

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

Injury No.: 09-004637

Employee: Pamela Appt  
Employer: Fireman's Fund Insurance Company  
Insurer: American Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.<sup>1</sup> We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge (ALJ) dated January 3, 2012.

**Preliminaries**

On January 28, 2009, employee slipped and fell on stairs located inside the building containing employer's leased office space. Employee alleges that the fall caused her to sustain injuries to her neck, back, head, and right shoulder. Employee proceeded to final hearing of her claims against employer.

The ALJ found that employee's injuries arose out of and in the course of her employment. The ALJ found that as a result of employee's injuries she sustained 7.5% permanent partial disability of the body as a whole attributable to the cervical spine, and 25% permanent partial disability of the right upper extremity rated at the shoulder. The ALJ also awarded employee past medical expenses (\$12,479.00) and temporary total disability benefits (4 weeks).

Employer appealed to the Commission alleging, among other things, that the ALJ erred in finding that employee's injuries arose out of and in the course of her employment because there is no evidence that employer owned or controlled the area where employee's fall occurred.

**Findings of Fact**

Employer is one of multiple tenants in a larger office building containing shared entryways and stairwells. Employer's office is located on the second floor.

On the morning of January 28, 2009, employee was on her way to work when she entered the building containing employer's office, walked up the stairwell to the second floor, and slipped and fell on the top of the stairs as she was opening a door. Employee testified that she believes she fell inside the opened door at the top of the stairs. Employee further testified that she "landed on [her] left side, but [her] right side kind of twisted and braced the fall..." She immediately experienced pain primarily in her right

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2008 unless otherwise indicated.

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arm and neck. She reported her injury to her supervisor and was sent to Concentra for treatment.

On the date of the injury, snow had fallen outside and employee testified that she believes the area in the building where she fell was wet due to people tracking snow in with their shoes.

### Discussion

As a preliminary matter, we note that because employee's alleged injury occurred on January 28, 2009, this case falls under the purview of the 2005 amendments to the Missouri Workers' Compensation Law.

Section 287.120 RSMo "requires employers to furnish compensation according to the provisions of the Workers' Compensation Law for personal injuries of employees caused by accidents arising out of and in the course of the employee's employment." *Gordon v. City of Ellisville*, 268 S.W.3d 454, 458-59 (Mo. App. 2008). "The burden is on the employee and claimant in a workers' compensation proceeding to prove the basis of his claim, and the first essential is that the claimant must prove that the injuries were the result of an accident which arose out of and in the course of his employment."<sup>2</sup> *McClain v. Welsh Co.*, 748 S.W.2d 720, 724 (Mo. App. 1988).

The construction of the phrase "arising out of and in the course of employment" historically has been broken in half, resulting in a two prong test, with the "arising out of" portion construed to refer to cause or origin, and the "course of employment" portion to the time, place, and circumstances of the accident in relation to the employment. See *Vickers v. Mo. Dep't of Pub. Safety*, 283 S.W.3d 287, 292 (Mo. App. 2009). Employer essentially argues under § 287.020.5 RSMo that employee failed to prove that the accident occurred "in the course of" her employment because she failed to prove that employer owned or controlled the premises where the accident occurred.

Section 287.020.5 RSMo provides, as follows:

Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the

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<sup>2</sup> Section 287.020.2.3(2) RSMo provides as follows:

An injury shall be deemed to arise out of and in the course of the employment only if:

- (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
- (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

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employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

The ALJ relied on *Lammering v. United Benefit Life Insurance Co.*, 464 S.W.2d 511 (Mo. App. 1971) in concluding that employee's injuries arose out of and in the course and scope of her employment. In *Lammering*, the claimant was injured in an elevator shaft. The employer in *Lammering* was a tenant in a building housing many employers. The Court cited a Workers' Compensation treatise for the proposition that:

Where an employer is a tenant in a building housing many employers, so much of the steps, elevators, hallways and other parts of a building as are necessary for the employee to use in coming to or departing from the place where his services to his employer are rendered, are considered part of the employer's premises, and injuries sustained, while thereon for the purpose of entering upon the duties of the employment, or departing from such duties, are generally held to be compensable as coming within the purview of the compensation acts.

*Id.* at 513.

As cited above, § 287.020.5 RSMo abrogates the extension of the premises doctrine to the extent that it extends liability for accidents that occur on property not owned or controlled by the employer. The effect of § 287.020.10 RSMo<sup>3</sup> in conjunction with § 287.020.5 RSMo was recently discussed in *Hager v. Sybergs*, 304 S.W.3d 771 (Mo. App. 2010). In *Hager*, the claimant was injured in a parking lot not owned or controlled by the employer. The Court concluded that when analyzing the extension of the premises doctrine, any case prior to 2005 must be rejected.

Initially, this Court must address Claimant's attempt to distinguish the facts of his case from those in earlier cases interpreting the extended premises doctrine. Claimant states in his brief that 'The Missouri Legislature likely intended to negate the holdings of [*Wells v. Brown*, 33 S.W.3d 190 (Mo. banc 2000)],...[*Cox v. Tyson Foods*, 920 S.W.2d 534 (Mo. Banc 1996)],...and [*Roberts v. Parker-Banks Chevrolet*, 58 S.W.3d 66 (Mo. App. 2001)]...that pertain to liability for injuries on property not owned or controlled by the employer.' Claimant erroneously attempts to either limit or disregard the Legislature's express intent 'to reject and abrogate earlier case law interpretations on the meaning of or definition of...'arising out of',

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<sup>3</sup> Section 287.020.10 RSMo provides as follows:

In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

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and 'in the course of the employment.'" Section 287.020.10. As discussed above, the abrogation of case law by Section 287.020.10 "is not limited to simply those cases named therein but any case interpreting a number of key terms." [*Ahern v. P & H, LLC*, 254 S.W.3d 129 (Mo. App. 2008)]. Moreover, Section 287.020.10 does not limit its rejection or abrogation of earlier cases to holdings "that pertain to liability for injuries on property not owned or controlled by the employer" as [c]laimant alleges. Rather, Section 287.020.10 explicitly rejects and abrogates earlier case law interpretations of 'arising out of' and 'in the course of employment' and does not limit the scope of its rejection or abrogation.

*Hager*, 304 S.W.3d at 775.

The ALJ noted that many cases were abrogated by the 2005 amendments to Missouri Workers' Compensation Law, but specifically found that "[t]he legislature did not abrogate the interpretations in *Lammering* and did not purport to exclude the hallways, elevators and stairs addressed in *Lammering*." Based upon the holding in *Hager*, we disagree. While *Lammering* was not specifically abrogated in § 287.020.10 RSMo, that subsection does specifically state that the earlier cases interpreting the meaning or the definition of "accident," "arising out of," and "in the course of the employment" are abrogated. For the foregoing reasons, we find that *Lammering*, decided in 1971, is not applicable to this post-2005 amendments case.

The *Hager* decision provides the proper analysis for this case. The *Hager* court found that the employee's injury did not occur on premises controlled by the employer because the employer "did not exercise power or influence over the parking lot." *Hager*, 304 S.W.3d at 776. (emphasis added). The *Hager* court examined the employer's lease and the testimony of employer's witness, and found the following factors determinative: under the lease, the landlord (1) was responsible for "managing and maintaining" the parking areas; (2) had "sole discretion to change, rearrange, alter, or modify the parking areas"; and (3) had the power to "make reasonable rules and regulations pertaining to the use of such parking areas by [Employer], its guests, invitees, and suppliers." *Id.* 776-77. The *Hager* court also cited testimony that the employer did not have control over parking decisions, but that the landlord permitted employer, its employees, and its guests to choose parking spaces. *Id.*

Here, because the evidence is clear that employer did not own the building where the accident occurred, the issue is whether employer exercised sufficient "power" and "influence" over the area at the top of the stairs so as to constitute "control" for purposes of § 287.020.5 RSMo. Unfortunately for employee, the record is devoid of *any* evidence or testimony regarding whether employer controlled the area in which employee fell. While employee testified that she fell at the top of the stairs as she was opening the door on the second floor and that she believes she fell inside the opened door, there is no evidence regarding whether employer controlled the area where employee fell.

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Section 287.808 provides, as follows:

The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

As previously stated, it is employee's burden to prove that her injuries arose out of and in the course of her employment. Because employee has failed to prove (more likely true than not true) that employer controlled the area where the accident occurred, employee has failed to meet her burden of proving that the injury occurred "in the course of the employment." Because employee has failed to meet this burden, we find that her claims against employer are denied. We find that all other issues are moot.

**Decision**

We hereby reverse the award and decision of the administrative law judge and find that employee's claim for benefits is denied.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued January 3, 2012, is attached hereto for reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of October 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T  
Chairman

\_\_\_\_\_  
James Avery, Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Pamela Appt Injury No.: 09-004637  
Dependents: N/A  
Employer: Fireman's Fund Insurance Co.  
Additional Party: Second Injury Fund (open)  
Insurer: American Insurance Company  
Hearing Date: September 26, 2011

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

Checked by: JED:sw

### 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: January 28, 2009
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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:  
Employee slipped and fell in doorway on a wet floor/steps and sustained injury.
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: right arm and neck
14. Nature and extent of any permanent disability: 25% PPD of right shoulder, 7.5% PPD of body (cervical).
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$381.29

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- 17. Value necessary medical aid not furnished by employer/insurer? \$12,749.00 (stipulated)
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$379.62
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses:	\$12,749.00
4 weeks of temporary total disability benefits	1,518.48
88 weeks of permanent partial disability benefits from Employer	33,406.56

22. Second Injury Fund liability: No

TOTAL: \$47,404.04

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:

James Sievers

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

Employee:	Pamela Appt	Injury No.:	09-004637
Dependents:	N/A		Before the
Employer:	Fireman’s Fund Insurance Co.		<b>Division of Workers’ Compensation</b>
Additional Party:	Second Injury Fund (open)		Department of Labor and Industrial Relations of Missouri
Insurer:	American Insurance Company		Jefferson City, Missouri
Hearing Date:	September 26, 2011	Checked by:	JED:sw

This case involves two separate Claims for Compensation resulting to Claimant with the reported accident dates of January 28, 2009 (#09-004637) and June 5, 2009 (#09-104752). These cases may be referred to hereafter as the “first” and “second” cases, respectively. Employer admits Claimant was employed on said dates and that any liability is fully self-insured. The Second Injury Fund is a party to these claims but remains open in each case for a determination of liability, if any, at a future date.

Issues for Trial

Both Cases

1. whether an accident occurred;
2. whether injury arose out of and in the course of employment;
3. medical causation;
4. nature and extent of permanent partial disability;

First Case Only

5. liability for medical expenses (stipulated amount);
6. nature and extent of temporary total disability (stipulated amount).

**FINDINGS OF FACT**

1. Claimant, age 58, ambulated slowly but fluidly into the courtroom. Claimant worked for Employer as support staff for Employer’s claims adjusters on the reported accident date. Claimant worked 38 hours per week. Employer is one of many tenants in a larger office building with shared entryways. Claimant’s offices were on the second floor.

2. Claimant entered the office building on the morning of the reported accident date when snow had fallen, or was falling. Upon entering the doorway, Claimant slipped on the wet surface as she entered her building headed for the steps and her second floor offices. She was wearing boots and she noticed ice and water on her boots; the carpet she fell on was wet. Claimant fell to the floor AND immediately felt neck and head pain. She later developed upper right arm pain.
3. Claimant first treated the next day at Concentra on January 29, 2009. Notes from Dr. Shelby Kopp, at Concentra, reflect pain complaint at 6/10 "on the posterior and neck." The patient history included, "I hurt my neck and the back of my head walking-opening a door and then slipped on the carpet." An essentially negative physical exam was noted but a diagnosis of cervical strain was assigned. Claimant was given Ibuprofen but not placed off work (Exhibit 4).
4. Claimant continued to work her office/clerical job using Advil to alleviate her symptoms. Her work station was re-evaluated ergonomically and adjusted.
5. After persistent right shoulder symptoms and difficulty working some tasks, Claimant sought treatment with by Dr. Mark Halstead (Washington University School of Medicine, Department of Orthopedics) who diagnosed her with right shoulder impingement syndrome on May 28, 2009. Dr. Halstead recommended injection therapy or further imaging diagnostics. (Exhibit E.)
6. Employer's physician, Dr. Kopp, subsequently made right shoulder diagnoses on June 2, 2009. Dr. Kopp diagnosed right shoulder impingement and right rotator cuff strain. The notes reference the January 28, 2009 accident date (or "case date") (Exhibit 4).

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7. On June 5, 2009 Claimant reported her second accident and injury which involved the same entryway wherein she tripped on the carpet at the top of the stairs while opening the door from the stairwell into the office area.
8. Claimant was treated by Employer's physician, Dr. Kopp, at Concentra, on June 5, 2009. Again, the notes reference the January 28, 2009 accident date (Exhibit 4). In this second case, Claimant presented accident history that she tripped and fell on carpeting at the tops of the steps as she headed for her second floor offices. The note of the examining physician, Dr. Kopp, nevertheless, states: "ASSESSMENT: 1. Shoulder pain. 7/10. right, not work related with present information." (Underline Added.) The physician's "PLAN" was to "double check" her work station pursuant to an earlier ergonomic review of Claimant's work station.

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9. Claimant offered the narrative report of Dr. David Volarich. Dr. Volarich examined Claimant and reviewed the medical record. Cervical Spine MRI data revealed moderately severe degenerative changes at C4-5, C5-6, C6-7, without disc herniation. Cervical range of motion was significantly curtailed in all planes. Left cervical rotation and palpation elicit pain. Right shoulder findings include surgical scars, twenty percent curtailed loss of motion per Apley Scratch test with 2/4 crepitus noted, impingement testing was mildly positive, 1/4 atrophy of

deltoid and rotator cuff is noted. He assigned a thirty-five percent PPD to the right shoulder and fifteen percent PPD of the cervical spine as a result of the first case (January 28, 2009).

10. Regarding the second case, Dr. Volarich assigned an additional fifteen percent PPD of the cervical spine and thirty percent PPD of the left shoulder.<sup>1</sup> Dr. Volarich noted *left* shoulder physical findings of curtailed range of motion, crepitus, weakness and some atrophy. The left shoulder was unoperated.

11. Prior to the reported accident date, Claimant sustained no injuries or conditions of the right shoulder requiring medical treatment of any kind. She had no prior complaints of discomfort or difficulty with the right shoulder.

12. The total charges for treatment rendered Claimant is \$12,479.00 (Stipulation). As she described, this treatment was undertaken at the direction of her personal physician and surgeon.

## RULINGS OF LAW

### Course and Scope

In the first case, Claimant presented un rebutted credible evidence that she slipped on a wet (or icy) floor surface as she entered her building headed for the steps and her second floor offices. The weather was snowy and she noted her boots were wet. Her primary complaint was to the neck. She reported these facts in her patient history at Concentra on January 29, 2009 and she was treated (Exhibit 4).

In the second case, Claimant presented un rebutted credible evidence that she tripped and fell on carpeting at the tops of the steps as she headed for her second floor offices. The note of the examining physician, Dr. Kopp, however, purports to determine work-relatedness: "ASSESSMENT: 1. Shoulder pain. 719.41. right, not work related with present information." Further, after giving a slip and fall patient history, the physician writes a "PLAN" to "double check" her work station pursuant to an earlier ergonomic review of Claimant's work station. These notes suggest employer advocacy rather than those of a neutral---first tier---medical provider and, are, therefore, not credible. Separately, the notes all reference the January 28, 2009 event (or *first* case herein).

One of the disputes regarding compensability centers on whether the *locus* of the slip and fall, and trip and fall, may be found under the law to be considered part of the Employer's premises and, therefore, within the realm of compensability under Chapter 287. The extended premises doctrine has its most simple, and seminal, examples in the sidewalk, lobby and elevator extensions. The case of Lammering v. United Benefit Life Insurance Co., 464 S.W.2d 511 (Mo.App. 1971), is instructive. In that case the employee was injured in an elevator shaft. The case also implicitly identifies the employer as a "tenant in a building housing many employers."

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<sup>1</sup> Some left shoulder complaints and testing appear in the later 2009 medical record. Left shoulder information contemporaneous to the first and second case accident dates is difficult to find in the record.

Further, it was held that “so much of the steps, elevator, hallways, and other parts of the building are necessary for the employee to use in coming to or departing from the place where ... services to [the] employer are rendered, are considered part of the employer’s premises.” The court apparently discounted the importance of any lease agreement (presumably regarding control or maintenance) and embraced analysis centering on common use and practicality, “something equivalent to an easement.” Lammering, 464 S.W.2d at 513. See Lawson v. City of Hazelwood, 356 S.W.2d 539 Mo.App. 1962) (*sidewalk case*). More recent decisions are less clear. Indeed, many are abrogated at 287.020 et seq. RSMo (2005). The legislature did not abrogate the interpretations in Lammering and did not purport to exclude the hallways, elevators and stairs addressed in Lammering.

In the case at hand, Claimant credibly testified that she fell on a snow-melt slick lobby floor feet inside a multi-story office building. The weather-based premises defect is readily understood and Employer did not dispute the existence of the premises defect. Nor does Employer dispute it was one of several employer-tenants in the building all of whose employees use common entryways. It is of no consequence that Claimant was not performing the tasks, functions, or assignments of her job with Employer at the precise time she fell. Such cases are not reasonably disputed.

Specifically, in the post-Reform Bill case of Miller v. Missouri Hwy. & Trans. Comm., 287 S.W.3d 671, the Supreme Court expressly stated the claimant therein did not injure himself “due to some condition of his employment.” The court looked at the road *surface* describing it as “even.” *Id.* At 674. In a footnote analyzing one of the abrogated cases, Drewes v. TWA, 984 S.W.2d 512 (Mo. banc 1999), the the court again looked at the floor surface and noted the fall as occurred while the claimant walked across a “clear floor area, without apparent cause.” *Id.* at 674 (fn. 2). Here, the icy-wet entryway is uncontradicted and compensable under Lammering and Miller.

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The second case is dismissed as a duplicate Claim. “[A] subsequent incident or injury may be of such a character that its consequences are the natural result of the original injury and may thus warrant [the award of additional] compensation...,on the other hand, the facts and circumstances of the second injury may constitute an independent, intervening cause...” This is a fact question determined by the evidence. Hall v. Spot Martin, 304 S.W.2d 844, 852 (Mo. 1957). Here, Claimant fails to establish resolution of the original right shoulder pathology (first case) and fails to identify a new pathology underlying a new injury. Rather, the second claim contemplates the same disabling condition, albeit aggravations. The complaints and disabilities alleged in the second case are addressed and compensated in the earlier claim, or first case.

### Medical Causation

Claimant presented substantial medical evidence that her injury, treatment and permanent symptoms are work-related. Claimant offered the treatment records of Concentra and Washington University, School of Medicine, Department of Orthopedics evidencing the work related accident history, immediate treatment of symptoms, persistent symptoms at work without

intervening event (including ergonomic adjustment of workstation), injection therapy and finally, eighteen months later, surgery which had an post-operative report reflecting a rotator cuff tendonitis (no tear), repaired arthroscopically by subacromial decompression and acromioplasty; history notes and surgical notes indicate the surgery was injury-based, not degenerative disease-based.

Claimant presented expert opinion evidence on the issue of causation by Dr. Volarich. Dr. Volarich contemplated initial patient history of the fall to the floor and initial complaints of neck pain. Subsequent, right shoulder pain manifested which Claimant attempted to self-treat but eventually sought treatment in May 2009. Injection therapy and MRIs and evolving right shoulder diagnoses occurred over the next year and ultimately surgery was required. Noting no prior shoulder pathology or problems, Dr. Volarich found the injury, surgery and residual symptoms all related to the first case. He assigned additional PPD to the second case.

### Nature and Extent of PPD

Claimant's testimony was largely corroborated by the medical documentation from Dr. Goldgaber and HealthSouth, that, on or about March 19, 2002, Claimant sustained injuries by accident arising out of and in the course and scope of her employment, namely a slip-and-fall on the wet floor of the in the lobby of One Bell Center.

Claimant sustained injuries to her neck and right shoulder. Based upon her history and the diagnoses of Dr. KoppGoldgaber and the HealthSouth physical therapist, these injuries can be classified as contusions with resultant ongoing pain and discomfort.

While Claimant sustained a minor *low back* injury in a prior 2006 accident, a review of Claimant's testimony and the medical records reveals no evidence of a pre-existing permanent partial disability of the neck or right shoulder. Claimant continues to complain of daily right shoulder pain. While distal arm strength, and presumably activity, is normal, shoulder strength and activity are diminished and painful. The evidence suggests Claimant sustained a seven and one-half percent PPD of the cervical spine and twenty-five percent PPD of the right shoulder.

### Medical Expenses

Claimant testified that the treatment was undertaken on the basis of the reported injury. This testimony and a review of the medical records supports a finding that the medical treatment rendered Claimant's doctors was reasonable and necessary to cure and relieve the effects of her work-related right shoulder and neck injuries.

The reasonable value of the medical aid obtained by Claimant for her injuries is \$12,479.00, as per Exhibit I. She testified that her visits to Washington university and Dr. Nasrallah were the product of the work accident of January 28, 2009 and June 5, 2009. This evidence was probative and un rebutted. Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105, 111-12 (Mo. banc 1989).

Conclusion

Accordingly, in the first case (January 28, 2009), on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have sustained a work related injury. Claimant sustained a seven and one-half percent PPD of the cervical spine and twenty-five percent PPD of the right shoulder as a result of the work accident of January 28, 2009. Claimant is entitled to reimbursement of medical expenses in the stipulated amount.

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

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

JOSEPH E. DENIGAN  
*Administrative Law Judge*

