

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

Injury No.: 04-118118

Employee: Rebecca Garber
Employer: Dr. & Sara Jaroonwanichkul d/b/a Branson Oncology
Insurer: Uninsured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: May 28, 2004
Place and County of Accident: Taney County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 8, 2007. The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued November 8, 2007, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 24th day of June 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Before the

DIVISION OF WORKERS'
COMPENSATION

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

Employee: Rebecca Garber

Injury No: 04-118118

Dependents: N/A

Employer: Dr. & Sara Jarronwanichkul, d/b/a Branson Oncology

Additional Party: N/A

Insurer: N/A

Hearing Date: August 15, 2007

Checked by:

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 28, 2004
5. State location where accident occurred or occupational disease was contracted: TANEY COUNTY, MO
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? N/A
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
CAUGHT HER FOOT ON A RUG AND TRIPPED HITTING DOOR JAMB WITH LEFT SIDE OF FACE AND FELL TO THE GROUND
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: FACE, LEFT SHOULDER AND LOW BACK

- Nature and extent of any permanent disability: 10 PERCENT BODY AS A WHOLE

15. Compensation paid to-date for temporary disability: NONE
16. Value necessary medical aid paid to date by employer/insurer? \$1,200.00
17. Value necessary medical aid not furnished by employer/insurer? \$11,726.63
18. Employee's average weekly wages: \$400.00
19. Weekly compensation rate: \$266.66

- Method wages computation: STIPULATION

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$10,369.63

N/A weeks of temporary total disability (or temporary partial disability)

40 weeks of permanent partial disability from Employer \$10,666.40

N/A weeks of disfigurement from Employer

22. Second Injury Fund liability: YES -- IF AWARD NOT PAID BY EMPLOYER

Total: \$21,036.03

23. Future requirements awarded: FUTURE MEDICAL AWARDED

Said payments to begin IMMEDIATELY and to be payable and be subject to modification and review as provided by law.

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

Becky Dias

FINDINGS OF FACT and RULINGS OF LAW:

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

Employee: Rebecca Garber

Injury No: 04-118118

Dependents: N/A

Employer: Dr. & Sara Jarronwanichkul, d/b/a Branson Oncology

Additional Party: N/A

Insurer: N/A

Checked by:

AWARD ON HEARING

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on August 15, 2007. The undersigned reopened the file on August 30, 2007, for purpose of incorporating into the Legal File the correspondence and redaction noted by Becky Dias, Esq. and Eric Farris, Esq. The redaction is identified in the parties stipulation set forth below.

The employee appeared personally and through her attorney, Becky Dias, Esq. The alleged employers, Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology Clinic (hereinafter referred to as Dr. Jaroon) and Sara Jaroonwanichkul d/b/a Branson Oncology Clinic appeared personally and through their attorney, Eric Farris, Esq. The Treasurer of Missouri, as the Custodian of the Second Injury Fund, is a party but did not appear at the evidentiary hearing by agreement of the parties.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about May 28, 2004, Dr. Jaroonwanichkul d/b/a Branson Oncology Clinic was an employer operating under and subject to The Missouri Workers' Compensation Law, but during this time was without workers' compensation insurance.
 - (2) On the alleged injury date of May 28, 2004, Rebecca Garber was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
 - (3) On or about May 28, 2004, the employee sustained an accident, which arose out of and in the course and scope of her employment with the above-referenced employer.
 - (4) The above-referenced employment and accident occurred in Taney County, Missouri. The parties agree to venue lying in Christian County, Missouri. Venue is proper.
 - (5) The employee notified the employer of her injury as required by Section, 287.420, RSMo.
 - (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
 - (7) At the time of the alleged accident, the employee's average weekly wage was \$400.00, which is sufficient to allow a compensation rate of \$266.66 for temporary total disability compensation / permanent total disability compensation, and a compensation rate of \$266.66 for permanent partial disability compensation.
 - (8) No temporary disability benefits have been provided to the employee.
- The employer has provided certain medical treatment to the employee, having paid approximately \$1,200.00 in medical expenses.
 - The deposition of Dr. Koprivica should be redacted to reference only one fall, and the date of the fall being May 2004. (The Legal File includes the parties' correspondence referencing the redaction.)

The sole issues to be resolved by hearing include:

- Whether Sara Jaronwanichkul (allegedly d/b/a Branson Oncology Clinic) was an employer operating under and subject to The Missouri Workers' Compensation Law on May 28, 2004?
- Whether the alleged accident of May 28, 2004 caused the injuries and disabilities for which benefits are now being claimed?
- Whether the alleged employer(s) is/are obligated to pay for certain past medical care and expenses in the amount of \$11,726.63?
- Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- Whether the employee sustained any permanent disability as a consequence of the alleged accident; and, if so, what is the nature and extent of the disability?
- Whether the Treasurer of Missouri, as the Custodian of the Second Injury Fund, is liable for payment of medical care relative to the alleged employers being uninsured under The Missouri Workers' Compensation Law, pursuant to Section 287.220, RSMo?
- Whether the Second Injury Fund is entitled to reimbursement from the employer for payment of the unpaid medical expenses?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. Also, the employee presented at the hearing of this case the testimony of Diane L. Cornelison, D.O. In addition, the employee offered for admission the following exhibits:

- Exhibit A Deposition of P. Brent Koprivica, M.D.
- Exhibit B Deposition of Anjelica Quiko Davis
- Exhibit C Deposition of Grace B. Catron
- Exhibit D Medical Records from St. John's Clinic (Branson Medical Center – Kim Rittman, D.O.)
- Exhibit E Medical Records from Skaggs Occupational Health & Urgent Care Plus (Randall J. Cross, M.D.)
- Exhibit F Medical Records from Branson Pain & Neurology Clinic (Diane Cornelison, D.O.)

Exhibit G Medical Records from Branson Pain & Neurology Clinic (Diane Cornelison, D.O.) (Records Attached to Deposition)
 Exhibit H Medical Records from Skaggs Community Health Center
 Exhibit I Medical Report from Springfield Neurological & Spine Institute (J. Charles Mace, M.D.)
 Exhibit J Medical Bills & Summary
 Exhibit K Missouri State Board of Registration for the Healing Arts Uniform Complaint Report
 Exhibit L Missouri State Board of Registration for the Healing Arts Uniform Complaint Report (filed against Dr. Cornelison)
 Exhibit M (not offered for admission)
 Exhibit N Article – Image-Guided Spine Intervention
 Exhibit O Photograph (Hall Door)
 Exhibit P Letter (State Board of Professional Registration for the Healing Arts to Dr. Cornelison – Dated November 9, 2006)
 Exhibit Q Photograph (with drawing notation)
 Exhibit R CV (Short Form) of Diane Lynne Cornelison, D.O.
 Exhibit S Branson Oncology Clinic Incident Report
 Exhibit T Deposition of Charles Mauldin, M.D. (June 27, 2007)

The exhibits were received and admitted into evidence, with the exception of Exhibit M. (Exhibit M was not offered for admission, and is not part of the evidence file.)

The employer (Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology) testified at the hearing in support of his claim. Also, the employer presented at the hearing of this case the testimony of Charles Mauldin, M.D. In addition, the employer offered for admission the following exhibits:

Exhibit 1 Correspondence Dated Oct. 27, 2006 (from Kevin Dunaway, Esq. attorney for Diane Cornelison, M.D. to Dr. Jaroon)
 Exhibit 2 Deposition of Randall Cross, M.D.
 Exhibit 3 Deposition of Charles Mauldin, M.D.

The exhibits were received and admitted into evidence.

The Second Injury Fund, having elected not to appear for the hearing by agreement of the parties, did not present any evidence at the hearing of this case.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include:

- o Minute Entries
- o Notice of Hearing
- o Request for Hearing
- o Answer to Alleged Employers (Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology and Sara Jaroonwanichkul d/b/a Branson Oncology Clinic) to Amended Claim for Compensation
- o Answer of Second Injury Fund to Amended Claim for Compensation
- o Amended Claim for Compensation
- o Answer of Employer (Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology) to Original Claim for Compensation
- o Answer of Second Injury Fund to Original Claim for Compensation

- o Original Claim for Compensation
- o Correspondence Between Becky Dias, Esq. and Eric Farris (Letters Dated July 20, 2006, June 20, 2006 and August 30, 2007)

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

DISCUSSION

(The adjudication of this case involves several issues. The primary issue involves the question of whether the May 28, 2004 incident caused Ms. Garber to sustain an injury to her low back.)

The employee Rebecca Garber is 47 years of age, having been born on April 24, 1960. Also, Ms. Garber is suffers from obesity, weighing approximately 230 pounds, which is similar to her weight at the time of the May 28, 2004 accident. Ms. Garber is a resident of Branson West, Missouri.

Ms. Garber is a high school graduate, and subsequent to graduating from high school in 1978, she enjoyed working in a variety of jobs. Ms. Garber is a Certified Nurse's Assistant (CNA) and most recently worked for Branson Oncology Clinic, working as a Phlebotomist. Also, in her employment with Branson Oncology Clinic Ms. Garber performed other work, including duties as a medical receptionist, a billing clerk, and a medical assistant. In her employment with Branson Oncology Clinic Ms. Garber worked under the supervision of Angie Davis, Office Manager, and Dr. Jaroon, owner.

Branson Oncology Clinic is an unincorporated medical practice owned by Pairote Jaroonwanichkul, M.D., and is located in the Skaggs Community Health Center complex. (Dr. Jaroonwanichkul is commonly referred to by the parties and the testimonial evidence as Dr. Jaroon. Hereinafter, the undersigned will refer to him as Dr. Jaroon.) The medical practice of Branson Oncology Clinic is in the nature of a medical specialty providing treatment and care of cancer patients. The parties acknowledge that, at all times relevant to this case, Branson Oncology Clinic operated under and subject to The Missouri Workers' Compensation Law, and engaged in business in the city of Branson, but during this time was without workers' compensation insurance.

The employee alleges that, in addition to Dr. Jaroon, Sara Jaroonwanichkul d/b/a Branson Oncology Clinic owned the medical practice. Dr. Jaroon indicates that the medical practice is a sole-proprietorship and he is the sole owner. Similarly, Ms. Sara Jaroonwanichkul indicates that, while she performs some work for her husband, she is not a physician and is not an owner of the practice. The parties do not offer any evidence to contradict the testimonies of Dr. and Mrs. Jaroon, relative to the nature and ownership of Branson Oncology Clinic.

On or about May 28, 2004 Ms. Garber testified that she suffered an injury while engaged in her employment with Branson Oncology Clinic. In describing the nature of this injury, Ms. Garber indicates that she caught her foot

On May 28, 2004, the claimant's foot caught on the rug as she was proceeding down the hallway of Branson Oncology Clinic. In the course of tripping on this rug, according to Ms. Garber, she fell forward, striking the left side of her face on the right side of the door jam. Further, the forward momentum of her body caused her to twist and fall into the break room, landing on her back with her face pointing upwards.

The noise caused by the fall prompted several co-employees to check on the incident, and to discover Ms. Garber lying on the ground. Similarly, Ms. Garber notes, Dr. Jaroon observed her lying on the ground. Dr. Jaroon, on the other hand, acknowledges hearing the noise, but denies seeing Ms. Garber on the ground.

Angelica ("Angie") Davis, the office manager, testified by deposition, that, while she did not observe the fall, she heard the fall, as did the other employees in the office. Ms. Davis indicated that she and the

other employee went to the back of the office to make sure that the fall did not involve a patient; and, upon reaching the break room, she saw Ms. Garber on the floor, in a seated position and being assisted by a nurse in the office. Similarly, another co-employee, Grace Catron, testified that heard the fall and responded to the fall, and saw Ms. Garber on the ground being assisted by the office's nurse. Notably, Ms. Catron testified that, at the time she observed Ms. Garber, Dr. Jaroon was present and observed Ms. Garber on the ground.

Immediately subsequent to getting Ms. Garber back to her feet, Ms. Davis prepared an Incident Report, which she completed and signed. Additionally, Ms. Garber and Dr. Jaroon signed this Incident Report. In addition, Ms. Davis indicated that she had no doubt that Ms. Garber actually fell. According to Ms. Davis she was noted a bruise on Ms. Garber's shoulder. And, while she thought Ms. Garber was more "embarrassed than shaken up, Ms. Davis believed Ms. Garber should be checked out. Consequently, Ms. Davis referred Ms. Garber to Skaggs Occupational Health and Urgent Care Plus, which is situated in the same building of Branson Oncology Clinic.

Randall Cross, M.D., who is a physician with Skaggs Occupational Health and Urgent Care Plus, examined Ms. Garber shortly after the incident on May 28, 2004. Notably, at the time of Ms. Garber presenting to Dr. Cross on May 28, 2004, Ms. Garber presented with multiple problems, and with the chief complaints involving the left shoulder and neck. In describing the history presented to him by Ms. Garber, Dr. Cross propounded the following notation:

This employee tripped on the carpeting in their office hallway and fell forward striking her left side of her face and left anterior on the edge of the door jam. There was no loss of consciousness but she was dazed for a minute. Presently she complains of soreness in the left side of her neck but no headache or dysesthesia of the fingers or arm. There is no history of any previous neck traumas.

Dr. Cross diagnosed Ms. Garber as having sustained a direct trauma to the left anterior shoulder with significant hematoma of the trapezius muscle, and a mild contusion of the left mandible. And, in light of his examination and diagnosis, Dr. Cross treated Ms. Garber for bruises to her face and left shoulder. Notably, at the time of this May 28, 2004 examination, Dr. Cross did not provide any treatment associated with Ms. Garber's back, as she did not make any complaints regarding her back. However, Dr. Cross admitted in his deposition that he sees patients that become stiff or sore in certain areas the next day, or sometimes a couple of days after the accident. Dr. Jaroon paid for the May 28, 2004 medical visit.

At the time of the May 28, 2004 medical visit, Dr. Cross scheduled a follow-up appointment for Ms. Garber. Further, Ms. Garber testified that, for several days, her face and left shoulder was very painful, necessitating receipt of prescription medication prescribed by Dr. Cross. However, according to Ms. Garber, Dr. Jaroon informed her that he did not have workers' compensation insurance, and he would have to pay the medical expenses out his personal pocket. Not wanting to cause Dr. Jaroon to incur expenses, and believing that the injury was not serious and she would get better without the necessity of additional medical care, Mr. Garber indicates that she did not get any additional treatment with Dr. Cross.

Yet, in the following weeks, according to Ms. Garber, she began to experience problems with her right leg (Although she did not identify this progression of symptoms as a back problem at the time, Ms. Garber now refers to his medical concern as a back problem.) Notably, Ms. Garber states, the problems progressed and her right leg started to go numb. The progression of symptoms prompted Ms. Garber to inform Angie Davis of her leg pain, and to inform Ms. Davis that she was going to see a doctor. At that point, according to Ms. Garber, she did not associate the pain in her back with the fall.

In July 2004, Ms. Garber presented to Kym Rittman, D.O., who is family physician, with complaints of right and left leg pain. Notably, as explained by Ms. Garber, she did not associate the leg pain with a back

problem, and thus did not identify the May 28, 2004 incident as the cause of her left and right leg pain. Consequently, Ms. Garber notes, in providing Dr. Rittman with a history she did not reference a recent injury. In light of her examination and evaluation of Ms. Garber, Dr. Rittman ordered a diagnostic study in the nature of an MRI of the lumbar spine.

Subsequently, the MRI revealed a bulging disc or chronic circumferential disk protrusion. Scott L. Rossow, D.O., who is radiologist evaluating the MRI, propounded the following impression:

Endstage degenerative disk and endplate changes at the L5-S1 level. Left paracentral and lateral prominence of the disk bulge which narrows the lateral recess here may effect the left S1 root.

In or around September 2004, and in light of the MRI findings, Dr. Rittman referred Ms Garber to Diane Cornelison, D.O., who is a neurologist with the Branson Neurology & Pain Center. Thereafter, Ms. Garber presented to Dr. Cornelison for treatment, believing that the payment would occur through group insurance, with Dr. Jaroon paying the co-payments. According to Dr. Cornelison, she did not initially note Ms. Garber's treatment was under workers' compensation. However, she later identified the concern as a workers' compensation concern, which, according to Dr. Cornelison, prompted Dr. Jaroon, on October 15, 2004, to inform her that he did not have workers' compensation insurance and that he would need to work out the bills with her. Responding to this concern, Dr. Cornelison informed Dr. Jaroon that she did not handle the bills, and would have to refer the matter to the clinic (Branson Neurology and Pain Center).

In light of her examination of Ms. Garber on September 15, 2004, Dr. Cornelison diagnosed Ms. Garber with lumbar radiculitis, strain/sprain, and scheduled Ms. Garber with follow-up examination. At the time of the follow-up examination, which occurred on or about September 24, 2004, Dr. Cornelison administered a lumbar L5-S1 epidural injection, which did not improve Ms. Garber's condition. Notably, according to Dr. Cornelison, the absence of improvement following the injection is an indication that the degenerative disk disease in Ms. Garber's back is not the cause or source of her lumbar pain.

On October 15, 2004, Ms. Garber presented to Dr. Cornelison for further follow-up examination, at which time Dr. Cornelison discussed her findings and opinion with Ms. Garber. Additionally, in offering a differential diagnosis or impression of right lateral numbness consistent with either L4 pathology or lateral femoral cutaneous neuropathy, Dr. Cornelison recommended to Ms. Garber that she proceed with a diagnostic lateral femoral cutaneous nerve block. With Ms. Garber's consent, Dr. Cornelison administered the nerve block at the time of that visit -- October 15, 2004.

In addition, on or about October 15, 2004, according to Dr. Cornelison, Dr. Jaroonwanichkul contacted Dr. Cornelison regarding the payment of Ms. Garber's bill and his lack of a workers' compensation insurance policy. Dr. Cornelison made a note in the chart indicating that Dr. Jaroonwanichkul wished to be billed for the services and that she had checked with Carolyn Duncan of the hospital and that was fine. And, in light of this conversation, Dr. Cornelison directed Dr. Jaroonwanichkul to speak with Susan (the office manager in Dr. Cornelison's office) in order to make the appropriate arrangements.

Follow-up examinations with Dr. Cornelison occurred on October 25, 2004, November 2, 2004, and December 8, 2004. During each of these examinations, Dr. Cornelison administered a right L4 transforaminal block with epidurograms. Subsequent to the last injection, Ms. Garber experienced a cessation of the pain. The cessation of pain, however, was temporary, lasting for 9 days, and then began slowly to return. According to Dr. Cornelison, the cessation of pain, even if temporary, served as an indication that she was treating Ms. Garber in the correct area.

During her treatment of Ms. Garber, Dr. Cornelison discussed with Ms. Garber the option of getting a second opinion from Dr. Mace, which, apparently, the employer had recommended to Dr. Cornelison.

Thereafter in light of the foregoing, Ms. Garber underwent a medical examination with Dr. Mace, who opined that Ms. Garber was not a surgical candidate. Notably, in addressing this issue, Ms. Garber testified that, at the time of her examination with Dr. Mace she had undergone the injections and was doing much better.

During the course of Ms. Garber's treatment with Dr. Cornelison, the employer (Dr. Jaroon) changed his mind about being responsible for the medical expenses; and, on or about December 6, 2004, Dr. Jaroon contacted Dr. Cornelison and discussed the claim in a garage parking lot. Further, according to Dr. Cornelison, at the time of this encounter, Dr. Jaroon appeared angry and upset with her, telling her that Ms. Garber was lying and suffering from degenerative disc disease, not a workers' compensation injury. Additionally, Dr. Cornelison states, at the time of this garage encounter, Dr. Jaroon asked her to change her diagnosis and opinion of causation. Later, Dr. Jaroon filed a complaint against Dr. Jaroon with the Missouri Board of Healing Arts, claiming that Dr. Cornelison was engaging in fraud.

In light of the filing of the Board of Healing Arts complaint, Dr. Cornelison secured the services of legal counsel, Kevin Dunaway, Esq. Further, according to Dr. Cornelison, her encounter with Dr. Jaroon, and his subsequent filing of complaint against her, did not affect her medical treatment of Rebecca Garber. She testified her diagnosis was made long before any of these events occurred.

In addressing the issue of causation, Dr. Cornelison testified that the mechanism of injury, as described by Ms. Garber, is consistent with the medical complaints for which she treated Ms. Garber. In context of the mechanic of the fall, Dr. Cornelison explained how a twisting fall affects the nerves and the spinal chord. Additionally, Dr. Cornelison explained the difference in how she viewed an anatomical causation and causation of an accident. Preeminently, Dr. Cornelison opined that the fall of May 28, 2004 is a substantial factor in the cause of Ms. Garber's low back pain. She further testified that it was reasonably apparent upon consideration of all of the circumstances, that Rebecca Garber's injury on May 28, 2004, during her employment at Branson Oncology was a substantial factor in causing the injury to her back for which she was receiving treatment. Similarly, Dr. Cornelison testified that the need for physical therapy was substantially caused by the May 28, 2004, fall.

Dr. Mauldin, who examined Ms. Garber at the request of the employer, appeared live and also had given a prior deposition testimony, which was received into evidence. Dr. Mauldin diagnosed meralgia paresthetica, but did not believe it was caused by the fall. He opined that Ms. Garber's weight was a contributing factor, and he did not believe Ms. Garber regarding the fall. He stressed that she had used the word "bounced" which he thought was preposterous. He did not feel that her pain was related to her fall.

Regarding Rebecca Garber's weight, Dr. Cornelison testified that weight can be a contributing factor, but her weight was stable and there were no prior complaints of back pain, so weight would be a less-contributing factor. Regarding the fact that Ms. Garber did not complain of back pain to Dr. Cross at the initial visit, Dr. Cornelison testified that the brain triages the most painful injury. She explained that a smack in the face would be the most painful injury at the time. She gave a hypothetical that, if a man was having a heart attack and had his right arm cut off, he would not know that the arm was missing until you first "removed the elephant off his chest," as the elephant would be the most painful thing at the time. Only later, after removal of the elephant, would the individual complain about the arm. She explained that Ms. Garber's recitation of the events in question is very consistent with what she has seen in her career, especially in her trauma duty in the emergency rooms.

Preston Brent Koprivica, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition on behalf of the employee. Dr. Koprivica performed an independent medical examination of Ms. Garber on or about March 17, 2005. At the time of this examination, Dr. Koprivica took a history from Ms. Garber, reviewed various medical records, and performed a physical examination of her. Notably, the history provided to Dr. Koprivica by Ms. Garber included intermittent back pain, intermittent right

lateral thigh numbness, and the need to sleep in a recliner because of the pain.

In light of his examination and evaluation of Ms. Garber, Dr. Koprivica opined that, as a consequence of the accident of the May 28, 2004, which involved a fall, Ms. Garber sustained an injury in the nature of a chronic lumbosacral strain, which involved the facet joint. Further, Dr. Koprivica opined, the May 28, 2004 fall caused Ms. Garber to develop a meralgia paresthetica. (This diagnosis is similar to Dr. Cornelison.)

Notably, Dr. Koprivica found Ms. Garber's physical presentation to be representative of her residual complaints and impairments. Similarly, Dr. Koprivica opined that the medical care and treatment provided to Ms. Garber for her complaints of low back pain with right radiculopathy was medically reasonable, and a direct necessity of the work-related injury of May 28, 2004. In addition, Dr. Koprivica opined that, as a consequence of the May 28, 2004 accident, Ms. Garber should be provided with additional ongoing physical therapy.

Finally, Dr. Koprivica opined that, as a result of the May 28, 2004 accident, Ms. Garber sustained a permanent partial disability of 15 percent to the body as a whole, referable to the low back. Notably, in rendering this opinion, Dr. Koprivica took into consideration that the right lower extremity involved meralgia paresthetica, as well as the chronic mechanical back pain attributed to the injury.

In explaining his opinion, during the taking of his deposition, Dr. Koprivica stated that the fall, as described by Ms. Garber, produced injury in her low back, and became an aggravating injury to the lateral femoral cutaneous nerve. He felt that she had sustained a lumbosacral strain with chronic mechanical back pain. The strain injury likely involved the facet joint on the right at about the L4-L5 or L3-L4 level, and that she also had an injury when she fell in the fashion in which she fell, that resulted in the entrapment of the lateral femoral cutaneous nerve at the groin area. Dr. Koprivica testified that the problem with the lateral femoral cutaneous nerve is that it exits from the groin area and supplies the sensation of the thigh. Further, according to Dr. Koprivica, because of Ms. Garber's size, she was at risk for sustaining such an injury. Yet, at the time of the injury, Dr. Koprivica states, she was symptom free and did not become symptomatic until she fell, which directly compressed the nerve causing additional injury.

Dr. Koprivica testified that he considered the mechanics of a fall routinely in his practice in emergency medicine and in occupational medicine. After reviewing Rebecca Garber's testimony regarding the mechanics of the fall in her deposition and the doctors' notes, he testified that he did not find anything unusual regarding the fall. He further testified that he believed the forces involved were not just in one plane, but that there was rotation and different planes of motion incorporated in the fall. Again, his explanation was also identical to the testimony of Dr. Cornelison regarding the forces she felt were present in the fall.

Ms. Garber testified at the hearing that she told Dr. Cross she "fell." Also, she testified that she told the providers that she felt like she "bounced" because it was such a violent smack in the face. She drew on a photograph of the doorway where her body came to rest after the fall.

Also, Ms. Garber testified that continues to suffer from pain in her back and pain in her right thigh. She cannot stand for long periods of time. And, according to Ms. Garber, her quality of life is diminished because she can no longer engage in nature walking or hiking. She does not participate in activities with her grandchildren at the same level she used to before the accident.

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Dr. Jaroonwanichkul testified live at the time of hearing. Dr. Jaroon acknowledges hearing noise, but denies seeing the fall or seeing Ms. Garber on the ground. Further, according to Dr. Jaroon, he was not aware of Ms. Garber claiming that the May 28, 2004 incident involved a fall, causing injury to her back and buttock, until after 2006. And, Dr. Jaroon is of the belief that Ms. Garber is trying to perpetuate a fraud and "to retire rich."

FINDINGS AND CONCLUSIONS

The Workers' Compensation Law for the State of Missouri underwent substantial change on or about August 28, 2005. However, in light of the underlying workers' compensation case involving an accident occurring on May 28, 2004, the legislative changes occurring in August 2005 enjoy only limited application to this case. The legislation in effect on May 28, 2004, which is substantive in nature, and not procedural, governs the adjudication of this case. Accordingly, in this context, several familiar principles bear reprise.

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the employee's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the employee need not establish the elements of the case based on absolute certainty. It is sufficient if the employee shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575,577 (Mo. App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

I.

Liability of Sara Jaronwanichkul

The evidence is supportive of a finding that the sole employer in this case is Pairote Jaronwanichkul, M.D., who is a sole-proprietor and the sole owner of Branson Oncology Clinic. Sara Jaronwanichkul is Dr. Pairote Jaronwanichkul wife, and works in the Branson Oncology Clinic as an employee. Further, while Ms. Sara Jaronwanichkul may assert herself into the activity of Branson Oncology Clinic with more assertiveness and involvement not typical of a regular employee, she is doing so as a spouse, and not as a legal owner or legal partner of Dr. Pairote Jaronwanichkul.

Accordingly, after consideration and review of the evidence, I find and conclude that, at all times relevant to this case, Sara Jaronwanichkul is not an employer of Rebecca Garber, and is not an owner or legal business partner in the medical practice Branson Oncology Clinic. Therefore, the Claim for Compensation, as filed against Sara Jaronwanichkul, is dismissed.

II.

Accident / Medical Causation

The employee, Rebecca Garber, contends that, on or about May 28, 2004, she sustained an injury to her face, left shoulder, and low back, which arose out of and in the course of her employment with Branson Oncology Clinic. In support of her claim, Ms. Garber relies upon the medical opinions of Drs. Cornelison and Koprivica.

The employer, Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology Clinic, does not readily dispute that, on May 28, 2004, the employee, Rebecca Garber, sustained an accident that arose out of and in the course of her employment with Branson Oncology Clinic. Dr. Jaroonwanichkul, however, disputes the causal relationship of the May 28, 2004 incident and the injury and disability pertaining to Ms. Garber's her low back. In support of his denial, Dr. Jaroonwanichkul relies upon the medical opinion of Dr. Mauldin.

The evidence is supportive of a finding, and, I find and conclude, that, on or about May 28, 2004, while walking down the hallway of Branson Oncology Clinic, and while performing her duties as an employee of Branson Oncology Clinic, Ms. Garber tripped on a rug and fell to the ground. In the course of tripping on this rug, she fell forward, striking the left side of her face on the right side of the door jam. Further, the forward momentum of her body caused her to twist and fall into the break room, landing on her back with her face pointing upwards.

Further, in resolving the issue of causation, I resolve the differences in testimony and medical opinion in favor of the testimonies and medical opinions of Drs. Cornelison and Koprivica, who I find to be more credible and persuasive than Dr. Mauldin. Notably, in this context, Dr. Cornelison testified that the mechanism of injury is consistent with the medical complaints for which she treated Ms. Garber, and Ms. Garber's response was appropriate to the treatment. And, in explaining the mechanics of the fall and the causal relationship of this fall to a low back injury, Dr. Cornelison explained how a twisting fall affects the nerves and the spinal chord. Additionally, Dr. Cornelison explained the difference in how she viewed an anatomical causation and causation of an accident.

Preeminently, Dr. Cornelison opined that the fall of May 28, 2004 is a substantial factor in the cause of Ms. Garber's low back pain. She further testified that it was reasonably apparent upon consideration of all of the circumstances, that Rebecca Garber's injury on May 28, 2004, during her employment at Branson Oncology was a substantial factor in causing the injury to her back for which she was receiving treatment. In this regard, Dr. Cornelison notes that she was able to rule out conclusively degenerative disk disease as an anatomical cause of Ms. Garber's pain.

Also, Dr. Koprivica provides similar medical opinion supportive of a finding of causation between the May 28, 2004 injury and the injury to Ms. Garber's low back. In explaining his opinion, Dr. Koprivica states that the fall produced injury in Ms. Garber's low back, and became an aggravating injury to the lateral femoral cutaneous nerve, resulting in a lumbosacral strain with chronic mechanical back pain. Further, Dr. Koprivica states, this injury likely involved the facet joint on the right at about the L4-L5 or L3-L4 level, and that she also had an injury when she fell in the fashion in which she fell, that resulted in the entrapment of the lateral femoral cutaneous nerve at the groin area. In explaining the nature of this injury, Dr. Koprivica testified that the problem with the lateral femoral cutaneous nerve is that it exits from the groin area and supplies the sensation of the thigh. Further, according to Dr. Koprivica, because of Ms. Garber's size, she was at risk for sustaining such an injury. Yet, at the time of the injury, Dr. Koprivica states, she was symptom free and did not become symptomatic until she fell, which directly compressed the nerve causing additional injury.

Dr. Koprivica testified that he considered the mechanics of a fall routinely in his practice in emergency medicine and in occupational medicine. And, after reviewing Rebecca Garber's testimony regarding the mechanics of the fall in her deposition and the doctors' notes, he did not find anything unusual regarding the fall. He further testified that he believed the forces involved were not just in one plane, but that there was rotation and different planes of motion incorporated in the fall.

In addition, the determination that an accident caused an injury is controlled not by consideration of a lapse of time between the occurrence of the accident and the onset of the injury, but by the succession of the events in question. *Greer v. Black, Sivalls & Bryson, Inc.*, 483 S.W. 2d 763 (Mo.App. 1972). In this regard, find Ms. Garber credible and accept as true her testimony regarding the events in question and her complaints. Similarly, an employee need not be immediately aware of the disabling nature of an injury at the time of a work-related accident, and need not express any physical complaints to fellow workers contemporaneously with the event in question in order for an event to constitute a compensable accident. *Parrott v. HQ, Inc.*, 907 S.W. 2d 236 (Mo. App. S.D. 1995).

Accordingly, after consideration and review of the evidence, I find and conclude that, on or about May 28, 2004, the employee Rebecca Garber sustained an accident that arose out of and in the course of her employment with Pairote Jaronwanichkul, M.D. d/b/a Branson Oncology Clinic. I further find and conclude that, as a consequence of this accident, the employee sustained an injury to her face, left shoulder, and back. The injury to the back is in the nature of a chronic lumbosacral strain involving the facet joint, causing chronic low back pain with right radiculopathy.

III.
Medical Care & Expenses

Subsequent to suffering the accident of May 28, 2004, Ms. Garber received treatment from Dr. Cross. Initially, Dr. Jaronwanichkul, as Ms. Garber's employer, and uninsured under Chapter 287, RSMo, paid the medical expenses incurred by Ms. Garber relative to her treatment with Dr. Cross. Later, however, Dr. Jaronwanichkul declined to provide Ms. Garber with any additional medical care, asserting that the request for medical care did not relate to the May 28, 2004 accident. Consequently, Ms. Garber sought and obtained medical care on her own, incurring medical care and expenses in the amounts and as follows:

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| Diane Cornelison, D.O. | \$ 1,567.00 |
| Skaggs Community Health Center | \$ 8,528.63 |
| Springfield Neurological Institute (J. Charles Mace, M.D.) | <u>\$ 274.00</u> |
| Total: | \$10,369.63 |

The aforementioned medical care was reasonable, necessary and causally related to the May 28, 2004 accident.

Section 287.140, RSMo, requires an employer to provide medical treatment as may be reasonably required to cure and relieve an employee from the effects of the work-related injury. Accordingly, in light of the foregoing, the employer Pairote Jaronwanichkul, M.D. d/b/a Branson Oncology Clinic is responsible for payment of the medical care and expenses the employee, Rebecca Garber, incurred in the course of receiving treatment for the injuries she sustained on May 28, 2004.

The employer, Pairote Jaronwanichkul, M.D. d/b/a Branson Oncology Clinic, did not have workers' compensation insurance coverage at the time of the injury and accident of May 28, 2004. Yet, the employer was operating subject to the requirements of The Workers' Compensation Law for the State of Missouri, and was obligated by law to carry the requisite insurance coverage.

Accordingly, the employer Pairote Jaronwanichkul, M.D. d/b/a Branson Oncology Clinic is ordered to pay to the employee, Rebecca Garber, the sum of \$10,369.63, which represents payment of past medical care and expenses. Similarly, the Treasurer of the State of Missouri, as the Custodian of the Second Injury Fund, is liable to the employee, Rebecca Garber, for payment of medical care and expenses in the amount of \$10,369.63.

In addition, the evidence presented in this case is supportive of a finding that the employee, Rebecca Garber, is in need of future medical care in order to cure and relieve her of the effects of the injuries caused by the May 28, 2004 accident. In this regard, Ms. Garber testified that she continues to suffer from pain in her back and pain in her right thigh. And, in light of the conservative treatment and recurrent symptoms, Dr. Koprivica opines that, while Ms. Garber is at maximum medical improvement, she should be provided with future medical care, to include physical therapy and prescription medication. Accordingly, finding in favor of Dr. Koprivica, over Dr. Mauldin, I find and conclude that, as a consequence of the May 28, 2004 accident, the employee, Rebecca Garber, is entitled to future medical care in order to cure and relieve her from the effects of the May 28, 2004 accident and injury.

Therefore, the employer, Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology Clinic, is ordered to provide the employee, Rebecca Garber, with future medical care, as may be directed by Dr. Cornelison, and which is reasonable, necessary, and causally related to the May 28, 2004 accident. Similarly, the Treasurer of the State of Missouri, as the Custodian of the Second Injury Fund, is ordered to provide the employee, Rebecca Garber, with future medical care, as may be directed by Dr. Cornelison, and which is reasonable, necessary, and causally related to the May 28, 2004 accident.

The Treasurer of the State of Missouri, as the Custodian of the Second Injury Fund, is entitled to reimbursement against the employer, as is allowed by law.

IV. Permanent Disability Compensation

The evidence is supportive of a finding that, as a consequence of the May 28, 2004 accident, Rebecca Garber sustained certain permanent partial disability. Notably, in this regard, Dr. Koprivica opined that, as a result of the May 28, 2004 accident, Ms. Garber sustained a permanent partial disability of 15 percent to the body as a whole, referable to the low back. Further, and in this context, Ms. Garber continues to suffer from pain in her back and pain in her right thigh; and she is limited in her ability to stand for long periods. In addition, Ms. Garber, no longer engages in nature walking or hiking, and she does not participate in activities with her grandchildren at the same level she used to before the accident. Yet, the physicians examining and/or treating Ms. Garber do not impose any permanent medical restrictions or limitations.

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the May 28, 2004 accident, the employee, Rebecca Garber, sustained a permanent partial disability of 10 percent to the body as a whole (or 40 weeks), referable to the low back. Therefore, the employer, Pairote Jaroonwanichkul, M.D. d/b/a Branson Oncology Clinic, is ordered to pay to the employee, Rebecca Garber the sum of \$10,666.40, which represents 40 weeks of permanent partial disability compensation, payable at the applicable compensation rate of \$266.66 per week.

The award is subject to modifications as provided by law, and shall remain open as to future medical care.

An attorney's fee of 25 percent of the benefits ordered to be provided is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Date: _____November 8, 2007_____

Made by: ___/s/ L. Timothy Wilson_____

L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation
Signed November 5, 2007

A true copy: Attest:

_____/s/ Jeffrey W. Buker_____
Jeffrey W. Buker
Director
Division of Workers' Compensation