

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

Injury No.: 07-093795

Employee: Willie Woodard  
Employer: Vitro Products, Inc.  
Insurer: Accident Fund Insurance Company of America  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 16, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued September 16, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of March 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Willie Woodard

Injury No.: 07-093795

Dependents: N/A

Employer: Vitro Products, Inc.

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

Additional Party: Second Injury Fund

Insurer: Accident Fund Ins. Co. of America

Hearing Date: July 13, 2009

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? N/A
4. Date of accident or onset of occupational disease: Alleged July 27, 2007
5. State location where accident occurred or occupational disease was contracted: Alleged 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? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? N/A
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 lifting
12. Did accident or occupational disease cause death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: 0
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

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Issued by DIVISION OF WORKERS' COMPENSATION

- 17. Value necessary medical aid not furnished by employer/insurer? 0
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: unknown
- 20. Method wages computation: N/A

**COMPENSATION PAYABLE**

21. Amount of compensation payable: 0

22. Second Injury Fund liability: No

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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

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

Employee: Willie Woodard

Injury No.: 07-093795

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Vitro Products, Inc.

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Accident Fund Insurance Co. of America

Checked by: MDL

### **PRELIMINARIES**

A hearing was held on July 13, 2009 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Willie Woodard ("Claimant") appeared pro se. Vitro Products ("Employer") and its Insurer Accident Fund Insurance Co. of America were represented by Mr. Reid Highlander. The Second Injury Fund was represented by Assistant Attorney General Eileen Krispin.

The parties stipulated on July 27, 2007 Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; and the Claim for Compensation was timely filed. Employer denied this claim, and has paid no benefits. The issues to be resolved by hearing are: whether Claimant sustained an accident arising out of and in the course of employment on or about July 27, 2007; whether Claimant provided the requisite notice of his injury to Employer; medical causation; liability of Employer to provide future medical care; and what is the appropriate rate of compensation. Claimant offered Exhibit A into evidence which consisted of various medical records, notes and reports, a letter, an accident report, and deposition pages. Employer and SIF's objections to Exhibit A were sustained in part. No medical records or deposition pages were admitted into evidence. An Internal Accident Report and Letter from Employer to Claimant were admitted.

### **FINDINGS OF FACT**

Claimant was working as a lead man for Employer on July 27, 2007. Claimant testified, on that date, while lifting a 55 gallon drum, he felt pain and a burning sensation in his back. He testified he reported the incident to Mr. J.R. Scott, Employer's Vice President, who told him it was probably nothing, and Claimant, who was trying not "to make a fuss", returned to his department and continued to work.

Claimant testified he informed Mr. Scott when his back pain worsened, and was told not to report the accident as a workers' compensation case, but to use his health insurance which was provided by Employer. Mr. Scott denied being told anything by Claimant about a work related injury, and denied telling Claimant to use his own insurance. Claimant testified when his pain

continued to worsen, he called his own doctor who gave him a prescription for Vicodin, and Oxycodone. Claimant testified his doctor referred him to a specialist, who diagnosed herniated discs, and from Claimant's testimony it is unclear exactly what treatment his doctor recommended. Claimant is seeking treatment for his injury.

An accident report dated September 24, 2007 contains Claimant's statement which is consistent with his trial testimony. The Foreman's Statement signed by Mr. Scott is consistent with his trial testimony that Claimant deviated from company policy when he failed to report the injury, and saw his own doctor.

### **RULINGS OF LAW**

Claimant failed to meet his burden of proving he is entitled to workers' compensation benefits because there is no medical evidence to prove his alleged work accident caused his medical condition, and there is no expert medical evidence to prove he is in need of future medical treatment as a result of an alleged work accident.

Under Missouri law, it is well-settled that the claimant bears the burden of proving all the essential elements of a workers' compensation claim, including the causal connection between the accident and the injury. *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo.App. W.D.2002); *see also Davies v. Carter Carburetor*, 429 S.W.2d 738, 749 (Mo.1968); *McCoy v. Simpson*, 346 Mo. 72, 139 S.W.2d 950, 952 (1940). Furthermore, the element of causation must be proven by medical testimony, "without which a finding *for claimant* would be based on mere conjecture and speculation and not on substantial evidence." *Grime*, 83 S.W.3d at 583 (citing *Jacobs v. City of Jefferson*, 991 S.W.2d 693, 696 (Mo.App. W.D.1999)) (emphasis added).

The testimony of a claimant or other lay witness can constitute substantial evidence of the nature, cause, and extent of disability when the facts fall within the realm of lay understanding. *Silman v. William Montgomery & Associates*, 891 S.W.2d 173, 175 (Mo.App. E.D. 1995); *McGrath v. Satellite Sprinkler Systems*, 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). *Id.* 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. *McGrath, supra*. Where the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, and particularly where there is a serious question of preexisting disability and its extent, the proof of causation is not within the realm of lay understanding nor -- in the absence of expert opinion -- is the finding of causation within the competency of the administrative tribunal. *Silman, supra at* 175, 176.

Because there was no expert medical evidence admitted to prove Claimant's alleged accident caused the injury and symptoms he complains of, his claim fails, and he is not entitled to recover any benefits from Employer for the alleged injury. The remaining issues are moot.

The Claim for Compensation is denied.

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

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

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

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*