

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

Injury No.: 05-019476

Employee: Lieutenant Carter

Employer: Lemay Concrete Block Co. (Settled)

Insurer: Missouri Employers Mutual Insurance Co. (Settled)

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

Date of Accident: March 11, 2005

Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 29, 2007, and awards no compensation in the above-captioned case.

On June 27, 2007, the Second Injury Fund filed a Motion for Sanctions for Filing Frivolous Appeal. On July 2, 2007 the employee filed a Motion for Sanctions. All motions are denied.

The award and decision of Administrative Law Judge Suzette Carlisle, issued March 29, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 31st day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Lieutenant Carter

Injury No.: 05-019476

Dependents: N/A
Employer: Lemay Concrete Block Co. (Settled)
Additional Party: Second Injury Fund
Insurer: Missouri Employers Mutual Insurance (Settled)
Hearing Date: January 16, 2007

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: SC:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
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 11, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis, Mo.
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:
While working, Claimant's jacket became caught in a machine injuring his right shoulder.
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 shoulder
14. Nature and extent of any permanent disability: 20% of the right shoulder at the 232 week level
15. Compensation paid to-date for temporary disability: \$2,894.62
16. Value necessary medical aid paid to date by employer/insurer? \$4,693.68

Employee: Lieutenant Carter Injury No.: 05-019476

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$400.00
19. Weekly compensation rate: \$266.67/\$266.67
20. Method wages computation: Section 287.250.1.5

COMPENSATION PAYABLE

21. Amount of compensation payable:

Previously settled

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Ray Gerritzen

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Lieutenant Carter	Injury No.: 05-019476
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Lemay Concrete Block Co.(Settled)	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Additional Party:	Second Injury Fund	
Insurer:	Missouri Employers Mutual Insurance (Settled)	Checked by: SC:tr

PRELIMINARY MATTERS

A hearing was held at the Missouri Division of Workers' Compensation, St. Louis office, on January 16, 2007 at the request of Lieutenant Carter ("Claimant"). Attorney Ray Gerritzen represented Claimant. The Second Injury Fund ("SIF") appeared represented by Assistant Attorney General Kevin Nelson. Prior to hearing, Claimant settled the claim with Lemay Concrete Block Co. ("Employer") and Missouri Employers Mutual Insurance ("Insurer"). The record closed after presentation of all the evidence. Hearing venue is correct and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

ISSUES

The parties have agreed the issues for disposition are:

1. Accident;
2. Rate; and
3. Nature and extent of SIF liability, if any, for permanent partial disability (PPD) or permanent total disability (PTD).

EXHIBITS

Claimant offered Exhibits A through L, which were admitted over SIF objection to Exhibit A. ^[1] The SIF offered Exhibits I through IX. Exhibits I –VI were admitted over Claimant's objection to Exhibits II through VI. ^[2] Exhibits VII and VIII are inadmissible hearsay and not admitted. ^[3] SIF motion to clarify the record by adding evidence after the record closed is denied. ^[4] Any objections not expressly ruled on in this award are overruled. Any notations contained in the records were present when admitted into evidence.

SUMMARY OF EVIDENCE

Live Testimony

Claimant

1. Claimant was 40 years old in March, 2005. He quit school in 9th grade at age 18 and did not obtain a GED.
2. After leaving school, Claimant worked “odd jobs”, planting trees, mowing lawns, working in a car wash, kitchen, restaurant, hotels, and a warehouse, and through temporary agencies.
3. Claimant testified he aspired to be a “top chef”; so most of his work was performed in the kitchen. He cooked for week long parties at Henry the VIII Hotel and for the Canteen Corporation at the Chrysler Corporation plant.
4. Claimant testified he was often paid in cash and the income was not reported to the IRS or the Missouri Department of Revenue.
5. Claimant is right handed and denied any right-shoulder problems prior to March 11, 2005.
6. Claimant was hired March 5, 2005 and began working full time March 7th earning \$10.00 an hour for eight hours a day. Some days he worked more than eight hours. Claimant described the work as “strong hard labor,” lifting 50 to 90 pound blocks, moving skids, sweeping, and driving a forklift.
7. On March 11, 2005 shortly after arriving at work, Claimant testified he cleaned a machine by bending and “going into the machine and pulling” gravel from underneath using a hoe. The machine ran constantly and contained 9 huge blocks used to move pallets electronically.
8. While bending over the machine, Claimant’s jacket became caught for 20 minutes, as his life flashed before his eyes.
9. The same day, Claimant treated at St. Louis University Hospital (SLU) where he was hospitalized, received medication, x-rays, and bed rest until March 13th. Claimant denied giving a history of crawling under the machine, calling the SLU intake information a lie. Claimant testified he gave the best history he could give as he was alone and in pain.
10. Claimant testified that Dr. Nogalski placed Claimant’s arm in a sling and ordered physical therapy at ProRehab and limited Claimant’s lifting to ten pounds.
11. Claimant returned to work on May the 10th and only worked 5 ½ hours due to pain. On May 11th, Claimant worked 1 ½ hours with a pain level of 8 out of 10. Claimant’s last day at work was May 16th when he worked 6 hours and asked Dr. Nogalski to keep him off work until he completed therapy. He did not call or report to work again.
12. Claimant testified he injured his right shoulder, punctured his lung, fractured a rib and has a protruding right scapular bone. He complained of great pain and nightmares from the injury.
13. Claimant described his typical day as being stuck in the house, and that he might as well be in jail. He can perform light housework but not heavy work in the kitchen or yard. Claimant cannot play baseball, swim, or play football to the extent he once did. Claimant uses his left arm for many activities. Claimant plays set shots in basketball and shoots with his left arm. Claimant has problems sleeping on his right side or lifting overhead.
14. Before March 11, 2005, Claimant testified he had no problems doing anything he wanted to do, including working a physical job. Claimant testified he lifted weights up to approximately 475 pounds before the injury, but now he cannot. Now he feels stuck and unable to deal with “things.”
15. Claimant testified that because of the injury, his dream of becoming a top chef has gone to “crap.” Claimant believes his life is a “done deal.” Claimant would like to write a book but cannot, due to his right hand problems and inability to use a computer.
16. Claimant does not believe he can work because he uses his right hand for everything.
17. He believes his life is “through” due to the March injury; and that working “ain’t gonna happen.” Claimant attributed his inability to work to the March 2005 injury.
18. Later in the hearing, Claimant could not remember what year his work-related injury occurred; but was certain it happened by 2000. Claimant was uncertain where and when he received treatment for his right shoulder injury. Claimant testified he has difficulty remembering details, which was supported by the medical records.

Pre-existing conditions

19. Claimant testified he was dropped on his head at birth. There is no evidence in the record to support Claimant's testimony. Before March 2005, Claimant testified to having preexisting paranoid schizophrenia and "grand mal seizures caused by heat." Claimant has suffered from mental illness all of his life. Claimant testified his recall is inaccurate and he is prone to hallucinations such as being a top chef, murderer, or cutting people for money.
20. Claimant testified he was hospitalized at Alexian Brothers Hospital for a left-sided stroke prior to March 11, 2005. Later, Claimant testified he was hallucinating about having a stroke.
21. Claimant refused to testify whether he told Dr. Mangelsdorf he was incarcerated for 14 years or shot and cut people for money; stating it was "none of the SIF's business."
22. Claimant testified he has been admitted to a number of psychiatric facilities during his lifetime; including Malcolm Bliss, Barnes, and Alexian Brothers Hospital. Claimant testified his preexisting mental condition did not prevent him from living a normal life.

Work History

23. Claimant described himself as a hard worker who loved to work and did so when not hospitalized.
24. On cross examination, Claimant denied using other names with the Social Security Administration (SSA) but admitted working under the following names because the employer either used a nickname or made a mistake: 1) 1985-87 - "R. Carter" - a sports service company, 2) 1990 - "LT Carter," - Goodwill Industries, 3) 1994 - "LL Carter" - Catering St. Louis, Inc., and 4) 1995 - "LC Carter," which Claimant denied providing to the employer.
25. Claimant admitted he lied about working the assembly line at Chrysler. He also admitted he told Mr. Lalk he worked eighteen months, earning \$11-12.00 an hour and left for a better paying job, which did not occur. He told Mr. Lalk he had been a top chef for 25 years, however, this is a title Claimant gave himself. Claimant told Mr. Lalk about sexual abuse, drug and theft convictions, but not the retail theft conviction.
26. Claimant testified he worked for the Viking Hotel in 1993 and 1994; however, records indicate he worked in 1999 and 2000. Claimant testified he worked at a warehouse prior to the Viking Hotel but according to his attorney Claimant worked there after the Viking Hotel. Claimant testified he was paid in cash after he told employers he received Social Security benefits. Claimant could not remember when he worked for M.B. Sturgis or what he earned.
27. Claimant testified he could not recall many of his previous jobs. Claimant did not remember working for a moving company. Claimant testified he worked for cash as a roofer but did not remember the company's name. Claimant denied being self-employed, however his social security records show self-employed earnings in 1994.
28. Claimant testified he had 55 successful suicide attempts then refused to say more when cross examined.
29. Claimant admitted he served 18 months for stealing baby food in Illinois. When asked about a sexual molestation conviction regarding his 5-year-old niece, Claimant testified the victim was not his niece.
30. Claimant complained of difficulty gripping with his right hand and decreased sensation since he sustained a gunshot wound to his right long finger. Claimant also reported a left sided stroke, resulting in permanent loss of memory and concentration. Claimant reported seizures but did not know when they began. Claimant reported wandering off as a result of his psychiatric condition. Claimant reported thinking the devil was talking to him while he worked.
31. He recalled injuring his right arm in the machine. Claimant complained of right shoulder pain, with or without activity, causing him to want to rip it off. Claimant complained of decreased grip strength, weakness, and numbness when he slept on it, inability to run, lift weights, swim or fish, shortness of breath due to a punctured lung, and fear of reinjuring his shoulder.

Sherry Browning-Vocational Expert

32. **Ms. Sherry Browning** is a vocational rehabilitation counselor and a licensed professional counselor with 25 years experience in physical and psychological disabilities, and alcohol and drug abuse.
33. At the SIF's request, Ms. Browning performed a records review in November 2006 to determine Claimant's employability. Ms. Browning agreed with Mr. Lalk's opinion that Claimant may be able to obtain employment in the open labor market but cannot sustain it. She concluded Claimant could not sustain employment prior to March 11, 2005 due to his psychiatric condition.
34. She acknowledged that being a paranoid schizophrenic, having a mental confinement, or being an ex-convict does not automatically prevent a person from being employable.

However, she testified Claimant was unstable before March 11, 2005. Ms. Browning referred to Claimant's GAF score of 20 in 2003, which Dr. Johnson diagnosed as a danger to Claimant and others; and commented on Claimant's inability to hold a job in 2004.

35. Ms. Browning disagreed with Dr. Mangelsdorf's opinion that Claimant's depression deteriorated after March 11, 2005, noting a diagnosis for anti-social personality disorder in 1989 and depression in 1991, multiple hospitalizations, and suicide ideations and attempts between 1989 and 2004 while employed (Exhibit II-36). Ms. Browning concluded the books Dr. Mangelsdorf relied on do not address job loss due to work place injuries.
36. She found Claimant to be an undesirable job applicant based on 38 jobs with 28 employers between 1985 and 2005. She opined that employers seek to hire employees who are consistent and reliable. She concluded Claimant's lack of reliability was also shown by his failure to complete a drug rehabilitation program.
37. Ms. Browning referred to Claimant's missed medical appointments and non-compliance with treatment as irresponsible; and noted his "inability to sustain the structure and reality of work." A lack of a driver's license would limit Claimant's access to employment opportunities. Ms. Browning found Claimant's low test scores were an obstacle to securing employment. ^[5]
38. She also opined convictions pose employment obstacles and predicted Claimant would be unable to sell or make alcohol or sell Illinois lottery tickets. Based on Ms. Browning's experience, she believed it is difficult for Claimant to find employment with a criminal background.
39. Ms. Browning found no objective limitations with Claimant's shoulder, discounted his credibility, and found Claimant's employability did not change as a result of the shoulder injury (Exhibit II-26). ^[6]
40. According to Ms. Browning, records show Claimant consistently refused to complete psychiatric and later right shoulder care, which therapists believe affected his progress. Therapists also believed Claimant's pain level was inconsistent with his objective presentation. ^[7]

Deposition Testimony
Timothy Lalk – Vocational Rehabilitation Counselor

41. **Timothy G. Lalk** is a vocational rehabilitation counselor and testified by deposition at Claimant's attorney's request after interviewing Claimant on 9-21-06.
42. Mr. Lalk concluded Claimant could perform the following tasks from a physical standpoint; cleaning, parking lot attendant, small parts assembly or packager, and cook, assuming Dr. Nogalski's restrictions were permanent. As a short order or grill cook Claimant would be restricted to work below shoulder level and a 75 pound weight restriction using both hands in a dependent position.
43. However, based on Dr. Mangelsdorf's opinion, Mr. Lalk did not believe Claimant could maintain employment in the open labor market due to aggravation of his psychiatric condition caused by the right shoulder injury. Mr. Lalk further wrote:

“Although he could possibly be hired during a period in which his symptoms were in remission and/or controlled, his history indicates his level of functioning typically does not remain so. Dr. Mangelsdorf has indicated that currently his psychiatric condition is too severe for him to even be considered for employment. Certainly Mr. Carter's presentation at my office would prevent any potential employer from considering him for even unskilled, entry-level positions. With his current level of symptoms I do not believe that he could secure or compete for any position in the open labor market.” (Emphasis added)
44. According to Mr. Lalk, records show Claimant's GAF score over years has ranged from 20 to 70, twenty indicating danger to self and others and 70 indicating mild symptoms, and functioning with only some social and occupational problems, i.e. home theft. ^[8] Mr. Lalk did not believe any employer would hire Claimant for an unskilled entry level position, if he displayed the same conduct he did when examined by Dr. Mangelsdorf. But even if Claimant were hired, he could not function very long. Mr. Lalk did not believe Claimant could successfully complete vocational training.
45. Mr. Lalk found long gaps in Claimant's employment because of incarceration were a deterrent to employment. He did not believe Claimant's criminal record would prevent hard labor low paying jobs. A child molestation conviction prevented Claimant from working with children or close to them, as it is against the policy of most employers. Mr. Lalk expected employers would be "quite reluctant" to hire someone to work with cash or sales with a retail theft conviction.

46. Mr. Lalk expected some employers may require completion of a rehabilitation program before Claimant would be considered for employment. Records show Claimant scored an IQ of 59 on 12-22-82 (Exhibit I). Mr. Lalk found Claimant's lack of a valid driver's license eliminated certain driving jobs; i.e. taxicab, package delivery, or over the road driver. Mr. Lalk speculated some employers would not hire Claimant unless alternative transportation was found.

Claimant's first and second grade test scores were also found to be a deterrent to employment (Exhibit K-B-16).^[9] Mr. Lalk did not consider Claimant a reliable historian and observed him laugh inappropriately, evade questions, and inadequately address work history and gaps in employment.

47. According to Mr. Lalk, while receiving therapy for the right scapula fracture, Claimant grimaced, guarded his right arm, and displayed a high perception of disability and pain inconsistent with physical therapy exercises. Claimant was noncompliant after May 18, 2005.^[10]

48. **Verna Detmer**, a registered agent for Employer, testified by deposition on behalf of the SIF regarding Claimant's employment history. Claimant worked from March 7, 2005 to March 11, 2005. He returned to work May 10th and worked five and a half hours. On May 11th, Claimant worked one and a half hours but called on the twelfth, and refused to work. Claimant last worked May 16th for six hours and was fired later for failure to call or report to work. Ms. Detmer was unaware of Claimant's prior criminal record; but Employer routinely hired individuals with criminal backgrounds.

Thomas K. Mangelsdorf, M.D.

49. **Thomas K. Mangelsdorf M.D.**, a board certified psychiatrist, evaluated Claimant initially based on a medical records review at his attorney's request. Dr. Mangelsdorf was unable to personally examine Claimant initially because Claimant was confined in the workhouse on September 22, 2005 when scheduled to see him. Dr. Mangelsdorf reported:

"In surveying the old records, which are extremely voluminous, it seemed to me that it was just as well that he did not come, as that would have just taken more time: it is clear from the record that Mr. Carter does not like to be interviewed. He does not like to answer questions and **I do not think anything could be found in a personal interview at this date, which would add anything to the enormous amount of psychiatric history that has been well-recorded over the years.** So, this report will consist of a review of records."

Dr. Mangelsdorf concluded:

"His voluminous psychiatric medical records clearly show that he is a very poorly functioning person in any environment, school, home, work or with social relations. **I do not believe that any employer, who has any background knowledge of this person, would hire him, and even when he is hired he does not last long on the job.** He has been found by the Social Security Administration as being totally and permanently disabled. It is my conclusion, within a reasonable degree of medical certainty, that he is a totally disabled person. I do not believe he could be relied upon to function adequately in any type of environment. He is now 41 years old and has never functioned well before and there would be no reason to think that he will in the future."^[11] (Emphasis added)

50. After Dr. Mangelsdorf issued the report, Claimant berated and threatened him by telephone; leading Dr. Mangelsdorf to think Claimant was out to get him.

51. Dr. Mangelsdorf reluctantly consented to examine Claimant May 17, 2006 at his attorney's request, in his attorney's office with a security officer on the premises. Records show Claimant refused to talk about the child abuse conviction, choosing to say he was incarcerated for murder. "Claimant was defensive, surly, hostile, uncooperative, evasive, quick to accuse, displaying hatred for doctors, lawyers, policemen, and just about all of society, argumentative, self pitying, poor posture, moving from right to left, avoided eye contact, and agitated. Claimant reported being angry at everything and everybody and not knowing why."

52. After interviewing Claimant, Dr. Mangelsdorf found him to be more out of touch with reality than the medical records reflected. He testified Claimant was "a **totally disabled person, now even more so than in the past.**" (Exhibit J-14) (Emphasis added)

Dr. Mangelsdorf wrote:

"By 30 (GAF) it is meant that his behavior is considerably influenced by his paranoid delusions and he has very serious impairment in communication and judgment. He is unable to function in almost all areas, no job, stays in bed most of the day, and gets along poorly with family and friends...a great deal of his life has been spent with some type of help from medical providers or social service agencies. **But he could do physical work** (e.g. Chrysler and cooking jobs). He has serious impairment in judgment and communication, some suicidal preoccupation, delusions that he can die and come back to life. He seems unaware of social realities

and has had major impairment in many endeavors of his life including his thinking, judgment, and mood.

But now he has the added physical impairment of his shoulder. This new physical impairment combines with the long standing emotional problems. It is my opinion, within a reasonable degree of medical certainty, that he is totally and permanently disabled person as a result of the combination of his shoulder disability together with his mental impairment. I do not believe he could be relied upon to function in any type of work environment. Even though he says he could do some jobs, I think that statement is a product of his delusions about his own ability.” (Exhibit J-A-8).

53. Claimant “wiggled back and forth in his chair, giggled when he could not perform simple arithmetic, and demonstrated inappropriate behavior” (Exhibit J-12, 22, 56). Claimant reported 55 suicide attempts, some of which were successful, before he returned to life (Exhibit J-26). Claimant further stated he served prison time for murder, which he did not. Claimant did not report convictions for child molestation, possession of a controlled substance, or stealing over \$150.00. He also refused to talk about the March 2005 work injury.
54. Dr. Mangelsdorf diagnosed schizoaffective disorder and paranoid schizophrenia which worsened due to Claimant’s job loss following the accident. He pointed to Claimant’s assault on his girlfriend and receiving stolen property as evidence of his deterioration.
55. The doctor opined Claimant’s mental condition deteriorated from stress caused by his inability to work (Exhibit K-7), which damaged his self-esteem, leading to a sense of shame and aggravating his pre-existing psychiatric condition.
56. Dr. Mangelsdorf distinguished the impact between voluntary gaps in employment from the inability to work. He speculated Claimant was fired due to surliness and being argumentative. However, Dr. Mangelsdorf did not believe Claimant was fired for physical violence in the past.
57. Dr. Mangelsdorf found the shoulder to be another stressor on top of many others; which aggravated everything else. Claimant worked with a number of stressors before the accident; however, he could no longer work following the accident. Dr. Mangelsdorf based his opinion in part on several books written about stress related job loss. ^[12] As a result of “all these things,” Dr. Mangelsdorf concluded Claimant became sicker after the accident. Dr. Mangelsdorf noted Claimant had recently split with his long time girlfriend Christine.
58. Dr. Mangelsdorf opined the shoulder injury was a substantial factor in “aggravating or activating” Claimant’s prior psychiatric condition and concluded the combination of Claimant’s shoulder injury and aggravation of his psychiatric condition render him permanently and totally disabled.
59. Dr. Mangelsdorf stated Claimant could be hired for manual labor for about two weeks, until an employer learned of his challenges. Therefore, Dr. Mangelsdorf concluded Claimant is “more totally disabled now than in the past” (Exhibit J-14).

Medical Records Review

60. Claimant has an extensive history of psychiatric treatment. Seizures began after an automobile accident at age 9, when he injured his head. Claimant was diagnosed as mildly retarded with an IQ test of 59 in 1982 (Exhibit I).
61. Early records reflect a long history of fighting, running away from home, school suspensions, first arrest at 15 for tampering with an automobile, abusing and using drugs at age 12. Youthful acts included truancy, torturing animals, and starting fires which continued into adulthood (Exhibit I).
62. Claimant treated at Regional Hospital for superficial lacerations due to a knife fight with his common law wife. His first admission to Malcolm Bliss was September 14, 1989. Claimant was diagnosed with adjustment disorder, depressed mood and anti-social personality disorder after being fired from work for a “bad temper.” Claimant was described as a danger to himself and others (Exhibit I).
63. Medical records show Claimant was paroled in 1989 after serving time in the Missouri State Penitentiary. On several occasions Claimant was placed in four point restraints after verbally abusing and threatening to kill another patient he found rummaging through his belongings. He was discharged from Malcolm Bliss on September 22, 1989 diagnosed with polysubstance abuse, alcohol abuse, anti-social personality, mild mental retardation and a history of seizures (Exhibit I).
64. On August 24, 1993, Claimant was diagnosed with alcohol abuse/psychoactive substance abuse, anti-social personality disorder and mild retardation. Claimant treated at Barnes Hospital Emergency Room for headaches on August 29, 1993 and seizures. Claimant was diagnosed with seizure disorder and unspecified schizophrenia.
65. Claimant was admitted to Barnes Hospital March 3, 1994 with reported stress from the death of his niece, nephew, and psychiatrist, and abuse to his daughter by the child’s mother and boyfriend in 1993. He became verbally abusive toward

other patients before leaving against medical advice. Medical records indicate a history of being unable to maintain employment (Exhibit B).

66. Claimant attempted suicide April 28, 1994 and was treated at Barnes-Jewish Hospital where he reportedly enjoyed scaring staff and being unpleasant. Claimant complained of hearing voices and wanting to hurt people. Claimant was placed in four point restraints, broke loose and was placed in handcuffs. He later broke left leg restraints, smiled and made more threats. Claimant was diagnosed with grand mal seizures, impulse control disorder, organic personality syndrome, mild mental retardation, and anti-social personality disorder.
67. Claimant's first Global Assessment of Functioning (GAF) of 40 was made in May 1994 at Lutheran Medical Center. Claimant complained of being suicidal, unable to sleep and a recent suicide attempt. Claimant was diagnosed with impulse control disorder, organic personality syndrome, mild mental retardation, seizure disorder, psychosocial stressors, and anti social personality. Claimant refused further treatment and left against medical advice (Exhibit C).
68. Following a gunshot injury on May 22, 1994, Claimant's right long finger was surgically repaired for "complete destruction of the proximal interphalangeal joint," extensor tendon damage, and partial laceration of the ring finger tendon (Exhibit B).
69. Stanley Cohen, D.O., at Washington University, examined Claimant in December 1994 with two security officers nearby; and diagnosed psychosis, and cocaine and alcohol dependence (Exhibit I).
70. In 1995, Claimant injured his head in an automobile accident and was diagnosed with a cervical strain and straightening of the cervical lordosis (Exhibit I).
71. Claimant requested admission to the Deaconess Health System Emergency Room on January 17, 1997 due to stress. [13]
Records from Metropolitan St. Louis Psychiatric Center (MSLPC) show Claimant attempted to hang himself with a bed sheet, resulting in a seizure. Claimant became verbally abusive to peers and left when confronted by staff on January 25, 1997.
72. Claimant was re-admitted to Deaconess Hospital December 10, 1997 for reported suicide ideas, attempting to strangle his niece, and holding a shotgun to his wife's head. Records show Claimant's wife reportedly suffered a heart attack after he threatened her with a shotgun (Exhibit F-I).
73. Claimant was transferred to MSLPC on December 19, 1997 by court order. Claimant complained of delusions and hallucinations and displayed manic type ideas. Claimant bragged of stabbing people and cutting their throats. Claimant complained of depression, laughed, and mocked staff. Claimant reported difficulty sleeping and mood swings after allegedly drinking liquor and using cocaine daily. Claimant was placed in four point restraints due to his agitated state. Claimant was discharged to Archway Substance Abuse Treatment on January 9, 1998, diagnosed with mood disorder, alcohol and cocaine dependence, mild retardation, severe antisocial personality disorder, and hypertension (Exhibit I, F).
74. Claimant was first admitted to BJC Behavioral Health Community Health (BJC-BH) program on January 27, 1998 and was discharged March 7, 2001.
75. Claimant was re-admitted to BJC-BH through Shelter Outreach on July 13, 2001 with a 40 GAF score (Exhibit F).
76. Claimant was re-admitted to MSLPC on July 16, 2001 by police escort from BJC -BH after making threats that he wanted to "chop off his girlfriend's arms and legs," and stating he brought explosives "strong enough to wipe out a city block." Douglas McCoy, M.D., a treating psychiatrist, noted Claimant had no "conventional or consistent job, never provided for himself or anyone else of note." He was observed to be manipulative; making threats in a coy way to gain support for his ideas. Claimant was diagnosed with psychosis NOS and cocaine abuse, anti-social traits, and a GAF score of 55 when discharged to a chemical dependency program on August 6, 2001(Exhibit I).
77. Claimant treated with Barnes-Jewish Hospital from October 2001 through November 2002 for seizures and acute mania after allegedly swallowing ten pills and acting in a bizarre manner (Exhibit B).
78. Claimant treated in the emergency room at MSLPC on November 11, 2001 and at Barnes-Jewish Hospital on December 6, 2001 for drug abuse and destroying his girlfriend's apartment (Exhibit B). Claimant was admitted with a GAF score of 20 and discharged December 17, 2001 with a GAF of 40. Claimant reported being sexually abused at age seven by his nephew. Claimant later jumped a divider to attack another patient after being told he would be discharged. According to Ms. Browning, Claimant described himself to doctors as being "screwbie in the head, and a nut" (Exhibits B, II-12). However, the record is not in evidence.
79. Claimant treated at St. Joseph's Hospital on July 19, 2002 after falling and being diagnosed with a comminuted skull fracture with minimal displacement (Exhibit D).

80. Claimant was admitted to Barnes-Jewish Hospital Emergency Department on December 14, 2002 following an overdose and a fight with his wife.
81. Claimant was admitted to BJC-Behavioral Health Continuous Treatment Team on January 9, 2003. Records indicate Claimant requested a transfer back to Shelter Outreach, called BJC-BH and threatened to “kill everybody on the 6th floor” because he needed to “kill somebody” before New Year’s Eve “to let the beast out” (Exhibit F).
82. On January 13, 2003 Claimant attempted to harm his longtime girlfriend and was readmitted to MSLPC for the fourth time; and diagnosed with psychosis, anti-social personality disorder, and a 30 GAF score. Records show Claimant was on parole until August 2003. According to records, Claimant lost his Social Security benefits and needed to return to work but admitted his work history was unstable.
83. Claimant was reported by social services as chasing a neighbor girl with a knife, holding his girlfriend hostage for two hours threatening to smother and stab her, and pulling the phone from the wall when she tried to call 911 (Exhibit II-^[14]14).
84. Claimant returned to MSLPC from BJC Behavioral Healthcare escorted by police on May 16, 2003 after he threatened to jump out of a fifth floor window or cut himself. Claimant’s GAF was 25 when admitted. Claimant was diagnosed with schizoaffective disorder, bipolar type, history of polysubstance dependence and sustained remission, anti-social personality disorder, and seizure disorder (Exhibit F, I).
85. Records show Claimant reported to BJC-BH for treatment on January 14, 2004, stating he was “just a nut”; and bearing the word “die” carved into his left upper arm. Mark Johnson, M.D., a Behavioral Health psychiatrist, described Claimant as unable to hold a job due to his psychotic condition. Claimant informed doctors he was a human time bomb and a threat to society, and Dr. Mangelsdorf agreed. Records show Claimant listed mental illness as one of many deterrents to reaching his professional goals. Dr. Johnson found Claimant’s GAF score was 41 as of February 11, 2004. Dr. Johnson last treated Claimant on May 7, 2004. Records indicate that prior to readmission at BJC-BH, Claimant should be evaluated for hostility and threats of bodily harm toward staff (Exhibit F).^[15]
86. Claimant moved to Festus, Missouri in June 2004. He treated with Comtrea Community Services from September to December 2004. Claimant reported thoughts of hurting himself and others, forgetfulness, difficulty concentrating, irritability, anxiety, panic, isolation and hallucinations, and delusions of destroying the city. David Krojanker, M.D. recommended a psychiatric evaluation and diagnosed a 55 GAF and medicine, however Claimant requested a different doctor.
87. Claimant made inappropriate comments to staff regarding their bodies. Records show Steve Stormsdorfer, M.D. examined Claimant on December 9, 2004 and diagnosed schizoaffective disorder, polysubstance dependence with a 60 GAF score (Exhibit G) However, Claimant did not return for his scheduled appointment on January 6, 2005 (Exhibit F).
88. On March 11, 2005, Claimant was hospitalized for three days at St. Louis University Hospital after hospital records show he crawled underneath a cement machine and was smashed between two metal plates. X-rays revealed a fracture of the right scapula treated with a sling and swathe. Claimant tested positive for opiates’ and cocaine on March 15, 2005 (Exhibit E).^[16]
89. Michael P. Nogalski, M.D., examined Claimant on March 25, April 8, April 21, and May 10, 2005. Dr. Nogalski diagnosed a comminuted scapular fracture and lung contusion. Physical therapy was prescribed, and Claimant was released to light duty by May 10th with no use of the right arm, no work on uneven ground, or climbing. The fracture healed by May, 5th and aggressive physical therapy was ordered, with lifting up to ten pounds at chest level (Exhibit E).
90. Dr. Nogalski reported Claimant verbally abused office staff and threatened him. On May 10th Claimant requested narcotic medication and reported Employer did not comply with restrictions. Dr. Nogalski refused and Claimant made more threats (Exhibit H).
91. Sarah Wurster, M.D. at St. John’s Mercy Medical Center, limited Claimant’s sweeping to two hours per day for seven days with gradual increase and recommended work hardening.
92. Dr. Nogalski found Claimant reached maximum medical improvement after he missed two appointments and continued to verbally abuse staff and threaten Dr. Nogalski. Dr. Nogalski found Claimant sustained permanent disability of the right shoulder, however did not indicate the percentage of disability.^[17]

FINDINGS OF FACT AND RULINGS OF LAW

After careful consideration of the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

1. Claimant sustained a work related accident.

Claimant asserts a work related accident, however the SIF contends it is not.

Section 287.120.1 RSMo (2000) provides workers' compensation where an injured worker shows that his injury was caused by an accident "arising out of and in the course of the employee's employment." Section 287.020.2 defines accident as "an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury." 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 accident arises out of the employment relationship "when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury." *Abel By and Through Abel v. Mike Russell's Standard Service*, 924 S.W.2d 502,503 (Mo. 1996) (citations omitted). An injury occurs "in the course of" employment "if the injury occurs within the period of employment at a place where the employee reasonably may be fulfilling the duties of employment." *Shinn v. General Binding Corp.* 789 S.W.2d 230, 232 (Mo. Ct. App.1990). "Arising out of" and "in the course of" are two separate tests. "[B]oth must be met before [an employee] is entitled to compensation." *Automobile Club Inter-Insurance Exchange v. Bevel*, 663 S.W.2d 242, 245 (Mo. banc 1984).

I find Claimant sustained an accident while operating the machine. It is true Claimant has a long history of delusions, being out of touch with reality, and a poor historian. However, whether he was bending and pulling, or he crawled under the machine; Claimant was injured while assigned to work the machine and was doing so at the time the accident occurred. It is undisputed Claimant was lying next to the machine when EMS arrived the same day. It is also undisputed that X-rays revealed a fractured scapula. There is no indication the fracture was old. In fact, the doctor expected Claimant would experience pain for several weeks following the injury.

I find the accident occurred during Claimant's scheduled shift. I find the accident was unexpected, occurred suddenly and violently, and produced objective symptoms. Therefore, I find a causal connection between Claimant's work conditions and the March 11, 2005 injury.

2. Claimant sustained 20% PPD of the right shoulder from the March 11, 2005 primary work injury.

Claimant asserts SIF liability for either PPD or PTD benefits. SIF contends if Claimant is PTD, it occurred prior to the last injury or as a result of it.

In a workers' compensation proceeding, the employee has the burden to prove by a preponderance of credible evidence all material elements of his claim, including Second Injury fund Liability. *Meilves v. Morris*, 422 S.W.2d 335, 339 (Mo. 1968). Claimant must prove the nature and extent of disability by a reasonable degree of certainty. *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo. Ct. App. 1995). (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W. 3d 220, 223 (Mo banc 3003)).

In deciding whether the fund has any liability, the first determination is the degree of disability from the last injury considered alone. *Hughey v. Chrysler Corp.*, 34 S.W.3d 845, 847 (Mo. Ct. App.2000). [P] re-existing disabilities are irrelevant until the employer's liability for the last injury is determined. *Id.* If the last injury in and of itself rendered Claimant permanently and totally disabled, then the fund has no liability... *Id.*., *Landman v. Ice Cream Specialties, Inc.* 107 S.W.3d 240, 248 (Mo.banc 2003) (*Overruled on other grounds by Hampton*, 121 at 220).

The SIF is not bound to the terms of the settlement between Claimant and Employer. *Totten v. Treasurer of State*, 116 S.W.3d 624, 628 (Mo. Ct. App. 2003). Claimant sustained a scapular fracture, was hospitalized two days and off work for two months and four days before being released to light duty. Dr. Nogalski's last restriction limited lifting to ten pounds at chest level but no rating is in evidence, although Dr. Mangelsdorf noted "25% total and permanent injury to [Claimant's] shoulder. Claimant, who is right handed, uses his left arm now to play sports and has difficulty sleeping due to the fracture. Therefore, I find Claimant sustained 20% PPD of the right shoulder as a result of the March 2005 work injury.

Section 287.220.1 RSMo (2000), pertaining to SIF liability, provides that in a case of permanent partial or permanent total disability benefits, Claimant must prove the following:

- 1) There must be a determination that the employee has permanent disability resulting from the last injury alone which is a compensable; *Hughey v. Chrysler Corp.*, 34 S.W.3d 845, 847

(Mo. Ct. App. 2000), and

- 2) There was a pre-existing permanent disability that was serious enough to constitute a hindrance or obstacle to employment or re-employment which combines with the disability from the compensable work related injury to create a greater overall disability to the employee's body as a whole than the simple sum of the disability from the work injury and the pre-existing disability considered separately.

To establish entitlement to permanent total disability benefits, Claimant must prove a third factor:

- 3) There must be a determination that all of the injuries and conditions combined, including the last injury, have resulted in the employee being permanently and totally disabled.

I find Claimant met the first step. As noted earlier, Claimant proved that he sustained permanent partial disability as a result of the March 11, 2005 accident at work. However, Claimant failed to meet his burden for steps two and three.

3. Claimant did not show that the shoulder injury combined with the pre-existing psychological injury to create greater overall disability than the sum of each injury separately.

Although Claimant's psychological condition posed a hindrance or obstacle to employment or obtaining re-employment, Claimant failed to show that the psychological disability and shoulder injury combined to create greater overall disability than the simple sum of each injury considered separately. Dr. Mangelsdorf did not address the shoulder injury in the September 2005 report. He found Claimant totally disabled based on his pre-existing psychological condition without considering Claimant's fractured right scapula. Dr. Mangelsdorf further stated he would not discuss the right shoulder injury.

4. Claimant did not show that the right shoulder injury combined with the pre-existing psychological condition (or aggravation of it) to render Claimant permanently and totally disabled.

I find Claimant was permanently and totally disabled prior to March 11, 2005 for the following reasons. Expert opinion evidence is necessary to prove the extent of the pre-existing disability. *Plaster v. Dayco Corp.*, 760 S.W.2d 911, 913 (Mo. Ct. App. 1988). Dr. Mangelsdorf found Claimant totally disabled in September 2005 based on his voluminous medical history. He did not believe anything could be gained from interviewing Claimant given the "enormous amount of psychiatric history that had been well-recorded over the years." Dr. Mangelsdorf opined Claimant could not function in any environment, including work, as he had not done so in 41 years and there was "no reason to think he would in the future."

In the September 2005 report, Dr. Mangelsdorf did not state that the shoulder injury and pre-existing psychological condition combined to make Claimant permanently and totally disabled. Nor did Dr. Mangelsdorf find that the shoulder injury "aggravated or activated" the pre-existing psychological condition. He merely stated there was no need to discuss the shoulder injury because it had been finalized.

The test for permanent total disability is the worker's ability to compete in the open labor market in that it measures the worker's potential for returning to employment." *Sutton v. Vee Jay Cement Contracting Co.*, 37 S.W.3d 803, 811 (Mo. Ct. App. 2000) (*overruled on other grounds by Hampton*, 121 SW 3d at 223). The primary determination is whether an employer can reasonably be expected to hire the employee, given his or her present physical condition, and reasonably expect the employee to successfully perform the work. *Knisley v. Charleswood Corp.* 2007 WL 92369, 4 (Mo. Ct. App. 2007). (*citations omitted*).

I do not find Claimant was able to compete in the open labor market or had the potential to work full time before or after March 11, 2005. Total disability means the inability to return to any reasonable or normal employment; it does not require that the employee be completely inactive or inert." *Grgic v. P & G Const.* 904 S.W.2d 464, 466 (Mo.Ct. App. 1995).

I find that four days and several hours of work for Employer are not sufficient to show Claimant was able to compete in the open labor market. Claimant last earned income in 2001, four years before he was hired by Employer. No earnings were reported to Social Security in 2002, 2003 or 2004. Social Security found Claimant permanently and totally disabled prior to March 2005. All experts agree Claimant has virtually no potential for sustaining full time employment in his current condition. I find Claimant's pre-existing psychiatric condition alone prevented him from being able to work for any length of time in normal employment.

The mere fact that an individual might be able to work for brief periods of time, or on an irregular part-time basis, does not establish that he or she is employable in the open labor market. The fact that [a] claimant sometimes can work a few hours a day serves only to highlight his inability to work a regular schedule, which is a hallmark of "odd-lot" total disability. See *Larson*, 1C *Law of Workmen's Compensation* § 57.51(a), p. 10-283 et

seq. (1994), *Grgic v. P & G Const.* 904 S.W.2d 464, 466 (Mo. Ct. App. 1995). Claimant has worked 38 jobs with 28 employers during a ten year period. He has a history of terminating medical treatment, walking off the job, and abusing medical staff. The record is void of evidence indicating this instability had changed by March 11, 2005. I find Claimant was unable to perform the daily requirements of normal employment; therefore, he was unable to compete in the open labor market prior to March 11, 2005.

Additionally, Dr. McCoy, a treating psychiatrist, noted in 2001 that Claimant had no “conventional or consistent job, never provided for himself or anyone else.” In 2004, Dr. Johnson found Claimant unable to maintain employment due to his psychiatric condition. Ms. Browning testified credibly that Claimant was permanently and totally disabled prior to March 2005, as evidenced by his 28 jobs with 38 employers between 1985 and 2005.

Claimant’s own vocational expert concluded that if Claimant were hired, based on his history, he could not continue to function. Delusions, attempted suicide, and homicide ideations and severe anti-social behavior prevented Claimant from sustaining employment for very long. During the hearing, I observed Claimant become defensive, combative and evasive during the hearing despite the presence of a security officer and my constant request that he answer the questions being asked.

Mr. Lalk concluded Claimant could not secure or maintain employment in the open labor market. He opined Claimant could return to work as a cook, maintenance, parking lot attendant, small parts assembly or packager, if his psychiatric symptoms were controlled. However, based on Dr. Mangelsdorf’s opinion, Mr. Lalk believed Claimant’s psychiatric condition was too severe for him to be considered for employment.

Historically, Claimant’s GAF score ranged from 20 to 70 with the majority of scores being in the 30-40 range, indicating a serious condition. Although Claimant scored a GAF of 60 in December 2004, he did not return for his scheduled appointment on January 6, 2005, demonstrating continued noncompliance with treatment leading up to March 11, 2005 accident.

In Dr. Mangelsdorf’s May 2006 report, he opined Claimant’s mental condition deteriorated from stress caused by his inability to work (Exhibit K-7), which damaged his self-esteem, leading to a sense of shame and aggravating his pre-existing psychiatric condition.

However, it is well documented that Claimant’s condition had severely deteriorated prior to March 11, 2005. Dr. Mangelsdorf further opined Claimant’s inability to work was a new stressor on top of all the others during his lifetime, which aggravated everything else. Although Claimant’s psychological condition may have deteriorated after March 11, 2005, he was totally disabled prior to that date. The law does not provide compensation for being more totally disabled now than in the past.

Dr. Mangelsdorf did not address how Claimant’s recent separation from his long time girlfriend may have contributed to his deteriorated mental condition. The SIF is not liable for **post-accident** worsening of an employee’s pre-existing disabilities which are not caused or aggravated by the last work related injury or any conditions which arise after the last work related injury. *Garcia v. St. Louis County*, 916 S.W.2d 263, 266 (Mo. Ct.App. 1995) (*overruled by Hampton*, 121 S.W. 3d at 223) (Emphasis added).

Similarly, the SIF is not liable for permanent and total disability which existed **prior to the work accident**. The fact that Claimant may be ‘more totally disabled now than in the past’ does not compel SIF liability. Claimant historically required restraints or the presence of a guard to receive treatment due to verbal and physical abuse of medical staff. Claimant’s own medical expert thought Claimant was out to get him after he found Claimant totally disabled based on Claimant’s psychological history.

In addition, Ms. Browning and Mr. Lalk opined the following factors impeded Claimant’s ability to compete in the open labor market. Convictions made it difficult for Claimant to work with money, children or seniors.^[18] Authority issues, lack of a driver’s license, non-compliance with drug rehabilitation, limited education, low test scores, mild retardation, and lack of transferable skills challenge Claimant’s ability to compete in the open labor market. It should be noted that these obstacles existed prior to March 11, 2005.

Section 287.220 was created to encourage the employment of disabled workers without employers incurring more exposure under the Act than they would for workers without such disability. The SIF was not created to be an insurance policy; therefore it is limited in scope and purpose. Dr. Mangelsdorf found Claimant totally disabled based on the pre-existing psychological condition alone. Initially, he did not combine the right shoulder injury with aggravation of the pre-existing psychological condition. He did not find greater overall disability from the two injuries than was present from the simple sum of both injuries. Nor did he find the combination rendered Claimant permanently and totally disabled. I find Dr. Mangelsdorf’s opinion that Claimant would not function on the job in the future to be equivalent to being “permanent.”

Once a claimant is found to be permanently and totally disabled, the law does not provide for a claimant to become more permanently and totally disabled nine months later. For these reasons, I find the SIF is not liable for Claimant’s permanent and total disability as it existed prior to March 11, 2005.

Claimant desires to work and has attempted to do so for years; despite his significant mental condition. However, I find no employer in the ordinary course of business would reasonably be expected to employ Claimant in his present physical condition, and reasonably expect him to successfully perform work. I find Claimant is not employable in the open labor market due to his pre-existing psychological condition. Therefore, I find Claimant is not permanently and totally disabled as a result of a combination of the right shoulder injury and the pre-existing mental condition or aggravation of it.

As Claimant failed to show the synergistic effect of the right shoulder and pre-existing injury combined, there is also no SIF liability for PPD.

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CONCLUSION

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Claimant was PTD prior to March 11, 2005; therefore, the SIF is not liable for PTD or PPD benefits. All other issues are moot.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

[1] Exhibit A, Stipulation for Compromise Settlement was initially admitted. However, the exhibit was not considered for any purpose in this proceeding as it is non-binding on the SIF, who was not a party. *Totten v. Treasurer of State* 116 S.W.3d 624, 628 (Mo. Ct. App. 2003).

[2] Exhibits II-VI were admitted only for impeachment. Claimant provided the following case law in support of the objection: *State of Missouri v. AYA*, 927 S.W.2d 951 (Mo. Ct. App. 1996), *State of Missouri v. Phelps*, 677 S.W.2d 418 (Mo. Ct. App. 1984), and Section 491.050. It should be noted that Claimant admitted to the convictions during the hearing which I find sufficient for impeachment purposes. See *Phelps*, 677 S.W.2d at 420.

[3] Exhibits VII and VIII are not certified.

[4] After the hearing, the SIF submitted a written motion to either supplement Exhibit VI or admit a new exhibit reflecting Claimant's conviction for receiving stolen property in 2006. SIF asserts the information is needed to clarify the record. However, SIF concedes Claimant admitted the conviction during the hearing, the information is not offered for impeachment, does not impact the outcome, a new trial is not sought, the evidence is supplementary, and. For these reasons, the motion is denied.

[5] Ms. Browning based her opinion on the results of Mr. Lalk's tests where Claimant scored first and second grade level.

[6] Ms. Browning noted Dr. Nogalski rated Claimant 12% PPD referable to the right shoulder, however the record is not in evidence but is included because she relied on it.

[7] Physical therapy records referenced by Ms. Browning are not in evidence. However, they are included because she relied on them. It should be noted that Mr. Lalk references therapy records which are also not in evidence.

[8] Mr. Lalk referenced a GAF score of 45 in January 2004, 41 in January 2004, 55 on 10-15-04 and 60 on 12-9-04. Ms. Browning referenced a GAF

score of 35 in 2005 by Dr. Mangelsdorf and 30 in May 2006, reportedly influenced by paranoid delusions. All GAF scores may not be in evidence; however, they are included because Mr. Lalk and Ms. Browning relied on them.

[9] Based on the Wide Range Achievement Test, Revision 3 and the Adult Basic Learning Examination, Level 1 administered by Mr. Lalk.

[10] Physical therapy records are included because Mr. Lalk relied on them; however, they are not in evidence.

[11] Dr. Mangelsdorf testified he assigned a GAF score of 35 in September 2005 which denotes significant disability. The GAF score of 30 in May 2006 indicated Claimant was worse according to Dr. Mangelsdorf.

[12] Formulated by the Committee on Psychiatry in Industry Group for the Advancement of Psychiatry, Job Loss- A Psychiatric Perspective, 1982 (Exhibit D), and Nick Kates, M.B.B.S., Barrie S. Grieff, M.D., & Duane Q. Hagen, M.D., The Psychosocial Impact of Job Loss - 1990 (Exhibit E).

[13] Claimant was admitted due to alleged depression, voicing suicidal ideation, and "saving" medication. Claimant was diagnosed with schizoaffective disorder, drug dependence, and seizure disorder (Exhibit F).

[14] While hospitalized, Claimant reportedly threatened to jump off a bridge, was non compliant with medication, tested positive for cocaine use and made statements that he planned to use explosives to destroy his surroundings.

[15] It should be noted that the discharge diagnosis from BJC-BH dated March 29, 2005, lists the following: diagnoses: schizoaffective disorder-mixed, antisocial personality disorder, H/o seizure, social – severe.

[16] I find Claimant to be the same patient listed as Idaho AB Trauma in medical records because the social security number, date of birth and patient ID numbers are the same. The hospital Chaplin is noted to respond to a Trauma call and the patient identified himself as Claimant. Also, there is one medical record that lists both names. However, the record is not clear why Claimant was listed as Idaho AB Truman. Note: SIF raises a Section 287.120.6 defense RSMo 2000 based on drug use. However, the issue was not raised during the hearing, and is therefore not considered. See *Spacewalker, Inc. v. American Family*, 954 S.W. 2d 420, 424 (Mo. Ct. App. 1997).

[17] The medical record is not in evidence; however it is included because Dr. Nogalski relied on it. Note: this contradicts Ms. Browning's report that Dr. Nogalski rated 12% of Claimant's right shoulder.

[18] Claimant also testified that he had stolen property and sexually molested a minor in the past.