

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

Injury No.: 03-132379

Employee: Nancy Brown
Employer: Missouri Department of Corrections
Insurer: Self-Insured – Central Accident Reporting Office
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 22, 2009. The award and decision of Administrative Law Judge Victorine R. Mahon, issued December 22, 2009, 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 18th day of May 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

SEPARATE OPINION FILED
John J. Hickey, Member

Attest:

Secretary

Employee: Nancy Brown

SEPARATE OPINION
CONCURRING IN PART AND DISSENTING IN PART

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, as the majority concluded, that the decision of the administrative law judge should be affirmed with regard to the awarding of benefits for employee's permanent partial disability referable to her thoracic and lumbar spine. However, I dissent from the majority's decision as to the denial of benefits referable to employee's cervical spine.

As argued in employee's brief, there is persuasive evidence to conclude that her work in the mail room aggravated preexisting spondylosis that then led to the C6-8 radiculopathy.

Because this injury occurred prior to the 2005 amendments to Missouri Workers' Compensation Law, the standard for medical causation is whether the work environment was a "substantial factor" in producing the medical conditions for which benefits are sought. *Cahall v. Cahall*, 963 S.W.2d 368, 372-73 (Mo. App. 1998).

It is obvious from the record that employee had some problems with her cervical spine prior to working for employer. However, it is also obvious that employee's repeated lifting of mail bags and carts, weighing between 30 to 100 pounds, aggravated her cervical condition. In fact, Dr. Joann Mace indicated in her report that she believed employee's mail room lifting activities were not only the substantial factor, but also "the prevailing factor causing the aggravation of her prior cervical spine condition (fusion C5-6) including the C4-5 left paracentral disc protrusion and C6-7 impingement upon the neural foramen."

Missouri recognizes that repetitive trauma may accelerate a personal degenerative or arthritic condition and result in a compensable injury. *Kelley v. Banta and Stude Constr. Co., Inc.*, 1 S.W.3d 43, 48 (Mo. App. 1999). Essentially, pre-2005 Missouri Workers' Compensation Law holds that a work environment which accelerates a personal degenerative or arthritic condition meets the standard of a substantial factor. *Winsor v. Lee Johnson Constr. Co.*, 950 S.W.2d 504, 509 (Mo. App. 1997).

Although employee had a history of neck problems prior to her work for employer, it is illogical to conclude that her constant lifting of heavy mail bags and carts was not a substantial factor in causing her to have to undergo a cervical discectomy and fusion at C4-7 on April 11, 2005. Dr. Mace affirmatively stated that employee's work for employer was the substantial and prevailing factor in causing the aggravation of her cervical spine condition. Further, even Dr. Koprivica (employer's expert) admitted that employee's work in the mail room placed her at a heightened risk of developing a musculoskeletal disease such as this radiculopathy.

Based on the above, I believe that employee has carried her burden of proving that her work for employer was a substantial factor in causing the aggravation of her cervical

Employee: Nancy Brown

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spine condition. Therefore, I find that employee should not only be awarded benefits for her thoracic and lumbar spine conditions, but also for her cervical spine condition.

For the foregoing reasons, I respectfully concur in part and dissent in part from the decision of the majority of the Commission.

John J. Hickey, Member

AWARD

Employee: Nancy Brown

Injury No. 03-132379

Dependents: N/A

Employer: Missouri Department of Corrections

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

Additional Party: Treasurer of Missouri, as custodian of
the Second Injury Fund

Insurer: Self-Insured – Central Accident Reporting Office

Hearing Date: November 4, 2009

Checked by: VRM/db

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: December 29, 2003.
5. State location where accident occurred or occupational disease was contracted: Texas County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Self Insured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was repetitively lifting mail bags when she injured her back.
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: Lumbar and thoracic spine.

14. Nature and extent of any permanent disability: 15 percent Permanent Partial Disability to the body as a whole due to the low back and thoracic spine from the work injury.
15. Compensation paid to-date for temporary disability: None.
16. Value of necessary medical aid paid to date by employer/insurer? \$5,350.77.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$360.23.
19. Weekly compensation rate: \$240.15.
21. Method of wage computation: By agreement.

COMPENSATION PAYABLE

22. Amount of compensation payable from Employer:

For Permanent Partial Disability: **\$14,409.00.**
(60 weeks x \$240.15 = \$14,409.00)

23. Second Injury Fund liability:

For enhanced Permanent Partial Disability, using a 10 percent load: **\$5,043.15.**
(21 weeks x \$240.15 = \$5,043.15)

24. Future requirements awarded: None.

The compensation awarded to the claimant shall be subject to a lien of 25 percent of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Patrick Platter.

FINDINGS OF FACT AND RULINGS OF LAW

Employee: Nancy Brown

Injury No. 03-132379

Dependents: N/A

Employer: Missouri Department of Corrections

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

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the Second Injury Fund

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INTRODUCTION

This workers' compensation claim was heard before the undersigned Administrative Law Judge on November 4, 2009 in West Plains, Missouri. Nancy Brown (Claimant) appeared in person and with her attorney Patrick Platter. Assistant Attorney General Cara Harris appeared on behalf of the Missouri Department of Corrections and the Central Accident Reporting Office (Employer). Assistant Attorney General Heather Rowe appeared on behalf of the Treasurer of Missouri, as custodian of the Second Injury Fund.

STIPULATIONS

1. On or about December 29, 2003, the Missouri Department of Corrections was operating subject to the Missouri Workers' Compensation Law.
2. Employer's liability is self-insured.
3. Claimant was a covered employee, working subject to the Missouri Workers' Compensation Law.
4. Venue and jurisdiction appropriate in West Plains, Missouri. The onset of the occupational Disease by repetitive trauma is to have occurred at the correctional center in Texas County, Missouri.
5. Employee did sustain an injury that occurred within the course and scope of employment.
6. The parties agree that Claimant's average weekly wage yields a Temporary Total Disability and Permanent Partial Disability rate of \$240.15.
7. Employer has provided \$5,350.77 in medical aid and no Temporary Total Disability.
8. Employer has paid \$488.73 in mileage.
9. Attorney Patrick Platter requests a fee of 25 percent of award, except for future medical.

ISSUES

1. What is the nature and extent of permanent disability?
2. Is Claimant's permanent disability medically and causally related to her work?
3. Is Claimant entitled to six weeks of Temporary Total Disability?
4. Is Claimant entitled to additional medical aid totaling \$53,217.80?
5. Is Claimant entitled to additional mileage reimbursement for 2449 miles?
6. Is Claimant entitled to future medical treatment?
7. Does the Second Injury Fund have liability?

EXHIBITS

The following exhibits submitted by Claimant and admitted:

Medical Reports

- A. Dr. Joann Mace
- M. Dr. Sudhir Batchu

Depositions:

- C. Claimant
- D. Dr. Sudhir Batchu

Medical Records:

- E. St. John's Regional Health Center
- F. TCMH Family Clinic
- G. Whiteside Adult Medicine (Dr. Scott Ellis)
- H. St. John's Clinic – Houston, Missouri
- I. Texas County Memorial Hospital
- J. Dr. Fred McQueary
- K. Springfield Neurological & Spine
- L. Phelps County Regional Medical Center
- N. Dr. David Myers

Other Documents

- B. Claim for Compensation
- O. Medical Bills
- P. Summary of Medical Expenses
- Q. Correspondence from Healthcare Recoveries

The following documents were submitted by Employer and admitted:

1. Deposition – Dr. Brent Koprivica
2. Workers' Compensation Worksheet

No exhibits were admitted on behalf of the Second Injury Fund.

FINDINGS OF FACT

Nancy Brown is a high school graduate and has completed about 30 hours of college coursework. She has worked more in the title insurance industry, as a tax collector on a contractual basis, and as a store cashier. She began her employment with the Missouri Department of Corrections (Employer) in August 2002.

Initially Claimant worked for Employer in a number of clerical positions at the South Central Correctional Center in Licking, Missouri. In September 2003, she accepted a transfer to the mail room. The job required that she could lift up to 20 to 25 pounds, walk, and distribute mail into various slots. Claimant is five foot-five inches in height. She had to retrieve heavy, vinyl mail bags, sling them onto the table top before sorting the mail. Claimant estimated the actual weight of the mail bags varied between 20 to 75 pounds. There could be as many as 13 or 14 bags. Although she occasionally had assistance in lifting the bags, she worked the first 30 minutes of her shift by herself. She also lifted boxes or cartons of mail that each weighed 25 to 30 pounds.

After three or four months of working in the mail room, Claimant experienced back discomfort. On or about December 29, 2003, Claimant contacted the Central Accident Reporting Office (CARO) for the State of Missouri to report an injury. CARO referred Claimant to Eilene Warner, a nurse practitioner.

Subsequent Medical Treatment

Ms. Warner, who first saw Claimant on January 7, 2004, noted that Claimant had pain in the shoulder blades and low back. She diagnosed a thoracic strain, prescribed physical therapy and medication. There is nothing in the medical record for that day or a subsequent visit on January 16, 2004, suggestive of *neck* pain. When the treatment was not successful in relieving

Claimant's symptoms, Ms. Warner referred Claimant to Dr. Frederick McQueary for an orthopedic consultation.

Before seeing Dr. McQueary, however, Claimant went on her own to another nurse practitioner – Charlene Furr—on February 5, 2004. Ms. Furr noted that Claimant's neck was “supple with full range of motion.” She noted paraspinous muscle spasm and thoracic back pain.

Dr. McQueary evaluated Claimant on February 10, 2004. He noted that there was no specific incident but rather that Claimant's pain developed over time. He saw no radiation from either of “two distinct areas of pain.” These areas of pain were “the left side of the upper lumbar spine, as well as the lumbosacral junction.” (Ex. J). Dr. McQueary believed Claimant had pre-existent scoliosis and two-level degenerative disc disease in the lumbar spine. Dr. McQueary did not believe Claimant was a surgical candidate and recommended conservative treatment.

Claimant had physical therapy at the Texas County Memorial Hospital, first under orders of Ms. Warner and later by Dr. McQueary. During this time period there is only one record of a complaint of “neck” pain, which did not occur until March 8, 2004. Otherwise, Claimant's complaints were limited to the thoracic area, low back, and legs. On February 24, 2004, the physical therapist specifically noted: “Cervical range of motion does not appear to increase her complaints of pain or parathesias.” (Ex. I). When Claimant saw Ms. Warner again on March 12, 2004, the nurse practitioner reported that Claimant was doing much better and had improved dramatically. The physical therapist noted on March 30, 2004, that Claimant reported having “significantly decreased pain.” (Ex. I). Claimant was released to work and directed to follow up as needed. There was no further authorized care after March 2004.

Claimant returned to Ms. Furr on April 1, 2004, complaining of back pain, not neck pain. An MRI of the thoracic and lumbar sacral spine revealed left-sided paracentral disc protrusion at

L1-2. An MRI scan of the thoracic spine performed the same date was negative. A subsequent MRI performed on the cervical spine on May 22, 2004 showed a "C4-5 left paracentral extrusion. Degenerative changes at C6-7 with spurring impinging on the neuroforamen. C5-6 fusion." (Ex. F, p. 29).

Claimant next went on her own accord to Dr. John Ferguson in June 2004, for a surgical opinion. Dr. Ferguson had treated Claimant in the past. He noted a normal neurologic evaluation, with minor degenerative changes and mild cervical and lumbar spondylosis. He recommended conservative treatment and no surgery. Dr. Ferguson would later note in August 2004, that Claimant had degenerative changes in the cervical spine with osteophytic spurring at the C6-7 position.

Claimant then saw Dr. Glenn Kunkel, who administered left L5-S1 transforaminal epidural steroid injections on August 15, 2004. He performed left L3-4, L4-5, and L5-S1 facet injections on September 17, 2004. He later administered bilateral C4-5 and C6-7 root blocks. When these failed to produce any relief, Claimant saw Dr. Batchu on December 20, 2004, on her own referral.

Dr. Sudhir Batchu saw Claimant only one time. He diagnosed left lumbar radiculopathy at L5-S1 and right cervical radiculopathy. An MRI performed on March 16, 2005, revealed moderate body encroachment on the left at C4-5 and severe bilateral neuroforaminal narrowing at C6-7. Dr. Batchu referred Claimant to Dr. Hadi.

Dr. Bassam Hadi performed a cervical discectomy and fusion at C4-7 on April 11, 2005. Dr. Hadi's records note a three year history of symptoms, which suggests that Claimant's neck pain began well before her employment in the mail room at the correctional center. Dr. Hadi released Claimant to return to work on a limited basis on May 20, 2005. On December 1, 2005,

Dr. Hadi noted that Claimant had done quite well from her cervical discectomy and fusion, and that her main complaints are now in her back and legs. A nerve conduction study was normal, and Dr. Hadi recommended Claimant for conservative treatment. He referred Claimant to Dr. Pak for treatment of her ongoing fibromyalgia.

Prior Medical Treatment

Ten years prior to the work injury that is the focus of this case, Claimant experienced pain in her head and neck, and numbness in her hands. On June 26, 1995, Claimant underwent a cervical fusion performed by Dr. Ferguson. She said the fusion helped her for a time. She said the numbness stopped, and the headaches and pain decreased from a daily occurrence to once per week.

Subsequent to her fusion, in 1999 and 2000, Claimant sought treatment with the Texas County Family Clinic for complaints of problems with her hips, neck, back and shoulders, and headaches. Claimant had been diagnosed with fibromyalgia. On January 14, 2000, she treated again with the Texas County Family Clinic, stating that her fibromyalgia was “giving her fits” and she was having problems with her legs hurting and going numb.

In 2000, she moved to Springfield, Missouri and established care with Dr. Keith Ellis, complaining of fibromyalgia, migraine headaches, depression, and significant pain in her legs, shoulders, and arms.

In January 2001, based on Claimant’s continuing complaints of neck pain and headaches, Dr. Ellis ordered an MRI of her neck. The MRI revealed “Extensive postsurgical changes at C5-6 with extensive postoperative epidural fibrosis at the same site.” (Ex. G, p. 6). The next month, Claimant complained of hand tingling. This was two years prior to the alleged work injury at the

Department of Corrections. Dr. Ellis wrote in one note that Claimant's headaches and hand tingling were most likely due to fibrosis of the surgical area of the neck.

In May 2001, Claimant again complained of hand tingling and numbness. She was referred to the pain clinic.

Claimant contends that the pain she was experiencing in 2001, which was in the same area of the body as the pain she experienced in 2003-04, was sufficiently severe to prompt her to apply for Social Security Disability. In May 2001, Claimant took a form to Dr. Ellis to obtain an evaluation to qualify for Social Security Disability. In deposition, when Claimant was asked the basis for the Social Security Disability claim, she responded:

What I remember was my neck was giving me problems again a little bit. I was having headaches, and my hands had been bothering me. But as I said, in time that got better.

(Ex. C, p. 14). On November 6, 2001 and May 16, 2002, Claimant again was seen at the Texas County Medical Clinic complaining of neck pain or headaches. This latter visit was just three months prior to accepting a position with Employer.

Current Complaints

Claimant testified that the April 11, 2005 surgery initially eliminated her headaches and the pain in her shoulder blades. But since that time, the pain and headaches returned, although not to the same degree as before the last surgery. She continues to complain of low back aching, which she says has not dissipated. She also continues to suffer from fibromyalgia, which had been diagnosed in 2000. She described that condition as feeling bruised, mostly in her arms and shoulder blades. She claimed the sensation is different than what she experienced when she was working in the mail room. She stated that now she can only lift five to 10 pounds and walk about 1/8 of a mile. She avoids all overhead lifting because it causes pain in her back. She

currently sees Dr. Myers for continuing pain medications which include flexeril, vicodin, and sleeping aids.

Expert Medical Opinions

Dr. Brent Koprivica said Claimant's cervical condition related to a progression of the adjacent segment degenerative changes from a prior C5-6 anterior cervical discectomy and fusion that was performed in 1995. Dr. Koprivica noted that, 1) the natural history of Claimant's pre-existing condition was one of progression, 2) in 2001, prior to working for Employer, Claimant was having disabling symptoms, and 3) there is no evidence of any injury to the neck that arose from her work. Therefore, Dr. Koprivica concluded that Claimant's job activities were not a substantial factor in the need for the surgery that she had with Dr. Hadi or any treatment, starting in October 2004 and going forward. Although he believed Claimant performed activities that had a potential risk to cause injury to the cervical spine, there was "no evidence that those activities produced injury with what I could see." (Ex. 1, p. 70). While Dr. Koprivica saw no work-related cervical injury, he opined that the injury of December 29, 2003 did result in an aggravating injury to the thorocolumbar region, as well as an aggravation of underlying lumbar spondylosis.

Dr. Koprivica indicated that because of the work in Employer's mail room, Claimant sustained a 15 percent Permanent Partial Disability to the body as a whole related to her thoracolumbar region. He assigned 25 percent Permanent Partial Disability to her pre-existing neck injury and 12.5 percent to the body as a whole for fibromyalgia. For purposes of Second Injury Fund liability, he assigned a 10 percent loading factor due to the combination of the injuries. He found that Claimant needed no future medical treatment as a result of any injury that occurred while she was working for Employer.

Dr. Joann Mace agreed that the mail room work activities caused a lumbar spine injury. But, she also believed the work-related lifting activities produced an aggravation of a prior cervical condition with adjacent segment involvement. She rated the lumbar problem at 30 percent Permanent Partial Disability to the body as a whole. She assigned a 30 percent Permanent Partial Disability to the body as a whole for the prior fusion and 20 percent for the aggravation to the cervical spine. She also assigned an eight percent Permanent Partial Disability to the body as a whole for fibromyalgia. She would impose a 15 percent loading factor due to combination of all injuries. She recommended no additional surgery.

Dr. Mace did not note in her report any complaints Claimant had to her neck and head on visits with the Texas County Family Medical Clinic in 1999, 2000, 2001, and 2002. She failed to note complaints regarding the neck and shoulder and the tingling in her hands that Claimant had made to Dr. Ellis on several occasions. She, likewise, did not mention that Claimant requested that Dr. Ellis complete a disability application in May 2001.

Dr. Sudhir Batchu, who examined Claimant on December 20, 2004, about one year after Claimant had advised Employer of an injury, diagnosed Claimant as having cervical radiculopathy at the C6-8 level and lumbar radiculopathy at the L5-S1 level. In deposition, he opined that Claimant's work duties had a significant role in the damage to her spine.

Dr. Batchu, however, had no past medical records other than some MRI films. He did not know the condition of Claimant's back and neck at the time she began working for Employer. He was unaware that Claimant previously had been in so much pain that she had sought Social Security Disability. He was completely unaware that Claimant had numbness in her hands prior to going to work for Employer. He admitted that degenerative disc disease above and below a cervical fusion is progressive and can occur without any trauma. He also noted that

such condition takes a period *of years* to develop. He also noted that osteophytic spurring, as was seen in a May 23, 2004 MRI, can develop over time, without any triggering event, particularly in persons who are susceptible to conditions such as fibromyalgia. Finally, Dr. Batchu admitted that he “cannot” state within a reasonable degree of medical certainty that Claimant’s job activities caused the problems that she currently has.

CONCLUSIONS OF LAW

This case arises under the law as it existed prior to significant amendments to the Workers’ Compensation Law in 2005. The law in effect at the time of Claimant’s last injury provides that the Workers’ Compensation Act is to be broadly and liberally interpreted and doubts are to be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App. E.D. 1995). Still, Claimant has the burden of proof, *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), including all essential elements of her claim. *Decker v. Square D. Co.*, 974 S.W.2d 667, 670 (Mo. App. W.D. 1998); *Brufat v. Mr. Guy, Inc.*, 933 S.W.2d 829, 835 (Mo. App. W.D. 1996).

Medical Causation – Cervical Spine

As stated in § 287.020.2 RSMo 2000:

An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

Moreover, § 287.020.3(1) RSMo 2000, states:

Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deteriorating or degeneration follows an incident of employment.

There is overwhelming evidence that Claimant’s headaches and pain in her neck, shoulders, and numbness in hand existed prior to going to work for Employer. There is

overwhelming evidence that Claimant's first complaints of pain did not involve her neck. The focus of the treatment, based on Claimant's complaints, was to the low and mid or thoracic back. Given that Claimant previously had a neck fusion, one would certainly anticipate that she would have complained of *neck* pain if the neck was involved. Dr. Mace does not explain her opinion in light of the treatment records immediately after the injury in which there is no mention of neck pain. Dr. Mace also fails to note in her review of the medical records the many complaints that Employee had to her neck and shoulders in the years just prior to her work injury. Dr. Batchu, likewise, had no prior medical records other than MRI films. Dr. Koprivica, on the other hand, made a thorough review of the records in rendering his opinion. Based on Dr. Koprivica's opinion, which I find credible in this case, and the record as a whole, I conclude that Claimant's neck complaints and subsequent treatment to the neck were unrelated to the work for Employer.

Medical Causation – Lumbar and Thoracic Spine

Claimant did sustain her burden of demonstrating, however, that she suffered a compensable injury to the low back and thoracic spine. Treatment was provided by Employer, consisting of visits to a health care provider, physical therapy, medication, x-rays, and a visit with an orthopedic specialist. This treatment was warranted and reasonable. Employee reached maximum medical improvement from her work injury on March 12, 2004 when she was released (Exhibit H, p. 6). The medical records demonstrate that at that time, Claimant was feeling better and understood that she was released to return to work.

Nature and Extent of Permanent Partial Disability

I accept the ratings of Dr. Koprivica and conclude that Claimant sustained a 15 percent Permanent Partial Disability to the body as a whole as a result of the non-surgical injury to the thoracic and lumbar spine.

Temporary Total Disability

Claimant was released to return to work in March 2004. The claim for Temporary Total Disability benefits related to the time Claimant missed work following the cervical surgery performed by Dr. Hadi in May 2005. Because I conclude that the work with Employer was not a substantial factor in the need for the surgery, Employer has no responsibility for Temporary Total Disability.

Past Medical Expenses

The claim for \$53,217.80 in medical expenses all relate to treatment occurring subsequent to Claimant's release to return to work in March 2004. I conclude that none of the treatment subsequent to March 2004 is related to the work.

Future Medical Care

"To support an award for future medical care, the need for that care 'must flow from the accident, via evidence of a medical causal relationship between the condition and the compensable injury, if the employer is to be held responsible.'" *Farmer v. Advanced Circuitry Div. of Litton*, 257 S.W.3d 192, 197 (Mo. App. S.D. 2008) (quoting *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 270 (Mo. App. S.D. 2004)). After reviewing the medical records and expert opinions, I am persuaded that Claimant's current problems with her neck and fibromyalgia are unrelated to her work with the Department of Corrections. No future medical is awarded.

Mileage Reimbursement

The mileage claimed relates to treatment Claimant received subsequent to her release to return to work in March 2004. Because I conclude that such treatment relates to deterioration of her underlying disease and not as a result of the work injury, no mileage is awarded.

Second Injury Fund

To establish Fund liability, Claimant must show “either that (1) a preexisting partial disability combined with a disability from a subsequent injury to create permanent and total disability or (2) the two disabilities combined to result in a greater disability than that which would have resulted from the last injury by itself.” *Gasson v. Liebengood*, 134 S.W.3d 75, 79 (Mo. App.W.D. 2004). The disability necessary to trigger Second Injury Fund liability is Permanent Partial Disability existing at the time the last work-related injury was sustained. § 287.220.1 RSMo; *Lammert v. Vess Beverages, Inc.*, 968 S.W.2d 720, 725 (Mo. App. E.D.1998) *overruled on other grounds*, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

The record demonstrates that Claimant had multiple debilitating physical complaints prior to working for Employer, including fibromyalgia and a fusion to the cervical spine. At one point, Claimant even applied for Social Security Disability because she felt incapable of working based on her physical complaints. Based on the whole record, I accept the opinion of Dr. Koprivica that Claimant’s pre-existing disabilities combine synergistically with the injuries from the primary injuries to the thoracic and lumbar spine. Dr. Koprivica rated the total of Claimant’s disabilities at 210 weeks (60 weeks to the body as a whole from the primary injury; 100 weeks for prior cervical fusion; and 50 weeks due to fibromyalgia). Applying the 10 percent load as opined by Dr. Koprivica, the Second Injury Fund is responsible for 21 weeks for Permanent Partial Disability.

Summary

Employer is liable for 15 percent Permanent Partial Disability to the body as a whole referable to the thoracic and lumbar spine for a total of \$14,409.00 (60 weeks x \$240.15).

Second Injury Fund is liable for 21 weeks of Permanent Partial Disability for a total of \$5,043.15 (21 x. \$240.15).

Attorney Patrick Platter is entitled to 25 percent of the amounts awarded, which shall be a lien on the proceeds, as a reasonable fee for necessary legal services rendered to Claimant.

Date: December 22, 2009

Made by: /s/ Victorine R. Mahon
Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Naomi Pearson
Naomi Pearson
Division of Workers' Compensation