

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

Injury No. 10-017735

Employee: Robert Bell  
Employer: St. Charles County  
Insurer: Self-Insured

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 9, 2015. The award and decision of Administrative Law Judge Edwin J. Kohner, issued October 9, 2015, 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 17<sup>th</sup> day of March 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Robert Bell Injury No.: 10-017735  
Dependents: N/A Before the  
Employer: St. Charles County **Division of Workers'**  
Additional Party: N/A **Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Insurer: Self-Insured Jefferson City, Missouri  
Hearing Date: August 13 and 24, 2015 Checked by: EJK/kr

### 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, 2010
5. State location where accident occurred or occupational disease was contracted: St. Charles 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:  
The claimant, a deputy sheriff, suffered a lumbar spine disc injury when he fell to the ground to avoid gunfire.
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: Low back
14. Nature and extent of any permanent disability: 20% permanent partial disability to the low back
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: \$1, 945.06

- 17. Value necessary medical aid not furnished by employer/insurer? \$395.00
- 18. Employee's average weekly wages: \$844.52
- 19. Weekly compensation rate: \$563.00/\$422.97
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses:	\$ 395.00
2 weeks of temporary total disability (or temporary partial disability)	\$ 1,126.00
100 weeks of permanent partial disability from Employer	\$42,297.00

- 22. Second Injury Fund liability: No

TOTAL: \$43,818.00

- 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: Ronald J. Wuebbeling, Esq.

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Robert Bell	Injury No.: 10-017735
Dependents:	N/A	Before the
Employer:	St. Charles County	<b>Division of Workers'</b>
Additional Party:	N/A	<b>Compensation</b>
Insurer:	Self-Insured	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: EJK/kr

This workers' compensation case raises several issues arising out of an alleged work-related injury in which the claimant, a deputy sheriff, suffered a lumbar spine disc injury when he fell to the ground to avoid gunfire. The issues for determination are (1) Accident or occupational disease arising out of and in the course of employment, (2) Notice, (3) Medical causation, (4) Liability for Past Medical Expenses, (5) Temporary Disability, and (6) Permanent disability. The evidence compels an award for the claimant for medical expenses, temporary total disability benefits, and permanent partial disability benefits.

At the hearing, the claimant and his wife, Edward Noonan, Daniel J. Cunningham, Bryan Streck, and Tom Koch testified. The claimant offered the following exhibits which were received without objection:

- Exhibit 1. Deposition of Dr. Raymond F. Cohen taken August 4, 2015 (subject to the objections contained therein).
- Exhibit 1-A Curriculum Vitae of Dr. Raymond F. Cohen.
- Exhibit 1-B Medical Rating Report of Dr. Raymond F. Cohen dated June 2, 2014.
- Exhibit 1-C Supplemental Medical Report of Dr. Raymond F. Cohen dated July 8, 2015.
- Exhibit 2. Medical Records of Barnes-Jewish St. Peters
- Exhibit 3. Medical Records of BarnesCare St. Peters
- Exhibit 4. Medical Records of Dr. Galileu Cabral/C&M Medical
- Exhibit 5. Medical Records of Dr. Ralph Caraffa/Psychological Network, Inc.
- Exhibit 6. Medical Records of Rohen & Associates
- Exhibit 7. Medical Records of Dr. Jyothi Mandava
- Exhibit 8. Medical Records of St. Peters Bone & Joint Surgery
- Exhibit 10. Medical Records of St. Joseph Hospital West (3/6/2010 Injury)
- Exhibit 12. St. Charles County Employee Injury Forms
- Exhibit 13. Medical Records of St. Joseph Hospital West (7/25/2012 Injury)
- Exhibit 14. Medical Records of St. Charles Orthopaedic Surgery Associates (7/25/2012 Injury)
- Exhibit 15. Medical Records of St. John's Mercy (7/25/2012 Injury)
- Exhibit 16. Answer to Claim for Compensation (Injury No. 10-017735)

The following exhibits were offered by claimant and received over Employer's objections:

- Exhibit 9. Medical Records of Professional Pain Physicians/South County Anesthesia (objection as to foundation overruled)
- Exhibit 11. Medical Records of Dr. Brian Stufflebam (objection as to relevance overruled)

The defense offered the following exhibits which were received without objection:

- Exhibit A. Deposition of Dr. Elizabeth F. Pribor taken June 15, 2015 (subject to the objections contained therein).
- Exhibit A-1 Curriculum Vitae of Dr. Elizabeth F. Pribor.
- Exhibit A-2 Independent Psychiatric Evaluation Report of Dr. Elizabeth F. Pribor dated May 6, 2015.
- Exhibit B. Deposition of Dr. Michael C. Chabot taken August 7, 2015 (subject to the objections contained therein).
- Exhibit B-1 Curriculum Vitae of Dr. Michael C. Chabot.
- Exhibit B-2 Medical Rating Report of Dr. Michael C. Chabot dated July 10, 2015.
- Exhibit B-3 Supplemental Medical Report of Dr. Michael C. Chabot dated July 30, 2015.
- Exhibit C. Prior Medical Records of Dr. Galileu Cabral/C&M Medical
- Exhibit D. Email correspondence to/from Ed Noonan dated August 21, 2012 and email correspondence from claimant to Ed Noonan dated October 17, 2012.
- Exhibit E. Email correspondence from claimant to Ed Noonan dated October 17, 2012 and response dated November 21, 2012.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the accident occurred in Missouri. Any markings on the exhibits were present when offered into evidence.

### **SUMMARY OF FACTS**

On March 6, 2010, this then 33-year-old claimant, a County Sheriff's deputy, injured his low back after falling to the ground to avoid gunfire from an armed assailant near the Katy Trail and Upper Bottom Road in St. Charles County, Missouri. On that date, the claimant was on regular patrol near the Katy Trail at 8:49 pm when he observed a 40-50 year old white male, grey hair, approximately 5'10 to 6'0" tall, approximately 180-200 pounds, wearing a camouflage jacket and dark-colored pants. The claimant identified himself as a police officer. After the unidentified subject initially ignored the claimant's inquiry, the subject turned toward the claimant and fired one shot at the claimant. The claimant who was then 30 to 50 feet from the subject and behind his driver side door, then drew his gun, fired two shots, went to the ground and rolled to the rear of his vehicle for cover. The claimant fell to the ground landing on his mace canister which was on his service belt. The claimant advised dispatch of the incident and remained at the scene. An empty cartridge was found at the scene where the shooting took place.

The claimant testified that he felt he had lots of adrenalin, felt pain and knew that something was not right. He remained at the scene with many other officers and supervisors for about an hour and then went by ambulance to Barnes-Jewish St. Peters Hospital.

At Barnes-Jewish St. Peters Hospital, the claimant reported being involved in a shooting (without gunshot wound) and complained of low back pain and high blood pressure after the altercation. The claimant received pain medication and muscle relaxers, some of which caused nausea/vomiting. The claimant reported back pain with a severity of 7, which was constant and sharp, and radiated into his right thigh. The claimant was diagnosed with low back pain and sciatica and instructed to follow up with his employer's occupational health provider. See Exhibit 2. Both the claimant and Jennifer Bell testified that the emergency room physician recommended a low back MRI.

On March 8, 2010, the claimant went to BarnesCare St. Peters and reported that his symptoms had continued since the injury occurred and that the pain was constant. He stated to the nurse practitioner that he wanted to return to full-duty work. See Exhibit 3. The claimant testified that even though he was still experiencing pain, he wanted to go back to work because that is who he is.

The claimant testified that as a result of the shooting he was required to go to at least three appointments with a psychiatrist. At the April 13, 2010 appointment, Dr. Caraffa noted that the claimant "likes most all supervisors" but a lieutenant questioned one of the claimant's "protégés about having [a] throw-down gun and extra shells" and the protégé told the lieutenant "no way". At the April 20, 2010 appointment, Dr. Caraffa noted how the claimant had issues with a lieutenant who mistrusts him. The claimant also discussed with Dr. Caraffa the differences between working in Jennings (the claimant's prior employer where the claimant was involved in other shootings) and St. Charles. See Exhibit 5.

The claimant testified that he continued to have low back complaints in the months following the accident. On April 9, 2010, he went to his primary care physician who noted that the claimant's back and leg pain were not responding with conservative treatment and he was advised to follow up with an orthopedist. See Exhibit 4. The claimant testified that in order to cope with his back pain that he self-medicated by taking large quantities of over-the-counter pain medications such as Tylenol and Advil. Jennifer Bell testified that the claimant was in significant pain, was very immobile and only left bed for work.

On May 24, 2010, the claimant went to St. Joseph Hospital West complaining of nausea/vomiting and left heel pain, brought about by overcompensating due to back pain and right leg pain. The claimant also complained of low back pain. The claimant was diagnosed with gastritis caused by taking too many medications. See Exhibit 10.

The claimant testified that he spoke with Sgt. Mallet, co-workers, and Lt. O'Neill (his supervisor on midnights) about his continued back complaints. The claimant testified that before his March 6, 2010, injury he had never filed a claim for workers' compensation and was not familiar with the process. The claimant testified that in June or July 2010 he called and left messages with Ed Noonan, the Risk Manager for St. Charles County. The claimant testified that he did not receive responses. The claimant's wife also testified that she sent an email to Ed

Noonan concerning the claimant's back complaints but did not receive a response. After discussing his continued back problems with Lt. O'Neill (the claimant's supervisor on midnights), Lt. O'Neill recommended Dr. Graven as Dr. Graven had treated Lt. O'Neill's wife's back problems.

On June 22, 2010, Dr. Larkin examined the claimant and ordered a low back MRI, which revealed a broad central and right paracentral herniation and diffuse disk bulge at L4-5. On June 29, 2010, Dr. Larkin prescribed a second Medrol Dosepak and directed the claimant to follow up with Dr. Graven. On July 29, 2010, Dr. Graven noted the claimant was experiencing excruciating right leg pain. Dr. Graven referred the claimant for epidural steroid injections. See Exhibit 8. On July 29, August 19, and September 16, 2010, the claimant received lumbar epidural steroid injections. See Exhibit 9.

On September 10, 2010, Dr. Mandava, a psychiatrist, examined the claimant and noted that claimant was having nightmares and dreams related to the shooting in March of 2010. Dr. Mandava noted that the claimant's heart was racing, and he had lack of sleep, dreams, sweating, trembling, shaking, shortness of breath, nausea, dizziness, losing control, crazy, chills, hot flashes, paresthesias, and agitation. The claimant has had flashbacks at home and woke up sweating. Dr. Mandava diagnosed the claimant with post-traumatic stress disorder (PTSD). See Exhibit 7.

On October 18, 2010, Dr. Graven performed an L4-5 discectomy and L4-5 hemilaminotomy on the right. See Exhibits 8 and 10. On October 29, 2010, Dr. Graven examined the claimant and released him to return to work on November 1, 2010, with light duty/desk duty only. The claimant followed up with Dr. Graven again on November 23, 2010. See Exhibit 8.

The claimant was off work from October 18, 2010, through November 1, 2010, and contacted his Employer who filled out Leave Requests/Absence Reports. See Exhibit 12.

On December 9, 2010 Dr. Stufflebam, the claimant's new primary care physician, noted the L4-5 discectomy, the NSAID-induced ulcer, and PTSD among the claimant's problem list. On February 15, 2011, Dr. Stufflebam began prescribing Cymbalta. See Exhibit 11.

The claimant testified that currently he experiences stiffness and soreness in his back. He cannot sit in certain positions for very long. He is unable to ride his motorcycle for long distances. The claimant testified about the significant psychological problems which he has related to the March 6, 2010 shooting. He described his "night terrors" and how he does not like to talk about the incident as talking about the incident will result in increased "night terrors". The claimant testified he was often afraid to go to sleep. The claimant testified that he had previously been shot at while working for the City of Jennings, but that was different because it was expected and he was prepared for it. The claimant testified about how he was withdrawn socially and did not want to be around his family and friends. He had no mood and no energy. His sleep is significantly interrupted and difficult. He still has the "night terrors" (75% of his nightmares involve the March 6, 2010, shooting while 25% involve the July 25, 2012 shooting). He testified that he "knows" where the areas are that the shootings took place, and while he does not completely avoid the areas, being in the areas brings back the memories.

Jennifer Bell, the claimant's wife of nine years, testified that the claimant has had significant back pain since the March 6, 2010 injury. She testified that he took lots of pain medications, was less mobile, and only left bed for work. He was unable to help care for their then two young children. Following the back surgery, his condition improved and he had fewer complaints related to the back. She testified that he tries to do as much as he can. Ms. Bell testified emotionally about the significant psychological problems that the claimant has encountered. She described it as a "rough go". The claimant withdrew from his family and friends. He did not want to get out of bed. She testified that it was as if he was not there. Currently, he continues to have terrible dreams and nightmares where he relives the March 6, 2010 and July 25, 2012 incidents. He will roll out of bed, run into the wall or furniture, and/or curl up in a ball. If he is able to be calmed down enough to go back to sleep, it takes a long time. Ms. Bell also testified that she sent an email to Ed Noonan from her yahoo home email account following up on the voicemail messages that claimant had left for Mr. Noonan concerning obtaining treatment for his back injury. Ms. Bell testified that Mr. Noonan did not respond to her email.

Edward Noonan, the employer's risk manager since 2003, testified that a supervisor is required to contact him for approval of medical treatment for an employee unless it is a life-or-death matter. He testified that the employer is self-insured for workers' compensation and for group health/medical insurance. Despite a Report of Injury, filed in March 2010 and an Answer to Claim for Compensation dated February 28, 2011, Mr. Noonan testified that he first heard of the March 6, 2010, injury in February 2013. See Exhibit 16. Mr. Noonan also testified that neither the claimant nor his wife contacted him about the 2010 injury, but he acknowledged that it was possible that he was contacted. Mr. Noonan testified that the claimant emailed him on October 17, 2012, concerning the July 25, 2012 injury and that the email "got misplaced and resurfaced" five weeks later. See Exhibit E.

St. Louis County Police Sergeant Daniel Cunningham testified that on March 6, 2010, he was the pilot of a helicopter flying general patrol over Chesterfield when they heard the call of an officer involved shooting. Though he did not have his call notes (which would set forth the exact times) or any recordings, he believed it took him about two minutes to get to the area of the scene of the shooting. Sgt. Cunningham testified his primary duty was piloting the helicopter and a different officer was in charge of actually looking at the FLIR unit. Sgt. Cunningham testified that the FLIR unit cannot observe all areas such as under bridges. He also testified that they had to leave the scene and refuel on three different occasions which would take at least 16-18 minutes each time. He testified that after six hours (3 am on March 7, 2010), he had no other involvement with the shooting, the search or the investigation. Sgt. Cunningham also testified that an officer on the ground has a better perspective on what has occurred.

St. Charles County Police Sergeant Bryan Streck arrived at the scene of the shooting eight minutes after the shooting. He testified that the claimant appeared "shaken up", looked like he had been in a tussle, was a little bit dizzy and later said his back hurt. Sgt. Streck initially testified that he set up a perimeter of 5 miles and had an officer every 50-100 feet on the perimeter. He also testified that that was not possible. He testified that while there may have been a total of one hundred officers at the scene, not all of them were part of a perimeter. Sgt. Streck also acknowledged that a canine unit with the Maryland Heights Police Department was

on a hot trail when he instructed them to stop the search because air support had to land for refueling and he did not think it was safe for them to continue on the trail without air support. After not being able to continue on the hot trail, the Maryland Heights officers and canine unit left the scene and did not return. While personally believing that no shooting occurred, Sgt. Streck testified that he did not review any of the investigation and based it primarily on the fact that a suspect was not captured. Sgt. Streck testified that there were supplemental reports concerning the investigation and he did not review them. He acknowledged that other witnesses saw a man fitting the description given by claimant and that structures in the area were found that indicated homeless people had been living there in the vicinity. Sgt. Streck also testified that he personally filled out the Leave Request/Absence Report (Exhibit 12) dated October 30, 2010 and that as is normally done, he decided which box to mark and he signed the line which reads "Signature of Employee". Sgt. Streck testified that the claimant never reported to him whether the back surgery was or was not work-related.

Captain Thomas Koch testified that in March 2010 he was a Lieutenant and the Patrol Division Commander. He went to the Katy Trail after receiving a call from Sgt. Streck. He only saw claimant briefly and the claimant and all the officers were "shaken up". He testified he had very little contact with the claimant immediately after the shooting and limited contact afterwards. He testified that he did not perform any investigation concerning the March 6, 2010, shooting. Detective Copeland performed the investigation. No discipline of anyone was discussed. Captain Koch testified that the claimant has been "Officer of the Year" on two occasions. Captain Koch testified that it is an anomaly for a police officer to be shot at in St. Charles County and that such shootings are rare. He acknowledged that the claimant has shrapnel in his arm to prove the July 25, 2012 shooting.

Raymond F. Cohen, D.O.

On June 2, 2014, Dr. Cohen examined the claimant, took a medical history, reviewed his medical records, and reviewed the claimant's deposition. Dr. Cohen described the claimant's current chief complaints related to his back:

He continues to have pain in his low back. This is present on a daily basis. He has difficulty sitting in most chairs. He will try to lean forward, if at all possible. When he sits in a vehicle, after approximately two hours, he will get out for a few moments to stretch. He has pain radiating down to the right hamstring area. He describes this as a painful grabbing or pulling sensation. He does obtain some relief of the low back and right leg pain by lying on the floor on his back. He also notes some relief of the pain during the day when he can extend his low back area. When he has to put on his work boots he will have to sit on the floor in order to tie them. He has frequent muscle spasm. He describes the muscle spasm as increased periods of severe low back pain in which his muscles feel extremely hard. He tries to do the stretching that was shown to him in physical therapy on a regular basis. He has increased pain in his low back with repetitive squatting and twisting at the waist. He is careful with heavy lifting. He used to enjoy riding his motorcycle for long periods of time. He now can ride approximately 45 minutes and he will have to stop because of his low back. See Dr. Cohen medical report, Exhibit 1-B, pages 2-3.

In his physical examination, Dr. Cohen noted that the claimant appeared to be in mild distress due to his low back and that he did most of the examination sitting in a forward manner. Dr. Cohen noted that the right toes and foot dorsiflexors were weak at 4/5. There was loss of the normal lumbar lordotic curve and presence of distinct lumbar muscle spasm. Lumbar range of motion in extension was to 10 degrees and he complained of pain with extension. Flexion was to 50 degrees and he complained of discomfort. Both side bending was to 15 degrees and he complained of pain to the left and discomfort to the right. The claimant had some increased spasm with side bending to the left. Straight leg raising was negative bilaterally at 90 degrees, although this did increase his back pain on the right to 70 degrees. See Dr. Cohen medical report, Exhibit 1-B, pages 4-5.

Dr. Cohen testified that from April 2011, to November 2012, he was employed as a neurologist at the Compensation and Pension Section at the Harry S. Truman Memorial Veterans Hospital in Columbia Missouri and he dealt with veterans who had PTSD on a frequent basis, at least weekly and almost daily. See Dr. Cohen deposition, pages 6-7. After reviewing reports from Dr. Pribor and Dr. McCabe, Dr. Cohen also prepared a supplemental medical report dated July 8, 2015. See Dr. Cohen medical report, Exhibit 1-C. After reviewing Dr. Pribor's medical report and Dr. McCabe's test results, Dr. Cohen's opinions and conclusions set forth in his June 2, 2014 did not change. See Dr. Cohen deposition, page 19.

Dr. Cohen's diagnoses regarding the primary work-related injury of March 6, 2010, were:

- (1) Fall at work on his low back after shots fired.
- (2) Lumbar herniated nucleus pulposus at L4-5 with right lower extremity radiculopathy.
- (3) Status post surgery for herniated nucleus pulposus L4-5. The procedure was minimally invasive spine surgery, discectomy at L4-5 and hemilaminotomy at L4-5 on the right.
- (4) Failed lumbar laminectomy syndrome characterized by muscle spasm and loss of lumbar range of motion.
- (5) Post-traumatic stress disorder. See Dr. Cohen deposition, pages 14-15.

Dr. Cohen opined that due to the severe symptoms from the PTSD, the claimant is in need of additional treatment and recommended that he be evaluated by a sleep specialist and have a formal sleep study performed. He also recommended that the claimant be seen and followed by a mental health specialist for treatment of the PTSD.

Assuming that the claimant received no further treatment, Dr. Cohen opined that as a result of the March 6, 2010 injury, the claimant suffered a 40% permanent partial disability of the whole person at the lumbar spine level and a 30% permanent partial disability of the whole person as a result of the post-traumatic stress disorder. See Dr. Cohen deposition, page 17. Dr. Cohen further opined that although the claimant did have other potentially traumatic events that he was exposed to prior to being employed with this employer, he did not develop any symptoms of PTSD until the work injury of March 6, 2010. Accordingly, claimant did not have any pre-existing disability prior to that date regarding the PTSD. See Dr. Cohen deposition, pages 17-18.

Michael C. Chabot, D.O.

On July 10, 2015, Dr. Chabot examined the claimant, took a medical history, and reviewed his medical records and diagnostic studies. See Exhibit B-2. Dr. Chabot noted that the claimant complained of back stiffness/ache and occasional soreness. Dr. Chabot noted that hip examination revealed decreased internal rotation involving the bilateral hips with mild hamstring tightness bilaterally. Dr. Chabot noted in his review of medical records that on February 9, 2010, the claimant had complained to Dr. Cabral of back pain radiating to the right leg. See Dr. Chabot deposition, page 11. Dr. Chabot also testified that the September 16, 2010, notation from Dr. Shelton regarding an aggravation of the claimant's back condition due to moving furniture was of minimal relevance, because the claimant already had documentation of a disc herniation on the right. Dr. Chabot deposition, pages 13-14. Based on his review of the medical records, Dr. Chabot opined that the claimant's need for surgical intervention was related to his work injury of March 6, 2010. See Dr. Chabot deposition, page 19. Dr. Chabot opined that the treatment surrounding his back complaints from March 6, 2010, until his discharge from care by Dr. Graven was causally related to the March 6, 2010 work injury. See Dr. Chabot deposition, page 21. Dr. Chabot further opined that the claimant sustained a 5% permanent partial disability of the lumbar spine from the March 6, 2010, injury and the surgery following as a result of that injury. See Dr. Chabot deposition, pages 15-16. After reviewing the June 25, 2010, MRI, Dr. Chabot provided a supplemental report dated July 30, 2015 in which he stated that his conclusions set forth in his July 10, 2015 report remain unchanged. See Dr. Chabot medical report, Exhibit B-3.

Elizabeth F. Pribor, M.D.

Dr. Pribor, a psychiatrist, evaluated the claimant regarding his psychiatric complaints related to his work-related incidents of March 6, 2010 and July 25, 2012. Testing was performed on October 29, 2014, and she interviewed the claimant on March 25, 2015. See Dr. Pribor deposition, page 96. Dr. Pribor testified that post-traumatic stress disorder is a psychiatric disorder that results when an individual is exposed to trauma, then that particular trauma produces a particular type of emotional reaction in an individual. See Dr. Pribor deposition, page 10. Dr. Pribor testified that PTSD is the most subjective, or one of the most subjective, psychiatric disorders that leaves the diagnosis open to interpretation by one physician versus another. See Dr. Pribor deposition, pages 13, 48. The diagnosis of PTSD is a subjective measure on the part of the physician. See Dr. Pribor deposition, page 47.

Dr. Pribor testified that being shot at on March 6, 2010, and being shot at and hit on July 25, 2012, qualifies as traumatic events. See Dr. Pribor deposition, page 47. Dr. Pribor testified that the claimant's nightmares, flashbacks, and upsetting dreams satisfy the second requirement. Dr. Pribor deposition, pages 49-50. The third requirement is that there needs to be avoidance. Dr. Pribor agreed with the American Board of Psychiatry when it says that avoiding reminders of the traumatic event may include avoiding people, places, activities, objects, and situations that bring on distressing memories. See Dr. Pribor deposition, page 52. Dr. Pribor acknowledged that the claimant does not like to talk about the shooting and avoids doing that, because it brings on nightmares. Dr. Pribor opined that those conditions do not rise to the level of avoidance needed to meet that diagnostic requirement. See Dr. Pribor deposition, pages 53-54. Dr. Pribor initially testified that the fourth requirement has to do with essentially changing world

perceptions, negative perceptions and connections with the world. See Dr. Pribor deposition, page 54. After consulting her DSM-5, she clarified that they call it negative alteration and cognitions and mood associated with a traumatic event, including but not limited to the following examples: Persistent negative emotional state such as fear, horror, anger, guilt or shame; markedly diminished interest or participation in significant activities; feelings of detachment or estrangement from others; etc. See Dr. Pribor deposition, pages 55-56. Dr. Pribor opined that the claimant did not have two of the examples of the fourth requirement (i.e. negative alteration in cognitions and moods). See Dr. Pribor deposition, page 59. The fifth criterion is that there needs to be arousal symptoms such as irritability, difficulty sleeping, hypervigilance, etc. Despite acknowledging that he had irritability (page 59), hypervigilance (page 57), and sleep disturbance (page 60), Dr. Pribor opined that the claimant did not meet the fifth criterion, “[H]e may have met E for a portion of time, but by the time he saw me, he was no longer having E. See Dr. Pribor deposition, page 60. Dr. Pribor acknowledged that Dr. Mandava, a psychiatrist, in fact diagnosed him as having PTSD. See Dr. Pribor deposition, pages 40, 58.

Dr. Pribor testified that the claimant’s psychological testing suggests that he has problems expressing negative symptoms and that due to his difficulty with the expression of negative symptoms, clinicians working with claimant might need to amplify the intensity of what he says to get a better sense of what he is likely experiencing in reality. See Dr. Pribor deposition, page 63. It is also claimant’s personality to underreport things. See Dr. Pribor deposition, pages 64-65. Dr. Pribor testified that the claimant is the only person she spoke to and she did not speak to his wife, anyone at work, or anyone else concerning the claimant or his symptoms. See Dr. Pribor deposition, pages 53, 79-80, 83. Dr. Pribor testified that the testing indicated that there’s no suggestion that claimant is exaggerating or faking bad about the shootings. See Dr. Pribor deposition, page 84. Dr. Pribor testified that a police officer in Jennings has an expectation of worse things happening than a police officer in St. Charles County. See Dr. Pribor deposition, page 86.

Dr. Pribor opined that the claimant developed an adjustment disorder with anxious mood following the March 6, 2010, shooting and the July 25, 2012, shooting and that he developed psychological symptoms directly related to those events that were clinically significant. See Dr. Pribor deposition, pages 37, 90. Dr. Pribor opined that the claimant’s psychological symptoms, specifically the nightmares that he gets and the somewhat increased difficulty with sleep are directly related to the work incidents. See Dr. Pribor deposition, page 102. Nonetheless, Dr. Pribor opined that despite having these psychological symptoms, they do not rise to a level of a permanent partial disability. Dr. Pribor concluded that the claimant is fit to continue his work as a patrolman for the St. Charles County Police Department. See Dr. Pribor medical report, Exhibit A-2, page 21.

### **ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**

The claimant has the burden to establish that he has sustained an injury by accident arising out of and in the course of his employment, and the accident resulted in the alleged injuries. Choate vs. Lily Tulip, Inc., 809 S.W.2d 102, 105 (Mo. App. 1991).

An accident is defined as “an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused

by a specific event during a single work shift.” Section 287.020.2 RSMo Supp. 2011. “An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability”. Section 287.020.3(1), RSMo Supp. 2011. “An injury is deemed to arise out of and in the course of employment only if the accident is the prevailing factor in causing the injury and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment.” Section 287.020.3(2), RSMo Supp. 2011. The Courts, the Commission, and Administrative Law Judges “shall construe the provisions of this chapter strictly” and “the division of workers’ compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflict.” Section 287.800, RSMo Supp. 2011.

In this case the claimant testified that he was on regular patrol near the Katy Trail at 8:49 pm on March 6, 2010, when he observed a 40-50 year old white male, grey hair, approximately 5’10 to 6’0” tall, approximately 180-200 pounds, wearing a camouflage jacket and dark-colored pants. The claimant identified himself as a police officer. After the unidentified subject initially ignored the claimant’s inquiry, the subject turned toward the claimant and fired one shot at the claimant. The claimant, who was then 30 to 50 feet from the subject, and behind his driver side door, then drew his gun, fired two shots, went to the ground, and rolled to the rear of his vehicle for cover. The claimant fell to the ground landing on his mace canister which was on his service belt. The claimant advised dispatch of the incident and remained at the scene.

Being shot at and falling to the ground to take cover are unexpected traumatic events which occurred at a specific time and place and produced objective symptoms of an injury. The claimant injured his low back as a result of the incident. The event is identifiable by time and place in that it occurred on March 6, 2010, at approximately 8:49 pm near the Katy Trail and Highway 364. The fact that the assailant was not caught does not mean that the shooting did not occur. An empty cartridge was recovered at the scene where the shooting took place. None of the witnesses reviewed the investigation reports prepared by the employer. While St. Louis County Police Sgt. Cunningham testified he did not see the assailant, he did not arrive on the scene for at least two minutes. His primary duty was flying the helicopter and not looking at the FLIR unit, and he was away from the scene at times while refueling. Sgt. Cunningham also testified that an officer on the ground, such as the claimant, has a better perspective on what has occurred than an officer in a helicopter. Sgt. Streck and Captain Koch both testified that they did not review the investigation and that they were not the detective in charge of the investigation. Sgt. Streck confirmed that other witnesses had reported seeing a man fitting the description given by the claimant.

The claimant’s low back injury in this case clearly arose out of and in the course of employment. After falling to the ground and landing on his mace canister, which was on his service belt, the claimant felt pain in his low back which radiated into his right lower extremity. Both Dr. Chabot and Dr. Cohen examined the claimant and opined that the March 6, 2010, shooting/fall to be the prevailing factor in causing claimant’s low back injuries.

A claimant must “show a causal connection between the injury at issue and the employee’s work activity.” Johme vs. St. John’s Mercy Healthcare, 366 S.W.3d 504, 510 (Mo.

2012). The focus should be on whether the “risk of injury” is a risk to which one is exposed equally in normal non-employment life. Id. at 511. In this case, getting shot at by an armed assailant is clearly a risk which a police officer has that is considerably higher than in normal non-employment life.

Based on the weight of the credible evidence, the claimant has met his burden to establish that he has sustained an injury by accident arising out of and in the course of his employment, and the accident resulted in the alleged injuries.

### **MEDICAL CAUSATION**

Claimant bears the burden of proving the essential elements of his claim by producing evidence from which it may be reasonably found that an injury resulted from the cause for which the employer would be liable. Griggs vs. A.B. Chance Co., 503 S.W.2d 697 (Mo. App. 1973). Medical causation not within lay understanding or experience requires expert medical evidence. Wright vs. Sports Associated, Inc., 887 S.W.2d 596 (Mo. 1994)(overruled on other grounds). “[T]he question of causation is one for medical testimony, without which a finding for claimant would be based upon mere conjecture and speculation and not on substantial evidence.” Elliot vs. Kansas City, Mo., School District, 71 S.W.3d 652, 658 (Mo. App. 2002).

Both Dr. Chabot and Dr. Cohen agree that the claimant sustained an L4-5 herniation as a result of the March 6, 2010 work-related injury. Dr. Chabot opined that the claimant’s need for surgical intervention was related to his work injury of March 6, 2010. See Dr. Chabot deposition, page 19. Dr. Chabot opined that the treatment surrounding his back complaints from March 6, 2010, until his discharge from care by Dr. Graven was causally related to the March 6, 2010, work injury. Dr. Cohen also opined that the March 6, 2010, work-related injury was the prevailing factor in causing the claimant’s symptoms, the need for medical care and treatment, as well as the resulting disability. The uncontradicted medical testimony of both qualified experts establish that the claimant’s back injuries and resulting disabilities were medically caused by the March 6, 2010 injury.

Based on the weight of the credible evidence, the claimant has met his burden to establish that he has sustained an injury by accident arising out of and in the course of his employment, and the accident resulted in the alleged injuries and disability to his low back.

### **NOTICE**

Section 287.420 RSMo sets forth the requirements for the notice an employee must provide his employer regarding a work injury, and provides in relevant part as follows:

No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice.

The written notice may be circumvented if the claimant makes a showing of good cause or the employer is not prejudiced by the lack of such notice. Dunn v. Hussman Corporation, et al., 892 S.W.2d 676, 681 (Mo. App. E.D. 1994). Claimant has the burden of showing that the employer was not prejudiced. Hannick v. Kelly Temporary Services, 855 S.W.2d 497, 499 (Mo.App. E.D. 1993). One way a claimant may meet claimant's *prima facie* burden of showing that an employer was not prejudiced by the failure to give written notice within thirty days is to demonstrate that the employer had actual notice of the accident. Saylor, Id. Missouri Courts have held that no prejudice exists where the evidence of actual notice was uncontradicted, admitted by the employer, or accepted as true by the fact finder. Id.

In this case, the evidence shows that the claimant reported the shooting to his employer's dispatch immediately after it happened and his employer's supervisors arrived shortly afterward. Based on the weight of the credible evidence, the claimant has provided actual notice of the injury minutes after the occurrence.

### **LIABILITY FOR PAST MEDICAL EXPENSES**

The statutory duty for the employer is to provide such medical, surgical, chiropractic, and hospital treatment ... as may be reasonably required after the injury. Section 287.140.1, RSMo 1994.

The intent of the statute is obvious. An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those against his employer. However, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 85 (Mo.App. E.D. 1995).

The method of proving medical bills was set forth in Martin v. Mid-America Farmland, Inc., 769 S.W.2d 105 (Mo. banc 1989). In that case, the Missouri Supreme Court ordered that unpaid medical bills incurred by the claimant be paid by the employer where the claimant testified that her visits to the hospital and various doctors were the product of her fall and 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 are the product of her injury, and when the bills relate to the professional services rendered, as shown by the medical records and evidence, a sufficient, factual basis exists for the Commission to award compensation. The employer, may, of course, challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. Id. at 111, 112.

As stated in Sickmiller v. Timberland Forest Products, Inc., 407 S.W.3d 109, 121 (Mo. App. S.D. 2013), "[S]ection 287.140.1 'does not require a finding that the workplace accident

was the prevailing factor in causing the need for particular medical treatment.” (Quoting Tillotson v. St. Joseph Medical Center, 347 S.W.3d 511, 517 (Mo. App. W.D. 2011)). “Where a claimant produces documentation detailing his past medical expenses and testifies to the relationship of such expenses to the compensable workplace injury, such evidence provides a sufficient factual basis for the Commission to award compensation.” Id. (quoting Treasurer of Missouri v. Hudgins, 308 S.W.3d 789, 791 (Mo. App. W.D. 2010)).

In this case, this employer is self-insured for workers’ compensation and group health/medical insurance. The vast majority of medical expenses were paid by this employer either through workers’ compensation or group health, but the claimant did receive and pay certain medical bills. The claimant testified that he received medical treatment related to the March 6, 2010, injury and that he received and personally paid the following medical bills that he received as a result of that medical treatment:

<u>Provider</u>	<u>Amount Paid by Claimant</u>
Dr. Jyothi Mandava	\$45.00
St. Peters Bone & Joint Surgery	\$95.00
Professional Pain Physicians	\$105.00
St. Joseph Hospital West	<u>\$150.00</u>
Total:	\$395.00

The medical bills and treatment records are set forth in Exhibits 7, 8, 9, and 10. Dr. Chabot, Employer’s expert, testified that the medical treatment claimant received from March 6, 2010 until his discharge from Dr. Graven was necessary and causally related to the March 6, 2010 work injury. Based on the weight of the credible evidence, the claimant is awarded \$395.00 as the amount of medical expenses paid by claimant for medical services related to his March 6, 2010 injury.

### **TEMPORARY DISABILITY**

When an employee is injured in an accident arising out of and in the course of his employment and is unable to work as a result of that injury, Section 287.170, RSMo sets forth the TTD benefits an employer must provide to the injured employee. Section 287.020.7, RSMo defines the term “total disability” as used in workers’ compensation matters as meaning the “inability to return to any employment and not merely mean[ing the] inability to return to the employment in which the employee was engaged at the time of the accident.” The test for entitlement to TTD “is not whether an employee is able to do some work, but whether the employee is able to compete in the open labor market under his physical condition.” Thorsen vs. Sachs Electric Co., 52 S.W.3d 611, 621 (Mo. App. 2001). Thus, TTD benefits are intended to cover the employee’s healing period from a work-related accident until he or she can find employment or his condition has reached a level of maximum medical improvement. Id.

In this case, the claimant had back surgery on October 18, 2010, and was unable to work until he was released for light duty on November 1, 2010, with limitations of sitting only; no repetitive bending, stooping, squatting; and a 5 pound lifting limit. See Exhibit 12. The claimant

did not work from October 18 through November 1, 2010, a period of two weeks. The parties stipulated that the temporary total disability rate was \$563.00. Based on the credible evidence, the claimant is awarded \$1,126.00 in temporary total disability benefits.

### **PERMANENT PARTIAL DISABILITY**

Missouri courts have routinely required that the permanent nature of an injury be shown to a reasonable certainty, and that such proof may not rest on surmise and speculation. Sanders vs. St. Clair Corp., 943 S.W.2d 12, 16 (Mo. App. 1997). A disability is “permanent” if “shown to be of indefinite duration in recovery or substantial improvement is not expected.” Tiller vs. 166 Auto Auction, 941 S.W.2d 863, 865 (Mo. App. 1997).

Workers’ compensation awards for permanent partial disability are authorized pursuant to section 287.190 RSMo. “The reason for [an] award of permanent partial disability benefits is to compensate an injured party for lost earnings.” Rana vs. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. 2001). The amount of compensation to be awarded for a PPD is determined pursuant to the “SCHEDULE OF LOSSES” found in Section 287.190.1. “Permanent partial disability” is defined in Section 287.190.6 as being permanent in nature and partial in degree. Further, an “actual loss of earnings is not an essential element of a claim for permanent partial disability.” Id. A permanent partial disability can be awarded notwithstanding the fact the claimant returns to work, if the claimant’s injury impairs his efficiency in the ordinary pursuits of life. Id. “[T]he Labor and Industrial Relations Commission has discretion as to the amount of the award and how it is to be calculated.” Id. “It is the duty of the Commission to weigh that evidence as well as all the other testimony and reach its own conclusion as to the percentage of disability suffered.” Id. In a workers’ compensation case in which an employee is seeking benefits for PPD, the employee has the burden of not only proving a work-related injury, but that the injury resulted in the disability claimed. Id.

In a workers’ compensation case, in which the employee is seeking benefits for PPD, the employee has the burden of proving, inter alia, that his or her work-related injury caused the disability claimed. Rana, 46 S.W.3d at 629. As to the employee’s burden of proof with respect to the cause of the disability in a case where there is evidence of a pre-existing condition, the employee can show entitlement to PPD benefits, without any reduction for the pre-existing condition, by showing that it was non-disabling and that the “injury cause[d] the condition to escalate to the level of [a] disability.” Id. See also Lawton vs. Trans World Airlines, Inc., 885 S.W.2d 768, 771 (Mo. App. 1994) (holding that there is no apportionment for pre-existing non-disabling arthritic conditions aggravated by a work-related injury); Indelicato vs. Missouri Baptist Hospital, 690 S.W.2d 183, 186-187 (Mo. App. 1985) (holding that there was no apportionment for a pre-existing degenerative back condition, which was asymptomatic prior to the work-related accident and may never have been symptomatic except for the accident). To satisfy this burden, the employee must present substantial evidence from which the Commission can “determine that the claimant’s preexisting condition did not constitute an impediment to performance of claimant’s duties.” Rana, 46 S.W.3d at 629. Thus, the law is, as the appellant contends, that a reduction in a PPD rating cannot be based on a finding of a pre-existing non-disabling condition, but requires a finding of a pre-existing disabling condition. Id. at 629, 630. The issue is the extent of the appellant’s disability that was caused by such injuries. Id. at 630.

The claimant testified that he experiences stiffness and soreness in his back. He cannot sit in certain positions for very long. He is unable to ride his motorcycle for long distances. He has difficulty sitting in most chairs. He will try to lean forward, if at all possible. When he sits in a vehicle, after two hours, he will get out for a few moments to stretch. He has pain radiating down to the right hamstring area. He describes this as a painful grabbing or pulling sensation. He does obtain some relief of the low back and right leg pain by lying on the floor on his back. He also notes some relief of the pain during the day when he can extend his low back area. When he has to put on his work boots he will have to sit on the floor in order to tie them. He has frequent muscle spasms. He describes the muscle spasm as increased periods of severe low back pain in which his muscles feel extremely hard. He tries to do the stretching that was shown to him in physical therapy on a regular basis. He has increased pain in his low back with repetitive squatting and twisting at the waist. He is careful with heavy lifting. He used to enjoy riding his motorcycle for long periods of time. He now can ride 45 minutes and he will have to stop because of his low back. See Dr. Cohen report, Exhibit 1-B, pages 2-3.

In his physical examination, Dr. Cohen noted that the claimant appeared to be in mild distress due to his low back and that he did most of the examination sitting in a forward manner. Dr. Cohen noted that the right toes and foot dorsiflexors were weak at 4/5. There was loss of the normal lumbar lordotic curve and distinct lumbar muscle spasm was present. Lumbar range of motion in extension was to 10 degrees and he complained of pain with extension. Flexion was to 50 degrees and he complained of discomfort. Both side bending was to 15 degrees and he complained of pain to the left and discomfort to the right. The claimant had increased spasm with side bending to the left. Straight leg raising was negative bilaterally at 90 degrees although this did increase his back pain on the right at 70 degrees. See Exhibit 1-B, pages 4-5. Dr. Cohen opined that as a result of the March 6, 2010 injury, claimant suffered a 40% permanent partial disability of the lumbar spine.

Dr. Chabot examined the claimant on July 10, 2015, and noted that the claimant complained of back stiffness/ache and occasional soreness. In his physical examination, Dr. Chabot noted that hip examination reveals decreased internal rotation involving the bilateral hips and there is mild hamstring tightness bilaterally. In his review of medical records, Dr. Chabot noted that the claimant had complained to Dr. Cabral of back pain radiating into the right leg on February 9, 2010. See Dr. Chabot deposition, page 11. Dr. Chabot also testified that the September 16, 2010, notation from Dr. Shelton regarding an aggravation of the claimant's back condition due to moving furniture was of minimal relevance because the claimant had already had documentation of a disc herniation on the right. See Dr. Chabot deposition, pages 13-14. Dr. Chabot further opined that the claimant sustained a 5% permanent partial disability of the lumbar spine as it relates to the March 6, 2010 injury and the surgery following as a result of that injury.

Based on the weight of the credible evidence, the claimant has suffered a 25% permanent partial disability of the low back from the accident.

The claimant also alleged that he suffered a significant psychological condition related to the March 6, 2010 shooting. He described the "night terrors" which he has; how he does not like to talk about the incident, as talking about the incident will result in increased "night terrors".

The claimant testified that he is often afraid to go to sleep. The claimant had previously been shot at while working for the City of Jennings, but that was different because it was expected and he was prepared for it. The claimant and his wife testified that he has been withdrawn socially and did not want to be around his family and friends. He testified that he had no energy. He testified that his sleep is significantly interrupted and difficult and that 75% of his nightmares involve the March 6, 2010, shooting while 25% involve the July 25, 2012, shooting. He continues to have terrible dreams and nightmares where he relives the March 6, 2010, and July 25, 2012, incidents. He will roll out of bed, run into the wall or furniture, and/or curl up in a ball. If he is able to be calmed down enough to go back to sleep, it takes a long time. He “knows” where the shootings took place, and while he does not completely avoid the areas, being in the areas brings back the memories.

The uncontradicted testimony is that the claimant suffered significant psychological symptoms following the March 6, 2010. As directed by the Employer, the claimant treated with Dr. Caraffa from March 24, 2010 through April 20, 2010. See Exhibit 5. Dr. Pribor summarized the claimant’s description of that treatment:

[T]he captain told him that he had to go see ... Dr. Caraffa three times before he could return to work. So he saw Dr. Caraffa the requisite three times, hated seeing him, so once his requisite three times were done he stopped going. ... He did not care for him at all. All he cared about talking about was his father. Dr. Caraffa was sure there was some sort of issue with his father and he was sure that there was not, and so that was all there was to it. He also was sure that there was no issue with him going back.” See Dr. Pribor deposition, Exhibit B, page 12

The claimant consulted Dr. Mandava, another psychiatrist, at his wife’s request. Dr. Pribor summarized the office visit:

Dr. Mandava only saw him for an hour and from his perspective, Dr. Mandava just double his dose of Cymbalta and it felt like she was saying take two of these and call me in the morning, because Dr. Mandava said you have a problem with posttraumatic stress disorder, take more pills, and see me in a few weeks. At that point, he did not want to see anyone. ... From his perspective, within a month of stopping seeing Dr. Mandava, he decided it was time to go off all medications and do it cold turkey. ... He went on to say that it is not that he does not want treatment at all, “I’m resistant because of the experience I’ve had.” See Dr. Pribor deposition, Exhibit B, page 12

In September 2010, Based on her single hour long interview, Dr. Mandava diagnosed PTSD, panic disorder, and depression. Dr. Mandava noted that the claimant was having nightmares and dreams related to the shooting in March 2010. Dr. Mandava noted that the claimant’s heart was racing, and he had lack of sleep, dreams, sweating, trembling, shaking, shortness of breath, nausea, dizziness, losing control, crazy, chills, hot flashes, paresthesias, and agitation. The claimant has had flashbacks at home and woke up sweating. Dr. Mandava diagnosed the claimant with post-traumatic stress disorder (PTSD). See Exhibit 7.

The diagnostic criteria for PTSD are set forth in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published by the American Psychiatric Association. Diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: Intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms; the seventh assesses functioning; and, the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition. Two specifications are noted including delayed expression and a dissociative subtype of PTSD, the latter of which is new to DSM-5. In both specifications, the full diagnostic criteria for PTSD must be met for application to be warranted.

### **Criterion A: Stressor**

The person was exposed to: Death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, as follows: **(one required)**

1. Direct exposure.
2. Witnessing, in person.
3. Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental.
4. Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.

### **Criterion B: Intrusion symptoms**

The traumatic event is persistently re-experienced in the following way(s): **(one required)**

1. Recurrent, involuntary, and intrusive memories. Note: Children older than six may express this symptom in repetitive play.
2. Traumatic nightmares. Note: Children may have frightening dreams without content related to the trauma(s).
3. Dissociative reactions (e.g., flashbacks) which may occur on a continuum from brief episodes to complete loss of consciousness. Note: Children may reenact the event in play.
4. Intense or prolonged distress after exposure to traumatic reminders.
5. Marked physiologic reactivity after exposure to trauma-related stimuli.

### **Criterion C: Avoidance**

Persistent effortful avoidance of distressing trauma-related stimuli after the event: **(one required)**

1. Trauma-related thoughts or feelings.
2. Trauma-related external reminders (e.g., people, places, conversations, activities, objects, or situations).

**Criterion D: Negative alterations in cognitions and mood**

Negative alterations in cognitions and mood that began or worsened after the traumatic event: **(two required)**

1. Inability to recall key features of the traumatic event (usually dissociative amnesia; not due to head injury, alcohol, or drugs).
2. Persistent (and often distorted) negative beliefs and expectations about oneself or the world (e.g., "I am bad," "The world is completely dangerous").
3. Persistent distorted blame of self or others for causing the traumatic event or for resulting consequences.
4. Persistent negative trauma-related emotions (e.g., fear, horror, anger, guilt, or shame).
5. Markedly diminished interest in (pre-traumatic) significant activities.
6. Feeling alienated from others (e.g., detachment or estrangement).
7. Constricted affect: Persistent inability to experience positive emotions.

**Criterion E: Alterations in arousal and reactivity**

Trauma-related alterations in arousal and reactivity that began or worsened after the traumatic event: **(two required)**

1. Irritable or aggressive behavior
2. Self-destructive or reckless behavior
3. Hypervigilance
4. Exaggerated startle response
5. Problems in concentration
6. Sleep disturbance

**Criterion F: Duration**

Persistence of symptoms (in Criteria B, C, D, and E) for more than one month.

**Criterion G: Functional significance**

Significant symptom-related distress or functional impairment (e.g., social, occupational).

**Criterion H: Exclusion**

Disturbance is not due to medication, substance use, or other illness.

***Specify if: With dissociative symptoms.***

In addition to meeting criteria for diagnosis, an individual experiences high levels of either of the following in reaction to trauma-related stimuli:

1. **Depersonalization:** experience of being an outside observer of or detached from oneself (e.g., feeling as if "this is not happening to me" or one were in a dream).
2. **Derealization:** Experience of unreality, distance, or distortion (e.g., "things are not real").

***Specify if: With delayed expression.***

Full diagnosis is not met until at least six months after the trauma(s), although onset of symptoms may occur immediately.

On June 2, 2014, Dr. Cohen, a neurologist, examined the claimant, took a medical history, reviewed his medical records, and reviewed the claimant's deposition. Dr. Cohen

diagnosed the claimant with PTSD as a result of the March 6, 2010 injury. Dr. Cohen, while at the Harry S. Truman Memorial Veterans Hospital in Columbia, Missouri from April of 2011 through November 2012, dealt with veterans who had PTSD on a frequent basis, at least weekly and almost daily. See Dr. Cohen deposition, pages 6-7. Dr. Cohen opined that due to the PTSD, the claimant requires additional treatment and recommended that he be evaluated by a sleep specialist and obtain a formal sleep study performed. He also recommended that the claimant be examined and followed by a mental health specialist for treatment of the PTSD. Dr. Cohen opined that as a result of the March 6, 2010, injury, the claimant suffered a 30% permanent partial disability as a result of the post-traumatic stress disorder. See Dr. Cohen deposition, page 17. Dr. Cohen further opined that although the claimant did have other potentially traumatic events that he was exposed to prior to being employed by this employer, he did not develop any symptoms of PTSD until the work injury of March 6, 2010. Therefore, he opined that the claimant did not have any pre-existing disability prior to that date regarding the PTSD. See Dr. Cohen deposition, pages 17-18.

Dr. Pribor, a psychiatrist, evaluated the claimant regarding his psychiatric complaints related to his work-related incidents of March 6, 2010 and July 25, 2012. Testing was performed on October 29, 2014, and she interviewed the claimant on March 25, 2015. See Dr. Pribor deposition, page 96. Dr. Pribor opined that the claimant did not have PTSD. She testified that the claimant did not have the avoidance under Criteria C, the negative alteration in cognitions and moods in Criteria D, and the arousal symptoms under Criteria E. See Dr. Pribor deposition, pages 59-61. While not diagnosing PTSD, Dr. Pribor testified that the claimant developed an adjustment disorder with anxious mood following the March 6, 2010 shooting and that he developed psychological symptoms directly related to those events that were clinically significant. See Dr. Pribor deposition, page 90. Dr. Pribor also testified that the claimant's psychological symptoms, specifically the nightmares that he gets and the somewhat increased difficulty with sleep are directly related to the work incidents. See Dr. Pribor deposition, page 102. Dr. Pribor testified PTSD is the most subjective or one of the most subjective psychiatric disorders which leaves the diagnosis open to interpretation by one physician versus another. She based her conclusions on her clinical evaluation, spending five hours with the claimant and the psychological test results. See Dr. Pribor deposition, page 61. Dr. Pribor diagnosed:

Adjustment Disorder with anxious mood, resolved.  
Psychiatric symptoms not meeting criteria for diagnosis.  
Generalized Anxiety Disorder.  
Narcissistic Personality Disorder.

It is my opinion based on review of records and interview that the onset, shortly after the Katy Trail shooting and in particular after the shooting in 2012 ... , Mr. Bell developed an adjustment disorder with anxious mood. That is to say that he developed psychological symptoms directly related to those events that were clinically significant. They included the nightmares and difficulty sleeping that he had. Nervousness, jitteriness, and worry were the prominent symptoms. His symptoms did not rise to the level of a posttraumatic stress disorder. ... Over time, these symptoms improved such that the remaining symptoms became slowly very rare, once every two months nightmare and his ever present light sleeping seemed to be somewhat worse. ... As such, his diagnosis moved from being an

adjustment disorder with anxious mood to psychiatric symptoms not meeting the criteria for a full disorder.

By his account, Mr. Bell's main and only problem now is with nightmares. Later, he redefines them as night terrors that occur about once every two months that wake him from sleep and are quite bothersome. Ninety percent of the time, they have to do with the time he was shot at work in 2012, and the other ten percent of the time with the Katy Trail incident. He presents, when asked what the incidents in question related to his Workers' Compensation claim, presenting with several work-related incidents that could be considered difficult or traumatic. He also has a history of apparently being shot at four times including at least one where the gun was pointed at him point-blank and he could feel the bullet go by him, although he now does not recall it that way. He now has two incidents that are most germane in his mind. These are the two incidents that come back to him in his psychological complaint. He will point out that he has seen terrible things as a police officer – as many police officers have. But when one asks the content of his psychological complaints that relate to his work – these two incidents surface. See Dr. Pribor deposition, Exhibit B, page 18.

In his brief, the claimant criticized Dr. Pribor's findings:

In the past three years, Dr. Pribor has testified on behalf of employers/insurers 100% of the time. She was compensated more than \$11,000.00 in this case. Dr. Pribor also did not consider or have the benefit of any input from claimant's wife or any other people. Instead of amplifying the intensity of what claimant was reporting as she should have done (see Dr. Pribor deposition, page 63), Dr. Pribor undervalued the already underreported symptoms and problems which claimant was experiencing. See claimant's brief.

One could certainly consider the volume of claimant's medical evaluations conducted by Dr. Cohen over the past three years and the compensation received by him for his evaluation. To do so would lead to a side discussion of what is the value of a specialized expertise of a medical school expert versus a neurologist in private practice. It is very common to compensate forensic experts in cases and different expertise bears different prices. Also, Dr. Pribor appears to have presented an extraordinarily thorough evaluation with a five-hour interview, extensive psychological testing, extensive review of medical records, and a detailed medical report. Further, given the nature of the claimant's psychological condition, the main consideration should be the claimant's condition based on his clinical presentation and his medical history from the extensive medical records.

There are a few difficult aspects of this case. First, any analysis of a person's psychological condition and background is likely to produce unexpected results due to the technical analysis from mental health providers. Second, there are various reports relating to the frequency of the claimant's symptoms and whether those symptoms are oriented more to the 2010 occurrence or more to the 2012 occurrence. The variations result from the claimant's reports to the medical providers. One could question the consistency of the reports by impugning the credibility of the claimant in his reports or by impugning the credibility of the medical

providers regarding their attention to the patient or a grand conspiracy to influence the legal proceeding toward one party or the other. That seems unrealistic. A more realistic analysis is that the claimant's condition is not a constant. Rather, the claimant's condition may vary from time to time. Dr. Pribor's analysis was that his condition at the time of her examination and testing was substantially different than it was in earlier years. Dr. Pribor testified that the claimant's condition during her evaluation in 2015 was far different than the claimant's condition in 2010 described by Dr. Caraffa.

The more appropriate consideration is to compare the two medical evaluations with each other and against the facts in evidence. Both medical experts evaluated the claimant based on the facts in the case. Dr. Pribor's analysis appears to be more thorough and in sync with her specialized expertise as a psychiatrist. Certainly, if the inquiry were related to a neurological condition, such as a neurological deficit, stroke, or a headache syndrome, Dr. Cohen's expertise would be more highly valued. Therefore, based on the weight of the credible evidence, the claimant did not suffer any permanent disability from the incident. The claimant's resulting condition was not sufficiently disabling to constitute a psychological or psychiatric disability under DSM-5 notwithstanding the existence of psychiatric symptoms not meeting criteria for diagnosis.

Based on the weight of the credible evidence, the claimant has suffered a 25% permanent partial disability of the low back from the accident.

Made by: \_\_\_\_\_

EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*