

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 11-099024

Employee: Loretta Courtney
Employer: Clay County Health Center
Insurer: Accident Fund General Insurance Co.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

This workers' compensation case is pending before the Labor and Industrial Relations Commission on employer/insurer's Application for Review of the administrative law judge's Temporary or Partial Award. We have read the briefs, reviewed the evidence, and considered the whole record. We find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo¹, we affirm the award and decision of the administrative law judge by this supplemental opinion.

Preliminaries

The administrative law judge issued a temporary award of temporary total disability benefits and medical treatment. Employer/insurer challenges the administrative law judge's award. One ground for its challenge is that the "ALJ simply signed a proposed Temporary Award prepared and submitted by the Claimant's attorney." We have reviewed the Temporary Award in light of the record before us. All of the facts found by the administrative law judge are fully supported by the record. However, since the employer/insurer has questioned the impartiality of the administrative law judge, we make our own specific findings on the two critical issues.

Accident

We address employer/insurer's argument that the accident described by employee never occurred. As support, employer/insurer points to the seemingly crystal clear memories of two co-workers who purport to have mentally processed and stored minute details of what the co-workers describe as a non-event. Experience tells us that individuals seldom recall insignificant events in such great detail. There are no contemporaneous records to support the version of events relayed by the co-workers.

On the other hand, employee's testimony about the manner in which the accident occurred is supported by medical records made at or around the time of the alleged accident. Employee's description of her injury at trial is consistent with the history employee gave to Dr. Scott Steelman. We find employee's testimony to be the most credible regarding the events of December 9, 2011, and we believe the accident occurred as described by employee.

¹ Statutory references are to the Revised Statutes of Missouri 2011, unless otherwise indicated.

Employee: Loretta Courtney

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Medical Opinions

Upon first examining employee, Dr. Steelman took employee off work and immediately requested an MRI. The December 16, 2011, MRI clearly showed a disc herniation at C5-6. The MRI is objectively different than the CT scan performed on January 9, 2010. The January 2010 scan revealed degenerative changes but did not show a herniated disc. Dr. Steelman diagnosed a disc herniation with radiculopathy.

Dr. Steelman referred employee to neurosurgeon Steven Reintjes. Somehow, Dr. Reintjes recorded that employee reported to him that a 50-pound box fell on her head. Employee credibly testified that she did not report that a box fell on her head and we believe her. We believe Dr. Reintjes inadvertently recorded the inaccurate history of a falling box. Dr. Reintjes' ultimate opinion is based upon the inaccurate history. For that reason, we disregard Dr. Reintjes' opinions.

Instead, we look to the testimony of Dr. Hopkins. Dr. Hopkins cogently explained why he believed the December 16, 2011, MRI of employee's C5-6 herniated disc showed a recent injury; there was fluid in the annulus of the disc. Dr. Hopkins acknowledged that the May 12, 2012, MRI was different from the December 2011 MRI. Dr. Hopkins believed that the changes were due to the progression of the herniation seen in the December 16, 2011, MRI. Dr. Hopkins did not believe the May 12, 2012, MRI showed a new disc herniation. We find credible the testimony of Dr. Hopkins.

Award

We affirm and adopt the temporary award of the administrative law judge, as supplemented herein.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The temporary or partial award and decision of Administrative Law Judge Lisa Meiners, issued May 6, 2013, is attached and incorporated by this reference, to the extent it is not inconsistent with our findings and conclusions herein.

Given at Jefferson City, State of Missouri, this 11th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY AWARD

Employee: Loretta Courtney

Injury No: 11-099024

Employer: Clay County Health Center

Insurer: Accident Fund General Insurance Co.

Hearing Date: April 5, 2013

Checked by: LM/cy

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: December 9, 2011
5. Location where accident occurred or occupational disease was contracted: Clay County Health Center, Liberty, Clay County, Missouri
6. Was the above employee in the employ of the above employer at time of alleged accident or occupational disease? Yes
7. Did the employer receive proper notice? Yes
8. Did the accident or occupational disease arise out of and in the course of employment? Yes
9. Was the claim for compensation filed within time required by Law? Yes
10. Was the employer insured by the above insurer? Yes
11. Describe the work employee was doing and how the accident occurred or the occupational disease contracted: Employee was taking a 35-pound box off a shelf while standing on a stepstool when she lost her balance, causing her neck to jerk.
12. Did the accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Neck

14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$4,785.48
16. Value of necessary medical aid paid to date by employer? \$7,569.12
17. Value of necessary medical aid not furnished by employer? 0
18. Employee's average weekly wages: \$797.58
19. Weekly compensation rate: \$531.72/\$425.19
20. Method of wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of Compensation payable from the Employer:
Temporary total disability at the rate of \$531.72 per week from February 16, 2012, and ongoing until Employee reached maximum medical improvement.
Further medical care and treatment to cure and relieve claimant from this injury as it casually relates to her December 9, 2011, injuries.
22. Second Injury Fund Liability: None.
23. Future requirements awarded:

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Employee: Loretta Courtney

Injury No: 11-099024

Employer: Clay County Health Center

Insurer: Accident Fund General Insurance Co.

Hearing Date: April 5, 2013

Checked by: LM/cy

FINDINGS OF FACT and Rulings of Law:

A hearing was held on April 5, 2013, before the Honorable Lisa Meiners. Claimant appeared in person and was represented by Mark E. Kelly. Employer and Insurer were represented by Bill Richerson.

STIPULATIONS

1. That the Employer, Clay County Health Center, was an employer operating under and subject to the provisions of Missouri Workers' Compensation Law on December 9, 2011, and was fully insured by Accident Fund General Insurance Co.;
2. that Loretta Courtney was its employee and working subject to the law in Liberty, Clay County, Missouri;
3. that Employee notified the Employer of her injuries as required by law and her claim was filed within the time allowed by law;
4. that Employee's average weekly wage was \$797.58, resulting in a compensation rate of \$531.72 for temporary total disability and \$425.19 for permanent partial disability compensation; and
5. that the Employer has paid temporary total disability compensation in the amount of \$4,785.48, and medical care costing \$7,569.12.

ISSUES

The issues to be determined by the hearing are as follows:

1. Whether Ms. Courtney suffered an injury by accident on December 9, 2011;

2. Whether Ms. Courtney's injuries are casually related to the accident;
3. Whether Ms. Courtney requires further medical care and treatment to relieve her of her injuries from the December 9, 2011, accident; and
4. Whether Employer is liable for temporary total disability benefits from February 16, 2012, through the present date and ongoing until she reaches maximum medical improvement.

Exhibits

The following exhibits were presented at trial:

Claimant's Exhibits

- A. Deposition of Dr. William Hopkins
- B. Employee's Report of Injury
- C. December 14, 2011, letter from Accident Fund
- D. January 27, 2012, check from Accident Fund
- E. December 16, 2011, MRI report from Northland Imaging
- F. May 1, 2012, MRI report from Diagnostic Imaging
- G. January 9, 2010, CT Cervical Spine from Liberty Hospital
- H. Medical Records of Work Health Solutions
- I. Medical Records of KC Neurosurgery Group/Dr. Reintjes
- J. Medical Records of Kearney Family Medicine
- K. Medical Records of Liberty Hospital
- L. Medical Records of University of Toledo Medical Center
- M. Photograph #1 – Place of Accident
- N. Photograph #2 – Place of Accident
- O. Photograph #3 – Place of Accident
- P. Photograph #1 – Demonstration
- Q. Photograph #2 – Demonstration
- R. Photograph #3 – Demonstration
- S. Photograph #4 – Demonstration

Employer's Exhibits:

1. Deposition of Dr. Stephen Reintjes
2. MRI report dated December 16, 2011
3. MRI report dated May 1, 2012
4. Dr. Reintjes record dated January 16, 2012
5. Dr. Reintjes record dated April 8, 2012
6. Dr. Reintjes record dated May 16, 2012
7. Dr. Reintjes record dated June 20, 2012

Medical Evidence

Ms. Courtney was standing on a stepladder pulling on a box weighing approximately 35 pounds and lost her balance with the box in her arms and whipped her head backward to catch her balance. This injury happened on a Friday afternoon and Ms. Courtney's neck began to tighten later in the day and by the following morning was suffering a severe headache. The following Monday she reported the injury and was directed to see Dr. Scott Steelman at Work Health Solutions.

The demographic information sheet in Dr. Steelman's file lists the description of accident as; "lifting box of files off top file cabinet standing on stepladder. Box heavy started to slip/jerked to catch box of files." Dr. Steelman saw Ms. Courtney on December 13, 2011, and reported she had pain located in her neck, upper back, and left shoulder which she described as aching beginning three days prior remained constant. The pain was made worse by moving her head forward and backwards and noted it is accompanied by pain that shot down both arms. Ms. Courtney reported she was lifting a box of files off the top of a file cabinet while on a ladder and started to lose her balance and jerked her neck backwards and forwards. Dr. Steelman's physical examination revealed radicular pain and weakness of her grip, Spurling's maneuver was positive causing symptoms in both arms. Dr. Steelman diagnosed a neck strain, thoracic paraspinal muscle spasm and cervical radiculopathy. He felt she suffered a whiplash injury to her cervical spine at work and had felt a burning sensation that had become worse. He requested an MRI of the cervical spine and then to return for follow up. Dr. Steelman took Ms. Courtney off work and on the off work status sheet, he listed acute c-spine strain with radiculopathy as his diagnosis.

The MRI performed at Northland Imaging on December 16, 2011, showed disk desiccation, disk space narrowing and marginal osteophytes involving primarily the C5-6 and C6-7 levels with the broad based osteophyte herniation at the C5-6 level with bilateral unciniate and facet hypertrophy. Ms. Courtney returned to Dr. Steelman on December 20, 2011, following the MRI. He noted the MRI showed: C5-6 herniation, C5-6 spinal stenosis, and cervical spine degenerative disk disease. Based on the MRI findings, Ms. Courtney was referred to Dr. Stephen Reintjes for follow up. Ms. Courtney was also placed in a no-work status capacity and the off work status sheet states the diagnosis is a "C5-6 disk herniation with nerve root and spinal canal stenosis." A referral form to Dr. Reintjes in Dr. Steelman's records again list a diagnosis of C5-6 disk herniation with nerve root and spinal canal stenosis.

Ms. Courtney saw Dr. Reintjes on January 16, 2012. Dr. Reintjes' records reflect Ms. Courtney saw him because of a neck injury in the early part of December. He reported Ms. Courtney was on a stepladder at work and pulled a 50 pound box overhead off the shelf and it fell striking her on the top of her head. She denied loss of consciousness but complained of a burning sensation at the base of her neck. He further noted Ms. Courtney had severe stiffness and when she leaned forward, she had severe shocking pain down the posterior arms to the elbow. She also had sub-occipital headache and felt her left hand was weak and she drops things. He indicated he reviewed the MRI report and it showed a central osteophyte C5-6. He recommended physical therapy three times a week over four weeks and then return for follow up. Ms. Courtney saw Dr. Reintjes again on April 18, 2012. Ms. Courtney continued to have neck pain radiating into her

occiput and left retro-orbital pain. He recommended an additional MRI scan of the cervical spine which he believed was related to her work accident as well as an MRI of her brain to evaluate her headaches.

Ms. Courtney returned to Dr. Reintjes on May 16, 2012. He reported she returned after having undergone an MRI scan for the cervical spine which showed central and right-sided C5-6 disk herniation causing right-sided C5-6 foraminal stenosis. He recommended she continue physical therapy three times a week over the next four weeks.

Dr. Reintjes last saw Ms. Courtney on June 20, 2012. He reported she had undergone physical therapy and was feeling better but still had numbness in her right thumb. She also had numbness and tingling in her right trapezius area. He performed a physical examination and indicated his impression was central and right-sided C5-6 disk herniation and recommended a cervical myelogram with a possibility of cervical repair.

Expert Testimony – William O. Hopkins, M.D., C.T.D.

William O. Hopkins, M.D., C.T.D., performed an independent medical evaluation of Ms. Courtney on September 19, 2012. Dr. Hopkins reported on December 9, 2011, Ms. Courtney was climbing on a stepladder to retrieve some files which were in a file box. She was reaching overhead to remove the box from the shelf when she felt a burning sensation between her shoulder blades and up to her neck. He indicated she was somewhat stiff throughout the weekend, when her neck pain began to increase to the point that on Monday, she notified her employer and was sent to see Dr. Steelman. Dr. Hopkins noted the remainder of her treatment history and that she had not been treated since May of 2012. At the time of Dr. Hopkins' examination, she was continuing to suffer pain in her shoulder blades into her neck, headaches, numbness in her right thumb, as well as dropping things with her right hand, tingling in the fingers of both hands when she bends over and waking up at night due to pain. Dr. Hopkins reviewed the medical records from this injury and the MRI studies performed as well as the medical records predating this injury.

After reviewing all the evidence, Dr. Hopkins opined Ms. Courtney suffered an injury to the intervertebral disk at C5-6 and, to a lesser extent, at C6-7 based on the persistent symptoms and physical findings. Dr. Hopkins felt it was significant to note she had no prior pain in her cervical spine nor prior cervical radicular symptoms or physical findings. However, immediately following the physical incident on December 9, 2011, she had an abrupt onset of severe pain with an immediate subsequent onset of arm tingling and numbness, which he felt was clearly indicative of cervical radiculopathy that had never been documented before in the medical records. Accordingly, Dr. Hopkins felt she suffered an injury to her cervical spine involving primarily the C5-6 and, to a lesser extent, a C6-7 disk as a direct and prevailing cause of her cervical radiculopathy.

Dr. Hopkins testified he has been an orthopedic surgeon since 1971. In addition to performing IME's, Dr. Hopkins continues to treat a number of patients he had previously seen who continue to have physical problems. Additionally, he will see new patients that contact his office and request a physical exam. Dr. Hopkins performed orthopedic surgeries until 2008. During that time, he performed surgeries on the cervical and lumbar spine as well as the upper and lower

extremities.

Dr. Hopkins testified Ms. Courtney brought in the actual disks from the December 12, 2011, and May 1, 2012, MRI's which he reviewed and did not rely solely on the interpretation of the radiologist. Additionally, Dr. Hopkins reviewed the medical records from Dr. Steelman, noting Dr. Steelman was the first physician to examine Ms. Courtney for this injury. Dr. Hopkins thought it was significant to examine Dr. Steelman's impressions and his report of the mechanism of the injury. He noted Dr. Steelman felt Ms. Courtney had experienced a whiplash type of injury to her cervical spine while at work. As time progressed, her symptoms increased and became worse. At the time Ms. Courtney saw Dr. Steelman, Dr. Hopkins noted she was having neck pain, limited motion and pain into both arms when Dr. Steelman performed the Spurling's maneuver. Dr. Hopkins also noted Dr. Steelman had recorded the mechanism of injury as having occurred when Ms. Courtney was lifting a box off the shelf and lost her balance, causing her neck to go back and forth which was consistent with Dr. Steelman's conclusion of a whiplash injury.

In reviewing the MRI film of December 16, 2011, Dr. Hopkins noted Ms. Courtney had significant abnormality at multiple levels, but mostly the C5-6, levels. The radiology report of December 16, 2011, noted a broad based disk osteophyte herniation and multilateral uncinata and facet hypertrophy. Dr. Hopkins noted prior x-rays by Dr. Ledbetter showed only mild degenerative changes. Dr. Hopkins felt the conditions noted on the December 16, 2011, MRI were due to recent trauma. He explained the areas in which Ms. Courtney reported pain, tingling, and numbness in her right arm and hand were primarily involved in the medial nerve distribution, thumb, index, and middle finger. Prior to this injury, Ms. Courtney never reported any pain in her arm, hand or numbness and tingling that involved that particular distribution. He explained, anatomically, this particular area of the arm and hand are served primarily by the C5-6 level. The C4-5 and C5-6 levels are where the nerves exit the spinal cord and give sensation to the radial part of the hand, not the ulnar part of the hand. He felt it was significant there were no reports or symptoms of that kind in her prior medical records. However, suddenly she had symptoms that were anatomically aligned with the changes that were seen in the MRI of her cervical spine. Dr. Hopkins felt Ms. Courtney developed neck pain and burning paresthesias for which there was no prior history as well as developing radicular symptoms of pain, tingling and numbness in her right arm immediately after the injury, and then had changes on her MRI that were compatible to her symptoms. This led him to the conclusion that the incident on December 9, 2011, caused the onset of her symptoms and physical findings.

Dr. Hopkins further explained while osteophytic changes take a long time to occur, when they see fluid in the annulus or disruption of the annulus with fluid accumulation, it is the hallmark of a "very more recent injury." Dr. Hopkins noted the MRI demonstrated a protrusion and irregularity in the annulus of the disk that was compatible to symptoms Ms. Courtney suffered.

Dr. Hopkins stated whether you were discussing Dr. Steelman's records, Dr. Reintjes' records, or his report, everybody related her symptoms to a physical episode where she is removing some files above her head while on a stepladder. Dr. Hopkins did not feel it is unusual to have different discussions of the mechanism of injury but while it is described in different terms, it all reflects an incident on December 9, 2011. Dr. Hopkins opined the most significant issue as to when

the injury occurred is the onset of her problems. In reviewing the prior medical records, Dr. Hopkins felt they are all very similar in describing the onset of her symptoms.

Dr. Hopkins also reviewed the MRI report from May 1, 2012. The radiologist described multiple levels of intervertebral disks from the fourth vertebra down to the seventh cervical vertebra and a large central herniated disk with marked cord compression. The radiologist also noted there was a large osteophyte complex of the right neural foramen and measured the thecal sac as .7 centimeters in the midline. Dr. Hopkins explained this measurement describes contact with the spinal cord and the marked narrowing of the nerve root opening at that level on the right side. Dr. Hopkins reviewed both of the original disks of the MRI's and felt they were essentially the same findings. He felt she had difficulties in those same areas of the MRI. Dr. Hopkins was asked to distinguish the difference between the osteophyte herniation at C5-6 on December 16, 2011, versus the central herniated disk found on the May 1, 2012, MRI. He felt it was somewhat difficult to distinguish the two. He noted the MRI's were performed at two different facilities by two different machines, noting in some respects there could be some differences from one machine to another. Additionally, he noted you are dealing with verbal descriptions that are not necessarily scientific. Both reports, however, describe certain levels of stenosis of the spinal canal. He noted there was a 2mm AP diameter difference between the MRI on December 16, 2011, and the one performed on May 1, 2012. Dr. Hopkins felt if you looked at the measurements, it would suggest there is a progression of the herniation at the C5-6 from December until May of 2012.

Dr. Hopkins stated while the C5-6 large herniated disk with marked cord compression was not noted in the first MRI, it is consistent with the progression of the deformity shown on the initial MRI. The first MRI noted dural contact which he explained was contact with the dura itself, but the second MRI described spinal cord contact which was a progression of the deformity. He indicated one radiologist can describe a disk in one way and use a general term and the other may describe the same or later one in general terms. It is not an exact science, but rather a physical description and an impression. Dr. Hopkins felt the radiologist was describing a greater degree of impingement or greater degree of deformity in the disk itself on the second MRI.

Dr. Hopkins was asked about Dr. Reintjes' description of the mechanism of the injury. Specifically, whether a 50-pound box struck Ms. Courtney on the top of her head was different than the mechanism of injury she described to him. He felt there was a difference in the description of the injury, but there was some basic mechanics of the injury that would be the same. It was noted Dr. Reintjes opined the injury was unrelated because, in his opinion, Ms. Courtney initially had symptoms in her left hand. Dr. Hopkins felt if she did, in fact, have symptoms in her left hand, it would still correlate to the findings of the MRI on December 16, 2011. He explained there are areas of foraminal narrowing both left and right in her MRI. He also noted she had left upper extremity weakness and certainly, you could have left upper extremity weakness without radicular pain. She also had changes on the right side of her spine on the MRI as well. At the time Dr. Hopkins examined her, her grip strength was normal on the left side. He felt those types of symptoms and physical findings can vary from time to time. However, it was very obvious she had symptoms on both sides at first, but they were dominate on the right as most of the observers and most of the doctors described. Dr. Hopkins also felt Dr. Reintjes' opinion was based on the impression her symptoms were only unilateral to the left side and not the right side. Dr. Hopkins opined this was

incorrect looking back at the records from Dr. Steelman, who initially saw her after the injury.

Dr. Hopkins felt Ms. Courtney needs further care as a result of her injuries. Specifically, he recommended physical therapy, consideration of cervical steroid epidurals, and ultimately consultation with a spine surgeon for a surgical evaluation if those modalities do not result in significant improvement.

Expert Testimony – Dr. Stephen Reintjes, M.D.

Dr. Reintjes' entire file was marked as an exhibit to his deposition. The records indicated he was contacted by the Accident Fund on January 13, 2012, and asked to evaluate and treat Ms. Courtney. In a letter from Hilah Adkins, on behalf of the Accident Fund, she described the injury as, the employee was pulling a box of files from a shelf when the box started to fall and she jerked to hold on to it and did not fall. The adjuster also stated two co-workers did not believe the injury had occurred. She further added Ms. Courtney lives on a farm and frequently rides horses. Accordingly, the adjuster sought an opinion as to whether the current complaints were a result of the December 9, 2011, injuries, whether they were more probably pre-existing or due to her horseback riding.

Following that contact, Dr. Reintjes saw Ms. Courtney on January 16, 2012. At that point, Dr. Reintjes noted Ms. Courtney was, "on the stepladder at work and pulled a 50-pound box and (sic) overhead off a shelf and it fell down striking her on top of her head." He reported Ms. Courtney had severe shocking pain down the posterior arms to the elbow when she leaned forward and a suboccipital headache. Her left hand also felt weak and she dropped things. On physical examination, he noted Ms. Courtney had a decreased pinprick sensation in the left arm that did not follow a specific dermatome. It was his impression Ms. Courtney was suffering from a cervical strain and noted she had undergone an MRI which demonstrated a central osteophyte at C5-6. He recommended physical therapy and then follow up in one month. Unfortunately, Ms. Courtney was unable to return to Dr. Reintjes until April 18, 2012. He noted she had neck pain as well as numbness in her thumb and pain in her left shoulder. On physical examination, she had decreased pinprick sensation in the left C7 distribution and pain that occurred with rotation of the left shoulder. He recommended she undergo an MRI of the cervical spine which he believed was related to her work incident. He also recommended an MRI of the brain to evaluate her headaches, but did not believe it was for any work-related event. Ms. Courtney underwent the MRI on May 1, 2012, and returned to Dr. Reintjes. Dr. Reintjes noted the MRI showed a central and right-sided C5-6 disk herniation causing right-sided C5-6 foramen stenosis. He also noted, "the patient still complains of pain in her right scapula and numbness in her right thumb." His impression was she had a C5-6 disk herniation and recommended physical therapy three times a week over the next four weeks as well as home cervical traction.

Ms. Courtney returned on June 20, 2012, and he reported, "She still has numbness in her right thumb. She complains of numbness and tingling in the right trapezius. When she bends, she will have pain that radiates down the right medial arm and medial forearm to the tip of her fingers." His impression was she had a central and right-sided C5-6 disk herniation. He recommended she undergo a cervical myelogram with follow up CT scan of the cervical spine and then return for

further evaluation. It was noted on that office note, a copy of the report was sent to counsel for employer, Bill Richerson.

There were no further treatment notes contained in Dr. Reintjes' file. However, there was a letter dated June 22, 2012, from Mr. Richerson, requesting to come to Dr. Reintjes' office to look through Ms. Courtney's chart. Dr. Reintjes' deposition was then taken on August 31, 2012. It was at that point in time Dr. Reintjes offered an opinion that was different from what he had previously noted in his office records.

Dr. Reintjes stated when a patient comes in; he hand writes notes in what he characterizes as his poor hand writing. He then dictates from his hand-written notes at some point in time after the examination. Once those notes have been dictated, he discards his hand-written notes. Dr. Reintjes stated Ms. Courtney reported she was on a stepladder at work and pulled a 50 pound box from an overhead position which fell and struck her on the top of her head. This is what he based the mechanism of injury upon. Dr. Reintjes stated his impression on January 16, 2012, was that she had suffered a cervical strain and had undergone an MRI scan of the cervical spine which he thought showed a central bone spur at C5-6. It was only in a subsequent visit that he discussed a disk herniation. Dr. Reintjes testified it would alter his opinion if a box weighing 50 pounds did not strike her on top of the head.

Dr. Reintjes was asked whether a patient like Ms. Courtney would be expected to have at least some type of complaints with her neck immediately after experiencing an incident as he noted in his records. Dr. Reintjes testified he's had a lot of patients that have an event one day and do not have any symptoms of pain until they wake the following day. He acknowledged he doesn't always relate the immediacy of the event to the onset of symptoms but there has to be a temporal relationship to which he described as 24 hours between the event and the onset of pain.

Dr. Reintjes testified his diagnosis changed after the second MRI which showed a ruptured disk on the right between C5-6. Dr. Reintjes acknowledged Ms. Courtney had radicular symptoms the first time she saw him but, in his opinion, the symptoms were in the left arm and the MRI scans reviewed in May showed a right sided C5-6 herniation. He felt there was something that occurred between January and May 2012 that did not at all relate to her work injury. Dr. Reintjes stated he did not inquire as to whether there was some incident that occurred between January 16, 2012, and June 20, 2012. He felt the most common cause of a cervical disk herniation is someone waking up in the morning with a stiff neck because herniated disks, "just - - happen." Dr. Reintjes did not feel a C5-6 disk herniation on the right could cause radiculopathy in both upper extremities.

Dr. Reintjes concluded by stating he withdrew his opinions of causation if a 50 pound box did not fall on top of Ms. Courtney's head. However, he acknowledged a person who is lifting a box of files off a top file cabinet, standing on a stepladder, when the box is heavy and starts to slip, causing them to jerk and catch the box of files; could cause a cervical strain. And as a result, could develop pain in the neck, upper back, and left shoulder for which he could recommend treatment.

Dr. Reintjes' also felt Ms. Courtney needs further care as a result of the herniated disk in her neck. His last office note of June 2012, recommended a cervical myelogram with a follow up CT

scan of the cervical spine.

Employee's Testimony

Loretta Courtney testified she began working for Clay County Health Center in September of 2008. She was initially hired as a medical clerk, but then received a promotion after a year to Program Coordinator for medical records.

Ms. Courtney suffered an injury on December 9, 2011, on the premises of the Clay County Health Center. She was standing on a stepladder and pulling a box weighing approximately 35 pounds off the shelf when she lost her balance, causing her upper body to jerk in an awkward position. As Ms. Courtney slid the box off the top shelf, she realized it weighed more than she anticipated. She thought the box was going to fall, and she jerked to catch it to make sure it did not fall. Ms. Courtney described the box as a copy paper box that did not have any openings on the sides to use as handles. Pam Wittmeyer and Linda Washburn were standing next to her when she was on the ladder. The plan was to hand the box to Ms. Washburn after she retrieved it from the top shelf. Ms. Courtney felt her shoulders go back and then forward before having a burning sensation in her neck. She returned to work after the incident, but continued to have a burning sensation in her neck, which she had never felt before. Ms. Courtney did not say anything to Ms. Washburn or Ms. Wittmeyer about the burning sensation, but she did tell them if they needed any more boxes down from the shelf, they needed to call Roy, the building maintenance coordinator.

That evening, Ms. Courtney began to have stiffness in her neck and both shoulders as well as a headache. She took some over-the-counter medication to try to relieve the pain, but it did not help. Ms. Courtney's symptoms increased throughout the night and on Saturday. She sat in her recliner with a heating pad on for a majority of the day on Saturday. She was unable to sleep in her bed that night, but instead slept in the recliner. That Sunday, Ms. Courtney could not turn her head, and she again tried heat, alternating with ice, and taking ibuprofen to relieve her pain. Ms. Courtney had to sleep in the recliner again on Sunday night. On Monday she woke up and called into work as she was in too much pain to be able to go to work. Ms. Courtney called in and left a message for Jack, the Human Resource Director, and told him she had a headache and stiff neck and would be calling her physician, Dr. Carl Ledbetter. Unfortunately, Dr. Ledbetter would not see Ms. Courtney as she reported the pain was due to a work accident. Ms. Courtney then called Mr. Carpenter again and, at that time, he advised her to see Dr. Steelman with Work Health Solutions. She was unable to see Dr. Steelman until December 13, 2011, and at that time, was still having pain in her head as well as a stiff neck. She reported she had pulled something when she was on a ladder retrieving a records box from the top of filing cabinets.

Ms. Courtney testified that following Dr. Steelman's examination he recommended an MRI of her neck which was performed. She returned to Dr. Steelman and he advised her she had a herniated disk in her neck and was referring her to a neurosurgeon. Ms. Courtney was subsequently seen by Dr. Steven Reintjes on January 16, 2012. She testified she had previously seen Dr. Reintjes for low back pain as a result of a prior automobile collision. She met with Dr. Reintjes for about 15 minutes on January 16, 2012. He asked her questions and she reported he seemed to be somewhat hurried. Dr. Reintjes inquired as to the nature of her injury, the weight of the box and whether it

struck her on the head. Ms. Courtney testified she told Dr. Reintjes the box weighed less than 50 pounds, which she estimated in the 35 pound range, and had not struck her on the head. Ms. Courtney also told Dr. Reintjes of weakness in her right hand. Ms. Courtney testified she not tell Dr. Reintjes she had weakness in her left hand as noted in his records but that she had loss of strength and numbness in her right hand at the time of his examination which has progressed to some degree since then. Ms. Courtney testified Dr. Reintjes did not review the MRI films with her but he recommended physical therapy which was scheduled.

Ms. Courtney further testified that due to her mother's deteriorating health and scheduling conflicts, physical therapy was ultimately not authorized by the insurance company until she was re-examined by Dr. Reintjes on April 18, 2012. Ms. Courtney further testified despite the physical therapy she had ongoing pain in her neck with numbness and tingling into both elbows and weakness in her right hand. Ms. Courtney previously had some weakness in the right hand due to a fracture of her hand but now has numbness in her thumb, index, and middle finger and greater weakness in the right hand since her December 9, 2011, accident. Ms. Courtney also testified over the years she had pain in her low back but never had neck pain or pain into either arm. She slipped and fell on ice at the Health Department's parking lot in January 2010, and struck her face on a car and as a result was seen in the Liberty Hospital Emergency Room where a CT scan of her neck was performed but noted no problems. Ms. Courtney also testified that in October 2010, she had a horse fall on its side and bruised her lower leg which was also noted in the Liberty Hospital records. She noted on neither of these occasions did she suffer any pain in her neck or in her arms. Immediately following the injury on December 9, 2011, was the first time she felt any pain or numbness in her arms.

Ms. Courtney also testified about her examination with Dr. William Hopkins. She took DVD copies of her December 16, 2011, and May 1, 2012, cervical MRIs to her exam with Dr. Hopkins. The examination took approximately one and one-half hours and included Dr. Hopkins' review of the MRIs with her. She testified Dr. Hopkins showed her the C5-6 disk herniation on both MRIs and that he explained there was essentially no difference in the two MRI results.

Ms. Courtney continues to suffer an aching pain in the base of her skull at the top of her neck. She also has pain between her shoulders that radiates down both arms to her elbows and into her right hand, which is weak and causes her to drop things. She also continues to have numbness in her thumb, index, and middle finger of her right hand. Although her pain has increased somewhat, her condition remains mostly unchanged from June 2012. She does not believe she is capable of working at this time due to her injuries.

Testimony of Linda Washburn

Linda Washburn, who testified on behalf of the employer, was looking for a box with Ms. Courtney. They were searching for a box of documents for the WIC Program for which Ms. Washburn was responsible. The box was located on the top shelf of a file cabinet and Ms. Courtney proceeded to stand on a stepladder and slide the box off the shelf and hand it down to Ms. Washburn. Ms. Washburn testified she did not see Ms. Courtney lose her balance nor did she believe the box "dropped." There were photographs Ms. Washburn identified that showed she

could not reach the box until after it had slid off the top of the shelf nor place her palm on the box until it was approximately six to eight inches off the top shelf. Ms. Washburn testified the box was approximately "20 pounds give or take." Ms. Washburn testified she recalled the box was a banker's box with handles on either end. She acknowledged each of the other boxes that were on top of the shelf did not have handles and were simply copy paper boxes. Ms. Washburn testified although she did not recall when she was first questioned after the incident that she had taken maybe six other boxes off the top shelf; she remembered this particular incident specifically. She also testified this incident was approximately a week after Ms. Courtney had been injured by a horse. She acknowledged she would not argue with the medical records if they reflected the incident where Ms. Courtney fell off a horse had occurred more than a year prior to her accident of December 9, 2011.

Testimony of Pam Wittmeyer

The employer also presented the testimony of Pam Wittmeyer who was present while Ms. Courtney was standing on the stepladder. Ms. Wittmeyer testified she was standing behind Ms. Courtney and did not see anything unusual when she slid the box off the top of the cabinets. Ms. Wittmeyer, who was the corporate representative and was present throughout the hearing, testified she recalled it was a banker's box full of documents Ms. Courtney slid off the top shelf and she handed the box down to Ms. Washburn at approximately Ms. Courtney's waist level a couple of feet below where Ms. Washburn described it. Although Ms. Wittmeyer testified she was absolutely certain Ms. Courtney had handed the box down to her waist level before Ms. Washburn reached for it, she acknowledged that either she or Ms. Washburn were "absolutely wrong" about where the box had been handed to Ms. Washburn. Ms. Wittmeyer also stated she had been questioned by her supervisor about Ms. Courtney's accident within a week or two of the December 9, 2011, date of injury. She testified that would have been within the timeframe of when the box of documents Ms. Courtney took off the shelf was destroyed on December 23, 2011. She acknowledged the box could have been weighed and photographed had employer sought to do so.

RULINGS:

Accident

Employer and Insurer have challenged whether Ms. Courtney suffered an accident in the course and scope of her employment. Ms. Courtney testified she suffered an injury on Friday, December 9, 2011, on the premises of the Clay County Health Center. She was standing on a stepladder and pulling a box weighing approximately 35 pounds off the shelf when she lost her balance, causing her upper body to jerk in an awkward position. Ms. Courtney stated as she slid the box off the top shelf, she realized it weighed more than she anticipated. Thinking the box was going to fall, she jerked to catch it to make sure it didn't fall. Ms. Courtney testified she had a burning sensation in her neck that continued through the day and that evening, she began to have stiffness in her neck as well as a headache and stiffness in both shoulders. Ms. Courtney's symptoms increased throughout the weekend and on Monday, she woke up and called in sick to work as she was in too much pain to work. Ms. Courtney spoke with Jack Carpenter, the Human

Resource Director, on Monday morning, December 12, 2011, and he advised her to see Dr. Steelman with Work Health Solutions.

The medical records with Dr. Steelman on December 13, 2011, are consistent with Ms. Courtney's testimony. The demographic information sheet in Dr. Steelman's file lists the description of accident as; "lifting box of files off top file cabinet standing on stepladder. Box heavy started to slip/jerked to catch box of files." Dr. Steelman reported Ms. Courtney had pain located in her neck, upper back, and left shoulder which she described as aching beginning three days prior. Dr. Steelman stated Ms. Courtney reported to him she was lifting a box of files off the top of a file cabinet while on a ladder and started to lose her balance and jerked her neck backwards and forwards. He opined she had suffered a whiplash injury to her cervical spine at work and had felt a burning sensation that had become worse.

Ms. Courtney was referred to Dr. Reintjes by Dr. Steelman. Although Dr. Reintjes' records reflect a different mechanism of injury, the records he received from Dr. Steelman as well as the letter from the adjuster in advance of Ms. Courtney's appointment reflect a report of injury consistent with Ms. Courtney's testimony.

Ms. Courtney's co-worker, Linda Washburn, testified she was looking for a box with Ms. Courtney. The box was located on the top shelf of a file cabinet and Ms. Courtney proceeded to stand on a stepladder and slide the box off the shelf and hand it down to Ms. Washburn. Ms. Washburn testified she did not see Ms. Courtney lose her balance nor did she believe the box "dropped." Ms. Washburn identified photographs that showed she could not reach the box until after it had slid off the top of the shelf nor place her palm on the box until it was approximately six to eight inches off the top shelf. Ms. Washburn testified the box was approximately "20 pounds give or take." When she was first questioned after the incident she did not recall that she had taken maybe six other boxes off the top shelf; she remembered this particular incident specifically.

Pam Wittmeyer testified she was also present while Ms. Courtney was standing on the stepladder. Ms. Wittmeyer testified she was standing behind Ms. Courtney and did not see anything unusual when she slid the box off the top of the cabinets. Although Ms. Wittmeyer testified she was absolutely certain Ms. Courtney handed the box down to Ms. Washburn's waist level before Ms. Washburn reached for it, she acknowledged that either she or Ms. Washburn had to be "absolutely wrong" in their description of how the box had been handed to Ms. Washburn.

After listening to the testimony and reviewing the medical records that were contemporaneous with the work injury, I find Ms. Courtney's testimony to be more credible than that of Ms. Wittmeyer and Ms. Washburn. I believe Ms. Courtney suffered an injury by accident when she was lifting the box off the shelf. Ms. Courtney's testimony is consistent that her upper body jerked in an awkward position after the weight of the box came off the shelf. Ms. Wittmeyer testified she was questioned within a week or two of the accident. Given the amount of time that passed before the witnesses were asked about the incident, it is understandable they did not remember the occurrence the same way in which Ms. Courtney did. Ms. Wittmeyer had difficulty recalling other events contemporaneous with the accident. Ms. Washburn attributed Ms. Courtney's injuries to a horse accident that she believed was a week prior, when the medical records establish

the incident was more than a year prior. Both witnesses remembered the incident differently as well as events preceding the accident. Ms. Courtney's testimony is consistent with her report of injury to her employer on Monday morning after the accident on Friday and consistent with the report of injury she completed on December 21, 2011, at the insurer's request. Lastly, her testimony is consistent with the medical records of Dr. Steelman who she saw on December 13, 2011, and December 20, 2011. Accordingly, I find the testimony of Ms. Courtney more credible than the testimony of Ms. Washburn and Ms. Wittmeyer

I find Ms. Courtney proved she suffered an accident in the course and scope of her employment.

Causation

Employer and Insurer challenged whether Ms. Courtney's medical condition is causally related to her December 9, 2011, accident. The courts have held that when a condition is beyond the understanding of a lay person, expert testimony is required. "For an injury to be compensable the evidence must establish a causal connection between the accident and the injury. The testimony of a claimant or other lay witness can constitute substantial evidence of the nature, cause and extent of the disability when the facts fall within the realm of lay understanding...An injury may be of such a nature (however) that expert opinion is essential to show that it was caused by the accident to which it is ascribed." (Citations omitted). Griggs v. A. B. Chance Company, 503 S.W.2d 697, 704 (Mo.App. 1974). The courts have further noted that, "medical causation not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." Selby v. Trans World Airlines, Inc., 831 S.W.2d 221, 222 (Mo.App. 1992).

In this case, the onset of symptoms and the location of the symptoms were a key component in the expert opinions. The first records we have detailing Ms. Courtney's symptoms are Dr. Steelman's who saw her four days after the injury on December 13, 2011. He reported she had pain located in her neck, upper back, and left shoulder which she described as aching which had been constant. Her pain was made worse by moving her head forward and backwards and noted it was accompanied by pain that shot down *both* arms. Ms. Courtney reported she was lifting a box of files off the top of a file cabinet while on a ladder and started to lose her balance and jerked her neck backwards and forwards. Dr. Steelman's physical examination revealed radicular pain and weakness of her grip and Spurling's maneuver was positive causing symptoms in *both* arms. Dr. Steelman diagnosed a neck strain, thoracic paraspinal muscle spasm and cervical radiculopathy. Dr. Steelman assessed Ms. Courtney with a whiplash injury to her cervical spine at work and had felt a burning sensation that had become worse.

An MRI performed on December 16, 2011, showed a broad based osteophyte *herniation* at the C5-6 level. When Ms. Courtney returned to Dr. Steelman on December 20, 2011, following the MRI, he noted the MRI showed a C5-6 herniation, C5-6 spinal stenosis, and cervical spine degenerative disk disease. Based on the MRI findings, he referred Ms. Courtney to Dr. Stephen Reintjes. Ms. Courtney was also placed in a no-work status capacity and the off work status sheet reiterated the diagnosis is a "C5-6 disk herniation with nerve root and spinal canal stenosis." A

referral form to Dr. Reintjes in Dr. Steelman's records again list a diagnosis of C5-C6 disk *herniation* with nerve root and spinal canal stenosis.

Dr. Reintjes' file which was marked as an exhibit to his deposition indicates he was notified of Ms. Courtney's description of the mechanism of the injury by the adjuster. Dr. Reintjes then saw Ms. Courtney on January 16, 2012, wherein he noted Ms. Courtney was, "on the stepladder at work and pulled a 50-pound box and (sic) overhead off a shelf and it fell down striking her on top of her head." He reported Ms. Courtney had severe shocking pain down the posterior *arms* to the elbow when she leaned forward and a suboccipital headache. He believed Ms. Courtney was suffering from a cervical strain and noted she had undergone an MRI which demonstrated a central osteophyte at C5-6. On April 18, 2012, Dr. Reintjes noted she had neck pain as well as numbness in her thumb and pain in her left shoulder. On physical examination, she had decreased pinprick sensation in the left C7 distribution and pain that occurred with rotation of the left shoulder. He recommended she undergo an MRI of the cervical spine which he believed was related to her work incident which was performed on May 1, 2012. Dr. Reintjes noted the MRI showed a central and right-sided C5-6 disk herniation causing right-sided C5-6 foraminal stenosis. He also noted, "the patient *still* complains of pain in her *right* scapula and numbness in her *right* thumb." His impression was she had a C5-6 disk herniation.

Ms. Courtney returned on June 20, 2012, and he reported, "She *still* has numbness in her *right* thumb. She complains of numbness and tingling in the right trapezius. When she bends, she will have pain that radiates down the right medial arm and medial forearm to the tip of her fingers." His impression was she had a central and right-sided C5-6 disk herniation. After a copy of the report was sent to counsel for employer, Bill Richerson, there were no further treatment notes from, Dr. Reintjes'. However, on June 22, 2012, Mr. Richerson requested to come to Dr. Reintjes' office to look through Ms. Courtney's chart. Dr. Reintjes' deposition was taken on August 31, 2012, and at that point, Dr. Reintjes testified it would alter his opinion if a box weighing 50 pounds did not strike her on top of the head.

Dr. Reintjes testified his diagnosis changed after the second MRI showed a ruptured disk on the right between C5-6. Dr. Reintjes acknowledged Ms. Courtney had radicular symptoms the first time she saw him but, in his opinion, the symptoms were in the left arm and the MRI scans reviewed in May 2012 showed a right sided C5-6 herniation. He felt there was something that occurred between January and May that did not at all relate to her work injury. Because he felt her symptoms were initially only on the left side and the herniation shown on the May 1, 2012, MRI were right sided, he did not believe the herniation was related to her work injury.

Despite this change in testimony, Dr. Reintjes acknowledged lifting a box of files off a top file cabinet, standing on a stepladder, when the box is heavy and starts to slip, causing a person to jerk and catch the box of files; could cause a cervical strain. And as a result, could develop pain in the neck, upper back, and left shoulder for which he could recommend treatment.

In contrast, Dr. Hopkins viewed the symptoms and the MRI differently than Dr. Reintjes. In reviewing the MRI film of December 16, 2011, Dr. Hopkins noted a broad based disk osteophyte herniation and multilateral uncinata and facet hypertrophy. Dr. Hopkins noted prior x-rays by Dr.

Ledbetter showed only mild degenerative changes but the conditions noted on the December 16, 2011, MRI were due to recent trauma. He explained the areas in which Ms. Courtney reported pain, tingling, and numbness in her right arm and hand were primarily involved in the medial nerve distribution, thumb, index, and middle finger. Prior to this injury, Ms. Courtney never reported any pain in her arm, hand or numbness and tingling that involved that particular distribution. He explained, anatomically, this particular area of the arm and hand are served primarily by the C5-6 level. The C4-5 and C5-6 levels are where the nerves exit the spinal cord and give sensation to the radial part of the hand, not the ulnar part of the hand. He felt it was significant there were no reports or symptoms of that kind in her prior medical records. However, suddenly she had symptoms following the December 9, 2011, accident that were anatomically aligned with the changes that were seen in the MRI of her cervical spine. Dr. Hopkins felt Ms. Courtney developed neck pain and burning paresthesias for which there was no prior history as well as developing radicular symptoms of pain, tingling and numbness in her right arm immediately after the injury, and then had changes on her MRI that were compatible to her symptoms. This led him to the conclusion that the incident on December 9, 2011, caused the onset of her symptoms and physical findings.

Dr. Hopkins stated while osteophytic changes take a long time to occur, when fluid in the annulus or disruption of the annulus with fluid accumulation is seen on an MRI, it is the hallmark of a "very more recent injury." Dr. Hopkins noted the MRI taken on December 16, 2011, demonstrated a protrusion and irregularity in the annulus of the disk that was compatible to symptoms Ms. Courtney suffered.

Dr. Hopkins reviewed both of the original disks of the MRI's and felt they were essentially the same findings. Both reports describe certain levels of stenosis of the spinal canal. Between December 16, 2011, and May 1, 2012, there was a 2mm decrease in the AP diameter. Dr. Hopkins felt the measurements suggested a progression of the herniation at the C5-6 from December 2011, until May of 2012.

Dr. Hopkins noted Dr. Reintjes opined the injury was unrelated because, Ms. Courtney initially had symptoms in her left hand. Dr. Hopkins felt if she did, in fact, have symptoms in her left hand, it would still correlate to the findings of the MRI on December 16, 2011. He explained there are areas of foraminal narrowing both left and right in her MRI. He also noted she had left upper extremity weakness and certainly, you could have left upper extremity weakness without radicular pain. She also had changes on the right side of her spine on the MRI as well. At the time Dr. Hopkins examined Ms. Courtney, her grip strength was normal on the left side. He felt those types of symptoms and physical findings can vary from time to time. But, it was very obvious she had symptoms on both sides at first, but they were dominate on the right as most of the observers and most of the doctors described. Dr. Hopkins also felt Dr. Reintjes' opinion was based on the impression her symptoms were only unilateral to the left side and not the right side. Dr. Hopkins opined this was incorrect looking back at the records from Dr. Steelman, who initially saw her after the injury. Additionally, Ms. Courtney testified her symptoms were primarily in her right arm and hand, which she reported to Dr. Reintjes.

It is clear Ms. Courtney now suffers from a herniated disk at C5-6. The question is whether

the herniation is a result of the December 9, 2011, accident. After reviewing the evidence, I find Dr. Hopkins' opinion to be more persuasive than the opinions expressed by Dr. Reintjes. Dr. Hopkins also reviewed the records of Dr. Steelman, which Dr. Reintjes testified he did not do prior to evaluating Ms. Courtney. Dr. Hopkins explained the correlation of Dr. Steelman's records with the results shown on the MRI. He also explained the correlation between the two MRI's, noting the herniation was a progression – not new as of May 2012. Dr. Hopkins also explained how the symptoms can manifest on each side with the type of herniation Ms. Courtney was diagnosed. Dr. Reintjes was very firm in his opinion that the herniation was not evident on the first MRI, only appeared in May, and accordingly, could not have been caused by the accident on December 9, 2011. He further did not believe she had any right sided symptoms prior to May 1, 2011, despite his contradictory notes in which he indicated left arm pain but then refers to his notes as Ms. Courtney *still* has pain in her right arm. It is clear from Dr. Steelman's notes Ms. Courtney suffered pain in her right and left arm contemporaneous with her accident.

It is also clear from reading the radiologist report from December 16, 2011, and Dr. Steelman's records, Ms. Courtney was initially diagnosed with a herniated disk at C5-6. These initial reports note a broad-based disc osteophyte herniation at C5-6. Dr. Hopkins also testified the herniation was present in December 2011. The only one that did not believe the herniated disk was present following the accident in December 2011, was Dr. Reintjes. He offers no explanation for why he believes it was not present, despite Dr. Steelman's diagnosis as well as the radiologist report that assesses a herniated disk.

Accordingly, I find Ms. Courtney's injury to her neck, including the herniated disk at C5-6 is causally related to her accident on December 9, 2011. Ms. Courtney's accident on December 9, 2011, was the prevailing factor in causing her medical condition and resulting disability.

Temporary and Total Disability

Ms. Courtney is seeking temporary total disability compensation from February 16, 2012, ongoing until she reached maximum medical improvement.

Section 287.270, RSMo, provides that an injured employee is to be paid compensation during the continuance of temporary total disability up to a maximum of 400 weeks. Total disability is defined in Section 287.020.7 as the "inability to return to any employment and not merely...[the] inability to return to the employment in which the employee was engaged at the time of the accident." Compensation is payable until the employee is able to find any reasonable or normal employment or until his medical condition has reached the point where further improvement is not anticipated. Vinson v. Curators of Univ. of Missouri, 822 S.W. 2d 504 (Mo. App. 1991); Phelps v. Jeff Wolk Const. Co., 803 S.W.2d 641, 645 (Mo. App. 1991); and Williams v. Pillsbury Co., 694 S.W.2d 488 (Mo. App. 1985).

The employee has the burden of proving that he or she is unable to return to any employment. Such proof is made only by competent and substantial evidence. It may not rest on speculation. Griggs v. A.B. Chance Company, 503 S.W.2d 697, 703 (Mo. App. 1974). The employee's testimony alone can constitute substantial evidence to support an award of temporary

total disability. Evidence of temporary disability given by the employee is not necessarily beyond the realm of understanding by lay persons. Riggs v. Daniel Intern, 771 S.W.2d 850, 851 (Mo. App. 1989).

Ms. Courtney testified she is currently unable to work due to the level of her pain. Dr. Hopkins testified Ms. Courtney is temporarily totally disabled from February 16, 2012, through the present. I believe Ms. Courtney's testimony supports her claim for temporary total disability compensation. Additionally, Dr. Hopkins' testimony and the corroborating medical records evidence Ms. Courtney's inability to work from February 16, 2012, through the present time. There is no evidence to the contrary.

I find that Ms. Courtney has met her burden of proof in her claim for temporary total disability compensation. Ms. Courtney was temporarily disabled from February 16, 2012, through the present time. The Employer shall pay Ms. Courtney \$531.72 per week for the claimed time period in which Ms. Courtney was temporarily totally disabled, and ongoing until she reaches maximum medical improvement from this injury.

Further Medical Care and Treatment

Ms. Courtney seeks an award for further medical care and treatment to relieve and cure her of the work related injuries she has suffered.

Section 287.140, RSMo, requires that the employer/insurer provide "such medical, surgical, chiropractic, and hospital treatment...as may reasonably required...to cure and relieve [the employee] from the effects of the injury." Mathia v. Contract Freighters, Inc., 929 S.W.2d 271, 277 (Mo.App. 1996). The standard of proof for entitlement to an allowance for further medical treatment cannot be met simply by offering testimony that it is "possible" that the claimant will need further medical treatment. Modlin v. Sun Mark, Inc., 699 S.W.2d 5,7 (Mo.App. 1995). Employees are required to show by a reasonable probability that they will need future medical treatment. Sharp v. New Mac Elec. Co-op., 92 S.W.3d 351, 354 (Mo.App. 2003), overruled in part on other grounds by Hampton, 121 S.W.3d at 224; Dean v. St. Luke's Hospital, 936 S.W.2d 601, 603 (Mo.App. 1997), overruled in part on other grounds by Hampton, 121 S.W.3d at 227.

When the standards for awarding further medical aid are applied to the facts of this case, I find that Ms. Courtney has satisfied her burden of proof on this issue. While the experts in this case disagree as to the cause of her injuries, there is no dispute Ms. Courtney requires further medical treatment. Dr. Reintjes' last office note of June 2012, recommends a cervical myelogram with a follow up CT scan of the cervical spine. Likewise, Dr. Hopkins recommended physical therapy, consideration of cervical steroid epidurals, and ultimately consultation with a spine surgeon for a surgical evaluation if those modalities do not result in significant improvement.

Based on this evidence, Employer and Insurer are directed to provide all additional medical treatment reasonable and necessary to cure and relieve Ms. Courtney from the effects of her December 9, 2011, injury in accordance with the provisions of Section 287.140, RSMo. This

requirement for further medical aid shall include any care and treatment that is causally related to Ms. Courtney's accident of December 9, 2011.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 percent of all payments in favor of Mark E. Kelly for necessary legal services rendered to the claimant.

Interest shall be provided as by law.

Made by: _____
Administrative Law Judge Lisa Meiners
Division of Workers' Compensation