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

Injury No.:   11-008697

Employee:   Charles Jinkerson
Employer:   Hillsboro R-III School District
Insurer:  Missouri United School Insurance Company
Additional Party:  Treasurer of Missouri as Custodian of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the 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.

Preliminaries
The parties asked the administrative law judge to determine the following issues: (1) medical causation; (2) liability for unpaid medical expenses; (3) the nature and extent of any unpaid temporary total disability; (4) liability for future medical treatment; (5) nature and extent of permanent disability; and (6) liability of the Second Injury Fund.

The administrative law judge determined as follows: (1) the evidence compels a finding that the reported injury was not the prevailing factor in causing a need for employee’s vertebroplasty with Dr. Jennings; (2) employee’s symptoms, while heralded as cured after surgery, were, nevertheless, unresolved by the vertebroplasty, and this is not a sufficient basis to impose liability against employer for the cost of this surgery and follow-up; (3) no liability is found for additional temporary total disability benefits; (4) no liability is found for future medical treatment as a result of the reported injury; (5) employee is found to have sustained a 15% permanent partial disability of the lumbar spine, and 5% permanent partial psychiatric disability as a result of the reported injury; and (6) the Second Injury Fund is liable for 79.1 weeks of permanent partial disability benefits.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in his determination of the issue of medical causation; (2) in failing to find that employee is entitled to be reimbursed for the medical expenses he incurred after being discharged by Dr. Coyle and Dr. Doll; (3) in failing to find that employee is entitled to additional temporary total disability benefits; (4) in his determination of permanent disability; and (5) in failing to find employer liable for future medical care benefits.
For the reasons stated below, we modify the award and decision of the administrative law judge referable to the issues of: (1) medical causation; (2) nature and extent of permanent disability; (3) liability for past medical treatment; (4) liability for future medical treatment; and (5) Second Injury Fund liability.

**Discussion**

**Medical causation**

The parties disputed the issue of medical causation. The administrative law judge rendered an award of permanent partial disability benefits suggesting he believed the accident caused a psychiatric injury as well as some injury to the spine, but he did not render any affirmative findings with regard to the particular medical condition(s) he believed to have resulted from the accident of February 8, 2011. Accordingly, we must resolve the issue herein. Section 287.020.3(1) RSMo sets forth the statutory test for medical causation applicable to this claim, and provides, in relevant part, as follows:

> An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

The parties advance conflicting expert medical testimony with regard to the pathology resulting from employee’s fall at work on February 8, 2011. Employee presents the evaluating physician Dr. David Volarich, who believes the accident was the prevailing factor causing the resulting medical conditions of an L2 compression fracture, and bilateral sacroiliac joint dysfunction. With regard to the latter diagnosis, Dr. Volarich explained that employee’s sacroiliac joint was partially disrupted by the accident, resulting in movement that wasn’t there beforehand, with corresponding inflammation and pain.

Employee also presents the treating physician Dr. Anthony Margherita, who agrees the accident was the prevailing factor causing an L2 vertebral body compression fracture, and sacroiliac joint dysfunction. In addition, Dr. Margherita identified a fracture of the coccyx and exacerbation of employee’s degenerative lower lumbar spine condition at the L5-S1 level as resulting from the accident.

Employer, on the other hand, presents the authorized treating physician Dr. James Coyle, who disagrees that employee’s sacroiliac joint dysfunction and related symptoms bear any relationship to the accident. Instead, Dr. Coyle believes the accident caused only an L2 fracture, and a coccyx fracture. In Dr. Coyle’s view, any complaints and symptoms referable to the accident were essentially resolved as of September 2011, and employee’s ongoing low back complaints are due to multiple preexisting conditions or comorbidities that overwhelm any disability employee may have experienced secondary to the accident. Dr. Coyle did, however, rate 5% permanent partial disability for the L2 fracture, plus an additional 5% for the coccyx fracture; Dr. Coyle did not specify which of employee’s various ongoing symptoms or limitations correspond to these ratings.
In contrast, employer’s authorized treating physician, Dr. James Doll, essentially agrees with Drs. Volarich and Margherita that employee’s lumbosacral pain and SI joint dysfunction did result from the accident. In his award, the administrative law judge suggested that Dr. Doll was merely following good medical practice by treating all of employee’s concurrent symptoms, and did not actually causally link these diagnoses to the work injury. We disagree with this view of the evidence. Asked at his deposition to distinguish between employee’s preexisting pathology affecting the spine and the specific medical conditions that resulted from the work injury, Dr. Doll unequivocally identified both lumbosacral and sacroiliac joint pain as resulting from employee’s fall at work. Dr. Doll explained that the fracture at L2 involved injury not just to the bone itself, but also the ligaments and surrounding muscle structures in the low back.

It appears that the administrative law judge found employee to be a generally credible witness; we discern no basis to find otherwise. Accordingly, we credit employee’s testimony with regard to the symptoms he experienced following the accident. We find that employee suffered, and has continued to suffer, moderate to severe lower back and SI joint pain since the date of the accident.

Ultimately, after careful consideration of the voluminous record on this point, we are more persuaded to credit the opinions from Drs. Volarich, Doll, and Margherita that the accident caused employee to suffer not only the L2 and coccyx fractures, but also lumbosacral and sacroiliac joint injuries, over the sole contrary opinion from Dr. Coyle. While the evidence reveals employee certainly had preexisting degenerative pathology and disability referable to his lumbar spine, the overall weight of the medical evidence including the opinions of Dr. Doll, along with the credible testimony from employee, indicate that employee has sustained new injury and associated permanent partial disability referable to his lumbosacral spine and SI joint, as a result of the accident. Accordingly, we modify the administrative law judge’s decision on this point.

Employee also alleges psychiatric injury as resulting from the accident. He presents the expert psychiatric opinion of Dr. Gregory Bassett, who believes the accident was the prevailing factor causing employee to suffer a recurrent depressive episode that manifested thereafter. On the other hand, employer’s psychiatric expert, Dr. Elizabeth Pribor, opined in her report that the accident was the prevailing factor “in the initiation of the exacerbation of the particular major depressive episode in [employee], but it is not the prevailing factor in the overall episode and persistence of his clinical depression.” Transcript, page 2085 (emphasis in original). At her deposition, Dr. Pribor testified that the accident, in her opinion, did cause the onset of an episode of major depressive disorder, but was not the prevailing cause in its continuation over time, and that employee’s other medical conditions have instead caused the episode to continue. Dr. Pribor did, however, rate permanent partial disability referable to a major depressive episode as having resulted from the accident at work. After careful consideration of these expert psychiatric opinions, we are persuaded that the accident caused employee to suffer the resulting medical condition of a recurrent depressive episode, with associated permanent disability; we so find.
In light of the foregoing considerations, we conclude pursuant to § 287.020.3(1) that the accident was the prevailing factor causing employee to suffer the following resulting medical conditions, with associated disability: (1) an L2 fracture, (2) a coccyx fracture, (3) lumbosacral and sacroiliac joint dysfunction and pain, (4) exacerbation of employee’s degenerative lower lumbar spine condition, and (5) a major depressive disorder.

**Past medical expenses**

Section 287.140.1 RSMo controls with respect to the issue of past medical expenses, and provides, in relevant part, as follows:

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

The administrative law judge concluded “the reported injury was not the prevailing factor in causing a need for [employee’s] vertebroplasty with Dr. Jennings.” *Award*, page 11. However, as the Missouri courts have instructed, the “prevailing factor” test pertains only to issues of causation under § 287.020.3 RSMo, and has no place in our analysis with regard to the issue of past medical expenses. See *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511 (Mo. App. 2011). Accordingly, we must disclaim the administrative law judge’s use of a “prevailing factor” test in the context of the claim for past medical expenses.

We note also that the administrative law judge suggested that because employee did not obtain total, lasting relief of his low back symptoms following the vertebroplasty, the claim for disputed past medical expenses should be denied in full. See *Award*, page 12. We note that the claim for disputed past medical expenses includes other charges besides those associated with the vertebroplasty procedure. We are concerned that the administrative law judge’s analysis might be construed to require that, to prevail on a claim for past medical expenses, each disputed procedure must be shown to have permanently cured or relieved the injured employee’s symptoms and complaints. We are aware of no such requirement in the statute or relevant case law, so we must disclaim any imposition of such a test to the claim for past medical expenses.

Instead, we must begin by asking whether the disputed treatments were reasonably required to cure and relieve the effects of the work injury, or in other words, the resulting medical conditions of (1) an L2 fracture, (2) a coccyx fracture, (3) lumbosacral and sacroiliac joint dysfunction and pain, (4) exacerbation of employee’s degenerative lower lumbar spine condition, and (5) a major depressive disorder.

The parties dispute, in particular, whether the January 31, 2012, vertebroplasty performed by Dr. Jennings was reasonably required to cure and relieve the effects of the L2 fracture. On this specific point, we find more persuasive the testimony from Dr. Coyle, who opined that the L2 fracture had fully healed before this procedure, as shown on a January 4, 2012, CT/bone scan. Dr. Coyle rather persuasively testified that
one does not receive any therapeutic benefit from injecting cement into a healed bone fracture; in our view, the contrary opinions from Drs. Volarich and Margherita were comparatively lacking in substance and persuasive force. Accordingly, we find that the January 31, 2012, vertebroplasty was not reasonably required to cure and relieve the effects of the work injury. Consequently, we conclude that employer is not liable for charges associated with this procedure, including the claimed amount of $5,119.00 in charges from Dr. Jack Jennings and the Mallinckrodt Institute of Radiology, as well as the amount of $10,990.00 in charges from Barnes Jewish – West County Hospital.

Employee also claims various other charges incurred in connection with treatment he underwent for ongoing lower back and SI joint complaints after September 8, 2011, when Dr. Doll released him from authorized treatment. Specifically, employee claims charges in connection with treatment visits with Dr. Margherita, diagnostic studies such as x-rays and MRIs, spinal nerve blocks at L4, bilateral injections to his SI joint, and physical therapy. With respect to these treatments, employee claims the following past medical expenses: $8,490.00 in charges from Dr. Margherita and West County Spine & Sports Medicine; $3,594.70 from St. Luke’s Hospital; and $1,947.00 from Advanced Training & Rehab. See Transcript, page 1587.

With respect to the charges from Dr. Margherita and West County Spine & Sports Medicine, we note that the medical treatment records in evidence reveal that employee underwent numerous treatments with this provider that were obviously unrelated to any claimed effect of the work injury, e.g., treatment from Dr. Margherita for cervical complaints, follow-up examinations in connection with a total knee replacement surgery, and multiple right knee injections. See Transcript, pages 550-54, 560-64, and 579-84. Employee provides five pages of medical billing records from this provider; we note that these billing records appear to include the charges for these unrelated treatments, in that the dates of service corresponding to the treatment records for unrelated medical conditions/diagnoses are included in the bills. We note also that employee has made no effort on the record or in his brief to delineate which of these charges he claims are compensable, and which (if any) of these charges he concedes are not related to the work injury, apart from identifying the total amount of $8,490.00 as the charges claimed from this provider, an amount that is likewise not calculated or explained anywhere on the record or in employee’s brief.

Given these circumstances, it appears that we are invited to scrutinize the voluminous records from this provider in conjunction with a line-by-line audit of the billing records (which contain numerous cryptic codes/entries such as “NCV MOTOR NO F WAVE” and thus are, in many instances, wholly unclear with regard to which particular treatments or procedures prompted the various charges), in order to determine whether the identified amount of $8,490.00 is supported by the record. To undertake this arduous process on behalf of the employee would, in our view, inappropriately place us in the role of advocate. This seems especially the case when we consider that testimony from this provider or a billing representative might have been provided to explain and delineate the various charges, resolving this considerable evidentiary ambiguity.
For the foregoing reasons, we deny the claimed past medical expenses from Dr. Margherita and West County Spine & Sports Medicine, because we find that employee has failed to prove that the claimed charges were incurred for treatment reasonably required to cure and relieve the effects of the work injury, as opposed to his various other unrelated medical conditions and diagnoses.

On the other hand, with respect to the charges from St. Luke’s Hospital, we are able to determine the basis for employee’s identification of total charges of $3,594.70, as these bills are relatively clear with regard to the procedures that prompted the charges. Specifically, it appears employee claims $148.20 for a lumbar spine x-ray on November 1, 2011; $503.60 for a lumbar spine x-ray on September 23, 2013; and $2,942.90 for a lumbar spine MRI on June 2, 2014. We have found that employee’s work injury resulted in lumbosacral and sacroiliac joint dysfunction, as well as pain and exacerbation of employee’s degenerative lower lumbar spine condition; the medical treatment records in evidence demonstrate (and we so find) that these diagnostic procedures correspond to treatment employee sought and received in an effort to cure and relieve the effects of these resulting medical conditions. Employer has not advanced any evidence that would demonstrate that employee is not required to pay the billed amounts, that his liability for the disputed amounts was extinguished, and that the reason such liability was extinguished does not otherwise fall within the provisions of § 287.270 RSMo. See Farmer-Cummings v. Pers. Pool of Platte Cnty., 110 S.W.3d 818 (Mo. 2003), and Maness v. City of De Soto, 421 S.W.3d 532, 545 (Mo. App. 2014). We conclude employer is liable for $3,594.70 in charges from St. Luke’s Hospital.

With respect to the charges from Advanced Training & Rehab, employee claims a total of $1,947.00 for physical therapy sessions between January 4, 2013 and February 23, 2015. As with the charges discussed above from Dr. Margherita and West County Spine & Sports Medicine, we note that the medical treatment records in evidence reveal that employee underwent many treatments with this provider that addressed conditions that are unrelated to any claimed effect of the work injury, e.g., neck and shoulder complaints. See Transcript, pages 1145, 1149, 1156, etc. The ten pages of billing records do not delineate which charges were incurred for work-related versus unrelated conditions, and employee has not advanced evidence to make this showing, nor has he provided any guidance in his brief as to this issue. As indicated above, we view these circumstances as an invitation to search the 98 pages of medical treatment records from this provider (many of which are handwritten and illegible) for the information necessary to interpret the bills; once again, we decline to undertake this cumbersome process in order to avoid acting as an advocate for either party in this matter. We find, instead, that employee has failed to prove that the claimed charges from this provider were incurred for treatment reasonably required to cure and relieve the effects of the work injury, as opposed to unrelated medical conditions and diagnoses. For this reason, we deny the claimed past medical expenses from Advanced Training & Rehab.

In sum, we conclude employer is liable for $3,594.70 in past medical expenses.
Future medical treatment
Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove there is a reasonable probability of a need for future medical treatment that flows from the work injury. Conrad v. Jack Cooper Transp. Co., 273 S.W.3d 49, 51-4 (Mo. App. 2008). Dr. Volarich believes employee will need ongoing treatment to address his pain referable to the work injury, including pain medications, periodic trigger-point and SI injections, epidurals, foraminal nerve blocks, TENS units, and radiofrequency ablation procedures.

When he released employee from authorized treatment on September 8, 2011, Dr. Doll provided his opinion that employee was not then in need of any active or ongoing treatment for the effects of the work injury; he reiterated this opinion at his deposition. However, Dr. Doll never specifically addressed the question whether there was a reasonable probability that employee might have a need, in the future, for treatment flowing from the effects of the work injury. Consequently, we do not find on this record an opinion from Dr. Doll to squarely rebut that from Dr. Volarich. With respect to Dr. Coyle, we have found his opinions less persuasive with regard to the issue of medical causation; his opinion that employee will need no further treatment for the L2 and coccyx fractures thus fails to address the additional medical conditions that we have found to result from the work injury. Consequently, we are more persuaded to credit Dr. Volarich’s opinions on this point. We find that there is a reasonable probability that employee will need treatment in the future to cure and relieve the physical effects of his work injury.

With regard to employee’s psychiatric injury, Dr. Bassett provided his opinion that employee needs ongoing treatment with antidepressant medication as a result of the accident. Dr. Pribor, on the other hand, believes that although employee might benefit from ongoing psychiatric medications and therapy, this need does not flow directly from the work injury, because employee suffered from preexisting bouts of recurrent major depression, and is more likely to need treatment as a result of this recurrent preexisting condition, rather than any psychiatric effect of the work injury. As the courts have made clear, however, “the question of whether or not [employee] may have needed future treatment even if the injury did not occur is irrelevant to the analysis of whether the future medical care flows from the injury that actually occurred.” Stevens v. Citizens Mem’l Healthcare Found., 244 S.W.3d 234, 238 (Mo. App. 2008). We find Dr. Bassett’s opinion more persuasive.

We conclude that employee is entitled to, and employer is liable to provide, that future medical treatment that may reasonably be required to cure and relieve the effects of the work injury.

Nature and extent of permanent disability
The administrative law judge determined that employee is not permanently and totally disabled as a result of the work injury, but instead suffered a 15% permanent partial disability of the lumbar spine, and a 5% permanent partial psychiatric disability. We agree that employee is not permanently and totally disabled as a result of the work injury considered in isolation. However, given that we have modified the administrative law judge’s decision with respect to the issue of medical causation to credit the opinions
from Drs. Volarich, Doll, and Margherita over the contrary opinion from Dr. Coyle, we must revisit the question of the nature and extent of permanent disability employee suffers as a result of the work injury.

After careful consideration, we find that employee suffers a 20% permanent partial disability of the body as a whole referable to the L2 fracture, coccyx fracture, lumbosacral and sacroiliac joint dysfunction and pain, and exacerbation of employee’s degenerative lower lumbar spine condition suffered in the injury, as well as an additional 5% permanent partial disability of the body as a whole for depression. Accordingly, we hereby modify the award of the administrative law judge on this point.

We deem reasonable and hereby adopt as our own the administrative law judge’s finding that, as of the date of injury, employee was suffering from considerable preexisting permanent partial disability affecting the lumbar spine, both wrists, both knees, both ankles, and the body as a whole referable to psychiatric disability. We find that employee reached maximum medical improvement from the effects of the work injury on July 10, 2012, as it appears from Dr. Margherita’s records that he considered employee’s low back condition to have stabilized enough that a rating of permanent disability had become appropriate as of that date. As of July 10, 2012, employee was 56 years of age, and was suffering from the following symptoms, complaints, and limitations referable to the work injury as well as his preexisting permanent partially disabling conditions as they existed on the date of accident: daily burning pain of the low back and SI joints; sciatica and spasms affecting the right leg; stiffness, cramping, and decreased grip strength in both hands; difficulty with fine motor skills and manipulating small objects; bilateral knee pain which hindered employee’s ability to crawl, navigate stairs, and traverse uneven surfaces; pain and range of motion problems affecting the ankles which hindered employee’s ability to carry heavy items, navigate stairs, and remain on his feet for prolonged periods; and chronic, recurrent psychiatric difficulty in the form of depression.

Turning to the question whether employee was permanently and totally disabled as of July 10, 2012, we note that the administrative law judge determined that employee was unable to compete in the open labor market as of the July 2016 hearing in this matter, but that this inability had only arisen as the product of post-accident deterioration, rather than the effects of the work injury in combination with employee’s preexisting disabling conditions. In making this finding, the administrative law judge suggested employee’s medical and vocational experts failed to properly exclude unrelated, post-accident deterioration from their analysis.

We disagree with this view of the evidence. Employee’s vocational expert, Stephen Dolan, specifically testified that in rendering his opinion that employee is permanently and totally disabled, he did not consider any of the unrelated medical problems that have developed since the work accident, such as employee’s cardiac issues, right knee deterioration and eventual total replacement surgery, or increased right foot complaints. Likewise, Dr. Volarich specifically testified that he believed employee was disabled regardless of any progression of knee symptoms following the accident. More importantly, from employee’s credible testimony, it appears (and we so find) that, if anything, the right total knee replacement procedure in 2014 resulted in an overall
improvement of employee’s right knee symptoms, given that it relieved his prior complaints of buckling/instability in the knee. The same may be said for employee’s 2012 right ankle surgery, which appears to have improved employee’s pain and swelling in the ankle. In other words, simply pointing to the occurrence of post-accident surgeries involving unrelated medical conditions does not compel a finding that employee’s permanent total disability must have arisen, if at all, as a result of such procedures.

In sum, we are not persuaded by the Second Injury Fund’s argument that employee is only permanently and totally disabled if one considers post-accident worsening of employee’s overall medical condition. Ultimately, and after a careful review of the entire record on this point, we find most persuasive the opinions from Mr. Dolan and Dr. Volarich with respect to the question of permanent total disability. We find that employee is unable to compete for work in the open labor market owing to the effects of the work injury in combination with employee’s preexisting conditions of ill-being.

Second Injury Fund liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in "all cases of permanent disability where there has been previous disability." As a preliminary matter, the employee must show that he suffers from “a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed…” Id. The Missouri courts have articulated the following test for determining whether a preexisting disability constitutes a "hindrance or obstacle to employment":

[T]he proper focus of the inquiry is not on the extent to which the condition has caused difficulty in the past; it is on the potential that the condition may combine with a work-related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition.

Knisley v. Charleswood Corp., 211 S.W.3d 629, 637 (Mo. App. 2007)(citation omitted).

We have adopted the administrative law judge’s findings that, at the time of the primary injury, employee suffered extensive preexisting permanent partial disability affecting the lumbar spine, both wrists, both knees, both ankles, and the body as a whole referable to psychiatric disability. After careful consideration, we are convinced that employee’s preexisting disabling conditions were serious enough to constitute hindrances or obstacles to employment. This is because we are convinced that each of employee’s preexisting disabling conditions had the potential to combine with a future work injury to
result in worse disability than would have resulted in the absence of these preexisting conditions. See *Wuebbeling v. West County Drywall*, 898 S.W.2d 615, 620 (Mo. App. 1995).

Fund liability for PTD under Section 287.220.1 occurs when [the employee] establishes that he is permanently and totally disabled due to the combination of his present compensable injury and his preexisting partial disability. For [the employee] to demonstrate Fund liability for PTD, he must establish (1) the extent or percentage of the PPD resulting from the last injury only, and (2) prove that the combination of the last injury and the preexisting disabilities resulted in PTD.


Section 287.220 requires us to first determine the compensation liability of the employer for the last injury, considered alone. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo. 2003). If employee is permanently and totally disabled due to the last injury considered in isolation, the employer, not the Second Injury Fund, is responsible for the entire amount of compensation. *Id.*

We have found that the last injury did not render employee permanently and totally disabled in isolation, but instead resulted in a 20% permanent partial disability of the body as a whole referable to the spine, as well as an additional 5% permanent partial disability of the body as a whole for depression. We have credited the testimony from employee’s medical and vocational experts and found that employee’s inability to compete for work in the open labor market is a result of the primary injury in combination with his preexisting disability. We conclude, therefore, that the Second Injury Fund is liable for permanent total disability benefits.

**Conclusion**

We modify the award of the administrative law judge as to the issues of: (1) medical causation; (2) nature and extent of permanent disability; (3) liability for past medical treatment; (4) liability for future medical treatment; and (5) Second Injury Fund liability.

Employee is entitled to, and employer is hereby ordered to pay, $3,594.70 in past medical expenses.

Employee is entitled to, and employer is hereby ordered to provide, that future medical treatment that may reasonably be required to cure and relieve the effects of the work injury.

Employee is entitled to, and employer is hereby ordered to pay, $35,175.00 in permanent partial disability benefits.

Employee is entitled to, and the Second Injury Fund is hereby ordered to pay, weekly permanent total disability benefits beginning July 10, 2012, at the rate of $351.75. The weekly payments shall continue for employee’s lifetime, or until modified by law.
Injury No. 11-008697

Employee: Charles Jinkerson

The award and decision of Administrative Law Judge Joseph Denigan is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

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

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

Given at Jefferson City, State of Missouri, this 28\textsuperscript{TH} day of April 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

V A C A N T

Member

Curtis E. Chick, Jr., Member

Attest:

Secretary
AWARD

Employee: Charles A. Jinkerson  
Injury No.: 11-008697
Dependents: N/A
Employer: Hillsboro R-III School District
Additional Party: Second Injury Fund
Insurer: Missouri United Insurance Co.
Hearing Date: July 19, 2016

CHECKED BY: JED

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: February 8, 2011 (stipulated)
5. State location where accident occurred or occupational disease was contracted: Jefferson County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was walking and slipped and fell on ice.
12. Did accident or occupational disease cause death? No  Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: low back
14. Nature and extent of any permanent disability: 15% PPD of body referable to low back, 5% psychiatric PPD; 79.1 weeks from SIF.
15. Compensation paid to-date for temporary disability: $2,763.75
16. Value necessary medical aid paid to date by employer/insurer? $31,726.46
17. Value necessary medical aid not furnished by employer/insurer?  N/A
18. Employee's average weekly wages:  N/A
19. Weekly compensation rate:  $351.75/$351.75
20. Method wages computation:  Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

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<td>80 weeks of PPD from Employer</td>
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22. Second Injury Fund liability:  Yes

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<td>79.1 weeks PPD</td>
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TOTAL:  $55,963.43

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 hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Dean Christianson
This case involves a low back injury resulting to Claimant on the reported accident date of February 8, 2011 with allegations of pre-existing disability. Employer/Insurer admits Claimant was employed on said date and that any liability was fully insured. The Second Injury Fund is a party to this claim. All parties are represented by counsel. Claimant seeks permanent total disability benefits. Any objections not previously sustained are hereby overruled consistent with the findings and rulings herein.

**Issues for Trial**

Medical Causation;
unpaid medical expenses (necessity, reasonableness);
nature and extent of unpaid TTD benefits;
liability for future medical treatment;
nature and extent of permanent disability;
liability of the SIF.

**FINDINGS OF FACT**

1. Claimant worked for Employer as a custodian. Claimant was required to clean and move equipment.

2. Claimant, age 55, had performed a variety of work including welding, materials management for a foundry, computer-aided design (degree), and home remodeling general contractor (d/b/a Al’s Home Improvements).

3. Claimant injured his low back when he slipped and fell on ice at work striking his low back.

4. Claimant was diagnosed with a compression fracture at L2 with fracture of the coccyx also. Claimant sustained some resulting depression as a result of his pain and treatment. He lost two months from work following the diagnoses before returning to work on light duty.
5. Claimant treated with Dr. Doll and Dr. Coyle, an orthopedic surgeon, from the date of injury until September 2011. Claimant was off work two months for the period following his injury until April 5, 2011.

6. Claimant underwent MRI evaluation, injection therapy and physical therapy until he was finally released on September 9, 2011.

7. Claimant had begun private treatment with Dr. Anthony Margherita in November 2011 and underwent a second MRI in December 2011. Dr. Coyle again examined Claimant on January 4, 2012 and had Claimant undergo CT scan on January 5, 2012. Dr. Coyle recommended against the procedure medically and found the symptoms unrelated to the reported injury. He stated the procedure was not necessary to treat the reported injury. Thereafter, Claimant underwent L2 vertebroplasty and, in addition, an L4 nerve block surgery by Dr. Jack Jennings on January 31, 2012.

8. Claimant testified on direct examination and cross examination that the surgery was a success but Claimant never returned to work anywhere after the surgery. Claimant complains of daily low back pain. He apparently had worked without accommodation.

9. Claimant’s primary care physician’s records comprise Exhibit 27. The earliest note is dated January 27, 2011, yet the same note reflects a variety of existing prescriptions.

**Significant Pre-Existing Disabilities**

10. In 1986, Claimant treated symptoms of his cervical and thoracic spine. Claimant periodically underwent manipulations by Dr. Stephen Forsythe, D.O.


12. In 2007, Claimant underwent left knee surgery with Dr. John Weltmer.


14. In 2009, Claimant underwent two left foot surgeries with Dr. Weltmer. The right foot was similarly diagnosed but remained unoperated.

**Significant Post-Accident Medical events**

15. In 2012, Claimant underwent right (foot) clacaneal osteotomy with bone graft tibialis, tenosynovectomy right flexor digitorum longus transfer with Dr. Weltmer.

17. In 2013, Claimant had three cardiac events with hospitalizations.

Opinion Evidence

Dr. Volarich

Claimant offered the deposition of Dr. David Volarich, D.O. as Exhibit 1. Dr. Volarich reviewed the medical record and examined Claimant in September 2013. Dr. Volarich noted Claimant’s full-time work duties for Employer included tasks of cleaning, routine systems maintenance and moving furniture and equipment. Weights included forty pounds regularly and 150 pounds occasionally. He diagnosed L2 compression fracture, requiring L2 vertebroplasty, and SI joint dysfunction, two separate pathologies. Dr. Volarich stated the there was “mild structural change at L2” and that Claimant had “instability” at that level (p. 27). He did not distinguish Dr. Coyle’s diagnosis of healed L2 fracture. He neither diagnosed nor rated the coccyx fracture. Dr. Volarich did not fault the treatment plan of the treating physicians.

Dr. Volarich assigned a 30 percent PPD of the low back referable to the reported injury. He found pre-existing disabilities as follows: 15 percent PPD of the lumbar spine (with radicular syndrome), 5 percent PPD of the thoracic spine, 25 and 17.5 percent PPD of the right and left wrists, respectively, due to CTS, 30 percent PPD of the left knee, 50 percent of the right knee and 50 percent PPD of the right ankle. Dr. Volarich believed Claimant had worked in excess of appropriate medical restrictions prior to the reported injury. He recommended a vocational assessment which, absent job placement, would be the basis of his opinion that Claimant was permanently and totally disabled as a result of the reported injury in combination with the pre-existing disabilities as described in his subsequent report in which he reviewed Mr. Dolan’s and Dr. Bassett’s reports. Dr. Volarich did not discuss Mr. Dolan’s analysis in his (half-page) 2014 report and appears to have relied on Mr. Dolan’s expertise. (Exhibit 1, Deposition Exhibit 3). He apparently was not given Mr. England’s opposing vocational report to review, or that of Mr. Kaver. (Exhibits C & D.)

Dr. Volarich initially found numerous permanent partial disabilities and that the primary injury combined with the pre-existing disabilities to create a substantially greater disability the simple sum of the individual disabilities. He recommended a vocational evaluation. In 2014, upon review of the vocational evaluation, he amended his opinion to that of permanent total disability as a result of the combination between the primary injury and pre-existing conditions.

Dr. Coyle

Employer offered the deposition of Dr. James Coyle, orthopedic surgeon, as Exhibit B. Dr. Coyle first examined Claimant on March 1, 2011, approximately three weeks after the injury. History included a slip and fall on ice by Claimant, a 55 year old custodian. He reviewed the emergency room CT which revealed an acute L2 compression fracture with five percent loss of height, the minimum for loss expected for compression fracture diagnosis. CT further revealed acute fracture of the lateral aspect of the coccyx. He had been released to light duty. Physical
examination was largely negative with mild tenderness at L2, ability to squat, heal walk and toe walk, negative SLR, and symmetric reflexes.

MRI of February 17, 2011 revealed the L2 compression fracture, ten to fifteen percent loss of height, with bone marrow edema. Vertebral body alignment remained intact. L1-2 through L3-4 were unremarkable for herniation or stenosis. L4-5 was noteworthy for annular disc bulge and mild to moderate bilateral neuroforaminal stenosis. Also, L5-S1 had minimal annular bulging with bilateral arthropathy but without stenosis. Dr. Coyle stated that the L2 pathology was related to the reported injury (p. 11).

Dr. Coyle placed Claimant off-work for approximately two months (as stipulated by the parties). By April 5, Claimant had been in a brace for activity, and he encouraged Claimant to begin a walking program. He could remove the brace at home.

By April 13, 2011, Claimant had some pain at the hip with light duty work, which pain was not referable to the L2 dermatome, i.e. fracture site. An x-ray confirmed no further compression at L2. In [early] May 2011 Claimant complained of pain referable to sciatic dermatomes; he obtained percocet and flexeril from an urgent care center (p. 14). Diagnosis was sciatica, primarily L5-S1 and fracture healed. He found no surgical indication and referred Claimant to Dr. Doll for rehabilitation management.

Dr. Coyle saw Claimant again on January 4, 2012, almost one year post-accident. History included several injections, with temporary relief, from Dr. James Doll and physical therapy. He had been released to full duty in August and released in September. Claimant began treatment with Dr. Anthony Margherita in November, who ordered another MRI on December 3, 2011. Complaints included pain throughout the thoracic and lumbar spine and shoulder pain. Dr. Margherita had prescribed “a very powerful pain medication.”

Dr. Coyle noted diffuse low back complaints at the examination. His physical examination notes included tenderness over the entire spine, pain over the SI joints bilaterally, flexion to ninety degrees and negative SLR. Claimant was able to squat but had spasms in his thighs and calves per sciatic nerve distribution. Dr. Coyle testified Claimant did not have these symptoms at the time of the reported injury, eleven months earlier. The repeat MRI revealed mild to moderate compression fracture deformity at L2 with associated mild adjacent edema; there was no bulging or protrusion at L1 to L4 (p. 17).

At L5-S1 there was very mild spondylolethesis and a mild bulge at L4-5 with narrowing of the neuroforamina on both sides. Dr. Coyle recommended against the vertebroplasty procedure. CT scan of January 5, 2011 revealed the L2 fracture was healed which he described in detail (p. 25). He reiterated these (lack of) findings would not be the basis for vertebroplasty. He placed Claimant at MMI for the reported injury (p. 20). He assigned a ten percent PPD of the body referable to the L2 compression fracture from the reported injury.

Dr. Coyle noted numerous post-accident conditions and surgical procedures unrelated to the reported injury including: foot surgery, arthritis of the thoracic spine, lumbar degenerative disc disease, and cardiac issues.
**Dr. Doll**

Employer offered the deposition of Dr. James Doll, M.D., a physiatrist, as Exhibit A. Dr. Doll first examined Claimant on May 11, 2011 upon referral from Dr. Coyle. Dr. Doll diagnosed lumbosacral and SI joint pain in addition to the L2 compression fracture as related to the reported injury (p. 10). He also diagnosed multi-level lumbar spondylosis and degenerative changes from the radiological records he reviewed. He referenced the February 2011 MRI report noting lumbar spondylosis and arthropathy.

Dr. Doll treated Claimant with injections and physical therapy as late as August 2011. History from Claimant included improving symptoms and increased activity at work (pp. 11, 15). He released Claimant on September 8, 2011 to full duty without restrictions. He opined that many of Claimant’s problems were unrelated symptoms of degenerative disc disease. He placed Claimant at Maximum medical improvement.

In his last examination he noted improved movement with complaints of diffuse back pain and mildly limited range of motion in all planes. It is noteworthy that Dr. Doll repeatedly injected the SI joints. He testified that Claimant did not raise radicular complaints and he found no evidence of radiculopathy on final examination (p. 20). He assigned 3 percent PPD of the body to the reported injury and one percent PPD to the pre-existing degenerative changes.

**Vocational Experts**

**Mr. Dolan**

Claimant offered the June 2014 deposition of Mr. J. Stephen Dolan, CRC, as Exhibit 3. Mr. Dolan reviewed the record and interviewed Claimant on November 4, 2013. He had noted extensively Claimant’s (post-accident) presentation at the assessment interview including: hinged knee brace (knee replacement surgery, August 2014), right foot surgery, cardiac condition (three hospitalizations) and crying episodes that sometimes interfered with questions. Mr. Dolan did not attempt to explain the fact that Dr. Volarich had not found permanent total disability as late as two years after Dr. Doll released Claimant to full duty and who had not questioned the treatment provided by Employer or the MMI release. In addition, he makes no chronological perspective of Claimant’s severe post-accident health events.

Notably, Mr. Dolan identified two areas of transferable skills and supervisory experience. Mr. Dolan opined that Claimant could “hypothetically” return to some employment (he identified two sets of transferable skills) under the restrictions given by the medical treatment providers. He embraced the restrictions of Dr. Volarich. Under those restrictions, he opined Claimant could not obtain full-time employment, eight hours per day, five days per week. He noted disabling pain that was not traced to Dr. Volarich’s initial PPD assignments (See Exhibit 1). He readily admitted Claimant’s post-accident problems could impact his employability (p. 60).
Mr. England

Employer offered the 2015 deposition of Mr. James England, CRC as Exhibit 3. He reviewed the medical record, Dr. Volarich’s reports and interviewed Claimant. He noted the array of drugs Claimant takes daily. Claimant reported the drugs make him function better. Claimant reported being able to stay on his feet for extended periods, touch his toes and lift 40-50 pounds, including 20 pounds away from the body. As per his employment history, Claimant could be assisted toward supervisory work.

Mr. England opined that Claimant could return to sedentary employment under existing medical restrictions, including those of Dr. Volarich. He easily noted Claimant’s undisputed familiarity with building materials, supplies and tools, performing cost estimates for remodeling, etc. He recommended placement.

Employer offered the deposition of Mr. Tim Kaver as Exhibit 4. Mr. Kaver sought to meet with Claimant for placement services in December 2014. However, Claimant had undergone right total knee replacement in August 2014 and was unable to walk or drive a car. Updated medical records and adherence to Dr. Volarich’s 30 minute limit on sitting and standing made Mr. Kaver question placement services.

Psychiatric Experts

Dr. Bassett

Claimant offered the deposition of Dr. Gregory Bassett, psychiatrist, as Exhibit 2. Dr. Bassett reviewed the record, examined Claimant and prepared an extensive report in 2014, including independent testing. Dr. Wetzel assisted with testing noting some pain behavior and personality issues. Testing also suggested hypochondriacal problems and somatoform disorder. Dr. Bassett diagnosed Claimant with major depressive disorder and some emotional turmoil. He opined the reported injury was the prevailing factor in causing Claimant’s current episode of depression. He stated earlier depressive episodes regarding the divorce and foundry incident were “self-limited” and, apparently untreated (p. 15). Dr. Bassett assigned an overall 25 percent psychiatric PPD: 15 percent pre-existing and 10 percent the result of the reported injury (p. 17).

Dr. Pribor

Employer offered the deposition of Dr. Elizabeth Pribor, psychiatrist, as Exhibit E. Dr. Pribor reviewed the medical record, interviewed Claimant and prepared a comprehensive narrative report. Noteworthy in her report is her detail on Claimant’s inaccurate medical references as compared to the actual records. In her records review, she noted Dr. Margherita’s notes were sparse. She performed testing reflecting Claimant exaggerated complaints and had some personality issues not detailed here. She opined that the reported injury was the prevailing factor for an exacerbation of pre-existing major depressive disorder. She found Claimant was at
MMI for the exacerbation but required additional treatment for his clinical depression. Further she opined:

Opinion 5: Since Mr. Jinkerson is at MMI from the 2/8/11 accident, I can opine his level of permanent partial disability. In my opinion, he has a total of 25% permanent partial disability. I concur with Dr. Bassett that 15% of that (three-fifths of his total psychiatric disability) is preexisting and 10% or two-fifths is subsequent to the injury. Of that 10%, half of it or 5% is related to the work-related incident and the other half is related to the multitude of other additional medical problems.

Opinion 6: Mr. Jinkerson has psychiatric diagnoses that predate the 2/8/11 injury. These diagnoses include the persistent depressive disorder as well as the major depressive disorder with anxious distress. I note that he previously had substance abuse that is now in remission. He also has a maladaptive personality style that may indeed amount to a personality disorder but there are not enough records to adequately diagnose a disorder at this time.

(See Exhibit E, Deposition Exhibit B, p. 18)

Dr. Pribor’s rating reflects 15 percent psychiatric PPD pre-existing the reported injury, 5 percent PPD directly related to the reported injury and 5 percent PPD related to subsequent problems.

RULINGS OF LAW

Medical Causation and Liability for Unpaid Medical Expenses

Section 287.020.3 RSMo sets forth the standard for medical causation and provides, in relevant part, as follows:

(1) An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and the disability. “The prevailing factor” is defined to be the primary factor in relation to any other factor, causing both the resulting medical condition and the disability

(2) An injury shall be deemed to arise out of and in the course of employment only if:

(a) It is reasonably apparent on consideration of all the circumstances, that the accident is the prevailing factor in causing the injury and;
(b) it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

Here, the parties do not dispute the reported accident and injury to Claimant’s low back on February 8, 2011. Employer tendered substantial benefits including two months of TTD benefits that ended April 5, 2011, as stipulated. Claimant returned to work on light duty for five months during which period Dr. Doll treated his symptoms, including injections and physical therapy. Dr. Doll testified Claimant reported his symptoms were improving and he was increasing his activity at work.

Dr. Doll’s testimony seems, at first glance, to expand work related diagnosis beyond that of Dr. Coyle, a board certified surgeon. Dr. Doll adds SI joint pain as work related whereas Dr. Coyle never diagnosed SI joint pain as work related and never noted active SI joint symptoms back in March 2011. Dr. Coyle is better qualified than Dr. Doll on the issue of medical causation and resulting diagnoses. In fairness, Dr. Doll observed and treated all low back symptoms in serving Employer’s duty to cure and relieve Claimant from the effects of the reported injury. It is noteworthy that treatment of symptoms is not the same as diagnosis of a work-related pathology. Regarding release from treatment, neither Dr. Doll nor Dr. Coyle recommended additional or ongoing treatment.

After returning to work a few months, Claimant began treating privately with Dr. Margherita in November 2011. A December 2011 MRI showed several spinal pathologies at several levels of the lumbar spine. It is relevant here that Claimant did not like his job or the organization and co-workers; this fact permeates both psychiatrists’ assessments and diagnoses of depression and personality issues (Exhibits 2 and E).

In December 2011, Dr. Margherita recommended a vertebroplasty and Dr. Jennings performed the surgery in January 2012. Dr. Coyle, who treated Claimant from the beginning and reviewed the second MRI from December 2011, disagreed with the assessment. First he did not believe the surgery was a good idea medically since the L2 compression fracture was healed as detailed above (pp. 26-28). Second, he believed Claimant’s active symptom complex, and his clinical findings from January 4, 2012, suggested an unrelated sciatica pathology, i.e. at the L5-S1 level. Underlying Claimant’s current symptoms are the degenerative findings from the February 2011 and December 2011 MRIs each of which substantiate clinical findings of other lumbar pathologies. So strongly did Dr. Coyle believe this that he ordered a CT scan on January 5, 2012 which confirmed the healed L2 fracture.

Dr. Margherita’s recommendation is less persuasive because it is unexplained and does not rebut the months’ long monitor of the healing of the L2 fracture. Neither Dr. Margherita nor Dr. Jennings give perspective on the competing lumbar pathologies that pre-existed the reported injury or the fact that Claimant had returned to work six months after Dr. Coyle’s release in May.

1 It is recognized that good medical practice includes treatment of all concurrent symptoms in order to maximize a patient’s recovery.
2011. Separately, Dr. Pribor, in trying to understand Claimant’s perspective, found Dr. Margherita’s notes unclear. Dr. Volarich did not explain Dr. Margerita’s surgery recommendation. Dr. Volarich asserts L2 instability without reference to facts and circumstances that exclude pre-existing lumbar pathologies. The L4 nerve block seems related only to pre-existing pathology.

Dr. Coyle was more persuasive than Dr. Margherita, Dr. Jennings and Dr. Volarich. It is also important that Dr. Coyle is a witness with contemporaneous dimension to his testimony whereas Dr. Volarich’s perspective is almost two years remote from Claimant’s choice to treat privately. This is made more complicated by the undisputed evidence of Claimant’s psychiatric problems that were, and remain, active. The evidence compels a finding that the reported injury was not the prevailing factor in causing a need for Claimant’s vertebroplasty with Dr. Jennings.

* * *

Regarding treatment for psychiatric symptoms, both experts agreed significant psychiatric diagnoses pre-dated the reported injury. Each assigned most of the psychiatric disability to pre-existing causes and both assigned relatively little PPD amounts overall. Both Dr. Bassett and Dr. Pribor believed Claimant required treatment for his current conditions but Dr. Pribor did not believe treatment of current symptoms was due to the reported injury. Dr. Pribor’s opinions are most easily reconciled with Claimant’s comprehensive diagnoses and his admissions to each of the vocational experts about his perspectives and feelings. Dr. Pribor’s disability rating and treatment analysis is more persuasive.

### Reimbursement

While Employer has an “absolute and unqualified duty” to furnish medical care under §287.140 for compensable injuries, an employee must prove that the disputed treatments “flow” from the work injury. See Martin v. Town & Country Supermarkets, 220 S.W.3d 836, 844 (Mo. App. 2007); Tillotson v. St. Joseph Med. Ctr., 347 S.W.3d 511, 519 (Mo. App. 2011). §287.140.1 RSMo (2005). Here, Employer provided substantial medical benefits from two qualified physicians, each of whom found Claimant at MMI for the reported injury. Claimant’s own medical expert failed to criticize the treatment or these findings. Claimant memorialized demand for additional treatment through his attorney letters (Exhibit 40). Thereafter, upon Employer’s refusal, Claimant did not seek an order for resumption of care and proceeded to treat privately, as provided by Section 287.140.1 RSMo (2005), presumably with an intention to seek reimbursement by Award.

Here, the record contains substantial evidence that Employer addressed its obligation under the statute, again, without criticism from Claimant’s medical expert, Dr. Volarich. Neither Dr. Margherita nor Dr. Jenning’s were deposed. Immediately before the disputed surgery, Employer actively asserted its right to control medical benefits and had Dr. Coyle re-examine Claimant, with CT, as stated. The notes, radiological evidence, Claimant’s own history and the opinions of Dr. Coyle all embrace the reality of multiple degenerative pathologies and broad symptoms comprising Claimant’s difficult low back condition.
As found above, Dr. Coyle’s medical causation analysis was more persuasive. He disagreed that the surgery was medically necessary and that it was unrelated to the reported injury. Moreover, and unfortunately, Claimant’s symptoms, while heralded as cured after surgery, were, nevertheless, unresolved by the vertebroplasty. This is not sufficient basis to impose liability against Employer for the cost of this surgery and follow-up.

**Liability for Temporary Total Disability and Future Medical Treatment**

For the same reasons as outlined above, no liability is found for additional TTD benefits or future medical treatment as a result of the reported injury. Dr. Doll released Claimant on September 11, 2011 with no further treatment recommendations. In line with this decision was the fact that Claimant had been on light duty since May 2011 without return to temporary total disability at any time. No further treatment recommendations were made upon release and, two years later, Claimant’s own medical expert made no criticism or dispute regarding Employer’s tender of medical benefits. Still later, after Claimant began treating privately, Dr. Coyle affirmed the L2 fracture healed and that Claimant had attained MMI. Similarly, no liability is found for future medical treatment as a result of the reported injury. Neither Dr. Doll nor Dr. Coyle contemplated future medical treatment.

**Nature and Extent of Permanent Partial Disability**

The medical evidence and expert opinion does not support the conclusion that Claimant is permanently and totally disabled as a result of the reported injury or as a result of the reported injury in combination with the pre-existing disabilities. It does appear that substantial evidence of post-accident deterioration, including three right foot surgical procedures, multiple cardiac events and ongoing disabling symptoms of depression form the basis to conclude that Claimant is currently unable to compete in the open labor market.

Preliminary to the dramatic post-accident events, Claimant’s own admissions and Dr. Volarich’s initial report, did not initially predicate a permanent total disability case on medical findings alone. Dr. Volarich initially assigned an array of partial disability assessments with a suggestion for vocational work-up. Thus, despite the treatment and follow-up of the primary injury and the array of serious pre-existing disabilities, Dr. Volarich did not independently find permanent total disability in September 2013. The evidence demonstrates Dr. Volarich’s reliance on Mr. Dolan’s analysis was misplaced.

Thereafter, in 2014, he reviewed Mr. Dolan’s and Dr. Bassett’s assessments and changed his opinion from permanent partial disability to permanent total disability (Exhibit E, Deposition Exhibit 3). These reviews seem incomplete and facts of the assessments are not integrated into his change in opinion to that of permanent total disability and inability to compete in the open labor market. Quite notable in the vocational assessment are two things that are not routinely found in these assessments.
First, Mr. Dolan identified transferable skills and supervisory experience. Mr. Dolan identified two types of transferable skills, basic computer skills for estimating metal manufacturing materials and constructions knowledge of all the trades, “carpentry, plumbing, electrical wiring, siding roofing, etc.” (See Exhibit 3, Deposition Exhibit 2, p. 11.) Second, he further noted, but did not reconcile, Claimant’s supervisory experience and skill running a remodeling business. Mr. Dolan’s evaluation was probative in identifying transferable skills and supervisory experience, and in recording Claimant’s history that he can lift up to forty pounds and carry twenty pounds. His evaluation lacks probative value on the issue of unemployability.

Also contrary to an opinion of permanent total disability, Dr. Bassett found only partial disability and enunciated no clear opinion on employability. Neither forensic report was sufficient basis to change the disability opinion from partial to total. Separately, Claimant’s first treatment for psychiatric symptoms was in 2013. Thus, unlike cases where transferable skills and supervisory experience are absent, Dr. Volarich’s opinion is less persuasive here where both are present in the evidentiary record and neither is addressed and integrated into an opinion of permanent total disability and unemployability on the open labor market.

The medical records and clinical evaluations support some findings of significant permanent partial disability. Claimant is found to have sustained a 15 percent PPD of the lumbar spine and 5 percent psychiatric PPD as a result of the reported injury (or 80 weeks). The record supports a finding of pre-existing permanent partial disability as follows: 15 percent PPD of the lumbar spine (60 weeks), 20 percent of the right wrist and 15 percent PPD of the left wrist (61.25 weeks), 20 percent PPD of the left knee (32 weeks), 30 percent of the right knee (48 weeks), 15 percent psychiatric disability (60 weeks), 20 percent PPD of the left ankle and 15 percent PPD of the right ankle (54.25 weeks). (Dr. Volarich did not rate sleep apnea.) This list totals 395.5 weeks.

**Liability of the Second Injury Fund**


The medical evidence and other evidence suggest Claimant’s disabilities found above are hindrances and obstacles to reemployment. The significance of permanent partial disability findings is predicated upon the statutory thresholds for injuries to the extremities and injuries to the body as a whole. The medical evidence and other evidence suggest Claimant’s low back and the above pre-existing disabilities reached threshold requirements. In addition, each is found to be a hindrance and obstacle to employment or reemployment, whereas the other SIF allegations of pre-existing disability are not so. Here, Claimant’s primary injuries and low back condition constitute common upper body-lower body synergy and opposing limb synergy.

While Claimant experiences ongoing pain, his histories suggest he maintains significant lifting ability under 50 pounds. The several items of current and pre-existing PPD total to 395.5 weeks. Applying a 20 percent load results in SIF liability of 79.1 additional weeks of compensation.
Conclusion

Accordingly, on the basis of substantial and competent evidence contained within the whole record, Claimant is found to have sustained a 15 percent PPD of the body referable to the low back and 5 percent psychiatric PPD as a result of the primary injury. In addition, Claimant is found to have sustained an additional 79.1 weeks PPD from the SIF as a result of the combination between the primary injury and the synergistic pre-existing PPD.

Date: _________________________________        Made by: __________________________________

JOSEPH E. DENIGAN
Administrative Law Judge