

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

Injury No.: 95-134059

Employee: Sasha Monteleone

Employer: Truman Medical Center

Insurer: Self-Insured

Date of Accident: August 31, 1995

Place and County of Accident: Kansas City, Jackson County, Missouri

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 September 28, 2004, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Rebecca S. Magruder, issued September 28, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11<sup>th</sup> day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: John J. Hickey, Member

Secretary

**AWARD**

Employee: Sasha Monteleon

Injury No. 95-134059

Dependants: N/A

Employer: Truman Medical Center

Insurer: Self-Insured

Hearing Date: September 8, 2004

Checked by: RSM/bi

### **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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
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:  
N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: None.
  
16. Value necessary medical aid paid to date by employer/insurer? \$1,435.26
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: N/A
20. Method wages computation: N/A

### **COMPENSATION PAYABLE**

21. Amount of compensation payable: None.
22. Future requirements awarded: None.

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

Employee: Sasha Monteleon

Injury No. 95-134059

Dependants: N/A

Employer: Truman Medical Center

Insurer: Self-Insured

Additional Party: N/A

Checked by: RSM/bi

### **STIPULATIONS**

At the hearing on September 8, 2004 the parties stipulated to the following:

- 1) That on or about August 31, 1995 Truman Medical Center Incorporated was an employer operating under the provisions of the Missouri Workers' Compensation Law;
- 2) that their liability under said law was fully insured by the authority to self-insure;.
- 3) that on or about August 31, 1995 Sasha Monteleon was an employee of Truman Medical Center, Inc., and was working under the provisions of the Missouri Workers' Compensation Law;
- 4) that the Employer had notice of the alleged injury;
- 5) that a claim for compensation was filed within the time prescribed by law;
- 6) that no compensation had been paid; and
- 7) that medical aid had been furnished in the amount of \$1,435.26.

### **ISSUES**

The issues to be determined by this hearing are as follows:

- 1) Whether on or about August 31, 1995 Sasha Monteleon sustained an injury by accident arising out of and

- in the course of her employment;
- 2) the wage and compensation rate;
  - 3) liability for past temporary total disability benefits and past temporary partial disability benefits;
  - 4) the nature and extent of any permanent disability resulting from the alleged August 31, 1995 accident; and
  - 5) liability for past and future medical aid.

### **FINDINGS AND RULINGS**

Claimant's evidence consisted of her testimony, the testimony of Dr. Mary Brothers and numerous medical records and reports. The Employer's evidence consisted of the deposition testimony of Stephen Hendler, M.D. The claim for compensation and report of injury were also admitted into evidence.

The first issue to be determined in this case is whether the Claimant sustained injury on or about August 31, 1995, which arose out of and in the course of her employment. Claimant contends in her Claim for Compensation dated October 24, 1995, that she ruptured a disk at the L5-S1 level when she picked up a neonatal monitor in connection with moving a baby from an isolate to a normal crib in transfer of the child. She alleges this accident occurred on August 31, 1995. The Employer denies that the alleged accident occurred and denies injury resulting therefrom.

In a workers' compensation proceeding the burden of proof is on the claimant to prove all elements of his claim. Meilves v. Morris, 422 S.W.2d 335 (MO 1968). While the claimant does not have to establish the essential elements of his case, absolutely, the claimant must show these elements by a reasonable probability. Tate v. Southwestern Bell Telephone Company, 715 S.W.2d 326 (MoApp. 1986). The claimant in this case must therefore show by a reasonable probability that an accident occurred and resulted in injury. See Elmer v. Board of Police Commissioners of Kansas City, 895 S.W.2d 117 (MoApp. 1995).

The Claimant testified that she was a neonatal intensive care nurse for Truman Medical Center on August 30, 1995, and that she had worked for Truman Medical Center for approximately one year prior to that date. She testified that around one o'clock in the afternoon she was getting a baby ready for a test and that the babies in the neonatal unit had monitors attached to their isolates. She testified that the monitor had to go with the baby when the baby was moved. She reached down and picked up the monitor and put it in the isolate above her head. When she did so, she testified that she felt pain in her spine, but she thought was just a strain. She testified that a physician named Heather Isson was present in the room when she injured her back. Claimant testified that she made some comment or remark to Dr. Isson that "that didn't feel very good". And she then testified that Dr. Isson responded to the remark by stating that those monitors were heavy. The Claimant did not seek medical treatment that day and testified that she thought she had merely sustained a minor injury straining her back.

She was not scheduled to work on Friday, August 31<sup>st</sup> after her alleged injury on Thursday, August 30<sup>th</sup> as she was leaving town for the Labor Day week to get married. She first sought medical treatment at Northeast Regional Medical Center emergency room in Kirksville, Missouri on Monday, September 4, 1995. The Claimant's history recorded at that visit in the medical records contains absolutely no indication that the Claimant was injured at work. In fact, the record contains a history of a nonwork-related event Claimant attributed her back pain to. The September 4, 1995, emergency room record reads as follows: "Patient thinks she may have 'turned funny' in bed..." Exhibit 3, p. 3.

At the hearing, Claimant repeatedly denied that she had told anyone that she injured herself by turning funny in bed. Moreover, in a statement she made in October of 1995, the Claimant stated that she had mentioned to the doctor in Kirksville that she may have injured herself when she picked up a monitor at work.

Claimant sought treatment the very next day, September 5, in Chillicothe, Missouri with complaints of right leg pain and numbness. Although the Claimant advised the emergency room physician of her visit to the emergency room in Kirksville, there is absolutely no history of a work-related injury contained in the Chillicothe record.

Claimant testified at the hearing that she next sought medical treatment at Truman Medical Center on September 6<sup>th</sup> where she was treated by a medical resident. There were no medical records offered or admitted into evidence from Truman Medical Center other than a one-page record of a September 11<sup>th</sup> visit. Exhibit 5. Nonetheless, there appears to be no dispute the Claimant did in fact have more than one visit to Truman Medical Center. Claimant testified that she did not advise anyone of any work-related incident at the September 6<sup>th</sup> visit. She gave three reasons at the hearing for not advising

anyone initially that she had hurt herself when she picked up the monitor at work. Her first reason was that she thought that she had just sustained a minor injury or sprain to her back. Secondly, she testified that she was apprehensive about telling anyone that she hurt her back because of the nature of her work, i.e., she had to be able to do physical work in order to be a nurse and that if anyone thought she had hurt herself she would not be allowed to work. Finally, she testified that she was afraid of telling anyone she had injured herself at work because of what happens to “people who file workers’ compensation claims”. She never really explained, however, why she was fearful other than to testify that the “nurses talked about things like that.” Claimant obviously was trying to excuse her not telling anyone she had hurt her back at work due to some alleged fear she had.

Claimant’s first reason for not telling anyone immediately at work about her alleged injury ceased to be a valid reason by the time she had to seek medical treatment at the emergency room in Kirksville on September 4, 1995. Her second reason, (that if her employer knew she was injured her employer would not let her work) apparently became an insufficient reason for the Claimant herself when she went to the emergency room at Truman Medical Center on September 6, 1995. Clearly, her employer, Truman Medical Center, would find out that she was hurt if she went to the emergency room at Truman Medical Center for treatment of back pain. Her third reason for not telling anyone that she had injured herself at work (that being her fear of filing or having a workers’ compensation claim) also becomes completely unpersuasive with a close examination of the evidence. Claimant testified that this Dr. Isson, who allegedly been present when the Claimant lifted the monitor on August 30<sup>th</sup> and who allegedly knew the Claimant had hurt herself, happened to be in the emergency room on September 6<sup>th</sup> when the Claimant sought treatment. Claimant testified that Dr. Isson sought her out and told her that she needed to go to the orthopedic clinic and the employee health nurse and come clean with the August 30<sup>th</sup> work incident. There was no testimony from Dr. Isson.

Claimant did go to the Truman Medical Center Orthopedic Clinic four or five days after she had spoken with Dr. Isson in the emergency room. Exhibit Five is the one-page Truman Medical Center record admitted into evidence. It is an orthopedic clinic note, which was dictated on September 11, 1995. The record is difficult to read but does contain the following history: “The patient is a 35-year-old white female, neonatal ICU nurse at Truman Medical Center, who states that two weeks ago she was at home making her bed when she experienced acute onset of sudden back pain radiating down the right leg.” Once again, Claimant does not give a history of injuring herself at work and attributes her problems to making her bed at home. This is particularly curious given the Claimant’s testimony that Dr. Isson five days before this had supposedly advised the Claimant to report the injury as being a work-related injury. It makes no sense at all as to why the Claimant would then seek further treatment at Truman Medical Center, but fail to advise that she had hurt herself at work as Dr. Isson had advised. I can find no explanation as to why on September 11<sup>th</sup> she would give a history of hurting herself at home when she supposedly been told by Dr. Isson on September 6<sup>th</sup> to come clean with the work injury.

Sometime between September 11 and September 22<sup>nd</sup>, Claimant did tell her employer that she had injured her back at work and was sent by her employer to Dr. Brothers. Since September 22, 1995 when she first visited Dr. Brothers, the history contained in the records is consistent with Claimant’s contention that on August 30<sup>th</sup>, she injured her back when she picked up a neonatal monitor at work.

In all cases, the credibility of the Claimant is an essential factor when determining compensability. In a case where, as here there are no eyewitnesses to the accident, the Claimant’s credibility is of paramount importance. In this case, the impeachment of Claimant’s testimony was devastating to her credibility. I simply was not persuaded that the Claimant was telling the truth at the hearing regarding the facts surrounding the accident. I was unable to determine when the Claimant was telling the truth and when she was not. Because I was unable to rely on the Claimant’s version of the facts asserted at trial, compensation must be denied. The Claimant failed to establish that she had a work-related accident. As demonstrated above, the record is characterized largely by inconsistencies, and the fact finder is ultimately left to speculate as to whether the Claimant sustained injury as a result of the work-related accident as described by the Claimant. The Claimant clearly sustained a low back injury at some time in early September 1995. Furthermore, the Claimant has disability as a result of this injury and is in need of further medical treatment. The Claimant has proved these contentions by a reasonable probability. Claimant has not, however, proved by a reasonable probability that she sustained any accident at work on August 30 1995 which caused her back injury.

Claimant’s version of the events at trial has no support from her own medical records until September 22, 1995. Where medical records are silent with regard to the history of a work-related injury, the Claimant’s otherwise credible testimony can often defeat any inference that the accident did not occur at work. However, where there are affirmative histories recorded in medical records of nonwork-related accidents causing the alleged injury, the inference is extremely strong that Claimant did not in fact injure herself in a work-related accident. While there are other inconsistencies in Claimant’s testimony as well as other impeaching evidence contained in the record, the above analysis in itself caused me to

have serious doubts about the Claimant's credibility. Compensation is therefore, denied on the above basis.

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

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

Rebecca S. Magruder  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Renee Slusher  
*Director*  
*Division of Workers' Compensation*