

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

Injury No.: 05-046705

Employee: William Whitehead  
Employer: McArthur's Party Cake Bakery, Inc.  
Insurer: Missouri Restaurant Association  
c/o Alternative Risk Services  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)  
Date of Accident: Alleged May 26, 2005  
Place and County of Accident: St. Louis, 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 March 13, 2008, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued March 13, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of June 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

# AWARD

Employee: William Whitehead

Injury No.: 05-046705

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: McArthur's Party Cake Bakery, Inc,

Department of Labor and Industrial  
of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund (Dismissed)

Insurer: Missouri Restaurant Association  
C/O Alternative Risk Services

Hearing Date: January 22, 2008

Checked by: MDL

## 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 May 26, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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? 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 he injured his back while pulling bags of trash
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: None
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: William Whitehead

Injury No.: 05-046705

17. Value necessary medical aid not furnished by employer/insurer? \$15,928.80

- 18. Employee's average weekly wages: \$239.72
- 19. Weekly compensation rate: \$159.81/\$200.00
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:	None
Second Injury Fund liability: No	
Total:	0

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

Employee: William Whitehead

Injury No.: 05-046705

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: McArthur's Party Cake Bakery, Inc,

Department of Labor and Industrial  
of Missouri

Additional Party: Second Injury Fund (Dismissed)

Jefferson City, Missouri  
Checked by: MDL

Insurer: Missouri Restaurant Association  
C/O Alternative Risk Services

**PRELIMINARIES**

A hearing was held on January 22, 2008 at the Division of Workers' Compensation in the City of St. Louis. William Whitehead ("Claimant") was represented by Mr. D. Andrew Weigley. McArthur's Party Cake Bakery, Inc., ("Employer") was represented by Mr. Paul Huck. Although the Second Injury Fund is a party to this case, the parties agreed to leave the claim against the Second Injury Fund open pending the outcome of this hearing. Mr. Weigley requested a fee of 25% of Claimant's award.

The parties stipulated that on or about May 26, 2005 Claimant was an employee of Employer; venue is proper in the city of St. Louis; Employer received proper notice of the injury; and the claim was timely filed. The parties stipulated to an average weekly wage of \$239.72 with rates of compensation of \$159.81 for Temporary Total Disability ("TTD") benefits, and \$200.00 for Permanent Partial Disability ("PPD") benefits. Employer has denied this claim, and paid no benefits.

The issues for resolution by hearing are: accident, medical causation, liability of Employer for past medical expenses in the amount of \$15,928.80; whether Employer is liable for TTD benefits; and nature and extent of PPD sustained by Claimant.

**SUMMARY OF EVIDENCE**

Claimant is a 35 year old man who began working for Employer, a commercial bakery, in March, 2005. Claimant worked evenings as a janitor, and was responsible for cleaning the premises after the store closed for the day. Although Claimant never graduated from high school or obtained a GED, he lied on his job application with Employer, by claiming to have a GED.

Claimant testified on May 26, 2005 he began working between 8:00 and 8:30 P.M. Claimant's girlfriend accompanied him as he performed his work. Claimant testified between 10:30 and 11:00 P.M., he was in the Baker's room when he lifted a large industrial size trash bag and felt a popping sensation in his low back followed by immediate pain. Claimant testified he attempted to finish his work for the day. Claimant testified while taking the trash out to the dumpster, which was approximately 100 yards away from the Baker's Room, his back pain increased and his legs became weak. Claimant testified he had numbness and tingling in his legs and was unable to move his legs. He testified his back pain continued to intensify, and he instructed his girlfriend to lock the doors and take him to the hospital. Claimant testified he tried to make his way to the front of the store to get to his car, but was hurting so badly he was unable to walk.

Claimant's girlfriend called 911, and Claimant was transported by ambulance to St. Anthony's hospital. The emergency room records indicate Claimant gave a history of onset of low back pain from lifting a heavy object. Claimant complained of bilateral paralysis and numbness. One of the physicians who examined Claimant stated: "We tried to get patient up, but he persisted in story of not being able to walk/feel sensation. Patient did jump when I did rectal exam. . . . I did explain to patient that picture did not make clinical sense."

Claimant was admitted, and an MRI of the thoracic spine showed marginal spurring with residue of juvenile discogenic disorder without any acute process, and an MRI of the lumbar spine was normal. X-rays of his thoracic spine were normal. The admission notes indicated the neurological examination did not correspond to a specific anatomical distribution, nor was it indicative of any serious spinal cord injury.

A neurosurgical consultation was obtained, and Dr. Paul Young diagnosed likely hysterical paralysis, and recommended a psychiatric consultation. Dr. Chilakamarri, a psychiatrist, consulted, who felt Claimant likely had depression. Physical therapy was prescribed; Claimant slowly began to improve, was eventually able to use a walker, and was discharged. The discharge diagnoses were: lower extremity weakness which is improving; low back pain; probable depression; and obesity.

In the discharge report Claimant gave Dr. Sharda a history of accident of lifting heavy boxes of baking goods weighing about 75 to 100 pounds when he felt a pop in his back, followed by sudden weakness in his lower extremity, and being unable to get up.

After some home health care visits, Claimant has had no additional treatment for his alleged injury. Claimant testified he hardly has any pain as a result of his alleged accident of May 26, 2005, but he incurred medical expenses in the amount of \$15,928.80, and was unable to work for three weeks.

Claimant sustained a previous back injury in 1998 while working for Universal Printing Company. The history of that accident is similar to the history of his alleged accident of May 26, 2005. Claimant was referred to BJC Corporate Health for treatment by his Employer, and gave a history of back pain after lifting bales of binding. He gave a history of first feeling weak in the legs. Claimant was treated conservatively, and settled his claim for 5% PPD of the body as a whole in July, 2000.

In 1999, Claimant was seriously injured in a race car accident, and was admitted to Barnes-Jewish hospital. Claimant complained of lower back pain and an inability to move his lower extremities. An MRI was obtained which showed some epidural enhancement consistent with small hematoma, but no evidence of bony, ligamentous, or spinal cord injury. The impression was spinal cord contusion and sacral sparing [sic] with an incomplete spinal cord injury. Claimant eventually made a full recovery, and testified he had no residual problems from this injury leading up to the alleged accident of May 26, 2005.

Mr. Randall McArthur testified on behalf of Employer. A surveillance videotape of the evening of May 26, 2006 was admitted into evidence. The videotape showed Claimant working, and he did not appear to have any difficulty with his legs. It shows him at one point holding his lower back, as if he is in pain.

Claimant has worked for eight different employers over a ten year period. Between 1991 and 2005, Claimant had 12 reported work injuries. Claimant worked for three different employers before the alleged injury in 2005, and left

each of those employers because of work injuries. Since working for Employer, Claimant left another employer because of a work injury.

In 2007, Claimant injured his neck and head in a car accident. He is currently treating for that injury, and walks with a cane as a result of injuries he sustained. He is currently not working because of that accident, and has a pending lawsuit.

Claimant was convicted five times for Driving While Suspended, and was convicted of misdemeanor stealing.

Dr. Thomas Musich, who is board certified in family practice medicine, testified on behalf of Claimant. Dr. Musich examined Claimant on February 14, 2006. Claimant told Dr. Musich he injured his low back on May 26, 2005, while pushing a commercial steel frosting barrel when he felt a pain in his low back. Claimant told Dr. Musich he continued to work, and later in his shift was lifting commercial bags out of trash cans when he noticed severe low back pain and his legs would not move. Dr. Musich diagnosed lumbar strain, mechanical low back pain, and sacroiliac joint dysfunction resulting from the work injury of May 26, 2005. Dr. Musich testified the work trauma of May 2005 is the prevailing factor in the development of acute low back pain, and the need for hospitalization at St. Anthony's Medical Center through June 7, 2005. Dr. Musich rated Claimant's disability at 15% PPD of the body as a whole referable to his lumbar spine.

Dr. John Gragnani, who specializes in physical medicine and rehabilitation, and occupational and environmental medicine, testified on behalf of Employer. Dr. Gragnani examined Claimant on October 23, 2007. Dr. Gragnani testified bilateral lower extremity paralysis is usually caused by a significant compression either on the spinal cord or the caudal nerves below the level of the end of the spinal cord. Dr. Gragnani testified it would be possibly caused by, but not necessarily limited to, such things as dislocations of the spine caused by significant falls, massive herniation of a disc which would compress the spinal cord or the nerves in the region, or a tumor which finally reached enough of a mass that would cause significant compression, or a hemorrhage in the area that could have resulted in a compression.

Dr. Gragnani testified that strains and sprains would not result in paralysis. Dr. Gragnani testified there were no objective physical examination findings that would explain Claimant's paralysis, and in fact there was a contradistinction to this in the examination report from the emergency room when the doctor who examined Claimant found that he did feel when a rectal examination was administered, which would suggest he was not paralyzed, and did not have sensory changes which would be expected to accompany any such paralysis. Dr. Gragnani testified there were no objective physical examination findings which would suggest the occurrence of any type of acute injury. There were no objective abnormalities in any of the films he reviewed which would indicate the occurrence of a traumatic acute injury or suggest the reasoning behind a paralysis.

Dr. Gragnani testified a hysterical paralysis is a feigned paralysis, or not a real paralysis. It can be malingering, it can be for secondary gain, or it can be a psychological condition. Dr. Gragnani testified a conversion disorder occurs when a person substitutes a physical complaint for a psychological issue, which could be due to secondary gain, malingering, depression, or anxiety.

Dr. Gragnani found there was no evidence of a causal relationship between the alleged lifting accident of May 2005 and any specific medical condition. Dr. Gragnani testified he did not believe any of Claimant's reported symptoms are medically causally related to any type of work injury. He did not believe any of the medical bills incurred by Claimant were medically causally related to an acute work injury.

Dr. Gragnani testified it would be highly unlikely for someone to have a muscular soft tissue injury that could result in temporary paralysis of the legs or loss of feeling in the legs. He stated it would be virtually impossible for someone to present with complete paralysis of the lower extremities without there having been some obvious finding that would be generated to explain that. It would have to have been a bleed such as a hematoma, a large massive bleed in the canal, a large disc herniation, a subsequent dislocation of the spine, or a spinal artery damage which would have resulted in a permanent paralysis.

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

Based upon the competent and substantial evidence, my observations of Claimant at hearing, and the application of Missouri law I find:

### ACCIDENT

Claimant failed to meet his burden of proving he sustained an accident arising out of and in the course of employment on or about May 26, 2005. Claimant's version of the events which occurred on May 25, 2005 is not credible. While it is clear Claimant's girlfriend called an ambulance which transported him to St. Anthony's hospital, his testimony regarding the alleged accident is not credible. Claimant gave different versions of the accident to different medical providers. At least one of the doctor's at St. Anthony's doubted Claimant's veracity. The doctor indicated they tried to get Claimant up, but he persisted in his "story" of not being able to walk or feel sensation. He did jump when the doctor performed a rectal examination which indicates, as Dr. Gragnani testified, he was not paralyzed, and did not have sensory changes consistent with paralysis. In addition, the videotape does not support Claimant's story. In the videotape, Claimant does not appear to have any difficulty with his legs.

Claimant has several criminal convictions which cast doubt upon his credibility. All of these factors lead to the conclusion that Claimant failed to prove an accident occurred. Considering all the evidence, Claimant's story is not credible.

### MEDICAL CAUSATION

If one were to assume Claimant had sustained a work accident on the date in question, he still failed to prove the accident is medically causally related to his medical condition, and hospitalization at St. Anthony's. I find Dr. Gragnani's testimony more credible than Dr. Musich. The diagnoses of the treating doctors do not support Dr. Musich's diagnoses of lumbar strain, mechanical low back pain, and sacroiliac joint dysfunction. I find the diagnoses of the treating doctors more credible than the opinions of Dr. Musich who examined Claimant nine months after the injury.

While Claimant was hospitalized, Dr. Young, a neurosurgeon diagnosed likely hysterical paralysis, and recommended a psychiatric consultation. Dr. Chilakarmari, the psychiatrist, diagnosed depression, and the discharge diagnoses were lower extremity weakness, low back pain, probable depression, and obesity.

The issue of whether Claimant's psychiatric condition is medically causally related to employment is an issue upon which medical testimony is necessary. Claimant has the burden of proving all essential elements of a claim, including causation. *Grime v. Altech Industries*, 83 S.W.3d 581, 583 (Mo.App. 2002)(overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. Banc 2003)).

"Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." [\*Brundige v. Boehringer Ingelheim\*, 812 S.W.2d 200, 202 \[5\] \(Mo.App.1991\)](#). This requires Employee's medical expert to establish the probability Employee's injuries were caused by the work accident. [\*Selby v. Trans World Airlines, Inc.\*, 831 S.W.2d 221, 223 \[4\] \(Mo.App.1992\)](#). [\*McGrath v. Satellite Sprinkler Systems Inc.\*, 877 S.W.2d 704, 708 \(Mo.App. E.D. 1994\)](#)(overruled on other grounds by *Hampton v. Big Boy Steel Erection* 121 S.W.3d 220 (Mo.2003))

Dr. Gragnani testified credibly that there are numerous causes of paralysis, and it would be virtually impossible for someone to be paralyzed from a soft tissue injury. No psychiatric testimony was introduced to suggest that a work accident, such as that described by Claimant, was the substantial factor in causing or aggravating a psychiatric condition such as hysterical paralysis or a conversion disorder. As Dr. Gragnani testified, a conversion disorder or a hysterical paralysis can be caused by a psychological disorder, or it can also be malingering or a desire for secondary gain.

Because Claimant failed to prove an accident occurred, or his alleged accident caused his resulting medical and

psychiatric conditions or need for hospitalization, no PPD, TTD, or medical expenses are awarded.

The Claim against the Second Injury Fund is dismissed.

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

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

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Jeffrey W. Buker  
*Director*  
*Division of Workers' Compensation*