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

Injury No.: 05-036477

Employee: Shelby Mays

Employer: Arvinmeritor OE LLC (Settled)

Insurer: Self-Insured (Settled)

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

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 10, 2010. The award and decision of Administrative Law Judge Carl Strange, issued February 10, 2010, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 3rd day of September 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

_____
William F. Ringer, Chairman

_____
Alice A. Bartlett, Member

_____
John J. Hickey, Member

Attest:

_____
Secretary

INTER-OFFICE COMMUNICATIONS

DIVISION OF WORKERS' COMPENSATION

January 8, 2007

Ms. Patricia "Pat" Secrest, Director
Division of Workers' Compensation
PO Box 58
Jefferson City, Missouri 65102-0058

In Re: Injury Number: 05-036477
Employee: Shelby G. Mays
Employer: Arvin Meritor Incorporated
Insurer: Arvin Meritor Incorporated

Dear Ms. Secrest:

Enclosed please find a temporary or partial award in the above referenced workers' compensation case. The employer-insurer has been directed to furnish additional medical aid as set forth in the terms of the award. In addition the employer has been directed to provide temporary total disability benefits, pay mileage and pay for previously incurred medical bills.

Sincerely,

_____

Gary L. Robbins
Administrative Law Judge
Cape Girardeau, Missouri

ISSUED BY DIVISION OF WORKERS' COMPENSATION

TEMPORARY OR PARTIAL AWARD

Employee: Shelby G. Mays Injury No. 05-036477

Dependents: N/A

Employer: Arvin Meritor Incorporated

Additional Party: N/A

Insurer: Arvin Meritor Incorporated

Hearing Date: October 30, 2006 Checked by: GLR/kh

SUMMARY OF FINDINGS

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? March 3, 2005
5. State location where accident occurred or occupational disease contracted: Stoddard 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? Self Insured
11. Describe work employee was doing and how accident happened or occupational disease contracted: The employee was operating a "sizer" machine. As she was

twisting and moving product into and out of the machine, she injured her back and lower body.

12. Did accident or occupational disease cause death? No

13. Parts of body injured by accident or occupational disease: Back and left leg.

14. Compensation paid-to date for temporary total disability: $0

15. Value necessary medical aid paid to date by employer-insurer? $104.00

16. Value necessary medical aid not furnished by employer-insurer? $227,230.89

17. Employee's average weekly wage: $688.29

18. Weekly compensation rate: $458.86

19. Method wages computation: By agreement

20. Amount of compensation payable: $264,240.72

Unpaid medical expenses: $227,230.89

Additional Medical Aid: See Award

TTD: $35,791.08

Mileage: $1,218.75

This award is only temporary and partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

The compensation awarded to the employee 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 employee: Kimberly A. Heckemeyer

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

FINDINGS OF FACT AND RULINGS OF LAW

On October 30, 2006, Shelby G. Mays, the employee, appeared in person and by her attorney, Kimberly A. Heckemeyer, for a temporary or partial award. The employer was represented at the hearing by their attorney, Richard A. Day. The Court took judicial notice of all of the records contained within the files of the Division of Workers' Compensation. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was fully qualified as a self-insured employer.
2. On or about the date of the alleged accident or occupational disease the employee was an employee of Arvin Meritor Incorporated and was working under the Workers' Compensation Act.
3. On or about March 3, 2005 the employee sustained an accident or occupational disease arising out of and in the course of her employment.
4. The employer had notice of the employee's claim.
5. The employee's claim was filed within the time allowed by law.
6. The employee's average weekly wage was $688.29 per week. Her compensation rate for temporary total disability was $458.86 per week.
7. The employer-insurer furnished $104.00 in medical aid.
8. The employer-insurer did not furnish any temporary disability benefits.

ISSUES:

1. Whether the employee's injury was medically causally related her accident or occupational disease?
2. Whether the employer should be liable to pay $227,230.89 in past medical bills, as the employer has disputed the issue as to authorization, reasonableness, necessity and causal relationship?
3. Whether the employer should be liable to pay the employee mileage costs for 3,250 miles?
4. Whether the employer should be liable for future medical care?
5. Whether the employer should be liable to pay temporary total disability benefits amounting to $35,791.08?

EXHIBITS:

Employee Exhibits-

A. Medical records
B. Medical bills

C. Deposition of Anthony Zoffuto, M.D.
D. Mileage statement

Employer Exhibits-

1. Deposition of Russell C. Cantrell, M.D.
2. Letter of James E. Palen, M.D.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

STATEMENT OF THE FINDINGS OF FACT:

Shelby G. Mays, the employee, is 59 years old and has lived in Bloomfield, Missouri for the last thirty-six years. She went to school as far as the sixth grade, but at the age of thirteen, had to quit to support herself.

Over the years, the employee worked as a babysitter, housekeeper, clerk, waitress, cook, candy factory worker, and sewing machine operator. She began factory employment when she turned twenty years old. In 1988 she began employment with Arvin Meritor Incorporated, hereinafter referred to as Arvin or employer. The employee testified that she worked at Arvin for seventeen years, and that prior to this employment she had no problems with her back. When the employee first started, she worked in the muffler department as a spot welder, ran a turntable and packaged muffles into containers. After some time, the employee transferred to the Y-Pipe department. There she ran machines and did whatever she was told to do. Over the years of employment with Arvin, the employee worked in several capacities and departments including running machines, welding, office cleaning and office work.

The employee testified that she had an injury in 1991 where she injured her left hand. She indicated that she did not hire an attorney for this matter, but did receive a settlement. After her husband died, the employee worked cleaning the employer's offices for a few months.

The employee testified that she had right rotator cuff surgery due to an injury she had in 2000 while working for Arvin. She was treated by Dr. Ritter and was released back to work with restrictions of no overhead repetitive motion. She testified that she was not having any problems with her back at that time, however she could not go back to the same job due to diminished arm strength. She continued working and eventually injured her left shoulder and had a back strain in 2004. The employee testified that this was the first time that she had hurt her back. Dr. Ritter again did shoulder surgery and released her to work with further restrictions. After her release, the employee testified that the problems with her back strain went away and that she had no problems with her back or lower extremities.

Due to the problems with her arms, the employee was placed in the office and did office work until January 2005. At that time, her employer returned the employee to the floor where she did various jobs. She testified that she was not having any problems with her back but had limited arm strength.

On March 3, 2005, the employee was operating a "sizer machine" and injured her back. She said that she gotten to work about 4 P.M., and her supervisor, Jimmy Head asked her to move to the sizer machine and size muffler end caps. She testified that she was familiar with this machine, as she had operated it before. A sizer machine stands about four feet off the concrete floor and is operated with a foot pedal as you load product into it for sizing and out to repeat the process. To operate this machine, the employee has to stand on one leg and use the other to operate the foot pedal. The operator would grab product on the left aide of the machine, place it in the machine for sizing, and then remove the product to the right for stacking. In the process of moving the product from the left to the right, the employee testified that she hurt her back. She testified that she felt immediate pain in her back and left leg at the time of the accident. She testified that the accident happened about 7:30 P.M. She further testified that she worked to about 8 P.M. and then told Mr. Head of her accident due to the fact that she was hurting so bad. She filled out an incident report and turned it in after she finished her shift. The employee also testified that she could not sleep that night because she was in so much pain.

The next day after the accident the employee went to work and went to see Kathi Smith, the company nurse, told her about the accident and asked her to see a doctor. The employee had been scheduled for hysterectomy surgery the next week after her accident. She testified that Ms. Smith told her to have the surgery and that maybe while she was off, the back complaints would resolve. The employee had that surgery and did not work for approximately six weeks. She further testified that after four weeks of recovery, she returned to her employer, saw Ms. Smith, reported that she continued to have pain in her back and leg, and asked again to see a doctor. This time Ms. Smith told her to give it a couple of more weeks. The employee returned home for more recuperation, but the pain continued. She testified that she was aware of the pain in her back and leg despite the effects of her surgery.

The employee returned to work on April 17, 2005 and initially worked four-day weeks. She testified that upon returning to work, her back was hurting badly. She again went to see Ms. Smith, told her that her back was not any better and asked to see a doctor. The employee testified that the nurse gave her some over the counter medication and again told her that her pain was related to her surgery. The next day the employee again asked to see a doctor-she was given more pills. The next day the employee again asked to see a doctor, but no appointment was scheduled. This went on for several days and over the weekend. On the next Monday, the employee returned to work and told Ms. Smith that she had to have an appointment to see a doctor. The employee testified that at that time she was told that the back pain was due to her hysterectomy and they were not going to send her to a doctor. The next day, the employee testified that she was told that she had to work on a sizer machine. She said she could not operate the foot pedal due to her pain, and placed the pedal on the counter and operated it with her hand. She indicated that she was sent to Don Mayberry and was told she had to operate the sizer machine.

The employee testified that she eventually decided that Arvin was not going to provide medical care and made an appointment on her own to see Dr. Majid on April 25, 2005. She told the doctor how she was injured and the problems she was having. Dr. Majid initially prescribed

Celebrex and pain pills. As of April 29, 2006 Dr. Majid took the employee off work, took x-rays and started the employee on a course of physical therapy at Southern Health Care.
During this time the employee began a long course of conservative care with Dr. Majid, Dr. Naushad and several other medical providers. This course of conservative care was fairly extensive and involved several types of therapy including DRX therapy, injections, medication and pain patches etc. The employee testified that she took these steps to try to avoid surgery, but none of the conservative measures helped. In April 2006 Dr. Naushad referred the employee to Dr. Park who advised her that she had two ruptured discs and needed surgery. The employee had personal problems, her mother had to be placed in a nursing home and Dr. Park went on vacation. All of these factors delayed her surgery date. Dr. Park performed back fusion surgery on August 7, 2006, and kept the employee in the hospital for several days.

The employee testified that Arvin has paid none of these bills. She is requesting that he employer be ordered to pay all of her medical bills, lost wages, mileage costs and provide future medical care. She indicated that she never asked the providers about the cost of her care and submitted the bills through group health. She further testified that she initially took her off duty slips to her employer and presented them to Bobby Ward. She also advised Mr. Ward that she was taking physical therapy. She testified that Mr. Ward told her that they were not going send her to a doctor. It was at this time that the employee hired legal counsel. The employee testified that she last worked on April 28, 2005 and has not worked since that time.

Kathi Smith provided live testimony at trial. Ms. Smith testified that she is the company nurse at Arvin sees people for workers' compensation matters. She indicated that the employee reported back complaints to her at he time of her accident in March 2005. At that time she was aware of the employee's pending hysterectomy surgery and advised the employee that the surgery may help her back pain.

Ms. Smith testified that after her leave of absence that employee returned to work. She advised that the employee complained to her of her back problems on a daily basis and asked to go see a doctor. Ms. Smith testified that she told the employee that she could not recommend anything for her and that she should talk to a doctor. She further testified that she did not recommend that Arvin send the employee to a doctor as she felt the problems were due to the hysterectomy.

Bobby Ward provided live testimony at trial. He testified that he is the human resources manager at Arvin who deals with workers' compensation claims. He testified that he first became aware of the employee's low back claim in February or March 2005. He said he heard something from Kathi Smith but did not think it was a major problem. He testified that the employee brought in a doctor's statement reporting that she was going to a doctor. He further testified that he talked to the employee shortly after he saw the doctor's statement and advised the employee that if she went on her own she would have to pay for it.

Mr. Smith testified that the employee was on restrictive duty prior to March 3, 2005. He indicated that Arvin sent the employee to Dr. Cantrell and he saw that report. He testified that he told the employee that Dr. Cantrell had reported that she could return to work, but that she could not return to work until her doctor lifted the restrictions.

Several reports of medical providers were offered into evidence. Employee's Exhibit A contains the records of Dr. Majid. The doctor started treating the employee on April 25, 2005 for back and leg problems due to a work related accident. As of April 29, 2005, he reported that the employee could not work. The doctor tried a conservative course of care involving testing, medication, and physical therapy. As earlier as May 16, 2005, the employee was inquiring as to when she could go back to work. At that time the doctor continued medication, physical therapy and kept the employee off work. As of May 31, 2005, his records show that he referred the employee to Dr. Naushad for pain management and continued to keep the employee off work.

The records of Dr. Naushad, Julie Minton, PT and Dr. Muthu M. Ramasamy, M.D., document the conservative care that then employee received, including steroid injections, DRX 9000 therapy and medical blocks. As of March 9, 2006 it was determined that the employee should have a neurosurgical consultation.

Dr. Park's records show that he saw the employee on June 6, 2006. After taking a history and examining the employee, Dr. Park reported that:

1. the employee has a two level disc herniation at L4-5 and L5-S1
2. they occurred as a result of the March 3, 2005 accident
3. she needs surgery and the need for surgery is as a direct result of the March 3, 2005 injury
4. he recommended fusion surgery

The surgery was performed on August 7, 2006. Dr. Park's report that as of September 6, 2006, the employee reported that her back and left leg was significantly better.

Dr. Zoffuto saw the employee on May 9, 2006 and wrote reports dated May 9, 2006 and July 30, 2006. He testified by deposition on August 15, 2006. As a result of his examination of May 9, 2006, Dr. Zoffuto opined that:

1. the employee had a back ailment causing pain to radiate into left leg
2. the employee sustained a structural spinal disorder which comprised disc rupture and bulging and she also had facet joint arthrosis which probably was a chronically developed disorder
3. the cause of the employee's condition was the March 3, 2005 accident. The prevailing factor was the motions she was going through operating the sizer
4. the employee is not at maximum medical improvement and she has severe enough pain that she cannot perform her usual work
5. the employee needs more care and surgery by Dr. Park is reasonable. The employee has had reasonable conservative care and has not responded well enough to resume her usual life activities
6. the employee is temporarily totally disabled at this time

Dr. Cantrell examined the employee on August 16, 2005. He reviewed medical records and prepared a report. He testified by deposition on September 6, 2006. After his examination of the employee, Dr. Cantrell had several opinions that he testified to:

1. In March 2005, while working with a machine, the employee developed back pain that she reported to her employer

2. the employee had surgery shortly after the accident and was off six weeks
3. the inactivity or recovering from surgery can be a source of back pain
4. the findings from the MRI are not consistent with the employee's left leg pain, and that he did not find any decompression or herniations
5. the employee's back pain is largely mechanical in nature and there is nothing to indicate that a disc herniation is causing any complaints in the employee's back or left leg
6. the MRI findings are consistent with degenerative changes
7. the employee is at maximum medical improvement from the March 3, 2005 injury and can return to work with no additional restrictions
8. any further treatment would not be related to the March 3, 2005 injury
9. the employee has a 3% permanent partial disability due to her lumbar strain

On the day of his deposition testimony, Dr. Cantrell was given a discogram that was performed on December 13, 2005 after he had examined the employee. Based on his reading of the discogram, he provided further opinions:

1. the findings of the discogram are consistent with the MRI
2. there is no indication of any focal disc herniations
3. any annular tear is due to the degenerative process
4. he does not agree with Dr. Park's assessment of a two level herniation
5. the surgery that Dr. Park performed was not necessitated by the March 2005 injury
6. it is possible that disc herniations occurred between December 2005 and August 2006

Dr. Palen provided his opinions in a letter dated November 7, 2005. He had sent the employee in his office on November 3, 2005. He opined that:

1. the incident of March 2, 2005 was the substantial cause of the employee's back injury
2. all treatment so far was reasonable and necessary to treat her condition
3. the employee would benefit from epidural injections and continued physical therapy

Employee Exhibit B contains a listing of the charges for the medical care that the employee has received as a result of her March 3, 2005 accident. Employee Exhibit D is a listing of the trips that the employee received in order to obtain medical care.

RULINGS OF LAW:

Medical Causation

It is important to note that the burden of proof is on the employee to prove all material elements of his claim. **Marcus v. Steel Contractors, Inc., 434 S.W. 2d 475 (Mo. 1968).** The employee has the burden of proving both that there was an accident and that there is a medical causal relationship between the accident, the injuries, and the medical treatment for which he is seeking compensation. **Dolan v. Bandera's Café and Bar, 800 S.W. 2d 263 (Mo. App. 1990).** In order to prove a medical causation relationship between the alleged accident and medical condition, the employee in cases such as this involving any significant medical complexity must offer competent medical testimony to satisfy his burden of proof. **Brundige v. Boehringer Ingelheim, 812 S.W. 2d 200 (Mo. App. 1991).**

In order for an employee to present a compensable workers' compensation claim, she must present credible medical evidence that satisfies these established principles. Without this evidence, there cannot be a finding that the employee has met her burden of proof on the issue of medical causation.

The decision of medical causation is the controlling matter in this case. The employer did not provide medical care thinking that the employee's back pain was related to unrelated surgical problems. The employer sent the employee to Dr. Cantrell and relied on his findings. The employee has offered several exhibits outlining the medical care that she received, the costs for that medical care and the medical records and opinions of the medical providers who provided care to her.

The employee reported that she has no back pain or lower extremity problems prior to the March 3, 2005 accident. She also testified that after her hysterectomy surgery and recuperation, she continued to have back and leg pain. She received treatment for these problems from Dr. Majid, Dr. Naushad and Dr. Park. The Court has outlined the testimony and opinions of those providers. Evaluations and opinions of the employee's medical condition were provided by Dr. Cantrell and Dr. Zoffuto.

The Court finds the opinions of Dr. Park and Dr. Zoffuto to be more credible than the testimony of Dr. Cantrell. Dr. Park is a well-respected neurosurgeon. He evaluated MRI and discogram tests prior to the surgery that he performed and reported that the employee had a problem that warranted surgery. He performed that surgery and after surgery in his surgical report indicated his "Pre and Post" operative diagnosis. The Court notes that the neurosurgeon who did the surgery and actually cut the employee open, found herniated discs. Dr. Parks' records also note that the employee benefited from the surgery. It is very important evidence that the Court relied on in making a decision in this case. Based on this information, the Court finds and believes that the employee's surgery was justified as a result of the accident of March 3, 2005. The Court also further finds that the opinion of Dr. Cantrell is not persuasive when compared to the actions of Dr. Park and his opinions, along with those of Dr. Zoffuto.

Accordingly, the Court finds that the two level herniation from which the employee suffered, and the surgery that was performed as a result of the employee's herniation was directly causally related to the work injury/accident that she sustained on March 3, 2005. The Court finds that the employee has met her burden of proof on the issue of medical causation.

Past Medical Bills

The employee is securing reimbursement of $227,230.89 for past medical bills that she has incurred as a result of her March 3, 2005 accident. Employee Exhibit B breaks down these bills. The employer has denied these bills on the issues of authorization, reasonableness, necessity and causal relationship.

The employee testified as to the accident, her reporting of the accident to her supervisors, her requests for medical care and the treatment that she has received. Both Kathi Smith and Bobby Ward testified about the employee's contacts with them reporting the accident, her condition, asking for medical care, and their actions based on the employee's requests. The Court finds each of their testimony to be credible. There is no question that the employee was hurt at work, the employer admitted accident. There is no question that the employer was made aware of the employee's accident and her requests for medical care. There is also no question that the employer took no action and specifically denied the employee's requests for medical care. The evidence is clear that the employee was told that if she was going to get medical care she would have to do so on her own. The employee took the employer's word and got care on her own. There is no question that the employer was aware that the employee was seeking and receiving medical care, was taken off work, was receiving various forms of therapy and eventually had surgery. When the employer denied medical care, they lost the right to select the medical provider and control the treatment that the employee was to receive.

The employee testified that after the employer refused to provide medical care, she sought medical care and submitted the bills through her group health plan. This testimony is uncontroverted.

Both Kathi Smith and Bobby Ward support the employee's testimony that they denied medical after the employee requested it. They also confirm that the employee requested medical care on many occasions. They also confirm that they told the employee to get medical care on her own as they were not going to provide medical care as a result of her work related accident. They also confirm that the employee was told not to return to work until she was entirely released by her treating physician. When the Court examines all of the evidence, the Court finds the employer's position that the employee was not authorized to get medical care on her own unsupportable. All of the employee's actions were based on her requests to be given medical care. She did what she was told-she got care on her own. When the employer refused to provide care, they lost their right to control medical treatment.

Dr. Cantrell reported that the employee's need for surgery was not related to her accident. The Court has already rejected this position. He was the only physician to suggest that the medical care that the employee received was not reasonable or necessary. At the time they examined the employee, both Dr. Zoffuto and Dr. Palen opined that the employee's care was reasonable and necessary. The Court finds that the operating neurosurgeon did not perform unreasonable or unnecessary surgical procedures. Dr. Park testified that the employee needs surgery as a result of her March 3, 2005 accident. Based on an examination of all of the credible evidence, the Court finds that the medical treatment that the employee received was both reasonable and necessary as a result of her work related injury. There is no evidence before the Court to suggest that the charges that were made for the employee's medical were inappropriate or unreasonable. The Court has already found that the employee's medical care was medically causally related to her accident.

The employer's focus at trial was to ask the employee if she inquired about the costs of her medical care. The employee replied no. This inquiry in no way provides any suggestion that the

medical bills were unreasonable or unnecessary. The employer in all aspects of this case relied on the opinions of Dr. Cantrell that the employee had a back strain, that the employee had reached maximum medical improvement, that the employee did not need further medical care let alone surgery, and that any care provided after his findings was unwarranted. Kathi Smith and Bobby Ward determined that the employee's back problems were as a result of the hysterectomy surgery that she had. As a result of this determination, they denied the employee's requests for medical care. The employee said the problems from her accident were different than those related to her hysterectomy. The employer sought the opinion of Dr. Cantrell to support their decision and that is the opinion they received. They relied on that opinion. In the end the employer must bear the responsibility and consequences of their decision, as the credible medical evidence is that the employee needed medical care including surgery as a result of her accident, not her hysterectomy.

The Court finds that after considering all the evidence in this case, the employee has met her burden and has shown that the medical care that she has received has been reasonable, necessary and causally related to her accident of March 3, 2005. Additionally the evidence shows that the employer denied the employee's requests for medical care and thereby lost the ability to control the medical care that the employee received. In light of the forgoing conclusions, the employer is ordered to pay to the employee $227,230.89 for her previously incurred medical bills.

Mileage

The employee has asked for an award of mileage costs to reimburse her for the costs of the 3,250 miles that she traveled to receive medical care under the control of both Dr. Majid and Dr. Park. The employee submitted Employee Exhibit C in support of her request. The Court finds this evidence persuasive, as this evidence was not refuted by the employer's case.

The Court finds the request of the employee to be reimbursed for mileage compensable. The rate of reimbursement effective July 1, 2005 was $.375 per mile. The Court orders that the employer pay to the employee $1,218.75 to reimburse her for the costs of mileage. (3,250 x $.375 = $1,218.75.)

Future Medical Care

Dr. Zoffuto testified that the employee was in need of further medical treatment and specifically testified that the treatment provided by Dr. Park was reasonable. Dr. Park's most recent record indicates that the employee remains under his care. At the time of trial the employee was still under Dr. Park's care and had an appointment scheduled to see him shortly after the trial date.

Based on the credible evidence in this case, the Court orders that the employer continue to provide future medical care under the direction of Dr. Park, until such time the employee is in need of no reasonable medical care to cure and relieve her from the effects of her March 3, 2005 accident. The employer-insurer waived their right to select the physician in this case by refusing to provide medical care.

Temporary Total Disability

The records reflect that Dr. Majid took the employee off work as of April 29, 2005. The employee has been under constant care since Dr. Majid took her off work. Other that Dr. Cantrell, no doctor has reported that the employee could work. When the Court examines all of the evidence, the Court again does not find the testimony of Dr. Cantrell to be credible.

The employee's testimony was that she was told that after she hired a lawyer, her employer had no work for her until her treating physician released her entirely. As of the date of trial, this has not happened.

Accordingly, the Court finds that the employee has met her burden of proof on the issue of temporary total disability, and orders that the employer pay the employee temporary total disability benefits from April 29, 2005 to the day of trial. The Court computes that period to amount to at least seventy-eight weeks. The Court orders the employer to pay to the employee $35,791.08 as temporary total disability benefits (78 x $458.86 = $35,791.08). In addition the Court orders that the employer pay to the employee temporary total disability benefits in the amount of $458.86 per week until such time as the employee has reached maximum medical benefit and has been cured and relieved from the effects of her March 3, 2005 work related accident.

As previously indicated this is a temporary or partial award. The award is therefore subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Date: _____ Made by:

_____
Gary L. Robbins
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____
Patricia "Pat" Secrest
Director
Division of Workers' Compensation