This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge awarding compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge (ALJ) with this supplemental opinion.

Discussion

The following issues were raised in three applications for review filed in this case:

- **Whether the employee’s April 11, 2013, work related accident was the prevailing factor causing her medical condition and 15% permanent partial disability of the right hip**
  (Employer’s application for review, filed July 7, 2017)

- **Whether the employee was permanently and totally disabled as a result of injury sustained in her April 11, 2013, accident in combination with preexisting injuries**
  (Second Injury Fund’s application for review, filed June 29, 2017)

- **Whether the ALJ erred in not awarding past medical expenses of $51,445.81 against the employer**
  (Employee’s application for review, filed July 10, 2017)

Counsel for the employer and the Second Injury Fund (SIF) make valid observations that would support a denial of compensation or an award of permanent partial, as opposed to permanent total disability benefits against the SIF. The case was well briefed by all parties.

The employer and the SIF challenge the employee’s credibility. Cognizant of this issue, and while noting some inconsistencies in the employee’s testimony, the ALJ specifically concluded “[O]verall I find [the employee] credible.” The Commission is not required to defer to an ALJ’s credibility determination and may come to a different conclusion, so long as there is competent and substantial evidence to support our award. That said we give careful consideration to an ALJ’s credibility determination based on her first-hand observation of witnesses. Based upon our review of all of the evidence in this case, we affirm the ALJ’s finding regarding employee’s credibility.

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1 Employer’s application for review focuses on the issue of nature and extent of the employee’s disability; employer’s brief raises the issue of medical causation. We consider both arguments.

2 Award, p. 9.

3 Hampton v. Big Boy Steel Erection, 121 S.W.3d 220 (Mo., 2003); McCutchen v. Peoplease Corporation, 195 S.W.3d 421 (Mo. App., 2006).
We rely on Dr. Volarich’s opinion that, within a reasonable degree of medical certainty, the employee’s April 11, 2013, injury was the prevailing factor in causing her severe right hip strain, requiring conservative medical treatment.\(^4\) We further credit Dr. Volarich’s opinion that the employee’s multiple preexisting disabilities were a hindrance to employment or reemployment and that these disabilities combined synergistically with disability resulting from the primary injury to create substantially greater disability than the simple sum. We conclude consistent with Dr. Volarich’s evaluation and the opinion of vocational expert Timothy Lalk, that employee’s physical disabilities considered in relation to her age, education, work experience, and lack of transferable skills, have rendered the employee permanently and totally disabled.

Regarding the issue of past medical expenses, we note Dr. Volarich’s opinion that the employee’s December 2014, right hip replacement was due to wear and tear of a prior hip replacement over a period of eighteen years, unrelated to her primary work injury.\(^5\) Based on this evidence, we conclude that the ALJ properly found that the employee’s outstanding medical bills in the amount of $51,445.81 relating to her 2014 hip revision did not flow from her work injury and that employer is not liable for these past medical expenses.

**Award**

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued June 20, 2017, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 31\(^{st}\) day of January 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT

Member

Curtis E. Chick, Jr., Member

Attest:

Secretary
AWARD

Employee: Diane Koch  Injury No.: 13-026268
Dependents: n/a
Employer: Aldi, Inc.
Additional Party: Second Injury Fund (SIF)
Insurer: Self c/o Cannon Cochran Management Services, Inc.

Hearing Date: March 13, 2017

CHECKED BY: KMH

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 11, 2013
5. State location where accident occurred or occupational disease was contracted: St. Charles, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured right hip and right knee when she fell while climbing off her forklift.
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: right hip and right knee
14. Nature and extent of any permanent disability: 15% PPD of the right hip payable by Employer, and
permanent and total disability payable by the SIF as a result of the combination of Claimant’s primary and
prior injuries and disabilities.
15. Compensation paid to-date for temporary disability: $13,376.24
16. Value necessary medical aid paid to date by employer/insurer? $4,703.85
17. Value necessary medical aid not furnished by employer/insurer? none

18. Employee's average weekly wages: unknown

19. Weekly compensation rate: $714.76/$433.58

20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

31.05 weeks of permanent partial disability from Employer $13,462.66

22. Second Injury Fund liability: Indeterminate

Permanent total disability benefits from Second Injury Fund:
weekly differential of $281.18 payable by SIF for 31.05 weeks beginning August 21, 2013, and, $714.76 weekly thereafter, for as long as provided by law

TOTAL: INDETERMINATE

23. Future requirements awarded: see award

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:

Ryan Cox
FINDINGS OF FACT and RULINGS OF LAW:

Employee: Diane Koch
Dependents: n/a
Employer: Aldi, Inc.
Additional Party: SIF
Insurer: Self c/o Cannon Cochran Management Services, Inc.

Injury No.: 13-026268

Before the Division of Workers’ Compensation
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

A hearing was held on the above captioned matter March 13, 2017. Diane Koch (Claimant) was represented by attorney Ryan Cox. Aldi (Employer) was represented by attorney Lynn Barnett. SIF was represented by Assistant Attorney General Barbara Toepke.

The SIF offered Exhibit I, Claimant’s facebook posts, over Claimant’s objections. The exhibit was admitted subject to the objection, and Claimant was given the opportunity to brief her objection in her proposed award. Claimant did not do so, and Exhibit I is hereby admitted. All remaining objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

STIPULATIONS

The parties stipulated to the following:

1. Claimant had an accident in the course and scope of her employment for Employer on April 11, 2013.
2. Venue is proper in St. Louis.
3. Employer and Claimant were operating under the provisions of the Missouri Workers’ Compensation law.
4. Employer’s liability was self-insured c/o CCMSI.
5. Employer had notice of the accident and a claim for compensation was timely filed.
6. Claimant’s average weekly wage was sufficient to yield rates of $714.76 for TTD/PTD and $433.58 for PPD.
7. Claimant has been paid compensation to date in the amount of $13,376.24 covering a time period of April 13, 2013 through August 20, 2013. She received $4,703.85 in medical benefits.
ISSUES

The parties stipulated the issues to be resolved are as follows:
1. Medical causation
2. Liability for past medical expenses of $51,445.81
3. MMI date
4. Future medical care
5. TTD from August 21, 2013 through the date of MMI.
6. Permanent disability
7. SIF liability

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 64 year-old female who graduated from high school and cosmetology school. She has no other vocational training or certification. She began working for Employer in 1979. She worked in the warehouse, and her duties involved unloading trailers, stacking product, filling store orders, operating a fork lift, and various warehouse duties. This was a physical job and required her to stand, lift, bend, squat, climb, and kneel. She worked up to 50 hours a week, and worked for Employer for 34 years.

2. Prior to her 2013 accident, Claimant had a number of injuries. In 1989, she injured her right hip, and Dr. Whiteside performed a total hip replacement in February 1990. He noted Claimant had congenital dysplasia of the hip with pain for the past five years. She was able to return to work, but her hip bothered her when she had to walk a lot at work. By June 1996, Claimant developed a large osteolytic cyst. Dr. Lux diagnosed a failed total hip replacement and performed a revision of the acetabular component and cup. He released her from treatment in December 1996 and noted she was doing well with no more hip pain.

3. Leading up to the 2013 accident, Claimant had pain in her hip. She had limitations that slowed her down at work. She was not able to lift as much and could not kneel.

4. In 1993 Claimant slipped on broken eggs at work and landed on her left elbow. She was treated with injections. She also developed pain in her right elbow. Both elbows were weaker, and she had pain and problems lifting leading up to 2013. Claimant settled a 1994 case for 10% PPD of the right elbow.

5. Claimant injured her left knee in 2001 when she fell at work. She tore her meniscus and Dr. Johnson performed arthroscopic partial medial meniscectomy and debridement. He released Claimant at MMI in April 2002. Claimant settled this case for 25% PPD of the left knee. She also settled the SIF aspect of this case for 40% PPD of the right hip. Leading up to the 2013 accident and continuing, Claimant had stiffness and frequently
iced her knee. Her knee swelled at the end of the work day. She is knock kneed, and has a slightly abnormal gait. This knee injury and her later ankle injury worsened her gait.

6. In 2003, Claimant injured her **left index finger** when a pallet broke and smashed her fingers. A cyst formed, and Dr. Brown removed the cyst. Claimant settled this case for 15% of her left index finger. Leading up to 2013 and continuing, Claimant had stiffness in her finger, and it is crooked. She has difficulty making a fist and gripping. It is hard to lift and is uncomfortable at work.

7. Claimant injured her **left shoulder** in 2005 when she was backing in pallets to the line. An MRI revealed a torn rotator cuff and Dr. Haupt performed an arthroscopic debridement of the bicep and subscapularis tendon with decompression and open repair of the rotator cuff. Claimant had ongoing weakness, but Dr. Haupt released Claimant at MMI in August 2005. Claimant settled this case for 22.5% PPD of the left shoulder.

8. In 2010 she injured her **right shoulder** when she was struck by a pallet and hyperextended her right arm. An MRI revealed a full thickness rotator cuff tear, and Dr. Milne performed a subacromial decompression, distal clavicle resection and rotator cuff repair. Claimant returned to her regular duties in March 2011 and was released at MMI in May 2011. Claimant settled this case for 19% PPD of the right shoulder. The stipulation for compromise settlement states this was a left shoulder injury, but the injury was to Claimant’s right shoulder.

9. Leading up to the 2013 accident and continuing, Claimant had ongoing symptoms in both shoulders. They ached from her repetitive forklift driving. Her strength was reduced, and she could not lift as much. She was not able to lift 20 pounds overhead. If she lifted, she had immediate numbness and pain. She needed assistance from co-workers when she had to do any lifting.

10. Claimant injured her **left ankle** in 2008 when she got off a forklift and twisted her ankle. She had immediate swelling, and an MRI showed a ligament tear. In January 2009 she had an arthroscopic debridement, peroneal tendon repair and removal of loose body. She settled this case for 30% PPD of the ankle. Leading up to the 2013 work accident and beyond, Claimant had swelling in the ankle, and she had to ice it frequently. Walking increased her pain and swelling.

11. Claimant had symptoms in **both hands** prior to the primary injury. Her hands were numb and ached. Repetitive work increased her symptoms. Her right hand symptoms increased after her shoulder surgery, and she had reduced strength in her right hand. If she had to lift heavy items, her hands gave out.

12. Claimant had symptoms in her **neck and low back** before the primary injury. She had neck stiffness with headaches she attributes to being in awkward positions at work. Her neck symptoms increased after her shoulder injuries. She had low back pain and stiffness when she was sitting and walking a long time.
13. Claimant also was diagnosed with diabetes, high cholesterol, high triglycerides, and high blood pressure prior to her work injury.

14. Claimant testified it was a strain for her to work due to all her prior injuries. She had pain every day, required help from co-workers, and had to take pain medications when she got home. She had constant pain and difficulty dealing with the pain mentally. She testified she kept working because she did not want to give up. She walked with a limp and missed work about once a week.

15. On April 11, 2013, Claimant slipped getting out of a fork lift, her leg got caught, and she fell. She had pain in her low back, down her leg, and in her right hip. Her hip pain was the worst, and her hip clicked with each step. This had never happened in the past, and her pain was different that it had been in the past. She thought the pain would resolve, so she did not seek immediate medical attention.

16. Employer sent Claimant to BarnesCare on April 15, 2013, and these records indicate a history of hip replacement. The doctor noted Claimant had treated with Dr. Lux in the past and had an appointment scheduled with him on May 2, 2013. Claimant advised she had not been having hip problems, and the appointment in May was simply to have her hip checked. Hip x-rays showed some lucency beneath the acetabular and femoral components that the doctor noted can indicate loosening. The doctor diagnosed a right knee contusion and right hip pain. He recommended light duty and conservative treatment. By April 22, 2013, her pain had not improved and she was referred to an orthopedic surgeon for a causation opinion and possible treatment.

