

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

Injury No.: 03-098340

Employee: Lisa Nickels
Employer: Wireless Northwest
Insurer: American Home Assurance Co.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: August 13, 2003
Place and County of Accident: St. Louis, 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 February 20, 2007. The award and decision of Administrative Law Judge Margaret D. Landolt, issued February 20, 2007, 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 11th day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Lisa Nickels

Injury No.: 03-098340

Dependents: N/A
Employer: Wireless Northwest
Additional Party: Second Injury Fund (Open)
Insurer: American Home Assurance Co.
Hearing Date: January 3, 2007

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

Checked by: MDL:tr

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: August 13, 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 moving items when she developed low back pain.
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% PPD of the body as a whole referable to the low back
15. Compensation paid to-date for temporary disability: \$3,491.02
16. Value necessary medical aid paid to date by employer/insurer? \$7,121.87

Employee: Lisa Nickels Injury No.: 03-098340

17. Value necessary medical aid not furnished by employer/insurer? \$1,609.36
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$662.55/\$347.05
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$1,609.36

100 weeks of permanent partial disability from Employer

\$34,705.00

22. Second Injury Fund liability: Open

TOTAL:

\$36,314.36

23. Future requirements awarded: Future medical treatment pursuant to Award

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:

Mr. Gary Sanguinet

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Lisa Nickels

Injury No.: 03-098340

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Wireless Northwest

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

Additional Party: Second Injury Fund (Open)

Insurer: American Home Assurance Co.

Checked by: MDL:tr

PRELIMINARIES

A hearing was held on January 3, 2007, at the Division of Workers' Compensation in the City of St. Louis. Lisa Nickels (Claimant) was represented by Mr. Gary Sanguinet. Wireless Northwest (Employer) and its insurer, American Home Assurance Company, were represented by Mr. Edward Vokoun. Although the Second Injury Fund is a party to this case, pursuant to the agreement of the parties, the claim against the Second Injury Fund shall remain open.

Mr. Sanguinet requested a fee of 25% of Claimant's award.

The parties stipulated that on or about August 13, 2003, Claimant sustained an accident arising out of and

in the course of employment; Claimant was an employee of Employer; venue is proper in the city of St. Louis; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated that Claimant's TTD rate is \$662.55 and her PPD rate is \$347.05. Employer has paid TTD benefits of \$3,491.02 representing periods of time from February 6, 2004 to February 13, 2004 and September 20, 2004 to October 17, 2004. Employer has paid medical benefits of \$7,121.87. The parties stipulated that Exhibit E is a Group Exhibit consisting of bills and evidence of payments. Claimant paid \$1,050.00 and \$559.36 for epidural steroid injections.

The issues for resolution by hearing are medical causation, liability of Employer for past and future medical care, and nature and extent of PPD.

SUMMARY OF EVIDENCE

On August 13, 2003, Claimant was working for Employer as a kiosk manager at a local shopping mall. Employer is in the business of selling cell phones. On that day, Claimant received a telephone call from the mall management to inform her that the storage room which was used by the kiosk would have to be emptied by 5:00 because the mall was undergoing construction. The entire storage room had to be moved and Claimant was unable to obtain any assistance from her corporate office. The storage room contained all the store's paperwork, phones, metal shelving as large as six feet, boxes containing metal parts, file cabinets, and boxes containing phone accessories.

When Claimant began to move the storage room, construction was already underway. Claimant had to personally move everything by piling items on a dolly and pulling the dolly over tile that had already been partially ripped up. Claimant made trip after trip to move all items from the storage room. She performed the entire job by herself, with the occasional help of one maintenance person from the mall. While moving the items her back began to hurt. After the move was complete, she was tired, and she hurt all over in her lower back, arms, and legs. Her pain progressively worsened over the following days. Her lower back got progressively worse and she saw her personal physician, Dr. Ponnuru, who asked her if she had done anything out of the ordinary. She told her family doctor about her experience moving the storage room.

Dr. Ponnuru recommended medications and physical therapy. Claimant was eventually referred by Employer to Dr. Lange who did not provide her with any treatment. Employer also referred Claimant to Dr. Tate who gave her a shot and prescribed physical therapy.

Dr. Ponnuru recommended epidural steroid injections. Claimant had three injections. She had to pay for the last two injections. Dr. Ponnuru suggested she try a chiropractor, and she selected the chiropractor on her own.

Following her course of treatment, her symptoms did not improve. Claimant currently has a stabbing pain which goes down her feet. The pains are from the center of her low back and radiate. When she gets the stabbing pain it feels like a cattle prod. It goes down her legs and across her back. Claimant never had an injury to her lower back before August 13, 2003.

Claimant did have a work related shoulder injury approximately one year before the present injury when a metal rack fell on her shoulder. She was treated for neck, upper back, and shoulder pain. Claimant did not injure her back in a motor vehicle accident on March 28, 2002, and does not have a history of chronic low back pain as stated in medical records of Southwest Medical Center on November 16, 2001.

Claimant missed work as recently as the Friday before the hearing due to pain. Some days are worse than others. Claimant is limited in the number of employment positions available to her. She is unable to sit an entire shift. Claimant is attempting to get back into management, but that requires her to be able to lift. Claimant applied for a management position recently, but was denied an interview because she has a bad back.

Claimant has difficulty getting her children in and out of the bathtub. Housework, vacuuming, and gardening are all difficult. She even wears certain types of clothing due to her injury. Claimant has difficulty picking up her two children, age 19 months and 6 years. Claimant has not had any new injuries since August 13, 2003. Claimant will cooperate with any testing or treatment offered.

Medical Evidence

Claimant was seen at Southwest Medical Center on August 26, 2003. She gave a history of doing some heavy lifting to move stored items, and had to do it quickly without help. Two days later the pain became severe when she was lifting her daughter. Claimant reported very sharp pain from her low back radiating into her toes. The diagnosis was low back pain likely secondary to muscle strain. Claimant was prescribed pain medication and muscle relaxants, and was taken off work. Claimant continued to treat conservatively with Southwest Medical Center until July 9, 2004. Claimant also treated with Dr. Dailey, a chiropractor, from April to August 2004. On February 18, 2004, Claimant had an MRI which revealed a moderate sized left paracentral disc herniation L5-S1 possibly affecting the left S1 root and diffuse disc bulge L4-5 with posterior annular tear. Claimant underwent three epidural steroid injections following her MRI.

Dr. Steve Nester testified on behalf of Claimant. When he examined Claimant on October 30, 2004, she was pregnant. Dr. Nester diagnosed disc herniation at the L5-S1 level and annular tear at the L4-5 level with intermittent radiculopathy. Dr. Nester stated in his report that Claimant was eight weeks pregnant. Due to the risks to the fetus at her early stage of pregnancy, testing requiring radiation exposure or surgery were not recommended. He recommended the delay of more definitive diagnostics and treatment pending delivery. He stated that future diagnostics would include a myelogram and discogram. On the basis of those results, he stated she might require treatment as aggressive as surgery or further conservative treatment with pain control.

Dr. Nester testified that it was his opinion that Claimant's medical condition was caused by the work accident. Dr. Nester rated Claimant's disability at 30% of the low back. Dr. Nester testified that subsequent to her delivering she might benefit from other more interventional type treatments. On cross-examination, Dr. Nester testified that with respect to future medical treatment, he recommended physical therapy initially, intermittent or regular pain control, and he testified it was not uncommon for a neurosurgeon or orthopedist to do surgery on someone with her level of injury if she continues to be symptomatic.

Dr. David Lange testified on behalf of Employer. Dr. Lange examined Claimant on January 19, 2004. Dr. Lange testified that her presentation was consistent with an annular tear, and that it was reasonable to associate her symptoms with the traumatic event she described. Dr. Lange reviewed Claimant's MRI. He saw degenerative changes with an annular fissure at L4-5 and a contained herniation at the lowest level extending over toward the left. Dr. Lange was unable to testify when the herniation occurred. He testified that it is not unreasonable, if Claimant's history is correct, to associate the abnormalities on the MRI with her work activities and her presentation when he examined her.

Dr. Sandra Tate also testified on behalf of Employer. Dr. Tate testified that Claimant's MRI findings were compatible with degenerative disc changes. Dr. Tate did not believe Claimant's work activities were a substantial factor in causing her medical condition. She testified that the lifting injury was a temporary precipitation of symptoms. Dr. Tate also testified she did not believe Claimant's lifting incident at work on August 13, 2003, aggravated any preexisting condition. She testified that it was a temporary exacerbation.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon my observation of Claimant at hearing, my comprehensive review of the evidence, and the application of Missouri law, I find:

Claimant testified credibly that she had no treatment for low back pain before she sustained the injury on August 13, 2003. I find the opinions of Dr. Lange and Dr. Nester more credible than Dr. Tate's. Dr. Lange, Employer's own physician, found it was not unreasonable to conclude that Claimant's work incident caused the injury to Claimant's back. I find that the incident occurring on August 13, 2003 is the cause of her current low back symptoms. I further find that the epidural steroid injections that she received were necessary to cure and relieve

from the effects of her injury. I find Claimant sustained permanent partial disability of 25% of the body as a whole.

Claimant is entitled to \$1,609.36 to reimburse her for the cost of her medical bills. Claimant is further entitled to 100 weeks of PPD benefits at the rate of \$347.05 per week for \$34,705.00.

Claimant is entitled to an award of future medical treatment. Future medical benefits may be awarded if a claimant shows by reasonable probability that there will be a need for additional medical care due to the work related injury. Landers v. Chrysler Corp., 963 S.W.2d 275 (Mo.App. 1997) (overruled in part). When future medical benefits are awarded, the medical care must flow from the accident in order to hold an employer liable. Id. Reasonable probability is based on reason and experience that inclines the mind to believe, but leaves room for doubt. Tate v. Southwestern Bell Telephone Co., 715 S.W.2d 326, 320 (Mo.App. 1986).

Dr. Nester recommended future medical treatment including diagnostics, pain control, physical therapy, and possibly surgery. Employer shall refer Claimant to an orthopedic specialist who shall provide such treatment. This award shall remain open for Claimant to obtain additional medical treatment.

This award is subject to an attorney's lien of 25% in favor of Gary Sanguinet.

Date: _____

Made by: _____

Margaret D. Landolt
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation