

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

Injury No.: 02-139866

Employee: Brian Senter
Employer: Midwest Waste
Insurer: American Home Assurance Co.
c/o AIG Claim Services, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: July 18, 2002
Place and County of Accident: St. Louis, County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 27, 2004, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued August 27, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of September 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Brian Senter

Injury No.: 02-139866

Dependents: N/A

Before the
Division of Workers'

Employer: Midwest Waste

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: American Home Assurance Co.
c/o AIG Claim Services, Inc.

Hearing Date: June 8, 2004

Checked by: MDV:tr

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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
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: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Brain Senter

Injury No.:

02-139866

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: Not provided
19. Weekly compensation rate: N/A
20. Method wages computation: N/A

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No
- TOTAL: -0-
23. Future requirements awarded: None

Said payments to begin N/A 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:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Brain Senter	Injury No.: 02-139866
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Midwest Waste	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	American Home Assurance Co. c/o AIG Claim Services, Inc.	Checked by: MDV:tr

PREFACE

The issues presented for resolution by way of this hearing are accident, notice, arising out of and in the course of employment, medical causation, past medical expenses in the amount of \$7,862.20, future medical care, and permanent partial disability.

SYNOPSIS

Claimant is a 43-year-old male who has worked in the past as a front loader/driver for waste hauling companies. Prior to the incident which forms the subject of this claim, the Claimant had a neck fusion and a low back surgery. On the date of the incident Claimant was working for the Employer herein and jumped out the way of a quickly moving car. Claimant believes he sustained additional injuries and requests a 15% permanent partial disability to the body as a whole as a result of the injury and past medical expenses in the amount of \$7,862.20.

Employer contends it had no knowledge of the work-relatedness of the injury and that Claimant rejected medical care and thus undertook the cost of medical as his own responsibility and, that at the most, Claimant sustained a neck strain superimposed on a prior fusion. Further, Employer contends Claimant was able to work overtime after the incident and has not experienced significant disability as a result of the incident.

FINDINGS OF FACT AND RULINGS OF LAW

1. Claimant is a 43-year-old male who has two sons, ages 15 and 12.
2. Claimant is currently unemployed, last working for Excel Waste, when he was unable to pass his Department of Transportation physical and terminated employment.
3. Claimant has worked for the last seven years prior to the incident for Midwest Waste as a front loader/driver. He has been in the waste hauling business for 25 years.
4. Claimant would drive a front loading waste hauling truck at night and drive to commercial facilities, insert the front loader into the dumpsters and dump them into the back of the truck. He would have to take the truck to be emptied several times in the evening.
5. On the date in question Claimant was in Maryland Heights picking up trash at about 10:00 p.m. As he was opening the gates to one of the Employer's clients, with his flashers on, a car quickly came around the corner narrowly missing Claimant. He contends he spun quickly to get out of the way and felt a pain in his neck.
6. Claimant radioed the Employer. Charlie Brown was the dispatcher. He told Claimant to come into the yard and that he would get Claimant to the hospital.
7. Claimant returned to the yard after finishing his shift and Jerry Peterson, head mechanic, took him to the hospital.
8. Claimant went to St. Anthony's where x-rays were performed of his neck and mid back and he was told to follow up with his doctor. Claimant's girlfriend picked him up at the hospital and he did not work the next day.
9. Claimant contends he talked with Dave McCoy or Rob Henderson, the operations manager, and told them about the accident. Dave McCoy asked Claimant to fill out and sign an accident report and Claimant was given overtime on his paycheck to compensate him for the medical treatment.
10. Claimant underwent injections into his neck six months later in December 2002 with Dr. Anderson.
11. Claimant contends that on September 24, 2002 he received overtime pay for prescription medications. Claimant doesn't know what bills were paid for and which were not paid for under this financial arrangement where he would receive overtime to compensate him for his medical bills.
12. Claimant contends he went to see Dr. Patel under his group health plan and that the company paid his out of pocket expenses as overtime.
13. Claimant was fired in December of 2002 for insubordination. Thereafter he filed a Fraud and Noncompliance complaint because no Report of Injury was ever filed. Claimant also asked for his job back that same day.
14. Claimant contends he wanted treatment in January 2003 for shooting pains going down into his toes. Claimant thereafter went to work for Onyx and then Excel waste haulers and was unable to obtain his Department of Transportation certification for failure to pass his physical.
15. Charlie Brown, Claimant's co-employee who was working on the night of the incident, testified. He has worked for the Employers for seven years as a dispatcher. Claimant had called in and told Mr. Brown his neck was hurting as he was getting back into the truck. Claimant said that he twisted the wrong way. Charlie Brown told Claimant he needed to fill out an accident report and that Charlie Brown could come and get the Claimant. Claimant tried to work with the pain and called one hour later still hurting. Claimant came to the Midwest Waste yard to dump his load, said that he hurt and his wife was called. Claimant told his wife he was going to the doctor and asked his wife to meet him at St. Anthony's. Claimant was asked whether he wanted to fill out an accident report several times and he said he did not want to because he related his pain to his prior neck injury.
16. Claimant was offered medical treatment which he refused. He returned to work and no other conversations were held with Charlie Brown after that.
17. Charlie Brown is no longer the dispatcher and owns his own cleaning business.

RULINGS OF LAW

1. On July 18, 2002 Claimant was working for the Employer herein when he had an increase in pain in his neck.
2. Employer was aware, through Charlie Brown, the dispatcher, of the increase in Claimant's neck pain.
3. Claimant indicated on the day of the accident that the neck pain was not the result of an accident which arose out of employment.
4. The pain in Claimant's neck and the continuing symptoms that he experienced are not medically and causally related to anything which occurred while working for the Employer on July 18, 2002.
5. Claimant rejected medical treatment and therefore is responsible for his own medical expenses.
6. Future medical care is denied as well as permanent partial disability.

DISCUSSION

Claimant seemed to tell a believable story but I rely most heavily on the testimony of the disinterested witness, Charlie Brown. While Mr. Brown's testimony could be construed as substantiating a work related incident and that Claimant said his neck became hurt while getting back into the truck when he twisted it the wrong way, Claimant denied to Charlie Brown that it was work related and attributed the injury to a prior accident. He was offered medical treatment and he refused. Therefore the medical treatment became his own responsibility.

The best evidence is that from the day of the incident by way of a disinterested witness. The Claimant's testimony may be unreliable because of the subsequent firing.

Claimant's physician, Dr. Kitchens, who performed the prior cervical fusion, testified there was no change from his baseline condition which existed prior to the incident on July 18, 2002 and that which was presented after the incident.

I can't tell what happened here. There was bad blood at Claimant's termination. The neck pain seemed to become an issue again then even though the alleged incident was six months earlier. It was not work related in July 2002 but seemed to become so in December 2002 when Claimant was fired.

I find no version of facts more compelling than any other version. The disinterested witness acts against Claimant's version of facts. Claimant has the burden of proof. *White v. Henderson Implement Co.*, 575, 581 (Mo.App. W.D. 1994). I cannot honestly ascertain the controlling facts. The claim must be denied.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Reneé T. Slusher
Director
Division of Workers' Compensation