

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

Injury No.: 07-016489

Employee: Tom Parmeter
Employer: Ramey's Automotive Machine Service
Insurer: Uninsured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This 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, read the briefs, 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 with this supplemental opinion. The Commission adopts the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the supplemental opinion set forth below.

Discussion

The administrative law judge denied employee's claim on a finding that employee failed to establish a compensable accident. Employee filed an Application for Review challenging the findings and conclusions of the administrative law judge. After carefully reviewing all of the evidence, we agree with the result reached by the administrative law judge, but because she failed to make affirmative findings of fact with regard to the dispositive issue of accident, we write this supplemental opinion to fulfill the statutory requirement.

Section 287.460.1 mandates that an award in a contested workers' compensation case be accompanied by findings of fact and conclusions of law. The Missouri Supreme Court has declared that such statutory requirements contemplate an unequivocal affirmative finding as to what the pertinent facts are.

Stegman v. Grand River Reg'l Ambulance Dist., 274 S.W.3d 529, 533 (Mo. App. 2008) (citations omitted).

Alleged accident

Employee alleged that on January 16, 2007, he leaned over to pick up an engine head at work and felt a snap in his groin. In his testimony at the hearing before the administrative law judge, employee acknowledged that he doesn't remember the actual date that this happened.

The administrative law judge thoroughly discussed the numerous contradictions between employee's account of what occurred and his statements set forth in the medical record

Employee: Tom Parmeter

generated in connection with his treatment for low back complaints in early 2007. We agree with the administrative law judge that these contradictions cast doubt upon employee's testimony regarding the alleged accident. The administrative law judge also summarized the testimony from employee's supervisor Gerard Ramey, and coworkers Rich Morris and Ivan Ramey, who each denied employee reporting or otherwise complaining of a back or groin injury on or about January 16, 2007. We find the testimony from employee's supervisor and coworkers to be credible in this respect. We find that employee did not report or otherwise complain of a back or groin injury to Gerard Ramey, Rich Morris, or Ivan Ramey.

Ultimately, given the foregoing considerations, and in light of the numerous inconsistencies and concerns identified by the administrative law judge, we find employee lacking credibility as to the circumstances of the alleged accident. We find that on or about January 16, 2007, employee did not lean over to pick up an engine head at work and feel a snap in his groin.

Decision

Based upon the foregoing, we affirm the award of the administrative law judge with this supplemental opinion. We deny employee's claim because he did not sustain an accident for purposes of the Missouri Workers' Compensation Law.

All other issues are moot.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued December 22, 2011, is attached, affirmed, and incorporated by this reference to the extent it is not inconsistent with our findings, conclusions, and decision herein.

Given at Jefferson City, State of Missouri, this 3rd day of July 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Tom Parmeter

Injury No.: 07-016489

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Ramey's Automotive Machine Service

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

Additional Party: Second Injury Fund (SIF)

Insurer: None

Hearing Date: October 5, 2011

Checked by: KMH

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: alleged January 16, 2007
5. State location where accident occurred or occupational disease was contracted: alleged St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? No
7. Did employer receive proper notice? No
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: Claimant alleges he injured his back while lifting at work.
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 low back and body as a whole
14. Nature and extent of any permanent disability: n/a
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Tom Parmeter

Injury No.: 07-016489

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$520.00
- 19. Weekly compensation rate: \$346.33/\$346.33
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: NONE

23. Future requirements awarded: n/a

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 n/a of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Tom Parmeter

Injury No.: 07-016489

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Ramey's Automotive Machine Service

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

Additional Party: Second Injury Fund (SIF)

Insurer: None

Checked by: KMH

A hearing was held on the above captioned matter October 5, 2011. Tom Parmeter (Claimant) was represented by attorney Mike Korte. Ramey's (Employer) was represented by attorney Devin Sauer. The SIF was represented by Assistant Attorney General Todd Matheny.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award. Any markings on the exhibits were present when admitted into evidence.

Claimant alleges he was injured by accident while in the course and scope of his employment January 16, 2007. Employer is uninsured, and denies Claimant was injured at work.

STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were subject to the workers' compensation act on the alleged date of injury.
2. A claim for compensation was timely filed.
3. Claimant's average weekly wage was \$520.00, and his rate for TTD and PPD is \$346.66.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Accident
2. Notice
3. Liability for past medical expenses of \$46,516.05.
4. TTD from February 16, 2007 through June 26, 2007.
5. PPD
6. SIF liability for uninsured benefits.

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 56 year-old male who worked for Employer for several years before the alleged date of injury. Claimant testified his duties included tearing down and rebuilding engines, and he lifted up to 90 pounds consistently throughout a work day.
2. Claimant also worked as a junk collector. As a junker, he lifted items of all sizes, even refrigerators, and he wore a belt when lifting. He testified he was not junking as a side job when his back injury occurred.
3. Claimant has a long history of back pain. He testified at trial and in his deposition that his back and entire body hurt before the 2007 injury. His back has bothered him his entire life, but he never had treatment before 2007. His doctor told him he had arthritis, and he has a family history of arthritis in the back. Claimant testified it was common knowledge among his co-workers at Employer that he had back problems. He always wore a back brace or belt while working for Employer.
4. Claimant testified on the alleged date of injury he leaned over to pick up a cylinder head and heard and felt a snap in his groin. He was working alone in the tear down room at the back of the shop when he was injured. No one witnessed his injury. Claimant testified he put the engine head down and told Steve Ramey, his boss and the owner's son, that he was injured. Claimant testified Steve told him to take it easy. Claimant felt numbness in his legs, but continued to work until he could not take the pain any longer. Claimant testified he told Gerry Ramey, the owner, he was going to the hospital. Claimant testified he also told Steve Ramey he was going to the doctor, and Steve told him to do what he had to do. He did not direct Claimant to a specific doctor or hospital.
5. In his deposition, Claimant testified that after Steve Ramey told him to take it easy, he continued working that day, but did not lift. His co-workers, Rich Morris, Dave Ira and Steve Ramey helped him with the lifting. Claimant testified he let everyone know he had been injured. He went home at the end of his shift and returned to work the next two days. His co-workers helped him with his work those days. Claimant testified he told Steve and Gerry that he was hurt, and he kept telling everyone at work that he was hurt, but nobody told him to go to a doctor. He had to insist that he was going to the hospital. Claimant testified on the third day, he told Gerry Ramey he was going to the hospital because he was in too much pain. Claimant testified at trial the last day he worked for Employer was the day after he went to the hospital, so the date of the injury may have been January 21.
6. Claimant testified he had an inhalation injury at work a week before his back injury. He inhaled some gas that was used to dry out cylinder heads. He had difficulty breathing, and thought he developed pneumonia over the weekend. By Monday morning, January 8, 2007, he couldn't breathe and went to the hospital. Claimant agreed the January 8, 2007, St. John's hospitalization was not related to his back injury. Claimant had not injured his

back at that point, and had no back complaints at the time of this hospitalization. The hospital records note a history of chronic back pain with no current leg pain, numbness or tingling. Claimant's only treatment on this date related to his breathing difficulties.

7. Payroll records indicate the last date Claimant worked at Employer was January 11, 2007. Claimant identified Exhibit 2 as his time card and check stub. The check is dated January 18, 2007 and covered work for January 5, 9, 10, and 11. Claimant did not remember if this was his last paycheck from Employer. Claimant testified all he knows is he left Employer when he was going to the hospital for his back, and he is not confusing this with the inhalation injury and hospitalization.
8. On January 23, 2007, Claimant went to St. John's Mercy hospital. He testified he had complaints of chest pain, low back pain, and numbness in his right leg and thigh. He told the doctors he had a back injury. He was admitted, had tests, and was told he had a broken bone in his back. Claimant testified this was the first treatment he had for his back after the work injury, and this was 2-3 days after the work accident happened. He is not good with dates, but knows the inhalation incident happened before the back injury. Claimant testified when he went to St. John's he had tests for his heart because when the bone broke off his spine, it touched a nerve causing him to think he was having a heart attack.
9. The hospital records indicate Claimant presented to the Emergency Room January 23 with chest and low back pain for three weeks, but he denied any recent trauma to the spine. He had numbness and tingling in both legs for the past three days. Claimant testified the first doctor he talked to at the hospital was foreign with a heavy accent, and she was difficult to understand. Claimant testified he told the doctor he thought he had a hernia, and the doctor said the snapping noise he heard was his spine breaking. An MRI was ordered, and Dr. Coyle was called in for consultation. He notes a history of an injury while lifting a cylinder three weeks ago. He notes Claimant was seen one week after that lifting incident for an inhalation injury. He reviewed the MRI and opined Claimant had an acute L3-4 herniation on the right side. He had back pain, right lower extremity numbness, and neck and shoulder pain.
10. Dr. Coyle opined Claimant's only option was surgery, and he performed a L3-4 micro lumbar discectomy on February 16, 2007. He saw Claimant for follow-up treatment and recommended physical therapy. Claimant testified he did not get physical therapy because he did not have any insurance or any money. Claimant treated with Dr. Coyle and was unable to work from February 16, 2007, through June 26, 2007. He does not recall if he was released with or without restrictions. He did not return to any work until August 2007, when he found a job as a cab driver. Claimant is not currently working.
11. Exhibits D through J are the medical bills related to treatment for the back injury. Claimant has no insurance, is not on Medicare, and has no way to pay the bills.
12. Claimant continues to have pain from the injury. He has had arthritis for years, and uses a heating pad. His pain increases when the weather changes. Claimant continues to get injections from SLU Pain Management for his back pain and takes Vicodin as needed.

The injections last one to two months. His last injection was about a month before trial. Before the injury and after the surgery, he had back pain with any lifting, even 15 pounds. He was never pain free and had difficulty sleeping.

13. Gerard Ramey testified. He is the sole owner of the business. The shop repairs auto cylinder heads for passenger vehicles and light trucks. All items weigh less than 60 pounds. He has been in business for over 20 years. Claimant worked for him for about 10 years. In 2007, Claimant was a disassembler. He took apart cylinder heads and cleaned them.
14. Mr. Ramey testified Claimant always had back pain and wore a back brace the entire 10 years he worked for Employer. It was common knowledge in the shop that he had back pain. Regarding the inhalation incident, Claimant told Mr. Ramey he felt sick from inhalation and had developed boils in the groin area. Mr. Ramey advised those are not caused by the inhalation, and Claimant said he was sick and going home. Mr. Ramey later got a call from the hospital asking if they used mustard gas, which they do not. Claimant never came back to work, and came back to the shop to get his paycheck. His last paycheck is dated January 18, 2007, and covers work through January 11, 2007.
15. Mr. Ramey testified Claimant never reported a back injury, groin injury, stabbing pain or numbness in his legs. He does not recall any co-employees assisting Claimant or telling him they assisted Claimant. He does not recall any co-employees telling him Claimant had told them he injured his back at work. Mr. Ramey testified he was first notified Claimant alleged a work related back injury on February 23, 2007, when he received Exhibit P.
16. Mr. Ramey testified his employees in January 2007 were Claimant, Rich Morris, Dave Ira, Steven Ramey and Ivan Ramey. Steve and Dave are no longer in St. Louis, and were not available to testify at trial. At the time of the alleged injury, Employer had been dropped by his workers' compensation carrier, and Mr. Ramey hadn't had time to get another policy.
17. Rich Morris testified for Employer. He is the head assembler/machinist. He has worked for Employer for 20 years, and he worked there in January 2007. He knows Claimant and worked with him for several years.
18. Ivan Ramey testified. He has worked for Employer for several years as a builder. In 2007 he worked part time after school. He knows Claimant and worked with him as a tear down technician in the tear down room. Ivan Ramey testified he remembers the inhalation incident. He and Claimant were tearing apart a tank. Claimant said he wasn't feeling good and he went home. He didn't say he had an injury to his back. Claimant never returned to work after that. Ivan assumed Claimant quit. The first time he knew Claimant said he had a back injury from work was a few weeks or a month after he quit.
19. Gerard Ramey, Rich Morris, and Ivan Ramey each testified:
 - it was common knowledge at the shop that Claimant had back problems before 2007 and wore a back brace to work,

- they do not recall Claimant hurting his back at work,
- Claimant never told them he injured his back at work,
- Claimant never told them he injured his groin at work,
- Claimant never told them he had stabbing pain or numbness,
- they do not recall Claimant needing assistance at work due to a back injury,
- they never helped Claimant at work due to a back injury,
- Claimant never asked their assistance at work because of a work related back injury,
- Claimant worked on the side as a junker. In January 2007, he had a truck at the shop filled with heavy appliances. They saw him lift heavy junk items.
- they did not know Claimant alleged a work related back injury until after he quit.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

Claimant failed to prove he sustained a compensable accident.

Section 287.020.2 (RSMo 2005) provides an accident is “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.” Claimant bears the burden of proving, to a reasonable probability, that his injury resulted from the accident to which he attributes it. *Jones v. Washington University*, 239 S.W.3d 659, 664 (Mo.App. E.D. 2007).

Claimant is a poor historian, and there are numerous inconsistencies in his testimony. Claimant’s testimony is not compatible with the medical records, and that puts his credibility in doubt. While I understand the language barrier between Claimant and the Emergency room physician, the medical records are a reliable source of information and were put into evidence by each party. The records reveal Claimant was in the hospital January 8 for the inhalation incident. At that time, he had no complaints to his back or legs. He then returned to work, and the time card and payroll records show he worked January 9, 10, and 11th. The evidence establishes January 11th was Claimant’s last day of work. The next medical treatment was not until the January 23rd hospital admission. That is the first record of any back complaints. Those records state Claimant denied a recent trauma, but they also reflect a history of a back injury before the inhalation injury.

Dr. Coyle notes Claimant injured his back while lifting at work three weeks before January 23, and that was the prevailing factor in causing his condition. He based his causation opinion on the assumption Claimant had the work injury, Claimant had reported it to Employer, and that Claimant had ongoing lower extremity pain following the work accident. Dr. Coyle did not have all the facts when he rendered his causation opinion. He did not know Claimant had a long history of back problems. He did not know Claimant also worked as a junker and lifted heavy objects. Dr. Coyle testified based on the MRI finding, Claimant would not have been able

to work for long in his condition. He testified with his finding on MRI, there is no way Claimant could have been lifting heavy objects because his disc was blown out and pressing on the nerve.

Given Dr. Coyle's testimony regarding the severity of Claimant's herniated disc, if Claimant had in fact been injured three weeks before January 23, he would not have been able to lift and he would have had ongoing leg pain. That is not reflected in the January 8 admission. In addition, Claimant testified he is sure the inhalation incident occurred before the back injury, and his first treatment for his back was the January 23rd hospitalization.

Employer and his son, Ivan, testified Claimant did not return to work after the inhalation incident. However, the payroll and time card records show Claimant did work January 9, 10, and 11. Employer presented credible evidence that Claimant's last work day was January 11. Claimant's co-workers credibly testified Claimant did not report a back injury to any of them or request their assistance with lifting.

I find Claimant failed to establish a compensable accident.

All remaining issues are moot.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation