

FINAL AWARD DENYING COMPENSATION
(Reversing Award and Decision of Administrative Law Judge)

Injury No.: 07-045337

Employee: Angela Bond

Employer: Site Line Surveying

Insurer: Missouri Employer's Mutual Insurance Co.

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

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have heard oral argument, reviewed the evidence and briefs, and we have considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated July 15, 2009.

Preliminaries

The administrative law judge heard this matter to consider: 1) whether employee sustained an injury by accident arising out of and in the course of her employment; 2) employer/insurer (employer) liability for past medical expenses; 3) need for future medical treatment; and 4) whether either employer or employee is liable for costs to the other party for defending or prosecuting this claim without reasonable grounds.

The administrative law judge found that employee sustained an injury by accident arising out of and in the course of her employment on May 17, 2007, and, therefore, employer is liable for employee's past medical expenses. The administrative law judge also held that employee is in need of future medical treatment to cure and relieve her from the effects of her work related injury and that employer must provide employee with the same. Lastly, the administrative law judge found that employer denied employee's claim without reasonable grounds and, as a result, ordered employer to pay employee her fees and expenses associated with prosecuting this claim.

Employer appealed to the Commission alleging the administrative law judge erred in finding that employee's wrist injury arose out of and in the course of her employment. Employer also alleged that the administrative law judge erred in awarding employee her fees and expenses associated with prosecuting this claim because employer clearly had reasonable grounds for defending the claim.

Therefore, the primary issue currently before the Commission concerns whether employee's right wrist injury arose out of and in the course of her employment.

Findings of Fact

On May 17, 2007, the alleged date of injury, employee was the owner and president of Site Line Surveying (SLS), the employer in this matter. As the owner and president of

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SLS, employee performed many duties associated with the business. Employee's job duties included: performing office work, preparing bids, organizing jobs, communicating with clients, addressing any problems with any jobs, and conducting the general daily business of SLS.

On May 17, 2007, employee alleges she was walking through the SLS office when she tripped over a telephone cord, causing her to fall to the ground. At the time of this alleged fall, employee stated she was delivering files to her assistant's desk. Employee claims that she landed on the right side of her body and immediately felt pain in her right wrist and her head.

The following employees were present at SLS when employee allegedly fell: Mary Pat Young (employee's aunt), Jennifer Renner (employee's mother), and Warren Bond (employee's brother). Ms. Young testified that, at approximately 4:15 or 4:20 p.m. on May 17, 2007, she was sitting at her desk facing the opposite direction of where employee fell. Ms. Young stated she could sense employee coming down the hallway and then heard the phone on her desk behind her kind of jiggle and hit the floor. Ms. Young testified that after she heard the phone hit the floor, she then heard employee hit the floor.

Ms. Young testified that nobody saw employee fall, but that she and Ms. Renner were in the same room/area. According to Ms. Young, Mr. Bond was in the break room at the time of the alleged fall.

Ms. Young testified that after she heard the fall, she turned around and saw employee laying on the floor on her right side moaning. Ms. Young initially testified that employee complained of only her head and arm hurting, but later testified that employee also complained that her wrist hurt as well. Ms. Young stated that she and Ms. Renner comforted employee on the floor and that Ms. Renner told employee she should go home. Although Ms. Renner was employed by SLS at the time of this incident, she is also a registered nurse. Employee took Ms. Renner's advice and left work.

Ms. Young testified that after employee left SLS that afternoon, Conley Stamper, a business affiliate of SLS and employee's mother's ex-boyfriend, stopped by SLS looking for employee because he had some contracts he needed employee to review and sign. They informed Mr. Stamper that employee had gone home for the day. Mr. Stamper's visit at SLS took place around 5:00 p.m.

After employee left work on May 17, 2007, she alleges she stopped by Picture This! (PT), a photography business that employee often did work for as a subcontractor. Employee alleges that she stopped by PT because she was scheduled to photograph a wedding on May 19, 2007, and wanted to inform the owner of PT, Angela Needs, that she would not be able to do so due to her wrist.

Ms. Needs testified that she and employee shared strictly a professional relationship, but also stated that they were friendly whenever they worked events together. When

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Ms. Needs was asked to identify employee at the hearing, she pointed at employee and stated that she was the “blonde bombshell” sitting right there.

Ms. Needs testified that employee showed up at her place of business in the afternoon of May 17, 2007, and dropped off some photographs from a previous event she had worked. Ms. Needs also stated that employee informed her that she would not be able to photograph the May 19, 2007, wedding because of her injured wrist. Ms. Needs recalled looking at employee’s right wrist and it appeared swollen, discolored, and mangled. Ms. Needs noticed employee was favoring her wrist and was restricting its movement. Ms. Needs stated that employee had told her that she had fallen and that she had come directly from work with her mom. Ms. Needs later testified that employee came to PT by herself and that her mom was not with her.

After Mr. Stamper had been informed that he missed employee at SLS, he stopped by employee’s house with the aforementioned contracts. Mr. Stamper testified that employee answered the door and appeared shaken, in pain, and holding a frozen vegetable pack against her right arm near her wrist. Mr. Stamper stated that employee appeared “beaten up emotionally [and] physically.” Mr. Stamper noticed some swelling and noticed she was favoring her right arm with her other arm for support. Mr. Stamper was at employee’s home no longer than 5 minutes.

Mr. Stamper testified that he had previously worked at SLS from 1996—2006 and at one point was “romantically involved” with employee’s mother, Ms. Renner.

Employee testified that she went to bed the night of May 17, 2007, at about 9:00 p.m. Employee further testified that she thinks she fell out of bed backwards and landed on her rear that night. She denied injuring or re-injuring her right wrist when this fall occurred.

Employee stated that on May 18, 2007, at about 8:00 a.m., she and her boyfriend at the time, Scott Paulsen, had an argument. Employee testified that she and Mr. Paulsen lived together, but slept in separate rooms. She stated that the argument concerned Mr. Paulsen’s drinking the night before. Employee claims that Mr. Paulsen was not home when she went to bed and she could smell alcohol on him the next morning. During this exchange, employee alleges she told Mr. Paulsen about her wrist injury at work and about her fall at night.

Employee testified that she occasionally has nocturnal seizures. She stated that when she has them she generally does not remember them, but when she wakes up she discovers that she has bitten her tongue, has swollen bloodshot eyes, and feels flu-like symptoms. Employee claims that she did not have any of these symptoms on the morning of May 18, 2007, or that she told Mr. Paulsen that she had a seizure that night.

The Truman Medical Center (TMC) records show that Mr. Paulsen called Dr. Lehr’s office for employee on the morning of May 18, 2007. The office note states, “fiancée called, [patient] had [seizure] last night and possibly has fracture[d] wrist.” Employee

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testified that past seizures had caused her to break her ribs. Mr. Paulsen also testified that employee once had a seizure that caused her to suffer fractures in her back.

Upon arriving at TMC's emergency room, the records reveal that employee presented "with chief complaint that she fell out of bed last night and hurt her wrist." Employee testified that she does not "**think**" she gave that history to the ER doctor. All records at TMC state as the cause of employee's injury, her falling out of bed.

There are some inaccuracies in TMC's records with regard to the date of the surgery, employee's age, and the wrist the surgery was performed on.

Employee later saw Dr. Brannon on May 23, 2007, and the history states "[p]atient slipped and fell on Thursday of last week." Employee gave this history to Dr. Brannon with her mom present.

The medical records reveal that employee suffered two fractures in her right wrist. The bones were impacted, or driven into each other.

Mr. Paulsen and employee broke up approximately six months after the alleged incident. Mr. Paulsen provided deposition testimony after they had broken up. Mr. Paulsen stated that on the night of May 17, 2007, employee came in and woke him up in the early morning hours and was very lethargic. He stated that employee acted the way she normally did after she had one of her nocturnal seizures. Mr. Paulsen stated that after she had these seizures she generally acted lethargic and like she was "drunk or something."

Mr. Paulsen testified that after employee woke him up, she showed him her wrist and it looked "kind of goofy" and was already swelling up. He stated that he knew she had a seizure based on past experiences with her seizures. Mr. Paulsen stated he then went in employee's room to lay with her until she went back to sleep.

Dr. Brannon surgically repaired employee's wrist on May 25, 2007. Employee's follow up care was shifted to Dr. Reed. In a letter dated October 4, 2007, Dr. Reed documented employee's loss of motion in her wrist, radiographic evidence of angular deformity and rated employee's disability at 10% permanent partial impairment to the upper extremity. Dr. Reed later evaluated employee and recommended an EMG.

On February 24, 2009, employee was evaluated by Dr. Pazell. Dr. Pazell recommended an EMG and an MRI scan of her right shoulder.

Employee testified that she continues to experience numerous physical problems from her injury.

Employee's claim for compensation was filed on August 20, 2007. The date of the injury listed on said claim for compensation is May 18, 2007. Employee's description of how the injury occurred states, "[e]mployee, while in the course and scope of her employment, was moving office furniture when she tripped."

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Conclusions of Law

First of all, it is important to note that employee is alleging that her accidental injury occurred on May 17, 2007. Therefore, this case falls under the purview of the 2005 amendments to Missouri Workers' Compensation Law.

Section 287.120 RSMo Supp. (2007)¹ "requires employers to furnish compensation according to the provisions of the Workers' Compensation Law for personal injuries of employees caused by accidents arising out of and in the course of the employee's employment." *Gordon v. City of Ellisville*, 268 S.W.3d 454, 458-59 (Mo. App. 2008).

Section 287.020.2 RSMo. defines "accident" 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." Pursuant to § 287.020.3 RSMo, an "injury" is defined to be "an injury which has arisen out of and in the course of employment." Section 287.020.3 RSMo further states that:

"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."

The administrative law judge found that employee's evidence was far more persuasive than employer's. The administrative law judge found that the sequence of events from May 17, 2007, through May 18, 2007, took place how employee, employee's aunt (Ms. Young), employee's mother's ex-boyfriend (Mr. Stamper), and employee's friend/colleague (Ms. Needs) described. In making said determination, the administrative law judge entirely discredited the only evidence contained in the record that came from a source not closely related to employee, the medical records of TMC. These medical records were given no weight by the administrative law judge because they contained inaccuracies.

First of all, the inaccuracies cited by employee and relied on by the administrative law judge were essentially typographical errors. Employee's age was incorrect by one year, the date of the surgery was off by one day, and the wrist that the surgery was performed on was listed incorrectly as the left wrist. Although hospitals are justifiably held to a high standard when it comes to recording information accurately, we find it error to completely disregard all of the medical records from a hospital based on inaccuracies which were unrelated to the primary issue in this case: whether employee's wrist injury arose out of and in the course of her employment.

All of TMC records consistently state that employee injured her wrist when she fell/tripped out of bed. Employee argues that this is inaccurate and that Mr. Paulsen, on his own volition, called Dr. Lehr's office and reported that her injury occurred this way.

¹ Unless otherwise indicated, all statutory references are to RSMo Supp. (2007).

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However, when employee was asked whether she gave that history when she was seen in the TMC emergency room, employee stated, "I don't **think** so." Also, employee attempted to discredit Mr. Paulsen's testimony by stating that he was making this up due to their bitter break up. Even if Mr. Paulsen's testimony is entirely falsified, that does not explain why he would fabricate the cause of employee's injury when he called Dr. Lehr's office the morning of May 18, 2007. He and employee were together for nearly six months after that date.

The administrative law judge, in discrediting Mr. Paulsen's testimony, largely relied on the fact that Mr. Paulsen is not qualified to make the determination that employee suffered a seizure on the night in question. While it is true that Mr. Paulsen is not a medical doctor, both he and employee testified that he had witnessed prior nocturnal seizures and the symptoms that arose from those episodes. We find that he was able, as a layman, to make a reasonable conclusion that employee's incoherence, lethargy, and confusion in the early morning of May 18, 2007, were the result of a nocturnal seizure. Employee did not advise him otherwise.

Another issue that is not even mentioned in the administrative law judge's award is the disparity between the description of employee's accident in employee's claim for compensation and the story she and her witnesses testified to. Employee and her witnesses testified that employee was bringing files to Ms. Young when she tripped on a phone cord and fell on her right side. This is very different than the description in her claim for compensation stating that she "was moving office furniture when she tripped." In addition, the date of injury on her claim for compensation is listed as May 18, 2007, not May 17, 2007, as she later claimed.

Lastly, the chronology of events strongly suggests that employee's injury occurred in the early morning of May 18, 2007. Employee was diagnosed through radiological examination with "a severely impacted and foreshortened with mild dorsal angulation of the distal fracture of the radius." The double fracture, both posteriorly and medially, was by employee's own account very painful, and it later required an internal reduction fixation surgery. Due to the severity of this injury, it is far more logical that employee sustained the injury in the early morning of May 18, 2007, and then went fairly immediately to the emergency room at TMC than that she sustained the injury at work at approximately 4:15 or 4:20 p.m. on May 17, 2007, and waited almost 18 hours to seek medical treatment, as she alleged at hearing. In addition, employee alleges that her mother, who is a registered nurse, was present when the injury occurred and examined her wrist right after the alleged fall and could not diagnose this severe fracture. It seems that someone with the training Ms. Renner has could easily determine that the severity of the injury required a somewhat immediate emergency room trip. Instead, according to employee, Ms. Renner looked at it and told her she should just go home and ice it and see how it felt the next day. This does not seem plausible.

For the foregoing reasons, we find that employee's fractured right wrist did not arise out of and in the course of her employment on May 17, 2007. Although employee may have suffered a minor fall at work, we find that the weight of the evidence suggests that

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her double fracture occurred at her home later that night or in the early morning of May 18, 2007. We hereby reverse the award and decision of the administrative law judge and find that employee's claim for past medical expenses, future medical treatment, and costs are denied.

The award and decision of Administrative Law Judge R. Carl Mueller, Jr., issued July 15, 2009, is attached hereto for reference.

Given at Jefferson City, State of Missouri, this 21st day of January 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer

Alice A. Bartlett, Member

DISSENTING OPINION FILED
John J. Hickey, Member

Attest:

Secretary

Employee: Angela Bond

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be affirmed. Therefore, I adopt the decision of the administrative law judge as my decision in this matter.

Because the Commission majority has decided otherwise, I respectfully dissent.

John J. Hickey, Member

TEMPORARY AWARD

Employee: Angela Bond Injury No: 07-045337
Dependents: N/A
Employer: Site Line Surveying
Additional Party: Treasurer of the State of Missouri as the Custodian of the Second Injury Fund
Insurer: Missouri Employer's Mutual Insurance Co.
Hearing Date: June 24, 2009 Checked by: RCM/rm

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: May 17, 2007
5. State location where accident occurred or occupational disease was contracted: Blue Springs, Jackson County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? 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: Employee was delivering files to her office manager when she tripped over a phone cord landing on her right upper extremity and head
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: Right upper extremity and head
14. Nature and extent of any permanent disability: undetermined
15. Compensation paid to-date for temporary disability: \$6,333.34
16. Value necessary medical aid paid to date by employer/insurer? \$10,941.85
17. Value necessary medical aid not furnished by employer/insurer? \$188.00

18. Employee's average weekly wages: Undetermined

19. Weekly compensation rate: Undetermined

20. Method wages computation: Undetermined

21. Amount of compensation payable:

Medical Expenses

Medical Already Incurred	\$11,129.85
Less credit for expenses already paid	(\$10,941.85)
Total Medical Owing	<u>\$188.00</u>

Attorney's Fees and Expenses

Attorney's Fees	\$3,030.00
Case Expenses	\$2,255.31
Total	<u>\$5,285.31</u>

Total Award: \$5,473.31

22. Second Injury Fund liability: N/A

23. Future requirements awarded: Medical treatment to cure and relieve from the effects of the work injury

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

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Angela Bond

Injury No: 07-045337

Dependents: N/A

Employer: Site Line Surveying

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

Insurer: Missouri Employer's Mutual Insurance Co.

Hearing Date: June 24, 2009

Checked by: RCM/rm

On June 24, 2009, the employee and employer appeared for a temporary hearing. The employee, Ms. Angela Bond, appeared in person and with counsel, David A. Slocum. The employer, Site Line Surveying (hereinafter SLS), and its insurer, Missouri Employer's Mutual Insurance Co. (hereinafter MEMIC), appeared through counsel, Heather Hutsell. The Second Injury Fund is a party to the case, but was not represented at the hearing as no issue involved it in this temporary hearing. The Division has jurisdiction to hear this case pursuant to §287.110. The primary issues the parties request the Division to determine are whether: (1) Ms. Bond sustained an injury by accident arising out of and in the course of her employment; (2) MEMIC must reimburse Ms. Bond for medical expenses totaling \$188.00; (3) MEMIC must provide Ms. Bond with additional medical care; (4) MEMIC must reimburse to Ms. Bond the cost of this proceeding for defending the claim without reasonable ground, or, whether Ms. Bond must reimburse the costs MEMIC incurred in defending this matter for prosecuting this claim without reasonable ground? For the reasons noted below, I find: Ms. Bond sustained a compensable work injury within the course and scope of her employment at SLS; MEMIC must reimburse Ms. Bond for \$188.00 for medical expenses that she incurred; MEMIC must provide Ms. Bond with additional medical treatment to cure and relieve her from the effects of her injuries pursuant to RSMo. § 287.140; and that MEMIC is liable to Ms. Bond for the whole cost of this proceeding, including her attorney's fees and expenses.

STIPULATIONS

The parties stipulated that:

1. On or about May 17, 2007 ("the injury date"), SLS was an employer operating subject to Missouri's Workers' Compensation law with its liability fully insured by MEMIC;

2. Ms. Bond was its employee working subject to the law in Blue Springs, Jackson County, Missouri;
3. Ms. Bond both notified SLS of her alleged injury and filed her claim within the time allowed by law; and
4. SLS and MEMIC have provided Ms. Bond with medical benefits under the applicable Missouri Workers' Compensation statutes totaling \$10,941.85, and temporary total disability benefits totaling \$6,333.34.

ISSUES

The parties request the Division to determine:

1. Whether Ms. Bond sustained an injury by accident arising out of and in the course of her employment?
2. Whether MEMIC must reimburse Ms. Bond for medical expenses totaling \$188.00?
3. Whether SLS must provide Ms. Bond with additional medical care?
4. Whether MEMIC must reimburse to Ms. Bond the cost of this proceeding for defending the claim without reasonable ground, or, whether Ms. Bond must reimburse the costs MEMIC incurred in defending this matter for prosecuting this claim without reasonable ground?

FINDINGS

Ms. Bond testified on her own behalf. In addition, Ms. Bond presented the testimony of Mary Pat Young, Angela Needs, and Charles Conley Stamper. Ms. Bond presented the following exhibits, all of which were admitted into evidence without objection:

- Exhibit A - Medical Report, John A. Pazell, MD, February 24, 2009.
- Exhibit B - Medical Records, Carrie Lehr, MD
- Exhibit C - Medical Records, Athletic Rehabilitation Center
- Exhibit D - Medical Records, Truman Medical Center Lakewood
- Exhibit E - Medical Records, Kansas University Physicians, Inc.
- Exhibit F - Medical Records, University of Kansas Hospital
- Exhibit G - Medical Records, Heartland Hand & Spine Orthopedic Center

- Exhibit H - Medical Records, Heartland Hand & Spine Orthopedic Center
- Exhibit I - Medical Bills, Heartland Hand & Spine Orthopedic Center
- Exhibit J - Medical Records, Arthur Allen, MD
- Exhibit K - Attorney's Fees and Costs

SLS and MEMIC offered the following exhibits, all of which were admitted into evidence without objection; except for exhibit 3. When exhibit 3 was offered, claimant renewed all objections made at the time of the deposition:

- Exhibit 1 - Medical Records, Carrie Lehr, MD
- Exhibit 2 - Medical Report, William O. Reed, MD, October 04, 2007
- Exhibit 3 - Deposition, Scott Paulson, April 02, 2008
- Exhibit 4 - Diagram of Site Line Surveying office (by M.P. Young)

Based on the above exhibits and testimony, I make the following findings:

Ms. Bond is a forty year-old female who currently resides in Blue Springs, Missouri. On May 17, 2007, Ms. Bond was the owner and president of SLS. On that date, SLS was located at 1132 Luttrell, Blue Springs, Missouri, 64055.

As the owner and president of SLS, Ms. Bond performed many duties associated with the business. Most of these duties were performed at its Blue Springs office. Ms. Bond's job duties included: performing office work, preparing bids, organizing jobs, communicating with clients, addressing any problems with any jobs, and conducting the general daily business of SLS.

On May 17, 2007, Ms. Bond was walking through the SLS office when she tripped over a telephone cord, causing her to fall to the ground; at the time of the accident she was delivering files to her assistant's desk. When she fell, Ms. Bond landed on the right side of her body and immediately felt pain in her right wrist and her head. Several of SLS' employees were present at the time that Ms. Bond fell including Mary Pat Young.

Ms. Young was in close proximity to Ms. Bond when she fell; specifically, Ms. Young was directly behind her. Although Ms. Young did not actually see Ms. Bond fall, she heard the sound of Ms. Bond falling behind her. Also, at the same time, Ms. Young heard her phone fall from her desk and hit the ground; her phone was connected to the cord on which Ms. Bond tripped. When she turned around to see what had happened, Ms. Young saw Ms. Bond lying on the ground on the right side of her body. At that time, Ms. Bond was complaining of pain in her right arm and head. After assisting Ms. Bond to her feet, Ms. Young was present when Ms. Bond's mother, Jennifer Renner, recommended that Ms. Bond go home and ice her wrist. Ms. Bond did not finish her day at SLS and left the office before 5:00 P.M.

Ms. Bond did not go directly home after leaving SLS on May 17, 2007. Instead, Ms. Bond went to the business office of Picture This Studios (hereinafter PTS), a company that subcontracts Ms. Bond to perform photography work at weddings. Ms. Bond went to PTS to

drop off a computer disk and to notify the owner, Angela Needs, that she would not be able to photograph a wedding scheduled for May 19, 2007.

Ms. Needs remembered specifically that Ms. Bond arrived at PTS on the afternoon of May 17, 2007 because she only had one day to find a replacement for Ms. Bond to work the wedding scheduled for May 19, 2007. Moreover, in Ms. Needs' entire career, this is the only time she ever has had to replace a photographer on such short notice. When Ms. Bond arrived, Ms. Needs met with her in person. At that meeting, Ms. Bond told Ms. Needs she had fallen, injured her wrist and would not be able to photograph the May 19, 2007 wedding. Ms. Needs viewed Ms. Bonds' right wrist and it appeared to be swollen. In addition, Ms. Needs, observed Ms. Bond limiting the use of her right arm and acting in a manor consistent with someone who had sustained an injury to her right wrist. I find Ms. Needs to be a credible witness.

After leaving PTS, Ms. Bond went to her home at 313 SE Sumpter Drive, Lee's Summit, Missouri. Upon arriving at home, Ms. Bond took Tylenol and iced her wrist using a bag of frozen vegetables at the recommendation of her mother.

Sometime after 5:00 P.M., Mr. Charles Conley Stamper visited Ms. Bond at her home. Mr. Stamper's fulltime career is with the United States Department of the Treasury working in Accounts Management. Mr. Stamper also worked for SLS part time assisting with computer management and direct client contact relating to contract execution. After completing his regular Treasury Department job duties on May 17, 2007, Mr. Stamper went to SLS to deliver contracts for Ms. Bonds' signature. Upon learning she had gone home, Mr. Stamper then went to her home. Mr. Stamper specifically remembered seeing Ms. Bond with a bag of frozen vegetables on her right wrist when he arrived. Mr. Stamper observed Ms. Bond looking as if she were in pain, and remembered that her right wrist was swollen. Mr. Stamper stayed at Ms. Bond's house for approximately ten minutes, and did not see anyone other than Ms. Bond in the home. Mr. Stamper himself had tripped on the same phone cord at SLS just a few days prior to Ms. Bond's accident. I find Mr. Stamper to be a credible witness.

Ms. Bond did not seek any professional medical treatment for her injuries on May 17, 2007. Instead, based on the advice of her mother, who is a nurse, Ms. Bond took Tylenol and iced her wrist. Ms. Bond hoped that her injury was only a sprain and would resolve with this treatment. She went to bed around 9:00 p.m.; she was alone in her house when she went to bed and at no point prior to going to bed was Scott Paulson present in her home. Although she and Mr. Paulson lived in the home together, they each slept in separate bedrooms.

At some point during the night of May 17 or early morning of May 18, Ms. Bond rose out of bed to use the restroom. Because she was trying to avoid her sleeping dogs, she lost her balance and fell, landing on her rear; she did not fall on or injure her right wrist in any way. Ms. Bond admitted that she occasionally experienced nocturnal seizures. However, Ms. Bond's fall did not result from a seizure: every time she has had a seizure she always bites her tongue, feels sore, has red eyes and feels confused. Ms. Bond's neurologist, Arthur Allen, MD, noted that "She has also bitten her tongue *every time* and from straining, sustained subconjunctival hemorrhages." (Emphasis added). See, Claimant's Exhibit J at 8. On the morning of May 18,

2007, there was no evidence that Ms. Bond had bitten her tongue, and she did not feel sore or have red eyes. The medical records from her appointment with Dr. James Brannon on May 23, 2007 do not document any injury to Ms. Bond's tongue on the HEENT examination.

Mr. Paulson's testimony confirms he was not in the bedroom when Ms. Bond fell. Mr. Paulson did not see or hear Ms. Bond fall. Furthermore, Mr. Paulson admitted that had no personal knowledge of how Ms. Bond fell or how Ms. Bond landed in her bedroom.

On the morning of May 18, 2007, around 8:00 a.m., Ms. Bond had an argument with Mr. Paulson. During this argument, they discussed many issues including her wrist injury, tripping at work, falling at home, Mr. Paulson's drinking and social activities, and her need for medical treatment of her wrist. Ms. Bond never told Mr. Paulson either that she injured her wrist in the fall at home, or that she had suffered a seizure the night before. In fact, even Mr. Paulson's testimony is totally void of any claim that Ms. Bond ever told him she had suffered a seizure or injured her wrist in anyway other than a fall at work.

At 9:27 a.m. on May 18, 2007, Mr. Paulson placed a phone call to the office of Dr. Carrie Lehr. The office note states "fiancée called, pt had sz last night and possibly has fracture wrist." See, Claimant's Exhibit B at 6. Mr. Paulson apparently concluded on his own that Ms. Bond had suffered a seizure. Mr. Paulson is a real-estate agent not a doctor. Dr. Lehr's office note recommended that Ms. Bond be taken to the emergency room.

The morning of May 18, 2007, Ms. Bond presented to the emergency room of Truman Medical Center Lakewood (hereinafter TMCL). Both Ms. Bond and Mr. Paulson testified Mr. Paulson was present in the emergency room. Ms. Bond testified Mr. Paulson was present when Ms. Bond was being examined by the emergency room physicians. The notes from TMCL dated May 18, 2007 state the following histories: "the patient presents with a chief complaint that she fell out of bed last night and hurt her wrist" (See, Claimant's Exhibit D at 4) and "...was found to have a colles fracture on her right arm. She apparently sustained this falling out of bed." (*Id.* at 5). Ms. Bond testified that she did not give these histories to the emergency room doctor, and that she had no explanation for why they appear in her medical records. She also testified that this is not how she injured her wrist. I note that the TMCL records do not indicate that Ms. Bond gave the history of accident. Ms. Bond testified that Mr. Paulson was a possible source of the inaccurate information.

I also note that the TMCL medical records contain multiple factual inaccuracies. At the hearing, Ms. Bond pointed out that one of the TMCL records dated May 18, 2007 states "the patient is a 39-year-old female." *Id.* at 10. Ms. Bond was not 39-years-old on May 18, 2007. Ms. Bond pointed out that the operative note was dated **May 26**, 2007 (*Id.* at 5); Ms. Bond had surgery on **May 25**. The follow up note dated May 26, 2007 states "The patient had open reduction and internal fixation, **left** wrist, came in today complaining of pain" (*Id.* at 7); the surgery was to her **right** wrist. Ms. Bond testified that she did not give any of the TMCL doctors any of this inaccurate information and does not know how or why this information is in her medical records.

Other medical records following the May 18, 2007 TMCL emergency room visit record a history of a “trip and fall” accident occurring on May 17, 2007. *Id.* at 8. The physician MEMIC initially authorized to treat Ms. Bond’s injury specifically noted that her accident occurred when she “tripped and fell over a phone cord at work.” *See*, Claimant’s Exhibit G at 9.

Dr. James Brannon surgically repaired Ms. Bond’s wrist on May 25, 2007. Ms. Bond’s follow up care was shifted to Dr. William O. Reed. Dr. Reed examined Ms. Bond on June 7, 2007. For treatment of her condition, Dr. Reed recommended occupational therapy. Ms. Bond attended occupational therapy and was released from Dr. Reed’s care on September 6, 2007. In a letter dated October 4, 2007, Dr. Reed documented Ms. Bond’s loss of motion in her wrist, radiographic evidence of an angular deformity and rated Ms. Bond’s disability at 10% permanent partial impairment to the upper extremity. *Id.* at 4. However, Dr. Reed reevaluated Ms. Bond seven months later on May 22, 2008. Dr. Reed noted that Ms. Bond presented with “a list of almost 30 concerns with respect to her right wrist. Of greatest concern to me is the possibility of posttraumatic carpal tunnel syndrome. To that end, EMG’s will be ordered.” *See*, Claimant’s Exhibit H at 2. The EMG’s recommended by Dr. Reed have never been authorized or performed.

On February 24, 2009, Ms. Bond was evaluated by orthopedic surgeon, John A. Pazell MD., PA. After reviewing the medical records and performing a physical examination of Ms. Bond, Dr. Pazell authored a report outlining specific treatment recommendation for her right upper extremity complaints. Specifically, Dr. Pazell recommended that Ms. Bond undergo an EMG of her right upper extremity and an MRI scan of her right shoulder. *See*, Claimant’s Exhibit A at 18. Dr. Pazell opined that the work injury of May 17, 2007 “was the prevailing factor leading to the development of the fracture right radius and the injury to her right shoulder.” *Id.* at 17. The treatment recommendations of Dr. Pazell have not been authorized or performed.

Ms. Bond continues to experience numerous physical from her work injury including: pain in her right hand and wrist, loss of strength in her right hand, loss of range of motion in her right wrist, numbness and tingling in her right hand, pain in her right shoulder, loss of motion in her right shoulder, and loss of strength in her right shoulder. Ms. Bond never had any of these complaints before her May 17, 2007 work accident.

RULINGS

The threshold issue is whether Mr. Bond sustained an injury by accident arising out of and in the course and scope of her employment at SLS. Based on the testimony of Ms. Bond, Ms. Young, Mr. Stamper, Dr. Reed and Dr. Pazell, I find that Ms. Bond did sustain a compensable injury by accident arising out of and in the course and scope of her employment at SLS.

The issue of whether Ms. Bond sustained a compensable injury by accident at SLS requires evaluation of several questions. First, is whether Ms. Bond sustained an injury by

accident arising out of and in the course and scope of her employment with SLS. If so, then it must be determined whether the accident is the medical cause of Ms. Bond's physical complaints and need for treatment.

Missouri's Workers' Compensation Law (MWCL) states, in pertinent part, that:

- (1) . . . 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 the resulting medical condition and disability.
- (2) An injury shall be deemed to arise out of and in the course and scope of employment only if:
 - a. It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
 - b. It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

MO.REV.STAT. § 287.020.3 (Supp. 2006)

In addition, MWCL states that:

The word accident as used in this chapter shall mean 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. An injury is not compensable because work was a triggering or precipitating factor."

MO.REV.STAT. § 287.020.2 (Supp. 2006)

Therefore, for Ms. Bond's claim to succeed, she must show: (1) She had an accident; (2) The accident is the prevailing factor in causing her injury; and (3) The accident was not the result of hazard or risk unrelated to her employment. I find that Ms. Bond met her burden of proof and her burden of persuasion with respect to each of these elements.

First, regarding whether she sustained an accident, Ms. Bond credibly testified that on the afternoon of May 17, 2007, she was walking through the SLS office when she tripped over a telephone cord, causing her to fall to the ground on her right wrist and right side of her body. The testimony of Ms. Young, Ms. Needs and Mr. Stamper all confirm and corroborate Ms. Bond's testimony. After reviewing all of the evidence and testimony presented at hearing, I find the testimony of Ms. Bond, Ms. Young, Ms. Needs and Mr. Stamper to be credible and

persuasive. Therefore, I find that Ms. Bond did, in fact, trip over a telephone cord at the SLS on May 17, 2007 and that she sustained an accident as defined by MWCL.

MEMIC reliance on Scott Paulson's testimony to establish that Ms. Bond did not sustain an accident at work is misguided for many reasons:

- Mr. Paulson admitted he was not at the SLS office on May 17, 2007 and had no personal knowledge of any accident that may have occurred there;
- Mr. Paulson admitted he was not present when Ms. Bond fell at home, and had no personal knowledge of how Ms. Bond landed;
- Mr. Paulson did not establish that he was with Ms. Bond before she went to bed on May 17, 2007, rather, only that he thought so;
- Mr. Paulson never testified that Ms. Bond told him that she injured her wrist at home;
- Mr. Paulson never testified that Ms. Bond told him that she had suffered a seizure at home the night of May 17, 2007;
- Mr. Paulson stated that he thought Ms. Bond had suffered a seizure based on her being "lethargic" on the Morning of May 18, 2007. Mr. Paulson is a real estate agent, not a medical doctor, and his opinions on this matter are given no weight.

Moreover, I find that Mr. Paulson is not a credible witness for the following reasons:

- Ms. Bond established that Mr. Paulson violated a Circuit Court's order of protection against him;
- Mr. Paulson lied under oath in his deposition testimony when he stated he had never filed a lawsuit against Ms. Bond, only to reverse his testimony and admit that, in fact, he did file a suit some five months prior to his deposition;
- The suit filed by Mr. Paulson was for the recovery of property, including two motorcycles that Mr. Paulson admitted were actually in his possession;
- After admitting that he in fact possessed the motorcycles included in his lawsuit against Ms. Bond, Mr. Paulson took no action to correct the misstatements in his suit;

- When Mr. Paulson was asked if he had spoken with Ms. Hutsell or her staff before his deposition, he responded “other than scheduling the time to come here, no”, only to change his answer when asked a second time.

For the foregoing reasons, I give no weight to any of Mr. Paulson’s testimony as I find him not credible.

MEMIC also relies on the TMCL records from May 18, 2007 to discredit Ms. Bond’s claim that she suffered an accident at work. However, as noted in the “Findings” portion of this Award, above, the TMCL records are riddled with many factual mistakes and inaccuracies making them of little value in sorting out the facts in this claim. In addition, this theory requires that the medical records that *do* document a slip and fall accident simply be ignored. Rather, the completely consistent testimony of all four witnesses at hearing (Mr. Paulson did not appear in person) all of whom were subject to cross-examination was far more helpful in ascertaining the rather straightforward circumstances surrounding Mr. Bond’s claim.

The second component Ms. Bond must establish to succeed in her claim is that the accident was the prevailing factor in causing her injury. “For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. The testimony of a lay witness can constitute substantial evidence of the nature, cause, and extent of disability when the facts fall within the realm of lay understanding. An injury, however, may be of such a nature that expert opinion is necessary to show that it was caused by the accident to which it is assigned. Medical causation, which is not within the common knowledge or experience of lay understanding must be established by scientific or medical evidence showing the cause and effect relationship between the complained condition and the asserted cause.” *Landers v. Chrysler Corp.*, 963 S.W.2d 275 (Mo.App. 1997); *Silman v. William Montgomery & Associates*, 891 S.W.2d 173 Mo.App. 1995).

Ms. Bond established the numerous problems resulting from her fall at SLS – problems that she did not have prior to May 17, 2007. After reviewing the medical records and performing a physical examination of Ms. Bond, Dr. Pazell authored a detailed medical report. In his report, Dr. Pazell opined that the work injury of May 17, 2007 “was the prevailing factor leading to the development of the fracture right radius and the injury to her right shoulder.” I find the opinions of Dr. Pazell credible. Based on the testimony of Ms. Bond and the report of Dr. Pazell, I find that the work accident of May 17, 2007 was the prevailing factor in causing her injuries. In doing so, I specifically note that MEMIC did not provide any medical evidence to the contrary.

Having established that Ms. Bond suffered an injury by accident, Ms. Bond must now show that her accident did not come from a hazard or risk unrelated to her employment to which she would have been equally exposed outside of and unrelated to the employment in normal nonemployment life. The evidence in this claim is that Ms. Bond tripped over a telephone cord in her office. I find that the evidence clearly establishes that Ms. Bond’s accident was the result of a hazard in her place of employment. Accordingly, I find that Ms. Bond’s injury does not come from a hazard or risk unrelated to her employment to which she would have been equally exposed outside of and unrelated to her employment in normal nonemployment life.

Because I find that Ms. Bond sustained an accident, that the accident is the prevailing factor in causing her injury, and that the injury is not the result of a hazard or risk unrelated to Ms. Bonds' employment, I find that Ms. Bond sustained a compensable work injury by accident within the course and scope of her employment.

The next issue for this Court to determine is whether MEMIC must provide Ms. Bond with additional medical care. I find that it must. MWCL states, in pertinent part, that:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

MO.REV.STAT. § 287.140 (2000)

A claim for future medical benefits need not be supported by conclusive evidence, but rather, it is sufficient to demonstrate the need for future medical treatment is a reasonable probability. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo.App. 2001); *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823 (Mo.App. 1995). "Probable means founded on reason and experience which inclines the mind to believe but leaves room for doubt." *Id.* Claimant is not required to present evidence on the specific medical treatment or procedures required. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo.App. 2001); *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63 (Mo.App.1995). However, Claimant must show that the need for future medical benefits flows from the accident before the employer is responsible. *Landers v. Chrysler Corp.*, 963 S.W.2d 275 (Mo.App. 1997); *Modlin v. Sun Mark Inc.*, 699 S.W.2d 5 (Mo.App. 1985). Therefore, to support an award of future medical benefits Ms. Bond must show there is a need for additional medical treatment, and that the need for medical benefits arises from her work injury.

In the present claim, the medical evidence that Ms. Bond needs additional medical treatment is uncontroverted. In his chart note dated May 22, 2008, Dr. Reed observed that Ms. Bond presented with "a list of almost 30 concerns with respect to her right wrist. Of greatest concern to me is the possibility of posttraumatic carpal tunnel syndrome. To that end, EMG's will be ordered." Dr. Pazell recommended that Ms. Bond undergo an EMG of her right upper extremity and an MRI scan of her right shoulder. To date, none of the treatment recommended by Dr. Reed or Dr. Pazell has been authorized or provided. Ms. Bond continues to suffer physically from this injury as noted in my "Findings". Accordingly, I order MEMIC to provide Ms. Bond with the treatment necessary to cure and relieve her from the effects of her injury. Specifically, MEMIC is to immediately provide Ms. Bond with the EMG recommended by both Dr. Reed and Dr. Pazell, as well as the MRI recommended by Dr. Pazell.

The next issue for this Court to determine is whether MEMIC must reimburse Ms. Bond \$188.00 in out-of-pocket expenses for medical treatment related to her work injury. I find that it must. "An employee is entitled to medical treatment that is reasonably required after a

compensable injury. Section 287.140. This treatment must be provided at the employer's expense. *Id.* When an employer denies liability for an employee's claim, the employer necessarily denies liability for medical aid to the employee and the employee may be entitled to an award for the cost of the medical services." *Farmer-Cummings v. Personnel Pool of Platte County*, 2002 MO 1483 (MOCA, 2002); *Weidower v. ACF Indus., Inc.*, 657 S.W.2d 71 (Mo.App. 1983). In the present claim, MEMIC denies all liability under the workers' compensation act. In doing so, MEMIC "necessarily denies liability for medical aid to the employee." Therefore, if it is determined that Ms. Bond suffered a compensable injury, Ms. Bond is entitled to a recovery for her medical expenses. As discussed above, I find Ms. Bond suffered a compensable injury. Furthermore, the itemized billing records show Ms. Bond incurred \$188.00 in bills for treatment she received for her injury. Accordingly, I order MEMIC to reimburse Ms. Bond's \$188.00 out-of-pocket medical expenses.

The last issue for this Court to address is whether MEMIC must reimburse to Ms. Bond the cost of this proceeding for defending the proceeding without reasonable ground, or, whether Ms. Bond must reimburse the costs MEMIC incurred in defending this matter for prosecuting this claim without reasonable ground. Ms. Bond requested payment of attorney's fees and costs under §§287.203 and 287.560, of MWCL. I find that MEMIC must reimburse to Ms. Bond the costs of this proceeding for defending the claim without reasonable grounds.

Section 287.560 states that:

All costs under this section shall be approved by the division and paid out of the state treasury from the fund for the support of the Missouri division of workers' compensation; provided, however, that if the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them.

Section 287.203 states that:

Whenever the employer has provided compensation under section 287.170, 287.180 or 287.200, and terminates such compensation, the employer shall notify the employee of such termination and shall advise the employee of the reason for such termination. If the employee disputes the termination of such benefits, the employee may request a hearing before the division. . . . If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole costs of the proceedings upon the party who brought, prosecuted, or defended them.

"So, costs are to be paid out of the state fund, except when a party has asserted or defended a claim on unreasonable grounds. In those cases, the offending party is to be charged." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. 2003). "The whole cost of the

proceeding,” as contemplated by both section 287.560 and section 287.203 includes the payment of attorney’s fees and expenses. *Landman*.

I find that it was unreasonable for MEMIC to deny Ms. Bond’s claim based either on the apparently perjury laden testimony of Scott Paulson, or the error-riddled records of TMCL. MEMIC essentially asks that the consistent testimony of three credible witnesses who corroborated Ms. Bond’s testimony and had personal knowledge of her accident be discarded in favor of their sole witness who lied under oath and was not present either at SLS or even during her purported seizure that MEMIC postulates caused her injury. This I refuse to do. In addition, MEMIC did not present any medical evidence that Ms. Bond did not require additional medical treatment for her injuries. Instead, MEMIC relies on Dr. Reed’s rating report of October 4, 2007 to support its argument that no additional medical treatment is needed. However, MEMIC’s argument ignores that seven months later, Dr. Reed – *who MEMIC authorized to treat Ms. Bond* – specifically recommended that she undergo an EMG on her right upper extremity. *See*, Claimant’s Exhibit G at 2. It is unreasonable to deny medical treatment to an injured employee based on the rating report of a doctor who subsequently authors a note recommending treatment of the work-related condition. Therefore, I find that MEMIC’s denial of additional medical benefits is unreasonable.

At the hearing, Ms. Bond introduced evidence of her expenses of litigation including her attorney’s fees. To date, Ms. Bond has incurred \$3,030.00 in attorney’s fees and \$2,255.31 in expenses. I find these attorney’s fees and expenses are reasonable. Furthermore, I find these fees and expenses were incurred by Ms. Bond as a result of MEMIC’s unreasonable denial and defense of her claim. As a result, I order MEMIC to pay Ms. Bond a total of \$5,285.31 in fees and expenses for defending without reasonable grounds the proceedings related to her claim.

In sum, I order MEMIC to pay Ms. Bond a total of \$5,473.31; of which, \$188.00 is for reimbursement of Ms. Bond’s necessary medical expenses, and \$5,285.31 is for payment of Ms. Bond’s attorney’s fees and expenses. In addition, I order MEMIC to provide Ms. Bond with all reasonable and necessary medical treatment to cure and relieve her from the effects of her work related injury. Specifically, MEMIC must provide Ms. Bond with the right upper extremity EMG recommended by Dr. Reed and Dr. Pazell; as well as, the right upper extremity MRI recommended by Dr. Pazell.

Date: _____

Made by: _____

Carl Mueller
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation