

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

Injury No.: 08-035075

Employee: Everett Mitchell
Employer: Crystal Extrusion System, LTD.
Insurer: Twin City Fire Insurance Co.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge by this supplemental opinion.

We offer this supplemental opinion to explain in some detail our agreement with the conclusion of the administrative law judge that there is no medical causal relationship between the alleged lifting incident and employee's spinal condition and related symptoms.

The opinion of Dr. Chabot is significantly more persuasive and credible than the opinion of Dr. Meyers. Dr. Chabot is a board-certified orthopedic surgeon, specializing in spinal surgery. He thoroughly reviewed the medical treatment records for the alleged injury. He noted, as do we, that the contemporaneous medical records conflict with employee's version of events.

At his first visit to the emergency room on March 15, 2008, employee complained of right-sided pain of two weeks duration triggered by a fall and recently exacerbated by moving furniture. Two weeks later, employee complained to Dr. Kunkel of back pain with left-sided lower extremity pain but Dr. Kunkel recorded no mechanism of injury. An April 17, 2008, MRI revealed a slight right-sided disc protrusion. In late April, Dr. Forget reported employee fell on ice 2 months prior then developed left-sided pain. There is also a note that employee "bent over at [illegible] felt a pop in back." The illegible word may be "work." By October 9, 2008, an MRI revealed the disc protrusion seen on the earlier MRI was almost completely resolved.

Dr. Chabot persuasively explained that the right-sided disc protrusion could not cause the left lower extremity pain and numbness that employee attributes to the alleged lifting incident. Nor could it explain employee's bilateral lower extremity complaints. Dr. Chabot is certain that even if the alleged lifting incident occurred as described by employee, the incident was not the prevailing factor in causing employee's current spinal condition or the symptoms of which he complains.

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Employee has failed to show that a lifting event on March 13, 2008, was the prevailing factor in causing the current condition of his spine.

The award and decision of Chief Administrative Law Judge Grant C. Gorman, issued September 2, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 15th day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Everett Mitchell

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Dependents: None

Employer: Crystal Extrusion System, LTD.

Additional Party: Second Injury Fund

Insurer: Twin City Fire Insurance Co.

Hearing Date: June 6, 2011

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: GCG/ln

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Alleged March 13, 2008
5. State location where accident occurred or occupational disease was contracted: Franklin County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges he injured his back while lifting a cart.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged low back
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: \$800.99
16. Value necessary medical aid paid to date by employer/insurer? \$1,667.71

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$400.00
- 19. Weekly compensation rate: \$266.67 for PPD benefits
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable: None

- 22. Second Injury Fund liability: No

TOTAL: NONE

- 23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Everett Mitchell

Injury No: 08-035075

Dependents: None

Employer: Crystal Extrusion System, LTD.

Additional Party Second Injury Fund

Insurer: Twin City Fire Insurance Co.

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: GCG/ln

PRELIMINARY STATEMENT

Hearing in this case was held before the undersigned Administrative Law Judge on June 6, 2011 in Franklin County, Missouri. Claimant Everett Mitchell was present and represented by attorney Sam Eveland. Attorney Palombi represented Crystal Extrusion System, LTD (Employer) and Twin City Fire Insurance Co. (Insurer). The Second Injury Fund (SIF) is a party to the case and was represented by Todd Matheny. Mr. Eveland requested a lien for attorney fees in the amount of 25%. Claimant and Employer/Insurer have submitted post-trial briefs.

The parties stipulated to the following:

1. On or about March 13, 2008, Claimant alleges an accidental injury. The alleged accident occurred in Franklin County, Missouri.
2. Claimant was an employee of Employer pursuant to Chapter 287 RSMo.
3. Venue is proper in Franklin County, Missouri.
4. Employer received proper notice of the claim.
5. Claimant filed the claim within the time allowed by law.
6. The Claimant earned an average weekly wage of \$400.00. The applicable compensation rate at the time of injury is \$266.67 for permanent partial disability (PPD) benefits.
7. Employer paid TTD benefits in the amount of \$800.99, from April 30, 2008 to May 20, 2008.
8. Employer paid \$1,667.71 in medical benefits.

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The issues to be determined by this hearing are:

1. Medical causation.
2. Whether Employer is liable for past medical benefits.
3. Whether Employer is liable for future medical benefits.
4. The nature and extent of disability.
5. Second Injury Fund liability.

SUMMARY OF THE EVIDENCE

Only evidence necessary to support the award will be summarized. Any objections not expressly ruled on during the hearing or in this award are now overruled. To the extent there are marks or highlights contained in the exhibits, those markings were made prior to being made part of this record, and were not placed thereon by the Administrative Law Judge.

Exhibits

Claimant offered Exhibits A through G, which were received into evidence without objection. Employer offered Exhibit 1, which was received into evidence without objection. The Second Injury Fund did not offer any exhibits.

Live Testimony

Claimant testified on his own behalf. He stated that he is currently employed and has been since April 2010 at a corn cob factory. He works forty hours per week and will lift up to 50 to 100 lbs. at least twice a day. He testified that he has not taken any medications today, but is receiving hydrocodone for pain from Dr. Kunkel.

Claimant testified that he worked for Crystal Extrusion Systems up until January 11, 2010. He had started with Crystal Extrusion in April 2007. On the date of the alleged accident of March 13, 2008, he was a line leader. He was lifting a rack with another employee which weighed approximately 300 to 350 lbs. As he was moving the rack, it slipped and he felt a "pop" in his back. He finished his shift. He testified that he went to the emergency room at St. John's in Washington the next day. He testified that he told them specifically about this work injury. He also told them that he had a prior back injury approximately two to three weeks earlier when he fell on some ice. He further testified that he had no medical treatment and missed no time

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from work. He admitted that he was moving furniture approximately three days prior but did not sustain any injury.

He testified he currently has lower back symptoms and problems bending over. He does have pain and numbness in the left leg to the knee, approximately twice a week, stating that the leg “feels dead”. He currently sees Dr. Kunkel every two to three months for medication.

After the injury, Claimant went to see Dr. Kunkel on April 4, 2008, even though he continued to work. He was then referred to Dr. Forget on April 28, 2008. Later, he was referred to Dr. Curylo. He also received injections from Dr. Bailey. He was on long term disability from April 24, 2008, until March 2009, when he returned to work full duty. He admitted that he was released to return to work by Dr. Kunkel without restrictions in March 2009. He denied any other medical treatment after the injections in November 2008 were concluded.

Claimant testified on cross examination that he did tell the emergency room at St. John’s on March 15, 2008, that he had injured his low back at work. He also testified that he told Dr. Kunkel on the first visit on April 4, 2008, of the incident at work. He further testified that he told Dr. Forget on April 28, 2008, that he injured himself at work moving a rack.

FINDINGS OF FACT AND RULINGS OF LAW

Based on the competent and substantial evidence presented, including the testimony of Claimant, my personal observations, expert medical testimony, and all other exhibits received into evidence, I find:

1. Claimant failed to prove that it is reasonably probable he sustained a compensable work injury arising out of and in the course of employment that resulted in injury to Claimant’s low back on March 13, 2008; or that any injury to his low back is medically causally related to his work.
2. Claimant’s testimony regarding his alleged injury and medical treatment is not credible.

ANALYSIS

In Exhibit B, the records of St. John’s Mercy Hospital Emergency Room, the records of March 15, 2008 contain entries from two separate persons, the doctor and the person who performed the triage assessment. Neither of them records a history of a work related injury. In fact, the ER doctor noted the pain started “2 weeks ago.” In a separate entry, it is noted “Fell 2 weeks ago.” The doctor’s notes also indicate “earlier this week was moving furniture,” and in the section which asks where the injury happened, the box marked “home” is checked. In the

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triage records, it indicates Claimant complained of low back pain “3 weeks on & off” and “moved furniture this week, now worse.”

In Exhibit C, the records of Dr. Kunkel, Claimant was first seen on April 4, 2008. Dr. Kunkel notes “no specific injury.” In Exhibit D, Claimant saw Dr. Forget for the first time on April 28, 2008. Dr. Forget records a history of a fall on ice approximately two months prior. Although the history recorded by both Dr. Kunkel and Dr. Forget are inconsistent, the records of Dr. Forget are consistent with the history recorded by the ER doctor two days after the alleged injury. None of the histories recorded in these records are consistent with the testimony provided by Claimant. In fact, the history to which Claimant testified does not appear in any records until May 19, 2008, in the records of Dr. Curylo (Exhibit F). Even part of that history is inconsistent with Claimant’s testimony, as Dr. Curylo notes that after Claimant injured his back, he was unable to work the rest of the day. However, Claimant testified he worked the rest of his shift, and did not present to the ER until March 15, 2008.

In order to believe Claimant injured his back at work, that the condition in his back is from the work injury, and that he gave that information to his medical providers, one would have to believe that four different people disregarded what Claimant told them, and recorded erroneous information in the treatment records. Additionally, some of them would have recorded identical erroneous medical histories independent of one another.

The claim for compensation is denied. The claim against the Second Injury Fund is denied. All other issues are moot.

Made by: /s/ GRANT C. GORMAN
GRANT C. GORMAN
Chief Administrative Law Judge
Division of Workers' Compensation