

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

Injury No.: 04-055550

Employee: Hali Batton
Employer: Daimler Chrysler Corporation
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 26, 2010. The award and decision of Administrative Law Judge Kathleen M. Hart, issued February 26, 2010, 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 12th day of August 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Hali Batton

Injury No.: 04-055550

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Daimler Chrysler Corporation

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

Additional Party: Second Injury Fund

Insurer: Self

Hearing Date: December 9, 2009

Checked by: KMH

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: on or about January 21, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured her neck, body as a whole, and left shoulder as a result of repetitive overhead work.
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: Neck, body as a whole, and left shoulder
14. Nature and extent of any permanent disability: 30% body as a whole, 10% left shoulder
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Hali Batton

Injury No.: 04-055550

- 17. Value necessary medical aid not furnished by employer/insurer? as per award
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$662.55/\$347.05
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	as per award
143.20 weeks of permanent partial disability from Employer	\$49,697.56

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential of \$315.50 payable by SIF for 143.20 weeks beginning
March 1, 2005, and, thereafter, \$662.55 for Claimant's lifetime

TOTAL: TO BE DETERMINED

23. Future requirements awarded: none

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

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

Jonathan Isbell

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Hali Batton

Injury No.: 04-055550

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Daimler Chrysler Corporation

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

Additional Party: Second Injury Fund

Insurer: Self

Checked by: KMH

A hearing was held on the above captioned matter December 9, 2009. Hali Batton (Claimant) was represented by attorney Jonathan Isbell. Daimler Chrysler (Employer) was represented by attorney Joye Hudson. The Second Injury Fund (SIF) was represented by Assistant Attorney General Kay Osbourne.

Claimant alleges she sustained an occupational disease as a result of repetitive trauma on or about January 21, 2004. Employer denied liability and has paid no benefits to date.

All objections not expressly ruled upon in this award are overruled to the extent they conflict with this award. Exhibits D and E were withdrawn by Claimant as they were duplicate records. Any markings on the exhibits were done before admitted into evidence and were not made by the Court.

STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law on the alleged date of injury.
2. Employer was self-insured.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was sufficient to yield TTD/PTD and PPD rates of \$662.55 and \$347.05 respectively. Employer has paid no TTD or medical benefits to date.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Accident
2. Arising out of and in the course of employment
3. Occupational disease
4. Medical causation
5. Liability for past medical expenses
6. Future medical care
7. Permanent disability
8. Second Injury Fund liability

FINDINGS OF FACT

Based upon the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 54 year old female who is a high school graduate and attended several semesters of college. She had no academic difficulty or learning disability. She began working for Employer in September 1995 as a production line assistant. She performed many different jobs on the line. Before working for Employer, Claimant was a licensed day care provider for several years. She cared for several children each day at her home.
2. In 1996 Claimant injured her right elbow and underwent open reduction and internal fixation. The hardware is still in her arm.
3. In 1997 Claimant had bilateral carpal tunnel releases. She returned to work and continued to have aching and decreased grip strength in both hands. Claimant testified the carpal tunnel syndrome made it difficult to work with small parts and screws because she dropped things frequently.
4. In April 2001 Claimant injured her neck in a non-work related incident. Her primary care physician (PCP) referred her to Dr. Heffner. Claimant had left arm and hand numbness and tingling with cervical pain. Dr. Heffner ordered an MRI in July 2001, which showed large herniations at C5-6 and C6-7. It did not show any abnormality at C4-5. After Claimant developed pain into her right shoulder and conservative treatment failed to relieve her symptoms, Dr. Heffner recommended surgery.
5. He performed a fusion at C5-6 and C6-7 on March 20, 2002. Claimant was released to return to work June 17, 2002, with no medical restrictions. She testified she continued to have limited motion in her neck, but she was able to return to work because she was assigned to one of the easier jobs on the line. She testified she had to be careful at work because heavy lifting caused pain and stiffness in her neck.

6. In November 2002, Claimant returned to Dr. Heffner with complaints of low back pain and sciatica. She did not have neck complaints at this visit. An MRI revealed a herniated disc at L4-5, and Dr. Heffner treated Claimant with epidural steroid injections.
7. Claimant returned to Dr. Heffner in January 2003 for her low back. She had no complaints with her neck at this time. Her pain was in her low back and left leg. She had another injection and began using a TENS unit. Claimant continues to have low back pain if she bends too long or does heavy work. This affected her work for Employer, and she was unable to do some of the heavy jobs.
8. In March 2003, Claimant saw Dr. Heffner for complaints of intermittent pain in her neck and left side. The records reveal Claimant had no symptoms for the most part, but had occasional sharp pain in the left side of her neck. She had no pain with motion in her neck. Dr. Heffner ordered x-rays which showed development of bony bridges and the plate was in good position. He opined she had no significant structural problem and no evidence of instability in her neck. He did not see Claimant again until February 2004.
9. Claimant continued to work her easier job at Employer until October 2003. During the time she worked this job, she had temporary flare ups of pain but Dr. Heffner just once in March 2003. Claimant testified the pain resolved on its own, and she did not take prescription pain medications.
10. In October 2003, Claimant's job changed, and she began working the Huntsville Inspection Job. This job involved repetitive overhead work. Claimant inspected the wiring on Dodge Ram Trucks while on the assembly line. To inspect the wiring, she released the truck hood, which was at chest height, and lifted it up into a vertical position. She reached under the hood and plugged in an electrical cord under the hood. She sat in the truck and plugged an approximately 4x8" computer box into the truck under the steering wheel to test the wiring. While in the truck, she checked the interior to make sure parts were placed correctly. When the tests were complete, Claimant exited the truck and set the box down.
11. In order to close the truck hood, Claimant had to look up towards the ceiling, reach her arm all the way up, insert a hook into the front or side of the hood, and pull the hood down. She had her whole body extended with her head back and her arms up. She used both arms to grab the hook and pull it down because it was heavy. When she got the hood to her eye level, she took the hook out and reached up to push the hood closed. She believes this is the job that caused new neck complaints.
12. Claimant worked the inspection job from October 2003 until February 2004. She worked ten hour shifts. During each shift, she inspected approximately 150-175 trucks.
13. Claimant testified she did not have neck complaints when she started the inspection job. At some point in December 2003, her neck started aching at the end of her shift. Her neck did not ache like this before the inspection job. Claimant rested over the holiday leave, and the pain became more severe upon returning to work. She developed sharp pain when she looked up to put the hook in the truck hood. By January 21, 2004, the pain

was very sharp and severe. Claimant thought something was wrong, and went to Chrysler medical.

14. By January 21, the pain was constant and did not stop when she was off work. Claimant testified she went to plant medical and told the doctor she believed pulling on the hood caused her neck pain. She testified the plant doctor told her the condition was not work related and she should see her own doctor.
15. On February 3, 2004, Claimant went to her PCP for complaints of neck pain with tingling on her left side. The doctor ordered an MRI and referred Claimant back to Dr. Heffner. Dr. Heffner noted Claimant's neck had been doing well until October 2003 when she began doing heavy overhead work. He noted she had limited movement in the neck and was not able to turn to her left side. She was not able to extend or flex her neck without pain and had weakness in her left arm. Her pain had progressed since October. He opined the MRI showed a new C4-5 disc protrusion. He again recommended conservative treatment and sent Claimant to PRORehab.
16. The therapy records show Claimant's job involved repetitious overhead work. She had the onset of new symptoms in October 2003 and was currently not able to work due to pain. She continued to have neck and left shoulder pain with tingling and burning into her right arm. Therapy did not improve her symptoms, and Dr. Heffner recommended another surgery. On March 15, 2004, he removed the C5-7 plate, performed a discectomy and decompression at C4-5, performed a fusion at C4-5, and put in a new plate from C4-7 to incorporate both fusions.
17. Claimant had several months of physical therapy, but continued to have significant problems in her neck and left upper extremity. Given the amount of heavy lifting required with her job, Dr. Heffner released her to work July 26, 2004, with a ten pound lifting restriction, and restricted her from using a power air gun or performing overhead lifting or reaching. Claimant was not able to work with those restrictions, and continued with more extensive physical therapy in an effort to build up her activity level.
18. In October 2004, Dr. Heffner referred Claimant to Dr. Baumer, an orthopedist, for her left arm complaints. He diagnosed myofascial pain syndrome and possible left shoulder bursitis and capsulitis. She had a course of injections into her shoulder. Claimant testified she did not have shoulder pain after her first neck surgery.
19. By February 2005, Claimant still had significant neck and left arm pain and difficulties. She had not been able to return to work. Dr. Heffner opined she was not able to progress given her multilevel disc problems. He imposed permanent restrictions of ten pounds for lifting, no overhead lifting or reaching, and no use of power tools. He released Claimant to return as needed.
20. Claimant returned to Dr. Heffner a few more times throughout 2005 for ongoing pain. Her updated scans were normal, and he continued her on anti-inflammatories and daily pain medications. In early 2006, he continued her restrictions and limited her to working only four hours a day.

21. Claimant took an 8 week course at the Washington University Pain Management Clinic in an effort to reduce her dependency on medication. The records reveal Claimant believed her pain started getting worse after her second fusion. Her neck pain was now continuous, and she had radiation into both upper extremities. She was diagnosed with failed neck surgery syndrome, bilateral upper extremity radiculopathy, depression, anxiety and insomnia. Through the course, Claimant learned to manage her pain through breathing and relaxation exercises and by breaking down her tasks to small parts.
22. In April 2006 Claimant returned to Dr. Heffner because she felt her pain was getting worse rather than better. Repeated tests did not show anything that warranted surgery, and Dr. Heffner recommended a second opinion. He could not explain her ongoing symptoms. Claimant saw Dr. Barta and Dr. Wright who had no suggestions for additional treatment. Dr. Wright opined Claimant had a solid fusion at all three levels.
23. In October 2006, Claimant underwent a functional capacity evaluation which showed even sedentary work would be a challenge due to her pain levels. Based on the FCE, Dr. Heffner increased Claimant's restrictions.
24. Claimant is no longer seeing Dr. Heffner. She sees her PCP to manage her medications. She takes Tramadol and Alleve for pain. Since her second surgery, she has consistently been on over the counter and prescriptions pain medications.
25. Claimant continues to have pain in her left shoulder to her neck. She recently started having pain in her right shoulder and believes her right arm is getting weaker. She continues to lose strength and can't climb stairs anymore. She testified she is never free of pain, and it extends from her neck into her shoulders. Her typical day involves helping her grandchildren get ready for school. She then goes home for breakfast and takes a break to sit or recline. She watches television, reads, or crochets for a short time. She does light housework and light yard work in small sections. She testified she lies down or reclines much of the day. If she drives more than 30 minutes, her pain increases.
26. After her first neck fusion, Claimant was able to golf a few times a month. She also swam occasionally and shopped. Since her second fusion, she can't golf as much and no longer tees off. She is unable to swim and simply floats in a life jacket. She grocery shops less frequently because it involves too much walking. She carries only a few bags into the house at time. Her most strenuous activity now is golf. She does not do heavy housework and guards herself with any activities.
27. In order to relieve her shoulder and neck pain, she changes position often. Her pain increases when she sits or stands for extended periods, and when she is active. She often sits in a recliner with an ice pack. Throughout the day she has to lay down to take the pressure off her neck. Claimant testified she can't work, and it is hard to take care of herself. She has more bad days than good days.
28. Claimant has been approved for SSD and is on Medicare. Medicare pays for her pain treatment.

29. Claimant saw Dr. Coyle in February 2007 for an evaluation on behalf of Employer. He testified he reviewed her CT scan from September 2004, which states the graft was not incorporated into the adjacent bone. He opined this means Claimant had a nonunion. He also reviewed the December 2005 and April 2006 CT scans which show stable and intact fusion hardware and no evidence of complications with fusion. Dr. Coyle opined since the radiologist did not say there was a solid fusion, this bolstered his opinion there was a nonunion following her first fusion. He concluded there was no connection between her work and the nonunion. He opined she had not reached maximum medical improvement and could only work in a light or sedentary capacity.
30. In May 2007 Dr. Heffner noted he had considered nonunion in the past, but Claimant had returned to completely normal function for two years after her first fusion. She then herniated her C4-5 disc and developed new symptoms. He opined this new herniation, and not a nonunion, was the cause of her new symptoms which necessitated surgery. Dr. Heffner opined it was possible some of her new symptoms related to a nonunion at C5-6. He ordered new x-rays which showed solid bone growth at that level.
31. Dr. Coyle examined Claimant again in February 2008. He opined she had a nonunion, and there was no connection between her nonunion and a work injury in 2004. He opined Dr. Heffner was concerned about a nonunion or he would not have ordered a CT scan in March 2003, and he would not have explored the C5-6 and 6-7 levels during Claimant's second neck surgery. Dr. Coyle recommended another CT to definitively establish whether or not a nonunion exists. In October 2008, Dr. Coyle reviewed the new CT scan which showed fusion at C5-6 and osteophytic spurring. He opined Claimant had a delayed fusion following her first surgery.
32. Dr. Coyle testified x-rays before the second surgery demonstrated a nonunion, so Dr. Heffner elected to explore that level during surgery. Dr. Coyle opined Dr. Heffner could not have explored the prior fusion during the second surgery because in order to do so, he would have had to drill it out or have a CT scan looking through it during surgery. He further testified if the fusion was in fact solid, Dr. Heffner would not have put a plate back in at the site of the first fusion. He would simply have put a plate from C4 through C5. Dr. Coyle disagreed with Dr. Heffner's technique, and stated inserting a new long plate is not typical procedure.
33. Dr. Coyle testified Claimant's C4-5 disc abnormality was not the cause of her problem. She had a nonunion and never got better after the first surgery. A nonunion means no bony formation between the two bones, there is movement, and there is pain. He offered no opinion as to the causation of the C4-5 herniation and testified it was coincidental Claimant's pain developed when doing overhead work. Her problems would have happened regardless of her work because the first fusion never fused.
34. Dr. Heffner testified x-rays in March 2003 showed there was bone growth and the fusion was stable. There was no clinical or diagnostic evidence of any problem at C4-5. He did not see Claimant for another year. X-rays done in March 2004 did not show any change in the fusion. He opined the bone graft and first fusion were in good position and solid.

35. Dr. Heffner noted studies done just before the second surgery, showed the possibility of a partial or nonunion. He explored the prior fusion during the second surgery and found the bone graft was very solid with no movement, so he did not need to revise the graft. He opined Claimant developed a new herniation between the time he released her in June 2002 and February 2004. Her work activity caused the new herniation, new symptoms, and need for treatment and additional surgery. Dr. Heffner testified Claimant came to see him a few times before October 2003 with neck complaints, and that is standard following a fusion. He testified all his treatment after February 13, 2004, was causally related to her new herniation.
36. Claimant saw Dr. Poetz in 2005 for an evaluation. He opined she is permanently and totally disabled as a result of the combination of her 2004 work injury and subsequent disability and her prior disabilities. She saw Dr. Poetz again in 2009. He noted she had gained 27 pounds since 2005, and her condition had deteriorated. He found the EMG/NCV studies showed no evidence of cervical radiculopathy, so there was no nerve root compression in the neck as Dr. Coyle believed. He found her repetitive job duties leading up to January 2004 were the substantial and prevailing factor in causing her condition and need for a second fusion. He reiterated his opinion she was permanently and totally disabled as a result of the combination of her disabilities.
37. Claimant also saw Jim Israel for a vocational evaluation. He found she had vocational skills that could transfer to light or medium skilled occupations. He opined her overall medical restrictions allowed for an excessively narrow range of work in the light or medium occupations, but the types of unskilled jobs that meet her medical guidelines do not allow the latitude she needs to accommodate her disabilities. He found without medical improvement, she is not able to sustain gainful work. Her inability to sustain gainful work is the result of her work injury and prior injuries and disabilities.
38. Claimant is credible. During the hearing, she frequently changed positions, sat and stood to alleviate her pain.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

- 1. Claimant sustained an occupational disease which arose out of and in the course of her employment and was medically and causally related to his work.**

Claimant contends she developed a herniated disc at C4-5 as a result of the repetitive activities she performed while working the inspection job, and that disc necessitated a second cervical fusion. Employer contends Claimant's condition was caused by a nonunion of her prior fusion, and she did not sustain an injury by occupational disease.

Section 287.020 (RSMo 2000) provides that in order to establish a compensable occupational disease, Claimant must show her work was a substantial factor in causing her neck complaints and need for a second fusion. I find Claimant satisfied this burden.

Claimant had a cervical fusion in March 2002 to relieve a nonoccupational injury. Although she had some ongoing pain, as can be expected after a fusion, she was able to return to work full time in June 2002. The plant medical records reveal no complaints of neck pain from the return to work until January 2004. During this time period, Claimant saw Dr. Heffner just once for neck complaints. At this visit in March 2003, Dr. Heffner ordered radiographic studies that showed development of bony bridges and no evidence of instability in the fusion.

Claimant credibly testified she developed new and different neck complaints after changing to a job that involved repetitive overhead work in October 2003. These new complaints are corroborated in the medical records. When Claimant saw Dr. Heffner in 2004 he noted the recent MRI showed a new C4-5 disc herniation. He opined this new herniation caused new neck complaints and necessitated a second surgery. During that surgery, he explored the prior fusion and found it was "very solid with no movement". Dr. Heffner testified he considered whether Claimant had a nonunion, but he found she had different symptoms which were caused by a different disc than those involved in the first fusion.

Dr. Coyle did not provide an opinion as to the causation of the C4-5 herniation. He repeatedly states Claimant had a nonunion, and that was not related to her work activity. He focused on the question of whether Claimant had a complete union following her first surgery. While I understand the logic of his theory, it seems to be based somewhat on speculation. He opines since the radiologist in 2005 and 2006 said the scans showed no evidence of complications with the fusion but didn't say there was a solid fusion, then there wasn't. He opines Dr. Heffner was concerned about nonunion or he wouldn't have ordered scans in March 2003. Dr. Coyle found significant Claimant's slow bone growth and stated there must have been movement in the old fusion. He disregards the fact that every time the fusion was checked, it was found to be stable. He disagreed with Dr. Heffner's surgical technique and concluded that established Dr. Heffner did not in fact explore the first fusion during the second surgery. He then concludes Claimant's pain would have developed when it did regardless of her work activities.

I find Dr. Heffner's opinion more persuasive. His opinion is based on his multiple evaluations of Claimant, and his actual visualization and exploration of the fusion during his second surgery. I find Claimant developed a new herniation as a result of her repetitive overhead work. This new herniation necessitated additional surgery and follow-up care. While Claimant had two falls at home in late 2003, the medical experts do not find that is the cause of her new herniation. These falls could have been a factor, but it is sufficient to show, as Claimant has, that her repetitive work was a substantial factor in causing the herniation and need for treatment.

2. Employer is responsible for past medical bills.

"In *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. banc 1989), our Supreme Court stated that "when [employee] 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." *Id.* at 111-12[7] (emphasis added)." *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo.App. E.D. 1994)

I find Claimant has satisfied this burden with respect to the bills from PRORehab. Employer is directed to pay the outstanding bills from PRORehab.

I find Dr. Heffner's treatment was reasonable and necessary to cure and relieve the effects of the injury. Some of his bills reflect credits for payments, but the last bill does not reflect whether those payments were credited against the total. The exact outstanding balance is unclear. Employer is directed to pay the outstanding balance of the bills related to Dr. Heffner's treatment after February 13, 2004.

3. Claimant is permanently and totally disabled as a result of the combination of her work injury and her pre-existing disabilities.

"The test for permanent total disability is a worker's ability to compete in the open labor market in that it measures the worker's potential for returning to employment." *Sutton v. Vee Jay Cement Contracting Co.*, 37 S.W.3d 803, 811 (Mo.App. 2000). "The critical question then becomes whether any employer in the usual course of employment would reasonably be expected to hire this employee in his or her present physical condition." *Reese v. Gary and Roger Link, Inc.*, 5 S.W.3d 522, 526 (Mo.App. 1999).

Claimant testified as to her restrictions, and presented medical and vocational evidence corroborating her testimony. All of the doctors agree Claimant is unable to work. Based on the evidence and my observations of Claimant at trial, I find she has satisfied her burden of proving she is permanently and totally disabled and is not able to compete in the open labor market.

Based on Claimant's ongoing complaints and the medical evidence, I find she has sustained 30% PPD to her neck and 10% to her left shoulder as a result of her work injury. She is therefore entitled to 143.20 weeks of compensation or \$49,697.56 from Employer.

The medical evidence supports a finding Claimant's total disability is not the result of her 2004 work injury alone. Before that injury, Claimant had a two level cervical fusion, a herniated lumbar disc, bilateral carpal tunnel releases, and an open reduction and internal fixation to her right elbow. She continued to have pain in her neck, back, and hands. She testified she was able to continue working after these injuries because she was on one of the easiest jobs at work. I find these disabilities were hindrances and obstacles to Claimant's employment or returning to employment.

Claimant's prior conditions combined with her current injury are the causes of her permanent and total disability. Neither all the prior injuries nor just the last injury, considered apart from each other, would produce the current inability to work. It is the totality of the injuries that is causing the inability to work. As such, liability is rightfully imposed on the SIF. Due to the severity of her injuries, I find she is permanently and totally disabled as of February

28, 2005, when Dr. Heffner released her from care and made her restrictions permanent. The vocational evidence establishes Claimant cannot compete in the open labor market with these work restrictions.

4. Claimant is not entitled to future medical care.

In order to receive an award for future medical care, Claimant must prove beyond speculation his work injury is in need of treatment. *Williams v. A.B. Chance Co.*, 676 S.W.2d 1, (Mo.App. 1984). Conclusive evidence is not required. However, evidence which shows only a mere possibility of the need for future treatment will not support an award. *Dean v. St. Luke’s Hospital*, 936 S.W.2d 601, 603 (Mo.App. 1997).

Dr. Heffner testified he did not expect Claimant to need any further medical care. He released her from care and imposed significant restrictions on her so as to limit her activity and reduce the risk of future treatment. Dr. Poetz recommended Claimant “consider” additional pain medications along with a laundry list of activity restrictions. Claimant testified she is not seeing any doctor besides her PCP. She continues to see her PCP to manage her medications. Those records indicate Claimant has “chronic pain”, but it is unclear if those medications relate to her work injury alone. I find Employer is not responsible for future medical care.

CONCLUSION

Claimant is permanently and totally disabled as a result of the combination of her primary injury and pre-existing injuries and disabilities. Claimant became permanently and totally disabled February 28, 2005. Employer is ordered to pay Claimant \$49,697.56 in PPD benefits. The Second Injury Fund is liable for permanent total disability benefits at a differential rate of \$315.50 for 143.20 weeks beginning March 1, 2005, and thereafter, \$662.55 per week for Claimant’s lifetime. Employer is also responsible for past medical bills related to Claimant’s treatment with Dr. Heffner and PRORehab.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation