

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

Injury No.: 02-002046

Employee: Josephine Chambers
Employer: Sunnen Products Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modification set forth below.

Discussion

Future medical treatment

Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove a reasonable probability that she has a need for future medical treatment that flows from the work injury. *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 51-4 (Mo. App. 2008). We are convinced that employee has proven she has a need for future medical treatment flowing from the work injury.

Employee presented expert medical testimony from Dr. Volarich, who opined that employee likely will need ongoing care for pain related to the work injury using modalities including but not limited to narcotics and non-narcotic medications, muscle relaxants, physical therapy, epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units, radiofrequency ablation procedures, evaluation for a spinal cord stimulator, and similar treatments as directed by the current standard of medical practice for symptomatic relief of employee's complaints. With respect to surgery, Dr. Volarich opined that additional surgeries are not presently indicated, while noting that orthopedic hardware in the spine can sometimes become infected, loosen, or fail.

Employee also provided expert medical testimony from Dr. deGrange, who opined that employee should undergo an additional back surgery to correct severe stenosis at the level above employee's prior fusion (described variously in the medical records as either L3-4 or L4-5 owing to the anomaly of employee having six lumbar vertebrae), and that employee's need for additional surgery at this level flows from the effects of the prior surgeries necessitated by the work injury.

Employer, on the other hand, presented expert medical testimony from Dr. Coyle, who opined that he does not see any indication that future medical treatment will be needed related to employee's injury of January 3, 2002. Dr. Coyle's opinion on this point stems from his opinion that the work injury and subsequent surgeries did not cause the pathology in employee's spine at levels adjacent to those that were surgically corrected, but instead that employee is suffering from normal degeneration in her spine due to age. Dr. Coyle described, in detail, the technique he employed during the lumbar fusion surgery he performed in April 2006, and explained that he specifically chose that technique because of the likelihood it would minimize postoperative stress to the adjacent levels of employee's lumbar spine. While we find Dr. Coyle's opinion with respect to postoperative degeneration and the absence of any additional surgical indication to be more

Employee: Josephine Chambers

persuasive than that provided by Dr. deGrange, we note that Dr. Coyle did not specifically address the issue whether conservative treatment might be indicated to relieve employee's ongoing back pain and symptoms. Dr. Coyle thus does not appear to contradict the opinion from Dr. Volarich that nonsurgical, conservative treatment may be needed in light of employee's serious low back injury and subsequent surgeries.

After careful consideration of all of the expert medical opinions in this factually complex matter, we ultimately deem the opinion of Dr. Volarich to be most persuasive as to the issue whether employee may need future medical care as a result of the work injury. We find that there is a reasonable probability that employee will have a need for nonsurgical treatment to cure and relieve her ongoing low back pain and discomfort flowing from the work injury and related surgeries. We conclude, therefore, that employer is obligated under § 287.140.1 to furnish those non-surgical future medical treatments, that may reasonably be required to cure and relieve the effects of the work injury.

Conclusion

We modify the award of the administrative law judge as to the issue of future medical treatment.

Employee is entitled to, and employer is hereby ordered to provide, those future medical treatments, with the exception of additional back surgery, that may reasonably be required to cure and relieve employee from the effects of the work injury.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued December 12, 2013, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission approves and affirms the administrative law judge's allowance of an 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 31st day of July 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Josephine Chambers

Injury No.: 02-002046

Dependents: n/a

Employer: Sunnen Products

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

Additional Party: Second Injury Fund (SIF)

Insurer: Self

Hearing Date: August 6 and September 4, 2013

Checked by: KMH

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: January 3, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured her low back while lifting boxes at work.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: low back and body as a whole
14. Nature and extent of any permanent disability: 50% body as a whole referable to the low back from Employer and 50 weeks of PPD from the SIF
15. Compensation paid to-date for temporary disability: unknown
16. Value necessary medical aid paid to date by employer/insurer? \$119,874.00

Employee: Josephine Chambers

Injury No.: 02-002046

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$470.46
- 19. Weekly compensation rate: \$313.32/\$313.32
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

200 weeks of permanent partial disability from Employer	\$62,664.00
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22. Second Injury Fund liability: Yes

50 weeks of permanent partial disability from Second Injury Fund	\$15,666.00
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TOTAL:	\$78,330.00
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23. Future requirements awarded: None

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

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

Nile Griffiths

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Josephine Chambers

Injury No.: 02-002046

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Sunnen Products

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

Additional Party: Second Injury Fund

Insurer: Self

Checked by: KMH

A hearing was held on the above captioned matter August 6, 2013. The parties requested the record be kept open to review a proposed exhibit. The parties agreed the exhibit was admissible and the record was closed September 4, 2013. Josephine Chambers (Claimant) was represented by attorney Nile Griffiths. Sunnen Products (Employer) was represented by attorney Kevin Leahy. The SIF was represented by Assistant Attorney General Tim Maurer.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Claimant alleges she is totally disabled as a result of her work injury.

STIPULATIONS

The parties stipulated to the following:

1. Claimant sustained an injury by accident January 3, 2002, in the course and scope of her employment.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law on the date of injury.
3. Employer's liability was self insured.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was \$470.46. Her rated for TTD, PTD, and PPD benefits is \$313.32.
6. Claimant was paid her full salary while receiving authorized treatment from April 24, 2006 through June 19, 2006.
7. Claimant received \$119,874.00 in medical benefits.

ISSUES

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

1. Future medical treatment.
2. Medical causation with respect to future medical treatment.
3. Permanent disability.
4. SIF liability.

FINDINGS OF FACT

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

1. Claimant is a 61 year old female who appeared at trial walking with the assistance of a cane. She began working for Employer in 1985. She spent the majority of her career with Employer working full-time as a Bench Assembler. She worked on the bagging machine and lifted boxes, frequently lifting 30 pounds.
2. Prior to her 2002 work injury, Claimant had a compensable left hand injury and a compensable low back injury. In March 1992, she developed pain, numbness and tingling in her left hand. She had a carpal tunnel release but continued to have difficulty working on the assembly line and had difficulty with repetitive activities. Claimant settled this case with Employer for 17.5% PPD of the left hand. She has had no treatment for her hand since the 1992 injury.
3. In 1993 and 1995 she treated with Dr. Aubuchon and Dr. Williams for bilateral foot and knee problems. She had a number of injections in her toes to relieve her hammertoe and testified she had trouble standing for a long time at work. She was diagnosed with chondromalacia and had cortisone injections in her knees. She testified she often had to sit down at work because of knee swelling. She had no treatment on her knees from 1999 until shortly before her knee replacement in 2008.
4. In 1993 she injured her low back at work. She received conservative treatment for her back strain, and settled this case for 10% of the body in 1994. She settled her SIF claim based on a prior 17.5% PPD to her left hand. She worked full duty with no restrictions following this injury until her 2002 injury. She testified she did not have back complaints at the time of her 2002 work injury.
5. On January 3, 2002, Claimant was lifting boxes when she developed a sharp pain in her low back that radiated into her right leg. She reported the injury to Employer, and they provided treatment. Claimant initially treated with Dr. Wagner who diagnosed a lumbar herniated disc. He recommended conservative treatment and light duty work restrictions.

6. Claimant's low back and right leg pain continued and Employer sent her to Dr. Coyle in June 2002. He also diagnosed a herniated disc and recommended continued conservative treatment. Dr. Coyle notes Claimant had some improvement, but continued to have low back pain with some radiation into her right lower extremity. He recommended continued conservative treatment and referral to a physiatrist, Dr. Tate. She examined Claimant, opined Claimant's symptoms were magnified and recommended a functional capacity evaluation.
7. In July 2002 Dr. Tate returned Claimant to work regular duty. Claimant's pain continued, and she went to her primary physician who referred her to Dr. Young. He performed a microdiscectomy on the right side at the lowest lumbar disc in November 2002. Claimant had relief from her pain for a short time, but her low back and right leg pain returned shortly after the surgery.
8. Claimant returned to work with light duty restrictions. Her low back and right leg pain continued, and she continued conservative treatment.
9. In March 2006 Claimant returned to Dr. Coyle, and he ordered an updated MRI. He opined the MRI showed Claimant had developed spondylolisthesis with a disc protrusion at the level above her 2002 surgery, and he recommended a fusion. He related the need for fusion to the work injury. The fusion was done April 24, 2006, and Dr. Coyle's follow up notes indicate Claimant's symptoms improved. By June 5, 2006, Claimant was walking almost a mile per day, and had significant improvement in her leg and back pain. Dr. Coyle released her to work with a lifting restriction in August 2006.
10. Claimant testified the surgery did not help or even provide temporary relief. She continued to work light duty. Her light duty job consisted of sitting at a machine and using a computer to stamp boxes 40 hours a week. This was not an assembly line job, and she did not do any heavy lifting. She testified she could stand and sit as needed, and sometimes she laid down on her break. She testified this light duty job was to accommodate her back pain, and not her knee problems.
11. Claimant returned to Dr. Coyle September 27, 2006, with new complaints of pain in her left thigh. She had no new injuries. Dr. Coyle ordered an MRI to rule out any adjacent segment problems. He opined the MRI showed stenosis and a synovial cyst impinging on the thecal sac at the level above her fusion. He opined this correlated with her left thigh symptoms, it is a degenerative condition, and it is unrelated to her prior surgeries. He referred her to another doctor to have the cyst treated. He released her at MMI and later opined she had sustained 20% PPD to the lumbar spine due to the fusion.
12. Claimant's back symptoms continued. Her doctor at the JFK clinic referred her to Dr. deGrange, and she first saw him in December 2009. Claimant stated she had no significant improvement following her surgeries, and she continued to have low back pain that worsened with sitting, standing, walking, and lying down. She had numbness and tingling in her low back that radiated down her right side. Dr. deGrange reviewed a recent MRI, and opined it showed the prior fusion was in normal position and it showed

significant stenosis and facet arthropathy at the level above the fusion. He treated Claimant with injections, physical therapy, and medications.

13. Her complaints continued, and Dr. deGrange recommended another fusion. Claimant elected not to have this third surgery because she was scared. Dr. deGrange testified this third surgery was necessitated by the 2006 fusion because Claimant's degeneration in her spine had escalated due to the increased stress from the adjacent level fusion.
14. While Claimant was treating for her back and working light duty, her left knee problems increased. She used a cane when she had bad days due to knee pain. Conservative treatment failed, and she had a total knee replacement on March 28, 2008. The knee replacement is not related to her primary injury. She testified she last worked March 27, 2008, and Employer terminated her for job abandonment after her knee surgery. Claimant testified Employer had received release papers from the doctor, but Claimant had not gotten them and did not know she was released to work.
15. Claimant has not worked since March 2008, and she applied for social security disability. Claimant testified without the knee replacement, she would have kept working her light duty job. She also testified if Employer had offered her back her light duty job in late 2008, she could not have done it. She testified she believes she can't work at this light duty job now because her low back pain is so severe. Medication helps a little bit, but her pain remains at an 8-8 ½ all day.
16. Claimant had no psychiatric treatment before the 2002 injury. She told her primary care doctor she was depressed because of her low back pain and decreased physical abilities. He prescribed Lexipro in 2007, but Claimant was not able to tolerate the medication. Claimant testified she developed depression following this injury, and feels she does not want to be around others or be in public very often. She testified the pain has taken away her ability to do her daily activities. She goes to church but does not go out socially. She cries frequently. She was outgoing and social before the injury, and now does not want to do anything. She does less housework and yard work. She does not go out dancing anymore.
17. Claimant continues to have constant low back pain that radiates down her right leg. She uses her father's cane at times. The cane was not a prescription or recommendation from any of her doctors. She takes daily prescription pain medications. Claimant lives with her grandchildren. She can care for herself, but needs her granddaughter's help with shoe laces and buckles. She testified she can cook and do dishes if she pulls up a chair. She can stand about 15-20 minutes before she needs to sit down. She sits for about an hour and then needs to stand up.
18. She testified on a typical day she doesn't do anything. She stays in the house and sometimes goes to her sister's house. She sleeps off and on. She did not have problems sleeping before the work injury, but now wakes up throughout the night because of back pain. She occasionally goes to the YMCA to use the steam room and some of the machines. She can exercise for about half an hour and uses the treadmill on a slow speed, the stationary bike, and light weights. She has not been there for a few months. She

testified she went to the YMCA five days a week prior to the 2002 injury and did aerobics classes and most of the machines.

19. Claimant's expert, Dr. Volarich, reviewed the records, examined Claimant, and issued two reports. In his 2007 report, he opined Claimant sustained 50% PPD to her low back and could continue to work with restrictions. In his 2011 report, he noted Claimant was awarded SSD in October 2008. Her symptoms had worsened and she had constant low back pain with spasms. Medications provided little pain relief. She had restricted ability to sit, stand, walk, or do household chores. He noted Claimant appeared depressed, and his physical exam showed significant reduced range of motion and pain with all motions. Dr. Volarich diagnosed disc herniations, postlaminectomy syndrome, and depression. He did not find a synovial cyst on his review of the 2009 MRI. He increased his disability rating on the primary injury, rated the prior injuries, and opined Claimant was permanently and totally disabled as a result of the work injury in combination with her prior injuries. He imposed a number of restrictions on her activity and recommended continued pain management.
20. Dr. Coyle opined Claimant did not have postlaminectomy syndrome, and did not have a problem with her fusion. He opined she had successful resolution of her right leg pain which had developed as a result of the work injury. He diagnosed Claimant with degenerative changes in her spine, including a synovial cyst. The cyst is not related to her work injury, and he concluded Claimant did not need further treatment as a result of the work injury. He rated Claimant's disability from the fusion at 20% of the body.
21. Claimant's psychiatric expert, Dr. Liss, reviewed the records, interviewed Claimant and had her complete numerous questionnaires. He testified he uses these checklists because there are no objective tests in psychiatry. He testified the MMPI is not standardized for the most significant work injury type of psychiatric conditions, which are post-concussion syndrome and PTSD. He diagnosed pain syndrome, major depression, and PTSD as a result of her work injury. He opined the combination of her pain and psychiatric symptoms from her primary injury cause her to be permanently and totally disabled. He noted Claimant is discouraged about her future, sees a lot of failures in her life, cried a lot, and has little pleasures in life, but testified these could also be the result of factors other than the work injury. He agreed Claimant has stress in her life related to her daughter's drug problems and incarcerations and related to the fact Claimant is raising her three grandchildren, but Dr. Liss opined these stressors do not cause any psychiatric disabilities and are not relevant to her psychiatric condition.
22. Employer's psychiatric expert, Dr. Stillings, reviewed the records, interviewed Claimant and administered psychiatric tests. He noted the questionnaires used by Dr. Liss are not generally accepted in forensic psychiatry because they are transparent to the test taker and have no internal validity scales. He opined Claimant incorrectly attributes all of her life's and personal problems to her low back pain and minimizes the natural stress associated with her daughter's problems and with raising three teenagers. He interpreted her MMPI to show chronic depression, alienation, and over reporting of subjective symptoms. Dr. Stillings diagnosed numerous psychiatric conditions, but did not relate any of them

causally to the work injury. He testified Claimant could benefit from counseling for her preexisting conditions and personality disorder, which are not related to the work injury.

23. Claimant's vocational expert, Jim England, reviewed the records, met with Claimant and issued a report. He noted Claimant came across as tired, depressed, in a great deal of pain, and walking with an obvious limp and use of a cane. He opined her appearance would cause her to not be picked over virtually any other candidate for an entry-level position. He opined Claimant did not have skills that would make her marketable. He concluded given the effects of Claimant's back and longstanding knee problems alone, she is incapable of sustaining regular employment. Her pain causes her to lose sleep at night and need to recline throughout the day, and this would make her incapable of lasting in any type of work setting. He agreed she did not need to recline during the day or use a cane until after her total knee replacement.

RULINGS OF LAW

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

- 1. Claimant sustained 50% PPD as a result of her primary injury, and is entitled to PPD benefits from Employer totaling \$62,664.00.**

Claimant alleges she is permanently and totally disabled as a result of her work injury. Her experts opine she is totally disabled due to a combination of her primary and prior injuries and conditions. Employer's experts opine she is able to return to work.

Section 287.020.7 (RSMo 2000) defines total disability to mean the inability to return to any employment and not merely the inability to return to the employment in which Claimant was engaged at the time of the accident.

After her primary injury, Claimant continued to work full duty until her first back surgery in November 2002. Claimant began working full-time with restrictions in April 2003. She continued to work full-time with restrictions and undergo conservative treatment until her April 2006 back fusion by Dr. Coyle. Dr. Coyle's records indicate Claimant did well following the fusion, and she returned full-time to her light duty position by the end of June 2006.

In July 2007, Claimant's expert, Dr. Volarich, opined she could continue to work with restrictions, and he rated her disability at 50% of the body. Claimant continued to work full-time for eight months, until her knee condition deteriorated and necessitated a total knee replacement.

Claimant did not return to work after her knee replacement, and she applied for SSD. Claimant testified she would have kept working her light duty job had it not been for her knee replacement.

In 2011, Claimant returned to Dr. Volarich and advised him her symptoms had worsened and her activities were more restricted. He then opined she was totally disabled due to the combination of her primary and prior injuries.

Claimant told her experts and testified at trial that her back symptoms substantially restrict her activities. Her testimony regarding her restrictions contrasts sharply with her activities shown in Exhibit 1 in 2012.

Claimant also alleges she has developed depression as a result of the primary injury. She testified she is depressed because of her constant back pain and inability to work. She had no psychiatric treatment prior to her injury. In 2007 her primary physician prescribed Lexipro, but after a few days, she was not able to tolerate the medication. There is no evidence Claimant tried any other medication or sought any psychiatric care, treatment, or counseling since 2007.

Claimant has significant personal psychological stressors that her expert opines are not relevant to her psychiatric condition. Dr. Stillings opined Claimant's psychiatric conditions are not related to her work injury. He opined Claimant incorrectly attributes all of her life's and personal problems to her low back pain and minimizes the natural stress associated with her daughter's problems and with raising three grandchildren.

I find the opinion of Dr. Stillings more persuasive, and I find Claimant has sustained no permanent psychiatric disability as a result of the primary injury.

I find Claimant is not permanently and totally disabled. I believe she may have more restrictions since her 2008 knee replacement, but the records reflect she was improving with respect to her primary injury. While she may not be able to return to her work as a bench assembler, the evidence shows she was able to work full-time with restrictions until her knee replacement. After the knee replacement, Claimant began using a cane and needing to recline periodically throughout the day.

I find Claimant has sustained 50% PPD to the back as a result of the primary injury, and she is entitled to \$62,664.00 in compensation from Employer.

2. Claimant is not entitled to future medical treatment.

In 2009 Dr. deGrange reviewed a recent MRI and opined it showed the fusion was in normal position but Claimant had developed stenosis and facet arthropathy at the level above the fusion. He recommended a third surgery to address this condition.

Claimant has not had treatment since late 2010. Dr. Volarich opined in 2011 that additional surgery was not indicated and made his typical recommendations for ongoing conservative treatment as needed. Dr. Coyle opined Claimant's fusion was solid, it resolved her leg symptoms, and Claimant did not need additional treatment.

Claimant must show by reasonable probability that she is in need of additional medical treatment. I find Claimant has not established by reasonable probability that she is in need of additional treatment as a result of her work injury.

3. Claimant is entitled to \$15,666.00 in PPD benefits from the SIF.

Claimant has established a right to recover PPD benefits from the SIF. SIF liability is triggered once Claimant establishes she has a preexisting permanent partial disability that was a hindrance or obstacle to employment or to reemployment and meets the statutory thresholds. Claimant's prior carpal tunnel syndrome settled for 17.5% PPD. Based on Claimant's testimony and the medical records, I find that accurately represents her disability and this injury was a hindrance or obstacle to employment or to obtaining re-employment.

Claimant has other prior disabilities that should be included in the calculation of SIF liability. I find her prior injuries and conditions resulted in 10% PPD to the body referable to the low back, 10% PPD to the right knee, 15% PPD to the left knee, 10% PPD to the left foot at the 110 level, and 10% PPD to the right foot at the 110 level.

I find these prior disabilities combine with the disability from the primary injury to create a greater overall disability that is substantially greater than that which would have resulted from the last injury alone. I find that combined disability exceeds the sum of the primary and prior disabilities by 50 weeks, and the SIF is liable for that 50 weeks, or \$15,666.00.

Date: _____

Made by: _____

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