

STATE OF WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
WORKER'S COMPENSATION DIVISION  
P.O. BOX 7901  
MADISON, WISCONSIN 53707  
(608) 266-1340

2010-025021

LYNDA K CARR  
905 RIVER PARK DRIVE  
WAUKESHA WI 53189

Applicant,

vs.

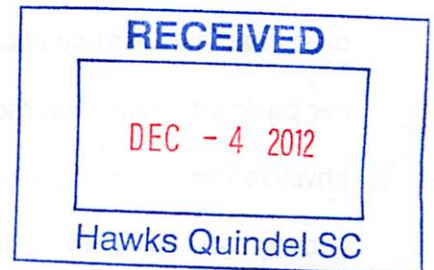
PLEASE SEE ENCLOSURE

SSM HEALTH CARE OF WISCONSIN INC  
ST CLAIRE HOSPITAL & HEALTH SE  
707 14TH ST  
BARABOO WI 53913-1539

Respondent,

SSM HEALTH CARE OF WISCONSIN INC  
C/O CANNON COCHRAN MANAGEMENT SERVICES I  
PO BOX 785  
PEWAUKEE WI 53072-0785

Insurance Carrier.



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Hearings were held in Madison, Wisconsin on February 23 and August 20, 2012.

APPEARANCES: The Applicant, In Person and by Attorney William  
E. Parsons  
The Respondent, by Attorney Paul R. Riegel

Conceded were jurisdictional facts and an average weekly wage of \$463.68. At issue is whether the applicant sustained a compensable injury on September 14, 2010, arising out of and occurring while performing services growing out of and incidental to her employment with the

employer-respondent. If causation is found the further issues presented are the nature and extent of disability resulting from the injury and the respondents' liability for certain medical expenses.

Upon the issues the Administrative Law Judge makes the following:

### FINDINGS OF FACT

The applicant, date of birth March 19, 1972, worked as a licensed practical nurse in the respondent-employer's endoscopy clinic. In that position she was responsible for preparing the patients for procedures, preparing the examination room before a procedure and cleaning the diagnostic equipment and room after a procedure.

On September 14, 2010 the applicant was working as an endoscopy technician with the physician who was performing a colonoscopy on an unusually large patient. During the procedure, the physician directed the applicant to assist the physician in maneuvering the endoscope. This required her to hold up the patients leg for an extended period while in a stretched out and bent over in an awkward position. While in that position the applicant experienced a sudden burning in her back with back pain radiating down her legs. While at work she contacted the office of a physician who had previously treated her back, Dr. Weber, reported the incident, and was told to undergo an MRI examination. She then obtained an appointment with Dr. Weber for September 21, 2010.

Dr. Weber examined the applicant on September 21, 2010. Dr. Weber diagnosed gradually worsening chronic back pain, ordered an epidural steroid injection and discussed potential surgical intervention. Dr. Weber then referred the applicant to an orthopedic surgeon, Dr. Alan Lozier.

Dr. Lozier examined the applicant on September 23, 2010. Dr. Lozier noted the applicant had undergone prior surgical intervention from which she had thereafter realized complete resolution of leg pain. However, symptoms had escalated recently. He noted superimposed degenerative disc changes accounting for continuing symptoms. Surgery was discussed.

The applicant underwent an epidural steroid injection on October 5, 2010 with marginal relief. Dr. Lozier then recommended and the applicant underwent surgery on October 25, 2010 in the form of a left anterior lumbar interbody fusion at L5-S1.

By certified medical report dated September 13, 2011, Dr. Lozier concluded the aforementioned work incident of September 14, 2010 caused the applicant's disability by precipitation, aggravation and acceleration of a pre-existing progressively deteriorating or degenerative condition beyond its normal progression. He reported her to have been in a healing period from that incident until January 20, 2011, when she was released to work without limitations. He assessed permanent disability from the anterior lumbar interbody fusion at 10 percent "to the body as a whole".

At the request of the Respondents, the applicant was examined by Dr. Mark Aschliman on December 19, 2011. By certified report dated December 30, 2011, Dr. Aschilman concluded the applicant's symptoms were only a manifestation of her pre-existing degenerative disc disease. He noted the applicant had a prior history of back problems resulting in surgery in the form of an anterior decompression and fusion with instrumentation at C5-6 and C6-7 on July 17, 2006, and a left side laminectomy and discectomy at L5-S1 on February 8, 2010. He noted the applicant had reported an increase in symptoms to Dr. Weber on July 27, 2010. He concurred with Dr. Lozier's date of an end of healing January 20, 2011. He noted Dr. Lozier had not reported any prior disability. He assessed pre-existing disability at 5 percent to the body as a whole and allowed an additional 5 percent for the fusion performed by Dr. Lozier.