17. Employer sent Claimant to Dr. Milne to evaluate her right knee symptoms on May 9, 2013. He examined Claimant, reviewed the x-rays, and diagnosed a right knee bony contusion. Dr. Milne expected this to improve on its own, and Claimant contacted Dr. Milne in mid June 2013 stating she had decided not to seek additional treatment. Dr. Milne released Claimant at MMI June 21, 2013.

18. Employer sent Claimant to Dr. Lux May 3, 2013, to evaluate her right hip. He noted Claimant had been having no trouble with her hip until the work injury. He opined the x-rays revealed significant wear of her hip replacement that was not related to the work injury. He diagnosed a hip strain due to the work injury and recommended Claimant work light duty. Dr. Lux opined the strain should resolve in the next four weeks.

19. Dr. Lux evaluated Claimant again June 4, 2013, and noted her hip was still sore, she had pain radiating from her hip, and she was walking with a limp. He recommended a hip revision to resolve Claimant’s osteolysis, or wear and tear. He opined it will be difficult for Claimant to continue in any type of warehouse work. He opined the work injury aggravated her hip, but her preexisting osteolysis is the main cause of her pain.

20. In July 2013, Dr. Lux diagnosed failed hip replacement and noted Claimant still had pain from her work injury. He opined she would not get better until she had the hip revision to resolve the osteolysis. Claimant advised she had no hip complaints prior to her work accident, and Dr. Lux noted that is common. He opined Claimant could not return to
work after her surgery because she will not be able to climb up and down on forklifts. She will need a sedentary job.

21. On August 20, 2013, Dr. Lux found Claimant had recovered from her work related hip strain. He again recommended hip revision to treat her preexisting wear and osteolysis. He opined she will not be able to return to her pre-injury work. Claimant testified she requested additional treatment, but Employer did not authorize any treatment after August 2013. Employer provided TTD benefits until August 20, 2013. Claimant testified she has not worked since the work injury because Dr. Lux said she could not do that job anymore.

22. Claimant returned to Dr. Lux on her own in June 2014, and he noted she had worsening of her pain. He diagnosed failed hip replacement. On December 8, 2014, Claimant had her third hip surgery. Dr. Lux again noted Claimant had done well following her prior hip surgeries, and had no trouble with her hip until her 2013 work accident. During surgery Dr. Lux found marked synovitis in the hip, osteolysis and a worn acetabular liner. He performed a synovectomy to remove all the osteolytic tissue and replaced the acetabular liner. Follow-up records from Dr. Lux indicate the surgery relieved all of Claimant’s preoperative pain. By December 2015, Dr. Lux noted Claimant’s hip was stable and giving her no problems. He issued permanent restrictions and opined Claimant could perform sedentary work.

23. Claimant testified she has good and bad days. On a typical day she gets up, walks a little, sits and reads, watches television, or plays games on her phone. She naps in the morning and afternoon to stretch out. Her pain is severe and she can’t sit or stand very long. She does her own cooking but can’t clean due to arm and hip pain. She can’t bend to pick things up and uses a gripper. When she sits on the floor to play with her grandchildren, she can’t get back up because she has no strength in her arms and her hip won’t rotate. She can’t exercise or walk like she did before the primary injury and feels her whole body is getting weaker. She takes the stairs one at a time, and uses the hand rail. She uses her cane when going up stairs and when she goes out. When going down stairs, she has to sit and scoot down each step because of her left knee. Prior to the primary injury, she could shop if she held onto the cart. Now she can’t walk long enough to shop and has to use a wheelchair. Claimant awakens frequently during the night due to pain. She takes over the counter and prescription pain medications.

24. Claimant believes she can’t work in an unskilled, sedentary position or in a position that allows periodic standing. She could not work in a job that requires much standing because standing causes low back, hip and knee pain. She believes she can’t work as a cashier or ticket taker. She can’t stand or sit long and she has numbness and swelling in her right hand. She has never worked in a job involving recording monetary transactions, typing or computer work. She believes she can’t work as a package assembler, due to her hand symptoms. Claimant believes that if she made it through one day in any of these jobs, she would be sore the next day and by the end of the week, she would be in too much pain.
25. Claimant testified she does not travel anymore and does not go to Cardinals games or go out very much. When presented with Exhibit I, which outlines some day trips and social events Claimant attended, she testified she attended one Cardinals in the summer of 2016. She went to Branson in 2015 and 2014 and lay in the back seat during the drive due to hip and low back pain. She occasionally goes out to lunch with her friends, and testified that is about all she does. Claimant testified she feels her life has changed tremendously. She was very active before this injury and now she aches all the time.

26. Dr. Lux testified he did not see Claimant between 1999 and the 2013 accident. He opined Claimant had a hip strain from the work injury and she had symptoms related to the significant wear of the hip. By August 2013, he opined the hip strain had resolved, and her need for treatment was related to the preexisting wear of the hip. He opined Claimant would have needed a revision regardless of whether there was a work injury.

27. Based on Claimant’s assertion that she had no hip pain prior to the 2013 injury, Dr. Lux testified the work related hip strain caused the previously asymptomatic osteolysis to become symptomatic or painful. That pain was not going to be relieved until she had a revision. The revision surgery was necessary to cure and relieve the pain that was brought on by her work injury. The surgery was to treat the underlying osteolysis and the intense pain she was having from the work accident.

28. Dr. Lux also testified the need for surgery was multifactorial. Her hip was wearing out. The strain did not get better with time and was a factor in the need for the surgery. He based this opinion on the fact she had missed no work for the hip since he saw her in 1996. He testified the prevailing factor in the need for surgery was the wear and tear. The strain was a factor, but not the prevailing factor.

29. Claimant’s expert, Dr. Volarich, reviewed the records, examined Claimant, and issued a report in November 2015. He noted Claimant had constant pain in her right hip prior to the work injury. She was able to perform normal activities, but co-workers helped her with lifting, and she only sat about 30 minutes at a time. Her symptoms increased by the end of the day, and she used Vicodin or over the counter pain medications on a daily basis. He noted overall Claimant was not doing as well as she tried to convince Dr. Lux. Dr. Volarich opined Claimant’s work injury is the prevailing factor causing a severe right hip strain that required conservative care and bilateral knee contusions. He rated her disability at 25% PPD of the right hip and 10% PPD of each knee. He rated the prior injuries and noted the 2014 surgery was due to failure of the 1996 revision.

30. Dr. Volarich opined the disabilities combine to create a greater disability than their simple sum, and testified to the synergistic effect of her injuries. Claimant is unable to engage in any gainful employment. Claimant is permanently and totally disabled as a result of the work injury in combination with her prior conditions.

31. Dr. Volarich testified the treatment Claimant had on her knees and hip following the work injury was medically necessary and reasonable and flowed from the work injury, but he attributed the 2014 surgery to wear and tear. Claimant had limitations in her hip and took
regular pain medication before the work injury. He noted she said she was having a lot of trouble with her hip and had to take a lot of medicine before the work injury.

32. Claimant’s vocational expert, Tim Lalk, reviewed the records, interviewed Claimant, and issued a report in April 2016. When considering Dr. Volarich’s restrictions, Mr. Lalk opined Claimant is limited to sedentary and near sedentary work that would allow her to change positions as needed. However, Claimant does not have the experience or training that would allow her to work at a skilled sedentary position, and she is not able to work at an unskilled sedentary position given the amount of time she needs to rest and recover from her symptoms throughout the day. He opined he cannot recommend vocational rehabilitation services. Mr. Lalk opined Claimant is not able to maintain employment in a competitive setting due to her inability to function even at sedentary levels through a full work shift.

33. Employer’s vocational expert, Mr. Dolan, reviewed the records, interviewed Claimant, and issued a report in February 2017. He opined neither the restrictions from Dr. Lux or Dr. Volarich eliminate all jobs for her, but they eliminate the work she did for Employer. She does not have other transferable skills. He testified the doctors did not restrict sitting, so he did not consider Claimant’s professed need to stand up frequently. He opined Claimant’s own description of limitations, and the limitations set out by the doctors, would allow her to work in seated jobs or standing jobs where she can sit when needed.

34. While there are some inconsistencies in Claimant’s testimony, overall I find her credible.

RULINGS OF LAW

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

1. **Claimant sustained an injury by accident to her right hip. Her right hip strain is medically and causally related to her work accident.**

   The parties stipulate Claimant had an accident at work, but Employer denies Claimant’s accident resulted in a compensable injury.

   Section 287.020.3(1) defines the term “injury” as “an injury which has arisen out of and in the course of employment. 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.”
Employer and Claimant’s medical experts agree Claimant sustained a hip strain as a result of the work accident. Claimant alleges the work accident resulted in a hip strain that necessitated a hip revision.

Claimant presented the testimony of Dr. Volarich, who noted Claimant had constant pain in her hip and missed work prior to the work injury. He opined Claimant’s work injury is the prevailing factor causing bilateral knee contusions and a severe right hip strain that required conservative care. He specifically attributed the 2014 surgery to wear and tear and failure of Claimant’s prior hip replacement. He lists this surgery as related to a preexisting condition and causing preexisting disability in his report. At his deposition, Dr. Volarich again opined the work injury caused a strain that required conservative care, but he also testified the treatment Claimant had on her knees and hip flowed from the work injury.

Employer presented the testimony of Dr. Lux, who initially opined the hip strain resolved in August 2013, and her need for surgery was related to the preexisting wear of the hip. He opined Claimant would have needed a revision regardless of whether she had a work injury. When Claimant’s pain continued, Dr. Lux opined the need for the surgery was due to the wear and tear of her prior replacement, and was necessary to cure and relieve the pain that was brought on by the work injury. However, he testified he based this opinion on Claimant’s assertion that she had no hip pain between 1999 and the 2013 work accident.

Both of the medical experts were somewhat equivocal regarding the cause of the 2014 hip surgery. Claimant need not show her need was surgery was entirely attributable to the work accident. However, she must show the need for the surgery flows from the work injury. Claimant has not satisfied that burden. I find the medical opinions establish the primary injury caused a hip strain that required conservative treatment, and the need for surgery did not flow from the work injury.

I find Claimant’s work accident caused a hip strain. The 2014 hip revision was not medically and causally related to the work accident.

2. **Employer is not liable for past medical expenses of $51,445.81.**

The outstanding medical bills relate to the 2014 hip revision. Having found that treatment did not flow from the work injury, I find Employer is not liable for these medical expenses.

3. **Claimant reached MMI regarding the primary injury on August 20, 2013.**
The medical experts agree Claimant sustained a right hip strain as a result of the work injury. On May 3, 2013, Dr. Milne also diagnosed a right knee strain that he opined would improve on its own. Claimant sought no further treatment for her right knee. Claimant continued to treat with Dr. Lux for her right hip during the summer of 2013. He found Claimant reached MMI on August 20, 2013. While Claimant sought additional care after that date, I find that additional treatment was not part of the rehabilitative process relating to the work-related right hip strain. I find Claimant reached MMI August 20, 2013.

4. Claimant is not entitled to future medical benefits from Employer/Insurer.

Claimant requests an award for future medical benefits as a result of the April 2013 injury. An award of future medical is appropriate if Claimant can establish a reasonable probability of a need for future medical treatment that flows from the work injury. The medical experts agreed Claimant achieved MMI from the work injury. I find Claimant has failed to establish she is entitled to future medical benefits.

5. Employer is not liable for additional TTD benefits.

Employer paid TTD through August 20, 2013, the date of MMI. Having found Claimant’s additional treatment did not flow from the work injury, I find Claimant is not entitled to additional TTD benefits.

6. Claimant sustained 15% PPD of the right hip as a result of her primary injury and is entitled to $13,462.66 in PPD benefits from Employer.

Based on the medical evidence, Claimant’s testimony regarding her ongoing symptoms, and my observation of Claimant, I find she sustained no disability to her right knee and 15% PPD of the right hip as a result of the work injury. She is therefore entitled to $13,462.66 in PPD benefits from Employer.

7. Claimant is permanently and totally disabled as a result of the combination of her April 2013 injury and her prior injuries and disabilities.

Claimant alleges she is permanently and totally disabled as a result of the combination of her April 2013 injury and her prior injuries.

Section 287.220.2 (RSMo 2005) provides that in cases of permanent total disability against the Second Injury Fund, there must be a determination of the following:
the percentage of disability resulting from the last injury alone;
that there was a pre-existing permanent disability that was a hindrance or obstacle
to employment or to obtaining re-employment; and
that all of the injuries and conditions, including the last injury, together result in
the employee being permanently and totally disabled.

Based on my review of the medical records and Claimant’s testimony, I find Claimant
sustained 15% PPD of the right hip as a result of the primary injury.

Claimant had a number of injuries and disabilities prior to her April 2013 primary injury.
She credibly testified these injuries were a hindrance or obstacle to her employment in that they
limited her ability to lift, kneel, and grip. Her strength was reduced and she needed assistance
from co-workers. She limped at times and had swelling in her left ankle. She had low back pain
and stiffness that limited her ability to sit or stand very long. I find Claimant’s prior injuries and
disabilities were a hindrance or obstacle to her employment.

The final question is whether all of Claimant’s previous injuries and disabilities and her
last work injury together rendered her permanently and totally disabled. The test for total
disability is whether Claimant is able to adequately compete in the open labor market. The
question is whether any employer in the usual course of business would reasonably be expected
to employ Claimant given her condition.

The experts agree Claimant is not able to return to work as a fork lift driver or warehouse
employee. Section 287.020.6 (RSMo 2005) defines total disability 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.”

Dr. Volarich is the only physician who examined Claimant regarding all of her injuries.
Dr. Volarich imposed restrictions and opined Claimant is permanently and totally disabled due to
a combination of her disabilities.

Mr. Lalk considered Dr. Volarich’s restrictions and Claimant’s lack of transferable skills
to lighter work, and opined Claimant is not able to maintain employment in a competitive setting
even at a sedentary level.

Mr. Dolan opined Claimant could work in seated jobs or in standing jobs that allowed her
to sit when needed. However, since the doctors did not issue restrictions to Claimant regarding
how long she could sit, he did not consider her need to change positions frequently. Claimant
credibly testified she is unable to sit or stand for extended time periods. I find Mr. Lalk’s
opinion more persuasive.

Based on my observations of Claimant and the vocational and medical evidence, I find
Claimant is permanently and totally disabled as a result of the combination of her primary and
prior injuries and disabilities. Claimant’s hip symptoms worsened after her 2014 surgery, but I
find she was permanently and totally disabled when she reached MMI in August 2013. It is not
the last injury alone that totally disabled her, and it is not the subsequent deterioration of her
prior conditions that totally disabled her. Claimant is no longer able to compete in the open labor market and no employer in the usual course of business would reasonably be expected to employ her.

Claimant reached MMI August 20, 2013. Claimant sustained 31.05 weeks of permanent partial disability as a result of her primary injury. The SIF is hereby ordered to pay permanent total disability benefits at the differential rate of $281.18 per week for 31.05 weeks beginning August 21, 2013, and, $714.76 per week thereafter, for as long as provided by law. The amount accrued to date shall be paid forthwith with interest as provided by law.

Made by: _________________________________
KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation