

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

Injury No.: 00-179033

Employee: Carmen Wiseman

Employer: Truman Medical Center

Insurer: Self-Insured  
c/o Corporate Claims Management

Date of Accident: Alleged February 19, 2000

Place and County of Accident: Alleged Jackson 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 July 7, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Mark S. Siedlik, issued and incorporated by this reference.

July 7, 2005, is attached and

Given at Jefferson City, State of Missouri, this 22<sup>nd</sup> day of February 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING  
\_\_\_\_\_  
William F. Ringer, Chairman

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

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Carmen Wiseman Injury No. 00-179033  
Dependants: N/A  
Employer: Truman Medical Center  
Insurer: Self-Insured c/o Corporate Claims Management  
Hearing Date: May 19, 2005 Checked by: MSS/bi

### 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: No accident found.
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? No.
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? No.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges reaching to hold on to a falling patient.
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: N/A Alleged back.
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$931.50
19. Weekly compensation rate: \$578.48/\$303.01
20. Method wages computation: By agreement.

### COMPENSATION PAYABLE

21. Amount of compensation payable: 0
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None.

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

Employee: Carmen Wiseman Injury No. 00-179033

Dependants: N/A

Employer: Truman Medical Center

Insurer: Self-Insured c/o Corporate Claims Management

Additional Party: N/A

On May 19, 2005, the Employee and Employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Ms. Wiseman, appeared in person and with counsel, Scott Mach. The Employer appeared through Michelle Daum Haskins.

The primary issues the parties requested the Division to determine are as follows:

1. whether or not Ms. Wiseman suffered an accident arising out of and in the course of her employment for date of accident alleged in her Claim of February 1, 2000;
2. whether Ms. Wiseman gave appropriate notice of accident;
3. whether a timely Claim for Compensation was filed;
4. whether temporary total disability benefits are owed (and for what time periods);
5. whether Employer must pay outstanding medical expenses; and lastly,
6. whether Ms. Wiseman sustained any disability.

### **STIPULATIONS**

The parties stipulated that:

1. On or about February 1, 2000 Truman Medical Center ("TMC") was an employer working subject to Missouri's Workers' Compensation law with its liability fully self-insured;
2. Ms. Wiseman was its employee working subject to the law in Kansas City, Jackson County, Missouri;
3. Ms. Wiseman's compensation rate would be \$578.48/\$303.01;
4. No medical care or temporary total disability benefits were paid by TMC.

## FINDINGS AND RULINGS

- Ms. Wiseman testified on her own behalf. Exhibits are as below. All were admitted unless otherwise denoted herein

### CLAIMANT'S EXHIBITS

- A. Medical records, including
  - Chiropractor Kelling - objected to on grounds of foundation and hearsay. Objection taken under advisement. Sustained herein.
  - Dr. Rattay
  - Dr. Walker
  - Dr. Maben
  - Dr. Brothers
  - Truman Medical Center
- B. Report of Dr. Truett Swaim
- C. Greeting card - objected to and sustained at hearing.
- D. Nursing Weekend Alternative Program literature dated 1/30/00
- E. Truman Exit or Personnel Change form dated 4/3/01
- F. Division of Workers' Compensation poster
- G. Medical bills - objected to on grounds of hearsay and foundation. Objection taken under advisement. Sustained herein.

### EMPLOYER'S EXHIBITS

- 1. Claim for Compensation and acknowledgment letter from DWC
- 2. Answer to Claim and acknowledgment letter from DWC
- 3. Report of Dr. Hendler
- 4. Orientation of employees document
- 5. Safety worksheet
- 6. 1998 Annual Safety Review Test
- 7. Deposition of Jose Petino
- 8. Deposition of Robert Myers
- 9. Deposition of Larry O'Neal
- 10. Deposition of Carmen Wiseman

Employee objected to the depositions of witnesses O'Neal, Myers and Petino. However, Missouri Rule of Civil Procedure 57.07 no longer contains a requirement that witnesses be established as unavailable. (Such Rule having been changed effective January 1, 2002). Accordingly, the objection is overruled and the depositions are admitted herein.

### Notice and Statute of Limitations

Carmen Wiseman testified at hearing that she was injured first on February 19, 2000 when a chair rolled out from beneath her. She stated that the following day, on February 20, 2000 she thought she was making a bed when a patient began to fall, and in turning to catch the individual she injured her low back.

Ms. Wiseman filed a Claim for Compensation in this case, which contains a description of injury occurring "2-2000" and states: "was trying to catch a falling patient, while in the scope of employment." On October 11, 2002 the Division acknowledged this Claim and a date of accident of February 1, 2000. [Exhibit 1]

A claim for compensation must be filed within two years of the date of injury or last payment made under this chapter. §287.430 R.S.Mo. In this case, the Claim for Compensation was not acknowledged as filed until October 11, 2002. As no payments were made, the two years runs from the date of alleged accident - February, 2000. The Claim is not timely in this instance, as it was filed two years and nine months after the alleged event.

We next must analyze, however, under the remaining language of §287.430, which states a Claim may be filed up to three years after the date of injury if a timely report of injury is not filed. The Employer argues herein that a timely Report of Injury was not filed, in fact could not be filed, because the Employee failed to give notice of an injury.

Section 287.420 R.S.Mo. holds that no proceedings for compensation can be brought unless "written notice of the time, place and nature of the injury...have been given to the employer...." Ms. Wiseman admits she did not speak with her supervisors in person to advise that she was alleging she hurt her back at work on February 1, 19, or 20, 2000. At most, she called in to TMC's phone-in line to report she was not coming in to work. She admitted that this phone-in line was for all employees to use to call and report non-attendance at work for whatever the reason. Ms. Wiseman admitted she never completed any writing regarding an injury or accident occurring at work.

The Employer offered evidence by deposition of witnesses Petino, Myers, and O'Neal. All three gentlemen are long time supervisory employees of Truman. All testified that there is a defined course of action following an on-the-job injury. The employee is to report the accident to the supervisor. The supervisor then has the employee complete a written injury/illness report, which bears the employee's own signature. From there the employee is sent to Truman's emergency department and then on to employee health for further referral. None of these things ever happened in Ms. Wiseman's case, because she never reported the injury to her supervisor.

At trial it was inferred that Ms. Wiseman did not know how to react following an on-the-job injury. I find this to be not credible. Ms. Wiseman admitted attending not only employee orientation, but also participating in safety workshops and testing. These workshops and tests asked specific questions regarding what to do following a work accident (report it to the supervisor, Exhibit 5), but also asked questions about preventing back injuries. [Exhibit 6]

Ms. Wiseman testified her pain on Feb. 20, 2000 was severe. And yet she didn't present to the Emergency Department there at her very own place of employment - a hospital, which would seem the logical thing to do if one was truly in severe pain - but rather she went home and then on to her chiropractor the next day.

I find Ms. Wiseman did not give timely notice to her employer of an alleged on-the-job injury. She had the training and knowledge as to how to do so. The Court is cognizant that Ms. Wiseman was an educated individual, possessing a Bachelor's degree and intent on pursuing a Master's degree and teaching. She also testified with specificity regarding stenosis and its impact on the foramina of her back.

Whether this accident ever really occurred is moot given the foregoing. The Employee had the training and the intelligence to report an accident to the Employer, and she failed to do so. Simply calling in on a general employee phone-in line to report non-attendance at work is insufficient for notice purposes. Ms. Wiseman's deposition showed her responses to be that she did not tell her employer that she was alleging injury at work due to work.

Since there was no notice of injury given, the Employer did not have the ability to file a Report of Injury. As such, the Employee is held to a two-year statute of limitations. Gander v. Shelby County, 933 S.W.2d 892 (Mo.E.D. 1996). It is uncontroverted that the Claim was filed outside two years' time, and thus, this matter is time barred. No benefits are owed Ms. Wiseman.

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

Mark S. Seidlik  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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Patricia "Pat" Secret

*Director*

*Division of Workers' Compensation*