

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

Injury No.: 03-137509

Employee: Glenda Taylor  
Claimant: Marvin Taylor, surviving spouse  
Employer: Ballard RII School District  
Insurer: Missouri United School Insurance  
Gallagher Bassett Services  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: December 19, 2003  
Place and County of Accident: Henry 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 July 2, 2007. The award and decision of Administrative Law Judge Karen Wells Fisher, issued July 2, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 1<sup>st</sup> day of February 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Glenda Taylor

Injury No. 03-137509

Dependents: N/A  
Employer: Ballard RII School District  
Additional Party: Second Injury Fund  
Insurer: Missouri United School Insurance  
Gallagher Bassett Services  
Hearing Date: March 2, 2007

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by:

### 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: DECMEBER 19, 2003
5. State location where accident occurred or occupational disease was contracted: HENRY COUNTY, MO
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:  
DRIVING SCHOOL BUS
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: LOW BACK AND BODY AS A WHOLE
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
15. Compensation paid to-date for temporary disability: UNKNOWN
16. Value necessary medical aid paid to date by employer/insurer? UNKNOWN
17. Value necessary medical aid not furnished by employer/insurer? UNKNOWN
18. Employee's average weekly wages: \$316.28
19. Weekly compensation rate: \$210.85
20. Method wages computation:  $\$12,240 \text{ divided by } 9 \text{ divided by } 4.3 = \$316.28 \times 2 = \$632.56 \text{ divided by } 3 = \$210.85$

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$49,400.37

weeks of temporary total disability (or temporary partial disability)

weeks of permanent partial disability from Employer

weeks of disfigurement from Employer

22. Second Injury Fund liability: No

TOTAL: UNKNOWN

23. Future requirements awarded: Permanent total disability beginning January 29, 2004.

Said payments to begin IMMEDIATELY and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

JOHN STANLEY

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Glenda Taylor

Injury No. 03-137509

Dependents: N/A

Employer: Ballard RII School District

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: Second Injury Fund

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

Insurer: Missouri United School Insurance  
Gallagher Bassett Services

Hearing Date: March 2, 2007

Checked by:

## AWARD ON HEARING

A hearing was held in the above injury before the undersigned Administrative Law Judge on March 2, 2007. The employee appeared in person and with attorney, John Stanley. Attorney, Howard Gosnell, appeared on behalf of the employer/insurer and Assistant Attorney General, Meredith Moser, appeared on behalf of the Second Injury Fund. Prior to going on the record the parties agreed that there were several issues to be determined as a result of the hearing, those issues are as follows:

1. Whether proper notice was given by the employee to the employer.
2. Whether employee was exposed to conditions as a part of her employment sufficient to cause an occupational disease.

3. Whether the employer/insurer is liable for past medical treatment incurred by the employee for treatment of the alleged occupational disease.

5. What is the compensation rate in this case.

6. Whether or not the employee is entitled to permanent total disability benefits and would that permanent total disability be a result of the last injury alone or from a combination of the last injury and prior disabilities.

7. Whether or not the employee is entitled to future medical care.

### EVIDENCE

The employee testified in person as well as offering the following exhibits which were admitted into evidence.

Exhibit A	Dr. Koprivica deposition
Exhibit B	Dr. Gillen deposition
Exhibit C	Dr. Logan deposition
Exhibit D	Ms. Titterington deposition
Exhibit E	Dr Abercrombie records
Exhibit F	Dr. Alexander records
Exhibit G	Bates County Memorial Hospital records
Exhibit H	Dr. Gillen records
Exhibit I	Edward Jackson, Dr. Crabtree records
Exhibit J	Headache & Pain Centre records
Exhibit K	Dr. Holmes records
Exhibit L	Dr. Ogden records
Exhibit M	A.J. Porter, DC records
Exhibit N	Research Belton Hospital records
Exhibit O	St. Luke's Hospital records
Exhibit P	Shawnee Mission Medical Center records
Exhibit R	Dr. Gillen bills
Exhibit S	Research Belton bills
Exhibit T	Ballard RII School Personnel file of Glendna Taylor
Exhibit U	Midway School transcript of Glendna Taylor
Exhibit V	Notice faxed to employer

The employee's husband, Marvin Taylor, also testified at the trial. The employee, Glendna Taylor, was 46 years on the date of the hearing. She has completed the 10th grade and has earned a GED. She has a work history of various employment including cashier work, warehouse work, fast food work, and some production work. She has earned her real estate license although she has never used that license professionally. Additionally, Ms. Taylor was a homemaker at different periods of time. Ms. Taylor did not have any work-related injuries until she was working at Longview Community College between 1990 and 1993 doing clerical activities and experienced a fall at work. This resulted in a distal and proximal spiral tibial fracture. It involved an extended recovery. Bone grafting from the pelvic area and intramedullary rod placement were performed to achieve healing. The rod has since been removed. As a result of this injury Ms. Taylor continues to walk with a limp.

Her employment history continued with various and multiple employers including positions as a mailroom clerk, cook, bus driver, clerical, and assembly worker. She was employed at Kemper Insurance when she developed bilateral carpal tunnel syndrome and had bilateral carpal tunnel release surgeries in approximately 2001. Those surgeries were not handled through workers' compensation. Ms. Taylor began working at Ballard School District for the second time on October 1, 2002. She worked as a bus driver. She also began a second job at Wal-Mart as a cashier beginning in November of 2002. In April of 2003 she was moved to the floor in the ladies wear department. She did do some stocking activities as well as assembly and disassembly of hanging racks. She last worked at Wal-Mart in July of 2003.

The claimant describes her work at Ballard School District as in her own mind the source of the development of her back pain as well as the progression of that back pain. She attributes this to the rough surface on the rural gravel roads and she describes a washboard-type effect where she would be bounced in her seat. The bridges over which she drove also have rough surfaces on entry and exit. The claimant's husband, Marvin Taylor, testified at hearing that he had helped work on the Ballard School District buses that the buses were eight to ten years old and that none of these buses had shock absorbers or

suspension systems that he knew of. He indicated that a bus would be broken down once or twice a month. He had, in fact, driven one year for Ballard School District in 1991. He indicated that Bus 9, which the claimant drove, had a manual shift. He testified that he had taken pictures which are indicated as Koprivica Exhibits A1 through A14N along his wife's regular bus route.

Mr. Taylor testified that the photograph marked as Exhibit A14F shows the bridge higher than the road level with approximately 7 1/2 to 8 inch difference in height. He said that it was like coming off a curb. Mr. Taylor took pictures along the whole route to give a general representation of the entire route. He also used an aluminum concrete leveler in some pictures to help accurately show the road unevenness. He took those photos on a single day in the spring. He said that the county roads on which she drove were graded twice a month and the potholes filled with loose gravel. He testified that his wife drove two times a day five days a week.

Mr. Taylor also stated that three to four months after she started driving she complained of pain in her leg. The claimant had progression of numbness and pain into both legs as well. Initially the problem started in the right hip, but then progressed to where it was affecting both legs. One of her concerns was the safety of driving a bus because of the profound numbness as she would drive. As a result of the problems with her legs she was not able to perform the floor tasks required at Wal-Mart. She attempted to find a different position with Wal-Mart which was not offered. She was eventually terminated from that employment. Initially the claimant did not comprehend that her problems arose from her low back. She erroneously believed that they related to a bone graft taken from her pelvic area as a result of the leg fracture ten years earlier. The claimant did have a history of going to a chiropractor as a child which is why she initially sought chiropractic care. The chiropractor, Dr. Porter, recorded difficulties associated with her having to drive a different bus. The claimant first made these complaints to Dr. Porter on December 6, 2002. She then treated with her family physician, Dr. Alexander for "leg cramps" and pain in her back. He then referred her to Dr. Carroll who saw her on July 8, 2003. Dr. Carroll suspected lumbar radiculopathy and ordered electrodiagnostic studies which revealed abnormalities consistent with right lumbar radiculopathy.

On July 23, 2003, an MRI scan was ordered which indicated degenerative disk disease as well as a focal disk herniation at L4, L5 and a more prominent disk protrusion that was posterolateral to the right at L5-S1 with some S1 nerve root impingement. The claimant received epidural steroid injections which were unsuccessful in improving her symptoms. The claimant took medical leave on June 25, 2003, and did not work during the summer. She returned to work in the fall on September 2, 2003. As she continued to work her symptoms progressed. She went back to Dr. Carroll, her family physician, on December 23, 2003. As a result of her back and radicular complaints claimant decided that she should consider surgery. Dr. Carroll referred her to Dr. Gillen on December 31, 2003. She had hoped to continue driving until the end of the spring semester, unfortunately she could not continue working. Her last attempt to work was on January 5, 2004. She was then terminated by the school district on January 15, 2004. With that termination her insurance benefits were going to be discontinued. In order to have the surgery under coverage Dr. Gillen and Dr. Roh went ahead and performed an anterior lumbar interbody fusion using Ray cages at L4, L5 and L5-S1. The claimant continued to see Dr. Gillen for follow up. A bone stimulator was prescribed on February 13, 2004.

The claimant testified at the hearing that she was hired on October 1, 2002, to drive a bus. She signed a contract to drive a morning and afternoon route and a vo-tech route. The contract ended in May 2003 and then the new contract started August 2003. She testified she was paid a salary of \$1,020.00 per month gross on a 12-month basis, but that she had been given a verbal option of choosing a 9-month or a 12-month pay out. Her normal schedule was that she picked up the bus at 7:00 a.m., she was at school by 8:00 a.m., then she went to Clinton on her vo-tech route. She would then go back to the Ballard school by 11:15 a.m. for lunch, and then she left again at 3:15 p.m. on the afternoon bus route. She indicated that the school district had three automatic transmission buses. She normally drove Bus 3 which was an automatic, but she sometimes drove the standard bus or the manual shift because she had fewer kids than the other drivers. She was required to complete the route within one hour. She drove 55 mph on the blacktop, which comprised about 25 percent of her route and she drove approximately 35 mph on the gravel roads. She indicated that there was no suspension in the seats and it was a hard hit when you hit a bump. She indicated to the principal, Mr. Duncan, and the paperwork clerical worker for the bus route about how rough the roads were.

She indicated that it was about three to four months after she started driving the bus route that she began having problems. She had sharp pains in her hip, across her back, and down her leg. It was December 6, 2002, when she first complained of back pain to Dr. Porter. In December the claimant called the school district and verbally indicated her need for surgery and that she believed it was work related and then put notice of her injury in writing and faxed it to Mr. Duncan. Her surgery was scheduled on February 5, 2004, but then was moved to January 29, 2004, so her regular health insurance could pick it up. The claimant testified that the school was aware that the surgery was set and that she was claiming workers' compensation. Medicaid ultimately picked up what her regular health insurance did not pay.

The surgery was not successful in that it did not resolve her pain, but it did end the burning sensation in her hips. The claimant testified that she does still have occasional pain and cramping in her feet and also shooting pain in her back. She indicates that her pain level is the same as before surgery. During the surgery the surgeon left a clip on a ureter and killed her left kidney. This was removed at St. Luke's and paid for by Medicaid.

Claimant describes her current symptoms as having pain across her back which goes down her legs. If she sits too long her legs go to sleep. She can't walk for long periods of time or her legs start cramping. She currently takes hydrocodone and Infran. Dr. Vitt in Butler prescribes these medications for the claimant and has since the date of the surgery. She also takes Ambien every night. She did admit that she had a history of depression and other psychological ailments. Claimant had depression diagnosed in 1990 just after her brother committed suicide. She was placed in Baptist Memorial psychiatric unit for three weeks. She currently sees a psychologist in Butler once a month who prescribes certain medications. She also indicated she feels her anxiety has gotten worse since the surgery. Her feeling is that, "when you can't do everything by yourself you begin to feel bad."

The claimant testified that no doctor had ever indicated she had a bulging or herniated disk prior to this injury. She also said she had never had a referral to an orthopedic surgeon prior to this injury and that she had never before had pain down into her legs.

The claimant had an independent medical examination performed by Dr. Brent Koprivica who concluded that "Ms. Taylor's work activities as a bus driver with the bouncing and whole body vibration associated with those job tasks represent activities that are a substantial factor in progressive degenerative disk disease in the lumbar spine and the development of symptomatic diskogenic disease. As a result of the work activities at Ballard School District Ms. Taylor did develop a central disk herniation at L4, L5 and right-sided herniation at L5, S1." He further concluded that Ms. Taylor's work activities at Ballard School District represent a substantial factor in the necessity for the anterior lumbar interbody fusion that had been performed at L4-5 and L5-S1.

Dr. Koprivica examined the employee a second time on January 4, 2005, and came to the conclusion that Mr. Taylor had failed back syndrome. He felt that she also suffers from significant psychological and psychiatric dysfunction. While he indicated that she was at maximum medical improvement he felt that she would need ongoing chronic pain management. He also indicated that when he considered her current restrictions that followed as a result of the lumbar condition in isolation and it was his opinion that she would be unable to access the open labor market. He opined that he did not believe an ordinary employer would realistically employ her with the severity of restrictions and including the posture limitations and the need to recline. He further indicated that she was permanently and totally disabled based on the work injury and its residuals in isolation.

Also presented into evidence is a report and deposition of Dr. John Gillen, orthopedic surgeon. Dr. Gillen indicates that the employee described her work as a bus driver as involving long tedious routes over rough roads including gravel with many potholes, on buses that were somewhat out of date with less than optimal suspension systems. He indicates that if given what Ms. Taylor had told him to be true he believed that this was a substantial factor in the decline and demise of her back and leg condition necessitating the surgery which he performed.

A report from psychiatrist, William Logan, was admitted into evidence. Dr. Logan believes that the employee is permanently and totally disabled based on the last injury alone. He indicates that as a result of the poor surgical result and ongoing back and leg pain this fuels her ongoing depression. The surgery also resulted in further complications which was the removal of one of her kidneys. He indicated that her back problems also resulted in the loss of her job and inability to do other types of work and the loss of income and benefits which is an ongoing source of anxiety and blocks her access to needed physical and mental health care. He indicates that even though she did have a long history of depression and psychological difficulties prior to the back pain which intensified during her employment as a bus driver, she had previously enjoyed working and derived satisfaction from her job and enjoyed recreational activities. Despite her concerns with other family members, prior to the back injury her depression was responding to antidepressant, anti-anxiety, and hypnotic medication and she had not needed hospitalization or counseling since 1999. He indicated that while she was more susceptible to depression than the average individual she had attained stability prior to her last injury. He assigned a 10 percent disability to her preexisting psychological conditions.

The employee offered the deposition of vocational rehabilitation expert, Mary Titterington. Ms. Titterington also indicates that Ms. Taylor would currently not be a good candidate for vocational rehabilitation. Her low test results do not support formal retraining and with her limited functioning level she is not a candidate for direct job placement. She also indicated that there are no services that would restore her employability at this time.

The employer/insurer submitted the report and deposition of Dr. Michael Poppa. Dr. Poppa reached several conclusions. He stated Ms. Taylor's present medical condition was neither causally or directly related to her employment at Ballard RII School District. He also indicated that her employment was not a significant factor in the resulting medical condition requiring lumbar interbody fusion. Dr. Poppa indicated that Ms. Taylor's history of chronic preexisting medical condition involving her back which is progressive in nature would have eventually resulted in the lumbar surgery regardless of her occupation or activities of daily living. He felt that it merely represented a personal health condition which manifested itself in her employment in which her work played no substantial factor in the resulting need for medical treatment or disability. Dr. Poppa further indicated that subsequently Ms. Taylor had not suffered any permanent disability as a direct and proximate result of her work activities at Ballard School District.

The record was left open for the submission by employer/insurer of documentation as to the claimant's agreed upon salary and for the 2003-2004 school year. This was received and admitted and is marked as Exhibit 2.

### FINDINGS

As to the issue of notice the only evidence available to the court is that of the claimant's testimony indicating that she had reported verbally and in writing to the school district her need for surgery and that she would be claiming that as work related. There was no evidence to the contrary, therefore, I find that proper notice was given.

As to the issue of whether the employee was exposed to the conditions necessary to cause an occupational disease, I rely upon the opinion of Dr. Koprivica who indicates that as the claimant describes her work at the Ballard School District this, in fact, would have aggravated and been a substantial factor in causing the symptoms of which she complained and the need for the surgery that resulted.

The claimant testified that she did drive the school bus regularly. She was also required to complete the route within time limitations. The claimant also provided photographic evidence as to the condition of the roads on which she drove. There was no evidence to dispute this, therefore, finding the claimant's description of her work to be believable I find that Dr. Koprivica's opinion that her work was a substantial factor to be most persuasive in this case.

I find that the medical bills for which the claimant is desiring reimbursement and set out in Exhibits R and S (totaling \$49,400.37) were reasonable and necessary as a result of the work-related injury and I order the employer/insurer to pay these amounts

I also find that the employee is permanently and totally disabled as a result of the last injury alone. I find that the expert medical opinions of Dr. Koprivica and the psychiatric evaluation of Dr. Logan to be most persuasive. I therefore order the employer/insurer to pay permanent total disability benefits beginning January 29, 2004.

As to the compensation rate in this case, the evidence is that the employee was on a salary of \$12,240.00 for the contract term with a choice to receive it in either nine or twelve increments. The employee chose the twelve-month pay out although it would have been the same pay out salary-wise if she had chosen a nine-month allocation. I find that as the actual employment period was a nine-month period the salary amount is properly divided by nine months and divided by 4.3 weeks to determine the average weekly wage. I determine the average weekly wage to be \$316.28 per week for a compensation rate of \$210.85 per week I order the employer/insurer to pay this amount per week as permanent total disability benefits.

I find that Second Injury Fund has no liability in this case. I order attorney fees on behalf of John Stanley in the amount of 25 percent of all amounts awarded.

Date: July 2, 2007

Made by: /s/

Karen Wells Fisher  
Administrative Law Judge  
Division of Workers' Compensation  
Signed May 31, 2007

A true copy: Attest:

/s/ Lucas Boling  
Lucas Boling  
Acting Director

