

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

Injury No.: 14-063577

Employee: Shirley Tyler

Employer: SSM Cardinal Glennon Children's Hospital

Insurer: Cannon Cochran Management Services, Inc.

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 25, 2016. The award and decision of Administrative Law Judge Suzette Carlisle, issued August 25, 2016, 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 20th day of January 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Shirley Tyler Injury No.: 14-063577
Dependents: N/A Before the
Employer: SSM Cardinal Glennon Children's Hospital **Division of Workers' Compensation**
Additional Party: N/A Department of Labor and Industrial Relations of Missouri
Insurer: Cannon Cochran Management Services, Inc. Jefferson City, Missouri
Hearing Date: May 23, 2016 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: August 26, 2014
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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:
While lifting trash out of a container, Claimant injured her low back.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back
14. Nature and extent of any permanent disability: 10% permanent partial disability of the low back
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$6,907.82

Employee: Shirley Tyler

Injury No.: 14-063577

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$615.73
- 19. Weekly compensation rate: \$410.49
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

40 weeks of permanent partial disability from Employer:	\$16,419.60
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22. Second Injury Fund liability: None

TOTAL:	\$16,419.60
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23. Future requirements awarded: N/A

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Attorney James Sievers.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Shirley Tyler	Injury No.: 14-063577
Dependents:	N/A	Before the
Employer:	SSM Cardinal Glennon Children’s Hospital	Division of Workers’
Additional Party:	N/A	Compensation
Insurer:	Cannon Cochran Management Services, Inc.	Department of Labor and Industrial
Hearing Date:	May 23, 2016	Relations of Missouri
		Jefferson City, Missouri

Statement of the Case

On May 23, 2016, Ms. Shirley Tyler (“Claimant”) appeared at the Missouri Division of Workers’ Compensation, St. Louis Office (“Division”) and requested a hearing for a final award to determine the liability of SSM Cardinal Glennon Children’s Hospital (“Employer”) and Cannon Cochran Management Services (“Insurer”) for permanent partial disability (“PPD”) benefits.

Attorney James Sievers appeared on behalf of the Claimant. Attorney Kevin Leahy appeared on behalf of the Employer/Insurer. The Second Injury Fund is not a party to this case. The record closed after presentation of the evidence. Court Reporter Jennifer Jett recorded the proceedings.

Stipulations

The parties stipulated that on August 26, 2014:

1. Claimant was employed by Employer and sustained an accidental injury which arose out of and in the course of her employment in St. Louis City;¹
2. Employer and Claimant operated under the Missouri Workers’ Compensation Law;²
3. Employer’s liability was fully insured;
4. Employer had proper notice of an injury;
5. A claim for compensation was timely filed;
6. Claimant’s average weekly wage was \$615.73, with a rate of \$410.49 for PPD benefits;
7. Employer paid no temporary total disability (“TTD”) benefits; and
8. Employer paid medical benefits totaling \$6,907.82.

¹ All references in this award to the Employer also refer to the Insurer unless otherwise stated.

² Unless otherwise stated, all statutory references are to RSMo 2005.

ISSUES

The parties identified two issues for disposition:

1. Was Claimant's low-back condition medically causally related to the August 26, 2014 work injury?
2. If so, what is the nature and extent of the Employer's liability for PPD benefits, if any?

Exhibits

Claimant's Exhibits 1 and 2 were offered and received into evidence without objection from the Employer. The Employer's Exhibits A through E were offered and received into evidence without objection from the Claimant. Any objections made during the hearing or contained in the depositions but not ruled on during the hearing or in this award are now overruled. To the extent there are marks or highlights contained in the exhibits, they were made prior to becoming a part of this record and were not placed there by the undersigned administrative law judge.

FINDINGS of FACT

All evidence was reviewed, but only evidence that supports this award is discussed below.

Claimant's testimony - Background

At the time of the hearing, Claimant was 60 years old and had worked for Employer for ten years. Claimant hired in as an Environmental Aide. Later, Claimant was assigned first floor duties and became an Environmental Service Aide. In this capacity, Claimant dusts, vacuums, empties trash and lifts items as needed. She works 40 hours per week and reported no back injuries before August 2014.

The work injury

On August 26, 2014, Claimant placed her right foot on the pedal of a trash can to open the lid, lifted a plastic liner out of the can and felt a sharp pain that radiated from her left hip to her leg, which caused her to sit down. Claimant had difficulty getting up. She notified her supervisor, Toni, of the incident. Several days later, she received medical treatment including an MRI, muscle relaxers, light-duty restrictions, physical therapy and one injection. Dr. Randolph provided some of the treatment.

Current low-back complaints include pain with excessive walking, bending, vacuuming, pushing, and sitting. To relieve pain, she takes tramadol or Aleve.

Medical evidence

Anjum, Razzaque, M.D., a physician with WorkHealth - St. Louis, treated Claimant on August 29, 2014, with complaints of left hip pain after pulling trash on August 26, 2014.³ Examination of the back, left hip and thigh were normal. Dr. Razzaque diagnosed a left thigh muscle sprain caused by the work accident on August 26, 2014. He prescribed medication, stretching exercises, and limited Claimant to 10 pounds when lifting, pulling, bending at the waist or pushing for one week, no kneeling or squatting, with a follow-up on September 9, 2014.⁴

In September, 2014, Claimant continued to treat at WorkHealth and reported increased symptoms which she attributed to physical therapy. Complaints include pain from the left gluteal area to the anterolateral area of the left thigh and into the left calf without radiation to the foot or back pain. Matthew Spinks, M.D., diagnosed a left gluteal muscle and left thigh strains with possible piriformis syndrome. He increased the restrictions to 20 pounds when lifting, pulling, and pushing. Dr. Spinks recommended more physical therapy, which Claimant was reluctant to receive.

By September 24, 2014, the pain complaints centered on the left hip/thigh with occasional tingling in the left lower leg, aggravated with bending, prolonged standing and walking. Claimant completed 5/5 sessions and noted improvement. Complaints included increased pain with prolonged weight bearing and occasional tingling of the left lower leg. Claimant was referred to a physiatrist in October 2014, when she reported a decrease in left thigh pain but an increase in left leg tingling that radiated to her toes. Dr. Razzaque continued to recommend restricted duty and medication.

Bernard C. Randolph Jr., M.D., a board certified physician in physical medicine and rehabilitation, examined Claimant on October 2, 2014.

Examination of the low back revealed pain and left leg tingling with movement, straight leg raise produced discomfort in the buttock and outer side of the leg, left-sided stretching, slightly decreased pinprick on the front of the left leg, and slightly reduced strength in the anterior tibialis and abductors. Dr. Randolph prescribed medication, physical therapy, restricted Claimant to light duty, and ordered an MRI.

Dr. Randolph interpreted the MRI to show degenerative changes of the lower two discs which he opined developed over time and included the following: Annular expansion, more at L4-5 to the left, and foraminal and lateral recess stenosis to the left at both levels.

³ Another medical record in evidence from August 29, 2014, states Claimant reported pain to her left lateral thigh with palpation during examination.

⁴ The September WorkHealth - St. Louis report lists "current work restrictions" which are not clear in the instruction to: "20 lbs Max/Lift 10 lbs 34-66% and 20 lb. Max Push/Pull."

Dr. Randolph referred Claimant to Dr. Frank Bender, a pain management specialist, who performed a selective nerve root injection at L5 to the left.

During a follow-up examination with Dr. Randolph on November 17, 2014, Claimant reported she was doing well. Dr. Randolph found no abnormalities, concluded Claimant had reached maximum medical improvement, and returned her to work full duty.

Expert testimony

The Employer cross-examined Thomas F. Musich, M.D., a retired physician selected by Claimant's attorney, to perform an independent medical evaluation on February 12, 2015. Dr. Musich reviewed medical records, wrote a report and testified at the request of the Employer.⁵ Claimant gave a history of pain in her left hip girdle. Claimant gave no history of low-back pain or left leg symptoms before August 2014. Therefore, Dr. Musich concluded it was significant that Claimant had immediate pain in her left hip with radiation to her left foot.

Examination of bilateral deep tendon reflexes of the lower extremities were normal, no disc pathology was found in the upper or lower discs and no dermatomal parathesias was found in either lower limb. The left hip examination was normal. The Faber test was consistent with sacroiliac joint dysfunction.

Dr. Musich reviewed the MRI of the lumbar spine report but did not review MRI scans or x-rays. Dr. Musich did not find nerve root impingement or a herniated disc present on the MRI report. Also, Dr. Musich opined Claimant's lack of radiating pain into either lower extremity suggested no "immediate severe nerve root impingement." Dr. Musich found no injury to Claimant's left hip.

If the preexisting degenerative changes were present when the work injury occurred, Dr. Musich concluded they were never evaluated because they were asymptomatic. He diagnosed symptomatic left lower extremity radiculopathy, lumbar spondylosis/HNP, sacroiliac joint dysfunction, and piriformis syndrome.

Dr. Musich did not recommend additional medical treatment. He testified Claimant received appropriate medical care from Drs. Razzaque, Randolph and Bender, and rated 30% PPD of the body for the August 26, 2014, work injury based on Claimant's symptoms.

Dr. Randolph performed an independent medical examination on January 5, 2016 and Claimant gave a history of left hip and low back pain with bending or twisting, and occasional pain on the outside of her thigh.

⁵ Claimant did not depose Dr. Musich. At the hearing, she submitted Dr. Musich's February 12, 2015, report pursuant to Section 287.210.

During examination, Claimant reported pain with pressure to the low back, but Dr. Randolph found no pathology in the piriformis muscle group or the surrounding nerve.

Dr. Randolph concluded the August 2014 accident caused a mild lumbar strain which exacerbated multilevel degenerative disease and degenerative stenosis at L4-5 and L5-S1. This resulted in “axial or midline back pain and mild radicular pain.” He opined Claimant responded well to treatment and returned to baseline. Dr. Randolph further opined that Claimant’s symptoms in January 2016 were not consistent with the lumbar sprain or sciatica, and opined it may be consistent with her being 58 years old.

Dr. Randolph concluded the accident “did not aggravate or substantively change the underlying condition.” Dr. Randolph rated 1 percent PPD related to the August 2014 work injury, and 7 percent PPD of the body as a whole for preexisting lumbar degenerative disc disease and degenerative spinal stenosis. Dr. Randolph did not recommend any additional medical treatment for the August 2014 work injury.

ADDITIONAL FINDINGS OF FACT AND RULINGS OF LAW

After careful consideration of the entire record, based upon the above testimony, the competent and substantial evidence presented during the hearing, and the applicable law of the State of Missouri, I make the following findings:

1. Claimant’s low-back condition is medically causally related to the work injury

Under the Missouri Workers’ Compensation Law, the employee bears the burden of proving all the essential elements of his claim, including medical causation. *Roberts v. Mo. Highway & Trans. Comm.*, 222 S.W.3d 322, 331 (Mo. App. 2007). For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. *Id.* “Medical causation, which is not within common knowledge or experience, must be established by scientific or medical evidence showing the relationship between the complained of condition and the asserted cause.” *Gordon v. City of Ellisville*, 268 S.W.3d 454, 461 (Mo. App. 2008) (citations omitted).

Questions regarding medical causation of an injury are issues of fact for the [fact finder] to decide, as are questions regarding medical treatment. *Id.* The [fact finder] is the sole judge of the weight of the evidence and credibility of the witnesses. *Id.* When conflicting medical opinions are in evidence, the [fact finder] determines which expert’s opinion is more credible. *Bock v. Broadway Ford Truck Sales, Inc.*, 55 S.W.3d 427, 439 (Mo.App.2001). The weight to be given the expert’s opinion on medical causation is within the sole discretion of the [fact finder]. *Id.* at 438. (Citations omitted).

While the claimant is not required to prove the elements of her claim on the basis of "absolute certainty," she must at least establish the existence of those elements by "reasonable probability." *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. 1999).⁶ 'Probable' means founded on reason and experience which inclines the mind to believe but leaves room for doubt. *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo.App. 1996). I find Claimant met her burden.

At the hearing, the parties stipulated Claimant sustained an injury that arose out of and in the course of her employment on August 26, 2014. I find Dr. Randolph's opinion is persuasive that Claimant sprained her low back as a result of the work injury. Despite medication, physical therapy and an injection, Claimant credibly testified that she continues to have symptoms. Therefore, I find Claimant's low-back condition is medically causally related to the August 26, 2014, work injury.

2. Employer is liable for permanent partial disability benefits

The determination of a specific amount or percentage of disability to be awarded a claimant is a finding of fact within the unique province of the [fact finder]." *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 284 (Mo.App. 1997). In determining the percentage of disability, the [fact finder] is not bound by the percentage estimates of the medical experts and may consider all the evidence, including the testimony of the employee. *Eimer v. Board of Police Com'rs of Kansas City, Mo.*, 895 S.W.2d 117, 120 (Mo.App. W.D.1995) (Citations omitted).

Both doctors agreed Claimant sustained disability from the work injury. Based on credible testimony from Claimant and Drs. Randolph and Musich, I find Claimant sustained 10% PPD of the body as a whole for the low-back sprain she sustained on August 26, 2014.

⁶ Several cases cited herein were overruled by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003) on grounds other than those for which the cases are cited in this award. No further reference will be made to *Hampton* in this award.

CONCLUSION

Claimant's low-back condition is medically causally related to her August 26, 2014 work injury, which resulted in 10% permanent partial disability of the body as a whole, for the low back. The award is subject to a lien in favor of Claimant's attorney for legal services rendered.

Made by: *Suzette Carlisle*
Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation