

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

Injury No.: 00-134335

Employee: Julia Wright
Employer: Garden View Care Center
Insurer: Healthcare Facilities of Missouri
Date of Accident: September 19, 2000
Place and County of Accident: Chesterfield, St. Louis County, 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 December 10, 2004. The award and decision of Administrative Law Judge Linda J. Wenman, issued December 10, 2004, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 20th day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Julia Wright

Injury No.: 00-134335

Dependents: N/A
Employer: Garden View Care Center
Additional Party: N/A
Insurer: Healthcare Facilities of Missouri
Hearing Date: September 17, 2004

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

Checked by: LJW:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: September 19, 2000
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
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? Yes
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: Resident sitting in a wheelchair pulled on Employee's shirt, causing Employee to fall against resident's wheelchair.
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: Low back
14. Nature and extent of any permanent disability: 5% BAW referable to the low back.
15. Compensation paid to-date for temporary disability: \$812.16, a period of 4 weeks.
16. Value necessary medical aid paid to date by employer/insurer? \$3,500.00

Employee: Julia Roberts Injury No.: 00-134335

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$304.56
19. Weekly compensation rate: \$203.04 / \$203.04
20. Method wages computation: Statutory calculation

COMPENSATION PAYABLE

21. Amount of compensation payable:

20 weeks of permanent partial disability from Employer

\$4,060.80

TOTAL: \$4,060.80

23. Future requirements awarded: None

Said payments to begin immediately 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Daniel Brown

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Julia Wright	Injury No.: 00-134335
Dependents:	N/A	Before the
Employer:	Garden View Care Center	Division of Workers'
Additional Party:	N/A	Compensation
Insurer:	Healthcare Facilities of Missouri	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: LJW:tr

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PRELIMINARIES

A hearing was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on September 17, 2004. The case was formally submitted on September 17, 2004. Attorney Daniel Brown represented Julia Wright (Claimant). Garden View Care Center (Employer) was insured by Health Care Facilities of Missouri, and represented by Attorney Leslie Phillips.

Prior to the start of the hearing the parties identified nature and extent of permanent partial disability (PPD) as the issue for disposition in this case. Claimant offered Exhibits A & B, and Employer offered Exhibits 1-3. All exhibits were admitted into the record. Any objections not expressly ruled on in this award are overruled.

SUMMARY OF EVIDENCE

Only testimony necessary to support this award will be reviewed and summarized.

Testimony

Claimant: Claimant is 40 years old, and has worked for Employer as a certified nurses aide since 1997. On September 19, 2000, Claimant was bending over performing her usual patient care duties, when the resident she was assisting reached up, grabbed her shirt and caused Claimant to fall against the resident's wheelchair. Claimant felt immediate pain in her low back, and notified her charge nurse.

Employer directed Claimant to Barnes Care for medical treatment. X-rays were obtained and conservative medical treatment was provided that included medication and approximately five weeks of physical therapy. Claimant received temporary total disability while she was off work. Claimant was released from medical care on October 23, 2000. When released, Claimant continued to experience occasional low back pain with spasms, but no radicular pain.

Medical Reports

Dr. Morrow: Dr. Morrow examined Claimant on July 2, 2002, regarding this injury and a subsequent injury. The history surrounding the September 19, 2000 injury provided to Dr. Morrow is consistent with Claimant's testimony. The examination findings and complaints voiced to Dr. Morrow relate to the subsequent injury. Dr. Morrow diagnosed a lumbosacral sprain. Dr. Morrow rates Claimant's overall low back disability at 40% BAW PPD due to two injuries, with 5% PPD preexisting, but fails to apportion the percentage of disability for each separate injury, although he commented that the relation of injury was greater with the subsequent injury. Dr. Morrow does indicate that the 5% preexisting disability was asymptomatic prior to the first injury.

Barnes Care: The history surrounding the September 19, 2000 injury provided to Barnes Care is consistent with Claimant's testimony. The treatment offered Claimant by Barnes Care is also consistent with Claimant's testimony. The Barnes Care physician diagnosed a lumbosacral strain, and provided conservative treatment.

FINDINGS OF FACT & RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to permanent partial disability

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App.1991) (overruled in part). Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled in part). The medical diagnoses are not in conflict, and reflect that Claimant suffered a lumbosacral sprain/strain.

With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App.1983) (overruled in part). Dr. Morrow provided a 35% BAW PPD rating for two injuries, but did not apportion between the injuries. Based on the evidence presented, I find Claimant sustained PPD of 5% BAW referable to her low back for which Employer is liable.

CONCLUSION

In summary, Claimant sustained an injury on September 19, 2000, that arose out of and in the course of her employment with Employer. Claimant is awarded 5% BAW in permanent partial disability referable to Claimant's low back. Claimant's attorney is entitled to a 25% lien.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary Estenson
Acting Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 01-102040

Employee: Julia Wright
Employer: Garden View Care Center
Insurer: Healthcare Facilities of Missouri
Date of Accident: August 17, 2001
Place and County of Accident: Chesterfield, St. Louis County, 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 December 10, 2004. The award and decision of Administrative Law Judge Linda J. Wenman, issued December 10, 2004, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 20th day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest:

John J. Hickey, Member

Secretary

AWARD

Employee: Julia Wright Injury No.: 01-102040
Dependents: N/A Before the
Employer: Garden View Care Center **Division of Workers'**
Compensation
Department of Labor and Industrial
Additional Party: N/A Relations of Missouri
Jefferson City, Missouri
Insurer: Healthcare Facilities of Missouri
Hearing Date: September 17, 2004 Checked by: LJW:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
3. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
6. Date of accident or onset of occupational disease: August 17, 2001
7. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
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? Yes
10. 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: While transferring a resident from bed, the resident grabbed Employee, causing Employee to fall into resident's wheelchair.
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: Low back
15. Nature and extent of any permanent disability: 15% BAW referable to the low back.
15. Compensation paid to-date for temporary disability: \$2146.13, a period of 10 4/7 weeks.
16. Value necessary medical aid paid to date by employer/insurer? \$7,444.25

Employee: Julia Roberts Injury No.: 01-102040

17. Value necessary medical aid not furnished by employer/insurer? None

- 19. Employee's average weekly wages: \$304.56
- 19. Weekly compensation rate: \$203.04 / \$203.04
- 20. Method wages computation: Statutory calculation

COMPENSATION PAYABLE

21. Amount of compensation payable:

6 weeks of temporary total disability (or temporary partial disability)	\$1,218.24
60 weeks of permanent partial disability from Employer	\$12,182.40
TOTAL:	\$13,400.64

23. Future requirements awarded: None

Said payments to begin immediately 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Daniel Brown

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Julia Wright	Injury No.: 01-102040
Dependents: N/A	Before the Division of Workers' Compensation
Employer: Garden View Care Center	Department of Labor and Industrial Relations of Missouri
Additional Party: N/A	Jefferson City, Missouri
Insurer: Healthcare Facilities of Missouri	Checked by: LJW:tr

PRELIMINARIES

A hearing was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on September 17, 2004. The case was formally submitted on September 17, 2004. Attorney Daniel Brown represented Julia Wright (Claimant). Garden View Care Center (Employer) was insured by Health Care Facilities of Missouri, and represented by Attorney Leslie Phillips.

Prior to the start of the hearing the parties identified the following issues for disposition in this case: unpaid temporary total disability (TTD), and nature and extent of permanent partial disability (PPD). Claimant offered Exhibits A & B, and Employer offered Exhibits 1-3. All exhibits were admitted into the record. Any objections not expressly ruled on in this award are overruled.

SUMMARY OF EVIDENCE

Only testimony necessary to support this award will be reviewed and summarized.

Testimony

Claimant: Claimant is 40 years old, and has worked for Employer as a certified nurses aide (CNA) since 1997. Claimant alleges two separate low back injuries. On September 19, 2000, Claimant was bending over performing her usual patient care duties, when the resident she was assisting reached up, grabbed her shirt and caused Claimant to fall against the resident's wheelchair. Claimant felt immediate pain in her low back, and notified her charge nurse.

Employer directed Claimant to Barnes Care for medical treatment. X-rays were obtained and conservative medical treatment was provided that included medication and approximately five weeks of physical therapy. Claimant received temporary total disability while she was off work. Claimant was released from medical care on October 23, 2000. When released, Claimant continued to experience occasional low back pain with spasms, but no radicular pain.

On August 17, 2001, while transferring a resident from his bed, the resident grabbed Claimant causing her to fall into the resident's wheelchair. Claimant again experienced low back pain, and notified her charge nurse. Claimant contacted Employer and requested treatment. Employer initially denied care, but six weeks later arranged for Claimant to be seen at Barnes Care. Barnes Care again provided conservative treatment including physical therapy and restricted duty. When Claimant did not progress in treatment, she was referred to orthopedist, Dr. Samson.

Dr. Samson first examined Claimant on October 31, 2001. Dr. Samson ordered conservative treatment, and on December 27, 2001 an MRI was obtained of Claimant's lumbar spine. The MRI revealed degenerative disc disease with a small protrusion at L5-S1 lateralizing to the right, producing "some" effacement of the L5 nerve root. Claimant was referred for epidural cortisone injections, and she received two injections. Claimant experienced temporary relief, but when symptoms returned she underwent a CT/myelogram, and the findings were similar to her MRI. Claimant was then referred to Dr. Kennedy for a surgical opinion. Dr. Samson returned Claimant to work without restrictions on February 13, 2002.

On September 4, 2002, Dr. Kennedy examined Claimant. After examining Claimant and reviewing her diagnostic studies, Dr. Kennedy did not find Claimant to be a surgical candidate. Dr. Kennedy placed permanent lifting restrictions for Claimant at fifteen pounds with only occasional bending, twisting and stooping. Claimant testified that with these restrictions she can no longer work as a CNA, and has returned to college to obtain a degree. On October 7, 2002, Dr. Samson found Claimant to be at maximum medical improvement (MMI), and rated Claimant's disability at 3% BAW referable to her lumbar spine.

Claimant now experiences low back pain on a constant basis, and continues to take muscle relaxants along with prescribed pain medication. She experiences radicular pain three to four times per week, along with occasional back spasms. Claimant is no longer physically active, and confines her activity to short walks. Claimant has not returned to employment, as Employer cannot accommodate her permanent restrictions. Upon cross-examination, Claimant confirmed she is able participate as a full-time college student.

Medical Reports

Dr. Morrow: Dr. Morrow examined Claimant on July 2, 2002, regarding this injury and a subsequent injury. The history surrounding the August 17, 2001 injury provided to Dr. Morrow is consistent with Claimant's testimony. Dr. Morrow diagnosed a lumbosacral sprain. Dr. Morrow rates Claimant's overall low back disability at 40% BAW PPD due to two injuries, with 5% PPD preexisting, but fails to apportion the percentage of disability for each separate injury, although he commented that the relation of injury was greater with the subsequent injury. Dr. Morrow does indicate that the 5% preexisting disability was asymptomatic prior to the first injury.

FINDINGS OF FACT & RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to permanent partial disability

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App.1991) (overruled in part). Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled in part). The medical diagnoses are not in conflict, and reflect that Claimant suffered a lumbosacral sprain/strain.

With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App.1983) (overruled in part). Dr. Morrow provided a 35% BAW PPD rating for two injuries, but did not apportion between the injuries. Claimant's underlying degenerative back condition was aggravated by the August 17, 2001 injury, and has left her with permanent work restrictions that will preclude her from future work as a CNA. Based on the evidence presented, I find Claimant sustained PPD of 15% BAW referable to her low back for which Employer is liable.

Issues relating to temporary total disability

Claimant seeks two periods of TTD not paid by Employer. The first period covers the initial six weeks from the date of injury until Employer provided treatment at Barnes Care. The second period alleged, runs from the date Claimant was found to be at MMI until the present. Temporary total disability (TTD) benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991)(overruled in part). Claimant timely reported her injury to Employer, and requested treatment. Employer took six weeks to determine that it would accept liability for this injury and afford Claimant treatment. During this time period, Claimant was unable to work. I find Employer is liable for six weeks additional TTD benefits.

Employer is not liable for the second period of TTD sought by Claimant. Claimant was returned to work by Dr. Samson on February 13, 2002, and found to be at MMI on October 7, 2002. Although Claimant may be unable to return to work as a CNA, she is not precluded from other employment within her restrictions. Employer is not obligated to meet Claimant's restrictions and provide work, once Claimant is found to be at MMI, even if restrictions are made permanent. Claimant is not entitled to the second period of alleged TTD.

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CONCLUSION

In summary, Claimant sustained an injury on August 17, 2001, that arose out of and in the course of her employment with Employer. Claimant is awarded 15% BAW in permanent partial disability referable to Claimant's low back, and six additional weeks of TTD. Claimant's attorney is entitled to a 25% lien.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Gary Estenson
Acting Director
Division of Workers' Compensation