

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

Injury No.: 08-017416

Employee: Tammy Moore Ransdell

Employer: Randolph County

Insurer: Missouri Association of Counties

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 January 8, 2013. The award and decision of Administrative Law Judge Hannelore D. Fischer, issued January 8, 2013, 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 27<sup>th</sup> day of June 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Tammy Moore Ransdell

Injury No.: 08-017416

Dependents: N/A

Employer: Randolph County

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: N/A

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

Insurer: Missouri Association of Counties

Hearing Date: October 29, 2012

Checked by: HDF/scb

### 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: February 26, 2008
5. State location where accident occurred or occupational disease was contracted: Randolph 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:  
See award
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: Low back
14. Nature and extent of any permanent disability: 25% body referable to low back
15. Compensation paid to-date for temporary disability: - 0 -
16. Value necessary medical aid paid to date by employer/insurer? - 0 -

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- 17. Value necessary medical aid not furnished by employer/insurer? \$130,574.00
- 18. Employee's average weekly wages: ----
- 19. Weekly compensation rate: \$240.00
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

21. Amount of compensation payable:	25% body	= \$24,000.00
	100 weeks of TTD	= \$24,000.00
	Total	= \$48,000.00
	Plus Medical expenses	\$130,574.00

22. Second Injury Fund liability:

23. Future Requirements Awarded:

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: Russell C. Still.

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

Employee: Tammy Moore Ransdell

Injury No: 08-017416

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Randolph County

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

Additional Party: N/A

Insurer: Missouri Association of Counties

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on October 29, 2012. Memoranda were submitted by November 16, 2012.

The parties stipulated that on or about February 26, 2008, the claimant, Tammy Moore Ransdell (Ransdell) was employed by Randolph County. The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was insured by the Missouri Association of Counties. The employer had timely notice of the injury; a claim for compensation was timely filed. The appropriate compensation rate for all benefits is \$240.00 per week. No temporary disability benefits have been paid. No medical aid has been provided.

The issues to be resolved by hearing include 1) the causation of the injuries alleged, 2) the liability of the employer/insurer for past medical treatment in the amount of \$130,574.00, 3) the liability of the employer/insurer for 100 weeks of past temporary total disability benefits, 4) the nature and extent of permanent disability (permanent partial disability is alleged), and 5) the liability of the employer/insurer for future medical treatment.

The parties stipulated that in the event of a finding for the claimant on the preliminary issue of causation that the employer/insurer would be liable for the past medical expenses and past temporary total disability benefits sought.

### **FACTS**

The claimant, Tammy Moore Ransdell, worked in the Randolph County assessor's office since 1998 as a deeds clerk responsible for updating property records. On February 26, 2008, Ms. Ransdell was changing the property records cards, which were physically housed in file folders in file cabinets. Ms. Ransdell squatted down attempting to pull out a lower file drawer, which she described as too full. Ms. Ransdell reached into the back of the file drawer twisting to remove the file and experienced extreme low back pain. Ms. Ransdell finished the day but had too much low back pain the following day to get out of bed. Ms. Ransdell received initial medical attention from Dr. Tiede, who had treated her for neck pain before, and eventually

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received medical care from Dr. Highland, who performed an anterior fusion in November of 2010. Ms. Ransdell described herself as doing well after the surgery until this past June when a broken screw was discovered; Ms. Ransdell believes that she will eventually need a refusion of her back. Currently Ms. Ransdell describes pain in her back causing her to be unable to sit comfortably for more than 45 to 50 minutes and be unable to stand for more than 30 to 40 minutes without an increase in low back pain. Ms. Ransdell described taking vicodin for pain, as well as medication for nerve pain and muscle relaxation, as well as Cymbalta for depression.

During cross-examination Ms. Ransdell admitted taking medication for nerve pain prior to 2008.

Dr. Thomas Highland, orthopedic surgeon specializing in treatment of the spine since 1985, testified by deposition that he initially saw Ms. Ransdell on May 5, 2008, as a referral from Dr. Foster for back pain originating from an injury on February 26, 2008. After he saw her in July of 2008, Dr. Highland performed a discogram on Ms. Ransdell and determined that Ms. Ransdell had degeneration in the discs at L3-4, L4-5 and L5-S1 and recommended a three-level fusion for those discs. Dr. Highland specifically noted that the disc above the three problematic discs was not painful when injected; he referred to the disc which was not painful as the control disc. When Dr. Highland next saw Ms. Ransdell in August of 2010, he took an x-ray of Ms. Ransdell and noted that the discs at all three levels had gotten worse, particularly at the L5-S1 level. An MRI confirmed the deterioration at the three discs mentioned. Dr. Highland described his surgery on Ms. Ransdell on November 3, 2010, as removal of the "bad" discs, a fusion, a bone graft using cadaver bone, and a plate anteriorly as well as a laminectomy and fusion posteriorly.

Dr. Highland said that the injury of February 26, 2008, in which Ms. Ransdell squatted and twisted to get a file, caused the condition for which he treated her, including the surgery. At the time of his deposition on March 4, 2011, Dr. Highland opined that it was too early to assess permanent partial disability. Dr. Highland was asked about the factors contributing to Ms. Ransdell's condition and replied that the lumbar strain was the primary factor in causing Ms. Ransdell's condition. Dr. Highland acknowledged that the lumbar strain alone would not have necessitated Ms. Ransdell's three-level fusion without the underlying degenerative condition.

In a January 25, 2012 report, Dr. Highland opined that Ms. Ransdell had an acute lumbar strain as well as internal disc disruption at L3-4, L4-5 and L5-S1 in February of 2008 resulting in anterior and posterior fusion at those levels resulting in 25 percent permanent partial disability of the body.

Ms. Ransdell has continued under Dr. Highland's care for treatment of her back other than the lumbosacral back, including her thoracic spine. When Dr. Highland saw Ms. Ransdell on July 9, 2012, he noted that Ms. Ransdell complained of increasing low back pain after falling off of a raft and twisting in the water two weeks prior to the time he saw her. Dr. Highland also noted that a June 2011 x-ray revealed a broken screw at the S1 level, but that Ms. Ransdell had no complaints of pain associated with the broken screw when it was discovered the year prior. When Dr. Highland saw Ms. Ransdell on September 4, 2012, he recommended the use of a bone stimulator, but did not relate it to the 2008 accident or to later events.

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Dr. Michael Chabot, board certified in orthopedic surgery and a trained spine surgeon, testified by deposition that he evaluated Ms. Ransdell on October 16, 2008. Dr. Chabot testified that Ms. Ransdell may have suffered a back strain on February 26, 2008, but that her back pain is caused by her preexisting advanced degeneration of multiple levels of the lumbar spine. Dr. Chabot noted in his report that Ms. Ransdell had left lower extremity complaints prior to February 26, 2008; Dr. Chabot noted in his deposition testimony that "if it's associated with acute injury such as a disk herniation one would expect that, one, you would see a lesion or disk lesion on that same side of the complaints like the left side. You would also expect to see changes involving the extremity that would most likely corroborate with nerve entrapment or nerve irritation. An acute injury of any substantial merit you would expect to see changes involving the ligament where you could have sustained a ligament irritation or a ligament inflammation. None of those changes were noted. The disk changes to the L4-5 level were on the right, not on the left." (Chabot depo p14,15) Dr. Chabot opined that the majority of Ms. Ransdell's treatment was for her chronic degenerative condition and not her "simple" back strain injury. Dr. Chabot stated that Ms. Ransdell had a positive disc provocation on all three lumbar levels during her discogram and that a control level was never found. Dr. Chabot admitted that his reference to a lack of a control level was incorrect during cross-examination. Dr. Chabot went on to say that the presence of a control disc does not change his opinion with regard to the propriety of a fusion for Ms. Ransdell and said that the statistical odds are against a successful three-level fusion.

### **APPLICABLE LAW**

RSMo Section 287.020.2. 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. An injury is not compensable because work was a triggering or precipitating factor.

RSMo Section 287.020.3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

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(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

To receive an award of future medical benefits, an employee need not show "conclusive evidence of a need for future medical treatment. Instead, an employee need only show a "reasonable probability" that, because of his or her work-related injury, future medical treatment will be necessary. ABB Power T&D Co. v. Kempker, 236 S.W.3d 43 (Mo.App. W.D. 2007).

### **AWARD**

The claimant, Tammy Moore Ransdell, has sustained her burden of proof that the accident of February 26, 2008 caused her low back pain and subsequent surgery and related treatment. Ms. Ransdell testified credibly to the squatting and twisting necessitated in pulling out a low full file drawer in the course of her employment for the Randolph County assessor's office and the immediate and intense low back pain resulting from that activity. Dr. Highland testified with regard to the February 26, 2008 activity as the cause of Ms. Ransdell's low back condition and need for treatment, including surgery. Dr. Chabot focused on the lack of disc changes to the left in concluding that Ms. Ransdell had not injured herself at work; Ms. Ransdell had complaints of left leg pain prior to February 26, 2008, it was the low back complaints that were new and that she is seeking to have addressed. Moreover, Dr. Chabot's conclusion that the absence of a control disc negated the validity of the discogram in determining the option of surgical treatment was without merit where a control disc was found and Dr. Highland found that control disc significant in recommending surgery. In this case I find the testimony of Dr. Highland more persuasive than that of Dr. Chabot.

The employer/insurer is liable for medical expenses in the amount of \$130,574.00 as well as temporary total disability benefits for 100 weeks.

Ms. Ransdell has sustained her burden of proof that she has a permanent disability of 25 percent of the body referable to her low back as the result of the accident and injury of February 26, 2008. This award is based on the testimony of Ms. Ransdell and Dr. Highland. Only Dr. Highland opined with regard to permanent disability sustained by Ms. Ransdell as the result of her accident and injury of February 26, 2008.

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Finally, Ms. Ransdell has failed to sustain her burden of proof with regard to her need for future medical treatment as the result of the February 26, 2008 accident and injury. While Dr. Highland mentioned Ms. Ransdell's increased low back pain in 2012, Dr. Highland did not link the increased back pain or treatment therefrom to the February 26, 2008 accident and injury.

Made by: \_\_\_\_\_  
HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*