

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

Injury No.: 07-034564

Employee: Tiffany Meachum
Employer: Dana Corporation
Insurer: Hartford Casualty Insurance Company

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge.

Preliminaries

The parties stipulated the following issues for determination by the administrative law judge: (1) accident; (2) notice; (3) whether the accident arose out of and in the course of and scope of employment; (4) medical causation; (5) past medical expenses; (6) future medical care; (7) temporary total disability; and (8) permanent disability.

The administrative law judge made the following findings: (1) employee performed her job task by reaching into a basket and pulling out parts; (2) employer had actual notice and was not prejudiced; (3) there was substantial and competent evidence that employee's job task performance while in the course and scope of her employment caused her to suffer a herniation of the L5-S1 disc; (4) employee's work injury resulted in the need for medical treatment and employer is liable for past medical expenses; (5) employee met her burden of proof that she is in need of medical treatment in the future in order to cure and relieve the effects of the injury of March 23, 2007; (6) employee is entitled to temporary total disability benefits from March 8, 2009, until April 26, 2009; and (7) employee suffered a permanent partial disability of 15% of the body as a whole as a result of her injury of March 23, 2007.

Employer submitted a timely Application for Review with the Commission challenging the administrative law judge's findings as to each of the disputed issues.

For the reasons set forth in this award and decision, we reverse the award of the administrative law judge.

Findings of Fact

Preexisting low back complaints

On January 22, 2001, employee strained her low back while jerking a box to remove it from a basket. She received treatment at Boone Hospital for left low back pain. The treating doctor diagnosed left sacral pain/sacroiliitis with a clinical history of radiculopathy, prescribed a Medrol Dosepak, and put her on light duty. Employee underwent physical therapy and attended regular evaluations with her treating physician through February 16, 2001, when she was released to full duty work.

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Beginning February 7, 2005, employee again sought treatment for low back pain. Treatment notes record a history of significant intermittent low back pain with radicular symptoms every three months or so. Employee took Flexeril, limited her activities, performed home stretches and exercises, and was ultimately released to full duty work on March 16, 2005.

On May 26, 2006, employee was in a motor vehicle accident which left her with injuries to the bilateral knees and low back. Treating doctors took employee off work until June 5, 2006, and employee underwent chiropractic treatment for her low back.

Alleged accident

Employee testified that she hurt her back at work on March 23, 2007. Employee explained the circumstances as follows. Employee was working on a station called a cross-over and was taking a partial-built axle out of a three-sided basket and placing it on another line. After performing this activity for about four hours, employee felt a sharp pain in her low back and right leg. Employee described the pain as sharp and excruciating and testified it made her stand up for a minute to get herself together.

The foregoing testimony is in stark contrast with the medical record generated in connection with treatment employee received for her low back following March 23, 2007. For example, the record from employee's visit to her personal physician on March 27, 2007, relates that employee presented with longstanding problems with her low back, that she reported low back problems before the 2006 motor vehicle accident, and that she described her back as periodically becoming extremely painful and going out on her. There is no mention of employee complaining of a work-related injury. This document is characteristic of nearly all of the treatment notes in evidence. Multiple practitioners record a history of longstanding back problems and fail to mention any work injury at all, much less the specific circumstances of the accident employee described at the hearing.

Faced with these troubling contradictions, we turn back to employee's testimony. On cross-examination, employee flatly denied any memory of the circumstances surrounding the low back pain she experienced in 2001 or 2005, including symptoms, medical treatment, or whether she missed any time from work, and even denied recalling the condition of her back "at all" between 2001 and 2005. Later in her testimony, however, employee asserted that she would characterize her back as doing "fine" up until March 23, 2007. We fail to see how employee is able to reconcile an inability to remember anything "at all" about her back before the work injury with a belief that her back was doing "fine" up until the date of the alleged accident.

But in any event, we find that employee's striking inability to remember anything at all about the condition of her low back before the work injury casts doubt on her testimony as a whole. If employee's memory is really so lacking regarding her low back that she can't remember anything about her significant history of low back pain and medical treatment predating the injury, we are reluctant to credit her testimony about the alleged accident, especially when almost every medical record generated in connection with treatment for the low back after March 23, 2007, contains no history of a low back injury on that date.

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Ultimately, given the foregoing considerations, we find employee's testimony lacking credibility. We find that employee did not experience the onset of low back or right leg pain while performing her work duties on March 23, 2007.

Conclusions of Law

It is employee's burden to prove all of the elements of her claim to a reasonable probability. *Cooper v. Medical Ctr. of Independence*, 955 S.W.2d 570, 575 (Mo. App. 1997). This includes the burden of establishing the threshold factual proposition that an accident occurred at work. *Clayton v. Langco Tool & Plastics, Inc.*, 221 S.W.3d 490, 492-93 (Mo. App. 2007). Section 287.020.2 RSMo states, in pertinent part:

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.

We have determined that employee's testimony regarding the March 23, 2007, incident lacks credibility. We have found that employee did not experience the onset of low back or right leg pain while performing her work duties on that date. We conclude employee failed to meet her burden of proof. We conclude employee did not suffer an accident at work on March 23, 2007.

All other issues are moot.

Conclusion

Based on the foregoing, the Commission concludes and determines that employee failed to demonstrate that she sustained an accident on March 23, 2007. Accordingly, employee's claim for benefits is denied.

The award and decision of Administrative Law Judge David L. Zerrer, issued November 17, 2011, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 19th day of June 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Member

Attest:

Secretary

AWARD

Employee: Tiffany Meachum

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Dependents:

Employer: Dana Corporation

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party:

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

Insurer: Hartford Casualty Insurance Company

Hearing Date: August 15, 2011/September 9, 2011

Checked by: DLZ

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 23, 2007
5. State location where accident occurred or occupational disease was contracted: Columbia, Boone 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: Claimant lifted product and felt pain in back
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: Back; body as a whole
14. Nature and extent of any permanent disability: 15% of the body as a whole referable to the low back
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$4,095.00

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- 17. Value necessary medical aid not furnished by employer/insurer? \$25,298.91
- 18. Employee's average weekly wages: \$906.13
- 19. Weekly compensation rate: \$604.12/\$376.55
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: \$25,298.91

7 weeks of temporary total disability (or temporary partial disability) \$4,228.84

60 weeks of permanent partial disability from Employer \$22,593.00

- 22. Second Injury Fund liability: Yes No Open

TOTAL: \$52,120.75 PLUS FUTURE MEDICAL EXPENSES

- 23. Future requirements awarded: As set out in this 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 in favor of the following attorney for necessary legal services rendered to the claimant: Christopher Schappe

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FINDINGS OF FACT and RULINGS OF LAW:

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Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Dana Corporation

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

Additional Party:

Insurer: Hartford Casualty Insurance Company

Checked by: DLZ

On the 15th day of August, 2011, the parties appeared before the undersigned Administrative Law Judge for final hearing. The Claimant appeared in person and by her attorney, Christopher Schappe. The Employer appeared by its attorney, Julie Madsen. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, is not a party to this claim. The record was ordered to remain open until 5:00 p.m. September 9, 2011.

The parties have entered into a stipulation as to certain facts which are not at issue in this claim, as follows, to wit: On or about the 23rd day of March, 2007, Dana Corporation was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully insured by Hartford Casualty Insurance Company; on the alleged injury date of March 23, 2007, Tiffany Meachum was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the employment occurred in Boone County, Missouri, and the parties agree that Boone County, Missouri, is the proper venue for this hearing; the Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident, Claimant's average weekly wage was \$906.13, sufficient to allow the following compensation rates, to wit: \$604.12, for temporary total disability and permanent total disability, and \$376.55, for permanent partial disability; no temporary disability benefits

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have been paid prior to the date of this hearing; the Employer has paid medical benefits in the amount of \$4,095.00 prior to the date of this hearing; Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award plus expenses; the parties have further stipulated that any medical expense paid by the Employer was not paid to the University of Missouri Medical Center or Boone Hospital Center.

ISSUES

Whether the Claimant sustained an accident?

Whether the Claimant gave Employer proper notice?

Whether the accident arose out of the course of and scope of employment?

Whether the accident caused the injuries and disabilities for which benefits are now being claimed?

Whether the Employer is obligated to pay for past medical expenses?

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

Whether temporary total benefits are owed to the Claimant?

The nature and extent of any permanent disabilities?

DISCUSSION

A legal file was established for this hearing which consisted of the following documents, to wit: Report of Injury; Claim for Compensation, filed with the Division August 23, 2007; Answer to Claim for Compensation, filed with the Division February 4, 2008; Request for Final Hearing, filed with the Division June 6, 2011.

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Claimant offered, and there was admitted into evidence, without objection, Exhibits 1 through 19.

Tiffany Meachum, claimant herein, testified on her own behalf. Claimant testified that she was 40 years of age at the time of the hearing with one child. Claimant is not married. Claimant has been employed by Employer for fourteen years, currently as an assembler.

Claimant testified that on March 23, 2007, she was working on the “crossover line,” where she was removing parts from a large metal basket and moving them to another line for further processing. Claimant stated that she had to bend her body into the three-sided basket to remove parts and place them on a conveyor. She further stated that usually she would use a hoist to assist in moving parts, but on March 23, 2007, the hoist was broken and the parts had to be moved manually.

Claimant testified that the parts in the basket were partially manufactured axles for motor vehicles. Claimant testified that she was taking a part from the basket when she felt a pain in her back and down her leg. Claimant told her supervisor, Jamie, about the incident. The supervisor had Claimant talk to the safety coordinator, Greg Wiswold. Claimant stated that she went to the cafeteria to rest and then she was asked if she wanted to go back to the line, and her supervisor, Jamie, sent her back to a line handling lighter materials for the remainder of the shift.

Claimant testified that on the morning of March 24, 2007, she could not get out of bed because of pain in her back. Claimant went to the emergency room at the University of Missouri Medical Center for treatment where she was prescribed Flexeril and pain medications and was advised to follow-up with her physician and her employer. Claimant further testified that on Monday, March 26, 2007, she went to work and advised her supervisors of the events of the weekend. Claimant stated that Employer arranged for her to see a doctor for treatment and that

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she, in fact, received treatment that day. Eventually, Claimant told Employer that she needed to see a doctor again, but the human resources person told Claimant that her complaints would subside and resolve and that she could not see a doctor again.

Claimant testified that after she was told Employer would not send her back to a doctor for additional treatment, she sought treatment from her personal physician who referred her to the Missouri Orthopedic Institute where Claimant was prescribed exercises, pain medication, as well as receiving one steroid injection. Claimant testified that the injection did not have a good result, and she did not have any more injections at that time.

Claimant testified that she next went to the Boone Hospital Pain Management Clinic where she was given more exercises and steroid injections, which gave Claimant some temporary relief, but the pain in her back and right leg would always come back.

Claimant testified that she sought treatment from a chiropractor at the Lordex Spine Center for several months, but was eventually discharged from treatment after which she sought treatment again from the Pain Management Clinic, where she was referred to Dr. Ryan, an orthopedic surgeon, who recommended and performed a discectomy at the L5-S1 level.

Claimant testified that prior to March 23, 2007, she received treatment for back pain. She testified that she did not remember seeing a doctor in 2001 for back pain, but Claimant did not deny accuracy of the medical records with regard to treatment in 2001. Claimant did not remember receiving nerve root blocks or steroid injections in 2001, but did testify that she did not have surgery on her back in 2001.

Claimant testified that she saw a doctor for treatment of back pain in 2005 two to four times, but that she did not remember receiving nerve blocks or steroid injections in 2005.

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Claimant testified that in May 2006 she was involved in a motor vehicle accident in which Claimant's knees, cervical spine, and low back were injured. Claimant was treated and released from the emergency room following the accident and was referred to a chiropractor for further treatment. Claimant further testified that her knees hurt more than her back as a result of the motor vehicle collision.

Claimant testified that prior to her March 23, 2007, injury she did not have nerve blocks, steroid injections, or surgery to treat her low back pain.

Claimant identified Exhibits 11 and 12 as medical bills incurred for treatment for her injury of March 23, 2007, except those items shown for which Claimant did not place a check-mark on the exhibits.

On cross-examination Claimant admitted that she does not remember the year she first experienced back pain. She admitted that the 2001 back pain was the result of a work-related injury, but she did not remember the exact location of the pain, how much medical treatment she had, if she had radicular pain, or how much work, if any, she missed. Claimant further admitted that she does not remember any specific condition of her back from 2005 to 2006, except for the motor vehicle accident in 2006.

Claimant admitted that she was involved in a motor vehicle accident in 2006. She further admitted that she does not remember any problem with activities prior to the motor vehicle accident with regard to her back and that she did not have any radicular pain after the motor vehicle accident. Claimant did not recall seeing a chiropractor after the accident or how long she would have received chiropractic treatment at that time. Claimant admitted that after she received treatment following the accident, her back pain symptoms resolved. Claimant admitted that she did miss some time from work after the accident, but that it was caused by the problems

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she was having with her knees as a result of the accident. Claimant admitted that following the motor vehicle accident she was able to do her job and that she did not take any medication after being released from treatment.

Claimant admitted that the parts that she was reaching for and handling on March 23, 2007, were partially built axles that weighed 50-60 pounds each. She admitted that she did not feel an immediate "pop" in her back when the incident occurred on March 23, 2007, but that she did feel an immediate pain down her right leg. Claimant further admitted that she did not recall having back pain prior to March 23, 2007, and that she had no back problems for the six months before the March 2007 incident at work.

Claimant denied that she told the occupational medicine doctor, which Employer sent Claimant to, that there was no injury, and she further denied that she told the occupational medicine doctor that she had a long history of back pain. Claimant admitted that she saw her private physicians at Green Meadows Clinic on or about March 26, 2007, but she denied saying that her back gets painful and goes out all the time.

Claimant admitted that she considered her back to be fine before the March 23, 2007, injury. She further admitted that now the pain in her back is constant, but the intensity of the pain varies from light to severe. Claimant admitted that she takes medication for her back pain and right leg pain and that the right leg pain goes down to her toes.

Claimant admitted that she did not tell Dr. Lange about previous treatment for her back and that she did not tell Dr. Lange about the radicular pain in her right leg. She further admitted that she told Jamie Drew, her supervisor, that she was working with axle parts from a basket when incident occurred.

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Claimant admitted that she did not know exactly how much time she was off work because of the injury and that she collected short-term disability for a period of time after the injury, but that Claimant never applied for or received unemployment benefits while off work during treatment as a result of the injury of March 23, 2007.

Claimant admitted that she reported the injury incident to Jamie and to the safety coordinator, Greg Wiswold, and that Employer never offered to pay for any medical treatment for Claimant's injury other than the occupational medicine doctor that Employer sent Claimant to for evaluation and treatment.

Claimant admitted that the pain she had prior to March 23, 2007, would come and go and would resolve between times of treatment. She further admitted that since the March 23, 2007, injury, her pain is constant, is more intense, and goes down her right leg.

Claimant admitted that she returned to work after her discectomy surgery on or about April 27, 2009, and that Employer accommodates Claimant's back pain by giving Claimant lighter jobs on the days when Claimant's back pain is exacerbated. Claimant admitted that she does not drive a forklift anymore.

Claimant admitted that she has a hard time standing for more than two hours and that sitting for longer periods of time is affected by the type of chair she uses and the posture.

Dr. Brent Koprivica testified on behalf of Claimant by deposition. Dr. Koprivica testified that he performed an independent medical evaluation upon the Claimant on August 9, 2008, and again on September 12, 2009. He testified that he issued a written report of both evaluations, which were admitted as exhibits to the deposition. Dr. Koprivica testified as to Claimant's current complaints at the time of each evaluation. Dr. Koprivica was aware that Claimant had received surgery to her low back between the dates of the evaluations.

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Dr. Koprivica testified that at the time of the September 2009 evaluation, Claimant still had back pain which varied from a level two of ten to a level nine of ten. Claimant further reported that sitting tolerance was less than one hour with weight shifting constantly; standing tolerance was less than 30 minutes; walking tolerance was less than 30 minutes; and Claimant was self-limiting lifting and carrying to less than ten pounds. Claimant indicated that the surgery helped her right leg pain symptoms, but that she continued to have spasms in her low back.

Dr. Koprivica testified that Claimant reported previous episodes of back pain, which were supported by the medical records he reviewed. Dr. Koprivica further testified that prior to March 23, 2007, Claimant did not have chronic back pain complaints with symptoms radiating down the right leg. Dr. Koprivica performed several tests as part of his physical examination including Waddell signs tests, all which indicated appropriate responses by the Claimant. Dr. Koprivica found deficits in the lumbar flexion and extension, as well as an absence of right Achilles deep tendon reflex, which would suggest a right S1 radiculopathy. Dr. Koprivica opined that the deficits in range of motion were consistent with a disc herniation.

Dr. Koprivica testified that, in his opinion, Claimant suffered an acute disc herniation with a right S1 radiculopathy, for which the treatment of surgical hemilaminectomy, foraminotomy, and discectomy would have been appropriate.

Dr. Koprivica testified that, in his opinion, Claimant had suffered a 25% permanent partial disability to the body as a whole, referable to the low back, which was caused by Claimant's incident of injury of March 23, 2007, when Claimant was pulling and reaching into a bin to remove partially manufactured parts of axles, and further that Claimant's action in handling the parts being removed from the basket was the prevailing factor in causing the disc herniation and the resultant permanent partial disability.

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Dr. Koprivica testified that Claimant's continued symptoms would require ongoing chronic pain management for treatment on pain.

Dr. Koprivica identified Deposition Exhibit 3 as the report which he authored as a result of his independent medical evaluation of August 9, 2008, and Exhibit 4 as the report he authored as a result of his independent medical evaluation of September 12, 2009.

On cross-examination Dr. Koprivica admitted that he was aware of treatment to the Claimant in 2001 for left sided sacroiliac pain and radicular symptoms to the left lower extremity. He also admitted that the Claimant complained of bilateral lower extremity complaints in 2006 following the motor vehicle accident. He further admitted that he did not consider Claimant's failure to mention previous conditions from time to time as inconsistent. He also admitted that he would not recommend traction as a long-term relief.

Dr. Koprivica admitted that Claimant did not have restrictions issued by a physician. Although he further admitted that, in his opinion, Claimant does have restrictions, he did not enumerate any in his report in order for Claimant to maintain her employment, and Claimant told him that she could self-accommodate at work.

Dr. Koprivica admitted that the comparisons of measurements and test results between the two examinations were not significant because there was not more than a 10% change in measurements and results between the two evaluations. He further admitted that Claimant lost her Achilles deep tendon reflex as a result of the surgery.

Dr. Koprivica admitted that Claimant's radicular symptoms improved after the surgery and that her primary problems were from spasms and pain in her low back. He also admitted that when a person suffers a traumatic disc herniation, the extremity symptoms can begin immediately, within a few hours, within a few days, or even within a few weeks of the incident.

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Claimant offered, and there was admitted without objection, Exhibits 4a, 4b, 4c, and 5 through 9, which contain records of medical treatment of the Claimant for her pre-existing back treatment and for treatment which she received as a result of her injury of March 23, 2007. The treatment information contained in the medical record exhibits generally supports the testimony of Claimant and the records used by Dr. Koprivica to form his opinions as to causation of Claimant's condition and her need for treatment and resultant disability.

Exhibits 11, 12 and 16 set out amounts of medical expenses which Claimant states she incurred as a result of the injury of March 23, 2007. Claimant testified that the amount of expense incurred for the injury of March 23, 2007, for treatment administered by University Physicians was \$2,132.00. The amount incurred for medical treatment with Boone Hospital set out in Exhibit 16 is \$23,166.91. Other medical expenses set out in Exhibit 11 are also included in Exhibit 16.

Employer offered, and there was admitted without objection, Exhibits A, B, C, D, F, and G.

Dr. David R. Lange testified on behalf of Employer by deposition. Dr. Lange testified that he performed an independent medical evaluation upon the Claimant on March 22, 2010, and authored a report of that date with regard to his findings and opinions with regard to Claimant's injury of March 23, 2007.

Dr. Lange testified that he took a history from the Claimant, reviewed certain medical records, and conducted a physical examination of the Claimant as part of his evaluation. He further testified that after his evaluation, it was his opinion that Claimant had a herniated disc at L5-S1, but that Claimant's work was not the prevailing factor in causing the herniated disc. He further testified that chiropractic records from 2006 reference complaints of right-sided sciatica,

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as well as other medical treatment records which indicated that Claimant was treated for back pain prior to March 2007.

Dr. Lange opined that Claimant suffered a 15% permanent partial disability as a result of the herniated disc and the resultant surgery to correct the herniation. He further testified that the treatment Claimant received and the charges rendered for that treatment, were reasonable. However, he reiterated his opinion that none of the treatment was attributable to Claimant's work or any injury alleged to have occurred on March 23, 2007.

Dr. Lange testified that he specifically relied, in part, on treatment notes from the University of Missouri Emergency room which indicate that Claimant denied any fall or injury Friday (March 23, 2007) at work.

On cross-examination Dr. Lange admitted that the last treatment Claimant had for back pain prior to March 23, 2007, was August 3, 2006. He further admitted that Claimant had typical conservative treatment for a herniated disc prior to surgery. Dr. Lange admitted that the emergency room notes of treatment administered on March 24, 2007, stated no known recent injury, and further, part of the note stated "back pain, onset was abrupt, duration lasting two days." He also admitted that the same treatment notes list heavy lifting and repetitive stress as risk factors experienced by Claimant.

Dr. Lange admitted that he did not review any medical treatment records from Claimant's 2006 motor vehicle accident, including the CT scan taken May 26, 2006.

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FINDINGS OF FACT AND RULINGS OF LAW

Whether the Claimant gave Employer proper notice?

Claimant testified that she told her supervisors about her back hurting her on March 23, 2007. She testified that she told her immediate supervisor what had occurred with regard to reaching and pulling and lifting parts out of the basket. Claimant testified that the safety coordinator allowed her to go to the cafeteria and rest for awhile after the incident. The next week, after Claimant related the events of the weekend about going to the emergency room for treatment to her back, the Employer sent Claimant to the Occupational Medicine Clinic for evaluation.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that Employer had actual knowledge of Claimant's injury and further that Employer was not prejudiced by Claimant's failure to report the injury to the Employer in writing within 30 days of the date of injury.

I find that Claimant gave the Employer sufficient notice of the incident of March 23, 2007, to comply with the provisions of Chapter 287 RSMo.

I find this issue in favor of Claimant.

Whether the Claimant sustained an accident?

Whether the accident arose out of the course of and scope of employment?

Whether the accident caused the injuries and disabilities for which benefits are now being claimed?

Claimant testified by deposition that she was placing parts into a three-sided basket when her injury occurred. At trial, she testified that she was removing parts from a three-sided basket when her injury occurred. At deposition she testified that the parts weighed 23 to 30 pounds. At

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trial she testified that the parts weighed 50 to 60 pounds. There was no other evidence adduced at the hearing as to how much the parts weighed. There was evidence that there was a hoist used to move parts but the hoist was not working on the day of the alleged injury. Claimant testified that she told her treating physicians about hurting her back at work. Several medical records do not reflect that Claimant reported that she hurt her back at work. Several other medical records are consistent with Claimant's testimony about when the incident occurred.

There was evidence adduced at the hearing that Claimant had prior treatment for back pain. Medical records admitted into evidence support prior treatment for left side low back pain. Other medical records admitted into evidence support prior treatment for low back pain following a motor vehicle collision.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that there was substantial and competent evidence adduced at the hearing that on March 23, 2007, Claimant was working on a line at a job task that involved manually moving partially constructed axles which weighed at least 25 pounds and as much as 60 pounds each. I further find that the Claimant performed her job task by reaching into a "basket" and pulling or lifting parts off the basket and onto another line for further processing.

I further find that there was substantial and competent evidence that Claimant's job task performance, which involved bending, reaching, lifting, and twisting, while in the course of scope of her employment, caused the Claimant to suffer a herniation of the L5-S1 disc which caused immediate pain in Claimant's right side low back and radicular pain down Claimant's right leg, all of which resulted in the need for medical treatment, including, but not limited to discectomy surgery to cure and relieve the effects of her injury.

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I further find that that medical treatment administered to Claimant by Green Meadows Clinic, Boone Hospital Pain Management Clinic, and Dr. Ryan for surgery, was reasonable and necessary in order to cure and relieve the Claimant of the effects of the injury.

I find these issues in favor of Claimant.

Whether the Employer is obligated to pay for past medical expenses?

Claimant offered, and there was admitted Exhibits 11,12,15, and 16, which contain billing amounts for medical services provided to Claimant in connection with her treatment received after Employer denied any further medical treatment. The amount of the medical bills for treatment rendered to the Claimant totals the sum of \$25,298.91, including physicians' and hospital charges.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, as well as the findings and rulings set out above, I find that the medical treatment administered to Claimant was the responsibility of the Employer and such medical treatment should have been provided by the Employer. Employer is hereby ordered to reimburse Claimant in the sum of \$25,298.91, as and for medical expenses incurred by Claimant for treatment of the injury of March 23, 2007.

I find this issue in favor of Claimant.

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

Claimant testified that she takes over-the-counter medication on a regular basis for pain and that she sometimes takes prescription medications at night to help her sleep. Dr. Ryan did not prescribe any specific need for future medical treatment, other than medications.

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Dr. Koprivica opined that Claimant would need medications in the future for chronic pain management as a result of the injury of March 23, 2007.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, as well as the findings and rulings set out above, I find that Claimant has met her burden of proof that she is in need of medical treatment in the future in order to cure and relieve the effects of this injury of March 23, 2007. I find that Claimant's continued use of medications since her surgery, along with the opinions of Dr. Koprivica, constitute substantial and competent evidence to prove that Claimant will need medical treatment to monitor her chronic pain management.

Employer is hereby ordered to provide Claimant with such treatment as the Boone Hospital Pain Management Clinic or any other physician to whom Claimant shall be referred from time to time, shall recommend.

I find this issue in favor of Claimant.

Whether temporary total benefits are owed to the Claimant?

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, as well as the findings and rulings set out above, I find that Claimant returned to work on April 27, 2009. I further find that Claimant is entitled to temporary total disability from the date of her surgery with Dr. Ryan, March 8, 2009, until April 26, 2009.

The parties stipulated that Claimant's compensation rate for temporary total disability was \$604.12. Employer is hereby ordered to pay to Claimant the sum of \$4,228.84, (49 days = 7 weeks x \$604.12 = \$4,228.84) as and for temporary total disability benefits.

I find this issue in favor of Claimant.

Employee: Tiffany Meachum

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The nature and extent of any permanent disabilities?

Dr. Koprivica rated Claimant's permanent disability at 25% of the body as a whole as set out in his second report dated September 12, 2009. Dr. Koprivica testified that he considered Claimant's self limitations in determining his rating of permanent disability and that if he did not consider Claimant's self limitations, his rating would be 15% of the body as a whole.

Dr. Lange did not believe that Claimant's injury was work related; however, he testified that Claimant did have a 15% permanent disability as a result of her back surgery and her pre-existing conditions with regard to her back.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, as well as the findings and rulings set out above, I find that Claimant has suffered a permanent partial disability of 15% of the body as a whole, as a result of her injury of March 23, 2007.

The parties stipulated that Claimant's compensation rate for permanent disability was \$376.55, the maximum rate allowed by law for the date of injury. Employer is hereby ordered to pay to Claimant the sum of \$22,593.00, $[(15\% \times 400 \text{ weeks}) = 60 \text{ weeks} \times \$376.55 = \$22,593.00]$ as and for permanent partial disability benefits.

I find this issue in favor of Claimant.

The Claimant's attorney has requested approval of an attorney fee of 25% of the amount of any award plus expenses of litigation. Claimant's attorney's fee request is hereby approved. Claimant's attorney is hereby awarded an attorney fee of 25% of the amount of this award plus expenses advanced by the attorney for litigation. Claimant's attorney is hereby granted a lien on the proceeds of this award unless and until the attorney fee shall have been paid in full.

Employee: Tiffany Meachum

Injury No. 07-034564

Made by: _____
David L. Zerrer
Administrative Law Judge
Division of Workers' Compensation