

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

Injury No.: 02-158503

Employee: Ronald Voss
Employer: Ford Motor Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged December 20, 2002
Place and County of Accident: Alleged St. Louis

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 September 21, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Matthew D. Vacca, issued September 21, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4th day of December 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Ronald Voss

Injury No.: 02-158503

Dependents: N/A
Employer: Ford Motor Company
Additional Party: Second Injury Fund
Insurer: Self-Insured
Hearing Date: August 1, 2007

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: MDV: ms

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: Alleged December 20, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? No
7. Did employer receive proper notice? N/A
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: None
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Ronald Voss

Injury No.: 02-158503

17. Value necessary medical aid not furnished by employer/insurer? \$0
18. Employee's average weekly wages: \$1000.00
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable:

22. Second Injury Fund liability: Yes No Open

TOTAL: \$0

23. Future requirements awarded: None

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 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:	Ronald Voss	Injury No.: 02-158503
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Ford Motor Company	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: MDV: ms

ISSUES PRESENTED

The issues presented are accident, nature and extent of permanent partial disability, and causation.

FACTS

1. At the time of the hearing Claimant was fifty-one years old, unemployed, having been laid off from the Ford Motor Company on March 8, 2006, when the plant quit production.

2. Claimant has been receiving his salary since then based on the collective bargaining agreement buyout plan and may receive his pension at the end of the year. His salary is based on thirty-four hours a week.
3. Claimant testified that on the date of the accident, December 20, 2002 he was working using a forklift to unload train cars, when, as he pushed open a train car door, he injured his back. Claimant was rather vague in his description of the accident. He mostly complained that it was a company rule that he not use the forklift to open the train doors because they would damage the boxcars, therefore he was required to open the train car by hand.
4. Claimant's testimony appeared more along the lines of describing a repetitive strenuous duty, rather than to recite a specific incident on December 20, 2002.
5. Claimant contends that he went to the plant dispensary on December 20, 2002, but there is no record of the visit because the healthcare providers there would not put his information into the computer.
6. He continued working until the plant was shut down.
7. Claimant says he was forced to treat the back injury with his family physician Dr. Pritchard. An MRI was performed, and he was given injections that worked for a short period of time, and Claimant was told he had arthritis in his back.
8. Claimant can now only garden for an hour or so a day and he can only shop for one or two hours on concrete floors. He can still hunt deer, go fishing, boating and drive for two hours, but then he has to move around to regain flexibility.
9. Claimant has no prior back claims, although he's had slight back pain in the past when he would go to a chiropractor.
10. Claimant contends his back is not getting any better even though he hasn't been working.
11. Claimant told Dr. Pritchard on December 10, 2002, ten days prior to this injury, that he had back pain that started when he was getting off the couch.
12. The date of the injury herein is December 20, 2002. Claimant insists that his current back problem is a work related injury, despite the fact that the work injury is not mentioned in the records.
13. Claimant does not recall being prescribed the muscle relaxant Skelaxin before December 20, 2002. Medical records indicate he told Dr. Pritchard he had been using the muscle relaxant Skelaxin since the couch incident, but it was not giving him relief. The doctor also prescribed Darvocet for back pain. Again, all ten days before the work accident.
14. There is no mention of **work related** back pain to Dr. Pritchard until May 2, 2003, and then he does not report specific trauma or injury.
15. Claimant underwent an x-ray on February 20, 2002 related to a motor vehicle accident prior to the work injury where he fractured the lateral eighth, ninth, and tenth ribs. That x-ray indicates persistent chest pain related to a motor vehicle accident three months ago, which would put this automobile accident in approximately November of 2001. Pursuant to an x-ray dated December 19, 2001 Claimant had neck pain, chest pain, and pelvic pain after a motor vehicle accident. These events were about a year before the work injury.
16. Dr. Berkin examined Claimant on April 19, 2006, and found Claimant to have tenderness in his lower back, and that Claimant reported he had symptoms of tightness and muscle spasms. Dr. Berkin says Claimant had a lumbosacral strain with a herniated nucleus pulposus at C4-5 and L5-S1. Dr. Berkin testified Claimant injured himself when he was opening/unloading automobile parts from rail cars. He estimates disability of thirty percent of the body as a whole. Dr. Berkin testified that he cannot say with a reasonable degree of medical certainty that the degenerative changes in Claimant's lumbar spine were due exclusively to a degenerative process or to an alleged trauma.
17. Claimant didn't report to Dr. Berkin that he was having back symptoms prior to December 20, 2002. Dr. Berkin did not review Dr. Pritchard's note of December 10, 2002, which indicates that ten days prior to the work injury Claimant had back pain over the weekend with no specific injury or trauma when he got off the couch at home. Dr. Berkin was also unaware of the prior back injury from the motor vehicle accident in 2001.
18. Dr. Berkin found Claimant's reflexes were intact and his straight leg raising was negative. There was no evidence of lumbar radiculopathy nor neurological findings of spinal injury.
19. Dr. Chabot believes Claimant suffered from back pain from disc degeneration and lumbar spondylosis with an additional degeneration involving the hips. Dr. Chabot reviewed medical records prior to the date of the injury. His opinion after reviewing the medical records and MRI films is that Claimant's work duties were not a factor in his complaints. He also believed that Claimant could continue regular work duties and that he sustained no permanent partial disability with regard to any events on December 20, 2002.

20. Claimant was also involved in an automobile accident following this work incident. He broke several ribs and he hit his head, but says he didn't have any back injury. Then he testified that the auto accident did aggravate his back, but then said he wasn't sure.
21. Claimant was seen in St. Elizabeth's Hospital on September 21, 2005 with an admitting diagnosis of shoulder, back, and neck pain following another motor vehicle accident on Route 64 near Caseyville when he was hit from the side. The assessment statement for that date on the physical therapy certification form indicates that Claimant has impingement in his shoulder and muscular pain in his low back. A "low back evaluation" September 21, 2005 indicates that Claimant had a posture where he was shifted laterally to the right, and that he was markedly tender at L2-3 and L4. He was tender over the left iliac crest.
22. Pertaining to the injury one year prior to the incident at issue herein, Claimant was drinking coffee while driving to work on December 19, 2001, and choked when he ran into a tree with his truck.
23. Claimant did not mention this accident to Dr. Berkin.
24. Claimant contends that since he was laid off, he has tried to work and do some home repair work for a friend in the real estate business, but he has turned that work down due to back pain.
25. Claimant has a friend that is involved in foreclosures and needs to fix up houses prior to selling them at public auction. The friend has asked Claimant to work for him several times, but Claimant contends that he's unable to do any work.

RULINGS OF LAW

1. Claimant has failed to establish that claimant sustained an accident on December 20, 2002, which arose out of and in the course of his employment, or that any of the complaints that he has relating to his low back or that any medical treatment was required as a result of anything that occurred at Ford Motor Company. This being the case the nature and extent issue is moot.

DISCUSSION

My impression is that Claimant is angry over having to manually open train cars rather than use the forklift, and angry over being laid off. I don't find competent, substantial evidence that there is a work related factor to what appears to be degenerative arthritis. The motor vehicle accident in December of 2001, the couch incident reported to Dr. Pritchard ten days before the alleged work accident, and the normal, gradual deterioration of the body are all highly probable causes for Claimant's symptoms. While the complaints could be the result of an occupational disease, there is no evidence in that direction, and the claim points to a specific accident. I don't believe anything in the nature of an "accident" occurred on December 20, 2002.

Given Claimants anger over the work conditions (opening the train door manually), the medical records that disclose prior and subsequent back injuries, Claimant's failure to tell his expert about those injuries, and the fact a specific incident is alleged on December 20, 2002, but not convincingly recounted at trial, I cannot find sufficient evidence to impose liability.

Date: _____

Made by: _____

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

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation