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

Injury No.: 11-031709

Employee: Adriana Barahona

Employer: Hilton Hotel/Hilton Worldwide, Inc.

Insurer: Ace American Insurance Company

Additional Party: Treasurer of Missouri as Custodian of Second Injury Fund

This 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, read the parties' briefs, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Permanent total disability

On April 24, 2011, employee was cleaning a table in employer's cafeteria when she slipped and fell on a wet floor, injuring her back and left knee, and striking the back of her head. The parties asked the administrative law judge to resolve the issue of the nature and extent of disability resulting from this event. The administrative law judge determined that employee is permanently and totally disabled as a result of the April 2011 work injury considered alone. Employer appeals.

After careful consideration, we agree with the administrative law judge's determination that employee is permanently and totally disabled as a product of the April 2011 work injury considered alone. We do, however, discern a need to provide some additional findings and clarifying comments. Accordingly, we issue this supplemental opinion.

On pages 49 and 50 of her award, the administrative law judge provides a list of impairments or disabling conditions she deemed to have resulted from the last injury. We commend the administrative law judge for applying the appropriate statutory analysis, which requires that we first isolate, to the extent possible, the residual effects from the last work injury in order to determine whether the employer, or the Second Injury Fund, is liable for employee's permanent total disability. See *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo. 2003). We do note, however, that the list on pages 49 and 50 appears to include some conditions which are arguably related, at least in part, to employee's preexisting disabling conditions. For example, employee's current and ongoing need for assistance with activities of daily living; her need for daily narcotic medications in connection with multiple pain-generating conditions; and her limitations with regard to prolonged sitting and standing would all appear to involve at least some component of disability referable to employee's

preexisting injuries and disabling conditions. Likewise, employee's bilateral ankle problems clearly involve disability referable to her prior work injuries of June and July 2010 affecting the right ankle. Accordingly, we must disclaim, from the numbered list spanning pages 49 and 50, the above-mentioned items, as we are convinced each involve some component of disability or impairment not referable solely to the effects of the last work injury.

Having said that, we are convinced that the effects of the April 2011 injury, considered alone, remain sufficient to render employee permanently and totally disabled. Employer asks us to credit the opinion from its vocational expert, James England, who believes that, even based on the more limiting restrictions imposed by employee's evaluating expert, Dr. David Volarich, employee may be able to go back to work in the areas of ticket sales, security work, assembly, and some cashiering. Mr. England ultimately conceded, however, that if one agrees with Dr. Volarich that employee is unlikely to be able to sustain a regular workday, employee may be unemployable due to a combination of her injuries. In other words, Mr. England appears to concede that if Dr. Volarich's opinions are believed, employee may be unemployable owing to a combination of her work injury and preexisting disability.

Notably, Mr. England believed that the restrictions from Dr. Volarich were referable to a combination of employee's various work injuries and preexisting problems. See *Transcript*, page 600. This is incorrect. At his deposition, Dr. Volarich made clear that all of the restrictions he assigned within his report were referable to the April 2011 primary injury. See *Transcript*, pages 353 and 374. Thus, it would appear that any unemployability conceded by Mr. England must be deemed referable to the primary injury considered alone, rather than a combination of employee's injuries and disabling conditions.

We note also that Mr. England failed to address the critical question whether employee possesses, given the effects of her last work injury combined with her limited education and work history, the ability to successfully compete for jobs in the open labor market:

> The test for permanent total disability is whether the worker is able to compete in the open labor market. The critical question is whether, in the ordinary course of business, any employer reasonably would be expected to hire the injured worker, given his present physical condition.

Molder v. Mo. State Treasurer, 342 S.W.3d 406, 411 (Mo. App. 2011).

Aside from acknowledging that employee will need a great deal of remediation in order to obtain her GED in the United States, Mr. England failed to discuss this issue, or to persuasively identify any likelihood that a prospective employer would choose employee over virtually any other applicant, where her work history is primarily limited to medium-duty jobs in the kitchen and restaurant industry, and where she possesses only an eighth-grade education from her native Honduras.

Ultimately, like the administrative law judge, we find most persuasive the vocational analysis of Phillip Eldred, who opined that employee is permanently and totally disabled based on the effects of the April 2011 primary injury, considered alone. We so find.

Conclusion

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Karen Fisher, issued September 13, 2016, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm 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 12th day of July 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT
Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Adrianna Barahona Injury No. 10-043312, 10-110361, 10-111518, 11-031709

Dependents: N/A

Employer: Hilton Hotel/Hilton Worldwide, Inc.

Additional Party: Second Injury Fund

Insurer: Ace American Insurance Company
c/c Specialty Risk Services

Before the
DIVISION OF WORKERS' COMPENSATION
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Hearing Date: May 5, 2016 Checked by:

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? YES

2. Were the injuries compensable under Chapter 287? YES

3. Were there accidents under the Law? YES

4. Dates of injury: June 3, 2010, June 10, 2010, July 1, 2010, and April 24, 2011.

5. Locations where accidents occurred: Branson, Taney County, Missouri

6. Was above employee in employ of above employer at time of alleged accidents? YES

7. Did employer receive proper notice? YES

8. Did accidents arise out of and in the course of the employment? YES

9. Were claims 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 accidents occurred: On June 3, 2010, employee sustained an injury when she was pulling a cart. On June 10, 2010, employee sustained an injury when she slipped on water. On July 1, 2010, employee sustained an injury when she slipped on water. On April 24, 2011, employee sustained an injury when she slipped on water.

12. Did accident cause death? NO

13. Parts of body injured by accidents: June 3, 2010: right ankle; June 10, 2010: back and body as a whole; July 1, 2010: right ankle; and April 24, 2011: head, back, left leg, right leg, left ankle, left knee, and body as a whole.

14. Nature and extent of any permanent disability: June 3, 2010 – 10 percent right ankle permanent partial disability against the employer/insurer; June 10, 2010 – 5 percent body as a whole permanent partial disability against the employer/insurer; July 1, 2010 – 15 percent right ankle permanent partial disability against the employer/insurer; and April 24, 2011 - permanent total disability against the employer/insurer.

15. Compensation paid to-date for temporary disability: None for the June 3, 2010, June 10, 2010, July 1, 2010 injury, and the April 24, 2011, injury.

16. Value of necessary medical aid paid to date by employer/insurer? Unknown

17. Value necessary medical aid not furnished by employer/insurer? $1,666.28 for April 24, 2011, accident.

18. Employee's average weekly wage: $605.45 for the June 3, 2010, injury; $605.45 for the June 10, 2010, injury; $605.45 for the July 1, 2010, injury; and $573.81 for the April 24, 2011, injury.

19. Employee's weekly compensation rate: $403.63 for the June 3, 2010, injury; $403.63 for the June 10, 2010, injury; $403.63 for the July 1, 2010, injury; and $382.54 for the April 24, 2011, injury.

20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: $1,666,28.

For permanent partial disability:

June 3, 2010: 10% x 150 x $403.63= $6,054.45

June 10, 2010: 5% x 400 x $403.63 = $8,072.60

July 1, 2010: 15% x 150 x $403.63 = $9,081.68

TOTAL: $23,208.73

Costs pursuant to section 287.560, Mo.Rev.Stat. (1994): No

Medical aid in the future: Yes

Permanent total disability benefits: Yes

Beginning October 13, 2011, and continuing for the remainder of claimant's lifetime, the employer/insurer shall pay to claimant the weekly sum of $382.54, for permanent total disability benefits.

Disfigurement: No

22. Second Injury Fund liability: No

Weeks of permanent partial disability: None

Uninsured medical/death benefits: No

Permanent total disability benefits from Second Injury Fund: No

TOTAL: NONE

23. Future requirements awarded: Yes, for injuries arising from April 24, 2011.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to claimant:

Jennifer L. Newman

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Adrianna Barahona Injury No. 10-043312, 10-110361, 10-111518, 11-031709

Dependents: N/A

Employer: Hilton Hotel/Hilton Worldwide, Inc.

Additional Party: Second Injury Fund

Insurer: Ace American Insurance Company
c/c Specialty Risk Services

Hearing Date: May 5, 2016

Before the
DIVISION OF WORKERS' COMPENSATION
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

AWARD

The parties appeared before the undersigned administrative law judge for a final hearing to determine the liability of Hilton Hotel/Hilton Worldwide, Inc. (Employer and hereinafter "Hilton") and Ace American Insurance Company c/c Specialty Risk Services (Insurer) as well as the Second Injury Fund (the Fund). Ms. Adriana Barahona (Claimant) appeared with her attorneys of record, John Newman and Jennifer Newman. Ms. Peggy Hecht appeared on behalf of Employer/Insurer. Assistant Attorney General Catherine Goodnight represented the Second Injury Fund. Ms. Adriana Barahona alleges Four (4) dates of injuries. She alleges that she was injured while pulling a cart on June 3, 2010. Ms. Barahona also alleges that she sustained injuries when she slipped on water on June 10, 2010, July 1, 2010, and April 24, 2011. All Four (4) cases were tried together. Injury number 10-043312 pertains to an injury date of June 3, 2010. The second claim, Injury number 10-110361, occurred on June 10, 2010. The third claim, Injury Number 10-111518, occurred on July 1, 2010. The fourth claim, Injury Number 11-

031709, occurred on April 24, 2011. The parties stipulated to the following facts and limited the issues as follows:

STIPULATIONS

Re: June 3, 2010; Injury Number 10-043312

1. On June 3, 2010, the parties were protected by and subject to the Missouri Workers' Compensation Laws. The employer was fully insured by Ace Indemnity Insurance, c/o Specialty Risk Services, LLC.
2. On the alleged injury date of June 3, 2010, Adriana Barahona was an employee of the employer.
3. The claimant was working subject to the Missouri Workers' Compensation Law.
4. The parties agree that on or about June 3, 2010, claimant sustained injuries in an accident that were medically and causally related to her work with employer. The injuries arose out of and were within the course and scope of claimant's employment with employer.
5. This employment occurred in Branson, Taney County, Missouri. Employer admits that the employee's contract of employment was made in Missouri. Parties agree to venue and jurisdiction lying in Springfield, Greene County Missouri for the purposes of the hearing in all Four (4) claims.
6. The claimant notified the employer of her injury as required by Missouri Revised Statute Section 287.420.

7. The claim was filed within the time prescribed by Missouri Revised Statute Section 287.430.
8. At the time of the claimed accident, claimant's average weekly wage was $605.45, sufficient to allow the compensation rate of $403.63 for TTD and PPD.
9. No Temporary Total Disability (TTD) benefits have been paid in this claim.

Re: June 10, 2010; Injury Number 10-1100361

1. On June 10, 2010, the parties were protected by and subject to the Missouri Workers' Compensation Laws. The employer was fully insured by Ace Indemnity Insurance, c/o Specialty Risk Services, LLC.
2. On the alleged injury date of June 10, 2010, Adriana Barahona was an employee of the employer.
3. The claimant was working subject to the Missouri Workers' Compensation Law.
4. This employment occurred in Branson, Taney County, Missouri. Employer admits that the employee's contract of employment was made in Missouri. Parties agree to venue and jurisdiction lying in Springfield, Greene County Missouri for the purposes of the hearing in all Four (4) claims.
5. The claim was filed within the time prescribed by Missouri Revised Statute Section 287.430.
6. At the time of the claimed accident, claimant's average weekly wage was $605.45, sufficient to allow the compensation rate of $403.63 for TTD and PPD.
7. No Temporary Total Disability (TTD) benefits have been paid in this claim.

Re: July 1, 2010; Injury Number 10-111518

1. On July 1, 2010, the parties were protected by and subject to the Missouri Workers' Compensation Laws. The employer was fully insured by Ace Indemnity Insurance, c/o Specialty Risk Services, LLC.
2. On the alleged injury date of July 1, 2010, Adriana Barahona was an employee of the employer.
3. The claimant was working subject to the Missouri Workers' Compensation Law.
4. This employment occurred in Branson, Taney County, Missouri. Employer admits that the employee's contract of employment was made in Missouri. Parties agree to venue and jurisdiction lying in Springfield, Greene County Missouri for the purposes of the hearing in all Four (4) claims.
5. The claim was filed within the time prescribed by Missouri Revised Statute Section 287.430.
6. At the time of the claimed accident, claimant's average weekly wage was $605.45, sufficient to allow the compensation rate of $403.63 for TTD and PPD.
7. No Temporary Total Disability (TTD) benefits have been paid in this claim.

Re: April 24, 2011; Injury Number 11-031709

1. On April 24, 2011, the parties were protected by and subject to the Missouri Workers' Compensation Laws. The employer was fully insured by Ace Indemnity Insurance, c/o Specialty Risk Services, LLC.
2. On the alleged injury date of April 24, 2001, Adriana Barahona was an employee of the employer.
3. The claimant was working subject to the Missouri Workers' Compensation Law.

4. The parties agree that on or about April 24, 2011, claimant sustained injuries in an accident that were medically and causally related to her work with employer. The injuries arose out of and were within the course and scope of claimant's employment with employer.
5. This employment occurred in Branson, Taney County, Missouri. Employer admits that the employee's contract of employment was made in Missouri. Parties agree to venue and jurisdiction lying in Springfield, Greene County Missouri for the purposes of the hearing in all Four (4) claims.
6. The claimant notified the employer of her injury as required by Missouri Revised Statute Section 287.420.
7. The claim was filed within the time prescribed by Missouri Revised Statute Section 287.430.
8. At the time of the claimed accident, claimant's average weekly wage was $485.65, sufficient to allow the compensation rate of $382.54 for TTD and PPD.
9. No Temporary Total Disability (TTD) benefits have been paid in this claim.

ISSUES re: June 3, 2010; Injury Number 10-043312

1. What is the nature and extent of claimant's disability?
2. What is the liability of the employer/insurer for claimant's disability?
3. What is the liability of the Second Injury Fund for the claimant's disability?
4. Claimant's attorney seeks a 25 percent fee of any amounts awarded.

ISSUES re: June 10, 2010; Injury Number 10-1100361

1. Whether the employee provided notice to the employer as required by Missouri Revised Statue Section 287.420?

2. Whether on or about June 10, 2010, the claimant sustained injuries in an accident that were medically and causally related to her work with employer? Did the employee's injuries arise out of and in the course and scope of her employment with employer?
3. What is the nature and extent of claimant's disability?
4. What is the liability of the employer/insurer for claimant's disability?
5. What is the liability of the Second Injury Fund for the claimant's disability?
6. Claimant's attorney seeks a 25 percent fee of any amounts awarded.

ISSUES re: July 1, 2010; Injury Number 10-111518

1. Whether the employee provided notice to the employer as required by Missouri by Revised Statute Section 287.420?

2. Whether on or about July 1, 2010, the claimant sustained injuries in an accident that were medically and causally related to her work with employer? Did the employee's injuries arise out of and in the course and scope of her employment with employer?

3. What is the nature and extent of claimant's disability?

4. What is liability of the employer/insurer for claimant's disability?

5. What is the liability of the Second Injury Fund for the claimant's disability?

6. Claimant's attorney seeks a 25 percent fee of any amounts awarded.

ISSUES re: April 24, 2011; Injury Number 11-031709

1. What is the nature and extent of claimant's disability?
2. What is the liability of the employer/insurer for claimant's disability?
3. What is the liability of the Second Injury Fund for the claimant's disability?
4. Whether the employee is entitled to future medical treatment?
5. Whether the employer/insurer is responsible for past claimed medical benefits?

6. Whether the employee is entitled to TTD benefits from April 26, 2011, through October 13, 2011?

7. Claimant's attorney seeks a 25 percent fee of any amounts awarded.

EXHIBITS

Claimant offered the following exhibits which were received into evidence:

1. Medical records;
2. Deposition-Dr. David Volarich taken July 16, 2013, with attached exhibits;
3. Deposition-Dr. Paul Olive taken August 24, 2015, with attached exhibits;
4. Curriculum Vitae and report of Mr. Phil Eldred; and
5. Job description.

The employer/insurer offered the following exhibits, which were received into evidence.

A. Deposition-Dr. Daniel Kitchens taken January 28, 2014;
B. Deposition-Dr. Christopher Miller taken October 28, 2014; and
C. Deposition-Dr. James England taken on October 30, 2014.

The Second Injury Fund offered no exhibits.

FINDINGS OF FACT

Claimant is 55 years old having been born in Honduras on July 22, 1960. She immigrated to the United States in approximately 1980. Claimant is a citizen of the United States. She attended school in Honduras, and the highest level of education she completed in Honduras was 8th grade. Claimant has not obtained any further education. Claimant has never obtained a GED and has had no vocational training.

Claimant never worked in Honduras. The claimant began her first job in the United States in 1984 in California. She worked as a babysitter at home. She cared for her own Two (2) children and Javier, a Seven (7) year old boy. She babysat for approximately Seven (7) years until she moved to Missouri in 1991.

She did not work immediately when she moved to Missouri. After moving to Missouri, claimant moved to North Carolina for a few months and worked as a waitress in a deli market. Her job responsibilities as a waitress included taking order, delivering food to customers, busing tables, maintaining the salad bar, and preparing food. She lived in North Carolina only a few months before moving back to Missouri.

Upon returning to Missouri, her first job was working in Branson at the Ramada Inn Hotel full-time as a housekeeper. Her job duties in housekeeping included cleaning toilets, vacuuming and changing beds. While continuing to work full-time at Ramada Inn, she began working part-time at Welk Resorts in Branson. Her job duties at Welk Resort included working in the kitchen. Her job responsibilities included preparing food and tending to the salad bar. This job required her to lift Five (5) gallon buckets of food.

Claimant left her employment with Welk Resorts and Ramada Inn to open her own restaurant, Jose Mexican. She opened this restaurant with her husband in 1996. In her employment with Jose Mexican, claimant waited tables, worked as a cashier, prepared food, cleaned, mopped, and swept floors. She worked at Jose Mexican restaurant for approximately Eleven (11) years.

In 2007, claimant began working as a cook at Hilton Hotel. Her job responsibilities as a cook included preparing food for banquets, preparing salads, preparing dressings, and tending to

the cafeteria. She did whatever needed to be done to keep the kitchen in good condition and functioning properly. Claimant's job duties at Hilton required her to lift up to Fifty (50) pounds.

June 3, 2010 Injuries

On June 3, 2010, claimant was pulling Two (2) large carts through sliding doors. When claimant attempted to open the sliding doors, the doors swung back against her. This caused her to lose control, and she twisted her right ankle. Claimant experienced immediate pain in her right ankle.

Nathan, the Executive Chef, at Hilton, sent claimant to Skaggs Community Health Center. Claimant received medical treatment in the Emergency Room at Skaggs Community Health Center on June 3, 2010, for complaints of right ankle pain after a twisting event at work. An x-ray was taken of her right ankle, which revealed soft tissue swelling. She was diagnosed with a right ankle sprain and placed in a splint. She did not receive further medical treatment for this injury. However, the claimant continued to walk with a limp due to ongoing right ankle pain. Claimant took over-the-counter pain medications for her right ankle following the June 3, 2010, injury. Claimant did not have any injury or receive any medical treatment for her right ankle prior to the work injury of June 3, 2010. Following the June 3, 2010, injury, claimant returned to work at Hilton as a cook. However, her husband, Jose Nambo, helped her lift the Fifty (50) pound buckets of potatoes, apples, pineapples, and other foods following the June 3, 2010, injury.

June 10, 2010, Injuries

On June 10, 2010, claimant was working in the kitchen when she slipped on a wet floor and landed on her back. She experienced immediate pain in her back. Several co-workers witnessed her fall and helped her ice her injury following her fall. The employer filed a Report

of Injury. She did not receive medical treatment for this work injury, and self-treated. Claimant continued to experience some sporadic symptoms of aches and pains in her back but continued working at Hilton. Claimant did report a history of prior back pain. An MRI on June 18, 2009 revealed degenerative disc disease at L1-2 and L3-4 through L5-S1 without central canal stenosis or neural foraminal narrowing, and a multi-loculated cyst mass in her right hemipelvis. The claimant's prior back condition had resolved prior to the work injury of June 10, 2010. In addition, the claimant was not under any active medical care for her prior back injuries at the time of the June 10, 2010, injury. Claimant did not have medical restrictions for her back prior to the work injury of June 10, 2010. Claimant continued to work as a cook at Hilton following the work injury of June 10, 2010.

July 1, 2010, Injuries

On July 1, 2010, claimant slipped but did not fall due to a combination of what appeared to be a wet floor and weakness in her right ankle. She experienced immediate pain in her right ankle. Joe, a supervisor in the kitchen, reported the claimant's injury to the employer. Claimant did not receive medical treatment for this work injury, and self-treated. Claimant continued to experience pain in her right ankle and took over-the-counter medications for her work injury. She continued working at Hilton. The only injury claimant sustained to her right ankle prior to the July 1, 2010, injury was the prior work injury of June 3, 2010. Claimant continued to work as a cook at Hilton following the work injury of July 1, 2010.

April 24, 2011, Injuries

On April 24, 2011, claimant was cleaning a table in the cafeteria when she slipped and fell on wet floor, injuring her back and striking the back of her head on the floor. Claimant also reported suffering a loss of consciousness.

The employer/insurer referred claimant to Dr. Jon Peterson. Dr. Peterson examined claimant on April 25, 2011, and recorded that she had pain in her neck, shoulder blades, lower back, buttock, left knee, and left ankle after a fall at work the day before. X-rays of her left ankle and left knee revealed no fracture. Dr. Peterson diagnosed claimant with a left knee contusion and left ankle sprain, prescribed medications, and recommended work restrictions and a home exercise program.

At the follow up visit on April 28, 2011, Dr. Peterson noted mid and low back pain that radiated down into both legs. Dr. Peterson ordered x-rays of her lumbar spine and thoracic spine and diagnosed a lumbar strain and a thoracic strain. Dr. Peterson prescribed medications and continued the claimant's work restrictions.

Claimant continued to receive medical treatment with Dr. Peterson. On May 12, 2011, Dr. Peterson recommended physical therapy and ongoing work restrictions to address the claimant's complaints of back, left ankle, and left knee pain. An MRI of her lumbar spine on August 2, 2011, revealed minimal degenerative changes, a small radial tear at L5-S1 and minimal disc bulging and disc space narrowing at L1-2. An MRI of her left knee revealed a likely complex tear of the lateral meniscus with a possible flipped fragment and associated meniscal cyst. Dr. Peterson referred claimant to an orthopedist.

Dr. Paul Olive examined claimant on August 25, 2011, and noted the claimant's left ankle pain was improved. However, the claimant had continuing complaints of ongoing pain and popping in her left knee and pain in her thoracic and lumbar spine. Dr. Olive reviewed the MRI of her lumbar spine and noted a small separation in the posterior, caudal annular fibers at L4-5 and L5-S1. Dr. Olive also reviewed the MRI of the claimant's left knee and noted that it showed a lateral meniscus tear. With regard to claimant's back, Dr. Olive diagnosed a lumbar strain,

recommended a home exercise program, and placed the claimant at maximum medical improvement. Dr. Olive assigned a Ten (10) pound weight restriction. With regard to her left knee, Dr. Olive diagnosed a lateral meniscus tear and recommended a surgical consultation with an orthopedist.

Dr. Christopher Miller examined claimant also on August 25, 2011, and noted claimant walked with a limp. Dr. Miller's physical examination revealed that claimant had limited spinal range of motion. Dr. Miller recorded that claimant had left knee pain for approximately Four (4) months after an injury at work. Dr. Miller reviewed the MRI and diagnosed a left knee tear of the anterior horn of the medial meniscus with a meniscal cyst of the left knee and recommended surgery.

Dr. Miller performed a partial lateral meniscectomy on the claimant's left knee on September 7, 2011. Dr. Miller observed swelling in claimant's left knee during the surgical procedure. Dr. Miller testified that almost the entire anterior horn in claimant's left knee was torn. Dr. Miller testified that claimant is more likely to develop arthritic changes in the left knee with this type of injury.

Following the left knee surgery, Dr. Miller recommended physical therapy and work restrictions. At the follow up visit on October 13, 2011, Dr. Miller noted improvement and released the claimant to full duty and placed her at maximum medical improvement. Dr. Miller assigned a Two (2%) impairment rating with regard to the left knee, which he testified translates to a One percent (1%) disability to the body as a whole.

Following her April 24, 2011, injury, the claimant was released to return to work on light duty. Claimant testified that working in a kitchen is not light duty. She returned to work on April 25, 2011, on light duty folding silverware. After Two (2) hours of light duty on April 25,

2011, the employer did not have any further work for claimant and they were unable to accommodate her medical restrictions. Therefore, claimant went home on April 25, 2011, after Two (2) hours of work. The claimant returned to work on April 26, 2011, and the employer was unable to accommodate the claimant's medical restrictions from her treating physician.

Claimant continued to try and work. She testified that she was not the same after the April 24, 2011, injury. Claimant testified that she hurt everywhere on her body. She was taking prescription medications, including but not limited to, Hydrocodone and muscle relaxers. Claimant testified that she could not operate the meat slicers or knives at work while taking the prescribed medications. She was also not able to lift heavy skillets and other heavy items in the kitchen that her job required. The claimant attempted to return to work, but he still could not do her job. Claimant had a failed return to work. Claimant was unable to continue working at Hilton. Claimant's last day of employment with Hilton was April 25, 2011. She testified that she was not physically capable of returning to work after the April 24, 2011, injury.

Claimant applied for Social Security Disability. Claimant did not have an attorney representing her in her Social Security Disability claim. She was approved for Social Security Disability and began receiving benefits in 2012 or 2013.

Current condition

Claimant continues to experience ongoing difficulties as a result of her work injuries of (1) June 3, 2010, (2) June 10, 2010, (3) July 1, 2010, and (4) April 24, 2011. She reports ongoing forgetfulness and the inability to feel pleasure. Claimant has severe, continuous headaches almost every day. The headaches occur at different levels and may be light to severe headaches.

With regard to her right ankle, claimant continues to experience pain and swelling in her right ankle. She also loses her balance, has difficulty walking and placing her feet well, and walks with a limp. Claimant now walks with the assistance of a cane.

She has ongoing crepitus, and buckling in her left ankle. The claimant also has constant pain and swelling in her left ankle.

She also reports left knee loss of motion, swelling, stiffness, weakness, buckling, and crepitus. With regard to her left knee, she experiences constant pain. The weather also increases the amount of pain she has in her left knee.

With respect to her thoracic and lumbar spines, she has ongoing pain, stiffness, spasms, and pain that radiates into both gluteal areas. As a consequence of these symptoms, she has difficulty with maintaining prolonged fixed positions. She is only able to sit or stand for Five (5) minutes before she experiences increased pain.

Claimant is not able to walk more than a short distance. It is also difficult for her to walk on uneven surfaces. With regard to her back, claimant limps and does not walk well. Claimant has constant back pain and cannot even take a shower without assistance.

Claimant is no longer able to cook, wash dishes, clean, or do laundry at home. Her husband does the household chores, and sometimes a neighbor assists her with household chores. Claimant had to rearrange all of the furniture in her house so that if she falls or loses her balance, she will not fall on the furniture and get hurt. Claimant is no longer able to attend mass services at her church due to experiencing difficulties with sitting, standing, and crouching. Claimant testified that she is no longer as active in her church as she was prior to her work injuries.

Prior to her work injuries, claimant traveled to her home country of Honduras every Two (2) years to visit her One (1) child that is still living and her grandchildren. Claimant testified

that she has not returned home to Honduras since her work injury of April 24, 2011. Claimant's mother passed away in 2011, and claimant was unable to make the trip home to Honduras to attend her mother's funeral.

Claimant continues to suffer from the injuries she sustained in the (1) June 3, 2010, (2) June 10, 2010, (3) July 1, 2010, and (4) April 24, 2011, work accidents. She is basically inactive and stays at home most of the time.

Claimant is in constant pain. She is on different medications, including Hydrocodone and muscle relaxers. The claimant testified that her medications for pain and muscle relaxers make her drowsy. She alternates positions and takes her pain medications to deal with the pain. She also takes Aleve every day to avoid taking the Hydrocodone, but many times, she must take the Hydrocodone even after taking the Aleve. Claimant testified that she takes Myrbetriq for incontinence that resulted from the fall at work on April 24, 2011.

Claimant tries to get comfortable throughout the day. The claimant is unable to sleep much on many nights, and therefore, she tries to sleep some during the day. Claimant testified that she lays down Two (2) to Three (3) times during the course of each day in an attempt to relieve her pain. Claimant testified that she could not do any of her previous jobs.

Expert opinions

Dr. Christopher Miller

Dr. Christopher Miller examined claimant on August 25, 2011, and noted claimant walked with a limp. Dr. Miller's physical examination revealed that claimant had limited spinal range of motion. Dr. Miller recorded that claimant had been experiencing left knee pain for approximately Four (4) months after an injury at work. Dr. Miller reviewed the MRI of

claimant's left knee and diagnosed a tear of the anterior horn of the medial meniscus with a meniscal cyst and recommended surgery.

Dr. Miller performed a partial lateral meniscectomy on the claimant's left knee on September 7, 2011. Dr. Miller observed swelling in claimant's left knee during the surgical procedure. Dr. Miller testified that almost the entire anterior horn in claimant's left knee was torn. Dr. Miller testified that claimant is more likely to develop arthritic changes in the left knee with this type of injury.

Following the left knee surgery, Dr. Miller recommended physical therapy and work restrictions. At the follow up visit on October 13, 2011, Dr. Miller noted improvement and released the claimant to full duty and placed her at maximum medical improvement. Dr. Miller assigned a Two (2%) impairment rating with regard to the left knee, which he testified translates to a One percent (1%) disability to the body as a whole.

Dr. Paul Olive

The employer/insurer directed claimant to Dr. Paul Olive for an examination on August 25, 2011. Dr. Paul Olive is an orthopedic surgeon that practices with Mercy Hospital in Springfield, Missouri. Dr. Olive has practiced medicine in the southwest area of Missouri for Twenty-Five (25) years.

On August 25, 2011, Dr. Olive reviewed x-rays and an MRI of claimant's lumbar spine. Dr. Olive opined that the claimant had a separation of the posterior caudal annular fibers, which he testified was an objective finding. Dr. Olive testified that the mechanism of injury that the claimant described from her fall of April 24, 2011, could cause the annular tear.

Dr. Olive diagnosed the claimant with a back strain and assigned a Ten (10) pound lifting restriction to claimant on August 25, 2011. Dr. Olive testified that the Ten (10) pound lifting

restriction was referable to the back injury of 2011. Dr. Olive also placed the claimant at maximum medical improvement on August 25, 2011.

Dr. Olive evaluated claimant on a second occasion on May 1, 2014. Claimant had continuing complaints back pain when Dr. Olive evaluated her a second time in May, 2014. Dr. Olive's note dated May 1, 2014 indicated that claimant appeared uncomfortable and walked with a slow, stiff, antalgic gait, which meant she walked with the appearance of having pain. On examination, claimant was tender to palpation over the lower back, she could flex forward where her hands came down to the level of her knee, which was not normal, and she was stiff when she raised up from a bent-over position.

On May 1, 2014, Dr. Olive diagnosed claimant with chronic low back pain secondary to the fall at work. Dr. Olive referred claimant for an FCE. Dr. Olive testified that he was in agreement with the medical restrictions outlined in the FCE report, and the restrictions noted in the FCE report are the medical restrictions Dr. Olive would assign as claimant's treating physician.

Dr. David Volarich

Dr. David Volarich examined the claimant on September 6, 2012. At the evaluation on September 6, 2012, Dr. Volarich recorded that claimant had ongoing difficulties with right ankle pain, weakness, swelling, and crepitus as a result of her June 3, 2010, and July 1, 2010, injuries. Claimant reported ongoing difficulty with ankle dependent movements including prolonged standing, stooping, squatting, running, jumping, pivoting, walking prolonged distances or on uneven surfaces, and climbing steps and ladders.

With respect to activities of daily living following the June 3, 2010, and July 1, 2010, injuries, Dr. Volarich noted claimant experienced difficulty getting in and out of the shower.

Claimant reported that she avoided wearing heels and had difficulty putting socks and shoes on her right foot. Cold and rainy weather exacerbated her symptoms. She had difficulty falling asleep and staying asleep due to pain in her right ankle. Since her right ankle injury, claimant deferred housework and yard work to her husband. She reported being less mobile than before and became less active at her church. Claimant does not drive, and she does not possess a driver's license.

Claimant reported ongoing difficulties to Dr. Volarich with regard to her June 10, 2010, and April 24, 2011, injuries. Claimant conveyed difficulty with headaches, forgetfulness, and having the ability to feel pleasure. She reported ongoing left ankle pain, swelling, crepitus, and buckling. She also reported left knee loss of motion, swelling, stiffness, weakness, buckling, and crepitus. With regard to her thoracic and lumbar spines, the claimant reported ongoing pain, stiffness, spasms, and pain radiating into both gluteal areas. As a consequence of these symptoms, she had difficulties maintaining prolonged fixed positions, standing, stooping, squatting, kneeling, crawling, running, jumping, climbing, walking and walking on uneven surfaces.

With respect to her activities of living following the June 10, 2010, and April 14, 2011, injuries, claimant reported difficulty reaching to wash between her shoulder blades, washing her hair, brushing her teeth, brushing her hair and putting on makeup. Claimant now wears loose clothing due to her symptoms. Cold and rainy weather exacerbate her symptoms. She does not do housework or yard work anymore, and she is no longer as active in her church. Claimant reported that she has lost interest in many activities that would normally interest her, and she has been unable to travel to see her children.

When claimant was examined on September 6, 2012, Dr. Volarich noted that claimant's left quadriceps and hamstrings were weak at 3.5/5 due to knee and back pain. The calves also appeared weak bilaterally at 4.5/5 because of bilateral ankle pain. Claimant had complaints of back pain with the toe walk testing. It was noted that claimant had considerable difficulties trying to heel walk and tandem walk because of back and left knee pain and could only do it a couple of steps. The claimant was only able to stand on her right foot for Ten (10) seconds and her left foot for only Six (6) seconds.

Testing of the thoracic spine revealed that her motion was restricted. With regard to thoracic range of motion testing, claimant had a 93% loss of flexion, 54% loss of extension, 53% loss of right lateral flexion, 20% loss of left lateral flexion, 73% loss of right rotation, and 80% loss of left rotation.

Testing of the lumbar spine revealed that her motion was restricted. With regard to lumbar range of motion testing, claimant had a 53% loss of flexion, 20% loss of extension, 52% loss of right lateral flexion, and 28% loss of left lateral flexion. The worst pain in the low back occurred with flexion and left side bending. Palpation elicited pain to the left of the midline from L1 to L4 and in the left sacroiliac joint. Trigger points were found at L2 and L3 in the paraspinal muscles on the left as well. Straight leg raise was accomplished to 45 degrees on each side where claimant stopped because of back discomfort and on the left side because of left knee pain.

Examination of the hips was within normal limits. However, evaluating the claimant's hip range of motion caused back pain.

The right knee exam was normal. With regard to examination of the left knee, the claimant had patellar mistracking and patellofemoral crepitus. Claimant had swelling in the prepatellar bursa.

The claimant had bilateral ankle pain in the lateral compartment, along the anterior talofibular ligament. The claimant had swelling in both ankles.

For the June 3, 2010, work injury, Dr. Volarich diagnosed claimant with a right ankle lateral compartment strain. Dr. Volarich diagnosed claimant with a lumbar strain/sprain for the June 10, 2010, work injury. With regard to the work injury of July 1, 2010, Dr. Volarich diagnosed the claimant with a right ankle lateral compartment strain.

With regard to the injuries claimant sustained in her fall of April 24, 2011, Dr. Volarich diagnosed claimant with (1) closed head trauma with mild residual post traumatic headaches and complaints of memory loss; (2) thoracic contusion with strain and residual myofascial pain; (3) severe lumbar strain and annular tear at L5-S1 with residual myofascial pain; (4) left knee internal derangement (torn lateral meniscus) – status post arthroscopic partial lateral meniscectomy and excision of a parameniscal cyst; and (5) left ankle strain/sprain. For her injuries that pre-existed the work injury of June 3, 2010, Dr. Volarich diagnosed the claimant with cervical and lumbar strain injuries with associated degenerative disc disease and degenerative joint disease in both cervical and lumbar spines, for which the claimant was asymptomatic after treatment.

Dr. Volarich opined that the work injury of June 3, 2010, when claimant was pulling a large cart of food through double doors when the doors swung back and caused claimant to lose her balance and twist her right ankle was the prevailing factor causing the right ankle strain. Dr.

Volarich further opined that the work injury of June 3, 2010, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities.

Dr. Volarich opined that the work injury of June 10, 2010, when claimant slipped on water on the floor and fell landing on her back was the prevailing factor causing the lumbar contusion and strain. Dr. Volarich further opined that the work injury of June 10, 2010, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities.

With regard to the work injury of July 1, 2010, claimant was walking across the floor and slipped on water, causing her to invert her right ankle. Dr. Volarich opined that the July 1, 2010, accident was the prevailing factor causing the recurrent right ankle lateral compartment strain. Dr. Volarich further opined that the work injury of July 1, 2010, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities.

Dr. Volarich opined that the work injury of April 24, 2011, when claimant slipped on water on the floor, causing her to fall on her back striking her mid back and head, and in the process, twisting her left lower extremity was the prevailing factor causing the closed head trauma with residual headaches, complaints of memory loss, thoracic spine contusion and strain with residual myofascial pain, the lumbar spine strain with annular tear at L5-S1 and residual myofascial pain, the left knee torn lateral meniscus that required arthroscopic repair, and the left ankle strain injury. Dr. Volarich further opined that the work injury of April 24, 2011, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities.

Dr. Volarich assigned disability ratings to claimant for the injuries that claimant sustained on (1) June 3, 2010, (2) June 10, 2010, (3) July 1, 2010, and (4) April 24, 2011. With regard to the injuries claimant sustained on June 3, 2010, Dr. Volarich assigned a rating of 10% to the right

ankle for the lateral compartmental strain injury. This rating accounted for this injury's contribution to pain, swelling, and crepitus in the ankle.

With regard to the work injury of June 10, 2010, Dr. Volarich assigned a rating of 5% to the body as a whole due to the contusion and strain injury to the low back. This rating accounted for this injury's contribution to back pain and lost motion.

Dr. Volarich assigned a rating of 15% of the right ankle due to the lateral compartment strain injury with regard to the injuries claimant sustained on July 1, 2010. This rating accounted for this injury's contribution to pain, crepitus, and swelling.

With regard to the work injury of April 24, 2011, Dr. Volarich assigned ratings of 5% to the body as a whole rated at the head due to the closed head trauma causing headaches and complaints of memory loss, 20% disability to the body as a whole rated at the thoracic spine due to the contusion and strain injury causing severe myofascial pain. This rating accounted for back pain and lost motion. Dr. Volarich also assigned 20% disability to the body as a whole rated at the lumbar spine due to the strain injury and annular tear at L5-S1. This rating accounted for this injury's contribution to back pain and lost motion. Dr. Volarich assigned a 35% disability rating to the left lower extremity rated at the knee due to the torn lateral meniscus that required orthoscopic repair. This rating accounted for knee pain, lost motion, swelling, crepitus, and weakness in the left lower extremity. In addition, Dr. Volarich assigned a 20% disability rating of the left lower extremity rated at the ankle due to the lateral compartment strain injury. This rating accounted for pain, crepitus, and swelling in the ankle.

Dr. Volarich issued a disability rating for claimant's injuries and health issues that preexisted June 3, 2010. Dr. Volarich assigned a disability rating of 5% to the body as a whole rated at the cervical spine and as additional 5% of the body as a whole rated at the lumbar spine

due to the degenerative disc disease and degenerative joint disease that required evaluation and treatment in 2009. Dr. Volarich noted the claimant was completely asymptomatic from this injury after treatment was completed. In addition, the claimant had no difficulties performing her job duties leading up to June 3, 2010.

Dr. Volarich placed restrictions on claimant's activities. With regard to claimant's spinal injuries after April 24, 2011, Dr. Volarich advised claimant to avoid all bending, twisting, lifting, pushing, pulling, carrying, and climbing. He advised claimant not to handle any weight greater than Twenty (20) pounds and to limit that to an occasional basis. Claimant was instructed not to handle any weight over her head or away from her body and she should not carry weight over distance or on uneven terrain. He advised claimant to avoid remaining in a fixed position for more than Twenty (20) to Thirty (30) minutes at a time, and that restriction applied to both sitting and standing. Claimant was to change positions frequently and to rest when needed. With regard to restrictions for claimant's lower extremities after April 24, 2011, Dr. Volarich advised her to avoid all stooping, squatting, crawling, kneeling, pivoting, climbing and all impact maneuvers. Claimant was advised to avoid navigating uneven terrain, slopes, steps, and ladders, especially if she must handle weight. Claimant was instructed to limit prolonged weight bearing, including standing and walking, to 30 minutes or to tolerance.

Dr. Volarich opined that the combination of claimant's disabilities from the injuries prior to June 3, 2010, when combined with her work injuries created a substantially greater disability than the simple sum or total separate injures. On September 6, 2012, Dr. Volarich opined that claimant was unable to engage in any substantial gainful activity and that claimant could not be expected to perform in an ongoing working capacity in the future. It was Dr. Volarich's opinion that claimant could not reasonably be expected to perform on an ongoing basis for Eight (8)

hours a day Five (5) days a week throughout the work year. Dr. Volarich opined that claimant could not continue in her line of employment with Hilton Hotels nor could she be expected to work on a full time basis in a similar job.

It was Dr. Volarich's opinion that claimant was permanently and totally disabled as a direct result of her work related injuries of (1) June 3, 2010, (2) June 10, 2010, (3) July 1, 2010, and (4) April 24, 2011, in combination with each other as well as in combination with her preexisting medical conditions. Dr. Volarich noted that claimant was 52 years old with an 8th grade education from Honduras, who had worked as a cook her entire work career, had been unable to work since April 24, 2011, and was receiving Social Security Disability benefits.

While claimant was at maximum medical improvement when Dr. Volarich examined her on September 6, 2012, Dr. Volarich opined that claimant would need further treatment as a result of her injuries sustained on April 24, 2011. Dr. Volarich recommended that claimant receive ongoing care for her pain syndrome that included pain medications, muscle relaxants, physical therapy and similar treatments as directed by the current standard of medical practice for symptomatic relief of claimant's complaints.

Dr. Volarich reviewed certain medical expenses with regard to claimant's treatment. He reviewed bills from Skaggs Hospital, Bridges Medical Functional Individualized Therapy, and Lakes Region Imaging. In addition to reviewing the medical bills, Dr. Volarich reviewed the medical records that corresponded to the bills. The bills he reviewed totaled $1,66628. It was Dr. Volarich's opinion that the bills were fair, reasonable, customary, and were necessary to cure and relieve the effects of claimant's work related injuries of June 3, 2010, June 10, 2010, July 1, 2010, and April 24, 2011.

Dr. Kitchens

The employer/insurer sent claimant to Dr. Daniel Kitchens for an IME. Dr. Kitchens examined claimant on August 13, 2013. Dr. Kitchens did not review any medical records for the claimant's 2010 injuries. Dr. Kitchens testified that he had reviewed only Ten (10) medical records with regard to the claimant's back injury of April 24, 2011. In addition to those Ten (10) medical records, Dr. Kitchens was provided with Two (2) dates of service from Dr. Miller with regard to the claimant's left knee. Dr. Kitchens offered no medical opinions with regard to the claimant's work injuries of (1) June 3, 2010, and (2) July 1, 2010. Dr. Kitchens only offered an opinion with regard to the claimant's back injuries of June 10, 2010, and April 24, 2011.

Dr. Kitchens made no mention of the claimant's torn annulus in his report. On cross-examination, Dr. Kitchens testified that a torn annulus is not a significant finding. Dr. Kitchens also testified that a torn annulus cannot occur traumatically and that a torn annulus is only associated with degenerative disc disease.

April 25, 2011, was the first date of service in medical records that Dr. Kitchens reviewed with regard to the claimant's back injury of April 24, 2011. It was Dr. Kitchens' opinion that the claimant did not sustain any injury to her back with regard to the work injury of April 24, 2011, despite that fact that multiple doctors had diagnosed the claimant with a back sprain/strain for the April 24, 2011, work injury. Dr. Kitchens testified that he did not review any records from medical providers assigning restrictions with regard to the claimant's back for the work injury of April 24, 2011.

Dr. Kitchens opined that claimant did not sustain an injury to her lumbar spine as a result of her work accidents on June 10, 2010, and April 24, 2011. While Dr. Kitchens did not review any medical records for the claimant's work injury of June 10, 2010, Dr. Kitchens opined that the work injury of June 10, 2010, was not the prevailing factor in the claimant's current report of

back pain. Dr. Kitchens further opined that the work accident of April 24, 2011, did not result in a diagnosis of injury to claimant's lumbar spine. Dr. Kitchens opined that the claimant did not require additional medical treatment with regard to her alleged work injuries of June 10, 2010, and April 24, 2011. It was Dr. Kitchens' opinion that the claimant could return to work without restrictions. Dr. Kitchens opined that claimant does not have a permanent partial disability with regard to her work injuries of June 10, 2010, and April 24, 2011.

Phil Eldred

Mr. Eldred is a vocational rehabilitation expert. He performed a vocational evaluation after meeting with claimant on January 31, 2013. Mr. Eldred noted that claimant presented to him with complaints of back pain (thoracic and lumbar), left knee pain swelling, and weakness, pain in both ankles and swelling in right ankle, headaches, poor concentration, and poor orientation, right arm pain, and depression.

On January 31, 2013, claimant was 52 years old. Claimant had an 8th grade education from her home country of Honduras. She demonstrated academic skills that equaled the skills of a 5th grader in math and a 12th grader in word reading. Ms. Barahona's native language is Spanish, and she is unable to spell English words. Therefore, Mr. Eldred did not administer the spelling portion of the Wide Range Achievement Test – 4. Ms. Barahona has not obtained a GED and has no other educational or vocational training. She does not possess a driver's license. Mr. Eldred testified that not being able to drive in a rural area like southwest Missouri is vocationally limiting.

Mr. Eldred administered the Purdue Pegboard Test to claimant in an effort to determine her dexterity. Using her (1) right hand, (2) left hand, and (3) right hand, left hand, and both

hands, claimant scored in the less than 1st percentile of all people taking this test. This means that 99% of the population scores higher than claimant.

Mr. Eldred reviewed the medical restrictions placed upon claimant by various physicians. With regard to pre-existing medical restrictions, on August 19, 2009, Dr. Chad Morgan gave restrictions at the light work level for claimant's cervical condition. With regard to the April 24, 2011, injury, Dr. Jon Peterson assigned restrictions at the sedentary work level. Dr. Paul Olive gave restrictions at the sedentary work level. Dr. David Volarich assigned restrictions at the less than sedentary work level.

Mr. Eldred noted that, as a result of claimant's injuries, claimant was unable to perform the essential duties of her prior occupations of cook, prep-cook, and room attendant. Mr. Eldred testified that the claimant did not have transferrable job skills.

Mr. Eldred opined that, when considering claimant's multiple impairments, medical restrictions and limitations that claimant was not employable or placeable in the open labor market. It was Mr. Eldred's opinion that claimant was permanently and totally disabled as a result of the combination of her pre-existing impairments and disabilities and those impairments and disabilities that arose from his work injuries of June 3, 2010, June 10, 2010, July 1, 2010, and April 24, 2011.

Mr. Eldred reviewed additional documentation prior to testifying live at the hearing on May 5, 2016. Mr. Eldred reviewed the Hilton job description, claimant's Social Security Disability file, claimant's depositions, Mr. James England's deposition, Dr. Kitchens' deposition, Dr. Miller's deposition, Dr. Olive's deposition, Dr. Volarich's deposition, Dr. Corsolini's report dated June 13, 2012, and claimant's school records from Honduras. At the hearing, Mr. Eldred testified that the Ten (10) pound lifting restriction from Dr. Olive placed upon claimant solely as

a result of her work accident on April 24, 2011, in combination with the claimant's age, education, and work history, renders the claimant permanently and totally disabled based on the last work injury alone.

Mr. James England

Mr. James England evaluated claimant on July 9, 2014 at the request of the employer/insurer. The only medical restrictions Mr. England considered were from Dr. Christopher Miller and Dr. David Volarich. Claimant told Mr. England she could sit about Five (5) minutes before she needs to get up. Mr. England recorded in his report that he observed claimant getting up after Fifteen (15) minutes in his office.

Mr. England testified that if an individual is limited to standing or walking Two (2) hours a day, that would fall into the sedentary work classification. Restrictions of lifting or carrying up to Ten (10) pounds would be the sedentary classification of work levels. Restrictions of no lifting would restrict the individual to a very limited amount of sedentary work. Restrictions of no pushing and/or no pulling eliminate the light level of work. Restrictions of no crawling would further limit the work that the individual could perform. If an individual were unable to sit Thirty (30) minutes or more, this would reduce their work level to sedentary. Mr. England testified that from the medical records he reviewed, claimant had achieved maximum medical improvement, and the restrictions placed upon claimant were permanent restrictions.

Mr. England testified that claimant's past work history falls into the medium classification of work levels. After her work injuries with Hilton, claimant received assistance with heavy lifting, but her job was at least at the light level without the heavy lifting due to her being on her feet all day.

Additional Findings

I find that claimant reached maximum medical improvement as of October 13, 2011, 2008, the date when Dr. Miller evaluated claimant and found her to be at maximum medical improvement. As to credibility, all the experts are well qualified. Dr. Volarich testified that the claimant sustained permanent injuries from her work injuries of (1) June 3, 2010, (2) June 10, 2010, (3) July 1, 2010, and (4) April 24, 2011. Both Dr. Volarich and Dr. Olive agree that claimant sustained permanent injuries as a result of her work injuries on April 24, 2011. The employer/insurer submitted no evidence addressing whether the claimant sustained permanent injuries with regard to her work injuries of (1) June 10, 2010, and (2) July 1, 2010.

I find that the medical records support the opinions of Dr. Volarich and Dr. Olive. To the extent that Dr. Volarich, Dr. Olive, and Dr. Kitchens disagree, I find that the opinions of Dr. Volarich and Dr. Olive are more credible and persuasive. Dr. Kitchens did not address the claimant's work injuries of (1) June 10, 2010, and (2) July 1, 2010. Dr. Kitchens issued opinions on the June 10, 2010, injury but did not review any medical records for the claimant's work injury of June 10, 2010. Dr. Kitchens reviewed only Ten (10) medical records with regard to the claimant's back injury of April 24, 2011. Dr. Kitchens only offered an opinion with regard to the claimant's back injuries of June 10, 2010, and April 24, 2011.

Dr. Kitchens made no mention of the claimant's torn annulus in his report. On cross-examination, Dr. Kitchens testified that a torn annulus is not a significant finding. Dr. Kitchens also testified that a torn annulus cannot occur traumatically and that a torn annulus is only associated with degenerative disc disease.

It was Dr. Kitchens' opinion that the claimant did not sustain any injury to her back with regard to the work injury of April 24, 2011, despite that fact that Dr. Peterson, Dr. Olive, Dr. Volarich, x-ray and MRI reports of the claimant back, physical therapists, and all medical

professionals treating the clamant for her back condition of April 24, 2011, diagnosed the claimant with a back sprain/strain for the April 24, 2011, work injury. Dr. Kitchens testified that he did not review any records from medical providers assigning restrictions with regard to the claimant's back for the work injury of April 24, 2011.

Also, Dr. Volarich did a more complete examination in that he went into claimant's entire past medical history as opposed to limiting it to claimant's back injuries of June 10, 2010, and April 24, 2011, as Dr. Kitchens did in his report. I find the vocational opinion of Mr. Eldred to be more credible and persuasive.

With regard to the vocational testimony, Mr. England was asked who assigned restrictions to claimant. He testified that he reviewed restrictions issued by Dr. Miller and Dr. Volarich. Mr. England did not list, nor did he even acknowledge the Ten (10) pound weight restriction assigned by Dr. Olive on August 25, 2011. Dr. Olive was chosen and authorized by the employer/insurer to examine and treat claimant. The failure to review or consider a substantial vocational restriction issued by an authorized physician negatively impacts Mr. England's credibility and opinion.

CONCLUSIONS OF LAW

A claimant in a workers' compensation claim has the burden of proving all elements of a claim to a reasonable probability. Cardwell v. Treasurer of State of Missouri, 249 S.W.3d 902, 911 (Mo. App. E.D. 2008). When a claimant has alleged permanent and total disability, she must prove her inability to return to any employment and not merely an ability to return to the employment in which the employee was engaged at the time of the accident. § 287.020.6 RSMo Cum. Supp. 2005. In determining whether claimant can return to employment, Missouri law allows consideration of an employee's age, education, along with physical disabilities. BAXI v.

United Technologies Automotive, 956 S.W.2d 340 (Mo. App. E.D. 1997). The central question is whether, in the ordinary course of business, would an employer reasonably be expected to hire claimant in her physical condition. Ransburg v. Great Plains Drilling, 22 S.W.3d 726, 732 (Mo. App. W.D. 2000), overruled on other grounds by Hampton v. Big Boy Steel Erection, 121 S.W.2d 220 (Mo. Banc 2003).

June 3, 2010 Injuries - Injury Number 10-043312

Nature and Extent of Disability

On June 3, 2010, claimant was pulling Two (2) large carts through sliding doors. When claimant attempted to open the sliding door, the doors swung back against her. This caused her to lose control, and she twisted her right foot. Claimant experienced immediate pain in her right ankle.

Nathan, the Executive Chef, at Hilton sent claimant to Skaggs Community Health Center. Claimant received medical treatment in the Emergency Room at Skaggs Community Health Center on June 3, 2010, for complaints of right ankle pain after a twisting event at work. An x-ray was taken of her right ankle, which revealed soft tissue swelling. She was diagnosed with a right ankle sprain and placed in a splint. She did not receive further medical treatment for this injury. However, the claimant continued to walk with a limp due to ongoing right ankle pain. Claimant took over-the-counter pain medications for her right ankle following the June 3, 2010, injury. Claimant did not have any injury or receive any medical treatment for her right ankle prior to the work injury of June 3, 2010. Following the June 3, 2010, injury, claimant returned to work at Hilton as a cook. However, her husband, Jose Nambo, helped her lift the Fifty (50)

pound buckets of potatoes, apples, pineapples, and other foods following the June 3, 2010, injury.

Dr. Volarich opined that the work injury of June 3, 2010, when claimant was pulling a large cart of food through double doors when the doors swung back and caused claimant to lose her balance and twist her right ankle, was the prevailing factor causing the right ankle strain. Dr. Volarich opined that the work injury of June 3, 2010, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities.

With regard to the injuries claimant sustained on June 3, 2010, Dr. Volarich assigned a rating of 10% to the right ankle for the lateral compartmental strain injury. This rating accounted for this injury's contribution to pain, swelling, and crepitus in the ankle.

The employer/insurer offered no evidence with regard to the claimant's injury of June 3, 2010. Dr. Volarich's opinion is the only opinion in evidence with regard to the injury of June 3, 2010. I find that there is substantial and competent evidence to support the conclusion that the employee sustained a 10% permanent partial disability to the right ankle for the lateral compartmental strain injury. At the claimant's compensation rate of $403.63, this totals $6,054.45 for the June 3, 2010, injury. I hereby order the employer/insurer is responsible to pay permanent partial disability compensation to the claimant in the amount of $6,054.45 for the June 3, 2010, injury.

Liability of the Second Injury Fund

The Second Injury Fund is triggered only when an employee has a preexisting permanent partial disability, whether from a compensable injury or otherwise. Section 287.220.1 RSMo. 2000. Dr. Volarich testified that the claimant was completely asymptomatic from the injuries she sustained to her neck and back in 2009 leading up to the work injury of June 3, 2010. The

claimant's preexisting injuries to her neck and back were not an obstacle or a hindrance to her employment leading up to the work injury of June 3, 2010. There is not substantial and competent evidence that claimant had permanent disability as a result of her injuries and health conditions that preexisted June 3, 2010, in combination with the work injuries she sustained in the work accident of June 3, 2010. Therefore, the Second Injury Fund is not liable to claimant for permanent partial disability benefits as a result of the June 3, 2010, accident.

June 10, 2010, Injuries – Injury Number 10-110361

On June 10, 2010, claimant was working in the kitchen when she slipped on a wet floor and landed on her back. She experienced immediate pain in her back. Several co-workers witnessed her fall and helped her ice her injury following her fall. The employer filed a Report of Injury. She did not receive medical treatment for this work injury, and self-treated.

Claimant continued to experience some sporadic symptoms of aches and pains in her back but continued working at Hilton. Claimant did report a history of prior back pain. An MRI on June 18, 2009 revealed degenerative disc disease at L1-2 and L3-4 through L5-S1 without central canal stenosis or neural foraminal narrowing, and a multi loculated cyst mass in her right hemipelvis. The claimant's prior back condition had resolved prior to the work injury of June 10, 2010. In addition, the claimant was not under any active medical care for her prior back injuries at the time of the June 10, 2010, injury. Claimant did not have medical restrictions for her back prior to the work injury of June 10, 2010. Claimant continued to work as a cook at Hilton following the work injury of June 10, 2010.

Notice

Missouri Revised Statute Section 287.420 provides that with respect to an accident, an employee must provide written notice of the time, place, and nature of the injury, and the name and address of the person injured to the employer no later than thirty (30) days after the accident **unless** the employer was not prejudiced by failure to receive the notice.

A claimant may demonstrate lack of prejudice where evidence of actual notice is not contradicted, admitted by the employer, or accepted as true by the fact-finder. Pursifull v. Braun Plastering & Drywall, 233 S.W.3d 219, 223 (Mo. App. 2007). Here, the employee did not receive medical treatment for her work injury of June 10, 2010. Therefore, the employer/insurer was not prejudiced by lack of notice. There is substantial and competent evidence to find that the employer was not prejudiced by the failure to receive the notice of the employee's injury, and as such, the employee is entitled to benefits under Missouri workers' compensation law.

Medical Causation/Injuries Arising Out of the Course and Scope of Employment

Dr. Volarich opined that the work injury of June 10, 2010, when claimant slipped on water on the floor and fell landing on her back was the prevailing factor causing the lumbar contusion and strain. Dr. Volarich further opined that the work injury of June 10, 2010, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities. As to credibility, all the experts are well qualified. Dr. Volarich testified that the claimant sustained permanent injuries from her work injuries of June 10, 2010. I find that the medical records support the opinions of Dr. Volarich.

Dr. Kitchens did not review any medical records for treatment the claimant received for her work injury of June 10, 2010. However, Dr. Kitchens opined that the claimant did not sustain an injury to her lumbar spine as a result of the work accident of June 10, 2010. Dr. Kitchens further opined that the alleged work injury of June 10, 2010, was not the prevailing

factor in the claimant's current report of back pain. It was Dr. Kitchens' opinion that the claimant did not have any permanent disability resulting from the work injury of June 10, 2010.

To the extent that Dr. Volarich and Dr. Kitchens disagree, I find that the opinion of Dr. Volarich is more credible and persuasive. Dr. Kitchens did not address the claimant's work injuries of (1) June 3, 2010, and (2) July 1, 2010. Dr. Kitchens did not review any medical records for the claimant's work injury of June 10, 2010. Dr. Kitchens reviewed only Ten (10) medical records with regard to the claimant's back injuries. Dr. Volarich did a more complete examination in that he went into claimant's entire past medical history as opposed to limiting it to claimant's back injuries of June 10, 2010, and April 24, 2011, as Dr. Kitchens did in his report.

The only credible evidence is that claimant sustained injuries in the June 10, 2010, accident. Therefore, there is substantial and competent evidence to find that the injuries of June 10, 2010, arose out of the course and scope of claimant's employment with employer. There is also substantial and competent evidence to find that the accident of June 10, 2010, caused injuries to claimant.

Nature and Extent of Disability

With regard to the work injury of June 10, 2010, Dr. Volarich assigned a rating of 5% to the body as a whole due to the contusion and strain injury to the low back. This rating accounted for this injury's contribution to back pain and lost motion.

The employer/insurer offered no evidence with regard to the nature and extent of disability of claimant's injury of June 10, 2010. Dr. Volarich's opinion is the only opinion in evidence with regard to the nature and extent of disability resulting from the injury of June 10, 2010. I find that there is substantial and competent evidence to support the conclusion that the

employee sustained a 5% disability to the body as a whole due to the contusion and strain injury to the low back. At the claimant's compensation rate of $403.63, this totals $8,072.60 for the June 10, 2010, injury. I hereby order the employer/insurer to pay permanent partial disability compensation to the claimant in the amount of $8,072.60 for the June 10, 2010, injury.

Liability of the Second Injury Fund

The Second Injury Fund is triggered only when an employee has a preexisting permanent partial disability, whether from a compensable injury or otherwise. Section 287.220.1 RSMo. 2000. Dr. Volarich testified that the claimant was completely asymptomatic from the injuries she sustained to her neck and back in 2009 leading up to the work injuries of June 3, 2010, and June 10, 2010. The claimant's preexisting injuries to her neck and back were not an obstacle or a hindrance to her employment leading up to the work injuries of June 3, 2010, or June 10, 2010. There is not substantial and competent evidence that claimant has permanent disability as a result of her injuries and health conditions that preexisted June 10, 2010, in combination with the work injuries she sustained in the work accident of June 10, 2010. Therefore, the Second Injury Fund is not liable to claimant for permanent partial disability benefits as a result of the June 10, 2010, accident.

July 1, 2010, Injuries – 10-111518

On July 1, 2010, claimant slipped but did not fall due to a combination of what appeared to be a wet floor and weakness in her right ankle. She experienced immediate pain in her right ankle. Joe, a supervisor in the kitchen, reported the claimant's injury to the employer. Claimant did not receive medical treatment for this work injury, and self-treated. Claimant continued to experience pain in her right ankle and took over-the-counter medications for her work injury. She continued working at Hilton. The only injury claimant sustained to her right ankle prior to

the July 1, 2010, injury was the prior work injury of June 3, 2010. Claimant continued to work as a cook at Hilton following the work injury of July 1, 2010.

Notice

Missouri Revised Statute Section 287.420 provides that with respect to an accident, an employee must provide written notice of the time, place, and nature of the injury, and the name and address of the person injured to the employer no later than thirty (30) days after the accident **unless** the employer was not prejudiced by failure to receive the notice.

A claimant may demonstrate lack of prejudice where evidence of actual notice is not contradicted, admitted by the employer, or accepted as true by the fact-finder. Pursifull v. Braun Plastering & Drywall, 233 S.W.3d 219, 223 (Mo. App. 2007). Here, claimant's accident was witnessed by her supervisor. The employee did not receive medical treatment for her work injury of July 1, 2010. Therefore, the employer/insurer was not prejudiced by lack of notice. There is substantial and competent evidence to find that the employer was not prejudiced by the failure to receive the notice of the employee's injury, and as such, the employee is entitled to benefits under Missouri workers' compensation law.

Medical Causation/Injuries Arising Out of the Course and Scope of Employment

With regard to the work injury of July 1, 2010, claimant was walking across the floor and slipped on water. This caused her to invert her right ankle and was the prevailing factor causing the recurrent right ankle lateral compartment strain. Dr. Volarich opined that the work injury of July 1, 2010, was the prevailing factor causing the claimant's symptoms, need for treatment, and resulting disabilities. Dr. Kitchens did not issue any opinions with regard to claimant's work injury of July 1, 2010.

The only evidence is that claimant sustained injuries in the July 1, 2010, accident. Therefore, there is substantial and competent evidence to find that the injuries of July 1, 2010, arose out of the course and scope of claimant's employment with employer. There is also substantial and competent evidence to find that the accident of July 1, 2010, caused injuries to claimant.

Nature and Extent of Disability

Dr. Volarich assigned a rating of 15% of the right ankle due to the lateral compartment strain injury with regard to the injuries claimant sustained on July 1, 2010. This rating accounted for this injury's contribution to pain, crepitus, and swelling.

The employer/insurer offered no evidence with regard to the claimant's injury of July 1, 2010. Dr. Volarich's opinion is the only opinion in evidence with regard to the nature and extent of disability resulting from the injury of July 1, 2010. I find that there is substantial and competent evidence to support the conclusion that the employee sustained a 15% disability of the right ankle due to the lateral compartment strain injury with regard to the injuries claimant sustained on July 1, 2010. At the claimant's compensation rate of $403.63, this totals $9,081.68 for the July 1, 2010, injury. The employer/insurer is responsible to pay permanent partial disability compensation to the claimant in the amount of $9,081.68 for the July 1, 2010, injury.

Liability of the Second Injury Fund

The Second Injury Fund is triggered only when an employee has a preexisting permanent partial disability, whether from a compensable injury or otherwise. Section 287.220.1 RSMo. 2000. Dr. Volarich testified that the claimant was completely asymptomatic from the injuries she sustained to her neck and back in 2009 leading up to the work injuries of June 3, 2010, June 10, 2010, and July 1, 2010. The claimant's preexisting injuries to her neck and back were not an

obstacle or a hindrance to her employment leading up to the work injuries of June 3, 2010, June 10, 2010, or July 1, 2010. There is not substantial and competent evidence that claimant has permanent disability as a result of her injuries and health conditions that preexisted July 1, 2010, in combination with the work injuries she sustained in the work accident of July 1, 2010. Therefore, the Second Injury Fund is not liable to claimant for permanent partial disability benefits as a result of the July 1, 2010, accident.

April 24, 2011, Injuries – 11-031709

On April 24, 2011, claimant was cleaning a table in the cafeteria when she slipped and fell on wet floor, injuring her back and striking the back of her head on the floor. Claimant also reported suffering a loss of consciousness.

Dr. Jon Peterson examined claimant on April 25, 2011, and recorded that she had pain in her neck, shoulder blades, lower back, buttock, left knee, and left ankle after a fall at work the day before. Dr. Peterson diagnosed claimant with a left knee contusion and left ankle sprain, prescribed medications, and recommended a home exercise program. Dr. Peterson assigned restrictions of modified duty to include primarily seated work with occasional walking and no squatting, kneeling, or climbing.

At the follow up visit on April 28, 2011, Dr. Peterson noted mid and low back pain that radiated down into both legs. Dr. Peterson ordered x-rays of her lumbar spine and thoracic spine and diagnosed a lumbar strain and a thoracic strain. Dr. Peterson prescribed medications and continued took the claimant off work.

Claimant continued to receive medical treatment with Dr. Peterson. On May 12, 2011, Dr. Peterson recommended physical therapy to address the claimant's complaints of back, left ankle, and left knee pain. Dr. Peterson assigned restrictions of sedentary work only; no lifting,

climbing stairs, and claimant is to take a Five (5) minute postural break every Thirty (30) minutes. An MRI of her lumbar spine on August 2, 2011, revealed minimal degenerative changes, a small radial tear of the annulus at L5-S1 and minimal disc bulging and disc space narrowing at L1-2. An MRI of her left knee revealed a likely complex tear of the lateral meniscus with a possible flipped fragment and associated meniscal cyst. Dr. Peterson referred claimant to an orthopedist. On August 12, 2011, Dr. Peterson assigned work restrictions of primarily seated work with no bending, squatting, shoveling, sweeping, mopping, climbing, running, or jumping.

The employer/insurer directed claimant to Dr. Paul Olive, orthopedic surgeon. Dr. Olive examined claimant on August 25, 2011, and noted the claimant's left ankle pain was improved. However, the claimant had continuing complaints of ongoing pain and popping in her left knee and pain in her thoracic and lumbar spine. Dr. Olive reviewed the MRI of her lumbar spine and noted a small separation in the posterior, caudal annular fibers at L4-5 and L5-S1. Dr. Olive also reviewed the MRI of the claimant's left knee and noted that it showed a lateral meniscus tear. With regard to claimant's back, Dr. Olive diagnosed a lumbar strain, recommended a home exercise program, and placed the claimant at maximum medical improvement. Dr. Olive assigned a Ten (10) pound weight restriction. With regard to her left knee, Dr. Olive diagnosed a lateral meniscus tear and recommended a surgical consultation with an orthopedist.

Dr. Christopher Miller also examined claimant on August 25, 2011, and noted left knee pain for approximately Four (4) months after an injury at work. Dr. Miller reviewed the MRI and diagnosed a left knee tear of the anterior horn of the medial meniscus with a meniscal cyst and recommended surgery. Dr. Miller performed a partial lateral meniscectomy on the claimant's left knee on September 7, 2011. Following the left knee surgery, Dr. Miller recommended physical

therapy and work restrictions. At the follow up visit on October 13, 2011, Dr. Miller noted improvement and released the claimant to full duty and placed her at maximum medical improvement.

Following her April 24, 2011, injury, the claimant was released to return to work on light duty. Claimant testified that working in a kitchen is not light duty. She returned to work on April 25, 2011, on light duty folding silverware. After Two (2) hours of light duty on April 25, 2011, the employer did not have any further work for claimant and they were unable to accommodate her medical restrictions. Therefore, claimant went home on April 25, 2011, after Two (2) hours of work. The claimant returned to work on April 26, 2011, and the employer was unable to accommodate the claimant's medical restrictions from her treating physician.

Claimant continued to try and work. She testified that she was not the same after the April 24, 2011, injury. Claimant testified that she hurt everywhere on her body. She was taking prescription medications, including but not limited to Hydrocodone and muscle relaxers. Claimant testified that she could not operate the meat slicers or knives at work while taking the prescribed medications. She was also not able to lift heavy skillets and other heavy items in the kitchen that her job required. The claimant attempted to return to work, but she still could not do her job. Claimant had a failed return to work. Claimant was unable to continue working at Hilton. Claimant's last day of employment with Hilton was April 25, 2011. She testified that she was not physically capable of returning to work after the April 24, 2011, injury.

Claimant applied for Social Security Disability. Claimant did not have an attorney representing her in her Social Security Disability claim. She was approved for Social Security Disability and began receiving benefits in 2012 or 2013.

Nature and Extent of Disability

Dr. Olive and Dr. Miller, both physicians selected by the employer/insurer, and Dr. Volarich agree that claimant was injured in the work accident on April 24, 2011. Dr. Olive diagnosed the claimant with a back strain and assigned a Ten (10) pound lifting restriction to claimant on August 25, 2011. Dr. Olive testified that the Ten (10) pound lifting restriction was referable to the back injury of 2011. Dr. Olive also placed the claimant at maximum medical improvement on August 25, 2011.

On May 1, 2014, Dr. Olive diagnosed claimant with chronic low back pain secondary to the fall at work. Dr. Olive referred claimant for an FCE. Dr. Olive testified that he was in agreement with the medical restrictions outlined in the FCE report, and the restrictions noted in the FCE report are the medical restrictions Dr. Olive would assign as claimant's treating physician.

Dr. Miller examined claimant on August 25, 2011, and noted claimant walked with a limp. Dr. Miller's physical examination revealed that claimant had limited spinal range of motion. Dr. Miller recorded that claimant had been experiencing left knee pain for approximately Four (4) months after an injury at work. Dr. Miller reviewed the MRI of claimant's left knee and diagnosed a tear of the anterior horn of the medial meniscus with a meniscal cyst and recommended surgery.

Dr. Miller performed a partial lateral meniscectomy on the claimant's left knee on September 7, 2011. Dr. Miller observed swelling in claimant's left knee during the surgical procedure. Dr. Miller testified that almost the entire anterior horn in claimant's left knee was torn. Dr. Miller testified that claimant is more likely to develop arthritic changes in the left knee with this type of injury.

Following the left knee surgery, Dr. Miller recommended physical therapy and work restrictions. At the follow up visit on October 13, 2011, Dr. Miller noted improvement and released the claimant to full duty and placed her at maximum medical improvement. Dr. Miller assigned a Two Percent (2%) impairment rating with regard to the left knee, which he testified translates to a One Percent (1%) disability rating to the body as a whole.

Dr. Volarich opined that claimant was unable to engage in any substantial gainful activity and that claimant could not be expected to perform in an ongoing working capacity in the future. It was Dr. Volarich's opinion that claimant could not reasonably be expected to perform in an ongoing basis for Eight (8) hours a day Five (5) days a week throughout the work year. Dr. Volarich opined that claimant could not continue in her line of employment with Hilton Hotels nor could she be expected to work on a full time basis in a similar job. It was Dr. Volarich's opinion that claimant was permanently and totally disabled as a direct result of her work related injuries of (1) June 3, 2010, (2) June 10, 2010, (3) July 1, 2010, and (4) April 24, 2011, in combination with each other as well as in combination with her preexisting medical conditions.

Dr. Kitchens reviewed only Ten (10) medical records with regard to the claimant's back injury of April 24, 2011. Dr. Kitchens only offered an opinion with regard to the claimant's back injuries of June 10, 2010, and April 24, 2011.

Dr. Kitchens made no mention of the claimant's torn annulus in his report. On cross-examination, Dr. Kitchens testified that a torn annulus is not a significant finding. Dr. Kitchens also testified that a torn annulus cannot occur traumatically and that a torn annulus is associated with degenerative disc disease.

April 25, 2011, was the first date of service in medical records that Dr. Kitchens reviewed with regard to the claimant's back injury of April 24, 2011. It was Dr. Kitchens' opinion that the

claimant did not sustain any injury to her back with regard to the work injury of April 24, 2011, despite that fact that multiple doctors had diagnosed the claimant with a back sprain/strain for the April 24, 2011, work injury. Dr. Kitchens testified that he did not review any records from medical providers assigning restrictions with regard to the claimant's back for the work injury of April 24, 2011. To the extent that the medical experts disagree, I find the opinions of Dr. Olive and Dr. Volarich more credible.

Mr. Eldred performed a vocational evaluation with claimant on January 31, 2013. Mr. Eldred noted that claimant presented to him with complaints of back pain (thoracic and lumbar), left knee pain swelling, and weakness, pain in both ankles and swelling in right ankle, headaches, poor concentration, and poor orientation, right arm pain, and depression.

On January 31, 2013, claimant was 52 years old. Claimant had an 8th grade education from her home country of Honduras. She demonstrated academic skills that equaled the skills of a 5th grader in math and a 12th grader in word reading. Ms. Barahona's native language is Spanish, and she is unable to spell English words. Therefore, Mr. Eldred did not administer the spelling portion of the Wide Range Achievement Test – 4. Ms. Barahona has not obtained a GED and has no other educational or vocational training. She also does not possess a driver's license. Mr. Eldred testified that not being able to drive in a rural area like southwest Missouri is vocationally limiting.

Mr. Eldred administered the Purdue Pegboard Test to claimant in an effort to determine her dexterity. Using her (1) right hand, (2) left hand, and (3) right hand, left hand, and both hands, claimant scored in the less than 1st percentile of all people taking this test. This means that 99% of the population scores higher than claimant.

With regard to pre-existing medical restrictions, Dr. Chad Morgan gave restrictions at the light work level. With regard to the April 24, 2011, injury, Dr. Jon Peterson assigned restrictions at the sedentary work level. Dr. Paul Olive gave restrictions at the sedentary work level. Dr. David Volarich assigned restrictions at the less than sedentary work level.

Mr. Eldred noted that, as a result of claimant's injuries, claimant was unable to perform the essential duties of her prior occupations of cook, prep-cook, and room attendant. Mr. Eldred testified that the claimant did not have transferrable job skills.

Mr. Eldred opined that, when considering claimant's multiple impairments, medical restrictions and limitations that claimant was not employable or placeable in the open labor market. It was Mr. Eldred's opinion that claimant was permanently and totally disabled as a result of the combination of her pre-existing impairments and disabilities and those impairments and disabilities that arose from his work injuries of June 3, 2010, June 10, 2010, July 1, 2010, and April 24, 2011.

Mr. Eldred reviewed additional documentation prior to testifying live at the hearing on May 5, 2016. Mr. Eldred reviewed the Hilton job description, claimant's Social Security Disability file, claimant's depositions, Mr. James England's deposition, Dr. Kitchens' deposition, Dr. Miller's deposition, Dr. Olive's deposition, Dr. Volarich's deposition, Dr. Corsolini's report dated June 13, 2012, and claimant's school records from Honduras. At the hearing, Mr. Eldred testified that the Ten (10) pound lifting restriction from Dr. Olive in combination with the claimant's age, education, and work history, renders the claimant permanently and totally disabled based on the last work injury alone. To the extent that Mr. James England and Mr. Eldred disagree, I find that the evidence supports the findings of Mr. Eldred.

In determining the extent of disability attributable to Employer and the Second Injury

Fund, the extent of the compensable injury must be determined first. Roller v. Treasurer of the State of Missouri, 935 S.W.2d 739, 742-43 (Mo. App. 1996). If the compensable injury results in permanent total disability, no further inquiry into Second Injury Fund liability is made. Id. Since the Second Injury Fund can only have liability if the last injury results in permanent partial disability, claimant's last injury must be closely evaluated and scrutinized to determine if it alone results in permanent total disability and not permanent partial disability, thereby eliminating any Second Injury Fund liability.

The question in this case is not if claimant is or was permanently and totally disabled as we saw her at trial. She was. The question becomes whether she is permanently and totally disabled if you strip away the prior conditions and only consider the following factors from the last injury alone:

(1) a 55 year old female;

(2) with an 8th grade education from Honduras;

(3) who has not obtained a GED or any other educational or vocational training;

(4) has academic skills equivalent to a 5th grader in math;

(5) is unable to spell English words;

(6) does not have a driver's license;

(7) that with regard to dexterity of her hands, scored in the less than the 1st percentile of all people taking the Purdue Pegboard Test when using her (1) right hand, (2) left hand, and (3) right hand, left hand, and both hands;

(8) has complaints of pain (thoracic and lumbar), stiffness, and spasms in her back and radiating pain into both gluteal areas;

(9) has pain and swelling, stiffness, weakness buckling, and crepitus in her left knee;

(10) has weakness and pain in both ankles, swelling in both ankles, ongoing crepitus and bucking in her left ankle;

(11) who loses her balance, has difficulty walking, and walks with the assistance of a cane;

(12) is only able to sit or stand for Five (5) minutes before she experiences increased pain;

(13) has headaches;

(14) has poor concentration and poor orientation;

(15) has right arm pain;

(16) has depression;

(17) is on different medications, including Hydrocodone and muscle relaxers, which make her drowsy;

(18) requires assistance with her daily living activities;

(19) lays down Two (2) to Three (3) times during the course of each day in an attempt to relieve her pain; and

(20) cannot return to any past work or use any of her transferrable skills to perform the essential duties of her prior occupations of cook, prep-cook, and room attendant.

There is substantial and competent evidence regarding this last injury alone to find that claimant is permanently and totally disabled.

Looking solely at the disabilities occurring as of the last injury alone and considering the evidence of all the employment opportunities that are available, I find that there is competent and substantial evidence to conclude that claimant is not employable in the open labor market. She is permanently and totally disabled from the injuries sustained in the April 24, 2011, injury alone.

Claimant's permanent and total disability is a direct result of the injuries sustained in the April 24, 2011, accident. I conclude that there is substantial and competent evidence to find that the employer/insurer is responsible for permanent total disability benefits to claimant at the compensation rate of $382.54 beginning on October 13, 2011, and continuing for the reminder of claimant's lifetime.

Liability of the Second Injury Fund

The Second Injury Fund is triggered only when an employee has a preexisting permanent partial disability, whether from a compensable injury or otherwise. Section 287.220.1 RSMo. 2000. Dr. Volarich testified that the claimant was completely asymptomatic from the injuries she sustained to her neck and back in 2009 leading up to the work injuries of June 3, 2010, June 10, 2010, July 1, 2010, and April 14, 2011. The claimant's preexisting injuries to her neck and back were not an obstacle or a hindrance to her employment leading up to the work injuries of June 3, 2010, June 10, 2010, July 1, 2010, or April 24, 2011. There is not substantial and competent evidence that claimant has permanent disability as a result of her injuries and health conditions that preexisted April 24, 2011, in combination with the work injuries she sustained in the work accident of April 24, 2011. Therefore, the Second Injury Fund is not liable to claimant for permanent partial disability benefits.

Future Medical Care

Section 287.140 RSMo, requires that an employer provide medical care that would cure or relieve the effects of the work injuries. Dr. Volarich opined that claimant would require ongoing care for her pain syndromes that included pain medications, muscle relaxants, physical therapy and similar treatments as directed by the current standard of medical practice for symptomatic relief of claimant's complaints.

Claimant has been on pain medications since the injuries she sustained on April 24, 2011. Claimant needs these medications to simply get through the day. There is substantial and competent evidence to support the conclusion that claimant will need future medical treatment to treat and alleviate the injuries she sustained from the April 24, 2011, accident. Employer/insurer shall provide such future medical treatment as is required to cure and relieve the effects of the work injuries.

Past Claimed Medical Benefits

Dr. Volarich reviewed medical expenses and the medical records that corresponded to the expenses. He testified that $1,666.28 in expenses were fair, reasonable and customary. He further testified that the treatment that resulted in the expenses was necessary to treat the injuries that claimant sustained in the work accident on April 24, 2011. Finally, Dr. Volarich testified that the medical treatments that resulted in medical expenses were necessary to treat claimant's injuries. Therefore, I find that there is substantial and competent evidence to support the conclusion that the employer/insurer is responsible to pay to claimant the sum of $1,666.28 for past medical expenses incurred by the claimant.

Past Owed TTD Benefits

Following her April 24, 2011, injury, the claimant was released to return to work on light duty. Claimant returned to work on April 25, 2011, on light duty folding silverware. After Two (2) hours of light duty on April 25, 2011, the employer did not have any further work for claimant and they were unable to accommodate her medical restrictions. Therefore, claimant went home on April 25, 2011, after Two (2) hours of work. The claimant returned to work on April 26, 2011, and the employer was unable to accommodate the claimant's medical restrictions from her treating physician.

Claimant continued to try and work. She testified that she was not the same after the April 24, 2011, injury. Claimant testified that she hurt everywhere on her body. She was taking prescription medications, including but not limited to, Hydrocodone and muscle relaxers. Claimant testified that she could not operate the meat slicers or knives at work while taking the prescribed medications. She was also not able to lift heavy skillets and other heavy items in the kitchen that her job required. The claimant attempted to return to work, but he still could not do her job. Claimant had a failed return to work. Claimant was unable to continue working at Hilton. Claimant's last day of employment with Hilton was April 25, 2011. She testified that she was not physically capable of returning to work after the April 24, 2011, injury.

Claimant is seeking TTD benefits from April 26, 2011, through October 13, 2011, when Dr. Miller released claimant form medical treatment and opined claimant had achieved maximum medical improvement. Dr. Volarich did not address whether the claimant was temporarily and totally disabled following the work injury of April 24, 2011. Therefore, I conclude that there is not substantial and competent evidence to find that claimant is entitled to TTD benefits for the period of April 26, 2011, through October 13, 2011. The employer/insurer is not responsible for payment of TTD benefits to claimant.

Summary

As a result of the June 3, 2010, accident, employer/insurer is responsible for paying to claimant a total of 15 weeks of disability. Claimant was at the at compensation rate of $403.63. Therefore, employer/insurer is ordered to pay claimant $6,054.45 for permanent, partial disability as a result of injuries claimant sustained in the June 3, 2010, work accident.

As a result of the June 10, 2010, accident, employer/insurer is responsible for paying to claimant a total of 20 weeks of disability. Claimant was at the at compensation rate of $403.63.

Therefore, employer/insurer is ordered to pay claimant $8,072.60 for permanent, partial disability as a result of injuries claimant sustained in the June 10, 2010, work accident.

As a result of the July 1, 2010, accident, employer/insurer is responsible for paying to claimant a total of 22.5 weeks of disability. Claimant was at the at compensation rate of $403.63. Therefore, employer/insurer is ordered to pay claimant $9,081.68 for permanent, partial disability as a result of injuries claimant sustained in the July 1, 2010, work accident.

Employer/insurer is further ordered to pay to claimant $1,666.28 for past medical expenses incurred by the claimant. The $1,666.28 is to be paid directly to claimant. Employer/insurer shall provide future medical care to claimant to cure or relieve the effects of the work injuries that occurred on April 24, 2011.

The claimant is permanently, totally disabled against the employer/insurer solely as a result of her work injuries of April 24, 2011. Beginning October 13, 2011, and continuing for the remainder of claimant's lifetime, the employer/insurer shall pay to claimant the weekly sum of $382.54, for permanent, total disability arising from her work injuries sustained on April 24, 2011, alone.

Attorney Jennifer Newman shall have a lien of 25 percent of all amounts awarded as a reasonable fee for necessary legal services rendered to claimant. Interest shall be paid as provided by law.

Made by: _____

Karen Fisher
Administrative Law Judge
Division of Workers' Compensation
Signed 9/22/16