

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

Injury No. 10-006350

Employee: Enisa Comic
Employer: Wal Mart Associates, Inc.
Insurer: Illinois National Insurance Co.
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 modifications set forth below.

Preliminaries

The parties asked the administrative law judge to resolve the following issues: (1) medical causation; (2) liability of employer for past medical benefits of \$30,430.18; (3) liability of employer to provide future medical care; (4) employer's liability for temporary total disability benefits; (5) nature and extent of permanent disability; (6) whether employee is permanently and totally disabled; and (7) Second Injury Fund liability.

The administrative law judge rendered the following determinations: (1) the work injury on February 2, 2010, is not the prevailing factor in causing employee's psychiatric condition; (2) employee suffered a 20% permanent partial disability of the body as a whole referable to the lumbar, cervical, and thoracic spines as a result of the work injury on February 2, 2010; (3) employee is not permanently and totally disabled; (4) even if it is assumed employee is permanently and totally disabled, there is no evidence employee suffered from a psychiatric condition prior to the primary injury that constituted a hindrance or obstacle to employment or re-employment, or combined in any way with the primary injury to render employee permanently and totally disabled; (5) the claim against the Second Injury Fund is denied; (6) employer is not liable for past medical treatment; (7) employer is not liable for future medical treatment; and (8) employer is liable for 19 and 3/7 weeks of temporary total disability benefits from February 2, 2010, until June 18, 2010.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in declining to award permanent total disability benefits; (2) in failing to award past medical bills; (3) because the amount awarded in temporary total disability benefits is inadequate; and (4) in failing to award future medical care.

The Second Injury Fund filed a timely application for review with the Commission alleging: (1) the Second Injury Fund is not liable for permanent total disability benefits; and (2) employee failed to prove a compensable primary injury.

Employee: Enisa Comic

- 2 -

For the reasons stated below, we modify the award of the administrative law judge referable to the issues of: (1) medical causation; (2) nature and extent of permanent disability; (3) future medical care; and (4) Second Injury Fund liability.

Discussion

The administrative law judge's award sets forth the stipulations of the parties and the administrative law judge's findings of fact and conclusions of law referable to the numerous issues disputed at the hearing. We adopt and incorporate those findings and conclusions to the extent that they are not inconsistent with the modifications set forth in our award. Consequently, we make only those findings of fact and conclusions of law pertinent to our modifications herein.

Medical causation/nature and extent of permanent disability

We defer to and adopt as our own the administrative law judge's conclusion that the accident of February 2, 2010, was the prevailing factor causing employee to suffer lumbar, thoracic, and cervical strains with an associated 20% permanent partial disability of the body as a whole. We disagree, however, with her conclusion that the accident was not the prevailing factor causing employee to sustain any psychiatric injury. Section 287.020.3(1) RSMo provides, in relevant part, as follows:

An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Both of the parties' chosen evaluating psychiatric experts testified that the accident was the prevailing factor causing employee to suffer psychiatric injury with associated permanent partial disability. We find the uncontested expert opinions in this regard from Drs. Brockman and Stillings to be persuasive. We find that, in addition to the lumbar, thoracic, and cervical strains identified in the administrative law judge's award, the accident was the prevailing factor causing the resulting medical condition of major depressive disorder, as well as an associated psychiatric permanent partial disability of 2% of the body as a whole.

Past medical expenses

We agree with the administrative law judge's conclusion that employer is not liable to pay employee's past medical expenses, but for somewhat different reasons than stated in the administrative law judge's decision. The administrative law judge concluded that employee exercised her right under § 287.140 RSMo to select her own medical providers at her own expense. See *Award*, page 15. We disagree. Employee filed her claim for compensation in this matter on February 8, 2010, a mere six days after the accident of February 2, 2010. Therein, employee specifically demanded additional medical care, thus placing employer on notice of her position that she required additional medical treatment as a result of the accident. In response, employer chose to reject employee's request for additional treatment, relying on the opinions from its authorized treating physicians that employee did not need additional care. Faced with this rejection of her demand for additional medical care from employer, employee sought treatment on her own. Under the relevant and controlling case law, these circumstances preclude a finding that employee's claim for past medical expenses was "unauthorized," as there was no question of employer authorizing

Employee: Enisa Comic

- 3 -

additional treatment. See, e.g., *Downing v. McDonald's Sirloin Stockade*, 418 S.W.3d 526, 529 (Mo. App. 2014)(noting that “where an employer has refused requested treatment, the employer will be liable for medical treatment obtained at the employee's own expense”).

In order to support an award of past medical expenses, however, there must be a showing that the treatment giving rise to the expenses was “reasonably required after the injury or disability, to cure and relieve from the effects of the injury.” § 287.140 RSMo. With regard to this question, we find most persuasive the following testimony from Dr. Coyle:

Q. What did you advise Ms. Comic regarding the medications she was receiving?

A. I advised her she was being treated inappropriately. It was inappropriate to keep someone on high doses of narcotics and muscle relaxers for a period of three years, and, in fact, it was even more inappropriate in the absence of any objective findings on examination and in the absence of a diagnosis. In fact, it was my impression that her biggest problem was the fact that she was on those medications.

Transcript, page 647.

We agree with Dr. Coyle that the disputed treatment employee received was inappropriate, and may even have worsened or hindered her recovery. As explained more fully below, we are persuaded that employee’s primary difficulty is her extreme psychiatric response to the relatively minor physical injuries she sustained on February 2, 2010. We conclude that the disputed treatment was not reasonably required to cure and relieve the effects of employee’s work injuries, and deny employee’s claim for past medical expenses for that reason.

Future medical care

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 defer to and adopt as our own the administrative law judge’s finding that Dr. Coyle provided the more persuasive opinion with regard to whether there is a reasonable probability that employee needs future medical care to cure and relieve the effects of her physical lumbar, thoracic, and cervical strain injuries. We find particularly persuasive the opinion from Dr. Coyle (substantially corroborated by Dr. Brockman) that it would be beneficial for a physician to attempt to wean employee from the “massive” amount of narcotic pain medications and muscle relaxers she is presently taking. *Transcript*, page 648. As Dr. Brockman credibly testified, it appears employee is actually getting worse rather than improving under her current medication regime, and her use of Vicodin up to four times per day, combined with Ambien, Robaxin, and Seroquel is particularly concerning in light of the potential for iatrogenic complications and adverse side effects.

On the other hand, we have found that the accident of February 2010 caused employee to suffer a psychiatric injury, which requires us to revisit the question whether employee has any need for future psychiatric treatment flowing from the primary injury. Like the administrative law judge, we tend to agree with Dr. Stillings’s opinion that the bulk of employee’s current psychiatric disability is attributable to preexisting psychiatric injury

Employee: Enisa Comic

- 4 -

sustained as a product of her experiences in the Bosnian War; however, this does not rule out an award of future psychiatric care against the employer, because “it is immaterial that the treatment may have been required because of the complication of pre-existing conditions, or that the treatment will benefit both the compensable injury and a pre-existing condition.” *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 519 (Mo. App. 2011). After careful consideration, we deem most persuasive the opinion from Dr. Brockman (and so find) that employee will need ongoing treatment of her psychiatric symptoms with both medication managed by a psychiatrist and psychotherapy with a psychologist or therapist, including translation services.

We conclude that there is a reasonable probability that employee needs future psychiatric treatment to cure and relieve the effects of her work injury. Employer is ordered to provide employee with that future psychiatric care that may reasonably be required to cure and relieve the effects of her psychiatric injury.

Second Injury Fund liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in “all cases of permanent disability where there has been previous disability.” As a preliminary matter, the employee must show that she suffers from “a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed...” *Id.* The Missouri courts have articulated the following test for determining whether a preexisting disability constitutes a “hindrance or obstacle to employment”:

[T]he proper focus of the inquiry is not on the extent to which the condition has caused difficulty in the past; it is on the potential that the condition may combine with a work-related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition.

Knisley v. Charleswood Corp., 211 S.W.3d 629, 637 (Mo. App. 2007)(citation omitted).

The administrative law judge appears to have credited the testimony from Dr. Stillings that employee’s psychiatric disability is a product of her war experiences, yet she also found there is no evidence employee suffered from a psychiatric condition prior to the primary injury that constituted a hindrance or obstacle to employment or re-employment. See *Award*, pages 14, 15. We disagree with the latter finding. Instead, we deem most persuasive Dr. Stillings’s opinion (and so find) that employee suffered considerable preexisting permanent partial disability referable to post-traumatic stress and major depressive disorders.¹ We conclude that these conditions were serious enough to constitute hindrances or obstacles to employment, because we believe employee’s preexisting post-traumatic stress and major depressive disorders had the potential to

¹ We acknowledge employee’s testimony suggesting she didn’t believe she experienced any psychiatric disability before the primary injury. We deem, however, Dr. Stillings’s expert medical opinion more persuasive than employee’s lay opinion of her psychiatric health before the primary injury. Likewise, we acknowledge the evidence that employee was not under the care of a psychiatrist or taking prescription medications for psychiatric illnesses before the primary injury, but we do not deem these circumstances to be preclusive of a finding of preexisting disability where the persuasive opinion from Dr. Stillings establishes otherwise; obviously, the mere absence of treatment for a psychiatric condition does not disprove its existence.

Employee: Enisa Comic

- 5 -

combine with a future work injury to result in worse disability than would have resulted in the absence of these preexisting conditions. See *Wuebbeling v. West County Drywall*, 898 S.W.2d 615, 620 (Mo. App. 1995). Indeed, this potential seems to have been borne out by the very facts of this case, where most of the treating and evaluating experts agree that there is a psychiatric component to employee's unusually severe pain reaction to the relatively minor February 2010 back and neck strain injuries.

We turn now to the question of permanent total disability. Section 287.220.1 requires us to first determine the compensation liability of the employer for the last injury, considered alone. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo. 2003). If employee is permanently and totally disabled due to the last injury considered in isolation, the employer, not the Second Injury Fund, is responsible for the entire amount of compensation. *Id.*

We have adopted the administrative law judge's finding that, as a result of the accident on February 2, 2010, employee sustained a 20% permanent partial disability of the body as a whole referable to lumbar, thoracic, and cervical strains; and we have also found that the work injury caused employee to sustain a 2% permanent partial disability of the body as a whole referable to psychiatric injury in the form of major depressive disorder. We find that employee is not permanently and totally disabled as a result of the last injury considered in isolation.

We turn now to the question whether employee has proven that the primary injury combines with her preexisting psychiatric disability to render her permanently and totally disabled. Notably, Dr. Brockman believes employee is permanently and totally disabled on a psychiatric basis alone. Dr. Brockman explained that employee's apathy, panic attacks, and cognitive symptoms would psychiatrically hinder her from being able to find meaningful employment. Ms. Gonzalez agreed employee's psychiatric symptoms could exclude her from the workforce, if severe enough.

While we are not persuaded by Dr. Brockman's opinion that all of employee's psychiatric disability results from the primary injury considered alone,² we do find compelling Dr. Brockman's opinion that employee's psychiatric condition is the primary obstacle to her competing for employment in the open labor market. We also find Dr. Brockman's testimony that the accident of February 2010 was a "catalyst" for employee's psychiatric decline to constitute persuasive evidence that the primary injury has combined with employee's preexisting psychiatric disability to render her unable to compete for work; Dr. Brockman explained that employee's prior traumatic experiences "affect how [she] responds to stress and copes with them or fails to cope." *Transcript*, pages 191, 194. Similarly, Mr. England persuasively opined that employee's physical injuries sustained in the February 2010 accident triggered psychiatric issues that weren't present before.

In light of the foregoing considerations, we conclude employee is permanently and totally disabled owing to a combination of her preexisting disabling conditions in combination with

² Dr. Brockman did not obtain a history regarding employee's Bosnian War experiences as thorough or detailed as that set forth in Dr. Stillings's report; this circumstance appears to have influenced his decision to assign all of employee's psychiatric disability to the primary injury. Again, we believe Dr. Stillings reached the more persuasive opinions as to employee's preexisting psychiatric conditions and disability.

Employee: Enisa Comic

- 6 -

the effects of the work injury. The Second Injury Fund is liable for permanent total disability benefits.

Conclusion

We modify the award of the administrative law judge as to the issues of: (1) medical causation; (2) nature and extent of permanent disability; (3) future medical care; and (4) Second Injury Fund liability.

Employer is liable for \$25,012.24 in permanent partial disability benefits.

Employer is ordered to provide employee with the future psychiatric care that may reasonably be required to cure and relieve the effects of her work injuries.

The Second Injury Fund is liable for weekly permanent total disability benefits beginning February 24, 2012,³ at the stipulated weekly permanent total disability rate of \$284.23. The weekly payments shall continue for employee's lifetime, or until modified by law.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 28, 2014, 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 21st day of May 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

³ Employee reached maximum medical improvement on June 18, 2010. Permanent total disability benefits thus begin from the Second Injury Fund on February 24, 2012, in order to account for employer's payment of 88 weeks of permanent partial disability benefits at the same weekly compensation rate.

AWARD

Employee: Enisa Comic

Injury No.: 10-006350

Dependents: N/A

Employer: Walmart Associates, Inc.

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

Additional Party: Second Injury Fund

Insurer: Illinois National Insurance Co.

Hearing Date: July 22, 2014

Checked by: MDL

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: February 2, 2010
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was lifting a box when she felt pain in her back.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: lumbar and cervical spine
14. Nature and extent of any permanent disability: 20% PPD of the body as a whole referable to the spine
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? \$725.44

Employee: Enisa Comic

Injury No.: 10-006350

- 17. Value necessary medical aid not furnished by employer/insurer? 0
- 18. Employee's average weekly wages: \$426.34
- 19. Weekly compensation rate: \$284.23/\$284.23
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	0
19-3/7 weeks of temporary total disability	\$5,522.18
80 weeks of permanent partial disability from Employer	\$22,738.40

22. Second Injury Fund liability: No

TOTAL: \$28,260.58

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Frank J. Niesen

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Enisa Comic

Injury No.: 10-006350

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Wal- mart Associates, Inc.

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

Additional Party: Second Injury Fund

Insurer: Illinois National Insurance Co.

Checked by: MDL

PRELIMINARIES

A hearing was held on July 22, 2014 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Enisa Comic ("Claimant") was represented by Mr. Frank Niesen. Wal-Mart Associates, Inc., and its insurer Illinois National Insurance Co. were represented by Mr. Eric Christensen. The Second Injury Fund ("SIF") was represented by Assistant Attorney General Da-Niel Cunningham. Mr. Niesen requested a fee of 25% of Claimant's award.

The parties stipulated that on or about February 2, 2010 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant's average weekly wage at the time of injury was \$426.34 resulting in a rate of \$284.23 for Temporary Total Disability ("TTD"), Permanent Total Disability ("PTD") benefits, and Permanent Partial Disability ("PPD") benefits; and Employer paid no TTD benefits and \$725.44 in medical benefits.

The issues to be determined are medical causation; liability of Employer for \$30,430.18 in medical expenses; liability of Employer to provide future medical care; whether Claimant is entitled to TTD benefits from February 2, 2010 to June 28, 2012; nature and extent of PPD Claimant sustained as a result of the February 2, 2010 injury; whether Claimant is permanently and totally disabled; and liability of the SIF.

SUMMARY OF EVIDENCE

On February 2, 2010, Claimant was working for Employer as an overnight stocker when she sustained an injury to her back and neck while lifting a box containing assorted utensils and tools such as spoons, ice cream scoops, wrenches, etc. Claimant lifted the box from a pallet, from a position below her knees, turned to place the box in a shopping cart, and felt immediate pain in her neck and back. Claimant did not know how much the box weighed, but it was heavy.

Claimant immediately reported the injury and was allowed to go home. She could not recall what she did at home for the pain, but it did not help. Claimant contacted the store office and advised them she was not feeling well. Employer referred Claimant to Concentra.

Dr. Joseph Homan evaluated Claimant at Concentra on February 2, 2010. Claimant gave a history of picking up a heavy box and feeling pain in the back and neck. She presented with complaints of bilateral pain in the lower, mid, and upper back, and pain in the sacral region and neck. She rated her pain at 10 out of 10. She denied radicular pain. Physical examination of the cervical spine revealed intact sensation, symmetric reflexes, no spasms, and mild to moderate tenderness of the neck. The examination of the cervical spine and left and right trapezius revealed no ecchymosis or swelling, 5 out of 5 strength, breakaway weakness, Spurlings was negative bilaterally, and there was full range of motion with pain in all directions. In the thoracic spine there was no ecchymosis or erythema, no swelling, and mild to moderate tenderness of both paraspinous muscles at the level of T1 through T12. There was no spasm and decreased active range of motion in all directions with pain and at extremes. In the lumbar spine there was normal sensation; reflexes were symmetric, negative bilateral leg raise, no ecchymosis or erythema, and tenderness of both sides of the lumbosacral spine from L1 through S2. There was no spasm, normal gait, full squats, 5 out of 5 strength, and normal heel and toe walking. There was decreased active range of motion. There were 5 positive Waddells signs. X-rays of the lumbar spine were unremarkable. Dr. Homan had no good explanation for this pattern of symptoms. Claimant was given a pain injection which had no effect. She was given Tylenol and Advil and was told to return in three days. The assessment was back pain without objective findings. Claimant was allowed to remain at full duty, and was advised to return for an evaluation in three days. The Plan was to discharge Claimant from treatment at the next evaluation if there were no objective findings.

After her first Concentra visit, and before she was released from Concentra, Claimant saw Dr. Emir Keric as a new patient on February 3, 2014. Claimant testified Dr. Keric was her primary care physician. Claimant testified she went to see Dr. Keric after her second Concentra visit. Some of the notations in Dr. Keric's records are not legible. It appears Claimant presented with complaints of back pain after she "pulled too low". Physical examination showed tenderness and reduced range of motion in the low back, with positive straight leg raise at ninety degrees. Dr. Keric's impressions were low back strain with sciatica, and anxiety post stress reaction. He issued prescriptions for Naproxen and Flexeril.

On February 4, 2010 Claimant saw Dr. Homan at Concentra for the second time. Claimant felt her pattern of symptoms was worse. Claimant reported she had not been working because she chose not to work. Dr. Homan stated Claimant moved slowly and deliberately. She had pain with movement only. Dr. Homan described her pain as exaggerated. She continued to present symptoms of severe pain in the bilateral lumbosacral region, bilateral lower back, bilateral mid-back, bilateral upper back, neck, head, and the top of the head. Physical examination was negative for spasm, swelling, ecchymosis, or erythema. Mild to moderate tenderness was noted in the cervical, thoracic and lumbar spine areas, as well as reduced range of motion. Straight leg raise testing was negative, and Waddell's testing was positive in all respects.

Dr. Homan again assessed back pain without objective findings. He found multiple non-physiologic findings with symptom magnification. He stated Claimant's cousin was asking for something for her pain, and Dr. Homan stated he had nothing to give at this point, and that the

pain was not organic in nature. The doctor had no medical explanation for the current findings, and stated that they were not from the work injury as described. He released her from care to resume regular activities, and advised her to follow up with her primary care physician as needed. Claimant testified when she went to Concentra the second time, the doctor gave her something for her pain and told her to come back one more time. Claimant testified she went to Concentra a third time, but the doctor didn't want to see her. The Concentra medical records do not support Claimant's testimony.

On February 9, 2010, Claimant returned to Dr. Keric with complaints of continued low back pain. Claimant indicated she could not work and sleep. Physical examination showed reduced range of motion in the back and leg. Dr. Keric's impressions were low back strain, possible acute disc, and muscle spasm. He issued a prescription for Vicodin and recommended Claimant remain off work.

Claimant followed up with Dr. Keric on February 16, 2010 where it was noted she had been to physical therapy. Tenderness in the back was noted, and Dr. Keric's impressions were neck and back strain. He recommended continued physical therapy and return to work on March 1, 2010.

Dr. Keric referred Claimant to Dr. Naseem Shekhani for evaluation on February 18, 2010. Claimant presented with complaints of pain in the neck and low back, headache, numbness and tingling sensation in the bilateral upper extremities especially pain in the neck radiating into the right arm, numbness and tingling in the right lower extremity and pain radiating from the back into the right lower extremity. Claimant described the pain as aching and sometimes stabbing in nature. X-rays performed were negative.

Dr. Shekhani's physical examination on February 18, 2010 showed restricted range of motion in all directions of the neck, with trigger points noted on the bilateral C-5 and C-7 areas. Straight leg raise test was positive on the right, and antalgic gait was noted. Range of motion in the back was restricted due to pain, and trigger points were noted on the bilateral facet joints at L4-5 and L5-S1. Dr. Shekhani assessed cervical radiculopathy, sciatica, and numbness in the bilateral upper extremities and right lower extremity. The doctor recommended continued physical therapy, Hydrocodone, Naproxen, and Cyclobenzaprine, and MRI scans of the cervical and lumbar spine.

On February 18, 2010 an MRI scan of the cervical spine at Precision Imaging showed multilevel facet degenerative changes without central canal or neural foraminal compromise. There was no lateralized disc herniation. A somewhat diminutive disc at the C4-5 level was noted which may be congenital. An MRI scan of the lumbar spine showed mild diffuse facet arthropathy without stenosis. At the L4-5 level a 1 to 2 millimeter disc bulge was present without stenosis or root impingement.

Claimant returned to Dr. Shekhani on March 1, 2010 and it was noted that the MRI scans revealed arthritic changes in the neck and lumbar areas, with some facet arthropathy. Dr. Shekhani performed trigger point injections at bilateral C-5 and bilateral L-4 areas. The doctor

also issued prescriptions for Naproxen and Hydrocodone medications. Claimant was advised to start physical therapy three times a week for four weeks.

Claimant attended six physical therapy visits at St. Anthony's Sports and Therapy Services from February 11, 2010 to March 5, 2010. The last progress note dated March 5, 2010 indicated therapy may be helping a little, although Claimant's lower extremities were swollen since undergoing injections, and it was noted that she was limping. The therapist noted no goals had been met. Subsequent notes indicate Claimant was scheduled for additional therapy visits which she cancelled or failed to attend. Claimant testified that the physical therapy did not help her.

Claimant returned to Dr. Shekhani on March 15, 2010 with continued complaints of pain, tingling sensation, and numbness in bilateral upper and lower extremities, as well as radiating pain into the neck and right shoulder. Dr. Shekhani discussed with Claimant her exercise program for range of motion, stretching and strengthening. The doctor did not feel that she should get another injection because it had not helped a lot. He recommended nerve conduction studies of all four extremities.

On March 25, 2010, Dr. Shekhani performed electrodiagnostic studies of the upper extremities which were consistent with bilateral median neuropathy across the wrist consistent with mild sensory carpal tunnel syndrome. No abnormality was noted on the right lower extremity. The doctor again discussed a home exercise program with Claimant and use of a cock-up splint, and prescribed Tramadol medication.

Claimant followed up with Dr. Shekhani on April 7, 2010, with complaints of a lot of pain in the neck and low back, as well as tingling sensation. It was noted that the Tramadol medication was not helping. The doctor again discussed a home exercise program and asked Claimant not to have bed rest but instead to look into getting her activities of daily living as close to normal as possible.

On June 4, 2010, Claimant was seen by Dr. Mahrukh Khan where it was noted that she was applying for disability. Claimant presented complaints of headaches starting two months ago as well as upper and lower back pain on the right side. No history of a work injury was indicated, although Claimant testified she explained the work injury to Dr. Khan. Claimant's active problems were listed as myofascial pain syndrome, cervicgia with sciatica, and bilateral median neuropathy. The doctor's notes indicate Claimant was advised to stop taking Hydrocodone medication. Claimant was assessed with anxiety, depression, suicidal ideation, insomnia, cervicgia, lumbago, and bilateral carpal tunnel syndrome. Referral to a psychiatrist was recommended.

On June 15, 2010, Claimant sought treatment with a psychiatrist, Dr. Farida Farzana, where she presented a history of injuring her back while lifting a box at Wal-Mart. It was noted Claimant did not have any previous psychiatric care. She presented complaints of pain, anxiety, and difficulty sleeping. Dr. Farzana noted Claimant was born and raised in Bosnia and came to St. Louis in 2001. Dr. Farzana diagnosed major depression, single episode, and prescribed Cymbalta medication.

Claimant was evaluated by Dr. Shekhani on June 18, 2010, at which time she presented continuing symptoms. Physical examination showed trigger points in the cervical and lumbar spine, and antalgic gait was noted. Range of motion in the neck and back was restricted in all directions. Straight leg raise test was negative. Dr. Shekhani diagnosed Claimant with myofascial pain syndrome, cervicgia, sciatica, bilateral median neuropathy, and depression and anxiety, and felt that the work injury on February 2, 2010 was the prevailing factor causing both these medical conditions and disability. Dr. Shekhani stated that Claimant had reached maximum medical improvement, and rated Claimant with 10% PPD of the cervical spine due to pain, 10% PPD of the lumbar spine due to pain, 20% PPD of the hands due to bilateral carpal tunnel syndrome, and 20% disability of the hands [sic] due to depression and anxiety with sleep disturbances. Dr. Shekhani stated these disabilities represent a hindrance or obstacle to Claimant's employment or re-employment, and that Claimant was not a surgical candidate.

Claimant returned to Dr. Khan on July 12, 2010, where it was noted that the psychiatrist had prescribed Cymbalta medication which was helping with her nervousness and keeping her calm. Dr. Khan saw Claimant once more on January 3, 2011, at which time she reported continuing to see a psychiatrist for anxiety and sleeping disorder. None of the medical records from Dr. Khan include any information regarding Claimant's work injury.

Claimant followed up with Dr. Farzana for psychiatric counseling on a regular basis from June 22, 2010 to April 14, 2014. The progress note from Dr. Farzana dated October 1, 2013 states that Claimant kept thinking about what happened in the war, and how her house was bombed, and how she was in a shelter and had to keep moving. The last note dated April 14, 2014 indicates that Claimant's son came with her to the appointment and told the doctor that Claimant was worried about him because he was not working.

Claimant began treating with a new personal care physician, Dr. Tulika Katyal. On June 13, 2011, Claimant presented with complaints of headache, back pain and neck pain, and that her left side felt numb. The review of system indicates that Claimant reported arthritis, back problems, muscle stiffness, and depression. Physical examination revealed tenderness on palpation of the cervical and lumbosacral spine, but range of motion was intact in both areas. Mild paraspinal muscle spasm was noted in the lumbosacral spine. Dr. Katyal's report does not mention anything about the work injury at Wal-Mart, and lists the onset dates of Claimant's various conditions as occurring on February 28, 2011 at the earliest.

Dr. Katyal referred Claimant to Dr. Gurpreet Padda at the Center for Interventional Pain Management on October 25, 2011. Dr. Padda performed bilateral intraarticular facet joint injections at the C-5 through T-2 levels. Claimant tolerated the procedure well and received immediate resolution of pain.

Claimant sought treatment in the Lemay Urgent Care office of St. Anthony's Medical Center on March 4, 2012 due to left-sided chest aches, back and neck pain, hand weakness, and numbness. She reported the symptoms had been present for two years. It was noted that Claimant had been seen by many doctors without relief. No history of a work injury was noted.

Claimant had chest x-rays which were normal and physical exam of the back showed full range of motion with no tenderness, palpable spasm, or pain with motion. Claimant was diagnosed with chest pain and back pain.

Claimant followed up with Dr. Katyal on a regular basis for refills of various medications including Vicodin, Percocet, Diluadid, Hydrocodone, and Naproxen. The last medical record from Dr. Katyal dated January 2, 2013 indicates Claimant's physical exam revealed tenderness on palpation of the neck and low back, although range of motion was normal in both areas. There was paraspinal muscle spasm in the lumbosacral area. Claimant continued to be diagnosed with numerous conditions including, but not limited to, depressive disorder, lumbago, degenerative cervical, myalgia and myositis, edema, hematuria, and migraine.

Upon referral by Dr. Katyal, Claimant attended physical therapy at SSM Physical Therapy from February 12, 2013 to March 18, 2013. Claimant attended eight therapy visits and had three cancelled appointments. The discharge summary indicates there was no significant change in Claimant's pain complaints after eight therapy sessions, and objective measurements also did not show significant improvement. It was noted that Claimant's ability to perform her exercises was occasionally limited due to pain.

On October 21, 2013, Claimant went to the emergency room at St. Anthony's Medical Center for evaluation of low back pain. The history indicates that symptoms were present for one month and pain had worsened over the last week. It was noted that Claimant has had low back pain for three years. Physical examination showed decreased range of motion and tenderness of the lower lumbar spine, with positive straight leg raise testing on the right side. Claimant was assessed with low back pain with radiculopathy, and a prescription for Medrol dose pack was issued with instructions to continue hydrocodone.

Claimant testified that she continues to see Dr. Katyal every three or four months. The doctor continues to provide prescription medications including Hydrocodone, Methocarbamol, Naproxen, Lovastatin, and Topiramate.

Claimant testified she has pain every day, and her spine pain feels better when she uses medication, but if she does not take the medication she does not feel better. Claimant testified she takes Hydrocodone twice a day, and when she takes it she feels very tired and just wants to lie down. She testified because of the pills she cannot go out and take a nice walk or do things like run.

Claimant testified she has problems bending and squatting, and cannot lift or move heavy things. She stated she would feel comfortable lifting a canister of milk. She has trouble taking a bath, in that it takes a lot longer than it used to. Claimant's children or husband have to help her with combing and drying her hair. She wears simple clothes and shoes so she won't have to bend and tie them. When Claimant came to the United States she learned how to drive, but no longer has a valid license because she is afraid to drive due to her medications and inability to turn her head.

Claimant used to bake, but since her work injury she frequently buys prepared food. Claimant uses a handrail to go down the steps of her apartment, and her children carry the clothes down steps so she can do laundry. Claimant testified she dusts, does a little housework, washes a few dishes, and rarely vacuums.

Claimant testified on a typical day she gets up and makes coffee or tea; sits and watches television or just sits and does not watch; takes medicine; makes something to eat for breakfast or a sandwich later; sometimes goes outside for a while; spends time with her cat; and goes shopping with her children, but doesn't carry anything. Claimant has not worked since the injury in February 2010. She does not believe she can work because she has constant pain and depression, and does not have any concentration. She no longer socializes, goes to parties, attends religious services, or goes out to eat. Claimant testified her pain in general is in the low back, back, neck and headaches.

Claimant testified she has depressive symptoms every day. She denied having any problems with disturbing memories from the Bosnian War before the work injury, because she did not have time to think about that. Claimant testified she had no mental healthcare in her life before she saw Dr. Farzana in 2010. Claimant still thinks back on what happened and sometimes feels like someone is calling her, but nobody is there.

Claimant was born in Bratunac, Bosnia in 1979. She attended school in Bosnia until the eighth grade, at which time her schooling stopped because of the Bosnian War. Claimant did not have a job outside of the home when she lived in Bosnia. In 1995, when she was 16 years old, she began living with her husband Safer, and they were married in 2000. Claimant came to the United States in 2001 with assistance from the Lutheran Church.

During the war Claimant's town was ethnically cleansed by the Serbs, meaning the Serbs found and killed as many Bosnians as they could. Claimant lost aunts, uncles, cousins and friends during this time. Her family was forced to relocate to Srebrenica in 1993 when she was 12 or 13 years old. Claimant and her family walked from their town to Srebrenica, and she was not sure how far they went.

Claimant lived in Srebrenica from 1993 to 1995. She lived with her family in a 2-story house that they shared with another family. Food and water was difficult to get during the first year, but after that they received supplies from relief convoys. During the time she lived in Srebrenica it was surrounded by the Serbs.

Srebrenica was considered a safe zone until 1995 when the Serbs began shelling the city. Claimant testified the shelling began at night on the 9th of July and continued until July 11, when her family left Srebrenica. Claimant and her family were taken on a bus to a factory in Potocari located just outside of Srebrenica. During the bus ride, the Serbs stopped the bus and forced Claimant and the passengers to watch while they executed men and boys.

Claimant was held captive at the factory in Potocari for three days. She saw people being struck, beaten and killed by the Serbs while she was in captivity. After three days, Claimant was deported to a refugee camp in Tuzla where she lived for a few days.

Claimant was 16 or 17 years old when the Bosnian War ended in 1995. She remained in Bosnia until coming to the United States in 2001. Claimant witnessed many terrible things during the war, and has never forgotten those terrible things. Claimant agreed it is impossible to forget about those experiences, especially when people remind you of them.

Dr. David Volarich examined Claimant on June 28, 2012, and testified on behalf of Claimant. Dr. Volarich diagnosed Claimant with cervical strain/sprain with aggravation of degenerative joint disease with severe myofascial pain; thoracic strain/sprain and severe myofascial pain; and lumbar strain/sprain with disc bulges L4-5, and severe myofascial pain. He testified the work injury was the prevailing factor in causing the symptoms and need for treatment. Dr. Volarich rated Claimant with 15% PPD of the whole body at the cervical spine, 10% PPD of the thoracic spine, and 20% PPD of the lumbar spine. Dr. Volarich testified he reviewed Claimant's MRI images himself and found no evidence of disc herniation, canal or foraminal encroachment in the cervical spine, and the lumbar MRI showed minimal disc bulging and mild arthritic changes at the L4-5 level. Dr. Volarich testified his disability ratings are based on objective findings of disc bulge without nerve root impingement, trigger points, and reduced range of motion. He agreed it is fair to characterize Claimant's pain complaints as subjective complaints.

Dr. Volarich also diagnosed multiple psychiatric disorders and stated that considerable disability exists as a result of Claimant's psychiatric disorders. Dr. Volarich noted he reviewed a psychiatric evaluation performed by Dr. Jennifer Brockman on October 15, 2011, who found significant psychiatric disabilities. Dr. Volarich testified he would defer to a psychiatrist in regard to medical causation of Claimant's psychiatric condition and resulting disability.

Dr. Volarich opined that Claimant is permanently and totally disabled as a direct result of the work injury in combination with her psychiatric disorders. He further opined that Claimant has reached maximum medical improvement, although he recommended ongoing care for her pain syndrome including narcotics and non-narcotic medications, muscle relaxants, physical therapy, and care at a pain clinic including injections and use of a TENS unit. Dr. Volarich issued activity restrictions of avoiding all bending, twisting, lifting, pushing, pulling, carrying, climbing and other similar tasks to an as-needed basis; not to handle any weight greater than 10 to 15 pounds and limit this to an occasional basis; not to handle any weight over her head or away from her body, nor carry weight over long distances or over uneven terrain; to avoid remaining in a fixed position more than about 20 to 30 minutes at a time, including both sitting and standing; advised Claimant to change positions frequently to maximize comfort and rest when needed, including resting in a recumbent fashion; and advised Claimant to pursue an appropriate stretching, strengthening, and range of motion exercise program in addition to non-impact aerobic conditioning such as walking, biking or swimming to tolerance daily. He testified Claimant would need toile down during the day, and no employer, even in a sedentary position, would allow her to do that.

Dr. Jennifer Brockman performed a psychiatric evaluation of Claimant on October 15, 2011, and testified on behalf of Claimant. Dr. Brockman opined that Claimant has a significant history of trauma and limited support and coping skills, but despite her previous experiences she was previously able to marry, immigrate, raise children, and work. Dr. Brockman opined that since the work accident, Claimant has described chronic pain and suffered significant disability, and is now unable to engage in numerous activities that she once was and has been unable to work. Dr. Brockman noted that considering Claimant's education level, language barriers, and prior work experience, a physical problem is a devastating loss and as Claimant's period of incapacitation has become prolonged; her mental status has further deteriorated.

Dr. Brockman diagnosed Claimant with Major Depressive Disorder, Single Episode; Generalized Anxiety Disorder; Panic Disorder with Agoraphobia; and rule-out Post-Traumatic Stress Disorder. Dr. Brockman testified it is her opinion that these various diagnoses, with the exception of consideration for a diagnosis of post traumatic stress disorder, developed as a result of the work injury on February 2, 2010. Dr. Brockman testified in her opinion Claimant is psychiatrically permanently and totally disabled and that the work injury is the prevailing factor, standing alone, in the development of this psychiatric disability. Dr. Brockman testified the work injury certainly appeared to be a catalyst from which point her condition progressively worsened. Dr. Brockman testified she questioned Claimant regarding her Bosnian War experiences, and Claimant made it clear that it was traumatic and painful for her to discuss, so she did not press further.

Dr. Brockman testified Claimant's history of experiences in the Bosnian War is there and exists, but Claimant denied having nightmares, flashbacks, and many of the criteria required for a diagnosis of Post-Traumatic Stress Disorder so she could not make this diagnosis. Dr. Brockman testified Claimant's war experiences were clearly traumatic, but up to the time of the work injury she functioned reasonably well and had no prior psychiatric treatment before the work injury. Dr. Brockman testified based on the history Claimant provided, and the medical records, she considers the work injury the prevailing factor in Claimant's condition and resulting disability.

James England performed a vocational rehabilitation evaluation of Claimant on August 17, 2011, and testified on behalf of Claimant. Mr. England opined that Claimant is a younger worker with a limited education and no transferable skills, who needed an interpreter for communication. He stated Claimant seemed physically uncomfortable, and he believes her problems would be readily observable to an interviewer in an employment setting. Mr. England opined that Claimant has a combination of physical and psychiatric impairments as shown by the doctors from this injury that would preclude her from returning to any type of work activity. He noted that Dr. Volarich's physical restrictions would restrict Claimant to less than sedentary work, and Dr. Volarich's restriction that indicated Claimant would need to lie down would take her out of the workforce. He further noted Dr. Brockman believed Claimant's psychiatric problems would also disable her. Mr. England testified he would defer to the doctors in regard to their medical opinions.

Dr. James Coyle examined Claimant on May 8, 2013, and testified on behalf of Employer. Dr. Coyle's physical examination showed that Claimant was able to move freely to face him on both the right and left when he alternated his position from her right to left side. However, on requested range of motion Claimant's cervical range of motion was markedly limited. Dr. Coyle noted Claimant's movements were slow, but he could find no specific point tenderness to palpation of her cervical, thoracic or lumbar spine. Dr. Coyle noted breakaway to strength testing against resistance, and was able to resist knee extension in both lower extremities with one finger. After he pointed out to Claimant that she could not stand on her legs if this were possible, she demonstrated 5/5 motor strength in the lower extremities. Dr. Coyle stated the Claimant has excellent upper body muscle tone and 5/5 motor strength in both upper extremities, and does not have a body habitus that would be consistent with absolute sedentary activity level for the past three years.

Dr. Coyle testified he personally reviewed Claimant's cervical MRI images dated February 18, 2010 and felt they were normal with no evidence of acute traumatic injury or herniation, and showed only mild facet hypertrophy or arthropathy which was within normal limits. Dr. Coyle testified he also reviewed the lumbar MRI scan dated February 18, 2010 and felt it was a normal MRI, and agreed it showed minimal bulging at the L4-5 level. Dr. Coyle testified he saw no evidence of physical disability secondary to her activities at Employer on February 2, 2010. Dr. Coyle testified there was no objective evidence of a disability and no credible injury mechanism that would have caused disability, and he does not believe Claimant was suffering from the detrimental effects of the work injury at the time of his examination.

Dr. Coyle opined that there is no discernible neuromuscular injury apparent from Claimant's work activities of February 2, 2010, and stated that she does not have any objective neuromuscular, motor, or sensory disability. Dr. Coyle opined that he did not see any impediments to Claimant working in her prior capacity from a strictly neuromuscular/musculoskeletal standpoint. Dr. Coyle recommended that Claimant be weaned from the massive quantities of narcotics and muscle relaxers that she was taking, and noted that these were not being given to her referable to the work injury of February 2, 2010.

Dr. Wayne Stillings performed a psychiatric evaluation of Claimant on October 4, 2012, and testified on behalf of Employer. Dr. Stillings obtained a detailed history of Claimant's experiences from the Bosnian War, including the ethnic cleansing of Claimant's village; her loss of nearly her entire paternal and maternal extended family including aunts, uncles and cousins; Claimant's witnessing of killings and executions; her family's relocation to Srebrenica; the bus ride from Srebrenica to Kladanj in which Claimant, her mother and youngest brother were forced to watch the execution of Bosnian males when the Serbs stopped the bus; the escape of Claimant's father, two older brothers, and her husband from the Serbs when they fled through the woods; and Claimant's subsequent deportation to Tuzla and later Zagreb.

Dr. Stillings noted that Claimant still has active symptoms Post Traumatic Stress Disorder including disturbing, intrusive, recurrent recollections of the Bosnian War trauma and avoidance symptoms. Dr. Stillings testified Claimant was subjected to some of the greatest war crimes ever, and atrocities against mankind.

Dr. Stillings diagnosed Claimant with Post-Traumatic Stress Disorder with Secondary Major Depressive Disorder, chronic and severe, due to extreme Bosnian War trauma, pre-existing; and Personality disorder, NOS, with dependent, somatoform, borderline, avoidant, and passive-aggressive personality traits, and with elements of exaggeration, pre-existing. Dr. Stillings opined that the February 2, 2010 work injury is not the prevailing factor in causing these psychiatric diagnoses; however it is the prevailing factor in causing an aggravation of Claimant's pre-existing depressive disorder as part of her post-traumatic stress disorder. Dr. Stillings opined that Claimant sustained 2% psychiatric PPD of the whole body due to the work injury, as well as pre-existing psychiatric PPD of 45% of the whole body due to war-related chronic and severe post-traumatic stress disorder and 5% of the whole body due to personality disorder.

Dr. Stillings opined that from a psychiatric perspective, Claimant is not permanently and totally disabled as a result of the work injury on February 2, 2010, and that she has reached psychiatric maximum medical improvement with respect to the work injury. Dr. Stillings opined that from a psychiatric standpoint, Claimant is as able to work post-injury as pre-injury. He testified due to a combination of Claimant's physical and psychiatric problems it would be problematic for her to work, although it would not hurt to try.

Delores Gonzalez performed a vocational rehabilitation evaluation of Claimant on July 26, 2013, and testified on behalf of Employer. Ms. Gonzalez opined that Claimant is a younger individual at 34-years-old with an 8th grade Bosnian education, impoverished educational skills, and a limited ability to speak English. Ms. Gonzalez noted that if credence is given to the opinions of Dr. Brockman and Dr. Volarich, then Claimant is not capable of performing her job as an overnight stocker for Wal-Mart or any of her past relevant work. Ms. Gonzalez opined that if credence is given to Dr. Stillings and Dr. Coyle, Claimant is capable of performing her past job at Wal-Mart and all past relevant work. Ms. Gonzalez further opined that in addition to her past relevant work, Claimant would be capable of performing jobs in the local economy which are sedentary to light in exertion level with an option to sit or stand. Such positions include bench assembler, silver wrapper, and table worker. Ms. Gonzalez noted that these are merely a representative sampling of positions available in the St. Louis area, and although Claimant has difficulty with the English language, she is able to read in English and passed her citizenship test in English.

RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Claimant contends she is permanently and totally disabled as a result of the work injury of February 2, 2010 alone or alternatively based on the combination of the work-related injuries and her pre-existing psychiatric disabilities.

The competent and substantial evidence does not show that Claimant is permanently and totally disabled from the work injury on February 2, 2010. The evidence shows that this work injury occurred when Claimant strained her neck and back when lifting a heavy box. Subsequent

treatment records fail to disclose objective evidence of a physical injury reasonably sufficient to render Claimant permanently and totally disabled. MRI scans of Claimant's cervical and lumbar spine were obtained on February 18, 2010, just over two weeks after the work injury. With the exception of a minimal disc bulge at the L4-5 level and degenerative changes, the scans were normal. Claimant underwent nerve conduction studies of the upper and lower extremities administered by Dr. Shekhani on March 25, 2010, which were consistent with mild carpal tunnel syndrome but showed no spinal nerve involvement. By all accounts, Claimant is not a surgical candidate.

Claimant has been evaluated by several physicians of her choice who were unable to find any definitive source of her ongoing pain symptoms, despite lab work and diagnostic testing. Claimant received no relief or improvement from two rounds of physical therapy visits. Claimant's rating physician, Dr. Volarich, testified the MRI scans failed to indicate any disc herniation or nerve root impingement. Dr. Volarich's diagnoses of cervical, thoracic and lumbar strains and myofascial pain syndrome are based in part on Claimant's subjective pain complaints, rather than objective medical evidence of physical injury. Dr. Coyle, an orthopedic spine surgeon, testified that the MRI scans were normal and could find no objective medical evidence of physical injury related to the work injury. Although Claimant has obtained treatment from a variety of doctors, including ongoing prescriptions for narcotic pain medications and pain management injections, her symptoms have continued undiminished four years after the strain injury at work.

The expert medical testimony, as well Claimant's lack of recovery from a relatively innocuous incident, indicates there is a significant psychiatric component to Claimant's ongoing symptoms. The expert psychiatric opinions present different explanations for the cause of Claimant's psychiatric condition. Dr. Brockman believes all of Claimant's problems are related to her work injury alone. Dr. Stillings feels Claimant's condition was caused by the trauma she experienced in her adolescent years during the Bosnian War, but also opined that Claimant's work injury slightly aggravated Claimant's pre-existing psychiatric illness. I find the opinions of both Dr. Brockman and Dr. Stillings persuasive in different respects.

I find Dr. Stilling's testimony that Claimant's psychiatric condition was caused by her previous experiences during the Bosnian War to be persuasive, but I am not persuaded that her work injury aggravated her pre-existing psychiatric condition. Dr. Brockman credibly testified that the work injury appeared to serve as a catalyst for Claimant's subsequent psychiatric problems. I find such testimony is akin to saying the work injury 'triggered' Claimant's condition. "An injury is not compensable because work was a triggering or precipitating factor." Section 287.220.2 R.S.Mo.

Because the work injury on February 2, 2010 is not the prevailing factor causing Claimant's psychiatric condition, and because Claimant's physical disabilities from the work injury are not sufficient to render her permanently and totally disabled, the evidence fails to support a conclusion that the February 2, 2010 work injury alone resulted in permanent total disability.

Based on the competent and substantial evidence presented, including the testimony of Claimant regarding her symptoms, medical treatment, and experiences in the Bosnian War, the reports and testimony of Dr. Stillings and Dr. Coyle, and the records of the treating physicians, Claimant suffered PPD of 20% of the body as a whole referable to the lumbar, cervical and thoracic spine as a result of the work injury on February 2, 2010. Claimant is entitled to receive \$22,738.40, which represents 80 weeks of PPD benefits at a weekly rate of \$284.23.

Claimant is not permanently and totally disabled. I find the opinion of Dr. Coyle to be the most persuasive opinion on the issue of whether Claimant is permanently and totally disabled. Dr. Stillings also testified from a psychiatric standpoint Claimant is as able to work now as she was before the injury. Ms. Gonzales testified if credence is given to the opinions of Drs. Coyle and Stillings, Claimant is capable of performing her past job at Wal-Mart and all past relevant work. In addition, even if it is assumed Claimant is permanently and totally disabled, there is no evidence Claimant suffered from a psychiatric condition prior to the primary injury that constituted a hindrance or obstacle to employment or re-employment, or combined in any way with the primary injury to render Claimant permanently and totally disabled. The claim against the SIF is denied.

Employer is not liable to Claimant for past medical treatment. Claimant received authorized medical treatment at Concentra from which she was released after two appointments on February 4, 2010. Claimant testified she was told to return to Concentra for a third visit, but the medical records from Concentra do support this statement. The medical records from Dr. Keric, Claimant's personal physician, indicate Claimant actually began treating with her doctor on February 3, 2010 which was a day before she was released by Concentra.

Claimant testified the only doctor Employer sent her to was at Concentra, and all the other doctors she went to were of her own choosing, and she went without the authorization of Employer. "If the employee desires, [s]he shall have the right to select [her] own physician, surgeon, or other such requirement at [her] own expense." Section 287.140.1 R.S.Mo. The substantial weight of the evidence supports the conclusion that Claimant sought the medical treatment at her own expense.

Employer is not liable to Claimant for future medical treatment. Section 287.140.1 R.S.Mo. provides that Claimant has the burden of proving entitlement for future medical expenses. An employer is not responsible for compensation for future medical care unless the evidence establishes a reasonable probability that additional medical treatment is needed and, to a reasonable degree of medical certainty that the need arose from the work injury.

The substantial weight of the medical evidence presented fails to support Claimant's request for future treatment. As previously noted, the opinions of Dr. Stillings are given greater weight and deference than those of Dr. Brockman in regard to Claimant's psychiatric condition. Dr. Stillings concluded that Claimant's current need for treatment is due to her pre-existing psychiatric problems resulting from her Bosnian War experiences, rather than the work injury. As such, the medical evidence does not support an award of future psychiatric treatment as a result of the work injury.

With respect to future treatment for Claimant's physical problems, I find Dr. Coyle's opinion more persuasive than that of Dr. Volarich. Dr. Coyle is an orthopedic spine surgeon and did not find Claimant was in need of any additional treatment as a result of the work injury of February 2, 2010.

I find Employer is liable for 19-3/7 weeks of TTD benefits from February 2, 2010 until June 18, 2010, the date on which Dr. Shekhani, her primary care physician released her to return to work.

This award is subject to any attorney's lien of 25% in favor of Claimant's attorney, Mr. Frank Niesen.

Made by: _____
MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation