

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

Injury No.: 03-066171

Employee: John Renner  
Employer: Exteriors by Roesch  
Insurer: American Family Mutual Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: May 12, 2003  
Place and County of Accident: St. Louis County, 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 January 12, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Karla Ogrodnik Boresi, issued January 12, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5<sup>th</sup> day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: John Renner

Injury No.: 03-066171

Dependents:	N/A	Before the
Employer:	Exteriors by Roesch	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund	<b>Compensation</b>
Insurer:	American Family Mutual Ins. Co.	Department of Labor and Industrial
Hearing Date:	December 4, 2006	Relations of Missouri
		Jefferson City, Missouri
		Checked by: KOB

**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? Yes.
4. Date of accident or onset of occupational disease: May 12, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
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? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant fell from a walk board while working on a customer's residence.
12. Did accident or occupational disease cause death? No.
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee:	John Renner	Injury No.: 03-066171
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17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,000.00
19. Weekly compensation rate: \$649.32 /\$340.12
20. Method wages computation: By stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses:	\$0.00
0 weeks of temporary total disability (or temporary partial disability)	\$0.00

0 weeks of permanent partial disability from Employer:

\$0.00

22. Second Injury Fund liability: No

TOTAL:

23. Future requirements awarded: None

Said payments to begin 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 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:	John Renner	Injury No.: 03-066171
Dependents:	N/A	Before the
Employer:	Exteriors by Roesch	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund	<b>Compensation</b>
Insurer:	American Family Mutual Ins. Co.	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: KOB

### PRELIMINARIES

The matter of John Renner ("Claimant") proceeded to hearing to determine if he should recover workers' compensation benefits on account of an alleged May 12, 2003, accident. Attorney Joseph Frank represented Claimant. Attorney Ken Alexander represented Exteriors by Roesch ("Employer") and its insurer, American Family Mutual Insurance Company. The Second Injury Fund is a party to the claim, but Claimant's attorney agreed to leave the Second Injury Fund claim open pending the outcome of the primary case. No one appeared on behalf of the medical providers who filed medical fee disputes.

The parties stipulated that on or about May 12, 2003, Claimant was an employee of Employer earning an average weekly wage of \$1,000.00. The applicable rates of compensation are \$649.32 for total disability benefits and \$340.12 for permanent partial disability benefits. Venue is proper in the City of St. Louis, and the claim was filed within the time required by law. Employer paid medical benefits of \$5,189.16, but did not pay temporary total disability benefits.

The issues to be determined are: 1) Did Claimant's accident arise out of and in the course of employment; 2) Is Claimant's medical condition causally related to his accident; 3) Did Claimant give proper notice as required by law; and 4) What is the nature and extent of Claimant's permanent partial disability?

Claimant submitted the following exhibits which were admitted into evidence: Records of the Affton Fire Protection District documenting an ambulance run involving Claimant on May 12, 2003; Emergency room records of St. Anthony's Medical Center for Claimant on May 12, 2003; and Deposition of Dr. Berkin. Employer submitted the following exhibits which were admitted into evidence: Medical Records of Dr. Singh; and Deposition of Dr. Cantrell.

### SUMMARY OF THE EVIDENCE

*Witnesses.*

Claimant is a 39 year old construction worker. When Claimant entered the courtroom, he obviously appeared to be in distress. His multiple overt pain behaviors included slow ambulation with a single-point cane, verbal moaning, facial grimacing, and grunting.<sup>[1]</sup> However, at two or three brief periods throughout his testimony, I observed him to sit in the chair in a relaxed manner, with no tension observable in his body until questioning resumed, when the facial distortions and body tension returned. On two separate occasions, he began to sob as if crying.

Claimant began working for Employer in early 2003, and his boss was Vic Roesch, the owner. On May 12, 2003, Claimant was a lead man on a job in the Indian Hills subdivision, working with Al Deeken as his material helper. Al was not employed by Employer, but was a friend of Claimant who sometimes helped him. According to Claimant, he was on the job at 7:00 a.m. to set up two ladders to support a walk board so he could work on the gables. After several hours of work, he was on top of the walk board, standing on his toes to set a nail above his head, when the walk board shifted and he fell to the ground, landing on his chest. Claimant testified he lay on the ground in pain while Al called 911 on his cell phone. Claimant also testified that he asked Al to call Employer, and even claimed to have overheard a ten-minute conversation between Al and Mr. Roesch, who was not on the scene. An ambulance took Claimant to St. Anthony's Hospital, where he was tested and released.

Claimant testified he returned to work the next day, and worked for about two weeks with pain in his neck, chest, and back. Then, on a Friday, he called in to Mr. Roesch to say he needed to see a doctor. Claimant testified that his boss did not ask why he needed to see a doctor, and hung up. That Monday, Claimant testified that he "put a bug in his ear" by telling Mr. Roesch he was hurting. Again, he said he received no reply. Claimant did not file a written report of injury. Claimant testified that about three to four weeks after the accident, for no apparent reason, Mr. Roesch fired him, saying he did not care if he fell twenty feet to his chest.

Claimant said he saw Dr. Singh for about ten minutes one day after the accident, and then he was "kicked out" of Dr. Singh's office. Prior to this event, he had seen Dr. Singh for what he called "slight" back pain. He admitted that he was taking narcotic pain medication for this slight or mild back pain prior to his accident. Claimant admitted he hurt his back and neck in a car accident prior to his work fall, and he received compensation in settlement of his civil complaint. In 2005, Claimant came under the care of Dr. Julie Bush and Dr. Greywald at the People's Health Clinic for pain management and psychiatry respectively. Claimant receives a number of medications. Claimant testified that he had no physical problems before his injury.

Claimant testified that after he was fired, he attempted several small jobs in inspection and construction, but could not perform such work due to the pain that he attributes to the fall. Claimant last worked two weeks in 2004. He described his pain in various ways. He said that he sometimes loses control of his legs, and that his pain radiates to the hip, neck, and lower part of his legs, all of which prompts him to go to the emergency room. Two weeks prior to hearing, Claimant had been taken to the emergency room at SLU by ambulance because his legs were numb. Claimant's description of his pain was dramatic. He testified that he has started burning his arms to transfer the pain from his back to other parts of his body. Claimant testified he is unable to do anything. He used to be a good softball player and bowler, but he can no longer perform those activities.

Claimant testified when he is in extreme pain, he goes to emergency rooms at Barnes Jewish, St. Louis University, and St. Anthony's, and other facilities. He estimated that over the past year, he has gone to the emergency room fifteen or twenty times. Medicaid pays the medical bills. Sometimes, but not always, the emergency room physicians prescribe narcotics. Claimant said his family says he has a problem with drugs, but he said he was a "pain addict, not a drug addict." He says he tries not to take narcotics. Claimant testified he drinks four to five beers every night in order to sleep. He testified he wakes up in the middle of the night with flashbacks of his head barely missing the post on the way down from the walk board. Claimant started to cry when he described his sleep habits.

Victor Roesch is the owner of Employer, a home improvement company that has been in his family for fifty years. Mr. Roesch testified that in May 2003, Claimant became an employee of Employer after having worked as an independent contractor. Although Mr. Roesch's records indicated that the Indian Hills job was scheduled to start May 13, 2003, a day after Claimant's alleged accident, the records, including the ambulance and emergency room records, indicate that Claimant indeed fell on the 12<sup>th</sup> of May. Mr. Roesch admitted that he could be mistaken regarding the start date.

Mr. Roesch testified that he first became aware of an alleged accident in September 2003, when he investigated why he had begun to receive bills from medical providers. He had not had any conversations with Claimant prior to September in which Claimant told him he had fallen at work or required medical treatment. Mr. Roesch described Al as a friend of Claimant's who helped him as necessary. He was not an employee. Al never contacted anyone at the Employer regarding a fall in May 2003. Mr. Roesch testified he has never spoken to Al by phone about any subject.

Mr. Roesch testified that Claimant worked up until July 3, 2003. Mr. Roesch terminated Claimant after he and Al got into a "tiff" on the job and the homeowner complained about the incident. Thereafter, Claimant failed to show up to the job site to remove ladders. When Mr. Roesch had to perform the clean up work himself, he decided to fire Claimant. Mr.

Roesch had never had an occasion to confront Claimant about any physical problems, and Claimant never asked for a medical referral. He testified that Claimant seldom worked on Mondays, and he scheduled around that habit. Otherwise, Claimant got the job done and did it right.

### *Medical Records and Opinions*

The records document well the treatment Claimant received on May 12, 2003. The Afton Fire Protection District picked Claimant up at a Tomahak address at 11:30 a.m. after an approximately 15 foot fall from scaffolding (Exhibit A). Thereafter, testing performed at St. Anthony's Medical Center was negative and Claimant was released from care (Exhibit B).

The records of Dr. Arjun Singh, Claimant's personal physician, were in evidence as Employer/Insurer's Exhibit 1, and document a patient-physician relationship from December 4, 2001 to December 29, 2003.<sup>[21]</sup> The records of Dr. Singh directly contradict Claimant's testimony on two key points. First, Claimant said he only had slight or mild back pain prior to his accident. Yet, for over one year before the accident, Dr. Singh was prescribing narcotic pain medication for back and neck pain that Claimant described as high as 10/10 at times. The week before the work accident, Claimant's reported pain scale level was 7/10. In the nine months prior to the date of his work accident, Claimant saw Dr. Singh regularly, twice a month on average, and received prescriptions for Lorcet and an anxiety medication at nearly every visit. Each prescription was for a 14-day supply. This pattern continued in the seven months following the accident. Therein lies the second major contradiction – Claimant testified Dr. Singh threw him out of the office right after the accident, but in actuality, Claimant continued to have appointments in Dr. Singh's office to receive narcotic medication for seven months at the same rate he had prior to the accident. Interestingly, the post-accident entries mirror those prior to the accident in both substance (narcotics prescribed) and frequency (average of twice a month).

The Singh records support Claimant's statement that his family thinks he has a drug problem. The chart contains a lengthy message taken by "MM" dated February 26, 2006 regarding a phone call from June Renner, Claimant's mother. The caller stated her son had a drug problem, and that she wanted to get him help. Apparently, she wanted to doctor to stop prescribing medication, but MM could not discuss confidential information. The call was emotional and ended abruptly.

Dr. Shawn Berkin performed an independent medical exam on Claimant's behalf on June 28, 2006, and testified by deposition on August 10, 2006 (Exhibit C). He had the benefit of medical records that were not made part of the record of hearing, including documentation of the seven emergency room visits (not counting the day of injury) and one admission, at five different facilities, over 15 months. Generally, Claimant was evaluated, received narcotic medications, and referred to his own doctor each time he sought emergency treatment. Dr. Berkin also noted treatment for seizures. Claimant denied any previous injuries, but Dr. Berkin noted the records of Dr. Ivy Benjamin documented treatment of the neck, lower back, and left shoulder following a car accident in October 2001.

On exam, Claimant demonstrated a number of exaggerated pain gestures, involving winching, grunting, shaking and jerking. He complained of pain and tenderness to his neck and lower back and reported symptoms of tightness and muscle spasms. Claimant rated his degree of pain at level eight, on a scale of one to ten. He reported tightness and limited motion of his neck, and stated that his neck and back symptoms are aggravated by straining and lifting. Since the injury, he reports he is unable to bowl or play softball. Dr. Berkin had the impression Claimant suffered sprains to the cervical compression and lumbar spine with degenerative arthritis on the spine. He also felt Claimant had a herniated disc at C5/6, but he could not relate it to his work accident. Dr. Berkin concluded the May 2003 fall was the prevailing factor in causing strains to the cervical and lumbar spines. Dr. Berkin rated permanent partial disability of 17 ½ % of the body at the level of the cervical spine, and 20% of the body at the level of the lumbosacral spine. Additionally, 15% permanent partial disability of both the neck and back preexisted. Dr. Berkin admitted Claimant has a substance abuse or addiction problem, but does not know if it is "deliberate."

Dr. Russell Cantrell, a board certified physical medicine and rehabilitation physician, examined Claimant, issued a report, and testified by deposition on behalf of Employer. Dr. Cantrell indicated Claimant reported diffuse pain that was not necessarily consistent with anatomic pathology, and his multiple overt pain behaviors included slow ambulation with a single-point cane, verbal moaning, facial grimacing, and grunting. Dr. Cantrell found no objective evidence of injury on examination, and concluded that his non-physiological pain behaviors suggested a non-atomic source of the pain complaints. Regarding his prior medical history, Dr. Cantrell noted Claimant had chronic low back pain and degenerative changes, and a history of narcotic dependencies.

Dr. Cantrell found that Claimant had multiple contusions and possibly strain injuries to the cervical and lumbar spine as a result of the work accident, but that these injuries have since resolved. The emergency room visit on the day of the accident was appropriate to treat the injuries, but the subsequent diagnostic tests and treatments were not necessitated by the injury, and the current multiple pain complaints are not medically causally related to the accident. Dr. Cantrell noted that when he looked at the medical records from Claimant's primary care doctor (Dr. Singh), there did not appear to be any change in the dosage or frequency of the medications Claimant was taking before and after the accident.

