

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

Injury No.: 05-107685

Employee: Katherine Hunt
Employer: Daimler-Chrysler aka Chrysler, LLC
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-captioned workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo (2000).¹ We have reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record. We find 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, except as modified herein. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the February 19, 2010, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The administrative law judge did not award future medical care because employee has thus far declined medical care that has been offered her. Employee has shown by a reasonable probability that she will need future medical care related to her work injury.

We are aware of cases holding that future medical care may be denied where a claimant has already refused to accept the treatment and refuses to change her lifestyle so as to become a good candidate for treatment in the future. See, *Kern v. General Installation*, 740 S.W.2d 691 (Mo. App. 1987). This case is distinguishable. Here, there is no indication that employee is not a suitable candidate for treatment. She simply has not yet chosen to participate in some of the recommended procedures, therapies, or treatment.

We reverse the administrative law judge regarding future medical care. Employer shall provide to employee future medical care as may reasonably be required to cure and relieve the effects of her work injury. In all other respects, we affirm the award of the administrative law judge.

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.

¹ Statutory references are to the Revised Statutes of Missouri 2000.

Employee: Katherine Hunt

- 2 -

The award and decision of Administrative Law Judge Linda J. Wenman, issued February 19, 2010, is attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 3rd day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Katherine Hunt

Injury No.: 05-107685

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Daimler-Chrysler aka Chrysler LLC

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: November 19, 2009

Checked by: LJW

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: July 11, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While performing her job duties, a forklift hit Employee's part table, pushing the table into Claimant and pinning her to the car door she was building.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left knee and low back
14. Nature and extent of any permanent disability: 15% PPD referable to the left knee and 17.5% BAW PPD referable to the lumbar spine from Employer, and 18 weeks of PPD benefits from SIF.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$4,127.26

Employee: Katherine Hunt

Injury No.: 05-107685

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Sufficient for maximum rates
- 19. Weekly compensation rate: \$696.97 / \$365.08
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

94 weeks of permanent partial disability from Employer	\$34,317.52
--	-------------

22. Second Injury Fund liability: Yes

18 weeks of permanent partial disability from Second Injury Fund	\$6,571.44
--	------------

TOTAL:	\$40,888.96
--------	-------------

23. Future requirements awarded: None

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Ray Gerritzen

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Katherine Hunt	Injury No.: 05-107685
Dependents:	N/A	Before the
Employer:	Daimler-Chrysler aka Chrysler LLC	Division of Workers' Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-insured	Checked by: LJW

PROCEDURAL HISTORY

On January 31, 2008, and again on March 13, 2009, Temporary Awards were issued by the undersigned Administrative Law Judge, directing Daimler-Chrysler Corporation (Employer) to provide the following: medical treatment referable to Katherine Hunt’s (Claimant) lumbar spine; potential temporary total disability payments; and payment of past medical expenses incurred by Claimant related to treatment sought for her work related injury. Upon receipt of the first Temporary Award, Employer reimbursed Claimant for past medical expenses owed, and arranged for Claimant to be examined by Dr. Kitchens, a board certified neurosurgeon. Upon receipt of the second Temporary Award, Employer arranged for Claimant to receive treatment from Dr. Polinsky, a neurosurgeon and Dr. Christopher, a pain management specialist in St. Louis, and upon her move to Huntsville, Alabama, by Dr. Murray, a spine surgeon and Dr. Scherlis, a pain management specialist.

The undersigned Judge has reviewed the two Temporary Awards issued, along with the transcript and evidence presented at both prior hearings. Following this review and the testimony and evidence presented at the hearing for final award, the findings of fact and rulings of law found in the initial temporary awards are adopted in this award, attached to the this award, incorporated by this reference, and will not be repeated. Any additional findings of fact and conclusions of law found necessary to supplement or to comport to the new evidence presented during trial will be included in this award.

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers’ Compensation claim by the undersigned Administrative Law Judge on November 19, 2009. This case was tried with companion cases #06-063573 and #06-084854. Post-trial briefs were declined by the parties and the case was formally submitted on the date of hearing. Attorney Ray Gerritzen represented Claimant. Employer is self-insured, and represented by Attorney James Kennedy. Assistant Attorney General Karen Schute represented the Second Injury Fund (SIF).

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: medical causation; liability of Employer and SIF for permanent partial disability

(PPD) benefits; and future medical care. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

In addition to the Exhibits offered by the parties during the previous two hearings, Claimant offered Exhibits O-Q, and Employer offered Exhibit 6. Claimant's exhibits were admitted into the record, but the objection voiced to Employer's Exhibit 6 was sustained.

Any other objections not expressly ruled on in this award are overruled. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be reviewed and summarized.

1. On July 11, 2005, Claimant sustained a work related injury to her left knee and lumbar spine due to an accident as outlined in the initial Temporary Award issued on January 31, 2008.
2. In response to the second Temporary Awards issued, Employer authorized Dr. Polinsky, a neurosurgeon to provide additional treatment to Claimant's lumbar spine. Dr. Polinsky referred Claimant to Dr. Christopher, a pain management specialist. Claimant declined to receive treatment from Dr. Christopher after learning Dr. Christopher recommended Claimant undergo lumbar epidural steroid injections.
3. Shortly after declining treatment offered by Dr. Christopher, Claimant moved to Huntsville, AL. Employer arranged for Claimant to be examined by Dr. Murray, a spine surgeon. Dr. Murray obtained a new MRI of Claimant's lumbar spine, and recommended Claimant undergo a myelogram to assess potential surgical intervention. Claimant declined the myelogram and any possibility of lumbar surgery. Dr. Murray then referred Claimant to Dr. Scherlis for pain management treatment.
4. On June 23, 2009, Dr. Scherlis examined Claimant, and recommended Claimant undergo lumbar sacral facet and sacroiliac joint injections, but Dr. Scherlis noted: "she is adamantly opposed to any sort of injection. She is not taking any pain medication. She does not wish to pursue any sort of injection. We would unfortunately have very little to offer her if she is not interested in any sort of therapeutic management. Perhaps physical therapy would be better suited for her if she is not interested in any sort of intervention." Claimant elected to receive six physical therapy visits, or two weeks of therapy, which did not help her.
5. Claimant moved to Huntsville to be closer to family, who provide physical assistance to her. Her physical abilities have not changed since the last hearing, except after she underwent right shoulder surgery, Claimant can now comb her hair and perform actions with her right arm if it is directly in front of her at waist level.
6. Claimant is currently receiving her only medical treatment from her primary physician, Dr. Ervin, who does not directly treat Claimant's work injuries, but treats Claimant's complaints of nausea and weight loss, which Claimant "ascribes to the constant pain" she is in. Dr. Ervin

opined Claimant to be “permanently and totally disabled from performing her prior manufacturing assembly work.”

7. Claimant’s rating physician, Dr. Poetz, opined Claimant’s herniated lumbar disc at L3-4 and associated radiculopathy is the result of Claimant’s second forklift related injury on June 30, 2006. Dr. Poetz rated Claimant’s lumbar spine at 30% BAW PPD, and 5% BAW PPD preexisting. Dr. Poetz further opined Claimant’s left knee injury was the result of the July 11, 2005 forklift injury, and rated that injury at 25% PPD referable to her left knee, and 5% PPD preexisting. Dr. Poetz rated a preexisting right wrist carpal tunnel release at 35% PPD. Dr. Poetz is the only medical physician to opine Claimant is PTD and unemployable in the open labor market. Claimant continued to work for Employer until June 30, 2006.

8. Claimant’s L3-4 herniated disc was present on an MRI obtained during May 2006.

9. Dr. Schlafly rated Claimant’s lumbar spine at 30% BAW PPD, and her left knee at 15% PPD, and her preexisting right wrist at 20% PPD.

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to medical causation

The issue of medical causation regarding Claimant’s lumbar spine was thoroughly discussed and found in favor of Claimant when the initial temporary award issued in 2008, and again in the second temporary award issued in 2009. The only new admissible medical evidence regarding the lumbar spine presented in the instant case is the medical records of Dr. Scherlis, and the testimony of Dr. Ervin. Dr. Ervin is Claimant’s primary care physician and he is not actively involved in the treatment of Claimant’s lumbar spine. Based on the evidence presented in the three hearings, I readopt the findings made in the previous temporary awards issued, and find the July 2005 forklift incident produced compensable left knee and lumbar spine injuries.¹ Claimant’s work was a substantial factor in causing her injuries, and Claimant has met her burden to demonstrate her need for medical treatment is medically causally related to her work duties.

Issues related to future medical care

Claimant requests future medical care from Employer in regard to her low back and left knee injuries. Claimant is not required to present evidence concerning the specific future medical treatment that will be necessary in order to receive an award of future medical care. *Landers v. Chrysler Corp.*, 963 S.W2d 275 (Mo.App. 1997) (overruled on other grounds).

¹ It is noted and corrected in this award that in the first Temporary Award two physicians, Drs. Poetz and Schlafly were indicated as relating the 2005 forklift incident as the cause of Claimant’s L3-4 HNP. Only Dr. Schlafly so opined.

Future medical benefits may be awarded if a claimant shows by reasonable probability that there will be a need for additional medical care due to the work-related injury. *Id.* When future medical benefits are awarded, the medical care must flow from the accident in order to hold an employer liable. *Id.* Reasonable probability is based on reason and experience that inclines the mind to believe, but leaves room for doubt. *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 320 (Mo.App. 1986). Claimant has been offered medical care for both injuries, but she continues to decline any treatment except for pain medication. She is currently not receiving prescription pain medication or any pain management treatment, as Dr. Scherlis had indicated he has no further treatment options to offer. As any future treatment offered involves risks to Claimant's health, Claimant is free to decline treatment that might make her condition improve, but, this does not obligate Employer to keep medical open until Claimant changes her mind. I find Employer is not liable for future medical benefits.

Issues related to Employer's PPD benefits

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). Dr. Poetz and Dr. Schlafly rated Claimant's injuries. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds). Based on the testimony and evidence presented, I find Claimant's disability to be 15% PPD at the 160 week level referable to her left knee, and 17.5% BAW PPD referable to Claimant's lumbar spine. Employer is liable for 94 weeks, or \$34,317.52 in PPD benefits.

Issues related to SIF liability for PPD benefits

Section 287.220.1 RSMo., provides SIF is implicated in all cases of permanent partial disability where there has been previous disability that created a hindrance or obstacle to employment or re-employment, and the primary injury along with the pre-existing disability(s) reach a threshold of 50 weeks (12.5%) for a body as a whole injury or 15% of a major extremity. The combination of the primary and preexisting conditions must produce additional disability greater than the last injury standing alone.

Claimant's documented preexisting condition is her 1983 right carpal tunnel release, rated by Dr. Poetz at 35% PPD referable to the wrist and by Dr. Schlafly at 20% PPD. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App.1983) (overruled on other grounds). I find Claimant's preexisting right wrist condition to present a disability of 15% PPD, and I adopt this percentage when considering Claimant's SIF PPD claim. I further find this condition to have been a hindrance or obstacle to her employment or reemployment.

Taking into account Claimant's preexisting disability and combining this disability with her work related left knee and lumbar spine injuries, I find the combination synergistically

produces a disability greater than the simple sum. Applying a 15% load factor, I find SIF to be liable for 18 weeks of PPD disability or \$6,571.44.

CONCLUSION

Claimant's work at Employer was a substantial factor in causing injury to her left knee and lumbar spine. Claimant's request for future medical benefits is denied. Employer and SIF are to pay PPD benefits as outlined in this award. Claimant's attorney is entitled to a 25% lien.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

TEMPORARY OR PARTIAL AWARD

Employee: Katherine Hunt

Injury No.: 05-107685

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Daimler-Chrysler Corporation

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: January 8, 2008 continued to January 10, 2008

Checked by: LJW

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: July 11, 2005
5. State location where accident occurred or occupational disease contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted: While performing her job duties, a forklift hit Employee's part table, pushing the table into Claimant and pinning her to the car door she was building.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Left knee and low back
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? \$249.11

Employee: Katherine Hunt

Injury No.: 05-107685

- 17. Employee's average weekly wages: Sufficient for maximum rates
- 18. Weekly compensation rate: \$696.97 / \$365.08
- 19. Method wages computation: Stipulated

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses:	\$249.11
--------------------------	----------

TOTAL:	*\$249.11
--------	-----------

***OWED TO DATE**

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Ray Gerritzen

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Katherine Hunt	Injury No.: 05-107685
Dependents:	N/A	Before the
Employer:	Daimler-Chrysler Corporation	Division of Workers'
		Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Self-insured	Checked by: LJW

PRELIMINARIES

The above referenced Workers' Compensation claim was heard by the undersigned Administrative Law Judge on January 8, 2008, and continued to January 10, 2008. This case was tried with companion cases #05-106534, #06-063573, and #06-084854. Katherine Hunt seeks issuance of a final award, and Daimler-Chrysler Corporation seeks issuance of a temporary award if the case is found compensable. Briefs were received and the case was formally submitted on January 24, 2008. Attorney Ray Gerritzen represented Katherine Hunt (Claimant). Daimler-Chrysler Corporation, (Employer) is self-insured, and represented by Attorney James Kennedy. Assistant Attorney General Jennifer Chestnut represented the Second Injury Fund (SIF).

Prior to the start of the hearing, the parties identified the issues for disposition in this case: medical causation; liability of Employer for past and future medical expenses; and liability of Employer and SIF for permanent partial disability (PPD) benefits. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

Claimant offered Exhibits A-M, and Employer offered Exhibits 1-2. All exhibits were admitted into the record with the exception of Amended Exhibit K, which contains the medical bills Claimant seeks to recover. Employer and SIF objected to admission of the document, and the admissibility ruling was reserved for this award. Following review of the exhibit, amended Exhibit K is admitted and the objections voiced go to the weight accorded the exhibit. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

Findings of Fact

All evidence presented has been reviewed. Only testimony necessary to support this award will be reviewed and summarized.

1. Claimant is sixty-four years old, and has worked at various assembly plants of Employer for twenty-three years. Claimant retired from Employer in June 2007. Throughout the years,

Claimant's work duties were mainly assembly line work, and some part data entry while working in Alabama. While working in Alabama, Claimant was treated for low back pain, and low back sprains/strains. On August 8, 2003, an abdominal CT scan was reported as demonstrating mild degeneration of the spine.

2. During March 2005, Claimant began working at Employer's Fenton, Missouri plant on the assembly line. Her production assignment consisted of inserting moldings on mini van doors, and inserting a bracket to secure the door arm rests. In order to place the molding, Claimant would "jam" the molding to insert the part, and "beat" the molding into place, striking each molding with a hammer approximately fourteen times before the molding was properly placed. Next, using a power screw driver located on an overhead bungee cord, Claimant would secure the armrest in place. Claimant would spend approximately forty-two seconds per door, worked on approximately 530 doors during an eight hour shift, or 680 doors in a ten hour shift.

3. On July 11, 2005, ten minutes before the end of her shift and the start of a two week plant shut-down, Claimant's parts table was struck by a forklift. Claimant estimated her parts table weighed 1500-2000 pounds when the incident occurred. At impact, the fork-lift pushed the parts table into Claimant's legs, pinning her between the parts table and the door she was working on. Once freed, Claimant was told by her supervisor that the plant medical team had already left the building, and if she required medical treatment during the shut-down, she should consult her family doctor, but she should also report to medical when the plant resumed production. At the time of injury Claimant noted pain in her right shoulder, the "arch" of her back, and both legs. She noted indentation and bruising above both knees where the table had hit her legs, and her left leg hurt more than her right leg.

4. Claimant was seen in plant medical on July 26, 2005. Claimant was examined by the plant physician, who noted no bruising, hematomas, or tenderness of Claimant's legs. The physician diagnosed bilateral thigh contusions "by history."

5. On August 11, 2005, Claimant consulted Dr. Reis, an internist, with "multiple" complaints, including pain in her legs. Upon examination, Dr. Reis noted Claimant had indentation of her bilateral upper thighs in a horizontal pattern, but no associated bruising or tenderness. Dr. Reis noted Claimant demonstrated fullness behind her left knee, and indicated an ultrasound could be obtained if Claimant's symptoms did not improve. Claimant did not return to Dr. Reis.

6. On September 20, 2005, Claimant consulted with her primary care physician, Dr. Schnurpfeil, regarding continued pain located in her left posterior knee. Claimant also complained of right shoulder, right arm, cervical spine, and "other" joint pain. Dr. Schnurpfeil advised Claimant to see an orthopedist.

7. Claimant returned to plant medical on October 3, 2005, complaining of right shoulder and left leg pain. Claimant reported experiencing pain that shot down her left leg into her shin when sleeping at night. The plant physician indicated "no residual from impact with table some time ago - April." Plant medical declined to refer Claimant to an orthopedist.

8. On October 13, 2005, a left knee MRI was obtained that demonstrated a probable chronic tear of the medial meniscus. Dr. Schnurpfeil referred Claimant to Dr. Edward Schlafly, an orthopedist.
9. On October 25, 2005, Dr. Edward Schlafly conducted an initial examination, and noted Claimant had "no specific injury at work." Dr. Schlafly administered a cortisone injection into Claimant's left knee.
10. Claimant returned to Dr. Schnurpfeil on November 17, 2005 complaining of multiple joint pains. Dr. Schnurpfeil diagnosed chronic pain syndrome.
11. On March 7, 2006, Claimant returned to plant medical complaining of right sided cervical spine and right trapezius pain. Claimant was provided a topical cream to apply to the pain sites. Plant medical described the complaint as "non-occ/pain".
12. Claimant returned to Dr. Schnurpfeil on May 22, 2006, complaining of pain in her left leg and severe pain when sitting. Dr. Schnurpfeil ordered a lumbar MRI, which demonstrated a L3-4 herniated disc, lateralizing to the left with lateral foraminal disc herniation. Dr. Schnurpfeil ordered physical therapy, and prescribed Vicodin for pain.
13. On June 20, 2006, Claimant's parts table was hit again by a forklift, and Claimant was pinned between the table and the door she had been assembling. Claimant was taken to plant medical, and later returned to complete her shift. Driving home after her shift, Claimant noted tingling in her buttock, left hip, and down her left leg. Sitting increased her pain, and her level of pain increased over the next three months.
14. On July 10, 2006, Claimant was admitted to St. Luke's Hospital with nausea and vomiting, which began after she started taking Vicodin. While hospitalized, Claimant was seen in consultation by Dr. Polinsky, a neurosurgeon, due to her continued low back pain. Dr. Polinsky recommended Claimant undergo a selected lumbar nerve root steroid injection, or consider lumbar surgery due to disc herniation with radiculopathy. On July 13, 2006, a select nerve root injection was attempted by Dr. Thom, but aborted before completion, due to Claimant's discomfort during injection of contrast medium. Upon discharge, Claimant was to follow-up with Dr. Polinsky regarding further lumbar care, but she did not return.
15. Claimant returned to work on July 20, 2006, with a two pound lifting restriction. Claimant told plant medical her back problems were related to the forklift accident in July 2005. To be reinstated, Claimant needed to be cleared by plant medical. Plant medical noted Claimant's hammer weighed less than a pound. Upon examination, plant medical noted Claimant's deep tendon reflexes and bilateral straight leg raising was symmetric and normal, Claimant was able to bend over and touch the floor, perform a full squat, and demonstrated no radiculopathy by axial rotation. The plant physician opined: "exam explains why bending etc restrictions not requested." Claimant was returned to work.
16. Currently, Claimant is only able to sit or stand for short periods due to back pain. She takes Percocet daily for pain. Claimant walks frequently during the day, as walking provides her with relief. Driving is difficult, and Claimant must stop frequently when driving. Claimant is unable

to drive long distances, and has found it necessary to turn around and cancel a trip due to low back pain. Claimant lives alone, and a young neighbor carries her groceries when purchased. Claimant avoids using her dishwasher due to the need to load and unload the appliance. Claimant would accept medical treatment for her back and right shoulder, if the treatment would improve her condition. Claimant does not seek any further treatment for her left knee.

17. Claimant was examined at her request by Dr. Bruce Schlafly on March 13, 2007. Dr. Schlafly is a board certified orthopedist who specializes in hand surgery. Upon examination, Dr. Schlafly noted 10% loss of range of motion of Claimant's lumbar spine; pain that radiated from Claimant's left buttock into her left leg; negative straight leg raising; crepitation and pain with decreased range of motion of Claimant's right shoulder; a positive impingement sign of her right shoulder; and positive crepitation of Claimant's left knee. Dr. Schlafly diagnosed impingement syndrome and right rotator cuff tendinitis caused by the repetitive movement of Claimant's right shoulder while performing her work; an L3-4 herniated disc caused by the July 2005 and June 2006 forklift incidents; and a torn left medial meniscus caused by the July 2005 forklift incident. Dr. Schlafly opined Claimant's work was a substantial and prevailing factor in her resulting injuries. Dr. Schlafly rated Claimant's right shoulder at 30% PPD; her lumbar spine at 30% BAW PPD; and her left knee at 15% PPD. Dr. Schlafly recommended Claimant receive further medical care to her right shoulder and lumbar spine. Dr. Schlafly opined treatment might provide improvement and decrease his ratings involving her right shoulder and lumbar spine. Dr. Schlafly also opined a herniated disc can occur instantly or in a staged fashion.

18. Claimant was examined at her request by Dr. Poetz on July 9, 2007. Dr. Poetz is board certified in family practice medicine. Upon examination, Dr. Poetz noted decreased range of motion of Claimant's right shoulder, left knee, and lumbar spine; positive straight leg raising; and crepitus of Claimant's left knee. Dr. Poetz diagnosed aggravation of Claimant's preexisting left knee degenerative joint disease with a medial meniscus tear caused by Claimant's July 2005 forklift incident; aggravation of Claimant's preexisting right shoulder degenerative joint disease with rotator cuff tendonitis and impingement syndrome due to the July 2005 forklift incident; and aggravation of Claimant's preexisting degenerative lumbar spine disease with a L3-4 herniated disc due to the June 2006 forklift incident. Dr. Poetz opined Claimant's work was a substantial and prevailing factor in her resulting injuries. Dr. Poetz rated Claimant's left knee at 25% PPD; her right shoulder at 25% PPD; and her lumbar spine at 30% BAW PPD. Dr. Poetz recommended Claimant receive further medical care to her left knee, right shoulder, and lumbar spine. Dr. Poetz opined Claimant was and would remain PTD.

19. Claimant was examined at Employer's request by Dr. George on October 1, 2007. Dr. George is a board certified orthopedist. Upon examination, Dr. George noted a 25% loss of range of motion in Claimant's cervical spine; a 30% loss of range of motion of Claimant's right shoulder, along with pain on rotation and mild atrophy of her shoulder musculature; slightly decreased range of motion of Claimant's lumbar spine with slight loss of her left knee jerk. Dr. George diagnosed right shoulder impingement syndrome; diffuse lumbar spondylosis with lateral herniated disc at L3-4 to the left; and degenerative joint disease of Claimant's left knee. Dr. George recommended Claimant receive medical treatment to her right shoulder. Dr. George opined Claimant's need for right shoulder treatment was related to her overhead work activities performed for several years for Employer. Dr. George rated Claimant's current right shoulder disability at 15% PPD. Dr. George did not find Claimant's lumbar spine or left knee diagnoses

to be related to her work injuries or duties with Employer. Dr. George opined he would expect Claimant to exhibit low back or leg symptoms within a month or two of the July 2005 forklift incident, if the event had injured Claimant's low back.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues related to medical causation

At hearing, Claimant alleges injuries to her legs and low back. Claimant filed a claim alleging injury to her legs as a result of the July 2005 forklift incident. Although Claimant did not delineate an injury to her low back in her original claim or any amended claim, Claimant and multiple physicians have indicated she may benefit from medical treatment to her lumbar spine. Employer has not shown it was prejudiced by the lack of proper filing, and the hearing record demonstrates ample notice to Employer of the alleged injured body part far in advance of trial.

To be medically causally related the work must be a substantial factor in the cause of the resulting medical condition or disability. §287.020.2 RSMo.² A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998) (overruled on other grounds). Further, there is no minimum percentage set out in the Workers' Compensation Law defining "substantial factor." *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. 1999) (overruled on other grounds). Determinations of this kind require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds).

Two physicians, Dr. Bruce Schlafly and Dr. Poetz, relate Claimant's original July 2005 forklift injury as a substantial factor in causing Claimant's L3-4 disc herniation. Dr. George disagrees, and opines Claimant's lumbar disc herniation is the result of degenerative changes, and degenerative changes occur from age and wear. Dr. George further indicated he would have expected Claimant to have been symptomatic with her back within one to two months of the incident if it was related. Dr. George does concede that being hit by a forklift when a person has existing degeneration can cause a disc herniation (Exhibit 1, pgs. 30-31). Dr. Schlafly concedes he would expect "some component" of radicular complaints to be present within a week or two of the July 2005 forklift injury, but "making that distinction might be initially difficult if there was also knee pathology" (Exhibit F, pgs. 29-30). Dr. Schlafly further opined a disc herniation can occur in a "staged" fashion, with symptoms worsening over time.

Dr. Schlafly's theory is supported by the evidence and testimony presented. First, Claimant received a significant jolt when the parts table struck her. Although Employer's

² All references are to RSMo 2000 unless otherwise noted.

medical department examined Claimant on July 26, 2005, and noted no physical evidence of thigh contusions, several weeks after this exam, Dr. Reis examined Claimant and noted evidence of horizontal indentation still present on Claimant's thighs. Claimant may be a poor historian regarding dates and doctors visits, but this physical finding supports Claimant's testimony regarding the impact she sustained. Second, when Claimant returned to Employer's medical department on October 3, 2005, she complained of pain that would shot down into her left shin and awaken her at night. During this time frame, left knee pathology had been discovered and treatment was being concentrated on Claimant's left knee, and a potential radicular symptom may have been obscured by the knee pathology. Third, Dr. Polinsky's consultation report of July 11, 2006, indicated Claimant's symptoms began either two to ten months prior to her hospitalization,³ and upon her return to work Claimant informed Employer's medical department that she believed her lumbar problems were due to the July 2005 forklift incident. Fourth, all physicians agree Claimant had degenerative spine disease that preexisted the July 2005 forklift injury, however, only Dr. George opines Claimant's disc herniation was caused by degeneration, degeneration that had been described in an abdominal CT scan as "mild" in 2003.

I find Dr. Bruce Schlafly's opinion to be persuasive, and find the July 2005 forklift incident produced a compensable left knee and lumbar spine injuries. Claimant's work was a substantial factor in causing her injuries, and Claimant has met her burden to demonstrate her need for medical treatment is medically causally related to her work duties.

Issues related to medical treatment and TTD benefits due to issuance of a temporary award

Claimant seeks issuance of a final award. Issuance of a final award requires Claimant to be at maximum medical improvement so that permanency may be determined. Dr. Bruce Schlafly and Dr. Poetz indicate Claimant would benefit from additional medical treatment. Claimant indicated in testimony she would like treatment for her lumbar spine, but is not in need of further treatment for her left knee. Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the workers' injury. Employer has provided no treatment to date. I find Employer responsible to provide Claimant with additional medical treatment. I further find Employer is obligated to provide the following treatment: Employer shall select a competent physician(s) and authorize any treatment recommended by the physician(s) regarding Claimant's lumbar spine including, but not limited to:

- 1) any tests and procedures as directed by the authorized treating physician(s)
- 2) any medications directed by the authorized treating physician(s)
- 3) any splints, slings, braces or similar devices ordered by the authorized treating physician(s)
- 4) any necessary surgical procedures ordered by the authorized treating physician(s), including all doctor, hospital, diagnostic and medical costs

³ Exhibit E contains the St. Luke's Hospital records, including Dr. Polinsky's consultation dictation. Two dictations are present in these records. The aborted dictation indicates Claimant reported symptoms ten months prior, and the completed dictation indicates Claimant's symptoms began two months prior to her hospitalization.

5) all post-operative and rehabilitative care as directed by the authorized treating physician(s).

Additionally, Claimant may receive TTD benefits during the course of future medical treatment. TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Pursuant to this award, Claimant will receive medical intervention for her lumbar injury. She will also be entitled to receive TTD benefits to cover the healing period associated with such treatment, if the selected physician determines Claimant would be unable to work during that period.

Issues related to past medical expenses

Claimant seeks reimbursement of medical expenses incurred prior to hearing.⁴ As stated previously, Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the work injury. Additionally, §287.140.3 RSMo., provides that all medical fees and charges under this section shall be fair and reasonable. A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo.banc 1989).

Claimant's alleged expenses are set forth in amended Exhibit K. The bills submitted have been thoroughly reviewed, compared to the medical records in evidence and Claimant's testimony. Employer had notice of Claimant's injury and had an opportunity to provide treatment as of July 26, 2005. Other than examining Claimant, Employer provided no treatment. Claimant sought treatment on her own after Employer waived its right to treat. The following bills are awarded after being found to be in compliance with the standards set forth in *Martin*:

1. \$54.75 in out-of-pocket pharmacy expenses⁵ –

5/30/06 - \$4.75 for Hydrocodone

6/26/06 - \$5.00 for Hydrocodone

7/15/06 – 10/17/07 - \$45.00 for Oxycodone

2. \$194.36 in out-of-pocket expenses for doctors visits⁶ –

⁴ It appears from Claimant's amended Exhibit K she seeks only out-of-pocket expenses. Employer is a self-insured entity for workers' compensation and self-insured for its employee's group health insurance program. Claimant's claimed medical expenses were processed under Employer's group health insurance program.

⁵ Disallowed pharmacy expenses included any drug unrelated to the alleged work injury, and drugs prescribed to treat Claimant's GERD as Claimant had a long standing history of taking NSAID's unrelated to the July 2005 forklift injury, or medication prescribed by a physician for which no corresponding medical records were produced.

⁶ Disallowed office visits included bills for which no corresponding medical records were produced, a bill from a physician who rated but did not treat, and bills not sufficiently itemized to determine the reason for why the bill was issued.

8/11/05 - \$11.84 Dr. Reis
 9/20/05 - \$96.66 Dr. Schnurpfeil
 12/13/05 - \$18.07 Dr. Ed Schlafly
 5/18/06 - \$41.34 Dr. Schnurpfeil
 6/20/06 - \$26.45 Dr. Schnurpfeil

Accordingly, I find Employer liable for a total of \$249.11 in medical expenses accrued by Claimant in an attempt to cure and relieve the effects of her work related injury.

CONCLUSION

Claimant sustained injury to her low back and left knee that arose out of, and in the course and scope of her employment. Claimant is entitled to receive Workers' Compensation benefits associated with her back injury as described in this award. This is a temporary award, subject to further order, the proceedings are hereby continued, and the case kept open until a final award can be made. The remaining issues in dispute involving nature and extent of PPD and future medical will be determined in future proceedings. The SIF will remain open.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

 Jeffrey W. Buker
Director
Division of Workers' Compensation

SECOND TEMPORARY OR PARTIAL AWARD

Employee: Katherine Hunt

Injury No.: 05-107685

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Daimler-Chrysler Corporation

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: January 28, 2009

Checked by: LJW

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: July 11, 2005
5. State location where accident occurred or occupational disease contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted: While performing her job duties, a forklift hit Employee's part table, pushing the table into Claimant and pinning her to the car door she was building.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Left knee and low back
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? \$500.00⁷
16. Value necessary medical aid not furnished by employer/insurer? None

⁷ Amount corrected in Employer's post-trial brief.

Employee: Katherine Hunt

Injury No.: 05-107685

17. Employee's average weekly wages: Sufficient for maximum rates

18. Weekly compensation rate: \$696.97 / \$365.08

19. Method wages computation: Stipulated

COMPENSATION PAYABLE

20. Amount of compensation payable:

TO BE DETERMINED

TOTAL:

TO BE DETERMINED

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Ray Gerritzen

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Katherine Hunt	Injury No.:	05-107685
Dependents:	N/A	Before the	
Employer:	Daimler-Chrysler Corporation	Division of Workers'	Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
Insurer:	Self-insured	Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	LJW

PROCEDURAL HISTORY

On January 31, 2008, a Temporary Award was issued by the undersigned Administrative Law Judge, directing Daimler-Chrysler Corporation (Employer) to provide the following: medical treatment referable to Katherine Hunt’s (Claimant) lumbar spine; potential temporary total disability payments; and payment of past medical expenses incurred by Claimant related to treatment sought for her work related injury. Upon receipt of the Temporary Award, Employer reimbursed Claimant for past medical expenses owed, and arranged for Claimant to be examined by Dr. Kitchens, a board certified neurosurgeon.

The undersigned Judge has reviewed the Temporary Award of January 31, 2008, along with the transcript and evidence presented at the hardship hearing. Following this review and the testimony and evidence presented at the hearing for final award, the findings of fact and rulings of law found in the initial temporary award are adopted in this award, attached to the this award, incorporated by this reference, and will not be repeated. Any additional findings of fact and conclusions of law found necessary to supplement or to comport to the new evidence presented during trial will be included in this award.

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers’ Compensation claim by the undersigned Administrative Law Judge on January 28, 2009. This case was tried with companion cases #05-106534, #06-063573, and #06-084854. Post-trial briefs were received and the case was formally submitted on February 25, 2009. Attorney Ray Gerritzen represented Claimant. Employer is self-insured, and represented by Attorney James Kennedy. Assistant Attorney General Sara Reichert represented the Second Injury Fund (SIF).

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: medical causation; liability of Employer and SIF for permanent partial disability (PPD) benefits; future medical care; and doubling of the January 31, 2008 Temporary Award. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers’ Compensation.

In addition to the Exhibits offered by the parties during the January 2008 hearing, Claimant offered Exhibit N, Employer offered Exhibits 3-5, and SIF offered Exhibit I. All exhibits were admitted into the record with the exception of Exhibit I, which is Claimant's complete deposition. Employer and Claimant objected to admission of the document, and the admissibility ruling was reserved for this award. Following review of the post-trial briefs, the objections to Exhibit I are sustained. In regard to objections contained within the admitted depositions, the following objections are sustained: Exhibit N pgs. 21-22 including deposition exhibit 1, pgs. 37-39, and pg. 48; and Exhibit 3 pg. 18. Any other objections not expressly ruled on in this award are overruled. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be reviewed and summarized.

1. On July 11, 2005, Claimant sustained a work related injuries to her left knee and low back as outlined in the initial Temporary Award issued on January 31, 2008.
2. On February 28, 2008, Claimant was examined by Dr. Kitchens, a board certified neurosurgeon, at Employer's request. On the date of examination, Dr. Kitchens noted Claimant's history of left L3 radiculopathy due to her disc herniation at L3-4, but documented "she now has no pain into her left thigh or left leg." Dr. Kitchens did document Claimant complaints of pain into her lower back, both hips, and pain in her right hip extending down her right leg to the knee. Upon examination, the abnormal findings included diminished sensory pinprick to Claimant's left thigh, and a positive Faber's test for left hip pain. Following examination, Dr. Kitchens concluded Claimant was not a surgical candidate as she did not currently have left L3 radiculopathy. Dr. Kitchens opined Claimant's right hip and leg pain were a recent development unrelated to her L3-4 disc herniation, and recommended conservative treatment for the right sided symptoms.
3. On March 17, 2008, Dr. Kitchens opined Claimant's right sided symptoms were not related to any of her pending claims, and Claimant could work without restrictions. On April 7, 2008, Dr. Kitchens indicated he had reviewed Claimant's May 2006 lumbar spine MRI, and opined Claimant did not have a right sided disc protrusion or nerve root impingement on that film. Employer provided no further treatment to Claimant's lumbar spine.
4. On February 28, 2008, Claimant completed a pain evaluation form when she arrived for her appointment with Dr. Kitchens.⁸ On the pain evaluation form was an anatomical drawing on which Claimant was instructed to mark where her pain was located. Claimant indicated she was experiencing burning pain over the left lower buttocks and the top of her left thigh. Claimant also indicated stabbing pain in the right buttock, and pins/needles sensation at the top of her right thigh. In response to a question on the form asking her to rank her most urgent need for care, Claimant indicated "lower back."

⁸ The pain evaluation form was marked as Deposition Exhibit A, discussed during testimony, but never offered into evidence during deposition or at trial.

5. Claimant denied telling Dr. Kitchens she was experiencing pain down her right leg, and she testified she has always reported low back pain that radiated into her left leg. Claimant's current complaints regarding her low back remain unchanged since issuance of the original temporary award. Claimant continues to take Percocet daily to control her pain.

6. On March 17, 2008, based on an order from Dr. Polinsky, Claimant underwent a MRI of her lumbar spine. The MRI was interpreted as demonstrating minimal diffuse disc bulging from L2-L5, and a small left lateral foraminal disc herniation at L3-4 that appeared less prominent when compared to a May 27, 2006 MRI.

7. On December 11, 2008, Claimant was examined by Dr. Poetz at her request. Dr. Poetz is board certified in family practice medicine. Upon examination, Dr. Poetz noted flattening of Claimant's lumbar lordosis, decreased lumbar range of motion, positive left straight leg raising, positive Fabere Patrick testing on the left, and decreased pinprick sensation of her left lateral thigh. Dr. Poetz diagnosed preexisting lumbar degenerative disc disease, L3-4 disc herniation with L3 radiculopathy and exacerbation of degenerative disc disease. Dr. Poetz recommended Claimant receive a "series of epidural steroid injections into the lumbar spine, if no response she should undergo a lumbar myelogram with post myelogram CT followed by surgical intervention if indicated." Dr. Poetz rated Claimant's lumbar disability at 35% PPD BAW with 5% preexisting Claimant's work injuries. Dr. Poetz concluded Claimant "was and will remain" PTD.

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to medical causation

The issue of medical causation regarding Claimant's lumbar spine was thoroughly discussed and found in favor of Claimant when the initial temporary award issued in 2008. The only new admissible medical evidence regarding the lumbar spine presented in the instant case is the testimony of Dr. Kitchens. The opinions expressed by Dr. Kitchens only extend to Claimant's need for lumbar surgery, and whether her right sided complaints are related to her work injury. Dr. Kitchens acknowledged Claimant has a L3-4 left sided disc herniation, but does not opine what caused it. Based on the evidence presented in both hearings, I readopt the findings made in the initial temporary award issued on January 31, 2008, and find the July 2005 forklift incident produced compensable left knee and lumbar spine injuries. Claimant's work was a substantial factor in causing her injuries, and Claimant has met her burden to demonstrate her need for medical treatment is medically causally related to her work duties.

Issues related to permanent partial disability benefits

The parties seek issuance of a final award. Issuance of a final award requires Claimant to be at maximum medical improvement so that permanency may be determined. Claimant and Employer offer expert medical testimony to support their respective claims of permanency.

Employer offered the opinion of Dr. Kitchens, and Claimant offered the opinion of Dr. Poetz. Both opinions are flawed and rendered unreliable due to the inconsistencies their testimony demonstrated.

When examined, Dr. Kitchens insisted Claimant “was having pain in her lower back, into both hips, pain down into the right hip, down into the right leg to her knee.” (Exhibit 3, pg.10) When confronted with the pain evaluation form completed by Claimant on the date of examination, Dr. Kitchens’ uncontroverted testimony acknowledged Claimant never indicated she was experiencing pain into her right leg, and it appears Dr. Kitchens made no effort to reconcile the inconsistent data he received on the date of examination. (Exhibit 3, pg. 27, 40, 55). Claimant flatly denied she ever informed Dr. Kitchens she was experiencing any pain into her right leg. Without reconciling the inconsistent data, Dr. Kitchens elected not to treat Claimant, because her right leg symptoms were unrelated to her known herniated disc. I find the opinions expressed by Dr. Kitchens to be unreliable.

I also find the opinions expressed by Dr. Poetz to be equally unreliable. Dr. Poetz’s ratings would infer Claimant is at maximum medical improvement, but his recommendations for treatment are totally inconsistent with a finding of permanency. Specifically, in regard to Claimant’s lumbar spine, Dr. Poetz opined Claimant should have a “series of epidural steroid injections into the lumbar spine,” and “if no response she should undergo a lumbar myelogram with post myelogram CT followed by surgical intervention if indicated.” One might successfully argue a series of epidural steroid injections could be considered maintenance medical care, but an opinion that diagnostic procedures coupled with an opinion that surgical intervention if appropriate would be recommended is diametrically opposite to a finding of maximum medical improvement. I find the opinion of Dr. Poetz to be unreliable.

The January 31, 2008 temporary award directed Employer to select a competent physician(s) and authorize any treatment recommended by that physician to treat Claimant’s lumbar spine work related injury. To date, Employer has complied with terms of the original temporary order when it relied upon Dr. Kitchens’ opinion Claimant required no further treatment for her herniated disc. However, there is no reliable medical evidence demonstrating Claimant is at maximum medical improvement in regard to her lumbar spine injury. Accordingly, despite parties request for a final award, I find Claimant is not at maximum medical improvement, and a further temporary award must issue. As such, I find Employer is obligated to provide the following treatment: as Claimant has continued to seek medical treatment through Dr. Polinsky, a board certified neurosurgeon, Employer shall authorize Dr. Polinsky⁹ to evaluate and authorize any treatment recommended by Dr. Polinsky to cure and relieve Claimant of the effects of her L3-4 herniated disc, until such time as Dr. Polinsky determines Claimant has reached maximum medical improvement, including, but not limited to:

- 1) any tests and procedures as directed by the authorized treating physician(s)
- 2) any medications directed by the authorized treating physician(s)
- 3) any splints, slings, braces or similar devices ordered by the authorized treating physician(s)

⁹ If Dr. Polinsky is unable or unwilling to provide treatment, the parties are instructed to advise the undersigned Judge for further physician designation.

- 4) any necessary surgical procedures ordered by the authorized treating physician(s), including all doctor, hospital, diagnostic and medical costs
- 5) all post-operative and rehabilitative care as directed by the authorized treating physician(s).

Additionally, Claimant may receive TTD benefits during the course of future medical treatment. TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Pursuant to this award, Claimant will receive medical intervention for her lumbar injury. She will also be entitled to receive TTD benefits to cover the healing period associated with such treatment, if Dr. Polinsky determines Claimant would be unable to work during that period.

CONCLUSION

Claimant sustained injury to her low back and left knee that arose out of, and in the course and scope of her employment. Claimant is entitled to receive Workers' Compensation benefits associated with her back injury as described in this award. This is a temporary award, subject to further order, the proceedings are hereby continued, and the case kept open until a final award can be made. The remaining issues in dispute will be determined in future proceedings. SIF will remain open.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

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

Injury No.: 06-063573

Employee: Katherine Hunt
Employer: Daimler-Chrysler aka Chrysler, LLC
Insurer: Self-Insured
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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 19, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued February 19, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3rd day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Katherine Hunt

Injury No.: 06-063573

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Daimler-Chrysler aka Chrysler LLC

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: November 19, 2009

Checked by: LJW

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 as June 29, 2006
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Moot
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 injury to her low back due to repetitive work.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Katherine Hunt

Injury No.: 06-063573

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Sufficient for maximum rates
- 19. Weekly compensation rate: \$696.97 / \$365.08
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: - 0 -

23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Katherine Hunt	Injury No.: 06-063573
Dependents:	N/A	Before the
Employer:	Daimler-Chrysler aka Chrysler LLC	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Self-insured	Checked by: LJW

PROCEDURAL HISTORY

On January 31, 2008, and again on March 13, 2009, Temporary Awards were issued by the undersigned Administrative Law Judge involving companion case #05-107685, directing Daimler-Chrysler Corporation (Employer) to provide the following: medical treatment referable to Katherine Hunt’s (Claimant) lumbar spine; potential temporary total disability payments; and payment of past medical expenses incurred by Claimant related to treatment sought for her work related injury. Upon receipt of the first Temporary Award, Employer reimbursed Claimant for past medical expenses owed, and arranged for Claimant to be examined by Dr. Kitchens, a board certified neurosurgeon. Upon receipt of the second Temporary Award, Employer arranged for Claimant to receive treatment from Dr. Polinsky, a neurosurgeon and Dr. Christopher, a pain management specialist in St. Louis, and upon her move to Huntsville, Alabama, by Dr. Murray, a spine surgeon and Dr. Scherlis, a pain management specialist.

The undersigned Judge has reviewed the two Temporary Awards issued in companion case #05-107685 along with the transcript and evidence presented at both prior hearings. Following this review and the testimony and evidence presented at the hearing for final award, the findings of fact and rulings of law found in the initial temporary awards issued in companion case #05-107685 are adopted in this award. Any additional findings of fact and conclusions of law found necessary to supplement or to comport to the new evidence presented during trial will be included in this award.

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers’ Compensation claim by the undersigned Administrative Law Judge on November 19, 2009. This case was tried with companion cases #05-107685 and #06-084854. Post-trial briefs were declined by the parties and the case was formally submitted on the date of hearing. Attorney Ray Gerritzen represented Claimant. Employer is self-insured, and represented by Attorney James Kennedy. Assistant Attorney General Karen Schute represented the Second Injury Fund (SIF).

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: occupational disease; arising out of and in the course and scope of employment; medical causation; liability of Employer and SIF for permanent total disability (PTD) and permanent partial disability (PPD) benefits; notice; and future medical care. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

In addition to the Exhibits offered by the parties during the previous two hearings, Claimant offered Exhibits O-Q, and Employer offered Exhibit 6. Claimant's exhibits were admitted into the record, but the objection voiced to Employer's Exhibit 6 was sustained. Any other objections not expressly ruled on in this award are overruled. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be reviewed and summarized.

1. Claimant is sixty-four years old, and has worked at various assembly plants of Employer for twenty-three years. Claimant retired from Employer in June 2007. Throughout the years, Claimant's work duties were mainly assembly line work, and some part data entry while working in Alabama. While working in Alabama, Claimant was treated for low back pain, and low back sprains/strains. During 2002, Claimant was diagnosed with degenerative spine disease of her neck and lumbar spine. During March 2003, Claimant was placed on Mobic to control complaints of neck and low back pain, and in 2003, a CT scan of Claimant's abdomen noted mild degeneration of her spine.
2. During March 2005, Claimant began working at Employer's Fenton, Missouri plant on the assembly line. Her production assignment consisted of inserting moldings on mini-van doors, and inserting a bracket to secure the door arm rests. In order to place the molding, Claimant would "jam" the molding to insert the part, and "beat" the molding into place, striking each molding with a hammer approximately fourteen times before the molding was properly placed. Next, using a power screw driver located on an overhead bungee cord, Claimant would secure the armrest in place. Claimant would spend approximately forty-two seconds per door, worked on approximately 530 doors during an eight hour shift, or 680 doors in a ten hour shift.
3. On July 11, 2005, ten minutes before the end of her shift and the start of a two week plant shut-down, Claimant's parts table was struck by a forklift. Claimant estimated her parts table weighed 1500-2000 pounds when the incident occurred. At impact, the fork-lift pushed the parts table into Claimant's legs, pinning her between the parts table and the door she was working on. Once freed, Claimant was told by her supervisor that the plant medical team had already left the building, and if she required medical treatment during the shut-down, she should consult her family doctor, but she should also report to medical when the plant resumed production. At the time of injury Claimant noted pain in her right shoulder, the "arch" of her back, and both legs. She noted indentation and bruising above both knees where the table had hit her legs, and her left leg hurt more than her right leg.

4. Claimant was seen in plant medical on July 26, 2005. Claimant was examined by the plant physician, who noted no bruising, hematomas, or tenderness of Claimant's legs. The physician diagnosed bilateral thigh contusions "by history."
5. On August 11, 2005, Claimant consulted Dr. Reis, an internist, with "multiple" complaints, including pain in her legs. Upon examination, Dr. Reis noted Claimant had indentation of her bilateral upper thighs in a horizontal pattern, but no associated bruising or tenderness. Dr. Reis noted Claimant demonstrated fullness behind her left knee, and indicated an ultrasound could be obtained if Claimant's symptoms did not improve. Claimant did not return to Dr. Reis.
6. On September 20, 2005, Claimant consulted with her primary care physician, Dr. Schnurpfeil, regarding continued pain located in her left posterior knee. Claimant also complained of right shoulder, right arm, cervical spine, and "other" joint pain. Dr. Schnurpfeil advised Claimant to see an orthopedist.
7. Claimant returned to plant medical on October 3, 2005, complaining of right shoulder and left leg pain. Claimant reported experiencing pain that shot down her left leg into her shin when sleeping at night. The plant physician indicated "no residual from impact with table some time ago – April." Plant medical declined to refer Claimant to an orthopedist.
8. On October 13, 2005, a left knee MRI was obtained that demonstrated a probable chronic tear of the medial meniscus. Dr. Schnurpfeil referred Claimant to Dr. Edward Schlafly, an orthopedist.
9. On October 25, 2005, Dr. Edward Schlafly conducted an initial examination, and noted Claimant had "no specific injury at work." Dr. Schlafly administered a cortisone injection into Claimant's left knee.
10. Claimant returned to Dr. Schnurpfeil on November 17, 2005 complaining of multiple joint pains. Dr. Schnurpfeil diagnosed chronic pain syndrome.
11. On March 7, 2006, Claimant returned to plant medical complaining of right sided cervical spine and right trapezius pain. Claimant was provided a topical cream to apply to the pain sites. Plant medical described the complaint as "non-occ/pain".
12. Claimant returned to Dr. Schnurpfeil on May 22, 2006, complaining of pain in her left leg and severe pain when sitting. Dr. Schnurpfeil ordered a lumbar MRI, which demonstrated a L3-4 herniated disc, lateralizing to the left with lateral foraminal disc herniation. Dr. Schnurpfeil ordered physical therapy, and prescribed Vicodin for pain.
13. On June 20, 2006, Claimant's parts table was hit again by a forklift, and Claimant was pinned between the table and the door she had been assembling. Claimant was taken to plant medical, and later returned to complete her shift. Driving home after her shift, Claimant noted tingling in her buttock, left hip, and down her left leg. Sitting increased her pain, and her level of pain increased over the next three months.

14. On July 10, 2006, Claimant was admitted to St. Luke's Hospital with nausea and vomiting, which began after she started taking Vicodin. While hospitalized, Claimant was seen in consultation by Dr. Polinsky, a neurosurgeon, due to her continued low back pain. Dr. Polinsky recommended Claimant undergo a selected lumbar nerve root steroid injection, or consider lumbar surgery due to disc herniation with radiculopathy. On July 13, 2006, a select nerve root injection was attempted by Dr. Thom, but aborted before completion, due to Claimant's discomfort during injection of contrast medium. Upon discharge, Claimant was to follow-up with Dr. Polinsky regarding further lumbar care, but she did not return.

15. Claimant returned to work on July 20, 2006, with a two pound lifting restriction. Claimant told plant medical her back problems were related to the forklift accident in July 2005. To be reinstated, Claimant needed to be cleared by plant medical. Plant medical noted Claimant's hammer weighed less than a pound. Upon examination, plant medical noted Claimant's deep tendon reflexes and bilateral straight leg raising was symmetric and normal, Claimant was able to bend over and touch the floor, perform a full squat, and demonstrated no radiculopathy by axial rotation. The plant physician opined: "exam explains why bending etc restrictions not requested." Claimant was returned to work.

16. As of the date of first hearing, Claimant was only able to sit or stand for short periods due to back pain. She was taking Percocet daily for pain. Claimant walked frequently during the day, as walking provided her with relief of pain. Driving was difficult, and Claimant stopped frequently when driving. Claimant was unable to drive long distances, and found it necessary to turn around and cancel a trip due to low back pain. Claimant lived alone, and a young neighbor carried her groceries when purchased. Claimant avoided using her dishwasher due to the need to load and unload the appliance. Claimant testified she would accept medical treatment for her back and right shoulder, if the treatment would improve her condition. Claimant did not seek any further treatment for her left knee.

17. Claimant was examined at her request by Dr. Bruce Schlafly on March 13, 2007. Dr. Schlafly is a board certified orthopedist who specializes in hand surgery. Upon examination, Dr. Schlafly noted 10% loss of range of motion of Claimant's lumbar spine; pain that radiated from Claimant's left buttock into her left leg; negative straight leg raising; crepitation and pain with decreased range of motion of Claimant's right shoulder; a positive impingement sign of her right shoulder; and positive crepitation of Claimant's left knee. Dr. Schlafly diagnosed impingement syndrome and right rotator cuff tendinitis caused by the repetitive movement of Claimant's right shoulder while performing her work; an L3-4 herniated disc caused by the July 2005 and June 2006 forklift incidents; and a torn left medial meniscus caused by the July 2005 forklift incident. Dr. Schlafly opined Claimant's work was a substantial and prevailing factor in her resulting injuries. Dr. Schlafly rated Claimant's right shoulder at 30% PPD; her lumbar spine at 30% BAW PPD; and her left knee at 15% PPD. Dr. Schlafly recommended Claimant receive further medical care to her right shoulder and lumbar spine. Dr. Schlafly opined treatment might provide improvement and decrease his ratings involving her right shoulder and lumbar spine. Dr. Schlafly also opined a herniated disc can occur instantly or in a staged fashion.

18. Claimant was examined at her request by Dr. Poetz on July 9, 2007. Dr. Poetz is board certified in family practice medicine. Upon examination, Dr. Poetz noted decreased range of motion of Claimant's right shoulder, left knee, and lumbar spine; positive straight leg raising;

and crepitus of Claimant's left knee. Dr. Poetz diagnosed aggravation of Claimant's preexisting left knee degenerative joint disease with a medial meniscus tear caused by Claimant's July 2005 forklift incident; aggravation of Claimant's preexisting right shoulder degenerative joint disease with rotator cuff tendonitis and impingement syndrome due to the July 2005 forklift incident; and aggravation of Claimant's preexisting degenerative lumbar spine disease with a L3-4 herniated disc due to the June 2006 forklift incident. Dr. Poetz opined Claimant's work was a substantial and prevailing factor in her resulting injuries. Dr. Poetz rated Claimant's left knee at 25% PPD; her right shoulder at 25% PPD; and her lumbar spine at 30% BAW PPD. Dr. Poetz recommended Claimant receive further medical care to her left knee, right shoulder, and lumbar spine. Dr. Poetz opined Claimant was and would remain PTD.

19. Claimant was examined at Employer's request by Dr. George on October 1, 2007. Dr. George is a board certified orthopedist. Upon examination, Dr. George noted a 25% loss of range of motion in Claimant's cervical spine; a 30% loss of range of motion of Claimant's right shoulder, along with pain on rotation and mild atrophy of her shoulder musculature; slightly decreased range of motion of Claimant's lumbar spine with slight loss of her left knee jerk. Dr. George diagnosed right shoulder impingement syndrome; diffuse lumbar spondylosis with lateral herniated disc at L3-4 to the left; and degenerative joint disease of Claimant's left knee. Dr. George recommended Claimant receive medical treatment to her right shoulder. Dr. George opined Claimant's need for right shoulder treatment was related to her overhead work activities performed for several years for Employer. Dr. George rated Claimant's current right shoulder disability at 15% PPD. Dr. George did not find Claimant's lumbar spine or left knee diagnoses to be related to her work injuries or duties with Employer. Dr. George opined he would expect Claimant to exhibit low back or leg symptoms within a month or two of the July 2005 forklift incident, if the event had injured Claimant's low back.

20. On January 31, 2008, a temporary award ordering treatment for Claimant's lumbar spine issued.

21. Following issuance of the first temporary award, Claimant was examined by Dr. Kitchens, a board certified neurosurgeon, at Employer's request. On the date of examination, Dr. Kitchens noted Claimant's history of left L3 radiculopathy due to her disc herniation at L3-4, but documented "she now has no pain into her left thigh or left leg." Dr. Kitchens did document Claimant complaints of pain into her lower back, both hips, and pain in her right hip extending down her right leg to the knee. Upon examination, the abnormal findings included diminished sensory pinprick to Claimant's left thigh, and a positive Faber's test for left hip pain. Following examination, Dr. Kitchens concluded Claimant was not a surgical candidate as she did not currently have left L3 radiculopathy. Dr. Kitchens opined Claimant's right hip and leg pain were a recent development unrelated to her L3-4 disc herniation, and recommended conservative treatment for the right sided symptoms.

22. On March 17, 2008, Dr. Kitchens opined Claimant's right sided symptoms were not related to any of her pending claims, and Claimant could work without restrictions. On April 7, 2008, Dr. Kitchens indicated he had reviewed Claimant's May 2006 lumbar spine MRI, and opined Claimant did not have a right sided disc protrusion or nerve root impingement on that film. Employer provided no further treatment to Claimant's lumbar spine.

23. On February 28, 2008, Claimant completed a pain evaluation form when she arrived for her appointment with Dr. Kitchens.¹ On the pain evaluation form was an anatomical drawing on which Claimant was instructed to mark where her pain was located. Claimant indicated she was experiencing burning pain over the left lower buttocks and the top of her left thigh. Claimant also indicated stabbing pain in the right buttock, and pins/needles sensation at the top of her right thigh. In response to a question on the form asking her to rank her most urgent need for care, Claimant indicated "lower back."

24. Claimant denied telling Dr. Kitchens she was experiencing pain down her right leg, and she testified she has always reported low back pain that radiated into her left leg. Claimant's current complaints regarding her low back remain unchanged since issuance of the original temporary award. Claimant continues to take Percocet daily to control her pain.

25. On March 17, 2008, based on an order from Dr. Polinsky, Claimant underwent a MRI of her lumbar spine. The MRI was interpreted as demonstrating minimal diffuse disc bulging from L2-L5, and a small left lateral foraminal disc herniation at L3-4 that appeared less prominent when compared to a May 27, 2006 MRI.

26. On December 11, 2008, Claimant was examined by Dr. Poetz at her request. Dr. Poetz is board certified in family practice medicine. Upon examination, Dr. Poetz noted flattening of Claimant's lumbar lordosis, decreased lumbar range of motion, positive left straight leg raising, positive Fabere Patrick testing on the left, and decreased pinprick sensation of her left lateral thigh. Dr. Poetz diagnosed preexisting lumbar degenerative disc disease, L3-4 disc herniation with L3 radiculopathy and exacerbation of degenerative disc disease. Dr. Poetz recommended Claimant receive a "series of epidural steroid injections into the lumbar spine, if no response she should undergo a lumbar myelogram with post myelogram CT followed by surgical intervention if indicated." Dr. Poetz rated Claimant's lumbar disability at 35% PPD BAW with 5% preexisting Claimant's work injuries. Dr. Poetz concluded Claimant "was and will remain" PTD.

27. On January 28, 2009, a second hearing was held and on March 13, 2009 a second Temporary Award was issued re-ordering treatment for Claimant's lumbar spine.

28. In response to the second Temporary Awards issued, Employer authorized Dr. Polinsky, a neurosurgeon to provide additional treatment to Claimant's lumbar spine. Dr. Polinsky referred Claimant to Dr. Christopher, a pain management specialist. Claimant declined to receive treatment from Dr. Christopher after learning Dr. Christopher recommended Claimant undergo lumbar epidural steroid injections.

29. Shortly after declining treatment offered by Dr. Christopher, Claimant moved to Huntsville, AL. Employer arranged for Claimant to be examined by Dr. Murray, a spine surgeon. Dr. Murray obtained a new MRI of Claimant's lumbar spine, and recommended Claimant have a myelogram to assess potential surgical intervention. Claimant declined the myelogram and any possibility of lumbar surgery. Dr. Murray then referred Claimant to Dr. Scherlis for pain management treatment.

¹ The pain evaluation form was marked as Deposition Exhibit A, discussed during testimony, but never offered into evidence during deposition or at trial.

30. On June 23, 2009, Dr. Scherlis examined Claimant, and recommended Claimant have lumbar sacral facet and sacroiliac joint injections, but Dr. Scherlis noted: "she is adamantly opposed to any sort of injection. She is not taking any pain medication. She does not wish to pursue any sort of injection. We would unfortunately have very little to offer her if she is not interested in any sort of therapeutic management. Perhaps physical therapy would be better suited for her if she is not interested in any sort of intervention." Claimant elected to receive six physical therapy visits, or two weeks of therapy, which did not help her.

31. Claimant moved to Huntsville to be closer to family, who provide physical assistance to her. Her physical abilities have not changed since the last hearing, with the exception of use of her right arm after she underwent right shoulder surgery. Claimant can now comb her hair and perform actions with her right arm if it is directly in front of her at waist level.

32. Claimant is currently receiving her only medical treatment from her primary physician, Dr. Ervin, who does not directly treat Claimant's work injuries, but treats Claimant's complaints of nausea and weight loss, which Claimant "ascribes to the constant pain" she is in. Dr. Ervin opined Claimant to be "permanently and totally disabled from performing her prior manufacturing assembly work."

33. Claimant's rating physician, Dr. Poetz, opined Claimant's herniated lumbar disc at L3-4 and associated radiculopathy is the result of Claimant's second forklift related injury that occurred on June 30, 2006. Dr. Poetz rated Claimant's lumbar spine at 30% BAW PPD, and 5% BAW PPD preexisting. Dr. Poetz further opined Claimant's left knee injury was the result of the July 11, 2005 forklift injury, and rated that injury at 25% PPD referable to her left knee, and 5% PPD preexisting. Dr. Poetz rated a preexisting right wrist carpal tunnel release at 35% PPD. Dr. Poetz is the only medical physician to opine Claimant is PTD and unemployable in the open labor market.

34. Dr. Schlafly rated Claimant's lumbar spine at 30% BAW PPD, and her left knee at 15% PPD, and her preexisting right wrist at 20% PPD. Dr. Schlafly opined Claimant's forklift injuries during July 2005 and July 2006 were the substantial and prevailing factors in causing Claimant's herniated lumbar disc and sciatica, "although it is possible that lifting activities at work have also aggravated this condition."

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to occupational disease, arising out of and in the course and scope of employment, and medical causation

Section 287.020.3(2) RSMo. 2005, provides in part: an injury shall be deemed to arise out of and in the course of employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury. . . .

Section 287.067.2 RSMo. 2005, also provides an “injury by occupational disease” is compensable “only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” Section 287.067.3 RSMo., 2005 defines prevailing factor as “the primary factor, in relation to any other factor, causing both the resulting medical condition and disability,” and states “an occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert’s testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds).

Claimant alleges she developed injury to her lumbar spine due to her work exposure with Employer. Claimant’s two medical experts, Dr. Poetz and Dr. Schlafly, provided opinions regarding the relationship of Claimant’s lumbar spine disorder to her work environment. Dr. Poetz clearly relates Claimant’s lumbar spine disorder to her June 30, 2006 fork lift incident, a work related accident. Dr. Schlafly opined Claimant’s lumbar condition was the result of a combination of the two forklift incidents, with only a “possibility” that repetitive lifting at work was the prevailing factor in causing Claimant’s lumbar spine condition. Claimant has failed to establish her occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.

CONCLUSION

Claimant has failed to establish her lumbar condition was caused by injury due to occupational disease. All other issues presented are moot.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

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

Injury No.: 06-084854

Employee: Katherine Hunt
Employer: Daimler-Chrysler aka Chrysler, LLC
Insurer: Self-Insured
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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 19, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Linda J. Wenman, issued February 19, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3rd day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Katherine Hunt

Injury No.: 06-084854

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Daimler-Chrysler aka Chrysler LLC

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

Additional Party: Second Injury Fund

Insurer: Self-insured

Hearing Date: November 19, 2009

Checked by: LJW

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? Yes
4. Date of accident or onset of occupational disease: June 30, 2006
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While performing her job duties, a forklift hit Employee's part table, pushing the table into Claimant and pinning her to the car door she was building.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left knee and low back
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

Employee: Katherine Hunt

Injury No.: 06-084854

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Sufficient for maximum rates
- 19. Weekly compensation rate: \$696.97 / \$365.08
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: - 0 -

23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Katherine Hunt	Injury No.:	06-084854
Dependents:	N/A	Before the	
Employer:	Daimler-Chrysler aka Chrysler LLC	Division of Workers'	Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial	Relations of Missouri
		Jefferson City, Missouri	
Insurer:	Self-insured	Checked by:	LJW

PROCEDURAL HISTORY

On January 31, 2008, and again on March 13, 2009, Temporary Awards were issued by the undersigned Administrative Law Judge involving companion case #05-107685, directing Daimler-Chrysler Corporation (Employer) to provide the following: medical treatment referable to Katherine Hunt’s (Claimant) lumbar spine; potential temporary total disability payments; and payment of past medical expenses incurred by Claimant related to treatment sought for her work related injury. Upon receipt of the first Temporary Award, Employer reimbursed Claimant for past medical expenses owed, and arranged for Claimant to be examined by Dr. Kitchens, a board certified neurosurgeon. Upon receipt of the second Temporary Award, Employer arranged for Claimant to receive treatment from Dr. Polinsky, a neurosurgeon and Dr. Christopher, a pain management specialist in St. Louis, and upon her move to Huntsville, Alabama, by Dr. Murray, a spine surgeon and Dr. Scherlis, a pain management specialist.

The undersigned Judge has reviewed the two Temporary Awards issued in companion case #05-107685 along with the transcript and evidence presented at both prior hearings. Following this review and the testimony and evidence presented at the hearing for final award, the findings of fact and rulings of law found in the initial temporary awards in companion case #05-107685 are adopted in this award. Any additional findings of fact and conclusions of law found necessary to supplement or to comport to the new evidence presented during trial will be included in this award.

PRELIMINARIES

A hearing for final award was held regarding the above referenced Workers’ Compensation claim by the undersigned Administrative Law Judge on November 19, 2009. This case was tried with companion cases #06-063573 and #05-107685. Post-trial briefs were declined by the parties and the case was formally submitted on the date of hearing. Attorney Ray Gerritzen represented Claimant. Employer is self-insured, and represented by Attorney James Kennedy. Assistant Attorney General Karen Schute represented the Second Injury Fund (SIF).

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: medical causation; liability of Employer and SIF for permanent total disability

(PTD) or permanent partial disability (PPD) benefits; and future medical care. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

In addition to the Exhibits offered by the parties during the previous two hearings, Claimant offered Exhibits O-Q, and Employer offered Exhibit 6. Claimant's exhibits were admitted into the record, but the objection voiced to Employer's Exhibit 6 was sustained. Any other objections not expressly ruled on in this award are overruled. All markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit.

FINDINGS OF FACT

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be reviewed and summarized.

1. Claimant is sixty-four years old, and has worked at various assembly plants of Employer for twenty-three years. Claimant retired from Employer in June 2007. Throughout the years, Claimant's work duties were mainly assembly line work, and some part data entry while working in Alabama. While working in Alabama, Claimant was treated for low back pain, and low back sprains/strains. On August 8, 2003, an abdominal CT scan was reported as demonstrating mild degeneration of the spine.
2. During March 2005, Claimant began working at Employer's Fenton, Missouri plant on the assembly line. Her production assignment consisted of inserting moldings on mini-van doors, and inserting a bracket to secure the door arm rests. In order to place the molding, Claimant would "jam" the molding to insert the part, and "beat" the molding into place, striking each molding with a hammer approximately fourteen times before the molding was properly placed. Next, using a power screw driver located on an overhead bungee cord, Claimant would secure the armrest in place. Claimant would spend approximately forty-two seconds per door, worked on approximately 530 doors during an eight hour shift, or 680 doors in a ten hour shift.
3. On July 11, 2005, ten minutes before the end of her shift and the start of a two week plant shut-down, Claimant's parts table was struck by a forklift. Claimant estimated her parts table weighed 1500-2000 pounds when the incident occurred. At impact, the fork-lift pushed the parts table into Claimant's legs, pinning her between the parts table and the door she was working on. Once freed, Claimant was told by her supervisor that the plant medical team had already left the building, and if she required medical treatment during the shut-down, she should consult her family doctor, but she should also report to medical when the plant resumed production. At the time of injury Claimant noted pain in her right shoulder, the "arch" of her back, and both legs. She noted indentation and bruising above both knees where the table had hit her legs, and her left leg hurt more than her right leg.
4. Claimant was seen in plant medical on July 26, 2005. Claimant was examined by the plant physician, who noted no bruising, hematomas, or tenderness of Claimant's legs. The physician diagnosed bilateral thigh contusions "by history."

5. On August 11, 2005, Claimant consulted Dr. Reis, an internist, with “multiple” complaints, including pain in her legs. Upon examination, Dr. Reis noted Claimant had indentation of her bilateral upper thighs in a horizontal pattern, but no associated bruising or tenderness. Dr. Reis noted Claimant demonstrated fullness behind her left knee, and indicated an ultrasound could be obtained if Claimant’s symptoms did not improve. Claimant did not return to Dr. Reis.
6. On September 20, 2005, Claimant consulted with her primary care physician, Dr. Schnurpfeil, regarding continued pain located in her left posterior knee. Claimant also complained of right shoulder, right arm, cervical spine, and “other” joint pain. Dr. Schnurpfeil advised Claimant to see an orthopedist.
7. Claimant returned to plant medical on October 3, 2005, complaining of right shoulder and left leg pain. Claimant reported experiencing pain that shot down her left leg into her shin when sleeping at night. The plant physician indicated “no residual from impact with table some time ago – April.” Plant medical declined to refer Claimant to an orthopedist.
8. On October 13, 2005, a left knee MRI was obtained that demonstrated a probable chronic tear of the medial meniscus. Dr. Schnurpfeil referred Claimant to Dr. Edward Schlafly, an orthopedist.
9. On October 25, 2005, Dr. Edward Schlafly conducted an initial examination, and noted Claimant had “no specific injury at work.” Dr. Schlafly administered a cortisone injection into Claimant’s left knee.
10. Claimant returned to Dr. Schnurpfeil on November 17, 2005 complaining of multiple joint pains. Dr. Schnurpfeil diagnosed chronic pain syndrome.
11. On March 7, 2006, Claimant returned to plant medical complaining of right sided cervical spine and right trapezius pain. Claimant was provided a topical cream to apply to the pain sites. Plant medical described the complaint as “non-occ/pain”.
12. Claimant returned to Dr. Schnurpfeil on May 22, 2006, complaining of pain in her left leg and severe pain when sitting. Dr. Schnurpfeil ordered a lumbar MRI, which demonstrated a L3-4 herniated disc, lateralizing to the left with lateral foraminal disc herniation. Dr. Schnurpfeil ordered physical therapy, and prescribed Vicodin for pain.
13. On June 20, 2006, Claimant’s parts table was hit again by a forklift, and Claimant was pinned between the table and the door she had been assembling. Claimant was taken to plant medical, and later returned to complete her shift. Driving home after her shift, Claimant noted tingling in her buttock, left hip, and down her left leg. Sitting increased her pain, and her level of pain increased over the next three months.
14. On July 10, 2006, Claimant was admitted to St. Luke’s Hospital with nausea and vomiting, which began after she started taking Vicodin. While hospitalized, Claimant was seen in consultation by Dr. Polinsky, a neurosurgeon, due to her continued low back pain. Dr. Polinsky recommended Claimant undergo a selected lumbar nerve root steroid injection, or consider lumbar surgery due to disc herniation with radiculopathy. On July 13, 2006, a select nerve root

injection was attempted by Dr. Thom, but aborted before completion, due to Claimant's discomfort during injection of contrast medium. Upon discharge, Claimant was to follow-up with Dr. Polinsky regarding further lumbar care, but she did not return.

15. Claimant returned to work on July 20, 2006, with a two pound lifting restriction. Claimant told plant medical her back problems were related to the forklift accident in July 2005. To be reinstated, Claimant needed to be cleared by plant medical. Plant medical noted Claimant's hammer weighed less than a pound. Upon examination, plant medical noted Claimant's deep tendon reflexes and bilateral straight leg raising was symmetric and normal, Claimant was able to bend over and touch the floor, perform a full squat, and demonstrated no radiculopathy by axial rotation. The plant physician opined: "exam explains why bending etc restrictions not requested." Claimant was returned to work.

16. As of the date of first hearing, Claimant was only able to sit or stand for short periods due to back pain. She was taking Percocet daily for pain. Claimant walked frequently during the day, as walking provided her with relief of pain. Driving was difficult, and Claimant stopped frequently when driving. Claimant was unable to drive long distances, and found it necessary to turn around and cancel a trip due to low back pain. Claimant lived alone, and a young neighbor carried her groceries when purchased. Claimant avoided using her dishwasher due to the need to load and unload the appliance. Claimant testified she would accept medical treatment for her back and right shoulder, if the treatment would improve her condition. Claimant did not seek any further treatment for her left knee.

17. Claimant was examined at her request by Dr. Bruce Schlafly on March 13, 2007. Dr. Schlafly is a board certified orthopedist who specializes in hand surgery. Upon examination, Dr. Schlafly noted 10% loss of range of motion of Claimant's lumbar spine; pain that radiated from Claimant's left buttock into her left leg; negative straight leg raising; crepitation and pain with decreased range of motion of Claimant's right shoulder; a positive impingement sign of her right shoulder; and positive crepitation of Claimant's left knee. Dr. Schlafly diagnosed impingement syndrome and right rotator cuff tendinitis caused by the repetitive movement of Claimant's right shoulder while performing her work; an L3-4 herniated disc caused by the July 2005 and June 2006 forklift incidents; and a torn left medial meniscus caused by the July 2005 forklift incident. Dr. Schlafly opined Claimant's work was a substantial and prevailing factor in her resulting injuries. Dr. Schlafly rated Claimant's right shoulder at 30% PPD; her lumbar spine at 30% BAW PPD; and her left knee at 15% PPD. Dr. Schlafly recommended Claimant receive further medical care to her right shoulder and lumbar spine. Dr. Schlafly opined treatment might provide improvement and decrease his ratings involving her right shoulder and lumbar spine. Dr. Schlafly also opined a herniated disc can occur instantly or in a staged fashion.

18. Claimant was examined at her request by Dr. Poetz on July 9, 2007. Dr. Poetz is board certified in family practice medicine. Upon examination, Dr. Poetz noted decreased range of motion of Claimant's right shoulder, left knee, and lumbar spine; positive straight leg raising; and crepitus of Claimant's left knee. Dr. Poetz diagnosed aggravation of Claimant's preexisting left knee degenerative joint disease with a medial meniscus tear caused by Claimant's July 2005 forklift incident; aggravation of Claimant's preexisting right shoulder degenerative joint disease with rotator cuff tendonitis and impingement syndrome due to the July 2005 forklift incident; and aggravation of Claimant's preexisting degenerative lumbar spine disease with a L3-4 herniated

disc due to the June 2006 forklift incident. Dr. Poetz opined Claimant's work was a substantial and prevailing factor in her resulting injuries. Dr. Poetz rated Claimant's left knee at 25% PPD; her right shoulder at 25% PPD; and her lumbar spine at 30% BAW PPD. Dr. Poetz recommended Claimant receive further medical care to her left knee, right shoulder, and lumbar spine. Dr. Poetz opined Claimant was and would remain PTD.

19. Claimant was examined at Employer's request by Dr. George on October 1, 2007. Dr. George is a board certified orthopedist. Upon examination, Dr. George noted a 25% loss of range of motion in Claimant's cervical spine; a 30% loss of range of motion of Claimant's right shoulder, along with pain on rotation and mild atrophy of her shoulder musculature; slightly decreased range of motion of Claimant's lumbar spine with slight loss of her left knee jerk. Dr. George diagnosed right shoulder impingement syndrome; diffuse lumbar spondylosis with lateral herniated disc at L3-4 to the left; and degenerative joint disease of Claimant's left knee. Dr. George recommended Claimant receive medical treatment to her right shoulder. Dr. George opined Claimant's need for right shoulder treatment was related to her overhead work activities performed for several years for Employer. Dr. George rated Claimant's current right shoulder disability at 15% PPD. Dr. George did not find Claimant's lumbar spine or left knee diagnoses to be related to her work injuries or duties with Employer. Dr. George opined he would expect Claimant to exhibit low back or leg symptoms within a month or two of the July 2005 forklift incident, if the event had injured Claimant's low back.

20. On January 31, 2008, a temporary award ordering treatment for Claimant's lumbar spine issued.

21. Following issuance of the first temporary award, Claimant was examined by Dr. Kitchens, a board certified neurosurgeon, at Employer's request. On the date of examination, Dr. Kitchens noted Claimant's history of left L3 radiculopathy due to her disc herniation at L3-4, but documented "she now has no pain into her left thigh or left leg." Dr. Kitchens did document Claimant complaints of pain into her lower back, both hips, and pain in her right hip extending down her right leg to the knee. Upon examination, the abnormal findings included diminished sensory pinprick to Claimant's left thigh, and a positive Faber's test for left hip pain. Following examination, Dr. Kitchens concluded Claimant was not a surgical candidate as she did not currently have left L3 radiculopathy. Dr. Kitchens opined Claimant's right hip and leg pain were a recent development unrelated to her L3-4 disc herniation, and recommended conservative treatment for the right sided symptoms.

22. On March 17, 2008, Dr. Kitchens opined Claimant's right sided symptoms were not related to any of her pending claims, and Claimant could work without restrictions. On April 7, 2008, Dr. Kitchens indicated he had reviewed Claimant's May 2006 lumbar spine MRI, and opined Claimant did not have a right sided disc protrusion or nerve root impingement on that film. Employer provided no further treatment to Claimant's lumbar spine.

23. On February 28, 2008, Claimant completed a pain evaluation form when she arrived for her appointment with Dr. Kitchens.¹ On the pain evaluation form was an anatomical drawing on which Claimant was instructed to mark where her pain was located. Claimant indicated she was

¹ The pain evaluation form was marked as Deposition Exhibit A, discussed during testimony, but never offered into evidence during deposition or at trial.

experiencing burning pain over the left lower buttocks and the top of her left thigh. Claimant also indicated stabbing pain in the right buttock, and pins/needles sensation at the top of her right thigh. In response to a question on the form asking her to rank her most urgent need for care, Claimant indicated "lower back."

24. Claimant denied telling Dr. Kitchens she was experiencing pain down her right leg, and she testified she has always reported low back pain that radiated into her left leg. Claimant's current complaints regarding her low back remain unchanged since issuance of the original temporary award. Claimant continues to take Percocet daily to control her pain.

25. On March 17, 2008, based on an order from Dr. Polinsky, Claimant underwent a MRI of her lumbar spine. The MRI was interpreted as demonstrating minimal diffuse disc bulging from L2-L5, and a small left lateral foraminal disc herniation at L3-4 that appeared less prominent when compared to a May 27, 2006 MRI.

26. On December 11, 2008, Claimant was examined by Dr. Poetz at her request. Dr. Poetz is board certified in family practice medicine. Upon examination, Dr. Poetz noted flattening of Claimant's lumbar lordosis, decreased lumbar range of motion, positive left straight leg raising, positive Fabere Patrick testing on the left, and decreased pinprick sensation of her left lateral thigh. Dr. Poetz diagnosed preexisting lumbar degenerative disc disease, L3-4 disc herniation with L3 radiculopathy and exacerbation of degenerative disc disease. Dr. Poetz recommended Claimant receive a "series of epidural steroid injections into the lumbar spine, if no response she should undergo a lumbar myelogram with post myelogram CT followed by surgical intervention if indicated." Dr. Poetz rated Claimant's lumbar disability at 35% PPD BAW with 5% preexisting Claimant's work injuries. Dr. Poetz concluded Claimant "was and will remain" PTD.

27. On January 28, 2009, a second hearing was held and on March 13, 2009 a second Temporary Award was issued re-ordering treatment for Claimant's lumbar spine.

28. In response to the second Temporary Awards issued, Employer authorized Dr. Polinsky, a neurosurgeon to provide additional treatment to Claimant's lumbar spine. Dr. Polinsky referred Claimant to Dr. Christopher, a pain management specialist. Claimant declined to receive treatment from Dr. Christopher after learning Dr. Christopher recommended Claimant undergo lumbar epidural steroid injections.

29. Shortly after declining treatment offered by Dr. Christopher, Claimant moved to Huntsville, AL. Employer arranged for Claimant to be examined by Dr. Murray, a spine surgeon. Dr. Murray obtained a new MRI of Claimant's lumbar spine, and recommended Claimant have a myelogram to assess potential surgical intervention. Claimant declined the myelogram and any possibility of lumbar surgery. Dr. Murray then referred Claimant to Dr. Scherlis for pain management treatment.

30. On June 23, 2009, Dr. Scherlis examined Claimant, and recommended Claimant have lumbar sacral facet and sacroiliac joint injections, but Dr. Scherlis noted: "she is adamantly opposed to any sort of injection. She is not taking any pain medication. She does not wish to pursue any sort of injection. We would unfortunately have very little to offer her if she is not

interested in any sort of therapeutic management. Perhaps physical therapy would be better suited for her if she is not interested in any sort of intervention.” Claimant elected to receive six physical therapy visits, or two weeks of therapy, which did not help her.

31. Claimant moved to Huntsville to be closer to family, who provide physical assistance to her. Her physical abilities have not changed since the last hearing, with the exception of use of her right arm after she underwent right shoulder surgery. Claimant can now comb her hair and perform actions with her right arm if it is directly in front of her at waist level.

32. Claimant is currently receiving her only medical treatment from her primary physician, Dr. Ervin, who does not directly treat Claimant’s work injuries, but treats Claimant’s complaints of nausea and weight loss, which Claimant “ascribes to the constant pain” she is in. Dr. Ervin opined Claimant to be “permanently and totally disabled from performing her prior manufacturing assembly work.”

33. Claimant’s rating physician, Dr. Poetz, opined Claimant’s herniated lumbar disc at L3-4 and associated radiculopathy is the result of Claimant’s second forklift related injury that occurred on June 30, 2006. Dr. Poetz rated Claimant’s lumbar spine at 30% BAW PPD, and 5% BAW PPD preexisting. Dr. Poetz further opined Claimant’s left knee injury was the result of the July 11, 2005 forklift injury, and rated that injury at 25% PPD referable to her left knee, and 5% PPD preexisting. Dr. Poetz rated a preexisting right wrist carpal tunnel release at 35% PPD. Dr. Poetz is the only medical physician to opine Claimant is PTD and unemployable in the open labor market.

34. Dr. Schlafly rated Claimant’s lumbar spine at 30% BAW PPD, and her left knee at 15% PPD, and her preexisting right wrist at 20% PPD. Dr. Schlafly opined Claimant’s forklift injuries during July 2005 and July 2006 were the substantial and prevailing factors in causing Claimant’s herniated lumbar disc and sciatica, “although it is possible that lifting activities at work have also aggravated this condition.”

RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to medical causation

Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert’s testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds). The trier of fact determines whether medical evidence is accepted or rejected, and the trier may disbelieve uncontradicted or unimpeached testimony. *Alexander v. D.L. Sitton Motor Lines*, 851 S.W. 2d 525, 527 (MO banc 1993).

Claimant alleges the second forklift injury of June 30, 2006, produced additional disability to her already injured lumbar spine. Claimant relies on her two medical experts Dr. Poetz and Dr. Schlafly to establish the additional disability needed to sustain this claim, however, the opinions of both physicians fail. Dr. Poetz attributes Claimant's lumbar disc herniation and subsequent lumbar disability to the second forklift injury on June 30, 2006, but the medical evidence contradicts this opinion. During May 2006 Claimant voiced significant complaints of low back pain to her primary physician and an MRI was obtained. The MRI clearly demonstrated a disc herniation at L3-4, a herniation that was present at least one month prior to the June 30, 2006 incident. During March 2008, Dr. Polinsky obtained a second MRI that demonstrated minimal diffuse disc bulging from L2-L5, and a small left lateral foraminal disc herniation at L3-4 that appeared **less** prominent when compared to a May 27, 2006 MRI. I find neither Dr. Poetz nor Dr. Schlafly's opinions credible as their opinions are not supported by the medical records in evidence in regard to Claimant's June 30, 2006 forklift injury.

Based on the evidence presented in the three hearings, I readopt the findings made in the previous temporary awards issued in companion case #05-107685, and find the July 2005 forklift incident produced Claimant's left knee and lumbar spine injuries. I further find while Claimant's lumbar symptoms may have temporarily increased following the second forklift injury, there were no objective physical changes noted in her medical records following the incident, and Claimant sustained no additional disability due to the June 30, 2006 injury.

CONCLUSION

Claimant was involved in a work related incident on June 30, 2006 that produced no new disability to her left knee or lumbar spine. Claimant has failed to establish a compensable injury occurred due to this incident. All other issues presented are moot.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation