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

Injury No.: 09-029009

Employee: Kathie Lane

Employer: Via Bancourier (Settled)

Insurer Depositors Insurance Company (Settled)

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. Having reviewed the evidence, read the briefs, and considered the whole record, we find that the award of the administrative law judge denying 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 with this supplemental opinion.

Discussion

On January 2, 2018, an administrative law judge (ALJ) issued an award with respect to the employee's claim against the Second Injury Fund (SIF) in Injury No. 09-029009.[1]

At hearing, the ALJ identified the following disputed issues:

(1) Liability of the SIF; and

(2) Whether Kathie Lane was an employee of named employer Via Bancourier at the time of her January 29, 2009, injury.

The ALJ denied the employee's SIF claim on the basis that the employee failed to prove she was an employee under the Workers' Compensation Law pursuant to § 287.020 RSMo. The ALJ found that the employee was not a covered worker because she was self-employed. Employee filed a timely application for review, alleging she was a *statutory* employee of Via Bancourier pursuant to § 287.040.1 RS Mo.[2] We supplement the ALJ's decision with the following findings on the issue of a statutory employer/employee relationship.

Employee worked for employer Via Bancourier as a pick-up and delivery driver. Employee used her own car and was responsible for all maintenance, upkeep and insurance on the vehicle. Employer reimbursed twenty percent of her gasoline expenses. Employee entered into an employment contract with employer that provided she was an independent contractor. Employer issued employee a 1099 form at the end of each year. On January 29, 2009, she

[1] The employee settled her claim against the alleged employer/insurer in this case by a Stipulation for Compromise Settlement approved by an ALJ on August 30, 2016.
[2] The ALJ's award includes a finding that employee filed no claims against employer Via Bancourier relating to other work-related accidents in 2007 and 2008. *Award*, 4. We take administrative notice of Division of Workers' Compensation records documenting claim numbers 07-135482 and 08-121343, involving employee Kathie Lane and alleged employer Via Bancourier. A Division ALJ approved stipulations for compromise settlement of both claims on August 30, 2016.

sustained injury while delivering items for employer when a school bus turned into the path of her automobile.

Section 287.040.1 of the Missouri Workers' Compensation Law provides:

> Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of business.

The parties agree that at the time of her January 29, 2009, work injury employee was working pursuant to a contract with alleged employer Via Bancourier and performing courier work in the usual course of employer's business. The only dispute is whether employee's injury occurred "on or about the premises of the employer," the second component of the three-prong statutory employment test.

Employee cites *Sargent v. Clements*, *Simpson v. New Madrid Stave Co.*, and *Wilson v. C. C. Southern, Inc.*[3], in support of her contention that the term "premises" in § 287.040.1 should not be given a narrow or refined construction but rather be liberally construed and applied. Employee argues that because the general public did not have the right to use employee's personal vehicle or to access the items she delivered, employer's premises must be considered mobile.

The SIF cites the Eastern District case *Cole v. Town & Country Exteriors*[4], which held:

> [P]remises does not extend to public roads used by independent contractors to get to the job site. The general public has the same right to travel on a public road as did claimant. Accordingly, injuries suffered by claimant while travelling to the job site did not occur on the premises. *Id* at 585.

In reliance on *Cole*, the SIF urges that Ms. Lane's work injury on a public highway did not occur on or about the premises of Via Bancourier

The above-cited cases were decided prior to the 2005 changes in the law that require all administrative tribunals and any reviewing court to *strictly* construe provisions of the Workers' Compensation Law. The 2005 amendments to § 287.800 RSMo departed from the prior law which specifically called for provisions of the Workers' Compensation Law to be liberally construed.[5]

As explained by the court in *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823 (Mo. App. 2009):

[3] *Sargent v. Clements*, 88 S.W.2d 174,178 (Mo. 1935); *Simpson v. New Madrid Stave Co.*, 52 S.W.2d 615 (Mo. App. 1932) and *Wilson v. C. C. Southern, Inc.*, 140 S.W.3d 115 (Mo. App. 2004).
[4] *Cole v. Town & Country Exteriors*, 837 S.W.2d 580 (Mo App. 1992).
[5] Prior to the 2005 amendments, § 287.500 read:

> All of the provisions of this chapter shall be liberally construed with a view to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

> '[A] strict construction of a statute presumes nothing that is not expressed.' 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6TH ED. 2008). The rule of strict construction does not mean that the statute shall be construed in a narrow or stingy manner, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used. 82 C.J.S. *Statutes* § 376 (1999). Moreover, a strict construction confines the operation of the statute to matters affirmatively pointed out by its terms, and to cases which fall fairly within its letter. 3 SOUTHERN STATUTORY CONSTRUCTION § 58:2 (6TH ED. 2008). The clear, plain, obvious, or natural import of the language should be used, and the statutes should not be applied to situations or parties not fairly or clearly within its provisions. 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008). *Id.* 828.

Applying strict construction pursuant to *Allcorn* standard, the terms of § 287.040.1 do not affirmatively point out that a work injury sustained on a public highway should be construed as having occurred "on or about the premises of the employer." *Id.* Webster's dictionary defines premises in the employment context as "**The place of business of an enterprise or institution** (emphasis added)." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1789 (Unabridged, 2002). The conclusion that an employer's premises include public highways is inconsistent with the generally accepted definition of the term. Such an interpretation is clearly outside of the scope of the clear, plain, and obvious language of § 287.040.1. We find that the circumstances of the employee's injury do not clearly fall within the provisions of § 287.040.1 and that a fair application of the statute does not lead to a finding of a statutory employment relationship in this case.

Decision

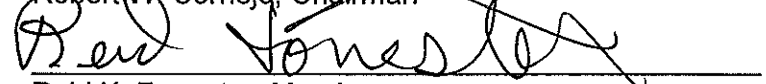
We affirm the administrative law judge's award denying all compensation. We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Mark S. Siedlik, issued January 2, 2018, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 31st day of October 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

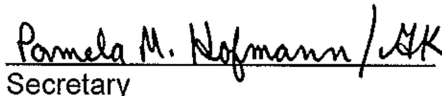
Robert W. Cornejo, Chairman



Reid K. Forrester, Member

DISSENTING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:



Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I disagree with the majority's denial of compensation in this case.

The only issue on appeal in this case is whether, as a matter of law, employee Kathie Lane failed to prove that she was a covered employee under the Workers' Compensation Law.

It is undisputed that Ms. Lane entered into a contract with Via Bancourier to be a delivery driver, that she was performing delivery driver work at the time of her injuries and that Via Bancourier's usual course of business was to provide courier services.

Section 287.040.1 of the Missouri Workers' Compensation Law provides:

> Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of business.

The Commission has previously held that determination of a statutory employer/employee relationship pursuant to this section is not predicated on the five-employee minimum number of employees required by § 287.030, nor precluded by an employee's status as an independent contractor.[1]

In *McCracken v. Wal-Mart Stores East, LP*, 298 S.W. 3d 473, 480 (Mo. 2009) the Missouri Supreme Court noted:

> [Section 287.040.1] is designed to prevent employers from evading the Act's requirements by hiring independent contractors to perform work the employer otherwise would hire ordinary employees to perform. ***Bass,* 911 S.W.2d at 619**. It does so by defining the company that hires the independent contractor as a statutory employer. This allows an injured employee to recover workers' compensation from the company if injured, *just as if the work had not been farmed out to an independent contractor* (emphasis added). **Huff v. Union Elec. Co., 598 S.W.2d 503, 511 (Mo. App. 1980)**. The party asserting the existence of statutory employee status bears the burden of proving that the injured person was a statutory employee of the purported statutory employer. **Martinez v. Nationwide Paper, 211 S.W.3d 111,115 (Mo. App. 2006)**. One is a statutory employee if (1) the work is performed pursuant to a contract, (2) the injury occurs on or about the premises of the alleged statutory employer and (3) the work is in the usual course of the alleged statutory employer's business. **Bass, 911 S.W.2d at 619**.

[1] See Vitaliano Rodas v. The Carter Group, Inc., Villa Bella, LLC and Aandrea Carter, Injury No. 15-078084 (LIRC, April 12, 2018), now pending before the Western District Court of Appeals. See *Villa Bella LLC, Apel. v. Vitaliano Rodas, Res.* WD81771 (filed May 10, 2018).

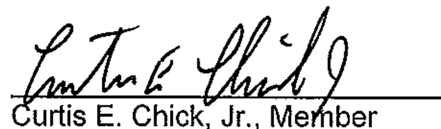
Section 287.800 requires provisions of the chapter be strictly construed. The plain meaning of the term "premises" in the employment context is "The place of business of an enterprise or institution." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1789 (Unabridged, 2002).

A courier service consists of a distinct type of work, unlike most others, in that most of its work is not conducted in a single location can be referred to in any traditional way as a "premises." The **road is the premises** where a delivery driver mainly works, with only brief stops at delivery pickup and drop off destinations. When, as here, employer's core business is that of a delivery service, its place of business necessarily becomes everywhere a driver is required to be present when performing that work. The conclusion that employee's injury in this case occurred on employer's premises is consistent with the plain language of § 287.040.1. To find that this statute does not apply to employee's situation subverts the mandate of § 287.800 that the terms of the statute be strictly construed.

The fact that employer's work necessarily involves continual movement should not deprive delivery drivers of the same protections § 287.040.1 affords to others workers. To find otherwise is to allow any employer in the business of providing courier services to circumvent the requirements of the Workers' Compensation Act by hiring independent contractor drivers to perform work that the employer would otherwise have to hire employee drivers to do.

As a matter of law, the facts and evidence in this case support the existence of a statutory employment relationship between employee and employer Via Bancourier. Her January 29, 2009, injury should be determined compensable.

Because the majority finds otherwise, I respectfully dissent.



Curtis E. Chick, Jr., Member

FINAL AWARD AS TO THE SECOND INJURY FUND ONLY

Employee: Kathie Lane Injury No. 09-029009

Dependents: N/A

Employer: Via Bancourier

Insurer: Depositors Insurance Company

Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund

Hearing Date: September 28, 2017 Checked by: MSS/pd

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Alleged January 29, 2009
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri
6. Was above Employee in employ of above employer at time of alleged accident or occupational disease? No
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes, alleged Employer was insured.
11. Describe work Employee was doing and how accident occurred or occupational disease contracted: Claimant was injured in a motor vehicle accident.
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: Whole person

14. Nature and extent of any permanent disability: permanent partial disability: None

15. Compensation paid to date for temporary total disability: None

16. Value necessary medical aid paid to date by employer/insurer? None

17. Value necessary medical aid not furnished by employer/insurer? None

18. Employee's average weekly wages: $560

19. Weekly compensation rate: $373.35

20. Method wages computation: by agreement

Compensation payable

21. Amount of compensation payable: none

22. Second Injury Fund liability: NA

23. Future requirements awarded: none

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kathie Lane Injury No. 09-029009

Dependents: N/A

Employer: Via Bancourier (Settlted)

Insurer: Depositors Insurance Company (Settled)

Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund

Hearing Date: September 28, 2017 Checked by: MSS/pd

This case comes on for hearing before Administrative Law Judge Siedlik in Kansas City, Missouri on September 28, 2017. The parties were given leave to file proposed awards and briefs and the record was deemed closed on October 30, 2017. The claimant, Kathie Lane, was represented by her counsel, Mr. Stephen Mayer. The Second Injury Fund was represented by their counsel, Ms. Alexandra Alpough and Ms. Shelly Hinson.

This case involves injuries on or about the 29th of January 2009 while the claimant alleges she was in the employ of Via Bancourier and sustained injuries by accident arising out of and in the course and scope of her employment in Jackson County, Missouri. At the time of the injuries, the parties were subject to the Missouri Workers' Compensation Law and the alleged employer's liability insured by Depositors Insurance Company. The claim was timely filed within the appropriate statute of limitations.

Claimant alleges an average weekly wage of $560 and a compensation rate of $373.35. This case has previously settled with the alleged employer and insurer and is tried at this proceeding to determine Second Injury Fund liability, if any.

The issues presented at trial are the nature and extent of disability, liability of the Second Injury Fund and whether the claimant was an employee of the alleged employer in this matter. The evidence at trial consisted of the testimony of the claimant in person, together with Claimant's Exhibits A through N and Second Injury Fund Exhibit No. 1.

For the reasons set forth below, I find the Second Injury Fund has no liability in this matter for the reason that the claimant has not met the statutory burden of being an employee of an employer under the Workers' Compensation Act.

Claimant testified she was hired by Via Bancourier as a pick-up and delivery driver and while so employed was injured in a motor vehicle accident on January 29, 2009. In that accident, the claimant collided with a school bus which had turned into the path of her automobile. The claimant was taken by ambulance to North Kansas City Hospital and later referred to the KU

Spine Center for treatment. The claimant alleges in that injury that she had injuries to her back and neck. The claimant was provided conservative treatment only. The claimant was provided some diagnostic treatment including an MRI to her low back which proved unremarkable.

The claimant alleges other work-related accidents in 2007 and 2008 for which workers' compensation claims were not filed. The incident in 2007 involved a motor vehicle accident where the claimant had injured her ribs, spleen and torso for which treatment was provided. The incident in 2008 indicated she had a slip and fall, injuring her right shoulder which received conservative treatment and no follow-up. The claimant testified she filed no claims for workers' compensation in either of those matters.

The claimant alleges preexisting conditions of ill which include a cervical spine condition dating back to the early part of the 2000 era, chronic obstructive pulmonary disease which was diagnosed in 2004, and a bipolar disorder which the claimant alleges was diagnosed in 2006.

Claimant testifies that for her chronic COPD she has oxygen assist that she sometimes uses during the day and to sleep at night and takes over-the-counter pain medications for relief of her various ailments. The claimant testified that she historically was a poor student, finishing the eleventh grade and did not receive a high school diploma nor a GED certificate. The claimant testified that her life's work has involved primarily entry-level jobs, that she is unable to type except for a hunt and peck method, and has lost jobs because of her chronic COPD which would involve coughing fits, eliminating her from some positions. The claimant is a 40-year smoker.

The claimant testified in her work environment she used her own car and her employer reimbursed 20 percent of her gasoline expenses, and the claimant was responsible for all maintenance upkeep and insurance on her own vehicle. The claimant signed an employment contract with the alleged employer, Via Bancourier, and acknowledged that she was not an employee of Via Bancourier but was an independent contractor. Claimant further acknowledged signing an agreement with Via Bancourier that she was aware that Via Bancourier carried no workers' compensation coverage and that the claimant would need to provide workers' compensation coverage for herself if she opted to do so. The claimant testified she did not have workers' compensation insurance. The claimant testified she was paid by 1099 at the end of every year and received no insurance or benefits from Via Bancourier.

Claimant testified her work involved at times a continuous 40-hour work environment, but the claimant controlled the means and method of her work and chose her routes of delivery. The claimant could choose to work at will and could refuse daily assignments if she so chose. The claimant's means and operation of doing her courier work, which involved delivering blood products and bank documents to various individuals and entities, was at her discretion on the time and route of delivery as well as whether she chose to work that particular day. The claimant was reimbursed $14 per hour for her time period worked.

Claimant testified when she was hurt in 2009, Via Bancourier did not provide temporary total disability benefits nor pay any of the medical expenses. The claimant did settle her case with Via Bancourier as an alleged employer for a lump payment of $10,453.80 and all issues were shown disputed, including whether an accident occurred and compensation rates. There

was no medical or temporary disability benefits paid and a strict compromise of all disputed issues including the claimant's status were resolved for that compromised lump sum.

MEDICAL AND VOCATIONAL EVIDENCE

The claimant was examined by Dr. Poppa on behalf of the claimant who offered an opinion and testified by deposition with attached exhibits and medical records for his consideration. Dr. Poppa found in examining the claimant that she gave a history of three work-related accidents which alleged one in August 29th of 2007 where she was in a motor vehicle accident and alleged injuries to her ribs, spleen and lungs; and an accident alleged April 1st of 2008 where the claimant slipped and fell and injured her left shoulder; and this last work accident of January 29, 2009 where the claimant in a motor vehicle accident alleged injuries to her back and neck. Dr. Poppa reflected the claimant's recited history of injuries and noted that for the most part all of her injuries were treated with conservative care; although, the claimant did have MRI studies done on two occasions with X-rays as appropriate and did not have a significant history of follow-up treatment or care. Dr. Poppa noted in his report through the history of the claimant alleged preexisting conditions of ill involving an injury to the cervical spine, the presence of chronic obstructive pulmonary disease which the claimant related was diagnosed in 2004, and the diagnosis of a bipolar disorder which the claimant alleged was diagnosed in 2006. Dr. Poppa opined that these preexisting conditions in his opinion left the claimant with a permanent partial disability of 15 percent of the cervical spine, 12-and-a-half percent of the whole body for the COPD, and 12-and-a-half percent of the whole body for bipolar disorder. Dr. Poppa in his history and course of treatment noted the claimant showed a continuous work history through the majority of her adult life; albeit, almost exclusively in the entry-level positions of employment, being the courier, stocker, cashier or restaurant work. Dr. Poppa noted Claimant, with only brief periods of time off work for any of the alleged conditions which he noted through the claimant's history, continued to have an ongoing and solid work history.

Dr. Poppa noted that the claimant in her history reflected that the work accidents alleged in 2007 and 2008 were not the subject of worker's compensation claims and Dr. Poppa felt from those two alleged injuries, he assigned 20 percent of the whole person referable to the 2007 motor vehicle accident injury the ribs, spleen and lungs; 15 percent of the whole person for the 2008 injuries alleged to the left shoulder; and 12-and-a-half percent of the whole person to this last work-related accident on January 29 of 2009 for the neck and low back.

Dr. Poppa noted with the cumulative effect of all these alleged conditions of ill taken together with the claimant's age and lack of education, coupled with a history of only entry-level jobs, the claimant was largely unemployable and so found that the claimant was permanently and totally disabled as a result of the combination of all her alleged conditions of ill.

The claimant was examined by Mr. Michael Dreiling, a vocational expert, who took the medical restrictions or, more realistically, lack of medical conditions with Dr. Poppa noting a history of alleged accidents for which conservative care, at best, was noted with not a great deal of lost time worked and generally a return to work in the labor market. Mr. Dreiling provided minimal testing but noted the percentages of disability applied by Dr. Poppa and Dr. Poppa's opinion of permanent and total disability. Mr. Dreiling agreed that the claimant, with no high school degree or GED and the general lack of transferrable skills, working only in the entry-level

menial positions for the bulk of her work life, was unlikely to obtain gainful employment again. Mr. Dreiling agreed with Dr. Poppa that the claimant was in his opinion permanently and totally disabled for gainful employment as a combination of the many conditions of ill alleged by the claimant.

FINDINGS

I find based on the evidence and testimony presented the claimant has failed to meet her burden of proof to establish that she was an employee under the Act pursuant to §287.020. I find the settlement with the alleged employer and the claimant to be one of a compromise without admission of any liability, including the employer-employee relationship and that no weekly benefits or medical expenses had been incurred by the alleged employer. The Second Injury Fund appropriately asserts this affirmative defense and the courts have found that the Second Injury Fund is entitled to assert any defenses for which an alleged employer could avail themselves. Liberty v. Treasurer of the State of Missouri/Custodian of the Second Injury Fund, 218 SW 3rd 7 (2007).

The claimant is deemed to be self-employed as evidenced by the multitude of facts in this case. The claimant candidly and freely admitted that she was not an employee of Via Bancourier, that she signed documentation to that effect. The claimant further admitted that Via Bancourier represented to her that she was not an employee and therefore not covered under the Workers' Compensation Law. The claimant acknowledged that if she wanted workers' compensation coverage it was her responsibility to provide same. The claimant was not provided any benefits from the employer/insurer beyond the $14 per hour agreed upon wage. The claimant was further reimbursed 20 percent of her gasoline expenses for her mileage driven while in the course of her delivery duties. The claimant was further provided a 1099 with no withholdings at the end of every year for her tax records. The claimant testified that for most of the period while engaged with Via Bancourier she was able to work 40 hours per week, this was not guaranteed by Via Bancourier and the claimant could choose to work different hours if she chose. The alleged employer, Via Bancourier, did not execute any right of control on the means and matter of her service as long as the documents that were entrusted to her care were delivered. The duration of the claimant's employment seemed to be at her discretion in that she could choose the hours which she worked. The claimant testified that while engaged as a courier with Via Bancourier there was no expressed prohibition that she could not engage in similar work for other couriers if she so chose. While there is no bright line of delineation of individual facts which determine whether an individual is an employee of an employer, the multitude of facts admitted to by the claimant in this situation describe an environment in which the claimant was self-employed as a courier doing work for Via Bancourier. The claimant acknowledged that she was not within the workers' compensation system as so engaged with Via Bancourier and chose not to avail herself of workers' compensation benefits.

The claimant did, however, allege that she was permanently and totally disabled. In order to determine whether the claimant is deemed permanently disabled under the Missouri law, it must be found that the claimant is unable to return to any employment. Statute 287.020 (7) defines total disability as "an inability to return to any employment and not merely…inability to return to the employment which the employee was engaged at the time of the accident." Reese v. Gary and Roger, Incorporated, 5 SW 3d 522 (Mo. App. 1999). It is not necessary that an

individual be completely inactive or inert in order to meet the statutory definition of permanently and totally disability. It is necessary, however, that they be unable to compete in the open labor market. Fletcher v. Second Injury Fund, 922 SW 2d 402 (Mo. App. 1966). The courts have held various factors may be considered, including claimant's physical and mental condition, age, education, job experience and skills in making the determination as to whether a claimant is permanently and totally disabled. Tiller v. 166 Auto Auction, 941 SW 2d 863 (Mo. App. 1997).

To that end and to meet the claimant's burden of proof on the test of whether she is permanently and totally disabled, I find the claimant has brought forth medical and vocational evidence with opinions consistent with a person who is deemed in the opinions of Dr. Poppa and Mr. Dreiling, a vocational expert, to be unemployable in the open labor market. This finding is made based on the myriad of conditions of ill for which the claimant had alleged and to a great degree the lack of treatment, both in an acute sense at or near the time of these alleged incidents and as on an ongoing basis, seems to be inconsistent with the opinions of Dr. Poppa and that of Mr. Dreiling as to the claimant's unemployability. While it is acknowledged that claimant has less than a high school education without a GED and has largely her entire work history in entry-level menial jobs, the claimant seems to lack specific conditions of ill which would prohibit the claimant from many of those same entry-level positions which she had been employed for the bulk of her adult life.

I find the determination of whether the claimant has credibly proven her inability to compete in the open labor market to be a moot point inasmuch as the claimant has not proved herself to be an employee covered by the Missouri Workers' Compensation Act and the Second Injury Fund's affirmative defense finding this lack of her employee relationship bars the claimant's claim for compensation against the Second Injury Fund.

I find, therefore, the claimant has failed to meet her burden of proof to establish entitlement to workers' compensation benefits and deny her claim for compensation as against the Second Injury Fund.

I certify that on 1-2-18, I delivered a copy of the foregoing award to the parties to the case. A complete record of the method of delivery and date of service upon each party is retained with the executed award in the Division's case file.

By [signature]

[signature]
Mark S. Siedlik
Administrative Law Judge
Division of Workers' Compensation