

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

Injury No.: 01-030140

Employee: Tina Ball-Sawyers
Employer: Blue Springs School District
Insurer: Hartford Underwriters
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: February 24, 2001
Place and County of Accident: Blue Springs, Jackson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 16, 2007. The award and decision of Administrative Law Judge Rebecca S. Magruder, issued May 16, 2007, 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 3rd day of April 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Tina Ball-Sawyers

Injury No. 01-030140

Dependents: N/A

Employers: Blue Springs School District

Insurers: Hartford Underwriters

Additional Party: Second Injury Fund

Hearing Date: April 10, 2007

Checked by: RSM/lh

FINDINGS OF FACT AND RULINGS OF LAW

- 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: February 24, 2001.
- 5. State location where accident occurred or occupational disease was contracted: Blue Springs, Jackson County, Missouri
- 6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
- 7. Did employer receive proper notice? Not applicable in occupational disease cases.
- 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: While driving a school bus, the Claimant sustained cumulative trauma to her back.
- 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: Lumbar spine, body as a whole,
- 14. Nature and extent of any permanent disability: Permanent and total disability.
- 15. Compensation paid to-date for temporary disability: \$65,074.10.
- 16. Value necessary medical aid paid to date by employer/insurer? None.
- 17. Value necessary medical aid not furnished by employer/insurer? \$176,240.90.

- 18. Employee's average weekly wages: \$424.40.
- 19. Weekly compensation rate: \$282.93/\$282.93.
- 20. Method wages computation: By Agreement.

COMPENSATION PAYABLE

- 21. Amount of compensation payable:
 - unpaid medical expenses\$176,127.90
 - 212 2/7ths weeks for temporary total disability from March 21, 2001 through
April 20, 2005 60,062.00
 - §287.510 Doubling of Temporary Award (temporary total disability & medical)..... 236,189.90
 - 102 3/7ths weeks of permanent total disability benefits from employer from
April 21, 2005 through hearing date of April 10, 2007 28,980.11
 - Employer is entitled to a credit against this award for benefits already paid
in the amount of.....{65,074.10}
- 22. Second Injury Fund liability: None

TO TRIAL DATE TOTAL OWED: \$436,285.81

23. Future requirements awarded: Yes. See Findings of Fact and Rulings of Law regarding on going weekly permanent total disability benefits and medical treatment.

Said payments to begin upon receipt of Award 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Mr. William Spooner.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Tina Ball-Sawyers Injury No. 01-030140

Dependents: N/A

Employers: Blue Springs School District

Insurers: Hartford Underwriters

Additional Party: Second Injury Fund

Hearing Date: April 10, 2007

Checked by: RSM/lh

PROCEDURAL HISTORY

On June 25, 1998, Claimant filed a Claim for Compensation against Employer alleging permanent repetitive trauma injury to her right shoulder, neck and back due to the repetitive nature of her job as a school bus driver. In her June 25, 1998, Claim for Compensation, Claimant alleged a date of injury up to and including April 01, 1998. On August 28, 1998, an Answer was filed to Claimant's June 25, 1998, Claim for Compensation. On March 26, 2001, Claimant filed an additional Claim for Compensation against Employer alleging permanent injury to her low back and body as a whole resulting from an occupational disease contracted from her duties as a school bus driver. At that time, no claim against the Second Injury Fund had been made. In her March 26, 2001, Claim for Compensation, Claimant alleged a date of injury up to and including February 24, 2001. On June 05, 2001, attorney for Employer/Insurer filed his Answer. On February 12, 2002, Claimant filed an Amended Claim for Compensation against the Employer/Insurer adding a claim against the Second Injury Fund alleging permanent and total disability to which the Second Injury Fund filed an answer denying liability.

On February 07, 2001, a hardship mediation was conducted for purposes of addressing Claimant's need for medical treatment and payment of temporary total disability benefits. The parties were unable to resolve their issues. On August 04, 2003, a hardship hearing was held before the Honorable Emily Fowler to address Claimant's need for medical treatment and payment of temporary total disability benefits. In an Award dated September 03, 2003, Judge Fowler made the following determinations: (1) Employee did sustain an occupational disease arising out of and in the course of her employment due to the repetitive trauma to her back caused by being a bus driver; (2) Employer had ample notice of Claimant's April 01, 1998 and February 24, 2001 Claims; (3) Employee is entitled to temporary total disability benefits from March 21, 2001 through the date of her award, September 03, 2003; and (4) Employer was ordered to provide Employee with additional medical care required to cure and relieve her symptoms. Ultimately, Judge Fowler ordered Employer to pay Employee the sum of \$35,001.27 representing 123 and 5/7th weeks of temporary total disability at \$282.93 owing up to the date of the Temporary Award and Employer was to provide Employee with necessary medical care and treatment and ongoing temporary total disability benefits as required.

On September 18, 2003, Attorney for Employer/Insurer, Thomas Hill, filed a timely Application for Review before the Labor and Industrial Commission of Missouri. Employer/Insurer sought review of Judge Fowler's September 03, 2003 Award. The parties briefed the issues and on February 13, 2004, the Commission affirmed and adopted the award and decision of Judge Emily Fowler entered in her September 03, 2003 Award. Despite the Commission's affirmation of Judge Fowler's Award, the Employer/Insurer did not provide any medical benefits to Claimant. The Employer/Insurer finally paid temporary total disability, \$45,268.80, on April 23, 2004. No additional temporary total disability payments were made, however, until August 24, 2005, sixteen months later, wherein Employer/Insurer paid \$17,541.86. Employer/Insurer made eight additional temporary total disability payments throughout June, July and August of 2005 totaling \$2,263.44.

On April 10, 2007, this case was heard before the undersigned administrative law judge for purposes of a final hearing. The parties were afforded an opportunity to submit proposed awards resulting in the record being completed and submitted to the undersigned on April 30, 2007. Although the parties entered into stipulations of facts concerning Claimant's April 1, 1998 Claim for Compensation, as well as her February 24, 2001 Claim for Compensation, the evidence in both the temporary hearings as well as the final hearing clearly shows that any viable 1998 Claim for Compensation should be and is hereby consolidated into the 2001 Claim for Compensation.

STIPULATIONS

The parties stipulated to the following facts concerning Claimant's February 24, 2001 Claim for Compensation:

- that on or about February 24, 2001, the Blue Springs School District was an Employer operating under the provisions of the Missouri workers' compensation law and that their liability under said law was fully insured by Hartford Insurance Company;
- that on or about February 24, 2001, Tina Ball-Sawyers was an Employee of Blue Springs School

- District and was working under the provisions of the Missouri workers' compensation law;
- that a claim for compensation was filed within the time prescribed by law;
 - that the venue was proper in Jackson County, Missouri;
 - that the average weekly wage was \$424.40 and that the applicable compensation rate for both temporary total disability benefits as well as permanent partial disability benefits is \$282.93 per week;
 - that compensation had been paid by the employer in the amount of \$65,074.10;
 - that no medical aid had been furnished by the employer or insurer.

ISSUES

The issues to be determined by the hearing are as follows:

- whether on or about February 24, 2001, Claimant sustained an injury by accident, series of accidents or occupational disease arising out of and in the course of her employment;
- whether the employer had notice of the injury as provided by law;
- whether the Claimant is entitled to temporary total disability benefits and for what period of time;
- whether the Claimant is entitled to payment of past medical expenses. Employee is requesting payment of bills in the amount of \$176,240.90 up to the date of trial;
- whether the Claimant is entitled to future medical treatment. Claimant is requesting that medical be left open for her lifetime;
- the nature and extent of any permanent disability resulting from the alleged work injury of February 24, 2001, as well as the liability of the Second Injury Fund under §287.220 RSMo;
- the liability, if any, of the Employer/Insurer for penalties under §287.510 RSMo. 2000;
- and the liability of the Employer/Insurer for fees and costs under §287.203.

Although the eight issues enumerated above were the issues listed at the time of the hearing, the Claimant later withdrew his request for imposition of costs and fees under §287.203. Therefore, the first seven issues are the issues left to be determined by the hearing.

FINDINGS OF FACT

Tina Ball-Sawyers (now Haley pursuant to marriage of August 6, 2006) was born November 2, 1961. She lives with her current husband, Tim Haley, and her youngest son in Lee's Summit, Missouri. She successfully obtained a general equivalency degree (GED) after having dropped out of high school when she was younger. She doesn't have any special vocational training, trade school, apprenticeships or certifications. Her work history prior to 1995 was primarily low skill level jobs including waitressing, housekeeping and providing nursing aid.

Claimant began working as a bus driver for the Blue Springs, Missouri school district in 1995. Her responsibilities in that employment were to transport children to and from home and school. Additionally, she was required to transport children from sporting events, concerts and other special school events. Claimant's day normally began around 6:00 a.m. when she went to the bus barn to get her bus. She would then briefly return to her home, which was an official stopping point due to its proximity to her bus routes, to wake her own children for school. She would leave her home at approximately 6:30 a.m. to begin the Freshman Center route, which took approximately 30-35 minutes. At 7:15 a.m., she would begin her middle school route and have those children at school by approximately 8:00 a.m. At 8:30 a.m., she would begin her grade school route, which would arrive at school around 9:10 a.m. She would return to the transportation hub, or bus barn, around 9:30 a.m. Bussing began anew at 12:30 p.m., when she drove her approximately one hour kindergarten route. At 1:45 p.m., she would pick up the Freshman Center children. She would then reverse the process of the morning, first driving Freshman Center, then middle school and finally grade school students home. Claimant drove around 65 miles per day, with many stops and several different schools. On cross-examination, Claimant confirmed that the bulk of her routes were on city streets in Blue Springs, Missouri with a very small portion of the route in Independence, Missouri. Claimant was additionally required to drive into several different

school facilities with speed bumps and potholes in the driveways.

Claimant did not drive the exact same bus throughout her employ with Blue Springs School District. She always drove a standard 65-passenger, long-nosed bus. The bus had a standard bus seat which was not an air-ride type seat. The seat sat on a metal pole to brace it to the bus' frame and had between two and four inches of foam padding on the bottom portion of the seat. Driving this bus was a very physical process in which the entire bus, including the driver's seat, would bounce when the bus hit any type of pothole or speed bump. Much pressure was also placed on her low back when the brake or gas pedal was engaged, based on the amount of pressure required for those pedals.

In the latter part of 1997, after having driven the bus for approximately two years, Claimant, who had not historically had low back pain, began to notice problems with pain in her low back. Claimant initially did not know the source of her back pain. She went to her primary care physician, Dr. Charles McGrath for initial treatment. Claimant spoke to Mr. McMillan, the transportation supervisor at Blue Springs School District, regarding her problems with her low back, but did not realize at the time that her condition was being caused by her bus driving activities.

Claimant continued to treat with Dr. McGrath. He performed x-rays, which revealed some minimal retrolisthesis of the L5 on S1 vertebrae. Electrodiagnostic studies were done by Dr. Bremen on November 8, 1997 for the right lower extremity and lumbar paraspinal muscle groups, which were within normal limits. She continued to experience radicular complaints and Dr. McGrath recommended injections. She was seen at Independence Regional Health Center's pain clinic by Dr. Greenfield, who performed a series of epidural steroid injections in December of 1997. The injections provided temporary relief, but Claimant again returned to Dr. McGrath on January 8 and January 30, 1998. She participated in physical therapy at Blue Ridge Physical Therapy, which provided some relief and was released from treatment with Dr. McGrath.

Claimant continued to experience increasing low back and right leg pain. She sought treatment from Dr. Turner, a chiropractor, in 2000 for her low back pain in addition to temporary cervical spine pain she was experiencing at that time. Claimant continued to work, as she needed to support her family, but her low back and right leg pain continued to increase.

In 2000, Claimant sought treatment from Dr. West for symptoms which had developed with regard to her wrists. She had bilateral carpal tunnel releases performed by Dr. West in 2000. She received a settlement from Blue Springs School District and their insurer for 12.5% disability to the body as a result of the carpal tunnel surgeries (Injury 00-078981). She had earlier received a settlement of 6.25% of the right shoulder, which was conservatively treated, from Blue Springs School District (Injury 96-022677). Claimant testified and I find that she continues to have pain in both hands as well as loss of grip and pinch strength. Claimant testified that she began initially taking pain medication immediately following her carpal tunnel surgery, but that she continued taking the medication due to severe headaches that had developed by 2000 as a result of her continued and worsening low back pain. Around that time, Claimant went to Mr. McMillan, her transportation supervisor, and requested that she be placed in a different job than bus driving within the transportation department due to her severe low back pain. By February of 2001, Claimant' low back pain had become unbearable and she returned to Dr. McGrath, her primary care physician.

Dr. McGrath ordered an MRI and felt upon review of that testing that Claimant had a herniated disk, degenerative disc disease and was in need of back surgery. Claimant went to Dr. Daniel Downs, an orthopedic surgeon, in March of 2001. Dr. Downs took x-rays, gave Claimant pain medication and told her not to return to work. Dr. Downs felt that the repetitive jarring and bouncing of the bus was the cause of Claimant' back problems. Claimant last worked on March 21, 2001.

A discogram was then performed, which revealed that at the L4-5 disc level "the patient had intense ten out of ten low back pain which reproduced her low back pain that is giving her such difficulty clinically." On the radiologic CT follow-up scan, it was determined at the L4-5 level there was "a moderate size focal disc protrusion in the midline with extension of injected contrast through a midline tear in the annulus fibrosis. This does not appear to extend through the posterior longitudinal ligaments however. At the L5-S1 level severe desiccation with multiple annular tears is seen. There is extrusion of injected contrast posteriorly just to the left of midline to the left at the dural space. The small disc extrusion just to the left of midline can cause some mild effacement of the left S1 nerve root near the level of the

lateral recess.” At that time, Dr. Downs suggested that the patient undergo what is known as “Band-Aid” surgery, clinically known as nucleoplasty or percutaneous procedure. At the time, Claimant declined this procedure.

Claimant continued to experience severe low back pain. She obtained Social Security Disability and Medicare. Notwithstanding the temporary award of September 3, 2003 so ordering, the employer/insurer failed to provide medical care for Claimant. Finally, on June 9, 2004, Claimant was seen by Dr. Alexander Bailey, whose treatment was provided through Medicare. Dr. Bailey performed another discogram on July 9, 2004 which was positive at L4-5 and L5-S1. On August 10, 2004, Dr. Bailey performed an anterior/posterior, two-level discectomy and fusion with instrumentation at L4-5 and L5-S1. Claimant was seen in follow-up by Dr. Bailey through February 18, 2005. Claimant completed physical therapy ordered by Dr. Bailey through April 20, 2005.

It was admitted on cross-examination that there had been a few isolated occasions where Claimant had been to local bars and had engaged in dancing. It was not clear when those incidents had occurred, and on how many occasions Claimant had socialized and danced, although it was Claimant’s recollection that it had been several years ago and on only a few occasions. Claimant has a very difficult time functioning the day following any type of strenuous activity, including those discussed on cross-examination. Claimant had made some trips between Atchison, Kansas and Kansas City to visit her sister, who lives in Atchison, and friends and family in Kansas City. She also took a trip to Houston, Texas in the summer of 2005 to visit friends. I do not find the evidence of these extracurricular activities to be inconsistent, based on the infrequency and repercussions of their occurrence, with her day-to-day level of functioning since the low back injury.

Claimant continues to require Vicodin, Flexeril, and nighttime pain medications for her low back pain, and these medications make her sleepy. She continues to experience right leg numbness and constant back pain at approximately a level seven of ten on a pain scale, with ten being the highest. She sometimes can’t feel when she needs to go to the bathroom due to her low back and leg problems. She tries to avoid any lifting due to the problems with her low back. Claimant will sometimes have a difficult time even getting out of bed due to her severe low back pain and has to generally lay down a couple of times throughout the day to assuage her low back pain. In fact, Claimant could not remember the last date she had made it throughout the day without having to lie down for low back pain relief, and I find this description of her day-to-day level of functioning credible. Claimant was observed to rotate sitting and standing throughout the bulk of the hearing, which is representative of her inability to remain in any single position for even a short amount of time due to her low back pain.

CONCLUSIONS OF LAW

The first issue to be determined by this Court is whether Claimant sustained an accident or occupational disease arising out of and in the course of her employment with the Blue Springs School District. I find that Claimant did sustain injury by occupational disease. Claimant began working as a bus driver in September of 1995. Claimant’s job duties as a bus driver included sitting on a seat with only three and one-half inches of cushion supported by a steel pole aligned directly with Claimant’s lumbar spine. Claimant would remain in this seat for 6 hours each day. The bus was not equipped with an air ride seat. I find that Claimant’s testimony with regard to her work activities is credible. Claimant testified as to repetitious bouncing and jarring of her body each time her bus would hit even the slightest bump or pothole. She testified that her bus seat reacted to each hole in the road. Each time her bus would hit a bump or pothole, the steel pole upon which Claimant’s spine was centered would come into contact and jar Claimant’s spine. Additionally, I find Claimant’s testimony regarding her physical complaints credible.

Furthermore, I find that Claimant’s work activities of driving a school bus, being jarred and bounced around on a daily basis over the course of several years in an uncomfortable hard seat were a substantial factor in causing her symptoms, current medical condition and need for medical care and treatment. RSMo. § 287.067(1) and (2) defining occupational disease reads as follows:

1. In this chapter the term “occupational disease” is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall

not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.

Subsections (2) and (3) of 287.020 referenced above provide as follows:

2. The word “accident” as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term “injury” is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) 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 employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d) 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.

The Workers’ Compensation Law now provides that an injury or an occupational disease is compensable only if it is clearly work related. While the term “work” is not further defined, the Claimant does have to prove that an injury is clearly work related if work is a substantial factor in the cause of the resulting medical condition or disability and is not merely triggering or precipitating factor. In the case at bar, not one but three medical doctors, (Drs. Downs, Koprivica, and McGrath) all state either in their office notes or reports that Claimant’s work activities of driving a school bus represent a substantial factor contributing to Claimant’s symptomology. Claimant sustained repetitive injury to her lumbar spine from her work activities up until her last date of employment in March of 2001. Specifically, Dr. Daniel Downs, a Board Certified Orthopedic Surgeon, speaks to the issue of whether work was a substantial factor in the cause of the Claimant’s resulting medical condition or disability.

- Okay. One of the main questions in this case has to do with what could cause this kind of a problem or aggravate a preexisting problem. Do you have an opinion?
- There’s a lot of things, of course, that can cause it. It’s usually a combination of things that cause disogenic injury. And her work activities are a significant contributing factor. The pain both potentially from the causation, if not causing it, then certainly the aggravation and perpetuating of the problem.

- The activities that you're referring to that either could cause or aggravate, what would they be specifically with her job?
- As I mentioned in the report: The bouncing, the twisting movements, she was in a seat that does not have a lot of cushioning or shock absorbing characteristics or capabilities and the vibratory stresses are a significant issue with discogenic problems.
- Is it your opinion that Mrs. Sawyers' work-related tasks were a substantial factor in the cause of or aggravation of her preexisting condition?
- Yes. That was the work activities, the school bus activities and the vibrational activities are the substantial cause why it continued and why she had to stop doing that.
- Is it your opinion that her work activities were a permanent aggravation of her underlying degenerative disc problems?
- Yes.

I find this expert testimony persuasive. Employer/Insurer relies on Dr. Ebelke's opinion that Claimant's back pain is not related to her bus driving activities. Dr. Ebelke's opinion, in summary, is that Claimant's "driving a bus for a few years" could not have been a significant cause of her underlying back problems. I do not find Dr. Ebelke's opinion persuasive. When addressing the issue of causation of a medical condition for worker's compensation purposes, knowledge of an employee's job and job duties play a critical role. I reviewed Dr. Ebelke's deposition testimony and found the following: during cross examination by Claimant's counsel, Dr. Ebelke was asked whether he asked Claimant any questions about her employment as a bus driver and her job duties. Dr. Ebelke testified that he did not recall asking any specific questions about her employment. He further testified that he does not generally go into great detail about employment. When asked if he asked any specific questions about her job and in what way if any that affected her back pain, Dr. Ebelke responded with "No. I would not have asked her any questions about her job." Without questioning the Claimant as to her job duties, I find it very difficult for Dr. Ebelke to address the issue of causation and therefore find Dr. Ebelke's causation opinion to be less credible than Claimant's treating physicians who were very familiar with her job duties as they related to her symptoms. I, therefore, find that Claimant did sustain an occupational disease arising out of and in the course of her employment due to the repetitive trauma sustained to her back while driving a school bus.

Notice: § 287.420 RSMo

The next issue to be determined is whether Claimant provided Employer with notice of her injury as required by Section 287.240 RSMo. The Missouri Supreme Court in Endicott v. Display Technologies, Inc., 77 S.W.3d 612 (Mo. *banc.* 2002) spoke directly to the issue of whether notice was required in occupational disease cases, such as the Claimant's. The Endicott Court specifically stated that "the statutes do not require an employee to notify the employer

of occupational diseases.” Endicott at p. 616. Because I have found that the Claimant sustained injury by occupational disease, the issue of notice is moot according to our Supreme Court. Although the Claimant pled accident, series of accidents, or occupational disease, I find that the Claimant’s injury resulted from her repetitive motion or resulted from her work-related repetitive bumping and jarring on the bus. The Court specifically held in Endicott v. Display Technologies, Inc., 77 S.W.3d 612 (Mo. banc 2002), that the notice requirement in §287.420 does not apply to occupational diseases. The Court explained that the statute required notice in accident claims but the notice requirement in §287.420 simply does not apply to occupational diseases and never has. The Court’s reasoning is as follows:

“[T]he statutes do not require an employee to notify the employer of occupational diseases. By section 287.420, an employer must receive notice of an injury, for compensation proceedings to be maintained. However, notice is required after an ‘accident,’ describing the ‘time, place, and nature of the injury.’ Section 287.420. By this plain language, section 287.420 does not encompass occupational diseases. See sections 287.020.2 and 287.067.1; cf. 287.127.1(2). The statute’s history confirms this meaning. The notice requirement in section 287.420 has not changed since the original compensation law in 1925. H.B. 112, sec. 38, 1925 Mo. Laws 395; S.B. 214, sec. 387.420, 1965 Mo. Laws 410. The original compensation law did not include occupational diseases. H.B. 112, sec 7(b), 1925 Mo. Laws 380; H.B. 498, sec. 1, 1931 Mo. Laws 383. When occupational diseases were comprehensively added to the compensation law, the amendment referenced the statute of limitations, but not the notice provision in 287.420. Section 287.063.6 RSMo 1959, now codified as Section 287.063.3. The notice requirement in section 287.420 does not apply to occupational diseases. Maxon, 9 S.W.3d at 733; Bryant, 963 S.W.2d at 348; Weninger, 860 S.W.2d at 361; Elgersma, 829 S.W.2d at 37; Prater v. Thorngate, Ltd., 761 S.W.2d 226, 229 (Mo.App. 1988).”

Temporary Total Disability

The next issue to be determined is whether Claimant is entitled to temporary total disability benefits. In her September 03, 2003, ALJ Emily Fowler awarded Claimant temporary total disability benefits beginning on March 21, 2001 through the date of her award, September 03, 2003. Dr. Downs informed Claimant on March 21, 2001, that her lumbar condition and complaints were related to her job as a bus driver. Claimant was taken off of work by Dr. Downs. Claimant was released at maximum medical improvement by Dr. Bailey on April 20, 2005. Therefore, I find that Claimant was unable to compete for gainful employment and under active medical treatment as a direct result of her lumbar condition from March 21, 2001 through April 20, 2005. This equates to 212 2/7th weeks of weekly temporary total disability payments of \$282.93 or \$60,062.00.

Past Medical Expenses

Claimant is requesting payment of \$176,240.90 in medical bills incurred to the date of the hearing. The evidence presented in Exhibits PP through YY are billing records documenting medical expenses in the amount of \$176,240.90. I find that these bills were reasonable and that the treatment was necessary with the exception of one \$113.00 bill for mammography which on its face is for a diagnostic test unrelated to Claimant’s work injury. Employer is responsible for all fair and reasonable medical expenses resulting from a compensable injury. Section 287.140 RSMo 2000. The employer should not receive an advantage for failing to timely pay medical bills at the Employee’s expense because the employer did not provide medical treatment as was required by Judge Fowler’s award and therefore forced the Claimant to seek her own medical treatment. The employer is indeed responsible for these medical expenses. In Farmer Cummings v. Personnel Pool of Platte Co County, 110 S.W.3d 818, (Mo en banc 2003), the Supreme Court held that once the employee has produced medical expenses related to the treatment of a compensable workplace injury, the employer is responsible for those expenses unless the employer proves “by a preponderance of the evidence that the health care providers allowed write-offs and reductions and [the employee] is not legally subject to further liability...” If the employee remains personally liable for any of the reductions, he is entitled to recover them as fees and charges pursuant to §287.140.” As there has been no evidence presented in this case that the Employee is not ultimately responsible for the payment of all of the amounts submitted, the employer and insurer are hereby ordered to pay all the related documented medical expenses, i.e., \$176,127.90.

Section 287.510 “Doubling”

The second issue to be addressed by this Court is of particular importance given the facts and circumstances of this case. This issue deals with Employer/Insurer's noncompliance with the Temporary Award entered by Administrative Law Judge Emily Fowler on September 03, 2003. Specifically, the issue to be determined is whether the September 03, 2003 Award should be "doubled" pursuant to Section 287.510. Section 287.510 allows for a "doubling" of an award in the event of noncompliance by an insurer. Specifically, Section 287.510 provides a warning to employers/insurers of the consequences of noncompliance and authorizes the Commission to enact those consequences for noncompliance. In this case, ALJ Emily Fowler awarded temporary total disability benefits to Claimant from March 21, 2001 through the date of the Award, September 03, 2003. The Award also ordered Employer/Insurer to pay TTD benefits "from September 03, 2003 **forward** as required to compensate Claimant for any time she is unable to work until she does find such cure or relief from her symptoms or she reaches maximum medical improvement." Despite the temporary order to pay temporary total disability benefits effective immediately, Employer/Insurer did not issue its first TTD payment to Claimant until April 23, 2004, **over seven months** after the Award was entered. Claimant's counsel repeatedly sent correspondence to counsel for employer/insurer requesting that Claimant's TTD payment be made pursuant to the ALJ's award. (see Exhibit DDD). Employer/Insurer provided no response whatsoever to Claimant's repeated requests for payment of TTD benefits. It was not until seven months later, out of the blue, that Claimant received her TTD benefits. Additionally, Employer/Insurer sent the TTD payments to Claimant's prior counsel despite full knowledge and an entry of appearance by Claimant's current counsel.

The September 03, 2003 Award also ordered Employer/Insurer to provide Claimant with reasonable and necessary medical care to relieve her of her medical condition. Dr. Downs testified that Claimant could benefit from surgery and certainly could benefit from additional medical care and treatment. I find it particularly noteworthy that at **no** time did Employer/Insurer provide Claimant with any medical care and treatment despite the recommendations of Dr. Downs and numerous other physicians. To date, Employer/Insurer has not provided Claimant with any medical care or treatment for her injuries despite this Court's prior Award. Claimant was forced to seek medical care and treatment on her own and pay for all medications and doctor visits through her private medical health insurance or out of her pocket. Claimant's symptoms developed as early as 1997. She sought care on her own. Claimant was forced to go without medical care for several months because she had no private health insurance and could not afford to seek care on her own. It was not until March 13, 2001 that Claimant learned through Dr. Downs that her work was causing and aggravating her low back condition. Claimant thereafter filed a Claim for Compensation demanding medical care and treatment. None was provided. Not only was none provided, none has ever been provided during the six plus years this case has been in existence. Again, Claimant counsel repeatedly demanded medical treatment and compliance with the Award through letters to counsel for employer. No medical care was provided. I also find it significant that ultimately, Claimant did undergo surgery as suggested as far back as 2001. This surgery was not paid for by the Employer/Insurer as ordered by this Court and remains unpaid to date.

I find Shaw v. Scott, 49 S.W.3d 720 (Mo. App. 2001) to be directly on point in the case at bar. In Shaw, Claimant made claim for workers' compensation benefits. Employer/Insurer denied benefits. A hardship hearing was held and the ALJ issued a temporary award awarding Claimant's past medical expenses to be paid along with temporary total disability benefits and future medical expenses. The Employer/Insurer paid a portion of Claimant's TTD benefits but then terminated the same. The Employer/Insurer also delayed in providing medical care. The ALJ later issued a final award affirming his temporary award and awarding penalties and costs pursuant to Section 587.210. The Commission affirmed the ALJ's decision. Shaw, at 725-26. Employer/Insurer appealed to the Western District arguing, among other things, that their noncompliance must have been "willful and intentional acts of noncompliance." Id. at 726. The Shaw court clearly disagreed and held that the reasons for an insurer's noncompliance with an award are irrelevant in determining whether penalties may be imposed for noncompliance. Id. The Shaw court refused to draft a requirement of ill-will or purposefulness into the statute. The purpose of the doubling statute is clear. The statute was enacted in order to encourage the payment of compensation during the interim between the temporary and final awards . . . if an employer elects to refuse compliance with the temporary award he is assuming a calculated risk of being subjected to the penalty in the event the final award is in accordance with the temporary award. Cebak v. John Nooter Boiler Works Co., 258 S.W. 2d 262, 266 (Mo. App. 1953). The case at bar illustrates the wisdom and applicability of Section 287.510. In the September 03, 2003, Award and subsequent affirmation by the Commission, Employer was ordered to provide compensation benefits including payment of medical expenses, provision of additional medical care and payment of temporary total disability benefits. Employer elected to refuse compliance despite complete knowledge of the risk of being subjected to the doubling penalty in question. Claimant, conversely, has been unable to work from

February 22, 2001 through the present. The only compensation paid by the Employer was delayed and irregular payment of temporary total disability benefits. In review of the evidence presented both at the temporary hearing and at the final hearing, I find that Claimant was entitled to compensation for her injuries and Employer blatantly refused to provide the same in a timely manner. Employer's delay constituted noncompliance with Judge Fowler's temporary award.

The only prerequisite to justify a doubling of an award is noncompliance with a temporary award. Shaw, at 726; Cebak v. John Nooter Boiler Works Co., 258 S.W.2d 262 (Mo. App. 1953). Employer asserts that it did make payments of all amounts of temporary total disability due and owing to Claimant prior to the final award. This makes no difference under §287.510 Shaw and other cases clearly hold that "upon the first instance of noncompliance, Section 287.510 vests the Commission with the discretion to double the award." Shaw at 727; *See also* Sutton v. Vee Jay Cement Contracting Co., 37 S.W. 3d 803 at 810 (Mo. App. E.D. 2000). The fact that the Employer ultimately paid even more temporary total disability benefits than was required is irrelevant because the payments were not made on a regular and timely basis. Therefore the employer under Shaw is not exempt from the penalty imposed by §287.510. Not only did the Employer fail to make timely and regular temporary disability payments, the employer failed to provide the Claimant with the medical care required under Judge Fowler's Award. This failure also constitutes noncompliance. Shaw clearly states that Section 287.510 allows for the doubling of the entire award rather than just the period of noncompliance. Shaw at 727. In Shaw, the penalty after a doubling of the entire award was 204 times greater than the actual nonpayment. Shaw, at 726-27. The Shaw court stated that the penalty was not excessive in that the language of the statute (287.510) allows for the doubling of the entire award. Id. at 727.

I find the Employer and Insurer blatantly chose not to comply with the September 03, 2003 Award. The only prerequisite for awarding a doubling of the entire September 03, 2003 Award, has therefore been satisfied and I assess the doubling of the entire amount of TTD owed to Claimant as well as the doubling of the outstanding medical bills incurred for medical treatment.

Nature and Extent of Permanent Disability

Claimant has alleged that she is permanently and totally disabled under the Missouri workers' compensation law. An employer is liable for permanent total disability compensation only where it is found that the effects of the last injury alone cause the employee to be permanently unable to compete for any gainful employment and therefore permanently and totally disabled. If the effects of the last injury taken in and of themselves render the Claimant permanently and totally disabled, any analysis regarding pre-existing disabilities is irrelevant as the entire liability for the permanent total disability benefits rests with the employer. If, however, the effects of the last injury result only in permanent partial disability benefits, then an analysis of the pre-existing disability is necessary. Under §287.220, the permanent disability predating the compensable work-related injury, or the pre-existing disability, must be an obstacle to employment and the current and pre-existing disabilities must combine to cause the Claimant to be permanently and totally disabled. If these requirements are met, the Second Injury Fund is liable for permanent total disability benefits rather than the employer. *See e.g.*, Mathia v. Contract Freighters, Inc., 929 S.W.2d 271, 276 (Mo.App. 1996); Feldman v. Strolling Properties, 910 S.W.2d 808 (Mo.App. 1995); Ruebbling v. West County Drywall, 898 S.W.2d 615 (Mo.App. 1995); Leutzinger v. Treasurer, 895 S.W.2d 591 (Mo.App. 1995); Reiner v. Treasurer, 837 S.W.2d 363 (Mo.App. 1992).

Section 287.020(7) defines "total disability" as an inability to return to any employment and not merely... inability to return to the employment in which the employee was engaged at the time of the accident. The terms "any employment" mean "any reasonable or normal employment or occupation." Reese v. Gary & Roger Link, Inc., 5 S.W.3d 522 (Mo.App. 1999); Fletcher v. Second Injury Fund, 922 S.W.2d 402 (Mo.App. 1996); Kowalski v. M-G Metals and Sales, Inc., 631 S.W.2d 919, 921 (Mo.App. 1982); Groce v. Pyle, 315 S.W.2d 482,490 (Mo.App. 1958). It is not necessary that an individual be completely inactive or inert in order to meet the statutory definition of permanent total disability. It is necessary, however, that they be unable to compete in the open labor market. *See* Reese v. Gary & Roger Link, Inc., 5 S.W. 3d 522 (Mo. App. 1999); Carlson v. Plant Farm, 952 S.W.2d 369, 373 (Mo.App. 1997); Fletcher v. Second Injury Fund, 922 S.W.2d 402 (Mo.App. 1996); Searcy v. McDonnell Douglas Aircraft, 894 S.W.2d 173 (Mo.App. 1995); Reiner v. Treasurer, 837 S.W.2 363 (Mo.App. 1992); Brown v. Treasurer, 795 S.W.2d 478 (Mo. App. 1990). Missouri courts have repeatedly held that the test for determining permanent total disability is whether the

individual is able to compete in the open labor market and whether the Employer in the usual course of business would reasonably be expected to employ the employee in his present physical condition. See Garcia v. St. Louis County, 916 S.W.2d 263 (Mo.App. 1995); Lawrence v. RVIII School District, 834 S.W.2d 789 (Mo.App. 1992); Carron v. St. Genevieve School District, 800 S.W.2d 6 (Mo.App. 1991); Fischer v. Archdiocese of St. Louis, 793 S.W.2d 195 (Mo.App. 1990). In other words, a determination of permanent total disability should focus on the ability or inability of the employee to perform the usual duties of various employments in the manner that such duties are customarily performed by the average person engaged in such employments. Gordon v. Tri-state Motor Transit, 903 S.W.2d 849 (Mo.App. 1995). The courts of this state have held that various factors may be considered, including an employee's physical and mental condition, age, education, job experience and skills in making the determination as to whether an employee is permanently and totally disabled. See e.g., Tiller v. 166 Auto Auction, 941 S.W.2d 863 (Mo.App. 1997); Olds v. Treasurer, 864 S.W.2d 406 (Mo.App. 1993); Brown v. Treasurer, 795 S.W. 2d 439 (Mo.App. 1990); Patchin v. National Supermarkets, Inc., 738 S.W.2d 166 (Mo.App. 1987); Laturno v. Carnahan, 640 S.W. 2d 470 (Mo.App. 1982); Vogel v. Hall Implement Company, 551 S.W.2d 922 (Mo.App. 1977).

I find in accordance with the Claimant's testimony that she has fairly constant and unremitting low back pain. While she has some good days and bad, her back nearly always is a concern to her. She testified that the surgery did help her with her right leg radicular pain but did not completely relieve it. During her live testimony she got up from her seated position and alternated between sitting and standing approximately every 10 to 30 minutes. She estimates her standing tolerance to be less than 30 minutes and walking tolerance also less than 30 minutes. She limits her lifting and carrying to less than 20 pounds. She has had problems with bladder urgency and episodes of incontinence. She has a significant loss of strength in both lower extremities with the right leg being worse than the left. On bad days she needs help tying her shoes, help zipping her zipper on her jeans and combing her hair. She does drive but only occasionally and limits her driving to short distances. She must lie down periodically throughout the day for relief of her back pain. I find Claimant's overall level of functioning a concern. She testified she experiences days when she does not get out of bed. Other days she lies down throughout the day for one to two hours seeking relief from her low back pain. She did testify and there was ample evidence to demonstrate that she does occasionally go out dancing with her husband but pays the price the next day by taking pain medication and remaining in bed all day.

In addition to her pain complaints and functioning limitations, I find her need to be on narcotic pain medication a factor impacting her ability to compete for gainful employment on the open labor market. I did note in Dr. Bailey's office notes of August 26, 2005, that Claimant only takes 1-2 Hydrocodone per day when her pain is bad, but can go weeks without narcotics. This raised a question concerning the legitimacy of Claimant's actual dependency on narcotic medication to control her pain. I find, however, that Dr. Bailey's office notes are inconsistent with the evidence submitted in this case. Upon review of Claimant's Exhibit XX (Claimant's Wal-Mart pharmacy receipts) I find a consistent use of narcotic pain medication by Claimant, specifically Hydrocodone, as well as other prescription medications. For the sake of brevity, I examined only Claimant's pharmacy records and medication use from the date of her fusion operation on August 10, 2004 through February 2007 (a month before the final hearing). I find that in August of 2004, Claimant was prescribed 500 Mg of Hydrocodone on three different occasions in the month of August along with one prescription of Oxycontin. One might expect this type of narcotic use immediately after a major back operation, however. In September of 2004, I find that Claimant consumed Cyclobenzapr (generic for Flexiril, muscle relaxant) as well as 120 tablets of Hydrocodone 500 Mg. In October of 2004, Claimant was prescribed 120 tablets of 500 Mg Hydrocodone along with Cyclobenzapr. During that time, Claimant also began taking Amitriptyline for depression. Further review of the pharmacy records reveal that Claimant was prescribed 75 tablet refills of 500 Mg Hydrocodone at least monthly on a regular basis. Claimant was therefore taking at least two (2) Hydrocodone 500 Mg tablets per day through February of 2007, approximately one month prior to this final hearing. This appears to be consistent with Claimant's testimony at hearing. In fact, the pharmacy records show that on January 09, 2007, Claimant had received a refill of 90 tablets of 500 Mg Hydrocodone, just two months before the final hearing. In addition to her Hydrocodone consumption, Claimant was consistently receiving prescription refills for such drugs as Cyclobenzapr (muscle relaxant), Amitriptyline and Wellbutrin for depression which also affect her level of functioning. Also, the pharmacy records indicate that Claimant began consuming 800 Mg of Ibuprofen on a monthly basis in June of 2005.

In sum, I find that Claimant's pharmacy records clearly demonstrate that Claimant continues to consume narcotic pain medication on a consistent basis. The prescription records indicate that Claimant obtained and continues to obtain

Hydrocodone refills on a monthly basis. The amount of Claimant's refills and the frequency of said refills indicate that Claimant is consuming Hydrocodone on a daily basis. I find that Claimant's overall level of functioning due to pain and narcotic use significantly impaired. This level of medication would certainly impair Claimant's ability to concentrate and remain on task. Multiple medical professions including Dr. Bailey and Dr. Koprivica have opined that Claimant's dependency on narcotic medication will last indefinitely and have recommended pain management. As such, balancing her pain and narcotic usage to alleviate the pain will be a lifelong struggle for Claimant. This will greatly interfere with her ability to sustain gainful employment. The evidence clearly supports that Claimant's narcotic use is a direct result of her low back injury occurring while working for Blue Springs School District.

In addition to her pain and narcotic use, Claimant has physical restrictions which she must abide by and which further limit her employment opportunities. Multiple medical providers have assigned medical restrictions to Claimant. Dr. P. Brent Koprivica assigned the following permanent work restrictions: Claimant be allowed the opportunity to change from captive sitting on an hourly basis; standing and walking should be limited to thirty minutes or less; only occasional lifting and carrying of no greater than 20 pounds; avoid frequent or constant bending at the waist, pushing, pulling or twisting; avoid sustained or awkward postures of the lumbar spine; avoid frequent or constant squatting, crawling or kneeling activities with no climbing activities. With respect to her bilateral upper extremities, Dr. Koprivica assigned the following restrictions: no repetitive pinching, grasping, no repetitive ulnar deviation of the wrist or exposure to either upper extremity to vibration. Dr. Ira Fishman also placed permanent work restrictions on Claimant of the following: difficulty performing work activities involving prolonged walking, standing, and sitting as well as frequent bending, stooping, kneeling and squatting. Dr. Fishman recommended that Claimant alternate between seated and standing positions as needed for relief of her low back pain. Dr. Fishman limited Claimant's lifting, carrying, and handling capabilities to the light physical demand category of work, essentially limiting her to 20 lbs or less on an occasional basis. Significantly, Employer's medical expert, Dr. Ebelke, recommended that Claimant consider a different line of work (i.e. no more bus driving), the reason being that Claimant is unable to tolerate her job due to her underlying condition. Dr. Ebelke recommended that Claimant not perform a job that significantly aggravates her back pain, but did feel Claimant could perform most light or light/medium activity jobs that do not involve the driving of a truck or bus.

Once the medical restrictions are provided, it is left for this tribunal to determine whether, indeed, Claimant is permanently and totally disabled. Again, "[t]he test for permanent total disability is the claimant's ability to compete in the open labor market." Forshee v. Landmark Excavating and Equip., 165 S.W.3d 533, 537 (Mo. App. E.D. 2005). "The pivotal question is whether an employer can reasonably be expected to hire this employee, given his present physical condition, and reasonably expect him to successfully perform the work." Sutton v. Vee Jay Cement Contracting Co., 37 S.W.3d 803, 811 (Mo. App. E.D. 2000). As a portion of that analysis, the "claimant's credible testimony as to work-related functioning can constitute competent and substantial evidence" for consideration by this tribunal. Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 224 (Mo. En Banc 2003).

The only vocational expert presented in the case was Michael Dreiling, vocational consultant retained by Claimant. In evaluating the vocational impact of Claimant's back injury in isolation it is critical to examine both Mr. Dreiling's report and deposition testimony. Mr. Dreiling reported that "[Claimant] has significant pain issues impacting the back area of a constant basis" (Ex. F. pg. 10). Mr. Dreiling also reported that Claimant had short tolerances of 15-30 minutes for sitting and standing, had to lie down several times a day and that about one day per week she had a "bad day" wherein she had difficulty doing any type of activity. (Ex. F. pg. 7).

Mr. Dreiling testified that the medications of Flexeril, Amitriptyline, Vicodin, and Ibuprofen caused drowsiness during the day and would affect Claimant's vocational prospects (Ex. ZZ pg. 44). Dr. Koprivica reported that medically all those medications were taken exclusively for the back condition (Ex. D pg. 9). Mr. Dreiling admitted that the postural limitations from the back condition alone would impact Claimant's vocational prospects (Ex. ZZ pg. 45). Indeed, in cross-examination, Mr. Dreiling participated in the following exchange: "Q: If, in fact, she had to lay down to relieve her pain, that alone would take her out of the labor market, wouldn't it? A: Realistically, it's going to." (Ex. ZZ pg. 48). Because I find that Claimant did credibly report a need to lay down during the day for back pain relief, I find that based on Mr. Dreiling's testimony, that condition alone is sufficient to remove her from the labor market. Dr.

Koprivica discusses on cross-examination Claimant's statement that she had to lay down during the day to relieve her back pain. First, Dr. Koprivica admitted that he does not inquire whether his patients require lying down during the day (Ex. AAA, pg. 54). When confronted with Claimant's admission on Social Security documentation that she must lie down to relieve back pain, Dr. Koprivica opined that a number of people with two-level fusions who have significant symptoms report that complaint and he would put medical validity to Claimant's comment since he found no evidence of magnification or psychological overlay in Ms. Ball-Sawyer's presentation (Ex. AAA, pg. 54). Dr. Koprivica went on to testify that someone who must lay down during the day would be prevented from working based on that condition alone (Ex. AAA, pg. 55).

Mr. Dreiling addresses Claimant's intellectual testing and ability, which he found fundamentally sufficient for participating in retraining, in the following manner: "A: Even if she gets additional training, she still has to enter the real world of work in terms of finding employment settings where [*sic*] could accommodate her sitting/standing and in her case, lying down. Q: And those sitting, standing, lying down problems are all related strictly to her back condition, correct? A: I believe from what I have seen in the medical, yes."

I find that Claimant is permanently and totally disabled based solely in isolation of her repetitive trauma to her lumbar spine while employed by Employer up and through her last date of employment. I find that the permanent medical restrictions apply primarily to Claimant's lumbar spine injury for which she sustained while employed by Employer. Claimant's needs to alternate sitting and standing every 15-30 minutes in addition to her need to lie down throughout the day are directly attributable to her low back pain. Furthermore, the medications currently consumed by Claimant are a direct necessity of her cumulative lumbar injury. The record reveals that prior to the development of her lumbar condition Claimant was not taking narcotic pain medication on a regular basis. These medications I feel affect her employability. I agree that Claimant has the capacity to be retrained or attend some type of vocational rehabilitation. However, given her pain presentation and medical difficulties, I do not find this to be a realistic option for Claimant. Even assuming Claimant did obtain additional training, I find it very unrealistic that she could find employment within the specific accommodations required by her medical restrictions. (i.e. her need to sit, stand, lie down, walk around). In this case, Claimant is a 45 year old woman who has been out of the labor market for over six years. It has been over twenty five years since she last obtained any type of formal academic training or education. She has been receiving full social security benefits from March 22, 2002. I agree with the vocational expert that even without medical disabilities vocational retraining is a very difficult proposition. I believe Claimant has the intellectual capability to be retrained, however, when you take into consideration her continued problems with her lumbar spine, her pain issues which affect concentration and indefinite need for pain medication, and the fact that she can only tolerate basic levels of activity on an inconsistent basis, it is not realistic for Claimant to start a new career. I find that Claimant's current medical condition and permanent medical restrictions assigned by numerous medical professionals are a direct and proximate result of her cumulative work injury while employed by Blue Springs School District. Because of this finding, no consideration or analysis regarding Claimant's pre-existing disabilities (regarding her upper extremities or any other possible prior disabilities) is necessary.

Future Medical

I find that the evidence presented by the medical experts in this case provides a basis for an award of future medical care and treatment for Claimant for life against Employer/Insurer. This award of future medical includes any necessary medical treatment necessary to relieve Claimant's chronic lumbar spine condition. Claimant testified that she continues to consume a large regimen of narcotic medication, including Hydrocodone. The medical evidence presented suggests that Claimant's need for narcotic medication will continue indefinitely. Claimant's orthopedic surgeon, Dr. Bailey, expressed concern in his office notes with Claimant's dependency on narcotic pain medication. Dr. Bailey is clearly of the opinion that Claimant will have ongoing medical needs including potentially life-long narcotic consumption. Claimant continues to receive narcotic prescriptions from her family physician, Dr. Ommen. Additionally, Dr. P. Brent Koprivica testified in his deposition that Claimant should be afforded the opportunity to follow up with Dr. Bailey or other orthopedic surgeon for prescription medication monitoring and for monitoring of her fusion operation which often comes with the risk of developing adjacent segment disease. Dr. Koprivica further testified that he would expect Claimant to have an indefinite need for medications such as Vicodin, Wellbutrin, Zantac and Ibuprofen. Dr. Koprivica, like Dr. Bailey, expressed a concern about chronic narcotic pain medication use with Claimant. Dr. Koprivica recommended that Claimant continue to treat with a medical professional who is familiar

with chronic narcotic pain use and can help Claimant regulate her use of the same. Specifically, Dr. Koprivica opined that Claimant continue to treat with either a pain management specialist or surgeon for purposes of managing her narcotic consumption. As such, this Court orders Employer to provide Claimant with ongoing access to an orthopedic surgeon or pain management specialist for management of Claimant's narcotic pain medication consumption. If at some point it is determined that Claimant is need of rehabilitation, I order Employer to provide the same. I also order Employer to provide chronic pain management for Claimant if necessary. As such, I hereby order Employer to provide Claimant with any and all future medical care and treatment necessary to cure and relieve the effects of her medical conditions arising from her lumbar injury.

Date: _____

Made by: _____

Rebecca S. Magruder
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

All statutory references are to Chapter 287 of the Revised Statutes of Missouri 2000 – the law applicable to this 2001 injury.