

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

Injury No.: 99-175189

Employee: Betty Jaynes
Employer: Beverly Health & Rehabilitation
Insurer: Self-Insured
(Constitution State Service Company as third-party administrator)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: Alleged April 24, 1999
Place and County of Accident: Alleged Cape Girardeau County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 30, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Jack H. Knowlan, issued August 30, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10th day of January 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Betty Jaynes

Injury No. 99-175189

Dependents: N/A

Employer: Beverly Health & Rehabilitation

Additional Party: Second Injury Fund

Insurer: Self-insured (Constitution State Service Company as third-party administrator)

Hearing Date: April 20, 2005

Checked by: JK/sm

SUMMARY OF FINDINGS

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? April 24, 1999
5. State location where accident occurred or occupational disease contracted: Cape Girardeau County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? 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: Employee tripped over a light cord and fell while taking care of a patient
12. Did accident or occupational disease cause death? Non
13. Parts of body injured by accident or occupational disease: No permanent disability
14. Nature and extent of any permanent disability: None
15. Compensation paid to date for temporary total disability: None
16. Value necessary medical aid paid to date by employer-insurer: None
17. Value necessary medical aid not furnished by employer-insurer: None
18. Employee's average weekly wage: \$520.00
19. Weekly compensation rate: \$346.67 for temporary total disability or permanent total disability and \$294.73 for permanent partial disability
20. Method wages computation: By agreement
21. Amount of compensation payable: Claim denied
22. Second Injury Fund liability: Claim denied
23. Future requirements awarded: None

FINDINGS OF FACT AND RULINGS OF LAW

On April 20, 2005, the employee, Betty Jaynes, appeared in person and by her attorney, Mr. Jeff Gault, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Mr. Rich Fitzgerald. The Second Injury Fund was represented at the hearing by Assistant Attorney General Jeff Koch. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about April 24, 1999, Beverly Health and Rehabilitation was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act and was duly qualified as a self-insured employer.
2. On or about April 24, 1999, Betty Jaynes was an employee of Beverly Health and Rehabilitation, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about April 24, 1999, the employee sustained an accident which arose out of and in the course of her employment.
4. The employer had notice of the employee's accident.
5. The employee's claim for compensation was filed within the time allowed by law.
6. The employee's average weekly wage was \$520.00 per week and her rate of compensation is \$346.67 for temporary total disability and permanent total disability and \$294.73 for permanent partial disability.
7. No medical aid was furnished by the employer-insurer.
8. No temporary total disability benefits were paid by the employer-insurer.

ISSUES:

1. Medical causation
2. Additional medical aid
3. Nature and extent of disability
4. Liability of the Second Injury Fund

SUMMARY OF THE EVIDENCE:

At the time of her accident, the employee, Betty Jaynes, was employed as a charge nurse in a long-term nursing care facility for Beverly Health and Rehabilitation. Prior to her April 24, 1999 accident, the employee had two minor back injuries that were each settled for 7 ½ % of the body as a whole, and a right thumb injury that was settled for 5% of the thumb (Employee's Exhibits T, U and V). According to the employee, neither her thumb nor her back were bothering her prior to her April 24, 1999 accident. The medical records also confirm that the employee had problems with depression prior to April 24, 1999, but only sought treatment from a psychiatrist on one occasion. The employee acknowledged in her medical records that on several occasions she had treated herself with her husband's medication (Employee's Exhibit B).

The employee's April 24, 1999 accident occurred when she was attempting to take care of a resident and tripped on an electrical cord. The employee testified that she fell flat on her face with her arms extended. The employee testified that she believed she may have been unconscious for a brief period of time. The medical records from her September 27, 1999 visit to the St. Francis Medical Center emergency room, contradict the employee's version of her accident. The emergency room physician notes:

This 52 year-old female caught her right leg on a cable Saturday, fell, and twisted her right leg. Also landed on her back. She was not knocked unconscious. No nausea or vomiting. She complains of back pain and leg pain. No headaches mentioned to me. Headaches mentioned in nurse's note (Employee's Exhibit A).

After x-rays taken of the employee's right knee and lumbar spine were negative, the emergency room physician diagnosed the employee as having a right knee sprain and low back strain, and prescribed Tylenol 3 and ibuprofen (Employee's Exhibit A).

Three days later on April 30, 1999, the employee was going with her husband while he sought treatment for his own psychiatric problems when she was found in their car attempting to cut her wrist with a pair of tweezers. The employee was admitted to Barnes Jewish Hospital where she was diagnosed as having major depression, and received electro shock therapy (Employee's Exhibit B).

The medical records from Barnes Jewish Hospital give no indication that the employee's depression and related treatment had any connection to her accident at work on April 24, 1999. To the contrary, the records from Barnes Jewish Hospital contain numerous entries that contradict the employee's claim that her current psychiatric problems are related to her work accident. The psychiatric intake assessments completed by Dr. Michael R. Jarvis included the following statements:

- “Chief complaint: This all has to do with Ronnie (employee's husband).”
- The employee saw a psychiatrist in the 1980s after experiencing symptoms of depression. She related this to having to deal with her husband’s chronic mental illness.
- She started taking her husband’s Darvocet and Amitriptyline in order to escape and possibly to kill herself.
- In 1994, she started taking her husband’s Prozac because she was stressed over other social stressors.
- Over the last year, the patient exhibited increased stress and decreased mood. She has had a number of things that are interpreted as suicide attempts, for example, while coming home from work, she totaled the car.
- She had previously reported being depressed for years and using Xanax occasionally for sleep.
- Two days prior to her admission to Barnes Jewish Hospital, the employee reported taking 60 Xanax.
- She has been feeling increasing stress as well as low mood since early this year. She has been worried since her husband was being treated at Barnes Jewish Hospital for his psychiatric condition.
- Since February, her husband was having difficulties with his psychiatric condition and recently bounced a \$10,000.00 check.
- On Monday, the employee was involved in a motor vehicle accident where she totaled her car.

The extensive records of Barnes Jewish Hospital establish that during her admission, neither the employee nor the treating psychiatrist related any of her problems with depression to the April 24, 1999 accident at work.

After two weeks of treatment at Barnes, the employee had follow-up care for her depression with Dr. Jarvis. In November of 1999, her family became concerned that she would hurt herself, and obtained a court ordered psychiatric admission. Since that date, the employee has continued to see psychiatrists with Bootheel Counseling.

In addition to her psychiatric problems, the employee has also received limited treatment for physical injuries that she attributes to her April 24, 1999 fall at work.

Approximately nine months after her fall, the employee sought treatment from Dr. Hatfield at the Dexter Medical Center. She initially complained of pain in her right shoulder and right arm, but in March of 2000, she started complaining of pain in her right knee. The diagnostic testing ordered by Dr. Hatfield failed to reveal anything abnormal for the right upper extremity, and Dr. Hatfield felt she had early signs of osteoarthritis in her right knee (Employee's Exhibit F).

The employee also saw Dr. Steven Winters in March of 2000 with similar complaints of right shoulder and right knee pain. Dr. Winters’ March 16, 2000 records note, “there is no reported shoulder injury, but she does remember falling upon the right knee last year” (Employee's Exhibit H). Dr. Winters injected the employee's right knee, ordered physical therapy and suggested a return visit after an MRI. There is no indication, however, that the employee returned to Dr. Winters after her initial visit (Employee's Exhibit H).

Physical therapy records from Dexter Regional Hospital indicate the employee did have several sessions of physical therapy in March of 2000. The employee advised her therapist that she was experiencing bilateral shoulder and elbow pain along with right knee pain. The employee attended five physical therapy sessions in March, and reported a significant improvement in her shoulder pain. The employee did not return for any follow-up therapy after her March 31, 2000 session (Employee's Exhibit G).

In May of 2000, the employee started seeing Dr. William S. Irvin, who is a rheumatologist at the Boone Clinic. By this time the employee was complaining of pain in her neck, both shoulders, both elbows, both wrists with numbness in her fingers. She also complained of pain in the joints of both hands, her low back, mid back and hips, both knees, her ankles and toes (Employee's Exhibit I).

The employee was attributing all of these symptoms to her fall at work, which occurred over one year prior to her visit with Dr. Irvin. The employee also told Dr. Irvin that the physical therapy that she received within the past 60 days made her condition worse. This comment is not consistent with the physical therapy records (Employee's Exhibit I and G). Dr. Irvin diagnosed the employee as having fibromyalgia and depression and prescribed Paxil and Ultram (Employee's Exhibit I).

In June of 2000, the employee was apparently referred by Dr. Hatfield to Dr. Shahid Choudhary who is a neurologist in Poplar Bluff, Missouri. At the time of this evaluation, the employee was complaining of severe headaches. Dr. Choudhary diagnosed the employee as having migraine and tension headaches, and noted that her depressing might be contributing to her headaches. Dr. Choudhary found “no focal neurological deficit to suggest any space – occupying intracranial lesion.” Based on nerve conduction studies, Dr. Choudhary felt the employee might have bilateral carpal tunnel syndrome with mild compression of the left ulnar nerve across the elbow. The MRI of the employee’s head, however, revealed no abnormality (Employee's Exhibit K). Dr. Choudhary recommended a trial prescription of Neurontin, and suggested a referral for a surgical evaluation of her bilateral carpal tunnel syndrome (Employee's Exhibit J).

The records of Dr. Brett C. Barnes with Three Rivers Healthcare – North indicate the employee had a left carpal

tunnel release and left cubital tunnel release on March 7, 2002 (Employee's Exhibit L). Although the employee testified that she had bilateral carpal tunnel releases, the medical records of Dr. Barnes do not indicate that he performed a right carpal tunnel release.

At the time of the hearing, the employee was still receiving psychiatric care through Bootheel Counseling, and was taking several different medications for anxiety and depression. Her physical complaints included pain and numbness in her hands, pain in her right knee, pain in both shoulders, severe pain in her low back and headaches on a daily basis. Emotionally the employee is anxious, nervous, has problems with her memory and has difficulty concentrating. The employee has problems sleeping, and still has thoughts of suicide. The employee did not believe she is capable of working because of her pain and problems with depression.

In addition to the employee's testimony and the medical records, the employee offered the deposition testimony of Dr. Raymond Cohen, Dr. Samina Khattak, Dr. Jay L. Liss, and Mr. James England.

Dr. Cohen examined the employee on February 7, 2003. Based on his examination of the employee and his review of certain medical records, Dr. Cohen diagnosed the employee as having a closed head injury with cognitive dysfunction, post traumatic headaches, fibromyalgia of the spine, right knee internal derangement, status post right and left carpal tunnel release, status post left ulnar tunnel release and depression (Employee's Exhibit P, page 15-18).

Dr. Cohen further testified that the employee's injury at work on April 24, 1999, was a substantial factor in causing the diagnosed conditions (Employee's Exhibit P, page 18). Dr. Cohen felt the employee needed additional treatment for her right knee and right shoulder (Employee's Exhibit P, page 22 and 23). Dr. Cohen rated the employee's disability at 30% of the body for her head injury, 10% of the body for her cervical injury, 10% of the body for her thoracic spine, 10% of the body for her lumbar spine, 35% of the left wrist, 35% of the left elbow and 30% of the right knee (Employee's Exhibit P, page 23 and 24).

On the issue of permanent total disability, Dr. Cohen testified that he believed the employee was permanently and totally disabled (Employee's Exhibit P, page 26).

The employee also offered the deposition testimony of Dr. Samina Khattak who treated the employee at Bootheel Counseling from August 7, 2000 through December 7, 2002 (Employee's Exhibit Q, page 6). At the request of the employee's attorney, Dr. Khattak prepared a report dated May 6, 2002. After briefly reviewing her treatment of the employee, Dr. Khattak testified that her diagnosis of the employee was "major depression, chronic resistant without psychotic features (Employee's Exhibit Q, page 8).

When questioned by the employee's attorney as to whether the April 24, 1999 accident was a substantial factor in causing the employee's depression, Dr. Khattak first stated, "Betty did report that the loss of her job due to the injury resulted in a lot of stress and increased her depression" (Employee's Exhibit Q, page 10). When the employee's attorney requested a "yes" or "no" answer, Dr. Khattak responded, "it was a pretty substantial factor" (Employee's Exhibit Q, page 11).

Dr. Khattak also testified that the employee will continue to need treatment for her depression. When asked if the April 24, 1999 fall was a substantial factor in causing the need for additional treatment, she responded by stated, "Yes, she did need her services, the services for psychiatric care, after the loss of her job which as a pretty significant stressor that she always reported to me that she feels worthless if she's not working. That was her major issue" (Employee's Exhibit Q, page 12 and 13).

Dr. Khattak concluded her direct examination by stating that she felt the employee was unable to maintain gainful employment because of her chronic problems with anxiety, concentration and depression (Employee's Exhibit Q, page 13).

During cross-examination by the employer-insurer's attorney, Dr. Khattak admitted that when the employee was first seen at the Bootheel Clinic, she gave no history of her April 29, 1999 fall at work (Employee's Exhibit Q, page 15). Dr. Khattak also admitted that prior to preparing her report, Dr. Khattak had not reviewed the records from Barnes Jewish Hospital related to the employee's April 30, 1999 admission (Employee's Exhibit Q, page 16). Dr. Khattak was therefore not aware that the employee had given Barnes Jewish Hospital a history that she was depressed because her husband was bipolar and had overspent (Employee's Exhibit Q, page 18). Dr. Khattak also admitted that the history she had provided to Barnes Jewish Hospital regarding her prior problems with depression and her use of her husband's antidepressant medication was not consistent with the history the employee had given to Dr. Khattak that she had no prior history of psychiatric problems before April 24, 1999 (Employee's Exhibit Q, page 18).

Dr. Khattak also agreed that she was unaware that the employee's husband had given a history to Barnes Jewish Hospital of the employee hitting her head in a motor vehicle accident three days prior to her admission to Barnes Jewish Hospital (Employee's Exhibit Q, page 23 and 24). Dr. Khattak then acknowledged that her opinions and testimony were based on the assumption that the history provided to her by the employee was true (Employee's Exhibit Q, page 21).

In addition to the deposition of Dr. Khattak, the employee also offered the deposition testimony of Dr. Jay Liss. Dr.

Liss is a psychiatrist who examined the employee at the request of her attorney on October 29, 2003 (Employee's Exhibit R, page 6). Based on this examination and his review of certain medical records, Dr. Liss prepared a report dated October 29, 2003.

In his report Dr. Liss diagnosed the employee as suffering from post concussion syndrome with anxiety and depression (Employee's Exhibit R, page 14). Dr. Liss based this diagnosis on the employee's history that she was unconscious (Employee's Exhibit R, page 8 and 14). Dr. Liss further testified that he believed the employee was permanently and totally disabled because of the April 24, 1999 fall at work (Employee's Exhibit R, page 19). Dr. Liss added that the employee's fall was a substantial factor in causing the employee's diagnosed condition, and agreed that she was in need of ongoing psychiatric and physical care (Employee's Exhibit R, page 20).

On cross-examination, Dr. Liss admitted that the major symptom of a concussion is a history of unconsciousness (Employee's Exhibit R, page 23). Dr. Liss also agreed that he relied on the employee's history of being knocked unconscious in reaching his conclusion that the employee had suffered a concussion (Employee's Exhibit R, page 27).

After reviewing the April 27, 1999 records from St. Francis Medical Center, Dr. Liss also agreed that three days after her fall, the emergency room records indicated that she was not knocked unconscious (Employee's Exhibit R, page 28). Upon further questioning, Dr. Liss admitted that no x-rays were taken of the employee's head at the time of her emergency room visit on April 27, 1999 (Employee's Exhibit R, page 31). He then acknowledged that none of the employee's treating physicians diagnosed the employee as having post-concussion syndrome (Employee's Exhibit R, page 31).

The final deposition offered by the employee was that of Mr. James England, who is a vocational rehabilitation counselor. Mr. England evaluated the employee on June 21, 2004, and prepared a report dated June 28, 2004. Based on his evaluation of the employee and his review of the medical records, Mr. England testified that based on the findings of Dr. Irvin, Dr. Liss and Dr. Khattak, together with his own observations, he did not believe that the employee would be able to compete for employment, and he did not feel she could sustain any kind of work on a consistent basis (Employee's Exhibit S, page 35).

Conversely, Mr. England testified that if he assumed the conclusions of Dr. Mishkin and Dr. Stillings were accurate, then the employee should be able to go back to any of the work she had done before because there would not be any physical or mental restrictions (Employee's Exhibit S, page 35).

The employer-insurer's evidence included the deposition testimony of Dr. Wayne A. Stillings, Dr. Patrick A. Hogan and Dr. Marvin Mishkin.

Dr. Stillings is a psychiatrist who examined the employee on June 24, 2003. Based on his examination of the employee and his review of the medical records and the tests he administered, Dr. Stillings concluded that the April 28, 1999 work incident was not a substantial factor in causing any of the employee's psychiatric problems (Employer-insurer Exhibit 1, page 17). Dr. Stillings further testified that her admission to Barnes Jewish Hospital on April 30, 1999, and her subsequent psychiatric treatment were not reasonable or necessary in relation to the April 28, 1999 work incident because he did not believe there was any causal connection (Employer-insurer Exhibit 1, page 17).

Dr. Stillings diagnosis included:

- Axis I: Parent-child relational problems relating to her loss of her father at age 12
- Axis II: Parent-child relationship problems related to her daughter who was diagnosed with attention deficit disorder
- Axis III: Substance abuse
- Axis IV: Chronic dysthymia, a chronic low mood
- Axis V: Partner relationship with husband, long standing chronic marital problems

(Employer-insurer Exhibit 1, page 15 and 16).

Dr. Stillings further noted that none of the five doctors who treated the employee diagnosed her as having post concussion syndrome (Employer-insurer Exhibit 1, page 19). He also emphasized that the emergency room records confirm that the employee did not lose consciousness, based on her own history and the fact that she did not have any symptoms associated with a concussion (Employer-insurer Exhibit 1, page 20).

In addition to the deposition of Dr. Stillings, the employer-insurer also offered the deposition of Dr. Patrick A. Hogan. Dr. Hogan is a neurologist who examined the employee on February 18, 2004. Based on his examination and his review of the medical records, Dr. Hogan concluded the employee had no evidence of any disorder of the central or peripheral nervous system, no muscular disorder, and no mental status abnormalities (Employer-insurer Exhibit 2, page 11). Dr. Hogan felt the employee's neurological exam was completely normal, and her complaints had no basis in neurological disorder (Employer-insurer Exhibit 2, page 12). Dr. Hogan also concluded the employee did not have post concussion syndrome because there was no evidence that she had a concussion (Employer-insurer Exhibit 2, page 12 and 13).

The final exhibit offered by the employer-insurer was the deposition of Dr. Marvin Mishkin. Dr. Mishkin is an orthopedic surgeon who examined the employee on November 4, 2002. The employee's major complaint at the time of Dr. Mishkin's examination was that she "hurt all over" (Employer-insurer Exhibit 3, page 6).

After reviewing the medical records and examining the employee, Dr. Mishkin diagnosed the employee as having major depression, status post carpal tunnel surgical release, status post left ulnar nerve transposition, and a diagnosis by Dr. Irvin of fibromyalgia (Employer-insurer Exhibit 3, page 12). After discussing each of these conditions, Dr. Mishkin concluded that none of the employee's diagnosed conditions were caused by her April 24, 1999 fall at work (Employer-insurer Exhibit 3, pages 12-15). Dr. Mishkin also testified that he did not believe the employee had any permanent partial disability attributable to the employee's April 24, 1999 accident (Employer-insurer Exhibit 3, page 16).

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Emergency room records from St. Francis Medical Center
- B. Medical records from Barnes Jewish Hospital
- C. Medical records of Dr. Michael Jarvis
- D. Medical records from Bootheel Counseling
- E. Medical records from Doctors' Regional Hospital
- F. Medical records from Dr. Ted Hatfield
- G. Medical records of Dexter Memorial Hospital
- H. Medical records of Dr. Steven Winters
- I. Medical records of Boone Clinic (Dr. Irvin)
- J. Medical records of Dr. Choudhary
- K. Medical records from Lucy Lee Hospital
- L. Medical records from Three Rivers Health Care (carpal tunnel syndrome)
- M. Medical records from St. Francis Medical Center
- N. Medical records of Dr. Stahly
- O. Medical records of Dr. Jack Mills
- P. Deposition of Dr. Raymond Cohen
- Q. Deposition of Dr. Samina Khattak
- R. Deposition of Dr. Jay Liss
- S. Deposition of James England
- T. Compromise settlement agreement for right thumb injury
- U. Compromise settlement agreement for low back injury
- V. Compromise settlement agreement for low back injury
- W. Medications

Employer-Insurer's Exhibits

1. Deposition of Dr. Wayne Stillings
2. Deposition of Dr. Patrick Hogan
3. Deposition of Dr. Marvin Mishkin

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. Medical Causation

The employee's attorney has made a valiant effort to obtain expert testimony to support the employee's claim that her depression, headaches, bilateral carpal tunnel syndrome, ulnar nerve entrapment, bilateral shoulder pain, bilateral wrist pain, right and left knee pain, low back pain, mid and thoracic back pain, and other complaints were all caused by her fall at work. This is a case where the old saying, "You can't make a silk purse out of a sow's ear" is applicable. The facts in this case simply do not support the employee's position, and the expert opinions offered by the employee are clearly based on inaccurate histories and false assumptions.

The most glaring weakness in the employee's argument is revealed in the medical records from Barnes Jewish Hospital. Six days after her accident, the employee was admitted to Barnes Jewish Hospital and diagnosed with major depression. Psychiatrists are apparently drilled on taking detailed medical histories in order to explore every possible stressor or other potential cause of a mental illness. The psychological assessments from Barnes Jewish Hospital include literally dozens of potential explanations for the employee's depression, but neither the employee nor her husband ever mentioned her fall at work. The list includes a drug overdose, a motor vehicle accident with a blow to her head three days earlier, prior episodes of depression which caused her to take her husband's antidepressant medication, stress from her husband's mental

illness, his irresponsible financial behavior and several other “stressors,” identified by the psychiatrists. After reading these records from Barnes Jewish Hospital, it is inconceivable that any reasonable person (judge or otherwise) would conclude that the employee's depression was caused by her fall at work.

Obviously, this statement does not bode well for the credibility of the employee's experts. Dr. Khattak made a lukewarm statement on causation by stating that the employee's accident and her resulting job loss were a “pretty substantial factor,” in causing her depression. Upon closer examination, however, there are two fatal flaws in her analysis. First, Dr. Khattak admitted that she had not read the Barnes Jewish Hospital records at the time she prepared her report. As previously noted, it is inconceivable that any reasonable psychiatrist who had read the Barnes Jewish Hospital records could have reached the conclusion that the employee's depression was work-related. Dr. Khattak admitted that her conclusions were based on the history provided by the employee, and that history was not accurate.

In addition to the fact that her conclusions were based on an inaccurate history, Dr. Khattak's conclusion has an additional flaw. Dr. Khattak's opinion was not based on any physical injury caused by the fall, but rather on the employee's subsequent loss of employment. Dr. Khattak emphasized on two occasions that the fact that the employee lost her job was a significant stressor that she felt contributed to the employee's depression. The fallacy of this logic is obvious. At the time the employee was admitted to Barnes Jewish Hospital, diagnosed with major depression and received electric shock therapy, she had not lost her job.

Given these two flaws in Dr. Khattak's analysis, her opinion on medical causation is not credible

The employee also offered two additional medical opinions to support her claim that her depression was caused by her fall at work. The testimony of Dr. Cohen contains a superficial, boilerplate conclusion that her depression was caused by her fall, but Dr. Cohen offered no explanation to support that conclusion. Dr. Liss, who is a psychiatrist, based his opinion on a theory that the employee suffered a head injury, was knocked unconscious and her depression was therefore related to a diagnosis of post concussion syndrome. Dr. Liss's conclusion, however, was also based on an inaccurate medical history. The employee told Dr. Liss that she hit her head when she fell at work and was knocked unconscious. The medical records do not support the employee's version of the accident. The emergency room physician at St. Francis Medical Center states that the employee was not knocked unconscious. She complained to him of back pain and leg pain. The employee told the emergency room doctor she twisted her right leg and landed on her back. Although she did mention headaches to the nurse, the emergency room doctor emphasized that she did not mention headaches to him and she denied nausea or vomiting. The emergency room records give no indication that the employee had struck her head in her fall, and no x-rays were taken of the employee's head.

The conclusion that the employee did not suffer a concussion as a result of her fall at work is also supported by the medical records of Barnes Jewish Hospital and her treating physicians. As previously noted, the Barnes Jewish Hospital records do not mention the employee falling at work and striking her head. To the contrary, the employee's husband advised the psychiatrist that the employee had struck her head in a recent motor vehicle accident that had totaled her car. In addition to the medical records of St. Francis Medical Center and Barnes Jewish Hospital, it is also significant that none of the employee's treating physicians ever diagnosed or treated the employee for a concussion.

Given these facts, Dr. Liss's theory that the employee is suffering from post concussion syndrome is not credible.

In addition to her depression, the employee has also alleged that her long list of physical ailments are all causally related to her fall. In the beginning the employee stated that she twisted her right leg and fell on her back. Much later the employee modified her description of the fall to the “hearing version” stating that she fell face forward and tried to catch herself with her hands outstretched. These two versions are not consistent.

In addition to changing her story, there are several other problems with the evidence that also refute the employee's position. The medical records indicate the employee had problems with headaches prior to her April 24, 1999 accident. The medical records also confirm that she did not seek any further medical treatment until nine months after her fall, and her only complaints at that time were of pain in her right shoulder and right arm. The employee later complained to Dr. Hatfield and other physicians of pain in her right knee, but the diagnostic testing indicates she did not have any objective findings other than early signs of osteoarthritis. The employee's symptoms eventually evolved into complaints of “I hurt all over,” and Dr. Irvin gave a default diagnosis of fibromyalgia.

Once again, the facts in this case do not support a finding that the employee's current complaints in multiple parts of her body have any connection to her fall. The employee's decision to change the description of her accident, the time lag between the accident and the onset of symptoms, the lack of any objective findings for most of her complaints, and the ever expanding list of physical problems she attributed to her accident make it difficult to conclude that the employee's work accident had any significant connection to her current complaints.

Based on these facts and observations, I find that the opinions of Dr. Stillings, Dr. Hogan, and Dr. Mishkin on the issue of causation are more credible than the opinions of Dr. Cohen, Dr. Khattak and Dr. Liss. I therefore find that the employee's accident on April 24, 1999, was not a substantial factor in causing either her depression or the other physical ailments she identified at the hearing.

Given this finding, the remaining issues are moot and shall not be ruled upon. The employee's claims against the employer-insurer and the Second Injury Fund are therefore both denied.

Date: _____

Made by:

Jack H. Knowlan, Jr.
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Pat Secrest
Director
Division of Workers' Compensation