

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

Injury No.: 07-037337

Employee: Barbara Ketterman
Employer: Woods Supermarket
Insurer: Missouri Grocers Trust Association
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 12, 2011. The award and decision of Administrative Law Judge Karen Wells Fisher, issued January 12, 2011, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 2nd day of August 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

+AWARD

Employee:	Barbara Ketterman	Injury No : 07-037337
Dependents:	N/A	
Employer:	Woods Supermarket	Before the DIVISION OF WORKERS' COMPENSATION
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri
Insurer:	Missouri Grocers Trust Association	Jefferson City, Missouri
Hearing Date:	September 8, 2010	Checked by:

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: April 30, 2007
5. State location where accident occurred or occupational disease was contracted: El Dorado Springs, Missouri
6. Was above employee in the employ of above employer at the time of the 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 the 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 was contracted: Employee injured her body as a whole including her right lower extremity in a fall
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Body as a whole, including her right lower extremity
14. Nature and extent of any permanent disability: Total disability
15. Compensation paid to date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer? None

Employee: Barbara Ketterman

Injury No 07-037337

18. Employee's average weekly wages: \$279.06
19. Weekly compensation rate: \$186.05
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:
Weekly benefits of \$186.05 for permanent total disability from and after April 28, 2008, for Claimant's life.
22. Second Injury Fund liability: none
23. Future requirements awarded: Medical benefits as set forth herein.

Said payment to begin immediately and to be payable and 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 Claimant: Morrison, Webster & Carlton.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Barbara Ketterman

Injury No : 07-037337

Dependents: N/A

Employer: Woods Supermarket

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Second Injury Fund

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

Insurer: Missouri Grocers Trust Association

Hearing Date: September 8, 2010

Checked by:

AWARD

An evidentiary hearing was held in this case on September 8, 2010 in Joplin, Missouri before Administrative Law Judge Karen Fisher. The claimant appeared in person and was represented by Attorney Matthew Webster. The employer/insurer was represented by Attorney Paula Green. The Second Injury Fund was represented by Assistant Attorney General Cara Harris.

STIPULATIONS

The parties stipulate as follows:

1. The Missouri Division of Workers' Compensation has jurisdiction over these cases;
2. That venue for this case is proper in Vernon County;
3. That the Claim for Compensation was filed in this case within the time allowed by the statute of limitations, Section 287.430;
4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That the rates of compensation are \$186.05/\$186.05, based on an average weekly wage of \$279.06;
6. That Claimant sustained an accident arising out of and in the course of her employment with Woods Supermarket, Inc. on April 30, 2007;
7. That the notice requirement of Section 287.420 is not a bar to the claim for compensation;

Employee: Barbara Ketterman

Injury No 07-037337

8. That Safety National Casualty Corporation fully insured the Missouri workers' compensation liability of Woods Supermarket, Inc. at all relevant times;
9. That Employer/Insurer paid \$ 71,947.35 in medical benefits; and
10. That Employer/Insurer paid temporary total disability benefits totaling \$8968.03.

ISSUES

The hearing was held to determine the following issues:

1. The nature and extent of Claimant's permanent disability, if any;
 2. The liability of Employer/Insurer, if any, for permanent partial disability;
 3. The liability, if any, of the Second Injury Fund for permanent partial disability;
- and
4. Whether Employer/Insurer shall be ordered to provide additional future medical benefits for Claimant pursuant to Section 287.140.

EVIDENCE PRESENTED

The evidence consisted of the testimony of Claimant, Barbara Ketterman; the deposition testimony of Dr. Brent Koprivica; the deposition testimony of Michael Lala, a vocational rehabilitation counselor; the deposition testimony of Claimant, Barbara Ketterman; the deposition testimony of Jim England, a vocational rehabilitation counselor; the testimony of Cort Rauthinsmeyer, a private investigator; medical records and video surveillance.

FINDINGS OF FACT

I find that Claimant, Barbara Ketterman, was born on March 19, 1947 and has completed high school, although with poor grades.

Claimant's work history has included various short-term clerical jobs as well as advertisement and real estate sales. Claimant's last employment was with Wood's Supermarket (Employer) where she worked as a cashier. Just prior to working for the Employer, Claimant sold real estate for approximately four years. However, she was not particularly successful at real estate sales and therefore, had to take the job for the Employer as a cashier. Prior to selling real estate, Claimant had spent five years with the Nevada Daily Mail selling advertisements. She described both of her sales jobs as involving a lot of walking and driving.

Claimant's work for Employer as a cashier involved lots of standing, walking, lifting, bending and twisting. In addition to her cashier duties, she was required to do various other job

Employee: Barbara Ketterman

Injury No 07-037337

tasks such as stocking and working outside. Claimant testified that she was able to do all of her work tasks at Wood's Supermarket without limitation. She was not limited physical in any way prior to her April 30, 2007 work injury. She last worked on an unrestricted basis for Employer on April 30, 2007. Following her work injury and prior to her surgeries, with Dr. Hicks, Claimant did work on a light duty basis for Employer.

I find Claimant sustained a work-related accident with Employer on April 30, 2007 in which she fell injuring her right hip, right knee, right ankle and lower back. Prior to April 30, 2007, Claimant had not had any injury to her lower back requiring medical treatment or leaving her with any permanent physical restrictions or disability. Prior to April 30, 2007, Claimant had never suffered an injury to her right hip requiring medical treatment or leaving her with any permanent physical restrictions or disability.

Claimant did have a right knee injury prior to April 30, 2007. In January of 1996, she was pulling on a bag when it popped loose hitting her right calf and knee. She had a small amount of treatment and some studies checking for a blood clot. She did recall some discussion regarding bursitis and the possibility of having a scope done if her symptoms did not resolve. However, her symptoms completely resolved after a couple of years leaving her with no continued complaints or permanent restrictions. Claimant was not limited in any way regarding her right knee and calf after she healed and her symptoms resolved.

Prior to April 30, 2007, Claimant had also suffered an injury to her right ankle. In 2001, she tripped on a step at work spraining her ankle. This injury required about five months of physical therapy. After her treatment ended and her ankle had a chance to heal, she had no ongoing difficulties from the ankle. She was given no permanent restrictions and was not limited in any capacity.

I find that on April 30, 2007 while working for Employer, Claimant tripped on a curb and fell onto the concrete landing on her right side. At the time of her fall, she had excruciating pain in her knee and felt her hip break. Initially, her hip was somewhat painful. After arriving at the hospital and moving around to do x-rays her hip began to hurt severely. Claimant did not notice significant pain in the ankle until approximately six weeks after the fall when the doctor released her to begin bearing weight on her right leg. Her back pain started after she began bearing weight and limping around.

Claimant was initially seen at Cedar County Hospital where x-rays were taken and she was given medication. She was then transferred to St. John's Hospital in Joplin. There she underwent hip surgery by Dr. Lieurance involving percutaneous pinning of a right femoral neck fracture that had been identified. Dr. Lieurance kept Claimant as non-weight bearing for the next six weeks.

Once she began bearing weight, Claimant noted terrible pain in her right hip, an aching pain in her right knee and a bad, deep pain in her right ankle. Her pain only increased as she continued bearing weight on her right lower extremity. Dr. Lieurance recommended an MRI of Claimant's right knee, which was performed on September 10, 2007. The MRI revealed a lateral capsular separation along with a medial meniscus tear. At that time, Dr. Lieurance recommended

Employee: Barbara Ketterman

Injury No 07-037337

arthroscopy on the right knee. However, Claimant's care was then transferred to Dr. Hicks in October 2007.

At the time of her initial visit with Dr. Hicks, Claimant complained of pain and burning in the right hip, pain and grinding in the right knee as well as extraordinary pain in her right ankle. Dr. Hicks performed arthroscopic partial medial meniscectomy and debridement of the right knee. Additionally, Dr. Hicks performed a surgery to treat the osteochondral talar dome injury to Claimant's right ankle. This was treated using a micro fracture technique.

Claimant continued to follow up with Dr. Hicks and undergo physical therapy. Unfortunately, Dr. Hicks had to perform a second surgery on her right hip in March 2008 removing the hardware placed in the hip by Dr. Lieurance.

As she continued to treat with Dr. Hicks, Claimant described her continued complaints as sickening pain into her right hip, a catching sensation in her right hip, significant deep pain in her right ankle, continued pain in her right knee, and continued pain into her groin and buttock area. Claimant indicated to Dr. Hicks that she was unable to stand or walk for any period of time. These complaints continued unchanged through May 2008 when Dr. Hicks released her.

Claimant has not worked since leaving her employment with Wood's Supermarket. She did receive temporary total disability benefits until being released by Dr. Hicks in April 2008. However, Claimant has not worked, sought work or received any compensation by way of wages or workers' compensation benefits since April 28, 2008. For a period of time Claimant watched her grandchild for 3-4 hours per day, one day per week while her daughter worked at the local sale barn. Her daughter did pay her cash for watching her grandchild on this very limited basis.

Claimant testified that she is not doing well. She continues to have significant problems and limitations from her April 30, 2007 accident. She continues to suffer with the low back pain on a daily basis. This pain is increased with standing. Occasionally the pain becomes so sharp as to almost take her to her knees. Claimant testified that she continues to have a constant aching pain in her right hip. She has a burning sensation in her right hip. The pain and burning in her right hip increase with any pressure and becomes sharp with almost any activity. Claimant also testified about her continued right knee problems by describing popping and grinding with movement as well as pain with walking or standing. She noted increased pain in her right knee when having to use stairs or when walking on uneven surfaces. Finally, Claimant testified that her right ankle hurts all the time and that the pain is present on a constant basis but significantly increases with standing or walking. She continues to experience swelling in her right ankle and decreased range of motion in the right ankle.

Claimant went on to testify regarding how her continued physical problems in her back, right hip, right knee and right ankle affect and limit her daily activities. The biggest impact, according to Claimant's testimony, is that they prevent her from working. She testified that these problems limit her standing to 15-20 minutes. She is also limited in her ability to walk. Claimant uses a cane, prescribed by her physician. She tries to limit the amount of time she must use it. She testified to the fact that she does not always require the use of a cane. However, when walking any distance, she must use the cane or other assistive device. If doing any walking of

Employee: Barbara Ketterman

Injury No 07-037337

distance, she takes additional pain medication. Claimant testified that she is capable of sitting for about 10-15 minutes before she must get up. She may be able to sit a little longer by shifting often but it depends on the chair she is in. She cannot stoop, squat, or bend without significant pain. She is limited in how far she can drive without having to stop. Claimant went on to describe difficulty sleeping because of these physical problems and indicated that she must lay down every day throughout the day in an effort to relieve the pain associated with her back, right hip, right knee and right ankle. She testified how she has good days and bad days. Each day is different.

On May 28, 2008, Dr. Brent Koprivica evaluated Claimant at the request of her attorneys. On May 19, 2010, Dr. Brent Koprivica testified by deposition that as a result of her April 30, 2007 accident, Claimant has the following diagnosis: 1) right femoral neck fracture that required surgical pinning and subsequent surgical removal of the hardware; 2) Interarticular injury to the right knee with medical meniscus tear requiring surgical treatment; 3) Osteochondral talar dome fracture to the right ankle requiring arthroscopy with microfracture; and 4) Chronic mechanical low back pain.

Dr. Koprivica went on to testify regarding the restrictions which he placed Claimant as a result of her April 30, 2007 accident. It was his belief that she should avoid squatting, crawling, kneeling and climbing. He felt she should be allowed postural allowances. He recommended 15-30 minute intervals pertaining to standing and walking along with flexibility to sit when she had to. Dr. Koprivica testified Claimant should be allowed to use a cane because of her limp and abnormal gait and for safety issues. For activities where Claimant would be on her feet for a longer period of time, he felt it was consistent with her condition for her to use a wheelchair. He recommended one hour of captive sitting with the flexibility of standing as needed. Finally, he recommended she limit herself to light physical demand or occasional lifting up to 20 lbs and frequent lifting up to 10 lbs. He believed Claimant's need to lie down throughout the day to alleviate her pain was an appropriate response on her part to try to palliate and deal with the pain she was having.

Dr. Koprivica further testified that Claimant has further ongoing treatment needs as a result of her April 30, 2007 accident. He felt she was in need of chronic pain management to be monitored by a physician regarding what medications would be appropriate and to insure no complications arose from those medications. In addition, he testified about his concern with regard to the post-traumatic degenerative arthritis in Claimant's knee, hip and ankle. He specifically believes Claimant will require a right ankle fusion in the future due to the likely progression of her post-traumatic degeneration.

Dr. Koprivica went on to testify that when he looked at all the facts and the vocational factors involved in this case, it was his opinion that Claimant is permanently and totally disabled as a result of the residual impairment and resulted ability attributable to the April 30, 2007 injury and the restrictions necessitated by those disabilities.

On July 24, 2008, Mr. Michael Lala, a vocational rehabilitation counselor, examined Claimant, at the request of her attorneys. On August 30, 2010, Mr. Lala testified by deposition regarding his opinion that as a result of her April 30, 2007 injury and her resulting restrictions,

Employee: Barbara Ketterman

Injury No 07-037337

age, education, limited transferable skills, Claimant was not employable or placeable and was thus permanently and totally disabled.

Mr. Lala went on to testify as to how he came to the conclusion that the injuries Claimant received in her April 30, 2007 accident resulted in her inability to access the open labor market and earn a wage. He discussed the physical restrictions that had been placed on Claimant by Dr. Koprivica. In choosing which restrictions to apply, Mr. Lala looked for the most restrictive restrictions. He testified it was the standard in his field to accept the most restrictive restrictions when trying to place an individual. He went on to say that in the case at hand, Dr. Koprivica's were really the only set of actual restrictions. Dr. Hicks had merely stated that Claimant should probably do desk-type jobs only without further delineation or explanation.

As part of his testimony, Mr. Lala explained how he viewed the restrictions placed on Claimant by Dr. Koprivica to be actually less than sedentary in nature. In other words, they do not allow her to even do a sedentary job. He based this upon the fact that she needs to be able to sit and stand at will. He went on to testify how a person who needs to sit and stand at their own discretion typically can't work within a sedentary exertional level because they can't meet an employer's demands for productivity or work activity.

In further discussing the basis for his conclusions, Mr. Lala testified that he understood Claimant would lie down throughout the day with her leg elevated in order to alleviate some of the pain she was having. Considering this fact alone, would totally eliminate her ability to work. He understood her need to lie down to be something that could not be accommodated on a break or at lunch and was not something that could be scheduled around.

In reaching his ultimate conclusion, Mr. Lala considered a variety of other factors. He considered Claimant's intelligence level as shown from her testing. Her lack of intelligence would negatively impact her ability for potential retraining into a position that would give her more flexibility to work with her restrictions. He considered the impact her pain has on her abilities and her vocational profile. The amount of pain Claimant has affects her in many ways including her ability to get work, to think, to be pleasant and to remain on task. He testified how those with chronic pain may have what they call good days and bad days. They may be able to do a little bit of activity for a while but not consistently over the course of a week or a month. He also explained how the pain medication Claimant takes negatively impacts her ability to be employed. He testified that narcotic medication use alone precludes Claimant from some jobs and restricts her from a number of types of jobs. He also considered Claimant's use of a cane in coming to his conclusions. He testified that she has limited mobility because of her use of the cane. In addition, when up and holding on to the cane, her hand is not available for work activity. Finally, Mr. Lala testified how Claimant's age of 63 negatively impacted her placeability due to the fact that she is not in a profession where age is a positive, such as a judge.

Overall, Mr. Lala testified that there were many factors involved in reaching his opinion that Claimant was unable to access the open labor market and be employed. His was a multifaceted opinion. He explained, discussing how even though Claimant may possess the intelligence to do some types of clerical work, the other factors involved, such as physical

Employee: Barbara Ketterman

Injury No 07-037337

limitations, use of narcotic medications and age discrimination, prevent her from being so employed. It is not, in his opinion, a one-step test.

On May 6, 2010, Mr. Jim England, a vocational rehabilitation counselor, hired by the employer/insurer, testified by deposition that it was his opinion, based on the doctor's restrictions, which he felt to be of more of a sedentary level, Claimant should be able to go back to inside sales work, clerical work or customer service work.

However, Mr. England admitted he did not take into consideration when forming his opinion Claimant's need to lie down throughout the day to relieve her pain. He testified that if Claimant lies down throughout the day, she is probably not employable. He went on to testify that as a part of his employment, he is not directly involved in the placement of individuals.

He did not inquire as to how the narcotic medication Claimant takes affects her ability to function but did testify that depending on how they affect an individual's ability to function, narcotic medications can have a negative impact on the ability to get work.

Mr. England discounted Claimant's low scores on intelligence testing. He testified he was surprised at how poorly she did on the testing. In fact, he stated that he did not believe she was "all that keen on putting out a whole lot of effort." He felt she underachieved on taking the test. He made these statements even though she was consistent in her scores over multiple tests given by both himself and Mike Lala over different days. He based this conclusion on the fact that she had once been able to pass the real estate exam, a test he admitted he had never given and had no knowledge as to its grade level. In fact, he acknowledged he had never seen the real estate exam or read any of the questions on the exam. Any knowledge he had about the real estate exam was based on friends of his who had taken it.

In addition to the testimony presented at hearing, surveillance videos were also admitted into evidence and reviewed. The videos cover dates of 10-30-09; 11-1-09; 11-7-09; 11-8-09; 11-13-09; 11-21-09; 11-22-09; 4-9-10; and 4-29-10. The videos contain various footage of Claimant entering and exiting vehicles, walking short distances and occasionally carrying items such as a purse, plastic bags with unidentified contents, a child's toy, a small dog, and an infant. At times during the videos, Claimant walks slowly using her cane. At other times, Claimant walks slowly and limps but does not use her cane. On no occasion was Claimant observed to be covering a large distance or moving without a slow and altered gait.

CONCLUSIONS

Claimant has alleged that she is permanently and totally disabled. Under section 287.020.7, "total disability" is defined as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident. Fletcher v. Second Injury Fund, 922 S.W.2d 402, 404 (Mo. App. W.D. 1996). It is important to note that "permanent" disability, as defined by the statutes, does not refer to whether or not the employee is completely immobilized. Brown v. Treas. Of Mo., 795 S.W.2d 479, 483 (Mo. App. 1990). The test for permanent and total disability is whether a claimant is able to competently compete in the open labor market given his or her condition and situation.

Employee: Barbara Ketterman

Injury No 07-037337

Messex v. Sachs Elec. Co., 989 S.W.2d 206, 210 (Mo. App. E.D. 1999). In other words, would an employer in the ordinary course of business, reasonably be expected to hire the employee in her present physical condition. Brown v. Treas. of Mo., 795 S.W.2d 479, 483 (Mo. App. 1990).

Dr. Koprivica, the only medical witness testifying herein, placed significant restrictions on Claimant's physical activities. Included in those significant restrictions is the ability to sit and stand as necessary. He testified she should have postural allowances. He recommended 15 – 30 minute intervals pertaining to standing and walking. He said she needed the flexibility to sit when she needed. Dr. Koprivica recommended one hour of captive sitting with the flexibility to stand as needed. He testified that Claimant should be allowed to use her cane because of her limp and abnormal gait as well as for safety issues. In addition, although not a specifically imposed restriction, Dr. Koprivica testified that he believed Claimant's need to lie down throughout the day to alleviate her pain was an appropriate response on her part to try to palliate and deal with the pain she having.

Michael Lala, one of the vocational rehabilitation counselors who testified, examined Dr. Koprivica's restrictions and viewed them as limiting Claimant to less than sedentary work based on the fact that she needs to be able to sit and stand at will. In addition to these restrictions, he also took into consideration Claimant's intelligence as shown by her vocational testing and how it negatively impacted her ability for potential retraining. He considered her pain and how it impacted her abilities and vocational profile. He recognized how people suffering from that type of chronic pain may be able to do a little bit of activity for a while but not consistently over the course of a week or a month. He took into consideration her use of narcotic medication and how it negatively impacted her vocational profile. He discussed Claimant's cane use and how it limited her. He did not qualify that she would need to use a cane at all times in order for this to be considered a limiting factor in her employability. Mr. Lala also factored in Claimant's need to lie down throughout the day in an effort to alleviate her significant pain. After considering all the limitations, restrictions and circumstances, Mr. Lala ultimately concluded that Claimant was not employable or placeable and was thus permanently and totally disabled.

Conversely, Jim England, the other vocational rehabilitation counselor testifying, failed to factor in Claimant's low scores on her vocational testing even though they were consistent throughout not only his testing but that of Mr. Lala's. Instead, he chose to conclude Claimant was not giving full effort based on the fact that she had previously past the real estate exam, a test he had no knowledge of but which had been taken by some of his friends. He also failed to consider the full impact of Claimant's narcotic medication use on her vocational profile as he did not inquire or have any knowledge of how they affected her abilities. Finally, Mr. England failed to consider the fact that Claimant must lie down throughout the day to help alleviate some of the pain she is in. Therefore, I did not find Mr. England's conclusion regarding Claimant's employability to be persuasive.

Dr. Koprivica, having reviewed the vocational reports from both Mike Lala and Mr. England, testified when he looks at all the facts and the vocational factors involved in this case, it is his opinion that Claimant is permanently and totally disabled.

Employee: Barbara Ketterman

Injury No 07-037337

I had the opportunity to observe the video surveillance presented at the hearing. These videos only served to solidify my belief in the limitations to which claimant had testified. She was observed to ambulate extremely slowly and with a pronounced limp most of the time. Consistent with her testimony, she often used her cane to help her when walking but did on occasion walk short distances without it. She was observed to do some bending and light lifting or carrying. This was on a limited basis and was again consistent with her testimony at trial.

I found Claimant to be truthful and sincere. I believe her to be a credible witness based not only on what I have read in the evidence but also on what I have observed personally and on the video surveillance presented.

The question that must be answered is whether Claimant is indeed unable to compete in the open labor market in her current condition. I find that an employer, in the ordinary course of business, could not reasonably be expected to hire Claimant in her present physical condition and thus she is permanently and totally disabled.

Having found that Claimant is permanently and totally disabled, it must next be determined whether the permanent and total disability is the result of a combination of the April 30, 2007 accident and Claimant's pre-existing disabilities or whether the April 30, 2007 accident, in and of itself, rendered her permanently and totally disabled. When the Claimant is disabled by a combination of the work-related event and pre-existing disabilities, the responsibility for benefits lies with the Second Injury Fund. Section 287.220.1 RSMo. If the last injury in and of itself renders a Claimant permanently and totally disabled, the Second Injury Fund has no liability and the employer is responsible for the entire compensation. Nance v. Treasurer of Missouri, 85 S.W.3d 767 (Mo. App. W.D. 2003). I find Claimant to be permanently and totally disabled as a result of the April 30, 2007 accident in isolation.

Claimant clearly testified that she had no residual limitations or restrictions from either her 1996 right calf and knee surgery or her 2001 right ankle injury. She stated that any symptoms she may have had from these conditions had resolved. Her activity level clearly supports her stated recovery. According to her uncontradicted testimony, her real estate sales and advertising sales jobs required a great deal of walking. In addition, her job with Employer required constant standing or walking as well as lifting, bending and twisting. According to Claimant, she was able to perform all of these tasks without any limitation.

Dr. Koprivica clearly testified that in his opinion Claimant had no disability prior to her April 30, 2007 injury. According to Dr. Koprivica's testimony, Claimant is permanently and totally disabled as a result of the residual impairment and resulting ability attributable to the April 30, 2007 injury and the restrictions necessitated by those disabilities.

In addition, Michael Lala testified regarding his opinion that as result of her April 30, 2007 injury and her resulting restrictions, age, education and limited transferrable skills, Claimant was not employable or placeable and was thus permanently and totally disabled.

Employee: Barbara Ketterman

Injury No 07-037337

Based on Claimant's own testimony, the testimony of Dr. Koprivica and the testimony of Michael Lala, I find that the April 30, 2007 accident, in and of itself, rendered Claimant permanently and totally disabled.

Having found Claimant to be permanently and totally disabled as a result of the April 30, 2007 accident, in and of itself, I find no Second Injury Fund liability. I find Employer and insurer are responsible for payment of Claimant's permanent total disability benefits and hereby order them to pay Claimant the weekly sum of \$186.05, from and after April 28, 2008, for Claimant's life.

The last issue to be decided is whether Employer and Insurer shall be ordered to provide Claimant with ongoing and future medical treatment pursuant to Section 287.140. In order to meet the burden of proof required to receive ongoing and future medical treatment, Claimant must show by a "reasonable probability" that she will need future medical treatment. Dean v. St. Luke's Hospital, 936 S.W.2d 601, 603 (Mo. App. W.D. 1997).

Dr. Koprivica was the only expert medical witness to testify in this matter. He clearly testified that Claimant has further ongoing treatment needs as a result of her April 30, 2007 accident. He feels she is in need of chronic pain management to be monitored by a physician. Additionally, he believes Claimant will require a right ankle fusion in the future due to the likely progression of her post-traumatic degeneration. Clearly, the need for prescription medication alone certainly meets the standard for "reasonable probability". I order Employer and Insurer to provide Claimant with future medical benefits pursuant to Section 287.140 RSMo.

Claimant's attorney, Matthew B. Webster, is allowed 25% of all sums awarded (including future sums) as and for necessary attorneys fees. The amount of such fees and expenses shall constitute a lien thereon.

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

Date: January 12, 2011

Made by: /s/ Karen Wells Fisher
Karen Wells Fisher
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Naomi Pearson
Naomi Pearson
Division of Workers' Compensation