

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

Injury No.: 01-141314

Employee: Melissa Lantz
Employer: Monsanto Chemical Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: January 22, 2001
Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 30, 2006. The award and decision of Administrative Law Judge Margaret D. Landolt, issued March 30, 2006, 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 9th day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

CONCURRING OPINION FILED

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

CONCURRING OPINION

I submit this concurring opinion to disclose the fact that I was previously employed as a partner in the law firm of Evans and Dixon. While I was a partner, the instant case was assigned to the law firm for defense purposes. I had no actual knowledge of this case as a partner with Evans and Dixon. However, recognizing that there may

exist the appearance of impropriety because of my previous status with the law firm of Evans and Dixon, I had no involvement or participation in the decision in this case until a stalemate was reached between the other two members of the Commission. As a result, pursuant to the rule of necessity, I am compelled to participate in this case because there is no other mechanism in place to resolve the issues in the claim. *Barker v. Secretary of State's Office*, 752 S.W.2d 437 (Mo. App. 1988).

Having reviewed the evidence and considered the whole record, I join in and adopt the award and decision of the administrative law judge allowing benefits.

William F. Ringer, Chairman

AWARD

Employee: Melissa Lantz

Injury No.: 01-141314

Dependents: N/A

Before the

Division of Workers'

Employer: Monsanto Chemical Company

Compensation

Department of Labor and Industrial

Additional Party:

Second Injury Fund Relations of Missouri

Jefferson City, Missouri

Insurer: Self-Insured

Hearing Date:

December 16, 2005 and January 10, 2006

Checked by: MDL:tr

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: January 22, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes

7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was working as a chemist when she was exposed to chemicals.
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: Body as a whole – respiratory and psychological
14. Nature and extent of any permanent disability: 25% permanent partial disability of the body as a whole
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$36,974.34

Employee: Melissa Lantz Injury No.: 01-141314

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$599.96/\$314.26
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

| | |
|---|-------------|
| Unpaid medical expenses: | \$ 1,898.92 |
| 100 weeks of permanent partial disability from Employer | \$31,426.00 |

22. Second Injury Fund liability: Yes

15 weeks of permanent partial disability from Second Injury Fund \$4,713.90

TOTAL: \$38,038.82

23. Future requirements awarded: Future medical treatment pursuant to 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:

Mr. Kurt Wolfgram

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Melissa Lantz

Injury No.: 01-141314

Dependents: N/A

Before the
Division of Workers'

Employer: Monsanto Chemical Company

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: Self-Insured

Checked by: MDL:tr

PRELIMINARIES

A hearing was held on December 16, 2005, at the Division of Workers' Compensation in the City of St. Louis. The record remained open until January 10, 2006, at which time additional evidence was received. Melissa Lantz ("Claimant") was represented by Mr. Kurt Wolfgram. Monsanto Chemical Company, which is self-insured, was represented by Mr. Edward Vokoun. The Second Injury Fund was represented by Assistant Attorney General Michael Finneran. Mr. Wolfgram requested a fee of 25% of Claimant's award.

The parties stipulated that on or about January 22, 2001, Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis; and the claim was timely filed. Claimant is entitled to the maximum rates of compensation of \$599.96 for total disability benefits and \$314.26 for permanent partial disability benefits. Employer paid medical benefits of \$36,974.34 and long-term disability benefits.

The issues for resolution by hearing are medical causation; liability of Employer for past medical benefits; reasonableness and necessity of certain medical expenses; liability of Employer for past temporary total disability benefits; nature and extent of permanent disability; and liability of the Second Injury Fund.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant received a B.S. Degree in Chemistry from Truman State University. In July 1992, she was hired at Sigma Chemical as a Production Chemist.

Claimant had a motor vehicle accident in 1996. Her primary care physician, Joseph Thompson, M.D., referred her to a spinal specialist, Dr. Randolph, who subsequently referred her for physical therapy, which she attended at ProRehab and Fenton Physical Therapy. She ultimately found aquatic exercise at the YMCA to be the best solution for her back pain.

Claimant's job at Sigma involved a great deal of lifting. After her car accident, she was no longer able to lift. Claimant left Sigma Chemical to work as a Discovery Medical Chemist for Employer in April 1998.

On January 22, 2001, Claimant was in the lab, when she smelled an odor from her co-worker's workstation. She testified her co-worker then ran out of the lab, and she took that as her cue to leave as well. She heard a loud whooshing, a red liquid spewed out, stoppers blew out, and a white puff of smoke came out of her co-worker's exhaust hood. After she left that lab, she went to her home lab, and her co-worker called Safety & Emergency Response.

As a member of the emergency response team and captain of the building, her role in the clean up was to assist the responding teams by mixing neutralizing chemicals for use in the cleanup. Claimant experienced throat,

lung, chest irritation, dry mucous membranes, and coughing for days after this incident.

On February 1, 2001, Claimant was emptying a solvent trap when a vapor hit her and she experienced sharp chest pain. Claimant first sought medical treatment when she saw Dr. Trottier on February 5th. Dr. Trottier listened to her chest and performed a pulmonary function test which was normal. After February 5th, her chest pain and coughing continued.

Claimant was fitted for a full face/head respirator, and used this in the lab from February 12th, until she stopped working in November 2001. She made modifications in her work process, including performing common practices such as washing lab equipment with Acetone in her hood, and weighing small amounts of chemicals in her hood.

Claimant testified that between February and July 2001, she was working with a full respirator, and continued to work although she was experiencing low energy and low grade fever that caused her to miss some days from work. She attributes these symptoms to the chemicals she was working with. On July 9, 2001, as Claimant was pouring a chemical, it started floating through the air and she experienced chest pain. On July 13, 2001, Claimant saw Dr. Godar, the onsite company doctor. She underwent spirometry testing, which was normal. Claimant was eventually referred by Employer to Dr. Tuteur.

When Claimant first saw Dr. Tuteur on October 9, 2001, she was having problems with chemicals even outside work, including a reaction to idling buses, perfume, fabric softeners, cleansers in the bathroom, and anything with a strong odor. She underwent a chest x-ray, arterial blood gases, and pulmonary function testing. Her pulmonary function tests were normal, but her methacholine challenge test was stopped when Claimant began to hyperventilate. Dr. Tuteur diagnosed chemically induced bronchial reactivity, and recommended an Advair inhaler and Albuterol inhaler for rescue. She was instructed on rigorous environmental controls. She testified she removed all scented candles from her home, stopped using regular household cleaners, changed soaps, stopped using perfume and hair spray, and threw out potpourri. She rid her home of boxes full of chemicals and fragrances. Her symptoms started progressing in early September 2001. Her understanding was that with each exposure she would grow increasingly sensitive.

The day after her visit to Dr. Tuteur, she spoke to her supervisors, and she was put on desk duty. She testified that by the end of October 2001, she had a meeting with the Human Resources Director and it was determined Employer would try to find her other employment outside of the lab. In the meantime, her doctors were trying to come up with a plan to provide nebulizer/rescue medications in her lab. She was not allowed in the lab without rescue medicines.

On November 8, 2001, a cleaning closet was left open at work. The ventilation system in the building blew the chemicals in front of her desk. She described chest pain lasting all day, and suffered an attack on the way home, requiring Foradil for rescue. She experienced another attack while driving around later that evening, and went to the emergency room. She did not return to work after November 8, 2001. On November 8, 2001, her short-term disability benefits from Employer began.

The inside of her house was easier to control, but she still had problems with her neighbors burning leaves. On November 26th, at 5:00 a.m., she experienced chest pain. She used Foradil, which worked for a while. She opened the door to her deck to throw away trash, was exposed to neighborhood smoke, and again suffered chest pain. She was advised again to use Foradil, but it did not relieve her symptoms. She was then advised to go to the emergency room.

Claimant contacted Employer regarding accommodations to return to work under the Americans With Disabilities Act. She requested either accommodations or another job with equal benefits but as of June 27, 2002, Employer was unable to accommodate her restrictions.

Claimant testified that she looked into other work options, including medical billing and medical transcription. Claimant testified that an on-line course would cost over \$21,000.00. Claimant testified she would

have trouble with home based work, as Employer sent materials which had to be aired out for several days before she could bring them into her house. She puts her mail on the deck for weeks at a time to air it out.

Claimant testified to her need for a backup generator. She now has 8 filters throughout her house. If there is a power outage, she feels she has no protection from her neighbor's bonfires. She further noted her PAPR has a limited battery life.

Claimant testified she has been forbidden to conceive by Dr. Tuteur because she would have a 100% chance of being hospitalized during the course of a pregnancy, and no hospital is equipped to handle her sensitivity. Her last dinner out was in October 2001, and she has not gone shopping since 2001. She has crying fits, and is frustrated. When she had to work 8 hours a day, she had trouble sitting greater than an hour due to back pain.

Claimant testified she generally wears a mask in public. She does not wear her mask in her car unless she drives by someone with a diesel engine or is exposed to other fumes.

In August 2001, Claimant took a four-day trip to Daytona Beach, during which time she felt fine, stating she was away from chemicals.

When she saw Dr. Tuteur, she was still doing water aquatics two evenings per week for about 2 hours total. While she was doing this she did not experience any attacks, and the chlorine did not require her to use her rescue medicine. She testified she last taught aquatics before her emergency room visit of November 2001. She testified she continued to swim after her second emergency room visit, last swimming in June 2003.

Claimant has 11 housebound cats, having had up to 13 cats since 2001. She has 3 housebound dogs, and her husband has 6 snakes, and 2 dozen geckos. She also has two rabbits which are kept outside. At the time of her deposition, Claimant was attending monthly Reptile Society meetings, but has not attended any meetings since the summer of 2004.

At the time of her deposition in August 2003, Claimant testified she was walking outside 4 to 5 times per week for twenty-minute intervals. She rarely walks outside her home anymore, and experiences hip pain walking up and down hills, as well as increased back pain. Last fall she took a trip to her in-laws at the Lake of the Ozarks, and takes an annual Fourth of July trip to Collinsville to the home of a friend who makes special accommodations for her. She acknowledged no emergency room visits since November 2001. Claimant tried a peak flow meter given to her by Dr. Jacobs, but she reached the maximum on it too easily, and did not write down the results. Claimant's back pain is 4/10 on a typical day, but she has days where her back pain is 9 to 10/10, and she has to lay in bed with heating pads or in a warm bath.

Claimant has not applied for any jobs. She testified she had contacted companies, naming the editor of Chemical and Engineering News regarding the qualifications for editing, but did not name any other companies contacted. She further testified she did not send out any job applications.

Claimant acknowledged receiving long-term disability benefits beginning 6 months after she last worked. This was paid at 65% of her base pay.

Dr. Tuteur advised her she could take employment at home if work is within her restrictions. Claimant continues to use her rescue medication at home. She uses it more frequently during the burning season, and takes it with her when she walks.

Claimant's husband testified that he does all the shopping and lawn work. If anything needs to be painted, he must use organic compounds and completely block off the portion of the house that is being painted. When neighbors are burning, he speaks to them about following State guidelines. They recently moved into a new home in a more remote location. If Claimant needs to go somewhere, Mr. Lantz makes sure the car has gas in it. He makes sure whatever environment they are traveling to is safe. Mr. Lantz has a sporadic work schedule, and he doesn't leave Claimant alone for extended periods of time. He has observed Claimant to be down and visibly upset.

An Employer Injury/Illness Report noted an incident on January 22, 2001, where Claimant experienced respiratory irritation after exposure to DMSO and HBr and possibly boric acid vapors on separate occasions. The report further noted DMSO was the source of the majority of the odors and is not considered a hazardous material. HBr is corrosive, and potential initial symptoms of exposure are irritation of the eyes, nose and throat. Higher exposure levels have much more serious consequences.

Dr. Godar's records reflect on February 5, 2001, Claimant complained of respiratory problems after her exposure to chemicals on January 22, 2001 and February 1, 2001. The irritation and drying of her mucous membranes went away within a day or so and a slight cough went away immediately when her exposure was reduced. Her spirometry test was normal. She returned on February 12, 2001 and her burning substernal chest pain had dissipated. On July 13, 2001, Claimant was seen by Dr. Godar. Her spirometry testing was normal. She was eventually referred to Dr. Tuteur.

Claimant reported to St. Anthony's Medical Center on November 8, 2001, complaining of shortness of breath and chest pain. She denied wheezing, started hyperventilating, and her hands began cramping and tingling. She was prescribed Ativan and was discharged. She returned to St. Anthony's Medical Center Emergency Room on November 26, 2001, complaining of shortness of breath and chest pain triggered by her neighbor's fireplace.

Claimant completed an Employee Request for Accommodation for her to return to work for Employer. The accommodations she requested were: Provide PAPA system to perform duties in the lab; a storage cabinet outside of the lab to prevent contamination from the lab into the office area; provide a completely enclosed office area, either by building up the walls to the cube or another location; use an air purification system in the enclosed desk area; provide an office or workspace with working windows, or allow breaks to obtain fresh air; allow placement of a "fragrance-free-zone" sign on office or cubicle door to notify coworkers not to enter if wearing scented products, and to advise a phone call or email message as alternative communication; provide an office or workspace not directly under a ventilation duct; maintain a work environment free of pollutants such as fragrances, toxic cleaning agents, pesticides, exhaust fumes, tobacco smoke, etc.; provide pre-notification of events such as painting, floor waxing, etc, and allow alternative work arrangements on those days in another area or from home; use non-toxic, fragrance-free cleaning agents, carpet shampoos, floor waxes, etc.; create a restroom free of scented cleaning agents and air-fresheners. Do not allow the use of hair spray or perfume in this restroom designated "Scent Free". Clearly identify it as such; provide a scent-free meeting room or allow alternative methods such as conference call, email, etc. for meetings; and allow work from home on a periodic basis.

Peter G. Tuteur, MD testified on behalf of Claimant. He is an Associate Professor of Medicine and Director of the Pulmonary Function Laboratory at Washington University. He is board certified in internal medicine and pulmonary disease. Claimant was exposed to dimethyl sulfoxide and trimethyl bromate on January 22, 2001 and on February 1, 2001 was exposed to boric acid as well as DMSO. He testified one could get chemically induced bronchial reactivity with a single massive exposure. He noted that following the second exposure, the dye was cast with respect to the development of persistent bronchial reactivity due to exposure to chemicals.

Dr. Tuteur testified Claimant has chemically induced bronchial reactivity, which is not an allergic disease. Exposures that trigger her symptoms are found in daily life, and it requires a substantial lifestyle change to try to eliminate. He further testified she also has a psychological response.

Dr. Tuteur testified her condition is permanent, and she is 100 percent permanently disabled from returning to her previous job. On the other hand, Claimant is an educated person who has the potential for cognitive remunerative employment, but unless she can get employment in an environment such as her home where she does not require contact that she can not control, she is totally and permanently 100 percent disabled as a person as a whole. The medical criteria he would set in regards to her ability to compete in the open labor market would be that she would not be regularly exposed or expected to be exposed to irritants that adversely affect her health status, because regular exposure can make things worse through remodeling, or scarring of the airways due to recurrent bronchial constriction. He testified she will need medication for the rest of her life. He advised her against becoming pregnant.

Dr. Tuteur testified regarding Claimant's treatment plan that anything she can do to make her environment cleaner, behaviorally, structurally, by way of filters and ventilation will be beneficial not only in her short-term well-being, but also in reducing the rate of progression of and severity of remodeling of the airways. Claimant submitted a plan to improve and maintain her ambient home environment and Dr. Tuteur felt that although her plan was expensive and required multiple sets of hardware to achieve, it was practical and medically appropriate.

Dr. Tuteur acknowledged if an employer outside the home can provide a clean air environment for Claimant to protect her from perfumes, colognes, ubiquitous types of smells, she would be able to work in that environment, although he believes she is at risk for the adverse environment of automobile travel.

Dr. Myron H. Jacobs, a pulmonary specialist and Director of Pulmonary Medicine at Christian Hospital Northeast, testified by deposition on behalf of Employer. He is board certified in internal medicine and pulmonary disease. His practice regularly involves the evaluation of chemically induced airway disease.

Dr. Jacobs testified none of the doctors has yet made a measurement to prove she has reactive airway disease of any kind, be it chemically induced or otherwise. She appeared to have had transient injury from inhalation of noxious substances but subsequent to that, Dr. Jacobs could not make any objective measurements to demonstrate that there was any respiratory impairment or disability. Based on a reasonable degree of medical certainty he was unable to find any evidence of lung disease of any kind including reactive airways dysfunction syndrome.

Dr. Jacobs explained that reactive airways dysfunction syndrome (RADS) is a subgroup of asthma and none of the testing to date has been able to demonstrate it. Claimant has not had a lot of the things measured, which Dr. Jacobs requested she have measured. In the absence of asthma, Dr. Jacobs cannot justify a diagnosis of RADS. He acknowledged the exposures of January 21, 2001 and February 1, 2001 caused Claimant to be concerned about shortness of breath and she may have a psychological condition now by being scared that when she smells things she is going to have trouble breathing, but he has been unable to determine that she actually has a respiratory condition and has been unable to demonstrate she actually has any trouble breathing.

Dr. Jacobs opined Claimant is able to work; he gave her a peak flow meter to provide a good representation of her ability to breathe properly and asked her to measure her peak flows. To Dr. Jacobs' knowledge, Claimant never recorded her peak flows. He encouraged her to go to work and make measurement of her lung function. He suggested to Claimant that she talk with her treating pulmonologist about the possibility as to whether additional medications such as a long-acting bronchodilator accompanied by a corticosteroid would be helpful to her.

Dr. Jacobs re-examined Claimant on February 3, 2005. She complained of worsening respiratory symptoms, chest pain and tightness; she claimed to experience respiratory symptoms and swelling in the axillae (armpits) on both sides when exposed to strong fragrances, petroleum-based smells, or smoke. Pulmonary function testing of February 3, 2005 showed normal flow rates, no evidence of asthma. She displayed no symptoms of chest pain, chest tightness or wheezing. Dr. Jacobs found no evidence of asthma; no evidence of reactive airways dysfunction syndrome. He suggested she discuss with Dr. Tuteur making these other measurements, going to work, and measuring the peak flow.

From his evaluation of Claimant over the course of three years, Dr. Jacobs testified to a reasonable degree of medical certainty that she had exposure on two separate occasions to substances in her work environment, and she thinks she developed respiratory symptoms following those inhalations. She and Dr. Tuteur think she developed a respiratory condition which may be reactive airways dysfunction syndrome, may be some form of asthma, but described as episodic shortness of breath following inhalation of strong smells; he finds no evidence whatsoever to substantiate the existence of this condition in Claimant.

Dr. Jacobs acknowledged he does not know for a hundred percent certain that she does not have the

condition, but there has been no documentation that she has the condition; it is very unusual for a person with any form of asthma to go this long without needing additional help on an urgent or semi-urgent basis. He is not a hundred percent sure, because he does not know how to prove that something does not exist.

Dr. Jacobs affirmed his opinion that Claimant be allowed to work in a smoke free environment, an environment free of strong smell, and if she discovers the smell from work disturbs her, then she would need to be working in her own space without additional co-workers.

Dr. Thomas Mangelsdorf, a psychiatrist in private practice, testified on behalf of Claimant. He examined her first in June 2003, noting the radical changes in her lifestyle and her livelihood have caused her great emotional upset. At the time of his June 2003 evaluation, she had had some panic attacks, was anxious and depressed, had poor sleep, lack of energy, poor concentration, and a pessimistic outlook of life. She felt useless and had a lack of interest and enthusiasm in things, she often felt blue and unhappy, and worries about her future health. Her social functioning was worsened and she rarely leaves the house or has friends come to visit her, but she communicates with friends by e-mail. He believes her complaints were very credible and reasonable, showing on psychological testing that she was a credible person. Dr. Mangelsdorf also administered the MMPI-II to test her authenticity and it showed she is a credible person. He believed her to be authentic, but having a lot of psychiatric problems, more than she wanted to admit to. There is a significant elevation for hypochondriasis and that is a recitation of a lot of somatic symptoms which she indeed has, and are not there in Dr. Mangelsdorf's opinion to manipulate somebody or to get people to feel sorry for her.

Dr. Mangelsdorf diagnosed Claimant as depressed and anxious because of her problems in adjusting to her new life-style. He diagnosed an adjustment disorder with depressed mood because she had significant impairment in her social and occupational functioning. She had symptoms of depressed mood, tearfulness, and feelings of hopelessness about the future.

Dr. Mangelsdorf assessed an Axis V score of 60, demonstrating somebody who had moderate depressive symptoms, moderate psychological symptoms, and then occasional panic attacks. Dr. Mangelsdorf testified she had an impairment of 25 to 30% on psychiatric conditions alone. He believes if the pulmonary condition were removed she would be a healthy person, but her Ativan seemed to be helpful to her, so she should continue to take that.

Dr. Mangelsdorf next saw Claimant in June 2005. In the interim, Claimant had done quite a bit to try to improve her situation she installed a central vacuum system, was using certain kinds of soaps that were free of chemicals, and she moved to a more rural location. She could now do some baking and some vacuuming, but still felt she was basically a prisoner at home. She had a new symptom, "brain fog", which she described as being somebody who might wake up in the middle of the night and be a little foggy until they get their bearings. She gets this sensation when she had been through one of her bad episodes and is feeling like she has the flu. Dr. Mangelsdorf presumed it to be physiological in nature. He opined she has a lack of oxygen when she gets these attacks, and the attacks cause her symptoms.

Dr. Mangelsdorf opined she has a 50% disability. He further testified that Claimant does not have Somatoform Disorder.

Dr. Wayne Stillings, a Psychiatrist board certified in Psychiatry and Neurology, testified on behalf of Employer. He evaluated Claimant on September 22, 2003. His review of Dr. Mangelsdorf's report of June 26, 2003, and MMPI-II testing shows Claimant was probably exaggerating some of her symptoms and presenting herself as a virtuous person.

Dr. Stillings administered the MMPI, and recorded the results of the MMPI in his report of September 22, 2003. He noted she reported 23 vague diffuse symptoms in eight organ system groups that cannot possibly fit in known medical syndromes. He believes the MMPI he administered and the MMPI-II administered by Dr. Mangelsdorf are relatively concordant, both identifying that Claimant is a somatizer; she will develop physical symptoms beyond what can be reasonably expected or proven or objectively established on testing or physical examination, a psychological process. He noted this is a subconscious process, just her personality style and this

is supported by elevations on various scales on the MMPI-II as administered by Dr. Mangelsdorf.

Dr. Stillings diagnosed Axis I, Undifferentiated Somatoform Disorder; Axis II, Rule Out Paranoid Personality Traits; Axis IV, not working, socially withdrawn; Axis V, GAF 65 with minimal symptoms but functioning pretty well.

Dr. Stillings does not agree with Dr. Mangelsdorf's diagnosis of adjustment disorder with depressed mood. He acknowledged the two work incidents have mildly aggravated her somatoform disorder. Dr. Stillings finds Claimant able to return to work and gainful employment without restrictions, and it would be beneficial for her to do so. Return to work would help her self-esteem and defocus her from her somatic reactivity, and quiet many of her physical complaints and restore her to productivity. He assessed a possibility of a 1 to 2 percent permanent partial psychiatric disability as a result of the two work incidents based on a very mild aggravation of the somatoform disorder. That means she has a mild aggravation due to her perception.

Dr. Robert Poetz, a board certified family medicine practitioner, testified on behalf of Claimant. He examined Claimant on May 16, 2005 to evaluate her claim against the Second Injury Fund. She has back pain on a daily basis, waking up every morning with lower back pain. She gets pain in her mid back, both hips, and her right hip is very stiff in the morning and walking increases her pain. When she bends over to pick up items, she gets pain, and gets pain in her right shoulder when she sits for a long period of time. Her hands frequently go numb, and she is unable to stay in one position too long.

On physical exam, he noted tightness in the right trapezium; myospasm in the paravertebral musculature; flexion to about 60 degrees and complaints of low back pain upon arising; straight leg raising and Fabere Patrick testing were positive for low back pain and pain upon arising. The positive Fabere Patrick testing means that in doing external rotation of the femoral head, there is resistance as well as myospasm in the lumbar and lumbosacral areas and pain is elicited in those areas. He assessed a 20% PPD rating to the body as a whole at the thoracic and lumbar spines as a direct result of the July 1996 motor vehicle accident. He opined this would present a hindrance or obstacle to her employment or reemployment.

John Stephen Dolan, a rehabilitation Counselor testified on behalf of Claimant. Mr. Dolan first saw Claimant August 21, 2003. Claimant was referred for an assessment by her attorney with a specific interest in whether homebound employment was or was not realistic.

Mr. Dolan concluded Claimant can no longer work in the type of work she's educated to do and has experience in. She cannot tolerate a normal work setting. The manner in which she presented herself was typical and normal. She has no training for any kind of computer-based homebound employment nor is she a good candidate for that; she is no more able to attend school to become trained form some type of homebound employment than she is to go to a job site. He concluded Claimant is not employable either outside the home or in the home because she has pulmonary reactions to too many substances. He went on to note that among the chemicals she has reactions to are ink and cleansers, and every company would have ink and cleansers present.

Mr. Dolan did not perform a labor market survey to determine if any employers in the St. Louis area had employment positions that could accommodate Claimant's work restrictions, nor did he contact any employers regarding telecommuter positions.

Karen Kane, a vocational consultant for the past fifteen years, testified on behalf of Employer. Ms. Kane was asked to evaluate Claimant's vocational prospects. Ms. Kane looked at Claimant's work history, education, her reported physical, medical issues, and Claimant's expressed desire to consider medical billing/coding employment or medical transcription. She undertook a labor market survey. She contacted schools regarding medical billing and coding employment training, specifically online training, and determined allied schools have programs for medical billing and medical coding which can be completed in 36 weeks. The course and testing is done online.

Ms. Kane opined Claimant would have sufficient skills to use a computer to participate in the program and

complete this type of employment training. Claimant has more than adequate reading abilities and mathematic abilities to participate in the workforce; has excellent problem solving and reasoning abilities; and the ability to organize and participate in the workforce. Employers contacted would consider reasonable accommodations, and were of the opinion that they could provide a clean air environment. Ms. Kane cannot say definitively that a current employer would have a higher obligation or desire than a new employer to provide accommodations.

The companies contacted had openings and periodically hire for medical billing positions. All the employers were willing to consider reasonable accommodations. She concluded that Claimant would be able to seek, accept, be hired, and maintain full-time stable gainful employment. If she obtained training for medical billing and medical coding, she would be able to seek employment that could be performed in an office environment or from her home.

Ms. Kane also looked at medical transcription, a position where you work in an office and/or you can work at home. BJC periodically has openings for medical transcriptionists and could accommodate a clean air environment, and they had some positions that would allow an individual to work from home. It continued to be her opinion Claimant would be able to seek, accept, be hired, and maintain full-time stable, gainful employment within these job titles and possibly similar job titles.

RULINGS OF LAW

Medical Causation

Based upon my observations of Claimant at trial, a comprehensive review of the evidence, and the application of Missouri law, I find:

I find and conclude Claimant has met her burden of proving she sustained the condition of bronchial reactivity and a depression secondary to her chemical exposures at work.

In this case, Claimant did not have any pulmonary symptoms prior to the chemical exposure at work on January 21, 2001. As a result of the work-place exposure she developed a number of symptoms including chest pain and sensitivity to chemical fumes. There is a difference in the diagnosis between Dr. Tuteur and Dr. Jacobs. Dr. Tuteur insisted Claimant has chemically induced bronchial reactivity. On the other hand Dr. Jacobs, also a pulmonologist, concluded that while he cannot rule out such a diagnosis, there is a lack of objective data to support such a diagnosis as a permanent rather than transient condition.

I find Dr. Jacobs' opinion to be more consistent with the medical evidence than Dr. Tuteur's. Employer referred Claimant to Dr. Tuteur, who is an expert in his field. He did not equivocate in his diagnosis of chemically induced bronchial reactivity disease despite the fact that all of Claimant's pulmonary function tests have been normal. Dr. Tuteur's diagnosis is based upon Claimant's subjective complaints, and a single aborted methacholine challenge test that was interrupted when Claimant began to hyperventilate. It is unclear whether Claimant began to hyperventilate because of her psychiatric condition or her physiological reaction to the methacholine.

Employer sent Claimant to Dr. Jacobs for a second opinion. Although Dr. Jacobs testified to a reasonable degree of medical certainty that he was unable to find any evidence of lung disease of any kind including reactive airways dysfunction syndrome, he did acknowledge that he is not 100% sure Claimant does not have the condition, and he felt Claimant should be allowed to work in a smoke free, fragrance free environment working in her own work space without co-workers, if she was unable to tolerate a normal work environment.

Putting aside Claimant's pulmonary condition, she has clearly developed a mental condition based upon the opinion of Dr. Mangelsdorf who diagnosed an adjustment disorder with depressed mood and an elevated hypochondriasis secondary to her chemical exposure. Although Dr. Stillings disagreed with Dr. Mangelsdorf's

diagnosis he assessed a one to two percent permanent partial psychiatric disability as a result of the work incidents based on a very mild aggravation of a somatoform disorder. Dr. Tuteur also felt Claimant has a psychological response.

Nature and Extent of Disability

Claimant has failed to prove her condition prevents her from engaging in gainful employment either at home or in a clean work environment. A claimant who alleges permanent disability must provide medical evidence showing with reasonable certainty that the disability is permanent. *Farmer-Cummings v. Future Foam*, 44 S.W.3d 830, 834 (Mo.App. W.D. 2001). A total disability is evidenced by an “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.” *Farmer-Cummings* at 834 citing §287.020(7) RSMo 2000 (emphasis in original); *Chatmon v. St. Charles County Ambulance*, 55 S.W.3d 451, 458 (Mo.App. E.D. 2001); *Baxi v. United Technologies*, 956 S.W.2d 340, 343 (Mo.App. E.D. 1997). The phrase any employment was held to mean “any reasonable or normal employment or occupation.” *Id.* citing *Reeves v. Kindell’s Mercantile Co., Inc.*, 793 S.W.2d 917, 920 (Mo.App. S.D. 1990). The relevant consideration is whether any employer in the usual course of business would reasonably be expected to employ Claimant considering her physical condition. *Id.*

Claimant is a highly educated worker with a skilled work background. Her educational background with a bachelor’s degree in science and her prior work experience as a research chemist at Sigma Chemical and at Monsanto confirm that she has the potential to work in the open labor market. Despite her bronchial disorder, depression, and back problems, she has full use of her hands, arms, legs and feet, is able to walk and sit albeit with some limitations due to back pain. She is able to drive with or without a mask to prevent exposure to fumes.

None of the treating or examining physicians have stated that Claimant may not work in any employment, but they all agree that her work should be confined to a clean air environment. The testimony of the medical experts in this case allow Claimant to engage in gainful employment, available either in her home, or in a clean work environment. Dr. Tuteur testified there probably exists a remunerative activity Claimant can engage in from her home. She has rescue medicine to carry should she encounter any irritant fumes. Dr. Jacobs opined she should attempt to work and to record her peak flows to determine if there was actually any impact on her respiratory system from any exposures. Dr. Stillings found Claimant able to return to work from a psychological perspective without restriction.

The vocational evidence shows Claimant is able to engage in work either from home, or in a clean air environment, which several employers can accommodate. Ms. Kane contacted employers who hire individuals to perform medical billing and coding, or medical transcription, and several were willing to consider reasonable accommodations including a clean air environment or work from home. She concluded Claimant would be able to seek, accept, be hired and maintain full-time stable gainful employment. Mr. Dolan did not perform a labor market survey to determine if any employers in the St. Louis area had employment positions that could accommodate Claimant’s work restrictions, and he did not contact any employers regarding telecommuting positions.

Taking into consideration her bronchial reactivity, anxiety, and depression, I find that Claimant has a permanent partial disability of 25% of the body as a whole for which her employer is liable, and further conclude Claimant has failed to prove her claim of permanent total disability.

Temporary Total Disability and Credit for Disability Payments by Employer

None of the doctors testified that Claimant has reached maximum medical improvement. The purpose of temporary total disability benefits is to cover an employee’s healing period, and are owed until claimant can find employment or the condition has reached the point of maximum medical improvement.

In this case, Claimant never returned to work after November 8, 2001, Claimant's condition has remained essentially unchanged since that time. After Claimant left her work for Employer, she has been unable to work in an environment that exposes her to any chemicals or irritating substances.

I find Claimant is not entitled to any temporary total disability benefits after November 8, 2001. Claimant did receive both short term and long term disability benefits from Employer, and Employer's request for a credit for same is moot.

Responsibility for Future Medical Care and Filtration Equipment

Claimant submitted a request for reimbursement for various items relating to her condition of chemically-induced bronchial reactivity totaling \$2,061.03 for replacement filters and UV bulbs for portable room filter units (\$1,631.52); replacement filters for Lennox PureAir HVAC system filter (\$56.45); chemical/fragrance free soaps, shampoos, conditioners, dishwashing hand and machine soaps (\$134.64); charcoal masks (\$114.87; \$33.50; \$38.48; 24.10); and chemical/fragrance-free dish soap, lotion (\$24.47). She also submitted bids for a 40KW generator for \$17,991.81 and \$14,390.13 for a 20 KW generator to provide an emergency back-up power system in case there is a power failure.

Dr. Tuteur testified Claimant's various filtration is needed to avoid exposure to "chemical" triggers. Dr. Jacobs rendered his opinion in August 2004, regarding the reasonableness and necessity of certain medical items. Room air purifier with replacement parts might be a legitimate purchase. Dr. Jacobs testified if Claimant were to need a backup generator, it was inconceivable that a backup generator would be necessary for the entire home; she could almost certainly be maintained in a smaller portion of the home with electrical less than the 30 and 40 kilowatt generator estimates previously submitted. He noted back-up generators for \$23,250.00 and \$16,983.98 were unreasonable.

I find the costs for past purchases of replacement filters and charcoal masks to be reasonable and totaling \$1,898.92. Section 287.140 RSMo provides that Employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may be reasonably required to cure and relieve from the effects of the injury. Because I do not believe shampoo and cleaning agents fit within the statute, Claimant's request for reimbursement for those items is denied. Claimant's request for reimbursement for a back-up generator is also denied. Claimant has protection in the form of her PAPR which has a battery back up in the event of a power outage as well as her rescue medicine should symptoms develop.

I find Claimant is entitled to future medical care in the form of medications and treatment by a pulmonologist. Dr. Tuteur testified that Claimant would need medications for life. The portion of this award related to future medical treatment shall remain open. Employer shall continue to provide ongoing medical treatment to Claimant with a qualified pulmonologist chosen by Employer.

Liability of Second Injury Fund

In order for Fund liability to attach, a preexisting disability must combine with a disability from a subsequent injury such that the two disabilities combine to form a greater disability than that which would have resulted from the new injury alone and of itself, or the preexisting disability combines with the subsequent injury to create permanent total disability. *Lorentz v. Missouri State Treasurer*, 72 S.W.3d 315, 318 (Mo.App. S.D. 2002). A pre-existing injury which is a hindrance to an employee's ability to compete in the open labor market will trigger Fund liability. *Id.* at 319. In the present case, Claimant has shown her preexisting back injury acts as an impediment to

employment. Specifically, Dr. Poetz testified Claimant's injury as a direct result of the July 1996 motor vehicle accident would present a hindrance or obstacle to her employment or re-employment. I find her preexisting disability is 12.5% of the body as a whole. This preexisting disability combines with her present permanent partial disability from the chemically induced bronchial reactivity and psychological disorder as aggravated by her pulmonary condition of 25% of the body as a whole to render her more disabled than she would be from her employment related conditions alone. I find a load factor of 10% shall be applied.

Conclusion

Claimant has sustained a work injury that resulted in a permanent partial disability of 25% of the body as a whole. Claimant is entitled to reimbursement for past medical expenses of \$1,898.92, and Employer shall provide future medical treatment as recommended by a qualified pulmonary specialist of Employer's choosing. I also find the Second Injury Fund liable for 15 weeks of compensation or \$4,713.90. Claimant's request for past temporary total disability benefits is denied.

This award is subject to an attorney's lien in the amount of 25% in favor of Claimant's attorney, Mr. Kent Wolfram.

Date: _____

Made by: _____

Margaret D. Landolt

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret

Director

Division of Workers' Compensation

Employee: Melissa Lantz

Injury No.:

01-141314

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified to award employee permanent total disability benefits.

The administrative law judge correctly found that the employee met her burden of proof that she sustained the condition of bronchial reactivity and depression secondary to her chemical exposures. However, the administrative law judge found that employee was not permanently and totally disabled and awarded only permanent partial disability benefits. The administrative law judge erred in not finding that employee was permanently and totally disabled.

Permanent and total disability is defined by section 287.020.7 RSMo (2000) 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.

The phrase "inability to return to any employment" has been interpreted as the inability of the employee to perform the usual duties of the employment under consideration in the manner that such duties are customarily performed by the average person engaged in such employment. The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. Total disability means the "inability to return to any reasonable or normal employment." An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

Gordon v. Tri-State Motor Transit Company, 908 S.W.2d 849, 853 (Mo.App. S.D. 1995) (citations omitted).

Employee was able to prove that her condition prevented her from engaging in gainful employment both at home and in a clean work environment. No reasonable employer would be expected to employ employee given the severity of her condition and the highly controlled atmosphere that would have to be maintained in order to provide a sufficiently safe and clean work environment. The list of things that could trigger a reaction in employee is numerous and trying to control the environment against such common irritants is too cumbersome a task for any employer. Not only was employee's own employer unable to accommodate her work restrictions, but employee herself was unable to maintain an environment necessary to avoid exposures in her own home. Therefore, the expectation for an employer to maintain such an environment is unreasonable. Due to the vast number of irritants, including exhaust fumes, which would be encountered on a daily commute to work, it would be nearly impossible for employee to come to work without being exposed to something that would provoke an attack and subsequently exacerbate her condition. Therefore even periodic trips into work would not be possible as they would put her at risk.

Furthermore, employee testified that she was not aware of any reasonable or normal employment that she would be able to perform and has been unable to find a job that would accommodate her.

The Commission may consider all of the evidence, including the testimony of the employee, and draw all reasonable inferences in arriving at the extent of disability. *Sifferman v. Sears, Roebuck & Co.*, 906 S.W.2d 823,826 (Mo.App. S.D. 1995) (overruled in part by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.banc 2003)). "The testimony of . . . lay witnesses as to facts within the realm of lay understanding can constitute substantial evidence of the nature, cause, and extent of disability, especially when taken in connection with, or where supported by some medical evidence." *Eimer v. Board of Police Comm'rs*, 895 S.W.2d 117, 120 (Mo.App W.D. 1995) (overruled in part by *Hampton*, 121 S.W.3d 220); *Ransburg v. Great Plains Drilling*, 22 S.W.3d 726, 732 (Mo.App. W.D. 2000) (overruled in part by *Hampton*, 121 S.W.3d 220).

Employee testified that she was not safe from exposures in her own home. Employee testified that she was forced to air out mailed materials for days or even weeks at a time before she was able to bring them into the house. She had several filters operating throughout her house to eliminate potential irritants. However, it was nearly impossible for her to eliminate all irritants inside the home even when she implemented vigorous environmental controls. For this reason, employee believed she would not be able to maintain employment even if her work was done exclusively from home.

Additionally, Dr. Tuteur testified that employee was 100% disabled from returning to her previous job and is

permanently and totally disabled from employment unless she can get employment in an environment such as her home where there is no contact which she cannot control. Taking this into consideration with testimony provided by employee, employability is implausible.

Based upon my review of all the evidence, I find employee has met her burden by showing that she is unable to compete in the open labor market and that no employer would reasonably be expected to hire employee in her present physical condition. I conclude that employee is permanently and totally disabled due to her bronchial reactivity disorder. Accordingly, I would modify the decision of the administrative law judge and award permanent total disability benefits.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member