

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

Injury No. 08-115098

Employee: Ricky Aufdenberg
Employer: Drury Inns, Inc.
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 16, 2014. The award and decision of Administrative Law Judge Maureen Tilley, issued July 16, 2014, 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 19th day of December 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Ricky Aufdenberg

Injury No. 08-115098

Dependents: N/A

Employer: Drury Inns Inc.

Additional Party: Second Injury Fund (left open)

Insurer: TPA Gallagher Bassett Services

Hearing Date: April 16, 2014

Checked by: MT/rmm

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Section 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? December 16, 2008.
5. State location where accident occurred or occupational disease contracted: Atlanta, GA.
6. Was the above Employee an employee 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 employment? Yes.
9. Was Claim for Compensation filed within time required by law? Yes.
10. Was the employer insured by above insurer? Yes.
11. Describe work Employee was doing and how accident happened or occupational disease contracted: Employee was in the process of unloading a tractor trailer truck in Atlanta, Georgia, when he reached overhead to grab a box. A board on a pallet on which he was standing broke causing the Employee to fall backwards and strike his left shoulder on the side of the tractor trailer truck injuring his left shoulder.

12. The accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Left shoulder.
14. Nature and extent of any permanent disability? See findings.
15. Compensation paid to date for temporary total disability: \$4,292.81, representing 3 weeks of TTD at a rate of \$700.77, for the period of December 23, 2008 through January 12, 2009. There was also \$2,102.31 paid for 5 weeks of TPD at the rate of \$438.10, for a total of \$2,190.50 for the time period of January 13, 2009 through February 16, 2009.
16. Value of necessary medical aid paid to date by Employer-Insurer: \$12,285.18.
17. Value of necessary medical aid not furnished by Employer/Insurer? \$32,356.62.
18. Employee's average weekly wage: \$1,077.05.
19. Weekly compensation rate: \$717.32 for TTD and \$404.66 for PPD.
20. Method of wage computation: By Stipulation.
21. Amount of compensation payable: See findings.
22. Second Injury Fund liability? N/A.
23. Future requirements awarded? None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the employee 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 employee: Chris Weiss.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW

A hearing was held in this case on the Employee's claim against Employer/Insurer on April 16, 2014. Employee, Ricky Aufdenberg ("Employee"), appeared in person and by his attorney, Chris N. Weiss. Employer, Drury Inns Inc., and Insurer, TPA/Gallagher Bassett Services, appeared by their attorney, Mark M. Anson. The Second Injury Fund is a party to this case but was not represented at the hearing and the claim against the Second Injury Fund is left open.

UNDISPUTED FACTS:

1. The Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and liability was fully insured by TPA/Gallagher Bassett Services.
2. On or about the date of the alleged accident, the Employee was an employee of Drury Inns Inc., and was working under the Workers' Compensation Act.
3. On or about December 16, 2008, the Employee sustained an accident arising out of and in the course of his employment.
4. The Employer had notice of the Employee's claim.
5. The Employee's claim was filed within the time allowed by law.
6. The Employee's average weekly wage is \$1,077.05. His compensation rate for temporary total disability is \$717.32 and the compensation rate for permanent partial disability is \$404.66 and the compensation rate for temporary partial disability is \$438.10.
7. The Employer/Insurer provided medical aid at a cost of \$12,285.18.
8. The Employer/Insurer paid temporary total disability benefits from December 23, 2008 through January 12, 2009 in the amount of \$2,102.31 and temporary partial disability benefits from January 13, 2009 through February 16, 2009 in the amount of \$2,190.50.

ISSUES:

1. Medical causation: Whether Employee's injury was medically causally related to accident or occupational disease.
2. Previously incurred Medical Aid: Whether the Employee incurred medical aid that was causally related to the accident of December 16, 2008, whether or not such medical aid was authorized, whether or not such medical aid was reasonable and whether or not such medical aid was necessary.
3. Mileage: There is an issue as to whether Employee is entitled to mileage under Section 287.140 RSMo in the amount of \$812.00 for 1,624 miles for his seven trips to see Dr. Mark Miller.
4. Temporary total disability: Whether Employee is entitled to additional temporary total disability benefits of \$19,367.64 representing January 10, 2012 through July 17, 2012. (27 weeks x 717.32 = 19,367.64)
5. Permanent partial disability.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Medical records of Dr. Ira Scott Taylor - 12/19/08 - 02/13/09 and DOT Physical of 02/27/09 by Richard Kinsey, FNP.
- B. St. Francis Medical Center Records - Physical Therapy records 01/06/09 - 02/23/09.
- C. Cape Imaging MRI w/o contrast 01/02/09.
- D. Professional Imaging MRI with contrast 12/30/10.
- E. Deposition of Dr. Shawn Berkin.
- F. The Orthopedic Center of St. Louis bill (Dr. Mark Miller - \$25,463.37).
- G. Timberlake Surgery Center Records and bill (01/10/12 - \$24,213.73).
- H. Premier Anesthesia bill (\$1,620.00).
- I. Southeast Missouri Hospital Healthpoint Rehab (Physical Therapy Evaluation - 01/12/12).
- J. Southeast Missouri Hospital Healthpoint Rehab (Physical Therapy records 01/12/12 - 06/26/12).
- K. Southeast Missouri Hospital bill for physical therapy of (01/12/12 - 06/26/12)
- L. Deposition of Dr. Mark Miller.

Employer's Exhibits:

- 1. Report of injury to employer.
- 4. RTW report from Regional Primary Care.
- 5. Certified records of Dr. Miller.
- 6. Deposition of Dr. Lehman.
- 7. Deposition of Dr. Nogalski.
- 8. Records of Anthem – Blue Cross.
- 9. Deposition of custodian of records of Anthem – Blue Cross.
- 10. Certified copy of e-magazine article 1.
- 11. Certified copy of e-magazine article 2.
- 12. Certified copy of e-magazine article 3.
- 13. Surveillance video on DVD.
- 14. Written surveillance report of investigator.
- 15. D.O.T. Exam.
- 16. H.R. – Employment Forms.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

The Employee is 55 years of age, married for 34 years and has 3 sons. He graduated from high school in 1976 and had no further education or training after that. Following graduation from

high school he worked on the family farm with his father. The family farm at that time consisted of approximately 3000 acres and included grain and cattle farming. The family farm is listed as a Century Farm which is recognized by the University of Missouri Extension as a farm that has been in the family for more than 100 years.

The Employee's father was killed in 1999 in a farm accident. Following that the Employee lost focus in regard to his farming and was referred to Drury Inns Inc. by a brother-in-law to possibly drive a truck. He had not ever driven a tractor trailer truck before but took the tests and passed them and started to work for the Employer in March of 2003. He was employed as a truck driver who made deliveries to different properties including hotels owned by his employer in the mid-west. Depending on where the delivery was he would make two to three trips per week. He was paid based upon an hourly rate, plus mileage and by the drop. A drop at a hotel paid more than a drop at a construction site for the reason that the workers at the construction site unloaded the tractor trailer truck for the Employee. His gross pay at the time of the date of accident was approximately \$1,100.00 per week.

The Employee hauled supplies for the different hotels owned by the Employer. This could include heavy items such as 70 pound soap pails or light items such as boxes of light bulbs. The loads could include furniture, mattresses, carpet or anything else needed by a motel. All of the boxes or items were marked with a number and sticker and as the Employee unloaded the truck those items were checked off. Employee drove approximately 80,000 to 100,000 miles per year. He took short trips such as to St. Louis or across the country.

The Employee received annual raises after his annual reviews. The Employee testified that the last page of Employer's Exhibit #16 was a copy of his 2008 Annual Review indicating that he performed at a level 3 on a scale of 1 to 4 which indicates that the Employee achieved excellent results in many areas of his position and had a few areas that he was considered as meeting expectations but overall performs at an above-average level. The Employee was not aware if any truck driver had ever achieved a 4 rating. The Employee testified that during his employment he never received any speeding tickets, traffic citations, log book violations and all of his physicals for his D.O.T. examinations were okay.

The Employee remained involved in farming after going to work with Drury. He testified that the farm that he lives on consists of approximately 340 acres and that he had within the last year or two picked up an additional 400 to 500 acres so that he was farming roughly 900 to 1000 acres. His sons assist on the farm. Employee testified that his farming over the years had incorporated the latest technology when it was available to lessen the load and physical demands of farming. When the Employee first started farming the heaviest items that they would pick up and/or carry would be a hay bale. They no longer carry hay bales, but farm the hay field and produce big round bales which are mechanically hauled by a tractor. The Employee's current heaviest load is picking up sacks of seed corn, but he testified that he has gotten away from that by purchasing a bulk seed container to load his planter. A lot of his farming is done mechanically or by pushing buttons.

The Employee testified he was never considered an athlete and is right-handed.

Employee testified in regard to Employer's Exhibits #10, 11 and 12. Employer's Exhibit 10 is a copy of an article from Commercial Agriculture in the summer of 2010 produced by the University of Missouri Extension. This concerned a farm tour that included a stop at the Employee's farm. Employer's Exhibit 11 is an article produced by Drovers and mentioned Employee's farm. Employee testified that his farm has been featured in agricultural magazines because they are a leader in agriculture.

Employer's Exhibit 12 is a report produced by the Environmental Working Group which lists the number of farm subsidies the Employee has received. The Employee has received a total of \$189,843.00 between the years 1995 and 2012. This includes cost share projects such as ponds and erosion control wherein the government pays a cost share and the Employee paid the other part of the cost share. This could range from a 50/50 percent equal split or 25/75 percent split. Some of the projects are produced and managed by the NRCS which is the National Resource Conservation Services. That agency is set up to assist farmers in protecting resources such as soil and providing other environmental protection projects.

The last half of Employer's Exhibit 12 concerned M&S Aufdenberg Farms, LLC. That is farming operation operated by Employee's brothers and he is not involved in those subsidies or farming operation.

The Employee testified that his prior medical history included having a right knee operation in 1989 or 1999, having cortisone shot into his right shoulder in 2009 by Dr. Mark Miller, and having an appendectomy in 1979.

The Employee did not have any prior pain, limitations, medical treatment to his left shoulder prior to December 16, 2008.

On December 16, 2008, the Employee was on a trip to Atlanta, Georgia to make a delivery to the airport hotel property. That was his third unload of four unloads for the day. Sometimes Employee has assistance with unloading, but on this date he was unloading the trailer himself. Employee had part of the trailer unloaded and had a pallet half unloaded. The Employee had to reach overhead to grab a box on top of the stack on the pallet and as he reached up and grabbed a box from the top, a board in the pallet broke causing his ankle to turn, the Employee fell backwards still holding on to the box which he later learned to be a box of copy paper, and fell to the floor striking his tailbone area on the floor and his left shoulder on the side of the trailer. Employee testified that his shoulder struck a board which is attached to the side of the tractor trailer truck to protect the sides from forklift damage. He immediately felt pain in his tailbone area and left shoulder. However, he proceeded with unloading the trailer.

When he got to the next stop in Atlanta, his shoulder was bothering him quite a bit on the back side of the shoulder. It was very sore and he got assistance to help unload at the next stop. He could hardly lift his left arm because of the pain and some of the other employees at the stop gave him some Advil. They offered to take him to the hospital, but he declined for it was approximately a week before Christmas and if he was given any type of medication that made

him unable to drive he did not want to be stuck in Atlanta during Christmas. He spent the night on the road and drove back to Cape Girardeau and immediately reported the accident to his supervisor, Rick Hessenkemper. It was decided then with Mr. Hessenkemper that they would wait a couple days to see if the shoulder was okay or if it continued to hurt.

On December 19th he reported back to Mr. Hessenkemper that the shoulder continued to hurt and he needed to have medical treatment. An accident report was completed and this was identified as Employer's Exhibit #1. Employee completed the second page of Exhibit #1 and Mr. Hessenkemper completed the first page. He was referred to Dr. Taylor at Saint Francis Medical Center and was seen by Dr. Taylor initially on December 19, 2008. Employee stated that Dr. Taylor's notes, wherein it states that his shoulder had struck the pallet was incorrect. Dr. Taylor prescribed 800 mg of ibuprofen and set him up for another appointment. Employee saw Dr. Taylor on December 29, 2008, January 5, 19, February 2 and February 13, 2009. During that time Dr. Taylor referred the Employee to physical therapy to be done at Saint Francis Medical Center which included 15 visits. Dr. Taylor also placed the Employee on limited duty of lifting no more than 25 pounds and no pulling.

In Dr. Taylor's notes of December 29, 2008, Dr. Taylor mentioned to Employee that he may need surgery after having an MRI performed. Around that time the Employee contacted Amy Franklin who was the case manager on the claim. She worked for Gallagher Bassett. Employee asked Amy Franklin if Dr. Mark Miller could be used as the surgeon if surgery was needed.

While placed on light duty the Employee continued working for the Employer and worked in the warehouse doing paperwork and helping to load trucks. However, none of that work included any overhead lifting. It was during that time that the Employee's pay was reduced and he received temporary partial disability benefits.

On February 13, 2009, Employee returned to see Dr. Taylor and told Dr. Taylor he wanted to return to full duty to see if the shoulder would finish healing. He was still on the prescription drug, Mobic, and was doing the home exercise program of 15 to 30 minutes of lifting weights and using exercise bands two times a day. According to the physical therapy records at that time he was 90% to 95% better but still had some range of motion problems. Employee had very little pain if working below shoulder level and according to the notes of Dr. Taylor on February 13, 2009, his shoulder hurt when lifting overhead. Based upon the request of Employee, Dr. Taylor released Employee to full duty.

On February 27, 2009, the Employee was seen by Richard Kinsey, a family nurse practitioner at the office of Dr. Taylor, for a D.O.T. physical examination. Mention was made of the recent shoulder injury and it quotes that the shoulder injury was now resolved and he had been released to full duty. The Employee was approved for two years for the D.O.T. physical.

The Employee's shoulder immediately started to bother him more as he returned to full duty and did overhead work. During that time he would take ibuprofen. It became so bad that when he saw Dr. Mark Miller on November 30, 2009, for treatment to the right shoulder, he took along the MRI of the left shoulder and asked Dr. Miller about it. Dr. Miller gave a cortisone shot to the

right shoulder and Employee had no further problems with the right shoulder. Employee understood that the right shoulder may have been injured in the accident of December 16, 2008, but that it was too late to include that in his workers' compensation claim. Dr. Miller offered to provide further treatment on the left shoulder as it appeared to him there was a tear in the labrum after reading the MRI.

For the period of March 2009 through December 2009, the Employee continued working full duty but the more the Employee worked overhead the more he had pain. In December 2009, he requested of his supervisor, Mr. Hessenkemper, that he be referred back to a doctor for more treatment. He was told that he had been released and nothing could be done. He was referred to Amy Franklin of Gallagher-Bassett. Employee asked Amy Franklin for more treatment and was told by her that he had been released and nothing could be done. After that, the Employee started calling Amy Franklin on a weekly or biweekly basis until she finally agreed to send Employee to one of their "doctors" but would no longer refer the Employee to Dr. Mark Miller.

On May 10, 2010, the Employee called Amy Franklin and told her that if he did not get a doctor's appointment he was going to get a lawyer. A couple hours later Amy Franklin called back and had an appointment for the Employee to see Dr. Nogalski, June 3, 2010.

During this time the Employee changed jobs and began work at Baker Implement, an agriculture equipment dealer in Cape Girardeau.

Employee saw Dr. Nogalski on June 3, 2010, wherein Dr. Nogalski recommended an MRI with contrast. That was scheduled for August of 2010 but later cancelled. In August 2010, the Employee hired Chris Weiss as his attorney. The MRI with contrast as recommended by Dr. Nogalski was done on December 30, 2010, more than six months after it was ordered by Dr. Nogalski and more than two years after the date of the accident. The Employee saw Dr. Nogalski on January 4, 2010, wherein the MRI was reviewed and the Employee was prescribed three weeks of physical therapy at Mid America Therapy for the diagnosis of the frozen shoulder resulting from the accident. Employee was still working full duty and after the physical therapy had some improvement with his range of motion. On February 9, 2011, the Employee saw Dr. Nogalski and was released to full duty despite his ongoing pain and limitations of range of motion.

In March of 2011, the Employee participated in a hardship pre-hearing with the Honorable Carl Strange at the Division of Workers' Compensation. Dr. Lehman was suggested as a doctor for an independent medical evaluation and Employee saw Dr. Lehman on September 6, 2011. The appointment lasted approximately five minutes and Dr. Lehman indicated that the Employee had degenerative arthritis and did not recommend any treatment, but referred the Employee to Dr. Mark Miller for treatment under his private insurance carrier.

Employee next saw Dr. Mark Miller on June 9, 2011, and again on November 15, 2011. Diagnostic surgery was scheduled for the left shoulder by Dr. Mark Miller for January 10, 2012. This was arranged by the Employee as being during the winter when he was not as busy on the farm and allowed him to have this covered under his new health insurance carrier. The surgery

was performed. The doctor indicated that Employee had a torn labrum. The Employee underwent physical therapy at Southeast Missouri HealthPoint.

The Employee had seven trips with mileage of 232 miles per trip to see Dr. Mark Miller for his appointments.

The Employee testified that Employee's Exhibit F is an itemized statement from The Orthopedic Center of St. Louis where Dr. Mark Miller works. Employee testified that the bill described in Employee's Exhibit F is related to and a product of his work injury. He testified the total amount of that bill is \$25,463.37.

Employee testified that Employee's Exhibit G is an itemized statement from Timberlake Surgery Center where he had his surgery done by Dr. Mark Miller. He testified that the bill in Employee's Exhibit G is related to and a product of his work injury and the total amount of that bill was \$24,213.73.

Employee testified that Employee's Exhibit H is an itemized statement from Premiere Anesthesia which is the anesthesia company that put him out for his surgery by Dr. Mark Miller. That bill totaled \$1,620.00. Employee testified that the bill from Employee's Exhibit H is related to and a product of his work injury.

Employee testified that Employee's Exhibit K is an itemized statement from Southeast Missouri Hospital where the physical therapy recommended by Dr. Mark Miller following his surgery with dates of service of January 12, 2012 through June 26, 2012. Employee testified that the bill set forth in Employee's Exhibit K is related to and a product of his work injury.

The Employee saw Dr. Shawn Berkin for an independent medical evaluation on January 12, 2013. The visit with Dr. Berkin lasted at a minimum one-half hour.

The Employee testified that the bills set forth in Employee's Exhibits F, G, H and K are bills that he feels financially responsible for. He testified that he made co-payments to Southeast Hospital for physical therapy visits for the reason that his health insurance coverage did not cover all of his visits. He paid out-of-pocket \$52.62 for eleven visits for a total of \$578.82. Employee testified that he made two co-payments of \$50.00 each to Dr. Mark Miller's office for a total of \$100.00. Employee testified that his health insurance deductible was \$1,500.00 and after that he had to pay 20% of the first \$5,000.00 for another \$1,000.00. He testified that he paid out-of-pocket \$3,178.82 for his care as recommended by Dr. Mark Miller.

