

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

Injury No.: 04-059259

Employee: Joe Rigdon  
Employer: Tower Rock Stone Company  
Insurer: St. Paul Fire & Marine Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: Alleged April 9, 2004  
Place and County of Accident: Alleged Perry 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 August 23, 2005, and awards no compensation in the above-captioned case.

The award and decision of Associate Administrative Law Judge Gary L. Robbins, issued August 23, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 15th day of April 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

## **AWARD**

Employee: Joe Rigdon

Injury No.04-059259

Dependents: N/A

Employer: Tower Rock Stone Company

Additional Party: N/A

Insurer: St. Paul Fire & Marine Insurance Company

Hearing Date: July 20, 2005

Checked by: GR:sm

## **SUMMARY OF FINDINGS**

- Are any benefits awarded herein? No
- Was the injury or occupational disease compensable under Chapter 287? No
- Was there an accident or incident of occupational disease under the Law? No
- Date of accident or onset of occupational disease? Alleged to be April 9, 2004
- State location where accident occurred or occupational disease contracted: Alleged to have occurred in Perry County, Missouri
- Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
- Did employer receive proper notice? Yes

- Did accident or occupational disease arise out of and in the course of the employment? No
- Was claim for compensation filed within time required by Law? Yes
- Was employer insured by above insurer? Yes
- Describe work employee was doing and how accident happened or occupational disease contracted: Employee alleged that on April 9, 2004 he was driving a front-end loader on an uneven surface. He alleged that on multiple occasions the frond-end loader hit uneven ground jarring and jolting his neck and body as a whole causing injury.
- Did accident or occupational disease cause death? No
- Parts of body injured by accident or occupational disease: Employee alleges neck back and body as a whole.
- Compensation paid-to date for temporary total disability: None
- Value necessary medical aid paid to date by employer-insurer? None
- Value necessary medical aid not furnished by employer-insurer? \$51,169.67
- Employee's average weekly wage: \$800.00 per week.
- Weekly compensation rate: \$533.33 per week.
- Method wages computation: By agreement.
- Amount of compensation payable: None

No benefits or interest are payable in this case as the Court ruled that the employee did not prove that he sustained an accident arising out of and in the course of his employment.

## **FINDINGS OF FACT AND RULINGS OF LAW**

On July 20, 2005, the employee Joe Rigdon appeared in person and by his attorney, Nile D. Griffiths, for a temporary or partial award. The employer-insurer was represented at the hearing by their attorney, Rhonda J. Kattelman. Six cases were originally set for trial, however the parties agreed that the only case to be tried was 04-059259. The Court took judicial notice of all records contained within the files of the Division of Workers' Compensation. The employee initiated this trial as a temporary proceeding as he was seeking additional medical care. However, the Court determined that the employee had not met his burden of proof under Chapter 287 proving accident; therefore the Court prepared its decision as a Final Award. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS:**

1. Tower Rock Stone Company was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and liability was fully insured by St. Paul Fire & Marine Insurance Company.
2. On or about the day of the alleged accident or occupational disease the employee was an employee of Tower Rock Stone Company and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's accident.
4. The employee's claim was filed within the time allowed by law.
5. The parties agreed that the employee's average weekly wage was \$800.00 per week. The employee's rate for temporary total disability is \$533.33 per week.

### **ISSUES:**

1. Whether on or about April 9, 2004, the employee sustained an accident or occupational disease arising out of and in the course of his employment?
2. Whether the employee's injury was medically causally related to an accident or occupational disease?
3. Whether the employer-insurer is liable for previously incurred medical bills totaling \$51,169.67, including disputes as to authorization, reasonableness, necessity and causal relationship; and whether the employer-insurer is liable for mileage and future medical care for the employee's back?
4. Whether the employer-insurer is liable for past temporary total disability payments totaling \$27,733.16 for the period beginning May 7, 2004 and ending May 7, 2005?

### **EXHIBITS:**

#### Employer-insurer Exhibits

1. Reports of Dr. Michael Chabot dated November 4, 2002
2. Reports of Dr. Michael Chabot dated September 29, 2004
3. Records of Dr. Paul Juergens

#### Employee Exhibits

- A. Deposition of Dr. Kee Park
- B. Records of the Auburn Surgical Center
- C. Records of Dr. Craig Davis

#### D. List of medical bills

#### SUMMARY OF THE EVIDENCE:

Joe Rigdon is thirty-seven years old and lives in Ava, Illinois with his wife. He began employment with Tower Rock Stone Company, a rock quarry, in 1990 and was working for them on April 9, 2004. As part of his employment he operated a front-end loader. He had been in that position for eight to nine years and was fulfilling those duties on April 9, 2004.

The employee testified at trial that on April 9, 2004, he was working in Zone 3 on a rough surface and took a jolt that caused pain in his neck, back and body as a whole. The employee testified that he was loading "shot rock" (rock that has been blasted out) with the front-end loader when the bucket hit a rough spot or material causing the front-end loader to jolt as it was brought to a complete stop. The employee testified that it was this event that caused his injury and subsequent problems. He testified that similar injuries have happened in the past from 1999 to 2000 and that he has pending cases on those matters. The employee testified that he felt pain in his neck, shoulders and lower back. He testified that he finished his shift and did not report any injury that day. Mr. Rigdon indicated that he first reported this event to his employer sometime in May or June 2004, after he had obtained medical care from Dr. Paul Juergens and Scott Petersen at Southern Illinois Pain Management. The employer did not offer any benefits at the time that the employee reported the injury or at any time thereafter.

Records reveal that the employee was treated in the office of Dr. Paul Juergens on April 22, 2004. This facility has treated the employee at least from 2000 to 2002 for neck and back complaints. Scott Petersen is a physician's assistant that works in the office and was the first medical provider to see the employee after April 9, 2004. Mr. Petersen prepared a report dated April 22, 2004, that included a medical history that was taken at the time he first saw the employee. That report indicates that the employee reported:

1. Patient complains of increased neck and shoulder pain for the past twelve days.
2. "The patient also notes episodic numbness and tingling in his fingers-this was present prior to twelve days ago and has been present for quite some time."
3. "**He does not note any new injuries,**" emphasis added.
4. "**He states this is the same pain that he had previously,**" emphasis added.
5. "**He cannot identify any reasons that it may be increasing at this time,**" emphasis added.

As a result of this examination, a cervical and thoracic MRI was performed on April 23, 2004. The cervical MRI was read as reporting a small central disc bulge at C6-7, with compression of the epidural sac and the spinal cord. The thoracic MRI was read as normal. The employee received epidural injections and pain medications while being treated at this facility and was told that he needed to find a primary care physician.

The April 27, 2004, records of Southern Illinois Pain Management report that the employee called and told them that he had an appointment to see Dr. Craig Davis on May 7, 2004. That report further indicates that the employee requested that their office state that he had a work-related injury. The employee was advised that the information that he provided could be documented, however a statement could not be made that his injury and/or pain is a direct cause from his job. The May 11, 2004 records of Southern Illinois Pain Management report a telephone call from Amy who is with Dr. Davis's office. She stated the employee had gone to Dr. Davis's office and wanted them to fill out a disability form that helped the employee pay for his house payment. Amy indicated that they declined this request as they had only seen the employee on two occasions after a two-year absence.

Prior to April 22, 2004, Dr. Juergens' office had treated the employee for neck, shoulder and back pain. During that period he underwent MRI's of both the neck and the back, epidural steroid injections in his neck and back, and received medication for pain control. His general diagnosis was cervical spondylosis and a herniated disc at L5-S1 and protrusion at L4-5. In an office note dated April 3, 2001, the employee presented for treatment for neck and back pain but denied any specific injury or incident that caused the pain; and denied any previous injuries.

A report of Dr. Gupta dated April 24, 2002, reports that the employee has not been seen for several months but came

in as he found out there had been communications with his lawyer. At that time he reported both lumbar and cervical pain. The pain was reported as “burning” during work last week. In a report dated March 20, 2001, the employee was reported as appearing delusional with auditory hallucinations.

Dr. Craig Davis treated the employee beginning May 7, 2004. A health history taken that day does not report a work-related injury. The employee’s chief complaint was that his hands and feet go numb. The employee complained of neck and back pain for the last four years. In a report to Pekin Insurance Company, Dr. Davis indicated that the problem possibly could be related to a work-related injury, “but cannot say with certainty a particular incident caused his problem or this was chronic deterioration due to prolonged use.” Dr. Davis reported that the employee had neck and shoulder pain as far back as 1997.

Dr. Michael Chabot first evaluated the employee on November 4, 2002. At that time the employee reported that he sustained an injury to his neck and back region, but the majority of his problems started during the summer of 2000 when he was operating a front-end loader on a rough floor. He was treated in 2000 to 2001 for his neck and back pain with various modalities including a cervical collar, off work, physical therapy, pain medications, MRI's and myelograms. An MRI of July 9, 2000, revealed evidence of disc degeneration at C5-6 and C6-7. An MRI of April 19, 2001, revealed evidence of disc desiccation at L4-5 and L5-S1 with a small disc bulge at L4-5; and an asymmetric disc bulging/HNP at L5-S1 on the left.

As a result of his review of the records and his examination of the employee in 2002, Dr. Chabot opined that:

1. The employee suffered from chronic cerviothoracic myofasciitis and chronic back pain.
2. The employee may have developed short-term aggravation of his pre-existing condition.
3. The majority of his persisting symptoms are associated with his pre-existing condition and are not specifically associated with his alleged work-related injury.
4. There is no evidence to indicate that the employee sustained a work-related injury that precipitated his lower back complaints.

Dr. Chabot also evaluated the employee on September 29, 2004. One purpose for this evaluation was to determine whether the employee needed medical care. The report states “Mr. Rigdon relates that sometime in early April, 2004, he began developing swelling in the back of his neck with numbness involving his hand and feet”. **“He denies any specific injury,”** emphasis added. “He states that he was operating a front-end loader at that time. **“He did not sustain a strain or jarring injury that he can remember,”** emphasis added.

Up to this point the employee had not had any surgical procedures, but as in the past had been treated with MRI's, pain medication, off-duty status and epidural injections. Dr. Chabot noted that the MRI taken of the cervical spine on April 23, 2004 indicated evidence of a small central disc bulge at C6-7 with compression of the epidural space and spinal cord. He also noted that the records showed a June 21, 2001 cervical MRI that revealed compression of the dural sac at C5-6 and C6-7.

As a result of his review of the records and his examination of the employee in 2004, Dr. Chabot opined that:

1. The patient’s work duties are not a significant contributing factor to his present complaints.
2. He has long term neck and back complaints that are not specifically related to his work injuries.
3. There are no objective findings that he is suffering from conditions associated with neural compression.
4. His complaints are chronic and myofascial in nature.
5. His subjective complaints are not supported by any clear physical findings.
6. The patient’s underlying depressive condition may be playing a role in his present complaints.
7. There is no evidence to indicate that his symptoms are significantly related to any specific work injury.
8. He should seek further medical treatment regarding his underlying depressive condition.

The employee came under the care of Dr. Kee Park on October 14, 2004. Dr. Park testified by deposition taken on May 11, 2005. Dr. Park testified that he first saw the employee on October 14, 2004 after a referral from Dr. Craig

Davis. Dr. Park testified that he had no records **other than his own**, emphasis added. As a result of his exam, Dr. Park did not provide a diagnosis, but indicated that the employee needed a nerve conduction test and a cervical myelogram. The myelogram was completed on January 10, 2005 and revealed a small C6-7 protrusion. Dr. Park felt that the disc herniation is the cause of the employee's neck pain and swelling, but not the source of his hands and feet burning. Dr. Park stated that "he has had this for years and would like to have this repaired;" however in his deposition Dr. Park related this herniation to the injury the employee sustained in April 2004. Dr. Park performed a cervical fusion surgery on January 18, 2005.

Dr. Park testified that his understanding was that prior to the April 2004 injury, the employee was doing reasonably well. He understood that after the 2000 injury the employee returned to work and that he (Dr. Park) assumed that everything was fine. He testified that without the films from the 2000 injury and records of what the employee's symptoms were, he can't say for sure, but the 2000 injury may have been a contributing factor.

The employee testified that he told all medical providers including Scott Petersen, Dr. Davis and Dr. Chabot about his April 9, 2004 accident and does not understand why the records say what they do.

The employee testified that he is now seeking care for his lower back. He additionally testified that before his neck surgery he had neck pain and numbness in his hands and feet. He indicated that at the time of trial he still had neck pain but the pain had decreased. He testified that he still has back pain and numbness in both feet.

## **FINDINGS OF FACT AND RULINGS OF LAW:**

### **Accident and Medical Causation:**

The employee testified that he injured his neck, back and body as a whole on April 9, 2004, when he was driving a front-end loader. The employee had previously filed several other cases wherein he alleges he was injured in about the same manner that he claims he was injured on April 9, 2004. By his own testimony, he did not report the April 9, 2004 event to his employer until sometime in May or June. In fact the employee did not report this event until after he sought medical care on his own. He never asked his employer for medical care prior to the time that he sought medical care on his own.

Scott Petersen was the first medical provider that treated the employee. In the Court's opinion, his record of April 22, 2004 is the single most telling piece of evidence in this case. That record indicates that not only did the employee not report a specific injury on April 9, 2004; he reported that this pain is the same pain that he had previously and that he could not identify any reason that the pain may be increasing at that time. The employee's testimony that he told Scott Petersen of the April 9, 2004 injury was found by the Court to be incredible. Even if the employee was believed on that point, the record goes on to report that the employee was experiencing the same problems as in the past and that he could not offer any reason that his pain could be increasing at that time. Scott Petersen's records were found by the Court to be entirely credible when compared to the testimony of the employee.

Even if that testimony was lacking, the employee faces additional credibility issues when you examine all medical records and look at the records of Dr. Chabot dated September 29, 2004. Even at that late date the records show that the employee denied any new specific injury and stated he did not sustain a jarring injury that he could remember. Even the records of Dr. Davis dated May 7, 2004, states that the employee denied any new injury. Again, the testimony of the employee that he told all medical providers of his accident is not believed by the Court.

The employee's whole case rises or falls on whether the employee has met his burden of proof by proving that his alleged accident of April 9, 2004, arose out of and in the course of his employment. In other words, whether the employee's testimony is found to be truthful and supported by the evidence taken as a whole. Unfortunately for the employee, the Court finds that the employee's testimony regarding the accident lacks credibility and is specifically contradicted by evidence from other more competent witnesses, and circumstantially by the totality of the evidence surrounding the events of April 9, 2004, and thereafter. The Court specifically finds that the employee has not met his burden of proof by proving with competent and credible evidence that he sustained an accident on April 9, 2004, that arose out of and in the course of his employment.

In addition to the employee's burden of proof on accident, the employee also has the burden to prove that there is a medical causal relationship between the accident and the injuries, and the medical treatment that the employee is seeking. As the Court has denied the employee's case on accident, the issue of medical causation is really moot; however the Court also finds that even if the employee had sustained a compensable accident, he has failed to meet his burden of proof on the issue of medical causation.

The employee mainly offers the testimony of Dr. Park on this matter. Dr. Park testified that he performed a cervical fusion on January 18, 2005, and he related the need for this surgery to the employee's accident of April 9, 2004. Interestingly, with reference to the employee's neck pain, Dr. Park stated that the employee has had this for years and would like to have it repaired. Dr. Park testified that he is still reviewing the employee's situation regarding the need for medical treatment to his back.

Dr. Park's testimony was found lacking and not as credible as the totality of the other medical evidence that was received into evidence. When the Court reviewed the complete medical history, it showed that the employee had made the same complaints in the past, had been treated for the same complaints in the past and described the same problems that he is now experiencing in the past. Dr. Chabot on two occasions examined the employee and reviewed the medical evidence. Without laboring the evidence, Dr. Chabot's opinion does not support the employee's position on either accident or medical causation. In addition to his opinion, the objective findings, specifically the findings of the various MRI's taken prior to the April 2004 event, document that the employee was complaining of and being treated for the same matters that he claims resulted from the April 2004 event. The prior MRI's document problems at the same level that Dr. Park performed his neck surgery. MRI's in the past specifically documented objective findings regarding the employee's back. Additionally, Dr. Park's credibility was found to be lacking when compared with the entirety of the medical evidence. To compound matters, the Court believes that Dr. Park's opinion is not credible, as it is not based on a review of the complete medical record. He specifically testified that he did not review any records "other than his own" prior to the surgery. He did not have the benefit of the past records generated by Dr. Juergens, Scott Petersen, Dr. Davis or Dr. Chabot. Dr. Park also testified that prior to April 2004 the employee was doing reasonably well and even further testified that he assumed everything was fine after the 2000 injury. The Court read the medical record as showing that the employee has a long- standing history of problems and treatment for his neck, back and generalized pain both before and after April 2004.

Based on the credible medical evidence, the Court specifically finds that the employee has failed to meet his burden of proof on the issue of medical causation.

As the Court has denied the employee's case on the issues of accident and medical causation, all others issues in this case are rendered moot and are not addressed by the Court.

In summation, the Court does not find the evidence that the employee has presented to be reliable and truthful. The employer-insurer is not ordered to provide any medical treatment for the employee's neck, back or body as a whole. He is entitled to no benefits.

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

Made by:

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Gary L. Robbins  
*Associate Administrative Law Judge  
Division of Workers' Compensation*

A true copy: Attest:

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Patricia "Pat" Secrest  
*Director*

