

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

Injury No. 05-087823

Employee: Carolyn Law-Clark
Employer: McLeod USA, Inc.
Insurer: American Home Assurance

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 allowing 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

Future medical – nursing

We agree with the administrative law judge's determination that employer/insurer are required pursuant to § 287.140 RSMo to provide employee with that future medical treatment that may reasonably be required to cure and relieve the effects of her carpal tunnel syndrome and resultant conversion disorder, because employee proved that there is a reasonable probability that she has a need for such care flowing from the work injuries she suffered. See *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 51-4 (Mo. App. 2008). We also agree with the administrative law judge's determination that employee did not persuasively demonstrate a reasonable probability that she has a need at this time for specific future treatment in the form of nursing services.

Having said that, we wish to make clear that the future medical portion of the award will remain open and subject to modification by this Commission. See *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015). Our award today, therefore, should not be read as preclusive of the possibility that employee may be able to demonstrate, at some point in the future, a need for nursing care substantiated by persuasive evidence.

Living employee

In *White v. Univ. of Mo.*, 375 S.W.3d 908 (Mo. App. 2012), the court held that the Commission exceeded its powers in declaring that a dependent's claim for permanent total disability benefits "qualifies for application of the *Schoemehl* case," because the employee was still living at the time the Commission issued its award. *Id.* at 910, 913. Contrary to the administrative law judge's statement on page 19 of her award that "the fact that [employee] is not yet deceased makes no difference," the *White* decision makes clear that the Commission is limited to making a finding of dependency where the employee is still living. Pursuant to *White*, we must clarify the award of the administrative law judge as to the issue whether employee's husband and daughter will be entitled to receive her permanent total disability benefits under *Schoemehl v. Treasurer of State*, 217 S.W.3d 900 (Mo. 2007). We

Employee: Carolyn Law-Clark

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affirm the administrative law judge's (implied) finding that John Clark and Sahara Truly were employee's "dependents," as that term is defined in § 287.240(4) RSMo, at the relevant time for purposes of *Schoemehl v. Treasurer of State*, 217 S.W.3d 900 (Mo. 2007). But because employee is still living, the right of John Clark and Sahara Truly to receive benefits pursuant to *Schoemehl* "remains contingent, and cannot be adjudicated at this time." *White*, 375 S.W.3d at 912.

Conclusion

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

The award and decision of Administrative Law Judge Victorine Mahon, issued March 23, 2015, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm 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 6th day of November 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Carolyn Law-Clark

Injury No. 05-087823

Dependents: John Clark (spouse) and Sahara Law (daughter)

Employer: McLeod USA, Inc.

Additional Party: None

Insurer: American Home Assurance

Hearing Date: January 6 and January 7, 2015

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: VRM/db

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: June 8, 2005.
5. State location where accident occurred or occupational disease was contracted: Greene County, 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: Carpal tunnel syndrome developed from repetitive trauma, which thereafter resulted in Conversion Disorder.
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: Hands/body as a whole.

- 14. Nature and extent of any permanent disability: Permanent total disability.
- 15. Compensation paid to-date for temporary disability: \$10,219.53.
- 16. Value necessary medical aid paid to date by employer/insurer? Amount unavailable.
- 17. Value necessary medical aid not furnished by employer/insurer? None.
- 18. Employee's average weekly wages: \$494.88.
- 19. Weekly compensation rate: \$329.92.
- 20. Method wages computation: By agreement.

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Temporary Total Disability –

From May 14, 2006 to May 13, 2010, a period of 208 and 4/7 weeks at the stipulated amount of \$329.92 = **\$ 68,811.89**

Past Permanent Total Disability –

From May 13, 2010 to the first date of hearing on January 6, 2015, a period of 242 and 5/7 weeks at the stipulated rate of \$329.92 = **\$ 80,076.30**

TOTAL: \$148,888.19

- 22. Second Injury Fund liability: None.
- 23. Future requirements awarded:

Employer/Insurer shall continue to pay Claimant the weekly amount of \$329.92 in permanent total disability for remainder of Claimant's life. Should Claimant predecease either of her dependents, the dependent(s) shall receive Claimant's permanent total disability benefits for their remainder of their lifetimes, pursuant to *Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. banc 2007). This Award is subject to modification and review as provided by law. Interest shall be paid as provided by law.

Compensation awarded to Claimant shall be subject to a lien of 25 percent in favor of the following attorney for necessary legal services rendered to Claimant: John Wise. Mr. Wise is to satisfy the outstanding lien of \$2,575.47 filed by attorney Robert Beezley.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Carolyn Law-Clark

Injury No. 05-087823

Dependents: John Clark (spouse) and Sahara Law (daughter)

Employer: McLeod USA, Inc.

Additional Party: None

Insurer: American Home Assurance

Hearing Date: January 6 and January 7, 2015

Checked by: VRM/db

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

INTRODUCTION

The undersigned Administrative Law Judge conducted a final hearing in this case to determine the liability of Employer and its Insurer. Attorney John Wise represented Claimant Carolyn Law-Clark. He seeks a 25 percent fee of any amounts awarded. Attorney William C. Love appeared on behalf of the employer McLeod USA, Inc., and its insurer, American Home Assurance. The parties stipulated to the following facts and issues.

STIPULATIONS

1. On or about June 8, 2005, Carolyn Law-Clark (Claimant) sustained an occupational disease by repetitive trauma. This injury arose out of and in the course of Claimant's employment with McLeod USA, Inc.
2. At the time of this injury, Claimant was an employee of McLeod USA, Inc., a Missouri employer fully insured with American Home Assurance. Both Claimant and Employer were subject to the provisions of the Missouri Workers' Compensation Law.
3. The injury occurred in Greene County, Missouri. Venue and jurisdiction is proper in Springfield, Greene County, Missouri.
4. There is no challenge to the statute of limitations or notice.
5. Claimant's average week wage was \$494.88, yielding a compensation rate of \$329.92 for all purposes.
6. Employer/Insurer paid \$10,219.53 in temporary total disability until May 14, 2006.
7. Employer/Insurer agree to satisfy outstanding medical liens if the Fact Finder determines that Claimant has suffered complications resulting in work-related reflex sympathetic dystrophy or complex regional pain syndrome (RSD/CRPS).

ISSUES

1. Other than the bilateral carpal tunnel syndrome which Employer/Insurer have acknowledged as compensable, did Claimant sustain complications from the bilateral carpal tunnel syndrome and related surgeries?
2. If Claimant has Conversion Disorder, is it medically and causally related to the work injury?
3. What is the nature and extent of Claimant's permanent disability?
4. What is the date of maximum medical improvement?
5. If Claimant reached maximum medical improvement after May 14, 2006, what, if any, temporary total disability is due?
6. Are Employer/Insurer liable for payment of any liens?
7. Are Employer/Insurer liable for any future medical treatment?
8. Are Claimant's spouse and daughter entitled to continuing benefits as dependents, pursuant to *Schoemehl v. Treasurer*, 217 S.W.3d 900 (Mo. banc 2007)?
9. What, if any, attorney's fee is due? Attorney Wise has agreed to satisfy the outstanding lien of Attorney Robert Beezley in the amount of \$2,575.47.

EXHIBITS

Claimant offered the following exhibits, which were admitted:

- A. Ozark Family Clinic – Medical Records
- B. Cox Health – Medical Records
- C. Boyd Crockett, M.D. – Medical Records
- D. Boyd Crockett, M.D. – Report
- E. Humana Letter
- F. Anthem Letter
- G. Boyd Crockett, M.D. – Deposition (2/20/2008)
- H. Boyd Crockett, M.D. – Deposition (10/19/2011)
- I. Wayne Wallender, D. O. – Deposition
- J. Robert Paul, M.D. – Deposition
- K. Phillip Eldred – Deposition
- L. Nursing Services Chart
- M. Layla Ziaee, M.D. – Deposition

Employer/Insurer offered the following exhibits, which were admitted:

1. William Charles Parsons, M.D. – Deposition
2. Tim Frederick, M.D. – Deposition
3. Barbara Radovanovich, Ph.D. – Deposition
4. Carolyn Law-Clark – Deposition
5. John Clark – Deposition
6. Website Statement – RSD Angels
- 7 – 9. Drawings from Website
10. Curriculum Vitae – Carolyn E. Inniss, M.D.

Also admitted were four volumes of medical records submitted as Joint Exhibits Volumes I through IV. The parties stipulated that any reference to a report by Dr. Schlafly within these Joint Exhibits is to be stricken.

LIVE TESTIMONY

Claimant Carolyn Law- Clark
Dr. Carolyn E. Inniss

FINDINGS OF FACT¹

Carolyn Law-Clark is an articulate woman with three years of college education having majored in psychology. Although she never attained her baccalaureate, she received a technical degree in medical assisting. She has a varied employment history which includes working as an underwriter for an insurance company and performing customer service. Claimant was 38 years old when she was working for McCleod USA, Inc., in a position that required extensive data input. On or about June 8, 2005, Claimant developed symptoms of bilateral carpal tunnel syndrome as a result of the repetitive work. Employer/Insurer provided conservative care. When that treatment option failed, Employer/Insurer provided surgical releases for each hand. Claimant filed her claim for compensation on August 26, 2005.

No one disputes the initial diagnosis of bilateral carpal tunnel syndrome. No one contends that the initial course of treatment, including surgery, was inappropriate. The seminal issue is whether Claimant's current condition is caused by a Conversion Disorder, Complex Regional Pain Syndrome (CRPS),² or both of these conditions. The parties do not dispute that if Claimant suffers RSD/CRPS as a result of the carpal tunnel syndrome and related surgeries, the condition is work related and the treatment flows from the original work injury. If Claimant suffers from Conversion Disorder alone, and not CRPS, Employer asserts that the condition is unrelated to the

¹ Any marks or highlighting in the exhibits were present at the time of admission. The Administrative Law Judge made none of the markings.

² Complex Regional Pain Syndrome (CRPS) previously was called Reflex Sympathetic Dystrophy (RSD). The terms often are used interchangeably, and at least one physician indicated that the terms are synonymous.

work injury. Employer asserts that the carpal tunnel surgeries merely triggered the manifestation of an underlying psychological disorder.

Conversion Disorder is a recognized psychiatric disorder involving a physical manifestation of an underlying emotional or psychological issue. Stated another way,

Conversion Disorder is when the person has psychological issues that present as medical issues. And the actual diagnosis of it is largely dependent on medical profession saying that there is either no medical reason that the person should be presenting with those symptoms or that the medical issues are insufficient to account for the symptoms.

(Deposition of Dr. Radovanovich, Exhibit 3, p. 26). Conversely, RSD/CRPS is a “an over the top response of the neurological system...that causes abnormal sensations allodynia, which is a term for nonpainful stimulation causing pain such as sheets on an arm or wind flowing against an arm....” (Deposition of Dr. Crockett, Exhibit G, pp. 10-11).

As one might expect from such a complex and unusual medical presentation, the experts do not agree on Claimant’s diagnosis or causation. Claimant has seen nearly two dozen health care providers over a course of treatment that has spanned ten years.

Original Treatment – June 2005 to April 2006

In June 2005, Claimant saw **William Parsons, M.D.**, with complaints of bilateral hand and wrist pain and night paresthesias. Dr. Parsons first tried conservative care, including splints. On August 16, 2005, after conservative treatment failed to resolve Claimant’s complaints, Dr. Parsons referred Claimant to **Rodney K. Geter, M.D.**, who specializes in plastic and reconstructive surgery. Although Claimant’s nerve conduction study was within normal limits, Dr. Geter found that Claimant had positive Tinel’s and Phalen’s signs. He believed Claimant was a good candidate for endoscopic carpal tunnel releases. He performed the left release on September 2, 2005, and the right hand surgery on September 16, 2005. Claimant said that while still in the recovery room, immediately after waking from anesthesia following her first surgery, her hands “became in a fist position.” (Exhibit 4, p. 32). The operative notes and related medical records of September 2005 fail to substantiate such an *immediate* complication.

A few weeks later on October 7, 2005, Dr. Geter did report that Claimant had problems returning to work because of pain and swelling. He restricted what Claimant could do at work.

When Dr. Parsons saw Claimant on October 10, 2005, she complained of pain, cold and shaking hands, and difficulty straightening her fingers. Claimant advised Dr. Parsons that her symptoms had begun “a week and a half previous to me seeing her.” (Exhibit 1, p. 11). This also would have been a few weeks after the second surgery. Because her presentation was unusual, Dr. Parsons considered the development of RSD/CRPS, and referred Claimant to **Jeff Tucker** for occupational therapy. Her initial evaluation for physical therapy was on October 11, 2005 at St. John’s Nixa Physical Therapy Clinic. Records at that time indicate that Claimant had begun posturing, which included flexed digits.

By October 25, 2005, more than one month following the right hand surgery, Dr. Geter noted symptoms of clenching and spasms. He found these symptoms unrelated to the bilateral carpal tunnel syndrome and surgical releases. He found that the carpal tunnel syndrome was resolved. He transferred postoperative care to Dr. Parsons, who was the referring physician.

Jeff Tucker, the outpatient occupational therapist, noted in a report dated October 31, 2005, that Claimant was clenching her fingers (but not the thumb). While she had made only minimal progress with the left hand, she had made progress with regard to active digit extension on the right. Dr. Parsons saw that Claimant could actually open the right hand voluntarily, even though she kept it clenched most of the time. Dr. Parsons ordered an MRI of the brain to determine whether Claimant had suffered a stroke. The MRI was normal. Dr. Parsons then referred Claimant to a neurologist, *Dr. Tim. E. Frederick*.

Dr. Frederick examined Claimant on November 8, 2005. He found that Claimant had none of the classic hallmarks of RSD/CRPS. Claimant's sensation to light touch was intact. The right hand was "clearly not swollen." Neither hand felt cool. Coloration was normal in each hand, as was the skin on the arms. There was no swelling in the left elbow, although he was unable to tell if that left hand was swollen because Claimant would not open the left hand. Dr. Frederick found no physical explanation as to why Claimant's fingers were flexed or clenched. He opined that Claimant did not meet the criteria for RSD/CRPS, but had a functional overlay.

It is my opinion that she has a functional overlay. I will not speculate on what psychological reasons might be present for this occurrence. She does not have the cardinal physical findings for reflex sympathetic dystrophy. The fact that with encouragement she was able to open her right hand certainly supports the notion that this is a functional problem. If one logically thinks of the anatomic process, surgery at the wrists, if anything, should cause decreased flexor tone rather than increased tone. If indeed there were any complications from the surgery.

I have encouraged her to be brave and courageous. I think with determination on her part, she can overcome the apparent difficulties which she is experiencing with her hands. I did not attempt any medical-technical explanation to her as judging from her demeanor, the discussion would have likely had no influence over her thinking.

(Joint Exhibit III, p. 874). Dr. Frederick's office scheduled Claimant for a follow-up examination within one month, but it did not occur.

On November 17, 2005, Claimant underwent a Radionuclide Bone Scan, Phase Three (also referenced as a Phase-3 Bone Scan). This is a confirmatory, objective test used to determine whether the patient has RSD/CRPS. The test result was negative.

Claimant next saw *Dale A. Halfaker, Ph.D.*, for a neuropsychological assessment on November 30, 2005. After testing and evaluation, Dr. Halfaker found no evidence of malingering but a strong psychological overlay. He said, "A diagnosis of a conversion disorder or somatoform disorder not otherwise specified appears to be indicated." (Joint Exhibit III, p. 892). Dr. Halfaker agreed with the assessment of Dr. Frederick. He strongly suggested that Claimant treat with a psychiatrist.

Dr. Parsons discontinued Claimant's physical therapy when such treatment appeared unsuccessful in resolving Claimant's symptoms, although she received instruction in home exercises. Prior to her release from Dr. Parsons' care, Claimant saw her personal physician, **Jess Lyon, D.O.**, who recommended that Claimant see **Boyd D. Crockett, M.D.**, a physician who is board certified in physical medicine and rehabilitation with Southwest Spine and Sports. Claimant could not recall whether she ever informed Dr. Parsons that she had begun treating with Dr. Crockett.

Dr. Crockett first examined Claimant on December 1, 2005. Dr. Crockett opined that Claimant had RSD/CRPS and recommended bilateral stellate ganglion blocks and Lyrica. Dr. Crockett testified that when he first began treating Claimant, he had no records from Dr. Parsons and no surgery records of Dr. Geter. His sole information was Claimant's history and a summary prepared by the referring physician, Dr. Lyon. Dr. Crockett said in his February 20, 2008 deposition that he had been unaware that Claimant had seen Dr. Halfaker for a neuropsychological evaluation. He did not recall Claimant ever telling him that she had been advised to get counseling for Conversion Disorder.

On December 15, 2005, Claimant first saw **Barbara Radovanovich, Ph.D.**, a psychologist who works within the Cox Hospital network at the Center for Advanced Pain Management, upon a referral from Dr. Crockett. Dr. Radovanovich is sometimes referenced in the record as Dr. Barb. Dr. Radovanovich testified that her role in Claimant's care was to help Claimant develop coping skills and relaxation techniques to help manage her chronic pain. At the time, Dr. Radovanovich was unaware that Claimant previously had been diagnosed with Conversion Disorder. Claimant did not inform her of the diagnosis. Dr. Radovanovich did not have Dr. Halfaker's report. She only was aware of Dr. Crockett's diagnosis of RSD/CRPS. She specifically stated that she performed no psychological testing until many years later, and her role was not to treat Conversion Disorder. On February 6, 2006, however, Dr. Radovanovich noted that Claimant refused to set goals and would not do anything uncomfortable. Dr. Radovanovich urged Claimant to make a greater effort in her occupational therapy. In April 2006, Claimant had quit going to see Dr. Radovanovich. The psychologist learned from the physical therapist that Claimant also had quit going to therapy. Dr. Radovanovich did not see Claimant again until April 2008.

Upon Dr. Crockett's referral, Claimant next saw **Dr. Thomas Brooks, M.D.** at Ozark Anesthesia Associates. Beginning January 10, 2006, Dr. Brooks treated Claimant with multiple procedures including a trial of stellate ganglion blocks, interscalene blocks, thoracic sympathetic blocks, thoracic sympathetic radiofrequency, and thoracic epidurals, all without any significant long-term relief. Claimant continued to clench her fingers – but not her thumb – which several medical professionals have indicated is inconsistent with peripheral nerve damage.

In a consultation report dated February 27, 2006, **Jerome Lisk, M.D.**, with the Cox Department of Neurology wrote:

Assessment

This is a 39-year old caucasian female with psychogenic movement disorder involving the left hand. It is unable to be determined whether the patient has any secondary gain or there is any malingering involved here.

Plan

I will suggest the patient has neuropsychological evaluation to determine any of these other psychogenic or non-psychogenic non-organic issues.

(Exhibit II, p. 459).

In April 2006, Claimant returned to Dr. Parsons who ordered a nerve conduction study for the upper right extremity. Again, the result was normal. Dr. Parsons opined in a letter to AIG Claims Services that he agreed with the assessment that Claimant has a subconscious conversion reaction with involuntary active contraction of the fingers. "It is my opinion that this is a pathological psychiatric response that is not directly related to the workers' compensation injury. The surgery has simply unmasked an underlying psychiatric 'issue' that is yet to be defined." (Exhibit III, p. 908).

On April 28, 2006, Dr. Parsons noted Claimant had surgical scars and issued a final rating of 6 percent to the body as a whole for the work-related bilateral carpal tunnel syndrome, and 46 percent to the body for an unrelated conversion reaction. By the time he saw Claimant at the final rating, her left hand was becoming fixed and the fingers no longer moved. As Dr. Parsons testified, Claimant's problem was not a damaged median nerve from the surgery because "the initial response would not be flexing the fingers because the median nerve controls the muscles that do pull the fingers down. The opposing muscles would actually extend them." (Exhibit 1, p. 25). In his rating report, Dr. Parsons stressed Claimant's need for psychiatric treatment.

It is felt that there is a strong psychiatric component which has not been adequately addressed and I strongly urge that the patient have this situation addressed. The opinion is not only from me, but also is shared by the two Board Certified Neurologists and the Neuropsychiatric Professional that evaluated Ms. Law.

(Exhibit III, p. 910). Dr. Parsons agreed in deposition that whatever caused Claimant's hand problems, she is not capable of working in her previous job and would need a "very accommodated position for her to work of any type." (Exhibit III, p. 34).

Even though Claimant continued to seek treatment on her own, she did not investigate the need for psychiatric or psychological help. Asked why she never sought treatment for the Conversion Disorder, Claimant explained that she told her physicians about the diagnoses and decided to "let them make the decision what they thought it was." (Exhibit 4, p. 56). The record indicates, however, that several doctors were unaware of the diagnosis of Conversion Disorder when they began treating Claimant.

Subsequent Treatment and Evaluations

Dr. Boyd D. Crockett continued to care for Claimant for many years after Dr. Parsons issued his final rating. Dr. Crockett tried multiple modalities to alleviate Claimant's pain symptoms with little success. Dr. Crockett continues to disagree with the diagnosis of Conversion Disorder. He believes Claimant suffered from RSD/CRPS brought on by the carpal tunnel releases.

Dr. Crockett believed that RSD/CRPS can cause focal dystonia, as well as allodynia, but he agreed that Conversion Disorder also could cause such symptoms. He admitted that Conversion Disorder can cause symptoms of anything. Dr. Crockett admitted that if Conversion Disorder was something that would be the cause of Claimant's pain, it would "certainly muddy up" his ability to draw a causal connection between Claimant's pain and RSD/CRPS (Exhibit G, p. 76). Dr. Crockett admitted he was not very familiar with Conversion Disorder, having treated only one case while he was in training. He was not treating Claimant for Conversion Disorder because he was treating RSD/CRPS. Dr. Crockett finally conceded that Claimant's condition has a psychological component, but still believed Claimant had an unfortunate response to carpal tunnel syndrome.

In May 2006, Claimant saw **David A. Carpenter, M.D.**, an Associate Professor of Neurology at Washington University in St. Louis. He suggested additional testing, which Claimant declined.

Dr. Michael Grillot, an orthopedic specialist, examined Claimant in December 2006 for ongoing bilateral upper extremity complaints. He initially diagnosed RSD/CRPS, performed a repeat carpal tunnel release, and tendon transfers on the left hand because Claimant was having some hygiene problems. The hand now is hyper extended. The right hand remains clenched. Dr. Grillot said it was unusual to have a flexion contracture of the fingers following a carpal tunnel release. After noting that Claimant had been treated for RSD/CRPS prior to surgery, he said, "It is possible that this is a conversion disorder." (Exhibit IV, p. 1337). When asked about causation, Dr. Grillot said that one way or another, Claimant had a release and contracture of the fingers which he treated based on her condition at the time of surgery and failure of therapy. He said even if Claimant has Conversion Disorder, he believed early therapy would have improved her chances of not having contractures. St. John's Nixa Physical Therapy Clinic records indicate that Claimant began physical therapy three and one-half weeks following her right carpal tunnel release and five and one-half weeks after the left carpal tunnel release (Exhibit III, p. 1042). Claimant did not have early psychological therapy.

E. Bruce Toby, M.D., an orthopedic surgeon at Kansas University, examined Claimant in May 27, 2007. He believed Claimant was a poor candidate for any further surgery. He believed Claimant was sending commands to the muscles in the forearms to flex the fingers through the normal brain channels independent of any type of pathological arm problems but that the patient did not perceive the voluntary signals. They were sent below awareness or at the unconscious level. He opined that flexion posturing is extremely unusual for a failed carpal tunnel surgery, median nerve hydrogenase injury, or RSD/CRPS.

Layla Ziaee, M.D., a psychiatrist, examined Claimant in March 2008, for the purpose of an evaluation and not treatment. Dr. Ziaee believed Claimant had an 80 percent permanent partial disability to the body as a whole, with 50 percent of that amount attributable to a Conversion Disorder, and 30 percent attributable to a major depressive disorder. She indicated that the Conversion Disorder was secondary to the on-the-job injury to Claimant's hands. Dr. Ziaee noted that Claimant had no prior psychiatric history, but also that Conversion Disorder normally is precipitated by some type of acute stressor. In this instance, Dr. Ziaee identified the stressor as being a combination of the physical injury followed by surgery and the psychological stress caused by sustaining such injury. Although Dr. Ziaee admitted that the stressor could be some

other event in the patient's life, there was no evidence of another stressor. Claimant had identified her childhood as being good. The psychiatrist also found no evidence of a dependent personality. Dr. Ziaee said Claimant would greatly benefit from intensive psychotherapy and regular medical management by a psychiatrist. Dr. Ziaee said if Claimant's depression was aggressively treated, her underlying Conversion Disorder also may improve.

Dr. Barbara Radovanovich saw Claimant again in 2008 and treated her sporadically for pain management techniques upon Dr. Crockett's referral. It was not until January 13, 2010, that Claimant first mentioned to Dr. Radovanovich that a workers' compensation insurer was claiming her problems were related to Conversion Disorder rather than RSD/CRPS. Claimant never provided Dr. Radovanovich with a copy of Dr. Halfaker's report. She never mentioned to Dr. Radovanovich that she had seen Dr. Ziaee. Dr. Radovanovich was unaware until late 2011 that Claimant ever had been *diagnosed* with Conversion Disorder. But as the psychologist explained, it would not have changed her approach to treating Claimant because her focus was on pain management. She was not attempting to cure any psychological condition. She did not make a separate diagnosis but relied on the one made by Dr. Crockett.

Caryn S. Feldman, a licensed clinical psychologist, provided a health behavioral assessment on May 5, 2008. She believed Claimant was a candidate for a multi-disciplinary chronic pain management program that would include self-managed pain-management techniques. She noted that Claimant's family "appears to respond to the pain in a solicitous manner" and Claimant's pain problem appears to be "affected by psychosocial factors that could be addressed with psychological intervention." (Joint Exhibit IV, p. 1401).

On May 7, 2008, Claimant saw **Petra G. Joseph, M.D.**, at the Chronic Pain Center Division of the Rehabilitation Institute of Chicago. While Dr. Joseph diagnosed the patient with CRPS type I, he repeated the finding of the psychological social issues found by Caryn Feldman, stating these "may be inadvertently reinforcing pain and pain behaviors." (Exhibit IV, p. 1374). Dr. Feldman recommended that Claimant start a multi-disciplinary chronic pain management program that would include, "cognitive-behavioral techniques for managing chronic pain; b) stress management; 3) emotion regulation; d) biofeedback-assisted relaxation training; 3) family education and counseling; f) vocational counseling." (Exhibit IV, p. 1375). Surprisingly, when Claimant saw Mark Woods, M.D., at the Ozark Family Clinic, for treatment of hypertension, she told Dr. Woods that the clinic in Chicago "had no further recommendations for her therapy." (Joint Exhibit IV, p. 1406). This clearly was not true.

For two days in July 2008, and again in February 2013, **Dr. Rosalyn Inniss**, a board certified psychiatrist with additional qualifications in forensic psychiatry, examined Claimant. Dr. Inniss also testified live at the hearing. Dr. Inniss, who had a complete history and medical records, determined that Claimant suffered from a depressive disorder, not otherwise specified, and a dependent personality. Her primary diagnosis was Conversion Disorder, which Dr. Inniss defined as a physical manifestation of an emotional or psychological issue. She said the condition was "rare even in Freud's day." In making that diagnosis, Dr. Inniss observed that the physical symptoms did not fit the circumstances. For instance, Claimant acted out by clenching her fists, but no one has been able to explain the fists being clenched from a physiological or anatomical component. She said if it was carpal tunnel surgery that had gone awry, it would not have

resulted in a flexion contracture. Moreover, an RSD/CRPS diagnosis is typically not an early diagnosis, as it was in this case.

Dr. Inniss emphasized that the carpal tunnel and related surgeries did not cause the Conversion Disorder. Rather, it was a vehicle for the expression of her Conversion Disorder. "It gave it a means to be expressed." Having reviewed the medical records in detail, Dr. Inniss said Claimant continues to present with a variety of physical symptoms "that cannot be fully explained based on sequelae from her surgery." She said Claimant is mired in her diagnosis of RSD and assiduously avoids contemplating any psychological factors as a part of her difficulty. Dr. Inniss opined that Claimant's dependency needs continue to be met with no one able to challenge her. Dr. Inniss concluded that Claimant has a classic Conversion Disorder.

Contrary to the opinion of Dr. Ziaee, Dr. Inniss insists that Claimant has a dependent personality. Dr. Inniss' insistence is significant because it establishes a causal relationship between the Conversion Disorder and the personality defect, and her opinion that the disorder was merely exposed or triggered by the carpal tunnel syndrome and surgeries. Treatment approaches would involve psychotherapy, hypnosis, and cognitive behavioral therapy, all of which Claimant has not received.

Dr. Inniss found that Claimant has the intellectual capacity to undergo insight oriented psychotherapy and work toward symptom remission and resolution of her underlying issues. She said Claimant believes her condition is physical due to RSD/CRPS. Claimant will not believe that there is an emotional or psychological component. Dr. Inniss said that while physical symptoms and Conversion Disorder are not mutually exclusive, Dr. Inniss sees Claimant's issues as psychological, and not physical.

On cross examination, Dr. Inniss initially agreed with Claimant's counsel that the carpal tunnel surgery was "a substantial factor in causing the manifestation of the conversion disorder." But Dr. Inniss later retreated from that opinion, stating that "a substantial factor" was not a term she had used in her profession. She explained her opinion as follows:

- Q. Doctor, what do you mean by carpal tunnel being the substantial factor of the conversion disorder? What do you mean by that?
- A. It's the easiest connection to make, based on what has happened.
- Q. And what is the – and when you say it is a substantial factor, is that because the carpal tunnel injury causes the conversion disorder, or just means of reveal itself or some other description?
- A. It's the means of exposure. It's that Houdini moment, ta-da, it's here. It could have been the same response to a car accident where she's bumped in the back, you know, a slip and fall, a trip that went wrong, you know, that type of thing.
- Q. Could be related to other life events or is it –

A. Yes.

Dr. Inniss further explained that a Conversion Disorder can occur without an obvious event. While she agreed that in Claimant's case, the carpal tunnel surgeries were an obvious event, it was an "obvious event in which the conversion disorder can be expressed."

On August 12, 2008, Claimant saw **Barry Feinberg, M.D.**, for an Independent Medical Evaluation (IME). After a review of relevant medical records, Dr. Feinberg opined that Claimant does not have findings consistent with RSD/CRPS and probably never did, given her results with blocks and physical examinations. He opined, however, that Claimant was in need of additional medical treatment, such as medication, localized injections, physical therapy, as well as psychiatric treatment if the diagnosis of conversion reaction is present. He believed that the repetitive motion injury reported on June 8, 2005, is a substantial and prevailing factor in causing Claimant's need for treatment.

On November 19, 2009, Dr. Woods referred Claimant to **Dr. Benjamin Lampert** for a spinal cord stimulator (SCS) trial. When she was seen for removal of two temporary spinal cord stimulator leads, Claimant reported some improvement in her pain. She thereafter received a SCS implant.

Robert Paul, M.D., performed an independent medical examination (IME) of Claimant on May 13, 2010. He found that Claimant's repetitive work involving her wrists and hands at McLeod USA, Inc., exposed Claimant to the hazards of an occupational disease, particularly carpal tunnel syndrome. The disease required surgical intervention, which condition is now at maximum medical improvement. He noted no physical findings on his examination that would be related solely to the carpal tunnel condition or the residuals of the surgery. Dr. Paul said the work at McLeod USA, Inc., was a substantial factor in causing not only the bilateral carpal tunnel syndrome, but also a resultant Conversion Disorder in which Claimant subconsciously clenches her hands. He opined that Claimant was now permanently and totally disabled as a result of the activities at McLeod USA, Inc. Dr. Paul said that until the date he saw Claimant, she was temporarily and totally disabled, but that she was now at maximum medical improvement. With respect to future medical needs, Dr. Paul recommended a two-year medication regimen, including anti-depressants, non-narcotic pain medication, and muscle relaxants.

Dr. Paul elaborated that Claimant's initial flexion contraction following the carpal tunnel releases was an organic condition related to the surgery. Dr. Paul opined that is extremely unusual for a failed carpal tunnel syndrome to result in flexion posturing, medial nerve injury, or RSD/CRPS. He said there was no indication that Claimant had a neurological issue that was causing focal dystonia. He said the continuation of the flexion contracture became a psychiatric Conversion Disorder. He did not believe the Conversion Disorder required an underlying psychiatric issue. Dr. Paul clearly did not believe Claimant ever had RSD/CRPS.

In approximately August 2011, Claimant began experiencing problems with her lower extremities. Up to then, her symptoms were restricted only to the upper extremities. On September 8, 2011, **James Wolski, M.D.**, with Cox Nuclear Medicine, interpreted yet another

Phase-3 bone scan. Dr. Wolski reported, "I see no convincing pattern of RSD in the lower extremities and no periarticular accentuation to suggest RSD (CRPS)." (Joint Exhibit 1, p. 270).

Despite Dr. Wolski's interpretation, Dr. Crockett referred Claimant to **Wayne Wallender, D.O.**, on September 15, 2011, to perform a sympathetic nerve block for RSD/CRPS. Dr. Wallender is an anesthesiologist with a subspecialty in pain management. Dr. Wallender performed a series of lumbar sympathetic blocks – bilaterally. In deposition testimony, Dr. Wallender opined that Claimant suffered from *migratory* CRPS (as Claimant's symptoms now encompassed both the upper and lower extremities); even though he admitted that the bone scan did not indicate CRPS. He conceded that he gave Claimant's medical records only a cursory review, "At its best, yes." (Exhibit I, p. 52). He conceded that in his examination of Claimant he recorded no skin, nail, or hair changes, no color or temperature changes, no sweating abnormalities, and no edema. He did not note any disuse atrophy. He agreed that such findings are inconsistent with RSD/CRPS. He also made no note of Claimant having been diagnosed with Conversion Disorder, most likely because Claimant never told him of the diagnosis. He admitted that he is unfamiliar with what Conversion Disorder can cause. He admitted that he made no effort to determine if the dystonia that Claimant exhibited in her foot was organic or psychogenic.

On March 28, 2012, after an eight week trial, Dr. Wallender attempted to insert a permanent percutaneous SCS (spinal cord stimulator) in Claimant's back to address lower leg pain. The operation was terminated due to extensive scar tissue. Dr. Wallender recommended a surgically place paddle lead, to be performed by Dr. Salim Rahman. Claimant has since had a second SCS implanted.

Vocational Opinion

Phillip Eldred, a vocational rehabilitation expert, saw Claimant on January 4, 2011. After having reviewed the medical records and various opinions, he concluded that Claimant is unable to compete in the open labor market and is permanently and totally disabled due to injury on June 6, 2005, in isolation. He found no preexisting conditions that constituted a hindrance or obstacle to employment or reemployment. Mr. Eldred admitted that he previously had not encountered Conversion Disorder. He had no information as far as the effects or non-exertional impairments that might be related to Conversion Disorder. Mr. Eldred said it was immaterial to him whether Claimant's diagnosis was Conversion Disorder or RSD/CRPS, or something else. He based his opinion on the limitations imposed by the physicians rather than the diagnosis. He also leaves the causation issues up the doctors.

Current Condition

Now, nearly 10 years after her original injury and extensive evaluation, testing, and treatment, Carolyn Law-Clark depends on a power-driven wheelchair for mobility. As observed by multiple physicians, it is apparent that in her current condition she is unable to work. She presents with a condition affecting all four extremities. One hand is clawed, except for the thumb. The other hand is hyper-extended and does not form a grip. She does not walk because she states she is incapable of flattening her feet. She believes walking on the sides of her feet would be hazardous.

She can stand long enough to make transfers. She is able to feed herself, but is unable to cut her food. She needs to use straws.

Although the Claimant is able to perform some light dusting and has demonstrated at the hearing she can sort through papers, she contends that she has needed assistance with most aspects of her daily living since 2005. Claimant has presented no studies demonstrating the number of hours of nursing or homemaker services she now requires or has required in the past.

Claimant testified that her husband assists her. Claimant has been married to her current husband, John Clark, from February 14, 2003, to the present. Although Mr. Clark testified by deposition on November 4, 2011, regarding the onset of Claimant's symptoms and some of her treatment, he said nothing regarding her need for nursing services. He did not testify at the hearing.

Claimant also has one daughter, Sahara, who was born on November 30, 1990. Sahara Law was 14 years old when Claimant's carpal tunnel syndrome arose and the claim was filed. Sahara has helped Claimant with household chores in the past prior to getting married. Sahara now lives out of the home and has a child of her own.

Despite her physical presentation, Claimant created several drawings that she attempted to sell through a web-site she had maintained for several years. Claimant said her marketing efforts were not very successful.

Anthem/Humana Payments

A letter dated December 16, 2014, from Anthem, indicates it made a conditional Medicare payment of \$1,872.15. No documentation is appended to that exhibit stating what services were paid or the dates the services were rendered. Exhibit E is a letter from Humana dated December 16, 2014, indicating a payment of \$66,208.60. Nothing in that exhibit reflects payments for the treatment of Conversion Disorder or carpal tunnel syndrome.

Credibility Assessment

Although Dr. Crockett who has treated Claimant for several years is resolute in his belief that Claimant has RSD/CRPS, the overwhelming weight of the evidence supports a finding that Claimant has no organic disease process. There is no definitive neurological explanation for her physical condition. There is no credible objective evidence substantiating the diagnosis of RSD/CRPS. I find credible the objective test results of two separate Phase-3 bone scans and the opinions of multiple experts, including Dr. Paul (Claimant's own IME physician), who stated that Claimant never had RSD/CRPS. Even Dr. Crockett now concedes that there is *at least* a psychological component in Claimant's presentation. Consistent with the opinions of Drs. Parsons, Frederick, Ziaee, Inniss, Halfaker, and Feinberg, I find that Claimant has Conversion Disorder. I specifically find that Claimant does not have RSD/CRPS. As detailed in the Conclusion of Law, below, I find credible the opinion of Dr. Ziaee who draws a causal connection between Claimant's Conversion Disorder and the stress of the work injury and related surgeries.

Claimant argues in her brief that a number of physicians for years have treated Claimant using the diagnosis of RSD/CRPS, thus suggesting that the diagnosis cannot be wrong. Not all treatment, however, was made with a full understanding of Claimant's medical history. For instance, Dr. Crockett began treating Claimant without the benefit of all relevant records, and without the knowledge that Claimant already had been diagnosed with Conversion Disorder. Moreover, he admitted not having a great understanding of the disorder. And despite all of the treatment, Claimant's condition has not significantly improved. Query what treatment Dr. Crockett would have undertaken had he been provided with all relevant medical records and reviewed the assessments already made by Drs. Halfaker and Frederick, and the first Phase-3 bone scan, when he first met Claimant?

Moreover, Dr. Radovanovich simply relied on Dr. Crockett's diagnosis of RSD/CRPS in treating Claimant with some pain coping techniques. It was never Dr. Radovanovich's intention to provide a diagnosis. Similarly, Dr. Wallender admitted that he only gave the medical records a cursory review, at best. He was given the diagnosis of RSD/CRPS, and not Conversion Disorder. Thus, I am not impressed by the fact that Claimant has had an incredibly long history of relatively unsuccessful treatments based on what may have been a misdiagnosis many years ago that was due to a lack of complete information.

While Claimant may not have attempted to consciously and purposefully deceive the Court, I also do not find Claimant to be a reliable witness. Medical records and Dr Parsons' testimony simply do not support Claimant's contention that her hands *immediately* became clenched while she was in the recovery room following her surgeries. She also made some bizarre statements on her Internet site which she iterated during her sworn testimony at the hearing. Specifically, she contends that Dr. Geter asked her if just wanted to sit on her "fat butt" and have others wait on her. She believes she was forced to make the decision whether to have her "left hand amputated" or undergo the tendon surgery with Dr. Grillot (*See Exhibit 6*). I do not believe that either Dr. Geter or Dr. Grillot would communicate to Claimant in such manner. Such statements are not supported by any medical records.

Additionally, as observed by Dr. Inniss, Claimant avoids what she does not want to hear. She is mired in the diagnosis of CRPS/RSD, and simply avoids her diagnosis of a psychiatric condition which requires psychotherapy. This is consistent with having not shared pertinent records and her diagnosis of Conversion Disorder with some treating physicians. As noted by Dr. Radovanovich, Claimant has demonstrated in the past that she does not want to do anything uncomfortable.

CONCLUSIONS OF LAW

Claimant has the burden of proving all elements of her claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo. App. E.D. 2008). Section 287.020.2 RSMo 2000, states:

An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

Under the law in effect at the time of Claimant's alleged injury, before the statutory changes to the Workers' Compensation Law in 2005, all relevant statutory provisions must be liberally construed with a view to the public welfare. § 287.800 RSMo 2000.

Claimant suffered carpal tunnel syndrome. The carpal tunnel syndrome, however, is resolved. The issue of greater interest to the parties is whether the work injury and related surgeries are a substantial factor in the cause of Claimant's Conversion Disorder. Merely providing evidence of the existence of this psychological condition is inadequate for compensability of that condition. *Schaffer v. Litton Interconnect Technology*, 274 S.W.3d 597 (Mo. App. S.D. 2009). Because the cause of Claimant's psychological condition is not readily apparent, like many physical injuries, proof depends on expert testimony. *Royal v. Advantica Restaurant Group, Inc.*, 194 S.W.3d 371 (Mo. App. W.D. 2006). As outlined above in the Findings of Fact, there is no dearth of expert opinions in this case.

Employer/Insurer's witness Dr. Inniss, who testified live, has extraordinary expertise and demonstrated her understanding of Conversion Disorder. She believes that the injury and subsequent surgeries did not "cause" Claimant's psychological condition, but merely triggered the condition. As Dr. Inniss explained, the surgeries merely provided an opportunity for the underlying psychological condition to manifest itself. In this case, however, there is the opposing credible opinion of Dr. Ziaee.

Employer/Insurer rely heavily on *Royal v. Advantica Restaurant Group, Inc.*, 194 S.W.3d 371 (Mo. App. W.D. 2006), which found that Claimant had failed in demonstrating that a work accident was a substantial factor in the development of a subsequent psychosomatic (somatoform) disorder. But as recognized in *Royal*, the work event may be *both* a triggering event and a substantial factor. 194 S.W.3d 376. There must be expert testimony demonstrating how the psychological disorder was related to or caused by the work related accident. It was not enough for the expert to opine that the employee had no prior history of psychosis, and thus it must be related to the work event. The Court of Appeals recognized that such expert testimony improperly confuses causality with chronology and fails to constitute substantial evidence of causation. 194 S.W.3d at 376.

Dr. Ziaee gave a more definitive explanation than that provided by the psychiatrist in *Royal*. Here, Dr. Ziaee explained that Conversion Disorder arises from stressful events, and the most stressful event known in Claimant's history was the carpal tunnel syndrome and related surgeries. Even Dr. Inniss recognized that while Conversion Disorder can arise from any event or none at all, the carpal tunnel surgery was an obvious event. Given the applicable standard of proof relevant to this case, I find and conclude that Claimant met her burden. Even if the carpal tunnel syndrome and related surgeries was a triggering event, and not the most important factor, Claimant has demonstrated that the work-related event was at least "a substantial factor" in the development of her Conversion Disorder.

Degree of Disability

Claimant alleges she is permanently and totally disabled. Permanent total disability means an employee is unable to compete in the open labor market. *Forshee v. Landmark Excavating and*

Equip., 165 S.W.3d 533, 537 (Mo. App. E.D. 2005). This means the inability to perform the usual duties of the employment in a manner that such duties are customarily performed by the average person engaged in such employment. *Gordon v. Tri-State Motor Transit Co.*, 908 S.W.2d 849 (Mo. App. S.D. 1995). While “total disability” does not require that the Claimant be completely inactive or inert, *Sifferman v. Sears Roebuck and Co.*, 906 S.W.2d 823, 826 (Mo. App. S.D. 1996), *overruled on other grounds Hampton v. Big Boy Steel Erection*, 121 S.W. 2d 220 (Mo. banc 2003), it does require a finding that Claimant is unable to work in any employment in the open labor market, and not merely the inability to return his last employment. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 884 (Mo. App. S.D. 2001), *overruled on other grounds Hampton v. Big Boy Steel Erection*, 121 S.W.2d 220 (Mo. banc 2003). It is within the province of the Administrative Law Judge to determine the extent of any permanent disability. *Landers v. Chrysler Corp.*, 963 S.W.2d 275 (Mo. App. E.D. 1998).

Medical records substantiate that Claimant is unable to work. The opinion of Mr. Eldred, the only vocational expert to testify at the hearing, supports such fact. Dr. Paul, who opined that Claimant was permanently and totally disabled from the Conversion Disorder, found that Claimant was at maximum medical improvement as of May 13, 2010, and temporarily and totally disabled prior to that date. Claimant is permanently and totally disabled beginning May 13, 2010 at the stipulated rate of \$329.92.

Temporary Total Disability

Employer/Insurer terminated temporary total disability on May 14, 2006. Pursuant to § 287.170 RSMo 2000, an injured employee is entitled to temporary total disability during her period of healing when she is unable to work, not to exceed 400 weeks. Claimant seeks temporary total disability from May 14, 2006, to the date she reached maximum medical improvement. Dr. Paul’s testimony establishes that Claimant was temporarily and totally disabled until she reached maximum medical improvement on May 13, 2010. This is a period of 208 and 4/7 weeks. At the weekly rate of \$329.92, Claimant is entitled to \$68,811.89 for temporary total disability.

Future Medical Treatment

Section 287.140 RSMo, requires Employer/Insurer to provide medical treatment as reasonably may be required to cure and relieve an employee from the effects of the work-related injury. To “cure and relieve” means treatment that will give comfort, even though restoration to soundness is beyond avail. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 249 (Mo. banc 2003). Drs. Inniss and Ziaee opined that Claimant requires psychotherapy for the Conversion Disorder. Drs. Ziaee believed treatment of Claimant’s depression would aid treating the Conversion Disorder. Dr. Paul opined that Claimant requires a two-year regimen of medication. Claimant is entitled to future medical care for treatment of the Conversion Disorder, but not for RSD/CRPS. Dr. Feinberg opined that Claimant needed future medical treatment for Conversion Disorder. Employer/Insurer shall provide all appropriate treatment to cure or relieve the effects of the Conversion Disorder.

Nursing Care

An injured employee is entitled to nursing services as a component of past and future medical treatment pursuant to § 287.2140.1 RSMo. Claimant, however, bears the burden on this issue. Claimant believes she requires six hours of assistance each day in cooking, feeding, making transfers and in tending to her personal hygiene and medication. Claimant admitted that this was an estimate. Doctors who have remarked on Claimant's need for assistance based their opinions on Claimant's statements to them rather than an independent evaluation. No nursing or home health care expert substantiated Claimant's estimations. Given that I have found Claimant not to be a reliable witness, I reject her estimations as adequate proof. I award nothing for past or future nursing care.

Schoemehl Dependency

Permanent total disability benefits do not necessarily end when the injured employee dies, as recognized in *Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. banc 2007). Section 287.200 RSMo 2000, provides that permanent total disability benefits are to be paid "during the continuance of such disability for the employee's lifetime." Section 287.020.1 RSMo 2000, provides that any reference to an injured employee in the workers' compensation law "shall, when the employee is dead, also include his dependents." The Court construed these statutes to permit the dependents of an injured worker, who dies of causes *unrelated* to the work accident, to receive workers' compensation benefits for the remainder of *the dependents'* lifetime. Subsequent to *Schoemehl*, the legislature amended several sections within the Workers' Compensation Law limiting the decision's application. Subsequent appellate decisions have held that recovery under *Schoemehl* is limited to claims pending between January 9, 2007 (the date of the *Schoemehl* decision) and June 26, 2008 (the effective date of the new amendments).

In *Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. banc 2012), Mr. Gervich sustained a work injury on April 6, 2006. He died of unrelated causes on April 5, 2009. His workers' compensation claim for permanent total disability was pending both *before and after* the legislative enactment of the statutory amendments limiting *Schoemehl*. The Court held that the statutory amendments do not apply retroactively to Mr. Gervich's widow. She had a right to receive continuing permanent total disability benefits as a dependent under the statutes in effect on April 6, 2006, the date of her husband's work related injury.

In the instant case, the claim for compensation, filed August 26, 2005, was pending between January 9, 2007 and June 26, 2008. As in *Gervich*, the statutory amendments limiting the effect of *Schoemehl*, do not apply retroactively to Claimant's dependents. Claimant's dependents at the time of the work injury (spouse John Clark and daughter Sahara) are entitled to continuing benefits for their lifetime, in the event that Claimant predeceases them from causes unrelated to her occupational injury (carpal tunnel syndrome and Conversion Disorder). The fact that Claimant is not yet deceased makes no difference. See *Tilley v. USF Holland, Inc.*, 325 S.W.3d 487 (Mo. App. E.D. 2010) (holding that even though Claimant was not yet dead, his wife was entitled to continuation of PTD benefits under *Schoemehl*).

Medical Liens

Employer/Insurer are responsible only for the medical care related to treatment of the carpal tunnel syndrome up to the date of Claimant's release from Dr. Parsons, and treatment for Claimant's Conversion Disorder. It is apparent from the record that Claimant sought no treatment for Conversion Disorder. Nothing in the exhibits from Anthem and Humana indicate that the payments were made for treatment of carpal tunnel syndrome or Conversion Disorder. Employer has no responsibility for the past treatment for RSD/CRPS.

Attorney Lien

The compensation awarded to Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of John Wise for necessary and reasonable legal services rendered to Claimant. Attorney Wise is responsible for satisfying the outstanding lien filed by Attorney Robert Beezley in the amount of \$2,575.47.

This Award is subject to review and modification as provided by law. Interest shall be paid as required by law.

Made by: _____

Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation