

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

Injury No.: 05-071282

Employee: Sandra Moore  
Employer: Missouri Baptist Medical Center  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 briefs, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) 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 ALJ dated July 8, 2011, as corrected below.

In the first sentence on page 3 of the ALJ's award, the ALJ lists the injury number for this matter as "(#02-148591)." We find that this is incorrect and that the correct injury number for this matter is 05-071282. Therefore, we find that the ALJ's award shall be corrected and "#02-148591" shall be deleted from the aforementioned sentence and "#05-071282" shall be added in its place.

Based upon the foregoing, the award and decision of Administrative Law Judge Joseph E. Denigan, issued July 8, 2011, is affirmed, as corrected herein, and is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of January 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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James Avery, Member

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**DISSENTING OPINION FILED**  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

Employee: Sandra Moore

### **DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge (ALJ) should be reversed and employee should be awarded permanent partial disability benefits against employer and permanent total disability benefits against the Second Injury Fund.

The ALJ denied employee's claim on a finding that employee failed to meet her burden of proof that she sustained any permanent partial disability attributable to the reported injury. I disagree with the ALJ and find that the competent and substantial evidence establishes that employee did in fact sustain permanent partial disability as a result of her July 25, 2005, work injury.

On July 25, 2005, employee injured her left hip and left hamstring. Employee credibly testified that on that date she was sitting down at work when a doctor asked her to retrieve something. Employee got up and turned to her left to retrieve the item; but while doing so, her left foot became caught in computer cords. Employee lost her balance and started to fall, but the doctor grabbed employee to break her fall. Employee did not fall all the way to the floor, but she felt a "pop" in her left leg, which was followed by the immediate onset of pain. Employee testified that when she sat down afterwards it felt like she was sitting on a rock in the back of her left leg.

Employee reported the injury to her supervisor and was sent to the emergency room for treatment. Employee was treated by Dr. Patricia Hurford, who diagnosed a left hamstring muscle strain. Dr. Hurford noted that the muscle strain was caused by the July 25, 2005, accident. Dr. Hurford ordered physical therapy, a thigh sleeve, and placed employee on sedentary work activities.

Employee followed up with Dr. Hurford and was eventually released from her treatment on September 13, 2005, with no work restrictions. Employee was released from treatment on September 13, 2005, but Dr. Hurford did note that employee complained of intermittent symptoms in the ischial region with prolonged sitting, especially while driving.

After returning to work, employee's left hip and hamstring problems began combining with her preexisting back problems. Employee attempted to obtain further treatment for her left hip and hamstring by notifying her employer, but her requests were denied. Employee then retained an attorney to help her obtain further treatment. Employee quit her employment on February 11, 2006, because she could no longer endure the pain and problems associated with her left hip and hamstring and preexisting problems associated with her wrists, hands, and back.

Employee was seen again by Dr. Hurford on November 21, 2006. Employee reported persistent pain and numbness since her last office visit on September 13, 2005, in her left buttock, leg, and groin. Dr. Hurford ordered an MRI of the left side of employee's

Employee: Sandra Moore

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ischiam and pelvis. The MRI revealed severe tendinopathy of the left hamstring muscle. Dr. Hurford ordered more physical therapy.

Dr. Hurford saw employee for the last time on March 14, 2007. She noted that employee had no significant improvement and that there were really no other treatment options available to employee. Dr. Hurford released employee at maximum medical improvement.

On December 17, 2008, Dr. Volarich saw employee for an independent medical evaluation. Dr. Volarich noted that employee continued to complain of ongoing difficulties with her left leg and hip. Dr. Volarich stated that employee reported no preexisting problems with her left hamstring/thigh and that the July 25, 2005, accident was the "substantial contributing factor, as well as the prevailing or primary factor causing the severe left hamstring strain with associated severe tendinopathy that required conservative treatment." Dr. Volarich opined that as a result of the July 25, 2005, injury employee sustained 20% permanent partial disability rated at the hip due to hamstring strain and severe tendinopathy. Dr. Volarich provided additional permanent disability ratings for employee's preexisting problems associated with her wrists, hands, and lumbar spine. Dr. Volarich ultimately concluded that employee is permanently and totally disabled as a direct result of employee's disabilities suffered from the July 25, 2005, injury combining with her preexisting disabilities.

On December 21, 2009, Dr. Cantrell saw employee for an independent medical evaluation. Dr. Cantrell reported the essential facts of how the July 25, 2005, injury occurred, employee's past medical treatment, and employee's ongoing complaints of left posterior hamstring pain. Dr. Cantrell states in his report that employee had difficulty distinguishing her left hip and thigh symptoms related to the July 25, 2005, injury from her preexisting lumbar back pain, prior hip pain and rheumatoid arthritis. Dr. Cantrell opined that the left hamstring tendinopathy was not caused by a specific injury and suggested it was the result of degenerative changes. Dr. Cantrell concluded that employee did not sustain any permanent partial disability as a result of the hamstring strain diagnosis.

After reviewing employee's testimony, the medical evidence, and the record as a whole, I find that Dr. Volarich's opinions more accurately assess employee's permanent disability than Dr. Cantrell's. Dr. Volarich's opinions are fully supported by Dr. Hurford's treatment records and properly account for employee's ongoing left hip and hamstring complaints. Dr. Cantrell, on the other hand, ignores the consistency of the record in finding that employee sustained no permanent partial disability as a result of the July 2005 injury. For example, Dr. Cantrell states in his report that employee had difficulty distinguishing her July 25, 2005, injury complaints from her preexisting problems; however, he goes on to state in the very next paragraph that employee reported that "as a result of her injury in July of 2005, she has difficulty with prolonged sitting[,] particularly on firm surfaces, ambulates with a limp[,] ... no longer able to ride a motorcycle or a riding lawnmower[,] ... no longer able to walk in the park because of pain in her leg, ... [and] she must 'walk it out' to relieve pain and cramping that occurs with sitting or standing or sleeping." Dr. Cantrell's statement regarding employee's difficulty distinguishing the source of her complaints is not an accurate assessment of the facts presented to him.

Employee: Sandra Moore

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Based upon the foregoing, I find that Dr. Volarich's opinions are more credible than Dr. Cantrell's. I find that as a result of the July 25, 2005, injury employee sustained 20% permanent partial disability. I further find, in accordance with Dr. Volarich's opinions, that employee is permanently and totally disabled as a result of the July 2005 injury combining with employee's preexisting disabilities. I would award to employee 20% permanent partial disability benefits against employer and permanent total disability benefits against the Second Injury Fund. Consequently, I would reverse the award of the administrative law judge.

Therefore, I respectfully dissent from the decision of the majority of the Commission.

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Curtis E. Chick, Jr., Member

### AWARD

Employee:	Sandra Moore	Injury No.:	05-071282
Dependents:	N/A		Before the
Employer:	Missouri Baptist Medical Center		Division of Workers'
Additional Party:	Second Injury Fund		Compensation
Insurer:	Self-insured		Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Hearing Date:	April 7, 2011	Checked by:	JED

### 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: July 25, 2005
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? N/A
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: left leg
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? \$7,103.79

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$309.54 TTD/PPD
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

Total: -0-

23. Future requirements awarded: N/A

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to Claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to Claimant:

N/A

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

Employee:	Sandra Moore	Injury No.:	05-071282
Dependents:	N/A		Before the
Employer:	Missouri Baptist Medical Center		Division of Workers' Compensation
Additional Party:	Second Injury Fund		Department of Labor and Industrial Relations of Missouri
Insurer:	Self-insured		Jefferson City, Missouri
Hearing Date:	April 7, 2011	Checked by:	JED

This case involves two separate Claims for alleged injury to Claimant with the reported injury dates of July 30, 2004 (#04-148449) and July 25, 2005(#02-148591), respectively, and which cases may be referred to hereinafter as the "first" and "second" cases, respectively. The Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is a party to these cases. The testimony and exhibits in this record shall be the evidence in each Claim. A separate Award issues for each Claim. All parties are represented by counsel.

The second case involves a disputed allegation of lower extremity injury resulting to Claimant.

Issues for Trial

1. Medical causation/attribution;
2. Nature and extent of permanentpartial disability;
3. Liability for future medical benefits;
4. Second Injury Fund liability;

FINDINGS OF FACT

Claimant, age 62, worked for Employer from 1999 to 2006 where she worked as a unit secretary. Claimant testified her job duties included registering patients, entering data on a computer terminal with a keyboard, communicating over the telephone, making patient charts and labels, walking patients to procedure rooms and ordering supplies. Claimant worked eight hours a day, five days a week. She voluntarily quit her job on February 11, 2006. She is married and has nine grandchildren (T. 4-5, 11).

Claimant alleges that she sustained injury to her left hamstring on the reported accident date by tripping over a computer cord from a seated position. Claimant testified that she reported the injury to her employer and was initially seen in the emergency room of her Employer.

Claimant was treated by Dr. Patricia Hurford, who diagnosed Claimant with an acute left hamstring muscle strain on July 27, 2005. Dr. Hurford recommended physical therapy and work restrictions.

However, Dr. Hurford noted comorbid conditions affecting treatment included: 1) significant prior history of chronic pain related to spine issues with previous multilevel fusion surgeries; 2) a history of rheumatoid arthritis with disease modifying treatment, including methotrexate and remicade; 3) a history of diabetes mellitus with treatment with Metformin; and 4) Lipitor treatment, which can be associated with muscle pain symptoms.

On August 16, 2005, Dr. Hurford noted that Claimant had completed at least four physical therapy visits and had some improvement with no increased pain complaints. Further history indicated that Claimant had slipped at home and had a reinjury of her left leg. Claimant reported 50% improvement. The diagnostic impression was an improving muscle strain. Dr. Hurford recommended that Claimant finish the physical therapy and return to work full duty.

Claimant followed up with Dr. Hurford a month later on August 30, 2005. At that time, Claimant reported continued, but less frequent difficulty with sitting. Claimant's gait showed no deviations and she was noted to be ambulating without any antalgic patterns. The diagnostic impression was an improving hamstring strain, with continued limitations with sitting and driving. Dr. Hurford recommended Bio-Freeze and Lidoderm patches, but noted that no long term disability or impairment was expected. Claimant was continued on full duty work without restrictions.

Claimant was then seen by Dr. Hurford on September 15, 2005 and reported intermittent symptoms with prolonged sitting, especially with driving to work for about one hour. Dr. Hurford noted that Claimant's pain medications were back to pre-injury levels for her chronic low back symptoms. Dr. Hurford discharged Claimant at maximum medical improvement at that time.

\* \* \*

Claimant was next seen by Dr. Hurford over one year later, on November 21, 2006. Dr. Hurford recommended MRI studies. The MRI of the pelvis and left hip took place on February 6, 2007. Claimant then followed up with Dr. Hurford on February 7, 2007. Dr. Hurford noted that the MRI showed severe tendinopathy of the left hamstring muscle. Dr. Hurford further added that she would expect a complete recovery of any hamstring tendinitis or injury, but given the significant amount of medication use for rheumatoid arthritis, including immune suppressant medications, the expected recovery patterns had not occurred. Dr. Hurford recommended an MRI with gadolinium enhancement to rule out a neuroma. The MRI of the pelvis with contrast took place on February 15, 2007. Claimant then followed back up with Dr. Hurford on February 21, 2007. Dr. Hurford noted that the MRI study showed a ganglion, but the source of

Claimant's pain was her severe hamstring tendinopathy. Dr. Hurford recommended additional physical therapy.

Claimant then followed back up with Dr. Hurford on March 14, 2007. Dr. Hurford noted that Claimant had no significant improvement and no other treatment options were available to her given her comorbid conditions. The diagnosis was severe left hamstring tendinopathy with chronic symptoms. Dr. Hurford once again released Claimant at maximum medical improvement and without permanent work restrictions.

#### Dr. Volarich

Claimant offered the deposition of Dr. David Volarich as Exhibit A. Dr. Volarich examined Claimant on December 17, 2008. His history of accident is vague. Dr. Volarich acknowledged Claimant's previous and ongoing lower back complaints, noting that leading up to the 7/25/05 injury, Claimant was always in pain. She complained of pain if she sat in a car or in a computer chair for more than one hour and of tingling and pain with weather changes. She was miserable and depressed and in pain all the time. Dr. Volarich indicated that Claimant's pain and symptoms from the 7/25/05 injury are completely different from the radicular symptoms she experienced following her back fusion surgeries. Dr. Volarich embraced the treatment diagnosis of left hamstring tendinopathy and added severe strain of the posterior thigh musculature. He assigned Claimant a twenty percent PPD of the left lower extremity at the hip.

Dr. Volarich further opined that Claimant was permanently and totally disabled as a result of the work injuries of 2004 and 2005 in combination with each other and with her pre-existing medical conditions. Dr. Volarich further added that Claimant was permanently and totally disabled prior to the development of cervical syndrome which required surgical repair. Dr. Volarich assessed Claimant with pre-existing permanent partial disability of 20% of the each wrist and 60% of the body as a whole referable to the lumbosacral spine. Dr. Volarich deferred to a psychiatric evaluation for assessment of disability due to depression.

#### Dr. Cantrell

Employer offered the deposition of Dr. Russell Cantrell as Exhibit 2. Dr. Cantrell examined Claimant and reviewed the medical record. Dr. Cantrell reported the history of Claimant's work injury of July 25, 2005 and Claimant's treatment thereafter. Dr. Cantrell's history included Claimant's significant past medical history, which included diabetes mellitus, rheumatoid arthritis, depression, water retention, nerve damage related to either nerve problems in her low back or diabetes, the two spinal fusions and the more recent cervical spine surgery performed by Dr. Chabot.

Dr. Cantrell noted Claimant's history of chronic lumbar back pain, bilateral hip and lower extremity pain complaints. Dr. Cantrell further noted that it was difficult for Claimant to distinguish the symptoms from the work injury of 7/25/05 from her lumbar

pain, hip pain and rheumatoid arthritis. Dr. Cantrell concluded that the work injury of July 25, 2005 was not a substantial factor in causing Claimant's current hip and hamstring complaints. Dr. Cantrell further opined that the radiographic findings of left greater than right hamstring tendinopathy were not caused by a specific injury, but rather the findings were degenerative. Dr. Cantrell further opined that Claimant was at maximum medical improvement from the 7/25/05 work injury and that she required no further medical treatment as a result of the work injury. Dr. Cantrell further opined that Claimant did not require any permanent restrictions as a result of the work injury of 7/25/05. Dr. Cantrell concluded that Claimant had not sustained any permanent partial disability as a result of the hamstring strain diagnosis.

## RULINGS OF LAW

### Medical Causation and Permanent Disability

Claimant failed to meet her burden of proof that she sustained any permanent partial disability attributable to the reported injury. Claimant sustained a hamstring strain as diagnosed by Dr. Hurford following the work injury. Claimant failed to establish by a preponderance of credible evidence that any permanent disability was the result of the subject accident and not that of a non-compensable event. Plaster v. Dayco, 760 S.W.2d 911, 913 (Mo.App. 1988). Bersett v. National Super Markets, Inc., 808 S.W.2d 34, 36 (Mo.App. 1991).

### *de Minimis Treatment Followed by One Year Treatment Gap*

Claimant received minimal treatment (three doctor visits) over the course of less than two months with Dr. Hurford, before being released at maximum medical improvement on September 2005. Claimant continued to work. At that time, Claimant reported only intermittent symptoms with prolonged sitting and that her pain medication usage was back to her ongoing pre-accident level.

Claimant obtained no further treatment for her work injury until she was seen approximately one year later by Dr. Hurford with ongoing complaints. After undergoing updated radiographic studies, Dr. Hurford now diagnosed Claimant with severe hamstring tendonopathy. The issue is whether Claimant's hamstring tendonopathy condition is medically causally related to the reported accident. Dr. Cantrell's opinions and testimony are found to be more persuasive than those of Dr. Volarich. Dr. Cantrell identified that Claimant's right hamstring showed mild tendonopathy as well. In addition, Dr. Cantrell noted that Claimant could not readily distinguish between her pre-accident radicular pain in the left leg and the effects of the work injury.

This *de minimis* treatment record and subsequent fourteen month treatment gap was unexplained by Claimant's expert, Dr. Volarich, both with regard to treatment continuity and with regard to the asserted status of permanent total disability.

*Pre-Accident Use of Prescription Pain Relievers*

Claimant's low back condition with radicular left leg symptoms are well documented in the medical records of Dr. Chabot. Claimant was taking Vicodin and Robaxin for her low back and left leg complaints prior to the work injury. Dr. Cantrell opines that Claimant suffered at most a left hamstring strain as a result of the reported accident and her current left leg complaints are not related.

Accordingly, Claimant is found to have no discernible permanent partial disability as a result of the reported injury. Similarly, Claimant is not found to have satisfied her burden of proof with regard to future medical benefits, and such future medical benefits are not awarded. As Claimant is not found to have suffered additional permanent partial disability as a result of the reported injury, there is no award against the Second Injury Fund.

Future Medical Care

An employee is not required to present evidence on the specific medical care which will be necessary in the future in order to receive an award of future medical treatment however, he must show by a reasonable probability that he is in need of additional medical treatment by reason of his work related accident or injury. Landers v. Chrysler Corp., 963 S.W. 2d 275, 283 (Mo. App. ED 1998). Such future medical care must flow from a work related accident before the employer is to be held responsible. Id. An employee is not entitled to future medical treatment for a possible disability resulting from some other cause. Breyer v. Howard Construction, 736 S.W. 2d 78, 82 (Mo. App. SD 1987). Insufficient reliable evidence was presented to reasonably conclude that Claimant's claim of ongoing treatment or symptoms are not the result of a pre-existing condition or subsequent deterioration over the many years since Claimant attained maximum medical improvement from her reported injury. Therefore her request for further treatment arising out of the reported accident is denied.

Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain her burden of proof. The remaining issues are moot. Claim denied.

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

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

JOSEPH E. DENIGAN  
Administrative Law Judge

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

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

JOSEPH E. DENIGAN  
*Administrative Law Judge*

A true copy: Attest:

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*Division of Workers' Compensation*