

FINAL AWARD ALLOWING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge  
With Separate Opinion Concurring in Part and Modifying in Part)

Employee: Ninette Garland Injury No.: 97-490278

Employer: Lifestyle Options & Opportunities

Insurer: Granite State Insurance Company

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

Date of Accident: December 17, 1997

Place and County of Accident: St. Charles County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 (ALJ) 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 ALJ dated April 14, 2004. The award and decision of Administrative Law Judge Karla O. Boresi is attached and incorporated by this reference.

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

The Commission finds that the ALJ correctly weighed and evaluated the medical and lay evidence in reaching her conclusions. We adopt the findings of the ALJ as to the credibility, reliability and probative worth of the medical and lay evidence. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d879 (Mo.App.S.D. 2001); *Chatmon v. St. Charles County Ambulance District*, 55 S.W.3d 451 (Mo.App. E.D. 2001).

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

Given at Jefferson City, State of Missouri, this 18<sup>th</sup> day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

SEPARATE OPINION FILED

Attest: John J. Hickey, Member

\_\_\_\_\_  
Secretary

Employee: Ninette Garland

Injury No.: 97-490278

SEPARATE OPINION

(Concurring in Part and Modifying in Part)

I concur in the opinion of the Commission awarding compensation for this injury.

However, in my opinion, the majority of the Commission has too restrictively evaluated the impact of the injury on the Employee. Clearly the evidence indicated that the permanent partial disability sustained by Employee as a result of this injury is greater than the amount awarded by the ALJ and affirmed by the majority.

Employee's testimony as to her pain problem following this accident is credible, and is demonstrative of significant injury. *Fogelson v. Banquet Foods Corp.*, 526 S.W.2d 886 (Mo.App. E.D. 886); *Landman v. Ice Cream Specialties, Inc.* 107 S.W.3d 240 (Mo.banc 2003).

Employee testified that for a number of years following the accident she was in constant pain and felt like a "fireball that runs down my spine." She was in too much pain to work. She experiences soreness in her neck and her back is inflamed.

It is for the Commission to determine the percentage of permanent partial disability attributable to injury. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W. 879, (Mo.App.S.D. 1995). I would award permanent partial disability of 7½ % of the unscheduled 400 weeks referable to the lumbar spine plus 5% of the unscheduled 400 weeks referable to the cervical spine.

This amount would combine with the preexisting disability to create a liability for the Second Injury Fund of 12 weeks or a factor of 10%.

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John J. Hickey, Member

## AWARD

Employee:	Ninette Garland	Injury No.:	97-490278
Dependents:	N/A	Before the	
	Division of Workers'		
Employer:	Lifestyle Options & Opportunities	Compensation	
		Department of Labor and Industrial	
Additional Party:	N/A	Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	AIG Claim Service, Inc.		
Hearing Date:	January 13, 2004	Checked by:	KOB

## 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: December 17, 1997.

5. State location where accident occurred or occupational disease was contracted: Employer's premises in O'Fallon, 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: Employee was assisting a handicapped individual who started to collapse, and whom Employee had to catch to guide to the floor, which caused injury to Employee.
12. Did accident or occupational disease cause death? No. Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Body as a whole, lumbar and cervical spine.
14. Nature and extent of any permanent disability: 5% body as a whole lumbar, 2½% body as a whole cervical.
15. Compensation paid to-date for temporary disability: \$3,564.00
16. Value necessary medical aid paid to date by employer/insurer? \$7,219.00

Employee: Ninette Garland

Injury No.: 97-490278

17. Value necessary medical aid not furnished by employer/insurer? \$0.
18. Employee's average weekly wages: \$267.73
19. Weekly compensation rate: \$178.22 / \$178.22
20. Method wages computation: By stipulation / statute.

#### COMPENSATION PAYABLE

21. Amount of compensation payable:

30 weeks of permanent partial disability from Employer:	\$ 5,346.60
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22. Second Injury Fund liability: No

TOTAL:	<b><u>\$ 5,346.60</u></b>
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23. Future requirements awarded: None.

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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Jerome L.T. Lefton, Esq.

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ninette Garland Injury No.: 97-490278

Dependents: N/A Before the  
Division of Workers' Compensation

Employer: Lifestyle Options & Opportunities Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: N/A

Insurer: AIG Claim Service, Inc.  
Checked by: KOB

### PRELIMINARIES

The matter of Ninette Garland<sup>[1]</sup> ("Claimant") proceeded to hearing on January 13, 2004 at the Division of Workers' Compensation in the City of St. Louis to determine the extent of the disability associated with Claimant's December 17, 1997 work-related accident. Attorney Jerome Lefton represented Claimant. Attorney Karie Casey represented Lifestyle Options and Opportunities ("Employer") and its Insurer, Granite State Insurance Company. Assistant Attorney General Rebecca Wright represented the Second Injury Fund.

The parties agreed that on or about December 17, 1997, Claimant sustained an accidental injury arising out of and in the course of employment that resulted in injury to Claimant's back. Employer and Second Injury Fund disputed the nature and extent of disability and Claimant's allegation that she hurt her neck as a result of the accident. The parties further agreed that at the time of her accident, Claimant earned an average weekly wage of \$267.73, which corresponds to a rate of compensation of \$178.22 for both total disability benefits and permanent partial disability benefits.<sup>[2]</sup> Employer paid temporary total disability benefits in the amount of \$3,564.00 covering a period of 20 weeks beginning December 17, 1997 through May 18, 1998. Employer also paid medical benefits totaling \$7,219.00. Employment, venue, notice, and timeliness of the claim were not at issue.

The issues to be determined are:

1. Is Claimant's cervical spine condition medically causally related to her December 17, 1997 work accident;
2. Is Claimant entitled to temporary total disability benefits from May 18, 1998 through October 3, 2002;
3. Is Claimant entitled to future medical care;
4. What is the nature and extent of Claimant's disability; and
5. What is the liability of the Second Injury Fund?

## SUMMARY OF THE EVIDENCE

### Claimant's Testimony

Claimant is a slim, well-groomed, 41-year old mother of three. Claimant was employed as a house parent in a group home in O'Fallon, where she supervised and cared for three physically and mentally challenged young women, providing assistance with mobility, feeding, leisure activities and personal grooming. On the evening of the 17<sup>th</sup> of December 1997, Claimant was assisting Denise, a young, 160-pound girl, to the bathroom. Claimant had both her arms under Denise's armpits when Denise collapsed. Faced with having to suddenly carry Denise's full body weight, Claimant was able to ease Denise safely to the ground, but while doing so, Claimant heard a snap in her spinal column. She immediately felt pain and other symptoms in her lower back but testified that her entire spinal column hurt including her neck and upper back.

Following this incident, Claimant received immediate medical care at the direction of Employer, including treatment from December 23, 1997 through January 23, 1998 at the SSM Corporate Health Services clinic where she saw Drs. Robinson, Geiger and Chuwala. The treatment focused on her back pain, which extended to her toes, which were numb. The SSM records do not mention neck complaints or treatment, even though Claimant testified that at every visit to SSM Corporate Health Services, she reported that she had serious complaints in her neck, which felt inflamed, her head, which felt like a bowling ball on a toothpick, and her fingers, which felt numb and burned.

Claimant came under the care of Dr. Cynthia Guy in February of 1998 at West County Pain Control Center. Dr. Guy referred Claimant to Everson Orthopedics where she was treated by a "progressive" physical therapist. Claimant testified that it was not until she presented to Everson Orthopedics that someone listened to and recorded her complaints regarding her neck. Thereafter, Claimant came under the care of Dr. Katz from March 13 through May 22, 1998. Claimant testified that Dr. Katz told her he would only focus on her back. Claimant reported that overall she had no benefit from the care she received from the authorized treating physicians.

Dr. Katz released Claimant to return to work and found her to be at maximum medical improvement in May 1998. Claimant was assigned a job in Alton, Illinois, but could not get there because she was taking narcotic medications and could not drive for that long in one sitting. She testified that she wanted to remain working for Employer if she could do so within restrictions and that Employer indicated she would be called if a job became available. She has not received a call.

At hearing, Claimant testified she had ongoing neck and hand problems from 1998 to 2001. She has followed with Dr. Buegner who was a family physician and who prescribed a narcotic she found to be helpful with pain control. Claimant consulted Dr. Piper regarding surgery and received nerve injections. However, Claimant testified that the problem with undergoing surgery was that she was too young.

Claimant has many complaints. Claimant's low spine feels inflamed, the right sacral area hurts, she has sciatic nerve pain, and the lowest part of her back feels like a pin has stuck it. Her neck muscles are sore, tight, and inflamed, and her hands hurt and go numb. She can't open jars and do family activities. Sitting, standing, stairs, and riding on buses cause her hips to ache and her pain to increase. Claimant limits her travel by car to a three-mile radius from home. Her entire lifestyle has changed. Claimant does not feel she was able to do any work during the time from 1998 through 2001 or 2002.

Although she down played the severity, Claimant had several incidents involving her spine before her December 17, 1997 accident. In 1994, Claimant hurt her back while taking an aerobics class. She testified that following an adjustment she felt fine. In 1995, while working in Kansas City as a phlebotomist, she developed a painful back, which her employer accepted as work-related. She underwent a series of epidural blocks and a myelogram and was released after several months of care with restrictions limiting weights she could lift and the bending, stooping, twisting, etc. she could perform. Claimant testified that following the 1995 work injury she still had problems, although she had increased her ability to function and was feeling good about doing her job by 1997. She testified that she had no real or significant problems in her neck, although there is some documentation

in the records that she had treatment for her neck that she simply described such treatment as insignificant.

Claimant admitted that prior to 1997, she went to a chiropractor frequently, but claimed it was for basically holistic, general health purposes, and not for specific spinal injuries. Claimant was taking medication for back pain prior to her December 17, 1997 accident, including Loratab, Ibuprofen 800, Ultram and muscle relaxants.

Claimant's live testimony in the courtroom was noteworthy for several reasons. First, she was well dressed, groomed and coifed. Second, she demonstrated obvious pain symptoms. Third, she was very emotional. Fourth, she repeatedly expressed anger and frustration in the way she was treated from the beginning by Dr. Katz and seemed to attribute her current problems with this perceived neglect, despite the lack of evidence of such a connection. All these observations played a role in determining Claimant's credibility.

### Medical Records

Claimant submitted several sets of medical records.<sup>[3]</sup> Exhibits A to E cover a period of time preceding Claimant's December 17, 1997 work accident and document the fact that Claimant had significant preexisting problems and complaints with respect to her low back and neck. From 1993 to 1995, Claimant treated with her family doctor on and off for chronic back and neck pain. She began taking Loratab for pain in 1993. In 1995, an MRI documented disk bulging at L4-5 and L5-S1. Throughout 1995 and 1996, Claimant saw Dr. Curry for lumbar and cervical complaints, treated with prednisone, had "intense cervical spasms," received injections spinal epidurals, and even received shots of Toradol. The timing of the treatment was rather frequent and consistent. Beginning in 1996, Claimant came under the care of Dr. Buckles, whose records are only partially decipherable. What is clear is that Claimant saw Dr. Buckles fairly regularly from mid-1996 to early 2001, with the visits becoming less frequent after 1998. During the time she treated with Dr. Buckles, Claimant had persistent back pain and always took various pain medications, including Loratab, Ultram, Skelaxin, and Oxycontin. In November of 1995, Dr. Windholz confronted Claimant about her excessive narcotics use (she was simultaneously filling prescriptions for the same narcotic from different doctors at different pharmacies). As late as December 8, 1997, less than two weeks prior to her work accident, Claimant saw her doctor for back pain, was diagnosed with chronic pain syndrome, and received prescriptions for narcotic pain medication.

The records subsequent to Claimant's work injury are significant in several ways. First, there is contradictory documentation of complaints of neck pain. In the initial treatment records at SSM Rehabilitation and with Dr. Katz, there is no mention of neck symptoms, even in the "Personal Health History Form" purportedly completed by Claimant herself. The physical therapy records of Everson Orthopedic in early 1998 reflect Claimant complained of bilateral neck pain, but Claimant did not indicate significant neck pain on the pain questionnaire. The records of Troy Family Practice indicate that Claimant had back and neck pain both before and after the work accident. Also significant is the evidence that Claimant's spine pathology is longstanding, chronic and unrelenting. In 1998, doctors again expressed concern with Claimant's narcotic usage. Diagnostic films showed pathology at the same levels as previous MRIs. The latest MRI actually showed that the prior herniated disk had resolved and the spurring had increased.

### Expert Opinion Evidence

Dr. Richard Katz is a physician who holds three board certifications in the area of physical medicine and rehabilitation. He treated Claimant for two months, prepared a final report, and testified by deposition on behalf of Employer. Dr. Katz explained that when he first saw Claimant on March 13, 1998, he took an extended history and performed a complete examination. Thereafter he ordered diagnostic tests to rule out a more serious problem and prescribed conservative treatment, which he felt provided some improvement. During the time Dr. Katz treated Claimant, she never mentioned neck pain to him, even when she was given the opportunity to complete pain diagrams herself. Upon release from his care on March 15, 1998, Dr. Katz maintained the restrictions previously placed on Claimant, namely no lifting or carrying 25 pounds occasionally, 13 pounds frequently or 5 pounds constantly, and also occasional bending, stooping or squatting. He felt Claimant had permanent partial disability of 1% of the body as a whole associated with her work injury, on top of preexisting permanent partial disability equivalent to 5% of the body as a whole.

Dr. Frederic M. Simowitz is a physician who is board certified in neurology. He examined Claimant once at

her attorney's request on September 9, 2002, almost five years after her work accident. Dr. Simowitz agreed that prior to her December 17, 1997 work accident, Claimant had marked restriction associated with a 1994 aerobics injury, a 1995 injury that occurred while she was a phlebotomist, and other chronic problems. As a result of the December 17, 1997 accident, Dr. Simowitz felt Claimant substantially aggravated both her chronic low back condition and her preexisting cervical condition.<sup>[4]</sup> He felt Claimant had an overall permanent partial disability of 35% of the body as a whole, half of which preexisted the December 1997 accident. Of the 17 ½ % permanent partial disability he attributed to the work accident, he would estimate half was associated with her low back and half with her neck, although he admitted such an allotment was speculative.

Dr. Terrence L. Piper is the orthopedic surgeon who evaluated and treated Claimant in 2001. He diagnosed severe degenerative disk disease, most pronounced at C 6-7, and referred her for nerve root injections. In October 2001, Dr. Piper appears to have scheduled a cervical fusion, but in November he noted there was a need for "detoxification" prior to surgery due to Claimant's narcotics usage. On October 26, 2001, Dr. Piper wrote Claimant's attorney at the time:

This patient has degenerative changes and degenerative disk disease in her cervical spine. Most especially at C5-6 and C6, C7. These are longstanding changes which certainly did not originate with her accident when working in rehabilitation but may have been re-exacerbated by it, assuming historically that she was doing well prior to the accident and deteriorated thereafter. It is possible in that case that the accident was related to the onset of her symptoms. However, on objective testing and x-ray she has longstanding changes in her neck that pre-existed the rehab fall by a long period of time.

## FINDINGS OF FACT

Based on the substantial and competent evidence, including Claimant's testimony, which I had the opportunity to observe, the medical records, and the expert evidence, I make the following findings of fact:

1. Claimant sustained an accidental injury on December 17, 1997 while assisting one of her charges. The injury resulted in the aggravation of both her chronic low back condition and her preexisting cervical condition.
2. Claimant had significant symptomatic disability that preexisted her 1997 work injury. All the medical records and expert opinions indicate that Claimant had symptomatic degenerative disk disease in her back and neck. Claimant had two or three distinct incidents that caused her to seek medical treatment for her back, and had chronic symptoms. The evidence support's Dr. Piper's statement that Claimant has longstanding changes in her neck that pre-existed the work fall by a long period of time.
3. For a good part of the 1990's, Claimant regularly took pain medication, including Loratab, Oxycotin, and other prescription medication. More than one doctor expressed concern over the amount of medication Claimant took, but there is no evidence that Claimant was diagnosed with or treated for a drug addition. Therefore, one must conclude that she was taking the medication to treat back and neck pain before and leading up to her 1997 work accident.
4. Claimant did not testify credibly with respect to symptoms and degree of disability of her spine prior to the 1997 work accident. She testified that she was feeling good and had no complaints in her neck. She claimed that although she saw a chiropractor, it was for basically holistic, general health purposes, and not for specific spinal injuries. This is inconsistent with her medical records, which show the chiropractor regularly treated Claimant for back pain. Mere weeks prior to her work accident, Claimant saw Dr. Buckles for back pain, was diagnosed with chronic pain syndrome, and received prescriptions for narcotic pain medication. In the months leading up to her accident, Claimant regularly had neck and back adjustments. Contrary to the picture presented by Claimant's testimony, I find that Claimant had chronic and unrelenting back and neck symptoms prior and leading up to her 1997 work accident.
5. Claimant's testimony regarding the onset and degree of her cervical symptoms is not entirely credible. Claimant would have us believe that she had immediate, intense and obvious cervical symptoms following the work incident, and that she reported the symptoms as such to all who treated her. However, most of the

early treatment records are devoid of any cervical complaints. Even Claimant's self-completed pain diagram does not indicate neck pain. However, other treatment records in close proximity to the accident do mention neck symptoms. I find that while Claimant may have had some neck complaints after the accident, they were not as severe as she now portrays. Furthermore, she had neck symptoms prior to the accident.

6. Claimant reached maximum medical improvement from her December 1997 work accident on May 18, 1998. She received all medical treatment that was reasonable and necessary to cure and relieve her of the effects of the work accident. If Claimant was unable to work after May 1998, it was due to her chronic spine condition, and not the December 1997 work accident.

## RULINGS OF LAW

Based on the above findings, I find that Claimant is entitled to recover permanent partial disability benefits from Employer, but that additional temporary total disability benefits, future medical care and Second Injury Fund benefits are not due Claimant.

### I. Temporary Total Disability

Benefits for temporary total disability are paid during the "healing period." See, e.g., *Vinson v. Curators of Univ. of Missouri*, 822 S.W.2d 504, 508 (Mo.App. E.D.1991); *Phelps v. Jeff Wolk Constr. Co.*, 803 S.W.2d 641, 645 (Mo.App. E.D.1991); *Williams v. Pillsbury Co.*, 694 S.W.2d 488, 489 (Mo.App. E.D.1985). Temporary total disability compensation is paid until the employee can return to work, his condition stabilizes, or he has reached a point where further progress is not expected. *Minnick v. South Metro Fire Protection Dist.*, 926 S.W.2d 906, 909 (Mo.App. W.D.1996); *Vinson*, 822 S.W.2d at 508. Claimant bears the burden of proving her entitlement to TTD benefits by a reasonable probability. *Cooper v. Med. Ctr. of Independence*, 955 S.W.2d 570, 574-75 (Mo. App. W.D. 1997); *Thorsen v. Sachs Elec. Co.*, 52 S.W.3d 611, 621 (Mo. App. W.D. 2001).

I find that Employer had met its obligation to provide temporary benefits when Claimant was healing from her work injury. As of May 1998, Claimant's condition had stabilized. The work restrictions predated her 1997 work injury. She claimed she could not work because narcotic pain medication prevented her from driving to her assigned job, but she had been on pain medication prior to her accident. Claimant's testimony that she could not work is not reliable because she has embellished or diminished her pain complaints to her advantage in other aspects of this case. Furthermore, her restrictions and pain medications are not from her work injury, but predate it. Claimant is not entitled to additional temporary total disability benefits.

### II. Future Medical Treatment

The right to medical aid is a component of the compensation due an injured worker. *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo.App. S.D.1996). A worker is entitled to medical treatment as may reasonably be required to cure and relieve from the effects of the injury. *Id.* It is sufficient to award future medical benefits if the claimant shows by "reasonable probability" that he is in need of additional medical treatment by reason of his work-related accident. *Sifferman v. Sears, Roebuck, and Co.*, 906 S.W.2d 823, 828 (Mo.App.1995).

Employer provided all treatment that was reasonable and necessary to cure and relieve the effects of Claimant's work accident. There is no doubt that as of 2001, several years after her accident, Claimant was a candidate for a cervical fusion due to her degenerative disk disease. However, Claimant's cervical disease predated her work accident. Any aggravation of the disease caused by the work accident was slight and did not contribute to her current need for treatment. I find there is no connection between the work accident and Claimant's current medical needs. Claimant is not in need of additional medical treatment by reason of her work-related accident.

### III. Permanent Partial Disability / Medical Causation

There is varying evidence on the issue of nature and degree of the disability attributable to Claimant's accident. Both

experts acknowledge Claimant had a significant degree of preexisting disability, but differ on overall amount as well as the preexisting amount. Only one expert attributed any disability to the cervical spine, and he did so based on Claimant's assertion that she had no neck symptoms prior to the work accident. However, there is contradictory evidence regarding Claimant's alleged neck symptoms immediately following the accident. If Claimant had neck symptoms, there were minor at the time.

The Administrative Law Judge can consider all of the evidence in arriving at a percentage and is not bound by the percentage estimates of medical experts. *Sellers v. Trans World Airlines, Inc.*, 776 S.W.2d 502, 505 (Mo.App. W.D.1989). Despite the issues with her credibility and degree of preexisting disability, Claimant had documented and legitimately treated lumbar pain and limitations following her accident. Claimant's neck complaints were not significant enough for Claimant herself to note them at every visit. Based on all the evidence, I find that Claimant sustained permanent partial disability of 7½ % of the body as a whole on account of the December 1997 work accident. Of that amount, 5% is associated with the lumbar spine and 2½% is associated with the cervical spine.

#### IV. Second Injury Fund

To recover compensation from the Second Injury Fund, Claimant has the burden to prove that her alleged injuries meet the statutory thresholds set forth in §287.220. See, *i.e.*, *Conley v. Treasurer Of Missouri*, 999 S.W.2d 269, 274 (Mo.App. E.D. 1999). The minimum requirements are that the permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability. *Id.*

Claimant did not meet her burden with respect to proving her Second Injury Fund claim. Even Claimant's own doctor does not provide ratings that meet the statutory thresholds. Having found Claimant's primary injury fails to meet the statutory thresholds, I find that Claimant is not entitled to recover benefits from the Second Injury Fund.

#### CONCLUSION

Claimant shall recover 30 weeks of permanent partial disability benefits from Employer on account of her December 17, 1997 work accident, but is not entitled to additional temporary total disability benefits or future medical treatment. Her claim against the Second Injury Fund is denied.

Date: \_\_\_\_\_

Made by:

\_\_\_\_\_  
KARLA OGRODNIK BORES  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Reneé T. Slusher  
*Director*  
*Division of Workers' Compensation*

[1] Claimant signs her name "Ninette", although the report of injury and subsequent Division of Workers' Compensation records incorrectly list her name as "Nanette." Claimant is also known as "Nici."

[2] The parties stipulated to average weekly wage ("AWW") and rate, even though the rate is not two-thirds the AWW.

[3] The parties are cautioned as to the propriety of submitting medical records into evidence that have been altered in any way. In this case, several exhibits contain highlighting.

[4] Initially, Dr. Simowitz opined the December 1997 accident caused a bilateral herniated cervical disk and accounted for Claimant's 35% BAW disability, but upon review of diagnostic films showing no herniation, Dr. Simowitz modified his conclusion to attribute half of Claimant's disability to her preexisting condition.