

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

Employee: Janet Hadley Injury No.: 02-032961
Employer: St. Joseph Health Center
Insurer: Sedgwick Claims Management Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: April 14, 2002
Place and County of Accident: St. Charles 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 August 23, 2005. The award and decision of Administrative Law Judge Koren M. Mueller, issued August 23, 2005, is attached and incorporated by this reference.

As to the issue of future medical care treatment, and in order to clarify any possible misinterpretation of the award issued by the Administrative Law Judge, the Commission affirms these findings by the Administrative Law Judge: "However, claimant did establish that, to a reasonable probability, she needs future psychiatric treatment. Dr. Stillings recommended future psychiatric treatment consisting of pharmacotherapy and psychotherapy. Dr. Bassett agreed with that recommendation. Therefore, I find that employer is to provide future psychiatric care consistent with those recommendations."

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 21st day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

FINAL AWARD

Employee: Janet Hadley Injury No. 02-032961
Employer: St. Joseph Health Center
Add.Party: State Treasurer, as Custodian of the Second Injury Fund
Insurer: Sedgwick Claims Management Services
Hearing Date: January 11, 2005

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

Checked by: KMM:bb (by df)

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 14, 2002
5. State location where accident occurred or occupational disease was contracted: St. Charles County
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: Claimant was injured while lifting a patient at work.
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: Low back, body as a whole
14. Nature and extent of any permanent disability: 20% of the body as a whole referable to low back; 20% of the body as a whole referable to psychiatric condition
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$6,731.67
17. Value necessary medical aid not furnished by employer/insurer? \$12,420.00
18. Employee's average weekly wages: \$814.06
19. Weekly compensation rate: \$542.71/\$329.42
20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$12,420.00

9 weeks of temporary total disability (or temporary partial disability) at \$542.71

for a total of.....\$ 4,884.39

160 weeks of permanent partial disability from Employer at \$329.42 for a total of...\$ 52,707.20

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
\$213.29 weekly differential payable by SIF for 160 weeks beginning
May 1, 2003 and, thereafter, \$542.71 for Claimant's lifetime

TOTAL:

23. Future requirements awarded:

Said payments to begin as of date of award 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:

Ray B. Marglous

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Janet Hadley

Injury No: 02-032961

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

Employer: St. Joseph Health Center

Add. Party: State Treasurer, as Custodian of the
Second Injury Fund

Insurer: Sedgwick Claims Management Services

Checked by: KMM:bb (by df)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PRELIMINARIES

A hearing was held on January 11, 2005 at the St. Charles Division of Workers' Compensation office. Post-hearing briefs were submitted by March 14, 2005 after an extension of time was granted. Therefore the claim was finally submitted on March 14, 2005. The hearing concerned both the Employer/Insurer and Second Injury Fund. Janet Hadley

(herein after "Claimant") was represented by Ray B. Marglous. The Employer, St. Joseph Health Center, was represented by Heidi A. Jennings. The Second Injury was represented by Barbara Toepke. Mr. Marglous requested a fee of 25% of all benefits.

The parties stipulated that on or about April 14, 2002, Claimant while in the employment of St. Joseph Health Center sustained an injury by accident arising out of and in the course of employment in St. Charles County, Missouri. The parties stipulated that Claimant's average weekly wage was \$814.06 and that the applicable compensation rates are \$542.71/\$329.42 respectively. Claimant was not paid temporary total disability compensation to date and medical aid was provided in the amount of \$6731.67.

The parties agreed and stipulated that the issues for disposition in this case are as follows:

1. Medical Causation
2. Liability for past medical expenses
3. Future medical care
4. Nature and extent of temporary total disability
5. Nature and extent of permanent partial disability
6. Nature and extent of permanent total disability
7. Second Injury Fund Liability

EXHIBITS

Claimant offered the following exhibits which were admitted into evidence without objection except for those objections contained within the deposition transcripts:

Claimant's Exh. A: James M. England, Jr. Deposition

Claimant's Exh. B: Wayne A. Stillings, M.D. Deposition

Claimant's Exh. C: Jerome F. Levy, M.D. Deposition

Claimant's Exh. D: Medical records of Neurosurgical Associates, Inc.

Claimant's Exh. E: Medical records of Metro Neurosurgery

Claimant's Exh. F: Medical records of St. Charles Psychiatric

Employer offered the following exhibits which were admitted into evidence without objection except for those objections contained within the deposition transcripts:

Employer's Exh. 1: John R. Wagner, M.D. Deposition

Employer's Exh. 2: Gregg Basset, M.D. Deposition

Employer's Exh. 4: SSM Corporate Health records

Employer's Exh. 5: St. Charles Clinic records

Employer's Exh. 6: St. Charles Clinic records

Employer's Exh. 7: Division of Workers' Compensation records

Employer's Exh. 8: NHC Healthcare of St. Charles records

Employer's Exh. 9: McKnight Place employment records

Employer's Exh. 10: Rosewood Care Center of St. Louis employment records

The Second Injury Fund offered the following exhibits which were admitted into evidence without objection except for those objections contained within the deposition transcripts:

SIF's Exh. I: St. Charles Orthopaedic Surgery Associates, Inc. records

SUMMARY OF EVIDENCE

Only the evidence necessary to support this award has been summarized. Any objections not expressly ruled on in this award are overruled. At the time of hearing Claimant was a divorced sixty-four year old woman. Claimant was not employed and was receiving Social Security Disability payments since January 2002. Claimant graduated from high school in 1958. She graduated in 1986 from St. Mary's College, O'Fallon with an Associates Degree in nursing and was certified as a registered nurse in 1986. She stated she had a troubled marriage and suffered from depression without seeking treatment throughout her marriage. After 1986 she supported herself as a registered nurse working part-time at DePaul Hospital for three months and full-time at Missouri Baptist Hospital for four years as a charge nurse on the medical/surgical floor.

In December 1987 she injured her low back while working at Missouri Baptist Hospital. The 1987 injury resulted in a L5-S1 herniated disc with radiating pain that required surgery by Dr. Kretteck. She was off work six months after the injury. She was released to return to work in June 1988, but continued off work due to temporomandibular joint surgery. She returned to Missouri Baptist Hospital in July 1988 and on cross-examination she stated she may have re-injured her back in May 1989 but she does not remember that injury or any restrictions from Dr. Kretteck. Dr. Kretteck's records reveal that Claimant re-injured her low back and was examined on June 5, 1989. His diagnosis was musculoligamentous strain on the opposite side of the prior disc rupture. She was treated with muscle relaxants, physical therapy and rest. Dr. Kretteck released Claimant to return to work with a restriction of no lifting greater than 30 pounds and no repeated bending, stooping or twisting on August 21, 1989. Claimant was released at maximum medical improvement on December 20, 1989 and it was noted she was unable to lift light loads without aggravating back pain and diagnosis included lumbar osteoarthritis. Missouri Baptist Hospital could not accommodate the light duty restrictions and required lifting that she could not accomplish therefore she left Missouri Baptist Hospital and sought a position in a nursing home where certified nurse assistants (CNA) could help with lifting. At that time Missouri Baptist Hospital did not employ CNAs.

Division of Workers' Compensation records reflect a stipulation for injury number 89-098894 with date of injury of May 28, 1989. The settlement is based upon 9.5 percent of the low back, legs and body as a whole. The stipulation in injury number 87-163678, date of injury of December 29, 1987 reflects the settlement is based upon 15 percent of the low back, legs, nerves and body as a whole.

She went to work for Delmar Gardens Nursing Home as a charge nurse from December 1990 through October 1995. She had CNAs working for her to do lifting. She was a medication instructor and worked on the Alzheimer's Unit with no heavy lifting. Claimant testified on cross-examination that she did not recall low back pain and muscle spasms in July 1990. She then worked for Rosewood Nursing Home doing the same activities from October 1995 until July 1997. She began working part-time because of patient care and emotional issues. On cross-examination Claimant did not recall any injury in June 1997 at Rosewood.

She then worked at McKnight Place from 1997 until the end of 2001 and continued part-time in 2002. She limited her lifting to 50 pounds because of her low back problems. She was on arthritis medications at that time as well as pain medication for headaches. She has had severe headaches intermittently her entire life. Her headaches occurred two to three times per week and were associated with stress and fatigue. She has also had sinus infections for years. In December 2000 Dr. Pepper treated her for chest pain and anxiety while working full-time at National Healthcare in St. Charles. Claimant suffered a low back sprain in August 2001 while working at National Healthcare. She was treated with anti-inflammatory medications and she testified she might have had restrictions from this injury.

Claimant was hired on October 29, 2001 at St. Joseph Health Center and she told Employer at the time she could not perform heavy lifting and needed assistance lifting. She testified Employer agreed to provide assistance with lifting. Claimant was not a charge nurse. She worked eight-hour shifts providing primary care for four to five patients in the Skilled Nursing Facility at the Health Center. On cross-examination Claimant testified she experienced increased back and right hip pain and sought treatment in January 2002. The diagnosis was back, right hip arthritis; trochanteric bursitis right hip and shoulder. She was treated with Daypro and Advil. On re-direct Claimant testified that her visit to Dr. Pepper in January 2002 involved bursitis with no radiating leg pain. She also testified that she had family problems and depression prior to the April 2002 injury.

Claimant testified that on April 14, 2002 a 200 pound patient was falling and she bent and twisted to catch him and felt immediate pain across her low back and down her right leg. She reported to the Emergency Room that day and treated with Dr. Covert from April 15, 2002 until August 2, 2002. Dr. Covert's early impression was lumbar pain with possible radiculopathy; He limited her lifting and performed a steroid injection on April 26, 2002. She was also referred to Dr. Ahmed. Dr. Covert performed a trigger point injection on June 19, 2002. Claimant was also tried on physical therapy and medications. She was on light duty and in pain until she was released by Dr. Covert in August 2002. Dr. Covert ordered a functional capacity evaluation and noted that the study demonstrated that Claimant was only able to carry thirty pounds and lift twenty pounds on an occasional basis. She had difficulty lifting fifteen pounds from the floor to overhead. Dr. Covert noted that Claimant was not able to handle her tasks as a full-time staff nurse. Dr. Covert recommended that Claimant remain on these restrictions on a permanent basis.

Following her release in August 2002 Claimant tried working in Senior Services at Employer for a few hours per day, answering phones and processing orders. She testified she was in a lot of pain and could not find a job at Employer that she could perform. She testified she could not work from August through November 2002. Claimant attempted to return to work at McKnight Place at the end of November 2002 but she testified she could not perform the work. Claimant testified the pain was worse with difficulty sleeping and walking so she sought treatment from Drs. Pierron and Taylor who performed epidural steroid injections on three occasions later in 2002 without relief.

She was referred to Dr. Martin, a neurosurgeon who recommended surgery. After ordering a lumbar myelogram, Dr. Martin on January 28, 2003 diagnosed mild to moderate stenosis at L4-5 due to a combination of facet hypertrophy and mild spondylolisthesis with a right L5 nerve root, which did not fill as well as the left. He recommended a complete decompression, fixation and fusion. On February 28, 2003 Drs. Martin and Merenda performed bilateral L4 laminectomy, bilateral L4-5 facetectomies and bilateral L4-5 fixation and fusion with Steffee plates and left iliac crest autograft. Claimant testified she felt better for six weeks when she was not engaged in any activity and someone was able to help her at home. When she increased her activity level the pain recurred and she came to believe that the surgery did not help at all.

Following the low back fusion she did not undergo physical therapy. She testified she wanted to return to work but could not do so because of the pain. She was mostly confined to her house at this time. She became depressed and saw Dr. Ilivicky, a psychiatrist five times for treatment and prescription medication. Dr. Ilivicky noted on December 17, 2002 that Claimant had a past history notable for depressive episodes, which were untreated. He diagnosed Claimant with a major depressive episode.

At the time of hearing Claimant testified that her pain remained stable and that she was never without pain. She could not sit or stand for any length of time and could not perform housework. She did not lift over ten pounds, or bend or stoop. Her current medications were Lidocaine patch; Neurontin; Extra-Strength Tylenol and Advil. She took no narcotics due to allergies.

Dr. Jerome Levy testified by deposition that he examined Claimant on her behalf on September 2, 2003 and assigned pre-existing permanent partial disability of 24.5 percent body as a whole and 25 percent body as a whole permanent partial disability due to her April 14, 2002 injury. Dr. Levy testified that Claimant should not lift over ten pounds on an occasional basis or over five pounds repetitively. She should not work in an upright position for over thirty minutes and she not perform any repetitive lifting. Dr. Levy testified (SIF objection overruled) that he considered Claimant permanently and totally disabled based upon the combination of Claimant's pre-existing and primary back disabilities. Dr. Levy testified that the fusion of February 28, 2003 was necessary and that the findings at the time of surgery included instability. Dr. Levy also testified that the accident on April 14, 2002 caused or contributed to Claimant's low back problems, which resulted in the fusion. He explained that Claimant had an instability problem and degenerative disc disease that had worsened due to the April 14, 2002 accident.

Dr. Levy admitted on cross-examination that he was unaware of any treatment to Claimant's low back immediately prior to April 14, 2002. However he testified (SIF objection overruled) that the diagnosis of right trochanter bursitis immediately prior to the accident involved Claimant's hip.

Dr. Wayne Stillings testified by deposition that he examined Claimant on her behalf on March 18, 2004. Dr. Stillings diagnosed Claimant with dysthymia; mood disorder due to a medical condition; pain disorder. Dr. Stillings testified that Claimant suffered from pre-existing dysthymia. He assigned permanent partial disability of 35 percent body as a whole for the mood disorder, related to the primary injury and 35 percent body as a whole for the pain disorder, related to the primary injury. Dr. Stillings assigned 15 percent body as a whole for the pre-existing dysthymia. Dr. Stillings testified that Claimant was permanently and totally disabled due to her psychiatric disorders alone. He testified that Claimant would require "ongoing open-ended indefinite psychiatric treatment" which would consist of pharmacotherapy for sleep and depression.

Dr. John Wagner testified by deposition that he evaluated Claimant at Employer's request on November 1, 2004. Dr. Wagner testified that Claimant suffered a sprain injury from the April 14, 2002 accident and that she also had pre-existing degenerative disease and spondylolisthesis. Dr. Wagner testified the need for the fusion was due to pre-existing spondylolisthesis. He assigned permanent partial disability of 15 percent lumbar spine due to pre-existing degenerative disease and 15 percent permanent partial disability of the lumbar spine due to the April 14, 2002 injury.

Dr. Wagner testified Claimant was at maximum medical improvement from an orthopedic standpoint and would be capable of nursing supervisory work, which he considered sedentary and occasionally light duty. Dr. Wagner testified Claimant should be restricted to lifting no more than 10 to 15 pounds with some bending and stooping, not frequently. On cross-examination Dr. Wagner testified that Claimant had trouble working due to back pain prior to the April 14, 2002 accident. Dr. Wagner continued that the fusion procedure was necessary for treatment of spondylolisthesis. On cross-examination Dr. Wagner admitted that spondylolisthesis and stenosis can be aggravated by trauma.

Dr. Gregg Bassett testified by deposition and evaluated Claimant on August 6, 2004 on behalf of Employer. Dr. Bassett diagnosed pre-existing dysthymic disorder and pre-existing dependent personality traits; pain disorder and depression. He recommended better pain control and agreed with the treatment plan outlined by Dr. Stillings. Dr. Bassett assigned 15 percent psychiatric disability overall with one-half attributed to the April 14, 2002 injury. Dr. Bassett testified that Claimant's psychiatric condition alone does not preclude her from working; instead it is the pain and decreased abilities associated with the pain that precludes Claimant from working.

Vocational Rehabilitation Counselor James M. England, Jr. testified on behalf of Claimant by deposition taken July 8, 2004.

After interviewing Claimant and reviewing her medical reports he testified that Claimant possessed transferable skills, which included nursing skills, medical terminology knowledge and some basic computer skills, which would transfer to the sedentary level if it were not for Claimant's degree of problems. Mr. England testified he believed based on the combination of problems Claimant had, that she would not be employable in the open labor market. He testified that the combination problems were her back problems and surgeries and her past and recent problems with depression.

FINDS OF FACT AND RULINGS OF LAW

Issues relating to Medical Causation

Claimant alleges the accident, which was the subject of the hearing in this matter, has worsened her pre-existing back condition to the point that a lumbar fusion was necessary. Employer disputes this contention, relying on testimony from Dr. Wagner limiting liability to a lumbar sprain.

The aggravation of a pre-existing condition is a compensable injury if the claimant establishes a direct causal link between job duties and the aggravated condition. Smith v. Climate Engineering, 939 S.W.2d 429, 433-34 (Mo.App. 1996). Claimant must establish a causal connection between the accident and the claimant injuries. McGrath v. Satellite Sprinkler Systems, 877 S.W.2d 704, 708 (Mo.App. 1994). There is no dispute that Claimant aggravated her underlying degenerative disc disease, the question is to what degree the condition was aggravated and to what extent Employer is liable.

Medical causation not within lay understanding or experience requires expert medical evidence. Wright v. Sports Associated, Inc., 887 S.W.2d 596 (Mo.banc 1994). When medical theories conflict, deciding which to accept is an issue reserved for determination of the finder of fact. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo.App. 1984). Dr. Wagner testified that the accident of April 14, 2002 resulted in a sprain injury and that the need for the fusion was due to pre-existing spondylolisthesis. However Dr. Wagner admitted that spondylolisthesis and stenosis could be aggravated by trauma. Dr. Levy testified that the fusion was necessary because of the instability that was found at the time of surgery. He believed that Claimant's degenerative disc disease was worsened by the accident of April 14, 2002. Claimant had worked prior to this accident for several years after her 1988 laminectomy and had restricted her duties and changed employment to accommodate her back. After the injury of April 14, 2002 she attempted to return to sporadic lighter duty part-time work. Dr. Covert's notes describe the continued problems she had with her low back after the injury, which caused Claimant to seek additional medical treatment once Dr. Covert released her with permanent restrictions. I find the medical opinion of Dr. Levy to be more persuasive and find that Claimant sustained a work related injury on April 14, 2002 that caused Claimant's low back problems that resulted in a lumbar fusion. I find that Claimant reached MMI on May 1, 2003 when she was released by Dr. Martin.

Issues relating to Temporary Total Disability

Temporary total disability (TTD) benefits are intended to cover a period of time from injury until such time as claimant can return to work. Phelps v. Jeff Wolk Construction Co., 803 S.W.2d 641 (Mo.App. 1991). Employer did not pay any TTD benefits in this case. Dr. Martin kept Claimant off work from February 28, 2003 until May 1, 2003, which is nine weeks at a stipulated TTD rate of \$542.71 or total TTD payment, due from Employer of \$4884.39.

Future Medical Care

Section 287.140 RSMo. (2000) states that the employer is to provide the necessary medical treatment to cure and relieve the effect of the injury. An employee must prove entitlement to future medical treatment by a "reasonable probability." Lana v. Landstar TLC, 46 S.W.3d 614, 622 (Mo.App. 2001). Proof of specific medical treatment or procedures needed in the future is not necessary to meet this burden, only that the need for future medical treatment be founded on reason and experience. Sifferman v. Sears, Roebuck & Co., 906 S.W.2d 823,828 (Mo.App. 1995). Claimant's need for future medical treatment to cure and relieve the effects of the orthopedic injuries is not supported in the evidence submitted. Dr. Levy did not recommend additional orthopedic treatment related to the work injury. However, Claimant did establish that, to a reasonable probability, she needs future psychiatric treatment. Dr. Stillings recommended future psychiatric treatment consisting of pharmacotherapy and psychotherapy. Dr. Bassett agreed with that recommendation. Therefore, I find that Employer is to provide future psychiatric care consistent with those recommendations.

Liability for Past Medical Expenses

Section 287.140.3 RSMo. (2000) provides that all fees and charges under this section shall be fair and reasonable. A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo.banc 1989). The Claimant seeks payment of approximately \$47,000 in medical expenses. Claimant's testimony at hearing that she remembered seeing bills totaling approximately \$47,000 is insufficient to support an award of past medical expenses in that amount. Drs. Levy and Wagner agreed that the treatment afforded Claimant by Dr. Martin was reasonable and necessary. Dr. Martin's medical bill of \$12,420.00, which was admitted into evidence as well as the supporting medical records and testimony, is sufficient to award past medical expenses in the amount of \$12,420.00.

Issues relating to Permanent Disability

The accident of April 14, 2002 caused Claimant to sustain an injury to her back as well as depression. Following the lumbar fusion surgery Claimant continued to present with pain and symptomology. Claimant remains on permanent restrictions as a result of the injury of April 14, 2002 that varies according to the expert testimony. Claimant attempted to return to work without success after her release from Dr. Martin on May 1, 2003. I find and conclude that the accident of April 14, 2002, considered alone, does not render Claimant permanently and totally disabled. A permanent partial award is intended to cover Claimant's permanent limitations due to a work related injury and any restrictions her limitations may impose on employment opportunities. Phelps v. Jeff Wolk Construction Co., 803 S.W.2d 641, 646 (Mo.App. 1991).

As a result of the April 14, 2002 injury Dr. Wagner diagnosed Claimant with a sprain injury and preexisting degenerative disease and spondylolisthesis. He rated permanent partial disability of 15 percent of the lumbar spine due to the April 14, 2002 injury. Dr. Bassett assigned 7.5% permanent partial disability body as a whole for Claimant's psychiatric condition due to the April 14, 2002 injury.

Dr. Levy attributed 25% body as a whole permanent partial disability of the low back due to the April 14, 2002 injury. Dr. Stillings assigned 70 percent body as a whole for Claimant's psychiatric condition due to the April 14, 2002 injury and testified that Claimant was permanently and totally disabled due to her psychiatric disorders alone. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. Banner Iron Works v. Mordis, 663 S.W.2d 770, 773 (Mo.App. 1983). I find that Claimant sustained as a result of the April 14, 2002 work related injury, permanent partial disability of 20 percent body as a whole referable to her lumbar spine and 20 percent body as a whole referable to her psychiatric conditions for which Employer is liable.

Therefore, I find Employer is liable for 40 percent body as a whole at a stipulated permanent partial disability rate of \$329.42 for a total of \$52,707.20 in permanent partial disability compensation.

Claimant argues that she is entitled to permanent total disability benefits from the Second Injury Fund. Section 287.020.7 RSMo., defines "total disability" as the inability to return to any employment, and not merely the inability to return to employment in which the employee was engaged at the time of the last work related injury. Fletcher v. Second Injury Fund, 922 S.W.2d 402 (Mo.App.1996). An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. Brown v. Treasurer of Missouri, 795 S.W.2d 479, 483 (Mo.App. 1990). The test for permanent total disability is whether any employer would reasonably be expected to hire the employee, considering the employee's current physical condition. Sutton v. Vee Jay Cement Contracting Co., 37 S.W.3d 803, 811 (Mo.App. 2000) and Reese v. Gary & Roger Link, Inc., 5 S.W.3d 522, 526 (Mo.App. 1999).

The experts in this case disagree on whether Claimant is permanently and totally disabled. Dr. Wagner testified (Claimant's objection overruled) that Claimant is capable of light duty nursing supervisory work. Dr. Levy testified (SIF objection overruled) that the combination of the preexisting back problems and the primary injury rendered Claimant permanently and totally disabled. Dr. Stillings testified that Claimant was totally and permanently disabled due to a combination of her preexisting and primary psychiatric conditions. Mr. England testified that Claimant was permanently and totally disabled due to a combination of her preexisting injuries and conditions and her primary back and psychiatric conditions. Considering Claimant's testimony, Mr. England's testimony, Dr. Levy's testimony, Dr. Stillings testimony, the medical evidence, Claimant's sincere but unsuccessful attempt to return to work and the entirety of the record, I conclude that the disability caused by the accident of April 14, 2002, combines with the preexisting disabilities to render Claimant permanently and totally disabled.

Accordingly, after consideration and review of the substantial and credible evidence I find and conclude that, as a consequence of the accident of April 14, 2002, in combination with the preexisting disabilities, Claimant is permanently and totally disabled. Accordingly, Claimant is awarded permanent and total disability benefits from the Second Injury Fund in the sum of \$542.71 per week for Claimant's lifetime.

Therefore, the payment of permanent total disability compensation by the Second Injury Fund is effective May 1, 2003 (when Claimant reached maximum medical improvement) and shall take into consideration the 160 weeks of permanent partial disability, which is attributable to Employer. Accordingly, the Second Injury Fund shall pay the difference between permanent total disability compensation and permanent partial disability compensation (\$213.29) for 160 weeks, and thereafter the payment of \$542.71 per week, for life.

CONCLUSION

In summary, Claimant's work related injury of April 14, 2002 caused low back problems that resulted in a lumbar fusion. Claimant is awarded from Employer past medical expenses in the amount of \$12,420.00; nine weeks TTD in the amount of \$4884.39 and 40 percent permanent partial disability referable to the body as a whole, attributed to her low back and psychiatric condition as outlined above, totaling 160 weeks or \$52,707.20. Claimant is awarded permanent total disability benefits of \$542.71 from the Second Injury Fund for Claimant's lifetime. The payment of permanent total disability compensation by the Second Injury Fund is effective May 1, 2003 and shall take into consideration 160 weeks permanent partial disability attributable to Employer. The Second Injury Fund shall pay the difference between permanent total disability compensation and permanent partial disability compensation (\$213.29) for 160 weeks, and thereafter the payment of \$542.71 per week, for life.

This award is subject to modifications as provided by law.

This award is subject to a lien of 25% in favor of Claimant's attorney, Ray B. Marglous on all benefits.

Date: _____

Made by: _____

KOREN M. MUELLER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia Secret
Director
Division of Workers' Compensation