

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

Injury No.: 12-032897

Employee: Kimberly Griggs
Employer: C. R. England, Inc.
Insurer: New Hampshire Insurance Co.

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 20, 2013. The award and decision of Administrative Law Judge L. Timothy Wilson, issued December 20, 2013, 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 11th day of June 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Kimberly Griggs

Injury No. 12-032897

Dependents: N/A

Employer: C.R. England, Inc.

Insurer: New Hampshire Insurance Co.

Additional Party: N/A

Hearing Date: October 22, 2013

Checked by: LTW

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: April 8, 2012
5. State location where accident occurred or occupational disease was contracted: Greene 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While engaged in employment with Employer and operating a tractor-trailer on Interstate 44 Employee suffered a motor vehicle accident, which involved the tractor and trailer striking a sign and an embankment at a median crossover before coming to a rest on its left side in the median. As a consequence of this accident Employee sustained an injury in the nature of strains/sprains and contusions to multiple parts of her body, including her lumbar and cervical spine.
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: BAW (including lumbar and cervical spine)
14. Nature and extent of any permanent disability: 7.5 % BAW (30 weeks)
15. Compensation paid to-date for temporary disability: \$4,721.35
16. Value necessary medical aid paid to date by employer/insurer? \$26,733.92

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$695.04
- 19. Weekly compensation rate: \$463.36 (TTD) / \$425.19 (PPD)
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: None (Denied)

Weeks of unpaid temporary total disability (or temporary partial disability): None (Denied)

The employee was temporarily and totally disabled for the period of April 9, 2012, to June 18, 2012; and during this period of temporary disability Employer / Insurer paid to Employee the applicable temporary total disability compensation.

30 weeks of permanent partial disability from Employer / Insurer:\$12,755.70

Weeks of disfigurement from Employer / Insurer: N/A

- 22. Second Injury Fund liability: N/A

TOTAL:\$12,755.70

- 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Randy Alberhasky, Esq.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kimberly Griggs

Injury No. 12-032897

Dependents: N/A

Employer: C.R. England, Inc.

Insurer: New Hampshire Insurance Co.

Additional Party: N/A

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on October 22, 2013. The parties were afforded an opportunity to submit briefs or proposed awards, resulting in the record being completed and submitted to the undersigned on or about November 18, 2013.

The employee appeared personally and through her attorney Randy Alberhasky, Esq. The employer and insurer appeared through their attorney, Robert Musick.

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

- (1) On or about April 8, 2012, C.R. England, Inc. was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by New Hampshire Insurance Co.
- (2) On the alleged injury date of April 8, 2012, Kimberly Griggs was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about April 8, 2012, the employee sustained an accident, which arose out of and in the course of her employment with the employer.
- (4) The above-referenced employment and accident occurred in Greene County, Missouri. The parties agree to venue lying in Greene 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 claimed accident of April 8, 2012, the employee's average weekly wage was \$695.04, which is sufficient to allow a compensation rate of \$463.36 for temporary total disability compensation /

permanent total disability compensation, and a compensation rate of \$425.19 for permanent partial disability compensation.

- (8) Temporary total disability compensation has been provided to the employee in the amount of \$4,721.35, payable for the period of April 9, 2012, to June 18, 2012.
- (9) The employer and insurer have provided medical treatment to the employee, having paid \$26,733.92 in medical expenses.

The issues to be resolved by hearing include:

- (1) Whether the employer and insurer are obligated to pay for certain past medical care and expenses?
- (2) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries?
- (3) Whether the employee is entitled to temporary total disability compensation?
- (4) Whether the employee sustained any permanent disability as a consequence of the claimed accident of April 8, 2012; and, if so, what is the nature and extent of the disability?

EVIDENCE PRESENTED

The employee testified at the hearing in support of her claim. Also, the employee offered for admission the following exhibits:

Exhibit A..... Medical Records from Advanced Radiology
Exhibit B Medical Records of Brown Chiropractic (Certified 04-16-2013)
Exhibit C Medical Records of Brown Chiropractic (Certified 10-08-2013)
Exhibit D..... Medical Records from Mercy Hospital-Springfield
Exhibit E Medical Records from MO Occupational Injury Center
Exhibit F..... Medical Records from Moberly Regional Medical Center
(Certified 02-01-2013)
Exhibit G..... Medical Records from Moberly Regional Medical Center
(Certified 10-10-2013)
Exhibit H..... Medical Records from Peak Performance
Exhibit I Medical Records from Providence Urgent Care
Exhibit J Medical Records from University Hospital & Clinics
Exhibit K..... Medical Bills from Moberly Regional Medical Center
Exhibit L Withdrawn
Exhibit M Medical Report of P. Brent Koprivica, M.D.
(Inclusion of Attachments)

Exhibit N..... Claim for Compensation
Exhibit O..... Answer of Employer & Insurer to Claim for Compensation
Exhibit P..... Missouri Uniform Crash Report (Report No. 120209213)
Exhibit Q..... Section 287.210, RSMo Letter Dated September 6, 2012
(In Re: Medical Report of Dr. Koprivica, Dated July 18, 2012)
Exhibit R..... Section 287.210, RSMo Letter Dated September 23, 2012
(In Re: Medical Report of Dr. Koprivica, Dated November 12, 2012)
Exhibit S..... Section 287.210, RSMo Letter Dated January 14, 2013
(In Re: Medical Report of Dr. Koprivica, Dated December 15, 2012)
Exhibit T Disclosure of Medical Records Letter Dated January 30, 2013
Exhibit U..... Disclosure of Medical Records Letter Dated February 11, 2013
Exhibit V..... Disclosure of Medical Records Letter Dated April 8, 2013
Exhibit W Disclosure of Medical Records Letter Dated April 24, 2013
Exhibit X..... Disclosure of Medical Records Letter Dated October 14, 2013
Exhibit Y..... Deposition of Kimberly Griggs

The exhibits were received and admitted into evidence. (Exhibit L was withdrawn as an exhibit, resulting in the undersigned neither receiving nor admitting it into evidence.)

The employer and insurer did not present any witnesses at the hearing of this case. The employer and insurer, however, offered for admission the following exhibits:

Exhibit 1..... Complete Medical Report of David K. Ebelke, M.D.
Exhibit 2..... Complete Medical Report of Kevin Donserm Komes, M.D.
Exhibit 3..... Deposition of Kimberly Griggs
Exhibit 4..... Summary of Indemnity Paid to Date
Exhibit 5..... Summary of Medical Expenses Paid to Date

The exhibits were received and admitted into evidence.

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 administrative or judicial notice of the documents contained in the Legal File, which include:

- Notice of Hearing
- Order of Dismissal of Claim against Second Injury Fund
- Dismissal Without Prejudice (Request of Employee to Dismiss SIF)
- Answer of Second Injury Fund to Claim for Compensation
- Answer of Employer/Insurer to Claim for Compensation
- Claim for Compensation

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

Background & Employment

The employee, Kimberly Griggs, is 44 years of age, having been born on January 26, 1969. Ms. Griggs resides in Clifton Hills, Missouri. She has three biological children, who are in their 20s (approximate ages of 22, 26 and 28).

Ms. Griggs enjoys limited education; she did not graduate from high school. However, subsequent to dropping out of high school, in or around 1985 or 1986 she obtained certification as a nursing assistant (CNA). She later obtained a GED and attended Moberly Area Community College for approximately two years. Also, in 2004 she obtained her Class A commercial driver's license. Ms. Griggs has worked in a variety of employment settings, and her employment history includes working as a cashier, waitress, CNA, and as a truck driver.

In or around March 2004 Ms. Griggs obtained employment with the employer, C.R. England, Inc. Initially, her association with C.R. England, Inc. involved attending the company's truck driving school in Utah. This training included classroom instruction, road training, and driving with a trainer over highways and bi-ways, followed by a final road test and receiving her CDL. Ms. Griggs noted that the road training was approximately one month long and the driving with a trainer continued for additional period of approximately one month. Subsequent to completing the truck driving school training course and obtaining her CDL Ms. Griggs returned to Missouri, and engaged in employment with C.R. England, Inc. as an over-the-road truck driver.

Notably, C.R. England, Inc. is a Salt Lake City, Utah based company. Ms. Griggs reported to supervisors and dispatchers working in Salt Lake City. Also, during her employment with C. R. England, Inc. Ms. Griggs worked as a team driver, working with her boyfriend (fiancé), Richard Underwood.

Prior Medical Conditions

Prior to sustaining the work injury of April 8, 2012, Ms. Griggs suffered several injuries and/or medical conditions, which caused her to present with certain permanent disability. These prior medical conditions include:

- **Right Shoulder:** In 2007, while working on a ladder and fixing a chute in the trailer, Ms. Griggs sustained an injury to her right shoulder. Apparently, she slipped and fell against her right shoulder and cervical spine. This injury caused her to experience immediate pain, and resulted in the employer providing her with medical care. According to Ms. Griggs this injury did not result in her filing a workers' compensation claim; nor did it result in entering into a settlement agreement. She did not receive any permanent disability compensation relative to this work injury.

On February 7, 2011, Ms. Griggs sustained an additional work injury. According to Ms. Griggs, she was driving her tractor-trailer when she approached an accident. She got out of the vehicle to assist, and when directed to move her truck to a different parking area, she walked back to her truck. Before she could return to the cab, a gust

of wind picked her up, twisted her around and knocked her down to the ground. This incident caused her to sustain an injury to her right shoulder. This injury necessitated receipt of medical care, which Ms. Griggs described as conservative treatment, and included an injection in her right shoulder. Medical records indicate that the attending physician diagnosed Ms. Griggs with right rotator cuff syndrome.

The medical records of Ms. Griggs from the University of Missouri Health System indicate that in 2000 she underwent rotator cuff surgery of her right shoulder. The surgeon performing this surgery is noted to be Dr. Christopher Main.

- Neck: The 2007 work injury, as noted above, caused Ms. Griggs to sustain additional injury to her cervical spine. In the course of receiving medical care for this injury Ms. Griggs underwent multiple diagnostic studies. Electrodiagnostic studies performed by Dr. Ryser on March 27, 2007, revealed a subacute left C6 radiculopathy; while x-rays of the cervical spine, performed on March 30, 2007, revealed a minimal Grade 1 retrolisthesis of C5 - C6 of a degenerative basis. A few days later, on April 5, 2007, an MRI scan of the cervical spine revealed a moderate broad-based disk bulge/posterior osteophyte at C5-C6. The attending physician diagnosed Ms. Griggs with superimposed left foraminal protruded disk, which produced severe left neural foraminal narrowing with encroachment on the left C6 nerve root consistent with the findings of a left C6 radiculopathy.

Treatment for the 2007 injury included injections and prescription medication for pain. Apparently, Ms. Griggs did not receive any permanent disability compensation relative to this work injury. Ms. Griggs says she missed approximately 4 months of work, but denied receiving any permanent partial disability.

In 2008 Ms. Griggs fell while her truck was in motion going down a hill. The medical records reference Ms. Griggs falling on her head and jarring her neck. Treatment for the neck included epidural steroid injections. Dr. Wen provided treatment for this neck pain, while treating Ms. Griggs for an upper respiratory infection. The treatment for the neck included recommendations for physical therapy; but Ms. Griggs indicated that her work as an over-the-road truck driver made physical therapy an unacceptable option.

The medical records indicate that the work injury of February 7, 2011, caused Ms. Griggs to sustain further injury to her cervical spine. During the course of receiving treatment for this injury Ms. Griggs was diagnosed with cervicgia and underwent several weeks of physical therapy. However, there is no indication that Ms. Griggs received any permanent disability for this medical condition.

- Low Back: In the 1980s, while engaged in employment as a CNA Ms. Griggs sustained an injury to her back. Ms. Griggs described this injury as a bruising of her torso and back. According to Ms. Griggs she did not seek or obtain any medical care for this concern, and suffered only residual soreness, which resolved without her sustaining any permanent disability.

In the 1990s, while working as a CNA Ms. Griggs sustained an injury in the nature of a lumbar strain. According to Ms. Griggs, she sustained this injury while transferring a patient from a wheelchair to the bed, and in the course of lifting the patient she pulled her back. The injury resulted in the employer providing Ms. Griggs with medical care, but she did not seek or obtain any permanent disability compensation.

The medical records indicate that the work injury of February 7, 2011, caused Ms. Griggs to sustain further injury to her lumbar spine. During the course of receiving treatment for this injury Ms. Griggs was diagnosed with lumbago. However, there is no indication that Ms. Griggs received any permanent disability for this medical condition.

- Right and Left Knees: The medical records of Ms. Griggs from the University of Missouri Health System reference a history of having surgery to both knees in 1999.
- Asthma: The medical records of Ms. Griggs from the University of Missouri Health System reference a history of suffering from asthma.

Accident

On April 8, 2012, while engaged in employment and performing her work duties with the employer, C.R. England, Inc., and while traveling on Interstate 44 in Greene County, Missouri, Ms. Griggs suffered a motor vehicle accident. According to Ms. Griggs, at the time of this accident she was operating a tractor-trailer (2012 Cascadia, Freightliner built, DD 15 engine). Ms. Griggs does not remember the specifics of the accident, as she indicates that moments before the accident she recalls seeing a TA Truck Stop billboard, and then awake and hurting. According to the Missouri Uniform Crash Report, Ms. Griggs' traveled 411 feet off the road. The truck was turned onto the drivers' side, along with the 52 foot reefer she was pulling. This report further notes that the tractor-trailer was headed eastbound and traveled off the left side of the roadway where it struck the median cable and began to overturn. The truck struck a sign and an embankment at a median crossover before coming to a rest on its left side in the median. (At the time of the accident, Richard Underwood was working as the co-driver, but was asleep in the bunk; he doesn't recall any details of the accident as he was asleep at the time of the accident.)

As a consequence of this motor vehicle accident, Ms. Griggs alleges she sustained multiple injuries to her body, including injuries to her head, cervical spine, lumbar spine and lower extremities.

Medical Treatment

Ms. Griggs received emergency medical treatment at the scene of the accident and was taken to Mercy Hospital-Springfield by ambulance. The attending physicians in the emergency room provided Ms. Griggs with medical treatment, which included multiple diagnostic studies and tests, including blood work, CT scans and x-rays. The CT scan of her chest revealed mild chronic obstructive pulmonary disease. There was no pneumothorax, pulmonary contusion, pleural effusion or great vessel injury. The CT scans of the abdomen revealed no evidence of significant intraperitoneal injury. There was no hemoperitoneum or pneumoperitoneum. The CT

scan of the pelvis was negative. The CT scan of the head was negative for skull fracture; there was no intracranial bleeding. The CT scan of her cervical spine revealed degenerative changes of the cervical spine at the level of C5-C6; there was no dislocation or fracture, as well as no pre-vertebral swelling. X-rays of the left knee and left ankle were negative. The attending physicians prescribed pain medication and muscle relaxants, but did not admit Ms. Griggs into the hospital.

On April 11, 2012, Ms. Griggs presented to Providence Urgent Care with complaints of neck pain, severe headache, left leg pain, left arm pain. Ms. Griggs received prescriptions for Flexeril, Ultram and physical therapy. On April 23, 2012, Ms. Griggs presented to Providence Urgent Care for follow-up treatment with continuing complaints of ongoing back pain.

On May 14, 2012, Ms. Griggs presented to Dennis Wen, M.D. a physician practicing in family medicine and affiliated with the University of Missouri Health System, for evaluation and treatment that did not relate to the work injury. (This treatment involved a previously scheduled appointment relating to treatment provided by Dr. Wen prior to the work injury of April 8, 2012. Notably, prior to the April 8, 2012, motor vehicle accident Ms. Griggs treated with Dr. Wen for multiple health complaints, including upper respiratory symptoms and migraine headaches.

The medical records of Dr. Wen indicate that Ms. Griggs presented with complaints of "floating", headaches and abdominal complaints that had resolved since she was no longer in the truck. Dr. Wen notes that Ms. Griggs' neck seemed to be getting better with physical therapy, but she was still having significant problems with her low back. The exam performed by Dr. Wen did not document radicular symptoms, and he continued to prescribe conservative treatment through Peak Performance.

On May 18, 2012, Ms. Griggs presented to Providence Urgent Care for additional evaluation and treatment. The attending physician, Jason Zerrer, M.D., kept Ms. Griggs off work and advised her to follow-up with the workers' compensation orthopedist or an occupational medicine specialist.

On or about May 29, 2012, Ms. Griggs presented to Kevin Komes, M.D., a physician practicing in the specialty of physical medicine and rehabilitation and is employed at the University of Missouri Department of Physical Medicine and Rehabilitation. This treatment served as a follow-up to the earlier care provided by the University of Missouri Health System and at the selection of the employer/insurer for the April 8, 2012, motor vehicle accident. At the time of this examination Dr. Komes took a history from Ms. Griggs, which included a reference to Ms. Griggs' past medical and surgical history, noted as follows:

PAST MEDICAL HISTORY:

1. Bronchial asthma
2. Migraines
3. OCD
4. PTSD
5. The patient denies being pregnant.
6. She denies a history of cancer.
7. She has taken steroids in the past for pneumonia.

PAST SURGICAL HISTORY:

1. Right shoulder surgery in 1999 at University Hospital by Dr. Main.
2. Left knee surgery in 2000 by Dr. Ball in Moberly.

Also, at this office visit Dr. Komes performed a physical examination of Ms. Griggs. Through this examination Ms. Griggs demonstrated full range of motion in the cervical and lumbar spine with flexion, extension, and side bending. Additionally, Dr. Komes noted that Ms. Griggs demonstrated full cervical rotation, as well as full range of motion in the bilateral shoulders. However, the exam demonstrated tenderness over bilateral SI joints, with a positive Patrick's test bilaterally for SI joint pain. In light of Ms. Griggs' presenting low back pain and his examination and evaluation of her, Dr. Komes opined that the April 8, 2012, motor vehicle accident is "the sole prevailing factor in her need for the resultant medical treatment." Further, based on this examination Dr. Komes prescribed a diagnostic study in the nature of an MRI of both her neck and back, as well as refills for her Flexeril and Ultram. Finally, Dr. Komes continued to excuse Ms. Griggs from work until she undergoes the MRI study.

On or about June 5, 2012, Ms. Griggs underwent an MRI of the lumbar spine and an MRI of the thoracic spine. (Ms. Griggs did not undergo an MRI of the cervical spine, presumably with the understanding and agreement of Dr. Komes) The MRI of the lumbar spine revealed an L4-L5 central zone disc herniation causing mild central canal narrowing. Yet, upon reviewing the diagnostic studies Dr. Komes concluded that Ms. Griggs did not suffer any gross distortion of nerve roots, and her back pain is without evidence of surgical lesion. Accordingly, Dr. Komes continued to prescribe physical therapy, as well as use of a TENS unit.

On or about June 18, 2012, Ms. Griggs presented to Dr. Komes for follow-up treatment. The medical records of Dr. Komes indicate that Ms. Griggs presented with complaints of continuing to have back pain. In describing his examination and findings on this date Dr. Komes propounded the following comments:

Ms. Griggs is seen back. She states that she is continuing to have back pain. She has been in therapy. She notes she has had minimal improvement with the TENS. She states that it still hurts for her to sit. She had been driving quite a bit yesterday and noted pain with this. She complains of nonradiating pain with this. Her biggest complaints are of a headache. She states that she had a headache, which radiated down from the back of the occiput towards the front. She felt as though there is a poker going through her eye. She does have a history of migraines. She is concerned that when she returns back to work, she will be terminated. She asked questions regarding carbon monoxide poisoning. She is concerned about future cancer due to carbon monoxide exposure.

PHYSICAL EXAMINATION:

MUSCULOSKELETAL: Examination at this time shows that she has normal side bending to the right and left. However, her legs start to shake at end range. Forward flexion is full. Again her lower extremities begin to tremble. Extension is also full. She is able to get on and off the chair without difficulty.

Based on his June 18, 2012, examination of Ms. Griggs, Dr. Komes identified no significant pathology or abnormalities. In light of the foregoing, Dr. Komes opined that Ms. Griggs had reached maximum medical improvement and could return to work. At this

examination Dr. Komes thus released Ms. Griggs from his care and to return to work without any permanent restrictions or limitations. Additionally, Dr. Komes opined that Ms. Griggs had not sustained any permanent disability.

Subsequent to being released from treatment by Dr. Komes, on or about November 26, 2012, Ms. Griggs sought and obtained chiropractic treatment from Lori C. Brown, D.C. (Brown Chiropractic Wellness Center & Spa LLC). At this initial visit Ms. Griggs presented with multiple complaints of pain and symptomology, which Dr. Brown described as follows:

The patient complained about mild neck stiffness on both sides, acute shoulder pain on the right, acute shoulder stiffness on the right, severe low back pain, acute low back stiffness, severe mid back pain, acute mid back stiffness, acute stabbing pain in the mid back and severe pain in both hips.

Thereafter, Dr. Brown provided Ms. Griggs with chiropractic treatment, which has continued to the date of hearing. This chiropractic treatment included manipulations of the cervical, thoracic and lumbar spine, as well as manipulations of both lower and upper extremities and the sacral region. Additionally, Ms. Griggs received mechanical traction treatment, as well as hydrotherapy. Ms. Griggs testified that she is receiving this chiropractic treatment twice a week, and the treatment has provided her with some relief. She further notes that subsequent to being released by Dr. Komes she obtained medical care from Moberly Medical Center, and this treatment included receipt of muscle relaxants, pain medications, and injections in both hips.

Independent Medical Examinations

P. Brent Koprivica, M.D.

P. Brent Koprivica, M.D., a physician enjoying board certification in emergency medicine and occupational medicine, testified by submission of a complete medical report. Dr. Koprivica performed an independent medical examination of the employee on July 18, 2012. At the time of this examination, Dr. Koprivica took a history from Ms. Griggs, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Griggs, Dr. Koprivica opines that the motor vehicle accident of April 8, 2012, is the prevailing factor in causing Ms. Griggs to sustain the following injuries: (1) a soft tissue type injury to the right shoulder, which causes her to present with “ongoing residual chronic right shoulder pain with limited strength and motion”; (2) chronic cervicothoracic strain/sprain, which causes her to present with mechanical neck pain without clinical evidence of cervical radiculopathy or myelopathy; and (3) a lumbosacral strain/sprain.

In addition, based on this examination Dr. Koprivica opines that Ms. Griggs is not presently able to return to work as an over-the-road truck driver. In rendering this opinion Dr. Koprivica opines that relative to the April 8, 2012, work injury, Ms. Griggs is not at maximum medical improvement. Rather, Dr. Koprivica asserts, Ms. Griggs is temporarily and totally disabled, and has been in this condition since suffering the motor vehicle accident of April 8, 2012. According to Dr. Koprivica, this temporary total disability will continue until she is provided additional medical treatment.

In proposing or recommending a treatment plan Dr. Koprivica states the following:

Ms. Griggs desires returning to work, but wants treatment in order to recondition to a level where she can return to work.

My suggestion would be to obtain MRI scans of the right shoulder as well as the lumbar spine. These are non-invasive tests which will help define what, if any, significant structural injury is present and whether or not any potential surgical pathology exists.

My belief is that this workup will be negative. However, since it is not invasive and provides useful information, I believe it is warranted. Symptoms have persisted for more than twelve weeks at this point without return to function.

After the diagnostic workup, assuming that surgical pathology is not identified, I would suggest a more aggressive reconditioning program in order to return her to function.

The possibility of incorporating a water exercise program with progression to work reconditioning would be recommended.

Finally, in considering the nature and extent of Ms. Griggs' disability under a hypothetical or assumption that she is adjudicated to be at maximum medical improvement, Dr. Koprivica opines that that the accident of April 8, 2012, caused her to sustain a permanent partial disability of 22.5 percent to the body as a whole, referable to the right shoulder, cervical spine and lumbar spine. In rendering this opinion Dr. Koprivica apportions separate partial disability assessments, as follows:

- **Right Shoulder:** Dr. Koprivica acknowledges that prior to April 8, 2012, Ms. Griggs sustained an injury to her right shoulder, which required surgical repair and to sustain certain permanent disability. Dr. Koprivica thus opines that the April 8, 2012, work injury is an aggravating injury to the right shoulder, and excluding consideration of the permanent disability for the prior operative intervention on the right shoulder, Dr. Koprivica assesses a permanent partial disability of 5 percent of the right upper extremity at the level of the shoulder, 232 week level, attributable to the April 8, 2012 work injury.
- **Cervical Spine:** Dr. Koprivica acknowledges that prior to April 8, 2012, Ms. Griggs sustained an injury to her cervical spine, which included prior cervical radiculopathy that was treated successfully with non-operative conservative care and to sustain certain permanent disability. Dr. Koprivica thus opines that the April 8, 2012, work injury is an aggravating injury to the cervical spine, and excluding consideration of any permanent disability for the prior non-operative condition, Dr. Koprivica assesses a permanent partial disability of 5 percent to the body as a whole referable to the cervical spine.
- **Lumbar Spine:** Dr. Koprivica assesses a permanent partial disability of 15 percent to the body as a whole referable to the lumbar spine. Dr. Koprivica premises his opinion on the severity of the mechanical back pain, as presented by Ms. Griggs.

Also, Dr. Koprivica testified that Ms. Griggs' employment as an over-the-road truck driver placed her at a greater risk than the general population, in terms of suffering the accident that occurred, due to the extent of driving activities required and the type of vehicle she was driving. Similarly, Dr. Koprivica notes that the inability to correct going off the roadway contributes to the overall multiple permanent partial disability sustained by Ms. Griggs.

In an addendum dated September 23, 2012, Dr. Koprivica noted that he recently received additional records from Missouri Occupational Injury Center. These records included a diagnostic studies report, including a copy of an MRI scan report on the lumbar spine dated June 5, 2012. In reviewing that report, according to Dr. Koprivica, there was a central zone disk herniation that produced mild central canal narrowing with mild to moderate L4-L5 degenerative changes. Dr. Koprivica states he would not interpret this study as demonstrating any significant surgical pathology. Dr. Koprivica thus continued to recommend non-operative treatment, as previously recommended and stated in his July 18, 2012 report. Dr. Koprivica also notes he has an MRI scan of the thoracic spine dated June 5, 2012, which is unchanged from a prior thoracic spine MRI scan of June 30, 2010.

David Ebelke, M.D.

David Ebelke, M.D., a physician practicing in the specialty of orthopedic surgery, testified by submission of a complete medical report. Dr. Ebelke performed an independent medical examination of the employee on or about November 19, 2012. At the time of this examination, Dr. Ebelke took a history from Ms. Griggs, reviewed various medical records, and performed a physical examination of her. In light of his examination and evaluation of Ms. Griggs, Dr. Ebelke opines that the motor vehicle accident of April 8, 2012, caused Ms. Griggs to sustain an injury in the nature of strains/contusions, which he believes have resolved without causing Ms. Griggs to sustain any residual permanent disability. Dr. Ebelke thus concludes that Ms. Griggs is at maximum medical improvement and is not in need of any additional medical care.

In substantiating or explaining the nature of his opinions Dr. Ebelke propounds the following comments:

After extensive review of this case, it's my opinion that the work incident caused strains/contusions, but there's no evidence of a significant or permanent injury to the thoracic or lumbar spine. Her subjective complaints far exceed the objective findings. I can provide no explanation for her thigh symptoms, or her new leg symptoms, which weren't noted by the original treating providers. There's no need for restrictions, with respect to the thoracic or lumbar spine, as a result of the work incident. There's no reason for spine restrictions based on her x-rays and MRIs. I see no reason she couldn't return to truck driving. There are multiple symptom magnification signs, indicating possible secondary gain issues. I don't know what her physical capabilities are; it's possible she can't lift 70# chains, however, if she can't, it has nothing to do with the accident last April. It's possible she might someday herniate a disc, in the usual sense of the term, and should that occur, she might need treatment. However, if that does occur, I can't relate it to this accident.

I agree with Dr. Komes that there's no evidence of a permanent injury with respect to the spine, and there is no disability rating with respect to the thoracic or lumbar spine. I suspect she's deconditioned from her lengthy time off work, and probably from smoking, but I don't think additional attempts at treatment are likely to be productive. I don't think epidurals would help, and I wouldn't recommend them, but in any case she claims allergies to cortisone. She doesn't need surgery. She's at MMI.

Present Complaints

At the hearing Ms. Griggs testified that she is experiencing pain that is "pretty bad." In describing the nature of this pain she notes experiencing pain in her mid-to-low back and hip, which she would rate as pain of 3 to 4 on a 10 scale; this pain increases with excessive sitting or standing. Also, in regard to the right shoulder pain Ms. Griggs notes that the pain develops or increases into a "burning" sensation with overuse. She rates her neck pain between 2 and 10 on a scale of 10. According to Ms. Griggs, she is taking medication daily for treatment of her pain; this medication includes Naproxen as needed and Excedrin every day.

Also, Ms. Griggs acknowledges that she smokes tobacco, and she has been a cigarette smoker for about 30 years, smoking at the rate of one-half to one package of cigarettes per day. She is generally aware that smoking is harmful to the healing process for orthopedic and/or spinal injuries. As a consequence, she says, she is now smoking electronic cigarettes in her effort to quit regular cigarettes.

Return to Employment

Ms. Griggs did not return to her employment with C.R. England, Inc. following her release from medical care by Dr. Komes. Nor has she returned to any employment subsequent to being released from medical care. Regarding her current efforts to find employment, Ms. Griggs notes that none of the prospective employers have advised her that her injuries or medical condition are the reason that she has not received a job offer.

According to Ms. Griggs, she is not capable of returning to work. Ms. Griggs asserts that she is continuing to experience complaints of ongoing muscle spasms in the cervical and lumbar regions. She notes that these symptoms radiate into both hips with some numbness and tingling into both thighs. (She does not describe upper extremity radicular symptoms.) She has intermittent numbness in the left leg that goes all the way to the foot. Her sitting tolerance is less than thirty minutes at this point. Her standing tolerance is less than thirty to forty-five minutes. Her walking tolerance is between 1 and 1 ½ hours. Also, Ms. Griggs notes that she is experiencing right shoulder, neck and thoracic pain as well.

In light of these continuing complaints of pain Ms. Griggs is seeking an award for additional medical care and treatment.

FINDINGS AND CONCLUSIONS

The workers' compensation law for the State of Missouri underwent substantial change on or about August 28, 2005. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee, Section 287.808 RSMo. Administrative Law Judges and the Labor and Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts, and are to construe strictly the provisions, Section 287.800 RSMo.

I. Accident & Injury

The evidence is supportive of a finding, and I find and conclude that on April 8, 2012, while engaged in employment and performing her work duties with the employer, C.R. England, Inc., and while traveling on Interstate 44 in Greene County, Missouri, Ms. Griggs suffered a motor vehicle accident. At the time of this accident the employee was operating a tractor-trailer (2012 Cascadia, Freightliner built, DD 15 engine), and inexplicably she drove the semi-truck & trailer off the road and into a ditch. According to the Missouri Uniform Crash Report, the employee traveled 411 feet off the road, and the truck was turned onto the drivers' side, along with the 52 foot reefer she was pulling. This report further notes that the tractor-trailer was headed eastbound and traveled off the left side of the roadway where it struck the median cable and began to overturn. The truck struck a sign and an embankment at a median crossover before coming to a rest on its left side in the median.

As a consequence of this motor vehicle accident, the employee sustained an injury in the nature of strains/sprains and contusions to multiple parts of her body, including her lumbar and cervical spine. This injury necessitated receipt of medical care, which resulted in the employer and insurer authorizing and providing Ms. Griggs with conservative medical care, primarily consisting of prescriptions for physical therapy and medication. Additionally, during the period the employer and insurer provided Ms. Griggs with medical treatment the attending physician, Dr. Komes, excused Ms. Griggs from work, until determining Ms. Griggs to be at maximum medical improvement on June 18, 2012. The employer and insurer thus provided the employee with temporary total disability compensation for the period of April 9, 2012, to June 18, 2012.

II. Maximum Medical Improvement & Medical Care

The employee contends that Dr. Komes prematurely released her from medical care, which required her to obtain medical and chiropractic care. Accordingly, she is seeking payment from the employer and insurer for past medical / chiropractic expenses incurred by her in the course of receiving treatment for injuries sustained as a consequence of the work injury. Further, according to Ms. Griggs, she is not at maximum medical improvement and remains temporarily and totally disabled. Consequently, in addition to past medical expenses, the employee is seeking additional medical care and temporary disability compensation.

In asserting that she is not at maximum medical improvement Ms. Griggs states that she is continuing to experience persistent pain and stiffness in her neck, right shoulder, mid back and

low back. Relying on the opinion of Dr. Koprivica, Ms. Griggs is requesting additional medical care, including treatment associated with the recommendations of Dr. Koprivica. Notably, this additional treatment recommended by Dr. Koprivica involves diagnostic studies, including MRI scans of the right shoulder and low back. Also, in assuming that these non-invasive tests do not identify any surgical pathology, additional recommended treatment includes a more aggressive reconditioning program, such as a water exercise program, in order to return her to function.

The employer and insurer dispute the contentions of the employee, and have denied Ms. Griggs request for medical care, contending that she is at maximum medical improvement and does not require any medical care in order to cure and relieve her from the effects of the work injury. In support of their assertion that the employee is at maximum medical improvement and not in need of medical care, the employer and insurer rely upon the medical opinion of Dr. Komes, who is the treating physician. Additionally, the employer and insurer rely upon the medical opinions of Dr. Ebelke, who is an orthopedic surgeon.

After consideration and review of the evidence, I find and conclude that the evidence presented in this case fails to corroborate or substantiate Ms. Griggs' subjective complaints of pain and symptomology. I do not find Ms. Griggs credible and do not accept as true her testimony, and in particular the severity and persistence of her continuing complaints of pain and symptomology. Also, to the extent there are differences in medical opinions, I resolve the differences in favor of Dr. Komes and Ebelke, who I find credible, reliable and worthy of belief.

The medical treatment received by Ms. Griggs, as provided by the health care providers selected by the employer and insurer, indicate that Ms. Griggs is not suffering any radiculopathy, and further indicate that she is at maximum medical improvement without need for additional medical care. The objective tests do not support Ms. Griggs' subjective complaints, and much of her subjective complaints lack medical explanation. As noted by Dr. Ebelke, Ms. Griggs demonstrates "multiple symptom magnification signs, indicating possible secondary gain issues." Therefore, the evidence tends to show that the employee is not credible in her subjective complaints of pain and presenting symptoms or her request for additional medical treatment.

Further, I find and conclude that Dr. Komes provided Ms. Griggs with appropriate medical treatment. This treatment included objective diagnostic studies, including MRI scans, as well as a prescription for physical therapy and prescription medication. After providing Ms. Griggs with medical care, including multiple and significant objective testing, following his examination of Ms. Griggs on June 18, 2012, Dr. Komes identified no significant pathology or abnormalities. Dr. Komes thus opined that Ms. Griggs had reached maximum medical improvement and could return to work without any permanent limitations or restrictions. He further determined that Ms. Griggs did not require any additional medical treatment; he thus discontinued treatment and released her from his care.

Admittedly, Ms. Griggs continues to present with subjective complaints of pain and symptomology, and Dr. Koprivica recommends additional medical treatment based on these subjective complaints of pain. Yet, Dr. Koprivica acknowledges that Ms. Griggs does not suffer any radiculopathy, and does not anticipate that any future additional diagnostic studies will suggest surgical pathology. Consequently, the medical care recommended by Dr. Koprivica is based primarily on the subjective complaints of Ms. Griggs, and relates substantially to conditioning type treatment already provided to her. However, Dr. Koprivica's reliance on Ms.

Griggs' complaints of pain renders his medical opinion less credible or persuasive, as he assumes facts and complaints of pain from Ms. Griggs, which I do not accept as true.

Past Medical Expenses

Therefore, in light of the foregoing, I find and conclude that the employer and insurer are not liable for payment of any past medical or chiropractic expenses incurred by Ms. Griggs. These expenses relate to treatment that is not causally related to the work injury, or otherwise is deemed unnecessary in order to cure and relieve her from the effects of the April 8, 2012, work injury. The employee's request for payment of past medical expenses is denied.

Additional Medical Care

In addition, in light of the foregoing, I find and conclude that the employer and insurer have provided the employee with reasonable medical treatment, and she does not require any additional medical care in order to cure and relieve her from the effects of the April 8, 2012, work injury. Ms. Griggs is at maximum medical improvement, and she reached maximum medical improvement on June 18, 2012. The employee's request for additional medical care is denied.

III.

Temporary Disability Compensation

The evidence is not supportive of a finding that the employee is entitled to additional temporary disability compensation. For reasons stated above, the employee's request for additional temporary total disability compensation is denied.

IV.

Permanent Disability Compensation

After consideration and review of the evidence, I find and conclude that the April 8, 2012, accident, was the prevailing factor in causing the employee, Kimberly Griggs, to sustain an injury in the nature of strains/sprains and contusions to multiple parts of her body, including her lumbar and thoracic / cervical spine. Although this injury caused the employee to sustain certain residual permanent disability, the injury is not the cause of her subjective complaints of pain and symptomology. In particular, I do not accept as true the severity and persistence of her continuing complaints of pain and symptomology.

After consideration and review of the evidence, I find and conclude that the evidence presented in this case fails to corroborate or substantiate Ms. Griggs' subjective complaints of pain and symptomology. I do not find Ms. Griggs credible and do not accept as true her testimony, and in particular the severity and persistence of her continuing complaints of pain and symptomology. Also, to the extent there are differences in medical opinions, I resolve the differences in favor of Dr. Komes and Ebelke, who I find credible, reliable and worthy of belief.

Accordingly, in light of the foregoing, and taking into consideration the varying medical opinions, I find and conclude that the accident of April 8, 2012, caused the employee, Kimberly Griggs, to sustain a permanent partial disability of 7.5 percent to the body as a whole (30 weeks).

Therefore, the employer and insurer are ordered to pay to the employee, Kimberly Griggs, the sum of \$12,755.70, representing 30 weeks of permanent partial disability compensation payable at the applicable compensation rate of \$425.19.

An attorney's fee of 25 percent of the benefits ordered to be provided is hereby approved, in favor of Randy Alberhasky, Esq., and shall be a lien against the proceeds until paid. Interest as provided by law is applicable. This award is subject to modifications as provided by law.

Made by: /s/ L. Timothy Wilson

L. Timothy Wilson
Administrative Law Judge
Division of Workers' Compensation