

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

Injury No.: 01-054103

Employee: Linda Moore
Employer: Nevada Regional Medical Center
Insurer: Missouri Property and Casualty Guarantee Fund
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: March 16, 2001
Place and County of Accident: Vernon 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, 2006. The award and decision of Administrative Law Judge Margaret Ellis Holden, issued September 28, 2006, 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 16th day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Linda Moore

Injury No. 01-054103

Dependents: N/A

Employer: Nevada Regional Medical Center

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Insurer: Missouri Property and Casualty Guarantee Fund

Hearing Date: 6/26/06

Checked by: MEH

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: 3/16/01
5. State location where accident occurred or occupational disease was contracted: VERNON COUNTY, MO
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 STEPPED ON AN OBJECT CAUSING HER TO FALL.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: BODY AS A WHOLE
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
14. Compensation paid to-date for temporary disability: \$7,113.81
16. Value necessary medical aid paid to date by employer/insurer? \$27,161.06

Employee: Linda Moore

Injury No. 01-054103

17. Value necessary medical aid not furnished by employer/insurer? \$967.00
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$599.96/\$314.26
20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$967.00

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning JANUARY 1, 2003, for Claimant's lifetime

22. Second Injury Fund liability: Yes No X Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

Permanent total disability benefits from Second Injury Fund:
weekly differential (0) payable by SIF for 0 weeks, beginning
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: FUTURE MEDICAL TREATMENT AND PERMANENT TOTAL DISABILITY

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:

TOM CARLTON AND BECKY DIAS

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Linda Moore

Injury No. 01-054103

Dependents: N/A

Employer: Nevada Regional Medical Center

Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund

Insurer: Missouri Property and Casualty Guarantee Fund

Hearing Date: 6/26/06

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The parties appeared before the undersigned administrative law judge on June 26, 2006, for a final hearing. The claimant appeared in person represented by Tom Carlton and Becky Dias. The employer and insurer appeared represented by Matthew Hogan. The Second Injury Fund appeared represented by Christy Pittman. Memorandums of law were filed by July 24, 2006.

The parties stipulated to the following facts. On or about March 16, 2001, Nevada Regional Medical Center was an employer operating subject to The Missouri Workers' Compensation Law. The employer's liability was fully insured by Reciprocal of America who is bankrupt and whose risk has been assigned to the Missouri Property and Casualty Guarantee Fund (MIGA.) On the alleged injury date of March 16, 2001, Linda Moore was an employee of the employer. The claimant

was working subject to the Missouri Workers' Compensation Law. On or about March 16, 2001, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in Vernon County, Missouri. The claimant notified the employer of her injury as required by Section, 287.420, RSMo. The claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident the claimant's average weekly wage was sufficient to allow a compensation rate of \$599.96 for temporary total and permanent total disability compensation and a compensation rate of \$314.26 for permanent disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$7,113.81. The employer and insurer have paid medical benefits in the amount of \$27,161.06. The attorney fee being sought is 25%. The parties also agree that a \$190 bill from Dr. Compton was authorized and will be paid if it has not already been paid by MIGA.

ISSUES:

1. Whether the employer is obligated to pay past medical expenses of \$967.00.
2. 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.
3. The nature and extent of permanent disabilities, including permanent total disability from January 1, 2003.
4. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

FINDINGS OF FACT:

The claimant is currently 65 years old. After high school she worked in primarily clerical jobs. In May 1977 she went to work for the employer. Her position was Vice President in charge of Human Resources. She oversaw all personnel issues for the employer including the payroll departments. This covered approximately 450 employees of the hospital and their nursing home. She had six staff members that personally reported to her. In addition, she oversaw several other areas including volunteer services, administrative matters, and various committees such as safety, risk management and quality. In performing her duties, she was required to physically reach, bend, stoop, sit for long periods of time and traveled often. She often attended meetings. Her office was located in a separate building across a parking lot from the hospital. She was required to walk approximately 50 feet across the parking lot to attend meetings in the hospital building.

Prior to this injury she had problems with her cervical neck, shoulder, arm, thumb and index finger on her left side. She would experience hot sensations in her neck and shoulder and have shooting pains in her arm. Her forearm was numb as well as her thumb and index finger. She began treating with Dr. Bruce in 1988 in Kansas City, and after 1995 she treated with Dr. Nichols in Joplin. During this time she did not treat constantly. She used over-the-counter medications.

Because of the problems with her left upper extremity, she modified how she performed functions of her job, such as how she would carry or grasp something. She would try to baby this arm and was able to perform her job duties. She is right-handed. She has no problems with her right hand and arm and would use it to compensate lifting items. She worked an average of 50 – 60 hours a week.

On March 16, 2001, she was going up some steps. She stepped on an item on a step and fell. When she fell, she was

thrown forward. She felt immediate pain in her low back on the right and in her neck. She landed on her hands and lacerated her palms and both knees. Sharon Johnson, the Employee Health Nurse and case manager for workers' compensation cases, was with her.

Immediately after the fall she went home. She reported the injury to Sharon Johnson, to whom work related injuries were to be reported to.

The claimant was required to go to a meeting in Florida. Her back pain increased while she was on this trip. She described driving pain that started a few days after the fall. While she was on the trip, she had problems sitting and driving. She was gone for about a week. When she returned home, she went to Dr. Meisenhimer, a chiropractor, on her own.

When her condition did not improve, and in fact worsened, she talked to Sharon Johnson. Ms. Johnson referred her to Dr. Compton, an orthopedist. Dr. Compton examined the claimant on April 16, 2001. Her complaints at this time were pain in her low back, hip and leg. He performed x-rays which showed degenerative disc disease at L4-5 and L5-S1. An MRI was recommended. Dr. Compton prescribed conservative treatment including medication and physical therapy. The claimant continued to see him until late June 2001 and continued physical therapy until late July 2001. The physical therapy helped relieve some of the pain, especially in her leg but never totally eliminated it.

On September 6, 2001, claimant began treating with Dr. Booth at the pain clinic. In the month since she had stopped physical therapy, her pain had begun to increase and had become excruciating. Dr. Booth performed two epidurals and physical therapy. An MRI done on September 6, 2001, showed generalized annular bulges at L3-4, L4-5, and L5-S1 and a moderate size right-sided L5-S1 disc herniation. She was referred to Dr. Karshner on October 1, 2001.

Dr. Karshner found claimant had radiculopathy. He prescribed medications and physical therapy. She continued to treat with Dr. Karshner through February 2002 when he recommended a surgical evaluation.

Dr. Nichols evaluated the claimant on February 26, 2002. She recommended a hemilaminotomy and discectomy. This was performed on March 6, 2002. The claimant testified that after the surgery, she continued to have undiminished pain but also began to have muscle spasms about one month after surgery. These spasms have continued to occur two to three times a day to the present. The claimant also said that she still has pain down her leg.

At the claimant's request, on April 22, 2002, Dr. Nichols allowed her to return to work with restrictions. The claimant said that she had problems and struggled to work. She could not sit or stand for long. She needed to lie down and could not. This caused her problems staying focused. She would need to sit through meetings and testified that she would sometimes have to stand up. She felt this was sometimes inappropriate and disruptive to the meetings. She said that everyone on her staff was aware of her problems and helped accommodate her.

She testified that she continued to have problems focusing, needed to alternately sit, stand and lie down. And generally could not keep up with her job. Because of the problems claimant was having in doing her job, in August 2002 the claimant began discussing with her husband the possibility of retiring. In October 2002 she decided to retire at the end of December 2002. She wanted to stay through December to help with the end-of-year wrap-up. She had not contemplated

retiring before her injury and had wanted to work a few more years at least to increase the amount of her retirement.

On March 20, 2003, Dr. Karshner found claimant at maximum medical improvement and placed a 50-pound lifting and carrying restriction. He rated her with a permanent partial disability of 10% of the body as a whole. He continued her on pain medication on a permanent basis. She continues to take this medication to the present and it has been paid for by the insurer.

On June 18, 2003, claimant was evaluated by Dr. Ellefsen. She went to him on her own; the insurance company did not send her there. She had discussed additional treatment with Sharon Johnson and the insurer but none had been provided. Dr. Ellefsen diagnosed failed back syndrome. He felt she was not at maximum medical improvement. He recommended a discography. He felt that a decompression and fusion were a possibility.

On October 16, 2003, the claimant returned to Dr. Karshner. The claimant had told the insurer that she needed help with pain complaints and was having the same complaints. Dr. Karshner felt that discography or consideration of a fusion was appropriate but did recommend consideration of a morphine pump. He reiterated this recommendation on October 23, 2003. The insurer has not given authorization for this pump. Dr. Karshner found the claimant could work at a medium level.

Dr. Bruce examined the claimant in December 2003. He recommended a nerve block and further testing. He did not recommend further surgery. He did not think that the discogram recommended by Dr. Ellefsen was appropriate.

The claimant incurred medical bills totaling \$967 that have not been paid. At the hearing the employer and insurer took the position that the claimant oversaw and authorized her own medical treatment.

Dr. Koprivica examined the claimant on December 27, 2004. He diagnosed failed back syndrome. He felt that the claimant was at maximum medical improvement and agreed that further surgery would not be recommended. He did feel that the claimant would need future medical treatment consisting of ongoing chronic pain intervention. He also recommended the intrathecal pain pump. Dr. Koprivica found the claimant to be at permanent total disability due to the work injury of March 16, 2001, in isolation.

Dr. Parmet examined the claimant on April 6, 2004. Dr. Parmet found claimant at maximum medical improvement and felt no further surgical intervention was appropriate. He felt the intrathecal pump was the only viable treatment for her condition. He rated her with a permanent partial disability of 10 - 15% body as a whole. He found her restrictions to be at the sedentary level.

There are two vocational opinions in evidence, both from vocational rehabilitation counselors, Phil Eldred and Terry Cordray.

Mr. Eldred found the claimant was permanently and totally disabled and is neither employable nor placeable in the open labor market. He found that she did have pre-existing physical limitations but that they did not prevent her from performing her work duties and that she could have continued to do so if not for the injury of March 16, 2001, and therefore, it is the last injury in isolation that makes her permanently and totally disabled.

Mr. Cordray felt that the claimant could work at a sedentary physical demand level and is capable of working at her previous occupation as a human resource manager. He therefore found that she could return to the skilled sedentary level she had performed in the past.

At present, the claimant has constant pain. It is located in her right side, low back, and buttocks. Her leg, calf and foot are numb. She still has spasms two to three times a day, and they will sometimes wake her up at night. She must lie down three to four times a day. She has problems concentrating when her pain increases. It interrupts her sleep. She has to lie down during the day. Since the injury, the claimant has taken trips in a motor home to Alaska and Texas. She testified that some days they would travel and some days they would not. She said that when they traveled, she could sit on a variety of areas or lie down. She has had no other injuries since March 16, 2001. She has had some other health issues including cancer, but is currently recovered and is cancer free.

CONCLUSIONS OF LAW:

1. Whether the employer is obligated to pay past medical expenses of \$967.00.

I find that the medical expenses incurred by the claimant of \$967.00 are to be paid by the employer and insurer. The employer and insurer at the hearing clearly took the position that the claimant was directing and authorizing her own medical treatment. Therefore, the fact that she may have sought the treatment giving rise to these bills on her own is irrelevant, and I find that this treatment was authorized and the bills shall be paid.

2. 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.

All of the doctors agree that the claimant is in need of further pain management ranging from medications and monitoring to a morphine pump. As a result, I find that the employer and insurer are to provide the claimant such future medical treatment to cure and relieve her of the effects of the injury. I further order that this treatment be provided pursuant to the recommendations of Dr. Karshner and pursuant to his recommendations to include medications, monitoring by a physician, placement of an intrathecal morphine pump, and any further medical care that may be required due to this injury.

3. The nature and extent of permanent disabilities, including permanent total disability from January 1, 2003.

Permanent total disability is the inability to any employment in the open labor market and not merely the inability to return to the claimant's prior employment. This further means a return to reasonable or normal employment and whether in the normal course of business an employer would reasonably be expected to hire the employee.

In this case the claimant attempted to return to her prior employment at the sedentary level. This I find can be characterized as a failed attempt at employment as she found she was unable to satisfactorily perform her duties and in fact retired due to the effects of this injury.

After carefully considering all of the evidence, and in particular, claimant's physical limitations and the

testimony of Mr. Eldred that the claimant is in fact permanently and totally disabled, I find that she is unable to compete in the open labor market. I find that this is due to the last injury of March 16, 2001, alone and not as a combination of the last injury and any prior injury or condition.

I further find that the claimant has been permanently and totally disabled beginning January 1, 2003. Employer and insurer are to pay past benefits from January 1, 2003, up to the date of the hearing and then weekly \$599.96 for the remainder of claimant's lifetime.

4. The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability.

As a result of the finding that claimant's permanent total disability is the result of the last injury alone, I do not find any liability on the part of the Second Injury Fund.

Attorneys for the claimant, Thomas Carlton and Becky Dias, are awarded an attorney fee totaling 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Date: September 28, 2006

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secrest
Patricia "Pat" Secrest
Director
Division of Workers' Compensation