The Employee continues to have some minor problems with his left shoulder. He stated that he had good improvement after the surgery and the pain went away immediately. He does have some problems in that he cannot sleep on his stomach anymore because of some discomfort in his left shoulder when it is stretched overhead for long periods of time and that he does have fatigue and loss of strength when working overhead. He tries to avoid lifting more than 45 pounds and when he does need to he gets help. He explained that he bought a seed tote

mechanism to carry his seed for his agricultural planter to avoid lifting bags of seed. He continues to do his daily exercises as recommended by the physical therapist.

Employee testified that he viewed the video which is contained in Employer's Exhibit #13. It is a lengthy video and it shows the Employee working at Baker Implement for a day on November 22, 2013. Employee stated that the video is consistent with what he normally does at work. He described the video as showing him doing some duties including washing a combine with a garden hose that weighed less than 10 pounds, climbing up a ladder to get into a combine, driving a tractor, washing the outside parking lot at his employer and washing a tractor with the hose. Employee testified that during the video he saw that he raised his left arm above shoulder level for a total of approximately a minute and a half. He states that that is consistent with what he does in all of his activities as his left arm does tire and become fatigued if he works overhead, but is able to do his full duties without any problems.

Employee stated he was asking for payment of the amounts charged by the medical providers, TTD from January 10, 2012 through July 17, 2012 totaling \$19,369.94, reimbursement of mileage totaling \$812.00 for his visits to see Dr. Mark Miller and a reasonable amount of permanent partial disability to his left shoulder.

Upon cross-examination, Employee stated that when he was working for the Employer he would normally have four weeks off at the end of March, June, September and December. There are some weeks when he would only have one to two routes per week. He stated it was approximately two years ago that his farming operation added the additional 400 to 500 acres. He states that on those acres he grows crops. When asked who is most likely to be driving the tractor on that additional acreage he stated it was either himself or his sons. The Employee has raised cattle since he started farming and has always had Angus. When moving cattle, there is some physical work involved but he normally uses a four-wheeler and opens the gates and the cattle come without much effort. The feeding that he presently does is mainly by pushing a switch.

Further, upon cross examination the Employee stated that he would have been the only person to describe the accident to his supervisor, Mr. Hessenkemper. Employee admitted that the D.O.T. physical refers to the shoulder injury as a bruise. Employee is not familiar with how Anthem Blue Cross Blue Shield makes its payments to the medical providers and does not know the total amount that is paid. He stated that his wife takes care of the paperwork and that he may have only glanced at the Explanation of Benefit forms that came in. He has not received any further bills from any of the four medical providers.

Upon cross-examination, Employee stated he had no reason to dispute the records of Dr. Shawn Berkin which did not mention that Employee is engaged in farming. In regard to his job at Baker Implement, Employee says that sometimes he has to add tires to machinery, but that he uses a hydraulic lift when he does that. He explained that he is the third person on set up of equipment. He admitted that he used his left arm to climb the ladder to get into the combine as shown on the video.

Further, upon cross-examination Employee explained that government programs are different every year as the programs change every year. Employee stated that the history to Dr. Nogalski indicated that the box fell on his chest during his accident. Employee did not recall filling out a form for Dr. Nogalski describing how the accident occurred. Also, the Employee stated he had not seen Dr. Nogalski until approximately eighteen months after the date of the accident. The Employee agreed that Dr. Mark Miller's records made no mention of the box striking the Employee. Employee also stated that Dr. Berkin's record showed that the weight of the box pulled his left shoulder as he fell.

Further, on cross-examination the Employee admitted that Dr. Taylor's records show that he was 90% to 95% improved while treating with him. He explained that was without doing any overhead work and that after he went to full-time and started doing overhead work his shoulder started to bother him quite a bit again. Employee admitted that he was helping load a truck without difficulty while on light duty and under the care of Dr. Taylor but that was only loading the low part and no overhead lifting. Employee admitted that he described his job to Dr. Miller as lifting 50 to 75 pounds. Employee admitted that he told Dr. Miller that he had an unimaginably good recovery and that he was doing remarkably well.

The Employee offered Exhibits F, G, H and K and objections were made by the Employer but were overruled. Employee's Exhibits F, G, H and K were admitted.

The Employer offered no other witnesses or evidence. The Employer called as a witness, Mr. Richard W. Hessenkemper. He testified he had been employed with the Employer since January of 2007 and supervised the truck drivers. He testified that truck drivers have to take the D.O.T. physical every two years. He testified that the Employee brought to him the first page of Employer's Exhibit #15 which is a card showing he was approved for the physical. He testified he does not send any medical records to the D.O.T. examiner.

Mr. Hessenkemper testified that they have a light duty program at the Employer wherein if a person is released to light duty they will provide light duty work. He also testified that in February 2009 after the Employee had been released to full duty his first run was a "grocery run" to Atlanta. He explained that a grocery run is delivering hotel supplies. He explained that the truck drivers use carts for moving the boxes and items from wherever they are in the trailer to the rear of the trailer where they are unloaded. At a construction or renovation site the construction crew does the unloading of the truck. Mr. Hessenkemper stated that the Employee did not turn down any runs and did not take off any time for medical reasons after he was released to full duty by Dr. Taylor.

Upon cross-examination, Mr. Hessenkemper agreed that if a doctor has an employee completely off work then the employer abides by the doctor's recommendations and does not try to put that person back to work against a doctor's orders. He also explained that on the first page of Employer's Exhibit 1 he wrote that the Employee stated that it hurt to lift his left arm.

Employee's Exhibit A is records from Regional Primary Care. Regional Primary Care records contain the treatment records of Dr. Ira Scott Taylor for the Employee beginning September 19,

2008 through February 13, 2009. Those records indicate that the Employee stated that he was loading some pallets at work and picked up a case of "I think" copy machine paper and was standing on a pallet when it happened. That pallet broke, his left ankle buckled and he fell backwards hitting another pallet with his left shoulder. That record is dated December 19, 2008, and indicates that the pain had persisted since the date of the accident on December 16th. Those records indicate that the Employee had decreased range of motion with his shoulder and the initial diagnosis was acute left shoulder rotator cuff tendonopathy and strain due to fall at work. He was started on ibuprofen and put on a 25 pound weight limit and told to follow up in 10 days. At the next visit of December 29, 2008, Dr. Taylor ordered an MRI and noted that rest and anti-inflammatory had not helped.

The next record of January 5, 2009, indicates that the Employee still had decreased range of motion of the left shoulder and that the MRI showed AC joint impingement syndrome with arthrosis of the left shoulder. A reading of the MRI also noted a little bit of fluid in the glenohumeral joint but everything else was intact. On January 19, 2009, the notes indicate the Employee's range of motion was increasing, but still quite painful with certain movements. The office visit of February 2, 2009, indicates the Employee's range of motion was increasing, but he was still having some pain and still not able to completely lift up to 100 pounds. The last office visit of February 13, 2009, indicates that the Employee wanted to go back to full duty at work and so he was released to a home exercise program for physical therapy. The note also states the Employee still had mildly decreased range of motion of the shoulder, but otherwise no pain. The final note indicates that the Employee was released, but told to follow up with the doctor PRN.

Employee's Exhibit B is a set of copies of records from Saint Francis Medical Center for the physical therapy as recommended by Dr. Taylor. These records show various physical therapy treatments and a note of February 12, 2009, indicating that the Employee was reporting 90% to 95% improvement.

Employee's Exhibit C is a copy of the MRI on the left shoulder dated January 2, 2009. The MRI shows some mild impingement and arthrosis at the acromioclavicular. It also noted there was a small amount of fluid present in the glenohumeral joint.

Employee's Exhibit D is a copy of the MRI arthrogram done on December 30, 2010. It was ordered by Dr. Michael Nogalski. That shows Type I acromion, mild to moderate changes of acromioclavicular joint osteoarthritis, intact glenoid labrum and no evidence of labral tear.

Employee's Exhibit L is the deposition of Dr. Mark Miller. Dr. Miller first saw the Employee on November 30, 2009, in regard to a problem with the right shoulder wherein the Employee mentioned a problem with the left shoulder. The history received from Employee indicated that the Employee had grabbed some copy paper overhead, stepped on a pallet and when the pallet broke he fell striking his shoulder on a wall. At that point in time he had difficulty lifting his arm and indicated that even though he had been in therapy his range of motion had severe limitation. Dr. Miller originally diagnosed that as post-traumatic frozen shoulder. Dr. Miller was unable to perform any treatment as he was not authorized by workers' compensation. However, he indicated if the Employee's care was transferred to him he was certainly capable of taking over

the responsibility for it. He also indicated that he reviewed an MRI on that date of the left shoulder and felt that there was separation at the top front part of the labrum that could represent a labral or SLAP tear. He explained that this MRI was done without contrast or in other words it was not an arthrogram. This interpretation of the MRI was in disagreement with the radiologist who had read the MRI. Dr. Miller's assessment of the injury was that the Employee could live with the shoulder as it was with limitations on range of motion and pain when lifting the arm overhead, he could have a cortisone injection to reduce inflammation and a third option would be to do diagnostic arthroscopy to see if there indeed was a labral tear and if so, fix it with a biceps tenodesis

The next time Dr. Miller saw the Employee was June 9, 2011, wherein he reviewed an arthrogram. The arthrogram indicated that there was a fluid separation at the top of the labrum between the biceps anchor and the glenoid which was "pretty typical of a slap tear". An image from that MRI was marked as Employee's Exhibit D and made part of Dr. Miller's deposition. Dr. Miller described the tear as seen as the letter "Y" where in the top part where it splits is a separation. Dr. Miller reviewed the films and did not notice any osteoarthritis.

Dr. Miller testified that he does approximately 300 shoulder surgeries a year and has seen cases where there is a tear in the labrum that is asymptomatic but after trauma the labrum is torn further and creates a progressive pathology that is symptomatic.

On January 10, 2012, Dr. Miller performed surgery on the Employee's left shoulder and found that the labrum was separated at 9 o'clock position to the 11 o'clock position, based upon a lateral view of the shoulder, and that this was pre-existing. Dr. Miller explained that the edge at that position was really smooth and it did not represent a tear. However, beyond 11 o'clock to 2 o'clock the labrum was torn and this was not normal anatomy. This part of the tear was from the accident at work approximately two to three years ago. It appeared to have a ragged edge to it and could not have occurred except at the accident.

Dr. Miller testified that he trimmed away the damaged labrum and detached the biceps and then attached the biceps tendon to the rotator cuff by stitch.

Dr. Miller testified that the orthopedic surgery confirmed his initial assessment that there was a labral tear from the accident of December 16, 2008. He indicated that the "crucial point is that I asked Ricky a history of his shoulder". He indicated that it was important to know that this was a non-dominant shoulder, it was not a throwing shoulder, it was not an athletic shoulder and he did not have any problems before the accident. Based upon the mechanism of the accident provided to Dr. Miller and the arthroscopic examination Dr. Miller testified that the story fit together and that the accident of December 16, 2008, caused the torn labrum.

Dr. Miller testified that the Employee was returned to work without limitations approximately six weeks after the surgery. The Employee said to Dr. Miller "this recovery has been unimaginably good". However, Dr. Miller did recommend that he stay on protocol to follow the restrictions that were given to him and do his physical therapy. Dr. Miller released Employee to full duty on July 17, 2012. Dr. Miller testified that the fall was the prevailing factor in development of the

labral tear he saw at the time of the surgery. He recommended the Employee follow a maintenance and home exercise program to maintain his overall strength and endurance.

Upon further cross-examination, Dr. Miller testified that he originally saw the Employee for problems with the right shoulder. The right shoulder had some calcium deposits. Dr. Miller also testified that he was not surprised that the Employee would request to be released to work following the initial conservative treatment by Dr. Taylor. He indicated that with a labral tear quite often you cannot lift your arm right away and it is painful, but because it is not a muscle you hopefully can continue to recover and be able to lift your arm without pain. Dr. Miller also testified that he felt the Employee had a sublabral cleft and a labral tear. This was initially seen in the MRI and was different in that the labral cleft or separation was smooth but the tear was ragged and detached and not the way a normal shoulder looks.

Upon further examination, Dr. Miller testified that there were no chondromalacia changes of the articular surface, that the rotator cuff was intact on the articular side and that this all indicates that there was no arthritis in the shoulder. Dr. Miller stated the fact that the Employee's range of motion improved slightly following his accident made "perfect sense" in that a person normally recovers and can continue most activities, but still has difficulty in lifting their arm. Dr. Miller stated:

I mean, that's how labral tears behave, they hurt really bad when you tear them, you can't do much, but yet you do get better, but you don't get better all the way.

Employee's Exhibit F is a copy of the itemized statement from The Orthopedic Center of St. Louis. That indicates that the amount charged by The Orthopedic Center of St. Louis for the Employee's surgery and treatment on January 10, 2012, totals \$25,463.37.

Employee's Exhibit G is a certified copy of records from Timberlake Surgery Center giving an itemized statement for medical services provided to Employee with a date of service of January 10, 2012, the total amount of the charges for the treatment totaling \$24,213.73.

Employee's Exhibit H is a copy of records from McKesson which indicates that Premier Anesthesia charged a total of \$1,620.00 for medical services provided to Employee with a date of service of January 10, 2012.

Employee's Exhibit I is a copy of the physical therapy evaluation dated January 12, 2012, as ordered by Dr. Mark Miller. It indicates that the chief complaint of the Employee was that he had left shoulder soreness and reported the symptoms began three years ago from falling.

Employee's Exhibit J is a certified copy of records from Southeast Health concerning Employee's physical therapy beginning January 12, 2012 through June 26, 2012. Those records set out the physical therapy provided to the Employee.

Employee's Exhibit K is a certified copy of records from Southeast Missouri Hospital with an itemized statement for the charges for physical therapy on January 12, 2010 through June 26, 2012.

Employee's Exhibit E is a deposition of Dr. Shawn Berkin. Dr. Berkin testified by deposition on July 29, 2013. Dr. Berkin is a medical doctor, licensed to practice medicine in the State of Missouri and is certified from the American Board of Independent Medical Examiners. He met with the Employee at the request of Employee's attorney and performed an independent medical evaluation. Independent medical evaluations include a review of the medical records, physical examination and history of accident.

The history provided to Dr. Berkin was that in December of 2008, the Employee was unloading a trailer at a Drury Inn in Atlanta when he was standing on a pallet in order to reach above his head to obtain a box of copy paper, the pallet broke causing the Employee to lose his balance and he fell backwards striking his left shoulder against the side of the trailer.

Dr. Berkin reviewed the medical records including the initial treatment records of Dr. Taylor. He also reviewed the treatment records of Dr. Mark Miller and Dr. Michael Nogalski.

Dr. Berkin performed a physical examination performing various tests. It was Dr. Berkin's opinion that based upon the records, physical examination and history that the accident of December 16, 2008, was the prevailing factor in causing the torn labrum in the Employee's left shoulder. Dr. Berkin testified that it was the accident of December 2008 wherein the Employee developed pain, tenderness to the shoulder and limitations in range of motion.

Dr. Berkin rated the left shoulder at 35% permanent partial disability at the level of the shoulder and recommended further treatment including being involved in a home exercise program and restrict his lifting to 45 pounds on occasional basis, 35 pounds on a frequent basis.

Dr. Berkin also testified that he had received various medical bills and itemized statements concerning the treatment recommended by Dr. Mark Miller. He testified that the treatment for physical therapy at Southeast Hospital and the treatment by Dr. Mark Miller were reasonable and necessary to treat the effects of the injury. He testified that the charges of The Orthopedic Center where Dr. Mark Miller works in the amount of \$25,463.37 were fair and reasonable and that the charges for physical therapy in the amount of \$6893.25 from Southeast Hospital were reasonable. He testified both of these were necessary in order to cure the Employee from the effects of the December 2008 accident.

Upon cross-examination, Dr. Berkin testified that the direct blow by hitting the shoulder against the side of the trailer could have caused the pathology in the left shoulder. Dr. Berkin testified that even though the Employee's symptoms were initially improving while he was on light duty, when the Employee went back to full duty at work his symptoms got worse and that is when he sought help from Dr. Mark Miller.

Employer's Exhibit 1 is a copy of the Report of Injury to Employer. Page 1 indicates that the Employee was unloading hotel supplies at the Drury hotel near the Atlanta airport and as he was standing on a pallet to lift a box of copy paper, when a pallet "slat" broke the Employee rolled his ankle, fell striking his tailbone on the floor of the trailer and left shoulder on the bottom of the side wall. It indicates at the time the form was filled out that the Employee's left shoulder hurt to move. Page 2 of Employer's Exhibit 1 indicates that 70 hours after the injury the ankle and tailbone are fine but the shoulder is sore in certain positions. That is signed by Rick Aufdenberg on December 19, 2008, and by the supervisor on December 19, 2008.

Employer's Exhibit 4 is a copy of the Return to Work form from Regional Primary Care dated February 13, 2009, indicating that the Employee may return to work without restrictions on February 13, 2009.

Employer's Exhibit 5 is a copy of a personal information form completed by the Employee at the office of Dr. Mark Miller indicating that Employee's chief complaint was right shoulder pain, but it is not dated nor does it indicate the source of the provider.

Employer's Exhibit 6 is the deposition of Dr. Richard Lehman. Dr. Richard Lehman is an orthopedic surgeon, board certified in the subspecialty of sports medicine since 2007. Dr. Lehman performed an examination of the Employee on September 6, 2011. The Employee described an accident to Dr. Lehman that occurred on December 16, 2008, in that he was at work, fell onto his left shoulder while trying to reach overhead to grab a hold of some copy paper. The Employee had stepped on a pallet that broke and fell landing on the posterior left shoulder. Dr. Lehman reviewed records from Dr. Mark Miller, Dr. Nogalski, Dr. Taylor and physical therapy records. Dr. Lehman testified that the type of superior labral anterior posterior tear (SLAP tear) that he deals within his practice is primarily a tear secondary to baseball players throwing baseballs, swimmers and frequently in football players and involves a deceleration injury.

Dr. Lehman was of the opinion that the mechanics of the Employee's accident was not consistent with the deceleration of the biceps tendon type of tear he normally sees in his practice.

Dr. Lehman needed to address several errors in his report. One was that he stated: "this evidenced an intact shoulder rotator cuff tear". However, he stated that this was incorrect and that the word tear should not have been used. Also, at page 20 of the deposition Dr. Lehman testified that there was a typographical error in his report wherein the report stated: "I have reviewed the patient's operative report and pictures and again it is my opinion that the patient's issues are traumatic". Dr. Lehman testified that he should have stated non-traumatic.

On cross-examination, Dr. Lehman admitted that he had not inquired of the Employee as to whether or not he had any problems with his shoulder prior to the accident of December 16, 2008. See page 29. When asked if he had inquired of the Employee whether or not he was taking any medications or seeking any medical treatment for his left shoulder prior to the date of the accident Dr. Lehman stated: "I don't mention it and I don't believe I saw any medical records prior to the incident". Page 30.

Even though Dr. Lehman's original opinion and report were based upon the MRI that was taken on January 2, 2009, and MRI arthrogram dated December 30, 2010, in Dr. Lehman's report he noted that neither MRI shows a labral tear, neither MRI shows a SLAP tear and neither MRI truly shows acute pathology. In his report Dr. Lehman stated, "in reviewing the MRI's and medical records, it is impossible to attribute this to his fall based upon a lack of acute pathology on the patient's scans". However, upon cross-examination Dr. Lehman testified that MRI arthrograms are only fifty to sixty percent accurate and fifty to sixty percent inaccurate and therefore not reliable in terms of diagnosis. Page 33-34. Dr. Lehman agreed upon cross-examination, that MRI arthrograms were pretty much worthless as far as diagnosis for that particular pathological process. He agreed that a diagnosis should be made clinically involving looking at the history, mechanics of the fall, and physical examination. He also agreed that arthroscopic surgery can be used as a diagnostic tool. Page 35.

Dr. Lehman agreed that the articular surface of the shoulder showed no chondromalacia changes which would indicate there is no arthritis. Page 35-36. Also, Dr. Lehman did not have any idea what type of medications Employee was taking prior to the accident. Page 43.

Dr. Lehman did find that there was no evidence of posterior instability. This was part of a finding from the physical examination. Page 17. Dr. Lehman was of the opinion that the Employee's accident was not the type of incident he normally sees that produces a SLAP tear.

Employer's Exhibit 7 is the deposition of Dr. Michael Nogalski. Dr. Nogalski is an orthopedic surgeon who was hired by the Employer/Insurer to provide medical treatment to the Employee. Dr. Nogalski ordered an MRI arthrogram at his first appointment with the Employee on June 3, 2010. The MRI arthrogram was completed on December 30, 2010. Dr. Nogalski reviewed the MRI on January 4, 2011. It was originally Dr. Nogalski's opinion that the Employee did not have a superior labral anterior posterior tear (SLAP tear). After reviewing Dr. Miller's operative report, Dr. Nogalski testified that Employee had a "supra labral tear or fraying of the labral tissue". Page 9. Dr. Nogalski testified that a fresh tear of the labrum does not have a ragged edge and that it would take around two to three years for an edge to be frayed. Page 21. He was of the opinion that the tear was degenerative. Page 10.

Dr. Nogalski stated that he tried to look at as many factors as possible including history of accident, symptoms, pain, loss of range of motion, whether or not there is any pre-existing pain or prior medical treatment for that condition. Dr. Nogalski testified that he had not made any note in regard to pain in the shoulder prior to 2008 and could not point to anything in his file to indicate that. Page 22. Also, Dr. Nogalski testified that he did not recall the Employee telling him that he had not had pain prior to 2008 in the left shoulder. Page 22.

Dr. Nogalski testified that when he had his last visit with the Employee on February 9, 2011, he recommended the Employee take 800 mg of ibuprofen for his discomfort on a long-term basis for his symptomatic discomfort. Page 28. Dr. Nogalski released the Employee on that date. Finally, Dr. Nogalski testified that even though the Employee was injured December 16, 2008, his first

appointment with Dr. Nogalski did not occur until June 3, 2010, and he had no idea why it would take so long to get an appointment. Page 32.

Dr. Nogalski testified that the Employee had multidirectional instability of the left shoulder. Page 15. He testified that this instability can be a source of pain and can be from an atraumatic condition or trauma. However, in his June 3, 2010 report, the doctor stated that "shoulder stability is intact". Dr. Nogalski believed that the Employee had some tightness and post adhesive capsulitis in the left shoulder that would be related to the December 16, 2008 incident.

Dr. Nogalski testified that based upon the configuration of the tear in the labrum and the type of fraying and ragged appearance, he believed it was degenerative and not a traumatic tear. Dr. Nogalski testified that he agreed with Dr. Lehman that arthrogram MRI's are only accurate 50% to 60% of the time in diagnosing a SLAP tear. Page 24. He also stated SLAP tears can occur traumatically. Page 24-25.

Employer's Exhibit 8 is a set of records from Anthem Blue Cross Blue Shield. These records were the subject of the deposition of Diana Moeller which is submitted by Employer/Insurer as Exhibit 9.

Employer's Exhibit 10 is a certified copy of a magazine produced by the University of Missouri Extension dated Summer of 2010. This article deals with several beef farmers from Southeast Missouri including the Employee who runs an Angus calf operation with assistance of his two sons who are both physical therapists.

Employer's Exhibit 11 is a copy of an article from Drivers Cattle Network. This article is dated August 30, 2010, and discusses using better beef genetics to obtain price premiums and includes a synopsis of a tour that visited four Southeast Missouri farms. One of those farms included a stop at the farm of the Employee who indicated that he was doubling the size of his feedlot and had built a covered structure for feeding his cattle and kept the construction low by using family labor.

Employer's Exhibit 12 is a certified copy of an article from the Environmental Working Group. This includes a record of farm subsidy payments received by the Employee from the United States Department of Agriculture. This indicates that between 1995 and 2012, the Employee had received approximately \$189,843.00 in subsidy payments including such things as program payments, market loss assistance, disaster payments and conservation program payments.

Employer's Exhibit 13 is a video of the Employee at a day of his work at Baker Implement on November 22, 2013. The video is several hours long and shows the Employee doing different duties including washing a combine, driving a truck and cleaning a tractor with a hose.

Employer's Exhibit 14 is a copy of a report from Gallagher Bassett Investigative Services indicating that the Employee was under surveillance for eight hours on November 22, 2013. The report indicates that a video was taken on that date filming the Employee entering his place of business at Baker Implement Company at approximately 7:37 a.m. The report indicates that

notes were made during the filming of the video which speaks for itself. Photos of the Employee performing the duties of his job at Baker Implement are included in the investigative report showing the Employee hosing with water a combine and climbing into the cab of a truck. Of these photos the Employee's left arm is raised above his shoulder level on a couple of instances.

Employer's Exhibit 15 is a copy of the DOT exam at Regional Primary Care dated February 27, 2009, and indicates that the first page of the form is completed by the Employee wherein he indicated that an injury had occurred within the last five years. He further explains that there was a "rotator cuff bruise, release to full duty 2 weeks ago". Medical examiner's comments indicate "recent recovery of shoulder bruise poses no potential hazard".

Employer's Exhibit 16 is a set of records from the Employer indicating that the Employee is to avoid standing on pallets when unloading and to continue his safe driving. Also included is the employment application from February 14, 2003, wherein the Employee applied for work with Employer and signed an acknowledgment that the Employee had received a copy of the Team Member Handbook from the Employer dated January 26, 2007, and December 31, 2008. The final page of Employer's Exhibit 16 is a 2008 Pay Matrix/Personnel Action Notice indicating that the Employee had received a performance rating of 3 on a scale of 1 to 4 with 4 being the maximum which indicates as follows:

Level 3: Team Member achieves excellent results in many areas of their position, has a few areas that would be considered "meets expectations" but overall performs at an above average level".

It is signed by a manager and approved by somebody else in March 2009.

STATEMENT OF THE FINDINGS OF FACT:

APPLICABLE LAW:

The burden is on the Employee to prove all material elements of the Employee's claim. Melvies v. Morris, 422 S.W.2d 335 (Mo.App. 1968). The Employee has the burden of proving that not only the Employee sustained an accident that arose out of and in the course of employment, but also that there is a medical causal relationship between the accident and the injuries and the medical treatment for which the Employee is seeking compensation. Griggs v. A.B. Chance Company, 503 S.W.2d 697 (Mo.App. 1973).

Under Missouri Revised Statute Section 287.140.1, "the employee shall receive and the employer shall provide such medical, surgical, chiropractic and hospital treatment, including nursing, custodial, ambulance and medicines as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury".

Employee must establish through competent medical evidence that the medical care requested “flows from the accident”, before the employer is responsible. Landers v. Chrysler Corporation 963 S.W.2d (Mo.App. 1997).

RULINGS OF LAW:

Issue 1. Medical causation

Based on all the evidence presented, I find that the opinions of Dr. Miller, the treating doctor who actually performed the surgery, and Dr. Berkin are more persuasive than the opinions of Dr. Lehman and Dr. Nogalski on the issue of medical causation.

Based on all the evidence presented, I find that the Employee sustained his burden of proof that the work accident of December 16, 2008, was the prevailing factor in causing his SLAP tear of his left shoulder.

Issue 2. Previously incurred medical aid

There are issues as to whether or not the Employee incurred medical aid that was causally related to the accident of December 16, 2008, whether or not such medical aid was authorized, whether or not such medical aid was reasonable and whether or not such medical aid was necessary.

It was the testimony of Dr. Berkin that the treatment provided by Dr. Miller was reasonable and necessary. However, Dr. Berkin only testified to the bills of Dr. Miller (\$25,463.37) and that of Southeast Missouri Hospital for physical therapy (\$6,893.25). No doctor testified to the surgery center bill or anesthesia bill. This medical aid was not authorized, but it was denied by the Employer/Insurer. According to the testimony of the Employee his recovery was doing remarkably well after the surgery and told Dr. Miller that he had an unimaginably good recovery.

In Maness v. City of De Soto et al, Eastern District Appeals Number 100074, the Eastern District Court of Appeals for the State of Missouri provides guidance when an employee requests an order for past medical expenses. The Court found that a sufficient factual basis exists for the Commission to award compensation for past medical expenses when: (1) the claimant introduces his medical bills into evidence; (2) the claimant testifies that the bills are related to and the product of his work injury; and (3) “the bills relate to the professional services rendered as shown by the medical records in evidence”. Martin v. Mid America Farm Lines Inc., 769 S.W.2d 105 (Mo.Banc 1989). The Court also went through an extensive review of the objections raised by the Employer and analysis of how to determine what can be made payable to the Employee.

In this matter the Employee has introduced the medical bills into evidence and testified that the bills are related to and the product of his work injury. Also the evidence shows that the bills related to the professional services rendered for medical treatment are to cure and relieve the effects of the injury. In this regard it is important to note that the Employee testified as to his remarkable recovery following the surgery as compared to his condition prior.

The Employer/Insurer claims it is entitled to a credit for the payments made by Anthem Blue Cross Blue Shield. However, pursuant to Section 287.270 RSMo., no credit is allowed for the amounts paid by the health insurer. Maness. Further, Employer is not entitled to a credit for fee reductions negotiated between the employee's health insurer and his medical providers. Also, as described in Maness the Employee is entitled to direct payment for the medical expenses.

Based upon the rulings in Issue 1, the Employee has sustained his burden of proof that the medical charges of \$32,356.62 (Dr. Miller's services and Southeast Missouri Hospital physical therapy) are reasonable, necessary and causally related to the accident of December 16, 2008. Based on all of the evidence presented, I find that the Employee sustained his burden of proof in establishing that the medical care requested "flows from the accident". Therefore, the Employer/Insurer is ordered to pay to Employee the sum of \$32,356.62 for previously incurred medical bills.

Issue 3. Mileage

There is an issue as to whether or not the Employee is entitled to mileage under Section 287.140 RSMo. in the amount of \$812.00 for 1,624 miles for his seven trips to see Dr. Mark Miller.

Based upon the rulings in Issues 1 and 2, the Employee's request for reimbursement of mileage to see Dr. Miller is granted. The Employer/Insurer is ordered to pay to Employee the sum of \$812.00 representing reimbursement of 1,624 miles at \$0.50 per mile for the seven trips to see Dr. Mark Miller for treatment.

Issue 4. Temporary total disability

There is an issue as to whether or not the Employee is entitled to additional temporary total disability benefits of \$19,367.64 for the time period of January 10, 2012 through July 17, 2012.

Based upon the rulings in Issues 1, 2 and 3 the Employee's request for temporary total disability from January 10, 2012 through July 17, 2012, for a total of \$19,367.64 is granted. This is the period of time when the Employee was off work under the care of Dr. Mark Miller.

Issue 5. Permanent partial disability

Based on all of the evidence presented, I find that the Employee has suffered 15% permanent partial disability at the level of the shoulder. Employer/Insurer is ordered to pay to Employee the sum of \$14,082.17 for permanent partial disability.

ATTORNEY'S FEE:

Chris N. Weiss, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation