

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

Injury No.: 99-176753

Employee: Byron Lyons
Employer: Auto Terminals
Insurer: Cassens Transport Company
Date of Accident: June 11, 1999
Place and County of Accident: Venice, Illinois

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 November 19, 2004. The award and decision of Administrative Law Judge Margaret D. Landolt, issued November 19, 2004, 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 20th day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Byron Lyons

Injury No.: 99-176753

Dependents: N/A
Employer: Auto Terminals
Additional Party: N/A
Insurer: Cassens Transport Company
Hearing Date: August 26, 2004

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: MDL: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: June 11, 1999
5. State location where accident occurred or occupational disease was contracted: Venice, Illinois
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:
Employee was unloading a vehicle when he turned his neck and felt immediate pain.
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: Body as a whole referable to neck
14. Nature and extent of any permanent disability: 7 ½% permanent partial disability of the body as a whole referable to the neck
15. Compensation paid to-date for temporary disability: \$964.57
16. Value necessary medical aid paid to date by employer/insurer? \$2,602.62

Employee: Byron Lyons Injury No.: 99-176753

17. Value necessary medical aid not furnished by employer/insurer? \$1,994.00
18. Employee's average weekly wages: \$1,082.50
19. Weekly compensation rate: \$562.67/\$294.73
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$1,994.00
8 weeks of temporary total disability (or temporary partial disability)	\$4,501.36

30 weeks of permanent partial disability from Employer \$8,841.90

22. Second Injury Fund liability: No

TOTAL: \$15,337.26

23. Future requirements awarded: N/A

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:

Mr. Scott Holwitt

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Byron Lyons	Injury No.: 99-176753
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Auto Terminals	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Cassens Transport Company	Checked by: MDL:tr

PRELIMINARIES

A hearing was held on August 26, 2004, at the Division of the Workers' Compensation in the City of St. Louis. Byron Lyons (Claimant) was represented by Mr. Scott Holwitt. Auto Terminals (Employer) and its Insurer, Cassens Transport Company, were represented by Mr. L. David Green. Mr. Holwitt requested a fee of 25% of Claimant's award.

The parties stipulated that on or about June 11, 1999, Claimant was an employee of Employer; venue is proper in the City of St. Louis; Employer received proper notice of injury; and the claim was timely filed. The parties further stipulated that Claimant was earning an average weekly wage of \$1,082.50 resulting in rates of compensation of \$562.67 for temporary total disability benefits and \$294.73 for permanent partial disability benefits. Employer paid temporary total disability benefits of \$964.57 for the period of time from June 20, 1999, to July 1, 1999, or 1 and 5/7ths weeks. Employer also paid medical benefits of \$2,602.62.

The issues for resolution by hearing are: Did Claimant sustain an accident arising out of and in the course of his employment; medical causation; liability of Employer for past medical benefits; liability of Employer for temporary total disability benefits from March 1, 2000, to June 15, 2000; and nature and extent of permanent partial disability.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant is a 34-year-old man who is employed by Employer as a car hauler/driver. He has been so employed since 1996. Claimant's job duties consist of loading and unloading vehicles from transport, as well as driving the large truck that hauls them. His job is physical, and involves a lot of climbing, twisting, turning, tying down, turning his head, and overhead tying. Claimant testified that his job puts a lot of stress on his neck and shoulders.

On June 11, 1999, Claimant was making a delivery to a rail yard in Venice, Illinois. As he was unloading a vehicle from his trailer, he turned his neck to look behind him when his neck popped. He felt a pop in the center of his neck above his collar, a pulling sensation in his face, and shooting pains and sensations in his shoulder and neck.

Claimant immediately reported the injury when he returned to the terminal in Fenton, Missouri. Claimant's supervisor, Terry Watson, and Claimant prepared written accident reports at that time. Employer referred Claimant to St. Joseph's Hospital of Kirkwood for evaluation.

The records of St. Joseph's Hospital reveal that Claimant gave a history of neck pain that started two months ago, and that he had popping and grinding in his neck. He stated that twists and turns at work might make things worse. The clinical impression was neck sprain. X-rays performed at the hospital were negative for neck fracture. Claimant was prescribed medications, and instructed to follow up with Dr. Patterson at Healthline Corporate Health Services.

On June 14, 1999, Claimant presented to Healthline for further treatment. At that time he gave a history of popping in his neck with pain, and occasional parasthesia for the past few months. He also gave a history of the work accident of June 11, that while twisting around the vehicle and loading, he turned his neck in a normal fashion and had increased pain. Dr. Patterson diagnosed neck pain, occasional parasthesia both upper extremities, and stated that the injury was consistent with work activities and the incident he described. Upon physical examination, Dr. Patterson found that Claimant had limited range of motion to the neck with lateral flexion and rotation to movement. She found tenderness and muscle spasm and the x-rays she performed showed foraminal encroachment C3-4 and C4-5 bilaterally. Dr. Patterson continued Claimant's medications.

Over the course of the next month, Claimant followed up with Healthline on four to five occasions complaining of continued neck pain with numbness and tingling in his arms and hands. During this time he continued to take prescription medication as ordered and attended physical therapy at Washington County Memorial Hospital. Dr. Patterson took Claimant off work for approximately two weeks. Dr. Patterson eventually referred Claimant to an orthopedic specialist.

On July 20, 1999, Employer referred Claimant to Dr. Steven Stahle, a family practice physician, for further evaluation and treatment. After examining Claimant and obtaining x-rays, Dr. Stahle diagnosed Claimant as suffering from non-work related muscle weakness. Dr. Stahle provided no treatment for Claimant but recommended that he perform home exercises to strengthen his neck muscles.

Claimant testified that Employer provided no additional medical treatment or evaluation regarding his cervical spine. He also testified that he returned to full duty as of July 2, 1999, and remained until approximately March 1, 2000. During that time he continued to experience pain, tenderness, and muscle spasms in the neck, as well as occasional parasthesia in the upper extremities. These symptoms gradually worsened as he continued to perform the physical activities required by his job.

Claimant testified that he requested additional medical treatment from Employer in approximately March 2000, but was refused. Employer advised him that based upon Dr. Stahle's medical report, his complaints were not work related and that he should seek treatment on his own.

Beginning on March 1, 2000, Claimant presented to his personal physician, Dr. Simpelo, for ongoing complaints referable to his neck and upper extremities. Dr. Simpelo initially prescribed medication followed by physical therapy and an MRI. The MRI confirmed that Claimant suffered from neuroforaminal narrowing at C3-4 while the physical therapy and medication gradually alleviated his symptoms.

As a result of Claimant's neck condition, Dr. Simpelo took Claimant off work from April 25, 2000, through May 15, 2000. Claimant received no temporary total disability benefits from Employer during that time period. From May 15, 2000, through June 19, 2000, Dr. Simpelo restricted Claimant to light duty of no lifting over 25 pounds while he completed physical therapy. Because Employer did not accommodate light duty, Claimant remained off work during this time period without receiving any temporary total disability benefits.

When Dr. Simpelo released Claimant from further care on June 15, 2000, Claimant continued to experience neck pain radiating across his shoulders with accompanying limited range of motion. As a result, Dr. Simpelo recommended that Claimant consult a neurosurgeon to determine if any surgical treatment was warranted. Claimant did consult with a neurosurgeon who advised that no surgical treatment was indicated. Dr. Simpelo also advised Claimant to continue taking prescription medications Ultram and Celebrex which Claimant has done ever since.

The cost of the treatment rendered by Dr. Simpelo totaled \$330.00. The cost of the MRI exam was \$900.00. The cost of physical therapy was \$764.00.

Claimant testified that he has been working at full duty since June 19, 2000. In that time he has not sustained any additional injuries to or accidents involving his neck or upper extremities. In June 2003 he presented to Dr. Jeffrey Huck for treatment of ongoing neck and upper extremity complaints. Dr. Huck provided Claimant with treatment consisting of chiropractic manipulation and heat therapy, which treatment continues presently on a monthly basis. Claimant maintains that this treatment relieves his symptoms on a temporary basis so as to allow him to continue working at full duty.

Presently, Claimant complains of frequent pain, popping, spasm, and tenderness in his neck and across the shoulders, as well as occasional paresthesia in his arms and hands. These symptoms are aggravated by physical activities particularly those required by his job for Employer. At no time before April 1999 did Claimant ever experience any of the symptoms he has identified in connection with the work accident of June 11, 1999, nor did he ever seek medical attention for any such complaints.

In March 2001, Dr. Musich examined Claimant and evaluated him for permanent disability at the request of his attorneys. Dr. Musich diagnosed Claimant as suffering from myofascial pain syndrome and assigned a 20% permanent partial disability rating of the body as a whole related to his cervical spine as a result of his work accident of June 11, 1999. Dr. Musich also recommended that Claimant refrain from repetitive movement or prolonged positioning of the cervical spine and that he avoid lifting greater than fifty pounds.

Dr. Stahle testified on behalf of Employer. In Dr. Stahle's opinion Claimant's complaints when he saw him on July 20, 1999 were not related to his work accident of June 11, 1999.

CONCLUSIONS OF LAW

Based upon the testimony, the medical evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Accident

Claimant sustained an injury by accident during the course and scope of his employment on or about June 11, 1999. Claimant's history of injury and symptoms is generally consistent. Employer's investigation reports prepared within hours of the accident support his testimony with regard to the injury and his symptoms. While

some of the medical records do demonstrate slight discrepancies in terms of the precise development of the neck and arm complaints, both before and after June 11, 1999, there is ample support for Claimant's testimony in the record. The injury investigation reports, the June 23, 1999, physical therapy note, and even progress notes from Healthline all establish a notable and significant change in the condition of Claimant's cervical spine as a result of the work accident.

Medical Causation

I do not find Dr. Stahle's opinions, particularly as to medical causation, to be credible. Dr. Stahle did not find foraminal narrowing or encroachment despite a previous x-ray identifying that and also a subsequent MRI exam. Between April and June of 1999, it appears Claimant was mildly symptomatic with regard to his neck. A June 1999 work event produced new and increased symptoms and required several months of treatment including physical therapy and an MRI exam. There is no dispute at least a portion of his symptoms are occupational in nature. Dr. Patterson of Healthline so stated in virtually every medical record she prepared and signed.

Permanent Partial Disability

I find Claimant has sustained a permanent partial disability of 7 ½% of the body as a whole. Claimant has ongoing neck complaints of neck pain, popping, spasm, tenderness, and occasional upper extremity paresthesia.

Unpaid Medical Bills

I find the reasonable value of medical aid obtained by Claimant for his injuries to be \$1,994.00 as reflected in Employee's Exhibit H and I. Claimant testified that his visits to Dr. Simpelo and Washington County Memorial Hospital were the product of the work accident of June 11, 1999, and the corresponding medical records similarly reflect this fact. The bills for these services were admitted into evidence without objection and Employer offered no evidence suggesting that these charges were not reasonable. Therefore, I find Claimant is entitled to an award of \$1,994.00 for unpaid medical aid.

Temporary Total Disability Benefits

I find Claimant was unable to work and compete for jobs in the open labor market from April 25, 2000 through June 19, 2000, and he is therefore entitled to temporary total disability benefits in the amount of \$4,501.36 for this period. It is clear that Claimant was not unable to perform the usual duties of his employment at Employer, nor it is likely that any other employer in the usual course of business would have reasonably been expected to employ him in his physical condition particularly with his 25-pound lifting restriction and need to attend physical therapy on a frequent basis.

This award is subject to an attorney's lien of 20% in favor of Claimant's attorney, Mr. Scott Holwitt.

Date: _____

Made by: _____

Margaret D. Landolt
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary J. Estenson
Acting Director
Division of Workers' Compensation

