

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 11-021524

Employee: Kenna Morris

Employer: Curators of the University of Missouri

Insurer: Self-Insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated June 3, 2013.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued June 3, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Kenna Morris Injury No. 11-021524

Dependents:

Employer: Curators of the University of Missouri Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Insurer: Self-Insured

Additional Party: (None)

Hearing Date: April 30, 2013

Checked by: RJD/njp

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: March 20, 2011.
5. State location where accident occurred or occupational disease was contracted: Columbia, Boone 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? Employer is self-insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee had retrieved a patient's cell phone from the ground floor of the main hospital and was taking it to the fifth floor of the ICU tower; Employee was walking up the stairs when she fell forward on the stairs and injured her low back.
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. Compensation paid to-date for temporary disability: \$3040.82.
15. Value necessary medical aid paid to date by employer/insurer? \$13,923.70.
16. Value necessary medical aid not furnished by employer/insurer? None at this time.
17. Employee's average weekly wages: \$506.49.

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18. Weekly compensation rate: \$337.65.
19. Method wages computation: Stipulation.

COMPENSATION PAYABLE

Employer is ordered to provide Employee with medical care and treatment as set forth more fully herein.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

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FINDINGS OF FACT AND RULINGS OF LAW:

Employee: Kenna Morris

Injury No. 11-021524

Dependents:

Employer: Curators of the University of Missouri

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Insurer: Self-Insured

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

Additional Party: (None)

Hearing Date: April 30, 2013

ISSUES DECIDED

An evidentiary hearing was held in this case in Columbia on April 30, 2013 on Claimant's request for a temporary or partial award. Claimant, Kenna Morris, appeared personally and by counsel Christine Kiefer. Employer, Curators of the University of Missouri, appeared by counsel George Floros. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on May 21, 2013. The evidentiary hearing was held to decide the following issues:

1. Whether Employee sustained an accident arising out of and in the course of her employment with the University of Missouri on March 20, 2011;
2. If found to have been sustained, whether the accident of March 20, 2011 was the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
3. Whether any additional medical treatment is reasonably required to cure and relieve Employee from the effects of the injury of March 20, 2011; and
4. The liability, if any, of Employer for additional medical treatment.

STIPULATIONS

The parties stipulated as follows:

1. The Division of Workers' Compensation has jurisdiction over this case;
2. Venue for the hearing is proper in Boone County;
3. The claim is not barred by Section 287.420 or Section 287.430, RSMo;
4. Both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. Employee's average weekly wage is \$506.49, with compensation rate of \$337.65;
6. Employer paid medical benefits in the amount of \$13,923.70, and temporary disability benefits in the amount of \$3,040.82; and
7. The University of Missouri was an authorized self-insured for Missouri Workers' Compensation purposes at all relevant times.

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EVIDENCE

The evidence consisted of the testimony of Claimant, Kenna Morris; narrative reports of Drs. David Robson, John Miles, and Michael Chabot; medical records; physical therapy records; Employer's original Answer in this case; and (amended) Answer of Employer filed during the hearing.

DISCUSSION

Claimant was born December 26, 1959 and is 53 years of age. Claimant has worked for the University of Missouri ("Employer") since June 2009 as a Hospitality Coordinator. For approximately the first two years of Claimant's employment with Employer, Claimant also worked part-time (approximately 26 hours) on the weekends at Menard's. Claimant's job as a Hospitality Coordinator requires her to run errands in the hospital for patients, move patients' belongings, charge their cell phones, retrieve items from surgery, and discharge patients. Claimant continues to work in this capacity.

On March 20, 2011, while engaged in employment and performing her work duties at University of Missouri Hospital, Claimant fell while walking quickly up a flight of stairs. She was bringing a cell phone from the ground floor to the fifth floor of the ICU tower to deliver the cell phone to a patient. Claimant testified that she navigates stairs at work approximately 8-12 times per work shift and that the area of the hospital she was walking to required her to use stairs as the new part of the building was added on. No elevator goes directly from the ground floor of the main hospital to the fifth floor of the ICU tower; Claimant had to use the elevator to the fifth floor of the main building, then walk down a hallway and ascend a partial flight of stairs to the fifth floor of the ICU tower. Claimant sustained the fall on this partial flight of stairs. Claimant was holding the patient's cell phone in her left hand; Claimant was not sure if she was holding anything in her right hand. She was wearing a radio on her right side. She was wearing rubber-soled flat shoes with no heel.

Claimant testified that she fell forward on the stairs and twisted her back. She felt immediate severe pain in her low back. Her immediate symptoms were a burning in her calf and toes, pain in the right hip, and radiating pain into her right thigh. Claimant was sent to Work Injury Services at University Hospital on the day of the accident. She then treated with Dr. Kevin Komes who made a diagnosis of lumbar strain and right hip pain. Physical therapy was ordered. Claimant continued with physical therapy through June when an MRI was finally performed. The MRI of July 14, 2011 showed T12-L1 broad-based disc herniation and L4-L5 disc bulge with compression on the anterior thecal sac. Claimant was referred to Dr. John Miles, an orthopedic surgeon.

Dr. Miles evaluated Claimant on August 2, 2011 and noted pain in her low back radiating into right hip, down into her right calf, and numbness into the right calf and foot. He interpreted the MRI as showing a bulge at L4-L5, T12-L1, and stenosis at L4-L5. He recommended an additional nerve conduction study. The EMG of August 9, 2011 was normal and Dr. Miles diagnosed early instability at L4-L5, with no significant stenosis and no herniations. He felt the

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instability was “her prime problem facing her at this juncture, but it is very difficult to link that to her work place incident.” He recommended a functional capacity exam.

Claimant was referred for an epidural steroid injection by Dr. Ebby Varghese. Claimant underwent two injections which did not alleviate her symptoms. In November, Dr. Varghese recommended a dorsal column stimulator. This was not done, however, and instead Claimant was sent back to Dr. Komes who said Claimant was at maximum medical improvement and returned her to full duty. Dr. Komes opined that Claimant had no permanent partial disability. He also indicated that he did not agree with the recommendation of Dr. Varghese for a spinal cord stimulator.

Claimant was evaluated by Dr. David Robson, a spine surgeon, on April 5, 2012. Dr. Robson indicated that Claimant’s symptoms continued to consist of aching, stabbing and burning in the low back which radiated into her right buttock and down the right leg. He noted numbness in the right foot. Dr. Robson said the MRI of June 14, 2011, “shows a central disc bulge at L4-5 with a high intensity zone. This is producing bilateral foraminal stenosis. Additionally, it is noted that she has bilateral renal cysts.” He assessed a “herniated nucleus pulposus at L4-L5 with an annular tear and bilateral foraminal stenosis.” Dr. Robson further recommended an anterior lumbar fusion at L4-5. He stated, “due to the findings on the MRI of a disc herniation accompanied by a high intensity zone lesion it is likely this represents an acute lesion.” Dr. Robson found that the work injury was the prevailing factor in the development of the herniation at L4-5.

Dr. Michael Chabot evaluated Claimant on July 26, 2012. Dr. Chabot also noted low back pain along with radiation into both sides of the thighs, burning and aching into the right leg to the right calf, and parasthesias into the right foot. He interpreted the MRI as showing spinal narrowing at L4-L5, no evidence of a disc herniation at L4-L5, but disc bulging associated with disc desiccation and degeneration. He also noted early instability at L4-L5. Dr. Chabot diagnosed chronic SI joint dysfunction with sacroiliitis and disc degeneration. He felt that her complaints were not related to the disc pathology at L4-L5 and that there was no indication for surgery at L4-L5. He did not feel there was any evidence of acute traumatic changes at the L4-5 level. He also stated that “any indication for surgical intervention at the L4-5 level is not causally related to her alleged March 20, 2011 injury.” He stated that any surgery in the future for the L4-L5 disease was related to chronic degenerative changes. Dr. Chabot provided a permanent partial disability of 3% of the body as the result of the SI dysfunction / sacroiliitis.

Was there a compensable accident/injury? In its original Answer filed in this case on December 15, 2011, Employer stated: “(f)urther Answering, the employer admits the employee sustained accidental injury on or about that date ...”. No request to file an amended answer was made in this case until approximately one hour into the hearing of this case on April 30, 2013. I find that, for the purposes of the April 30, 2013 hearing, Employer has admitted that Claimant sustained a compensable accident and injury “on or about that date” (i.e., March 20, 2011).

Assuming, however, that this issue had been properly and timely raised, it is nevertheless clear that Claimant did indeed sustain a compensable accident and injury arising out of and in the course of her employment with Employer on March 20, 2011. There was an unexpected traumatic event, as Claimant fell on a staircase. The event was identifiable by a specific time and place, on the date listed, and at the location noted. Claimant had immediate symptoms of an

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injury. The hazard or risk of falling on the stairs was a risk or hazard related to the employment (in fact *integral* to the employment) as Claimant could not access the fifth floor of the ICU tower without using the stairs.

Prevailing factor. I find that Dr. Robson's analysis of the nature of Claimant's injury to be most consistent with the evidence and thus most persuasive. Dr. Robson has opined that Claimant has a herniated disc at L4-5 and that the work accident of March 20, 2011 was the prevailing factor in the cause of the L4-5 disc herniation.

Need for additional medical treatment. Dr. Robson has opined that Claimant is clearly in need of a surgical procedure to address the L4-5 disc herniation. I find that such surgical procedure is reasonably required to cure and relieve Claimant from the effects of the L4-5 disc herniation; I also find that the work accident of March 20, 2011 was indeed the prevailing factor in the cause of the disc herniation.

FINDINGS OF FACT AND RULINGS OF LAW

In addition to those facts and legal conclusions to which the parties stipulated, I find the following facts and make the following rulings of law:

1. Claimant sustained an accident arising out of and in the course of her employment with Employer on March 20, 2011;
2. Claimant was a credible witness;
3. The medical opinions of Dr. David Robson are credible and persuasive;
4. Claimant sustained an L4-L5 disc herniation in the March 20, 2011 accident;
5. The work-related accident of March 20, 2011 was the prevailing factor in the cause of Claimant's L4-L5 disc herniation;
6. Claimant's condition has not reached maximum medical improvement and she is in need of additional medical treatment; and
7. Surgery, consisting of anterior discectomy and fusion at L4-L5, is reasonably required to cure and relieve Claimant from the effects of the work-related injuries.

ORDER

Employer-Insurer is hereby ordered to provide all such medical, surgical and hospital treatment as may reasonably be required to cure and relieve her from the effects of the work-related injury of March 20, 2011, including, but not limited to, surgery consisting of anterior discectomy and fusion at L4-L5.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

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Made by: /s/Robert J. Dierkes 6/3/2013
Robert J. Dierkes
Chief Administrative Law Judge
Division of Workers' Compensation