

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

Injury No. 99-071116

Employee: Harold Leon Crawford
Employer: Sprint PCS
Insurer: Continental Casualty Company (CNA)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having 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 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Motor vehicle accident of June 4, 1999

Subsequent to the workplace injury of February 5, 1999, employee was involved in a motor vehicle accident when another motorist rear-ended his car in a parking lot. The administrative law judge suggested, in her conclusions of law, that the motor vehicle accident was a natural and probable consequence of a compensable injury, making employer liable for any injury resulting from this event, citing *Lahue v. Missouri State Treasurer*, 820 S.W.2d 561 (Mo. App. 1991). Employer, in its brief, takes issue with this conclusion by the administrative law judge.

After careful consideration of employer's arguments as well as the evidence regarding the motor vehicle accident of June 4, 1999, we ultimately discern no need to consider whether or not this incident was a natural and probable consequence of employee's compensable injury, because we find that there is no persuasive evidence of any new injury (i.e. any identifiable medical condition with additional permanent disability) resulting from this event. Accordingly, we disclaim the administrative law judge's legal conclusion that employer is liable for any injury resulting from the motor vehicle accident of June 4, 1999, because the issue is moot.

Employer's Exhibits 3 and 4

The administrative law judge ruled that employer's Exhibits 3 and 4, consisting of various filings in divorce proceedings to which employee was a party, were not admissible by application of § 287.215 RSMo because employer did not furnish these documents to employee within thirty days after a written request by employee's attorney. Employer challenges this evidentiary ruling in its brief. After careful consideration, we agree with employer's argument. We hereby admit Exhibits 3 and 4 into the record.

Having said that, Exhibits 3 and 4 do not persuade us to disturb the findings of fact and conclusions of law set forth in the administrative law judge's thorough and well-

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reasoned award. We specifically defer to the administrative law judge's credibility findings and the weight she gave to the opinions from the various doctors and experts. For this reason, we affirm and adopt as our own the administrative law judge's findings and conclusions with respect to the disputed issues.

Conclusion

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

The award and decision of Administrative Law Judge Lisa Meiners, issued August 19, 2014, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 18th day of June 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

DISSENTING OPINION FILED

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Harold Leon Crawford

DISSENTING OPINION

Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the Commission should modify the award of the administrative law judge and award permanent partial rather than permanent total disability benefits to this employee.

On February 5, 1999, this highly educated and successful employee fell down one step while working for employer. The uncontested medical evidence reveals that, at worst, employee suffered very minor soft tissue injuries. Yet, employee never attempted to work again, despite a thorough and protracted course of medical treatment and numerous attempts by employer to accommodate his claimed limitations.

Employee has a remarkably accomplished educational and work history. Employee was in the Air Force from 1967 to 1969, where he received electronics training and taught missile electronics. In 1972, he received a bachelor's degree in electrical engineering; in 1975 he completed the coursework for a master's degree in the same subject. He has also completed nearly all of the coursework for a concurrent master's degree/PhD in business administration.

Employee worked for Alcoa from 1972 to 1979 as an electrical engineer computerizing various network processes for energy conservation. Employee then took a job with Armco Steel doing similar work. Employee left Armco Steel for a brief stint running his own microelectronics company. Employee then worked for Uninet from 1979 to 1981, and RCA from 1983 to 1988, where he served as a Director of Quality Assurance and Director of Network Operations, and eventually as Vice-President of Operations, in which role he supervised approximately 500 staff members.

Employee started working for employer in April 1989 as a senior network planner. He received positive performance reviews each year, and employer gave employee regular promotions and raises until he became Director of Research and Development in 1996.

On February 5, 1999, employee slipped and fell down one step in employer's stairwell. Although he testified that he experienced terrible pain in his low back migrating down to his left leg and shooting out of his toes, the emergency room records suggest that employee denied radiating pain, and all diagnostic tests were deemed unremarkable. Emergency room personnel diagnosed blunt head trauma and a contusion to the back and left hip. A shot of Toradol mixed with Benadryl and Compazine provided marked improvement, and employee was sent home.

Employee next saw his personal care physician, Dr. Greg Chambon, falsely informing him that he fell down two flights of stairs. Dr. Chambon, in his notes, made no mention of radicular or neurological pain, and prescribed a course of physical therapy. Employee complained that he was unable to tolerate physical therapy owing to severe pain, so Dr. Chambon referred him to the orthopedic surgeon Dr. Robert Worsing, who also found no evidence of radiculopathy. Dr. Worsing ordered a trigger point injection

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(which employee reported as providing no relief) and recommended employee continue physical therapy.

Employer then sent employee to Dr. Daniel Downs, who ordered thoracic and lumbar MRIs, as well as a bone scan, all of which were negative for signs of acute injury. On April 8, 1999, Dr. Downs reached the opinion that employee's pain problem was more owing to inactivity than the injury of February 1999, and suggested it would be beneficial for employee to return to work as soon as he felt able to do so. Instead of following Dr. Downs's recommendation to get back to work, employee started walking with a cane and went to a personal physician, Dr. Kettler, with sudden complaints of altered speech, difficulty forming words, and tremor. These complaints, when reported to Dr. Downs, triggered a referral to neurologist Dr. Moreng, who found that employee's speech was normal during an interview, that he could spell words backwards and forwards without hesitancy, and that his physical exam was normal. Dr. Moreng noted that employee didn't take his cane when asked to walk down a hallway, and that employee was able to accomplish this task without difficulty. To be safe, Dr. Moreng prescribed and performed a lumbosacral plexus MRI, an EMG-NCV, and an EEG; all of these tests were negative for signs of acute neurological injury.

On May 24, 1999, Dr. Downs again recommended employee get back to work, and referred him to the Lemons Center for Behavioral Health and Wellness for psychological counseling and therapy. Employer complied with all of the recommendations from its authorized providers at the Lemons Center aimed at getting employee back to work, including installing a modified seatbelt in employee's car, ordering an ergonomic chair, and permitting employee the freedom to limit his sitting and standing as he saw fit. Yet, employee resisted all of these efforts, complaining of subjective increases in pain whenever his providers recommended he try working.

Employee's own expert, Dr. P. Brent Koprivica, issued restrictions that would permit employee to return to his basically sedentary job with employer, but employee refused to consider returning even though employer was willing to accommodate even his subjective restrictions and complaints. When employee complained that he would be unable to tolerate the commute to work unless he was permitted to recline, employer's representative Teresa Maloney offered to provide employee with a taxi service to and from work, which would allow him to recline in the backseat. When employee complained he would be unable to walk from the car to his office, Ms. Maloney informed employee that he could park near the entrance and that employer would send a security guard down with a moving chair to fetch him and maneuver him to wherever he needed to go. When employee complained that the roads were too rough and that the commute would hurt his back, Ms. Maloney offered to arrange for employee to ride to and from work in a Lincoln Town Car which would provide employee a smoother ride and more room in the backseat to recline. When employee complained that the ride would be unsafe because the Town Car did not have a seatbelt that would permit him to recline while buckled in, Ms. Maloney told employee that employer would have a special harness installed in the backseat for him. Employee's response was that he simply would not be returning to work.

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It is undisputed that at the same time these negotiations were taking place, employee's wife was driving him to his numerous doctor appointments in their Toyota Previa. There is no evidence that this vehicle was ever equipped with a specialized harness to permit employee to lie down in the backseat. Nor, for that matter, is there any evidence that employee was unable to tolerate walking from the car to the doctors' offices, or that rough roads ever prevented him from making these trips. It thus appears that employee only raised such complaints and objections when the question was whether he would return to work. Notably, the same individual who believed that he would be unable to walk from his employer-provided Lincoln Town Car to his desk purchased a new bass boat in 2003, and in 2009 was admittedly going fishing up to twice a week.

There is no need to detail the remainder of this employee's 15-year medicolegal journey, as it closely follows the recurring pattern identified above: the providers are unable to find objective physical evidence of acute injury to explain employee's complaints; numerous diagnostic tests are performed and deemed unremarkable; yet, employee continues to allege extremely disabling pain with unusual features (e.g., radiating from the back to the front of his chest) and steadfastly resists any effort at getting him back to work. All told, employer has spent approximately \$170,000.00 for medical care aimed at providing cure and relief from the effects of employee's soft tissue work injury, but to no apparent avail: employee continues to complain of pain at a level of 7 or 8 out of 10.

Employee asks us to accept that the soft tissue injuries he sustained on February 5, 1999, render him unable to compete for work, despite his first-rate educational and employment history. Suffice to say I am not persuaded. Both vocational experts who testified in this matter generally agreed that employee is a very bright individual, and that because he possesses such a rare and specialized skill-set, many employers would be willing to make special accommodations in order to employ him. In fact, in reaching the conclusion employee is unable to compete for work in the open labor market, it appears employee's vocational expert Michael Dreiling relied mostly on the fact that employee was 62 years of age when he evaluated him. But employee was only 51 years of age on the date of injury. Unlike Mr. Dreiling, employer's vocational expert Terry Cordray properly focused on employee's prospects at the time of the injury, and credibly opined that employee would have been able to continue working for employer even under the restrictions from Dr. Koprivica.

I am convinced employee suffered relatively innocuous soft tissue contusion injuries as a result of the February 1999 fall, and that this event is not a substantial factor in causing employee to suffer a chronic pain syndrome, or his current complaints, including the alleged inability to work. I find that employee is not permanently and totally disabled as a result of the work injury. Instead, I find employee suffered, at worst, 5% permanent partial disability of the body as a whole as a result of the February 1999 fall.

Employer, in its brief, points out that there are some signs on this record that employee may have "planned" to become disabled. For example, employee chose in late 1998, only weeks before the work injury, to voluntarily raise his premium for long term

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disability benefits through employer from \$2.72 to \$22.67 per month in order to raise the amount of his monthly disability benefits. But I discern no need to consider whether employee harbors questionable motivations, where the overwhelming weight of the medical evidence is, in my opinion, simply insufficient to support an award of permanent total disability benefits from the employer.

I believe employee suffered permanent partial disability as a result of the work injury. I would modify the award of the administrative law judge accordingly. Because the majority has determined otherwise, I respectfully dissent.

James G. Avery, Jr., Member

FINAL AWARD

Employee: Harold Leon Crawford Injury No: 99-071116

Defendants: N/A

Employer: Sprint

Insurer: Continental Casualty Company (CNA)

Additional Party: N/A

Hearing Dates: June 3 & 4, 2014

Checked by: LM/drl

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 5, 1999
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment?
Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured as set out above? Yes

11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was on the way to a meeting when he slipped and fell on the stairs at work.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Body as a whole referable to neck and back
14. Nature and extent of any permanent disability: Employee is permanently and totally disabled
15. Employee's average weekly wages: \$2,192.42
16. Weekly compensation rate: \$562.67 / \$294.73
17. Method wages computation: Stipulation
18. Compensation paid to date for temporary disability: \$11,253.40
19. Value of necessary medical aid paid to date by employer/insurer: \$171,263.12
20. Value of necessary medical aid not furnished by employer/insurer: None
21. Amount of compensation payable: Additionally, the Employee shall receive \$562.67 per week beginning 6/12/04 for the remainder of his life.
22. Second Injury Fund liability: No
23. Future requirements awarded: The Employee is awarded future medical care with Dr. Patrick Griffith as the authorized treating physician including but not necessarily limited to continued maintenance and refills of the intrathecal pump and prescription medications as felt necessary by Dr. Griffith to cure and relieve the injuries suffered on 2/5/99.

The amount awarded to the claimant shall be subject to a twenty-five percent (25%) lien in favor of Lisa R. McWilliams., Attorney, for reasonable and necessary attorney's fees pursuant to Mo. Rev. Stat. §287.260.1.

FINDINGS OF FACT AND RULINGS OF LAW

Employee: Harold Leon Crawford Injury No: 99-071116
Defendants: N/A
Employer: Sprint PCS
Insurer: Continental Casualty Company (CNA)
Additional Party: N/A
Hearing Dates: June 3 & 4, 2014 Checked by: LM/drl

STIPULATIONS

At the hearing on June 3 and 4, 2014, the parties stipulated:

1. That on or about February 5, 1999 the Employer, Sprint, was an employer operating subject to the Missouri Workers' compensation law;
2. That the Employee, Harold Leon Crawford, was employed by Sprint on February 5, 1999;
3. That the Employee, Harold Leon Crawford, suffered a personal injury by accident in Jackson County, Missouri while in the course and scope of his employment on February 5, 1999;
4. That Employer was given proper and timely notice;
5. That timely claim was made by the Employee against the Employer.
6. That the proper compensation rate is \$562.67 for temporary and permanent total disability and \$294.73 for permanent partial disability.

ISSUES

The issues to be determined are the following:

- I Whether Claimant is entitled to additional temporary total disability from June 25, 1999 to June 11, 2004.
- II What is nature and extent of disability suffered by Claimant as a result of the February 5, 1999 accident?

III Whether Sprint must provide Claimant future medical care?

EVIDENCE

Evidence presented on behalf of Employee:

Harold Leon Crawford testified in person on his own behalf. Cheryl Crawford, the Employee's wife and Susan Leone, the Employee's daughter, testified in person.

Additionally, Claimant presented the following Exhibits all of which were admitted into evidence:

<u>EXHIBIT NO.</u>	<u>EXHIBIT</u>
A	Dr. Griffith 60 day to include records
B	Dr. Griffith updated records since 60 day Submittal
C	Dr. Griffith Deposition
D	Dr. Koprivica 1/10/06 Report
E	Dr. Koprivica 4/30/12 Report
F	Dr. Koprivica 3/12/14 Report
G	Dr. Logan Report
H	Michael Dreiling deposition w/Exhibits
I	St. Johns/Nix Physical Therapy/Functional Capacity Evaluation
J	Dr. Downs – off work notes
K	Dr. Downs Prescriptions
L	Overland Park Regional records
M	College Park Family records
N	Jackson County Orthopaedics/Dr. Downs records
O	Lemons Center records
P	St. Joseph Medical Center records
Q	Dr. Bernhardt Report - 60 day
R	Dr. Charapata medical records
S	Salary and Performance Ratings, Job History Inquiry
T	Employee Appraisal 2/4/91
U	Employee Appraisal 2/13/92
V	Merit Increase Document 12/18/97
W	Merit Increase Document 3/28/99
Y	1998 W-2
Z	Sprint Total Compensation and Benefits
AA	Receipt for ChampSport (weights)

Evidence presented on behalf of the Employer and Insurer:

Michael Horn, Manager of the Sprint Leave Management Group and Theresa Hanna, Claims Analyst for Sprint testified in person on behalf of the Employer and Insurer.

Additionally, the Employer and Insurer presented the following Exhibits which were admitted into evidence:

<u>EXHIBIT NO.</u>	<u>EXHIBIT</u>
5	Missouri Department of Revenue re: Bass boat
6	Dr. Griffith record dated 12/2/10
7	NKC Hospital record dated 3/28/14
8	Dr. Griffith NKC Hospital record – medications list
9	Dr. Griffith deposition Exhibit 12
10	NKC Hospital/Dr. Griffith Information Sheet
11	Position and concept paper Lake Taneycomo Lake and Watershed management meeting
16	Nick Navato, D.O. record 6/28/99
18	Dr. Allen Parmet 287.210
19	Terry Cordray deposition with Exhibits
20	Harold Crawford Depositions a. 11/11/99 with Exhibits b. 11/9/01 with Exhibits c. 10/29/09
22	Dr. Steven Charapata deposition 4/10/14 with Exhibits
23	Dr. Steven Charapata deposition 5/14/14 with Exhibits
24	Affidavit of records custodian photofax regarding DVD's
25	Transcript of Hardship Hearing with Exhibits
27	1. OP Regional Medical Center Records 2. College Park Family Care 3. Cardiovascular Consultants 4. Overland Park Fire Dept.
28	1. Overland Park Fire Dept. 2. North Kansas City Hospital 5/6/13-1/6/14 3. North Kansas City Hospital 2/25/11-5/6/13 4. Photofax

FINDINGS OF FACT AND RULINGS OF LAW

Employee Harold Leon Crawford was born April 11, 1947. He served in the Air Force for approximately 4 years from 1965-1969, then later earned a bachelor of science degree in electrical engineering from the University of Missouri Rolla in 1972. For the next several years he worked for various companies including a short stint at self-employment performing various jobs involving design and implementation of software (Exhibit 25, p. 19-22). Mr. Crawford began his employment with Sprint in 1989 as a senior network planner and received stellar performance reviews from 1989 – 1998 accompanied by substantial salary increases (Exhibits S-W). At the time of this accident he held the job title of Director of Strategic Development and he was earning a base salary of \$95,567.76 plus bonuses earned, bringing his annual salary for 1998 to \$114,005.82.

On Friday, February 5, 1999, Mr. Crawford was with co-worker Mike Parcel heading to an in-house meeting when he slipped, in what appeared later to be cream cheese or butter, and fell on the stairs (Exhibit 25, p. 35). He landed on his buttocks on the concrete stairs also hitting his head. Mr. Crawford cancelled the meeting and had Mr. Parcel help him to his car. He then drove to Overland Park Regional Medical Center where he complained of head, neck and back pain (Exhibit L, p. 25). The physician diagnosed blunt head trauma and contusion to the back and left hip. He was given prescriptions of Toradol and Norflex, told to limit his activities and use ice and moist heat (Exhibit L, p. 26). On Monday, February 8, 1999 Mr. Crawford reported the injury to his employer and an employee Accident Report was completed. On February 8, 1999 he was seen by Dr. Greg Chambon of College Park Family Care with continued pain in the mid and lower back. Dr. Chambon diagnosed Mr. Crawford with lumbosacral back strain and spasm based on objective findings of revealed tightness and tenderness in the paraspinal muscles of the lumbosacral spine. Claimant was prescribed physical therapy. On February 18, 1999, medical records reveal “significant tightness and pain that is severe after sitting or standing 15 min or longer. Also has had some significant sciatic nerve pain into both buttocks.” (Exhibit M, p. 2).

On February 25, 1999 Dr. Chambon noted Mr. Crawford had not tolerated physical therapy well, and thus referred Mr. Crawford to orthopedist Dr. Worsing, who ordered epidural injections with Dr. Hubert at Overland Park Regional (Exhibit M, p. 2). On March 11, 1999 Dr. Chambon found significantly decreased range of motion in both the lumbosacral spine and the thoracic spine and stated “severe back pain due to workers’ compensation accident.” (Exhibit M, p. 3). Mr. Crawford was scheduled for a 2nd and 3rd epidural injection but these were cancelled when Sprint instructed Mr. Crawford that they were changing his authorized treating physician to Dr. Daniel Downs.

Dr. Downs first saw Mr. Crawford March 22, 1999. On the physical examination Dr. Downs stated “*He is cooperative and compliant in the examination. He is apprehensive about what to expect from the injury and the fact that it has not rapidly improved, but, at the same time, is not exaggerating or limiting in his examination.*” (Exhibit N, p. 6). At the time of this initial examination Dr. Downs diagnosed two separate musculoskeletal problems: A compression fracture of the lower thoracic spine; and, direct contusive injury to the sciatic nerve. He prescribed Lortab and recommended an MRI and later a bone scan. At this visit Dr. Downs instructed Mr. Crawford to remain off work for 2 weeks and pointed out that “with his present pain medication thought process alteration is a concern.” (Exhibit J, p. 3).

Although the diagnostic testing was essentially negative, on April 8, 1999, Dr. Downs instructed Mr. Crawford to remain off work and prescribed physical therapy from April 15, 1999 – April 28, 1999 at St. Joseph Hospital (Exhibit P, p. 45-71). Dr. Downs then recommended either the Lemon’s Center for Behavioral Pain Management or the Menninger Clinic (Exhibit N, p. 11-12) since Claimant’s symptoms did not improve from physical therapy.

On April 23, 1999 ,Dr. Downs indicated that it would be reasonable to return to work “if he’s functionally capable and can do from a pain standpoint.” (Exhibit J, p. 4). Mr. Crawford credibly testified that he could not work due to complaints of pain making it impossible to sit and concentrate on his job long enough to effectively work.

On May 3, 1999 Mr. Crawford returned to Dr. Downs with additional complaints of slurring and stuttering. Dr. Downs referred Mr. Crawford to a neurologist and instructed Claimant to remain off work for 6 weeks (Exhibit J, p. 5-6).

Mr. Crawford was in the behavioral pain management program at the Lemons Center with Dr. Novato, D.O. and Dr. Lemons, a psychologist for 6 weeks from 5/25/99 – 7/16/99. When Mr. Crawford entered the program he had continuing mid and lower back pain into the buttocks, with the pain being worse on the left. He still had complaints of increased pain with sitting and standing more than 10-15 minutes as well as increased pain with driving and walking (Exhibit O, p. 53). Dr. Navato noted that the 5/15/99 MRI showed broad central disc protrusion at L4-5 that was mildly compressive (Exhibit O, p. 53). On Exam Dr. Navato noted several findings including objective findings of decreased lumbar lordosis and increased cervical lordosis and diagnosed *musculoskeletal pain and spinal stenosis with radicular symptoms* (Exhibit D, p. 54). Claimant complained of ongoing pain causing a significant decrease in activities including the inability to work and acknowledged that his self-esteem was taking “a hard hit” due to the pain. Mr. Crawford also described that “the pain has caused him to have a significant increase of anxiety and feeling of guilt... he is quite frustrated and angry about the pain and how much it is affecting his life. He acknowledged that he has periods of being very sad. (Exhibit O, p. 20-21). Dr. Lemon’s indicated signs of depression including sleep

disturbance, decline in energy, mild difficulty with memory and concentration, decline in sexual appetite, periods of hopelessness and occasional thoughts of death for relief from the pain. Dr. Lemons diagnosed *adjustment reaction with mixed emotions secondary to chronic pain* and recommended a program to deal with all aspects of his chronic pain which include stress levels, emotional reactions to his pain as well as the medical and physical aspects of his pain (Exhibit O, p. 21). During treatment at the Lemons Center, Dr. Navato had Mr. Crawford perform work simulation in an attempt to increase his tolerance and allow for a return to work. On June 2, 1999 while at the Lemons Center Mr. Crawford had an increase of pain after walking 20 minutes, but was able to use the techniques he was learning to help decrease the pain. On June 3, 1999 Mr. Crawford received instruction on exercise to be done 3-5 times per day and was instructed by the therapist that he should go to Champs Sports at Metcalf South Shopping Center to get weights he can use at home. On June 4th during the lunch break from Lemons program, he went down the street to Champs to purchase the weights (Exhibit AA). While stopped at a stop sign in the parking lot, Mr. Crawford was rear-ended and taken to Overland Park Regional Medical Center where his chief complaint was neck and upper back pain (Exhibit L, p. 3).

Diagnostic testing done subsequent to this auto accident showed no change from the earlier testing. The physical therapist continued to note muscle spasm in the low back and thoracic area (Exhibit O, p. 35). Mr. Crawford performed activities at the Lemons Center including work simulation of pulling a briefcase with computer and attempts at walking and driving distances to enable him to make the 26 mile drive and do the walking required to get to work (Exhibit O, p. 25 and 32).

On June 17, 1999 Dr. Navato instructed Mr. Crawford should remain off work (Exhibit O, p. 39). On June 28, 1999 Dr. Navato issued the following work status: "Return to work with a trial 4 hour work day performing no repetitive stooping, bending or twisting, 50 minute work hours to allow time for frequent rest breaks, lifting no greater than 15 lbs. no more than walking 150ft without a rest period on Wednesday or Thursday this week." (Exhibit O, p. 33). Mr. Crawford credibly testified that he attempted to go in for the 4-hour trial work day but half way into the 26 mile drive he was in a lot of pain and could not continue. Theresa Maloney, the claims analyst at Sprint testified that she did not recall that Mr. Crawford had made this attempt to come to work but did acknowledge that on July 1, 1999 Dr. Navato added additional instruction that Mr. Crawford would need to be provided transportation to work and would need to be able to lie down during the trip. He also added "no walking more than 150 feet without a rest period lasting up to 30 minutes, and provided he has an ergonomic seating at his work place." (Exhibit O, p. 30). There were then discussions about needing to get a seatbelt/harness that could be utilized while laying down on the 26 mile trip into work. The Sprint claims analyst acknowledged that it took several weeks to find such a harness (Exhibit O, p. 28). On July 8 1999, the records state that Dr. Navato was relinquishing medical care to Dr. Lemons and Dr. Downs (Exhibit O, p. 25).

On July 15, 1999 Dr. Downs indicated that Mr. Crawford's attempts to return to work were made difficult because of transportation issues and getting to and from work without severely increased pain. Dr. Downs states that Mr. Crawford had attempted to ride in a cab but that is not going to be practical because of safety issues dealing with the necessity of reclining during the drive and the need to rest and possibly lie down once he gets to work (Exhibit J, p.7).

On July 15, 1999 and August 5, 1999, Dr. Downs indicated he was to remain off work for an undetermined period (Exhibit J, p. 7-9). On August 16, 1999, Mr. Crawford was terminated by Sprint based on their policy of termination after 6 month of disability.

Dr. Downs did further diagnostic studies and stated on August 5, 1999 there was a disc herniation at the thoracic level and that while there was no impingement "that could be the source of the mid thoracic pain". He also noted degenerative changes in the lower lumbar with some encroachment at the 4-5 level (Exhibit N, p.19). Dr. Downs instructed Mr. Crawford to remain off work and again recommended a second opinion either at the Texas Back Institute or with Dr. Clymer or Dr. Koprivica. Dr. Downs stated "*I am still of the opinion that a large proportion of his chronic pain syndrome is intertwined with multifactors some of which certainly are the spine and back injury but stress and the psychological effect that these injuries have had on Mr. Crawford is still a major limiting factor that I would like to see addressed more aggressively.*" (Exhibit N, p. 20). Mr. Crawford continued to see Dr. Lemons for counseling. He then went four months with no authorized medical treatment other than the continuing prescriptions for Lortab, Oxycontin and Ambien from Dr. Downs (Exhibit K).

When Mr. Crawford returned to see Dr. Downs December 7, 1999, the doctor found severe limitations that the doctor felt were "*related to the chronic pain syndrome coupled with depression as well as significant psychological problems associated with the work related injury...*" Dr. Downs believed Mr. Crawford's condition was consistent with chronic pain syndrome and stated "*It is not a malingering or intentional hysteria but is an issue that needs aggressive psychological help. He is suicidal. It is not fair for this man that the arguments are between work comp, health insurance and disability insurance on who is going to address the issue. He needs help!*" (Exhibit N, p. 26). On December 7, 1999 Dr. Down stated: "no work permanent." (Exhibit J, p. 10).

Mr. Crawford continued counseling with Dr. Lemons and on February 7, 2000, one year after the work related accident, Dr. Downs felt although Mr. Crawford seemed improved from a psychological standpoint, the patient still had pain in his back with radiation into the buttock and left leg. (Exhibit N, p. 27).

Dr. Downs stated that on his review of the August 14, 2000, discogram that the L4-5 disc is not normal but there was no concordant pain with injection of the dye therefore he was not a surgical candidate (Exhibit N, p. 34-36).

Based on the discogram results Dr. Downs released Mr. Crawford on September 15, 2000 at maximum medical improvement but stated: *"I do think he is going to need continued treatment in that pain management which would be symptomatic type treatment. That may mean pain medication or different types of medications... will defer any concomitant treatment and management of the chronic pain syndrome beyond that. It seems that pain medication is going to be part of the treatment."* (Exhibit N, p.35; Exhibit 25, p. 394, l. 1 - p. 395, l. 17). Dr. Downs continued to prescribe Ambien for sleep and both Lortab and Oxycontin for pain through January 11, 2001 (Exhibit K, p. 4).

Mr. Crawford was not satisfied with his current status and obtained a referral through his primary personal physician to see Dr. Mark Bernhardt, an orthopedic surgeon with Dickson-Diveley Midwest Orthopedic Clinic. Dr. Bernhardt reviewed the records of Dr. Downs as well as all of the diagnostic studies. He examined Mr. Crawford on March 30, 2001. Mr. Crawford was still complaining of middle and lower back pain radiating down the left leg. Dr. Bernhardt's diagnosis was *chronic thoracic and lumbar pain syndrome and L5-S1 degenerative disc disease*. Dr. Bernhardt recommended that Mr. Crawford be seen by an algologist or pain specialist for consideration of invasive pain management such as a dorsal column/spinal cord stimulator (Exhibit Q). Dr. Bernhardt gave a specific recommendation of Dr. Elizabeth Thomas. Dr. Thomas was not under Mr. Crawford's health insurance plan so Mr. Crawford was seen by Dr. Steven Charapata.

Dr. Charapata reviewed the records of Dr. Bernhardt and Dr. Downs and examined Mr. Crawford on June 6, 2001. Dr. Charapata cited a detailed history of the treatment and diagnostic testing performed on Mr. Crawford and stated that *"Mr. Crawford was injured when he fell at work 2/5/99. Since that time he has had chronic intractable pain."* While noting that the diagnostic testing had been essentially negative, Dr. Charapata recommended consideration of either a trial of the spinal cord stimulator or a trial of a morphine pump (Exhibit R, p. 7-8). He sent Mr. Crawford home to review a video and literature on the procedures and discussed those procedures during his next visit with Mr. Crawford on June 28, 2001, at which time he explained all risks associated with the procedures to Mr. and Mrs. Crawford and recommended the trial of the morphine pump (Exhibit R, p. 6). On June 28, 2001 Dr. Charapata noted he was going to work with the insurance company to get approval of this trial (Exhibit R, p. 6). The recommendation was denied by Sprint. Therefore, claimant set this matter for hearing seeking authorization of additional medical treatment mentioned above. On March 8, 2002 Judge Siedlik issued a Temporary Award stating "the Claimant having met his burden of proof to establish the accident of February 5, 1999 which was within the course and scope of his employment and also

finding the need for future medical treatment is appropriate, I direct the employer and insurer to provide such treatment and pay weekly benefits during such period of treatment as the caregivers believe the Claimant is unemployable.” (See Temporary Award part of the record in this matter).

Prior to scheduling an appointment with Dr. Charapata, the Employer/Insurer sent records of Dr. Hindman and Dr. Stewart to Dr. Charapata. Upon review of these evaluations, Dr. Charapata stated “they brought up some concern as to the psychological involvement in Mr. Crawford’s pain. I am sure you know, all patients that have chronic pain develop some psychological component over a period of time” and then went on to state he did not want to proceed with a trial of intrathecal morphine unless Mr. Crawford had full psychiatric clearance (Exhibit R, p. 4).

The Employer/Insurer then obtained an evaluation by Dr. Patrick Hughes. There is then a letter dated May 8, 2002 from Dr. Charapata to Mr. Allmayer that indicates that he reviewed a psychiatric evaluation of Dr. Patrick Hughes and indicated that based on his review of Dr. Hughes report he would not be proceeding with intrathecal morphine. In his May 8, 2002 letter Dr. Charapata indicated that he had spoken to counsel for the Employee, Ms. McWilliams, and acknowledged that she and Mr. Crawford believed Dr. Hughes report to be biased and wanted to get an independent psychiatric evaluation. He testified Dr. Charapata agreed that if Claimant obtained another opinion refuting Dr. Hughes that he would reconsider the trial of intrathecal morphine (Exhibit R, p. 3; Exhibit 22, p. 71-72). Claimant then saw Dr. William Logan. Dr. Logan refuted Dr. Hughes and gave psychological clearance for the morphine pump (Exhibit G). This report was sent to Dr. Charapata for review on February 17, 2003 (Exhibit 22, p. 450).

On April 4, 2003, Dr. Charapata saw Mr. Crawford but did not want to treat Claimant “Because of my involvement in this case and the multiple legal associations related to this case, I am not willing to proceed in managing Mr. Crawford’s chronic pain with opioids or therapeutic injections. This would be the first step in managing his pain. I believe that if Mr. Crawford desires to have chronic pain management, he should pick a pain management physician who has not been involved in his management thus far.” (Exhibit R, p. 2).

Mr. Crawford continued to request authorization for pain management. On September 9, 2003, the employer/insurer sent Mr. Crawford to see Dr. Patrick Griffith a physician specializing in pain management. Dr. Griffith reviewed voluminous records including the psychiatric reports of Dr. Hughes and Dr. Logan and elected to proceed with attempting to manage Mr. Crawford’s pain with opioids and therapeutic injections (Exhibit A, p. 896-899). Eventually, on April 13, 2004, Dr. Griffith performed a trial of the intrathecal morphine and upon determining the trial to be successful performed surgery of a morphine pump on May 14, 2004 (Exhibit A, p. 742 and 751). Mr. Crawford testified that he believes Dr. Griffith has saved

his life by decreasing his pain levels to a 6 or 7. On June 11, 2004 Dr. Griffith, the authorized treating physician, found Claimant to be at MMI (Exhibit A, p. 729). Dr. Griffith has continued to treat Mr. Crawford refilling his pump every 80-90 days and periodically prescribing pain medications such as Oxycontin and Hydrocodone as well as Ambien for sleep. Dr. Griffith outlined Mr. Crawford's future medical needs including but not limited to refills of the pump every 80-90 days, replacement of the pump every 5-10 years and ongoing prescriptions narcotics for breakthrough pain (Exhibit A, p. 465; and Exhibit C, p. 86-90). In fact, the pump was replaced on December 2, 2010 (Exhibit A, p.291). In June 2013 Dr. Griffith completed a Medical Source Statement that outlined the restrictions and limitations Mr. Crawford has as a result of the injuries sustained on February 5 1999 and stated that Mr. Crawford was unemployable (Exhibit A, p. 6 #14 and p. 12 #14).

Based on the law applicable to this accident of February 5, 1999, in rendering a decision it is duly noted that the workers' compensation act should be liberally construed in favor of claimant. Wilson v. ANR Freight Systems, 892 S.W. 2d 658, 662 (Mo. App. W.D. 1994). Any doubt as to the right of an employee to compensation should be resolved in favor of the injured employee. Molder v Missouri State Treasurer, 342 S.W.3d 406, 409-410 (Mo. App. W.D. 2011); Kowalski v. M-G Metals, 631 S.W.2d 919,923 (Mo. App 1982); Fisher v. Archdiocese of St. Louis Cardinal Ritter Inst., 793 S.W.2d 195, 198 (Mo. App. 1990). While the claimant has the burden of proof, it is enough to show reasonable probability. Probable means only that it must be founded on reason and experience which inclines the mind to believe but leave room for doubt. Everard v. Goodwin Brothers, 13 MO WC LR 1010 Docket No. 95-192348 (Labor and Industrial Relations Comm. 2/9/00); Tate v. Southwestern Bell, 715 S.W.2d 329, (Mo. App. 1996).

RULINGS OF LAW

Claimant has the burden of proving all material elements of the claim. Fisher v. Archdiocese of St. Louis, 703 SW. 2d 196 (Mo. App. E.D. 1990); overruled on other ground by Hampton v. Big Boy Steel, 121 S.W. 3d 220 (Mo. Banc. 2003); Griggs v. AB Chance Co., 503 S.W. 2d 697 (Mo. App. W.D. 1973); Hall v. Country Kitchen, 935 S.W. 2d 917 (Mo. App. S.D. 1997); overruled on other ground by Hampton. Claimant met his burden as set out herein.

The parties request this award address whether the Employer is liable to Employee for temporary total disability benefits from June 25, 1999 to June 11, 2004. R.S. Mo. 287.170 provides that an injured employee is entitled to be paid compensation during the continuance of temporary total disability up to a maximum of 400 weeks. Compensation is payable until the employee is able to engage in any reasonable or normal employment or until his medical condition has reached the point where no further improvement is anticipated. Vinson v. Curators

of Univ. of MO., 822 S.W. 2d 504 (Mo. App. 1991); Phelps v. Jeff Wolk Const. Co., 803 S.W. 2d 641, 645 (Mo. App. 1991); Williams v. Pillsbury, 694 S.W. 2d 488 (Mo. App. 1985).

An employee's unsuccessful attempt to perform some of the activities connected with his job does not in and of itself constitute conclusive evidence that an employee was capable of work. Reeves v. Midwestern Mortgage Co., 929 S.W. 2d 293, 296 (Mo. App. 1996). The employee has the burden of proving he is unable to return to any employment. Such proof is made only by competent and substantial evidence. Griggs v. AB Chance Co., 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. Riggs v. Daniel Intern, 771 S.W. 2d 850, 851 (Mo. App. 1989).

Temporary total disability was paid from February 5, 1999 through June 25, 1999, and Claimant requests this award address whether he is temporarily totally disabled from June 25, 1999 to June 11, 2004. The authorized treating physicians Dr. Chambon and then Dr. Downs had Mr. Crawford off work through April 23, 1999. On April 23, 1999, upon being asked by a review company Dr. Downs stated that he believed Mr. Crawford could return to work "if he is functionally capable and can do from a pain standpoint." (Exhibit J, p. 4). Mr. Crawford did not feel he could return to work due to the pain and side effects of the narcotics. Then on May 3, 1999, Dr. Downs noted took Claimant off work for 6 weeks and sent him to a neurologist where it was determined the symptoms were related to the prescription pain medications. On June 17, 1999 Dr. Navato continued his no work status. Then on June 28, 1999, Dr. Navato allowed for a 4 hour 1 day trial of accommodated employment (Exhibit O, p. 33). Mr. Crawford attempted the 26 mile ride to work but was in a lot of pain midway through the ride. He felt that even if he got to work he would not be able to get any work done once he arrived. Dr. Navato then wrote the July 1, 1999 work status note adding the additional accommodations of lying down on the ride to work and resting once he got to work. Theresa Maloney, the Sprint Claims Analyst, explained Sprint's efforts to accommodate this 4 hour trial work day by providing transportation, allowing the necessary breaks and assisting Mr. Crawford to get to his work station. However, Dr. Navato had said that Mr. Crawford should be allowed to lie down on his ride to work and acknowledged there would be a safety concern of doing so without a seat belt/safety harness that could be used while lying down (Exhibit O, p. 28 and 30). Theresa Maloney admitted that it took several weeks to locate such a harness. By July 15, 1999 Dr. Downs had put Mr. Crawford back on temporary total disability status (Exhibit J, p. 7). Mr. Crawford did not return to work between June 28, 1999 to July 15, 1999 for this trial one half day of work as they were still trying to work out the logistics when Dr. Downs instructed him not to work.

On August 5, 1999, Dr. Downs continued his no work status and on August 16, 1999 Sprint terminated Mr. Crawford. Dr. Downs continued to instruct Mr. Crawford to remain off

work and on December 7, 1999, Dr. Downs stated that Mr. Crawford was permanently and totally disabled (Exhibit J, p. 9, 10).

Upon release from Dr. Downs' care, Mr. Crawford sought additional medical treatment eventually receiving same by Dr. Griffith. Dr. Griffith stated that Mr. Crawford was at MMI as of June 11, 2004 and has testified that he has permanent restrictions that made him unable to return to work in the open labor market (Exhibit A, p. 6 #14 and p.12 #14).

The authorized physicians have continuously had Mr. Crawford on a no work status from February 5, 1999 – June 11, 2004 with the exception of the periods of April 23 – May 3, 1999 and June 28 – July 15, 1999. Dr. Downs only allowed Mr. Crawford to return to work if he was “functionally capable and can do from a pain standpoint.” Mr. Crawford testified he did not believe he could return to work due to the pain and side effects of the medications, and I found, upon observing Claimant testify, that he was a credible witness. Claimant's inability to return during this time period was substantiated by the fact that on May 3rd he was referred to a neurologist and it was determined that his symptoms of slurring and slow speech were medication related.

Dr. Navato allowed for a one half day of trial work with substantial accommodations which did not come to fruition before Dr. Downs took him back off work. One half day of work does not constitute the ability to engage in reasonable or normal employment. Therefore, Mr. Crawford is entitled to additional temporary total disability benefits from June 25, 1999 – June 11, 2004 at the rate of \$562.67. I find that the restriction of return to work 4 hours a day does not constitute that Claimant is able to work in the open labor market on a sustained 8-hour day.

After considering all of the evidence, I find that Harold Leon Crawford met his burden proving he is permanently and totally disabled as a result of the February 5, 1999 accident and is entitled to future ongoing medical care. I also incorporate the findings of fact and rulings of law from the temporary award dated March 8, 2002.

Pursuant to R.S. Mo. 287.020(2)a February 5, 1999, accident is compensable if the work related injury is a substantial factor in the cause of the resulting medical condition or disability. In Cahall v. Cahall, 963 S.W.2d 368 (Mo. App. E.D. 1998) the court held that the work must only be “a” substantial factor and not “the” substantial factor and the work injury can be a substantial factor even if it is not the primary factor. Id. at 368. Additionally, the work related injury can be both a substantial factor and a triggering event. Id. at 368; Pace v. City of St. Joseph, 367 S.W. 3d 137, 147 (Mo. App. W.D. 2012).

Section 287.020.7 R.S. Mo. defines “total disability” as the “inability to return to any employment and not merely... inability to return to the employment in which the employee was engaged at the time of the accident. The inability to return to any employment means the employee is unable to perform the usual duties of the employment after consideration in the manner that such duties are customarily performed by the average person engaged in such employment.” Kowalski v. M-G Metals and Sales, 632 S.W. 2d 919, 922 (Mo. App. 1982). Any employment means any reasonable or normal employment or occupation. It is not necessary that the employee be completely inactive or inert. The central question is whether any employer in the usual course of business would reasonably be expected to employ the employee in that physical condition. Id.; see also Ransburg v. Great Plains Drilling, 22 S.W. 3d, 726, 732 (Mo. App. 2000). The test for permanent total disability is whether given the employee’s condition he or she would be able to compete in the open labor market. Brown v. Treasurer of Missouri, 795 S.W. 2d 479 (Mo. App. 1990). A claimant who is “only able to work very limited hours at rudimentary tasks is a totally disabled worker.” Grgic v. P&G Constr., 904 S.W. 2d 464, 466 (Mo. App. 1995).

No evidence has been presented that shows Mr. Crawford had any physical or psychological disability prior to February 5, 1999. The evidence from both experts and lay witnesses supports a finding that the February 5, 1999 accident arising out of and in the course of his employment with Sprint was a substantial factor in causing the chronic pain that claimant suffers triggering both claimant’s physical and psychological injury as well as his inability to perform in the open labor market.

Prior to February 5, 1999, Mr. Crawford was not having any problems with his neck or back. On February 5, 1999 he had an immediate onset of pain and in fact was seen in the Emergency Room approximately 30 minutes after he fell. He has continued uninterrupted in seeking medical treatment and, he has complained of neck and back pain since February 5, 1999.

Since claimant suffered immediate pain in his neck and back and was forthwith rendered unable to continue his work it is reasonable to infer that the fall caused an injury of some nature to claimant’s neck and back. Smith v. Terminal Transfer Company 372 S.W.2d 659 (Mo. App. 1963). The medical records of the February 5, 1999 Emergency Room visit indicate this was a work related injury. Dr. Chambon’s records of March 11, 1999 and April 30, 1999 indicate that Claimant’s back pain was due to the work related injury (Exhibit E, p. 3). Dr. Downs indicated in completing disability claim forms that claimant suffered cervical thoracic and lumbosacral strain with development of chronic back pain which was due to the injury arising out of and in the course of his employment on February 5, 1999 (Exhibit 25, p. 458-459; p. 454, p. 410, l. 22 – p. 412, l. 7). Dr. Griffith, who was the authorized treating physician, found the accident of February 5, 1999, rendered Claimant permanently totally disabled.

Subsequent to February 5, 1999, on June 4, 1999 Mr. Crawford was involved in a minor fender bender in the parking lot at Metcalf South which I find did not cause a new or intervening injury. There is no evidence of any new injury from the automobile accident. In the days prior to June 4th, Mr. Crawford was still having severe pain episodes and he was in the midst of his treatment at the Lemons Center. Even if the June 4, 1999 accident had somehow exacerbated the injury of February 5, 1999, the purpose of the trip to purchase weights as instructed by the Lemons Center renders it a natural and probable consequence of a compensable injury making the employer Sprint liable for all resulting injury. Lahue v. Missouri State Treasurer, 820 S.W. 2d 561 (Mo. App. W.D. 1991).

At the prior hearing, the Employer presented evidence in an attempt to prove that claimant's injury and ongoing complaints were not related to the February 5, 1999 accident but due to a pre-existing personality disorder. Claimant may have had pre-existing degenerative changes as well as pre-existing personality traits, but a pre-existing non-disabling condition does not bar recovery under the workers' compensation law if the work related accident causes the condition to escalate to a level of disability. Miller v. Wefelmeyer, 890 S.W.2d 372 (Mo. App. E.D. 1994); Weinbauer v. Grey Eagle Distributors, 666 S.W.2d 652 (Mo. App. E.D. 1983).

Judge Siedlik disagreed with the employer's defense and found he suffered a work-related accidental injury that required additional medical care. The employer has offered and I have admitted a copy of the transcript of that prior hearing and all of the exhibits admitted at that hearing as Exhibit 25 in this proceeding. The employer hired Dr. Stewart, who testified that he diagnosed claimant with pre-existing narcissistic personality disorder, chronic pain syndrome and adjustment disorder with depressed mood. Dr. Stewart then gives the opinion that based on his review of 4 e-mails from claimant's previous supervisor that claimant was experiencing "significant difficulties at work as outlined in the e-mail from Risk Management at Sprint PCS..." He then concludes that Mr. Crawford was distressed at the events transpiring at work before the injury and uses this conclusion to form an opinion that the "Narcissistic Personality Disorder left claimant less able to cope with insult to his ego as his lack of effectiveness at work was about to be exposed." He opines that the incident of February 5, 1999 was just a coincidental event that offered an acceptable way to withdraw from having his lack of acceptable performance further exposed. (Exhibit 29, p. 153-154). Dr. Stewart's theory is not supported by the evidence since out of a 10-year employment history with Sprint and Sprint PCS these 4 e-mails are the only employment documents Stewart reviewed (Exhibit 29, p. 69, l.20 – p. 70, l. 15).

Furthermore, Claimant testified that during his 29-year work history he was consistently employed and promoted receiving salary increases with these promotions. Other than the comments made by Justin Webb, he received positive annual reviews during all of his years of employment with Sprint and Sprint PCS, which is supported by the salary history and salary

increases as well as the only annual review documents the employer could locate (Exhibit S salary history; Exhibit T, U, V, Reviews).

Dr. Stewart also concludes that 90% of any disability Claimant has from a psychological standpoint is pre-existing and 10% is from the fall of February 5, 1999. He then admits that prior to February 5, 1999 claimant was never diagnosed with any psychological problem, that if claimant had a psychological problem or disorder prior to February 5, 1999 it in no way prevented him from maintaining employment or performing his activities of daily living (Exhibit 29, p. 81, l.24- p.82, l.2 p. 79, l.13 – p. 80, l.25). As such, I disregard Dr. Stewart's opinion and adopt and incorporate Judge Siedlik's finding of fact and conclusions of law in this award.

Claimant has met his burden of proof that that the accident of February 5, 1999 was a substantial factor in causing the injuries and disability. Prior to February 5, 1999 Mr. Crawford had been consistently employed with no evidence of any physical or psychiatric disability. Even if he had pre-existing asymptomatic degenerative changes or a pre-existing narcissistic personality disorder this injury resulted in those conditions becoming symptomatic and disabling.

Mr. Crawford's treating physician who has seen him for the last 10-11 years concluded that he is unable to work due to the February 5, 1999 injury (Exhibit A, p. 6 #14 and p. 12 #14). Dr. Griffith began treating Mr. Crawford in September 2003. He reviewed voluminous records including the conflicting psychological reports, examined Mr. Crawford and concluded that he felt that his pain complaints were real and required pain management (Exhibit C, p. 79, l. 17-21). He acknowledged that when a patient first comes in he takes them at face value and it takes time to determine whether he continues to believe the validity of the pain complaints (Exhibit C, p. 79, l. 22 – p. 80, l. 6). He testified that after 10 years seeing Mr. Crawford every 3-4 months he still believes Mr. Crawford's pain complaints are real (Exhibit C, p. 81, l. 14-20). Dr. Griffith has outlined in detail the work limitations Mr. Crawford has as a result of these work injuries and has testified that based upon his evaluations of Claimant over the last ten years the restrictions he has outlined are reasonable and appropriate within a reasonable degree of medical certainty (Exhibit A, p. 3-23; Exhibit C, p. 99).

Dr. P. Brent Koprivica evaluated Mr. Crawford in January 2006 and concluded that he is permanently and totally disabled as a result of the February 5, 1999 accident. Dr. Koprivica reviewed the voluminous records to date at the time of his January 2006 evaluation and also later reviewed updated records through December 13, 2013 as well as the deposition testimony of Dr. Griffith (Exhibits D, E & I). Dr. Koprivica concluded that as a direct and proximate result of the February 5, 1999 fall he developed disabling chronic mechanical thoracic and lumbar pain with additional psychological dysfunction associated with the injury which he characterized as chronic pain syndrome (Exhibit D, p. 16). He outlined restrictions of no frequent or constant bending at the waist, pushing, pulling or twisting; stated he should avoid sustained or awkward

postures; he should be allowed to change from sitting, standing or walking as needed with captive sitting, standing or walking intervals of less than an hour. He also recommended use of the cane (Exhibit D, p. 16). When considering both the physical and psychological limitations due to the February 5, 1999 accident including the need for narcotics and the use of the intrathecal morphine, Dr. Koprivica opined that realistically an ordinary employer could not be expected to employ Mr. Crawford in any capacity rendering him permanently and totally disabled as a result of the February 5, 1999 injury (Exhibit P, p. 17).

Mike Dreiling, a vocational expert, testified on behalf of the Employee that based on his review of the restrictions of Dr. Koprivica, Dr. Downs and the FCE, Mr. Crawford was not employable in the open labor market. In fact, he testified that even if he considered each of these providers' limitations in isolation, Mr. Crawford would be unemployable (Exhibit H, p. 25-28). While Dr. Griffith's restrictions were not available at the time of Mr. Dreiling's evaluation and deposition, Terry Cordray, a vocational expert retained by the Employer, testified that based upon Dr. Griffith's restrictions Mr. Crawford would not be employable in the open labor market (Exhibit 19, p. 45-47).

The Employer/Insurer presents a report from Dr. Downs dated January 12, 2001 rating Mr. Crawford with a 12% impairment to the body as a whole pursuant to the AMA Guidelines (Exhibit N, p. 40-41). I do not find his opinion particularly persuasive since he also stated "no work permanent" in December of 1999. Lastly, Dr. Downs specifically states that he is only addressing the musculoskeletal portion of the problem and is deferring the chronic pain and psychiatric portion to the treating physicians in that area. Therefore, I do not find much probative value in Dr. Downs' opinion regarding 100% disability and 12% impairment since the opinions are contrary to each other.

The Employer had Mr. Crawford evaluated by Dr. Allen Parmet on July 9, 2013. Dr. Parmet's diagnosis is chronic pain syndrome with mental health overlay. He concludes that the work injury was nothing more than a contusion that has long since resolved. Dr. Parmet states that Mr. Crawford has a 10% disability to the body as a whole as a result of the work injury and "any additional disability is due to his underlying psychological issue". Dr. Parmet goes on to state that "the functional capacity evaluation of 2007 appears to be valid and Mr. Crawford is capable of functioning at a sedentary level of activity with accommodation for standing and walking."

However, in reviewing the Functional Capacity Evaluation, while it states that Mr. Crawford "would require activities that are sedentary" it does not state that he is capable of sedentary activity for an 8 hour work day (Exhibit I, p. 8). In fact, it specifically states: "Throughout an 8 hour work day the patient can tolerate with positional changes and meal breaks the following specific activities for the specific durations: sitting occasional (1-33%)(less than

2.5 hrs.) (Exhibit I, p. 12). The therapist noted that this limitation was supported by objective findings. Additionally, the FCE states that "the patient demonstrates notable limitations with use of bilateral proximal upper extremities which does limit his ability to perform seated activities engaging use of upper extremities." (Exhibit I, p. 8). Mr. Crawford testified that activities that require his arms out in front of him cause pain in his neck and upper back. He therefore cannot sit and type or write or hold a book for more than 10-15 minutes at a time. If he can only sit 2.5 maximum in an 8 hour day and has limited use of his upper extremities, Mr. Crawford is not capable of sedentary employment based on the FCE and, therefore, I disregard Dr. Parmet's opinion.

Terry Cordray, the vocational expert retained by the Employer, testified that based on the documents provided by Sprint, he believes that Mr. Crawford would be employable in the open labor market with accommodations. However, Mr. Cordray testified: "I know I tend to give more weight to treating doctors than I do examining doctors..." and acknowledged that he had not been given the restrictions of the treating physician, Dr. Griffith, before forming his opinions contained in his October 14, 2013 report (Exhibit 19, p. 42, l. 12-20; p. 45, l. 10-17). Upon reviewing Dr. Griffith's restrictions Mr. Cordray stated that based on those restrictions Mr. Crawford would be unemployable. Again, Mr. Cordray testified that based on this restriction alone Mr. Crawford would not be employable in the open labor market (Exhibit 19, p. 47, l. 3-10).

Finally, the Employer presents testimony of Dr. Steven Charapata. Dr. Charapata testified that he does not believe Mr. Crawford's pain complaints to be real. Dr. Charapata is the physician that initially recommended the trial of the intrathecal morphine pump that was denied by the Employer/Insurer and which led to the Hardship Hearing. After receiving conflicting psychological reports from both parties and correspondence from counsel for the Employer arguing against Dr. Logan's findings, in April 2003 Dr. Charapata stated that because of his involvement and the multiple legal associations he was not willing to proceed in treating Mr. Crawford (Exhibit R, p. 2). Now, 11 years later, even though he has not seen or spoken to Mr. Crawford, after being retained by the Employer, he has testified that he never needed the intrathecal morphine as either his pain is minimal or he is malingering (Exhibit 22, p. 46-47). And as such, I disregard Dr. Charapata since he has not seen Claimant in over 11 years.

Additionally, the surveillance video shows Claimant doing just those activities in short spurts of time with breaks in between activities. The video also shows him moving very slowly with a cane while at home and utilizing a cane and an electric scooter when he left his home. The video surveillance is consistent with Mr. Crawford's testimony and not inconsistent with his limitations considering the short periods of time involved. The test for permanent total disability does not require the employee to be totally inert or inactive but requires examination into whether any employer would reasonably be expected to hire the injured worker in the workers

present physical condition. Underwood v High Rd Indus., LLC, 369 S.W.3d 59, 67 (Mo. App. S.D. 2012). Being able to perform some limited gardening activities for 2-3 hours spread out over a 4 day period does not equate to being able to perform full time employment in the open labor market. As such, I find Claimant was performing activities consistent with his testimony regarding restrictions and the FCE.

The Employer presented testimony of Mike Horn, manager of the Sprint Leave Management group. Mr. Horn testified that at the annual enrollment period in January 1999, Mr. Crawford increased his supplemental long term disability benefits. I can only speculate that the Employer is implying that Mr. Crawford either planned to become disabled or that this somehow resulted in a windfall by being injured at work. The evidence does not support such a conclusion.

While I have considered Dr. Charapata's opinions and other experts presented by the employer, I simply do not believe that they are in a better position than Dr. Griffith, the treating physician, to assess Mr. Crawford and the validity of his pain complaints. As such, I find Claimant permanently totally disabled based on the February 5, 1999, accident.

Currently, Claimant cannot sit or stand in one place for more than 15 minutes without an increase in pain and that the pain makes it difficult to concentrate. In fact, while testifying at hearing he did stand on numerous occasions and asked for several breaks and utilized his cane. He testified that in order to attempt to return to work he would need to use the maximum bolus (morphine) through his PTM and increase the oral narcotics which would then make it impossible to work as the side affects of narcotics make him groggy and affect his alertness and concentration. This is supported in the records from May 1999 when Dr. Downs sent him to a neurologist due to his symptoms caused from the narcotic medications. This is additionally supported by his daughter's testimony regarding occasions while he was taking more narcotics, she had been worried about her father as he was unable to speak properly and was slurring is words.

Cheryl Crawford testified that the work injury has changed and limited their lives. There are many hobbies such as scuba diving, hiking, projects around the house, woodworking, and traveling by airplane that he can no longer do in any form. They have had to alter the activities they continue engage in. For example, if they go to Church she has to drop him at the door and then they have to sit near the door and at the end of an aisle so he can stand up and/or leave if necessary. If they go to the grocery store together, he needs to utilize a motorized scooter as he cannot walk long enough to make it through buying groceries and he can no longer carry anything weighing over 5 lbs. If they try to go fishing it is for a very limited amount of time and she has to help him. They have used the bass boat on occasion for short periods only on the calm waters at Lake Taneycomo but once they go out for an hour he goes home to lay down. When

they come to Kansas City from Rockaway Beach to see Dr Griffith she has to do a lot of the driving and they must make several stops. When he comes up for these appointment he stays with his daughter Susan. He must come up the night before and rest so he can make it to the appointment the next day. His daughter testified that prior to February 5, 1999 her father had always been very active and as kids always played sports with them and took them to amusement parks. Because of his injuries, he has been unable to do those things with his grandchildren and in fact on many occasions goes home to rest while the family goes out together. I find the testimony of Mr. Crawford, his wife, Cheryl Crawford and his daughter Susan Leone credible and is consistent with the limitations outlined by Dr. Griffith.

Based on the testimony presented at the Hearing and testimony and evidence from Dr. Griffith, Terry Cordray, Dr. Koprivica, and Mike Dreiling, and even Dr. Downs, the Claimant has met his burden of proof, and I find the February 5, 1999, accident a substantial factor of chronic pain syndrome involving both physical and psychological components. Based on these injuries Mr. Crawford would not be able to find and sustain any employment in the open labor market and thus is permanently and totally disabled.

The parties also request this award address whether the Employer is liable to Employee for future medical care as a result of the February 5, 1999 accident. R.S. Mo. 287. 140 requires that the employer/insurer provide "such medical, surgical, chiropractic and hospital treatment..." as may reasonably be required... to cure and relieve [the employee] from the affects of the injury." Future medical care can be awarded even though Claimant has reached maximum medical improvement. Mathia v. Contract Freighters, 292 S.W. 2d 271, 273 (Mo. App. 1996). Where future medical benefits are awarded the medical care must flow from the accident and injuries sustained in the accident. Medlin v. Sun Mark, Inc., 699 S.W. 2d 5, 7 (Mo. App. 1985). Claimant has established with reasonable probability that future medical treatment will be required to cure and relieve him from the effects of the injury. The evidence supports an award of future medical treatment to include continued care with Dr. Patrick Griffith for refills of the intrathecal pump, prescriptions, annual lab work and evaluations recommended by Dr. Griffith as the authorized treating physician of these February 5, 1999 work injuries.

Dr. Griffith has outlined Mr. Crawford's future medical needs including but not limited to refills of the pump every 80-90 days, replacement of the pump every 5-10 years and ongoing prescriptions narcotics for breakthrough pain. (Exhibit A, p. 465; and Exhibit C, p.86-90). In fact, the pump was replaced in December 2010 (Exhibit A, p. 291). Dr. Griffith testified that the treatment he has been providing and continues to provide Mr. Crawford is reasonable and necessary to treat the work-related injuries (Exhibit C, p. 95).

Dr. Charapata has questioned the need for the intrathecal morphine pump but stated: "I didn't say the pump should be removed. I said the pump was not necessary to be implanted".

However, on cross-examination when asked whether he is stating the pump should now be removed, he stated; "I don't think I'm going to make that statement" (Exhibit 22, p. 114, l. 9-16).

Mr. Crawford has testified that while he still has significant limitations the pump has helped reduce his pain levels. In fact, he testified that prior to the implantation of the pump he had considered suicide. Dr. Downs even noted during his treatment of Mr. Crawford that he had become suicidal (Exhibit N, p. 26). Cheryl Crawford testified to the fact that the intrathecal morphine pump has been very helpful to Mr. Crawford. Dr. Griffith has testified that he believes it has been helpful to Mr. Crawford and he believes he will require the ongoing use of the pump as well as oral narcotics for breakthrough pain.

Dr. Koprivica examined claimant and his opinions concerning future medical care are similar to those of the treating physician. He believes that Mr. Crawford requires future medical care in the form of pain management as being provided by Dr. Griffith.

The Claimant has been treated by Dr. Griffith with an intrathecal pump and oral narcotics for 10 years. I believe the Claimant has met his burden that this pain management is necessary to cure and relieve the effects of the injury I will not now order discontinuation of treatment.

The Employer is liable to Claimant for temporary total disability in the amount of \$562.67 per week from June 25, 1999 to June 11, 2004, the date of the MMI. Thereafter, the employer is liable to Claimant for weekly permanent total disability benefits of \$562.67 for Claimant's lifetime. The Employee is awarded future ongoing medical care with Dr. Patrick Griffith as the authorized treating physician including but not limited to continued maintenance and refills of the intrathecal pump and prescription medications as felt necessary by Dr. Patrick Griffith to treat the injuries suffered on February 5, 1999.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of Lisa R. McWilliams for necessary legal services rendered to Claimant. Any past due compensation shall bear interest as provided by law.

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation