

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

Injury No. 13-085010

Employee: Maria Maddaloni-Boughton
Employer: Skaggs Community Hospital Association
Insurer: Self Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, 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 determine the following issues: (1) whether employee sustained injuries that will require future medical care in order to cure and relieve the employee of the effects of the injuries; (2) the nature and extent of any permanent disabilities; (3) the liability of the Second Injury Fund for enhanced permanent partial disability; (4) any disfigurement to be assessed; and (5) whether employer is liable for costs under § 287.560 RSMo.

The administrative law judge rendered the following determinations: (1) future medical treatment is not necessary to cure and relieve the claimant of the effects of her work-related injury; (2) employee sustained a permanent partial disability of 25% of the body as a whole as a result of her work-related injury of November 2, 2013; (3) the Second Injury Fund is liable for 16 weeks of permanent partial disability benefits; (4) employee is entitled to 4 weeks of compensation for disfigurement; and (5) there is no basis to award costs in this matter.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in declining to award costs; (2) in finding employee will not require future medical care as a result of the work injury and fusion surgery; and (3) in finding employee did not suffer any permanent partial disability to the thoracic and lumbar spine due to the injury.

The Second Injury Fund also filed a timely application for review with the Commission alleging the administrative law judge erred in awarding permanent partial disability

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benefits from the Second Injury Fund because there is no evidence on this record establishing that employee's preexisting disabilities and the disability from her primary work injury combine to create a greater disability than the simple sum.

For the reasons stated below, we modify the award of the administrative law judge referable to the issues of: (1) future medical care; (2) nature and extent of permanent disability; and (3) Second Injury Fund liability.

Discussion

Future medical treatment

Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove there is a reasonable probability of 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). Employee advances the expert medical testimony of Dr. Mitchell Mullins, who believes that it is likely employee, may require future medical intervention to cure and relieve the effects of the work injury.

The administrative law judge, however, declined to award any future medical treatment; despite her finding that employee suffers a 25% permanent partial disability of the body as a whole referable to the pain and limitations resulting from the work injury, which ultimately necessitated a cervical fusion surgery. The administrative law judge expressly relied upon the opinion of the treating physician Dr. Jeffrey Woodward, who believes that cervical injections are too risky, that facet joint injections are not likely to provide long lasting relief, and that post-fusion adjacent level degeneration is much less of a concern with regard to the cervical spine versus the lumbar spine.

We find Dr. Woodward's opinions unpersuasive to the extent they may be viewed as ruling out any reasonable probability that employee may have a need for future medical treatment to cure and relieve the effects of the work injury. First, Dr. Woodward does not suggest there is *no* concern of adjacent level degeneration in the context of cervical spine fusions; he merely contrasts them as *less* concerning when compared to lumbar spine fusion surgeries. He otherwise acknowledged that, in his practice, he has personally witnessed the effects of fusion surgeries placing greater stress on adjacent vertebral levels and causing additional damage.

Second, with regard to facet joint injections, Dr. Woodward merely advances a clinical opinion that such would not be very effective in the long-term; this rationale ignores that § 287.140 contemplates an award of any treatment that may "relieve" the effects of the work injury. We are not aware of any authority for the proposition that such "relief" must be of a certain minimum efficacy or duration to support an award of medical treatment. The case law, at least, would seem to run directly contrary to such a restrictive analysis, in that the courts have consistently declared that an award of medical treatment "[i]ncludes treatment that gives comfort or relief from pain even though a cure is not possible," because "[t]he employer has an **absolute and unqualified** duty to provide

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statutorily-required medical aid to a claimant.” *Abt v. Miss. Lime Co.*, 420 S.W.3d 689, 704 (Mo. App. 2014)(emphasis added).

Third, we note that, at his deposition, Dr. Woodward specifically acknowledged that employee’s pain complaints have been consistent since the date of her injury. He also opined that he personally found her, clinically speaking, to be credible, reliable, and worthy of belief. Yet, Dr. Woodward fails to rule out or explain why employee may not reasonably require medications to cure and relieve the ongoing pain she suffers as a result of the work injury.

Finally, to the extent that Dr. Woodward suggests that employee will never again need to see a doctor to—at the very least—evaluate the status of her cervical fusion and related hardware, we find such an opinion wholly unpersuasive. Again, Dr. Woodward admitted that he has firsthand experience with fusion surgeries contributing to adjacent-level degeneration. He also agreed that the hardware from fusion surgeries can sometimes break.

In light of the foregoing concerns, we find Dr. Mullins’s opinion ultimately more persuasive with respect to the issue whether future medical treatment may be reasonably required to cure and relieve the effects of the work injury. We are convinced (and we so find) that there is a reasonable probability that employee has a need for future medical treatment flowing from the work injury. We conclude that employer is obligated to provide that future medical treatment that may reasonably be required to cure and relieve the effects of employee’s work injury.

Nature and extent of disability

Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee’s compensable work injury. The administrative law judge found that employee suffered a 25% permanent partial disability of the body as a whole as a result of the November 2013 accident. Although the award is not explicit with regard to the issue, it appears to us (and the parties suggest in their briefs) that the administrative law judge awarded this amount solely for injury to the cervical spine, and declined to award any additional amount for permanent disability affecting the lumbar spine. After careful consideration, we agree with employee’s position that she is entitled to some additional permanent partial disability benefits for her low back injury.

First, we note that the administrative law judge explicitly found employee to be a credible witness. After a careful review of the record, we agree. At the hearing in this matter, employee listed the low back as one of the injuries she suffered when she slipped and fell in the puddle of urine at work on November 2, 2013.

The contemporaneous medical treatment records also describe low back complaints referable to the accident. Specifically, the notes from Cox Medical Center and CoxHealth Occupational Medicine show that in addition to neck pain, employee suffered thoracic and low back pain. Employee also advances the expert medical testimony of

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Dr. Mitchell Mullins, who believes she suffered 7% permanent partial disability referable to the thoracic and lumbar spine in addition to the 25% body as a whole rating he provided for the cervical spine injury.

Employer, on the other hand, relies upon Dr. Woodward, who acknowledged that employee's complaints of low back pain have been consistent since the date of injury, but who declined to rate permanent partial disability referable to the low back, because he did not render any medical treatment for this condition apart from oral medications prescribed at the initial visit. In our view, this rationale does not effectively rebut the contrary opinion from Dr. Mullins. We also find persuasive employee's argument that her cervical spine treatment and surgery understandably received more attention by treating personnel and thus overshadowed her ongoing low back complaints in the treatment records.

In light of the foregoing considerations, we deem Dr. Mullins more persuasive on the issue. We find that employee suffered an additional 5% permanent partial disability of the body as a whole referable to the low back injury sustained in the accident of November 2, 2013. We conclude that employer is liable for a total of 120 weeks of permanent partial disability benefits at the stipulated weekly permanent partial disability benefit rate of \$263.93, for a total of \$31,671.60 in permanent partial disability benefits. We note that employer additionally remains liable for the four weeks of compensation for disfigurement (a total of \$1,055.72) awarded by the administrative law judge.

Second Injury Fund liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid from the Fund in all cases of permanent disability where there has been previous disability. Employee claims permanent partial disability benefits from the Second Injury Fund, advancing the argument that her preexisting diagnosis of type II diabetes interacts synergistically with her primary injuries of the cervical and lumbar spine. A synergistic interaction as between an employee's preexisting disabling conditions and a subsequent compensable injury is a necessary showing in a claim for permanent partial disability benefits from the Second Injury Fund:

[T]he claimant must establish that the present compensable injury and his preexisting permanent partial disability combined to cause a greater degree of disability than the simple sum of the disabilities viewed independently. This is referred to as the "synergistic effect." If a claimant establishes that the two disabilities combined result in a greater disability than that which would have occurred from the last injury alone, then the Fund is liable for the degree of the combined disability that exceeds the numerical sum of the preexisting disabilities and the disability from the last injury, or the "synergistic effect" of the combined disabilities. In other words, the Fund is liable only for the amount attributable to the synergistic combination. Thus, the failure to prove a synergistic combination between

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the primary injury and a preexisting disability is proper grounds for denying Fund liability.

Winingear v. Treasurer of State, 474 S.W.3d 203, 207-08 (Mo. App. 2015).

We note that in making her award of permanent partial disability benefits from the Second Injury Fund, the administrative law judge did not specifically identify the evidence upon which she relied. In her brief, employee cites deposition testimony from Dr. Woodward for evidence of the requisite synergistic interaction. We have carefully reviewed Dr. Woodward's testimony. Although Dr. Woodward persuasively identifies a relationship between diabetes mellitus, neuropathy, and degenerative spine conditions *in general*, he fails to identify or describe any synergistic interaction between the effects of *this* employee's specific work injury and her preexisting diabetes. At the hearing in this matter, employee did not identify or describe any new or increased limitations referable to a synergistic combination of her diabetes and her lumbar and cervical spine injuries. Likewise, our review of the medical treatment records in evidence does not readily disclose evidence of synergy, and we will not parse them for such where employee has declined to cite them in her brief as supportive of a finding of synergy.

Ultimately, we agree with the Second Injury Fund's position with respect to this issue. We deem the evidence insufficiently developed to support a finding that there is a synergistic interaction between the effects of employee's preexisting disabling conditions and the effects of the primary work injuries. For this reason, we decline to make such a finding, and we must conclude therefore that employee is not entitled to any permanent partial disability benefits from the Second Injury Fund in this case.

Conclusion

We modify the award of the administrative law judge as to the issues of: (1) future medical care; (2) nature and extent of permanent disability; and (3) Second Injury Fund liability.

Employer is ordered to provide employee that future medical care that may reasonably be required to cure and relieve the effects of employee's work injury.

Employer is liable for a total of \$31,671.60 in permanent partial disability benefits, as well as the additional amount of \$1,055.72 for disfigurement.

The Second Injury Fund has no liability for permanent partial disability benefits in this case.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued November 19, 2015, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

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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 27th day of July 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Maria Maddaloni Boughton Injury No. 13-085010
Dependents: N/A
Employer: Skaggs Community Hospital Association
Additional Party: Treasurer of Missouri, as the Custodian of the Second Injury Fund
Insurer: Self Insured c/o Corporate Claims Management Inc.
Hearing Date: 9/17/15 Checked by: MEH

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: 11/2/13
5. State location where accident occurred or occupational disease was contracted: TANEY COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
CLAIMANT SLIPPED AND FELL ON LIQUID ON THE FLOOR.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: BODY AS A WHOLE
14. Nature and extent of any permanent disability: 25%
15. Compensation paid to-date for temporary disability: \$3,329.62
16. Value necessary medical aid paid to date by employer/insurer? \$57,984.53

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- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$395.89
- 19. Weekly compensation rate: \$263.93
- 20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: N/A

0 weeks of temporary total disability (or temporary partial disability)

100 weeks of permanent partial disability from Employer

4 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

22. Second Injury Fund liability: Yes No Open

16 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits:

Permanent total disability benefits from Second Injury Fund:
weekly differential (N/A) payable by SIF for 0 weeks, beginning
and, thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

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:

RYAN MURPHY

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Maria Maddaloni Boughton Injury No. 13-085010

Dependents: N/A

Employer: Skaggs Community Hospital Association

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

Insurer: Self Insured c/o Corporate Claims Management Inc.

Hearing Date: 9/17/15 Checked by: MEH

The parties appeared before the undersigned administrative law judge on September 17, 2015, for a final hearing. The claimant appeared in person represented by Ryan Murphy. The employer and insurer appeared represented by Patrick Platter. The Second Injury Fund appeared represented by Cara Harris and Danett Padgett. Memorandums of law were filed by November 16, 2015.

The parties stipulated to the following facts: On or about November 2, 2013, Skaggs Community Hospital Association was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully self-insured. On the alleged injury date of November 2, 2013, Maria Maddaloni Boughton was an employee of the employer. The claimant was working subject to the Missouri Workers' Compensation Law. On or about November 2, 2013, the claimant sustained an accident which arose out of and in the course and scope of employment. The accident occurred in Taney County, Missouri. The claimant notified the employer of her injury as required by Section 287.420 RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430 RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$395.89, which is sufficient to allow a compensation rate of \$263.93 for temporary total and permanent partial

disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$3,329.62. The employer and insurer have paid medical benefits in the amount of \$57,984.53. The attorney fee being sought is 25%.

ISSUES:

1. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
2. The nature and extent of permanent disabilities.
3. The liability of the Second Injury Fund for enhanced permanent partial disability.
4. Disfigurement to be assessed.
5. Claimant's oral Motion for Costs pursuant to Section 287.560 RSMo.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The claimant testified at the hearing. I find claimant to be a credible witness. She is 43 years old. She graduated from high school in 1991. She is married and lives in Branson, Missouri with her husband and daughter.

Prior to November 2, 2013, the claimant had been diagnosed with diabetes. She testified her diabetes caused fatigue and high blood pressure and was generally not well controlled. Medical records show a long history of preexisting treatment for diabetes including an inability to control her blood sugar. In 1984 she dislocated her right hip requiring an open reduction and internal fixation surgery. She testified she had a second surgery to remove hardware in her right hip in 1987.

The claimant has suffered problems with her Type II diabetes mellitus for several years and high blood sugars have been a recurring problem. On September 6th, 2010, she presented herself to Mercy Hospital. She told the staff there that she was currently getting treatment at the Kitchen Clinic but was

seen at Cox yesterday, had her blood glucose corrected, but on that date it rose into the 300s. She had not yet established a permanent insulin treatment program. The Mercy staff gave her insulin and encouraged her to follow up with her primary care physician. She went to Cox Medical Center on September 20th, 2010 complaining of tingling and burning in her left digits and left arm. This had been over the past several months. Her glucose level was 347 on February 3rd, 2011 when she presented at Skaggs. It was 434 when she presented to Skaggs on March 18th, 2013. On August 29th, 2013, approximately two months before her fall, she went to her primary care provider, Carolyn Clark of the Family Medical Center in Branson. This was her first appointment to establish care with Clark. The claimant reported she was diabetic and had been off all medications for seven (7) months due to insurance issues. She complained of neuropathy in both arms with the pain starting in her fingers and going up her arms to her neck. Clark diagnosed Type II diabetes mellitus uncontrolled with anxiety, asthma, a depressive disorder, hypertension and peripheral neuropathy. Clark started her on medication and recommended a recheck within one month. The claimant returned on September 26th, but for a well woman examination.

On November 2, 2013, she was employed at Cox Medical Center in Branson, Missouri as a certified nursing assistant. On that date, she was assisting a co-worker with a bed change when she slipped in urine and fell backwards. She had immediate back pain and reported this to her charge nurse. She continued working and her pain became worse over the next several hours. The next day, she was evaluated at Cox Medical Center Branson. She reported a fall resulting in low back and right shoulder pain that occurred the previous day. The records show that her current medications were Lisinopril, Gabapentin, Zoloft, and insulin injections. The doctor diagnosed acute back pain, thoracic strain, and a

sprained right shoulder. She was given work restrictions and advised to follow up with occupational medicine.

On November 4, 2013, she reported to Dr. Steven Foote with Occupational Medicine for evaluation of her low back pain, right shoulder pain and tingling in her right arm. She was diagnosed with lumbar and cervical strains and given work restrictions of no lifting or pulling more than fifteen pounds and no lifting overhead more than five pounds.

The claimant saw Dr. Randall Cross on November 15th, 2013. She told Dr. Cross she had noticed the onset of tingling in her right fourth and fifth fingers beginning the Tuesday of the week she saw him. She reported right arm weakness and that light duty doing prep work in the kitchen made her right arm hurt worse. She had diffused tenderness in her low back with no radicular pain. Testing with her neck and right shoulder indicated a progressive increasing right upper extremity pain following a C8 dermatome. She could not tolerate the Prednisone with her Type 2 diabetes mellitus. Dr. Cross diagnosed a right cervical radiculopathy. He advised her to avoid steroids. He also recommended physical therapy and likewise recommended a checkup in two weeks.

She was next evaluated on November 8, 2013 and November 15, 2013 by Dr. Anjum Qureshi with Occupational Medicine. It was recommended the patient continue with work restrictions and begin physical therapy. On December 3, 2013, she was reevaluated by Dr. Qureshi. It was recommended she be evaluated by a psychiatrist and to continue with current work restrictions.

On December 22nd, 2013, approximately six (6) weeks after the accident, claimant was admitted into Cox Health Branson upon an emergency basis. She was hospitalized from December 22nd until December 30th. She was admitted to ICU for diabetic ketoacidosis. Her glucose level was at 952. She was admitted because of dehydration and weakness. The attending physician prescribed various IV

drugs including glucose and monitored all. The clinical picture, according to the attending physician, evolved into a picture ileus. This ileus resolved over time and with MG suction. The attending physician advised her to resume her insulin. The claimant returned to Carolyn Clark on January 8th, 2014. She reported no pain or stiffness in her neck; no pain in her joints; no limitation of motion with no paresthesia or numbness.

Claimant was evaluated by Dr. Jeff Woodward with Springfield Neurological and Spine Institute on January 9, 2014. She reported low back and right shoulder pain with numbness and tingling in the right upper extremity. An exam revealed pain over the right C7 paraspinal region, cervical hyper lordosis and pain over the L5 lumbar region. It was recommended the claimant continue with physical therapy and work restrictions. On January 30, 2014, Dr. Woodward reevaluated the claimant who continued to report low back, neck and right upper extremity pain with numbness in the right upper extremity. It was recommended she continue with physical therapy and an MRI was ordered at that time. The MRI revealed spondylosis primarily at C5-6, but also C4-5 and C2-3 as well as the craniocervical junction, a slight mass effect upon the anterior cord at C5-6 with mass effect in the lateral recess regions possibly impinging upon the C6 nerve root, and reversal of lordotic curvature. On February 6, 2014, claimant followed up with Dr. Woodward to discuss the MRI. It was recommended she continue with physical therapy and be evaluated by a neurosurgeon.

On February 8, 2014, she presented to Dr. Mark Crabtree. Dr. Crabtree reviewed an MRI scan from January 30th, 2014. This indicated spondylosis primarily at C5-6, but also C4-5, C2-3 and the cranial cervical junction. There was a slight mass effect upon the anterior cord at C5-6 with mass effects in the lateral recess regions possibly impinging upon the C6 nerve roots. There was a reversal of

lordotic curvature but no subluxation to suggest instability. Dr. Crabtree recommended she undergo a CT myelogram of the cervical spine and remain on work restrictions.

On February 25, 2014, a CT myelogram was performed which revealed: (1) Overall mild degenerative changes. Reversal of cervical lordosis, apex C5-6, (2) At C2-3, central disk osteophyte protrusion with mild canal stenosis and cord approximation, (3) At C5-6, disk osteophyte, uncovertebral spurring and bilateral ligamentum flavum ossification. There was mild to moderate canal stenosis with mild cord deformity, but frank impingement. There was an “approximation, but no impingement of the right C6 nerve root.”

On April 17, Dr. Crabtree called the patient to discuss the need for cervical spine surgery. Surgery was scheduled and performed on April 21, 2014. The patient underwent: (1) Anterior cervical discectomy complete, (2) Arthrodesis, (3) Anterior plating, (4) PEEK Cage, intervertebral device, (5) Autograft from same incision.

On May 29, 2014, the patient presented to both Dr. Crabtree and Dr. Woodward with continued complaints of burning in her left hand. It was recommended that she begin physical therapy. On June 11, 2014, she was reevaluated by Dr. Woodward with continued complaints of neck pain. Physical therapy was again recommended and ordered. On July 7, 2014 and August 5, 2014, she presented to Dr. Woodward with continued complaints of neck pain that is worse with pushing a wheelchair. She felt physical therapy was not helpful. It was recommended that she complete physical therapy and have an EMG and MRI of the cervical spine. On August 11, 2014 an MRI of the cervical spine was performed and revealed: (1) ACDF C5-6 with moderate residual vertebral canal stenosis due to thickening of ligamentum flavum, (2) central zone disc extrusion C4-5 with annular fissure. Finding slightly more prominent when compared to January 20, 2014. On August 20, 2014, an EMG was performed and

revealed right median sensorimotor neuropathy at the carpal tunnel: right ulnar sensorimotor neuropathy diffuse in RUE without localizing elector data; no electrodiagnostic evidence of the right radial sensory neuropathy, no needle exam EMG electrical evidence of cx radiculopathy or brachial plexopathy.

On September 9, 2014 she was seen for follow up by Dr. Crabtree with continued complaints of neck pain with radiation into the right shoulder with numbness and tingling into the right upper extremity. There were no surgical recommendations at that time and she was referred to Dr. Woodward for a final impairment rating.

Nancy Dickey-Beiswenger is a board certified occupational therapist who conducted a functional capacity evaluation recommended by both Dr. Crabtree and Dr. Woodward. She conducted this evaluation on October 9th, 2014. Her deposition was admitted into evidence.

Ms. Beiswenger found claimant was giving less than full effort and did not meet validity scales. None the less, she thought the employee would have difficulty performing overhead work. She would expect her to have difficulty in lifting probably over fifty (50) pounds. She did not think claimant could do a heavy work job and would probably struggle doing a medium work job. She may also have difficulty if she was doing a job with a lot of cervical movement, but if she was static and was not moving her neck, she probably would have some muscle ache and fatigue.

The claimant was seen by Dr. Woodward on October 29, 2014 to discuss the FCE results. She reported bilateral hand pain after working. Dr. Woodward gave her lifting and postural restrictions and determined she was at maximum medical improvement. Dr. Woodward also testified by deposition.

In his final report, Dr. Woodward found the claimant suffered a work related cervical, scapular and lumbar spine injury with ongoing neck pain and radicular sensory symptoms without objective neurologic signs on exam or diagnostic testing. He placed her at maximum medical improvement

effective October 29th, 2014. He rated her final condition at ten percent (10%) to the body as a whole for her work related neck condition. In addition she had a preexisting impairment of degenerative disc disease in the cervical spine disease with bone spurring. This contributed to the work injury and current condition.

Dr. Woodward noted claimant's previous medical history of diabetes mellitus was significant. There is a relationship between diabetes mellitus and neuropathy. Diabetes mellitus is uncontrolled elevated blood sugar. Neuropathy is a nerve pathology which can be diffuse involving all the nerves or can be more related to a single nerve. There is a relationship between the two. Diabetes mellitus is clearly one of the causes of peripheral polyneuropathy conditions which are injury and abnormality to all the nerves diffusely in the body. Physicians understand glucose in the blood is a toxin to nerves at higher levels.

Dr. Woodward did not find any permanent disability for her low back. He did not have to prescribe any treatment for the low back other than oral medications that he provided her after her first visit with him. He and his staff would have encouraged her to report problems for her low back.

Dr. Woodward did not believe claimant required future medical treatment for her neck. He did not believe cervical injections were medically necessary for any work injury conditions. He certainly did not recommend any cervical epidural injections which have significant risk including paralysis for only temporary relief sixty percent (60%) of the time after the injections. The only other injection consideration would be a facet joint injection. However, for her condition, he did not feel that would likely change any significant symptoms she was having and it certainly would not provide any lasting treatment. These injections are normally for acute non-surgical conditions. Studies have shown those conditions respond best to cortical spine injections. The other consideration and concern would be her

preexisting diabetes and cortical cord steroid injections would definitely elevate her blood sugar, at least temporarily, which would not be recommended for her.

Dr. Woodward is also familiar with the adjacent segment condition. He believed the concern of post-fusion adjacent level or transition level issues are much less of a concern for the cervical spine. The majority of patients he treats and follows after this type of cervical fusion do not require ongoing medical care for post-fusion and do not develop any significant surgery related spine condition at the adjacent segments. Based upon her post-operative imaging, he did not identify any specific additional medical tests or treatments that are necessary or are likely to change her condition. Dr. Crabtree also evaluated those imaging studies and saw the patient post-operatively and he did not order any further treatment.

Further, the mild degenerative spine abnormalities at C2-3, C3-4, C4-5, C5-6 and C6-7 indicate a genetic predisposed effuse spine degenerative change which is not uncommon. She does not need treatment for the adjacent segments merely because she had a fusion. There is no medical indication that such treatment is necessary. And particularly, with her post-operative myelogram CT, there is no evidence showing any significant objective bone or disc abnormality requiring any additional medical care.

Dr. Woodward recommended claimant perform continuous lifting, pushing and pulling from zero to thirty pounds maximum and only occasional overhead activities to reduce the risk of significant physical re-injury to her neck. He believed her condition was medically stable, that she would have chronic post-operative cervical spine discomfort without significant changes unless she were to have a new significant injury. It would be most important that she limit heavy lifting and pulling and that she also continue neck exercises and stretches. Otherwise, he found no other medical recommendations

other than to manage her diabetes which has been known to contribute to degenerative spine disease.

On February 26, 2015, she was seen by Dr. Mitch Mullins for an independent medical evaluation. Dr. Mullins found claimant had continued ongoing pain in her neck, arms and right sided back pain. Dr. Mullins opined the accident that occurred on November 2, 2013, was the prevailing factor causing the disc herniation and subsequent stenosis in the cervical spine as well as ongoing low back pain and thoracic pain and further causing the need for surgical intervention in the cervical spine.

Dr. Mullins found claimant had reached maximum medical improvement and found permanent partial disability pertaining to and as a direct result of the accident occurring on November 2, 2013 while employed by Cox Medical Center. Dr. Mullins gave a 25% permanent partial disability to the body as a whole rated at the cervical spine due to the injury. This rating considers the need for discectomy and fusion surgery as well as her significant loss of range of motion and ongoing pain. Dr. Mullins gave a 7% permanent partial disability to the body as whole rated at the thoracic and lumbar spine due to the injury. Dr. Mullins assigned restrictions and limitations of no lifting more than thirty pounds occasionally and no more than ten pounds frequently.

Dr. Mullins found claimant will require future medical treatment including further surgery at the levels above or below her fusion level noting it is a well-established fact that with time, those levels above and below the fusion site will degenerate at an accelerated rate due to the fusion surgery. Because claimant is only 43 years old, she is likely to require further medical intervention. In his report he states, "Future medical treatment may include further surgery at the levels above or below her fusion level. It is a well-established fact that with time those levels above and below the fusion site will degenerate at an accelerated rate due to the fusion surgery. At her age she is likely to require further intervention. This may include physical therapy, injections and less likely surgical intervention."

Dr. Mullins diagnosed preexisting injuries or diseases including a 15% permanent partial impairment to the body as a whole with regard to her diabetes mellitus which requires insulin and has been poorly controlled. Her hemoglobin A1C of 9.4 is considered with this rating. He also found a preexisting 10% permanent partial disability at the right hip due to prior ORIF. This rating considers her loss of range of motion with occasional discomfort. Dr. Mullins did not comment or offer any opinion regarding a synergistic effect between the preexisting diabetes and/or right hip condition to create any greater disability when combined with the work injury.

Claimant testified her current symptoms include significant pain in the neck, low back on the right side, and right arm. She described the pain as throbbing with periodic pins and needles sensation that shoots from her fingers on the right hand up the arm to the back of the neck. She testified she has difficulty reaching down doing laundry, putting dishes away overhead, walking for long periods of time, climbing more than three flights of stairs, and driving due to the loss of range of motion in her neck and back.

The claimant also made an oral Motion for Costs under Section 287.560 RSMo. The basis for this motion is that the employer and insurer had not tendered an offer prior to the hearing. Correspondence between the parties shows the claimant was adamant that any offer would not be considered without an amount for future medical treatment. This is the basis upon which the claimant is requesting cost, the employer's failure to make an offer which included future medical treatment.

After carefully considering all of the evidence, I make the following rulings:

1. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.

Dr. Mullins found claimant to be at maximum medical improvement and also opined that she may need a variety of future medical treatments, including physical therapy, injections and less likely surgical intervention.”

Woodward carefully explained why he did not agree with Dr. Mullins recommendations for future medical treatment. He did recommend any cervical epidural injections which have significant risk including paralysis for only temporary relief sixty percent (60%) of the time after the injections. He did not recommend facet joint injections for her condition as he did not feel that would likely change any significant symptoms she was having and it certainly would not provide any lasting treatment. The other consideration and concern would be her preexisting diabetes and cortical cord steroid injections would definitely elevate her blood sugar, at least temporarily, which would not be recommended for her.

Dr. Woodward also found that the concern of post-fusion adjacent level or transition level issues are much less of a concern for the cervical spine. Based upon her post-operative imaging, he did not identify any specific additional medical tests or treatments that are necessary or are likely to change her condition. Dr. Crabtree also evaluated those imaging studies and saw the patient post-operatively and he did not order any further treatment. She does not need treatment for the adjacent segments merely because she had a fusion. There is no medical indication that such treatment is necessary. And particularly, with her post-operative myelogram CT, there is no evidence showing any significant objective bone or disc abnormality requiring any additional medical care.

I find Dr. Woodward’s opinion more persuasive. Therefore, I find that future medical treatment is not necessary to cure and relieve the claimant of the effects of her work-related injury.

2. The nature and extent of permanent disabilities.

I find the claimant has sustained a permanent partial disability of 25% of the body as a whole as a result of her work-related injury of November 2, 2013.

3. The liability of the Second Injury Fund for enhanced permanent partial disability.

Claimant has established a right to recover from the Second Injury Fund. A claimant in a worker's compensation proceeding has the burden of proving all elements of his claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo.App. E.D.2008). In order for a claimant to recover against the SIF, he must prove that he sustained a compensable injury, referred to as "the last injury," which resulted in permanent partial disability. Section 287.220.1 RSMo. A claimant must also prove that he had a pre-existing permanent partial disability, whether from a compensable injury or otherwise, that: (1) existed at the time the last injury was sustained; (2) was of such seriousness as to constitute a hindrance or obstacle to his employment or reemployment should he become unemployed; and (3) equals a minimum of 50 weeks of compensation for injuries to the body as a whole or 15% for major extremities. *Dunn v. Treasurer of Missouri as Custodian of Second Injury Fund*, 272 S.W.3d 267, 272 (Mo.App. E.D. 2008)(Citations omitted). In order for a claimant to be entitled to recover permanent partial disability benefits from the Second Injury Fund, he must prove that the last injury, combined with his pre-existing permanent partial disabilities, causes greater overall disability than the independent sum of the disabilities. *Elrod v. Treasurer of Missouri as Custodian of the Second Injury Fund*, 138 S.W.3d 714, 717-18 (Mo. banc 2004).

Claimant has met the burden imposed by law.

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

claimant sustained a compensable last injury which resulted in permanent partial disability equivalent to 25% of the body as a whole (100 weeks).

As of the time the last injury was sustained, Claimant had the following preexisting permanent partial disabilities, which meet the statutory thresholds and were of such seriousness as to constitute a hindrance or obstacle to employment or reemployment: 15% of the body as a whole related to her pre-existing diabetes (60 weeks). There is no testimony that her hip was a hindrance or obstacle and none of the doctors addressed it in their ratings, thus, I am not considering it in assessing pre-existing disability for Second Injury Fund purposes.

The credible evidence establishes that the last injury, combined with the pre-existing permanent partial disabilities, causes 10% greater overall disability than the independent sum of the disabilities. The Second Injury Fund liability is calculated as follows: 100 weeks for last injury + 60 weeks for preexisting injuries = 160 weeks x 10% = 16 weeks of overall greater disability.

4. Disfigurement to be assessed.

At the time of the hearing I observed a scar on claimant's neck resulting from the cervical surgery. I assess 4 weeks disfigurement for this scarring.

5. Claimant's oral Motion for Costs pursuant to Section 287.560 RSMo.

The claimant is requesting costs based on an unreasonable defense on the part of the employer and insurer because they refused to make an offer that included future medical treatment. I do not find this constitutes an unreasonable defense. Future medical treatment is a significant issue in this case. Furthermore, I have found, based on the evidence, that future medical treatment is not necessary and have denied claimant's request for it. Therefore, I do not find that there is any basis to award costs in this matter.

Attorney for the claimant, Ryan Murphy, is awarded an attorney fee of 25%, which shall be a lien on the proceeds until paid. Interest shall be paid as provided by law.

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation