

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

Injury No.: 04-039238

Employee: Michael Huller
Employer: VIP Property Management Company
Insurer: Missouri Employers Mutual Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 18, 2008. The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued July 18, 2008, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 11th day of March 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge (ALJ) should be reversed and future medical benefits should be awarded.

First, there is no question that employee's May 6, 2004 accident is compensable under the Missouri Workers' Compensation law. However, it is my opinion, based upon the medical records and testimony provided that employee should be awarded future medical benefits in addition to the permanent partial disability benefits awarded by the administrative law judge.

The authority for awarding future medical benefits is provided in §287.140.1 RSMo (2004), which states:

"In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury...."

The burden of proof that must be satisfied by a claimant seeking future medical benefits is provided in *Landers v. Chrysler Corporation*, 963 S.W.2d 275 (Mo.App. 1997) (citations omitted). In *Landers*, the court stated that a claimant is not required to present evidence on the specific medical treatment which will be necessary in the future, but must show by a "reasonable probability" that he or she is in need of additional medical treatment for said treatment to be awarded. *Id.* at 283.

Employee's spine required a surgical repair which involved a T12 to L2 fixation for the L1 burst fracture, and a fusion and fixation of the lumbar spine at the level of L4 to S1 for the L5 burst fracture. Dr. Robert Strang is the doctor that performed said surgical repair. Dr. Strang continued to see employee in follow-up after the surgery, and when he determined that he had no further treatment recommendations, he requested that employee be seen by Dr. Jeffrey Woodward.

Dr. Woodward determined that employee had reached MMI, was 18% permanently partially impaired at the body as a whole and that no future medical treatment was required.

Employee was then sent to Dr. Brent Koprivica for the purpose of obtaining an independent medical evaluation. Dr. Koprivica determined employee was 30% permanently partially disabled at the body as a whole and "that it is a likely probability due to the severity of trauma and the fusions necessary based on that severe trauma that [employee] will require medical care and treatment in the future."

Dr. Woodward was then asked to review Dr. Koprivica's report and provide an update to his previous records. Dr. Woodward stated in his special report that in his opinion, "the patient remains at MMI as indicated in my last office note with no change to work status or disability rating opinion. Also, as indicated previously, the patient requires no future or additional work injury medical treatments or evaluation."

At the final hearing, employee testified and listed his current complaints, which he believes are the direct result of his work-related accident as follows: 1) Not being able to bend as far as he used to; 2) Constant pain, which is exacerbated by repetitive movements; 3) Decreased strength; and 4) His legs fall asleep on occasion. Employee stated that he treats his pain with over-the-counter pain medications.

Based on the above, I believe that employee has carried his burden that there is a "reasonable probability"

that he is in need of future medical treatment. He sustained a very serious work-related injury which required extensive surgical repairs and subsequent therapy. Dr. Koprivica's report specifically stated that he was of the opinion that there is a "likely probability" that additional medical treatment and care will be needed. Dr. Koprivica's report satisfied employee's burden as to future medical benefits. Although Dr. Woodward reviewed Dr. Koprivica's report and reiterated his previous assessment that employee requires no future or additional work injury medical treatments or evaluation, his special report did nothing to rebut the burden that Dr. Koprivica's report had already satisfied.

The ALJ overstated Dr. Woodward's opinion in the award. He refers to Dr. Woodward on numerous occasions as a "treating physician" when Dr. Woodward only saw employee on one occasion; the same amount of times Dr. Koprivica saw employee. The ALJ also improperly stated that Dr. Strang was of the same opinion of Dr. Woodward as to employee not needing any future medical treatment. Dr. Strang never specifically addressed the need or lack thereof of future medical treatment in his records. The absence of a statement by Dr. Strang that future medical is required should not be interpreted as an opinion that future medical will not be required.

For the foregoing reasons, employee is entitled to future medical benefits. As such, I would reverse the award of the administrative law judge merely awarding employee permanent partial disability benefits and additionally award employee future medical benefits.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member

AWARD

Employee: Michael Huller

Injury No. 04-039238

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: VIP Property Management Company

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance Company

Hearing Date: May 6, 2008

Checked by:

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? YES
 2. Was the injury or occupational disease compensable under Chapter 287? YES
 3. Was there an accident or incident of occupational disease under the Law? YES
 4. Date of accident or onset of occupational disease: MAY 6,2004
 5. State location where accident occurred or occupational disease was contracted: BRANSON, MO
 6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
 7. Did employer receive proper notice? YES
 8. Did accident or occupational disease arise out of and in the course of the employment? YES
 9. Was claim for compensation filed within time required by Law? YES
 10. Was employer insured by above insurer? YES
 11. Describe work employee was doing and how accident occurred or occupational disease contracted:
LIFTING A GABLED TWO-STORY WALL
 12. Did accident or occupational disease cause death? NO
 13. Part(s) of body injured by accident or occupational disease: LUMBAR SPINE
- Nature and extent of any permanent disability: 30 PERCENT TO THE BODY AS A WHOLE
15. Compensation paid to-date for temporary total disability and temporary partial disability: \$14,393.03
 16. Value necessary medical aid paid to date by employer/insurer? \$153,119.12
 17. Value necessary medical aid not furnished by employer/insurer? -0-
 18. Employee's average weekly wages: \$705.53
 19. Weekly compensation rate: \$\$470.38/\$347.05
- Method wages computation: AGREED

COMPENSATION PAYABLE

21. Amount of compensation payable:
Unpaid medical expenses: -0-
-0- weeks of temporary total disability (or temporary partial disability)
120 weeks of permanent partial disability from Employer (\$41,646.00)
-0- weeks of disfigurement from Employer
22. Second Injury Fund liability: NO

Total: \$41,646.00

23. Future requirements awarded: NONE

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 PERCENT BEYOND THE SUM OF \$24,987.60 of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

PATRICK PLATTER

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Michael Huller

Injury No. 04-039238

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: VIP Property Management Company

Additional Party: N/A

Insurer: Missouri Employers Mutual Insurance Company

Hearing Date: May 6, 2008

AWARD ON HEARING

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on May 6, 2008.

The employee appeared personally and through his attorney, Patrick J. Platter, Esq. The employer and insurer appeared through their attorney, Karen L. Johnson, Esq.

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

- (1) On or about May 6, 2004 VIP Property Management Co. was an employer operating under and subject to The Workers' Compensation Law for the State of Missouri, and at times relevant to this case was fully insured by Missouri Employers Mutual Insurance Company.
- (2) On or about May 6, 2004 Michael Huller was an employee of VIP Property Management Co., and was working under and subject to The Workers' Compensation Law for the State of Missouri.

(3) On or about May 6, 2004 Michael Huller sustained an accident, which arose out of and in the course and scope of his employment with VIP Property Management Co.

(4) The above-referenced employment and accident occurred in Stone County, Missouri. The parties agree to venue lying in Christian County, Missouri. Venue is proper.

- The employee notified the employer of his injury as required by Section, 287.420, RSMo.
- The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- At the time of the claimed accident, the employee's average weekly wage was \$705.53, which is sufficient to allow a compensation rate of \$470.38 for temporary total disability compensation, and a compensation rate of \$347.05 for permanent partial disability compensation.
- Temporary disability benefits (Temporary total and temporary partial disability compensation) have been provided to the claimant in the amount of \$14,393.03, payable for the period of May 7, 2004 through April 4, 2005.
- The employer and insurer have provided medical treatment to the employee, having paid \$153,119.12 in medical expenses.

(10) Atty. Pat Platter seeks attorneys fees in the amount of 25% of the benefits awarded in excess of \$24,987.60.

The issues for resolution upon which evidence will be taken are as follows:

- Whether the claimed accident of May 6, 2004 caused the injuries and disabilities for which benefits are now being claimed?
- Whether the claimant has sustained injuries that will require additional or future medical care in order to cure and relieve him of the effects of the injuries?
- Whether the claimant sustained any permanent disability as a consequence of the claimed accident of May 6, 2004; and, if so, what is the nature and extent of the disability?

EVIDENCE PRESENTED

The claimant testified at the hearing in support of his claim. In addition, the employee offered for admission the following exhibits:

Exhibit A	Report of Injury
Exhibit B	Claim for Compensation
Exhibit C	Answer of Employer / Insurer to Claim for Compensation
Exhibit D	Medical Records from Skaggs Community Health Center
Exhibit E	Medical Records from Cox Medical Center
Exhibit F	Medical Records from Springfield Neurological & Spine Institute
Exhibit G	Records & Report from Work Evaluations & Ergonomic Assessments (Nancy Dickey, OTR/L)
Exhibit H	Medical Report from P. Brent Koprivica, M.D.
Exhibit I	Photograph of Michael Huller (Back Incision)

The exhibits were received and admitted into evidence .

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

Exhibit 1 Medical Report from Jeffrey Woodward, M.D.

Exhibit 1 was received and admitted into evidence.

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

- Notice of Hearing
- Order (Cancellation of Trial Setting & Scheduling of a New Evidentiary Hearing Date)
- Request for Hearing-Final Award
- Answer of Employer/Insurer to Claim for Compensation
- Claim for Compensation
- Entry of Appearance
- Notice of Settlement Offer
- Report of Injury

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

DISCUSSION

The employee is approaching 38 years of age, having been born on August 6, 1970. Mr. Huller resides in Reeds Spring, Missouri.

In or around 1996, Mr. Huller obtained employment with the employer, VIP Property Management (The Villages at Indian Point), which is a resort / condominium community. Initially, VIP Property Management hired Mr. Huller to work as a laborer. In this employment, Mr. Huller worked 40 to 60 hours a week, and performed general laborer duties, including: assisting framers, mowing, grounds keeping and landscaping, maintenance and repair, and moving furniture. Additionally, in this employment, prior to May 6, 2004, Mr. Huller engaged in heavy lifting, with items weighing between 50 to 100 pounds.

Mr. Huller continues to be engaged in employment with VIP Property Management. However, subsequent to returning to his employment following the May 6, 2004 accident, Mr. Huller modified the nature of his employment.

Today, Mr. Huller works as supervisor in the maintenance department, and performs lighter work, consistent with the permanent medical restrictions that have been given to him.

Accident of May 6, 2004

On or about May 6, 2004, while assisting in the construction of a residence, by team lifting a gabled two-story wall, the wall slipped from the grasp of co-workers, resulting in the wall falling on top of Mr. Huller. The incident caused Mr. Huller to be pinned underneath the wall, which prevented him from getting up until the co-workers lifted the wall off the ground sufficiently high to allow him to drag himself out from underneath the wall. Mr. Huller experienced immediate and severe back pain, which necessitated an emergency response by paramedics.

Medical Treatment

Upon stabilizing Mr. Huller, the emergency response team transported, by ambulance, Mr. Huller to Skaggs Hospital. The attending physicians at Skaggs Hospital provided Mr. Huller with emergency room treatment. However, in light of Skaggs Hospital not having a neurosurgeon available to attend to Mr. Huller's care, Mr. Huller was transported to Cox Medical Center for further care.

Thereafter, Mr. Huller was admitted into the hospital of Cox Medical Center, wherein he underwent diagnostic studies that included MRI and a CT-Scan of the spine. Additionally, Mr. Huller received a surgical evaluation by Robert D. Strang, M.D., who is neurosurgeon with Springfield Neurological & Spine Institute. In light of his examination and findings, Dr. Strang diagnosed Mr. Huller with burst fractures of the lumbar spine at the levels of L1 and L5.

Subsequently, on or about May 10, 2004, Mr. Huller underwent surgical repair involving a T12 to L2 fixation for the L1 burst fracture, and a fusion and fixation of the lumbar spine at the level of L4 to S1 for the L5 burst fracture. Following the surgery, Mr. Huller received conservative follow-up care that included both physical therapy and aqua therapy, and placed on temporary total disability. Eventually, Mr. Huller received a partial release of restrictions that afforded him opportunity to work approximately 20 hours a week under physical restrictions.

During the period of his post-surgery recovery, Mr. Huller experienced a progressive increase in his work restrictions, and opportunity to work more hours. In or around February 2005, Mr. Huller underwent a second surgery, which involved removal of hardware, which occurred without complications. Again, following this surgery, Mr. Huller received conservative follow-up care. On or about July 6, 2005, Mr. Huller underwent a functional capacity evaluation ("FCE"), which included recommendations that permitted Mr. Huller to return to work full time, but under permanent work restrictions. The permanent restrictions outlined in the FCE are as follows:

Reaching: Not Restricted
Squatting: Not Restricted
Bending: Occasional
Sitting: Not Restricted
Standing: One hour and can be resumed following positional changes
Walking: Protective Heights / Non Protective Heights
Stair Climbing: Occasional
Balance: Protective Heights / Non Protective Heights
Crawling: Occasional

Occasional Material Handling:

Leg Lift: 60 lb.
Carrying: 50 lb.
Lifting to shoulder level: 50 lb.
Overhead lifting: 40 lb.

Frequent Material Handling:

Leg Lift: 30 lb.

Carrying: 30 lb.

Lifting to eye level: 30 lb.

Work Speed: Good approach to tasks

Work Level: Medium

Medical Opinions

On or about November 14, 2005, Mr. Huller presented to Jeffrey Woodward, M.D., who is a physician affiliated with Springfield Neurological & Spine Institute, and engaged in the specialty of physical medicine. In light of his examination and evaluation of Mr. Huller, and taking into consideration Dr. Strang's recommendations and prior medical / functional capacity evaluation records, Dr. Woodward determined that Mr. Huller had reached maximum medical improvement, and could return to work full duty, but with the permanent restrictions outlined in the FCE performed by Nancy Dickey. Additionally, Dr. Woodward opined that, as a consequence of the May 6, 2004 accident, Mr. Huller sustained a permanent partial impairment of 18 percent to the body as a whole, referable to the lumbar and thoracic spine.

In addition, Dr. Woodward opines that Mr. Huller is not in need of future medical care. Notably, relative to this concern, and following his review of the Dr. Koprivica's report, Dr. Woodward propounded the following comments:

In my opinion the patient [Mr. Huller] remains at MMI as indicated in my last office note with no change to work status or disability rating opinion.

Also as indicated previously, the patient [Mr. Huller] requires no future or additional work injury medical treatments or evaluation.

P. Brent Koprivica, M.D., who is a physician practicing in the specialty of Occupational Medicine, testified by the submission of his complete medical report. Dr. Koprivica performed an independent medical examination of Mr. Huller on or about July 6, 2006. At the time of this examination, Dr. Koprivica took a history from Mr. Huller, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Huller, Dr. Koprivica opined that the May 6, 2004 accident caused Mr. Huller to sustain a "severe structural injury in the spinal region," which necessitated two surgeries, including a lumbar fusion. Dr. Koprivica further opined that, at the time of his examination and evaluation, Mr. Huller was at maximum medical improvement, relative to the injury Mr. Huller sustained and his subsequent recovery.

Although opining that Mr. Huller is at maximum medical improvement, Dr. Koprivica is of the opinion that, relative to the May 6, 2004 injury, "Mr. Huller will require medical care and treatment in the future." In this regard, Dr. Koprivica noted that the severity of the injury and the nature of the surgical repairs, warrant continuing "access to a spinal surgeon for monitoring purposes for the potential adjacent segment disease inferior and superior to the prior fusions as well as potential medication ... for chronic pain management purposes...."

In addition, Dr. Koprivica opined that, in light of the May 6, 2004 injury, Mr. Huller is governed by permanent work restrictions, which include allowance of lifting to 60 pounds. And, Dr. Koprivica opined that the May 6, 2004 accident caused Mr. Huller to sustain a permanent partial disability of 30 percent to the body as a whole, referable to the spine.

FINDINGS AND CONCLUSIONS

The Workers' Compensation Law for the State of Missouri underwent substantial change on or about August 28, 2005. However, in light of the underlying workers' compensation case involving an accident date of May 6, 2004, the legislative changes occurring in August 2005 enjoy only limited application to this case. The legislation in effect

on May 6, 2004, which is substantive in nature, and not procedural, governs substantively the adjudication of this case. Accordingly, in this context, several familiar principles bear reprise.

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

Further, in considering the question of future medical care, Section 287.140, RSMo requires the employer to provide such medical treatment as is reasonably necessary to cure and relieve the effects of the employee's injury. See *Landers v. Chrysler Corp.*, 963 S.W. 2d 275 (Mo. App. 1997). In obtaining an award for temporary total disability or future medical care, the claimant need merely prove that the injury is causally related to work based upon reasonable probability, while an award for permanent disability requires reasonable certainty of the disability. *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo. App. 1995) citing *Griggs v. A.B. Chance, Co.*, 503 S.W.2d 697 (Mo. App. 1973); *Winsor* at 8. Although medical causation not within common knowledge must be established through medical evidence, ultimately, "(the) importance of the expert testimony is to be determined from the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient." *McGrath v. Satellite Sprinkler Systems*, 877 S.W.2d 704, 708 (Mo. App. 1994). This standard was elucidated in *Haynes v. Emerson Elec. Co.*, 799 S.W.2d 939, 949-950 (Mo. App. 1990):

Claimant did not have to absolutely establish the essential elements of her case; it is sufficient if she shows them by a reasonable probability. 'Probable' means that it appears to be founded in reason and experience which inclines the mind to believe, but leaves room for doubt.

It is not necessary that the employee conclusively prove that specific treatment is required to treat or diagnose a condition, but rather it is sufficient if "claimant showed 'by reasonable probability' that he was in need of additional medical treatment by reason of the accident." *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo. App. 1995). It must be shown that the need for future medical care "flows(s) from the accident." *Landers* at 283. The phrase "to cure and relieve" has been construed to mean treatments that "give comfort even though restoration to soundness is beyond avail." *Mathia* at 277 (parenthesis omitted).

I. Accident

On or about May 6, 2004, while assisting in the construction of a residence, by team lifting a gabled two-story wall, the wall slipped from the grasp of co-workers, resulting in the wall falling on top of Mr. Huller. The incident caused Mr. Huller to be pinned underneath the wall, which resulted in Mr. Huller sustaining a severe injury to his spine, involving burst fractures of the lumbar spine at the levels of L1 and L5.

II. Medical Care

The May 6, 2004 accident, and the resulting injury to Mr. Huller's spine, necessitated extensive receipt of medical care, which included surgical repair involving a T12 to L2 fixation for the L1 burst fracture, and a fusion and fixation of the lumbar spine at the level of L4 to S1 for the L5 burst fracture. And, the injury necessitated a second surgery involving removal of the hardware. Additionally, following the two surgeries, Mr. Huller received conservative follow-up care that included both physical therapy and aqua therapy, and prescription medication and Ibuprofen for pain. The employer and insurer provided Mr. Huller with the medical care recommended and prescribed by the treating physicians, including Robert Strang, M.D., Ted Lennard, M.D., and Jeffrey Woodward, M.D. (Dr. Woodward saw Mr. Huller only once. However, all three physicians are affiliated with Springfield Neurological & Spine Institute, with

Drs. Lennard and Woodward being physicians who specialize in the practice of physical medicine.) The treating physicians do not recommend or believe that future medical care is indicated for continuing treatment of Mr. Huller's May 6, 2004 injury.

Notwithstanding, Mr. Huller asserts that he should be provided future medical care in order to cure and relieve him from the effects of the May 6, 2004 injury. Notably, in this context, Mr. Huller states that he suffers chronic back pain, and takes over the counter medication in the nature of aspirin and Ibuprofen for relief of this pain. Additionally, according to Mr. Huller, he takes hot showers to obtain certain relief from his pain. In support of his request for future medical care, Mr. Huller relies upon the medical opinion of Dr. Koprivica, who contends that Mr. Huller should be provided continuing "access to a spinal surgeon for monitoring purposes for the potential adjacent segment disease inferior and superior to the prior fusions as well as potential medication ... for chronic pain management purposes...."

After consideration and review of the evidence, and relating solely to the issue of future medical care, I resolve the differences in medical opinion in favor of the treating physicians, Drs. Strang and Woodward. Although Mr. Huller may suffer residual discomfort and certain pain, I am persuaded that future medical care is not necessary in order to cure and relieve Mr. Huller from the effects of the injury. In this regard, I accept as true Dr. Woodward's findings and conclusions that Mr. Huller "requires no future or additional work injury medical treatments or evaluation." Therefore, the request for future medical care is denied.

III.

Permanent Partial Disability

In the present case, the parties offer differing medical opinion relative to the nature and extent of Mr. Huller's permanent disability. Yet, both physicians recognize that Mr. Huller is governed by work restrictions. Additionally, it is noted that Dr. Woodward does not issue an opinion of disability, but an opinion of impairment. This is relevant, insofar as the restrictions and limitations necessitated a change in job duties, as Mr. Huller is no longer able to engage in heavy lifting. And, Mr. Huller suffers from permanent loss of motion and flexibility in the use of his back.

Further, while Mr. Huller is continuing to work in labor-oriented employment and is not working in an office environment, Mr. Huller is a working supervisor. He is not able to engage in the same or type of heavy lifting work he performed prior to the injury. Additionally, Mr. Huller seeks relief from his residual symptomology by regularly taking hot showers, and sleeping in a heated water bed. Also, while Mr. Huller is continuing to work 40 to 60 hours a week, depending on the season, he works with chronic discomfort and pain. Mr. Huller's continuing employment is evidence of a strong work ethic, and not a basis for concluding that his disability is minimal

Accordingly, after consideration and review of the evidence, and relating solely to the issue of permanent partial disability, I resolve the differences in medical opinion in favor of Dr. Koprivica, who is an occupational medicine physician. Therefore, I find and conclude that, as a consequence of the accident of May 6, 2004, Mr. Huller sustained a permanent partial disability of 30 percent to the body as a whole, referable to the thoracic and lumbar spine (120 weeks). Therefore, the employer and insurer are ordered to pay to the employee, Michael J. Huller, the sum of \$41,646.00, representing 120 weeks of permanent partial disability compensation, payable at the applicable compensation rate of \$347.05.

The award is subject to modifications as provided by law.

An attorney's fee of 25 percent of the benefits ordered to be paid, beyond the sum of \$24,987.60, is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Date: __July 18, 2008_
Wilson__

Made by: _____/s/ L. Timothy

L. Timothy Wilson

*Chief Administrative Law Judge
Division of Workers' Compensation*

(signed July 16, 2008)

A true copy: Attest:

_____/s/ Jeffrey W. Buker_

Jeffrey W. Buker

Director

Division of Workers' Compensation