

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

Injury No.: 03-078665

Employee: Jillian Bartle  
Employer: Meramec Group  
Insurer: Self-Insured  
Date of Accident: March 6, 2003  
Place and County of Accident: Franklin County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 24, 2006. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued October 24, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 21<sup>st</sup> day of February 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Jillian Bartle

Injury No. 03-078665

Dependents: ----  
Employer: Meramec Group  
Additional Party: N/A  
Insurer: Self-Insured  
Hearing Date: July 25, 2006; finally submitted 8/8/06

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by: KD/bb

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: March 6, 2003
5. State location where accident occurred or occupational disease was contracted: Franklin County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee struck in the head by a heavy metal mold while transferring molds from a cart
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: head injury
14. Nature and extent of any permanent disability: 20% permanent partial disability of the body as a whole referable to the head
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$4,389.20
17. Value necessary medical aid not furnished by employer/insurer? \$2,816.65
18. Employee's average weekly wages: \$255.86
19. Weekly compensation rate: \$170.57/\$170.57
20. Method wages computation: by agreement of the parties

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$ 2,816.65
80 weeks of permanent partial disability from Employer at \$170.57 per week:	\$13,645.60

TOTAL: \$16,462.25

23. Future requirements awarded: See Award as to future medical care

Said payments to begin as of the date of this Award and to be payable and be subject to modification and review as provided by law.

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

Susan L. Brown

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jillian Bartle

Injury No: 03-078665

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents: ----

Employer: Meramec Group

Additional Party N/A

Insurer: Self-Insured

Checked by: KD/bb

The claimant, Ms. Jillian Bartle, and the self -insured employer, Meramec Group, appeared at hearing by and through their counsel and entered into certain agreements and stipulations as to the evidence and issues to be presented in this claim for compensation. No claim as against the State Treasurer, as custodian of the Second Injury Fund, has been filed.

The parties stipulate that on or about the 6<sup>th</sup> day of March, 2003, the claimant sustained an injury by accident arising out of and in the course of employment in Franklin County, Missouri. The parties further agree that the issues to be resolved at hearing are as follows:

Medical causation;  
Liability for certain past medical expenses;  
Future medical care; and  
Permanent partial disability.

Ms. Jillian Bartle appeared at hearing and testified on her own behalf. The claimant also submitted the deposition testimony of Shawn L. Berkin, D.O., taken on 9/26/05. The employer submitted the deposition testimony of Patrick A. Hogan, M.D., taken on 1/13/06.

### **EXHIBITS**

The following exhibits are in evidence:

#### **Claimant's Exhibits**

- A. Certified medical records of Missouri Baptist Hospital-Sullivan for treatment dated 3/6/03
- B. Certified medical records of Missouri Baptist Hospital- Sullivan for treatment from 7/03/03 through 1/21/04
- C. Certified medical records of BJC Union Clinic
- D. Medical records of Dr. Jerry Fitzgerald
- E. Certified medical records of N.E.I of St. Louis (Dr. David Peeples)
- F. Certified medical records of N.E.I of St. Louis (Dr. David Peeples), 3 pages
- G. Deposition of Shawn L. Berkin, D.O., taken on 9/26/05
- H. Employees Injury Report
- I. Billing statements of Missouri Baptist - Sullivan, with attached correspondence from Berlin-Wheeler, debt collection agent.

#### **Employer's Exhibits**

1. Deposition of Patrick A. Hogan, M.D., taken on 1/13/06

### **FINDINGS OF FACT AND RULINGS OF LAW**

Ms. Bartle, 22 years old as of the date of hearing in this matter, began her employment with Meramec Group in May of 2002. Ms. Bartle was employed as a "line operator/mold tech", and her duties included pulling shoe soles out of molds, and taking molds on and off the assembly line. Ms. Bartle acknowledged that the various metal molds used on her assembly line were approximately 12 inches long, and weighed as much as 70 to 150 pounds apiece.

At hearing Ms. Bartle testified that while between shelves of molds, and as she was picking up a mold off of the floor next to her cart, a mold fell off of a shelf and struck her in the back of the head. In an injury report dated 3/10/03 (See Claimant's Exhibit H) Ms. Bartle reported that she "noticed the mold fell off my cart and had hit me in the head". Dr. Peeples, in his report dated 12/2/03 (Claimant's Exhibit E) documents a history provided to him by Ms. Bartle as follows: "On 3/3/03, while putting molds into a rack, a mold fell off the top of the card (sp) which she was loading and hit her on the back and top of the head". On cross-examination, Ms. Bartle acknowledged that she could not recall whether the mold fell off of her cart or fell off of a storage shelf. Irrespective of the exact mechanism of injury, it is clear from the record that at approximately 1:30 p.m. on 3/6/03, and nearing the close of a work shift beginning at 7:00 a.m. and to end at 3:00 p.m., Ms. Bartle suffered an injury by accident arising out of and in the course of her employment when she was struck in the back of the head by a heavy metal mold.

Claimant relates that she "passed out" as a result of the trauma to her head, and recalls that when she regained consciousness her head was pounding, and she was suffering from swelling on her head. Claimant reported her injury to a supervisor, and though feeling dizzy and with a knot on her head, chose to refuse the immediate offer of medical attention. Claimant relates that she spent the balance of her work shift in the break room, and did not seek medical attention until later that night.

Medical records from Missouri Baptist Sullivan (Claimant's Exhibit A) reveal that on 3/6/03 Ms. Bartle presented with complaints of headache, nausea, and blurred vision following her head trauma. CT of the brain performed that evening was reported as negative. Medical records from BJC Union Clinic (Claimant's Exhibit C) indicate that on 3/10/03 the claimant presented with a history of concussion injury to her head, and with complaints of head and eye pain. On that same date, 3/10/03, Ms. Bartle met with Dr. Fitzgerald, the "company doctor", who diagnosed Ms. Bartle as suffering from closed head trauma and concussion. Dr. Fitzgerald prescribed Ibuprofen and instructed the claimant to return for follow up in one week. On 3/17/03 Ms. Bartle reported ongoing complaint of dizziness, occasional headache and blurred vision, and was to

return in one week (see Claimant's Exhibit D).

On 7/3/03 Ms. Bartle presented at Missouri Baptist Hospital-Sullivan with various complaints of nausea, body numbness, "passing out", and of problems with her vision. A non-contrast brain scan and an EKG were performed and were reported as negative.

On 7/07/03 Ms. Bartle presented at BJC Union Clinic with a history of seizure complaint. EEG and MRI were recommended in conjunction with a neurology referral.

On 7/14/03 the claimant met with Dr. David Peeples, a neurologist, by referral by Dr. Glen Calvin, the claimant's personal physician. In his written report dated 7/14/03 (See Claimant's Exhibit F), Dr. Peeples recites a history of claimant having suffered four generalized seizures over the past week or so. Dr. Peeples performed an examination, and concluded that the claimant required medication, Trileptal 300 mg twice a day, for "a new onset seizure disorder". Dr. Peeples was unable to state whether the head trauma suffered by the claimant was contributory to her seizure disorder.

On 7/16/03 Ms. Bartle met with Dr. Fitzgerald, who was provided with the history of head trauma on 3/6/03, followed by complaint of seizures on multiple occasions beginning on 7/3/03. Dr. Fitzgerald recommended a referral for neurological evaluation. On 8/15/03 Ms. Bartle met with Dr. Peeples for further evaluation as to her work injury of 3/6/03. The history provided to Dr. Peeples at that time included complaints of headache, nausea, and vomiting shortly after the head trauma at issue, followed in early July of 2003 with episodes of loss of consciousness, associated with urinary incontinence, convulsive movements, and post ictal confusion. Dr. Peeples completed a neurologic examination that revealed normal responses and negative findings. Dr. Peeples nonetheless concluded that Ms. Bartle suffered from a new onset seizure disorder; that she remained seizure free for the last six months while on the Trileptal; and further stated that "It is recognized that head trauma even without loss of consciousness or radiologic evidence of intraparenchymal damage can be a significant risk factor for subsequent development of seizures". Dr. Peeples went on to state that there was no specific test or definitive way to determine whether the seizure disorder at issue is idiopathic or post traumatic. Dr. Peeples went on to recommend an MRI to rule out any underlying structural lesion that would predispose or cause seizures.

Although it is not clear as to the exact date of the testing, Claimant's Exhibit H includes an outpatient admission record from Missouri Baptist Sullivan dated 8/14/03, and an EEG report from E.R. Schultz, M.D., prepared on or before 8/20/03, relating to an EEG performed on "Bartle, Virginia".

At the request of Dr. Peeples, an MRI of the brain with and without contrast was performed on 2/9/04. The MRI report indicates that the MRI was negative, with inflammatory changes of the paranasal sinuses seen (See Claimant's Exhibit E).

The last treatment note in evidence pertaining to seizure complaints is found in the 1/21/04 notes of Missouri Baptist Hospital- Sullivan, Claimant's Exhibit B.

Ms. Bartle testified at hearing that she suffered an event on 7/2/03 that she described as tingling and numbness, followed by violent shaking, foaming at the mouth, and urinary incontinence. Claimant testified that she had no prior family or personal history of seizure disorder, and that it was this event that lead to a referral by Dr. Calvin to Dr. Peeples.

Ms. Bartle further testified that since July of 2003 she has suffered approximately 20 seizures, including what she refers to as "silent seizures". Ms. Bartle describes her "silent seizures" as episodes that do not include violent shaking or incontinence, but in her case involves blurred vision, loss of sense as to what is happening around her, with right arm tremors and head shakes. Claimant further testified that she is currently treating with Dr. Lambile, and is being provided with medication for migraine and seizures.

Ms. Bartle acknowledged at hearing that Meramec Group terminated her employment on 6/15/03 on account of absenteeism from work. Claimant acknowledges that for the nine months of her employment prior to her work injury, she missed 15 days of work, and that she was terminated from employment while taking requested personal leave in June of 2003.

Claimant testified that she worked at Wal-Mart for two weeks in November of 2003 before quitting that employment after suffering from nausea and dizzy spells. Ms. Bartle further testified that she also performed factory work for Industrial Wiring in January of 2004, but left that employment after three weeks on account of heat sensitivity that was causing her to "pass out" at work. Claimant relates that she has not found employment elsewhere, and that she is currently seeking Social Security disability benefits referable to her seizure complaints.

### **MEDICAL CAUSATION**

The claimant has the burden of proving all the essential elements of the claim for compensation. It is noted that the proof as to medical causation need not be by absolute certainty, but rather by a reasonable probability. "Probable" means founded on reason and experience which inclines the mind to believe but leaves room for doubt. Tate v. Southwestern Bell Telephone Co., 715 S.W.2d 326, 329 (Mo.App. 1986).

"Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause". Brundige v. Boehringer Ingelheim, 812 S.W. 2d 200, 202 (Mo.App. 1991); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). The ultimate importance of expert testimony is to be determined from the testimony as a whole

and less than direct statements of reasonable medical certainty will be sufficient. Choate v. Lily Tulip, Inc., 809 S.W. 2d 102, 105 (Mo.App.1991).

Medical causation as to a seizure disorder cannot be considered uncomplicated. The commission may not substitute an administrative law judge's personal opinion on the question of medical causation for the uncontradicted testimony of a qualified medical expert. Wright v Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo banc 1994), citing Merriman v. Ben Gutman Truck Service, Inc., 392 S.W.2d 292, 297 (Mo. 1965).

"A medical expert's opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence." (citations omitted) Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 904 (Mo.App. 1990).

The testimony of Drs. Hogan and Berkin, in conjunction with the medical findings of Dr. Peeples, persuades that the claimant suffers from a seizure disorder. The more difficult issue is as to whether the mechanism of seizure disorder is to be considered idiopathic, or whether it is post-traumatic and for that reason a consequence of the head injury suffered at work on 3/6/03.

Dr. Hogan, a neurologist, is emphatic in his conclusion that the involved seizure disorder is to be considered idiopathic in nature, citing the involved type of head injury suffered by Ms. Bartle, and the fact that her neurological evaluation was normal. More specifically, Dr. Hogan notes that claimant suffered no hematoma; no contusion; no lacerations; notes that the dura was normal and the skull intact; acknowledges that the CT scan of the brain, MRI of the brain, and EEG findings were normal; notes that most commonly, traumatically induced seizure disorders involve penetrating wounds of the skull and dura, or involve increased intracranial pressure after head injury; and concludes "Individuals with mild head trauma and concussion usually do not have seizure disorders" (Employer and Insurer's Exhibit No. 1, at page 13).

Dr. Peeples, also a neurologist, does not discount the possibility of post-traumatic seizure disorder in this matter. All of the medical experts would agree that there is no specific test or definitive way to determine whether the involved seizure disorder is post-traumatic or idiopathic. Dr. Peeples further acknowledges that Ms. Bartle has no identifiable underlying medical conditions that would result in seizures, and that there is no history of drug or alcohol abuse, or family history of seizures. Dr. Hogan acknowledges that in 25 to 35% of the cases of idiopathic seizure there is a family history of having such seizures (Employer and Insurer's Exhibit No. 1, at page 16-17).

Dr. Berkin, a specialist in family medicine, believes the onset of seizure symptoms four months post the head injury at issue is more than mere coincidence. Whereas Dr. Peeples makes it clear that he believes it possible that the involved trauma could be the cause of the seizure disorder, Dr. Berkin states his own opinion on causation within a reasonable degree of medical certainty (Claimant's Exhibit G, at page 20).

Each claim of injury must be decided on the unique set of facts surrounding the accident at issue. The problem with the analysis of Dr. Hogan is that it appears to preclude even the possibility of causal connection in seizure disorder cases where the trauma is not significant enough to induce intracranial pressure or penetrating wound to the skull and dura. Dr. Peeples persuades that head trauma without radiologic evidence of damage can be a significant risk factor for development of seizures. Further, the reference to a lack of other causative factors known to Dr. Peeples makes it even more compelling to suppose, as is believed by Dr. Berkin, that it is more likely than not that the seizure disorder suffered by Ms. Bartle is post-traumatic in nature.

Drs. Peeples and Berkin persuade, as a matter of a reasonable probability, that the seizure disorder suffered by Ms. Bartle is post-traumatic, and that there is a medical causal relationship between her complaints of ill being referable to a seizure disorder and the head trauma suffered at work on 3/06/03. The issue as to medical causation is found in favor of the claimant.

### **LIABILITY FOR PAST MEDICAL EXPENSE**

The parties stipulated that the expenses showing in Claimant's Exhibit I, in the amount of \$582.10 for services provided on 12/15/03, are unrelated to the injury at issue and liability for those expenses is not in dispute. Further, the employer admits and stipulates that the employer is liable for the bill totaling \$968.00 for treatment provided on 3/6/03.

At issue are bills in the amount of \$2,816.65, representing expenses incurred on 7/3/03 and on 7/04/03 in the amount of \$1,765.65; a charge on 8/14/03 in the amount of \$930.00; and a charge in the amount of \$121.00 for medical services received on 1/21/04.

The issue as to the requisite proof needed to support a claim for medical expense was addressed in Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo banc 1989). The Court stated:

In this case, Martin testified that her visits to the hospital and various doctors were the product of her fall. She further stated that the bills she received were the result of those visits. We believe that when such testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the commission to award compensation. The employer, of course, may challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question.

In this age of soaring medical costs it no longer serves the purposes of the Act to assume that medical bills paid by an injured worker are presumed reasonable (because they were paid), while those which remain unpaid, very probably because of lack of means, must be proved reasonable and fair. Martin, at pp. 111-112.

It is further apparent that there must be medical records in evidence that correspond to the bills put in evidence. See Meyer v. Superior Insulating Tape, 882 S.W.2d 735 (Mo.App. E.D. 1994).

The employer is to provide all medical necessary to cure and relieve of the effects of the work injury, Section 287.140 RSMo. The aforementioned bills from Missouri Baptist Hospital, in the amount of \$2,816.65, are found to be related to treatment necessary to cure and relieve of the effects of the work injury, and for which the employer is liable in this matter.

#### **FUTURE MEDICAL CARE**

An award of future care to cure or relieve, per section 287.140 RSMo, is not necessarily inconsistent with a finding that the claimant may have achieved maximum medical improvement. Mathia v. Contract Freighters, Inc., 929 S.W.2d 271 (Mo.App. S.D. 1996). Further, the claimant is not obliged to present evidence of specific medical treatment or procedures that would be necessary in the future in order to receive an award for medical care. Bradshaw v. Brown Shoe Co., 660 S.W.2d 390 (Mo.App.1983). It is sufficient to show "by reasonable probability" the need for additional medical treatment as a result of the work injury. Sifferman v. Sears, Roebuck and Co., 906 S.W.2d 823,828 (Mo.App. S.D. 1995).

The expert medical testimony in the matter persuades that the claimant has an ongoing need of medication and neurologic evaluation of her seizure complaints. The employer is to provide the necessary medical care, consistent with the opinions expressed by the expert medical providers.

#### **PERMANENT PARTIAL DISABILITY**

The complaints of Ms. Bartle as to her seizure disorder notwithstanding, her neurologic exams were generally unremarkable, and the only limitations expressed by Dr. Berkin related to working at height or on ladders. Ms. Bartle testified to having suffered approximately 20 seizure episodes since July of 2003, including those she describes as "silent seizures". From all of the evidence, as a result of her work injury, the claimant is found to have sustained a permanent partial disability equivalent to 20% of the body as a whole, referable to her head trauma and resultant seizure disorder. At the stipulated rate of \$170.57 per week, the amount due for permanent partial disability is for 80 weeks, or a total of \$13,645.60.

This award is subject to a lien in favor of Susan L. Brown, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

This award is subject to interest as provided by law.

Date: October 24, 2006

Made by: /s/ KEVIN DINWIDDIE  
KEVIN DINWIDDIE  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST  
Patricia "Pat" Secrest, *Director*  
*Division of Workers' Compensation*

