

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

Injury No. 11-041025

Employee: Carmelita Frost

Employer: Coin Acceptors, Inc./Mountain View Fabricating

Insurer: Self-Insured

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

**Discussion**

Past medical expenses

The parties asked the administrative law judge to resolve the issue whether employer is liable for employee's past medical expenses for treatment in connection with her right and left shoulder work injuries. The administrative law judge awarded employee a total of \$46,164.17 in past medical expenses based on a conclusion that the disputed treatment was reasonably required to cure and relieve the effects of employee's injuries. Employer appeals, arguing that certain of the awarded charges are not shown on the record to relate to treatment in connection with employee's left or right shoulder.

Employee, in her brief, fails to respond to employer's argument that certain of the charges are not supported by corresponding treatment records. We have carefully reviewed the transcript, and we agree that certain of the charges awarded by the administrative law judge are not shown to correspond to treatment that was reasonably required to cure and relieve the effects of the work injury. Accordingly, we must modify the award of the administrative law judge as follows.

The administrative law judge awarded \$245.00 in charges from Schierling Chiropractic, LLC. The bills themselves suggest that these charges were for lumbar spine adjustments provided between October 3, 2012, and November 19, 2014, and the medical records from December 18, 2013, through March 6, 2015, do not clearly reflect any treatment for the right or the left shoulder. *Transcript*, pages 240, 203-09. On the other hand, employee did provide records and bills for two dates of service, January 6 and February 8, 2012, for myofascial release treatments for the right shoulder. *Transcript*, pages 210-15. The total of these latter charges is \$114.00. Accordingly, we must modify the award of charges from Schierling Chiropractic from \$245.00 to \$114.00.

The administrative law judge also awarded \$5,378.29 in charges from Physical Therapy Specialists Clinic, Inc. The bills suggest 34 dates of service between May 4, 2012, and August 8, 2012. *Transcript*, pages 243-61. Employer argues that the medical records corresponding to these treatments are incomplete, as the record only contains specific notes for the following dates of service: May 4 and 29, June 28, July 2, and August 1, 2012.

Employee: Carmelita Frost

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*Transcript*, pages 140-72. We note, however, that the June 28, 2012, record references a total of 25 previous physical rehabilitation sessions, and the bills themselves plainly reveal that each date of service involved treatment for the shoulders. For example, the diagnostic codes and descriptions of service for July 2, 2012, (a date for which employee did provide a corresponding treatment record) and July 3, 2012, (a date for which employee did not) are identical. Given these circumstances, we deem the record sufficient to infer (and we so find) that these charges were incurred for treatment that was reasonably required to cure and relieve the effects of employee's work injury, despite the absence of notes specific to each physical therapy session.

We note also that the administrative law judge appears to have undervalued the cost of this treatment, in awarding to employee only the outstanding amount of the charges, and failing to include reimbursement for the payments employee or her insurer rendered to this provider. Specifically, our own calculations derived from the bills themselves suggest that this provider billed employee a total of \$6,750.00 for these services, and that this amount was reduced to the outstanding balance of \$5,378.29 as a result of a number of payments by employee and/or her insurer. Employee, however, has not filed an application for review challenging the administrative law judge's calculations, nor has she argued in her brief that we should award any additional amount. Accordingly, we will not disturb the administrative law judge's award with respect to Physical Therapy Specialists Clinic, Inc.

The administrative law judge also awarded \$9,929.88 in charges from Hubbard Bone and Joint Clinic, LLC. Employer argues that this amount must be reduced because it includes \$63.84 in charges for medical records. We disagree. Instead, a careful review of the bills reveals that, as with the charges from Physical Therapy Specialists Clinic, Inc., the administrative law judge has awarded the outstanding balance, and has not reimbursed employee for her out-of-pocket expenses, including the payments she made for medical records. Specifically, the bills reveal that employee made a payment of \$31.92 for medical records furnished on August 22, 2012, and another payment of \$31.92 for medical records furnished on September 26, 2012. *Transcript*, pages 271-72. These amounts are not included in the outstanding balance of \$10,141.88 identified by Hubbard Bone and Joint Clinic, LLC, *Transcript*, page 269, which was reduced by the administrative law judge to \$9,929.88 based on her finding that the April 4, 2012, treatment constituted self-directed treatment for which employer is not liable.

In fact, rather than overcharge employer for medical records, the administrative law judge appears to have once again undervalued the charges from this provider, because she did not account for the \$76.12 payment employee rendered to Hubbard Bone and Joint Clinic, LLC, for the treatment date of August 8, 2012. However, as we have noted, employee does not challenge the administrative law judge's award in any respect; for this reason, we decline to modify the award with respect to these (apparent) out-of-pocket expenses.

The administrative law judge also awarded \$1,518.00 in charges from Cox Regional Services. The bills themselves suggest that employee incurred \$2,325.00 in charges with this provider for dates of service between December 7, 2011, and February 5, 2015.

Employee: Carmelita Frost

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*Transcript*, pages 273-95. The administrative law judge did not provide her calculations or otherwise explain how she reached the awarded amount of \$1,518.00. Nor has employee, in her brief, provided any itemization or other explanation identifying the charges she believes are compensable.

The notations within the bills are rather cryptic and ultimately offer no indication that these charges were incurred in connection with treatment for employee's left or right shoulder. Turning to the medical treatment records from Cox Regional Services, we find only one note, March 5, 2012, that both corresponds to a date of service listed in the bills and that pertains to treatment of employee's right shoulder. *Transcript*, page 217-18. Accordingly, we must modify the award of charges from Cox Regional Services from \$1,518.00 to \$261.00, the amount incurred for employee's right shoulder treatment with Dr. Laurie Clarkston on March 5, 2012.

The administrative law judge also awarded \$3,490.00 in charges from Ozark Medical Center. The bills themselves suggest that employee incurred \$7,178.48 in charges with this provider for dates of service between November 1, 2013, and March 14, 2014. *Transcript*, pages 296-308. As with the charges from Cox Regional Services, the administrative law judge did not provide her calculations or otherwise explain how she reached the awarded amount of \$3,490.00. Nor has employee, in her brief, provided any itemization or other explanation identifying the charges she believes are compensable.

The notations within the bills do not clearly suggest that any of these charges were incurred in connection with treatment for employee's left or right shoulder. Employee did not provide testimony to explain the charges from Ozark Medical Center, and after a thorough review of the transcript, we are unable to find any treatment records from this provider corresponding to the dates of service listed in the bills. We find that employee has failed to meet her burden of proof with respect to the claimed charges from Ozark Medical Center. Accordingly, we must modify the award on this point. We conclude that the charges shown in the bills from Ozark Medical Center were not incurred in connection with any treatment reasonably required to cure and relieve the effects of the work injury. Consequently, employee is not entitled to any amount in charges from Ozark Medical Center.

As a result of the foregoing modifications, we conclude that employee is entitled to, and employer is obligated to pay, a total of \$41,286.17 in past medical expenses, rather than the amount of \$46,164.17 identified by the administrative law judge.

### **Award**

We modify the administrative law judge's award with respect to the issue of employer's liability for past medical expenses.

Employee is entitled to, and employer is obligated to pay, a total of \$41,286.17 in past medical expenses.

Employee: Carmelita Frost

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The award and decision of Administrative Law Judge Victorine R. Mahon, issued November 13, 2015, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission approves and affirms the administrative law judge's allowance of an attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 26<sup>th</sup> day of May 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Carmelita Frost

Injury No. 11-041025

Dependents: N/A

Employer: Coin Acceptors, Inc./Mountain View Fabricating

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

Additional Party: Not applicable

Insurer: Self-insured  
c/o Corporate Claims Management (TPA)

Hearing Date: September 16, 2015

Checked by: VRM/ps

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: May 9, 2011.
5. State location where accident occurred or occupational disease was contracted: Mountain View, Howell County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant injured her right shoulder while lifting at work and thereafter sustained a compensatory left shoulder injury.
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: Bilateral shoulders.

**Issued by MISSOURI DIVISION OF WORKERS' COMPENSATION**

Employee: Carmelita Frost

Injury No.: 11-041025

- 14. Nature and extent of any permanent disability: 25 percent of the right arm at the 232-week level; 7.5 percent of the left arm at the 232-week level.
- 15. Compensation paid-to-date for temporary disability: None.
- 16. Value necessary medical aid paid to date by employer/insurer? \$3,418.28.
- 17. Value necessary medical aid not furnished by employer/insurer? \$46,164.17
- 18. Employee's average weekly wages: \$584.58.
- 19. Weekly compensation rate: \$389.71.
- 20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

27 and 2/7 weeks of TTD at the weekly rate of \$389.71 =	\$10,633.52
58 weeks of PPD to the right arm at the shoulder (25% x 232 weeks) at the weekly rate of \$389.71 =	\$22,603.18
17.4 weeks of PPD to the left arm at the shoulder (7.5% x 232 weeks) at the week rate of \$389.71 =	\$ 6,780.95
Unpaid medical expenses =	\$46,164.17
<b>TOTAL:</b>	<b>\$86,181.82</b>

- 22. Second Injury Fund liability: Not applicable.
- 23. Future requirements awarded: None.

This Award is subject to review as provided by law.

The compensation awarded to Claimant shall be subject to a lien in the amount of 25 percent of all payments made hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Justin Nelson, Esq.

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Carmelita Frost

Injury No. 11-041025

Dependents: N/A

Employer: Coin Acceptors, Inc./Mountain View Fabricating

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

Additional Party: Not applicable

Insurer: Self-insured  
c/o Corporate Claims Management (TPA)

Hearing Date: September 16, 2015

Checked by: VRM/ps

**INTRODUCTION**

The undersigned Administrative Law Judge conducted a final hearing in Willow Springs, Missouri to determine the liability of the Employer/Insurer. Attorney Justin Nelson represented Carmelita Frost. He seeks a 25 percent fee of any amounts awarded. Mark Kornblum represented Coin Acceptors, Inc./Mountain View Fabricating, and Corporate Claims Management, a third party administrator. There is no Second Injury Fund claim.

**STIPULATIONS**

The parties stipulated to the following facts:

1. On May 9, 2011, Carmelita Frost (Claimant) was an employee working for a Missouri employer, Coin Acceptors, Inc./Mountain View Fabricating Claimant (Employer). On that date, Claimant sustained an injury to her right shoulder that arose out of and in the course of her employment with Employer.
2. On the date of the work injury, both Claimant and Employer were subject to Missouri Workers' Compensation Act, and Employer was self-insured. Its third party administrator is Corporate Claims Management.
3. Venue and jurisdiction are proper in Willow Springs, Howell County, Missouri.
4. There is no challenge to the statute of limitations or notice.
5. Claimant's average week wage was \$584.58, making her temporary total and permanent partial disability rate \$389.71.
6. Employer paid \$3,418.28 in medical benefits and no temporary total disability benefits.

## **ISSUES**

The issues for the hearing are as follows:

- Is Claimant's injury to her right arm requiring surgical treatment, as well as the injury to her left arm, medically and causally related to the work for Employer?
- What is the nature and extent of any permanent disability?
- Is Claimant entitled to temporary benefits?
- Is Claimant entitled to the payment of past medical bills?

## **EXHIBITS**

The parties offered the following exhibits which were admitted:

*Exhibits offered by Claimant and admitted:*

1. Deposition – Dr. Mullins
2. Medical Report – Dr. Mullins
3. Curriculum Vitae – Dr. Mullins
- 4 - 9. Medical Records – various providers
- 10 – 15. Medical Bills – various providers

*Exhibits offered by Employer and admitted:*

- A. Deposition – Dr. Burke, with exhibits

## **FINDINGS OF FACT**

Claimant is 62 years old. She was born in the Philippines and immigrated to the United States when she was 25 years old. Claimant began working for Mountain View Fabricating in October 1981, a business that remanufactures coin operated vending machines. For the first 30 years of employment for this company, Claimant never had a workers' compensation claim. That changed on May 9, 2011.

### *Accident*

Claimant's job on the morning of May 9, 2011, was to "triage" or inspect the machines to determine what repairs were needed. When vending machines arrived at Employer's business, the machines were placed on plywood boards. Big machines were placed on heavy 4 x 8 foot pieces of plywood. Smaller machines were placed on smaller boards weighing less than 20 pounds. The machines and plywood boards then traveled around the shop on rollers. After verifying the numbers on a machine, completing a work order, and removing some component parts, Claimant had to remove the plywood from under the machine and stack the plywood. Claimant is slightly built. Medical records indicate that she is only 5 feet 3 inches, and weighs less than 125 pounds. Between 8:00 and 10:00 in the morning, while stacking the heavier, large boards, Claimant felt a "pull" in her right arm. Because she did not expect there to be any more "big boards" that day, Claimant continued to work. But soon, her arm became painful. She delayed reporting her injury for two weeks.

Claimant explained that she was raised to work unless she was bleeding and forbidden to cry even when harshly and physically punished. Because of this upbringing, she is reticent to express complaints of pain. Therefore when she was injured at work, she solicited assistance from her coworkers in stacking the big boards and used a footstool so she would not have to lift her arm as high. With these accommodations, she believed her shoulder would get better. But she did not get better.

Claimant notified Employer of her injury about two weeks after its occurrence. Employer referred Claimant to Dr. Jordan, whom Claimant saw on June 7, 2011. Dr. Jordan diagnosed a right triceps strain and recommended the use of ice, hot packs, and Aleve. Claimant said Dr. Jordan also instructed her not to lift the heavier boards.

Claimant returned to Dr. Jordan on June 21, 2011. This time, Dr. Jordan diagnosed both a right triceps and possible deltoid strain. He recommended Aleve and Tylenol and returned Claimant to work without restrictions. Claimant returned to Dr. Jordan again on July 12, 2011. There was no change in diagnosis. Dr. Jordan wrote no restrictions on work, but he did give Claimant an exercise regimen and a return appointment for August 9, 2011. Claimant did not inquire of Dr. Jordan about an MRI, but rather, asked her supervisor for an MRI, which never materialized. She canceled her last appointment with Dr. Jordan, believing that Dr. Jordan had nothing further to offer her, even though Dr. Jordan had not released her at maximum medical improvement.

Claimant's supervisor continued to accommodate Claimant by providing job duties that did not entail heavy lifting. This caused friction with Claimant's co-workers. Feeling ostracized, Claimant quit her job on October 14, 2011.

After she quit work, Claimant sought medical treatment on her own. On November 15, 2011, Claimant saw Nurse Practitioner David McVicker, who recommended an MRI and prescribed codeine and prednisone (Exhibit 4). Mr. McVicker opined in a letter dated in 2012, that the shoulder injury was "definitely work related." Claimant, however, did not get the MRI recommended by Mr. McVicker because she lacked money to do so. Claimant also sought several chiropractic treatments which were not beneficial. Finally, Claimant saw her primary care physician, Dr. Laurie Clarkson who ordered an MRI which was performed on March 9, 2012.

The MRI revealed a right supraspinatus large full-thickness tear with a large degree of retraction of the free torn edge, and questionable right anterior superior labral tear. Claimant thereafter saw Dr. Gregory Hubbard, an orthopedic surgeon, whose assessment was rotator cuff tear with possible SLAP tear. He recommended surgery. Claimant filed a claim for compensation on April 11, 2012. Dr. Hubbard provided a letter dated April 13, 2012, opining that the rotator cuff and possible labral tear is the result of lifting "pallets" at Claimant's work (Exhibit 6). Employer authorized no additional treatment after the claim for compensation was filed, or after Dr. Hubbard's letter. Claimant underwent surgery for the right shoulder on April 24, 2012. Dr. Hubbard's operative report reveals that the retraction of the full thickness rotator cuff was about 20 millimeters.

For the first three months following the surgery, Claimant was unable to use her right shoulder as her arm was in a sling. She thereafter attended physical therapy. She did not drive until November 2012, and did not work. By November 1, 2012, Claimant was able to resume many of her normal activities, although she still has certain restrictive limits in lifting and range of motion. Even today, she alternates her arms in cleaning, relies on a step stool because she is unable to raise her arm without pain, and is unable to fasten her bra behind her back.

Since the time of her injury, Claimant relied heavily on her left arm to complete tasks that she could not perform with her dominant right arm. She said her left shoulder hurts, but not as badly as the right. Claimant now takes only over-the-counter medications.

**Medical Bills**

Claimant seeks reimbursement of all medical expenses for treatment of her right and left shoulder. These total \$51,284.36. Claimant admitted, however, that at the time she asked her supervisor "Linda" for an MRI, she had no physician recommendation for such diagnostic testing. It is unclear when she made such a request. She admitted that she failed to return to Dr. Jordan for additional treatment even though she had a scheduled appointment with him in August 2011. She admitted that she sought additional treatment on her own after she quit work. Claimant contends that a woman, who was handling Employer's workers' compensation issues, informed her that her claim was being denied. Claimant was not specific as to when such denial occurred. She produced no correspondence from Employer that would support a finding that prior to April 11, 2012, Employer had refused to provide Claimant with additional medical care. April 11, 2012 is the date that Claimant filed her claim for compensation which Employer then specifically denied.

The following are the bills that correspond with the medical records for services provided after April 11, 2012:

Exhibit 10 – Services of West Plains Ambulatory Surgery	\$25,603.00
Exhibit 11 – Schierling Chiropractic, LLC	\$ 245.00
Exhibit 12 – Physical Therapy Specialists Clinic, Inc.	\$ 5,378.29
Exhibit 13 – Hubbard Bone and Joint Clinic, LLC	\$ 9,929.88
Exhibit 14 – Cox Regional Services	\$ 1,518.00
Exhibit 15 - Ozark Medical Center	<u>\$ 3,490.00</u>
	\$46,164.17

There is no evidence in the record that these bills were unreasonable or unnecessary for the treatment of Claimant's left and right shoulder injuries.

**Expert Opinions**

On June 17, 2014, Claimant saw Dr. Mitchell Mullins for an Independent Medical Examination (IME). He is board certified in emergency medicine. Dr. Mullins said the May 9, 2011 work accident was the prevailing factor in causing the rotator cuff tear to the right shoulder with a subsequent development of compensatory left shoulder tendinopathy. He rated Claimant as having a 30 percent permanent partial disability to the right shoulder due to the injury and a 12 percent permanent partial disability at the left shoulder due to the injury.

Dr. James Burke examined Claimant on behalf of Employer. He is a board certified orthopedic surgeon. Dr. Burke said a 22 millimeter rotator cuff tear is considered massive. He opined that if Claimant had sustained this injury at work, she would have experienced exquisite pain and would not have been able to continue working the two weeks prior to reporting the injury. He also did not believe a small tear could have progressed to this massive size between the date of the injury and the date of the MRI. He believed the work incident was low energy in nature. Therefore, he concluded that the tear was chronic and the work incident of May 9, 2011 was not the prevailing factor in causing the tear.

## **Credibility Assessment**

Claimant is a credible witness. I find persuasive her narrative that she was taught a strong work ethic and was compelled to suppress complaints of pain. Despite her slight build and physically demanding occupation, Claimant never previously reported any work injury in the 30-plus years she worked for Employer. These factors adequately explain how Claimant could have continued working (with self-accommodation) despite a large rotator cuff tear.

I do not agree with Dr. Burke that her work injury involved low energy. Moreover, Claimant's history of the mechanism of the injury is consistent throughout all of the medical records. Even though Dr. Burke has an expertise in orthopedics; I find his causation opinion unpersuasive in this instance. I find credible and persuasive Dr. Mullins' opinion that Claimant's work injury on May 9, 2011 was the prevailing factor in both her right and left shoulder injuries. I believe his permanency ratings are high, however, and discussed below.

## **CONCLUSIONS OF LAW**

Claimant has the burden to prove all essential elements of her claim. *Bond v. Site Line Surveying*, 322 S.W.3d 165, 170 (Mo. App. 2010). Claimant has met her burden that she is entitled to temporary partial disability, permanent partial disability, and most of her medical benefits.

### *Temporary Partial Disability*

Temporary benefits are intended to provide compensation until a worker's medical condition has stabilized and reached maximum medical improvement. *Minnick v. S. Metro Fire Prot. Dist.*, 926 S.W.2d 906, 909 (Mo. App. 1996) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). "It is clear that a 'claimant is capable of forming an opinion as to whether she is able to work, and her testimony alone is sufficient evidence on which to base an award of temporary total disability.' [internal citations omitted]." *Pruett v. Fed. Mogul Corp.*, 365 S.W.3d 296, 309 (Mo. App. S.D. 2012).

Claimant testified credibly that from the date of her surgery on April 24, 2012 to November 1, 2012, she was unable to work in any capacity given the surgical repair of a massive rotator cuff tear. Claimant is entitled to 27 and 2/7 weeks of temporary total disability at the rate of \$389.71. Employer shall pay \$10,633.52 in temporary total disability.

### *Permanent Partial Disability*

Claimant's evidence demonstrates that she sustained a significant permanent partial disability to the right shoulder from the work accident of May 9, 2011, and an additional injury to her left shoulder when she was forced to compensate for the injured right arm. Despite bilateral arm injuries, Claimant is able to work. She is entitled to permanent partial disability. Permanent partial disability "means a disability that is permanent in nature and partial in degree...." § 287.190(6) RSMo 2000.

The nature and extent of disability is within the province of the fact finder. *Stewart v. Treasurer*, 419 S.W.3d 915 (Mo. App. S.D. 2014). The Administrative Law Judge and the Commission are not bound by the percentage estimates of medical experts and it may consider all of the evidence, including the

testimony of the employee. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 907 (Mo. App. 2008).

Having considered the whole record, I have found that Dr. Mullins' ratings are too high. Despite the massive tear, Claimant has had a relatively good result from the medical care she received from Dr. Hubbard and the physical therapy. Moreover, the disability to the left arm appears minimal. Therefore, I find and conclude that Claimant is entitled to a 25 percent permanent partial disability for the right shoulder and 7.5 percent permanent partial disability for the left shoulder. Employer owes Claimant \$22,603.18 for permanent partial disability to the right shoulder (232 weeks x 25% = 58 weeks; 58 weeks x \$389.71 = \$22,603.18). Employer also shall pay Claimant \$6,780.95 for the 7.5 percent permanent partial disability to the left shoulder (232 weeks x 7.5% = 17.4 weeks; 17.4 weeks x \$389.71 = \$6,780.95).

### *Past Medical Treatment*

Section 287.140 RSMo, requires an employer to provide medical treatment as reasonably may be required to cure or relieve an employee from the effects of a work-related injury. "Cure or relieve" means treatment that will give comfort, even though restoration or soundness is beyond avail. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 249 (Mo. banc 2003). Section 287.140.1 RSMo, does not refer to a "prevailing factor" test used in determining causation. "Rather, the legal standard for determining an employer's obligation to afford medical care is clearly and plainly articulated in Section 287.140.1 as whether the treatment is ***reasonably required to cure and relieve the effects of the injury.***" *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 518 (Mo. App. W.D. 2011). "The upshot of *Tillotson* is this: 'once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury.' *Id.* at 519." *Armstrong v. Tetra Pak, Inc.*, 391 S.W.3d 466, 472 (Mo. App. S.D. 2012).

Having reviewed the medical records and heard Claimant's testimony, I find and conclude that Claimant required additional medical treatment, including the surgery for the right shoulder, to cure or relieve the effects of her work injury. The record also supports the determination that Claimant was required to compensate for the injury to the right shoulder, thus sustaining an injury in her left shoulder. Dr. Mullins found that the need for additional treatment was related to and flowed from Claimant's work injury. I concur.

I conclude, however, that Claimant is not entitled to reimbursement of her medical bills incurred prior to April 11, 2012. Claimant was noncompliant with the directive of Dr. Jordan. She did not return to him for authorized treatment, choosing instead to seek treatment on her own. Although she requested an MRI from Employer, it is unclear when this demand was made or whether Claimant ever voiced her concern to Dr. Jordan who was the authorized physician.

Once Claimant filed a formal claim for compensation, however, which coincided with the surgical recommendation of Dr. Hubbard, Employer was put on notice that Claimant's work injury of May 9, 2011 had not resolved. Employer had the responsibility at that time to offer additional treatment. It did not do so, but thereafter denied all liability for the claim. *See Downing v. McDonald's Sirloin Stockade*, 418 S.W.3d 526 (Mo. App. S.D. 2014) (affirming award of past medical expenses for needed surgery after the employer had refused authorization). Calculating the bills for treatment incurred after April 11, 2012, I find and conclude that Claimant is entitled to \$46,164.17 for past medical treatment.

**SUMMARY**

Employer shall pay Claimant \$86,181.82 in workers' compensation benefits. That amount is calculated as follows:

For temporary total disability, 27 and 2/7 weeks at the rate of \$389.71 = \$10,633.52

For permanent partial disability to the right arm at the shoulder,  
58 weeks at the rate of \$389.71 = \$22,603.18

For permanent partial disability to the left arm at the shoulder,  
17.4 weeks at the rate of \$389.71 = \$ 6,780.95

For unpaid medical expenses = \$46,164.17

**TOTAL: \$86,181.82**

Claimant's attorney Justin Nelson shall have a lien in the amount of 25 percent of all amounts awarded as a reasonable fee for necessary legal services provided to Claimant.

This Award is subject to review as provided by law.

Made by: /s/ Victorine R. Mahon

Victorine R. Mahon  
Administrative Law Judge  
Division of Workers' Compensation