

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

Injury No.: 04-131022

Employee: Denise Locklin
Employer: Securitas Security Services USA, Inc.
Insurer: Ace American Insurance Company

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries

The parties asked the administrative law judge to resolve the following issues: (1) medical causation; (2) liability for past medical expenses; (3) future medical care; (4) temporary disability; and (5) permanent disability.

The administrative law judge rendered the following findings and conclusions: (1) the evidence supports a finding that employee has prevailed on the issue of medical causation; (2) employee is awarded \$6,359.99 for past medical expenses subject to a lien for the Missouri Medicaid program for \$206.38; (3) the issue of future medical care must be ruled in favor of the defense; (4) the defense prevails on the issue of temporary total disability; and (5) employee is awarded a 15% permanent partial disability.

Employer filed a timely Application for Review with the Commission alleging: (1) there was insufficient competent evidence to support a finding that employer is liable for a medical expenses award; and (2) the award of permanent partial disability is excessive.

Employee filed a timely Application for Review with the Commission alleging the administrative law judge erred: (1) in awarding \$6,359.99 in past medical expenses instead of \$10,656.38; (2) in failing to award future medical care; and (3) in awarding only 15% permanent partial disability benefits.

For the reasons stated below, we modify the award of the administrative law judge as to the issues of: (1) past medical expenses; and (2) future medical treatment.

Discussion

Past medical expenses

The administrative law judge determined that employee met her burden of proving entitlement under § 287.140 RSMo to her past medical expenses; we agree. Employee argues, however, that the administrative law judge did not award certain expenses reflected in the medical bills employee provided as evidence. Employer has not filed a responsive brief to contest this argument. After a careful review of the bills and the medical treatment record, it does appear to us that the administrative law judge did not award certain past

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medical expenses for which employee provided bills and evidence of her treatment in connection with her work injury. Specifically, we find that the administrative law judge did not award the following expenses:

<u>Date of Service</u>	<u>Provider</u>	<u>Charges</u>
01-04-05	Dr. Khan	\$450.00
01-04-05	Dr. Khan	\$116.00
01-04-05	Dr. Khan	\$ 70.00
04-19-05	Dr. Khan	\$ 92.00
04-20-05	Dr. Khan	\$116.00
04-20-05	Dr. Khan	\$ 33.00
04-20-05	Dr. Khan	\$ 38.00
04-20-05	Dr. Khan	\$ 70.00
05-12-05	Dr. Khan	\$176.00
07-26-05	Dr. Khan	\$ 92.00
03-02-06	Dr. Khan	\$ 39.00
09-26-06	Dr. Khan	\$ 39.00
03-27-07	Dr. Khan	\$213.00
	Total:	\$1,544.00

See *Transcript*, pages 554, 556-57.

The administrative law judge did not offer any rationale for excluding the foregoing charges; it thus appears that this was simply an inadvertent error. We conclude, in any event, that employee is entitled to, and employer is liable to pay, the foregoing additional charges.

We note also that the administrative law judge reduced employer's liability for certain charges in connection with payments tendered by employee. Specifically, the administrative law judge reduced employer's liability for a \$1,425.80 charge from St. Joseph Hospital West for services on January 3, 2005, in connection with a \$427.74 payment by employee, and for a \$768.60 charge from St. Joseph Hospital West for services on March 7, 2006, in connection with a \$307.44 payment by employee. See *Transcript*, pages 564, 568. Under § 287.270 RSMo, "[n]o savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder." Accordingly, we conclude employee is entitled to an additional \$735.18 in connection with these bills.

Finally, we note that the administrative law judge did not award each of the prescription drug charges reflected in the medical bills employee provided as evidence. It appears that the administrative law judge excluded certain unspecified charges under the impression that employee's Exhibit J contains duplicate billing records. We have carefully reviewed the bills in connection with the medical treatment records in evidence. We note that each of the prescription drug charges in Exhibit J are delineated by date, and that the medical treatment record reflects ongoing prescriptions from employee's treating physicians. Although Exhibit J does contain charges for a number of medications unrelated to employee's treatment for the work injury, we deem the record sufficiently clear to support

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an award in a greater amount than that awarded by the administrative law judge.¹ After a careful review of the bills in connection with the treatment record, we conclude that employer is liable for the following prescription drug charges:

<u>Date</u>	<u>Provider</u>	<u>Medication</u>	<u>Charges</u>
12-21-04	Dr. Varga	Combivent	\$ 77.32
12-21-04	Dr. Varga	Advair Disku	\$228.88
02-03-05	Dr. Khan	Combivent	\$ 84.54
02-03-05	Dr. Khan	Prednisone	\$ 8.36
02-03-05	Dr. Khan	Advair Disku	\$228.88
01-11-11	Dr. Khan	Advair Disku	\$201.21
01-11-11	Dr. Easterday	Singulair	\$116.11
04-07-11	Dr. Easterday	Singulair	\$ 38.24
01-03-12	Dr. Khan	Albuterol	\$ 14.57
02-28-12	Dr. Khan	Albuterol	\$ 14.57
01-23-13	Dr. Khan	Fluticasone	\$ 17.78
02-26-13	Dr. Easterday	Montelukast	\$ 77.59
03-25-13	Dr. Easterday	Montelukast	\$ 12.00
05-28-13	Dr. Easterday	Montelukast	\$ 19.95
07-30-13	Dr. Easterday	Montelukast	\$ 19.95
08-30-13	Dr. Easterday	Montelukast	\$ 19.95
10-10-13	Dr. Easterday	Montelukast	\$ 19.95
Total:			\$1,199.85

The administrative law judge awarded only \$571.84 of the foregoing charges; we conclude, therefore, that employee is entitled to the additional amount of \$628.01 for her prescription drug expenses.

In light of the foregoing considerations, we must modify the administrative law judge's award of past medical expenses. We conclude that, in addition to the amount of \$6,359.99 awarded by the administrative law judge, employee is entitled to an additional total of \$2,907.19.

Future medical treatment

Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove a reasonable probability that she has a need for future medical treatment that flows from the work injury. *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 51-4 (Mo. App. 2008). We are convinced that employee has proven she has a need for future medical treatment flowing from the work injury.

Employee presented expert medical testimony from Dr. Volarich, who opined that employee will need to continue to see her pulmonologist, Dr. Khan, take prescribed

¹ We do note that employee, in her brief, claims employer is liable for a January 10, 2012, prescription by Dr. Easterday for Triamcinolon, but Dr. Easterday's corresponding treatment record suggests he ordered this medication to treat swelling and a rash in employee's lower extremities, i.e., a condition unrelated to the work injury. Accordingly, we conclude that employer is not liable for employee's expenses in connection with her prescription for Triamcinolon.

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medications, and visit the emergency room if she has acute flare-ups of bronchospasm. Employer presented expert medical testimony from Dr. Hyers, who believes that employee will need ongoing treatment for her condition, and that the treatment she has been receiving from Dr. Khan is appropriate. Finally, turning to the medical treatment record, we note Dr. Khan's opinion that employee will need ongoing treatment for her lifetime in connection with her condition.

The medical evidence overwhelmingly suggests (and we so find) that employee needs ongoing treatment as a result of her work injury. We conclude, therefore, that employer is obligated under § 287.140.1 to furnish those future medical treatments that may reasonably be required to cure and relieve the effects of the work injury.

Conclusion

We modify the award of the administrative law judge as to the issues of (1) past medical expenses; and (2) future medical treatment.

Employee is entitled to, and employer is hereby ordered to pay, \$2,907.19 in past medical expenses in addition to the \$6,359.99 awarded by the administrative law judge, for a total of \$9,267.18.

Employee is entitled to, and employer is hereby ordered to provide, that future medical treatment that may be reasonably required to cure and relieve employee from the effects of the work injury.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued November 21, 2013, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission approves and affirms the administrative law judge's allowance of an 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 25th day of July 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Denise Locklin Injury No.: 04-131022
Dependents: N/A Before the
Employer: Securitas Security Services USA, Inc. **Division of Workers'**
Compensation
Additional Party: St. Joseph's Hospital West Department of Labor and Industrial
Relations of Missouri
Insurer: Ace American Insurance Company Jefferson City, Missouri
Hearing Date: October 18, 2013 Checked by: EJK/kr

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: December 19, 2004
5. State location where accident occurred or occupational disease was contracted: St. Charles 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:
The claimant, a security guard, developed reactive airways dysfunction syndrome after inhaling fumes in a paint locker at an automotive assembly plant.
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: Lungs
14. Nature and extent of any permanent disability: 15% permanent partial disability of the body as a whole
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: \$7,816.10

- 17. Value necessary medical aid not furnished by employer/insurer? \$6,359.99
- 18. Employee's average weekly wages: \$459.20
- 19. Weekly compensation rate: \$306.12
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses:	\$ 6,359.99
60 weeks of permanent partial disability from Employer	\$18,367.20

- 22. Second Injury Fund liability: No

TOTAL: \$24,727.19

- 23. Future requirements awarded: None

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: Claire R. Behrle, Attorney at Law

The compensation awarded to the claimant shall also be subject to a lien in the amount of \$206.38 in favor of the Missouri Medicaid program

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Denise Locklin	Injury No.: 04-131022
Dependents:	N/A	Before the
Employer:	Securitas Security Services USA, Inc.	Division of Workers'
Additional Party:	St. Joseph's Hospital West	Compensation
Insurer:	Ace American Insurance Company	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: EJK/kr

This workers' compensation case raises several issues arising out of a work-related injury in which the claimant, a security guard, developed a pulmonary condition after exposure to toluene, benzene, xylene, naphtha, and acetone in a paint storage room at an automobile assembly plant. The issues for determination are (1) Medical causation, (2) Liability for past medical expenses, (3) Future medical care, (4) Temporary disability, and (5) Permanent disability. The evidence compels an award for the claimant for past medical expenses and permanent partial disability benefits.

At the hearing, the claimant testified in person and offered a deposition of David T. Volarich, D.O., and voluminous medical records and medical bills. The defense offered depositions of the claimant and Thomas M. Hyers, M.D.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the accident occurred in Missouri. Any markings on the exhibits were present when offered into evidence.

SUMMARY OF FACTS

On December 19, 2004, this then 46 year old claimant, a security guard, developed a pulmonary condition after exposure to toluene, benzene, xylene, naphtha, and acetone in a paint mix room at an automobile assembly plant. At the time, she complained of coughing, chest tightness, and burning eyes and throat. There was no evidence of any pre-existing respiratory symptoms or diagnoses. On the date of injury, the claimant had been directed to take ventilation readings in the paint room. As she reached the room's door she smelled an odor which increased upon entering the room. She called her supervisor who asked her to locate the source of the overflow. She went back in the room and found a large spill on the floor surrounding a large drum. Her supervisor joined her in the room and shortly thereafter alarms went off and they exited. The claimant testified she thought she was in the room about four or five minutes. While in the paint mix room she started feeling a burning and tightness in the chest and she began coughing. It continued after they left the room. When she didn't improve, she went by ambulance to St. Joseph's Hospital and received a breathing treatment in the ambulance during the trip to the hospital. At the hospital, she received testing and another breathing treatment and was released to go home.

The claimant arrived at St. Joseph Hospital on December 19, 2004 with complaints of eyes, nose, and throat burning after paint thinner exposure. She had complaints of light headedness, dizziness, chest tightness, and coughing. She estimated she had an "at least ten plus minutes of exposure" where fumes were thick in the room. See Employee Exhibit B, 12/20/04 Consultation Report, 12/19/04 Triage Data report. The claimant received a nebulizer treatment and was discharged home but returned to the emergency room after coughing up blood at home. She was noted to be wheezing while coughing. See Exhibit B, 12/19/04 History and Physical.

Dr. Ahmareen Khan, a pulmonologist, examined the claimant in the hospital and has continued to treat the claimant since the accident. Bedside pulmonary function tests were done. Dr. Khan noted that the claimant made good effort but coughed a lot during the bedside. The Discharge Summary of December 21, 2004, noted the pulmonary function tests showed an excellent study with no restriction or obstruction seen. She reported that the claimant underwent arterial blood gases at the time of admission but it was worrisome that her carboxy hemoglobin was about 6.4. See Exhibit B, 12/21/04, Discharge Summary, 12/21/04 Consultation Report.

Dr. Khan diagnosed Reactive Airways Disease secondary to chemical inhalation with elevated carboxy hemoglobin despite not using cigarettes for at least 12-18 hours prior to blood gases being obtained. She recommended:

1. Check of bedside spirometry pre and post bronchodilators.
2. Continue nebulizer treatment.
3. Start Advair
4. Based on the results of her bedside spirometry, she may require systemic steroids.
5. Anxiolytics.
6. Proton pump inhibitor.
7. Smoking cessation/nicotine replacement advised.
8. Echocardiogram with Doppler to evaluate right heart functions.
9. GI/DVT prophylaxis.
10. Have her trailer inspected for any gas leak. See Exhibit B, 12/20/04 Consultation Report.

Dr. Varga's discharge diagnoses for the claimant were:

1. Mild Reactive Airways Disease after chemical irritants inhalation.
2. Tobacco abuse.
3. Hypertension.
4. Osteoarthritis.
5. Depression.
6. Acute bronchitis secondary to chemical inhalation, much improved.
7. Hematemesis secondary to bronchitis, resolved. See Exhibit B, 12/21/04 Discharge Summary.

The claimant returned to work at the automotive assembly plant but upon entering the building she had a reaction to the odors within the plant. She returned to the hospital on January 3, 2005, and followed up with Dr. Kahn. On January 5, 2005, Dr. Leahy examined the claimant, diagnosed an upper respiratory inflammation due to fumes/vapors, and released her to modified

work of no work in the paint room. He instructed her to follow up with a pulmonologist. See Exhibit C.

The claimant never returned to work at General Motors. Following her release her supervisor told her to stay home. She was subsequently advised she was no longer employed at General Motors but she was not given a reason for the discharge. The claimant testified she was out of work from January 3, 2005 until February 6, 2005 when she was placed at Pfizer by her employer. During this period of time, the claimant did not receive any wages, temporary disability benefits, or unemployment benefits. She applied for unemployment but did not receive it, because she had not worked for six months prior to losing her job at the General Motors location.

The claimant continued to work for this employer at a different location until September 7, 2007. Her employment ended after she developed a non-work-related medical condition and she exceeded the period of lost time in which her job could be held for her. Since that time she has not worked for anyone else. She has healed completely from that medical condition but is presently receiving social security disability as a result of orthopedic issues.

Dr. Kahn has continued to provide medical care for the claimant since the work-related exposure including twice yearly visits, pulmonary tests, and prescribed medications. The current treatment consists of taking medications such as Albuteral, Advair, Spiriva, ProAir, Fluticasone, Singulair, and Montelukast. She has a nebulizer machine in which she gives herself treatments twice a day. She is also prescribed medications for her breathing issues by her family physician, Dr. Easterday. The claimant has not always had a way to pay for her medical treatment and prescriptions. At one time, the claimant's husband had medical insurance. He lost his job and they no longer have insurance. She has received samples from the physicians and there are times when her in-laws pay for her medication.

As to her continuing complaints the claimant testified that she has daily problems breathing. She has difficulty walking and any exertion increases her problems. She has difficulty breathing in extremes of hot and cold weather. She no longer gardens or walks any distance, both are activities she used to enjoy. The claimant testified that she experiences her chest tightening and will find herself gasping for air. She wakes up from sleep with breathing difficulties. She has to buy fragrance free soap and often wears a mask when she is working around things she knows can trigger an attack. She cannot take hot showers and has problems when she tries to fry food. Dust and vacuuming also create difficulties for her. The claimant will have what she describes as asthma attacks and has had to seek treatment at the emergency room for shortness of breath and wheezing. See Exhibit D, 01/05/05 and 03/07/06.

When the accident occurred, the claimant was a smoker and had been smoking a half a pack for three to four years prior to the incident. Following the incident, she tried to stop smoking and would be successful, but then would relapse. This happened at least two or three times. She finally stopped smoking and has not smoked for four years.

Following the exposure, the claimant has been diagnosed with a pulmonary condition describe as asthma, Reactive Airways Disease, and Reactive Airways Dysfunction Disease (RADS). One of her four children was diagnosed with asthma but the claimant testified that he

was later re-diagnosed with Tourette's syndrome. None of her other children, her parents or any siblings have been diagnosed with asthma.

Before the accident, the claimant never had any similar breathing problems and was never diagnosed with RADS or asthma. Prior to the incident, she never had to take medication or use inhalers to address any breathing problems. She never had to go to the emergency room to address breathing problems and never received treatment from any of her physicians for breathing problems. The claimant's family physician for many years, Dr. Easterday, wrote a note certifying that the claimant has been a patient of his since 1978 with no prior history of asthma or airway obstruction of any kind. See Exhibit G. Dr. Easterday follows the claimant for asthma complaints and prescribes medications for that condition including Advair, Singulair, Albuterol, Celexa, and ProAir. See Exhibit G.

Dr. Khan

Dr. Khan first examined the claimant when she presented to the emergency room after her accident at work and has continued to treat the condition. On January 4, 2005, Dr. Khan noted that the claimant had a history of severe Reactive Airways Disease following chemical inhalation at her work place. She relayed the history of the hospitalizations and noted that since then the claimant had been using Advair and Albuterol regularly but continued to feel chest tightness and had an inability to take a deep breath. Spirometry testing that day revealed a FEV1 of 2.59 liters which improved to 3.23 liters with the use of bronchodilators. The doctor noted this was a 25% change. FEF 25-75% improved from 2.48 l/sec. to 4.22 l/sec. which was a 70% change. Dr. Khan diagnosed Reactive Airways Disease secondary to chemical inhalation. The claimant received a tapering dose of Prednisone and was scheduled for pulmonary function tests as well as a high resolution chest CT scan. A portable nebulizer was ordered to be used at her workplace. She was cleared to return to work on Friday, January 7, 2005. See Exhibit H, 1/4/05.

Dr. Khan re-examined the claimant on February 3, 2005, for continued complaints of dyspnea and chest tightness. The testing was not completed because workers' compensation would not cover it. The claimant advised the doctor she had quit smoking since her exposure. On that date, Dr. Khan diagnosed chemical exposure leading to Reactive Airways Dysfunction Syndrome. She started the claimant on a Prednisone taper, Advair, Combivent and ordered complete pulmonary function tests with Methacholine Challenge Testing. Pulmonary function reports dated April 19, 2005, revealed "Mild reversibility seen in large airway associated with some evidence of hyperinflation." On an office visit with Dr. Khan that same day the doctor again diagnosed Reactive Airways Dysfunction Syndrome. She noted the claimant's history of chemical exposure followed by asthma like symptoms. The doctor noted that previous spirometry showed reversible obstructive airways disease consistent with Reactive Airways Dysfunction Syndrome. Dr. Khan interpreted the pulmonary function testing done that day as normal. The doctor wanted claimant scheduled for a Methacholine Challenge Test as soon as possible and gave a prescription for a peak flow meter. She gave the claimant an asthma management plan and continued her on medication. See Exhibit H, 4/19/05.

On May 12, 2005, a Methacholine Challenge Test revealed "significant bronchial constriction associated with Methacholine; strongly suggests Reactive Airway Disease." On July 26, 2005, Dr. Khan opined that the pulmonary function tests were normal and the Methacholine

Challenge Test showed severe reactivity to the smallest dose of Methacholine. Dr. Khan noted that despite using Advair and Albuterol, the claimant continued to complain of dyspnea on exertion. Dr. Khan diagnosed Reactive Airways Dysfunction Syndrome and continued her on Advair, Singulair and Albuterol medications. See Exhibits E & H, 7/26/05.

The claimant has continued to consult Dr. Khan regularly for complaints of dyspnea, dyspnea with exertion, difficulty with weather, chest tightness, wheezing, coughing, difficulty sleeping. Dr. Khan reported that the claimant's breathing complaints progressively worsened with her inability to purchase the prescribed drugs and Dr. Khan would give her samples of medications due to her financial constraints. See Exhibits E & H, 11/29/05, 3/28/06, 9/27/06, 3/27/07.

On March 28, 2006, Dr. Khan reported that the claimant went to the emergency room secondary to an exacerbation of Reactive Airways Dysfunction Syndrome and received a nebulizer treatment in the ER and a Z-pack and Medrol dose pack. On October 13, 2009, Dr. Khan noted that recent pulmonary function tests that the claimant revealed mild small airways obstructive disease with air trapping. On that date, Dr. Khan diagnosed Reactive Airways Dysfunction Syndrome and allergic rhinitis and continued to prescribe medication such as Advair and Singulair. On April 15, 2010, pulmonary function testing indicated severe small airway and mild airway and mild large airway obstructive disease associated with hyperinflation and evidence of poor respiratory muscle strength.

Dr. Khan evaluated the claimant on July 20, 2010. She recorded that aggravating factors for the claimant included change in weather, exercise, pollen, respiratory infection, smoke, stress, strong emotion, and strong odors/perfume. Symptom relief was noted with beta-agonist inhaler and oral steroid use. Associated symptoms included dry cough and dyspnea with moderate exercise. Pertinent negatives included adverse reaction to therapy, dyspnea at rest, dyspnea with intense exercise, excessive phlegm, hemoptysis, hoarseness, mucus plug production, nocturnal asthma symptoms, nocturnal awakenings with cough, nocturnal awakenings with dyspnea, nocturnal awakenings with wheeze, oral thrush symptoms, palpitations, pleuritic pain, post-nasal drip, productive cough, reflux symptoms, seasonal rhinitis symptoms, SE from prescribed asthma meds, sinusitis, and stridor or tremor after inhaler use or wheezing. Dr. Khan has continued to order periodic testing and has continued to prescribe prescription medications. Prescribed medications include Nasacort Aq, Singulair, Advair Diskus, Ultram, Lisinopril-hydrochlorothiazide, Naproxen, Simvastatin, Famotidine, Zanaflex, Avinza, Albuterol Sulfate Hfa, Citalopram, Topiramate, Oxycodone Hcl-acetaminophen. See Exhibit H, 8/16/11. Throughout her treatment, Dr. Khan has continued to diagnose Reactive Airways Dysfunction Syndrome and she assessed that the claimant has Reactive Airways Dysfunction Syndrome rather than true asthma. See Exhibit H, 7/20/10 Office Visit. On January 7, 2010 Dr. Khan opined that the claimant's Reactive Airways Dysfunction Syndrome will require lifelong treatment. See Exhibit H.

Dr. Volarich

On July 8, 2008, Dr. Volarich, a physician board certified in Nuclear Medicine, Occupational Medicine and Independent Medical Examiner, examined the claimant, and diagnosed Reactive Airways Dysfunction Syndrome secondary to chemical exposures from the

December 19, 2004, occurrence. He testified that Reactive Airways Disease, or reversible obstructive airways disease, is another term for occupational asthma. This disease which is characterized by changes in the breathing passages is reversible with medications, as opposed to emphysema, or chronic obstructive pulmonary disease or emphysema caused by cigarette smoking where the passages are fixed. When a person is suffering from bronchial constriction because of an exposure, the medications help reverse the constriction and dilate the bronchioles again so the patient can breathe more easily. See Dr. Volarich deposition, pages 20, 42. Dr. Volarich opined that the claimant had no physical findings of obstructive lung disease such as she would have from smoking. See Dr. Volarich deposition, page 24. Dr. Volarich did not believe the claimant had asthma. He explained that she had no history of asthma before her exposure. He testified that people can get asthma at any time in their life, but typically it is in their youth. The claimant's problems did not happen until she was exposed to the chemicals at work. See Dr. Volarich deposition, pages 21, 33, 34. Dr. Volarich opined that the symptoms of asthma and RADS are very similar. See Dr. Volarich deposition, page 21.

Dr. Volarich was asked if a person can have a diagnosis of Reactive Airways Disease and have normal pulmonary function tests. He testified that if the patient is not exposed to an offending agent, whatever that may be, at the time of the pulmonary function studies their lungs are going to be normal; their breathing is going to be normal and their pulmonary function studies and blood gases are going to be normal. He testified that this disease does not leave a "footprint" like chronic obstructive pulmonary disease would. "When you have that offending agent in place, or they're exposed, and you take the pulmonary function studies, that's when the patient has drop in pulmonary function. We don't like to make the patient – expose the patient to a chemical that's going to cause them a lot of problem. What we do is the methacholine challenge test which mimics that exposure, and we can measure that clinically and have good control of it in the lab and be able to reverse it if we need to." See Dr. Volarich deposition, page 22. Dr. Volarich testified that a person can have normal spirometry testing and still have a diagnosis of RADS. One can also be receiving treatment, such as the nebulizer treatment, for an acute condition and as a result of the treatment have a normal pulmonary function test. See Dr. Volarich deposition, page 23, 42, 42.

Dr. Volarich was asked how a one-time exposure can create a chronic condition such as RADS if there is no permanent damage that can be seen to the lungs. He likened it to an allergic-type phenomenon and the way the body remembers different exposures, similar to an exposure to a certain virus. When you have an exposure to chemicals where you have a bronchospasm, there is a cross-reactivity so that any similar component or compound can cause the bronchospasm to come back when it is exposed to it again. This is a condition that is going to pop up whenever something cross-reacts with her airways to cause them to go into bronchospasm. The body remembers the particulate matter it was exposed to and will react any time it comes back or is exposed to a similar matter. See Dr. Volarich deposition, pages 42-44.

Dr. Volarich opined that the claimant suffered a 30 % permanent partial disability of the body as a whole rated at the pulmonary system due to her Reactive Airways Dysfunction Syndrome. The rating accounted for persistent shortness of breath requiring daily medication, limitations, and strenuous activities, easy fatigability, loss of endurance, and cross reactivity with multiple chemicals and odors throughout her activities of daily living. See Dr. Volarich deposition, page 26. He recommended she continue taking her medications and to also avoid

extremely hot or extremely cold temperatures and to limit her exposure to sudden changes in temperature. He also reinforced to her that she should avoid odors, fumes, dust, or particulate matters, chemicals, allergens, and other elements that can trigger an attack of bronchospasm. He recommended she limit vigorous or strenuous activities; particularly pushing, pulling, and extreme emotional stress; and if her wheezing becomes refractory, she should seek medical treatment to avoid the need for mechanical ventilation. See Dr. Volarich deposition, page 28.

Dr. Volarich opined that the claimant will require future medical treatment. He recommended she continue following the instructions of her pulmonologist, take the medications, particularly the inhalers that are provided to help control her systems, and to go to the emergency room when she has acute flare-ups that do not respond to her inhalers. See Dr. Volarich deposition, page 27.

Dr. Hyers

On May 20, 2009, Dr. Hyers examined the claimant and reviewed her medical records and test results on behalf of the Employer. Dr. Hyers practices pulmonary medicine and pulmonary occupational medicine and is board certified in those specialties. See Dr. Hyers' deposition, page 5. Dr. Hyers diagnosed mild asthma. See Dr. Hyers deposition, pages 7, 10. He opined that the claimant has an underlying predisposition to asthma. He opined that the methacholine challenge testing revealed hyperreactive airways, meaning her airways are more likely to constrict than the average person when she inhales an airway constrictor. See Dr. Hyers deposition, page 7. He opined that she would need treatment periodically for her asthma but would not need it as a result of the work exposure. See Dr. Hyers' deposition, page 11. Dr. Hyers testified that asthma is an inflammatory disease of the lungs that leads to periodic symptoms, cough, chest tightness, wheezing, and shortness of breath. It can be caused by genetics but chemical and biological exposures can also lead to asthma. See Dr. Hyers' deposition, pages 19, 20. Dr. Hyers opined that the chemical she was exposed to did not lead to asthma but aggravated a pre-existing condition – her asthma – that made her asthma more clinically evident. See Dr. Hyers' deposition, page 21. He opined that the exposure aggravated a pre-existing but dormant condition but he opined it wasn't permanent because when she was in the hospital it cleared up pretty quickly. See Dr. Hyers' deposition, page 21.

Dr. Hyers testified that claimant complained of shortness of breath and cough when she went to the hospital on December 19, 2004, but when she was examined by the doctors, her respiratory rate was normal. See Dr. Hyers deposition, pages 8, 9. So while she had complaints there was no objective evidence of significant respiratory dysfunction at that point. See Dr. Hyers deposition, page 9. Over her subsequent hospitalization, her testing showed normal oxygen content in her blood, both at rest and when walking, spirometry breathing tests were normal as well as her chest x-ray. See Dr. Hyers deposition, page 9.

Dr. Hyers agreed that pulmonary test results can vary from test to test because of what particular medicine she may be taking at the time. See Dr. Hyers' deposition, pages 16, 17, 22. Dr. Hyers testified that asthma and occupational asthma can get progressively worse over time. See Dr. Hyers' deposition, page 21. Both conditions can require lifelong treatment such as bronchodilators, medicines that open up airways and anti-inflammatory medicines either inhaled or given orally such as steroids. See Dr. Hyers' deposition, pages 11, 21, 22. Dr. Hyers also

opined that the claimant's medical requirements were not "as a result of the exposure." See Dr. Hyers' deposition, page 11. Dr. Hyers testified that Reactive Airways Disease is a tendency for the airways to constrict which is different than Reactive Airways Dysfunction Syndrome. See Dr. Hyers' deposition, page 23. He described Reactive Airways Dysfunction Syndrome as a severe reaction occurring within twenty-four hours to a chemical inhalant exposure. See Dr. Hyers' deposition, page 23. He opined that the claimant did not meet the definition of Reactive Airways Dysfunction Syndrome, because her examination was normal when she was in the hospital. See Dr. Hyers' deposition, page 23. This is a condition that can improve, stay the same, or worsen. It can be a permanent condition. See Dr. Hyers' deposition, pages 23, 24. The treatment is the same as with asthma but it is characterized separately from asthma, because its causation is different. See Dr. Hyers deposition, page 25. Dr. Hyers testified that the claimant's trouble breathing and wheezing is consistent with both asthma and Reactive Airways Dysfunction Syndrome. See Dr. Hyers' deposition, pages 26, 27. The claimant was a smoker at the time of Dr. Hyers' examination. Dr. Hyers testified that smoking can cause airway irritation and common manifestation is a smoker's cough which if it progresses leads to COPD, also known as emphysema. Dr. Hyers testified that the claimant did not have COPD or emphysema. See Dr. Hyers' deposition, pages 7, 8, 29, 30.

Dr. Hyers opined that the claimant suffered a 5% permanent partial disability based upon her respiratory problems. Of this, he opined she had a 2.5% permanent partial disability related to the work exposure and 2.5% permanent partial disability related to non-work causes. See Dr. Hyers' deposition, pages 7, 11.

MEDICAL CAUSATION

"The claimant in a workers' compensation case has the burden to prove all essential elements of her claim, including a causal connection between the injury and the job." Royal v. Advantica Rest. Group, Inc., 194 S.W.3d 371, 376 (Mo.App.W.D.2006) (citations and quotations omitted). "Determinations with regard to causation and work relatedness are questions of fact to be ruled upon by the Commission." Id. (citing Bloss v. Plastic Enters., 32 S.W.3d 666, 671 (Mo.App.W.D.2000)). Under the statute, "[a]n injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability." § 287.020.2. On the other hand, "[a]n injury is not compensable merely because work was a triggering or precipitating factor." Id. "Awards for injuries 'triggered' or 'precipitated' by work are nonetheless proper *if* the employee shows the work is a 'substantial factor' in the cause of the injury." "Thus, in determining whether a given injury is compensable, a 'work related accident can be both a triggering event and a substantial factor.'" Royal, 194 S.W.3d at 376 (quoting Bloss, 32 S.W.3d at 671).

"[T]he question of causation is one for medical testimony, without which a finding for claimant would be based upon mere conjecture and speculation and not on substantial evidence." Elliot v. Kansas City, Mo., Sch. Dist., 71 S.W.3d 652, 658 (Mo.App. W.D. 2002). Accordingly, where expert medical testimony is presented, "logic and common sense," or an ALJ's personal views of what is "unnatural," cannot provide a sufficient basis to decide the causation question, at least where the ALJ fails to account for the relevant medical testimony. Cf. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. banc 1994) ("The commission may not substitute an administrative law judge's opinion on the question of medical causation of a herniated disc for

the uncontradicted testimony of a qualified medical expert.”). Van Winkle v. Lewellens Professional Cleaning, Inc., 358 S.W.3d 889, 897, 898 (Mo.App. W.D. 2008).

The claimant sustained an accidental injury from exposure to fumes from a chemical spillage in the paint room at her place of employment on December 19, 2004, causing acute symptoms in the form of coughing, a burning sensation in her chest, a burning sensation in her eyes and shortness of breath. Because of the exposure to chemical fumes, the claimant received a nebulizer treatment in an emergency room shortly after the exposure occurred. She was discharged after her treatment but subsequently admitted to the same hospital when she complained of cough and a shortness of breath. When the claimant was discharged from the hospital on December 21 the diagnosis was Reactive Airways Disease after chemical irritants inhalation. Her pulmonary function test showed an excellent study and there was no restriction or obstruction. A chest x-ray was negative, and oxymetry revealed good oxygen saturation in her blood. The medical provider recommended that the claimant stop smoking and use a nicotine patch.

The claimant was diagnosed with a chronic lung disease which has been identified as Reactive Airways Disease, Reactive Airways Dysfunction Syndrome, and asthma after December 19, 2004. Regardless of the denomination of her disease, both physicians who testified in this case agree that the claimant has symptoms of asthma. Asthma was neither diagnosed nor treated before the exposure to chemical fumes. Although the claimant testified in her July 7, 2004, deposition that she stopped smoking in early 2005, the evidence shows that she continued to smoke until sometime in 2009 when she finally quit smoking. Smoking is a pulmonary irritant which can induce symptoms of asthma.

Dr. Hyers, a board certified internal medicine physician, who treats patients with pulmonary diseases and pulmonary occupational diseases, concluded that the claimant's exposure to chemical fumes did not cause her lung disease, because all of the diagnostic testing performed during the claimant's medical treatment shortly after the exposure occurred were negative. Dr. Hyers also concluded that the chemical exposure did not cause the claimant's asthma, but it did aggravate a pre-existing condition that made her asthma more clinically evident.

Dr. Volarich, who described his specialties as nuclear medicine, occupational medicine, and independent medical examiner, testified the claimant has Reactive Airways Disease related to the exposure because she had a positive methacholine test. Dr. Volarich also testified that none of the diagnostic testing performed at the hospital shortly after the chemical exposure indicated that employee had any findings related to a lung disease. His medical examination was limited to use of a stethoscope. He agreed that the claimant's symptoms were identical to asthma symptoms. Dr. Volarich did not perform any diagnostic tests and he seems to relate the claimant's asthma to the chemical exposure due to the temporal relationship.

The most qualified expert to opine in this issue, Dr. Khan, the claimant's treating pulmonologist, has not provided an opinion whether the chemical exposure is a substantial factor in causing the claimant's pulmonary disease. Dr. Khan has provided no opinion based upon a reasonable degree of medical certainty and no opinion regarding medical causation can be gleaned from her medical records.

The claimant's exposure to fumes from the chemical spillage in the paint room at her place of employment caused brief pulmonary and other physical symptoms which disappeared after employee left the area of exposure and received minimal treatment. Since the occurrence, the claimant has had symptoms of Reactive Airways Disease, Reactive Airway's Dysfunction Syndrome, or asthma, diseases common to the general population. Dr. Volarich opined that the claimant's exposure to chemical odors on the date of injury was a substantial contributing factor to causing Reactive Airways Dysfunction Syndrome resulting in a thirty percent permanent partial disability to the claimant's pulmonary system. See Dr. Volarich deposition, pages 26, 27. Dr. Hyers opined that the claimant had mild asthma and suffered a 2 ½% permanent partial disability from the exposure. See Dr. Hyers' deposition, pages 7-11. Clearly, there is a temporal relationship between the chemical exposure and the claimant's pulmonary condition requiring hospitalization and time off work. The evidence supports a finding that the claimant has prevailed on this issue.

LIABILITY FOR PAST MEDICAL EXPENSES

The statutory duty for the employer is to provide such medical, surgical, chiropractic, and hospital treatment ... as may be reasonably required after the injury. Section 287.140.1, RSMo 1994.

The intent of the statute is obvious. An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those against his employer. However, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 85 (Mo.App. E.D. 1995).

The method of proving medical bills was set forth in Martin v. Mid-America Farmland, Inc., 769 S.W.2d 105 (Mo. banc 1989). In that case, the Missouri Supreme Court ordered that unpaid medical bills incurred by the claimant be paid by the employer where the claimant testified that her visits to the hospital and various doctors were the product of her fall and that the bills she received were the result of those visits.

We believe that when such testimony accompanies the bills, which the employee identifies as being related to and are the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records and evidence, a sufficient, factual basis exists for the Commission to award compensation. The employer, may, of course, challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. Id. at 111, 112.

The claimant offered various medical bills for physician services, hospital services, radiological services, and prescription medicine. The billing statements contained duplicates and

billings for prescription medications not related to the occurrence. With regard to emergency room visits, office visits and diagnostic testing as provided and ordered by Dr. Khan., the billings can be summarized from Exhibit I:

Date	Provider	Service	Amount
12/04-1/3/05	St. Joseph West Physicians,	ER Services	\$ 581.00
12/19/04	Radiological Consultants,	X-ray consultation	\$ 27.39
12/19/04	St. Joseph West Hosp,	ER Services	\$ 847.00
12/30/04	Radiological Consultants,	X-ray consultation	\$ 27.39
01/03/05	Radiological Consultants,	X-ray consultation	\$ 27.39
01/03/05	St. Joseph West Physicians,	ER Services	\$ 998.06
05/12/05	BJC St. Peters Hospital,	Hospital Services MEDICAID	\$ 154.00
03/07/06	St. Joseph West Hosp,	ER Services	\$ 159.00
03/07/06	St. Joseph West Hosp,	Hospital Services	\$ 461.16
0207-09	Dr. Kahn,	Pulmonary Medical Services	\$1,436.00
03/27/08	Washington University Physicians,	X-ray consultation	\$ 38.00
03/27/08	BJC St. Peters Hospital,	X-ray	\$ 201.00
06/04/09	BJC St. Peters Hospital,	X-ray MEDICAID	\$ 52.38
06/04/09	Washington University Physicians,	X-ray consultation	\$ 40.00
04/15-05/24/10	Dr. Khan,	Pulmonary Medical Services	\$ 724.00
Total Claimant			\$5,581.77
Total Medicaid			\$ 206.38

The claimant also submitted billing statements for a vast array of prescription medication and commented in her brief,

The medical records submitted and Claimant's testimony support[s] an award of prescription expenses. As Dr. Khan has only treated Claimant for her respiratory complaints Employer is responsible for all prescriptions ordered by Dr. Khan. Dr. Easterday is Claimant's personal physician and treats Claimant for multiple issues. As such, there are prescriptions included in Exhibit J that are not related to Claimant's work injury. Claimant did testify, however, that the prescriptions of Singulair, Simvastatin, and the generic Montelukast are prescribed by Dr. Easterday and are related to her respiratory issues. The records of Dr. Khan additionally confirm the ordering of those prescriptions for Claimant's respiratory condition. Therefore, Employer is responsible for \$1,233.49 in past pharmacy expenses. See claimant brief.

The claimant has a point except for Simvastatin, which is usually related to cardiovascular conditions and designed to reduce cholesterol and prevent heart attacks. With this proviso and eliminating duplicate billing records, the sum is \$571.84.

The defense offered no evidence that the medical services and prescription medication were not necessary and proper to treat the claimant's asthma, but suggested that the medical care related to a pre-existing asymptomatic condition. However, the medical services are

compensable even if the medical services and mediation also provide treatment for pre-existing condition. See Stevens v. Citizens Memorial Healthcare Foundation, 244 S.W.3d 234, 238 (Mo.App. S.D. 2008).

Based on the evidence, the claimant is awarded \$6,359.99 for past medical expenses subject to a lien for the Missouri Medicaid program for \$206.38.

FUTURE MEDICAL CARE

Pursuant to section 287.140.1, an employer is required to provide care "as may be reasonably required to cure and relieve from the effects of the injury." This includes allowance for the cost of future medical treatment. Pennewell v. Hannibal Regional Hospital, 390 S.W.3d 919, 926 (Mo. App. E.D. 2013) citing Poole v. City of St. Louis, 328 S.W.3d 277, 290-91 (Mo. App. E.D. 2010). An award of future medical treatment is appropriate if an employee shows a reasonable probability that he or she is in need of additional medical treatment for the work-related injury. Id. Future care to relieve [an employee's] pain should not be denied simply because he may have achieved [maximum medical improvement]. Id. Therefore, a finding that an employee has reached maximum medical improvement is not necessarily inconsistent with the employee's need for future medical treatment. Id.

Section 287.140.1 places on the claimant the burden of proving entitlement to benefits for future medical expenses. Rana v. Landstar TLC, 46 S.W.3d 614, 622 (Mo.App.2001). The claimant satisfies this burden, however, merely by establishing a reasonable probability that he will need future medical treatment. Smith v. Tiger Coaches, Inc., 73 S.W.3d 756, 764 (Mo.App.2002). Nonetheless, to be awarded future medical benefits, the claimant must show that the medical care "flow [s] from the accident." Crowell v. Hawkins, 68 S.W.3d 432, 437 (Mo.App.2001) (quoting Landers v. Chrysler Corp. 963 S.W.2d 275, 283 (Mo.App.1997).

In determining whether medical treatment is "reasonably required" to cure or relieve a compensable injury, it is immaterial that the treatment may have been required because of the complication of pre-existing conditions, or that the treatment will benefit both the compensable injury and a pre-existing condition. Tillotson v. St. Joseph Med. Ctr., 347 S.W.3d 511, 519 (Mo.App. W.D 2011). Rather, once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury. Id. The fact that the medication or treatment may also benefit a non-compensable or earlier injury or condition is irrelevant. Id. Application of the prevailing factor test to determine whether medical treatment is required to treat a compensable injury is reversible error. Id. at 521.

The evidence demonstrated that the claimant has a pulmonary condition that episodically affects her ability to breathe. "[A]cute flare-ups are going to occur with exposures ... Just simple things around the house are going to happen." See Dr. Volarich deposition, page 27. "The exam can be normal one hour, and five minutes later, you have an abnormal flare-up of bronchospasm causing significant problems. ... This is the nature of the beast. It is not a static condition. It changes bases on exposures to different allergens, chemical, particulate matter, etc." See Dr. Volarich deposition, page 42. All of the physicians opined that the claimant would require

pulmonary medication for the rest of her life. None of them opined that the medication that the claimant currently consumes flows from the occurrence.

Dr. Hyers testified that the pulmonary condition that the claimant bears can get progressively worse over time and can require lifelong treatment such as bronchodilators, medicines that open up airways and anti-inflammatory medicines either inhaled or given orally such as steroids. See Dr. Hyers' deposition, pages 11, 21, 22. Dr. Hyers also opined that the claimant's medical requirements were not "as a result of the exposure." See Dr. Hyers' deposition, page 11. In Dr. Khan's last evaluation, he opined that the claimant has chronic problems: obesity, asthma, pneumonia, and allergic rhinitis. See Exhibit H. Dr. Khan opined that the claimant's condition will require lifelong treatment, but did not opine whether that treatment flowed from the exposure. See Exhibit H. Dr. Volarich opined, "I'd recommend she continue following the instructions of her pulmonologist, take the medications, particularly, the inhalers that are provided to help control her systems, and I also warned her that if her bronchospasm does not break with that, she needs to go to the emergency room." See Dr. Volarich deposition, page 27.

Dr. Hyers was the only medical provider with any clear opinion on the issue and he did not opine that the medical treatment flowed from the occurrence. This issue must be ruled in favor of the defense.

TEMPORARY DISABILITY

Compensation must be paid to the injured employee during the continuance of temporary disability but not more than 400 weeks. Section 287.170, RSMo 1994. Temporary total disability benefits are intended to cover healing periods and are unwarranted beyond the point at which the employee is capable of returning to work. Brookman v. Henry Transp., 924 S.W.2d 286, 291 (Mo.App. E.D. 1996). Temporary awards are not intended to compensate the Employee after the condition has reached the point where further progress is not expected. Id.

When an employee is injured in an accident arising out of and in the course of his employment and is unable to work as a result of his or her injury, Section 287.170, RSMo 2000, sets forth the TTD benefits an employer must provide to the injured employee. Section 287.020.7, RSMo 2000, defines the term "total disability" as used in workers' compensation matters as meaning the "inability to return to any employment and not merely mean[ing the] inability to return to the employment in which the employee was engaged at the time of the accident." The test for entitlement to TTD "is not whether an employee is able to do some work, but whether the employee is able to compete in the open labor market under his physical condition." Thorsen v. Sachs Electric Co., 52 S.W.3d 611, 621 (Mo.App. W.D. 2001). Thus, TTD benefits are intended to cover the employee's healing period from a work-related accident until he or she can find employment or his condition has reached a level of maximum medical improvement. Id. Once further medical progress is no longer expected, a temporary award is no longer warranted. Id. The claimant bears the burden of proving his entitlement to TTD benefits by a reasonable probability. Id.

Dr. Kahn, the treating pulmonologist, released her to work as of January 7, 2005. See Exhibit H. The claimant testified that she was unable to work from January 3, 2005, to February

5, 2005, (4 6/7 weeks), because her employer instructed her to not work due to her acute pulmonary condition. On the other hand, the defense points out that on January 5, 2005, Dr. Khan examined the claimant and stated that the claimant "has been cleared to return to work on Friday" (January 7). In addition, the claimant testified that she applied for unemployment compensation during the period in question and that she represented to the Division of Employment Security that she was ready and able to work. See claimant deposition, pages 12, 13. She also testified that she was unable to receive unemployment benefits, because she had not worked for two years before applying for benefits. See claimant deposition, page 12.

Generally, our Courts have held, "The temporary awards provided by the statute are not designed as unemployment compensation." Williams v. Pillsbury Co., 694 S.W.2d 488, 489 (Mo.App. E.D. 1985). In this case, the claimant was ready and able to work, but her employer declined to provide employment during the period in question. Neither her testimony nor the medical records support an award for temporary total disability benefits, and the defense prevails on this issue.

PERMANENT DISABILITY

Workers' compensation awards for permanent partial disability are authorized pursuant to section 287.190. "The reason for [an] award of permanent partial disability benefits is to compensate an injured party for lost earnings." Rana v. Landstar TLC, 46 S.W.3d 614, 626 (Mo. App. W.D. 2001). The amount of compensation to be awarded for a PPD is determined pursuant to the "SCHEDULE OF LOSSES" found in section 287.190.1. "Permanent partial disability" is defined in section 287.190.6 as being permanent in nature and partial in degree. Further, "[a]n actual loss of earnings is not an essential element of a claim for permanent partial disability." Id. A permanent partial disability can be awarded notwithstanding the fact the claimant returns to work, if the claimant's injury impairs his efficiency in the ordinary pursuits of life. Id. "[T]he Labor and Industrial Relations Commission has discretion as to the amount of the award and how it is to be calculated." Id. "It is the duty of the Commission to weigh that evidence as well as all the other testimony and reach its own conclusion as to the percentage of the disability suffered." Id. In a workers' compensation case in which an employee is seeking benefits for PPD, the employee has the burden of not only proving a work-related injury, but that the injury resulted in the disability claimed. Id.

In a workers' compensation case, in which the employee is seeking benefits for PPD, the employee has the burden of proving, inter alia, that his or her work-related injury caused the disability claimed. Rana, 46 S.W.3d at 629. As to the employee's burden of proof with respect to the cause of the disability in a case where there is evidence of a pre-existing condition, the employee can show entitlement to PPD benefits, without any reduction for the pre-existing condition, by showing that it was non-disabling and that the "injury cause[d] the condition to escalate to the level of [a] disability." Id. See also, Lawton v. Trans World Airlines, Inc., 885 S.W.2d 768, 771 (Mo. App. 1994) (holding that there is no apportionment for pre-existing non-disabling arthritic condition aggravated by work-related injury); Indelicato v. Mo. Baptist Hosp., 690 S.W.2d 183, 186-87 (Mo. App. 1985) (holding that there was no apportionment for pre-existing degenerative back condition, which was asymptomatic prior to the work-related accident and may never have been symptomatic except for the accident). To satisfy this burden, the employee must present substantial evidence from which the Commission can "determine that the

claimant's preexisting condition did not constitute an impediment to performance of claimant's duties." Rana, 46 S.W.3d at 629. Thus, the law is, as the appellant contends, that a reduction in a PPD rating cannot be based on a finding of a pre-existing non-disabling condition, but requires a finding of a pre-existing disabling condition. Id. at 629, 630. The issue is the extent of the appellant's disability that was caused by such injuries. Id. at 630.

The claimant's exposure to fumes from the chemical spillage in the paint room at her place of employment caused brief pulmonary and other physical symptoms which disappeared after employee left the area of exposure and received minimal treatment. Since the occurrence, the claimant has had symptoms of Reactive Airways Disease, Reactive Airways Dysfunction Syndrome, or asthma. Dr. Volarich opined that the claimant's exposure to chemical odors on the date of injury was a substantial contributing factor to causing Reactive Airways Dysfunction Syndrome resulting in a thirty percent permanent partial disability to the claimant's pulmonary system. See Dr. Volarich deposition, pages 26, 27. Dr. Hyers opined that the claimant had mild asthma and suffered a 2 ½% permanent partial disability from the exposure. See Dr. Hyers' deposition, pages 7-11. Dr. Khan opined that the claimant's pulmonary condition was "mildly severe". See Exhibit H. Clearly, there is a temporal relationship between the chemical exposure and the claimant's pulmonary condition requiring hospitalization and time off work. Based on the evidence, the claimant is awarded a 15% permanent partial disability.

Made by: /s/ EDWIN J. KOHNER
EDWIN J. KOHNER
Administrative Law Judge
Division of Workers' Compensation