

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

Injury No. 09-065204

Employee: Carla Fowler
(a/k/a Carla Helmig)

Employer: State of Missouri/Department of Corrections

Insurer: C A R O

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

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 23, 2015, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Vicky Ruth, issued January 23, 2015, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 28th day of May 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Carla Fowler
(a/k/a Carla Helmig)

Injury No. 09-065204

Dependents: N/A

Employer: State of Missouri/Dept. of Corrections

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: State of Missouri
c/o CARO

Hearing Date: October 20, 2014

Checked by: VR/cs

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? See Award.
3. Was there an accident or incident of occupational disease under the Law? See Award .
4. Date of accident or onset of occupational disease: June 27, 2009.
5. State location where accident occurred or occupational disease was contracted: Jefferson City, Missouri (alleged).
6. Was above employee in the employ of above employer at the time of the 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? See Award.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges she was working in the perimeter tower on a hot day, that the air conditioner was not working, and that she suffered heat exhaustion.
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: alleged body as whole.
14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.

17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: \$535.15.
19. Weekly compensation rate: \$356.78.
20. Method of wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from employer: None.
22. Second Injury Fund liability: None.
23. Future medical awarded: None.

Employee: Carla Fowler

Injury No. 09-065204

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carla Fowler
(a/k/a Carla Helmig)

Injury No. 09-065204

Dependents: N/A

Employer: State of Missouri/Dept. of Corrections

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
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Additional Party: Second Injury Fund

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c/o CARO

Hearing Date: October 20, 2014

PRELIMINARIES

On October 20, 2014, Carla Fowler (the claimant), State of Missouri Department of Corrections (the employer), State of Missouri in care of CARO (the insurer), and the Second Injury Fund appeared in Jefferson City, Missouri, for a final award hearing regarding Injury Nos. 09-065204 and 09-111731. Awards will be issued in each case. Claimant was represented by counsel Doug Van Camp; attorney Christine Kiefer was also present. The employer/insurer was represented by attorney Brian Herman, Assistant Attorney General. The Second Injury Fund was represented by Collette Neuner, Assistant Attorney General. David McCain, Assistant Attorney General, observed. Claimant testified in person at the hearing and by deposition. Dr. Raymond Cohen, Dr. Eric Caywood, and Dr. A.E. Daniel testified by deposition. The parties submitted briefs on or about November 10, 2014, and the record closed at that time.

STIPULATIONS

The parties stipulated to the following:

Injury No. 09-065204

1. On or about June 27, 2009, Carla Fowler (the claimant) was an employee of the State of Missouri Department of Corrections (the employer) when she *allegedly* sustained an injury by accident.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was self-insured by the State of Missouri in care of CARO.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Cole County is proper.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.

Employee: Carla Fowler

Injury No. 09-065204

7. Claimant's average weekly wage is \$535.15, yielding a weekly compensation rate of \$356.78 for permanent partial disability benefits.
8. No medical aid was provided.
9. No temporary total disability was provided.

Injury No. 09-111731

1. On or about August 3, 2009, Carla Fowler (the claimant) was an employee of the State of Missouri Department of Corrections (the employer) when she *allegedly* sustained an injury by accident.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was self-insured by the State of Missouri in care of CARO.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Cole County is proper.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.
7. Claimant's average weekly wage is \$535.15, yielding a weekly compensation rate of \$368.76 for permanent partial disability benefits.
8. Some medical aid was provided.
9. No temporary total disability was provided.

ISSUES

The parties agreed that the following issues were to be resolved in each case:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability.
4. Additional medical care.
5. Second Injury Fund liability.

EXHIBITS

On behalf of Claimant, the following exhibits were entered into evidence:

- | | |
|-----------|--|
| Exhibit 1 | Medical report of Dr. Raymond Cohen with <i>curriculum vitae</i> . |
| Exhibit 2 | Medical report of Dr. Eric Caywood with <i>curriculum vitae</i> . |
| Exhibit 3 | Medical report of Dr. A. E. Daniel with <i>curriculum vitae</i> . |
| Exhibit 4 | Deposition of Dr. Cohen, taken November 9, 2012. |
| Exhibit 5 | Withdrawn. |
| Exhibit 6 | Deposition of Dr. A. E. Daniel. |
| Exhibit 7 | Medical records of Dr. Janet Elliot. |
| Exhibit 8 | Medical records from Capital Region Family Care/Dr. Caywood. |
| Exhibit 9 | Medical records from Capital Region Medical Center. |

Employee: Carla Fowler

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supervisors about the air conditioner not working and that she had specifically told Sgt. Warnell of this problem.

4. Claimant testified that on June 27, 2009, she began to feel light-headed, sick to her stomach, and weak. She had the dry heaves despite drinking a lot of water. After her shift ended at around 11:30 p.m., she drove home. She felt ill the next two to three days, with symptoms of achiness, nausea, light-headedness, and lethargy. She testified that she called the office of her primary care physician, Dr. Eric Caywood, and was told to rest and drink plenty of fluids as it sounded like she had heat exhaustion. It must be noted, however, that Dr. Caywood's medical records do not reflect any call on June 27 or 28, 2009. Instead, on June 29, 2009, claimant called the doctor's office and requested a prescription for new medication as her current prescription, Celexa, made her hyper and kept her from sleeping.¹
5. After the alleged June 2009 incident, claimant continued to work full duty for the employer.
6. Claimant testified that on August 3, 2009, she suffered another heat-related incident. According to claimant, when she arrived in the tower around 3:30 p.m. on August 3, 2009, the thermometer read 101 degrees even though the fans were on and the windows were open. Claimant indicated the air conditioner was not working. Claimant expected to be relieved after four hours in the tower, but she was not. She testified that she called Sgt. Leonard and told him she was ill but he instructed her to finish her entire shift in the tower. Claimant testified that she was very ill in the tower; she was disoriented, weak, and vomited.
7. As part of her job duties, claimant would write in a "Chronological Log" during her shifts.² On August 3, 2009, claimant made the following notations (in pertinent part):

3:25 Helmig³ Relieves Bohling....
5:55 SGT Leonard called to get # of other VP vehicles. Trouble w/Jeep.
7:00 SGT Leonard called to tell me he wanted me to stay in the tower all night because CO1 [illegible] wanted to leave early. Didn't want to, but said OK. Called in Tower Sec to Williams & complained about the heat making me sick & SGT Leonard heard it & called & chewed my ass out. I apologized over the yelling but doubt if he heard me.
9:15 Air conditioner needs to be fixed! It is 90° @ 7:10.
8. On August 4, 2009, claimant called Dr. Caywood's office and reported that she had worked in the heat yesterday and become sick.⁴ She indicated she felt weak, dizzy, fatigued, and disoriented. The doctor took claimant off work for August 4, 2009. On August 7, 2009, claimant called Dr. Caywood's office and again requested an off-work slip. She reported that she felt like she needs a few more days to recover. The notes indicate "ok by Dr. Warbritton but if unable to return to work next week must be seen."⁵ Claimant was provided an off work excuse for August 7, 8, and 9, 2009. Claimant did not see

¹ Exh. 8.

² Exh. 13.

³ Claimant Carla Fowler is also known as Carla Helmig.

⁴ Exh. 8.

⁵ Exh. 8.

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Dr. Caywood or Dr. Warbritton on either August 4 or 7, 2009. In fact, the records indicate that claimant was not seen at Dr. Caywood's office until January 25, 2010.⁶ At that visit, claimant's complaint was "stress related to work.... Wants something to calm her down.... Patient stated that this has been going on about a year and it just gets worse instead of better."⁷ Claimant reported that the stress is making her sick and sometimes makes her vomit. There was no reference to heat exhaustion or heat intolerance.

9. Claimant did see Dr. Janet Elliot on August 11, 2009.⁸ Claimant reported that she worked eight hours in a hot tower with a broken air conditioner and closed windows, although there were three working fans. Claimant indicated she had reported the broken air conditioner many times. Claimant told the health care provider that the temperature in the tower was 100 degrees and that she suffered heat exhaustion although "I'm tired now but I'm really OK."⁹ The hand written notes appear to indicate that the doctor's diagnosis was heat exhaustion. Dr. Elliot returned claimant to work with no actual treatment, although she suggested a floor unit air conditioner or cooling jacket if the air conditioner unit could not be repaired. After this visit, claimant returned to work at the prison, where she worked until she resigned over two years later.
10. On or about August 10, 2009, claimant filled out an Incident Cause Evaluation (ACE) form.¹⁰ In that report, she indicated that while working in the perimeter tower she had exposure to heat and had ill effects. She also noted that the air conditioner does not work. The handwriting is difficult to decipher, but it appears that she wrote that the temperature was 101°. Also on August 10, 2009, claimant wrote an Inter-Office Communication with the subject line "Heat Exhaustion in P Tower."¹¹ In that report, claimant described working in the tower on August 3, 2009, in hot conditions. She noted that the "air conditioner has not worked all summer" and the temperature was 100°.¹² In the report, claimant wrote that when SGT Leonard told her she would be staying in the perimeter tower, she replied as follows:

Come on, Sarg, I'm already sick & you know what happened the last time I suffered heat exhaustion in the tower. He starts yelling again & I finally said, fine, just get someone out here to let me get into an air conditioned room to cool off for a few minutes. He says & I Quote – that would be too damn much trouble – if I were going to do that I might as well just get you a damed [sic] replacement! He hung up on me.¹³

11. In that same Inter-Office Communication (dated August 10, 2009), claimant made the following notation:

⁶ Exh. 8.

⁷ Exh. 8.

⁸ Exh. 7.

⁹ Exh. 7.

¹⁰ Exh. 13.

¹¹ Exh. 13.

¹² Exh. 13.

¹³ Exh. 13.

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First suffered Heat Exhaustion in tower on 6-27-09 – COI Williams told SGT Leonard I was too sick to be driving & I got called into CC to cool off. Was up all night sick and called in Tues too weak to come to work, so SGT Leonard knew I had serious issues Before 8-3-09. Dr said I was lucky I didn't have a heat stroke & now I will always be suseptable [sic] to heat Ex & heat stroke & will have to be careful!¹⁴

12. On August 10, 2009, COII Mark Leonard wrote a memorandum to Major Garnett regarding the August 3, 2009 work incident.¹⁵ He recorded that on August 3, 2009, officer William Arnold left early for the evening, so he called officer Carla Helmig in the perimeter tower and “asked if she minded staying in the tower for the second part of the shift, thinking at the time it would be easier. She stated that she didn’t mind.”¹⁶ However, Mr. Leonard later heard officer Helmig call officer Williams on the stenophone and complain that she was stuck in the perimeter tower for the rest of the night. Mr. Leonard indicated that he called officer Helmig and explained that if she had reservations about not making the switch, she should have told him instead of calling officer Williams and complaining openly over the stenophone about the situation.
13. Claimant testified that on or about August 10, 2009, she called Dr. Caywood and he ordered a CT scan.
14. On August 11, 2009, Rodney Perry, Safety Manager, wrote a memorandum regarding the alleged heat exhaustion incident in August 2009.¹⁷ In that memo, Mr. Perry noted that on August 11, 2009, he went to the tower at 9:00 a.m. to check the air conditioner and found all of the windows open. He asked the officer on duty to close the windows (except for the one the officer was using to communicate with other officers in the sally port). At that time, the temperature in the tower was 72 degrees and the temperature outside of the tower was 74 degrees. The air conditioner was putting out air that was 53 degrees. Approximately one hour later, with the windows (or all but one of the windows) closed, the temperature outside was 84 degrees and the temperature in the tower was 73 degrees. Mr. Perry also noted that he did not know how claimant determined the temperature in the tower as there was no thermometer located in the tower.
15. In June 2010, claimant called Dr. Caywood’s office and reported that she was having panic attacks and not functioning well.
16. In May 2011, claimant called Dr. Caywood’s office and reported an episode of heat-related problems over the weekend when she was outside for 45 minutes and became dizzy.
17. On September 4, 2012, Dr. Caywood wrote a letter regarding claimant’s medical condition. Dr. Caywood noted that although he did not treat claimant on June 27 or August 3, 2009, claimant did correspond with the nurses in his clinic regarding the incidents. Dr. Caywood indicated that “I do believe based on her history that she did suffer from heat exhaustion,

¹⁴ Exh. 13.

¹⁵ Exh. 14.

¹⁶ Exh. 14.

¹⁷ Exh. C.

possibly heat stroke.”¹⁸ He opined that based on the heat exhaustion or heat stroke suffered on those two occasions, claimant is “much more intolerant of the heat and she will continue to suffer such intolerance in the future. She is much more susceptible as well to heat related illnesses.”¹⁹ In addition, he noted that claimant’s pre-existing anxiety with depressive features has become much worse since the two incidents, which he suggests are responsible for the increase in her anxiety. Dr. Caywood opined that claimant was at maximum medical improvement. He rated her disability as 40% of the body as a whole for heat intolerance, and he opined that she is permanently and totally disabled “for any job for which she is trained because of the combination of her pre-existing illnesses and conditions and the heat related injuries set forth above. I feel she also now has an additional permanent partial disability of 15% of the body as a whole for her increased depression, anxiety, and agoraphobia, which also is a result of her heat related injuries, although I would defer to a psychiatrist in this regard.”²⁰ Dr. Caywood further opined that although claimant had anxiety and depression before the work accidents, these conditions have become much worse and she now requires more medications for anxiety and depression. He determined that claimant will need future medical care, such as office visits and medications, for these conditions.

18. Claimant resigned from her job in November 2011. Since she left the employer, she has worked several part-time positions. In December 2013, she started working full-time with Midwest Extradition and Prisoner Transport.
19. Claimant testified that her current symptoms are sweating, taking a long time to cool down, an intolerance to heat, and a feeling of lightheadedness or nausea when outside. Claimant also alleges a psychiatric component to her heat incidents. In addition to the alleged heat incidents, claimant reported issues of alleged harassment from other officers and an incident regarding an allergy to her uniform. Claimant alleged that her panic attacks got worse after the heat incidents. Claimant, however, did suffer from panic attacks before June 2009 and she began taking psychiatric medication prior to the alleged work incidents. Claimant indicated that Dr. Caywood had treated her for anxiety and depression since at least 2003, and he had prescribed Xanax, amitriptyline, and Paxil.

Sgt. Mark Leonard

20. Sgt. Mark Leonard testified on behalf of the employer. He indicated that he had worked at JCCC for 11 years as a supervisor. During the summer of 2009, he was the night shift supervisor and his responsibilities included making assignments during shifts. Sgt. Leonard indicated that normally the vehicle and tower patrols switched out during a shift but this was not always the case. He testified that currently it is common for individuals to work eight hours at a time in the tower and these staffing issues depend upon availability of employees. Sgt. Leonard testified that the upper part of the tower is glass and contains a bathroom, a touch screen for the electric fence, a large cubical, binoculars, and a panel to operate the

¹⁸ Exh. 2.

¹⁹ *Id.*

²⁰ Exh. 2. It should be noted that one of the parties referred to Dr. Cohen’s deposition, which *may* contain different numbers for claimant’s alleged permanent partial disabilities. That deposition, however, was not admitted into evidence.

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gates. He testified that this job is not physically demanding and it allows an officer to sit and stand as needed.

21. Sgt. Leonard testified that on August 3, 2009, claimant was asked to remain in the tower for eight hours due to staffing issues. He testified that there were other officers out sick and that he was unable to swap out duties on that day. He indicated, however, that if he had known that claimant was having health issues in the tower, he would have called his commander and replaced her as that is the prison's policy. Sgt. Leonard testified that he was not made aware of any health issues or heat exhaustion, and that if he had been notified of such, he would have prepared a report and called the incident in to the workers' compensation carrier. He also testified that he had never harassed claimant and had no personal issues with her.
22. On cross-examination, Sgt. Leonard admitted that he had no independent recollection of the incident with claimant until he read her statements. He admitted that he had no independent recollection of any issues with claimant and that his testimony was completely based on reading past memos. Sgt. Leonard did not go into the tower on either alleged injury date.

Rodney Perry

23. Rodney Perry, the Safety Manager at Jefferson City Correctional Center (JCCC), also testified. Mr. Perry has worked at the prison for 24 years. As Safety Manager, it is his job to insure the safety of the employees and inmates and to follow OSHA regulations. He testified that it would have been his job to check the air conditioning unit in any area in which there has been a complaint about the unit being broken. He testified that he could recall no other heat complaints or air conditioning safety incidents in the perimeter tower during the summer of 2009. Mr. Perry testified that he prepared the memo dated August 11, 2009, regarding the issue of an employee experiencing heat exhaustion in the tower.²¹
24. Mr. Perry testified that on August 11, 2009, he examined the tower using a handheld thermometer and that the temperature was in the 70s inside the building and in the 80s outside of the building. He indicated that on August 11, 2009, the date of his evaluation of the area, the windows were open, two fans were running, and the air conditioning unit was running. He also testified that the air coming out of the air conditioning unit was 53° and that when he closed the windows the temperature dropped 2° inside the tower. He also testified that there was not a thermometer inside the tower next to the desk, and that there had been no other complaints about heat in the tower in 2009. He had no recollection of this ever being a safety issue before.
25. On cross-examination, Mr. Perry admitted that he had no idea the condition of the tower in June 2009, or on August 3 or 4, 2009, and that he had not been in the tower until August 11, 2009. When asked about air conditioning units on the second floor and first floor, he believed there was one unit for both but had no independent knowledge of this issue.

Dr. Raymond Cohen

²¹ Exh. C.

26. Dr. Raymond Cohen examined claimant, reviewed various records, and prepared a report dated November 5, 2011. He recorded a history of claimant working in a guard tower on June 27, 2009. Claimant reported that the temperature was proximately 100 degrees, the air conditioner was not working, and that she worked for a four-hour shift. Claimant reported that she had a sink for water and a water bottle. Claimant indicated that she became very hot while working, stopped sweating, and felt disorientated and confused, with nausea and vomiting. She finished her shift and then went home. She indicated she did not work the next couple of days due to weakness. In addition, Dr. Cohen recorded that on August 3, 2009, claimant again worked in the tower for eight hours in very hot conditions; claimant reported that she stopped sweating, she had a bad headache, and she "passed out."²² Claimant reported to Dr. Cohen that now she cannot tolerate any heat or humidity.
27. Based on claimant's history, Dr. Cohen diagnosed claimant with heat exhaustion as to the June 27, 2009 injury and as to the August 3, 2009 injury. He further noted that due to both of the work-related injuries she has developed "Heat Disorder and Chronic Heat intolerance."²³ He opined that her work on those two dates is the prevailing factor in her disability and that the treatment she received was medically necessary and reasonable. He opined that she has a 10% permanent partial disability of the body as a whole due to the June 2009 work injury and a permanent partial disability of 10% of the body as a whole due to the August 2009 work injury. He found that claimant needs to be restricted from any work in which she is exposed to any prolonged temperatures greater than 80 to 85 degrees (Fahrenheit) or to any temperatures with elevated humidity, whether it is indoors or outdoors. He determined claimant also needs to have appropriate fluids available to her.

Dr. Anne-Marie Puricelli

28. On April 29, 2013, Dr. Anne-Marie Puricelli evaluated claimant on behalf of the employer/insurer; she issued a report on or about May 2, 2013.²⁴ Dr. Puricelli is board-certified in internal medicine and has been practicing occupational medicine since the early 1990s. At the evaluation, claimant reported experiencing symptoms of heat-related illness within 15 to 20 minutes of starting her shift on June 27, and August 3, 2009. Claimant indicated that now she must stay in an air-conditioned environment. Dr. Puricelli performed a physical examination of claimant, noting that claimant's face was tan and that she was wearing a turtleneck shirt with long sleeves even though the outside temperature was 75 degrees. Dr. Puricelli asked claimant to pull up her shirt; when claimant did so, the doctor observed a sunburn mark on her chest in a scoop pattern on claimant's anterior chest and posteriorly extending to her upper back. The doctor noted that claimant's arms were also tanned up to the mid-biceps area.
29. Dr. Puricelli opined that by claimant's history, she suffered heat-related exposure; however, she also indicated that "I would have expected, with her frequent visits to her primary care physician . . . that if she was truly ill, she would have sought the immediate assistance of

²² Exh. 1, report p. 1.

²³ Exh. 1, report p. 4.

²⁴ Exh. A.

medical personnel....”²⁵ Dr. Puricelli concluded that heat exhaustion symptoms resolve completely once the individual is removed from the heat environment and that this was the case with claimant. Dr. Puricelli determined claimant’s current complaints were related to her pre-existing anxiety and depression. She also noted that claimant was on phentermine for a period of time, which can cause adverse symptoms. The doctor determined that claimant did not need additional treatment for the work incidents, and that the work incidents are not the prevailing factors in her current condition or disability. She opined that claimant had no permanent partial disability as a result of the June 27 or August 3, 2009 incidents.

Psychiatric evaluations

Dr. A.E. Daniel

30. Dr. A.E. Daniel, a psychiatrist, evaluated claimant on November 16, 2012, and on December 17, 2012. Claimant reported a history of two episodes of heat exhaustion while at work, one in June 2009 and one in August 2009; she also mentioned a third incident that occurred in September 2010. Dr. Daniel noted that since the 2009 incidents she had not felt that same; she indicated she is unable to leave the house when the temperatures go up, that she cannot walk in the heat, and she cannot do the things she used to do with her grandkids in the summer. Dr. Daniel indicated that claimant felt she had lost her train of thought, was forgetful, and was unable to concentrate. Dr. Daniel determined that claimant did grow up in a somewhat abusive household and that she experienced sexual assault at a young age. Claimant agreed that these experiences had a significant impact on her, causing her to suffer from post traumatic stress disorder symptoms and anxiety and depression. Dr. Daniel noted that the claimant’s depression and anxiety became worse in 2007 and 2008 when she was caring for her ill mother, but that she started taking Amitriptyline approximately 15 years prior to his visit. Claimant told Dr. Daniel that she did see a therapist “a couple of times in 2008” and that it helped her to “sort things through” and move on.
31. Dr. Daniel administered the MMPI test, which noted a high degree of psychological distress and symptoms of depressed mood, fatigue, feelings of guilt and worthlessness, memory and concentration problems, and suicidal thoughts. Dr. Daniel diagnosed claimant as having Major Depressive Disorder, chronic, superimposed on a pre-existing Anxiety Disorder and Depressive Disorder. He found that the major depressive disorder was related to the work injuries of June and August 2009, **and** the work place harassment. He noted claimant had preexisting anxiety disorder and depressive disorder that began in her childhood and adolescence and persisted throughout her life. However, he found that the work injury was the prevailing factor in leading to major depressive disorder. Dr. Daniel assigned a disability rating of 30% of the body as a whole referable to the injuries, with a preexisting disability of 15% of the body as a whole referable to the prior depressive and anxiety disorder. Dr. Daniel recommended medication management and psychotherapy for depression and anxiety as a result of the work injuries.²⁶
32. Dr. Daniel testified that claimant did not seek the treatment of a psychiatrist, psychologist,

²⁵ Exh. A.

²⁶ Exh. 3.

or any mental health provider in the past and that all of her mental health treatment was provided by her primary care physician.²⁷ In Dr. Daniel's evaluation of Dr. Caywood's records, he found that Dr. Caywood "was talking about anxiety and depression that she had experienced prior to the two incidents. Subsequent to the heat exhaustion incidents, she became increasingly anxious and depressed and also had problems in leaving home, which he described as agoraphobia. So according to Dr. Caywood, there was significant worsening of her preexisting anxiety and depression following the work related injuries."²⁸

33. Dr. Daniel agreed that the claimant needed to be evaluated by a psychiatrist and needed ongoing management of medications along with therapy.²⁹
34. When asked whether claimant was exaggerating her symptoms, Dr. Daniel testified that "To some extent she is."³⁰ He further explained that "Basically my conclusion is that she has symptoms of anxiety and depression both before and after the work injuries. And in terms of the impact of the work injuries, she might have shown some over-endorsement of symptoms."³¹

Dr. Michael Jarvis

35. Claimant was evaluated by Dr. Jarvis, a psychiatrist, in May 2013; Dr. Jarvis issued his report on or about May 29, 2013.³² As part of his evaluation, he examined claimant and reviewed various records, including claimant's deposition. Dr. Jarvis opined that claimant did not suffer a psychiatric injury/disability attributable to the alleged work events in June 2009 and August 2009. His records include the following:

Ms. Fowler had a pre-existing depression and anxiety for which she has had an extensive history of treatment. Her medical treatment could cause iatrogenic heat intolerance. Other social factors to consider are that she went through her fourth divorce in 2010. She had the death of her mother in 2008 who was her sole parent since her father was an abuse alcoholic. She had a job that is described as being undesirable, horrible, and that other correctional officers would try to avoid going up into the tower. Dr. Caywood's notes indicate "drama" psychological stressors "stress related to work" that by January 2010 had been going for a while which were not volunteered by Ms. Fowler during my exam. She has been treated for chronic pain since 2003. Some of her prescribed medications can cause depression and anxiety....

36. Dr. Jarvis further noted that claimant has received no psychiatric injury from either of the work-related events as the prevailing factor and that she "was not permanently harmed" by these heat events.³³ He imposed no restrictions on claimant and found her to be at maximum medical improvement.

²⁷ Exh. 4, p. 34.

²⁸ Exh. 4, pp. 36-37.

²⁹ Exh. 4, pp. 45-46.

³⁰ Exh. 6, p. 12.

³¹ Exh. 6, pp. 12-13.

³² Exh. B.

³³ Exh. B, p. 22.

37. Dr. Jarvis indicated that several factors may be contributing to claimant's current condition. He notes that she "clearly had pre-existing depression and anxiety."³⁴ Dr. Jarvis provided a list of claimant's medications and their side effects that should be considered in terms of claimant's claims of heat intolerance. That list includes (but is not limited to) the following paraphrased notes:

- Dr. Caywood prescribed phentermine in October 2010, which is known to cause heat intolerance and anxiety and is counter-indicated for someone taking amitriptyline.
- Claimant took Chantix, which has a warning about causing serious neuropsychiatric events.
- Dr. Caywood prescribed multiple medications that Dr. Jarvis believes are known to promote heat intolerance, including amitriptyline, phentermine, and anti-hypertensive.
- Dr. Caywood prescribed amitriptyline concurrently with selective serotonin reuptake inhibitors, without monitoring her blood levels, and that such a concurrent prescription can worsen heat intolerance and produce toxicity causing memory loss, confusion, dizziness, imbalance, and seizures.
- Claimant was also taking benzodiazepines, such as Xanax and Ativan, and those medications are known to cause memory problems, confusion, and cognitive dysfunction.

38. Dr. Jarvis thoroughly discusses claimant's pre-existing condition. He notes that prior to the 2009 work incidents, Dr. Caywood was "already giving her a considerable amount of benzodiazepines (Xanax and Ativan) and other medication..."³⁵ Dr. Jarvis notes that Dr. Caywood prescribed Paxim in 2003, amitriptyline in 2004, Effexor in 2006, Cymbalta in 2006, restarted Paxil in 2006 and eventually increased the dosage to 40 mg. daily. Dr. Jarvis noted that claimant's medication was not controlling her anxiety attacks on August 4, 2009, which prompted a change to Lexapro and subsequently to Prazas because of claimant's "extreme highs and lows" and agoraphobia.³⁶ According to Dr. Jarvis, claimant's anxiety continued to be poorly controlled and resulted in the Xanax prescription in 2007. By 2009, claimant was prescribed Xanax 2 mg three times a day for anxiety, in addition to Elavil 100 mg daily. Dr. Jarvis notes that "[d]espite this being a lot of Xanax Dr. Claywood [sic] added another tranquilizer, Celexa in addition to the already prescribed Elavil, Xanax and Ativan."³⁷

39. Dr. Jarvis also opines that claimant's "anxiety and panic attacks are derivative of her major depression and are not a separate diagnosis. She is not psychotic or manic but she has a substance dependence diagnosis (benzodiazepine). Given the escalating amount of prescribed benzodiazepine she is undoubtedly dependent."³⁸

³⁴ Exh. B, p. 21.

³⁵ Exh. B, p. 20.

³⁶ Exh. B.

³⁷ Exh. B, p. 20.

³⁸ Exh. B, p. 20.

40. Dr. Jarvis concluded that the claimant had no psychiatric disability or injury referable to the work injuries in 2009. He felt she had preexisting depression and anxiety, and felt that “her medical treatment could cause iatrogenic heat intolerance.” He also noted that the claimant went through a divorce in 2010 and lost her mother in 2008 while she was also working a job that she described as “undesirable.” Dr. Jarvis also felt that some of her prescription medication she had been receiving since 2003 “can cause depression and anxiety.” Dr. Jarvis found that the claimant was not permanently harmed by the heat events and that she suffered no psychiatric injury from the work-related events. He also found her to be at maximum medical improvement and that she had no work restrictions.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

Issue 1: Accident or occupational disease arising out of and in the course of employment

Issue 2: Medical causation

Issue 3: Nature and extent of permanent partial disability

Issue 4: Future medical treatment

Issue 5: Second Injury Fund liability³⁹

Under Missouri Workers’ Compensation law, the claimant bears the burden of proving all essential elements of his or her workers’ compensation claim.⁴⁰ Proof is made only by competent and substantial evidence, and may not rest on speculation.⁴¹ Medical causation not within lay understanding or experience requires expert medical evidence.⁴² When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.⁴³

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.⁴⁴ Where there are conflicting medical opinions, the fact finder may reject all or part of one party’s expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant’s expert.⁴⁵

The fact finder is encumbered with determining the credibility of witnesses.⁴⁶ It is free to disregard that testimony which it does not hold credible.⁴⁷

The word “accident” as used by the Missouri workers’ compensation law means “an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and

³⁹ In her brief, claimant concedes that there is no Second Injury Fund liability.

⁴⁰ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

⁴¹ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).

⁴² *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

⁴³ *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).

⁴⁴ *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).

⁴⁵ *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

⁴⁶ *Cardwell v. Treasurer of the State of Missouri*, 249 S.W.3d 902 (Mo.App. E.D. 2008).

⁴⁷ *Id.* at 908.

Employee: Carla Fowler

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producing at the time objective symptoms of injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.”⁴⁸

An “injury” is defined to be “an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The “prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”⁴⁹ An injury shall be deemed to arise out of and in the course of employment only if it is readily apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non-employment life.⁵⁰

The determination of the specific amount or percentage of disability to be awarded to an injured employee is a finding of fact within the unique province of the ALJ.⁵¹ The ALJ has discretion as to the amount of the permanent partial disability to be awarded and how it is to be calculated.⁵² A determination of the percentage of disability arising from a work-related injury is to be made from the evidence as a whole.⁵³ It is the duty of the ALJ to weigh the medical evidence, as well as all other testimony and evidence, in reaching his or her own conclusion as to the percentage of disability sustained.⁵⁴

Subsection 1 of RSMo Section 287.140 states, in pertinent part, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability to cure and relieve from the effects of the injury.

As for future medical care, the employee need only show that he is likely to need additional treatment “as may reasonably be required . . . to cure and relieve . . . the effects of the injury . . . that flow from the accident [or disease].”⁵⁵ This has been interpreted to mean that an employee is entitled to compensation for care and treatment that gives comfort, i.e., relieves the employee’s work-related injury, even though a cure or restoration to soundness is not possible, if the employee establishes a reasonable probability that he or she needs additional future medical care.⁵⁶ “Probable” means founded on reason and experience that inclines the mind to believe but leaves

⁴⁸ Section 287.020.3(1), RSMo. All statutory references are to the Revised Statutes of Missouri (RSMo), 2005, unless otherwise noted.

⁴⁹ Section 287.020.3(1).

⁵⁰ Section 287.020.3(c).

⁵¹ *Hawthorne v. Lester E. Cox Medical Center*, 165 S.W.2d 587, 594-595 (Mo.App. S.D. 2005); *Sifferman v. Sears & Robuck*, 906 S.W.2d 823, 826 (Mo.App. S.D. 1999).

⁵² *Rana v. Land Star TLC*, 46 S.W.3d 614 626 (Mo.App. W.D. 2001).

⁵³ *Landers v. Chrysler*, 963 S.W.2d 275, 284 (Mo.App. E.D. 1998).

⁵⁴ *Rana* at 626.

⁵⁵ *Sullivan v. Masters and Jackson Paving*, 35 S.W.2d 879, 888 (Mo.App. 2001).

⁵⁶ *Rana v. Landstar TLC*, 46 S.W.3d 614 (Mo.App. W.D. 2001); *Boyles v. USA Rebar Placement, Inc.* 26 S.W.3d 418 (Mo.App. W.D. 2000).

Employee: Carla Fowler

Injury No. 09-065204

room for doubt.⁵⁷ Claimant need not show evidence of the specific nature of the treatment required, but only that treatment is going to be required.⁵⁸

The first issue for resolution in these cases is whether or not an accident occurred on each of the alleged dates – June 27, 2009 and August 3, 2009. In reviewing the evidence, I find the testimony of Mr. Perry and Sgt. Leonard to be credible and persuasive. Claimant’s testimony regarding the alleged events is less persuasive, although I do not find that she deliberately misstates the facts. Instead, I simply find her recollection of events to be less accurate or persuasive than other evidence. Moreover, I find that Dr. Puricelli and Dr. Jarvis provided credible and convincing opinions on the issues of accident, injury, and alleged disability.

Claimant alleges she called her physician the day of the June 27, 2009 incident or soon thereafter and reported that she became over-heated at work; the medical records, however, do not support this. Instead, Dr. Caywood’s records indicate she called on or about June 29, 2009, to discuss an unrelated medication issue. She never treated specifically for the alleged June 27, 2009 incident. Following the August 3, 2009 incident, however, the claimant did make note of the heat in the chronological log for that day and in the “inter-office communication” to her supervisor.⁵⁹ She did not receive immediate treatment, but instead saw Dr. Elliot about one week later, on August 11, 2009. Based on claimant’s self-reported history, Dr. Elliot diagnosed heat exhaustion.⁶⁰ Although records from Dr. Caywood from August 4, 2009 through May 9, 2011, do contain some self-reported problems tolerating heat after her (alleged) work-related exposure, claimant never sought immediate treatment after an alleged event and there is no objective, contemporaneous evidence of heat exhaustion.⁶¹

Although claimant may have suffered an accident on August 3, 2009, she has failed to meet her burden of proof that she suffered an accident on June 27, 2009 and she has failed to meet her burden of proof that she suffered an injury on either date. As such, all other issues are moot and claimant’s claims for compensation in each case fail. In making these determinations, I rely upon the opinions of Dr. Puricelli and Dr. Jarvis, as well as the credible evidence as a whole.

Any pending objections not expressly ruled on in this award are overruled.

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

⁵⁷ *Rana* at 622, citing *Sifferman v. Sears, Roebuck & Co.*, 906 S.W.2d 823, 828 (Mo.App. 1995).

⁵⁸ *Aldredge v. Southern Missouri Gas*, 131 S.W. 3rd 786 at 833 (Mo. App. D. D. 2004).

⁵⁹ Exhs. 13 and 14.

⁶⁰ Exh. 7.

⁶¹ Exh. 8.

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

Injury No. 09-111731

Employee: Carla Fowler
(a/k/a Carla Helmig)

Employer: State of Missouri/Department of Corrections

Insurer: C A R O

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

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 23, 2015, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Vicky Ruth, issued January 23, 2015, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 28th day of May 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Carla Fowler
(a/k/a Carla Helmig)

Injury No. 09-111731

Dependents: N/A

Employer: State of Missouri/Dept. of Corrections

Additional Party: Second Injury Fund

Insurer: State of Missouri
c/o CARO

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Hearing Date: October 20, 2014

Checked by: VR/cs

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? See Award.
3. Was there an accident or incident of occupational disease under the Law? See Award .
4. Date of accident or onset of occupational disease: alleged August 3, 2009.
5. State location where accident occurred or occupational disease was contracted: Jefferson City, Missouri (alleged).
6. Was above employee in the employ of above employer at the time of the 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? See Award.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges she was working in the perimeter tower on a hot day, that the air conditioner was not working, and that she suffered heat exhaustion.
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: alleged body as whole.
14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to-date for temporary disability: None.

16. Value necessary medical aid paid to date by employer/insurer? Some medical aid was provided, but the amount was not specified at trial.
17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: \$535.15.
19. Weekly compensation rate: \$368.76.
20. Method of wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from employer: None.
22. Second Injury Fund liability: None.
23. Future medical awarded: None.

Employee: Carla Fowler

Injury No. 09-111731

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carla Fowler
(a/k/a Carla Helmig)

Injury No. 09-111731

Dependents: N/A

Employer: State of Missouri/Dept. of Corrections

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: State of Missouri
c/o CARO

Hearing Date: October 20, 2014

PRELIMINARIES

On October 20, 2014, Carla Fowler (the claimant), State of Missouri Department of Corrections (the employer), State of Missouri in care of CARO (the insurer), and the Second Injury Fund appeared in Jefferson City, Missouri, for a final award hearing regarding Injury Nos. 09-065204 and 09-111731. Awards will be issued in each case. Claimant was represented by counsel Doug Van Camp; attorney Christine Kiefer was also present. The employer/insurer was represented by attorney Brian Herman, Assistant Attorney General. The Second Injury Fund was represented by Collette Neuner, Assistant Attorney General. David McCain, Assistant Attorney General, observed. Claimant testified in person at the hearing and by deposition. Dr. Raymond Cohen, Dr. Eric Caywood, and Dr. A.E. Daniel testified by deposition. The parties submitted briefs on or about November 10, 2014, and the record closed at that time.

STIPULATIONS

The parties stipulated to the following:

Injury No. 09-065204

1. On or about June 27, 2009, Carla Fowler (the claimant) was an employee of the State of Missouri Department of Corrections (the employer) when she *allegedly* sustained an injury by accident.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was self-insured by the State of Missouri in care of CARO.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Cole County is proper.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.

Employee: Carla Fowler

Injury No. 09-111731

7. Claimant's average weekly wage is \$535.15, yielding a weekly compensation rate of \$356.78 for permanent partial disability benefits.
8. No medical aid was provided.
9. No temporary total disability was provided.

Injury No. 09-111731

1. On or about August 3, 2009, Carla Fowler (the claimant) was an employee of the State of Missouri Department of Corrections (the employer) when she *allegedly* sustained an injury by accident.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was self-insured by the State of Missouri in care of CARO.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Cole County is proper.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.
7. Claimant's average weekly wage is \$535.15, yielding a weekly compensation rate of \$368.76 for permanent partial disability benefits.
8. Some medical aid was provided.
9. No temporary total disability was provided.

ISSUES

The parties agreed that the following issues were to be resolved in each case:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability.
4. Additional medical care.
5. Second Injury Fund liability.

EXHIBITS

On behalf of Claimant, the following exhibits were entered into evidence:

- | | |
|-----------|--|
| Exhibit 1 | Medical report of Dr. Raymond Cohen with <i>curriculum vitae</i> . |
| Exhibit 2 | Medical report of Dr. Eric Caywood with <i>curriculum vitae</i> . |
| Exhibit 3 | Medical report of Dr. A. E. Daniel with <i>curriculum vitae</i> . |
| Exhibit 4 | Deposition of Dr. Cohen, taken November 9, 2012. |
| Exhibit 5 | Withdrawn. |
| Exhibit 6 | Deposition of Dr. A. E. Daniel. |
| Exhibit 7 | Medical records of Dr. Janet Elliot. |
| Exhibit 8 | Medical records from Capital Region Family Care/Dr. Caywood. |
| Exhibit 9 | Medical records from Capital Region Medical Center. |

Employee: Carla Fowler

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Exhibit 10 Records from Capital Region Medical Center/ Dr. Caywood.
Exhibit 11 Medical records from Capital Region Family Care/updates.
Exhibit 12 Expenses of the Van Camp Law Firm.
Exhibit 13 Statements of claimant.
Exhibit 14 Letter dated 8/10/2009 from Mr. Leonard, Missouri Department of Corrections.

On behalf of the employer/insurer, the following exhibits were admitted into the record:

Exhibit A Medical report of Dr. Anne-Marie M. Puricelli and *curriculum vitae*.
Exhibit B Medical report of Dr. Michael R. Jarvis and *curriculum vitae*.
Exhibit C Memorandum of Rodney Perry, Safety Manager.
Exhibit D Deposition of Dr. Eric Caywood.

On behalf of the employer/insurer, the following exhibits were admitted into the record:

Exhibit I. Deposition of claimant (Carla Fowler) December 6, 2012.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence. All depositions were admitted subject to any objections contained therein. Unless noted otherwise, the objections are overruled.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

1. Claimant was born on January 20, 1959. On the date of the hearing, she was 55 years of age. Claimant lives in Linn, Missouri.
2. Claimant completed the 11th grade and has a G.E.D. Claimant's work history includes working in a nursing home, in a factory, and in a recording studio. Claimant started working for the Department of Corrections with Jefferson City Correctional Center (the employer) in approximately July 2008. Her duties included working in a control tower or in a vehicle that she used to check the perimeter of the facility. She testified that she usually worked four hours at each task (control tower or vehicle work) and she would swap tasks with another officer for the remaining four hours of her shift.
3. On June 27, 2009, claimant was working in the control tower when her shift began at approximately 3:10 p.m. The control tower has two floors; the first floor was a sally port and the second, where claimant worked, was the perimeter tower. Each floor had separate air conditioning units. The tower had windows on all sides and there were one or two fans. There was also a toilet and a sink. Claimant testified that on June 27, 2009, the windows in the tower were open as the fans were on as the air conditioner was not working, but it was still excessively hot. According to claimant, a thermometer hanging near her desk read 100 degrees Fahrenheit. Claimant testified that she had previously complained to her

Employee: Carla Fowler

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supervisors about the air conditioner not working and that she had specifically told Sgt. Warnell of this problem.

4. Claimant testified that on June 27, 2009, she began to feel light-headed, sick to her stomach, and weak. She had the dry heaves despite drinking a lot of water. After her shift ended at around 11:30 p.m., she drove home. She felt ill the next two to three days, with symptoms of achiness, nausea, light-headedness, and lethargy. She testified that she called the office of her primary care physician, Dr. Eric Caywood, and was told to rest and drink plenty of fluids as it sounded like she had heat exhaustion. It must be noted, however, that Dr. Caywood's medical records do not reflect any call on June 27 or 28, 2009. Instead, on June 29, 2009, claimant called the doctor's office and requested a prescription for new medication as her current prescription, Celexa, made her hyper and kept her from sleeping.¹
5. After the alleged June 2009 incident, claimant continued to work full duty for the employer.
6. Claimant testified that on August 3, 2009, she suffered another heat-related incident. According to claimant, when she arrived in the tower around 3:30 p.m. on August 3, 2009, the thermometer read 101 degrees even though the fans were on and the windows were open. Claimant indicated the air conditioner was not working. Claimant expected to be relieved after four hours in the tower, but she was not. She testified that she called Sgt. Leonard and told him she was ill but he instructed her to finish her entire shift in the tower. Claimant testified that she was very ill in the tower; she was disoriented, weak, and vomited.
7. As part of her job duties, claimant would write in a "Chronological Log" during her shifts.² On August 3, 2009, claimant made the following notations (in pertinent part):

3:25 Helmig³ Relieves Bohling....
5:55 SGT Leonard called to get # of other VP vehicles. Trouble w/Jeep.
7:00 SGT Leonard called to tell me he wanted me to stay in the tower all night because CO1 [illegible] wanted to leave early. Didn't want to, but said OK. Called in Tower Sec to Williams & complained about the heat making me sick & SGT Leonard heard it & called & chewed my ass out. I apologized over the yelling but doubt if he heard me.
9:15 Air conditioner needs to be fixed! It is 90° @ 7:10.
8. On August 4, 2009, claimant called Dr. Caywood's office and reported that she had worked in the heat yesterday and become sick.⁴ She indicated she felt weak, dizzy, fatigued, and disoriented. The doctor took claimant off work for August 4, 2009. On August 7, 2009, claimant called Dr. Caywood's office and again requested an off-work slip. She reported that she felt like she needs a few more days to recover. The notes indicate "ok by Dr. Warbritton but if unable to return to work next week must be seen."⁵ Claimant was provided an off work excuse for August 7, 8, and 9, 2009. Claimant did not see Dr.

¹ Exh. 8.

² Exh. 13.

³ Claimant Carla Fowler is also known as Carla Helmig.

⁴ Exh. 8.

⁵ Exh. 8.

Employee: Carla Fowler

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Caywood or Dr. Warbritton on either August 4 or 7, 2009. In fact, the records indicate that claimant was not seen at Dr. Caywood's office until January 25, 2010.⁶ At that visit, claimant's complaint was "stress related to work.... Wants something to calm her down.... Patient stated that this has been going on about a year and it just gets worse instead of better."⁷ Claimant reported that the stress is making her sick and sometimes makes her vomit. There was no reference to heat exhaustion or heat intolerance.

9. Claimant did see Dr. Janet Elliot on August 11, 2009.⁸ Claimant reported that she worked eight hours in a hot tower with a broken air conditioner and closed windows, although there were three working fans. Claimant indicated she had reported the broken air conditioner many times. Claimant told the health care provider that the temperature in the tower was 100 degrees and that she suffered heat exhaustion although "I'm tired now but I'm really OK."⁹ The hand written notes appear to indicate that the doctor's diagnosis was heat exhaustion. Dr. Elliot returned claimant to work with no actual treatment, although she suggested a floor unit air conditioner or cooling jacket if the air conditioner unit could not be repaired. After this visit, claimant returned to work at the prison, where she worked until she resigned over two years later.
10. On or about August 10, 2009, claimant filled out an Incident Cause Evaluation (ACE) form.¹⁰ In that report, she indicated that while working in the perimeter tower she had exposure to heat and had ill effects. She also noted that the air conditioner does not work. The handwriting is difficult to decipher, but it appears that she wrote that the temperature was 101°. Also on August 10, 2009, claimant wrote an Inter-Office Communication with the subject line "Heat Exhaustion in P Tower."¹¹ In that report, claimant described working in the tower on August 3, 2009, in hot conditions. She noted that the "air conditioner has not worked all summer" and the temperature was 100°. ¹² In the report, claimant wrote that when SGT Leonard told her she would be staying in the perimeter tower, she replied as follows:

Come on, Sarg, I'm already sick & you know what happened the last time I suffered heat exhaustion in the tower. He starts yelling again & I finally said, fine, just get someone out here to let me get into an air conditioned room to cool off for a few minutes. He says & I Quote – that would be too damn much trouble – if I were going to do that I might as well just get you a damed [sic] replacement! He hung up on me.¹³

11. In that same Inter-Office Communication (dated August 10, 2009), claimant made the following notation:

⁶ Exh. 8.

⁷ Exh. 8.

⁸ Exh. 7.

⁹ Exh. 7.

¹⁰ Exh. 13.

¹¹ Exh. 13.

¹² Exh. 13.

¹³ Exh. 13.

Employee: Carla Fowler

Injury No. 09-111731

First suffered Heat Exhaustion in tower on 6-27-09 – COI Williams told SGT Leonard I was too sick to be driving & I got called into CC to cool off. Was up all night sick and called in Tues too weak to come to work, so SGT Leonard knew I had serious issues Before 8-3-09. Dr said I was lucky I didn't have a heat stroke & now I will always be suseptable [sic] to heat Ex & heat stroke & will have to be careful!¹⁴

12. On August 10, 2009, COII Mark Leonard wrote a memorandum to Major Garnett regarding the August 3, 2009 work incident.¹⁵ He recorded that on August 3, 2009, officer William Arnold left early for the evening, so he called officer Carla Helmig in the perimeter tower and “asked if she minded staying in the tower for the second part of the shift, thinking at the time it would be easier. She stated that she didn’t mind.”¹⁶ However, Mr. Leonard later heard officer Helmig call officer Williams on the stenophone and complain that she was stuck in the perimeter tower for the rest of the night. Mr. Leonard indicated that he called officer Helmig and explained that if she had reservations about not making the switch, she should have told him instead of calling officer Williams and complaining openly over the stenophone about the situation.
13. Claimant testified that on or about August 10, 2009, she called Dr. Caywood and he ordered a CT scan.
14. On August 11, 2009, Rodney Perry, Safety Manager, wrote a memorandum regarding the alleged heat exhaustion incident in August 2009.¹⁷ In that memo, Mr. Perry noted that on August 11, 2009, he went to the tower at 9:00 a.m. to check the air conditioner and found all of the windows open. He asked the officer on duty to close the windows (except for the one the officer was using to communicate with other officers in the sally port). At that time, the temperature in the tower was 72 degrees and the temperature outside of the tower was 74 degrees. The air conditioner was putting out air that was 53 degrees. Approximately one hour later, with the windows (or all but one of the windows) closed, the temperature outside was 84 degrees and the temperature in the tower was 73 degrees. Mr. Perry also noted that he did not know how claimant determined the temperature in the tower as there was no thermometer located in the tower.
15. In June 2010, claimant called Dr. Caywood’s office and reported that she was having panic attacks and not functioning well.
16. In May 2011, claimant called Dr. Caywood’s office and reported an episode of heat-related problems over the weekend when she was outside for 45 minutes and became dizzy.
17. On September 4, 2012, Dr. Caywood wrote a letter regarding claimant’s medical condition. Dr. Caywood noted that although he did not treat claimant on June 27 or August 3, 2009, claimant did correspond with the nurses in his clinic regarding the incidents. Dr. Caywood indicated that “I do believe based on her history that she did suffer from heat exhaustion,

¹⁴ Exh. 13.

¹⁵ Exh. 14.

¹⁶ Exh. 14.

¹⁷ Exh. C.

possibly heat stroke.”¹⁸ He opined that based on the heat exhaustion or heat stroke suffered on those two occasions, claimant is “much more intolerant of the heat and she will continue to suffer such intolerance in the future. She is much more susceptible as well to heat related illnesses.”¹⁹ In addition, he noted that claimant’s pre-existing anxiety with depressive features has become much worse since the two incidents, which he suggests are responsible for the increase in her anxiety. Dr. Caywood opined that claimant was at maximum medical improvement. He rated her disability as 40% of the body as a whole for heat intolerance, and he opined that she is permanently and totally disabled “for any job for which she is trained because of the combination of her pre-existing illnesses and conditions and the heat related injuries set forth above. I feel she also now has an additional permanent partial disability of 15% of the body as a whole for her increased depression, anxiety, and agoraphobia, which also is a result of her heat related injuries, although I would defer to a psychiatrist in this regard.”²⁰ Dr. Caywood further opined that although claimant had anxiety and depression before the work accidents, these conditions have become much worse and she now requires more medications for anxiety and depression. He determined that claimant will need future medical care, such as office visits and medications, for these conditions.

18. Claimant resigned from her job in November 2011. Since she left the employer, she has worked several part-time positions. In December 2013, she started working full-time with Midwest Extradition and Prisoner Transport.
19. Claimant testified that her current symptoms are sweating, taking a long time to cool down, an intolerance to heat, and a feeling of lightheadedness or nausea when outside. Claimant also alleges a psychiatric component to her heat incidents. In addition to the alleged heat incidents, claimant reported issues of alleged harassment from other officers and an incident regarding an allergy to her uniform. Claimant alleged that her panic attacks got worse after the heat incidents. Claimant, however, did suffer from panic attacks before June 2009 and she began taking psychiatric medication prior to the alleged work incidents. Claimant indicated that Dr. Caywood had treated her for anxiety and depression since at least 2003, and he had prescribed Xanax, amitriptyline, and Paxil.

Sgt. Mark Leonard

20. Sgt. Mark Leonard testified on behalf of the employer. He indicated that he had worked at JCCC for 11 years as a supervisor. During the summer of 2009, he was the night shift supervisor and his responsibilities included making assignments during shifts. Sgt. Leonard indicated that normally the vehicle and tower patrols switched out during a shift but this was not always the case. He testified that currently it is common for individuals to work eight hours at a time in the tower and these staffing issues depend upon availability of employees. Sgt. Leonard testified that the upper part of the tower is glass and contains a bathroom, a touch screen for the electric fence, a large cubical, binoculars, and a panel to operate the

¹⁸ Exh. 2.

¹⁹ *Id.*

²⁰ Exh. 2. It should be noted that one of the parties referred to Dr. Cohen’s deposition, which *may* contain different numbers for claimant’s alleged permanent partial disabilities. That deposition, however, was not admitted into evidence.

gates. He testified that this job is not physically demanding and it allows an officer to sit and stand as needed.

21. Sgt. Leonard testified that on August 3, 2009, claimant was asked to remain in the tower for eight hours due to staffing issues. He testified that there were other officers out sick and that he was unable to swap out duties on that day. He indicated, however, that if he had known that claimant was having health issues in the tower, he would have called his commander and replaced her as that is the prison's policy. Sgt. Leonard testified that he was not made aware of any health issues or heat exhaustion, and that if he had been notified of such, he would have prepared a report and called the incident in to the workers' compensation carrier. He also testified that he had never harassed claimant and had no personal issues with her.
22. On cross-examination, Sgt. Leonard admitted that he had no independent recollection of the incident with claimant until he read her statements. He admitted that he had no independent recollection of any issues with claimant and that his testimony was completely based on reading past memos. Sgt. Leonard did not go into the tower on either alleged injury date.

Rodney Perry

23. Rodney Perry, the Safety Manager at Jefferson City Correctional Center (JCCC), also testified. Mr. Perry has worked at the prison for 24 years. As Safety Manager, it is his job to insure the safety of the employees and inmates and to follow OSHA regulations. He testified that it would have been his job to check the air conditioning unit in any area in which there has been a complaint about the unit being broken. He testified that he could recall no other heat complaints or air conditioning safety incidents in the perimeter tower during the summer of 2009. Mr. Perry testified that he prepared the memo dated August 11, 2009, regarding the issue of an employee experiencing heat exhaustion in the tower.²¹
24. Mr. Perry testified that on August 11, 2009, he examined the tower using a handheld thermometer and that the temperature was in the 70s inside the building and in the 80s outside of the building. He indicated that on August 11, 2009, the date of his evaluation of the area, the windows were open, two fans were running, and the air conditioning unit was running. He also testified that the air coming out of the air conditioning unit was 53° and that when he closed the windows the temperature dropped 2° inside the tower. He also testified that there was not a thermometer inside the tower next to the desk, and that there had been no other complaints about heat in the tower in 2009. He had no recollection of this ever being a safety issue before.
25. On cross-examination, Mr. Perry admitted that he had no idea the condition of the tower in June 2009, or on August 3 or 4, 2009, and that he had not been in the tower until August 11, 2009. When asked about air conditioning units on the second floor and first floor, he believed there was one unit for both but had no independent knowledge of this issue.

Dr. Raymond Cohen

²¹ Exh. C.

26. Dr. Raymond Cohen examined claimant, reviewed various records, and prepared a report dated November 5, 2011. He recorded a history of claimant working in a guard tower on June 27, 2009. Claimant reported that the temperature was proximately 100 degrees, the air conditioner was not working, and that she worked for a four-hour shift. Claimant reported that she had a sink for water and a water bottle. Claimant indicated that she became very hot while working, stopped sweating, and felt disorientated and confused, with nausea and vomiting. She finished her shift and then went home. She indicated she did not work the next couple of days due to weakness. In addition, Dr. Cohen recorded that on August 3, 2009, claimant again worked in the tower for eight hours in very hot conditions; claimant reported that she stopped sweating, she had a bad headache, and she "passed out."²² Claimant reported to Dr. Cohen that now she cannot tolerate any heat or humidity.
27. Based on claimant's history, Dr. Cohen diagnosed claimant with heat exhaustion as to the June 27, 2009 injury and as to the August 3, 2009 injury. He further noted that due to both of the work-related injuries she has developed "Heat Disorder and Chronic Heat intolerance."²³ He opined that her work on those two dates is the prevailing factor in her disability and that the treatment she received was medically necessary and reasonable. He opined that she has a 10% permanent partial disability of the body as a whole due to the June 2009 work injury and a permanent partial disability of 10% of the body as a whole due to the August 2009 work injury. He found that claimant needs to be restricted from any work in which she is exposed to any prolonged temperatures greater than 80 to 85 degrees (Fahrenheit) or to any temperatures with elevated humidity, whether it is indoors or outdoors. He determined claimant also needs to have appropriate fluids available to her.

Dr. Anne-Marie Puricelli

28. On April 29, 2013, Dr. Anne-Marie Puricelli evaluated claimant on behalf of the employer/insurer; she issued a report on or about May 2, 2013.²⁴ Dr. Puricelli is board-certified in internal medicine and has been practicing occupational medicine since the early 1990s. At the evaluation, claimant reported experiencing symptoms of heat-related illness within 15 to 20 minutes of starting her shift on June 27, and August 3, 2009. Claimant indicated that now she must stay in an air-conditioned environment. Dr. Puricelli performed a physical examination of claimant, noting that claimant's face was tan and that she was wearing a turtleneck shirt with long sleeves even though the outside temperature was 75 degrees. Dr. Puricelli asked claimant to pull up her shirt; when claimant did so, the doctor observed a sunburn mark on her chest in a scoop pattern on claimant's anterior chest and posteriorly extending to her upper back. The doctor noted that claimant's arms were also tanned up to the mid-biceps area.
29. Dr. Puricelli opined that by claimant's history, she suffered heat-related exposure; however, she also indicated that "I would have expected, with her frequent visits to her primary care physician . . . that if she was truly ill, she would have sought the immediate assistance of

²² Exh. 1, report p. 1.

²³ Exh. 1, report p. 4.

²⁴ Exh. A.

medical personnel....”²⁵ Dr. Puricelli concluded that heat exhaustion symptoms resolve completely once the individual is removed from the heat environment and that this was the case with claimant. Dr. Puricelli determined claimant’s current complaints were related to her pre-existing anxiety and depression. She also noted that claimant was on phentermine for a period of time, which can cause adverse symptoms. The doctor determined that claimant did not need additional treatment for the work incidents, and that the work incidents are not the prevailing factors in her current condition or disability. She opined that claimant had no permanent partial disability as a result of the June 27 or August 3, 2009 incidents.

Psychiatric evaluations

Dr. A.E. Daniel

30. Dr. A.E. Daniel, a psychiatrist, evaluated claimant on November 16, 2012, and on December 17, 2012. Claimant reported a history of two episodes of heat exhaustion while at work, one in June 2009 and one in August 2009; she also mentioned a third incident that occurred in September 2010. Dr. Daniel noted that since the 2009 incidents she had not felt that same; she indicated she is unable to leave the house when the temperatures go up, that she cannot walk in the heat, and she cannot do the things she used to do with her grandkids in the summer. Dr. Daniel indicated that claimant felt she had lost her train of thought, was forgetful, and was unable to concentrate. Dr. Daniel determined that claimant did grow up in a somewhat abusive household and that she experienced sexual assault at a young age. Claimant agreed that these experiences had a significant impact on her, causing her to suffer from post traumatic stress disorder symptoms and anxiety and depression. Dr. Daniel noted that the claimant’s depression and anxiety became worse in 2007 and 2008 when she was caring for her ill mother, but that she started taking Amitriptyline approximately 15 years prior to his visit. Claimant told Dr. Daniel that she did see a therapist “a couple of times in 2008” and that it helped her to “sort things through” and move on.
31. Dr. Daniel administered the MMPI test, which noted a high degree of psychological distress and symptoms of depressed mood, fatigue, feelings of guilt and worthlessness, memory and concentration problems, and suicidal thoughts. Dr. Daniel diagnosed claimant as having Major Depressive Disorder, chronic, superimposed on a pre-existing Anxiety Disorder and Depressive Disorder. He found that the major depressive disorder was related to the work injuries of June and August 2009, **and** the work place harassment. He noted claimant had preexisting anxiety disorder and depressive disorder that began in her childhood and adolescence and persisted throughout her life. However, he found that the work injury was the prevailing factor in leading to major depressive disorder. Dr. Daniel assigned a disability rating of 30% of the body as a whole referable to the injuries, with a preexisting disability of 15% of the body as a whole referable to the prior depressive and anxiety disorder. Dr. Daniel recommended medication management and psychotherapy for depression and anxiety as a result of the work injuries.²⁶
32. Dr. Daniel testified that claimant did not seek the treatment of a psychiatrist, psychologist,

²⁵ Exh. A.

²⁶ Exh. 3.

or any mental health provider in the past and that all of her mental health treatment was provided by her primary care physician.²⁷ In Dr. Daniel's evaluation of Dr. Caywood's records, he found that Dr. Caywood "was talking about anxiety and depression that she had experienced prior to the two incidents. Subsequent to the heat exhaustion incidents, she became increasingly anxious and depressed and also had problems in leaving home, which he described as agoraphobia. So according to Dr. Caywood, there was significant worsening of her preexisting anxiety and depression following the work related injuries."²⁸

33. Dr. Daniel agreed that the claimant needed to be evaluated by a psychiatrist and needed ongoing management of medications along with therapy.²⁹
34. When asked whether claimant was exaggerating her symptoms, Dr. Daniel testified that "To some extent she is."³⁰ He further explained that "Basically my conclusion is that she has symptoms of anxiety and depression both before and after the work injuries. And in terms of the impact of the work injuries, she might have shown some over-endorsement of symptoms."³¹

Dr. Michael Jarvis

35. Claimant was evaluated by Dr. Jarvis, a psychiatrist, in May 2013; Dr. Jarvis issued his report on or about May 29, 2013.³² As part of his evaluation, he examined claimant and reviewed various records, including claimant's deposition. Dr. Jarvis opined that claimant did not suffer a psychiatric injury/disability attributable to the alleged work events in June 2009 and August 2009. His records include the following:

Ms. Fowler had a pre-existing depression and anxiety for which she has had an extensive history of treatment. Her medical treatment could cause iatrogenic heat intolerance. Other social factors to consider are that she went through her fourth divorce in 2010. She had the death of her mother in 2008 who was her sole parent since her father was an abuse alcoholic. She had a job that is described as being undesirable, horrible, and that other correctional officers would try to avoid going up into the tower. Dr. Caywood's notes indicate "drama" psychological stressors "stress related to work" that by January 2010 had been going for a while which were not volunteered by Ms. Fowler during my exam. She has been treated for chronic pain since 2003. Some of her prescribed medications can cause depression and anxiety....

36. Dr. Jarvis further noted that claimant has received no psychiatric injury from either of the work-related events as the prevailing factor and that she "was not permanently harmed" by these heat events.³³ He imposed no restrictions on claimant and found her to be at maximum medical improvement.

²⁷ Exh. 4, p. 34.

²⁸ Exh. 4, pp. 36-37.

²⁹ Exh. 4, pp. 45-46.

³⁰ Exh. 6, p. 12.

³¹ Exh. 6, pp. 12-13.

³² Exh. B.

³³ Exh. B, p. 22.

37. Dr. Jarvis indicated that several factors may be contributing to claimant's current condition. He notes that she "clearly had pre-existing depression and anxiety."³⁴ Dr. Jarvis provided a list of claimant's medications and their side effects that should be considered in terms of claimant's claims of heat intolerance. That list includes (but is not limited to) the following paraphrased notes:

- Dr. Caywood prescribed phentermine in October 2010, which is known to cause heat intolerance and anxiety and is counter-indicated for someone taking amitriptyline.
- Claimant took Chantix, which has a warning about causing serious neuropsychiatric events.
- Dr. Caywood prescribed multiple medications that Dr. Jarvis believes are known to promote heat intolerance, including amitriptyline, phentermine, and anti-hypertensive.
- Dr. Caywood prescribed amitriptyline concurrently with selective serotonin reuptake inhibitors, without monitoring her blood levels, and that such a concurrent prescription can worsen heat intolerance and produce toxicity causing memory loss, confusion, dizziness, imbalance, and seizures.
- Claimant was also taking benzodiazepines, such as Xanax and Ativan, and those medications are known to cause memory problems, confusion, and cognitive dysfunction.

38. Dr. Jarvis thoroughly discusses claimant's pre-existing condition. He notes that prior to the 2009 work incidents, Dr. Caywood was "already giving her a considerable amount of benzodiazepines (Xanax and Ativan) and other medication..."³⁵ Dr. Jarvis notes that Dr. Caywood prescribed Paxim in 2003, amitriptyline in 2004, Effexor in 2006, Cymbalta in 2006, restarted Paxil in 2006 and eventually increased the dosage to 40 mg. daily. Dr. Jarvis noted that claimant's medication was not controlling her anxiety attacks on August 4, 2009, which prompted a change to Lexapro and subsequently to Prazas because of claimant's "extreme highs and lows" and agoraphobia.³⁶ According to Dr. Jarvis, claimant's anxiety continued to be poorly controlled and resulted in the Xanax prescription in 2007. By 2009, claimant was prescribed Xanax 2 mg three times a day for anxiety, in addition to Elavil 100 mg daily. Dr. Jarvis notes that "[d]espite this being a lot of Xanax Dr. Claywood [sic] added another tranquilizer, Celexa in addition to the already prescribed Elavil, Xanax and Ativan."³⁷

39. Dr. Jarvis also opines that claimant's "anxiety and panic attacks are derivative of her major depression and are not a separate diagnosis. She is not psychotic or manic but she has a substance dependence diagnosis (benzodiazepine). Given the escalating amount of prescribed benzodiazepine she is undoubtedly dependent."³⁸

³⁴ Exh. B, p. 21.

³⁵ Exh. B, p. 20.

³⁶ Exh. B.

³⁷ Exh. B, p. 20.

³⁸ Exh. B, p. 20.

40. Dr. Jarvis concluded that the claimant had no psychiatric disability or injury referable to the work injuries in 2009. He felt she had preexisting depression and anxiety, and felt that “her medical treatment could cause iatrogenic heat intolerance.” He also noted that the claimant went through a divorce in 2010 and lost her mother in 2008 while she was also working a job that she described as “undesirable.” Dr. Jarvis also felt that some of her prescription medication she had been receiving since 2003 “can cause depression and anxiety.” Dr. Jarvis found that the claimant was not permanently harmed by the heat events and that she suffered no psychiatric injury from the work-related events. He also found her to be at maximum medical improvement and that she had no work restrictions.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

Issue 1: Accident or occupational disease arising out of and in the course of employment

Issue 2: Medical causation

Issue 3: Nature and extent of permanent partial disability

Issue 4: Future medical treatment

Issue 5: Second Injury Fund liability³⁹

Under Missouri Workers’ Compensation law, the claimant bears the burden of proving all essential elements of his or her workers’ compensation claim.⁴⁰ Proof is made only by competent and substantial evidence, and may not rest on speculation.⁴¹ Medical causation not within lay understanding or experience requires expert medical evidence.⁴² When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.⁴³

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.⁴⁴ Where there are conflicting medical opinions, the fact finder may reject all or part of one party’s expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant’s expert.⁴⁵

The fact finder is encumbered with determining the credibility of witnesses.⁴⁶ It is free to disregard that testimony which it does not hold credible.⁴⁷

The word “accident” as used by the Missouri workers’ compensation law means “an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and

³⁹ In her brief, claimant concedes that there is no Second Injury Fund liability.

⁴⁰ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

⁴¹ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).

⁴² *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

⁴³ *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).

⁴⁴ *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).

⁴⁵ *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

⁴⁶ *Cardwell v. Treasurer of the State of Missouri*, 249 S.W.3d 902 (Mo.App. E.D. 2008).

⁴⁷ *Id.* at 908.

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producing at the time objective symptoms of injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.”⁴⁸

An “injury” is defined to be “an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The “prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”⁴⁹ An injury shall be deemed to arise out of and in the course of employment only if it is readily apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non-employment life.⁵⁰

The determination of the specific amount or percentage of disability to be awarded to an injured employee is a finding of fact within the unique province of the ALJ.⁵¹ The ALJ has discretion as to the amount of the permanent partial disability to be awarded and how it is to be calculated.⁵² A determination of the percentage of disability arising from a work-related injury is to be made from the evidence as a whole.⁵³ It is the duty of the ALJ to weigh the medical evidence, as well as all other testimony and evidence, in reaching his or her own conclusion as to the percentage of disability sustained.⁵⁴

Subsection 1 of RSMo Section 287.140 states, in pertinent part, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability to cure and relieve from the effects of the injury.

As for future medical care, the employee need only show that he is likely to need additional treatment “as may reasonably be required . . . to cure and relieve . . . the effects of the injury . . . that flow from the accident [or disease].”⁵⁵ This has been interpreted to mean that an employee is entitled to compensation for care and treatment that gives comfort, i.e., relieves the employee’s work-related injury, even though a cure or restoration to soundness is not possible, if the employee establishes a reasonable probability that he or she needs additional future medical care.⁵⁶ “Probable” means founded on reason and experience that inclines the mind to believe but leaves

⁴⁸ Section 287.020.3(1), RSMo. All statutory references are to the Revised Statutes of Missouri (RSMo), 2005, unless otherwise noted.

⁴⁹ Section 287.020.3(1).

⁵⁰ Section 287.020.3(c).

⁵¹ *Hawthorne v. Lester E. Cox Medical Center*, 165 S.W.2d 587, 594-595 (Mo.App. S.D. 2005); *Sifferman v. Sears & Robuck*, 906 S.W.2d 823, 826 (Mo.App. S.D. 1999).

⁵² *Rana v. Land Star TLC*, 46 S.W.3d 614 626 (Mo.App. W.D. 2001).

⁵³ *Landers v. Chrysler*, 963 S.W.2d 275, 284 (Mo.App. E.D. 1998).

⁵⁴ *Rana* at 626.

⁵⁵ *Sullivan v. Masters and Jackson Paving*, 35 S.W.2d 879, 888 (Mo.App. 2001).

⁵⁶ *Rana v. Landstar TLC*, 46 S.W.3d 614 (Mo.App. W.D. 2001); *Boyles v. USA Rebar Placement, Inc.* 26 S.W.3d 418 (Mo.App. W.D. 2000).

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room for doubt.⁵⁷ Claimant need not show evidence of the specific nature of the treatment required, but only that treatment is going to be required.⁵⁸

The first issue for resolution in these cases is whether or not an accident occurred on each of the alleged dates – June 27, 2009 and August 3, 2009. In reviewing the evidence, I find the testimony of Mr. Perry and Sgt. Leonard to be credible and persuasive. Claimant’s testimony regarding the alleged events is less persuasive, although I do not find that she deliberately misstates the facts. Instead, I simply find her recollection of events to be less accurate or persuasive than other evidence. Moreover, I find that Dr. Puricelli and Dr. Jarvis provided credible and convincing opinions on the issues of accident, injury, and alleged disability.

Claimant alleges she called her physician the day of the June 27, 2009 incident or soon thereafter and reported that she became over-heated at work; the medical records, however, do not support this. Instead, Dr. Caywood’s records indicate she called on or about June 29, 2009, to discuss an unrelated medication issue. She never treated specifically for the alleged June 27, 2009 incident. Following the August 3, 2009 incident, however, the claimant did make note of the heat in the chronological log for that day and in the “inter-office communication” to her supervisor.⁵⁹ She did not receive immediate treatment, but instead saw Dr. Elliot about one week later, on August 11, 2009. Based on claimant’s self-reported history, Dr. Elliot diagnosed heat exhaustion.⁶⁰ Although records from Dr. Caywood from August 4, 2009 through May 9, 2011, do contain some self-reported problems tolerating heat after her (alleged) work-related exposure, claimant never sought immediate treatment after an alleged event and there is no objective, contemporaneous evidence of heat exhaustion.⁶¹

Although claimant may have suffered an accident on August 3, 2009, she has failed to meet her burden of proof that she suffered an accident on June 27, 2009 and she has failed to meet her burden of proof that she suffered an injury on either date. As such, all other issues are moot and claimant’s claims for compensation in each case fail. In making these determinations, I rely upon the opinions of Dr. Puricelli and Dr. Jarvis, as well as the credible evidence as a whole.

Any pending objections not expressly ruled on in this award are overruled.

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

⁵⁷ *Rana* at 622, citing *Sifferman v. Sears, Roebuck & Co.*, 906 S.W.2d 823, 828 (Mo.App. 1995).

⁵⁸ *Aldredge v. Southern Missouri Gas*, 131 S.W. 3rd 786 at 833 (Mo. App. D. D. 2004).

⁵⁹ Exhs. 13 and 14.

⁶⁰ Exh. 7.

⁶¹ Exh. 8.