

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

Injury No. 03-098032

Employee: Judith Moore
Employer: Delmar Gardens
Insurer: Travelers Commercial Casualty

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 July 14, 2014. The award and decision of Administrative Law Judge Margaret D. Landolt, issued July 14, 2014, 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 9th day of December 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Judith Moore

Injury No.: 03-098032

Dependents: N/A

Employer: Delmar Gardens

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

Additional Party: N/A

Insurer: Travelers Insurance Company

Hearing Date: April 8, 2014

Checked by: MDL

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: September 6, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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:
Employee was involved in a motor vehicle accident on Employer's parking lot.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Neck
14. Nature and extent of any permanent disability: 2.5% PPD of the body as a whole referable to the cervical spine
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

Employee: Judith Moore

Injury No.: 03-098032

- 17. Value necessary medical aid not furnished by employer/insurer? \$5,333.26
- 18. Employee's average weekly wages: \$443.32
- 19. Weekly compensation rate: \$295.55 for PPD
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:	
Unpaid medical expenses:	\$5,333.26
10 weeks of permanent partial disability from Employer	\$2,955.50
22. Second Injury Fund liability No	
23. Credit to Employer from Employee's failure to appear at medical examinations	(\$300.00)
TOTAL:	\$7,988.76
24. Future requirements awarded: None	

Said payments to begin 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. Joseph Robbins

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Judith Moore

Injury No.: 03-098032

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Delmar Gardens

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

Additional Party: N/A

Insurer: Travelers Insurance Company

Checked by: MDL

PRELIMINARIES

A hearing was held on April 8, 2014 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Judith Moore ("Claimant") was represented by Mr. Joseph Robbins. Delmar Gardens ("Employer") and its insurer Travelers Insurance Company were represented by Mr. Gregory Temme. Mr. Robbins requested a fee of 25% of Claimant's award.

The parties stipulated that on or about September 6, 2003 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer, venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant was earning an average weekly wage of \$443.32 resulting in a rate of \$295.55 for Permanent Partial Disability ("PPD") benefits; and Employer paid no TTD benefits and \$300.00 in medical expenses.

The issues to be determined are medical causation; liability of Employer for past medical benefits of \$5,333.26; and nature and extent of PPD sustained by Claimant.

SUMMARY OF EVIDENCE

Claimant was working for Employer as a Certified Nursing Assistant on September 6, 2003. Claimant clocked out, and was in her car in Employer's parking lot when her vehicle was struck on the driver side by another vehicle. Claimant testified at the hearing she sustained injury to her neck, upper back and arms from the motor vehicle accident. Claimant testified at her deposition on June 20, 2006 that the injuries she sustained from the car accident were to her neck, upper shoulders and arms. (Exhibit 7, pg. 19). Claimant did not testify at her deposition that she sustained injury to her low back from the September 6, 2003 work injury.

Claimant reported the incident to Employer immediately following the accident. Claimant requested medical treatment which Employer denied. Claimant pursued medical treatment on her own with her primary care physician on September 12, 2003. She gave a history of a motor vehicle accident 6 days before, and complained of soreness and neck pain with headaches which occurred 2 to 3 times a day. Claimant was prescribed medication. Claimant

treated one time with her family physician. Claimant received chiropractic treatment from September 12, 2003 through March 17, 2004. Claimant was never taken off work or put on restrictions due to her work injury of September 6, 2003, and she continued to work full duty following the work injury. After Claimant was released from chiropractic care, she did not seek further treatment in connection with her work accident of September 6, 2003. Claimant testified she incurred medical expenses of \$5,333.26 as a result of her work accident of September 6, 2003.

Ms. Fern Wolf, a claims adjuster for Travelers Insurance Company, testified on behalf of Employer. Ms. Wolf testified Employer/Insurer scheduled Claimant for an exam with Dr. Russell Cantrell on three separate occasions, and Claimant failed to attend any of the scheduled exams. The exams were scheduled for December 16, 2003, January 13, 2004 and April 21, 2004. Ms. Wolf prepared and sent letters to Claimant's attorney notifying him of the exams. (Exhibit 5). She also called and spoke with Claimant's attorney, Joseph Robbins notifying him of the exams with Dr. Cantrell. Ms. Wolf testified each time Claimant failed to attend the exam with Dr. Cantrell, Travelers Insurance was charged a \$100.00 no-show fee. (Exhibit 5). Travelers Insurance paid \$300.00 in no show charges due to the fact that Claimant failed to attend the three scheduled exams. (Exhibit 5). Ms. Wolf testified no further exams were scheduled for Claimant since she failed to attend any of the three previously scheduled exams with Dr. Cantrell. Claimant denied any knowledge of the scheduled exams with Dr. Cantrell.

Dr. Jerry Meyers, a general surgeon, examined Claimant on August 5, 2010, prepared a report, and testified on behalf of Claimant. In his report dated September 6, 2010 Dr. Meyers found that following the motor vehicle accident Claimant had some mild posterior neck problems but resumed her work without difficulty. (Exhibit A-3, pg. 2). Upon examination, Claimant had some mild posterior neck pain with no crepitus. There was no back pain, and she had full range of motion of her neck and back. There were no radicular symptoms, and her neurological examination was normal. Dr. Meyers reviewed the x-rays of the cervical spine which showed no significant degenerative disease or other acute findings, and the lumbar spine showed some mild degenerative changes at the SI joint. (Exhibit A-3, pg. 3). Dr. Meyers opined that Claimant sustained soft tissue injuries of the neck with sprain/strain secondary to a motor vehicle accident. (Exhibit A-3, pg. 3). Dr. Meyers assigned a 12% PPD rating to body as a whole related to the neck. (Exhibit A-3, pg. 4). In regard to the low back, Dr. Meyers found Claimant sustained soft tissue injuries with strain/sprain of the back secondary to the motor vehicle accident. (Exhibit A-3, pg. 3). Dr. Meyers assigned a 12% PPD rating to the body as a whole referable to the back. (Exhibit A-3, pg. 4). Dr. Meyers felt Claimant had attained Maximum Medical Improvement (MMI). Dr. Myers stated that Claimant incurred medical expenses of \$5,333.26 as a result of her accident of September 6, 2003, and opined the medical expenses were fair, reasonable, and necessary as a result of her September 6, 2003 injury.

Dr. Daniel Kitchens, a neurosurgeon, testified on behalf of Employer. On October 8, 2008, Dr. Kitchens took a history from Claimant, reviewed her medical records, and performed a physical examination. In his examination of Claimant on October 8, 2008, Claimant denied neck pain or pain down her arms or hands. Dr. Kitchens opined, within a reasonable degree of medical certainty, that Claimant did not require additional medical treatment for the cervical strain from the automobile accident of September 6, 2003. Dr. Kitchens did not diagnose a low back injury as a result of the work accident of September 6, 2003.

RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing and the application of Missouri Law, I find:

Pursuant to the stipulation of the parties, Claimant sustained an accident arising out of and in the course of employment on September 6, 2003 when she was involved in a motor vehicle accident in the parking lot of Employer.

The motor vehicle accident of September 6, 2003 was the prevailing factor in the cause of Claimant's cervical strain. I do not find Claimant sustained injury to her low back from the September 6, 2003 motor vehicle accident. Claimant testified at her deposition and at hearing that she sustained injuries to her neck, shoulders, arms and upper back as a result of the motor vehicle accident of September 6, 2003. Claimant did not testify she sustained injury to her low back from the September 6, 2003 work injury. Dr. Kitchens did not diagnose a low back injury as a result of the accident of September 6, 2003.

Claimant sustained 2.5% PPD of the body as a whole referable to the cervical spine as a result of the September 6, 2003 work injury.

Claimant pursued medical treatment on her own following the September 6, 2003 work injury. Claimant requested treatment, which was denied by Employer. Claimant incurred medical bills of \$5,333.26 as a result of the accident. Dr. Myers stated the \$5,333.26 in medical expenses were fair and reasonable. Employer offered no evidence to the contrary.

Employer/Insurer attempted three times to have Claimant examined by Dr. Russell Cantrell. Employer/ Insurer scheduled Claimant for an examination with Dr. Cantrell on December 16, 2003, January 13, 2004 and April 21, 2004. Ms. Wolf sent letters to Claimant's attorney and spoke with him on the phone notifying him of the scheduled exams. Claimant failed to attend all three exams. Travelers Insurance Company paid a total of \$300.00 in no-show charges to Dr. Cantrell for the missed exams by the Claimant. Claimant is entitled to \$5,333.26 in medical expenses less the \$300.00 in no show charges paid by Insurer, or \$5,033.26.

This award is subject to an attorney's lien of 25% in favor of Claimant's attorney, Mr. Joseph Robbins.

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

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

Injury No. 04-128243

Employee: Judith Moore
Employer: Delmar Gardens
Insurer: St. Paul Travelers

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 parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Introduction

The parties asked the administrative law judge to resolve the following issues: (1) medical causation; (2) employer's liability for past temporary total disability benefits for the period of time from December 5, 2007, to December 5, 2008; (3) employer's liability for past medical expenses in the amount of \$84,794.62; and (4) the nature and extent of permanent partial disability.

The administrative law judge rendered the following findings and conclusions: (1) employee sustained a lumbar strain injury as a result of the accident on December 10, 2004; (2) employer is not liable for past temporary total disability benefits; (3) employer is not liable for past medical expenses; and (4) employee sustained 5% permanent partial disability of the body as a whole as a result of her work injury.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred in not awarding sufficient permanent partial disability.

Discussion

Nature and extent of permanent partial disability

The administrative law judge expressly relied upon the opinion from employer's evaluating expert, Dr. Kitchens, in resolving the disputed issues in this matter. With regard to the issue of permanent partial disability, however, the administrative law judge appears to have rejected Dr. Kitchens's opinion that employee did not suffer any permanent partial disability as a result of the lifting event on December 10, 2004. We agree with the administrative law judge's (implied) finding that Dr. Kitchens did not credibly assess the nature and extent of disability employee sustained as a result of the accident.

We find the administrative law judge's rating somewhat conservative, however, in light of employee's continuing and significant low back pain and stiffness following the accident. The courts have consistently declared that the question of the nature and extent of permanent disability resulting from a work injury is a factual one within the "unique province" of this Commission to decide. *ABB Power T & D Co. v. Kempker*, 236 S.W.3d

Employee: Judith Moore

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43, 52 (Mo. App. 2007). We find that the nature and extent of employee's permanent partial disability resulting from the work injury of December 10, 2004, is better represented by a rating of 12.5% permanent partial disability of the body as a whole. Given the stipulated compensation rate for permanent partial disability benefits (\$309.09), we conclude that employer's liability for permanent partial disability is \$15,454.50.

Conclusion

We modify the award of the administrative law judge as to the issue of the nature and extent of permanent partial disability. Employer is liable for \$15,454.50 in permanent partial disability benefits.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued July 14, 2014, is attached hereto and incorporated by this reference to the extent not inconsistent with our findings, conclusions, decision, and modifications herein.

This award is subject to a lien in favor of Joseph Robbins, Attorney at Law, in the amount of 25% for necessary legal services rendered.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 9th day of December 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Judith Moore

Injury No.: 04-128243

Dependents: N/A

Employer: Delmar Gardens

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

Additional Party: N/A

Insurer: Travelers Insurance Company

Hearing Date: April 8, 2014

Checked by: MDL

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: December 10, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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:
Employee was lifting a patient when she injured her low back.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Body as a whole – low back
14. Nature and extent of any permanent disability: 5% PPD of the body as a whole referable to the low back.
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? \$6,511.26

Employee: Judith Moore

Injury No.: 04-128243

- 17. Value necessary medical aid not furnished by employer/insurer? 0
- 18. Employee's average weekly wages: \$463/63
- 19. Weekly compensation rate: \$309.09/\$309.09
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	0
20 weeks of permanent partial disability from Employer	\$6,181.80
TOTAL:	\$6,181.80

23. Future requirements awarded: None

Said payments to begin 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. Joseph Robbins

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Judith Moore

Injury No.: 04-128243

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Delmar Gardens

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

Additional Party: N/A

Insurer: Travelers Insurance Company

Checked by: MDL

PRELIMINARIES

A hearing was held on April 8, 2014 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Judith Moore ("Claimant") was represented by Mr. Joseph Robbins. Delmar Gardens ("Employer") and Travelers Insurance Company ("Insurer") were represented by Mr. Gregory Temme. Mr. Robbins requested a fee of 25% of Claimant's award.

The parties stipulated that on or about December 10, 2004 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer, venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant was earning an average weekly wage of \$463.63 resulting in a rate of \$309.09 for Permanent Partial Disability ("PPD") and Temporary Total Disability ("TTD") benefits; and Employer paid no TTD benefits and \$6,511.26 in medical expenses.

The issues to be determined are medical causation; liability of Employer for past medical benefits of \$84,794.62; whether Employer is liable for past TTD benefits for the period of time from December 5, 2007 until December 5, 2008; and nature and extent of PPD sustained by Claimant.

FINDINGS OF FACT

Claimant was working for Employer as a Certified Nursing Assistant on December 10, 2004, when she injured her low back while lifting a patient. Claimant reported the incident to Employer and was referred to Concentra Medical Center for treatment. Claimant was seen at Concentra on December 14, 2004, and was diagnosed with a back strain, lumbosacral strain, and sciatica. She was treated conservatively with physical therapy, medication, and work restrictions. On December 29, 2004 Claimant was referred to Dr. James Doll, a physiatrist. Upon examination Claimant's lumbar range of motion was nearly full in all planes. Her lower extremity examination revealed intact strength, sensation, and reflexes to bilateral lower extremities. Straight leg raise test was negative bilaterally. Plain x-rays of the lumbar spine revealed a very mild decrease in disc space at the L4-5 and L5-S1 levels without any evidence of spondylolisthesis. Mild degenerative changes were noted with very subtle end plate spurring at

the lower lumbar levels. Dr. Doll diagnosed diffuse low back pain and very mild spondylosis. Dr. Doll recommended Claimant continue her home exercise program, and returned her to regular duty. Claimant returned to Dr. Doll's office on January 11, 2005. Claimant told Dr. Doll upon returning to her regular duties at work she began to have increased pain after two hours of performing her job. Dr. Doll released Claimant to full duty. Claimant returned to Dr. Doll on January 11, 2005, and Dr. Doll encouraged Claimant to resume physical therapy three times a week for two weeks. (Exhibit 2) Claimant returned to Dr. Doll on January 25, 2005. Dr. Doll ordered an MRI of the lumbar spine which was performed on January 31, 2005. The MRI revealed diffuse disk bulges with small central focal protrusions at the L4-5 and L5-S1 levels causing mild mass-effect on the anterior thecal sac, mild bilateral neuroforaminal narrowing but no central canal stenosis. (Exhibit 2)

Dr. Doll saw Claimant for a follow up exam on February 8, 2005. After reviewing her MRI, Dr. Doll's impression was persistent low back pain and reported intolerance of lifting above 30 pounds of weight. Dr. Doll also diagnosed mild lumbar spondylosis. (Exhibit 2). Dr. Doll ordered a functional capacity exam (FCE) which was performed on February 18, 2005. (Exhibit 2).

On March 1, 2005, Dr. Doll saw Claimant for a follow up exam and he reviewed and discussed the FCE results with Claimant. (Exhibit 2). Dr. Doll stated the FCE demonstrated work in the light physical demand level; however, Claimant passed only 21 out of 49 validity criteria during the FCE, rated at 43% suggesting very poor demonstrated effort or voluntary submaximal effort not necessarily related to pain impairment or disability. Claimant described pain ratings of 10 out of 10 throughout the entire examination, however, did not demonstrate any significant movement dysfunction to correlate with such reported high levels of pain. (Exhibit 2) Based on the results of the FCE, clinical history and response to treatment attempts Dr. Doll opined that Claimant could resume her regular duty activities without restrictions. (Exhibit 2) Dr. Doll released Claimant from care, and felt she was at MMI, and no further diagnostic tests or formal therapeutic interventions were indicated. Dr. Doll found that Claimant had not sustained any permanent partial disability due to this injury. (Exhibit 2).

Claimant was terminated by Employer in February 2005. Claimant has been operating a home daycare business since 2004. (Exhibit 7, pg. 28) She started with watching her daughter's four children. (Exhibit 8, pg. 10). Claimant then took care of another woman's four children. (Exhibit 8, pg. 11). Two of the eight children were infants. (Exhibit 8 p. 11). Claimant's job duties included feeding, changing diapers, cleaning, and activities. Claimant testified she was paid \$500.00 per month by the State of Illinois to watch the children. Claimant also testified that she was paid an additional \$300.00 per month for a food program as well.

After she was released from Dr. Doll, Claimant sought treatment on her own from Belleville Family Practice. On July 11, 2005 Claimant was seen for low back pain. The onset history was years ago but was worse over the last week. (Exhibit L). Claimant received conservative medical treatment on September 30, 2005. (Exhibit L). Claimant returned on February 23, 2006 and received conservative medical treatment. (Exhibit L). Claimant then underwent two epidural steroid injections at St. Elizabeth's Hospital on February 2, 2007 and May 4, 2007. (Exhibit K). An MRI was performed in May, 2007.

Claimant went to Dr. Nicholas Poulos on September 17, 2007. Dr. Poulos reviewed the lumbar spine MRI of May 2007, and opined that Claimant had degenerative disc disease at L4-L5 and L5-S1 but the heights were well preserved. (Exhibit 6). Dr. Poulos found at the L4-5 level she had a small central disc herniation and at the L5-S1 level a broad-based posterior herniation. (Exhibit 6). His overall impression was that both of the herniations were most likely non-compressive, and the foramen were wide open. (Exhibit 6). He stated the MRI was not particularly remarkable other than having some degenerative disc disease. (Exhibit 6).

Dr. Poulos ordered a CT discogram which was performed on September 24, 2007. Dr. Poulos reviewed the CT discogram and recommended surgery. On December 5, 2007, Claimant underwent a two level fusion at L4-L5 and L5-S1. (Exhibit 6.) The preoperative and postoperative diagnosis was degenerative disc disease at L4-L5, L5-S1 levels. (Exhibit 6). Claimant attended follow up exams with Dr. Poulos.

On May 8, 2008 Claimant returned to Dr. Poulos. In his report Dr. Poulos stated "Today was supposed to be the patient's last visit". (Exhibit 6). "It is very interesting that today she decided to tell me that she was having all sorts of problems including back pain, leg pain. As she is telling me this, she is explaining how she has to get down on the floor to put her shoes on, squats down without any difficulty and demonstrates. Her motions were completely fluid and there was certainly no restricted motion secondary to pain. The patient is currently in school. She does not want to return to work as a CNA. Hardware is well positioned and implants are well positioned. From my standpoint, there is nothing more than I can do for her. I am concerned that there is a significant functional component to her complaints". (Exhibit 6). Dr. Poulos released her from care at the May 8, 2008 examination.

Claimant is seeking temporary total disability from December 5, 2007 to December 5, 2008. Claimant testified that she had worked as a CNA at an assisted living Center for four to six months starting in June of 2008. Claimant confirmed that her work at the assisted living center consisted of assisting the elderly with bathing, feeding, putting on clothes and washing clothes. Claimant testified she helped lift the elderly out of chairs. Claimant worked 8 hours a day and 5 days a week, and worked some overtime.

Claimant is seeking reimbursement of the unauthorized medical treatment bills of \$84,794.62 for her low back condition. The medical bills have been paid by her private health insurance.

Dr. Daniel Kitchens, a neurosurgeon testified on behalf of Employer. On October 8, 2008, Dr. Kitchens took a history from Claimant, reviewed her medical records and performed a physical examination. In his report of October 8, 2008, Dr. Kitchens' assessment was that Claimant presented with degenerative disc disease of her lumbar spine. (Exhibit 1, pg. 11). Dr. Kitchens opined within a reasonable degree of medical certainty, that Claimant's chronic lower back pain is secondary to her degenerative disc disease, and the degenerative disc disease was the indication for the L4-5 and L5-S1 fusion. Dr. Kitchen's stated Claimant was in no need for further medical treatment with regard to the work injury. He stated the medical records revealed she had conservative treatment for the alleged lifting incident in December 2004, and stated the diagnosis with regard to the lifting incident was lumbar strain. He stated Claimant had appropriate conservative measures, including physical therapy, followed by an FCE. He opined

Claimant did not need additional treatment with regard to the lumbar strain from the lifting incident of December 2004. He found Claimant did not sustain any PPD as a result of the lifting injury and was at MMI on March 1, 2005.

Dr. Kitchens on April 3, 2012 testified he reviewed the 2005 MRI and the 2007 MRI reports and stated they are clearly different. (Exhibit 1, pg. 20). Dr. Kitchens testified the later MRI showed a broad based disc herniation at L5-S1, which she did not have in 2005. (Exhibit 1, pg. 20). He further testified she had a central disc herniation at L4-5 which she did not have in 2005. (Exhibit 1, pg. 20). Dr. Kitchens testified Claimant's condition had changed between the January 31, 2005 MRI, and the May 2007 MRI. (Exhibit 1, pg. 20).

On August 5, 2010, Dr. Jerry Meyers, a general took a history from Claimant, reviewed her medical records, performed a physical examination, and prepared a report. (Exhibit A-2). In his report, Dr. Meyers concluded that "within a reasonable degree of medical certainty the occupational lifting of December 10, 2004 when Mrs. Moore injured her back while lifting a patient when employed by Delmar Gardens South was the prevailing and substantial factor in causing her to develop a herniation of two discs at the L4-L5 and L5-S1 level requiring reparative surgery. (Exhibit A-2, pg. 6). Dr. Meyers final impression related to the occupational injury of December 10, 2004 was discopathy and herniation at the L4-L5 and L5-S1 lumbar disc levels with degenerative disc disease. (Exhibit A-2, pg. 6).

Dr. Meyers opined that as a result of the occupational injury of December 10, 2004 Claimant sustained 40% PPD of the body as a whole related to her ruptured discs involving her lumbar spine and reparative surgery with continuing symptoms. (Exhibit A-2, pg. 7). Dr. Meyers stated that of this 40% PPD, 5% was due to pre-existing degenerative disc disease. (Exhibit A-2, pg. 7).

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of the Claimant at hearing and the application of Missouri Law, I find:

The parties stipulated Claimant sustained an accident arising out of and in the course of employment on December 10, 2004 when she was lifting a patient with a co-worker. I find Claimant suffered a strain injury to her low back for which she received conservative treatment. With respect to the issue of medical causation, I find the opinions of neurosurgeon Dr. Kitchens to be more credible than general surgeon, Dr. Jerry Meyers. I am persuaded by Dr. Kitchens' opinion that Claimant sustained a lumbar strain on December 10, 2004, received conservative treatment, was released from care and attained MMI on March 1, 2005. Dr. Kitchens reviewed and compared the January 31, 2005 and May 15, 2007 MRI reports. Dr. Kitchens found the MRIs showed that Claimant's condition had changed. The January 31, 2005 lumbar MRI showed degenerative disc disease at L4-L5 and L5-S1 with degenerative disc bulging with no frank disc herniation or neural foraminal impingement. (Exhibit 1, pg. 11) However, the May 15, 2007 lumbar MRI showed a broad based disc herniation at L5-S1 and a central disc herniation at L4-L5.

Claimant pursued medical treatment only on a sporadic basis between the time she was released from care by Dr. Doll on March 1, 2005, until her medical treatment with Dr. Poulus in September 17, 2007. Claimant did not pursue consistent active treatment for her low back until September 17, 2007, and did not have surgery for her low back until December 5, 2007 which is almost 3 years after the December 10, 2004 work injury. During this time frame, Claimant was actively taking care of eight children at a time at her home, five days a week. The facts are more consistent with Dr. Kitchens' medical opinion that Claimant's need for medical treatment and lumbar fusion surgery was due to her degenerative disc disease.

Claimant sustained 5% PPD of the body as a whole referable to the low back as a result of the work injury of December 10, 2004. I find Dr. Kitchens' opinion more credible than Dr. Meyers' opinion. I find Claimant sustained a lumbar strain on December 10, 2004, received conservative medical treatment, was released from care and attained MMI on March 1, 2005.

Claimant is not entitled to reimbursement for past TTD benefits or medical expenses.

This award is subject to an attorney's lien in the amount of 25% in favor of Claimant's attorney, Mr. Joseph Robbins.

Made by: _____
 MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation