index finger prior to March 27, 2008.

Prior to the March 27, 2008 accident Ms. Lawrence had low back complaints with occasional radiation of pain into the right leg dating back to 1998. Ms. Lawrence described specific instances in which her back flared up in 1998, 2004 and 2006, as well as a regular aching in her back since 1998. Ms. Lawrence would take prescription medication for her back when her back bothered her and would also miss time from work due to back pain.

Ms. Lawrence testified that she did not request additional medical treatment from Modine for her back after she was told by Dr. Jordan to seek medical treatment on her own.

Dan George, the plant human resources officer for the Modine plant in Camdenton where Ms. Lawrence is employed, testified that Dr. Jordan called him after examining Ms. Lawrence and that Modine never offered Ms. Lawrence another medical opinion regarding her back complaints after March 27, 2008.

Dr. David Volarich, D.O., specializing in nuclear medicine, occupational medicine and as an independent medical examiner, testified by deposition that he evaluated Ms. Lawrence on March 4, 2010. Dr. Volarich diagnosed Ms. Lawrence with "lumbar right leg radicular syndrome secondary to aggravation of a disc herniation at L5-S1 to the right, status- post hemilaminectomy, foraminotomy, and fusion with instrumentation. Next was failed fusion with intravertebral graft failure, status-post hemilaminectomy and removal of graft material. Next was persistent lumbar right leg radicular syndrome with recurrent disc herniation at L5-S1, status-post revision fusion, L5-S1. And last was post-laminectomy syndrome."

Dr. Volarich described preexisting medical problems as "right wrist distal radius fracture, status-post closed reduction, healed with malunion. Next was left ring fingertip crush injury and open fracture, status-post conservative care. ...I didn't list it, but we have to talk about the preexisting back difficulties. She had the disc herniation at L5-S1 on the right and a protrusion at L4-5 on the left as well."

Dr. Volarich opined that although Ms. Lawrence had a preexisting disc herniation at L5-S1, the March 27, 2008 accident "substantially and irreversibly aggravated to the point that surgical repairs were needed to try to correct her lumbar right leg syndrome." Dr. Volarich found that it was the radicular pain into the right leg that occurred after the March 27, 2008 accident that caused the need for Ms. Lawrence's surgeries. Dr. Volarich went on to say that if it was not the March 27, 2008 accident that caused the need for Ms. Lawrence's back surgery then "it would have to be all of the work that she did leading up to that time."

Employee: Violet Lawrence

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Dr. Volarich found Ms. Lawrence to have a permanent disability of 50 percent of the body due to injuries received to her low back while working at Modine. Prior to March 27, 2008, according to Dr. Volarich, Ms. Lawrence had a permanent disability of 25 percent of the body attributable to the low back due to the right-sided disc herniation at L5-S1 and left-sided protrusion at L4-5." Also prior to March 27, 2008, Dr. Volarich found Ms. Lawrence to have a 20 percent disability to the right hand and a five percent disability to the left hand. Dr. Volarich found Ms. Lawrence's disabilities to combine to be greater than their simple sum. Dr. Volarich also found Ms. Lawrence to be in need of additional medical treatment. Specifically, Dr. Volarich recommended pain management and ongoing treatments at a pain clinic, including epidural steroids and nerve blocks. Dr. Volarich also mentioned treatment such as additional myelogram C.T. views of the low back should Ms. Lawrence's right leg symptoms worsen.

During cross-examination Dr. Volarich admitted that his review of MRI reports dating back to 1998 and 2006 reflected a right-sided disc herniation at L5-S1 and a left sided bulge at L4-5 and that the MRI report dated June 4, 2008 was interpreted as unchanged from the two prior reports. Dr. Volarich also acknowledged that Ms. Lawrence had complaints of right lower extremity pain dating back to 1998 and 2006.

Dr. Fred McQueary, M.D., specializing in hip and knee injuries and low back problems, testified by deposition that he evaluated Ms. Lawrence on January 25, 2011. Dr. McQueary stated that Ms. Lawrence's MRI films from August of 2006 and from June of 2008 "both demonstrated the small right paracentral disc protrusion at L5-S1 that resulted in some mild right neural foraminal and mild right lateral recess stenosis" and that there were no objective changes between the two films. Dr. McQueary testified that he did not believe that the March 27, 2008 accident and injury alone would have produced Ms. Lawrence's symptoms in the absence of her preexisting history of back problems. Additionally, Dr. McQueary testified that neither the preexisting history alone nor the March 27, 2008 accident alone would have caused him to perform back surgery on Ms. Lawrence and that it was both the preexisting back condition and the March 27, 2008 accident equally which caused Ms. Lawrence to have additional medical treatment. Dr. McQueary testified to a 15 percent permanent disability of the body on Ms. Lawrence's part, 10 percent attributable to her back complaints prior to March 27, 2008, and 5 percent attributable to the surgeries following the March 27, 2008 accident and injury. Dr. McQueary opined that Ms. Lawrence might need anti-inflammatory medications in the future.

During cross-examination, however, Dr. McQueary testified that Ms. Lawrence did experience a structural change in her back on March 27, 2008, "most likely an annular tear in the disc" that caused Ms. Lawrence to have the pain which led to the surgeries ultimately performed on her.

### **APPLICABLE LAW**

The employee bears the burden of proving all essential elements of a workers' compensation claim, including the causal connection between the accident and the injury. Grime v. Altech Indus., 83 S.W.3d 581, 583 (Mo.App. W.D. 2002) (overruled in part by Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 226 (Mo. 2003).

287.140.1

See Tillotson v. St. Joseph, WD72948, for the proposition that under 287.140.1 the test for medical care is whether it is reasonably required for compensable injury rather than whether the compensable injury is the prevailing factor in determining whether the employer/insurer is responsible for the provision of medical care.

287.220.1

To receive an award of future medical benefits a Claimant does not need to show "conclusive evidence" of a need for future medical treatment. Instead, a Claimant need only show a "reasonable probability" that, because of her work related injury, future medical treatment will be necessary. Stevens v. City of Citizens Memorial Healthcare Foundation, 244 S.W.3d 43, Mo. App. 2008.

Employee: Violet Lawrence

Injury No. 08-069747

**AWARD**

The claimant, Violet Lawrence has sustained her burden of proof that she sustained an injury to her back on March 27, 2008, as she was maneuvering a cart weighing 200 pounds. Ms. Lawrence testified to the onset of her back and right leg pain. Dr. Volarich testified with regard to the change in symptomology, persistent radicular pain into the right leg, as attributable to the March 27, 2008 accident and injury as differentiated from her previous low back complaints while Dr. McQueary testified to a change in pathology, a tear in the annulus, as attributable to the March 27, 2008 accident and injury and not preexisting.

Ms. Lawrence has sustained her burden of proof that the employer/insurer is liable for past medical bills in the amount of \$113,750.98. Both Dr. Volarich and Dr. McQueary testified that Ms. Lawrence's medical treatment was performed as the result of the March 27, 2008 accident and injury. The doctors differed with regard to the degree to which the March 27, 2008 accident and injury necessitated the medical treatment. Dr. Volarich opined that the medical treatment was necessitated by the new and ongoing radicular symptoms in the right leg. Dr. McQueary opined that the medical treatment was necessitated equally by the March 27, 2008 accident and injury and the preexisting back condition, thus precluding a finding that the March 27, 2008 accident was the prevailing factor in the need for treatment. I find that Dr. McQueary's reliance on the prevailing factor test in determining liability for medical treatment to be misplaced and his conclusion regarding the balanced need for surgery suspect given his admission that a tear in the annulus predicated the surgeries performed on Ms. Lawrence.

Ms. Lawrence has sustained her burden of proof that she is entitled to temporary total disability benefits for the periods of time during which she was unable to work as the result of her medical treatment for her back following the March 27, 2008 accident and injury, from June 30, 2008 through November 3, 2008 for the initial two surgeries and from June 17, 2009 through October 12, 2009 for the third surgery.

Ms. Lawrence has sustained her burden of proof that she has a permanent disability of 25 percent of the body attributable to the March 27, 2008 accident and injury. In determining permanent disability the testimonies of Ms. Lawrence, Dr. Volarich and Dr. McQueary were found to be most relevant.

Ms. Lawrence has sustained her burden of proof that she is entitled to future medical treatment in the form of the medications that she is currently taking, the vicodin and ibuprofen, and the medical visits necessary to support her prescriptions. The additional myelogram C.T. views are not awarded as speculative future medical treatment. Ms. Lawrence has sustained her burden of proof that she is entitled to compensation from the Second Injury Fund based on the combination of permanent disabilities to the low back and the right hand in the amount of three percent of the body.

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

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

HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*