

TEMPORARY OR PARTIAL AWARD  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-088417

Employee: Raifa Tahirovic  
Employer: Vanguard Packaging  
Insurer: Royal & Sun Alliance Insurance Company  
Date of Accident: May 4, 2004

Place and County of Accident: Kansas City, Jackson 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated February 27, 2007.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Mark Siedlik, issued February 27, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

\_\_\_\_\_  
Secretary

**TEMPORARY AWARD**

Employee: Rafia Tahirovic Injury No. 04-088417  
Dependents: N/A  
Employer: Vanguard Packaging  
Insurers: Royal & Sun Alliance Insurance Company  
Additional Party: N/A  
Hearing Date: December 8, 2006 Checked by: MSS/lh

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

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: On or about May 4, 2004.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson 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? Yes.
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: The Employee suffered an accident, series of accidents, or occupational disease as a result of repetitive bending and lifting while operating various machines at the manufacturing facility of the Employer.
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: low back, body as a whole.
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-
17. Value necessary medical aid not furnished by employer/insurer? \$22,636.65.
18. Employee's average weekly wages: \$568.17.
19. Weekly compensation rate: \$378.80/\$347.05.
20. Method wages computation: By Stipulation.

### **COMPENSATION PAYABLE**

21. Amount of compensation payable by the Employer: N/A
22. Second Injury Fund liability: N/A

#### **TOTAL:**

23. Future requirements awarded: All the medical care needed to cure and relieve the Employee from the effects of the injury. Temporary total disability benefits for the period August 2, 2004 to August 6, 2004 (5/7<sup>ths</sup> of a week) and October 6, 2004 to January 5, 2005 (13 1/7<sup>ths</sup> weeks) at the rate of \$378.80 for a total of \$5,249.06

Said payments to begin as of the date award 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 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Jerry Kenter.

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

Employee: Rafia Tahirovic

Injury No. 04-088417

Dependents: N/A

Employer: Vanguard Packaging

Insurers: Royal & Sun Alliance Insurance Company

Additional Party: N/A

Hearing Date: December 8, 2006

Checked by: MSS/lh

On December 8, 2006, the Employee and Employer appeared for a temporary Hearing. The Division had jurisdiction to hear this case pursuant to § 287.110 Rs.Mo.

The Employee, Raifa Tahirovic, appeared in person and with counsel, Jerry Kenter. The Employer and Self-Insurer appeared through counsel, Joe McMillan.

For the reasons noted below, I find the Employee is entitled to additional medical care as a result of the injury she sustained on or about May 4, 2004 arising out of and in the course of her employment with Vanguard Packaging. I find that she is entitled to 13 6/7ths weeks of temporary total disability benefits from August 2, 2004 to August 6, 2004 and October 6, 2004 to January 5, 2005.

### **STIPULATED FACTS**

The parties stipulated that:

On or about May 4, 2004 the parties were operating subject to the Missouri Workers' Compensation Law.

The employee had an average weekly wage of \$568.17 resulting in a compensation rate of \$ 378.80 / 347.05 per week for temporary total and permanent partial disability benefits respectively.

No Temporary total disability benefits were paid and no medical benefits were paid by the Employer and Insurer.

### **ISSUE PRESENTED**

The parties requested the Division determine:

1. Whether the Employee sustained an accident, series of accidents, or occupational disease arising out and in the course of her employment on or about May 4, 2004.
2. Whether notice was required to be given to the Employer or, in the alternative, if it was required, whether adequate notice was given to the Employer for the injury sustained by the Employee.
3. Whether the accident, series of accidents , or occupational disease caused the injuries of which the Employee is complaining.

4. Whether the Employer is liable for past medical expenses in the amount of \$22, 636.65
5. Whether the Employee is entitled to future medical benefits from the Employer and Self-Insurer.
6. Whether the employer is liable for temporary total disability benefits.

### **FINDINGS AND RULINGS**

The following witnesses testified in this case:

FOR THE EMPLOYEE:

1. Rafia Tahirovic
2. Jack Mathis
3. Fata Keljic
4. Jasmina Sclimouk
5. Gregory Walker, M.D. (By deposition)

FOR THE EMPLOYER/INSURER:

1. Joe Pope
2. Tammy Sprout
3. Jeffrey MacMillan, M.D. (By deposition)

The following Exhibits were entered into evidence without objection:

BY THE EMPLOYEE:

- A. A copy of the website of the Employer
- B. Medical Records of the following:
  - Clay Platte Family Medicine
  - Diagnostic Imaging for Women
  - Frank Feigenbaum, M.D.
  - Physical Therapy and Rehab Center
  - Research Medical Center
  - North Kansas City Hospital
  - Jeffrey MacMillan, M.D.
- C. Rating Report of Gregory Walker, M.D. dated 10/28/05
- D. Report of Injury
- E. Deposition of Dr Walker
- F. Off Work Slips
- G. Write Ups
- H. Employee's Application for group disability benefits
- I. Medical Bills

The Court reserved a ruling on the admission of the Employee's Exhibit "I", the medical bills and at this time rules them admissible.

EXHIBITS SUBMITTED BY THE EMPLOYER/INSURER:

- Deposition of Rafia Tahirovic
- Deposition of Dr. Jeffrey MacMillan Personnel File
- Print-out of hours worked by the Employee

The Claimant in this matter cannot read or speak English. The Claimant provided her testimony through and interpreter. When presented with Exhibit I by her counsel and asked to identify the medical bills, she was somewhat hesitant and confused. The Claimant was asked if the visits to the various providers listed on the bills were as a result of her back injury and that the bills represented the results of those visits. The medical records for which the bills were claimed were all admitted and set forth in Exhibit B. The Court has examined the medical bills and the medical records and determined that all the bills are for the treatment dealing with the low back condition. Therefore, I find that Exhibit I is admissible under the Court's interpretation of the burden of proof necessary in Martin v. Mid America Farm Lines, Incorporated, 769 SW2d 105 (MoBanc 1989).

Claimant claims low back injury from excessive repetitive bending at work. The first witness called was Jack Mathis, who identified himself as the chairman of the board of Vanguard Packaging, Incorporated. Mr. Mathis testified he had been with the company for over 30 years but denied current direct involvement. Mr. Mathis did identify Claimant's

Exhibit A as a copy of the company's website and a description of what the company does. Mr. Mathis indicated that the company made cardboard displays and fabricated cardboard boxes and indicated they had approximately 100 employees and numerous machines. The Claimant refused to be specific as to how many machines the company had or how the machines were operated. Mr. Mathis did insist that there were no quotas for the machine operators.

The Claimant, two of her daughters and her son all worked at Vanguard Packaging in May of 2004. The Claimant produced Fata Keljic, one of her daughters, as a witness. Fata testified she worked at Vanguard from 1998 to 2002. She indicated that there were various quotas from different machines involved. Ms. Keljic indicated she had worked as both a lead person and a machine operator and indicated the worker would bend over several thousand times a day during a 10-hour period. Ms. Keljic described the machines as requiring continuous bending and that an operator would grasp as much cardboard box material as possible in one armload and feed the machine product. Ms. Keljic testified they were 15 to 17 machines and indicated the operators made approximately 15,000 boxes per day. Upon cross-examination she indicated the quotas were very easy to attain.

The Claimant's other daughter, Jasmina Scilmouk, was the next witness to testify. At the time of the hearing she was 19 years of age. She also testified that her mother could not read or write English and indicated that there are several dialects of the Bosnian language and just because a person knew one dialect did not necessarily mean they knew others.

There were allegations the Claimant injured her back helping her daughter move to St. Louis, and Ms. Scilmouk was asked about her move to St. Louis. She said she was looking for an apartment for herself and her husband and was pregnant at the time, and although her mother did accompany her to St. Louis, there was no furniture or other items which were taken along other than personal suitcases which Claimant did not carry. Ms. Scilmouk also testified that she worked for Vanguard for about nine months in 2001. She worked the same machines as her mother and at times worked with her mother. Ms. Scilmouk indicated that they would make anywhere from 2,000 to 5,000 boxes a day depending on the machine that they were on, and she described four types of machines that she herself had operated and her mother had also operated.

There were allegations that the Claimant had knowingly filled out a disability application, indicating she was not hurt at work and Ms. Scilmouk went into detail on how the disability application was filled out as it was her testimony that she is the one who filled out the application for her mother. Claimant's Exhibit H consists of three pages labeled 3, 4 and 5. The signature of Rafia Tahirovic appears at the bottom of page 1. Ms. Scilmouk testified that her and her mother went into the personnel office on the date indicated on Exhibit H, August 8, 2004, and spoke with Joe Pope, the long time supervisor of the Claimant, indicating to him that her mother, the Claimant, had been hurt at work. The Claimant neither herself or through her daughter requested treatment and Ms. Scilmouk indicated that upon informing Mr. Pope of her mother's injury, he offered no guidance as to where to go for treatment. Ms. Scilmouk indicated that her mother could not understand the disability form and that neither of them knew what benefits they were supposed to apply for. They do not understand the difference between workers' compensation benefits and group disability benefits. Ms. Scilmouk, as well as the Claimant testified the signature of Rafia Tahirovic appears on the bottom of page 3 on Exhibit H and was in fact the signature of the Claimant, but that the writing on the rest of the page was that of her daughter Jasmina.

It appears evident from the testimony of the Claimant, as well as her two daughters, that the Claimant was handicapped by her inability to read and speak the English language and that she attempted to inform her supervisors of her work-related condition through her daughter Jasmina who presented herself as a credible witness.

Ms. Scilmouk testified that she has lived with her mother ever since coming to the United States and denied that her mother had any back problems prior to April 17<sup>th</sup> and 18<sup>th</sup>, 2004, which was the date of the first visit to the North Kansas City Hospital emergency room. Ms. Scilmouk denied that her mother incurred any other accidents or events which would have caused back pain in April or May in 2004. She further testified that all her mother did now was to sit and watch television since her release by Dr. Feigenbaum. She indicated that her mother has her own apartment but spends much of her time at Ms. Scilmouk's apartment looking after her two-year-old daughter. Ms. Scilmouk indicated that her mother has problems bending over and walking and that her mother can cook for herself but Ms. Scilmouk does the laundry and helps in cleaning her mother's apartment.

It appears from the testimony of Jasmina Scilmouk who seemed best able to communicate about the Claimant's condition, as well as the timing and nature of treatment that her mother's back condition dates back to approximately April 18, 2004, where the Claimant was admitted to the North Kansas City emergency room immediately after a 10-hour work shift.

The Claimant, Rafia Tahirovic testified with the aid of an interpreter. Even with the interpreter present, the Claimant seemed confused and spoke softly and seemed unable to remember much of the chronology of her case. Claimant testified that she immigrated to the United States from Germany in 1996 and could not read or write the English language. She did indicate she understood some spoken English. The Claimant indicated she had an eighth grade education in Bosnia and that her only work experience were in the manual jobs as a machine operator at Vanguard. The Claimant testified since she has left Vanguard she has not worked anywhere since. Claimant testified she began her work at Vanguard on October 2, 1998 and ended approximately August 2, 2004. The Claimant indicated her work on the assigned machine was nonstop bending approximately 10 hours per day.

Claimant testified she had back pain and first went to the emergency room on April 17 or 18, 2004. The Claimant denied any prior back problems. The Claimant admitted she had worked from April 17 up until approximately May 4, 2004 with the exception of a gap of a few days which she was unable to work. Claimant testified her initial emergency room visit in April of 2004 came at the end of a long 10-hour work shift for which she had significant back pain. Claimant further testified in early May of 2004 she was picking up boxes and had knife-like cut type pain in her back and was supplied a chair from a coworker. The Claimant testified she finished out her shift using the chair and then went home. The Claimant testified that her supervisor Mr. Joe Pope was aware of her use of the chair on that day, something to which Mr. Pope in his testimony denied. The Claimant returned to work and continued to work until her condition deteriorated to the point where she left work and had surgery performed by Dr. Feigenbaum on October 5, 2004. The Claimant testified she was unaware of what procedure he performed but did testify that she still has pain down her legs to her feet which would go numb even after the surgery.

The Claimant testified consistent with her daughter's testimony that it is her signature on the first page of Exhibit H, the application for disability benefits, but that it was her daughter Jasmina who filled out all other information on the form. Claimant testified that now she stays home and occasionally looks after her granddaughter, although she is unable to lift or carry her granddaughter and she does no house work or grocery shopping on her own.

Given the demeanor of the Claimant and her inability to understand many of the questions posed to her, even with the aid of an interpreter, and her soft spoken presentation, while I find her testimony credible, I question whether or not the Claimant fully understood the nature of the proceedings to which she was involved.

The employer called as one of their witnesses Mr. Joe Pope, a long-time supervisor of the Claimant. Mr. Pope testified that the correct procedure on any on-the-job injury was for him to write up an accident report after the employee reported the accident to him. Mr. Pope denied any conversation took place on or about August 8, 2004 (the date of the disability application, Exhibit H), with Rafia or either of her daughters as to notice of an injury. Mr. Pope denied that Rafia signaled to him that she was hurt and had to sit down while operating the machine on one of the dates in question.

Mr. Pope did describe the Meramotsu machine, which the Claimant was working on at the time of her injury. Mr. Pope indicated that the operator would have to pick up dyes and load the machine with flat 16 x 30 or 22 x 50 corrugated cardboard. The machine would be loaded with groups of cardboard, with the operator having the discretion to pick up as many as they could handle at one time. The operator would then have to take the cardboard product off the machine at the end of the process. Mr. Pope admitted that the Claimant could not speak English in full sentences but she could communicate in enough English if she were shown what to do. Mr. Pope testified that if he could not understand the Claimant he would use her son or daughter or someone else who spoke her language as an interpreter.

The Court finds that the testimony of Jasmina and Raifa is credible in terms of a machine operator having to bend over hundreds of times during a 10 hour work shift. The testimony of Jack Mathis does not contradict the testimony of the Claimant and her daughters in that regard. The defense produced no evidence that the Claimant had any problem with her low back prior to the visit to the emergency room at North Kansas City Hospital on 04/17/2004 or 04/18/04 at 9:35 p.m. (Exhibit B, p.5). The arrival time indicated on the records bolsters the testimony of Jasmina and Raifa that she reported to the emergency room with back pain after a long day at work. Although the defense is correct that there is no mention of an injury at work, page 7 of the Exhibit indicates that the exam was limited by Jasmina's having to translate the complaints of the Claimant to the ER physician. It is interesting to note that in Exhibit B, the injured Employee denied any specific injury. This is certainly consistent with a repetitive type of injury. There is nothing in Exhibit B to indicate that the back injury was from any other source other than working and the timing of the visit to the emergency room after a 10 hour work day is significant.

The Employee next sought treatment from her family doctor, Scott Kuennen, M.D. at the Clay-Platte Family Medicine Clinic on 04/21/04. She again reiterated to Dr. Kuennen that she had no known injury. Dr. Kuennen prescribed Vicodin and kept her off of work (Exhibit B, p. 59). An MRI was eventually ordered on 05/05/04 (Exhibit B, p. 48 ) which showed an annular bulge and a central disc herniation at L4-5. Following a round of physical therapy the patient was ultimately referred to Dr. Feigenbaum, a neurosurgeon, who ultimately performed a right L4-5 discectomy and partial hemilaminectomy at L4 on the right at Research Hospital on 10/05/04. (Exhibit B, p.14). Dr. Feigenbaum indicated that the disk had herniated behind the vertebral body at L5. The patient was discharged from the hospital the next day on 10/06/04. Exhibit B, p. 14) **It is to be noted that on September 10, 2006, the Claimant did tell Dr. Feigenbaum that she hurt her back after lifting a heavy object at work.** (Exhibit B, p. 28) A pre-existing condition is compensable if it is aggravated by on the job activities. Kelley v. Banta & Stude Construction Co., 1SW3rd43 (Mo.App.E.D.1999). In cases involving an occupational disease caused by repetitive work an Employee is disabled to work when the need for surgery is manifested Hale v. Treasurer of Missouri, 164SW3rd184 (Mo.App.E.D.2005); Lorenz v. Sweetheart Cup Company, Inc., 60SW3rd677,681 (Mo.App.S.D.2001).

I therefore find that the Claimant's sustained a series of accidents or occupational disease as a result of the repetitive

bending at work as a machine operator making cardboard packages being a substantial factor in causing the need for the surgery by Dr. Feigenbaum and any resulting disability.

The Claimant claims, through the testimony of her daughter, Jasmina, that at the time the disability form was filled out (Exhibit H) on August 8, 2004, her supervisor, Joe Pope, was called to the office. Joe Pope denies this. The Claimant testified that in early May and she felt bad pain and could not go on working, she signaled to Joe Pope to come over and that he saw her sitting in a chair and she was ultimately sent home.

Exhibit F indicates that 08/03/04, the Claimant had a non-plant accident and was sent home by Joe Pope. It also indicates that she was sent home for the same reason on 08/09/04 and that she could not work on 08/16/04 when a leave of absence came into effect and she was sent home for the same reason.

Based on the Exhibit H and the above quoted portion of Exhibit F, I find that notice was given to the Employer of an accident. It is to be noted that in an occupational disease case that no notice is required. Endicott v. Display Technologies, Inc., 77SW3rd612 (Mo.banc.2002). However, in this case it is clear that at least by 08/03/04 (Exhibit F) and certainly by 08/08/04 (Exhibit H) the Employer was aware of some type of back injury.

Even if the Claimant suffered a repetitive motion disorder to the low back, the issue of causation still remains. The Claimant submitted the report and deposition testimony of Gregory Walker, M.D., a neuro-surgeon (Exhibits C & E respectively) Dr. Walker testified that the repetitive bending on the job at Vanguard Packaging in his opinion was “a substantial aggravating factor” in causing the resulting low back condition and surgery. (Exhibit E, p.14, L23) Because the Employee was on the job for four (4) years, Dr. Walker opined that the job activities resulted in significant wear and tear on the disk over that period of time. (Exhibit E, p.15, L3).

Because there was an MRI on May 5<sup>th</sup> showing a protrusion and because the patient told Dr. Walker she was having symptoms prior to that date, he believed this protrusion was present to prior to the date that it became severely escalated. (Exhibit E, p.16, L7) Dr. Walker believed that there was an advancement in the amount of herniation and the extrusion of the disk which would be expected in view of the increase of symptoms of the patient from April until May, 2004 (Exhibit E, p. 17, L5). Dr. Walker believed that at age 51, a person who did a lot of frequent bending and twisting would be subject to an overuse syndrome of a disc causing a herniation.

The Employer/Insurer relied on the deposition and report from Dr. MacMillan to address causation. (Exhibit 2 & B). Upon cross-examination, Dr. MacMillan did admit that the job activities of the Claimant could aggravate her symptomology. This would apply to both the symptoms from the herniated disc and the symptoms of the allegedly pre-existing degenerative disc disease. (Exhibit 2, p. 30-31, L25-1-5). This testimony was despite the conclusion by Dr. MacMillan in his report (Exhibit B, p.3) that there is “no indication that the symptoms resulted from a work-related accident, injury or activity”.

The last page of Dr. MacMillan’s report is the key to understanding his opinion as to causation in this case. (Exhibit B p3) There Dr. MacMillan states that he asked the claimant through her daughter three times if there was a specific work related incident on May 8, 2004 that caused the onset of symptoms without an adequate response. Dr MacMillan goes on to observe that since the MRI was on May 5, 2004 three days before the alleged injury date of May 8 (Exhibit B p 48), and because there were several visits to “Dr. Tuton”<sup>[1]</sup> there is no indication that< the symptoms resulted from a work- related accident, injury or activity.” (Exhibit B p3)

Dr. MacMillan’s opinion is based on a theory of recovery of a single accident on a specific date. All the evidence points to continual back problems at least since April 17 or 18, 2004 which was the nighttime visit to the North Kansas City Hospital emergency room. Dr. Walker explained the findings of the MRI of May 5, 2004 in relation to when the pain became intolerable opining that there was no history of trauma with the protrusion present before it became severely escalated to a disability preventing the claimant from continuing to work. Dr. Walker explained that there was an advancement in the amount of the herniation and extrusion, “which you would expect to see some increase in symptoms.” (Exhibit E p 15-17)

Disability only attaches when the Employee is unable to perform his job duties. Hampton v. Big Boy Steel Erection, 121SW3rd220 (Mo.banc 2003); Rana v. Landstar, 46SW3rd614 (Mo.App.W.D.2001).

As in Rana, if there was pre-existing degenerative disc disease per the opinion of Dr. MacMillan it certainly was non-disabling because the Employer produced no evidence that the Claimant lost time from work prior to the spring of 2004 due to that condition.

I therefore find that the repetitive bending on the job was a factor in causing the resulting medical condition and need for surgery.

Exhibit I indicates that all of the medical expenses for which the Claimant is seeking reimbursement were due to the

back injury. The 04/17-18/04 admission to North Kansas City Hospital was when Claimant first started complaining of back problems. The \$409 bill from Clay-Platte Family Medicine covers the period 04/21/04, when the Claimant first saw Dr. Kuennan until 08/02/04, when the Claimant was referred out for a neurosurgical evaluation (Exhibit B, p. 61).

The physical therapy was for the back and the treatment rendered by Dr. Feigenbaum and the surgery at Research Medical Center was clearly for the back. The MRI's taken at the Diagnostic Imaging Center for women (Exhibit B, p.48) were for the low back.

I therefore find that the Employer/Insurer are responsible for the sum of \$22,636.65 for the past medical care needed to cure or relieve the injured Employee from the effects of her injury.

It is not the Claimant's burden to produce conclusive testimony or evidence to support a claim for future medical benefits. Landers v. Chrysler Corporation, 963SW2nd275,283 (Mo.App.E.D.1997). It is sufficient to award future medical benefits if the Claimant shows by "reasonable probability" that he is in need of additional medical treatment by reason of the work related accident. Dean v. St. Luke's Hospital, 936SW2nd601 (Mo.App.W.D.1997). The Claimant does not to present evidence of specific future medical care as that would be an unreasonable burden. Polavarapu v General Motors, 897 SW2d 63 ( Mo.App.1995)

In his deposition, Dr. Walker opined that there is a 60-70% chance that a low back fusion would help the Claimant. (Exhibit E, p.17, L21). Dr. Walker believed that the patient at least should be afforded pain medication, muscle relaxants, and possibly a TENS Unit. (Exhibit E, p.17, L31). (See also Exhibit E, p.20-21).

Even Dr. MacMillan admitted in his report (Exhibit B, p.3) that he could not declare the patient at maximum medical improvement and could not appropriately rate the patient because the patient required ongoing treatment.

I therefore find that it is reasonably probable that the injured Employee needs additional treatment and order the Employer to refer the Claimant to a competent neurosurgeon or orthopedic surgeon to determine what modalities of treatment would best cure or relieve her from the effects of her injury.

Neither Dr. Walker nor Dr. MacMillan rated the patient and both indicate she is not at maximum medical improvement. Jasmina and the Claimant testified she does little or nothing each day. In terms of past temporary total disability payments due the Court finds as follows:

- A. Exhibit F indicates the injured Employee was off from 08/02/04 until 08/06/04 with a doctor's slip. Therefore, I award 5/7th's of a week of temporary total disability for this period of time.
- B. On 10/05/04, Dr. Feigenbaum performed the discectomy. (Exhibit B, p. 36). His last date of treatment was 01/05/05. (Exhibit B, p. 32). I find for the period of 10/6/04 to 1/5/05, the Claimant entitled to weekly benefits.

### CONCLUSION

The claimant suffered a series of accidents or occupational disease in April and May 2004 due to repetitive bending and lifting on her job with this employer. She is entitled to the back medical bills for the resulting treatment and surgery and for temporary total disability for the period 08/02/04 to 08/06/04 and from the date of the back surgery, 10/06/04 to 1/5/05.

I also order the employer/insurer to provide her with future medical treatment necessary to cure or relieve her from her back injury, although based on her testimony of using only over-the-counter medications infrequently, and with the passage of time, it is uncertain what treatment, if any, would be prescribed. That determination is for the treating doctors to determine if appropriate, or if an opinion on final disability is appropriate.

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

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

Mark S. Siedlik  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret

[\[1\]](#) The medical records show that Lori Tuten is not a physician but a physician's assistant in that office.