As regards causation and nature and extent of disability the opinion and report of the treating orthopedic surgeon, Dr. Lozier, is most credible and adopted. In support of his opinion, Dr. Aschilman noted an absence of a report of a work injury in Dr. Weber's records. However, it was credibly established that Dr. Weber's office was told of the work incident by the applicant when she sought medical attention immediately after the work incident and that Dr. Weber was personally informed of the work incident when he examined her at the September 21, 2010, appointment. The omission of this information in his record was not because he was not apprised of the work incident.

In his report Dr. Aschilman further asserted that even if the work incident happened as claimed it did not establish a causal link because he did not appreciate any structural change. However, while the applicant did have some back discomfort before the incident it was not

disabling. The quality and severity of her symptoms dramatically and significantly changed when the incident occurred. The argument that this dramatic and disabling increase in symptoms was simply happenstance and coincidence to the work incident is, at the very least, unpersuasive. Dr. Aschilman noted that Dr. Lozier failed to assess any prior disability. However, it was not asserted, nor could it be in any way assumed that Dr. Lozier, after his surgical preparation, to say nothing of during the surgery itself, was ignorant of the applicant's prior medical history. That the applicant had undergone prior surgery does not allow a deduction from permanent disability in this situation. Dr. Lozier's assessment of 10 percent permanent disability is in accordance with the statutory minimums assessed by Chapter DWD 80.32 (11) of the Wisconsin Administrative Code. Dr. Aschilman's assessment does not comport with this provision.

The Administrative Law Judge therefore finds the applicant sustained an injury on September 14, 2010, arising out of and occurring while performing services growing out of and incidental to her employment with the employer-respondent. As a result of that injury she was temporarily totally disabled from September 14, 2010 through January 20, 2011, a period of 18 weeks and 1 day at a weekly rate of \$309.12 totaling \$5,615.68. She sustained permanent partial disability of 10 percent as compared to permanent and total disability entitling her to 100 weeks of compensation at a weekly rate of \$292.00 totaling \$29,200.00. A 20 percent attorney's fee is authorized and, totals \$6,901.31.

As further result of the work injury the applicant incurred reasonable and necessary medical expenses of \$18,677.31 from Dean Medical Center, \$530.00 from St. Mary's/Dean Ventures, \$1,034.79 from Reedsburg Area Medical Center, \$51,326.82 from St. Mary's Hospital, and \$160.00 from Dr. Michael Plooster, all of which was paid by WEA Insurance and it is entitled to reimbursement. She further incurred reasonable and necessary medical expenses of \$3,475.70 from St. Clare Imaging Services, of which \$57.89 was paid by the applicant and \$3,417.81 from WEA insurance and they are entitled to reimbursement; and \$1,528.89 from Madison Radiologists, of which \$42.11 was paid by the applicant and \$870.04 by WEA Insurance and they are entitled to reimbursement.

While the applicant's prognosis is good, there is no guarantee she will not need additional treatment as a result of the work injury. Furthermore, in ordering payment of medical expenses the Administrative Law Judge has recognized contractual discounts to which the respondents may not be technically entitled. Moreover, that the applicant exercised her right to a hearing to obtain the benefits to which she is entitled is no reason to truncate her rights as would occur with the issuance of a final order.

Jurisdiction is therefore reserved on all issues save that, as to the matters decided herein, this decision is final.

NOW, THEREFORE, this:

I N T E R L O C U T O R Y O R D E R

Within twenty-one days from date, the Respondent and Insurance Carrier shall pay to the applicant, Lynda K. Carr, the sum of Twenty-seven thousand six hundred five dollars and twenty-three cents (\$27,605.23), to the applicant's attorney, William E. Parsons, the sum of Six thousand nine hundred one dollars and thirty-one cents (\$6,901.31) as an attorney's fee.

The Respondent and Insurance carrier shall further reimburse the WEA Trust, the sum of Seventy thousand three hundred ninety-three dollars and seventy-six cents (\$70,393.76); and the applicant, the sum of One hundred dollars (\$100.00).

Jurisdiction is reserved for such further findings, orders and awards as may be warranted and as are not inconsistent with this decision.

Dated and mailed at Madison, Wisconsin  
this 3<sup>rd</sup> day of December, 2012.

  
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Roy L. Sass, Administrative Law Judge

CarrLyndaRLSjasRDO

cc:  
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