### **FINDINGS OF FACT**

Based on a comprehensive review of all the evidence, including live testimony of Claimant and Employer's representative, which I carefully observed, the deposition testimony, and the medical records, I find:

1. There is no evidence to contradict Claimant's testimony that he had an accident on May 12, 2003 when he fell from a platform at the Indian Hills job. The Afton Fire District records and the St. Anthony's Emergency Room Records establish the occurrence, as well as the essentially negative findings for serious injury. I find Claimant fell while performing work for Employer.
2. I do not believe Claimant, or Al, notified Employer of the fall, but find Mr. Roesch's testimony that he did not know of the accident until September to be more compelling. Al is a subcontractor/friend of Claimant who did not testify at hearing, and we only have Claimant's testimony to suggest Al made a call to Employer. After the accident, Claimant interacted with Mr. Roesch, but did not clearly communicate his accident and request for treatment – hints and suggestions are not sufficient to establish notice or a demand for treatment.
3. Claimant is not a reliable witness. His testimony at hearing was inconsistent with other credible evidence. For example, Claimant was not forthright and honest with his rating physician when Dr. Berkin asked about previous problems, and Claimant denied any such problems. He testified he only saw his personal doctor once after the work accident, when he actually continued to see him for months. Claimant denied facts, such as his prior drug seeking behavior and chronic back pain, which are well documented in the medical records. Mr. Roesch's testimony regarding the interaction he had with Claimant in the months after the accident is more credible than Claimant's description.
4. Claimant had contusions and possible cervical and lumbar strains as a result of his accident, but those strains have resolved. Claimant's multiple overt pain behaviors are out of proportion with his physical findings, are not causally related to his accident, and further undermine his credibility. Currently, Claimant exhibits no objective evidence of injury on examination, and his non-physiological pain behaviors suggest a non-atomic source of the pain complaints. On these points, Dr. Cantrell testified credibly. Claimant's overly dramatic presentation of his physical complaints, coupled with his unreliable testimony as a whole, make it impossible to accurately evaluate his true physical problems. Neither his testimony, nor any evidence based on his testimony, is persuasive.
5. Claimant regularly took narcotic and other pain medications for months prior to his work accident. Medical records from the nine months prior to the date of his work accident indicate Claimant saw Dr. Singh regularly, twice a month on average, and received 14-day prescriptions for Lorcet and an anxiety medication at nearly every visit. This pattern continued in the seven months following the accident. Based on his review of the records, Dr. Cantrell confirmed there did not appear to be any change in the dosage or frequency of the medications Claimant was taking before and after the accident.

### **RULINGS OF LAW**

Based on the facts found, and the applicable laws of the State of Missouri, I find:

#### **I. Claimant's accident arose out of and in the course of employment.**

The burden is on Claimant to prove his accident arose out of and in the course of employment. *McClain v. Welsh Co.*, 748 S.W.2d 720, 724 (Mo.App.1988). An accident arises out of the employment relationship "when there is a casual connection between the conditions under which the work is required to be performed and the resulting injury." *Abel By and Through Abel v. Mike Russell's Standard Service*, 924 S.W.2d 502, 503 (Mo.1996)(citations omitted). An accident occurs "in the course of" employment "if [it] occurs within the period of employment at a place where the employee reasonably may be fulfilling the duties of employment." *Shinn v. General Binding Corp.*, 789 S.W.2d 230, 232 (Mo.App.1990).

Claimant's evidence established he had an accident arising out of and in the course of his employment on May 12, 2003. He was performing remodeling work at a home in the Indian Trails Subdivision on which Employer was obligated to perform remodeling work. The Afton Fire District records show an ambulance picked Claimant up at the Indian Trails home and took him to St. Anthony's. Claimant had no other reason to be in the Indian Trail area other than to be performing the work Employer hired him to do. There is no credible evidence to challenge that Claimant's fall arose out of and in the course of his employment.

#### **II. Claimant did not prove his medical condition is causally related to his accident, or that he suffered any permanent partial disability as a result of the accident.**

Under Missouri law, it is well-settled that the claimant bears the burden of proving all the essential elements of a workers' compensation claim, including the causal connection between the accident and the injury. *Shelton v. City of Springfield*, 130 S.W.3d 30, 38 (Mo.App. S.D. 2004)(citations omitted). Furthermore, the element of causation must be proven by medical testimony, "without which a finding for claimant would be based on mere conjecture and speculation and not on substantial evidence." *Id.* On the issue of causation, Claimant had failed to meet his burden.

Claimant testified that his work accident is the cause of his constant, extensive, and incapacitating pain. Despite

admitting to a “slight” pain before, Claimant asserted the fall caused his current complaints. It is necessary to accurately establish Claimant’s current symptoms and his preexisting symptoms in order to determine which symptoms, if any, are caused by his work accident. *See, i.e., Plaster v. Dayco Corp.*, 760 S.W.2d 911, 913 (Mo.App. S.D. 1988)(A claimant has the burden to prove the extent of a preexisting disability, so that such percentage can be evaluated against the disability percentage existing after the compensable injury, in order to determine what percentage of permanent partial disability is attributable to the job-related injury). Given the unreliability of Claimant’s testimony, especially the minimization of his prior problems and a dramatic presentation of his current state that is out of proportion to objective findings, it is impossible to determine what symptoms, if any, are attributable to the work accident.

The medical records fail to establish a causal connection between the fall and any of Claimant’s current symptoms. First, the records indicate that Claimant’s prior back pain was much more serious than he described at hearing. For months prior to the fall, he received narcotic pain medication on a regular basis. Second, there was no change in the dose or frequency of his pain medication, or the documented symptoms, in the months following the fall. Third, other than the continued use of narcotics and the visit to the emergency room on the day of the fall, there is no evidence of treatment for injuries related to the fall. The treatment records do not support a finding of causation.

Finally, the expert medical evidence fails to support a finding the fall caused permanent disability. The medical experts agree on several points, including the facts that the fall resulted in strains only, Claimant had a dramatic presentation, Claimant has a problem with narcotic use, and, despite his denial, Claimant had preexisting back symptoms. However, the experts disagree on the issue of whether the fall caused permanent disability. Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 877 (Mo. App. 1984). I find Dr. Cantrell’s opinion more convincing than Dr. Berkin’s. Dr. Cantrell reviewed the medical records, acknowledged Claimant’s history of narcotic use, observed non-anatomical symptoms with an overly dramatic presentation, and noted the fall had no effect on the nature and extent of medical treatment Claimant received in 2003. With a well supported foundation, he credibly explained that any strain experienced by Claimant as a result of the fall had since resolved and caused no permanent disability. Any symptoms Claimant now experiences are not related to his fall. Dr. Berkin stated in a conclusory manner the fall caused permanent partial disability. However, I do not find Dr. Berkin credible on this point because he relied on an inaccurate history and subjective symptoms reported by Claimant, and although he rated the prior disability, he did not adequately explain how or why he divided the disability in such a manner. I find the expert medical evidence does not support a causal connection between the fall and a permanent injury.

### III. Claimant did not give proper notice of his work accident.

While the causation/disability issue determines the outcome of this case, the parties also placed notice at issue. Section 287.420 requires that an employee who suffers a compensable injury give written notice to the employer as soon as practicable, but no later than thirty days after the occurrence. Lack of timely written notice may be excused when there is actual notice to the employer. *Hall v. G.W. Fiberglass, Inc.*, 873 S.W.2d 297, 298 (Mo.App. E.D. 1994)(citations omitted). Claimant has the burden of proof of showing that the employer was not prejudiced. *Id.* A prima facie showing of no prejudice is made if claimant can show the employer had actual notice. *Id.*

Claimant did not give written notice, and I do not find Claimant’s testimony regarding actual notice to be credible. Mr. Roesch’s testimony that he did not receive a phone call from Al on the day of the accident or otherwise learn of the accident until September is believable. Even if Claimant “put a bug in his ear” or otherwise suggested to Mr. Roesch he was in pain following the accident, such subtle statements do not constitute notice. There must in addition be some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case might involve a potential compensation claim. *Gander v. Shelby County*, 933 S.W.2d 892, 896 (Mo.App. E.D. 1996) overruled in part by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 226 (Mo. 2003), citing 2B A. Larson, *The Law of Workmen’s Compensation* § 78.31(a)(2). As in *Hall*, I find there was no actual notice despite the testimony of Claimant.

### **CONCLUSION**

Claimant has not met his burden of proving he sustained a compensable work injury. Although he established an accident, proof of causation and notice are lacking. Claimant’s claim for workers’ compensation benefits is denied. The claim against the Second Injury Fund is denied on the grounds Claimant failed to prove a compensable claim against Employer.

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

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

KARLA OGRODNIK BORESI  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

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Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*

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[1] My observations of Claimant's behaviors were consistent with those described by Dr. Cantell in his September 28, 2006 report, and these words parallel his description of Claimant.

[2] Claimant cancelled, or was a "no show," for three visits in 2004, on April 8, April 17, and June 23.