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

Injury No.: 01-164519

Employee: Sheri Hill-Wurtz

Employer: Diocese of Jefferson City/Holy Cross Catholic Church

Insurer: Continental Western Insurance Company

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

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 April 26, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Vicky Ruth, issued April 26, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 18th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Sheri Hill-Wurtz

Injury No. 01-164519

Dependents: N/A

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

Employer: Diocese of Jefferson City, Holy Cross Catholic Church

Additional Party: Second Injury Fund

Insurer: Continental Western Insurance

Hearing Dates: December 5, 2012,
January 22, 2013, and
January 24, 2013

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.

2. Was the injury or occupational disease compensable under Chapter 287? No.

3. Was there an accident or incident of occupational disease under the Law? No.

4. Date of accident or onset of occupational disease: alleged February 24, 2001 (01-167511) and March 3, 2001 (01-164519).

5. State location where accident occurred or occupational disease was allegedly contracted: Cuba, 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? No.

8. Did accident or occupational disease arise out of and in the course of the employment? No.

9. Was claim for compensation filed within time required by Law? Yes.

10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges she was pulling or lifting a floor buffer up some stairs when the buffer fell on top of her.

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: alleged low back with radicular symptoms.

14. Nature and extent of any permanent disability: none.

15. Compensation paid to-date for temporary disability? None.

16. Value necessary medical aid paid to date by employer/insurer? None.

17. Value necessary medical aid not furnished by employer/insurer? N/A.

18. Employee's average weekly wages: $242.30.

19. Weekly compensation rate: $161.53/$161.53.

20. Method wages computation: by agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from Employer: none.

22. Second Injury Fund liability: N/A.

23. Future Requirements Awarded: none.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Sheri Hill-Wurtz

Injury No. 01-164519

Dependents: N/A

Employer: Diocese of Jefferson City, Holy Cross Catholic Church

Additional Party: Second Injury Fund

Insurer: Continental Western Insurance

Hearing Dates: December 5, 2012, January 22, 2013, and January 24, 2013

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

On December 5, 2012, January 22, 2013, and January 24, 2013, the claimant, the employer/insurer and the Second Injury Fund appeared for a final award hearing. The claimant, Sheri Hill-Wurtz, was represented by attorney Ronald D. Edelman; attorney Marshall Edelman was also present. The employer/insurer was represented by attorney Susan Turner. The Second Injury Fund was represented by attorney Cara Harris. This case was tried at the same time as Injury No. 01-167511; a separate award will be issued in that case. The claimant testified in person at the trial and through multiple depositions. Justin Ray and Father Robert Duesdieker testified by deposition and in person at the trial. Dr. Robert Poetz, Dr. Matthew Gornet, Gary Weimholt, and Dr. Joel Jeffries testified by deposition.

The administrative law judge set a deadline of February 21, 2013, for the filing of briefs. At claimant's request, the deadline was later extended to March 7, 2013. Claimant submitted her brief on March 5, 2013. The Second Injury Fund submitted its brief on March 6, 2013. The employer/insurer submitted its brief on March 7, 2013, and the record closed at that time.

STIPULATIONS

As to the alleged February 2001 injury (Injury No. 01-167511), the parties stipulated to the following:

On or about February 24, 2001, claimant was an employee of Holy Cross Catholic Church/The Diocese of Jefferson City (the employer).

1. The employer was operating subject to Missouri's workers' compensation law.
2. The employer's liability for workers' compensation was insured by Continental Western Insurance Company.
3. The Missouri Division of Workers' Compensation has jurisdiction and venue in Phelps County is proper.
4. A Claim for Compensation was filed within the time prescribed by law.

5. At the time of the alleged occupational disease or accident, claimant's average weekly wage was $242.30, yielding a weekly compensation rate of $161.53 for permanent total disability benefits, permanent partial disability benefits, and temporary total disability benefits.
6. No medical aid was provided.
7. No temporary disability benefits were paid.

As to the alleged March 2001 injury (Injury No. 01-164519), the parties stipulated to the following:

1. On or about March 3, 2001, claimant was an employee of Holy Cross Catholic Church/The Diocese of Jefferson City (the employer).
2. The employer was operating subject to Missouri's workers' compensation law.
3. The employer's liability for workers' compensation was insured by Continental Western Insurance Company.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Phelps County is proper.
5. A Claim for Compensation was filed within the time prescribed by law
6. At the time of the alleged occupational disease or accident, claimant's average weekly wage was $242.30, yielding a weekly compensation rate of $161.53 for permanent total disability benefits, permanent partial disability benefits, and temporary total disability benefits.
7. No medical aid was provided.
8. No temporary disability benefits were paid.
9. Claimant's date of maximum medical improvement was December 5, 2005.

ISSUES

At the hearing, the parties agreed that the issues to be resolved in Injury No. 01-167511 (the February 24, 2001 injury), are as follows:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability.
4. Notice.
5. Medical aid – reasonableness and necessity.
6. Second Injury Fund liability.

The parties also agreed that the issues to be resolved in Injury No. 01-164519 (the March 3, 2001 injury) are as follows:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability or permanent total disability.
4. Notice.
5. Medical aid – reasonableness and necessity.

6. Second Injury Fund liability.
7. Failure to provide medical treatment/unpaid medical bills in the amount of $34,396.68.
8. Future medical aid.
9. Unpaid temporary total disability benefits for the period of April 10, 2001 through December 5, 2005.

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence:

Exhibit A	Records of the Division of Workers' Compensation.
Exhibit B	Deposition of Robert Poetz, with Exhibits.
Exhibit C	Deposition of Matthew Gornet, with Exhibits.
Exhibit D	Deposition of Gary Weimholt with Exhibits.
Exhibit E	Deposition of Sheri Hill-Wurtz (1/08/03).
Exhibit F	Deposition of Sheri Hill-Wurtz (7/14/08).
Exhibit G	Deposition of Justin Ray (8/05/09).
Exhibit H	Deposition of Father Robert Duesdieker (8/05/04).
Exhibit I	Medical records from Mercy Clinic (Dr. Mason).
Exhibit J	Medical records from BJC Health Center.
Exhibit K	Medical records from Missouri Baptist Sullivan Hospital and from Missouri Baptist Sullivan Hospital and Physical Therapy.
Exhibit L	Medical records from Phelps County Regional Medical Center.
Exhibit M	Medical records from Missouri Baptist Medical Office.
Exhibit N	Medical records from Mid County Orthopedics.
Exhibit O	Medical records from North Kansas City Hospital.
Exhibit P	Medical records from Truman Medical Centers (Lakewood).
Exhibit Q	Medical records from Capital Region Medical Center.
Exhibit R	Medical records from St. John's Clinic–Rolla/Rolla Medical Group.
Exhibit S	Medical records from St. John's Regional Health Center.
Exhibit T	Medical records from The Headache and Pain Center.
Exhibit U	Medical records from Midwest Neurosurgery Associates (Dr. Chilton).
Exhibit V	Medical records from St. John's Clinic/Mercy Clinic–Rolla.
Exhibit W	Medical records from St. John's Mercy Clinic, SJC Rolla, MMG Imaging Services.
Exhibit X	Medical records from Patients First Health Care-Cuba (Dr. Lamble).
Exhibit Y	Medical records from Phelps County Regional Medical Center.
Exhibit Z	Medical records from Missouri Baptist Hospital -Sullivan.
Exhibit AA	Medical records from Cuba Chiropractic Center/Arthur Gross, D.C.
Exhibit BB	Medical records from Mercy Medical Group – Cuba (Dr. Nichols).
Exhibit CC	Medical records from Southeast Missouri Mental Health Center.
Exhibit DD	Billing records from Towne Pharmacy – Cuba.
Exhibit EE	Personnel file with letter and Certificate of Appreciation.
Exhibit FF	Billing records from Missouri Baptist Sullivan Hospital.
Exhibit GG	Billing records from St. John's Clinic.
Exhibit HH	Billing record from Patients First – Cuba.

Exhibit II	Billing record from Midwest Neurology Associates.
Exhibit JJ	Billing records from Phelps County Regional Medical Center.
Exhibit KK	Billing record from Truman Medical Center, Inc.
Exhibit LL	Billing record (apparently) from Mid County Orthopedic.
Exhibit MM	Billing records from K-Mart Pharmacy.
Exhibit NN	Billing record from The Headache and Pain Center.
Exhibit OO	Billing of St. John's Mercy Clinic, SJC Rolla.
Exhibit PP	Claimant's Request for Statements regarding Injury. No. 01-164519.
Exhibit QQ	Claimant's Request for Statements regarding Injury. No. 01-167511.
Exhibit RR	Wage information with letter from employer/insurer attorney.
Exhibit SS	Summary of medical bills.
Exhibit TT	Subpoena of Father Duesdieker.
Exhibit UU	Five photographs.
Exhibit VV	Various letters.
Exhibit WW	Letter dated 8/21/02 from Father Finder to Sister Ethel Marie.
Exhibit XX	Various letters.
Exhibit YY	Letter dated 9/13/04 from Mr. Edelman to Ms. Turner.
Exhibit ZZ	Order Regarding Motion in Limine, with attachment(s).
Exhibit AAA	Employee's Memorandum to Admit Statements of Employer's Deceased Agents Pursuant to Section 491.010, Missouri Dead Man Statute.
Exhibit BBB	Section 491.010, RSMo.

The following exhibits were admitted into the record without objection on behalf of the employer/insurer:[1]

Exhibit 1	Deposition of Dr. Joel Jeffries, with report.
Exhibit 2	Social Security Award.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence. All depositions were admitted subject to any objections contained therein. Unless otherwise specifically noted below, those objections are overruled.

FINDINGS OF FACT

Based on the above exhibits, the stipulations, and the testimony presented at the hearing, I make the following findings:

BACKGROUND AND GENERAL INFORMATION

1. Claimant's date of birth is March 19, 1957. At the time of the alleged injuries in 2001, claimant was known as Sheri Hill-Wurtz. In the past, she has also been known as Sheri Ann Hill. Since her marriage in 2007 to Robert Sexton, she has been known as Sheri M.

[1] Although claimant initially objected to the admission of Exhibit 2, she subsequently withdrew her objection and the exhibit was admitted into evidence.

Sexton. In March 2012, Robert Sexton died in a car accident; claimant was also injured in that accident. She testified her injuries included a head injury, which resulted in memory problems, and injuries to her lower extremities. As a result of the March 2012 accident, she takes Percocet, Vicodin, Soma, Xanax and uses a pain patch.

2. Claimant was 43 years old at the time of the alleged work injuries in 2001. At the date of the hearing, she was 55 years old.

3. Claimant has a 9th grade education and a GED. She took a few courses at Central Missouri Community College. She has four adult children who are not dependents. She currently resides in Cuba, Missouri.

4. Claimant previously worked in the shipping department of Sullivan Precision, which made airplane parts. Her job required her to lift boxes weighing up to 20 pounds. She was laid off due to a work shutdown. Claimant experienced depression and anxiety during the time she worked there because of spousal abuse and she missed work about three times per month. She believes her depression and anxiety began when she became involved with Mike Wurtz, whom she married. They later divorced. She testified that after the divorce, he would still follow her and beat her on a regular basis.

5. Claimant was a seasonal employee at Cobblestone Resort for approximately five years, where she cleaned cabins and washed dishes. Her depression caused her to miss work several times a month. She was a janitor at Midland Bank for eight or nine months; she left because she didn't have a babysitter for her son. She worked at a couple of hotels cleaning rooms, and at Meramec Shoes, where she was a sole inspector.

PRE-EXISTING CONDITIONS & TREATMENT

6. In 1985, claimant had a right ankle fracture that bothered her but did not prevent her from doing her duties at her various jobs. She was able to work full-time, but at times she had symptoms from the ankle fracture.

7. Claimant had prior back injuries in 1997, 1999, and 2000. Claimant took Soma, which helped her back pain, and Xanax, which was for depression and panic attacks.

8. On January 25, 1997, claimant was seen in the emergency room of Missouri Baptist Hospital–Sullivan for low back pain radiating into her legs to the knee after moving furniture four days earlier. The physician's assessment was low back pain secondary to suspected degenerative disc disease.

9. Claimant was seen by Dr. Lewis Hagene, D.C., on May 12, 1997, for low back pain she had had for a while. She indicated she had hurt her back on the job while working at motel. She was diagnosed with thoracolumbar sprain/strain syndrome and treated with manipulation on May 12, May 15, and May 19, 1997. On May 22, she reported she felt better and a temporary left shoe lift was prescribed for her back problem. On May 28,

1997, she was feeling better, and on June 26, 1997, she reported she did well until a week earlier when her back began to hurt and her legs were giving her some problems.

10. Claimant returned to Dr. Hagene on April 28, 1999, when she reported constant bilateral low back pain and stiffness after she tried to catch a table at work. She was seen on April 29, April 30, May 10, May 17, May 27, June 4, and June 11, 1999, when she was released at maximum medical improvement.

11. On March 9, 2000, claimant reported to Dr. Hagene's office that she was lifting some tables and injured her back, that she felt a pull when she lifted one of the tables.

12. On May 17, 1999, claimant saw Dr. Nichols at Mercy Medical Group-Cuba and reported a work-related back injury that occurred when she tried to catch a falling kindergarten table. She felt immediate pain across the sacral region and through the lumbosacral region, low back. Dr. Nichols noted that claimant demonstrated full range of motion. Claimant had pain in the lumbosacral spine with full extension, forebending, and back bending.[2] Claimant indicated she had been seeing a chiropractor without much improvement. The musculoskeletal exam revealed no spasms that the doctor could appreciate. He gave her samples of Daypro and instructed her to return if her symptoms continue or get worse.

13. On June 2, 1999, claimant saw Dr. Nichols and complained that she had been having back pain for six weeks.[3] Dr. Nichols recorded that "[i]nitially she says that she was no better, however, she then tells me that the pain is not constant. It comes and goes as before she says it was constant. So, it is improved. She complains of pain in the right sacroiliac region without any real radiation. This is also improved. She reports that she may go several days without pain, again improvement…."[4] The doctor diagnosed claimant with an improving low back strain, and gave her ibuprofen, 800 mg.

14. On March 6, 2000, claimant was seen at Mercy Clinic for a back injury, where it was noted she reinjured her back over the weekend. The record indicates claimant reported she had lifted a table and hurt her lower back a year ago; that she saw a chiropractor who thought it could be a herniated disk and who treated her for six weeks; but that the treatment made it even worse. She then saw Dr. Nichols and he gave her a muscle relaxant (Soma) which helped. A patient history form completed by claimant at this visit also noted a back injury a year ago when lifting a table, which (allegedly) resulted in a herniated disk.

[2] Exh. BB (5/17/99 note).
[3] Exh. BB.
[4] Exh. BB (6/02/99 note).

15. On July 12, 2000, claimant returned to Mercy Clinic. The handwritten notes are difficult to read, but it appears that claimant wanted to get off her medicine (Xanax).[5] The medical provider noted claimant was fearful, anxious, and very sad. There is a notation that claimant left her husband last week. The provider recorded that claimant should start taking Celexa, decrease the Xanax, and take Ambien for sleep.

16. On July 20, 2000, claimant returned to Mercy Clinic for a medicine check and reported that she had fallen on her tailbone five days earlier and was very sore.[6] In addition, she complained of back discomfort. Claimant requested muscle relaxers. The provider noted claimant sat stiffly in the chair and leaned on one hip at a time. On August 31, 2000, there was a notation of anxiety and depression. At the October 18, 2000 visit to Mercy Clinic, claimant noted that her back bothers her off and on.[7] On December 12, 2000, the record indicates claimant had stress over her ex-husband; anxiety and depression is noted, along with muscle spasms and pain. She complained of leg and knee pain. On December 12, 2000, claimant reported that she was under a lot of stress over problems with her ex-husband. Her legs hurt constantly, mostly in the thighs and on the side of the left knee[8].

17. On February 16, 2001, claimant was seen at the clinic for depression and anxiety. There was no mention of back or leg pain.

EMPLOYMENT - HOLY CROSS CATHOLIC SCHOOL

18. In 1996 or 1997 claimant began working for Holy Cross Catholic School as a full-time janitor and part-time cook. Her supervisor was Father Robert Duesdieker, the parish priest. She was a salaried employee.

19. Holy Cross Catholic School had approximately 56 students. As a janitor, she cleaned the school buildings. Initially, her role as a part-time cook involved cooking when the primary cook was off work. Claimant testified she worked 8 to 16 hours a day and sometimes on weekends, working as much as 60 hours per week. She indicated another woman was hired as a janitor, and she helped claimant with some tasks.

20. The Parish Hall could hold approximately 300 people and was used as a lunchroom. The Hall consisted of three classrooms, two bathrooms, the kitchen, and a stage. There were other classrooms in a separate building called the Mansion. That building was two stories and had a basement. Claimant cleaned all the classrooms, bathrooms, the kitchen, and the Hall. On weekends, she cleaned two additional churches in Steelville and Bourbon.

21. Claimant's workday started with her preparing breakfast at the school at about 6:30 a.m.; this task required her to lift a 20-to-25-pound crate of small milk containers onto a cart and

[5] Exh. I.
[6] *Id.*
[7] *Id.*
[8] *Id.*

set out cereal boxes, bowls, and small cartons of milk. Breakfast was ready by 7:00 a.m. and the children left the hall at 7:30 a.m. Claimant cleaned up and washed the dishes using a commercial dish washer. She then began cooking lunch, also using commercial equipment. She would move the food containers onto a cart and take them to the steam table. Volunteers sometimes helped her but she was in charge of the kitchen. After lunch at approximately 12:30 p.m., she would clean the tables, do the dishes, wipe down the tables and chairs, and sweep and mop the floor. It took two and one-half hours to clean up after lunch. Claimant buffed the floors most weekends or after they were waxed. She would finish work about 2:30 p.m. and would take the kitchen towels home to wash.

22. Claimant's job involved twisting, bending, lifting, walking, and standing. Before 2001, she could complete all her job duties. She worked on Saturdays cleaning the floor of the Parish Hall, which she would sweep, mop, and buff. The buffer was the heaviest thing she had to lift at the parish and she estimated it weighed between 75 and 100 pounds. She did have trouble lifting it.

23. Claimant had to move tables that weighed approximately ten pounds and she had no trouble with this task prior to the alleged injuries. If the buffer was not in the hall, she would get it from the boiler room which involved lifting it manually. She also carried food to be stored in the boiler room. She estimated the heaviest amount she carried was cartons containing cans weighing five pounds each with six cans to a box.

24. Claimant testified that because of the injuries she allegedly sustained at Holy Cross Catholic School, she could not do any of her prior jobs because of back and leg pain affected her sleeping. She indicated that all her prior jobs had required her to be on her feet and that she was no longer able to do that because of the pain. She testified she has to rest during the day, which would affect her ability to do any of her prior jobs.

FEBRUARY 24, 2001 ACCIDENT (ALLEGED) - INJURY NO. 01-167511

25. Claimant testified that the first accident occurred on February 24, 2001, a Saturday. Her trial testimony includes the following details:
    - On that date, she arrived at work at approximately 9:00 a.m. to do the cleaning and buffing in the Parish Hall. Only her 11-year-old son, Justin, was present.
    - She was trying to pull the buffer up the stairs by its handle when it got caught on the step. She attempted to pull it up and her back popped and her leg went numb. The buffer fell on top of her and she had back and leg pain into the bottom of her left foot and screamed because her legs were trapped by the buffer.[9]
    - She recalled a man showing up and helping Justin lift the buffer. She asked Justin to get Father Duesdieker, which he did. She later learned that the man was Roger Lee; she had never seen Mr. Lee before the day of the alleged injury.

[9] It should be noted that in one of her depositions, claimant does not claim the buffer fell on her and trapped her.

- She requested treatment. Father Duesdieker wanted her to see a chiropractor, which she refused to do. Father Duesdieker then told her to "take care of it." Father Duesdieker did not report the injury.
- Father Duesdieker put the buffer in the boiler room; claimant laid on the step for 15 to 20 minutes after the buffer was removed. Her back pain was ten plus on a ten-point scale.
- Mr. Lee helped her to the car and her eleven year old son, Justin, drove her home.

MARCH 3, 2001 ACCIDENT (ALLEGED) - INJURY NO. 01-164519

26. Claimant testified at trial that the second accident occurred on March 3, 2001. Her trial testimony includes the following details:
    - On March 3, 2001, she was working alone, although her son Justin was with her. At approximately 9:00 a.m., the buffer fell on her, trapping her on the steps again. She was trying to get the buffer off and her back popped and burned and she again had pain all over her back and down her left leg to her foot. The pain was worse than before.
    - She laid on the step for a while but the pain did not improve, so Justin went to get Father Duesdieker. Father Duesdieker asked what had happened and was angry she had tried to lift the buffer alone.
    - Father Duesdieker and Justin moved the buffer; she then laid there for 30 minutes.[10] Father Duesdieker did not offer treatment or to file a report of injury.
    - He helped her to her car and Justin again drove her home.

MEDICAL TREATMENT

2001

27. On March 11, 2001, claimant was seen at the emergency room of Missouri Baptist Hospital (BJC Health System) for chest pain.[11] She was diagnosed with chest pain and anxiety. **There was no report of low back pain or injury**; this was just eight days after the (alleged) March 3, 2001 work accident.

28. On March 15, 2001, claimant was seen at Mercy Clinic for a check-up, medication refill, and to discuss a massive panic attack she had on Sunday.[12] Dr. Mason noted the employee went to the hospital on Sunday for chest pain; while in church, she had become dizzy and her whole body became numb. Claimant indicated she was anxious over her ex-husband.

[10] It should be noted that in one of her depositions, claimant testified that on March 3, 2001, she pulled on the buffer, it got stuck on the stairs, her back popped and hurt, and then she threw the buffer down the stairs.
[11] Exh. K.
[12] Exh. I.

Objective findings were normal cadence of speech and chest wall tenderness to palpation and at the sternum. Dr. Mason's diagnosis was anxiety, panic attack with hyperventilation, and chest wall pain. **There is no mention of back or leg pain or an injury on March 3, 2001.**

29. On April 10, 2001, claimant was involuntarily committed to Southeast Missouri Mental Health Center.[13] The Screening/Admission Notes form and the Social Service Assessment indicate claimant was admitted because her children feared she was going to shoot and kill her ex-husband, hurt her 12-year-old son, and kill herself. There is also a reference to abusing Xanax. Claimant's children were ages 27, 25, 20, and 12 years of age. The form indicates claimant's children believe she is involved with drugs. Claimant was taken into protective custody after the reports of suicidal and homicidal ideations. She became combative and was placed in restraints at the police station. Claimant expressed that she believed people were plotting against her. In addition, she was experiencing auditory and visual hallucinations. She felt her ex-husband was going to plant drugs in her house so she would have to go back to prison.

30. Claimant reported to the Southeast Missouri Mental Health Center staff that she was prescribed Xanax approximately seven years ago and Valium approximately five years ago; she was recently prescribed Vistaril.. She denied abusing these medications or abusing alcohol. Claimant's children, however, reported that claimant has a 20-year history of abusing alcohol. One daughter reported that claimant drinks to intoxication three or four times per week. The daughter reported that claimant had made threats towards her ex-husband, as well as against a man who reportedly raped her four months ago, that her mother has threatened to poison her 12-year-old son; and that years ago, she stabbed a man in the back with a steak knife. Claimant's daughter feels that claimant's behavior has exacerbated in the last seven months, which she feels is related to claimant separating from her ex-husband. Claimant's children also reported an eight-year history of abusing prescription medication. Claimant has been observed by her 12-year-old son taking handfuls of pills and passing out. Claimant admitted to a history of using marijuana and cocaine. Claimant's personal history included being married and divorced four times. Her relationship with her last husband was physically abusive.

31. On physical examination at the Mental Health Center, the April 10th review of symptoms noted back pain four years earlier after a work injury. There is also a notation of a history of degenerative disc disease. The report indicates claimant's muscle strength and reflexes were normal and the physician noted the examination was normal. A separate psychiatric evaluation noted there were no focal neurological defects or gross physical abnormalities. **There was no mention of a February or March 2001 back injury**. Moreover, the nursing assessment indicated there had been no recent trauma.

[13] Exh. CC.

32. On April 19, 2001, claimant was discharged from the Southeast Missouri Mental Health Center. The records indicate claimant tolerated the decreasing dose of Phenobarbital and had good results. Claimant agreed to go to Salem Treatment Center for the 30-day inpatient alcohol and drug treatment program.

2002

33. A January 2, 2002 record from Missouri Baptist Hospital-Sullivan indicates claimant was seen for chest pain, anxiety, and leg pain that started six months ago.[14] **There was no report of back pain or back injury.**

34. On August 30, 2002 - well over one year after the alleged work injuries - claimant visited BJC Health Center for treatment of back pain and because she could not sleep.[15] The records indicate **she had had episodes of back pain for years and that this problem had worsened the last few weeks**. Although these hand-written notes are difficult to read, there does not appear to be any mention of a work-related accident in 2001.

35. On September 4, 2002, claimant was seen in the Phelps County Regional Medical Center emergency room for back pain.[16] It was noted she had had back pain since a 1997 work-related back injury. It was also noted she reported she seldom used alcohol, but there was a strong ETOH odor to her breath, her speech was slurred, and she swayed with standing.[17] There was no reference to a 2001 back injury.

36. On September 27, 2002, claimant was seen at BJC Health Center (Dr. Guillermno Ludi or Dr. Musa Modad) for low back pain.[18] **It was noted she had had a low back injury in 1997 with a second injury in February 2001.** She had pain radiating into both legs. There was no mention of a March 2001 incident. An X-ray taken September 30, 2002, indicated degenerative spondylosis at L1-2 and L2-3 with endplate osteophytes.[19]

37. On October 12, 2002, claimant was seen at Missouri Baptist Hospital-Sullivan with complaints of a left foot injury.[20] She reported that she had fallen from a stepladder.

38. An October 23, 2002 lumbar MRI from Missouri Baptist Hospital-Sullivan indicated mild degenerative changes, very mild anterior extradural defects at multiple levels, and no

[14] Exh. L.
[15] Exh. J.
[16] Exh. L, Bates pp. 60-68.
[17] Exh. L, Bates p. 61.
[18] Exh. J.
[19] *Id.*
[20] Exh. K.

definitive disc herniations or significant focal lateralization.[21] The summary was mild lumbar spondylosis.

39. On October 29, 2002, claimant was seen at BJC Health Center.[22] The records reflect her pain was better but she had fallen two to three weeks earlier and had fractured her foot in the fall. An MRI report was reviewed, which showed mild spondylosis. Physical therapy was ordered.

40. The November 8, 2002 notes from Sullivan Sports, Fitness, and Rehab Center indicate claimant reported **chronic low back pain since an injury in 1997 pulling a floor buffer.** Claimant reported that an MRI and x-rays "showed that her discs are okay."[23] She also reported her back went out "two weeks ago when she fell off a ladder fracturing her foot."[24]

41. On December 5, 2002, claimant was seen at BJC Health Center for back pain, medication refill, and physical therapy for (possible) ankle and back pain.[25]

2003

42. On May 7, 2003, claimant was seen at Missouri Baptist Medical Office for back pain.[26] Although the handwritten notes are difficult to read, there does not appear to be a reference to a work-related incident.

43. On June 19, 2003, claimant saw Dr. Daniel Shon at Mid County Orthopedics.[27] **Claimant complained of low back pain <u>since 1996, when she had injured her back pulling a buffer up the stairs</u> at the church where she worked.** Claimant reported that she saw a chiropractor and did somewhat better **until a reoccurrence in 2001**. She took Soma and Xanax three times a day and "complains today that her new PCP will not fill these medications."[28] She reported her pain was usually an eight but ranges from a three to a ten. The straight leg raising test was negative and the physical examination was normal except for reported tenderness. Dr. Shon's impression was chronic low back pain due to myofascial pain syndrome.

44. On August 11, 2003, claimant was seen at North Kansas City Hospital for right and left elbow pain that began about a week earlier after lifting a washer and dryer; it was noted a

[21] *Id.* .
[22] Exh. J.
[23] Exh. K.
[24] *Id.*
[25] Exh. J.
[26] Exh. M.
[27] Exh. N.
[28] *Id.*

tailgate had hit her.[29] There was no history of prior low back pain or injury in the ER records. It was noted claimant had requested Vicodin but was give non-steroidal anti-inflammatory drugs instead. Claimant later testified that this record was incorrect and that she had not lifted a washer and dryer.

45. Claimant was seen at Truman Medical Center a week later, on August 18, 2003.[30] She complained of back pain that has increased after dropping a fax machine one week ago. She dropped the machine, turned, twisted, and then had pain. The pain extended down her left leg with foot numbness at times. It was noted that **in 1997 she pulled a buffer up some stairs and her back popped, and that she had had ongoing back pain since**. **There was no history of a work-related back injury in 2001**. Physical examination was normal other than reported tenderness. Claimant was given Celebrex and Ultracet and referred to physical therapy.

46. On November 25, 2003, claimant was seen at Missouri Baptist Medical Office complaining of depression and requesting Xanax.[31]

2004

47. On February 9, 2004, claimant was seen for an evaluation by Dr. Osvaldo Acosta-Rodriguez.[32] The doctor noted that **claimant has had back pain since 1997 when she picked up a table** at a school where she was a janitor and cook. Claimant reported that she treated with a chiropractor and then her doctor ordered a steroid shot in her back. However, **she reinjured her back in February 2001 when she lifted a buffer**. The doctor's assessment was (1) no evidence or radiculopathy noted; (2) chronic scarring of the lumbosacral fascia identified; (3) no evidence today of a mechanical back pain; and (4) increased pain complaints and pain behavior.

48. On July 26, 2004, claimant was seen at Rolla Medical Group; the reason for the visit was Xanax withdrawal.[33] The physician's impression was anxiety/depression and questionable drug seeking.

49. On August 23, 2004, she was seen again at Rolla Medical Group for back pain and the side effects of medication prescribed at the stress center.[34] A lumbosacral strain was noted and physical therapy recommended.

2005

[29] Exh. O.
[30] Exh. P.
[31] Exh. M.
[32] Exh. Q.
[33] Exh. R.
[34] *Id.*

50. The March 18, 2005 physical therapy records from Phelps County Regional Medical Center indicate the employee was discharged from therapy for non-compliance after being a no show for her last four appointments.[35] The notes also indicate claimant had been making improvements in physical therapy and her home exercise program.

51. On March 23, 2005, a lumbar MRI was performed at St. John's Regional Health Center.[36] The report indicated the following: (1) left-sided disc protrusions at L3-4 and L4-5 without appreciable neural impingement; conceivably intermittent impingement upon the left L5 nerve root could be present in the lateral recess from the L4-5 disc protrusion; and (2) mild abnormal signal is present in the L1 vertebral body inferiorly, which could reflect recent trauma.

52. On April 1, 2005, she was seen at Rolla Medical Group for MRI results.[37] The diagnosis appears to be lumbosacral instability and herniated nucleus pulposus at L-5-S1, although the handwritten notes are difficult to read. On April 25, 2005, she requested something to support her back and a lumbar corset was prescribed. On June 22, 2005, she was seen for unrelated complaints and a herniated nucleus pulposus at L5-S1 was noted.

53. The July 25, 2005 record from Phelps County Regional Medical Center indicates claimant's chief complaint was back pain after a fall a week earlier.[38] She reported she was going to have back surgery in October. The ER physician noted claimant brought an MRI that was essentially normal. Lumbar spine x-rays indicated anterior osteophyte formation at several levels and the impression was degenerative changes of the lumbar spine.

54. On August 30, 2005, claimant was seen again at St. John's Health Center for back pain and was referred to a physician in Springfield. She was also given a prescription for Percocet.

55. On September 30, 2005, claimant returned to Rolla Medical Group with complaints of "back pain real bad…."[39]

56. On October 6, 2005, claimant was seen at the Headache and Pain Center.[40] Claimant reported low back pain that she described as burning, hot, sharp, and stabbing and was usually a nine out of ten. She rated her pain as severe and constant and indicated it interfered with most, but not all, daily activities and had been present for two years. She reported the injury was work related; that she had been unable to work at all since the injury; and that she had undergone a series of epidural injections that made the pain worse

[35] Exh. L.
[36] Exh. S.
[37] Exh. R.
[38] Exh. L.
[39] Exh. R.
[40] Exh, T.

[there are no records of lumbar injections]. On physical examination, she had tenderness at multiple levels and muscle spasm. Range of motion was restricted. Neurologically, muscle strength was intact and symmetrical, deep tendon reflexes were 2+, and straight leg raising was asymptomatic bilaterally.

57. Bilateral SI joint injections were done at the Headache and Pain Center, and claimant's diagnosis was bilateral SI joint dysfunction. It was noted she declined epidurals steroid injections. She saw a second physician the same day for an EMG and nerve conduction studies. The studies were normal and there were no findings of peripheral or entrapment neuropathy, myopathy, lumbosacral plexopathy, or lumbar radiculopathy. The doctor's diagnosis was bilateral unspecified idiopathic peripheral neuropathy and lumbosacral neuritis, radiculopathy unspecified.[41]

58. The Headache and Pain Center records contain the following additional notations:
    - An October 6, 2005 MRI reflected a posterior protrusion at L1-2, a diffuse posterior bulge at L2-3, L3-4, and L5-S1, and facet arthropathy from L3-4 to L5-S1.
    - On October 13, 2005, claimant reported no improvement and that her pain had gotten worse after the treatment. Physical findings were unchanged. The diagnosis was uncontrolled radiculopathy despite no documentation of reported radiculopathy or numbness and tingling and injections of the sacrococcygeal ligament were done.
    - On October 20, her pain had slightly improved. Decreased lumbar tenderness and improved range of motion were noted on physical examination. A second caudal injection was done.
    - At the October 27 visit, she now reported low back and left leg pain that was somewhat more severe. No physical examination is noted, a third caudal epidural was done, and the employee was discharged.
    - On November 30, 2005, she saw Dr. Goodman for intractable headache and neck pain. She also saw Dr. Judilla for follow up of lumbar radiculopathy and reported 70% improvement with epidural steroid injections. She was instructed to return as needed.
    - On December 5, 2005, she was seen for cervical radiculopathy and vascular headaches.

2006

59. On May 5, 2006, claimant saw Dr. Chilton at Midwest Neurology Associates for an evaluation of low back pain at the request of her family physician.[42] Claimant gave a **history of low back pain after she picked up a buffer at work in 1997**, **and that the symptoms improved until she picked up a buffer in 2001** and had a similar episode of back pain and new onset of left leg pain. She reported the low back pain radiated into the

[41] *Id.*
[42] Exh. U.

mid-thoracic spine and cramping pain in the left lateral thigh and calf associated with intermittent numbness and tingling. She also reported bilateral weakness. She was not able to identify any perceptible aggravating factor and "can't do anything" due to pain.[43] It was noted she had been disabled since 2002 due to back problems and was unable to work. Physical examination was normal with the exception of back and radiating leg pain with left straight leg raising, decreased response to pin prick at the L5-S1 nerve distribution, and absent ankle jerks Dr. Chilton reviewed the October 2005 lumbar MRI, which he noted revealed minimal L4-5 lateral disc bulging that did not cause significant nerve compression or foraminal stenosis. His impression was chronic low back pain secondary to mild lumbar spondylosis.

60. On June 19, 2006, claimant was seen at the Rolla Medical Group for medication refills and to follow up on her back.[44] The doctor noted there was a herniated nucleus pulposus at L4-5. The handwritten notes appear to indicate that he had previously noted the herniation at L5-S1.

61. On February 22, 2005, a Back Questionnaire form from Phelps County Regional Medical Center indicates that claimant has had back problem for five years since picking up a buffer at work, and that she injured her back again in 2001.[45] The February 25, 2005 records indicate claimant was making progress in physical therapy and the plan was to initiate "lumbar medx" next week.[46]

2007

62. On March 9, 2007, claimant was seen at Rolla Medical Group, for back pain.[47] She requested pain medication. She also requested a referral to an orthopedic physician in Springfield instead of Dr. Chilton, who she said would not take her back because she kept cancelling appointments.

63. Phelps County Regional Medical Center notes from March 18, 2005, indicate claimant did not show for her last four appointments and was being discharged from physical therapy for noncompliance.[48] Claimant had been making improvements.

64. On July 19, 2007, claimant was seen at Phelps County Regional Medical Center for the chief complaint of chronic low back pain.[49] She said the pain began the night before after

[43] *Id.*
[44] Exh. R.
[45] Exh. L, second set, Bates p. 25.
[46] Exh. L, second set, Bates p. 24.
[47] Exh. R.
[48] Exh. L, second set, Bates p. 21.
[49] Exh. L.

she picked her 155-pound husband up off the floor.[50] She reported a history of four bulging discs in her lower back and it was noted she was on disability because of her back. She also indicated she broke her right arm on May 15, 2007, and that the case was removed 2 weeks ago. Lumbar spine x-rays were read as "unremarkable lumbar spine films."[51] The clinical impression was acute myofascial strain of the lumbar region, along with a non-healed right wrist fracture. Claimant testified that the medical record is incorrect and that she never picked up her husband.

65. Claimant returned to the Phelps Country Regional Medical Center on July 25, 2007, for continued low back pain.[52] The clinical impression was chronic low back pain.

2008

66. On January 2, 2008, claimant was seen at Rolla Medical Group for a medication refill and the results of a CAT scan.[53] A herniated disc at L4-5 was noted.

67. On August 22, 2008, the Rolla Medical Clinic's notes reflect claimant wanted to talk about her back and requested long-term narcotics for back pain.[54] The handwritten notes are difficult to read, but it appears the doctor refused to provide the requested prescription. The diagnosis now indicated a herniated disc at L3-4.

68. On October 14, 2008, claimant returned to the Rolla Medical Clinic for a medicine refill and a referral for her low back problem.[55] She was given a referral to an orthopedic physician in St. Louis.

2009

69. On March 2, 2009, claimant was seen by Dr. Allen Northern at Mercy Clinic-Rolla (a/k/a St. John's Clinic, Inc.) for hypertension.[56] There was no report of back pain. On May 27, 2009, she was seen for low back pain that had a 15-year duration that was positional with bending or lifting with radiation down the legs. On physical examination, her gait was antalgic; she had no local tenderness of the lumbosacral spine but did a painful and reduced range of motion. Straight leg raising was positive at 40 degrees on the left, deep tendon reflexes, motor strength and sensation were normal, including heel and toe gait. The assessment was degenerative disc disk without herniated disc, herniated disc likely at L5-S1 and with radiculopathy.

[50] Exh. L, second set, Bates p. 13.
[51] Exh. L, second set, Bates p. 15.
[52] Exh. L, second set, Bates p. 19.
[53] Exh. R.
[54] *Id.*
[55] *Id.*
[56] Exh. V.

70. A lumbar MRI was done on May 29, 2009, at SJC Rolla MMG Imaging Services.[57] This study indicated mild disc extrusion on the left L4-L5, causing mild narrowing of the lateral recess and neural foramen without obvious neural impingement, mild disc changes were present at L5-S1, and mild spondylitis were present interiorly at L2-L3.

71. On August 5, 2009, claimant was seen at Mercy Clinic-Rolla for her chronic obstructive pulmonary disease.[58] On November 17, 2009, she was seen for hypertension, there was no complaint of low back pain.[59]

2010

72. On February 26, and August 9, 2010, she was seen at Mercy Clinic-Rolla for medical problems unrelated to the alleged work injuries.[60]

2011

73. On August 31, 2011, claimant was seen again at Mercy Clinic-Rolla for unrelated complaints; on physical exam it was noted her gait was normal.[61]

74. On December 19, 2011, claimant was seen by Dr. Peter Lamble at Patients First Healthcare for anxiety, headache, backache, menopausal state, and tobacco abuse.[62] Claimant reported she has had signs and symptoms of depression for 20 years, and that her status was worsening. Claimant has also been on Xanax for 20 years. Dr. Lamble indicated Dr. Dumore's attempt to wean claimant off Xanax in two or three months sounded "pretty harsh" and he was going to maintain her on her current medications. It was also noted claimant had been taken three Xanax a day for 20 years and that her current doctor reduced it to two times a day and she reported she could not drive or function with that amount. Which regard to her headaches, Dr. Lamble noted she used Fioricet very responsibly, which he refilled. As for back pain, he indicated it sounded like claimant was determined not to become dependent upon Vicodin and he refilled it in a limited quantity. It was noted she had had back pain for years and that she rated the pain at level of three (out of ten). The problem was stable but occurred persistently in the low back and radiated into the left and right thighs. She reported the symptoms were relieved by pain medication and drugs and that another doctor wanted to put a steel rod in her back but she didn't want back surgery. It was also noted there was no history of alcohol use. On physical examination, she had normal gait and a negative neurological examination.

[57] Exh. W.
[58] Exh. V.
[59] *Id.*
[60] Exh. V.
[61] *Id.*
[62] Exh. X.

CLAIMANT'S TESTIMONY

75. Claimant testified at the trial, and by deposition. She was deposed on January 8, 2003 (about two years after the dates of the alleged accidents) and on July 14, 2008 (over seven years after the alleged accidents). Claimant is a poor historian and provided various recollections of the same events.

76. At trial, claimant's testimony included the following points:
    - She has good and bad days but the pain and numbness never goes away. She stated that her prior lifting accidents had caused pain but not like the pain she experienced after March 2001. She testified that her leg and back would "give out," which she thinks was a result of the alleged accident. This would happen two to three times a week.
    - Before March 2001, claimant could sleep six to eight hours. Since the 2001 accidents, she has had trouble sleeping because of back and leg pain, which wakes her three times a night. She continued to have this problem at the time of the hearing.
    - She went to the emergency room in Sullivan, Missouri, on March 11, 2001, because she was concerned she was having a heart attack. She attributed this problem to the number of medications she was taking. When asked by her attorney if it was possible that she did not give a complete history at that time because of the chest pain, she indicated it was. She indicated she followed up with Dr. Mason. Claimant said she reported the accidents and the back and leg pain and numbness to Dr. Mason and was treated with Soma and pain pills. Claimant requested treatment from Father Duesdieker, and he responded by threatening to fire her and by cursing at her. She continued to have problems doing her work.
    - On April 9, 2001, claimant was committed to the Southeast Missouri Mental Health Center. Claimant testified that she still had some complaints at this time and was taking a lot of medications. She indicated the medication made her tired and forgetful. Claimant has no recollection of being admitted to the Southeast Missouri Mental Health Center at Farmington. Claimant apparently told the Center about her back injury from the 1990s, but not about her 2001 back injuries. She testified she did not give a complete history of her work accidents upon admission because of being on so much pain medication.
    - On November 2001, claimant went to work for Dana Brake even though she still had all the same back symptoms. She thought she worked there ten weeks. She worked in the paint line, hanging parts on a rack; the parts weighed up to ten pounds. She had problems bending, stooping, lifting, and twisting and she needed help from her co-workers. She missed two to three days a week from work as a result of her pain. She quit in February 2002 because she was going to be fired.

- Next, claimant tried cleaning houses, but she could not do the work because of her back pain and her left leg "going out."
- Claimant testified that after March 3, 2001, she sought her own treatment for the low back pain. At the hearing, she requested payment for medical treatment not paid for by the employer/insurer.
- Claimant was questioned by her attorney about medical records of North Kansas City Hospital emergency room that indicated she was lifting a washer and dryer. She testified she did not lift the washer and dryer, that her husband and brother were doing the lifting and her arms were simply hit with the tailgate of the truck. She believes the emergency room doctor made a mistake in the records.
- Claimant's attorney also asked about the records of Missouri Baptist Hospital-Sullivan that indicated she fell off a ladder in October 2001. She explained that it was really a step stool and that she had fallen because her left leg "went out.
- With regard to records from Phelps County Regional Medical Center that indicated claimant developed back pain after picking her husband up at home, she testified that he had an artificial foot which would get stuck under the dash when he drove. During this incident, her husband had fallen out of the car and she was trying to move his artificial foot, not pick him up.
- Claimant testified despite all the treatment she has received the pain returned to the same level as after March 3, 2001. She said she has been treated for low back pain since October 2002 and that the pain has never gone away. She was still receiving treatment in the form of Soma, which she was actually taking *prior* to March 3, 2001; she is also taking Vicodin.
- Claimant believes her back pain, leg pain, and foot cramping keep her from working. She testified that her back "goes out" with activity. She describes the pain as a ten on a ten-point scale. She also has numbness in her foot, which makes her unable to feel anything. She also described the foot pain as sharp and cramping. She rated the foot pain at a ten on a ten-point scale. Her sleep interruptions are due to pain and foot cramping from the back injury. She sleeps three to four hours at most at any one time; otherwise she sleeps in 20 minute intervals. She is tired and groggy in the morning and naps during the day in a recliner for 30-45 minutes. Claimant has problems sleeping even with heavy medication.
- According to claimant, her symptoms caused changes in what she is able to do. She no longer gets on a stepstool, or shops, drives, does laundry, vacuums, mows grass, or moves things around. She can perform activities of daily living but it takes her longer. She has problems reading; she doesn't remember what she has read; and she cannot sit very long. She can drive and does have a valid driver's license, but has not driven since the March 2012 auto accident that killed her husband, Robert Sexton.
- She no longer runs, rides bicycles with her son, who is now 22, and she cannot hold her grandchildren. She also no longer drives to Kansas City by herself.

- Since March 2001 she has walked with a limp; she occasionally uses a cane. She uses crutches in the house because of injuries sustained in the 2012 automobile accident.
- She had anxiety and depression before March 2001 which caused her to miss time from work, and avoid interactions and activities because being around a lot of people caused panic attacks. Before March 2001, she didn't like being alone with men because of the spousal abuse, and she couldn't work as a teaching assistant in school. Her anxiety and depression and panic attack symptoms continued as do her right ankle symptoms. She takes Xanax and Soma for the anxiety, depression, and panic attacks and they helped her sleep before March 2001.
- She has not looked for a job because she could not work as a result of the March 3, 2001, alleged injury. It was her opinion even without the March 2012 automobile accident she would not be able to work as a result of the March 2001 injury.
- She requested an award for medical bills, further medical treatment for pain, 223 weeks of TTD for April 9, 2001, through December 5, 2005, for a total of $37,470.96, PPD per the ratings of Dr. Poetz, and permanent total disability from either the Second Injury Fund or the Employer and Insurer.
- She does not recall seeing many of the medical providers.

77. Claimant also testified by deposition on January 8, 2003. Some of the details of that deposition testimony are as follows:
    - She was injured on March 3, 2001, as she was trying to pull a buffer up the stairs and felt her back pop and burn.[63] The incident occurred on a Saturday at about 10 o'clock and she was working alone. The buffer was a commercial buffer which she estimated weighted approximately 150 pounds.[64] She threw the buffer down the steps and went next door to tell Father Duesdieker about the incident.[65] She requested treatment and was told "they wouldn't pay for it," which she guessed meant the school and the diocese.[66] She left work and took muscle relaxants she had from an injury the week before.
    - On Saturday, February 24, as she was pulling the buffer upstairs and felt her back "move again."[67] It felt like it popped but was like a burning sensation across her back. The pain radiated into both legs into the toes.[68] This occurred about 10 a.m. and her son helped her finish pulling the buffer up and she finished working. She reported the incident to Father Duesdieker whom she said told her she could go home if she had finished the floors.[69]

[63] Exh. E, p. 23.
[64] Exh. E, p. 24.
[65] *Id.*
[66] Exh. E, p. 25.
[67] Exh. E, pp. 25-26.
[68] Exh. E, p. 27.
[69] Exh. E, p. 28.

- She was not sure when she first went to the doctor after the February 24th incident; she thought she called her doctor, Dr. Mason, who she had been going to for about a year for her back, anxiety, and depression.
- Her April admission to Farmington State Hospital was an involuntary admission and she had no prior admissions for emotional problems or alcohol treatment.[70] She had been treated for depression for four to five years.[71]
- She had a previous back injury in 1999 while working for the employer; she was treated for by Dr. Hagene and Dr. Nichols for that injury.[72]
- Her symptoms as a result of the March 2001 injury were the same as those after the February incident. She could not lift more than 20 pounds; she could not work; she was uncertain how far she could walk without back pain; she could not sit longer than an hour.[73] She was able to drive and do most of her house work.[74]
- She was not certain, but thought that since March 2001 she had been convicted of or plead guilty to a misdemeanor or felony - that is, to aiding and abetting in Crawford County, for which she received an SIS.[75]

78. Claimant also testified by deposition on July 14, 2008. Claimant was 51 at the time of the deposition and had been married to Robert Sexton since April 2007.[76] Her deposition included the following testimony:
    - She had not worked since she was employed by Dana Brake.[77]
    - Her family physician was Dr. Allen Northern and she was taking Xanax, Soma, Advair, Albuterol, and Zantac - Zantac for panic attacks, Soma for her back, Advair and Albuterol for her borderline emphysema, and Zantac for her stomach.[78] She also took Vicodin for her back and took it because she was allergic to pain medication.[79]
    - When asked about restrictions due to her back condition, she said she was supposed to wear a back brace when she was active.[80] She had some back weakness before 2001 as a result of picking up a kindergarten table in 1999.[81] She reported that injury, and Father Duesdieker sent her to a chiropractor. Her doctor gave her a cortisone shot and some Soma.[82] She had been on Soma since 1999.

[70] Exh. E, p. 31.
[71] Exh. E, p. 32.
[72] Exh. E, p. 35.
[73] Exh. E, p. 37.
[74] *Id.*
[75] Exh. E, pp. 40-43.
[76] Exh. F, p. 5.
[77] Exh. F, p. 6.
[78] Exh. F, p. 9.
[79] Exh. F, pp. 9-10.
[80] Exh. F, p. 28.
[81] Exh. F, p. 29.
[82] Exh. F, p. 30.

- She was approved for Social Security Disability in 2002; her only other source of income was her husband's Social Security Disability.[83]
- Her depression had been off and ongoing since 1992; she had attended therapy for the depression and she had been taking antidepressants since 1992.[84]
- The February and March injuries occurred in the exact same manner.[85] She continued to work at Holy Cross after the March 2001 injury but had a hard time doing so. She left her employment with the employer in April because her children signed her into Farmington (the mental health facility).[86] She stated she stayed in the hospital for three to four weeks because she was depressed and did not want to go home.[87]
- She thinks she probably had had panic attacks all her life, but she first became aware of it in 1992 when she had trouble with her ex-husband.[88] When the attacks occurred, she couldn't breathe, got dizzy, and shook.
- She was diagnosed with emphysema approximately a month before her deposition.[89] She had no permanent work restrictions until she hurt her back and was given a 25 pound lifting restriction; she thinks Dr. Nichols and Dr. Hagene gave her those restrictions after the injury in 1999.[90]

Justin Ray

79. Justin Ray, claimant's youngest son, testified at the trial and by a deposition taken on August 5, 2009.[91] His deposition includes the following testimony:
    - At the time of his deposition, Mr. Ray was 20 years old; he was 11 years old when his mother was allegedly injured at work in 2001.[92] He testified he was aware of the alleged injury and was usually with his mother when she was cleaning. He testified his mother used a heavy buffer on the floor; he believed the buffer weighed several hundred pounds.[93]
    - Mr. Ray testified he did not remember what day of the week February 24, 2001, or March 3, 2001, were on, nor did he remember those exact dates.
    - Mr. Ray testified that on March 3, 2001, he said he saw "the buffer and my mom hit the ground she screamed while she was – and dropped the buffer" and asked him to

[83] Exh. F, pp. 35-36.
[84] Exh. F, p. 37.
[85] Exh. F, pp. 41-42.
[86] Exh. F, p. 42.
[87] Exh. F, p. 43.
[88] Exh. F, p. 44.
[89] Exh. F, p. 44.
[90] Exh. F, pp. 45-46.
[91] Exh. G.
[92] Exh. G, p. 8.
[93] Exh. G, p. 11.

get Father Bob.[94] He indicated his mother was lifting the buffer by herself. He remembered watching her fall with the buffer and he remembered going to get Father Bob.[95] He said her back was on the steps against the rail and she was pinned by the buffer. She looked like she was in pain and she "had a look of agony on her face and heavy breathing."[96] They were in the parish hall and he went next door to Father Bob's house to get him.

- He said Father Bob was home and went with him to the parish hall and "got the buffer off her."[97] Mr. Ray testified that his mother was having trouble getting up and so Father Bob helped her up.
- His mother told Father Bob what had happened and requested treatment, specifically that she be sent to the doctor or to the emergency room. Mr. Ray testified Father Bob said he thought it was a pulled back muscle and did not respond to her request for medical treatment.[98] Mr. Ray said the encounter took at least twenty minutes and he was present the entire time. His mother was unable to finish her work and left early. She told him she had "real bad pain" down her leg, her back, and "couldn't hardly sleep or anything."[99] He said at the time she told Fr. Bob "her back had – was really hurt and that the pain went into her hip or legs" and he said it was a pulled muscle.[100]
- Mr. Ray testified that he and his mother went home and he had to help her walk because her back hurt. His mother still had pain and had trouble sleeping. She had back pain if she stood too long and he observed her taking pain medication.
- He did not think his mother had been able to work since the accident. Prior to March 3, 2001, his mother's back did not prevent her from working.[101]
- On cross-examination, Mr. Ray acknowledged he had no independent memory of the when the March 2001 incident occurred

80. Mr. Ray also testified in person at the trial. At the time of the hearing, he was 22 years old. In 2000 and 2001 he lived with his mother in Cuba. She worked for the Catholic Church in Cuba and was the cook, lunch lady, and janitor. He attended school at Holy Cross Catholic School from third to fifth grade; in 2001, he was in the fifth grade.

81. As to the alleged February 24, 2001 injury, Mr. Ray's testimony at the hearing included the following:

[94] Esh. G, pp. 11-12.
[95] Exh. G, p. 12.
[96] Exh. G, p. 13.
[97] Exh. G, p. 15.
[98] Exh. G, p. 17.
[99] Exh. G, p. 19.
[100] Exh. G, p. 20.
[101] Exh. G, p. 29.

- February 24, 2001, was on a Saturday and he was at work with his mother. He did not see the accident but he heard his mother yell. He found her on the stairs to the boiler room and he saw the buffer on top of her.
- After his mother screamed, a man came down to the stairwell. At the time, he did not know the man's name; his stepfather later told him the man's name was Mr. Lee. Mr. Lee told him that he was present at the time of the alleged accident.
- Claimant was crying and having back and leg pain; she told him to get Father Duesdieker. Mr. Ray testified Mr. Lee helped him get the buffer off claimant, and then Mr. Lee stayed with claimant while he went to get Father Duesdieker.
- His mother told Father Duesdieker what had happened. Father Duesdieker told claimant she could go to a chiropractor. Claimant indicated she wanted medical treatment instead. Father Duesdieker then told claimant she could do what she wanted.
- Father Duesdieker left. Since claimant was unable to stand on her own, Mr. Lee helped his get his mother to the car. Although Mr. Ray was only 11 years old, he drove his mother the short distance home.
- Once they got home, claimant took pain medication and laid down. Mr. Ray said his mother had back pain the next day but did feel better. She returned to work on Monday and worked a full day.
- Mr. Ray testified that over the weekend of February 24, 2001, he had to take care of his mother because of her back pain. Claimant was taking medication and moving normally but slowly. She was doing all her assigned tasks.

82. As to the alleged March 3, 2001 injury, Mr. Ray's hearing testimony included the following:
    - He was with his mother on March 3, 2001, when she tried to pick up the buffer and carry it up the stairs. She bent and twisted to pick it up, but it fell on top of her. He testified that he could not lift the buffer, and his mother was crying.
    - He went to get Father Duesdieker, who returned with him. He testified that Father Duesdieker was angry with claimant, and told her she shouldn't be picking up the buffer on her own.
    - He said his mother requested medical treatment and Father Duesdieker told her to do whatever she wanted. He also cussed at her.
    - He and Father Duesdieker lifted the buffer and put it in the boiler room.
    - The employee laid there for a while, quit working that day, and was in pain and crying. He helped her to the car and drove her home.
    - Mr. Ray testified that his mother's symptoms have been the same since the March 3 injury.
    - He did not hear Father Duesdieker offer treatment or tell claimant he would report the injury.

- According to Mr. Ray, claimant continued to complain of leg and back pain after March 3, 2001, and his family had to help care for her. He testified that claimant continued to work from March 5, 2001 through April 9, 2001.
- Mr. Ray testified he heard Father Duesdieker swear whenever he was angry. He said the Father swore at him once when he forgot his money while on a church ski trip. Mr. Ray said that if he didn't obey Father Duesdieker, he would get angry and there would be consequence, like being sent to the isolation table. He indicated that this would be true of all the volunteers who supervised the children.
- Mr. Ray was aware Father Duesdieker had been given a key to their trailer because he was having shelves installed for the employee.
- He said that prior to March 3, 2001, his mother did not have trouble sleeping like she did after the alleged injury. He knew his mother was afraid of her ex-husband and that she took sleeping pills to help her sleep.
- He testified that after March 3, 2001, he saw his mother having trouble getting breakfast ready at the church/school. She also had trouble serving lunch. He said volunteers from the church, Mary Bartle, James Gray, Michael Rose, and Robert Sexton and his wife, would help. He testified Mary Bartle had since died and he thought Mike Rose might be dead as well. He didn't know about James Gray.

83. Mr. Ray testified that after his mother was committed to the state hospital [in April 2001], he lived with his sister. He last saw Father Duesdieker when claimant was hospitalized. After claimant's hospitalization, Mr. Ray no longer attended school at Holy Cross Catholic School. He did continue to go to church there.

84. Mr. Ray's name was changed to Justin Ray when he was adopted by his brother.

85. With regard to claimant's involuntary hospitalization, Mr. Ray testified that he called his older brother and sister to pick him up because their mother was taking drugs and drinking. He didn't see her drinking but saw her take pills and was present when the police officer came to the house to take her to the state hospital.

Testimony of Joseph Brown

86. Joseph Brown testified at the hearing. He is one of claimant's sons, and he was 21 years old at the time of the alleged work accidents. In 2001, he was a member of the church and he volunteered in the school cafeteria. Mr. Brown testified he observed his mother performing her duties as cook and janitor. In his opinion, she had no problems doing her job before the February and March 2001 alleged injuries, except when she needed help lifting the buffer.

87. Mr. Brown stated that after the February 24, 2001 incident, his mother complained of low back and left leg pain. He recalled that her symptoms resolved by the next week, although she did work and move more slowly.

88. Mr. Brown testified that when he was present in the parish hall after March 3, 2001, he observed his mother having trouble working. He testified that he heard Father Duesdieker and his mother talking on two or three occasions about the accident and about how his mother wanted and needed treatment. In the first conversation, he claims he heard his mother tell Father Duesdieker she did not want to see a chiropractor and that she had severe low back pain and shooting left leg pain. Mr. Brown said Father Duesdieker told her he was not dealing with it and walked away. Mr. Brown testified that two weeks later, he was approximately twenty to thirty feet away and heard his mother request treatment for her injuries from the March 3 accident. According to Mr. Brown, Father Duesdieker told her to go to the chiropractor. Mr. Brown testified that in the third conversation he heard, his mother asked Father Duesdieker "what she should do." Mr. Brown did not, however, hear the response.

89. Mr. Brown acknowledged he did not get along with Father Duesdieker.

90. Mr. Brown was aware his mother had a previous work injury to her back that was reported and for which treatment was provided.

91. Mr. Brown and his sisters sought commitment/hospitalization of his mother because she was taking too much medication, allegedly as a result of back pain. However, he acknowledged that his mother\had been taking Xanax for some time before March 3, 2001, and that she continued to take it after the involuntary commitment. Mr. Brown was aware his mother was diagnosed with alcoholism in 2001, and he had seen her drinking before March 3, 2001. He claimed his mother drank because of the back pain and because she was depressed (apparently because of losing time from work and due to domestic abuse). Mr. Brown testified that his mother's then-husband had previously fractured her arm, leg, nose, and beat her frequently, resulting in her being hospitalized.

Testimony at Trial of Father Robert Duesdieker

92. Father Robert Duesdieker testified at the hearing on December 5, 2012, and on January 24, 2013.

93. Father Duesdieker resides in Boonville, Missouri, and since 2002 he has been assigned to St. Peter and Paul Catholic Church in Boonville, Missouri; he is also responsible for St. Joseph Catholic Church. He is a Catholic priest employed by the Diocese of Jefferson City, has been a priest for 32 years, and has been with the Diocese for 33.5 years, initially as a deacon. Father Duesdieker was at Holy Cross Catholic Church from August 15, 1996

to June 30, 2002. He testified that the diocese covers 38 counties in Mid-Missouri, and that it has approximately 100 different parishes or churches to which priests are assigned.

94. As a priest at Holy Cross Catholic Church and School, he was a spiritual counselor, hired and fired employees, and participated in parish activities.

95. He was claimant's supervisor on February 24 and March 3, 2001, and would have expected her to notify him of any injury. Claimant's duties included cleaning the hall and using the buffer. She worked 40 hours a week, although she might work a few hours; he had no recollection of her consistently working more than 40 hours a week.

96. With regard to the buffer in question, he testified that claimant had previously been told to ask for help in moving the buffer.

97. He testified that claimant did not come to the rectory on February 24, 2001, and report she had just injured her lower back trying to pull the buffer up the stairs, nor did her son come to the rectory that day telling him the employee had been injured moving the buffer.

98. Father Duesdieker testified that on March 3, 2001, claimant did not ask him to help her move the buffer, nor did she or her son come to the rectory to tell him she had injured her back trying to move the buffer.

99. At times Father Duesdieker asked for volunteers to assist with maintenance activities. However, of the alleged volunteers - Robert and Elaine Sexton, James Gray, Michael Rose, Mary Bartle, and Joseph Brown - he only recalled Joseph Brown, who was claimant's son.

100. With regard to the Diocese's procedures for workers compensation claims, he testified that injuries were to be reported to him or to the school principle, who would notify him. Father Duesdieker would notify the Diocese of the incident and the Diocese would report it to the workers' compensation insurance carrier. It was his understanding treatment was usually authorized by the insurance carrier.

101. Father Duesdieker testified claimant did not ask him for treatment for back pain on February 24 or March 3, 2001. He also stated that during the remainder of time she worked for Holy Cross Catholic Church, she did not request treatment for low back pain. He testified she continued to perform her regular work duties, cooking and doing maintenance and cleaning. He said claimant did not ever ask for accommodations to do her job as the cook or the janitor. To his knowledge, she did not ever complain of back pain to the teachers or other staff, and to his recollection claimant did not miss any time from work during that period because of back pain. To his knowledge, she did not seek medical treatment for back pain during that period.

102. Father Duesdieker testified that claimant was hospitalized in April 2001 for reasons other than her employment with Holy Cross. He does not remember if she contacted him about her job after she was released from the hospital. After she left her employment, she never contacted him to request treatment for low back pain. He did not know whether she had had any problems performing her duties as a cook after March 3.

103. With regard to Justin Ray's hearing testimony, he testified that Justin Ray did *no*t come to the rectory on February 24, 2001, requesting his help because the buffer had fallen on claimant – nor did he do so on March 3, 2001. Father Duesdieker denied that he and Mr. Lee ever lifted a buffer off claimant, and he never told claimant she should see a chiropractor.

104. Father Duesdieker testified that on March 3, 2001, Justin Ray did not come to see him in the rectory and request his help lifting a buffer off claimant. He said Justin Ray's testimony that the two of them carried the buffer to the boiler room was not true. With regard to Justin Ray's testimony that he drove claimant home after a work injury, Father Duesdieker said he was not aware of Justin Ray was driving claimant's car.

105. Father Duesdieker stated that Joseph Brown's testimony - that he heard Father Duesdieker and claimant discussing whether she needed medical treatment – was not true. He said Mr. Brown's testimony that when Father Duesdieker was told by claimant she did not want to see a chiropractor, was still in pain, had severe low back pain, and shooting pain in her left leg, that he responded with the comment that he was not dealing with it and that he walked away was not true. He also testified Mr. Brown's testimony he overheard the employee request medical treatment several weeks after the alleged accident and that Father Duesdieker told her to go to the chiropractor was not true.

106. He did not recall that claimant missed time from work because of depression before March 3, 2001.

Independent Medical Evaluation - Dr. Joel Jeffries

107. Dr. Joel Jeffries performed an evaluation of claimant by reviewing her medical records. He issued a report on September 25, 2006, and his deposition was later taken. Dr. Jeffries is an orthopedic surgeon; 99.99% of his work involves spine care.[102] Dr. Jeffries was asked to address causation. He testified that examining claimant would not have added much information; had he felt a physical examination was necessary, he would have said so in his report.[103]

[102] Exh. 1, p. 5.
[103] Exh. 1, p. 6.

108. Dr. Jeffries examined records back to 1991. Those records reflect a history of treatment for low back pain for several years prior to 2001, starting in 1997.[104] Based on his review of the records, claimant initially sought medical care on January 25, 1997, at Missouri Baptist Hospital for complaints of low back pain secondary to moving some furniture. Claimant appears to have seen the same provider on May 12, 1997, for back pain related to a work injury; she was seen again on May 19, 1997 with continued back pain. On May 22, 1998, she was found to be somewhat improved. Claimant underwent radiographs and the provider described some sort of lumbar deformity; claimant also underwent manipulation.

109. Dr. Jeffries noted that in April 1999, claimant saw Dr. Hagene with complaints of low back pain. Upon physical examination, claimant was found to have lower extremity spasms and some swelling. Claimant saw Dr. Hagene for several more visits, including one on May 5, 1999 when she hurt her back "cleaning the hall."[105] Claimant continued to treat with Dr. Hagene throughout May and June 1999, and she saw Dr. Nichols at Mercy Medical Group on May 17, 1999. On or about June 11, 1999, Dr. Hagene opined that claimant was at maximum medical improvement. Claimant returned to Dr. Hagene on March 9, 2000, with a back injury from lifting tables. The diagnosis was lumbar sprain and strain; claimant underwent manipulation. On or about January 2, 2002, claimant presented to Missouri Baptist Hospital with complaints of chest pain, but she also had some complaints of intermittent lower extremity cramping. Claimant treated on August 30, 2002 with complaints of back pain. She again treated for low back pain on September 27, 2007; during that visit, she reported a history of a low back injury in 1997 and then a second injury in February 2001. It is Dr. Jeffries' belief that this is the first mention of a 2001 back injury.[106]

110. Dr. Jeffries noted that the records reflect that an unknown provider had radiographs done on claimant on May 22, 1997; the provider found that the radiographs reflected some lumbar deformity. The next lumbar radiographs or x-rays were from September 30, 2002. Those tests indicated claimant had a "mild scoliosis" as well as degenerative disease or degenerative changes at the L1-L2 and L2-3 levels. A report from a lumbar MRI performed on October 23, 2002 indicates claimant has mild disc degeneration with "very mild anterior extradural defects at multiple levels," which Dr. Jeffries states indicates is mild disk bulging at those levels.[107] The report from a March 23, 2005 lumbar MRI reflects a diffuse disc bulge at the L2-3 level, a small disc protrusion or bulge with an annular tear at the L3-4 level with extension of this tear into the left foramen, as well as a "moderate" sized disc protrusion to the left at L4-5. Dr. Jeffries believes this would be a progression of claimant's previously known disc bulging from her degenerative disease. Claimant had another MRI on October 6, 2005. Dr. Jeffries testified that the report from

[104] Exh. 1, p. 7.
[105] Exh. 1, pp 9-10.
[106] Exh. 1, p. 13.
[107] Exh. 1, p. 15.

that study identifies a left lateral protrusion at the L4-5 level, which is consistent with what had been seen earlier, but with the comment that this abnormality "indents the L5 nerve root," which was a somewhat more significant abnormality or change than what had been noted previously. Also noted was a posterior protrusion at the L1-2 level and a diffuse disc bulging at L2-3, L3-4, and L4-5.

111. Dr. Jeffries opined that claimant suffers from diffuse lumbar degenerative disc disease with mechanical back pain (i.e. back pain that results from activity.)[108] Dr. Jeffries noted that claimant sought treatment at an emergency room on August 18, 2003 with complaints of back pain radiating to the left lower extremity and numbness in the left foot secondary to lifting a fax machine.[109]

112. Dr. Jeffries opined that claimant's work-related injuries of February or March 2001 were not a substantial causative factor in her medical condition.[110] Dr. Jeffries noted that before February and March 2001, claimant had had multiple previous health care encounters for complaints of low back pain; that claimant did not seek medical treatment for at least one and one-half years after those injuries; that the MRI scan performed most recently after the injury did not demonstrate anything that he would identify as an acute change; and that the claimant continued along a clinical course consistent with the natural history of lumbar degenerative disease.[111] Moreover, Dr. Jeffries does not believe that either the February or March 21001 incidents were a triggering or precipitating event in claimant's long-term back pain and degenerative disease.[112]

Independent Medical Evaluation - Dr. Robert Poetz

113. At the request of her attorney, claimant saw Dr. Robert Poetz on July 30, 2007, to evaluate injuries allegedly sustained on February 24 and March 3, 2001. Dr. Poetz is a family physician. His deposition was taken on June 9, 2008; both his report and his deposition were admitted into evidence.

114. Dr. Poetz opined that the initial injury on February 24, 2011, resulted in a lumbar strain and exacerbation or aggravation of her degenerative disc disease and spondylosis.[113] According to Dr. Poetz, the second injury caused lumbar disc protrusions at L3-4 and L4-5 based on the clinical symptoms and x-rays.[114] Dr. Poetz felt the February 2001 injury was the substantial factor in the cause of the lumbar strain and exacerbation of degenerative

[108] Exh. 1, pp. 17-18.
[109] Exh. 1, pp. 18-19.
[110] Exh. 1, p. 19.
[111] Exh. 1, p. 21.
[112] Exh. 1, p. 22; objection in deposition overruled.

[113] Exh. B, p. 17.
[114] Exh. B, p. 18.

disc disease and spondylosis and the March injury was a substantial factor in causing the lumbar disc protrusions at L3-4 and L4-5 with exacerbation of degenerative disease and spondylosis.[115]

115. With regard to the February 2001 injury, Dr. Poetz opined claimant had a 15% permanent partial disability (PPD) of the body as a whole (BAW) at the lumbar spine; he also opined that she has a 25% disability of the BAW at the lumbar spine for the March injury. It was his opinion the injuries were substantial factors in causing the employee's permanent partial disability.[116] In arriving at these conclusions, Dr. Poetz relied on a March 23, 2005, lumbar MRI that he said revealed disc protrusions at L3-4 and L4-5 according to the radiologist who read the MRI study.[117] He said the report indicated "conceivably intermittent impingement upon the left L-5 nerve root could be present in the lateral recess from the L4-5 disc protrusion."[118] Dr. Poetz noted the October 2005 MRI indicated left lateral protrusions at the L4-5 disc, some posterior protrusions of the L1-2 disc, diffuse posterior bulging at L2-3, L3-4, and L5-S1, and facet arthropathy from L3-4 to L5-S1.[119]

116. According to Dr. Poetz, protrusion meant a disc herniation, that the disc had left its normal position and was coming into a place it did not belong.[120] He said the diffuse posterior bulges at L2-3, L3-4, and L5-S1 indicated long standing multi-level discogenic disease, which was the basis for his opinion the injuries aggravated or exacerbated a preexisting degenerative disease process.[121] He indicated the employee had a preexisting 5% permanent partial disability at the lumbar spine.[122]

117. As to other pre-existing disabilities, he opined that claimant had a pre-existing permanent partial disability of 25% of the right ankle as a result of a fracture in 1985 and 25% of the body as a whole for preexisting depression based on her history to him. According to Dr. Poetz, claimant's history of violence and spousal abuse was a factor in her depression and felt the preexisting disabilities exceeded the simple sum by 20% percent. It was his opinion claimant was unemployable in the open labor market because of the two work injuries and her preexisting disabilities but would be unemployable based on the February and March 2001 injuries alone.[123] He also recommended a number of limitations and restrictions related to her low back.[124] Dr. Poetz indicated claimant's attempt at post-injury employment showed effort but also that she was unemployable for any sustained period of time.[125] He opined that claimant was permanently and totally disabled from employment in the open labor market as a result of the March 2001 injury.[126]

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[115] Exh. B, pp. 18-19.
[116] Exh. B, p. 20.
[117] Exh. B, pp. 20-21.
[118] Exh. B, p. 21.
[119] *Id.*
[120] Exh. B, p. 22.
[121] *Id.*
[122] Exh. B, p. 23.
[123] Exh. B., pp. 27-28.
[124] Exh. B, pp. 28-29.
[125] Exh. B, pp. 29-30.
[126] Exh. B, pp. 30-31.

118. He indicated she reached MMI at the point she was released by the treating doctor and would need further treatment because of the February and March injuries. It was his opinion the lumbar spine treatment reflected in the medical records after the February and March 2001 injuries was reasonable and necessary.

119. Dr. Poetz testified the employee was unable to work after the alleged March 1 incident despite the fact was aware she continued to work for the diocese until April when she was involuntarily committed to the Department of Mental Health.[127] In his opinion, she was permanently and totally disabled as a result of the March 1 incident alone because of the disc herniation.[128] He did not review the October 2002 MRI that indicated there were no disc herniations but said that would not change his opinion about causation and that he was relying in part on the diagnostic studies done four years after the alleged injury.[129] He said claimant told him she saw Dr. Nichols after the March 2001 incident and that he had reviewed Dr. Nichols records. However, when asked about the dates of those records he noted they were from 1997 not 2001.[130] He did not review any records of treatment for low back pain in 2001, but did have records of prior treatment for low back pain with Dr. Nichols and a chiropractor.[131] He reviewed the records of Dr. Chilton, a neurosurgeon, and Dr. Jeffries, an orthopedic spine surgeon - neither of whom indicated the employee's condition was work related.[132]

Independent Medical Evaluation - Dr. Matthew Gornet

120. Dr. Gornet saw the employee for an Independent Medical Evaluation on May 15, 2010. His deposition was taken on January 23, 2012. Dr. Gorney is an orthopedic surgeon whose practice is devoted to spine surgery.[133] Dr. Gornet saw claimant just once, on May 13, 2010; he reviewed a number of medical records and diagnostic studies in conjunction with the appointment.

121. Claimant's chief complaint was low back pain central to both buttocks, hips, and down both legs, left greater than right, to her feet; claimant attributed the pain to the March 2001 incident while working at Holy Cross School, which she bent over to pick up a buffer, developed increasing pain, and had not worked since.[134] Claimant reported a history of prior low back pain and injury after pushing some heavy furniture in 1999; the employer/insurer referred her to a chiropractor who treated her multiple times. [135] She said she stopped working three months after the March 2001 injury and was on disability. She reported constant pain that was worse with activity, bending, or lifting.

[127] Exh. B, p. 34.
[128] *Id.*
[129] Exh. B, pp. 34-35.
[130] Exh. B, p. 36.
[131] Exh. B, pp. 36-37.
[132] Exh. B, pp. 37-38.
[133] Exh. C, p. 5.
[134] Exh. C, pp. 13-14.
[135] Exh. C, p. 14.

122. On physical examination, she had pain in the low back, buttocks, both hips, and down the left leg. She was able to bend forward. Strength was five over five, deep tendon reflexes were one plus, and she had a decreased L-5 dermatome on the left.

123. Dr. Gornet reviewed MRI scans from October 23, 2001, May 29, 2009, and October 2006. He said the 2002 MRI revealed an annular tear at L4-5 with some mild changes and disc dehydration and degeneration.

124. It was Dr. Gorney's impression the employee had past issues and structural back pain but continued to work full duty without restrictions. He thought her current symptoms were causally related to her "alleged work related injury on March 3, 201" and that picking up the buffer was consistent with the type of injury that would cause the disc pathology noted in the 2002 MRI. He indicated her current symptoms were more consistent with a multi-level process and multi-level disc degeneration. He noted the 2009 MRI showed progression of her disc pathology particularly at L2-3 and L5-S1 compared to her 2005 films.

125. He believed the employee's increasing pain and symptoms, difficulty sleeping, and the need to rest during the day were consistent with the March 2001 accident because the disc became sensitized and nerve fibers had grown and pain was increased with mechanical activity.[136]

126. Considering claimant's asthma/smoking history and multi-level problems, Dr. Gornet did not think she would benefit from surgical intervention and placed her at MMI. He did not believe she was capable of gainful employment. He could not determine her time off work related to the work injury because "she clearly has crossed from being a patient with a structural problem related to her work injury to a patient with other health issues that would ultimately contribute to her inability to work."[137]

127. He indicated when conservative treatment failed surgical options were a possibility, but he did not think claimant was a surgical candidate in 2010 because of her medical conditions of asthma, smoking, and multiple problems and placed her at MMI.[138]

128. He indicated after the 1999 incident the employee had done fairly well working full duty at a heavy job and was not aware of any permanent restrictions from that incident.[139] He noted the 2009 MRI showed progression of the disc pathology at L5-S1 and L2-3 compared with the 2005 MRI.[140] He said degenerative changes at L4-5 were consistent with her injury and the changes at the adjacent levels were consistent with degenerative changes from her smoking and asthma.[141] Dr Gornet felt the March 2001 injury was more significant than the incident in February 2001.[142]

[136] Exh. C, pp. 30-31.
[137] Exh. C.
[138] Exh. C, p. 23.
[139] Exh. C, pp. 35-36.
[140] Exh. C, p. 43.
[141] Exh. C, p. 46.
[142] Exh. C, p. 45.

129. Dr. Gornet testified he reviewed multiple scans which indicated were listed in his IME report. His May 13, 2010 report indicated he reviewed a lumbar MRI from October 22, 2002, a scan from May 29, 2009, as well as an MRI scan from October 2006. He did not indicate he reviewed an MRI on March 23, 2005, performed at St. John's Regional Health Care Center. With regard to the 2002 MRI, he felt it showed a left-sided annular tear out in the foreman at L4-5, some mild changes in disc degeneration, and disc dehydration.[143] He also felt there was a lateral disc herniation on image 21 of axis T1 sequence as well as image 3 and 4 of the sagital sequence.[144] He indicated a disc herniation was also evidenced on the T1 sequence.[145]

130. According to Dr. Gornet, "a herniated disc is when the annular tears and a piece of disc material comes out, and when the disc material comes out we see the difference in the quality of the grayness or darkness because disc material looks different than the surrounding structures," that with an annular tear "what we see as one type of signal change or picture change or grayness and disc material flowing through the tear as another sort of darkness or signal change, and we can look together and make an assessment of the picture of the significance of the finding."[146]

131. The doctor indicated that the herniation and tear were basically a structural injury to the disc and disc mechanism.[147] He testified "I basically found the herniation and the tear as a structural injury to the disc and disk mechanism. It was out in the foreman, so it's essentially adjacent to the nerve. But it's important to note that you don't have to have significant nerve pressure to have symptoms. And so where the injury of the disc was, was consistent with her symptoms."[148] He found this consistent with her symptoms and her history, the positive dermatome findings, and her history of left leg pain.[149]

132. The doctor believed the lifting incident with the buffer was the cause of and the substantial factor in causing the disc herniation.[150] He thought "the fact that the MRI scan appears to be the closest thing we have to measure, so I won't say that it is right on top of her alleged injury because it's over at least—it seems to be about a year afterwards. With that being said, the brightness of it doesn't appear to be an older degenerative type. The location of it is consistent with her symptoms and the fact that she had – this is the type of injury that can be significantly disabling, so the fact that chronologically her symptoms became significantly worse to the point that she could not work whereas previously with a work related back injury two years earlier she was able to recover and do ok with that. All that is consistent with this being an acute injury at the time of her accident of 2001 in March."[151] When asked how he could ascertain the approximate age by brightness, Dr. Gornet testified, "well, what we can see here is there is a bright area at the disc at L4-5, and that

[143] Exh. C, p. 19.
[144] *Id.*
[145] *Id.* .
[146] Exh. C, p. 20.
[147] Exh. C, p. 21.
[148] *Id.*
[149] *Id.*
[150] Exh. C, pp. 21-22.
[151] Exh. C, p. 23.

L4-5 brightness is not something that is usually seen with a two-three year-old degeneration. So from my experience, that is more consistent with her 2001 lesion. I do want to point out that no MRI will date an injury and so we can't date it from this. No doctor can date anything from an MRI. That's just not possible but it is consistent with this and so in my opinion it is more probable than not that it occurred at the time of her March 2001 injury."[152] He did not feel the degenerative changes on her MRI were significant changes.[153]

133. He indicated the 2009 MRI showed more progression of the disc pathology since the one done in 2002 noting changes at L5-S1 compared to the 2005 MRI noting there were also some changes at L2-3.[154] His opinion regarding the employee's inability to be gainfully employed currently was based on her presentation when he saw her in May 2010.[155]

Vocational Report of Gary Weimholt

134. Mr. Weimholt saw the employee in November 2007; his deposition was taken on May 16, 2008.[156] He also reviewed a number of medical records. He did not perform vocational testing because she had been able to complete a GED and two years of college which he felt indicated at least basic types of academic abilities in reading and understanding.

135. Mr. Weimholt opined that claimant did not have transferrable job skills based on her work history and physical and mental limitations. It was his opinion she had a total loss of access to the open competitive labor market and was totally vocationally disabled from employment, that there was no reasonable expectation an employer in the normal course of business would hire the employee for any position or that she would be able to perform usual duties of any job she was qualified to perform. It was also his opinion, the combination of her low back work related injuries and psychological conditions resulted in her disability.

136. With regard to the exertional limitations or restrictions for her lower back injury, he considered those specified by Dr. Poetz, noting Dr. Jeffries did not address restrictions. It was his understanding her psychiatric issues were prior to 2001, and that she had a history of "difficulty." He indicated the barriers to employment from a psychiatric standpoint were fairly specific such as interacting appropriately in a social setting, adapting to changes in her environment, relating to patrons, co-workers, and supervisors, handling work pressures, and responding to changes in the work setting.

137. According to Mr. Weimholt, any job would have to be simple tasks and that even with simple tasks she would have moderate difficulty focusing on and remembering detailed instructions and would need minimal interaction with others because of the diagnosis of depression. He said these non-exertional restrictions could further restrict the jobs she could do because they limited the less physical jobs requiring the verbal ability to interact

[152] Exh. C, p. 24.
[153] Exh. C, p. 27.
[154] Exh. C, p. 43.
[155] Exh. C, pp. 43-44.
[156] Exh. D, p. 6.

with others or work with the public in the service industry. It was Mr. Weimholt's opinion claimant was not able to obtain or maintain competitive employment in the open labor market and was totally vocationally disabled. He noted she unsuccessfully tried some work after leaving Holy Cross but that she was unable to maintain it.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

The injuries in claimant's two cases are alleged to have occurred on or about February 21, 2001, and March 3, 2001. Therefore, the 2005 Amendments do not apply to the substantive law controlling the legal issues in this case. In *Thomas v. Hollister, Inc.*, the court held that "[a]ll the provisions of the workers' compensation law shall be liberally construed with a view to the public welfare.[157]

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.[158] Proof is made only by competent and substantial evidence and may not rest on speculation.[159]

Medical causation not within lay understanding or experience requires expert medical evidence.[160] When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.[161] Where the condition presents itself as a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, proof of causation is not within the realm of lay understanding.[162] Expert testimony is essential where the issue is whether a preexisting condition was aggravated by a subsequent injury.[163] In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.[164] Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.[165]

The fact finder is charged with passing on the credibility of all witnesses[166] and may disbelieve the testimony of a witness even if no contradictory impeaching testimony occurs.[167]

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[157] 17 S.W.3d 124, 126 (Mo.App.W.D. 1999).
[158] *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).
[159] *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).
[160] *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).
[161] *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).
[162] *Silman v. William Montgomery & Associates*, 891 S.W.2d 173 (Mo. App. E.D. 1995).
[163] *Modlin v. Sun Mark, Inc.*, 699 S.W.2d 5, 7 (Mo. App. 1985).
[164] *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).
[165] *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).
[166] *Id. at 199.*
[167] *Hutchinson v. Tristate Motor Co.*, 721 S.W.2d 158, 161-162 (Mo.App. 1986); *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658 (Mo.App. 1995).

Proof of "accident" is one of the essential elements that must be proven.[168] Section 287.020.2, RSMo., defines "accident" as follows:

> The word "accident" as used in this chapter shall unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

Section 287.020.3, RSMo, defines an "injury" to be one that "has arisen out of and in the course of employment." In addition, the "injury must be incidental to and not independent of the relation of the employer and employee. Ordinarily, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment."[169]

"Arising out of employment" means that a causal connection exists between the employee's duties and the injury for purposes of workers' compensation.[170] An injury is compensable only if it is clearly work-related, and an injury is clearly work-related only if work was a substantial factor in the cause of the injury and the resulting medical condition. However, an injury is not compensable if work was merely a triggering or precipitating factor.[171]

In these two cases, Injury Nos. 01-1657511 and 01-164519, claimant seeks benefits for injuries allegedly occurring about one week apart – on February 24, 2001, and on March 3, 2001. Claimant contents in both cases the exact same events occurred and that events were reported to her supervisor in the exact same way. Specifically, claimant testified at the hearing that on both days she went into the lower level of the school where she was employed and attempted to pull a heavy buffer machine up the stairs. On both occasions the buffer got caught in the stairs, she pulled on the buffer, trying to release it from the stairs, and in the process pulled her low back, felt pain in her low back, and the buffer fell, landing on top of her and pinning her to the ground.

Claimant further testified, as did her son Justin, that Justin was present on both occasions, saw his mother pinned to the floor by the buffer, and was told by his mother to go next door to Father Duesdieker's home to get him to help. Claimant testified that both times Father Duesdieker was home and immediately came with her son to the site of the accidents. She also testified that both times Father Duesdieker helped get the buffer off her.

At the hearing, claimant testified that after the February 2001 injury, Justin, drove her home even though he was only 11 years old. She testified that she was inactive for the remainder of the weekend, but that she was able to return to work on Monday without much pain or difficulty. She also testified at the trial that following the March 2001 incident, Justin again

[168] *Tangblade v. Lear Corp.*, 58 S.W.3d 662, 666 (Mo.App. 2011).
[169] Section 287.020.3, RSMo.
[170] *Cruzan v. City of Paris*, 922, S.W.2d 473 (Mo. App. E.D. 1996), overruled on other grounds by *Hampton*.
[171] Section 287.020.2, RSMo. 2000.

drove her home immediately. However, she testified that after the March 2001 event she did not have a good recovery and has remained in pain at some level since that time.

It must be noted that claimant offered no records showing that she sought treatment for the alleged incidents with the buffer immediately following the events – even though she testified that she did treat for her back immediately after the events. Instead the evidence shows that just days (on March 11, and March 15, 2001) after the alleged accident of March 3, 2001, claimant saw a doctor for other problems and did not mention a 2001 back issue. Likewise, medical records from April 10, 2001, reflect that claimant mentioned a low back injury from the 1990s, but did not mention a 2001 back injury. There is no mention of ongoing back symptoms or concerns in those April 2001 records. And those April 2001 records indicate claimant became combative during the admission process to the psychiatric hospital and had to be restrained.

Father Duesdieker, claimant's supervisor, was a credible and convincing witness. He testified that he was never retrieved from his home by Justin to go to the Parish Hall to find claimant pinned under a buffer. Father Duesdieker denies ever being asked to provide treatment to claimant for these alleged events. He denies being made aware of the alleged events involving claimant and the buffer in February or March 2001 until much later, when he received notice that claimant was seeking benefits for the alleged injuries through the workers' compensation system.

Claimant's depositions were received into evidence. In the January 2003 deposition, claimant testified regarding both the February 2001 and March 2001 incidents. **She did not, however, mention that Justin was involved in the reporting of either event to Father Duesdieker**. **Nor did claimant testify in this deposition that she was pinned underneath the buffer in either February or March 2001.** In fact, claimant testified that following the March 2001 event she threw the buffer down and walked over to Father Duesdieker's house to report the injury herself! Her deposition testimony was as follows:

> Q. Now, you've filed a claim indicating that you sustained an injury in March of 2001; is that correct?
>
> A: Yes.
>
> Q. And I believe the date is March 3, 2001; does that sound correct to you?
>
> A. Yes.
>
> Q. Can you tell me what happened on that date, how you were injured?
>
> A. I was trying to pull the buffer upstairs and I felt my back – my back felt like it popped and burned.
>
> Q. About what time was this?
>
> A. About ten o'clock in the morning.

*****

Q. Were you working alone?

A. Yes.

Q. And when this incident happened, what did you do when you felt this pop and burn in your back?

A. **I threw the buffer down the steps**. [Emphasis added.]

Q. And then what did you do?

A. **I went next door to tell Father Duesdieker what happened**. [Emphasis added.]

Q. Was he there? Did you tell him what happened?

A. Yes.[172]

And regarding the February 2001 incident, claimant testified in her deposition as follows:

Q. And that would be – before we started the deposition, your attorney indicated that you had a similar incident about a week before, at the end of February, 2001?

A. Yes.

Q. Tell me what happened that day.

A. February 24, 2001. It was a Saturday.

Q. What happened on that day?

A. I was pulling the buffer upstairs.

Q. What happened?

A. I felt my back move again.

Q. Describe what happened to your back on that day, February 24, 2001.

A. It felt like it popped, but it was like a burning sensation across the back.

*****

Q. What time did this incident occur on the 24th?

A. About ten o'clock.

[172] Exh. E, pp. 23-24.

Q. What did you do then?

A. I had my son help me finish pulling the buffer up.

Q. Did he observe the incident?

A. Yes.

Q. That's your son, Justin?

A. Yes.

Q. Did you finish working that day?

A. Yes.

Q. Did you report that incident to anyone?

A. Yes.

Q. To whom did you report that?

A. Father Duesdieker.

Claimant's deposition testimony, given less than two years after the alleged events, is contradictory to the testimony she gave at the hearing in December 2012 and January 2013. For examples, in her January 2003 deposition, claimant does not mention the buffer falling on her after the March 2001 event; instead, she threw the buffer down the stairs.

Claimant's son, Justin, also provided testimony that is not helpful. He testified at the hearing in 2012 that he was present both times when his mother had problems with the buffer on stairs – on February 24, 2001 and March 3, 2001. At the hearing, **Justin testified his mother was pinned under the buffer both time and that she told him to go Father Duesdieker**, which he says he did. At trial, he testified that Roger Lee was present during the February 2001 incident. He also testified that, at age 11 years, he immediately drove his mother home on both occasions after the buffer was removed. His mother, however, once testified that after one of the injuries she walked over to Father Duesdieker's house and reported the accident.

In Justin's deposition testimony, taken on August 5, 2009, he initially testified that his mother was headed down the steps with the buffer instead of going up the steps, although he later testified he was not sure which was she was going – up or down.[173] He testified that his mother was pinned to the floor by the buffer and that he went to get Father Duesdieker. He mentioned that after the March 3, 2001 incident, his mother stopped working for the day and she went home – but he does not mention that he drove her home. In his deposition, Justin did not mention that Roger Lee was present for either alleged injury.

[173] Exh. G, p. 12.

In both cases, the first question to be resolved is that of credibility and whom to believe. If the February and March 2001 events involving claimant and the buffer happened as claimant and her son, Justin, testified, then Father Duesdieker is lying. If Father Duesdieker is telling the truth, then claimant and her son, Justin, are lying.

Given the contradictions between claimant in her first deposition (January 2003) and in her hearing testimony, and given the contemporaneous medical records from March 2001 and April 2001 (which do not mention the 2001 back injuries or the back pain claimant testified she was having at that time), claimant's credibility is called into question.

And as previously noted, claimant has the burden of proving each element of her claim.[174] I find that in both cases, claimant has failed to meet that burden. In making this determination, I specifically find that the testimony of Father Duesdieker to be more credible than that of claimant or her sons, Justin and Joseph. Father Duesdieker's testimony was consistent and he testified in an open and credible manner.

Claimant's testimony, on the other hand, has changed from her having thrown the buffer down the stairs and walking over to Father Duesdieker's home to report the injury, to her being pinned under the buffer on the stairs and sending her son to report the injury. In addition, claimant had no contemporaneous medical evidence to corroborate her story. Although claimant alleges she was having back problems after the February and March 2001 events, she did not mention them or mention back pain when she saw a doctor on March 11 and March 15, 2001 – which was quite soon after the alleged event of March 3, 2001.

Likewise, there is no mention of the alleged 2001 back injuries in the April 10, 2001 records regarding claimant's involuntary admission to a mental health facility – in spite of claimant remembering to mention her work-related back injury from the 1990s, and in spite of the fact that she became combative during the admission process and had to be put in restraints. If claimant's back had been hurting during February and March 2001 as she claimed, it is a bit surprising that being combative and being placed in restraints did not cause her to feel sufficient discomfort to remind her to mention not just the 1990s back injury, but also the very recent 2001 injuries.

I find claimant failed to meet her burden of proof she injured her back in an accident arising out of and in the course and scope of her employment with the employer on February 24, 2001, or on March 3, 2001. I also find claimant has failed to meet her burden of proof that the employer was given timely notice of the alleged accidents and injuries.

Claimant presented no credible medical evidence to support her claimed back injury on February 24, 2001, and neither her testimony nor that of her son, Justin, is credible. On the other hand, I find that the testimony of Father Duesdieker is credible and convincing.

[174] Fisher v. Archdioceses of St. Louis, 793 S.W.2d 195, 198 (Mo.App. 1990).

Summary

Claimant presented no competent, substantial, or credible evidence of an accident or injury on February 24, 2001, or on March 3, 2001, arising out of and in the course and scope of her employment with the employer. She presented no credible evidence her employer had timely notice of either of the alleged accidents and injuries and the objective medical evidence does not support her allegations of a work-related injury on February 24, 2001, or March 3, 2001. Claimant has failed to meet her burden of proof and her claim for compensation fails.

Any pending objections not expressly addressed in this award are overruled.

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation

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

Injury No.: 01-167511

Employee: Sheri Hill-Wurtz

Employer: Diocese of Jefferson City/Holy Cross Catholic Church

Insurer: Continental Western Insurance Company

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

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 April 26, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Vicky Ruth, issued April 26, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 18th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Sheri Hill-Wurtz

Injury No. 01-167511

Dependents: N/A

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

Employer: Diocese of Jefferson City, Holy Cross Catholic Church

Additional Party: Second Injury Fund

Insurer: Continental Western Insurance

Hearing Dates: December 5, 2012,
January 22, 2013, and
January 24, 2013

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.

2. Was the injury or occupational disease compensable under Chapter 287? No.

3. Was there an accident or incident of occupational disease under the Law? No.

4. Date of accident or onset of occupational disease: alleged February 24, 2001 (01-167511) and March 3, 2001 (01-164519).

5. State location where accident occurred or occupational disease was allegedly contracted: Cuba, 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? No.

8. Did accident or occupational disease arise out of and in the course of the employment? No.

9. Was claim for compensation filed within time required by Law? Yes.

10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant alleges she was pulling or lifting a floor buffer up some stairs when the buffer fell on top of her.

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: alleged low back with radicular symptoms.

14. Nature and extent of any permanent disability: none.

15. Compensation paid to-date for temporary disability? None.

16. Value necessary medical aid paid to date by employer/insurer? None.

17. Value necessary medical aid not furnished by employer/insurer? N/A.

18. Employee's average weekly wages: $242.30.

19. Weekly compensation rate: $161.53/$161.53.

20. Method wages computation: by agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from Employer: none.

22. Second Injury Fund liability: N/A.

23. Future Requirements Awarded: none.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Sheri Hill-Wurtz

Injury No. 01-167511

Dependents: N/A

Employer: Diocese of Jefferson City, Holy Cross Catholic Church

Additional Party: Second Injury Fund

Insurer: Continental Western Insurance

Hearing Dates: December 5, 2012, January 22, 2013, and January 24, 2013

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

On December 5, 2012, January 22, 2013, and January 24, 2013, the claimant, the employer/insurer and the Second Injury Fund appeared for a final award hearing. The claimant, Sheri Hill-Wurtz, was represented by attorney Ronald D. Edelman; attorney Marshall Edelman was also present. The employer/insurer was represented by attorney Susan Turner. The Second Injury Fund was represented by attorney Cara Harris. This case was tried at the same time as Injury No. 01-164519; a separate award will be issued in that case. The claimant testified in person at the trial and through multiple depositions. Justin Ray and Father Robert Duesdieker testified by deposition and in person at the trial. Dr. Robert Poetz, Dr. Matthew Gornet, Gary Weimholt, and Dr. Joel Jeffries testified by deposition.

The administrative law judge set a deadline of February 21, 2013, for the filing of briefs. At claimant's request, the deadline was later extended to March 7, 2013. Claimant submitted her brief on March 5, 2013. The Second Injury Fund submitted its brief on March 6, 2013. The employer/insurer submitted its brief on March 7, 2013, and the record closed at that time.

STIPULATIONS

As to the alleged February 2001 injury (Injury No. 01-167511), the parties stipulated to the following:

On or about February 24, 2001, claimant was an employee of Holy Cross Catholic Church/The Diocese of Jefferson City (the employer).

1. The employer was operating subject to Missouri's workers' compensation law.
2. The employer's liability for workers' compensation was insured by Continental Western Insurance Company.
3. The Missouri Division of Workers' Compensation has jurisdiction and venue in Phelps County is proper.
4. A Claim for Compensation was filed within the time prescribed by law.

5. At the time of the alleged occupational disease or accident, claimant's average weekly wage was $242.30, yielding a weekly compensation rate of $161.53 for permanent total disability benefits, permanent partial disability benefits, and temporary total disability benefits.
6. No medical aid was provided.
7. No temporary disability benefits were paid.

As to the alleged March 2001 injury (Injury No. 01-164519), the parties stipulated to the following:

1. On or about March 3, 2001, claimant was an employee of Holy Cross Catholic Church/The Diocese of Jefferson City (the employer).
2. The employer was operating subject to Missouri's workers' compensation law.
3. The employer's liability for workers' compensation was insured by Continental Western Insurance Company.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Phelps County is proper.
5. A Claim for Compensation was filed within the time prescribed by law
6. At the time of the alleged occupational disease or accident, claimant's average weekly wage was $242.30, yielding a weekly compensation rate of $161.53 for permanent total disability benefits, permanent partial disability benefits, and temporary total disability benefits.
7. No medical aid was provided.
8. No temporary disability benefits were paid.
9. Claimant's date of maximum medical improvement was December 5, 2005.

ISSUES

At the hearing, the parties agreed that the issues to be resolved in Injury No. 01-167511 (the February 24, 2001 injury), are as follows:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability.
4. Notice.
5. Medical aid – reasonableness and necessity.
6. Second Injury Fund liability.

The parties also agreed that the issues to be resolved in Injury No. 01-164519 (the March 3, 2001 injury) are as follows:

1. Accident or occupational disease arising out of and in the course of employment.
2. Medical causation.
3. Nature and extent of permanent partial disability or permanent total disability.
4. Notice.
5. Medical aid – reasonableness and necessity.

6. Second Injury Fund liability.
7. Failure to provide medical treatment/unpaid medical bills in the amount of $34,396.68.
8. Future medical aid.
9. Unpaid temporary total disability benefits for the period of April 10, 2001 through December 5, 2005.

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence:

Exhibit A	Records of the Division of Workers' Compensation.
Exhibit B	Deposition of Robert Poetz, with Exhibits.
Exhibit C	Deposition of Matthew Gornet, with Exhibits.
Exhibit D	Deposition of Gary Weimholt with Exhibits.
Exhibit E	Deposition of Sheri Hill-Wurtz (1/08/03).
Exhibit F	Deposition of Sheri Hill-Wurtz (7/14/08).
Exhibit G	Deposition of Justin Ray (8/05/09).
Exhibit H	Deposition of Father Robert Duesdieker (8/05/04).
Exhibit I	Medical records from Mercy Clinic (Dr. Mason).
Exhibit J	Medical records from BJC Health Center.
Exhibit K	Medical records from Missouri Baptist Sullivan Hospital and from Missouri Baptist Sullivan Hospital and Physical Therapy.
Exhibit L	Medical records from Phelps County Regional Medical Center.
Exhibit M	Medical records from Missouri Baptist Medical Office.
Exhibit N	Medical records from Mid County Orthopedics.
Exhibit O	Medical records from North Kansas City Hospital.
Exhibit P	Medical records from Truman Medical Centers (Lakewood).
Exhibit Q	Medical records from Capital Region Medical Center.
Exhibit R	Medical records from St. John's Clinic–Rolla/Rolla Medical Group.
Exhibit S	Medical records from St. John's Regional Health Center.
Exhibit T	Medical records from The Headache and Pain Center.
Exhibit U	Medical records from Midwest Neurosurgery Associates (Dr. Chilton).
Exhibit V	Medical records from St. John's Clinic/Mercy Clinic–Rolla.
Exhibit W	Medical records from St. John's Mercy Clinic, SJC Rolla, MMG Imaging Services.
Exhibit X	Medical records from Patients First Health Care-Cuba (Dr. Lamble).
Exhibit Y	Medical records from Phelps County Regional Medical Center.
Exhibit Z	Medical records from Missouri Baptist Hospital -Sullivan.
Exhibit AA	Medical records from Cuba Chiropractic Center/Arthur Gross, D.C.
Exhibit BB	Medical records from Mercy Medical Group – Cuba (Dr. Nichols).
Exhibit CC	Medical records from Southeast Missouri Mental Health Center.
Exhibit DD	Billing records from Towne Pharmacy – Cuba.
Exhibit EE	Personnel file with letter and Certificate of Appreciation.
Exhibit FF	Billing records from Missouri Baptist Sullivan Hospital.
Exhibit GG	Billing records from St. John's Clinic.
Exhibit HH	Billing record from Patients First – Cuba.

Exhibit II	Billing record from Midwest Neurology Associates.
Exhibit JJ	Billing records from Phelps County Regional Medical Center.
Exhibit KK	Billing record from Truman Medical Center, Inc.
Exhibit LL	Billing record (apparently) from Mid County Orthopedic.
Exhibit MM	Billing records from K-Mart Pharmacy.
Exhibit NN	Billing record from The Headache and Pain Center.
Exhibit OO	Billing of St. John's Mercy Clinic, SJC Rolla.
Exhibit PP	Claimant's Request for Statements regarding Injury. No. 01-164519.
Exhibit QQ	Claimant's Request for Statements regarding Injury. No. 01-167511.
Exhibit RR	Wage information with letter from employer/insurer attorney.
Exhibit SS	Summary of medical bills.
Exhibit TT	Subpoena of Father Duesdieker.
Exhibit UU	Five photographs.
Exhibit VV	Various letters.
Exhibit WW	Letter dated 8/21/02 from Father Finder to Sister Ethel Marie.
Exhibit XX	Various letters.
Exhibit YY	Letter dated 9/13/04 from Mr. Edelman to Ms. Turner.
Exhibit ZZ	Order Regarding Motion in Limine, with attachment(s).
Exhibit AAA	Employee's Memorandum to Admit Statements of Employer's Deceased Agents Pursuant to Section 491.010, Missouri Dead Man Statute.
Exhibit BBB	Section 491.010, RSMo.

The following exhibits were admitted into the record without objection on behalf of the employer/insurer:[1]

Exhibit 1	Deposition of Dr. Joel Jeffries, with report.
Exhibit 2	Social Security Award.

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence. All depositions were admitted subject to any objections contained therein. Unless otherwise specifically noted below, those objections are overruled.

FINDINGS OF FACT

Based on the above exhibits, the stipulations, and the testimony presented at the hearing, I make the following findings:

BACKGROUND AND GENERAL INFORMATION

1. Claimant's date of birth is March 19, 1957. At the time of the alleged injuries in 2001, claimant was known as Sheri Hill-Wurtz. In the past, she has also been known as Sheri Ann Hill. Since her marriage in 2007 to Robert Sexton, she has been known as Sheri M.

[1] Although claimant initially objected to the admission of Exhibit 2, she subsequently withdrew her objection and the exhibit was admitted into evidence.

Sexton. In March 2012, Robert Sexton died in a car accident; claimant was also injured in that accident. She testified her injuries included a head injury, which resulted in memory problems, and injuries to her lower extremities. As a result of the March 2012 accident, she takes Percocet, Vicodin, Soma, Xanax and uses a pain patch.

2. Claimant was 43 years old at the time of the alleged work injuries in 2001. At the date of the hearing, she was 55 years old.

3. Claimant has a 9th grade education and a GED. She took a few courses at Central Missouri Community College. She has four adult children who are not dependents. She currently resides in Cuba, Missouri.

4. Claimant previously worked in the shipping department of Sullivan Precision, which made airplane parts. Her job required her to lift boxes weighing up to 20 pounds. She was laid off due to a work shutdown. Claimant experienced depression and anxiety during the time she worked there because of spousal abuse and she missed work about three times per month. She believes her depression and anxiety began when she became involved with Mike Wurtz, whom she married. They later divorced. She testified that after the divorce, he would still follow her and beat her on a regular basis.

5. Claimant was a seasonal employee at Cobblestone Resort for approximately five years, where she cleaned cabins and washed dishes. Her depression caused her to miss work several times a month. She was a janitor at Midland Bank for eight or nine months; she left because she didn't have a babysitter for her son. She worked at a couple of hotels cleaning rooms, and at Meramec Shoes, where she was a sole inspector.

PRE-EXISTING CONDITIONS & TREATMENT

6. In 1985, claimant had a right ankle fracture that bothered her but did not prevent her from doing her duties at her various jobs. She was able to work full-time, but at times she had symptoms from the ankle fracture.

7. Claimant had prior back injuries in 1997, 1999, and 2000. Claimant took Soma, which helped her back pain, and Xanax, which was for depression and panic attacks.

8. On January 25, 1997, claimant was seen in the emergency room of Missouri Baptist Hospital–Sullivan for low back pain radiating into her legs to the knee after moving furniture four days earlier. The physician's assessment was low back pain secondary to suspected degenerative disc disease.

9. Claimant was seen by Dr. Lewis Hagene, D.C., on May 12, 1997, for low back pain she had had for a while. She indicated she had hurt her back on the job while working at motel. She was diagnosed with thoracolumbar sprain/strain syndrome and treated with manipulation on May 12, May 15, and May 19, 1997. On May 22, she reported she felt better and a temporary left shoe lift was prescribed for her back problem. On May 28,

1997, she was feeling better, and on June 26, 1997, she reported she did well until a week earlier when her back began to hurt and her legs were giving her some problems.

10. Claimant returned to Dr. Hagene on April 28, 1999, when she reported constant bilateral low back pain and stiffness after she tried to catch a table at work. She was seen on April 29, April 30, May 10, May 17, May 27, June 4, and June 11, 1999, when she was released at maximum medical improvement.

11. On March 9, 2000, claimant reported to Dr. Hagene's office that she was lifting some tables and injured her back, that she felt a pull when she lifted one of the tables.

12. On May 17, 1999, claimant saw Dr. Nichols at Mercy Medical Group-Cuba and reported a work-related back injury that occurred when she tried to catch a falling kindergarten table. She felt immediate pain across the sacral region and through the lumbosacral region, low back. Dr. Nichols noted that claimant demonstrated full range of motion. Claimant had pain in the lumbosacral spine with full extension, forebending, and back bending.[2] Claimant indicated she had been seeing a chiropractor without much improvement. The musculoskeletal exam revealed no spasms that the doctor could appreciate. He gave her samples of Daypro and instructed her to return if her symptoms continue or get worse.

13. On June 2, 1999, claimant saw Dr. Nichols and complained that she had been having back pain for six weeks.[3] Dr. Nichols recorded that "[i]nitially she says that she was no better, however, she then tells me that the pain is not constant. It comes and goes as before she says it was constant. So, it is improved. She complains of pain in the right sacroiliac region without any real radiation. This is also improved. She reports that she may go several days without pain, again improvement…."[4] The doctor diagnosed claimant with an improving low back strain, and gave her ibuprofen, 800 mg.

14. On March 6, 2000, claimant was seen at Mercy Clinic for a back injury, where it was noted she reinjured her back over the weekend. The record indicates claimant reported she had lifted a table and hurt her lower back a year ago; that she saw a chiropractor who thought it could be a herniated disk and who treated her for six weeks; but that the treatment made it even worse. She then saw Dr. Nichols and he gave her a muscle relaxant (Soma) which helped. A patient history form completed by claimant at this visit also noted a back injury a year ago when lifting a table, which (allegedly) resulted in a herniated disk.

[2] Exh. BB (5/17/99 note).
[3] Exh. BB.
[4] Exh. BB (6/02/99 note).

15. On July 12, 2000, claimant returned to Mercy Clinic. The handwritten notes are difficult to read, but it appears that claimant wanted to get off her medicine (Xanax).[5] The medical provider noted claimant was fearful, anxious, and very sad. There is a notation that claimant left her husband last week. The provider recorded that claimant should start taking Celexa, decrease the Xanax, and take Ambien for sleep.

16. On July 20, 2000, claimant returned to Mercy Clinic for a medicine check and reported that she had fallen on her tailbone five days earlier and was very sore.[6] In addition, she complained of back discomfort. Claimant requested muscle relaxers. The provider noted claimant sat stiffly in the chair and leaned on one hip at a time. On August 31, 2000, there was a notation of anxiety and depression. At the October 18, 2000 visit to Mercy Clinic, claimant noted that her back bothers her off and on.[7] On December 12, 2000, the record indicates claimant had stress over her ex-husband; anxiety and depression is noted, along with muscle spasms and pain. She complained of leg and knee pain. On December 12, 2000, claimant reported that she was under a lot of stress over problems with her ex-husband. Her legs hurt constantly, mostly in the thighs and on the side of the left knee[8].

17. On February 16, 2001, claimant was seen at the clinic for depression and anxiety. There was no mention of back or leg pain.

EMPLOYMENT - HOLY CROSS CATHOLIC SCHOOL

18. In 1996 or 1997 claimant began working for Holy Cross Catholic School as a full-time janitor and part-time cook. Her supervisor was Father Robert Duesdieker, the parish priest. She was a salaried employee.

19. Holy Cross Catholic School had approximately 56 students. As a janitor, she cleaned the school buildings. Initially, her role as a part-time cook involved cooking when the primary cook was off work. Claimant testified she worked 8 to 16 hours a day and sometimes on weekends, working as much as 60 hours per week. She indicated another woman was hired as a janitor, and she helped claimant with some tasks.

20. The Parish Hall could hold approximately 300 people and was used as a lunchroom. The Hall consisted of three classrooms, two bathrooms, the kitchen, and a stage. There were other classrooms in a separate building called the Mansion. That building was two stories and had a basement. Claimant cleaned all the classrooms, bathrooms, the kitchen, and the Hall. On weekends, she cleaned two additional churches in Steelville and Bourbon.

21. Claimant's workday started with her preparing breakfast at the school at about 6:30 a.m.; this task required her to lift a 20-to-25-pound crate of small milk containers onto a cart and

[5] Exh. I.
[6] *Id.*
[7] *Id.*
[8] *Id.*

set out cereal boxes, bowls, and small cartons of milk. Breakfast was ready by 7:00 a.m. and the children left the hall at 7:30 a.m. Claimant cleaned up and washed the dishes using a commercial dish washer. She then began cooking lunch, also using commercial equipment. She would move the food containers onto a cart and take them to the steam table. Volunteers sometimes helped her but she was in charge of the kitchen. After lunch at approximately 12:30 p.m., she would clean the tables, do the dishes, wipe down the tables and chairs, and sweep and mop the floor. It took two and one-half hours to clean up after lunch. Claimant buffed the floors most weekends or after they were waxed. She would finish work about 2:30 p.m. and would take the kitchen towels home to wash.

22. Claimant's job involved twisting, bending, lifting, walking, and standing. Before 2001, she could complete all her job duties. She worked on Saturdays cleaning the floor of the Parish Hall, which she would sweep, mop, and buff. The buffer was the heaviest thing she had to lift at the parish and she estimated it weighed between 75 and 100 pounds. She did have trouble lifting it.

23. Claimant had to move tables that weighed approximately ten pounds and she had no trouble with this task prior to the alleged injuries. If the buffer was not in the hall, she would get it from the boiler room which involved lifting it manually. She also carried food to be stored in the boiler room. She estimated the heaviest amount she carried was cartons containing cans weighing five pounds each with six cans to a box.

24. Claimant testified that because of the injuries she allegedly sustained at Holy Cross Catholic School, she could not do any of her prior jobs because of back and leg pain affected her sleeping. She indicated that all her prior jobs had required her to be on her feet and that she was no longer able to do that because of the pain. She testified she has to rest during the day, which would affect her ability to do any of her prior jobs.

FEBRUARY 24, 2001 ACCIDENT (ALLEGED) - INJURY NO. 01-167511

25. Claimant testified that the first accident occurred on February 24, 2001, a Saturday. Her trial testimony includes the following details:
    - On that date, she arrived at work at approximately 9:00 a.m. to do the cleaning and buffing in the Parish Hall. Only her 11-year-old son, Justin, was present.
    - She was trying to pull the buffer up the stairs by its handle when it got caught on the step. She attempted to pull it up and her back popped and her leg went numb. The buffer fell on top of her and she had back and leg pain into the bottom of her left foot and screamed because her legs were trapped by the buffer.[9]
    - She recalled a man showing up and helping Justin lift the buffer. She asked Justin to get Father Duesdieker, which he did. She later learned that the man was Roger Lee; she had never seen Mr. Lee before the day of the alleged injury.

[9] It should be noted that in one of her depositions, claimant does not claim the buffer fell on her and trapped her.

- She requested treatment. Father Duesdieker wanted her to see a chiropractor, which she refused to do. Father Duesdieker then told her to "take care of it." Father Duesdieker did not report the injury.
- Father Duesdieker put the buffer in the boiler room; claimant laid on the step for 15 to 20 minutes after the buffer was removed. Her back pain was ten plus on a ten-point scale.
- Mr. Lee helped her to the car and her eleven year old son, Justin, drove her home.

MARCH 3, 2001 ACCIDENT (ALLEGED) - INJURY NO. 01-164519

26. Claimant testified at trial that the second accident occurred on March 3, 2001. Her trial testimony includes the following details:
    - On March 3, 2001, she was working alone, although her son Justin was with her. At approximately 9:00 a.m., the buffer fell on her, trapping her on the steps again. She was trying to get the buffer off and her back popped and burned and she again had pain all over her back and down her left leg to her foot. The pain was worse than before.
    - She laid on the step for a while but the pain did not improve, so Justin went to get Father Duesdieker. Father Duesdieker asked what had happened and was angry she had tried to lift the buffer alone.
    - Father Duesdieker and Justin moved the buffer; she then laid there for 30 minutes.[10] Father Duesdieker did not offer treatment or to file a report of injury.
    - He helped her to her car and Justin again drove her home.

MEDICAL TREATMENT

2001

27. On March 11, 2001, claimant was seen at the emergency room of Missouri Baptist Hospital (BJC Health System) for chest pain.[11] She was diagnosed with chest pain and anxiety. **There was no report of low back pain or injury**; this was just eight days after the (alleged) March 3, 2001 work accident.

28. On March 15, 2001, claimant was seen at Mercy Clinic for a check-up, medication refill, and to discuss a massive panic attack she had on Sunday.[12] Dr. Mason noted the employee went to the hospital on Sunday for chest pain; while in church, she had become dizzy and her whole body became numb. Claimant indicated she was anxious over her ex-husband.

[10] It should be noted that in one of her depositions, claimant testified that on March 3, 2001, she pulled on the buffer, it got stuck on the stairs, her back popped and hurt, and then she threw the buffer down the stairs.
[11] Exh. K.
[12] Exh. I.

Objective findings were normal cadence of speech and chest wall tenderness to palpation and at the sternum. Dr. Mason's diagnosis was anxiety, panic attack with hyperventilation, and chest wall pain. **There is no mention of back or leg pain or an injury on March 3, 2001.**

29. On April 10, 2001, claimant was involuntarily committed to Southeast Missouri Mental Health Center.[13] The Screening/Admission Notes form and the Social Service Assessment indicate claimant was admitted because her children feared she was going to shoot and kill her ex-husband, hurt her 12-year-old son, and kill herself. There is also a reference to abusing Xanax. Claimant's children were ages 27, 25, 20, and 12 years of age. The form indicates claimant's children believe she is involved with drugs. Claimant was taken into protective custody after the reports of suicidal and homicidal ideations. She became combative and was placed in restraints at the police station. Claimant expressed that she believed people were plotting against her. In addition, she was experiencing auditory and visual hallucinations. She felt her ex-husband was going to plant drugs in her house so she would have to go back to prison.

30. Claimant reported to the Southeast Missouri Mental Health Center staff that she was prescribed Xanax approximately seven years ago and Valium approximately five years ago; she was recently prescribed Vistaril.. She denied abusing these medications or abusing alcohol. Claimant's children, however, reported that claimant has a 20-year history of abusing alcohol. One daughter reported that claimant drinks to intoxication three or four times per week. The daughter reported that claimant had made threats towards her ex-husband, as well as against a man who reportedly raped her four months ago, that her mother has threatened to poison her 12-year-old son; and that years ago, she stabbed a man in the back with a steak knife. Claimant's daughter feels that claimant's behavior has exacerbated in the last seven months, which she feels is related to claimant separating from her ex-husband. Claimant's children also reported an eight-year history of abusing prescription medication. Claimant has been observed by her 12-year-old son taking handfuls of pills and passing out. Claimant admitted to a history of using marijuana and cocaine. Claimant's personal history included being married and divorced four times. Her relationship with her last husband was physically abusive.

31. On physical examination at the Mental Health Center, the April 10th review of symptoms noted back pain four years earlier after a work injury. There is also a notation of a history of degenerative disc disease. The report indicates claimant's muscle strength and reflexes were normal and the physician noted the examination was normal. A separate psychiatric evaluation noted there were no focal neurological defects or gross physical abnormalities. **There was no mention of a February or March 2001 back injury**. Moreover, the nursing assessment indicated there had been no recent trauma.

[13] Exh. CC.

32. On April 19, 2001, claimant was discharged from the Southeast Missouri Mental Health Center. The records indicate claimant tolerated the decreasing dose of Phenobarbital and had good results. Claimant agreed to go to Salem Treatment Center for the 30-day inpatient alcohol and drug treatment program.

2002

33. A January 2, 2002 record from Missouri Baptist Hospital-Sullivan indicates claimant was seen for chest pain, anxiety, and leg pain that started six months ago.[14] **There was no report of back pain or back injury.**

34. On August 30, 2002 - well over one year after the alleged work injuries - claimant visited BJC Health Center for treatment of back pain and because she could not sleep.[15] The records indicate **she had had episodes of back pain for years and that this problem had worsened the last few weeks**. Although these hand-written notes are difficult to read, there does not appear to be any mention of a work-related accident in 2001.

35. On September 4, 2002, claimant was seen in the Phelps County Regional Medical Center emergency room for back pain.[16] It was noted she had had back pain since a 1997 work-related back injury. It was also noted she reported she seldom used alcohol, but there was a strong ETOH odor to her breath, her speech was slurred, and she swayed with standing.[17] There was no reference to a 2001 back injury.

36. On September 27, 2002, claimant was seen at BJC Health Center (Dr. Guillermno Ludi or Dr. Musa Modad) for low back pain.[18] **It was noted she had had a low back injury in 1997 with a second injury in February 2001.** She had pain radiating into both legs. There was no mention of a March 2001 incident. An X-ray taken September 30, 2002, indicated degenerative spondylosis at L1-2 and L2-3 with endplate osteophytes.[19]

37. On October 12, 2002, claimant was seen at Missouri Baptist Hospital-Sullivan with complaints of a left foot injury.[20] She reported that she had fallen from a stepladder.

38. An October 23, 2002 lumbar MRI from Missouri Baptist Hospital-Sullivan indicated mild degenerative changes, very mild anterior extradural defects at multiple levels, and no

[14] Exh. L.
[15] Exh. J.
[16] Exh. L, Bates pp. 60-68.
[17] Exh. L, Bates p. 61.
[18] Exh. J.
[19] *Id.*
[20] Exh. K.

definitive disc herniations or significant focal lateralization.[21] The summary was mild lumbar spondylosis.

39. On October 29, 2002, claimant was seen at BJC Health Center.[22] The records reflect her pain was better but she had fallen two to three weeks earlier and had fractured her foot in the fall. An MRI report was reviewed, which showed mild spondylosis. Physical therapy was ordered.

40. The November 8, 2002 notes from Sullivan Sports, Fitness, and Rehab Center indicate claimant reported **chronic low back pain since an injury in 1997 pulling a floor buffer.** Claimant reported that an MRI and x-rays "showed that her discs are okay."[23] She also reported her back went out "two weeks ago when she fell off a ladder fracturing her foot."[24]

41. On December 5, 2002, claimant was seen at BJC Health Center for back pain, medication refill, and physical therapy for (possible) ankle and back pain.[25]

2003

42. On May 7, 2003, claimant was seen at Missouri Baptist Medical Office for back pain.[26] Although the handwritten notes are difficult to read, there does not appear to be a reference to a work-related incident.

43. On June 19, 2003, claimant saw Dr. Daniel Shon at Mid County Orthopedics.[27] **Claimant complained of low back pain <u>since 1996, when she had injured her back pulling a buffer up the stairs</u> at the church where she worked.** Claimant reported that she saw a chiropractor and did somewhat better **until a reoccurrence in 2001**. She took Soma and Xanax three times a day and "complains today that her new PCP will not fill these medications."[28] She reported her pain was usually an eight but ranges from a three to a ten. The straight leg raising test was negative and the physical examination was normal except for reported tenderness. Dr. Shon's impression was chronic low back pain due to myofascial pain syndrome.

44. On August 11, 2003, claimant was seen at North Kansas City Hospital for right and left elbow pain that began about a week earlier after lifting a washer and dryer; it was noted a

[21] *Id.* .
[22] Exh. J.
[23] Exh. K.
[24] *Id.*
[25] Exh. J.
[26] Exh. M.
[27] Exh. N.
[28] *Id.*

tailgate had hit her.[29] There was no history of prior low back pain or injury in the ER records. It was noted claimant had requested Vicodin but was give non-steroidal anti-inflammatory drugs instead. Claimant later testified that this record was incorrect and that she had not lifted a washer and dryer.

45. Claimant was seen at Truman Medical Center a week later, on August 18, 2003.[30] She complained of back pain that has increased after dropping a fax machine one week ago. She dropped the machine, turned, twisted, and then had pain. The pain extended down her left leg with foot numbness at times. It was noted that **in 1997 she pulled a buffer up some stairs and her back popped, and that she had had ongoing back pain since**. **There was no history of a work-related back injury in 2001**. Physical examination was normal other than reported tenderness. Claimant was given Celebrex and Ultracet and referred to physical therapy.

46. On November 25, 2003, claimant was seen at Missouri Baptist Medical Office complaining of depression and requesting Xanax.[31]

2004

47. On February 9, 2004, claimant was seen for an evaluation by Dr. Osvaldo Acosta-Rodriguez.[32] The doctor noted that **claimant has had back pain since 1997 when she picked up a table** at a school where she was a janitor and cook. Claimant reported that she treated with a chiropractor and then her doctor ordered a steroid shot in her back. However, **she reinjured her back in February 2001 when she lifted a buffer**. The doctor's assessment was (1) no evidence or radiculopathy noted; (2) chronic scarring of the lumbosacral fascia identified; (3) no evidence today of a mechanical back pain; and (4) increased pain complaints and pain behavior.

48. On July 26, 2004, claimant was seen at Rolla Medical Group; the reason for the visit was Xanax withdrawal.[33] The physician's impression was anxiety/depression and questionable drug seeking.

49. On August 23, 2004, she was seen again at Rolla Medical Group for back pain and the side effects of medication prescribed at the stress center.[34] A lumbosacral strain was noted and physical therapy recommended.

2005

[29] Exh. O.
[30] Exh. P.
[31] Exh. M.
[32] Exh. Q.
[33] Exh. R.
[34] *Id.*

50. The March 18, 2005 physical therapy records from Phelps County Regional Medical Center indicate the employee was discharged from therapy for non-compliance after being a no show for her last four appointments.[35] The notes also indicate claimant had been making improvements in physical therapy and her home exercise program.

51. On March 23, 2005, a lumbar MRI was performed at St. John's Regional Health Center.[36] The report indicated the following: (1) left-sided disc protrusions at L3-4 and L4-5 without appreciable neural impingement; conceivably intermittent impingement upon the left L5 nerve root could be present in the lateral recess from the L4-5 disc protrusion; and (2) mild abnormal signal is present in the L1 vertebral body inferiorly, which could reflect recent trauma.

52. On April 1, 2005, she was seen at Rolla Medical Group for MRI results.[37] The diagnosis appears to be lumbosacral instability and herniated nucleus pulposus at L-5-S1, although the handwritten notes are difficult to read. On April 25, 2005, she requested something to support her back and a lumbar corset was prescribed. On June 22, 2005, she was seen for unrelated complaints and a herniated nucleus pulposus at L5-S1 was noted.

53. The July 25, 2005 record from Phelps County Regional Medical Center indicates claimant's chief complaint was back pain after a fall a week earlier.[38] She reported she was going to have back surgery in October. The ER physician noted claimant brought an MRI that was essentially normal. Lumbar spine x-rays indicated anterior osteophyte formation at several levels and the impression was degenerative changes of the lumbar spine.

54. On August 30, 2005, claimant was seen again at St. John's Health Center for back pain and was referred to a physician in Springfield. She was also given a prescription for Percocet.

55. On September 30, 2005, claimant returned to Rolla Medical Group with complaints of "back pain real bad…."[39]

56. On October 6, 2005, claimant was seen at the Headache and Pain Center.[40] Claimant reported low back pain that she described as burning, hot, sharp, and stabbing and was usually a nine out of ten. She rated her pain as severe and constant and indicated it interfered with most, but not all, daily activities and had been present for two years. She reported the injury was work related; that she had been unable to work at all since the injury; and that she had undergone a series of epidural injections that made the pain worse

[35] Exh. L.
[36] Exh. S.
[37] Exh. R.
[38] Exh. L.
[39] Exh. R.
[40] Exh, T.

[there are no records of lumbar injections]. On physical examination, she had tenderness at multiple levels and muscle spasm. Range of motion was restricted. Neurologically, muscle strength was intact and symmetrical, deep tendon reflexes were 2+, and straight leg raising was asymptomatic bilaterally.

57. Bilateral SI joint injections were done at the Headache and Pain Center, and claimant's diagnosis was bilateral SI joint dysfunction. It was noted she declined epidurals steroid injections. She saw a second physician the same day for an EMG and nerve conduction studies. The studies were normal and there were no findings of peripheral or entrapment neuropathy, myopathy, lumbosacral plexopathy, or lumbar radiculopathy. The doctor's diagnosis was bilateral unspecified idiopathic peripheral neuropathy and lumbosacral neuritis, radiculopathy unspecified.[41]

58. The Headache and Pain Center records contain the following additional notations:
    - An October 6, 2005 MRI reflected a posterior protrusion at L1-2, a diffuse posterior bulge at L2-3, L3-4, and L5-S1, and facet arthropathy from L3-4 to L5-S1.
    - On October 13, 2005, claimant reported no improvement and that her pain had gotten worse after the treatment. Physical findings were unchanged. The diagnosis was uncontrolled radiculopathy despite no documentation of reported radiculopathy or numbness and tingling and injections of the sacrococcygeal ligament were done.
    - On October 20, her pain had slightly improved. Decreased lumbar tenderness and improved range of motion were noted on physical examination. A second caudal injection was done.
    - At the October 27 visit, she now reported low back and left leg pain that was somewhat more severe. No physical examination is noted, a third caudal epidural was done, and the employee was discharged.
    - On November 30, 2005, she saw Dr. Goodman for intractable headache and neck pain. She also saw Dr. Judilla for follow up of lumbar radiculopathy and reported 70% improvement with epidural steroid injections. She was instructed to return as needed.
    - On December 5, 2005, she was seen for cervical radiculopathy and vascular headaches.

2006

59. On May 5, 2006, claimant saw Dr. Chilton at Midwest Neurology Associates for an evaluation of low back pain at the request of her family physician.[42] Claimant gave a **history of low back pain after she picked up a buffer at work in 1997**, **and that the symptoms improved until she picked up a buffer in 2001** and had a similar episode of back pain and new onset of left leg pain. She reported the low back pain radiated into the

[41] *Id.*
[42] Exh. U.

mid-thoracic spine and cramping pain in the left lateral thigh and calf associated with intermittent numbness and tingling. She also reported bilateral weakness. She was not able to identify any perceptible aggravating factor and "can't do anything" due to pain.[43] It was noted she had been disabled since 2002 due to back problems and was unable to work. Physical examination was normal with the exception of back and radiating leg pain with left straight leg raising, decreased response to pin prick at the L5-S1 nerve distribution, and absent ankle jerks Dr. Chilton reviewed the October 2005 lumbar MRI, which he noted revealed minimal L4-5 lateral disc bulging that did not cause significant nerve compression or foraminal stenosis. His impression was chronic low back pain secondary to mild lumbar spondylosis.

60. On June 19, 2006, claimant was seen at the Rolla Medical Group for medication refills and to follow up on her back.[44] The doctor noted there was a herniated nucleus pulposus at L4-5. The handwritten notes appear to indicate that he had previously noted the herniation at L5-S1.

61. On February 22, 2005, a Back Questionnaire form from Phelps County Regional Medical Center indicates that claimant has had back problem for five years since picking up a buffer at work, and that she injured her back again in 2001.[45] The February 25, 2005 records indicate claimant was making progress in physical therapy and the plan was to initiate "lumbar medx" next week.[46]

2007

62. On March 9, 2007, claimant was seen at Rolla Medical Group, for back pain.[47] She requested pain medication. She also requested a referral to an orthopedic physician in Springfield instead of Dr. Chilton, who she said would not take her back because she kept cancelling appointments.

63. Phelps County Regional Medical Center notes from March 18, 2005, indicate claimant did not show for her last four appointments and was being discharged from physical therapy for noncompliance.[48] Claimant had been making improvements.

64. On July 19, 2007, claimant was seen at Phelps County Regional Medical Center for the chief complaint of chronic low back pain.[49] She said the pain began the night before after

[43] *Id.*
[44] Exh. R.
[45] Exh. L, second set, Bates p. 25.
[46] Exh. L, second set, Bates p. 24.
[47] Exh. R.
[48] Exh. L, second set, Bates p. 21.
[49] Exh. L.

she picked her 155-pound husband up off the floor.[50] She reported a history of four bulging discs in her lower back and it was noted she was on disability because of her back. She also indicated she broke her right arm on May 15, 2007, and that the case was removed 2 weeks ago. Lumbar spine x-rays were read as "unremarkable lumbar spine films."[51] The clinical impression was acute myofascial strain of the lumbar region, along with a non-healed right wrist fracture. Claimant testified that the medical record is incorrect and that she never picked up her husband.

65. Claimant returned to the Phelps Country Regional Medical Center on July 25, 2007, for continued low back pain.[52] The clinical impression was chronic low back pain.

2008

66. On January 2, 2008, claimant was seen at Rolla Medical Group for a medication refill and the results of a CAT scan.[53] A herniated disc at L4-5 was noted.

67. On August 22, 2008, the Rolla Medical Clinic's notes reflect claimant wanted to talk about her back and requested long-term narcotics for back pain.[54] The handwritten notes are difficult to read, but it appears the doctor refused to provide the requested prescription. The diagnosis now indicated a herniated disc at L3-4.

68. On October 14, 2008, claimant returned to the Rolla Medical Clinic for a medicine refill and a referral for her low back problem.[55] She was given a referral to an orthopedic physician in St. Louis.

2009

69. On March 2, 2009, claimant was seen by Dr. Allen Northern at Mercy Clinic-Rolla (a/k/a St. John's Clinic, Inc.) for hypertension.[56] There was no report of back pain. On May 27, 2009, she was seen for low back pain that had a 15-year duration that was positional with bending or lifting with radiation down the legs. On physical examination, her gait was antalgic; she had no local tenderness of the lumbosacral spine but did a painful and reduced range of motion. Straight leg raising was positive at 40 degrees on the left, deep tendon reflexes, motor strength and sensation were normal, including heel and toe gait. The assessment was degenerative disc disk without herniated disc, herniated disc likely at L5-S1 and with radiculopathy.

[50] Exh. L, second set, Bates p. 13.
[51] Exh. L, second set, Bates p. 15.
[52] Exh. L, second set, Bates p. 19.
[53] Exh. R.
[54] *Id.*
[55] *Id.*
[56] Exh. V.

70. A lumbar MRI was done on May 29, 2009, at SJC Rolla MMG Imaging Services.[57] This study indicated mild disc extrusion on the left L4-L5, causing mild narrowing of the lateral recess and neural foramen without obvious neural impingement, mild disc changes were present at L5-S1, and mild spondylitis were present interiorly at L2-L3.

71. On August 5, 2009, claimant was seen at Mercy Clinic-Rolla for her chronic obstructive pulmonary disease.[58] On November 17, 2009, she was seen for hypertension, there was no complaint of low back pain.[59]

2010

72. On February 26, and August 9, 2010, she was seen at Mercy Clinic-Rolla for medical problems unrelated to the alleged work injuries.[60]

2011

73. On August 31, 2011, claimant was seen again at Mercy Clinic-Rolla for unrelated complaints; on physical exam it was noted her gait was normal.[61]

74. On December 19, 2011, claimant was seen by Dr. Peter Lamble at Patients First Healthcare for anxiety, headache, backache, menopausal state, and tobacco abuse.[62] Claimant reported she has had signs and symptoms of depression for 20 years, and that her status was worsening. Claimant has also been on Xanax for 20 years. Dr. Lamble indicated Dr. Dumore's attempt to wean claimant off Xanax in two or three months sounded "pretty harsh" and he was going to maintain her on her current medications. It was also noted claimant had been taken three Xanax a day for 20 years and that her current doctor reduced it to two times a day and she reported she could not drive or function with that amount. Which regard to her headaches, Dr. Lamble noted she used Fioricet very responsibly, which he refilled. As for back pain, he indicated it sounded like claimant was determined not to become dependent upon Vicodin and he refilled it in a limited quantity. It was noted she had had back pain for years and that she rated the pain at level of three (out of ten). The problem was stable but occurred persistently in the low back and radiated into the left and right thighs. She reported the symptoms were relieved by pain medication and drugs and that another doctor wanted to put a steel rod in her back but she didn't want back surgery. It was also noted there was no history of alcohol use. On physical examination, she had normal gait and a negative neurological examination.

[57] Exh. W.
[58] Exh. V.
[59] *Id.*
[60] Exh. V.
[61] *Id.*
[62] Exh. X.

CLAIMANT'S TESTIMONY

75. Claimant testified at the trial, and by deposition. She was deposed on January 8, 2003 (about two years after the dates of the alleged accidents) and on July 14, 2008 (over seven years after the alleged accidents). Claimant is a poor historian and provided various recollections of the same events.

76. At trial, claimant's testimony included the following points:
    - She has good and bad days but the pain and numbness never goes away. She stated that her prior lifting accidents had caused pain but not like the pain she experienced after March 2001. She testified that her leg and back would "give out," which she thinks was a result of the alleged accident. This would happen two to three times a week.
    - Before March 2001, claimant could sleep six to eight hours. Since the 2001 accidents, she has had trouble sleeping because of back and leg pain, which wakes her three times a night. She continued to have this problem at the time of the hearing.
    - She went to the emergency room in Sullivan, Missouri, on March 11, 2001, because she was concerned she was having a heart attack. She attributed this problem to the number of medications she was taking. When asked by her attorney if it was possible that she did not give a complete history at that time because of the chest pain, she indicated it was. She indicated she followed up with Dr. Mason. Claimant said she reported the accidents and the back and leg pain and numbness to Dr. Mason and was treated with Soma and pain pills. Claimant requested treatment from Father Duesdieker, and he responded by threatening to fire her and by cursing at her. She continued to have problems doing her work.
    - On April 9, 2001, claimant was committed to the Southeast Missouri Mental Health Center. Claimant testified that she still had some complaints at this time and was taking a lot of medications. She indicated the medication made her tired and forgetful. Claimant has no recollection of being admitted to the Southeast Missouri Mental Health Center at Farmington. Claimant apparently told the Center about her back injury from the 1990s, but not about her 2001 back injuries. She testified she did not give a complete history of her work accidents upon admission because of being on so much pain medication.
    - On November 2001, claimant went to work for Dana Brake even though she still had all the same back symptoms. She thought she worked there ten weeks. She worked in the paint line, hanging parts on a rack; the parts weighed up to ten pounds. She had problems bending, stooping, lifting, and twisting and she needed help from her co-workers. She missed two to three days a week from work as a result of her pain. She quit in February 2002 because she was going to be fired.

- Next, claimant tried cleaning houses, but she could not do the work because of her back pain and her left leg "going out."
- Claimant testified that after March 3, 2001, she sought her own treatment for the low back pain. At the hearing, she requested payment for medical treatment not paid for by the employer/insurer.
- Claimant was questioned by her attorney about medical records of North Kansas City Hospital emergency room that indicated she was lifting a washer and dryer. She testified she did not lift the washer and dryer, that her husband and brother were doing the lifting and her arms were simply hit with the tailgate of the truck. She believes the emergency room doctor made a mistake in the records.
- Claimant's attorney also asked about the records of Missouri Baptist Hospital-Sullivan that indicated she fell off a ladder in October 2001. She explained that it was really a step stool and that she had fallen because her left leg "went out.
- With regard to records from Phelps County Regional Medical Center that indicated claimant developed back pain after picking her husband up at home, she testified that he had an artificial foot which would get stuck under the dash when he drove. During this incident, her husband had fallen out of the car and she was trying to move his artificial foot, not pick him up.
- Claimant testified despite all the treatment she has received the pain returned to the same level as after March 3, 2001. She said she has been treated for low back pain since October 2002 and that the pain has never gone away. She was still receiving treatment in the form of Soma, which she was actually taking *prior* to March 3, 2001; she is also taking Vicodin.
- Claimant believes her back pain, leg pain, and foot cramping keep her from working. She testified that her back "goes out" with activity. She describes the pain as a ten on a ten-point scale. She also has numbness in her foot, which makes her unable to feel anything. She also described the foot pain as sharp and cramping. She rated the foot pain at a ten on a ten-point scale. Her sleep interruptions are due to pain and foot cramping from the back injury. She sleeps three to four hours at most at any one time; otherwise she sleeps in 20 minute intervals. She is tired and groggy in the morning and naps during the day in a recliner for 30-45 minutes. Claimant has problems sleeping even with heavy medication.
- According to claimant, her symptoms caused changes in what she is able to do. She no longer gets on a stepstool, or shops, drives, does laundry, vacuums, mows grass, or moves things around. She can perform activities of daily living but it takes her longer. She has problems reading; she doesn't remember what she has read; and she cannot sit very long. She can drive and does have a valid driver's license, but has not driven since the March 2012 auto accident that killed her husband, Robert Sexton.
- She no longer runs, rides bicycles with her son, who is now 22, and she cannot hold her grandchildren. She also no longer drives to Kansas City by herself.

- Since March 2001 she has walked with a limp; she occasionally uses a cane. She uses crutches in the house because of injuries sustained in the 2012 automobile accident.
- She had anxiety and depression before March 2001 which caused her to miss time from work, and avoid interactions and activities because being around a lot of people caused panic attacks. Before March 2001, she didn't like being alone with men because of the spousal abuse, and she couldn't work as a teaching assistant in school. Her anxiety and depression and panic attack symptoms continued as do her right ankle symptoms. She takes Xanax and Soma for the anxiety, depression, and panic attacks and they helped her sleep before March 2001.
- She has not looked for a job because she could not work as a result of the March 3, 2001, alleged injury. It was her opinion even without the March 2012 automobile accident she would not be able to work as a result of the March 2001 injury.
- She requested an award for medical bills, further medical treatment for pain, 223 weeks of TTD for April 9, 2001, through December 5, 2005, for a total of $37,470.96, PPD per the ratings of Dr. Poetz, and permanent total disability from either the Second Injury Fund or the Employer and Insurer.
- She does not recall seeing many of the medical providers.

77. Claimant also testified by deposition on January 8, 2003. Some of the details of that deposition testimony are as follows:
    - She was injured on March 3, 2001, as she was trying to pull a buffer up the stairs and felt her back pop and burn.[63] The incident occurred on a Saturday at about 10 o'clock and she was working alone. The buffer was a commercial buffer which she estimated weighted approximately 150 pounds.[64] She threw the buffer down the steps and went next door to tell Father Duesdieker about the incident.[65] She requested treatment and was told "they wouldn't pay for it," which she guessed meant the school and the diocese.[66] She left work and took muscle relaxants she had from an injury the week before.
    - On Saturday, February 24, as she was pulling the buffer upstairs and felt her back "move again."[67] It felt like it popped but was like a burning sensation across her back. The pain radiated into both legs into the toes.[68] This occurred about 10 a.m. and her son helped her finish pulling the buffer up and she finished working. She reported the incident to Father Duesdieker whom she said told her she could go home if she had finished the floors.[69]

[63] Exh. E, p. 23.
[64] Exh. E, p. 24.
[65] *Id.*
[66] Exh. E, p. 25.
[67] Exh. E, pp. 25-26.
[68] Exh. E, p. 27.
[69] Exh. E, p. 28.

- She was not sure when she first went to the doctor after the February 24th incident; she thought she called her doctor, Dr. Mason, who she had been going to for about a year for her back, anxiety, and depression.
- Her April admission to Farmington State Hospital was an involuntary admission and she had no prior admissions for emotional problems or alcohol treatment.[70] She had been treated for depression for four to five years.[71]
- She had a previous back injury in 1999 while working for the employer; she was treated for by Dr. Hagene and Dr. Nichols for that injury.[72]
- Her symptoms as a result of the March 2001 injury were the same as those after the February incident. She could not lift more than 20 pounds; she could not work; she was uncertain how far she could walk without back pain; she could not sit longer than an hour.[73] She was able to drive and do most of her house work.[74]
- She was not certain, but thought that since March 2001 she had been convicted of or plead guilty to a misdemeanor or felony - that is, to aiding and abetting in Crawford County, for which she received an SIS.[75]

78. Claimant also testified by deposition on July 14, 2008. Claimant was 51 at the time of the deposition and had been married to Robert Sexton since April 2007.[76] Her deposition included the following testimony:
    - She had not worked since she was employed by Dana Brake.[77]
    - Her family physician was Dr. Allen Northern and she was taking Xanax, Soma, Advair, Albuterol, and Zantac - Zantac for panic attacks, Soma for her back, Advair and Albuterol for her borderline emphysema, and Zantac for her stomach.[78] She also took Vicodin for her back and took it because she was allergic to pain medication.[79]
    - When asked about restrictions due to her back condition, she said she was supposed to wear a back brace when she was active.[80] She had some back weakness before 2001 as a result of picking up a kindergarten table in 1999.[81] She reported that injury, and Father Duesdieker sent her to a chiropractor. Her doctor gave her a cortisone shot and some Soma.[82] She had been on Soma since 1999.

[70] Exh. E, p. 31.
[71] Exh. E, p. 32.
[72] Exh. E, p. 35.
[73] Exh. E, p. 37.
[74] *Id.*
[75] Exh. E, pp. 40-43.
[76] Exh. F, p. 5.
[77] Exh. F, p. 6.
[78] Exh. F, p. 9.
[79] Exh. F, pp. 9-10.
[80] Exh. F, p. 28.
[81] Exh. F, p. 29.
[82] Exh. F, p. 30.

- She was approved for Social Security Disability in 2002; her only other source of income was her husband's Social Security Disability.[83]
- Her depression had been off and ongoing since 1992; she had attended therapy for the depression and she had been taking antidepressants since 1992.[84]
- The February and March injuries occurred in the exact same manner.[85] She continued to work at Holy Cross after the March 2001 injury but had a hard time doing so. She left her employment with the employer in April because her children signed her into Farmington (the mental health facility).[86] She stated she stayed in the hospital for three to four weeks because she was depressed and did not want to go home.[87]
- She thinks she probably had had panic attacks all her life, but she first became aware of it in 1992 when she had trouble with her ex-husband.[88] When the attacks occurred, she couldn't breathe, got dizzy, and shook.
- She was diagnosed with emphysema approximately a month before her deposition.[89] She had no permanent work restrictions until she hurt her back and was given a 25 pound lifting restriction; she thinks Dr. Nichols and Dr. Hagene gave her those restrictions after the injury in 1999.[90]

Justin Ray

79. Justin Ray, claimant's youngest son, testified at the trial and by a deposition taken on August 5, 2009.[91] His deposition includes the following testimony:
    - At the time of his deposition, Mr. Ray was 20 years old; he was 11 years old when his mother was allegedly injured at work in 2001.[92] He testified he was aware of the alleged injury and was usually with his mother when she was cleaning. He testified his mother used a heavy buffer on the floor; he believed the buffer weighed several hundred pounds.[93]
    - Mr. Ray testified he did not remember what day of the week February 24, 2001, or March 3, 2001, were on, nor did he remember those exact dates.
    - Mr. Ray testified that on March 3, 2001, he said he saw "the buffer and my mom hit the ground she screamed while she was – and dropped the buffer" and asked him to

[83] Exh. F, pp. 35-36.
[84] Exh. F, p. 37.
[85] Exh. F, pp. 41-42.
[86] Exh. F, p. 42.
[87] Exh. F, p. 43.
[88] Exh. F, p. 44.
[89] Exh. F, p. 44.
[90] Exh. F, pp. 45-46.
[91] Exh. G.
[92] Exh. G, p. 8.
[93] Exh. G, p. 11.

get Father Bob.[94] He indicated his mother was lifting the buffer by herself. He remembered watching her fall with the buffer and he remembered going to get Father Bob.[95] He said her back was on the steps against the rail and she was pinned by the buffer. She looked like she was in pain and she "had a look of agony on her face and heavy breathing."[96] They were in the parish hall and he went next door to Father Bob's house to get him.

- He said Father Bob was home and went with him to the parish hall and "got the buffer off her."[97] Mr. Ray testified that his mother was having trouble getting up and so Father Bob helped her up.
- His mother told Father Bob what had happened and requested treatment, specifically that she be sent to the doctor or to the emergency room. Mr. Ray testified Father Bob said he thought it was a pulled back muscle and did not respond to her request for medical treatment.[98] Mr. Ray said the encounter took at least twenty minutes and he was present the entire time. His mother was unable to finish her work and left early. She told him she had "real bad pain" down her leg, her back, and "couldn't hardly sleep or anything."[99] He said at the time she told Fr. Bob "her back had – was really hurt and that the pain went into her hip or legs" and he said it was a pulled muscle.[100]
- Mr. Ray testified that he and his mother went home and he had to help her walk because her back hurt. His mother still had pain and had trouble sleeping. She had back pain if she stood too long and he observed her taking pain medication.
- He did not think his mother had been able to work since the accident. Prior to March 3, 2001, his mother's back did not prevent her from working.[101]
- On cross-examination, Mr. Ray acknowledged he had no independent memory of the when the March 2001 incident occurred

80. Mr. Ray also testified in person at the trial. At the time of the hearing, he was 22 years old. In 2000 and 2001 he lived with his mother in Cuba. She worked for the Catholic Church in Cuba and was the cook, lunch lady, and janitor. He attended school at Holy Cross Catholic School from third to fifth grade; in 2001, he was in the fifth grade.

81. As to the alleged February 24, 2001 injury, Mr. Ray's testimony at the hearing included the following:

[94] Esh. G, pp. 11-12.
[95] Exh. G, p. 12.
[96] Exh. G, p. 13.
[97] Exh. G, p. 15.
[98] Exh. G, p. 17.
[99] Exh. G, p. 19.
[100] Exh. G, p. 20.
[101] Exh. G, p. 29.

- February 24, 2001, was on a Saturday and he was at work with his mother. He did not see the accident but he heard his mother yell. He found her on the stairs to the boiler room and he saw the buffer on top of her.
- After his mother screamed, a man came down to the stairwell. At the time, he did not know the man's name; his stepfather later told him the man's name was Mr. Lee. Mr. Lee told him that he was present at the time of the alleged accident.
- Claimant was crying and having back and leg pain; she told him to get Father Duesdieker. Mr. Ray testified Mr. Lee helped him get the buffer off claimant, and then Mr. Lee stayed with claimant while he went to get Father Duesdieker.
- His mother told Father Duesdieker what had happened. Father Duesdieker told claimant she could go to a chiropractor. Claimant indicated she wanted medical treatment instead. Father Duesdieker then told claimant she could do what she wanted.
- Father Duesdieker left. Since claimant was unable to stand on her own, Mr. Lee helped his get his mother to the car. Although Mr. Ray was only 11 years old, he drove his mother the short distance home.
- Once they got home, claimant took pain medication and laid down. Mr. Ray said his mother had back pain the next day but did feel better. She returned to work on Monday and worked a full day.
- Mr. Ray testified that over the weekend of February 24, 2001, he had to take care of his mother because of her back pain. Claimant was taking medication and moving normally but slowly. She was doing all her assigned tasks.

82. As to the alleged March 3, 2001 injury, Mr. Ray's hearing testimony included the following:
    - He was with his mother on March 3, 2001, when she tried to pick up the buffer and carry it up the stairs. She bent and twisted to pick it up, but it fell on top of her. He testified that he could not lift the buffer, and his mother was crying.
    - He went to get Father Duesdieker, who returned with him. He testified that Father Duesdieker was angry with claimant, and told her she shouldn't be picking up the buffer on her own.
    - He said his mother requested medical treatment and Father Duesdieker told her to do whatever she wanted. He also cussed at her.
    - He and Father Duesdieker lifted the buffer and put it in the boiler room.
    - The employee laid there for a while, quit working that day, and was in pain and crying. He helped her to the car and drove her home.
    - Mr. Ray testified that his mother's symptoms have been the same since the March 3 injury.
    - He did not hear Father Duesdieker offer treatment or tell claimant he would report the injury.

- According to Mr. Ray, claimant continued to complain of leg and back pain after March 3, 2001, and his family had to help care for her. He testified that claimant continued to work from March 5, 2001 through April 9, 2001.
- Mr. Ray testified he heard Father Duesdieker swear whenever he was angry. He said the Father swore at him once when he forgot his money while on a church ski trip. Mr. Ray said that if he didn't obey Father Duesdieker, he would get angry and there would be consequence, like being sent to the isolation table. He indicated that this would be true of all the volunteers who supervised the children.
- Mr. Ray was aware Father Duesdieker had been given a key to their trailer because he was having shelves installed for the employee.
- He said that prior to March 3, 2001, his mother did not have trouble sleeping like she did after the alleged injury. He knew his mother was afraid of her ex-husband and that she took sleeping pills to help her sleep.
- He testified that after March 3, 2001, he saw his mother having trouble getting breakfast ready at the church/school. She also had trouble serving lunch. He said volunteers from the church, Mary Bartle, James Gray, Michael Rose, and Robert Sexton and his wife, would help. He testified Mary Bartle had since died and he thought Mike Rose might be dead as well. He didn't know about James Gray.

83. Mr. Ray testified that after his mother was committed to the state hospital [in April 2001], he lived with his sister. He last saw Father Duesdieker when claimant was hospitalized. After claimant's hospitalization, Mr. Ray no longer attended school at Holy Cross Catholic School. He did continue to go to church there.

84. Mr. Ray's name was changed to Justin Ray when he was adopted by his brother.

85. With regard to claimant's involuntary hospitalization, Mr. Ray testified that he called his older brother and sister to pick him up because their mother was taking drugs and drinking. He didn't see her drinking but saw her take pills and was present when the police officer came to the house to take her to the state hospital.

Testimony of Joseph Brown

86. Joseph Brown testified at the hearing. He is one of claimant's sons, and he was 21 years old at the time of the alleged work accidents. In 2001, he was a member of the church and he volunteered in the school cafeteria. Mr. Brown testified he observed his mother performing her duties as cook and janitor. In his opinion, she had no problems doing her job before the February and March 2001 alleged injuries, except when she needed help lifting the buffer.

87. Mr. Brown stated that after the February 24, 2001 incident, his mother complained of low back and left leg pain. He recalled that her symptoms resolved by the next week, although she did work and move more slowly.

88. Mr. Brown testified that when he was present in the parish hall after March 3, 2001, he observed his mother having trouble working. He testified that he heard Father Duesdieker and his mother talking on two or three occasions about the accident and about how his mother wanted and needed treatment. In the first conversation, he claims he heard his mother tell Father Duesdieker she did not want to see a chiropractor and that she had severe low back pain and shooting left leg pain. Mr. Brown said Father Duesdieker told her he was not dealing with it and walked away. Mr. Brown testified that two weeks later, he was approximately twenty to thirty feet away and heard his mother request treatment for her injuries from the March 3 accident. According to Mr. Brown, Father Duesdieker told her to go to the chiropractor. Mr. Brown testified that in the third conversation he heard, his mother asked Father Duesdieker "what she should do." Mr. Brown did not, however, hear the response.

89. Mr. Brown acknowledged he did not get along with Father Duesdieker.

90. Mr. Brown was aware his mother had a previous work injury to her back that was reported and for which treatment was provided.

91. Mr. Brown and his sisters sought commitment/hospitalization of his mother because she was taking too much medication, allegedly as a result of back pain. However, he acknowledged that his mother\had been taking Xanax for some time before March 3, 2001, and that she continued to take it after the involuntary commitment. Mr. Brown was aware his mother was diagnosed with alcoholism in 2001, and he had seen her drinking before March 3, 2001. He claimed his mother drank because of the back pain and because she was depressed (apparently because of losing time from work and due to domestic abuse). Mr. Brown testified that his mother's then-husband had previously fractured her arm, leg, nose, and beat her frequently, resulting in her being hospitalized.

Testimony at Trial of Father Robert Duesdieker

92. Father Robert Duesdieker testified at the hearing on December 5, 2012, and on January 24, 2013.

93. Father Duesdieker resides in Boonville, Missouri, and since 2002 he has been assigned to St. Peter and Paul Catholic Church in Boonville, Missouri; he is also responsible for St. Joseph Catholic Church. He is a Catholic priest employed by the Diocese of Jefferson City, has been a priest for 32 years, and has been with the Diocese for 33.5 years, initially as a deacon. Father Duesdieker was at Holy Cross Catholic Church from August 15, 1996

to June 30, 2002. He testified that the diocese covers 38 counties in Mid-Missouri, and that it has approximately 100 different parishes or churches to which priests are assigned.

94. As a priest at Holy Cross Catholic Church and School, he was a spiritual counselor, hired and fired employees, and participated in parish activities.

95. He was claimant's supervisor on February 24 and March 3, 2001, and would have expected her to notify him of any injury. Claimant's duties included cleaning the hall and using the buffer. She worked 40 hours a week, although she might work a few hours; he had no recollection of her consistently working more than 40 hours a week.

96. With regard to the buffer in question, he testified that claimant had previously been told to ask for help in moving the buffer.

97. He testified that claimant did not come to the rectory on February 24, 2001, and report she had just injured her lower back trying to pull the buffer up the stairs, nor did her son come to the rectory that day telling him the employee had been injured moving the buffer.

98. Father Duesdieker testified that on March 3, 2001, claimant did not ask him to help her move the buffer, nor did she or her son come to the rectory to tell him she had injured her back trying to move the buffer.

99. At times Father Duesdieker asked for volunteers to assist with maintenance activities. However, of the alleged volunteers - Robert and Elaine Sexton, James Gray, Michael Rose, Mary Bartle, and Joseph Brown - he only recalled Joseph Brown, who was claimant's son.

100. With regard to the Diocese's procedures for workers compensation claims, he testified that injuries were to be reported to him or to the school principle, who would notify him. Father Duesdieker would notify the Diocese of the incident and the Diocese would report it to the workers' compensation insurance carrier. It was his understanding treatment was usually authorized by the insurance carrier.

101. Father Duesdieker testified claimant did not ask him for treatment for back pain on February 24 or March 3, 2001. He also stated that during the remainder of time she worked for Holy Cross Catholic Church, she did not request treatment for low back pain. He testified she continued to perform her regular work duties, cooking and doing maintenance and cleaning. He said claimant did not ever ask for accommodations to do her job as the cook or the janitor. To his knowledge, she did not ever complain of back pain to the teachers or other staff, and to his recollection claimant did not miss any time from work during that period because of back pain. To his knowledge, she did not seek medical treatment for back pain during that period.

102. Father Duesdieker testified that claimant was hospitalized in April 2001 for reasons other than her employment with Holy Cross. He does not remember if she contacted him about her job after she was released from the hospital. After she left her employment, she never contacted him to request treatment for low back pain. He did not know whether she had had any problems performing her duties as a cook after March 3.

103. With regard to Justin Ray's hearing testimony, he testified that Justin Ray did *no*t come to the rectory on February 24, 2001, requesting his help because the buffer had fallen on claimant – nor did he do so on March 3, 2001. Father Duesdieker denied that he and Mr. Lee ever lifted a buffer off claimant, and he never told claimant she should see a chiropractor.

104. Father Duesdieker testified that on March 3, 2001, Justin Ray did not come to see him in the rectory and request his help lifting a buffer off claimant. He said Justin Ray's testimony that the two of them carried the buffer to the boiler room was not true. With regard to Justin Ray's testimony that he drove claimant home after a work injury, Father Duesdieker said he was not aware of Justin Ray was driving claimant's car.

105. Father Duesdieker stated that Joseph Brown's testimony - that he heard Father Duesdieker and claimant discussing whether she needed medical treatment – was not true. He said Mr. Brown's testimony that when Father Duesdieker was told by claimant she did not want to see a chiropractor, was still in pain, had severe low back pain, and shooting pain in her left leg, that he responded with the comment that he was not dealing with it and that he walked away was not true. He also testified Mr. Brown's testimony he overheard the employee request medical treatment several weeks after the alleged accident and that Father Duesdieker told her to go to the chiropractor was not true.

106. He did not recall that claimant missed time from work because of depression before March 3, 2001.

Independent Medical Evaluation - Dr. Joel Jeffries

107. Dr. Joel Jeffries performed an evaluation of claimant by reviewing her medical records. He issued a report on September 25, 2006, and his deposition was later taken. Dr. Jeffries is an orthopedic surgeon; 99.99% of his work involves spine care.[102] Dr. Jeffries was asked to address causation. He testified that examining claimant would not have added much information; had he felt a physical examination was necessary, he would have said so in his report.[103]

[102] Exh. 1, p. 5.
[103] Exh. 1, p. 6.

108. Dr. Jeffries examined records back to 1991. Those records reflect a history of treatment for low back pain for several years prior to 2001, starting in 1997.[104] Based on his review of the records, claimant initially sought medical care on January 25, 1997, at Missouri Baptist Hospital for complaints of low back pain secondary to moving some furniture. Claimant appears to have seen the same provider on May 12, 1997, for back pain related to a work injury; she was seen again on May 19, 1997 with continued back pain. On May 22, 1998, she was found to be somewhat improved. Claimant underwent radiographs and the provider described some sort of lumbar deformity; claimant also underwent manipulation.

109. Dr. Jeffries noted that in April 1999, claimant saw Dr. Hagene with complaints of low back pain. Upon physical examination, claimant was found to have lower extremity spasms and some swelling. Claimant saw Dr. Hagene for several more visits, including one on May 5, 1999 when she hurt her back "cleaning the hall."[105] Claimant continued to treat with Dr. Hagene throughout May and June 1999, and she saw Dr. Nichols at Mercy Medical Group on May 17, 1999. On or about June 11, 1999, Dr. Hagene opined that claimant was at maximum medical improvement. Claimant returned to Dr. Hagene on March 9, 2000, with a back injury from lifting tables. The diagnosis was lumbar sprain and strain; claimant underwent manipulation. On or about January 2, 2002, claimant presented to Missouri Baptist Hospital with complaints of chest pain, but she also had some complaints of intermittent lower extremity cramping. Claimant treated on August 30, 2002 with complaints of back pain. She again treated for low back pain on September 27, 2007; during that visit, she reported a history of a low back injury in 1997 and then a second injury in February 2001. It is Dr. Jeffries' belief that this is the first mention of a 2001 back injury.[106]

110. Dr. Jeffries noted that the records reflect that an unknown provider had radiographs done on claimant on May 22, 1997; the provider found that the radiographs reflected some lumbar deformity. The next lumbar radiographs or x-rays were from September 30, 2002. Those tests indicated claimant had a "mild scoliosis" as well as degenerative disease or degenerative changes at the L1-L2 and L2-3 levels. A report from a lumbar MRI performed on October 23, 2002 indicates claimant has mild disc degeneration with "very mild anterior extradural defects at multiple levels," which Dr. Jeffries states indicates is mild disk bulging at those levels.[107] The report from a March 23, 2005 lumbar MRI reflects a diffuse disc bulge at the L2-3 level, a small disc protrusion or bulge with an annular tear at the L3-4 level with extension of this tear into the left foramen, as well as a "moderate" sized disc protrusion to the left at L4-5. Dr. Jeffries believes this would be a progression of claimant's previously known disc bulging from her degenerative disease. Claimant had another MRI on October 6, 2005. Dr. Jeffries testified that the report from

[104] Exh. 1, p. 7.
[105] Exh. 1, pp 9-10.
[106] Exh. 1, p. 13.
[107] Exh. 1, p. 15.

that study identifies a left lateral protrusion at the L4-5 level, which is consistent with what had been seen earlier, but with the comment that this abnormality "indents the L5 nerve root," which was a somewhat more significant abnormality or change than what had been noted previously. Also noted was a posterior protrusion at the L1-2 level and a diffuse disc bulging at L2-3, L3-4, and L4-5.

111. Dr. Jeffries opined that claimant suffers from diffuse lumbar degenerative disc disease with mechanical back pain (i.e. back pain that results from activity.)[108] Dr. Jeffries noted that claimant sought treatment at an emergency room on August 18, 2003 with complaints of back pain radiating to the left lower extremity and numbness in the left foot secondary to lifting a fax machine.[109]

112. Dr. Jeffries opined that claimant's work-related injuries of February or March 2001 were not a substantial causative factor in her medical condition.[110] Dr. Jeffries noted that before February and March 2001, claimant had had multiple previous health care encounters for complaints of low back pain; that claimant did not seek medical treatment for at least one and one-half years after those injuries; that the MRI scan performed most recently after the injury did not demonstrate anything that he would identify as an acute change; and that the claimant continued along a clinical course consistent with the natural history of lumbar degenerative disease.[111] Moreover, Dr. Jeffries does not believe that either the February or March 21001 incidents were a triggering or precipitating event in claimant's long-term back pain and degenerative disease.[112]

Independent Medical Evaluation - Dr. Robert Poetz

113. At the request of her attorney, claimant saw Dr. Robert Poetz on July 30, 2007, to evaluate injuries allegedly sustained on February 24 and March 3, 2001. Dr. Poetz is a family physician. His deposition was taken on June 9, 2008; both his report and his deposition were admitted into evidence.

114. Dr. Poetz opined that the initial injury on February 24, 2011, resulted in a lumbar strain and exacerbation or aggravation of her degenerative disc disease and spondylosis.[113] According to Dr. Poetz, the second injury caused lumbar disc protrusions at L3-4 and L4-5 based on the clinical symptoms and x-rays.[114] Dr. Poetz felt the February 2001 injury was the substantial factor in the cause of the lumbar strain and exacerbation of degenerative

[108] Exh. 1, pp. 17-18.
[109] Exh. 1, pp. 18-19.
[110] Exh. 1, p. 19.
[111] Exh. 1, p. 21.
[112] Exh. 1, p. 22; objection in deposition overruled.

[113] Exh. B, p. 17.
[114] Exh. B, p. 18.

disc disease and spondylosis and the March injury was a substantial factor in causing the lumbar disc protrusions at L3-4 and L4-5 with exacerbation of degenerative disease and spondylosis.[115]

115. With regard to the February 2001 injury, Dr. Poetz opined claimant had a 15% permanent partial disability (PPD) of the body as a whole (BAW) at the lumbar spine; he also opined that she has a 25% disability of the BAW at the lumbar spine for the March injury. It was his opinion the injuries were substantial factors in causing the employee's permanent partial disability.[116] In arriving at these conclusions, Dr. Poetz relied on a March 23, 2005, lumbar MRI that he said revealed disc protrusions at L3-4 and L4-5 according to the radiologist who read the MRI study.[117] He said the report indicated "conceivably intermittent impingement upon the left L-5 nerve root could be present in the lateral recess from the L4-5 disc protrusion."[118] Dr. Poetz noted the October 2005 MRI indicated left lateral protrusions at the L4-5 disc, some posterior protrusions of the L1-2 disc, diffuse posterior bulging at L2-3, L3-4, and L5-S1, and facet arthropathy from L3-4 to L5-S1.[119]

116. According to Dr. Poetz, protrusion meant a disc herniation, that the disc had left its normal position and was coming into a place it did not belong.[120] He said the diffuse posterior bulges at L2-3, L3-4, and L5-S1 indicated long standing multi-level discogenic disease, which was the basis for his opinion the injuries aggravated or exacerbated a preexisting degenerative disease process.[121] He indicated the employee had a preexisting 5% permanent partial disability at the lumbar spine.[122]

117. As to other pre-existing disabilities, he opined that claimant had a pre-existing permanent partial disability of 25% of the right ankle as a result of a fracture in 1985 and 25% of the body as a whole for preexisting depression based on her history to him. According to Dr. Poetz, claimant's history of violence and spousal abuse was a factor in her depression and felt the preexisting disabilities exceeded the simple sum by 20% percent. It was his opinion claimant was unemployable in the open labor market because of the two work injuries and her preexisting disabilities but would be unemployable based on the February and March 2001 injuries alone.[123] He also recommended a number of limitations and restrictions related to her low back.[124] Dr. Poetz indicated claimant's attempt at post-injury employment showed effort but also that she was unemployable for any sustained period of time.[125] He opined that claimant was permanently and totally disabled from employment in the open labor market as a result of the March 2001 injury.[126]

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[115] Exh. B, pp. 18-19.
[116] Exh. B, p. 20.
[117] Exh. B, pp. 20-21.
[118] Exh. B, p. 21.
[119] *Id.*
[120] Exh. B, p. 22.
[121] *Id.*
[122] Exh. B, p. 23.
[123] Exh. B., pp. 27-28.
[124] Exh. B, pp. 28-29.
[125] Exh. B, pp. 29-30.
[126] Exh. B, pp. 30-31.

118. He indicated she reached MMI at the point she was released by the treating doctor and would need further treatment because of the February and March injuries. It was his opinion the lumbar spine treatment reflected in the medical records after the February and March 2001 injuries was reasonable and necessary.

119. Dr. Poetz testified the employee was unable to work after the alleged March 1 incident despite the fact was aware she continued to work for the diocese until April when she was involuntarily committed to the Department of Mental Health.[127] In his opinion, she was permanently and totally disabled as a result of the March 1 incident alone because of the disc herniation.[128] He did not review the October 2002 MRI that indicated there were no disc herniations but said that would not change his opinion about causation and that he was relying in part on the diagnostic studies done four years after the alleged injury.[129] He said claimant told him she saw Dr. Nichols after the March 2001 incident and that he had reviewed Dr. Nichols records. However, when asked about the dates of those records he noted they were from 1997 not 2001.[130] He did not review any records of treatment for low back pain in 2001, but did have records of prior treatment for low back pain with Dr. Nichols and a chiropractor.[131] He reviewed the records of Dr. Chilton, a neurosurgeon, and Dr. Jeffries, an orthopedic spine surgeon - neither of whom indicated the employee's condition was work related.[132]

Independent Medical Evaluation - Dr. Matthew Gornet

120. Dr. Gornet saw the employee for an Independent Medical Evaluation on May 15, 2010. His deposition was taken on January 23, 2012. Dr. Gorney is an orthopedic surgeon whose practice is devoted to spine surgery.[133] Dr. Gornet saw claimant just once, on May 13, 2010; he reviewed a number of medical records and diagnostic studies in conjunction with the appointment.

121. Claimant's chief complaint was low back pain central to both buttocks, hips, and down both legs, left greater than right, to her feet; claimant attributed the pain to the March 2001 incident while working at Holy Cross School, which she bent over to pick up a buffer, developed increasing pain, and had not worked since.[134] Claimant reported a history of prior low back pain and injury after pushing some heavy furniture in 1999; the employer/insurer referred her to a chiropractor who treated her multiple times. [135] She said she stopped working three months after the March 2001 injury and was on disability. She reported constant pain that was worse with activity, bending, or lifting.

[127] Exh. B, p. 34.
[128] *Id.*
[129] Exh. B, pp. 34-35.
[130] Exh. B, p. 36.
[131] Exh. B, pp. 36-37.
[132] Exh. B, pp. 37-38.
[133] Exh. C, p. 5.
[134] Exh. C, pp. 13-14.
[135] Exh. C, p. 14.

122. On physical examination, she had pain in the low back, buttocks, both hips, and down the left leg. She was able to bend forward. Strength was five over five, deep tendon reflexes were one plus, and she had a decreased L-5 dermatome on the left.

123. Dr. Gornet reviewed MRI scans from October 23, 2001, May 29, 2009, and October 2006. He said the 2002 MRI revealed an annular tear at L4-5 with some mild changes and disc dehydration and degeneration.

124. It was Dr. Gorney's impression the employee had past issues and structural back pain but continued to work full duty without restrictions. He thought her current symptoms were causally related to her "alleged work related injury on March 3, 201" and that picking up the buffer was consistent with the type of injury that would cause the disc pathology noted in the 2002 MRI. He indicated her current symptoms were more consistent with a multi-level process and multi-level disc degeneration. He noted the 2009 MRI showed progression of her disc pathology particularly at L2-3 and L5-S1 compared to her 2005 films.

125. He believed the employee's increasing pain and symptoms, difficulty sleeping, and the need to rest during the day were consistent with the March 2001 accident because the disc became sensitized and nerve fibers had grown and pain was increased with mechanical activity.[136]

126. Considering claimant's asthma/smoking history and multi-level problems, Dr. Gornet did not think she would benefit from surgical intervention and placed her at MMI. He did not believe she was capable of gainful employment. He could not determine her time off work related to the work injury because "she clearly has crossed from being a patient with a structural problem related to her work injury to a patient with other health issues that would ultimately contribute to her inability to work."[137]

127. He indicated when conservative treatment failed surgical options were a possibility, but he did not think claimant was a surgical candidate in 2010 because of her medical conditions of asthma, smoking, and multiple problems and placed her at MMI.[138]

128. He indicated after the 1999 incident the employee had done fairly well working full duty at a heavy job and was not aware of any permanent restrictions from that incident.[139] He noted the 2009 MRI showed progression of the disc pathology at L5-S1 and L2-3 compared with the 2005 MRI.[140] He said degenerative changes at L4-5 were consistent with her injury and the changes at the adjacent levels were consistent with degenerative changes from her smoking and asthma.[141] Dr Gornet felt the March 2001 injury was more significant than the incident in February 2001.[142]

[136] Exh. C, pp. 30-31.
[137] Exh. C.
[138] Exh. C, p. 23.
[139] Exh. C, pp. 35-36.
[140] Exh. C, p. 43.
[141] Exh. C, p. 46.
[142] Exh. C, p. 45.

129. Dr. Gornet testified he reviewed multiple scans which indicated were listed in his IME report. His May 13, 2010 report indicated he reviewed a lumbar MRI from October 22, 2002, a scan from May 29, 2009, as well as an MRI scan from October 2006. He did not indicate he reviewed an MRI on March 23, 2005, performed at St. John's Regional Health Care Center. With regard to the 2002 MRI, he felt it showed a left-sided annular tear out in the foreman at L4-5, some mild changes in disc degeneration, and disc dehydration.[143] He also felt there was a lateral disc herniation on image 21 of axis T1 sequence as well as image 3 and 4 of the sagital sequence.[144] He indicated a disc herniation was also evidenced on the T1 sequence.[145]

130. According to Dr. Gornet, "a herniated disc is when the annular tears and a piece of disc material comes out, and when the disc material comes out we see the difference in the quality of the grayness or darkness because disc material looks different than the surrounding structures," that with an annular tear "what we see as one type of signal change or picture change or grayness and disc material flowing through the tear as another sort of darkness or signal change, and we can look together and make an assessment of the picture of the significance of the finding."[146]

131. The doctor indicated that the herniation and tear were basically a structural injury to the disc and disc mechanism.[147] He testified "I basically found the herniation and the tear as a structural injury to the disc and disk mechanism. It was out in the foreman, so it's essentially adjacent to the nerve. But it's important to note that you don't have to have significant nerve pressure to have symptoms. And so where the injury of the disc was, was consistent with her symptoms."[148] He found this consistent with her symptoms and her history, the positive dermatome findings, and her history of left leg pain.[149]

132. The doctor believed the lifting incident with the buffer was the cause of and the substantial factor in causing the disc herniation.[150] He thought "the fact that the MRI scan appears to be the closest thing we have to measure, so I won't say that it is right on top of her alleged injury because it's over at least—it seems to be about a year afterwards. With that being said, the brightness of it doesn't appear to be an older degenerative type. The location of it is consistent with her symptoms and the fact that she had – this is the type of injury that can be significantly disabling, so the fact that chronologically her symptoms became significantly worse to the point that she could not work whereas previously with a work related back injury two years earlier she was able to recover and do ok with that. All that is consistent with this being an acute injury at the time of her accident of 2001 in March."[151] When asked how he could ascertain the approximate age by brightness, Dr. Gornet testified, "well, what we can see here is there is a bright area at the disc at L4-5, and that

[143] Exh. C, p. 19.
[144] *Id.*
[145] *Id.* .
[146] Exh. C, p. 20.
[147] Exh. C, p. 21.
[148] *Id.*
[149] *Id.*
[150] Exh. C, pp. 21-22.
[151] Exh. C, p. 23.

L4-5 brightness is not something that is usually seen with a two-three year-old degeneration. So from my experience, that is more consistent with her 2001 lesion. I do want to point out that no MRI will date an injury and so we can't date it from this. No doctor can date anything from an MRI. That's just not possible but it is consistent with this and so in my opinion it is more probable than not that it occurred at the time of her March 2001 injury."[152] He did not feel the degenerative changes on her MRI were significant changes.[153]

133. He indicated the 2009 MRI showed more progression of the disc pathology since the one done in 2002 noting changes at L5-S1 compared to the 2005 MRI noting there were also some changes at L2-3.[154] His opinion regarding the employee's inability to be gainfully employed currently was based on her presentation when he saw her in May 2010.[155]

Vocational Report of Gary Weimholt

134. Mr. Weimholt saw the employee in November 2007; his deposition was taken on May 16, 2008.[156] He also reviewed a number of medical records. He did not perform vocational testing because she had been able to complete a GED and two years of college which he felt indicated at least basic types of academic abilities in reading and understanding.

135. Mr. Weimholt opined that claimant did not have transferrable job skills based on her work history and physical and mental limitations. It was his opinion she had a total loss of access to the open competitive labor market and was totally vocationally disabled from employment, that there was no reasonable expectation an employer in the normal course of business would hire the employee for any position or that she would be able to perform usual duties of any job she was qualified to perform. It was also his opinion, the combination of her low back work related injuries and psychological conditions resulted in her disability.

136. With regard to the exertional limitations or restrictions for her lower back injury, he considered those specified by Dr. Poetz, noting Dr. Jeffries did not address restrictions. It was his understanding her psychiatric issues were prior to 2001, and that she had a history of "difficulty." He indicated the barriers to employment from a psychiatric standpoint were fairly specific such as interacting appropriately in a social setting, adapting to changes in her environment, relating to patrons, co-workers, and supervisors, handling work pressures, and responding to changes in the work setting.

137. According to Mr. Weimholt, any job would have to be simple tasks and that even with simple tasks she would have moderate difficulty focusing on and remembering detailed instructions and would need minimal interaction with others because of the diagnosis of depression. He said these non-exertional restrictions could further restrict the jobs she could do because they limited the less physical jobs requiring the verbal ability to interact

[152] Exh. C, p. 24.
[153] Exh. C, p. 27.
[154] Exh. C, p. 43.
[155] Exh. C, pp. 43-44.
[156] Exh. D, p. 6.

with others or work with the public in the service industry. It was Mr. Weimholt's opinion claimant was not able to obtain or maintain competitive employment in the open labor market and was totally vocationally disabled. He noted she unsuccessfully tried some work after leaving Holy Cross but that she was unable to maintain it.

CONCLUSIONS OF LAW

Based upon the findings of fact and the applicable law, I find the following:

The injuries in claimant's two cases are alleged to have occurred on or about February 21, 2001, and March 3, 2001. Therefore, the 2005 Amendments do not apply to the substantive law controlling the legal issues in this case. In *Thomas v. Hollister, Inc.*, the court held that "[a]ll the provisions of the workers' compensation law shall be liberally construed with a view to the public welfare.[157]

Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.[158] Proof is made only by competent and substantial evidence and may not rest on speculation.[159]

Medical causation not within lay understanding or experience requires expert medical evidence.[160] When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.[161] Where the condition presents itself as a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, proof of causation is not within the realm of lay understanding.[162] Expert testimony is essential where the issue is whether a preexisting condition was aggravated by a subsequent injury.[163] In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.[164] Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.[165]

The fact finder is charged with passing on the credibility of all witnesses[166] and may disbelieve the testimony of a witness even if no contradictory impeaching testimony occurs.[167]

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[157] 17 S.W.3d 124, 126 (Mo.App.W.D. 1999).
[158] *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo. App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).
[159] *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo. App. W.D. 1974).
[160] *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).
[161] *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo. App. 1984).
[162] *Silman v. William Montgomery & Associates*, 891 S.W.2d 173 (Mo. App. E.D. 1995).
[163] *Modlin v. Sun Mark, Inc.*, 699 S.W.2d 5, 7 (Mo. App. 1985).
[164] *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo. App. 1957).
[165] *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo. App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).
[166] *Id. at 199.*
[167] *Hutchinson v. Tristate Motor Co.*, 721 S.W.2d 158, 161-162 (Mo.App. 1986); *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658 (Mo.App. 1995).

Proof of "accident" is one of the essential elements that must be proven.[168] Section 287.020.2, RSMo., defines "accident" as follows:

> The word "accident" as used in this chapter shall unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

Section 287.020.3, RSMo, defines an "injury" to be one that "has arisen out of and in the course of employment." In addition, the "injury must be incidental to and not independent of the relation of the employer and employee. Ordinarily, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment."[169]

"Arising out of employment" means that a causal connection exists between the employee's duties and the injury for purposes of workers' compensation.[170] An injury is compensable only if it is clearly work-related, and an injury is clearly work-related only if work was a substantial factor in the cause of the injury and the resulting medical condition. However, an injury is not compensable if work was merely a triggering or precipitating factor.[171]

In these two cases, Injury Nos. 01-1657511 and 01-164519, claimant seeks benefits for injuries allegedly occurring about one week apart – on February 24, 2001, and on March 3, 2001. Claimant contents in both cases the exact same events occurred and that events were reported to her supervisor in the exact same way. Specifically, claimant testified at the hearing that on both days she went into the lower level of the school where she was employed and attempted to pull a heavy buffer machine up the stairs. On both occasions the buffer got caught in the stairs, she pulled on the buffer, trying to release it from the stairs, and in the process pulled her low back, felt pain in her low back, and the buffer fell, landing on top of her and pinning her to the ground.

Claimant further testified, as did her son Justin, that Justin was present on both occasions, saw his mother pinned to the floor by the buffer, and was told by his mother to go next door to Father Duesdieker's home to get him to help. Claimant testified that both times Father Duesdieker was home and immediately came with her son to the site of the accidents. She also testified that both times Father Duesdieker helped get the buffer off her.

At the hearing, claimant testified that after the February 2001 injury, Justin, drove her home even though he was only 11 years old. She testified that she was inactive for the remainder of the weekend, but that she was able to return to work on Monday without much pain or difficulty. She also testified at the trial that following the March 2001 incident, Justin again

[168] *Tangblade v. Lear Corp.*, 58 S.W.3d 662, 666 (Mo.App. 2011).
[169] Section 287.020.3, RSMo.
[170] *Cruzan v. City of Paris*, 922, S.W.2d 473 (Mo. App. E.D. 1996), overruled on other grounds by *Hampton*.
[171] Section 287.020.2, RSMo. 2000.

drove her home immediately. However, she testified that after the March 2001 event she did not have a good recovery and has remained in pain at some level since that time.

It must be noted that claimant offered no records showing that she sought treatment for the alleged incidents with the buffer immediately following the events – even though she testified that she did treat for her back immediately after the events. Instead the evidence shows that just days (on March 11, and March 15, 2001) after the alleged accident of March 3, 2001, claimant saw a doctor for other problems and did not mention a 2001 back issue. Likewise, medical records from April 10, 2001, reflect that claimant mentioned a low back injury from the 1990s, but did not mention a 2001 back injury. There is no mention of ongoing back symptoms or concerns in those April 2001 records. And those April 2001 records indicate claimant became combative during the admission process to the psychiatric hospital and had to be restrained.

Father Duesdieker, claimant's supervisor, was a credible and convincing witness. He testified that he was never retrieved from his home by Justin to go to the Parish Hall to find claimant pinned under a buffer. Father Duesdieker denies ever being asked to provide treatment to claimant for these alleged events. He denies being made aware of the alleged events involving claimant and the buffer in February or March 2001 until much later, when he received notice that claimant was seeking benefits for the alleged injuries through the workers' compensation system.

Claimant's depositions were received into evidence. In the January 2003 deposition, claimant testified regarding both the February 2001 and March 2001 incidents. **She did not, however, mention that Justin was involved in the reporting of either event to Father Duesdieker**. **Nor did claimant testify in this deposition that she was pinned underneath the buffer in either February or March 2001.** In fact, claimant testified that following the March 2001 event she threw the buffer down and walked over to Father Duesdieker's house to report the injury herself! Her deposition testimony was as follows:

> Q. Now, you've filed a claim indicating that you sustained an injury in March of 2001; is that correct?
>
> A: Yes.
>
> Q. And I believe the date is March 3, 2001; does that sound correct to you?
>
> A. Yes.
>
> Q. Can you tell me what happened on that date, how you were injured?
>
> A. I was trying to pull the buffer upstairs and I felt my back – my back felt like it popped and burned.
>
> Q. About what time was this?
>
> A. About ten o'clock in the morning.

*****

Q. Were you working alone?

A. Yes.

Q. And when this incident happened, what did you do when you felt this pop and burn in your back?

A. **I threw the buffer down the steps**. [Emphasis added.]

Q. And then what did you do?

A. **I went next door to tell Father Duesdieker what happened**. [Emphasis added.]

Q. Was he there? Did you tell him what happened?

A. Yes.[172]

And regarding the February 2001 incident, claimant testified in her deposition as follows:

Q. And that would be – before we started the deposition, your attorney indicated that you had a similar incident about a week before, at the end of February, 2001?

A. Yes.

Q. Tell me what happened that day.

A. February 24, 2001. It was a Saturday.

Q. What happened on that day?

A. I was pulling the buffer upstairs.

Q. What happened?

A. I felt my back move again.

Q. Describe what happened to your back on that day, February 24, 2001.

A. It felt like it popped, but it was like a burning sensation across the back.

*****

Q. What time did this incident occur on the 24th?

A. About ten o'clock.

[172] Exh. E, pp. 23-24.

Q. What did you do then?

A. I had my son help me finish pulling the buffer up.

Q. Did he observe the incident?

A. Yes.

Q. That's your son, Justin?

A. Yes.

Q. Did you finish working that day?

A. Yes.

Q. Did you report that incident to anyone?

A. Yes.

Q. To whom did you report that?

A. Father Duesdieker.

Claimant's deposition testimony, given less than two years after the alleged events, is contradictory to the testimony she gave at the hearing in December 2012 and January 2013. For examples, in her January 2003 deposition, claimant does not mention the buffer falling on her after the March 2001 event; instead, she threw the buffer down the stairs.

Claimant's son, Justin, also provided testimony that is not helpful. He testified at the hearing in 2012 that he was present both times when his mother had problems with the buffer on stairs – on February 24, 2001 and March 3, 2001. At the hearing, **Justin testified his mother was pinned under the buffer both time and that she told him to go Father Duesdieker**, which he says he did. At trial, he testified that Roger Lee was present during the February 2001 incident. He also testified that, at age 11 years, he immediately drove his mother home on both occasions after the buffer was removed. His mother, however, once testified that after one of the injuries she walked over to Father Duesdieker's house and reported the accident.

In Justin's deposition testimony, taken on August 5, 2009, he initially testified that his mother was headed down the steps with the buffer instead of going up the steps, although he later testified he was not sure which was she was going – up or down.[173] He testified that his mother was pinned to the floor by the buffer and that he went to get Father Duesdieker. He mentioned that after the March 3, 2001 incident, his mother stopped working for the day and she went home – but he does not mention that he drove her home. In his deposition, Justin did not mention that Roger Lee was present for either alleged injury.

[173] Exh. G, p. 12.

In both cases, the first question to be resolved is that of credibility and whom to believe. If the February and March 2001 events involving claimant and the buffer happened as claimant and her son, Justin, testified, then Father Duesdieker is lying. If Father Duesdieker is telling the truth, then claimant and her son, Justin, are lying.

Given the contradictions between claimant in her first deposition (January 2003) and in her hearing testimony, and given the contemporaneous medical records from March 2001 and April 2001 (which do not mention the 2001 back injuries or the back pain claimant testified she was having at that time), claimant's credibility is called into question.

And as previously noted, claimant has the burden of proving each element of her claim.[174] I find that in both cases, claimant has failed to meet that burden. In making this determination, I specifically find that the testimony of Father Duesdieker to be more credible than that of claimant or her sons, Justin and Joseph. Father Duesdieker's testimony was consistent and he testified in an open and credible manner.

Claimant's testimony, on the other hand, has changed from her having thrown the buffer down the stairs and walking over to Father Duesdieker's home to report the injury, to her being pinned under the buffer on the stairs and sending her son to report the injury. In addition, claimant had no contemporaneous medical evidence to corroborate her story. Although claimant alleges she was having back problems after the February and March 2001 events, she did not mention them or mention back pain when she saw a doctor on March 11 and March 15, 2001 – which was quite soon after the alleged event of March 3, 2001.

Likewise, there is no mention of the alleged 2001 back injuries in the April 10, 2001 records regarding claimant's involuntary admission to a mental health facility – in spite of claimant remembering to mention her work-related back injury from the 1990s, and in spite of the fact that she became combative during the admission process and had to be put in restraints. If claimant's back had been hurting during February and March 2001 as she claimed, it is a bit surprising that being combative and being placed in restraints did not cause her to feel sufficient discomfort to remind her to mention not just the 1990s back injury, but also the very recent 2001 injuries.

I find claimant failed to meet her burden of proof she injured her back in an accident arising out of and in the course and scope of her employment with the employer on February 24, 2001, or on March 3, 2001. I also find claimant has failed to meet her burden of proof that the employer was given timely notice of the alleged accidents and injuries.

Claimant presented no credible medical evidence to support her claimed back injury on February 24, 2001, and neither her testimony nor that of her son, Justin, is credible. On the other hand, I find that the testimony of Father Duesdieker is credible and convincing.

[174] Fisher v. Archdioceses of St. Louis, 793 S.W.2d 195, 198 (Mo.App. 1990).

Summary

Claimant presented no competent, substantial, or credible evidence of an accident or injury on February 24, 2001, or on March 3, 2001, arising out of and in the course and scope of her employment with the employer. She presented no credible evidence her employer had timely notice of either of the alleged accidents and injuries and the objective medical evidence does not support her allegations of a work-related injury on February 24, 2001, or March 3, 2001. Claimant has failed to meet her burden of proof and her claim for compensation fails.

Any pending objections not expressly addressed in this award are overruled.

Made by: _____

Vicky Ruth
Administrative Law Judge
Division of Workers' Compensation