

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

Injury No. 10-108871

Employee: Annette Ownby
Employer: Cargill Meat Solutions Corp.
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)

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 September 22, 2015, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued September 22, 2015, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of December 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Annette Ownby

Injury No. 10-108871

Dependents:

Employer: Cargill Meat Solutions Corp.

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Second Injury Fund (dismissed)

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

Insurer: Insurance Company of the State of Pennsylvania

Hearing Date: August 12, 2015

Checked by: RJD/cs

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. Although I find that Claimant did sustain a work-related fall, I find that Claimant did not sustain an injury as a result of the fall.
4. Date of accident or onset of occupational disease: alleged as February 23, 2010.
5. State location where accident occurred or occupational disease was contracted: alleged as Saline 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? No.
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 descending some stairs when she fell down the stairs. Claimant sustained no injury as a result of the 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: Alleged as neck.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.

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17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: Not determined.
19. Weekly compensation rate: Not determined.
20. Method wages computation: Not applicable.

COMPENSATION PAYABLE

21. From Employer:

The claim against the Employer and Insurer is denied in full.

Employee: Annette Ownby

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FINDINGS OF FACT AND RULINGS OF LAW:

Employee: Annette Ownby

Injury No. 10-108871

Dependents:

Employer: Cargill Meat Solutions Corp.

Additional Party: Second Injury Fund (dismissed)

Insurer: Insurance Company of the State of Pennsylvania

Hearing Date: August 12, 2015

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

ISSUES DECIDED

The evidentiary hearing in this case was held in Marshall on August 12, 2015. Employee Annette Ownby appeared personally and by counsel Matt Uhrig; Employer Cargill Meat Solutions Corp. appeared by corporate representative Lisa Huesgen, and by counsel Joshua Friel. Post-hearing briefs were filed on September 3, 2015. The hearing was held to decide the following issues:

1. Average weekly wage and resultant compensation rates;
2. Whether Annette Ownby (“Claimant”) sustained an accident arising out of and in the course of her employment with Cargill Meat Solutions, Inc. (“Employer”) on or about February 23, 2010;
3. If found to have been sustained, whether the February 23, 2010 accident is the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
4. Whether the notice requirement of Sec. 287.420 serves as a bar to the Claim for Compensation;
5. Employer’s liability, if any, to reimburse Claimant for past medical charges;
6. Employer’s liability, if any, for temporary total disability benefits; and
7. Employer’s liability, if any, for permanent partial disability benefits.

STIPULATIONS

The parties stipulated as follows:

1. The Missouri Division of Workers’ Compensation has jurisdiction to hear this case;

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2. Venue for the hearing is proper in Saline County;
3. Both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
4. Employer has paid no benefits under Chapter 287, RSMo; and
5. Insurance Company of the State of Pennsylvania fully insured the Missouri Workers' Compensation liability of Cargill Meat Solutions Corp. at all relevant times.

EVIDENCE

The evidence consisted of the testimony of Annette Ownby ("Claimant"), as well as Claimant's deposition testimony taken on December 9, 2011, and on May 7, 2015; the testimony of James Ownby, Claimant's husband; the deposition testimony of Lisa Huesgen taken February 11, 2015; July 19, 2013 narrative report and November 17, 2014 deposition testimony of Dr. James Stuckmeyer; December 18, 2011 narrative report and May 31, 2012 deposition testimony of Dr. Garth Russell; Employer's records including nurses' notes and internal injury report; numerous medical records; medical bills.

FINDINGS OF FACT & RULINGS OF LAW

Annette Ownby ("Claimant") works for Cargill Meat Solutions Corp. ("Employer"), and has worked for Employer since June 2008 as a Quality Assurance Technician.

Claimant alleges a work-related accident and injury to her neck on February 23, 2010. Claimant ultimately underwent extensive surgery on her cervical spine on October 12, 2012. The evidence does not reflect that Claimant had any neck complaints prior to February 23, 2010; likewise, the evidence does not reflect that Claimant had sought any evaluation or treatment for her neck prior to February 23, 2010.

Claimant clearly reported a work-related fall on February 23, 2010. Claimant completed an (internal) Employee Statement of Injury on that date, stating that she fell on stairs, falling on her back, with pain in her right finger tips.

Accident; causation (neck). While there are numerous contested issues in the case, the threshold questions are whether Claimant sustained a compensable accident and whether the accident (if sustained) caused the neck injuries and/or conditions in evidence. As the issues of accident and causation are intertwined, I will address them concurrently.

Employer has raised the issue as to whether Claimant actually sustained a fall on February 23, 2010. In this regard, Employer points out (correctly) that Claimant initially testified that a co-employee, Jose Tena, requested that she climb the stairs to inspect the water retention basin for the "pork pump", but further testified that Jose Tena did NOT witness her fall.

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Employer points out that, at the hearing, Claimant testified that Jose Tena did, indeed, witness the fall. This raises a legitimate question as to Claimant's truthfulness. Claimant is, at the very least, an extremely poor historian. Nevertheless, there was little or nothing to be gained by Claimant in making a false report of a fall only to report the injury as "pain in the fingertips". I believe Claimant did sustain a fall on February 23, 2010.

As to whether the February 23, 2010 fall was the prevailing factor in the cause of a serious injury to Claimant's cervical spine, including disc herniation, I find the following facts:

1. On the Employee Statement of Injury, Claimant mentioned injury to her right hand only; Claimant testified "I know I didn't write it on there, but I had pain in my neck".
2. Claimant testified that when she went home on the day of the accident (2-23-2010), she told her husband she hurt her neck; she also testified that on the following day (2-24-2010), she "woke up in pain". Nevertheless, on 2-24-2010, Claimant told Employer's nurse "I'm fine".
3. On the Employee Statement of Injury, Claimant stated she "landed on (her) back"; Claimant made no mention of striking the back of her head on the stairwell. Claimant likewise made no mention of striking the back of her head on the stairwell to any of the health care providers until seeing Dr. Stuckmeyer on July 16, 2013.
4. Claimant continued to work every day after February 23, 2010 and made no mention to Employer (nor to anyone connected with Employer) of neck symptoms for more than ten months.
5. Claimant first sought treatment for neck symptoms with her personal physician, Dr. Mica Newman of Missouri Valley Physicians, on September 14, 2010; Dr. Newman noted "Chief Complaint" as "C/O SHARP/PULLING PAIN IN THE LEFT SIDE OF NECK FOR 3 WEEKS." There was no mention of a fall.
6. On October 7, 2010, Claimant saw Dr. Timothy Ryan of Missouri Valley Physicians, with "Chief Complaint" as STILL HAVING NECK PAINS. For "History of Present Illness", Dr. Ryan noted: PT IS HERE FOR THE ABOVE C/O FOR THE PAST MONTH NO HX OF TRAUMA.
7. When seen by Dr. Ryan on December 23, 2010, for "recurrent neck pain no better", Dr. Ryan again noted: NO HX OF TRAUMA.
8. When seen by orthopedic surgeon Dr. Craig Kuhns on March 17, 2011, Claimant gave a history of no neck pain "until she fell down some stairs at work February 2010", but there is no history of striking the back of her head on the stairwell. Claimant also told Dr. Kuhns that her neck pain "started right away" and that she "had been fairly incapacitated because of pain", yet Claimant continued to work every day and did not see a health care provider for the problem for almost seven months.

In addition to the above-enumerated facts, I also note that Claimant relies solely upon her medical expert, Dr. James Stuckmeyer, to establish causation. Dr. Stuckmeyer noted that Claimant "indeed represents a very complicated orthopedic evaluation in regard to the question of causality". Dr. Stuckmeyer also stated: "(o)bviously there are discrepancies in the medical records in regard to the timeline and duration of her symptoms, and this examiner can only take Ms. Ownby at her word that she sustained a work-related fall." Dr. Stuckmeyer also took Claimant at her word that she hit the back of her head during

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the fall (which information was not conveyed by Claimant to any of the numerous other physicians); Dr. Stuckmeyer also assumed that Claimant's neck pain started immediately after the 2-23-2010 fall. In this regard, Dr. Stuckmeyer testified:

Q. You state that Mrs. Ownby relates she had an onset of neck pain. Did she tell you when she had the onset of neck pain?

A. She informed me that it began after the fall in February of 2010.

Q. That could be March or that could be September; did she specify any --

A. Well, if you look at the --

Q. Date?

A. If you look at the -- I'm looking for a date here. What date is this? I just have to assume that -- I was under the impression that she instructed me that the symptoms began immediately after the fall. That was my assumption of what she was telling me.

Q. But she didn't specifically tell you that, correct?

A. She said her neck symptoms began after she fell. *Exhibit 26, pp. 43-44.*

There is no question that Claimant's neck pain began *after* February 23, 2010 (as opposed to *before* February 23, 2010). But *how soon after* February 23, 2010, is extremely important. As Dr. Garth Russell testified:

Q. And is that time frame significant, between February 23rd and September, and was it significant in any part of your opinion?

A. Yes. There were two points. Number one, if you injure a neck, most of the time an injury occurs immediately. You don't feel it for a few hours, but the neck begins to stiffen, and you get the pain within 24 hours. However -- that's in the neck. In the lower back it takes sometimes six weeks or so. But in the neck -- if you have injured something upon some occasions it may be six weeks before you will begin to feel pain from it. And based upon reasonable medical certainty any pain that occurred within six weeks could be attached back to that injury. However, her history to Dr. Newman was that her neck pain had begun three weeks prior to seeing him on September 14, 2010. *Exhibit A, pp. 12-13.*

Dr. Stuckmeyer agreed with Dr. Russell's analysis:

Q. On Page 12 and 13, he testified that, with a neck injury, the neck begins to stiffen and you get pain within 24 hours after the injury. He said, in some cases, it might be as much as up to six weeks after the injury that you would have pain.

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Did you agree that a neck injury in which discs have been ruptured that you would get pain within 24 hours or up to six weeks later?

A. I think that's fair to state. *Exhibit 26, p. 47.*

The evidence as a whole leads to the inescapable conclusion that Claimant's neck pain started about three weeks prior to her September 14, 2010 visit to Dr. Mica Newman. There is absolutely no credible evidence that Claimant's neck pain started within six weeks of the February 23, 2010 fall. The physicians appear to agree that, if the February 23, 2010 fall caused cervical disc herniations as Claimant alleges, that she would have painful symptoms within six weeks (i.e., by early April 2010). It is almost impossible to believe that Claimant would wait over five months to see a health care provider with such symptoms. It is likewise almost impossible to believe that Claimant would have been able to work every day, including overtime, for over five months with such pain, without seeking medical help.

I find it most likely to believe that Claimant's neck pain started in August 2010 -- just as she told Dr. Newman. Therefore, I must also find that the February 23, 2010 fall was NOT the prevailing factor in the cause of Claimant's neck injuries or conditions which proceeded to surgery on October 12, 2012.

Having found that Claimant's February 23, 2010 fall at work was not the prevailing factor in the cause of Claimant's injuries or conditions, the claim must be denied, and all other issues are moot.

Made by _____
/s/Robert J. Dierkes 9-22-2015
Chief Administrative Law Judge
Division of Workers' Compensation