

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

Injury No.: 03-003791

Employee: Jerrold Walden  
Employer: Ceco Concrete Construction, LLC  
Insurer: American Protection Insurance Company  
Date of Accident: Alleged January 17, 2003  
Place and County of Accident: Alleged Kansas City, Clay 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 May 9, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge R. Carl Mueller, issued May 9, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 20<sup>th</sup> day of November 2006.

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

**FINAL AWARD DENYING COMPENSATION**

Employee: Jerrold Walden

Injury No. 03-003791

Dependents: N/A

Employer: Ceco Concrete Construction, LLC

Additional Party: N/A

Insurer: American Protection Insurance Company

Hearing Date: April 11, 2006

Briefs Filed: April 24, 2006

Checked by: RCM/rm

### 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: Not Applicable.
5. State location where accident occurred or occupational disease was contracted: Alleged Kansas City, Clay 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 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: Employee alleged that he injured his back while clearing and stacking sheets of plywood that were four feet wide and eight feet long.
12. Did accident or occupational disease cause death? No. Date of death? Not Applicable.
13. Part(s) of body injured by accident or occupational disease: Alleged back, body as a whole.
14. Nature and extent of any permanent disability: No disability awarded.
15. Compensation paid to date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$387.45
17. Value necessary medical aid not furnished by employer/insurer? No past medical was claimed.
18. Employee's average weekly wages: \$858.00.
19. Weekly compensation rate: \$572.00 for any temporary benefits, \$340.12 for permanent partial.
20. Method wages computation: By stipulation.
21. Compensation Payable: None; claim is denied.

### FINDINGS OF FACT and RULINGS OF LAW:

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Injury No. 03-003791

Dependents: N/A

Employer: Ceco Concrete Construction, LLC

Additional Party: N/A

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Hearing Date: April 11, 2006

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On April 11, 2006 the Employee and Employer appeared for final hearing. The Division has jurisdiction to hear this case pursuant to Section 287.110. The employee, Jerrold Walden appeared in person and with his attorney, David Mandelbaum. The Employer and insurer appeared through attorney Brian Fowler. The Second Injury Fund was not a party to the proceeding.

The primary issue to resolve concerned, did claimant sustain accidental injury arising out of and in the course and scope of his employment. For the reasons noted below, I find that claimant did not sustain a compensable accident and no benefits are awarded to claimant.

#### STIPULATIONS

The parties stipulated that:

1. On January 17, 2003 Ceco Concrete Construction, LLC was an employer operating under and subject to the terms and provisions of the Missouri Workers' Compensation Law with its liability insured by American Protection Insurance Company;
2. Jerrold Walden was an employee of the employer working subject to the workers' compensation law;
3. Jerrold Walden did file his claim within the time allowed by law; and,
4. Mr. Walden earned an \$858.00 weekly wage resulting in a \$572.00 weekly temporary total disability rate and a \$340.12 permanent partial disability rate. The employer paid no temporary benefits.

#### ISSUES

The parties requested the Division to determine:

1. Whether Mr. Walden sustained a repetitive trauma injury that occurred through and including January 17, 2003?
2. Whether Mr. Walden notified CECO of the alleged injury?
3. Whether Mr. Walden should received temporary total disability benefits ("TTD") from January 23, 2003 through June 19, 2003 representing 21 weeks for compensation totaling 12,012.00?
4. Whether CECO must provide the employee with additional medical care?
5. Whether Mr. Walden suffered any permanent partial disability ("PPD") and, if so, the nature and extent of the Employee's disability?

## FINDINGS

Mr. Jerrold Walden testified in his own behalf and also offered Exhibit A, rating report of Dr. Edward Prostic with various medical records that Dr. Prostic had reviewed as part of his evaluation.

Mr. Ed Mallard testified at the employer's request. In addition, the employer presented the following exhibits (Exhibit 3 was withdrawn and never offered), all of which were admitted into evidence without objection:

- Exhibit 1 – Application for Hearing, Kansas DWC, 5/14/2003
- Exhibit 2 – Report, Robert F. Paul, D.O., 6/19/2003
- Exhibit 4 – Letter from Walden to CECO, 1/23/2003
- Exhibit 5 – MRI, 7/20/2003

Based on the above exhibits and the testimony of the witnesses, I make the following findings. Mr. Walden is a forty-four year old man who has been employed for most of his work career as a general laborer. He worked for several different companies prior to employment at Ceco. On direct he was not sure as to his actual hire date, thought it was in early January and he worked maybe two weeks before his accident. On cross Mr. Walden agreed his date of hire was January 14, 2003 and he had only worked four days prior to his claim date of January 17, 2003.

On the first or second day on the job he started experiencing low back pain. He denied experiencing back injury at any of his prior employers. The back pain increased in severity until Friday, January 17, 2003. At the time, Mr. Walden was clearing and stacking sheets of plywood that were four feet wide and eight feet long. After he left work that evening he was in significant pain. The next day he drove himself to the Veterans Administration and received medications as well as "a shot in my back". Mr. Walden admitted he did not make claim for workers' compensation benefits prior to his exam at the VA on January 18, 2003. However, thereafter he called his supervisor to advise that he was having back pain. Mr. Walden was directed to report to work on Monday, January 20, 2003 and he was then taken to Occupational Health Services. Claimant received brief conservative treatment at Occupational Health Services and was released back to light duty work.

Claimant was not satisfied with the treatment at OHS and wanted to treat at the VA. He continued to work until January 23, 2003. On that date he had a meeting with his employer wherein he advised he did not want to pursue a workers' compensation claim. Mr. Walden signed a letter (Employer's Exhibit 4) which stated that "my employment with Ceco did not cause any injury to myself". Mr. Walden testified that he also informed his supervisor Ed Mallard that he had not sustained an injury while working for Ceco.

Mr. Walden tried to explain that he did in fact have an injury, but he signed the letter (Exhibit 4) and informed Mr. Mallard he did not sustain an injury only because he wanted to treat at the VA. Mr. Walden's testimony on that issue makes absolutely no sense at all. By his own admission he was trying to create a fraud against the Veterans Administration. If he truly had been injured on the job, then he could not treat at the VA for work related occurrence. If he truly was injured on the job, then he lied to his employer by executing the letter of January 23, 2003 and lied to Mr. Mallard when he informed him that he had not been injured on the job. Claimant's credibility fails under examination and view of his own evidence.

At the start of trial Mr. Walden and his attorney claimed he was entitled to TTD benefits from January 23, 2003 through June 19, 2003. However, during cross-examination, claimant admitted that in early February 2003 he started work at U. S. Engineering. This was a full time position, he was a laborer earning in excess of \$21.00 per hour. There can, of course, be no claim for TTD while claimant was gainfully employed by U. S. Engineering. In fact, he also worked some overtime hours for U. S. Engineering. In addition to defeating any claim for TTD, the employment at U. S. Engineering also negates any claim for back injury. This was a very labor intense position, it is inconceivable that claimant could have hired on and performed extensive labor work at U. S. Engineering while suffering from a severe back injury.

Claimant did sustain an injury while working at U. S. Engineering. He was standing about four feet on top of a stool performing work activities. He fell back from the stool landing "spread eagle". Although the principal injury was to his knee, claimant admitted that the injury at U. S. Engineering aggravated his back and he conceded that

his back felt worse after that accident. Claimant further agreed that the general everyday labor activities at U. S. Engineering aggravated his low back complaints. Even if the court was inclined to believe that claimant somehow sustained a compensable accident at Ceco Concrete Construction LLC, he cannot prove that any disability relates to that claim. By conceding that his back was aggravated and to a certain extent even worse after the incident at U. S. Engineering, claimant has raised two potential causes for his claimed back disability. Accordingly, PPD must be denied. See, **Seabaugh's Dependents v. Garver Lumber Manufacturing Company**, 200 S.W. 2d 55 (Mo. 1947). See also **Griggs v. A. B. Chance Company**, 503 S.W. 2d 697 (Mo. App. 1973).

Claimant's own expert, Dr. Edward Prostic, took history (his exam date May 23, 2005) that Mr. Walden still was experiencing frequent burning pain in his right knee, had difficulty walking in the morning, difficulty standing, difficulty with stairs, squatting or kneeling. Although that resulted from the U. S. Engineering claim, Dr. Prostic took history that it also was affecting and causing complaints to his low back (see Prostic report, claimant's Exhibit A). Other medical offered by claimant indicates that he injured both his knees at U. S. Engineering and was having difficulty with his gait (see page 60 of Exhibit A, Corporate Care Report dated May 8, 2003). Claimant testified that the injury at U. S. Engineering caused a change of gait, in fact, for a while he was even required to use crutches. Clearly that could have aggravated his low back pain.

There is other medical offered by claimant that refutes his claim for injury while working at Ceco. Claimant saw Dr. Paul June 19, 2003 on the U. S. Engineering claim. He gave a history of prior meningitis, but provided absolutely no history of prior injury occurring at Ceco in January of 2003.

Towards the conclusion of his cross-examination, claimant conceded he was a convicted felon, this was for an assault charge. In claimant's own words, "I beat the [crap] out of a guy".

Ed Mallard testified for the employer. He has worked at Ceco for over 30 years. In January 2003 he was a supervisor over Mr. Walden. He recalled that a few days after his employment started, he complained of some back difficulties. However, when Mr. Walden spoke to Mr. Mallard at the job site about this, he informed him the back pain had nothing to do with his employment at Ceco. At claimant's request, Ceco prepared the letter (Employer's Exhibit 4) that was signed by claimant admitting that his work at Ceco did not cause any injury to him. Mr. Walden advised he would treat at the Veterans Administration for his back complaints. At no time did Mr. Walden inform Mr. Mallard that he had been injured on the job. He never came back to Mr. Mallard and stated that he was initially mistaken and truly did have an on the job injury.

## RULINGS

Based upon review of all of the medical records, trial exhibits and consideration of the trial testimony of Mr. Walden and Mr. Mallard, I find that claimant did not sustain accidental injury while in the employment of Ceco and no benefits are awarded to him.

Mr. Walden did not come close to satisfying his burden of proof on the accident issue. Mr. Walden admitted at trial that he informed Mr. Mallard he was not hurt at Ceco. Claimant admitted that he signed Exhibit 4, the letter which confirms he was not injured on the job. Claimant tried to explain this away at trial but he was not credible. He was very argumentative and evasive under cross-examination. He claimed 21 weeks of TTD when his own evidence showed he was employed two or three weeks after he left Ceco. By his own testimony his back injury was aggravated as a result of the subsequent accident at U. S. Engineering. I, of course, had the opportunity to observe Mr. Walden as he testified, and his demeanor and attitude convinced me that he was not a credible witness. Having failed to prove his claim, Mr. Walden's request for benefits must be denied.

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

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

Carl Mueller  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*

