

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

Injury No. 07-077189

Employee: Nisfeta Mujanic  
Employer: Holiday Inn St. Louis South  
Insurer: Midamerica Hotels Corporation  
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 § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated June 25, 2015. The award and decision of Administrative Law Judge John K. Ottenad, issued June 25, 2015, 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 21<sup>st</sup> day of January 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

# AWARD

Employee: Nisfeta Mujanic

Injury No.: 07-077189

Dependents: N/A

Employer: Holiday Inn St. Louis South

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Midamerica Hotels Corporation  
C/O Claims Management, Inc.

Hearing Date: January 29, 2015  
Record Closed on February 28, 2015

Checked by: JKO

## 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: August 16, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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 worked as a housekeeper for Employer and was injured when she was attacked by a German shepherd (dog) as she opened a guest room to begin cleaning it.
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 (Left Breast and Psychiatric) and Left Shoulder
14. Nature and extent of any permanent disability: 15% of the Left Shoulder, 7.5% of the Body as a Whole—Left Breast and 10% of the Body as a Whole—Psychiatric
15. Compensation paid to-date for temporary disability: \$1,365.17
16. Value necessary medical aid paid to date by employer/insurer? \$7,398.17

Employee: Nisfeta Mujanic

Injury No.: 07-077189

- 17. Value necessary medical aid not furnished by employer/insurer? \$1,620.00
- 18. Employee's average weekly wages: Sufficient to result in the applicable rates of compensation
- 19. Weekly compensation rate: \$215.00 for TTD/ \$215.00 for PPD
- 20. Method wages computation: By agreement (stipulation) of the parties

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Underpayment of 6 3/7 weeks of temporary total disability (08/17/07 to 09/30/07)	\$16.97
104.8 weeks of permanent partial disability	\$22,532.00

22. Second Injury Fund liability:

29.22 weeks of permanent partial disability	\$6,282.30
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**TOTAL: \$28,831.27<sup>1</sup>**

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: Frank J. Niesen.

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<sup>1</sup> While Employer placed in evidence a document regarding subrogation concerning a third party civil recovery, and even included in its post-trial brief a purported calculation of said subrogation under the *Ruediger* case, the parties did not make subrogation, or any calculation of subrogation recovery, an issue in this case. In that respect, while they may have an agreement between themselves as to how such subrogation recovery benefits will be calculated, I am unwilling to include any such calculation in this Award as that issue was not placed before this Court for disposition. The parties are free to calculate subrogation recovery benefits pursuant to any side agreement they have, on their own, without its inclusion in this Award.

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Nisfeta Mujanic	Injury No.: 07-077189
Dependents:	N/A	Before the
Employer:	Holiday Inn St. Louis South	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund	<b>Compensation</b>
Insurer:	Midamerica Hotels Corporation C/O Claims Management, Inc.	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
		Checked by: JKO

On January 29, 2015, the employee, Nisfeta Mujanic, appeared in person and by her attorney, Mr. Frank J. Niesen, for a hearing for a final award on her claim against the employer, Holiday Inn St. Louis South, its insurer, Midamerica Hotels Corporation C/O Claims Management, Inc., and the Second Injury Fund. The employer, Holiday Inn St. Louis South, and its insurer, Midamerica Hotels Corporation C/O Claims Management, Inc., were represented at the hearing by their attorney, Mr. Edward L. Weiss. The Second Injury Fund was represented at the hearing by Assistant Attorney General Elad Gross.

To allow the parties time to prepare and file their proposed awards or briefs in this matter, the record did not technically close until February 28, 2015. Although we did not go back on the record or take any further evidence in this matter after January 29, 2015, the record was, then, closed on that date and the briefs were submitted by the parties by March 9, 2015, after an extension for filing was requested by the parties and granted.

At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

**STIPULATIONS:**

- 1) On or about August 16, 2007, Nisfeta Mujanic (Claimant) sustained an accidental injury arising out of and in the course of her employment that resulted in injury to Claimant.
- 2) Claimant was an employee of Holiday Inn St. Louis South (Employer).
- 3) Venue is proper in the City of St. Louis.
- 4) Employer received proper notice.
- 5) The Claim was filed within the time prescribed by the law.

- 6) At the relevant time, Claimant earned an average weekly wage sufficient to result in applicable rates of compensation of \$215.00 for total disability benefits and \$215.00 for permanent partial disability (PPD) benefits.
- 7) Employer paid temporary total disability (TTD) benefits in the amount of \$1,365.17, representing a period of time from August 17, 2007 to September 30, 2007, or 6 3/7 weeks, at a rate of \$212.36.
- 8) Employer paid medical benefits totaling \$7,398.17.

**ISSUES:**

- 1) Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to her accidental injury at work on August 16, 2007?
- 2) Is Employer responsible for the payment of past medical benefits in the stipulated amount of \$1,620.00?
- 3) Is Claimant entitled to future medical care on account of this work injury?
- 4) Is Claimant entitled to the payment of temporary total disability benefits for a period of time to be determined?
- 5) What is the nature and extent of Claimant's permanent partial and/or permanent total disability attributable to this injury?
- 6) What is the liability, if any, of the Second Injury Fund?

**EXHIBITS:**

The following exhibits were admitted into evidence:

***Employee Exhibits:***

1. Photographs of Claimant's injuries
2. Deposition of Dr. Edwin Wolfram, with attachments, dated July 14, 2009
3. Deposition of Dr. Edwin Wolfram, with attachments, dated September 5, 2013
4. Deposition of Dr. Thomas Musich, with attachments, dated June 16, 2010
5. Deposition of Mr. Vincent Stock, with attachments, dated July 26, 2013
6. Certified medical treatment records of St. Anthony's Medical Center
7. Certified medical treatment records of St. Alexius Hospital
8. Certified medical treatment records of Des Peres Hospital
9. Certified medical treatment records of Metro Imaging
10. Medical treatment records of Mattingly Chiropractic and Pressure Point Therapy
11. Medical treatment records of Unity Health

12. Medical treatment records of People’s Health Center
13. Medical treatment records of Dr. Jawed Siddiqui
14. Certified medical treatment records of the Center for Survivors of Torture and War Trauma
15. Claimant’s medication list
16. Amended Claim for Compensation in Injury Number 07-077189
17. *Objections SUSTAINED—Not admitted into evidence in this case*
18. Stipulation for Compromise Settlement in Injury Number 04-148380 (Date of Injury of March 31, 2004) between Claimant and employer
19. Certified medical treatment records of St. John’s Mercy Corporate Health
20. Cervical spine x-ray report from St. Alexius Hospital dated December 24, 2014
21. *Objections SUSTAINED—Not admitted into evidence in this case*

***Employer/Insurer Exhibits:***

- A. Evidentiary Stipulation for Trial regarding subrogation and third party case
- B. *Withdrawn by Employer/Insurer prior to admission*
- C. Report of Dr. Wayne Stillings dated March 20, 2012
- D. Claimant’s performance evaluations from Employer
- E. Various medical treatment records of Dr. Michael Ralph, St. John’s Mercy Corporate Health and Unity Corporate Health
- F. Deposition of Dr. James Doll, with attachments, dated June 17, 2010
- G. Deposition of Dr. Wayne Stillings, with attachments, dated May 3, 2010
- H. Deposition of Ms. Kimberly Gee, with attachments, dated July 30, 2014

***Second Injury Fund Exhibits:***

*Nothing offered or admitted into evidence in this case*

**Notes:** 1) *Unless otherwise specifically noted below, any objections contained in the deposition exhibits are overruled and the testimony is fully admitted into evidence in this case.*

2) *Any stray marks or handwritten comments contained on any of the exhibits were present on those exhibits at the time they were admitted into evidence, and no other marks have been made since their admission into evidence on January 29, 2015.*

**EVIDENTIARY RULINGS:**

At the time of hearing, objections were raised on the record regarding the admission of Employee’s Exhibits 17 and 21. Exhibit 17 is a Bid Agreement between Corporate Lodging Consultants, Inc. and Employer. Exhibit 21 is a psychological evaluation report authored by Dianna Moses-Nunley, Ph.D. of MEDEX, containing her findings from her evaluation of Claimant on November 10, 2011, as well as her diagnosis and prognosis of Claimant’s

psychological condition. This evaluation was ordered by the Missouri Department of Social Services Disability Determinations Division on account of her social security disability claim.

With regard to Exhibit 17, Employer/Insurer raised objections as to relevance and collateral source, as this was an outside agreement not germane to any of the issues raised in this hearing. With regard to Exhibit 21, Employer/Insurer and the Second Injury Fund raised hearsay objections, noting that this was an expert medical/legal opinion prepared in anticipation of litigation that was never made admissible by virtue of taking the psychologist's deposition or otherwise subjecting her to cross-examination. Having now had the opportunity to review the exhibits in detail and consider the objections, I *SUSTAIN* the objections as to both of these exhibits and will not admit them into evidence in this matter.

As for Exhibit 17, I find that it is an agreement between Employer and another company, which is apparently the reason why the occupant, who had the dog in this case, was staying at Employer's hotel as opposed to some other hotel in the area. To the extent that Employer is not disputing the accident itself, or the fact that Claimant was attacked by the dog, I fail to see how this agreement has any bearing on any of the issues in this case. Therein lies the reason for my sustaining the objection and not allowing this document into evidence in this case.

As for Exhibit 21, I find that the exhibit, as offered, is a medical/legal opinion prepared in anticipation of her social security disability claim at the direction of the Missouri Department of Social Services Disability Determinations Division. It contains a history provided by Claimant, a mental status examination, diagnoses and a prognosis of Claimant's psychological condition. I find that neither Employer/Insurer nor the Second Injury Fund were provided any opportunity to cross-examine this medical expert on the basis of her opinions in this matter. In that respect, I find that Claimant failed to make this report, and the psychologist's conclusions contained therein, admissible into evidence in this case.

For all of these reasons, the objections regarding Exhibits 17 and 21 are *SUSTAINED* and the exhibits are not admitted into evidence in this matter.

## **FINDINGS OF FACT:**

Based on a comprehensive review of the evidence, including Claimant's testimony, the expert medical opinions and depositions, the vocational expert opinions and depositions, the medical records, the medical bills, the other documentary evidence, and the testimony of the other witnesses, as well as based on my personal observations of Claimant and the other witnesses at hearing, I find:

- 1) **Claimant** is a 44-year-old, currently unemployed individual, who was working as a housekeeper for a little over four months at Holiday Inn St. Louis South (Employer) prior to her injury that is the subject of this case. After a period of time off work, following her August 16, 2007 injury, Claimant returned to work for Employer and continued working there until June 21, 2011. She has not worked anywhere else and has had no employment since she stopped working for Employer in 2011. She admitted that her Social Security disability claim is on appeal.

- 2) Claimant testified that she was born in Yugoslavia and came to the United States in 1999 with her husband and son to escape the Bosnian War. She said that she only had an eighth grade education in Yugoslavia, and, then, had to quit school to help on her family farm. Claimant testified that her English skills are not good, but she has also not taken any lessons to improve or work on them. She said that she became a United States citizen in September 2013, after she had obtained a waiver on the English requirement from Dr. Wolfgram.
- 3) After moving to St. Louis, prior to working for Employer, Claimant testified that she worked at Semco Plastic Company and Alco-Emerson. She said that she was a machine operator for both of these employers. She was fired by Semco and lost her job at Alco-Emerson, when the plant shut down. She said that English was not a problem for her at either employer because there were a lot of other Bosnian workers there.
- 4) Claimant suffered a work injury at Semco Plastic Company that allegedly involved her back. Medical treatment records from **St. Anthony's Medical Center** (Exhibit 6) show that she presented at the emergency room on August 21, 2004 with complaints of low back pain from pushing heavy loads at work. She was diagnosed with a lumbosacral strain and given some medications. She resolved that case (Injury Number 04-148380) by **Stipulation for Compromise Settlement** (Exhibit 18) with employer for the payment of \$10,625.00, or approximately 12.5% permanent partial disability of the body as a whole referable to the low back. That stipulation was approved by Administrative Law Judge Karla O. Boresi on December 3, 2008. She admitted that her low back continued to occasionally hurt after this injury, but it definitely got worse after the dog attack.
- 5) In addition to that injury, Claimant testified that she received treatment for her neck, back and other body parts at doctors and hospitals prior to her August 16, 2007 work injury.
- 6) Medical treatment records from **St. Alexis Hospital** (Exhibit 7) document an initial visit to the emergency room on June 27, 2000, with complaints of neck pain from lifting heavy boxes at work daily. She was diagnosed with a right trapizius strain and given some medications and work restrictions to address her complaints. On June 29, 2001, she was seen for a laceration of her left knee, when she became dizzy and fell down some stairs at her home. On February 5, 2005, she again went to the emergency room with a complaint of "pain all over." She gave a history of chronic low back pain and pain on the sides of her chest. She was given medications for her chronic low back pain and released. She returned on February 21, 2006, complaining of chronic low back pain and pain in her neck, radiating into the right hand. X-rays of the neck and low back revealed evidence of diffuse degenerative disc and joint disease (moderate in the neck and mild-to-moderate in the low back). She was diagnosed with a neck sprain and chronic low back pain, for which she was given medications and released. Finally, she sought treatment there on March 23, 2006, again for back and neck pain with right arm numbness. She reported injuring herself at work and

thought her low back pain was caused by her job. She was diagnosed with neck/back pain and released with medications once again.

- 7) Medical treatment records from **St. Anthony's Medical Center** (Exhibit 6) document a visit on March 14, 2006 for neck, right arm and low back pain from hammering at work, for which she originally sought treatment at St. Alexius Hospital on February 21, 2006. She was diagnosed with a neck and low back strain. Claimant had CT scans taken of her entire spine on April 12, 2006 on account of her continuing complaints of pain. The CT scan of the lumbar spine showed a degenerative disc and spurs at L5-S1, along with facet hypertrophy at that level. The CT scan of the thoracic spine showed some spurs on the left at T9-10. The CT scan of the cervical spine showed osteoarthritic changes with multiple spurs most pronounced at C4-5 and C5-6. Finally, an emergency room record dated August 4, 2006 revealed treatment for a cervical strain following a motor vehicle accident.
- 8) Claimant received additional neck and low back therapy and treatment at **Des Peres Hospital** (Exhibit 8) in May 2006. She reported having the complaints for five months as a result of working in a factory. By May 26, 2006, she reported that her neck had improved, but her low back complaints remained the same.
- 9) Medical treatment records from **Unity Health** (Exhibit 11) document treatment Claimant received from October 23, 2000 through June 26, 2006, primarily for low back and left shoulder complaints. Her initial visit there on October 23, 2000, contained a report of low back pain and pain down the left lower extremity. Then, on May 17, 2001, Claimant reported left shoulder pain from heavy lifting at work. She was diagnosed with left subdeltoid bursitis and treated conservatively with medications and physical therapy. After that initial treatment for the back and left shoulder, there is a gap in the records where she treated for a couple of other issues, but, then, returned in 2006, again complaining of low back pain, and, now, right shoulder pain.
- 10) Claimant denied having any psychiatric treatment prior to the August 16, 2007 dog attack injury. She said that prior to the attack, she had good moods, she worked, was happy with her job, went out with friends and attended family events.
- 11) Claimant testified that she began working for Employer on April 3, 2007. She said that a friend of hers helped her fill out the employment application because both of them were applying at the same time. She testified that she could not have filled it out on her own. She admitted that she had no problems doing her work for Employer prior to her August 16, 2007 injury.
- 12) Claimant testified that as a housekeeper for Employer her job duties included cleaning the guest rooms (emptying trash, changing towels and linens, vacuuming, dusting and cleaning the bathroom). She said that her normal shift was from 8:00 a.m. to 4:30 p.m. She was trained by another Bosnian lady for two to three days before she started performing the job on her own.

- 13) On August 16, 2007, Claimant received the list of rooms to be cleaned and was told to clean one of the rooms first because the guest had specifically requested it. She said that she knocked three or four times and announced "Housekeeping," but received no response. So, she opened the door to clean the room and was attacked by a German shepherd (dog). She said that the dog jumped on her and she fell backwards. She said that she cannot recall everything, but she remembers she saw blood coming out of her left breast where the dog bit her. She also knows that her head hit the ground. Claimant admitted that she did not lose consciousness, but she is not fully aware of what was going on at that time. She testified that her supervisor/manager came and took her to the hospital. She said that she was having problems with her head, neck, back, left breast, left arm, elbow and leg that she reported to the doctor that day when she sought medical treatment following the dog attack. She said that she had physical therapy, medications and rebandaging for her left breast every day.
- 14) **Photographs** (Exhibit 1) depict the condition, primarily of Claimant's left breast, and also her left elbow following the dog attack. There are, what appear to be, bite marks where the dog's teeth bit the left breast, as well as an area of discoloration on the breast and the left elbow, from the attack. Claimant testified that the photographs, taken in her attorney's office (first set) and by her husband (second set), depict how she looked after she was attacked by the dog. She said that the area was acutely painful at the time of the attack and there is still some discoloration on the breast from the attack. Claimant noted that it also bothered her emotionally and still does.
- 15) Medical treatment records from **St. John's Mercy Corporate Health** (Exhibits 19 and E) document the treatment Claimant received following her work injury. She was seen on the date of the injury, August 16, 2007, with puncture wounds on the left anterior breast (two of them deep), which did not require sutures. She was diagnosed with a dog bite to the left breast. When she followed up the next day, in addition to pain in the left breast, she also complained of pain in the right posterior thoracic area. She was given medications. On August 20, 2007, she was given some physical therapy to address complaints in the left shoulder and left posterior thoracic area, which was diagnosed as a contusion. She was still complaining of left shoulder and left neck/thoracic pain on August 27, 2007, as well as a headache. The doctor did not feel that the headache was related to work, but ordered an MRI to further assess the left shoulder. The MRI of the left shoulder taken at **Metro Imaging** (Exhibit 9) on September 1, 2007, showed no evidence of a rotator cuff tear and no impingement, but perhaps some bursitis or supraspinatus tendonitis. By September 11, 2007, Claimant was still complaining of left shoulder issues and now some left arm numbness, so she was referred to an upper extremity specialist. The same referral was described on October 2, 2007, as she was diagnosed with severe supraspinatus tendonitis of the left shoulder and healing bites to the left breast.
- 16) Claimant was examined by **Dr. Michael Ralph** (Exhibit E) on September 19, 2007. On physical examination, he was unable to find any objective physical findings with the neck or back to substantiate her subjective complaints. He was waiting on the MRI film to assess the left shoulder, but noted that with regard to her left breast, neck and back, "I consider her to have sustained no permanent physical injury as it relates

to the events of August 16, 2007.” After reviewing the MRI scan, he noted on September 26, 2007 that her left shoulder complaints were improving with medication and he saw no tears on the MRI. Finally, on October 10, 2007, Dr. Ralph noted that she had disproportionate complaints not really supported by any objective abnormalities. He released her from care at that point noting that he did not even think the subtle abnormalities on the left shoulder MRI were related to the injury as described. He rated Claimant as having 1% permanent loss of the left shoulder “from whatever may or may not have occurred from the events of August 16, 2007.” He did not believe she had any disability of the neck or back related to this injury and opined that she was capable of working at that time.

- 17) Claimant testified that she was initially off work for approximately six to seven weeks, but then returned to the same job for Employer. She said that she was given a helper for a time to assist her with her work duties. Even after the helper was taken away, Claimant testified that, although she was working full duty, the other ladies helped her complete her work because she just was not able to do it all by herself anymore. She described pain in her head, left arm, neck, left breast, back and legs at that time when she continued to try to work. She said that she was also afraid. She noted that she was often crying and afraid to enter the rooms because of the prior dog attack. She estimated that she cried maybe four times per week. Claimant testified that her supervisor, Judy, worked with her and was okay with Claimant getting the help she needed from the other ladies to get her job done.
- 18) Claimant testified that her attorney sent her to Dr. Wolfgram to try to get some help with her psychological issues. Dr. Wolfgram talked to her and gave her some pills, which she said helped a little bit with her problems.
- 19) Claimant testified that in December 2010, Judy left and Renee became her supervisor. Renee wanted Claimant to be able to clean the rooms by herself, without help from the other ladies, and wanted her to go back to the second floor where she was afraid to go because of the dog attack. She said that the manager also kept telling her to smile. Finally, on June 21, 2011, Claimant stopped working for Employer because the ladies were no longer allowed to help her and they were afraid of losing their own jobs if they did. On cross-examination by Employer, she also admitted that she quit working at that time because Dr. Wolfgram recommended that she leave work and become institutionalized.
- 20) On cross-examination, Employer questioned Claimant about her **performance evaluations from Employer** (Exhibit D). Claimant noted that she did not read any English. The evaluations beginning on July 12, 2007, showed that Claimant received fairly high marks for being thorough, helping when needed, getting the job done with few mistakes, and never needing help. She was described as having a good attitude and being very dependable. On her April 24, 2008 evaluation (which would have been following the dog attack), Claimant received even higher marks (28 points) with notations that she was very thorough, got the job done even with a heavy workload, and helped elsewhere when she was finished with her own tasks. She was noted to be helping out in laundry once she was done with her own tasks, and doing a good job

there also. She was described as a strong person in her work ethic with a positive attitude. By April 9, 2009, Claimant's scores were a little lower than the prior year, but exactly the same as her initial evaluation from 2007 (25.5 points). Claimant received many of the same compliments as described above, again noting that she stayed focused even with the heavy workload, does a good job cleaning rooms and helps out when needed. She received her first disciplinary write-up on January 10, 2010 for not changing one of the beds in a room, but again received a generally good evaluation on April 29, 2010, as well as a raise. She was again noted to get all of her work done and help others. All of these evaluations were conducted by Judy Fears. Finally, Claimant was written up by her new supervisor, Renee Thompson, on November 14, 2010, because she was confronted about some mistakes in the rooms she cleaned and became upset, using a curse word with her supervisor.

- 21) Claimant disagreed with the evaluations showing that she was an excellent employee and helping out in the laundry, because she said the ladies were helping her out to get her work done. She said that perhaps she did some dusting in her rooms, but the ladies did everything else, so she flatly disagreed that she was carrying a heavy load as the evaluations stated. Claimant also did not remember the disciplinary action in November 2010. She said that she does not speak English so she does not know how she could have spoken badly to a manager.
- 22) **Esma Burazovic**, one of Claimant's former co-workers, testified on Claimant's behalf at hearing. She had worked for Employer for ten years, but quit in 2010 after a car accident left her unable to do the work anymore. She confirmed that she and Claimant worked together in housekeeping for Employer and they were friendly while working, but not really anymore since they stopped working together. She said that they have little contact now, but she admitted that Claimant took her with her to see Dr. Wolfgram. Both employees had Judy as their supervisor. Prior to the dog attack, she said that Claimant was a good worker and among the best, if not the best, of the workers there. She said that they ate lunch together and were laughing and joking. She is the one who found Claimant on the ground after the dog attacked her and saw the blood where the dog bit her. She said that after the attack, Claimant was no longer a good worker. She confirmed that the other ladies would hurry to get their jobs done so they could help Claimant get hers done. She said Claimant did about 30% of her job (dusting and light vacuuming) and the ladies did the other 70% for her. Ms. Burazovic said that Judy was a good person, was aware that they were helping Claimant and was okay with it as long as the job got done. However, when Renee became the supervisor, they were still trying to help Claimant on the sly, but Renee told them just to do their own work. She said the bosses were always saying to be happy and smile, but Claimant was just not able to do that anymore. After the dog attack, Claimant was just crying and hurting all the time.
- 23) Claimant said that she continues to seek treatment for her physical complaints at the People's Clinic and with Dr. Siddiqui, who prescribes medications. She said that she also sees a psychologist at the Center for Survivors of Torture and War Trauma. Additionally, she sees a chiropractor, Dr. Mattingly, every two weeks for therapy for her back, neck and legs.

- 24) Medical treatment records from **People's Health Centers, Inc.** (Exhibit 12) document a visit there on November 1, 2011 for headache complaints. She reported that she has had problems with headaches for three to four years, as well as pains in other body parts. She also reported feeling depressed. Interestingly, the physical examination was negative for back and neck pain, but positive for joint pain. She was diagnosed with headache and depression, for which she was given medications.
- 25) Medical treatment records from **Dr. Jawed Siddiqui** (Exhibit 13) document office visits Claimant had between January 11, 2013 and November 20, 2014. The handwritten office notes are mostly undecipherable, but there are notations regarding neck and back pain.
- 26) The medical treatment records from the **Center for Survivors of Torture and War Trauma** (Exhibit 14) begin with a referral in January 2013 and an eligibility determination in February 2013. Claimant was certified as a "secondary survivor" as she did not experience torture or war trauma herself, but her husband had been involved in the war and was apparently in a concentration camp for a period of time. Her primary complaints or presenting problems were obtaining legal citizenship, applying for SSI and therapy. She attended regular counseling sessions with **Helen McGlynn** from April 2013 through November 2014. The records document her issues with fearfulness since the dog attack and her problems with sleeping and being unable to go out to stores, etc. She noted the dog attack changed her life and described herself as an invalid in May 2013. She described pain in her head, neck, back, spine, left arm and knees. Over the course of her treatment there, her scores on PTSD testing went down and her GAF scores went up. She reported a fear of even going out of the house since the dog bite and being paralyzed by fear, yet she worked almost four more years after the injury. Although Claimant made comments about wanting to kill herself, the therapist did "not believe suicidal ideation" as her other comments indicate otherwise. In late 2013, there are numerous reports of her going out multiple times, doing some housework (vacuuming), smiling, laughing, and even on December 11, 2013 of her having made bread and shoveled snow. In early 2014, she reported increased problems with headaches, but then reported that she planted a garden, was going out daily and took a trip to Bosnia for a month to visit family.
- 27) The last note dated November 19, 2014 from Helen McGlynn recounts the dog attack injury, Claimant's reported "almost complete withdrawal from functioning" and how her husband is home on disability and her daughter-in-law takes care of all of her needs. Dr. McGlynn writes that Claimant "doesn't even make coffee...or so she says." She noted that Claimant's psychiatrist wrote a letter supporting Claimant's disability and, "The entire family supports this belief, and there is financial gain to N's [Claimant's] disability." She notes that Claimant has made progress going out more, doing things around the house and gardening, but progress is slow.
- 28) Interestingly, when Claimant was asked at hearing about some of the references in these records to making bread and shoveling snow, Claimant disputed that those

records were accurate, instead indicating that she never cleans snow and they buy their bread, not make it.

- 29) Medical treatment records from **Mattingly Chiropractic and Pressure Point Therapy** (Exhibit 10) show that Claimant has received chiropractic treatment there from August 8, 2014 through September 22, 2014 for complaints in her cervical, thoracic, lumbar and pelvic regions that were categorized as acute and short term, even though she reported having neck pain for six years. She also reported headaches and numbness and tingling into her hands.
- 30) X-rays of the cervical spine taken on December 24, 2014 at **St. Alexius Hospital** (Exhibit 20) again showed degenerative disc disease at C4-5 and C5-6.
- 31) In terms of her current complaints, Claimant testified that her head hurts and she has headaches four to five times per week. She also has pain in her neck, left arm, left breast, left elbow, back and legs. She said that her fingers will sometimes go numb, as well. She reported taking hydrocodone for pain, but said the medications make her sleepy and sometimes make it difficult to go to the bathroom. She said that she cannot lift a gallon of milk and cannot even lift her left arm very high because it hurts a lot. She has problems showering, bathing and dressing on account of her complaints, and she cannot go up stairs or even walk too far. She said that she does not drive anymore since the dog attack. Her daily activities consist of sitting or walking around the house, watching television and laying down. She noted that she wears a back brace three to four times per week.
- 32) Claimant admitted that she has been depressed since the dog attack. She said that she tried to commit suicide after the attack and, therefore, is never left alone. She cries five to six times per day. Three to four times per week she has bad memories about the dog. She testified that she basically only leaves the house to go to the doctor for treatment or therapy, and perhaps one time every five to six months she will leave the house for something else. She said that she does not want to leave the house because she is afraid a dog will come after her and she is afraid of people, too. She noted that her daughter-in-law cleans her house and watches over her during the day because she cannot do those things herself. She does not go out socially anymore, does not go to the mosque and does not babysit her granddaughters. However, she did go back to Bosnia for about a month because her father was very sick. She brought her own medications and she said her husband pushed her around in a wheelchair while she was there.
- 33) Claimant testified that she has also had problems with sleep since the dog attack. She said that she has dreams of the dog coming at her and she wakes up screaming and crying. She leaves a light on all the time, and, then, cannot get back to sleep.
- 34) On cross-examination from the Second Injury Fund, Claimant admitted that she is unable to work now because of the effects of the dog attack injury on August 16, 2007. She admitted having some prior occasional headaches, but it never hurt then like it does now. She said the complaints really started after the dog attack. She

admitted to dealing with sleeping problems now, but had none of that prior to the injury. She has problems with depression and crying now, but had no such problems prior to her injury. She is afraid now of going into rooms, and afraid of dogs and people now, whereas she had no such problems prior to her injury. It was this fear that hurt her ability to do her job. While she admitted having some pains before the injury, she said it is the pain since the injury that stopped her from being able to work. She also noted having some memory issues since the dog attack, which she never had before. It was clear in her testimony that the vast majority of the significant problems she now described began following the dog attack and were not a problem at all for her prior to that attack.

35) Claimant's son, **Meldin Mujanic**, also testified on her behalf at the hearing in this matter. He testified that before the dog attack, his mother cooked, took care of him, drove places, went shopping, did gardening and did activities around the house. After the dog attack, he said that she had a completely different attitude. She was often "out of it" and was not doing well. He said that she could not sleep at night, did no cooking or work around the house, locked herself in her room, and did not interact with anyone, including him. I observed that he became very emotional when describing the change in his mother since the dog attack. He confirmed that she is always at home, does not go out and has basically cut everyone off. He noted that the bedroom light is on day and night. He testified that he caught her in the basement one time with a rope in the rafters getting ready to try to commit suicide. He described her as basically being in her "own world." He noted that there were even issues between his now wife and his mother, with his mother having tantrums, arguments and throwing a tray of coffee at her. He said that his wife only takes care of his mother now because he asked her to, but she does not interact with her. He said that they could not leave their children with her because she is not stable enough to take care of them. Mr. Mujanic confirmed that Claimant is never left alone. He admitted that they essentially forced her to go to Bosnia to try to help her, but she did the same thing there, with staying in the house and going upstairs while the family was downstairs. Finally, he admitted that all of her mental and emotional issues have occurred since the dog attack injury. He agreed that she had some prior bodily pains, but no mental issues at all.

36) The first deposition of **Dr. Edwin Wolfgram** (Exhibit 2) was taken by Claimant on June 14, 2009 to make his opinions in this case admissible at trial. Dr. Wolfgram is a board certified psychiatrist. He examined Claimant on one occasion, March 6, 2008, with the use of an interpreter, at the request of Claimant's attorney, and issued his report on July 21, 2008. He had provided no treatment to Claimant at this time. In addition to meeting with Claimant, he also reviewed the medical treatment records in this case. He recounted her history of injuries and asserted that psychiatric illnesses accompanied her injuries in 2000-2001, 2002-2006 and from the dog attack on August 16, 2007, which not only worsened her prior illnesses, but resulted in a specific new psychiatric illness. His "psychiatric findings through 2006" were that Claimant "was in a continuous state of pain" and "the pain interfered with her work and personal life." He admitted that he had no pre-existing records from a psychiatrist, but asserted that physical examination records were enough to also render

psychiatric conclusions because both are all wrapped up together. In describing the dog attack, Claimant recounted to Dr. Wolfgram that she “blacked out” and that she was “perplexed, dazed, and/or unconscious from a blow to the head.” Claimant recounted her nightmares, difficulty sleeping, increased pain and depression since the dog attack. Dr. Wolfgram asserts that she sustained a head injury at the time of the attack, even though no other examining or rating doctor made such a diagnosis or noted such complaints following this injury, nor did he order any testing or evaluations to confirm such a diagnosis. She noted to Dr. Wolfgram that her family avoided the Bosnian conflict. She asserted to Dr. Wolfgram that the current litigation was her first experience with the process, but she had a prior claim from 2004. She noted that she cannot work like she used to and co-workers now push her cart. In describing the way she presented her complaints, Dr. Wolfgram noted that, “This examiner has found that Eastern European immigrants tend to be dramatic in the presentation of usual symptoms. The reason for this, at least in part, is because there is a conscious and/or unconscious need to overemphasize to gain attention.”

- 37) Dr. Wolfgram diagnosed and rated the following conditions pre-existing the August 16, 2007 injury: Pain disorder associated with both psychological factors and a general medical condition, for which she has 4% permanent partial psychiatric disability of the body as a whole and Dysthymic disorder (mild to moderate depressive component), for which she has 4% permanent partial psychiatric disability of the body as a whole. Medically causally related to the August 16, 2007 work injury he diagnosed and rated the following: Pain disorder associated with both psychological factors and a general medical condition, for which she has 10% permanent partial psychiatric disability of the body as a whole; Mood disorder due to a cerebral concussion (brain damage that involves the entire brain function), for which she has 20% permanent partial psychiatric disability of the body as a whole and Posttraumatic Stress Disorder, chronic, for which she has 25% permanent partial psychiatric disability of the body as a whole. He opined that the disabilities are synergistic, resulting in an overall disability greater than their individual parts. He opined in his report that, “The event of August 16, 2007, has rendered her permanently and totally psychiatrically disabled.” However, in his deposition testimony, he opined that the permanent total psychiatric disability was actually the result of the combination of the August 16, 2007 work injury and her pre-existing conditions “to the degrees that I have identified.” He noted that she has remained employed in a protective setting that has been arranged for her, but such a setting would not be able to be arranged outside of her current employment. He gave her a GAF score of 38 and opined that she would need \$15,000.00 per year for the next three years for “brain rehabilitation, psychiatric hospitalization, insight and supportive psychotherapy, and psychoactive drugs.”
- 38) The deposition of **Dr. Wayne Stillings** (Exhibit G) was taken by Employer on May 3, 2010 to make his opinions in this case admissible at trial. Dr. Stillings is a board certified psychiatrist. He examined Claimant on one occasion, November 18, 2009, with the use of an interpreter, at the request of Employer, and issued his report on that same date. He provided no treatment to Claimant in this case. In addition to his meeting with Claimant, he also reviewed the medical treatment records and

administered some psychological testing. Claimant complained of pain in her left arm, left hand and head and poor concentration, as well as low back pain increased by 20% since the work injury, swelling in both knees that she attributed to the dog bite (even though the swelling began about two years later) and a sleep problem from dreams of the dog attack, which began two to three months after the attack and have progressively increased in frequency. Dr. Stillings noted that the complaints were vague and diffuse, that he did not find any support for her concentration complaint in his examination of her and that her description of worsening dog attack dreams was inconsistent with the general response that people have to a traumatic event, with it getting better, not worse, over time. Claimant provided a consistent history of the dog attack and Dr. Stillings noted no issue with memory of the event and no indication in the medical records of concussion, loss of consciousness or any type of head trauma. He noted that Claimant gave a history of continuing in her same job after her return to work following the dog attack, and that her job performance was fine, without written or verbal reprimands. However, she did want a restriction of not having to go to the second floor where the dog attack occurred and because she has difficulty carrying linen with the left hand and low back. She noted that sometimes, a co-worker will carry the linen for her, but one is not always available. Dr. Stillings confirmed that Claimant has no history of mental health/psychiatric treatment or use of any such medications. Claimant confirmed that she was not exposed to the Bosnian War, even though she left Bosnia to get away from it. He noted from his review of the medical records that Claimant has a long history of making chronic pain complaints when she presents to the medical community.

- 39) Dr. Stillings diagnosed the following: Axis I, Adjustment Disorder, unspecified, mostly in remission; Axis II, Personality Disorder, NOS, with depressive, dependent, passive-aggressive, borderline, and schizoid personality traits with elements of exaggeration, pre-existing the August 16, 2007 injury; Axis III, per medical records and including chronic pain due to degenerative disc disease of the cervical and lumbar spine, pre-existing; Axis IV, poor English language skills, separated from her nuclear family in Bosnia, and interaction with the legal system; and Axis V, Global Assessment of Functioning (GAF) of 70-75 (very mild to no significant psychiatric symptoms). Dr. Stillings opined that Claimant was not in need of any psychiatric treatment on account of the August 16, 2007 work injury. He opined that she did not have PTSD (Posttraumatic Stress Disorder), a cerebral concussion or a pain disorder causally related to the August 16, 2007 work injury. He believed that she could continue to work without restrictions. He rated her as having 1-2% permanent partial psychiatric disability of the body as a whole, on account of the adjustment disorder (now in full remission), attributable to the August 16, 2007 work injury. He also rated her as having 2% permanent partial psychiatric disability of the body as a whole, on account of her maladaptive personality traits, which pre-existed the August 16, 2007 injury.
- 40) The deposition of **Dr. Thomas Musich** (Exhibit 4) was taken by Claimant on June 16, 2010 to make his opinions in this case admissible at trial. Dr. Musich is board certified in family practice. He examined Claimant on three occasions, October 8, 2007, February 15, 2008 and April 19, 2010, at the request of Claimant's attorney,

and issued his reports on those same dates. He provided no treatment to Claimant in this case. The first report dated October 8, 2007 dealt primarily with Claimant's neck and low back complaints related to her employment at Semco Plastic from 2002 to 2006. Although Claimant denied having any neck or low back problems before her employment at Semco, Dr. Musich indicated that he had medical records that showed such treatment. He also referenced the August 2007 injury for which she was still taking medications. Dr. Musich diagnosed Claimant as having neck and low back pain (symptomatic degenerative disc disease of the lumbosacral spine, chronic symptomatic right sacroiliac dysfunction and right piriformis syndrome) causally related to her employment at Semco, for which he rated her as having 25% permanent partial disability of the body as a whole referable to the lumbosacral spine. He found no persistent symptomology in the neck.

- 41) At his second evaluation on February 15, 2008, Dr. Musich focused on the August 16, 2007 injury and had the medical treatment records documenting Claimant's care since then. Claimant complained of left breast, left shoulder and neck problems related to the dog attack, but she reported working for Employer full duty without restrictions. Medically causally related to the August 16, 2007 injury, Dr. Musich opined that Claimant had multiple puncture wounds of the left breast, chronic myofascial pain of the left neck and upper back, and internal derangement of the left shoulder, probably consistent with rotator cuff pathology and developing adhesive capsulitis. He opined that she had reached maximum medical improvement with regard to the left breast injury and he rated her as having 10% permanent partial disability of the body as a whole for that. He did not believe she had reached maximum medical improvement with regard to the neck and left shoulder, and felt that she was in need of further medical treatment for those body parts. He did not find any significant pre-existing disability referable to the head, neck, left upper extremity or left breast before August 16, 2007.
- 42) By the time of his third evaluation of Claimant on April 19, 2010, Dr. Musich noted that Claimant told him she was working "40 hours per week without restrictions for Holiday Inn." She reported receiving no further treatment since his last evaluation of her. He, again, causally related Claimant's left breast puncture wounds, chronic myofascial pain of the left neck and upper back, and her internal derangement of the left shoulder due to acute strain and rotator cuff tendinopathy, to her August 16, 2007 work injury. Even though she had had no further treatment, Dr. Musich now offered ratings of permanent partial disability of 10% of the body as a whole referable to the left breast and 30% of the left shoulder, attributable to the August 16, 2007 work accident. He recommended further evaluation and treatment for the left shoulder by a trained physical therapist. He deferred to Claimant's psychiatrist/psychologist for any rating of psychiatric disability with regard to the August 16, 2007 work injury. He also opined that the pre-existing low back disability would combine with the disabilities from the dog bite injury to create disability that is greater than the simple sum of the disabilities.
- 43) The deposition of **Dr. James Doll** (Exhibit F) was taken by Employer on June 17, 2010 to make his opinions in this case admissible at trial. Dr. Doll is an osteopathic

physician, board certified in physical medicine and rehabilitation. He examined Claimant on two occasions, May 6, 2008 and December 1, 2009, at the request of employers' attorneys, and issued his reports on May 20, 2008 and December 1, 2009. He provided no treatment to Claimant in this case. The first report dated May 20, 2008 dealt primarily with Claimant's neck and low back complaints related to her employment and alleged injuries at Semco. Dr. Doll noted inconsistencies between her subjective complaints and objective examination findings, as well as inconsistencies in her history of complaints. He did not believe that she sustained any permanent partial disability attributable to her alleged work injuries at Semco, but rated her as having 3% of the body as a whole referable to the cervical spine and 3% of the body as a whole referable to the lumbar spine, attributable to her pre-existent and underlying degenerative conditions in those body parts, as evidenced by the diagnostic testing.

- 44) At the second evaluation on December 1, 2009, Dr. Doll took a history of the dog attack and her complaints in her left breast, as well as headache, neck pain and left shoulder pain and left leg pain and numbness. She indicated that she was working full duty for Employer. Although in May 2008, she was reporting persistent right-sided symptoms, now, she was reporting no right-sided symptoms, but only left-sided symptoms. His physical examination revealed significant inconsistencies between her subjective complaints and objective findings, including poorly localized symptoms lacking a particular anatomic correlation, positive Waddell's signs and collapsing weakness in the left upper and lower extremity, with no abnormal tone, muscle atrophy, spasm, trigger points or palpable deformity. Medically casually related to the August 16, 2007 work injury, Dr. Doll diagnosed left breast puncture wounds and left shoulder/posterior thoracic contusion. Unrelated to the work injury, he diagnosed diffuse neck pain; left shoulder pain; left upper and lower extremity pain and paresthesias; cervical, thoracic and lumbar spondylosis; left shoulder degenerative joint disease; and left inferior breast skin rash or insect bite. He placed Claimant at maximum medical improvement for the August 16, 2007 work injury and did not believe she needed any further medical treatment on account of it. He opined that she did not sustain any permanent partial disability on account of that work injury (0% rating).
- 45) **Dr. Wayne Stillings** issued a supplemental report dated March 20, 2012 (Exhibit C) after his review of additional medical reports, medical records and deposition testimony. He indicated that none of that additional material changed any of his prior diagnoses or opinions in this case.
- 46) The second deposition of **Dr. Edwin Wolfgram** (Exhibit 3) was taken by Claimant on September 5, 2013 to make his opinions in this case admissible at trial. By the time of this second deposition, Dr. Wolfgram had provided some treatment to Claimant from February 26, 2010 to May 25, 2013 (seven sessions total) and had issued a new report dated June 24, 2011. Attached to the deposition were Dr. Wolfgram's psychiatric treatment bills totaling \$1,620.00. In preparing his additional report, Dr. Wolfgram now reviewed additional medical treatment records, the deposition testimony of the other medical experts in this case and also had an

interview on May 26, 2011 with Esma Burazovic, the same co-worker who testified for Claimant at hearing. Dr. Wolfram spends considerable time in his report offering his own analysis and conclusions regarding the opinions of the other medical experts in this case, even including Claimant's own rating physician. He asserts that Dr. Doll and Claimant "did not communicate effectively," and that he "to his own peril, accepted the health questionnaire information," which incidentally was provided by Claimant herself. He asserts that Dr. Musich did not "fully examine Ms. Mujanic's total life and work adjustment," did not talk to family or co-workers to see how she was performing at work, and "did not give a fully informed opinion." Finally, he asserts that Dr. Stillings was "too preoccupied with his psychological testing to do an adequate clinical evaluation." Dr. Wolfram asserts that if Dr. Stillings had done a more thorough evaluation, he would have determined that Claimant "was being 'strung along' by her employer to make it look as if she were not injured" and that "There was a lot of 'positioning' going on at work." Dr. Wolfram reviewed her performance evaluations from Employer and concluded that her incident reports and lower scores in 2010 are indicative of her inability to work effectively anymore. Dr. Wolfram also attacks Dr. Stillings' reliance on the psychological testing calling him "naïve," and calling his approach "unreliable," "of no merit" and "like painting by the numbers." He derisively comments that instead, "Specialists are trained to use their 80 billion brain cells and 100 trillion connections," as if Dr. Stillings failed to use his brain at all in reaching his conclusions in this case. He comments, "If you want to know how many teeth are in a horse's mouth you need not theorize. You open the mouth and count the teeth." Essentially, Dr. Wolfram summarizes that none of the doctors in this case, except him of course, performed a full and adequate examination, so none of them, except him, of course, can accurately assess her condition and psychiatric/medical needs.

- 47) Dr. Wolfram testified that in early 2010 he petitioned Employer to change her employment so that she did not have to go to the second floor and did not have to do the heavy work in the laundry because of the pain from her various injuries. He notes in his report and testimony that he, along with Claimant and her family, determined that her employment for Employer was "health threatening" and that "She has become a pawn in the management of the litigation process." Yet, he also notes that her employment was prolonged because of her family's desperate need for money, since her husband was unemployed and to forestall a foreclosure on the home. Noting that plans for alternative financing are underway, he, therefore, wrote a note to Employer dated May 27, 2011, that due to medical reasons she was advised to discontinue her employment by June 12, 2011. He testified that it was necessary for her to quit "for purposes of her survival and her health." Yet, he acknowledged that when he next saw her in May 2013, almost two years since quitting her job, her condition was essentially the same, even though she was no longer working.
- 48) During his testimony in this deposition, Dr. Wolfram again vacillated between agreeing that the predominant and prevailing factor in creating Claimant's permanent total disability was the dog bite accident of August 16, 2007 and testifying that her permanent total disability was on account of a combination of both the effects of the dog bite and her pre-existing psychiatric disability. He tried to explain away the

contradictory statements in his report and testimony by noting that while the dog bite was the primary reason, it was not the only reason for her current permanent total disability. He now testified that she should be under psychiatric treatment for the rest of her life, including, but not limited to, psychotherapy and medications for her, as well as counseling for her family, too. When challenged about his statements, particularly concerning Dr. Stillings and the use of the MMPI-2, as well as about Claimant's performance appraisals and ability to work following her injury, Dr. Wolfgram became argumentative and non-responsive. When asked about whether Dr. Stillings was the only doctor to rely on the MMPI-2, Dr. Wolfgram responded, "I don't know all the psychiatrists in the country." When asked about her performance appraisal from 2010, Dr. Wolfgram constantly referred back to 2007, which was not even part of the question. He even responded at one point, "And you're obviously not aware of what the whole record says."

- 49) Although Dr. Wolfgram largely based his opinions on the fact that she was not really "working" after 2007, he admitted that in his own treatment records dated April 20, 2010, Claimant gave him the history of working 40 hours per week, with no respect at work, performing hard work. However, later in the deposition he indicated that "the issue of 40 hours was advanced by people who were not fully advised and understanding what her actual work and her work hours were." Yet, that history appeared in his treatment records as part of the history from Claimant. He again asserted, without any real foundation for these statements, that Employer tried to make her look good at times, and, then, look bad at times, "manipulating her in various ways because of the issues that they were facing legally." He even asserted that they all "had hidden agendas, even the family, to not relate all of this to me as to how bad off she was, and—because they needed the money. And, at least, I felt that she was being used as a pawn by everybody."
- 50) The deposition of **Mr. Vincent Stock** (Exhibit 5) was taken by Claimant on July 26, 2013 to make his opinions in this case admissible at trial. Mr. Stock is a licensed psychologist and certified vocational rehabilitation counselor. He met with Claimant on one occasion, December 14, 2011, at the request of Claimant's attorney. He reviewed the medical treatment records; took a family, social, educational and vocational history from Claimant; determined her functional restrictions/limitations; and then issued his report. Claimant provided a history of not working and not doing anything around the house since 2010. However, on cross-examination, he noted that Claimant's attorney alerted him to the fact that that date was wrong and she actually worked until 2011. She reported problems with sleep, concentration and memory. Mr. Stock testified that he was uncertain when some of these problems started and when she started taking some of the medications, either before or after the 2007 injury. Mr. Stock opined that Claimant "has significant limitations that impact her ability to work that include the combination of her physical limitations and mental limitations and make her permanently and totally disabled from working." He found that she has no transferable skills. Interestingly, Mr. Stock noted that, "By itself, the moderate mental impairment attributed to her injury by Dr. Wolfgram would not be so disabling to make her permanently and totally disabled." However, he believed the

combination of the physical and mental limitations, both current and pre-existing, are what make her permanently and totally disabled.

- 51) The deposition of **Ms. Kimberly Gee** (Exhibit H) was taken by Employer on July 30, 2014 to make her opinions in this case admissible at trial. Ms. Gee is a certified vocational rehabilitation counselor. She met with Claimant on one occasion, January 27, 2014, at the request of Employer's attorney. She reviewed extensive medical treatment records; took a social, educational and vocational history from Claimant; performed an aptitude profile and transferable skills analysis; determined her employability assessment; and then issued her report dated March 4, 2014. Ms. Gee concluded that Claimant is employable in the open labor market in at least five different positions, including cleaner/housekeeper, laundry worker and assembler/machine operator. She based this opinion on the various medical reports and Dr. Stillings' report, and she spent quite a bit of time explaining why she did not rely on Dr. Wolfgram's assessment and opinions for reaching her vocational opinion in this case. She noted that from her review of the employment records, she did not see where Claimant was in a "protected work setting." She noted the evaluations all showed acceptable performance. Ms. Gee also offered a number of recommendations for what Claimant could do to enhance her employment options, including taking English and computer classes and getting her GED.
- 52) On cross-examination, Ms. Gee admitted that she did not talk to any family members or co-workers in the course of her evaluation, and it could have been helpful to have had that additional information. She also admitted that PTSD or a pain disorder can interfere with someone's ability to learn new things. She admitted that she did not know about the side effects of any of the medications Claimant was taking. She did not find any physical restrictions placed on Claimant, so she did not think any accommodations were necessary, but from a psychiatric standpoint, she thought Claimant could benefit from a task list to accommodate her reported memory issues. She admitted that there are a number of Claimant's psychological complaints that could not adequately be inputted into the OASYS system for determining potential employment. Ms. Gee also confirmed that Claimant consistently told her that the long list of her complaints and problems started four years ago, which would be somewhere around 2010, about three years after the dog attack injury. She confirmed that despite the medical treatment records showing treatment and complaints for various body parts before 2007, she found no evidence of physical restrictions, problems with her ability to work, or that she was not able to fully perform all of her work duties prior to 2007.
- 53) As Claimant was in the courtroom testifying in this matter, I observed that she became extremely emotional and cried as she was discussing the dog attack and looking at the photos of herself following the attack. She was also shifting in the witness chair, rubbing her neck, grimacing and holding her back after about an hour, in an apparent attempt to gain some relief of her complaints and get more comfortable. I noted that she had to stand after about an hour and a half and was leaning against the wall, while holding her left arm by the elbow.

**RULINGS OF LAW:**

Based on a comprehensive review of the evidence, including Claimant's testimony, the expert medical opinions and depositions, the vocational expert opinions and depositions, the medical records, the medical bills, the other documentary evidence, and the testimony of the other witnesses, as well as based on my personal observations of Claimant and the other witnesses at hearing, and based on the applicable statutes of the State of Missouri, I find:

Considering the date of the injury, it is important to note the statutory provisions that are in effect, including **Mo. Rev. Stat. § 287.800 (2005)**, which mandates that the Court "shall construe the provisions of this chapter strictly" and that "the division of workers' compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts." Additionally, **Mo. Rev. Stat. § 287.808 (2005)** establishes the burden of proof that must be met to maintain a claim under this chapter. That section states, "In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true."

Claimant bears the burden of proof on all essential elements of her Workers' Compensation case. *Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute*, 793 S.W.2d 195 (Mo. App. E.D. 1990) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). The fact finder is charged with passing on the credibility of all witnesses and may disbelieve testimony absent contradictory evidence. *Id.* at 199.

***Issue 1: Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to her accidental injury at work on August 16, 2007?***

Under **Mo. Rev. Stat. § 287.120.1 (2005)**, every employer subject to the Workers' Compensation Act shall furnish compensation for the personal injury of the employee by accident arising out of and in the course of employee's employment. According to **Mo. Rev. Stat. § 287.020.2 (2005)**, accident is defined as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift." Further, under **Mo. Rev. Stat. § 287.020.3 (1) (2005)**, "An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. 'The prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability." Finally, under **Mo. Rev. Stat. § 287.020.3 (2) (2005)**, an injury is deemed to arise out of and in the course of the employment only if the accident is the prevailing factor in causing the injury and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment.

In this case, the parties have stipulated that Claimant sustained an accident on August 16, 2007, arising out of and in the course of her employment for Employer. She was working as a

housekeeper for Employer on August 16, 2007, when she opened a guest room to clean it and a German shepherd (dog) attacked and bit her. However, the parties placed medical causation at issue, thus, requiring that I make findings on which, if any, of Claimant's alleged problems and complaints are medically causally related to the work accident of August 16, 2007. Through her testimony and statements in some of the medical records, Claimant alleged a plethora of problems and complaints that she attributed to the work injury of August 16, 2007. She described increased or new problems and complaints with her head, neck, back, left breast, left shoulder/arm, elbow and leg, as well as psychiatric/mental issues, all of which she attributed to the August 16, 2007 work injury. In order to meet her burden of proof on this issue, Claimant needed opinions from medical experts that diagnosed her conditions and medically causally related them to the August 16, 2007 work injury. In that respect, I have found medical opinions in the record of evidence that medically causally connect left breast, left shoulder and some psychiatric injuries and disabilities to the August 16, 2007 work injury.

Starting with her physical injuries from this August 16, 2007 accident, consistent with the competent, credible and reliable medical opinion of Dr. Musich in this case, I find that Claimant sustained multiple puncture wounds of the left breast, chronic myofascial pain of the left neck and upper back, and internal derangement of the left shoulder due to acute strain and rotator cuff tendinopathy, all of which is medically causally related to the August 16, 2007 work injury. I find that these diagnoses and medical causation opinions are supported by the medical treatment records in evidence. I can find absolutely no dispute in the record that the left breast injury is clearly related to the August 16, 2007 accident. While Claimant's pre-existing medical treatment records do document some neck and left shoulder issues/complaints prior to August 16, 2007, I find that the records show an increase in complaints, new diagnoses and a need for treatment for those body parts following the injury, which is certainly consistent with the mechanism of injury. Further, I find Dr. Musich's diagnoses are supported by the opinions of Dr. Ralph, who diagnosed a left shoulder injury, and Dr. Doll, who diagnosed left shoulder/posterior thoracic contusion, medically causally related to the 2007 injury. While they certainly disagree on the amount of permanent partial disability that may be attributable to these conditions, I find that they really do not disagree on the fact that Claimant sustained injury to these body parts connected with her August 16, 2007 accident.

The predominant area of disagreement between the parties on this issue surrounds the psychiatric component of this accident. However, even there, I find that both Claimant's and Employer's psychiatric experts agree that Claimant did sustain some psychiatric injury and some amount of permanent partial disability connected with that psychiatric injury. Therefore, I find that it is not a matter of whether or not any psychiatric injury/disability is associated with this accident, but, rather, what type of psychiatric injury and how much disability. In that respect, Claimant offered the opinions and testimony of Dr. Edwin Wolfgram in support of her position in this case. On the other hand, Employer offered the opinions and testimony of Dr. Wayne Stillings in support of their position in this case. It is also important to reiterate in this context, that since Claimant has the burden of proof in this case, regardless of what evidence Employer may submit and how it may be viewed by the Court, it is incumbent on her to produce competent, credible and reliable evidence (medical and otherwise) to support the outcome she believes appropriate for these issues. If she fails to do that, then, she fails to meet her burden of proof and is not entitled to the benefits for which she has failed to meet that burden.

Dr. Wolfgram opined that medically causally related to the August 16, 2007 work injury Claimant sustained a pain disorder associated with both psychological factors and a general medical condition, a mood disorder due to a cerebral concussion (brain damage that involves the entire brain function) and Posttraumatic Stress Disorder, chronic. To reach these diagnoses, Dr. Wolfgram apparently, primarily, relied on the history and complaints provided by Claimant (and her family/co-worker), as well as the medical treatment records and work records. Additionally, he diagnosed pre-existing psychiatric injury/disability associated with a pain disorder and dysthymic disorder, even though Claimant denied any prior psychiatric problems/complaints, denied any prior such treatment and there were no medical treatment records documenting any prior psychiatric problems. He essentially explained that if you have pain you have psychiatric disability, and since she had pain she had psychiatric disability. He is also the only physician in the record of evidence to opine that Claimant is permanently and totally disabled, whether as a result of the last injury alone or as a result of the combination of her disabilities.

In evaluating the strength and appropriateness of these diagnoses/opinions, I note that although Dr. Wolfgram diagnosed and rated a cerebral concussion (brain damage involving the entire brain), there is not one shred of diagnostic testing, nor any findings or opinions from any of the other treating or examining physicians, to support such a diagnosis. Even Dr. Wolfgram did not order any diagnostic testing, (MRI, CT scan, etc.) or any neuropsychological testing to confirm the presence of a concussion or brain injury. He made the diagnosis, apparently, based solely on Claimant's description and history to him. However, I found a number of issues with the history and descriptions Dr. Wolfgram relied on in reaching his opinions in this case. Claimant told Dr. Wolfgram that she blacked out and was, perhaps, unconscious, but denied being unconscious at trial and to other medical experts. She noted to Dr. Wolfgram that her family avoided the Bosnian conflict, but was found to be a "secondary survivor" of torture based on her statements to the Center for Survivors of Torture and War Trauma. She asserted to Dr. Wolfgram that the current litigation was her first experience with the process, but she had a prior claim from 2004. I found a number of references in the medical treatment records of Claimant exaggerating or overemphasizing her complaints without any objective explanation for them. Even Dr. Wolfgram noted that in describing the way she presented her complaints, "This examiner has found that Eastern European immigrants tend to be dramatic in the presentation of usual symptoms. The reason for this, at least in part, is because there is a conscious and/or unconscious need to overemphasize to gain attention." However, even noting this may be a "dramatic" presentation of usual symptoms, Dr. Wolfgram relied completely on that presentation in reaching his opinions/conclusions.

In reviewing Dr. Wolfgram's testimony and opinions in this case, I find that his credibility and persuasiveness is also negatively impacted by his derisive comments, argumentative and non-responsive testimony and unfounded and completely unsubstantiated assertions regarding the other medical experts and Employer in this case. He essentially asserts that he is the only physician, including Claimant's own rating physician (Dr. Musich), who performed a complete and thorough evaluation/examination of Claimant, and, therefore, no other doctor offered a competent opinion but him. I disagree. He asserts that Claimant's work records show a decline in her performance and abilities following the 2007 accident, which bolsters his opinions in this case. However, I find that the records actually show an increase in the year or so following the accident and no real decrease in performance until a couple of years later (incidentally, when Dr. Wolfgram started requesting accommodations in her job), but even then,

she was still noted to be performing well in her job. Yet, when attempts were made to question Dr. Wolfgram about this in his deposition, he became combative and non-responsive, constantly choosing to talk about 2007 scores, when he was being asked about 2010 scores. He even responded at one point, "And you're obviously not aware of what the whole record says." Finally, without any indication as to how he reached this conclusion and without any supporting evidence to bolster his assertion in this regard, he opined that Employer tried to make her look good at times, and, then, look bad at times, "manipulating her in various ways because of the issues that they were facing legally." He even asserted that they all "had hidden agendas, even the family, to not relate all of this to me as to how bad off she was, and-because they needed the money. And, at least, I felt that she was being used as a pawn by everybody." So, if Dr. Wolfgram's statements and testimony are to be taken at face value, every doctor but him got it wrong and every one (Employer and even her family) were all using her and taking advantage of her and only Dr. Wolfgram was able to see it. Given the totality of the facts and the rest of the evidence in this case, I find that very hard to believe, and I find that these statements negatively impact the credibility and persuasiveness that his opinions might otherwise have.

For all of these reasons, I find that I cannot fully rely on Dr. Wolfgram's diagnoses and opinions to serve as a basis for an award of compensation in this case.

On the other hand, I find that Employer's expert, Dr. Stillings, was at the other end of the spectrum, completely minimizing Claimant's complaints and problems from this injury and discounting her issues because there was no objective basis for those complaints nor any confirmation of a psychological disorder from this injury on the testing. While he did agree that there was an adjustment disorder (now in full remission), attributable to the August 16, 2007 work injury, he questioned Claimant having any PTSD from this injury, primarily based on the fact that the complaints, apparently, did not manifest themselves for a significant period of time after the injury. Although the treatment records from Helen McGlynn show that she did have some depression and PTSD, which Claimant always traced back to the dog bite, that treatment occurred over five years after the injury. Therefore, while I find I also cannot fully rely on Dr. Stillings' opinions in this case, with the exception of his ratings, I find that his opinions and diagnoses are much more rooted in the facts and evidence in this case, than the largely unsubstantiated and unfounded opinions of Dr. Wolfgram.

So, though I cannot rely fully on either expert, I find that there are areas of commonality between them and there are records in evidence that allow me to find that Claimant did suffer from a psychological/psychiatric component to this August 16, 2007 injury, which is medically causally related to it and resulted in some amount of permanent partial disability on account of it.

Accordingly, based on the competent and substantial evidence in the record, I find that Claimant met her burden of proving that she sustained multiple puncture wounds of the left breast, chronic myofascial pain of the left neck and upper back, internal derangement of the left shoulder due to acute strain and rotator cuff tendinopathy, and psychiatric/psychological injury to the body as a whole, which was all medically causally related to the August 16, 2007 injury.

***Issue 2: Is Employer responsible for the payment of past medical benefits in the stipulated amount of \$1,620.00?***

Under **Mo. Rev. Stat. § 287.140.1 (2005)**, “the employee shall receive and the employer shall provide such medical, surgical, chiropractic and hospital treatment...as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.” **Mo. Rev. Stat. § 287.140.3 (2005)** also states, “All fees and charges under this chapter shall be fair and reasonable...” Claimant bears the burden of proving these elements of the claim.

The Missouri Workers’ Compensation Statute is very clear that if the employer is going to be responsible for the payment of the medical bills, then the employer has the right to select the medical providers and direct the medical care. The statute, however, does give Claimant an option. If Claimant desires to direct her own medical care and choose her own treating physicians, then she has the right to do that, but then she is responsible for the payment of the bills associated with that treatment, not the employer.

Claimant admitted that she was sent to Dr. Wolfgram by her attorney, and based on his first report from 2008, it is clear that the purpose of that evaluation was for preparing a report with opinions in anticipation of litigation. I can find no indication in the record of evidence that Claimant ever requested psychiatric treatment from Employer, prior to being seen by Dr. Wolfgram.

I further find that, following that Dr. Wolfgram evaluation, Employer sent Claimant to Dr. Stillings in 2009 and Dr. Stillings opined at that time that Claimant was not in need of any psychiatric treatment on account of the August 16, 2007 work injury. Nonetheless, Claimant began treating with Dr. Wolfgram on a sporadic basis between February 26, 2010 and May 25, 2013 (seven sessions total). I, again, can find no indication in the record of evidence that Claimant requested any psychiatric treatment from Employer, following Dr. Stillings’ opinion and prior to beginning to treat with Dr. Wolfgram in 2010. In fact, the only request for medical treatment that I can find in the record of evidence is on the Amended Claim for Compensation (Exhibit 16) dated December 1, 2014, long after the treatment from Dr. Wolfgram had already ended.

Therefore, I find that, without any request for medical care from Employer, Claimant was examined and began treating with a doctor of her (and/or her attorney’s) own choosing. There is no evidence in the record to suggest that Claimant ever, prior to undertaking the treatment with Dr. Wolfgram, asked Employer to provide any psychiatric medical care or treatment to her on account of her injury. Instead, I find that Claimant continued to treat on her own with a doctor of his own choosing for her alleged psychiatric issues from this injury.

Since Claimant never requested or demanded psychiatric medical treatment for this injury from Employer prior to obtaining it on her own, I find that Employer was never given the opportunity to control the medical care or select the treating physician as is their statutory right. Since Employer was never given the opportunity to control the medical care or select the treating

physician, and since Claimant continued to treat on her own with a doctor of her own choosing, I find that Claimant is responsible for the medical bills referable to this treatment, not Employer. As is noted in the statute above, Claimant has the right to select her own physicians “at his [her] own expense.”

Additionally, even if an argument can be made that, although she never requested medical treatment from Employer, since Employer was aware of the treatment recommendation from Dr. Wolfgram (as they responded by sending her to Dr. Stillings), that their failure or refusal to provide it necessitated Claimant obtaining it on her own, I still find that Claimant is not entitled to collect these medical bills as a part of this Claim. Even with this additional argument, I reach the same result that the bills are not payable as a part of this Claim, because the outcome of this issue depends on the respective credibility and persuasiveness of the competing psychiatric experts. Dr. Wolfgram is the only expert to opine that Claimant was in need of psychiatric treatment, while Dr. Stillings found no further treatment was necessary. For all of the same reasons as expressed in detail above, I find that Dr. Stillings is more competent, credible and persuasive in this case on this issue when compared to the contrary opinions of Dr. Wolfgram. Without any credible or persuasive medical evidence on the issue of past medical bills, for this additional reason, I find that Claimant has failed to meet her burden of proof in this regard.

Without Claimant having requested that Employer provide medical care for her psychiatric condition prior to obtaining the treatment on her own, and without Employer actually failing or refusing to provide that requested medical care, I am left to conclude that Claimant decided, which she has the right to do under the statute, to control her own medical care and select her own physician, thus, making her, not Employer, responsible for the resulting medical charges for this treatment. Additionally, as Dr. Stillings has previously been found more credible and persuasive in this case than Dr. Wolfgram, and as Dr. Wolfgram indicated a need for psychiatric treatment with Dr. Stillings indicating that no further treatment was necessary, I find that Claimant has failed to meet her burden of proof in this regard, by failing to provide credible and persuasive medical evidence of a need for treatment. Claimant’s request for the payment of past medical expenses is denied.

***Issue 3: Is Claimant entitled to future medical care on account of this work injury?***

**Mo. Rev. Stat. § 287.140.1 (2005)** is the applicable statute under which the issue of future medical treatment must be addressed as well. Just as Claimant must prove all of the other material elements of her claim, the burden is also on her to prove entitlement to future medical treatment. *Dean v. St. Luke’s Hospital*, 936 S.W.2d 601, 603 (Mo. App. 1997) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). Claimant is entitled to an award of future medical treatment if she shows by a reasonable probability that future medical treatment is needed to cure and relieve the effects of the injury. *Conception v. Lear Corporation*, 173 S.W.3d 368, 372 (Mo. App. 2005).

With regard to her physical injuries, Drs. Ralph and Doll released Claimant from care and indicated that there was no need for additional medical treatment on account of the August 16, 2007 injury. Dr. Musich initially indicated that Claimant was not at maximum medical

improvement and in need of care for the left shoulder, but, then, by the time of his next evaluation, without any other treatment being given for the left shoulder, only recommended further evaluation and treatment for the left shoulder by a trained physical therapist, and rated Claimant's disability in the left shoulder. Claimant testified as to complaints in numerous parts of her body, many of which even Dr. Musich did not directly relate to the August 16, 2007 work injury, and also testified as to continuing treatment for those complaints, much of which was never related to the work injury either. On the basis of all of this evidence in the record, I find the opinions of Drs. Ralph and Doll on this issue more persuasive than the opinion of Dr. Musich, and find that Claimant has not met her burden of proof on the need for future medical treatment for her physical complaints allegedly related to this injury.

With regard to her psychiatric/psychological injuries from this accident, the same analysis as described in detail above in the past medical section applies to this issue as well. Dr. Wolfgram is the only expert to opine that Claimant was in need of psychiatric treatment, while Dr. Stillings found no further treatment was necessary. For all of the same reasons, as expressed in detail above, I find that Dr. Stillings is more competent, credible and persuasive in this case on this issue when compared to the contrary opinions of Dr. Wolfgram. Without any credible or persuasive medical evidence on the issue of future medical treatment, I find that Claimant has failed to meet her burden of proof in this regard.

Accordingly, I find Claimant has failed to meet her burden of proof on the future medical issue and her request for future medical treatment in this case is denied.

***Issue 4: Is Claimant entitled to the payment of temporary total disability benefits for a period of time to be determined?***

Employer is responsible under the statute for the payment of temporary total disability benefits pursuant to **Mo. Rev. Stat. § 287.170 (2005)** during the continuance of such disability at the appropriate weekly rate of compensation. The statute also defines "total disability" under **Mo. Rev. Stat. § 287.020.6 (2005)** as the "inability to return to any employment and not merely... (the) inability to return to the employment in which the employee was engaged at the time of the accident." Claimant bears the burden of proof on this element of her claim just as on any other element.

The parties stipulated that Claimant was paid temporary total disability benefits from August 17, 2007 to September 30, 2007, or 6 3/7 weeks, at a rate of \$212.36 per week. They further stipulated that Claimant's appropriate rate of compensation for total disability benefits is \$215.00 per week. Therefore, I find that for the period of time she was already paid TTD benefits, Claimant was underpaid at an inappropriately low rate, and, is, thus, entitled to the difference in TTD benefits for that period. Accordingly, I find that Claimant is entitled to an additional \$16.97 in TTD benefits for the period of time of August 17, 2007 to September 30, 2007 ( $\$215.00 - \$212.36 = \$2.64 \times 6 \frac{3}{7} \text{ weeks} = \$16.97$ ).

Following this period of temporary total disability, Claimant returned to work for Employer, where she continued to work in the same position she had prior to the work injury,

until June 21, 2011. She quit working for Employer at that time because of a slip from Dr. Wolfgram indicating that she was no longer capable of working and she was to discontinue her employment and quit for her survival and health. Neither at trial nor in her post-trial brief has Claimant been able to point to any specific period of time that she believes she is entitled to additional temporary total disability benefits outside the period of time for which she already received such benefits, as described above.

Accordingly, I find that Claimant has failed to meet her burden of proving that she is entitled to any additional period of temporary total disability benefits, above and beyond the period already described above. In addition to being unable to articulate any specific period beyond that already paid, Claimant apparently relies on Dr. Wolfgram as the physician that took her off work in 2011, but I find that I cannot rely on Dr. Wolfgram's opinions on her ability to work for the numerous reasons already described above. Additionally, even if Dr. Wolfgram is to be relied upon, his opinion is not that her inability to work is *temporary*, but rather, *permanent*, thus, additionally eliminating any possibility for the payment of more temporary total disability in this case.

Therefore, I find that Claimant is entitled to an additional \$16.97 in TTD benefits for the period of time of August 17, 2007 to September 30, 2007, but has failed to prove an entitlement to any other additional period of temporary total disability benefits in this case.

Given that the last two issues are so inter-related in this case, both issues will be addressed and decided in the same section of the Award.

***Issue 5: What is the nature and extent of Claimant's permanent partial and/or permanent total disability attributable to this injury?***

***Issue 6: What is the liability, if any, of the Second Injury Fund?***

Under **Mo. Rev. Stat. § 287.020.6 (2005)**, "total disability" is defined as the "inability to return to any employment and not merely ... inability to return to the employment in which the employee was engaged at the time of the accident." The test for permanent total disability is claimant's ability to compete in the open labor market. The central question is whether any employer in the usual course of business could reasonably be expected to employ claimant in his present physical condition. *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W.2d 173 (Mo. App. E.D. 1995) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003).

Under **Mo. Rev. Stat. § 287.190.6 (1) (2005)**, "'permanent partial disability' means a disability that is permanent in nature and partial in degree..." The claimant bears the burden of proving the nature and extent of any disability by a reasonable degree of certainty. *Elrod v. Treasurer of Missouri as Custodian of the Second Injury Fund*, 138 S.W.3d 714, 717 (Mo. banc 2004). Proof is made only by competent substantial evidence and may not rest on surmise or speculation. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 703 (Mo. App. 1973). Expert

testimony may be required when there are complicated medical issues. *Id.* at 704. Extent and percentage of disability is a finding of fact within the special province of the [fact finding body, which] is not bound by the medical testimony but may consider all the evidence, including the testimony of the Claimant, and draw all reasonable inferences from other testimony in arriving at the percentage of disability. *Fogelson v. Banquet Foods Corp.*, 526 S.W.2d 886, 892 (Mo. App. 1975)(citations omitted).

Additionally, under the 2005 amendments to the Workers' Compensation Law, the Legislature added further provisions that have an impact on the determination of the nature and extent of permanent partial disability. **Mo. Rev. Stat. § 287.190.6 (2) (2005)** states,

Permanent partial disability... shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty. In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

Therefore, according to the terms of this statute, it is incumbent upon the claimant to have a medical opinion from a physician that demonstrates and certifies claimant's permanent partial disability within a reasonable degree of medical certainty. Further, if there are conflicting opinions from physicians in a given case, then objective medical findings must prevail over subjective findings.

In cases such as this one where the Second Injury Fund is involved, we must also look to **Mo. Rev. Stat. § 287.220 (2005)** for the appropriate apportionment of benefits under the statute. In order to recover from the Fund, Claimant must prove a pre-existing permanent partial disability existed at the time of the primary injury. Then to have a valid Fund claim, that pre-existing permanent partial disability must combine with the primary disability in one of two ways. First, the disabilities combine to create permanent total disability, or second, the disabilities combine to create a greater overall disability than the simple sum of the disabilities when added together.

In the second (permanent partial disability) combination scenario, pursuant to **Mo. Rev. Stat. § 287.220.1 (2005)**, the disabilities must also meet certain thresholds before liability against the Second Injury Fund is invoked, and they must have been of such seriousness so as to constitute a hindrance or obstacle to employment or re-employment should employee become unemployed. *Messex v. Sachs Electric Co.*, 989 S.W.2d 206 (Mo. App. E.D. 1999) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). The pre-existing disability must result in a minimum of 12.5% permanent partial disability of the body as a whole (50 weeks) or 15% permanent partial disability of a major extremity. These thresholds are not applicable in permanent total disability cases.

Where the Second Injury Fund is involved and there is an allegation of permanent total disability, the analysis of the case essentially takes on a two-step process:

First, what is the extent of Employer's liability for permanent total or permanent partial

disability from the last injury alone?; and

Second, if Employer is not responsible for permanent total disability, but only permanent partial disability, is the permanent total disability caused by a combination of the disability from the last injury and any pre-existing disabilities?

In the case that Employer is responsible for the permanent total disability as a result of the effects of the last injury alone, then the analysis stops and the Second Injury Fund is not responsible for the payment of any benefits for this claim. In determining this case, I will follow this two-step approach to award all appropriate benefits under the statute.

Considering the competent and substantial evidence listed above, I find that Claimant has failed to meet her burden of proving that she is permanently and totally disabled in this case, either as a result solely of the August 16, 2007 work injury (against Employer) or as a result of the combination of that injury with pre-existing disabilities (against the Second Injury Fund). While all of the other medical experts who offered opinions in this case (Drs. Ralph, Doll, Stillings and even Claimant's rating physician, Dr. Musich) opined that Claimant was capable of returning to work, Dr. Wolfgram is the only medical expert in the record of evidence to opine that Claimant is permanently and totally disabled. He vacillates in his written reports and testimony between opining that the permanent total disability is the result of the last injury alone or as a result of a combination of the disabilities. But regardless, for the extensive reasons described above, I find that Dr. Wolfgram's opinions and testimony are not credible or persuasive, and, thus, cannot be used as a basis for an award of compensation in this matter. Additionally, Claimant points to the vocational opinion of Mr. Stock as evidence of her permanent total disability, but to the extent that Mr. Stock's opinion is based on Dr. Wolfgram's assessment, and Dr. Wolfgram's assessment has already been found not credible or persuasive, then Mr. Stock's opinions are also, thus, lacking in persuasiveness.

Having discounted the opinions of Dr. Wolfgram for the reasons described above, I can find no other medical evidence in the record to support a finding of permanent total disability in this case. There is no question that Claimant has recounted a number of complaints and problems that she associates with the August 16, 2007 injury, and I have no doubt that she mostly stays at home now, as described by both herself and her son, but I find that there must be some medical evidence to connect the complaints and problems to her work injury or to a combination of her disabilities, in order to substantiate a claim for permanent total disability. The reality in this case, is that there is no such credible medical evidence in the record that does that.

I find that Claimant's claim for permanent total disability in this case is further complicated by the fact that she continued to work for Employer for almost four more years after her injury in the same capacity that she had worked in prior to the injury. Based on the records in evidence, not only was she working full duty without restrictions for that period of time, but she was taking on additional responsibilities and handling a heavy workload and helping with other duties when she finished her own work. Her performance evaluations showed an increased score for the year after her accident. They showed the same score she received prior to her accident in the second year post-accident, and then only slightly decreased marks after that, but still a generally good evaluation that merited her a raise in pay.

Claimant alleges that these evaluations are not an accurate picture of her performance and notes that she was the one that needed constant help from co-workers to get her job done as she

continued working after the injury. She also brought a witness, Ms. Burazovic, who portrayed herself essentially as a disinterested co-worker, who was friendly with Claimant while they worked together but who has had little contact with her since then. However, I was interested to see that in addition to testifying for Claimant at hearing, she also accompanied her to Dr. Wolfgram at one point, as well, to talk to the doctor on her behalf. It seems odd to me that a truly disinterested co-worker would accompany someone to a doctor to support their claims, and, then, almost four years later would also come to Court to testify on her behalf, if there was little to no contact and no relationship between them. Instead, this scenario suggests to me that there was more a friendship and/or relationship between the two, and Ms. Burazovic was trying to minimize that at hearing for the purpose of boosting the credibility assigned to her testimony by making herself out to be a merely disinterested co-worker.

Additionally, I am at a loss to understand why Employer would inaccurately report her performance over the years after her injury, which Claimant alleges occurred in this case. I have no doubt that Claimant, at times, especially immediately after the injury, needed some help from co-workers to accomplish all of the aspects of her job. I could even understand if Employer would not dock Claimant points on her evaluation for needing some help in the aftermath of the injury. But Claimant's allegation, as supported by Ms. Burazovic, is that she was barely functioning at work, perhaps only performing 30% of her job duties, yet her performance scores from Employer went up after the injury. And even if the performance scores stayed high, perhaps out of sympathy for Claimant's condition, or because of not wanting to make her look bad after the injury, I can find no good reason for Employer to also add the commentary in the evaluations that Claimant regularly finished her heavy workload and helped others or helped in the laundry room as well, nor any good reason to give her raises in pay either, if she was not, in fact, performing her job duties. There are suggestions in the record that perhaps this was all just made up by Employer, but we know she was, in fact, helping out in the laundry room after her injury, because Dr. Wolfgram, in 2010, started asking for accommodations of Employer that included not having Claimant work in the laundry room. So, if Claimant's testimony is to be believed and she was not even able to complete 30% of her room cleaning assignments, I do not understand how she would ever find herself in the laundry room to help out. Yet, we know that she was there since Dr. Wolfgram wanted to restrict her from it in 2010. Having had the chance now to critically evaluate the testimony against the contents of Employer's performance evaluations of Claimant, I find that I must rely more on the performance evaluations than the contradictory testimony of Claimant and Ms. Burazovic for determining Claimant's capabilities in the aftermath of the August 16, 2007 work injury.

Having found that Claimant has not met her burden of proving that she is permanently and totally disabled, neither solely from the August 16, 2007 injury nor as a result of the combination of her disabilities, I must now move to the issue of permanent partial disability referable to the August 16, 2007 work injury against Employer.

In awarding permanent partial disability for this injury under these statutory provisions, it is necessary to deal with each of the sections enumerated above. Considering the competent and substantial evidence listed above, I find that the medical opinions from Drs. Musich, Stillings and Ralph demonstrate and certify, within a reasonable degree of medical certainty, that Claimant sustained permanent partial disability as a result of her work-related injury on August 16, 2007. I further find, that the medical opinions from Drs. Musich, Stillings and Doll demonstrate and

certify, within a reasonable degree of medical certainty, that Claimant sustained permanent partial disability as a result of her pre-existing conditions/injuries.

In trying to assess the percentage of permanent partial disability related to this injury for which Employer would have responsibility, I must take into account the medical treatment records showing the diagnoses and treatment performed, and also consider Claimant's testimony and her statements in the records regarding her continuing complaints and problems. I have previously found that, as a result of the August 16, 2007 injury, Claimant sustained multiple puncture wounds of the left breast, chronic myofascial pain of the left neck and upper back, internal derangement of the left shoulder due to acute strain and rotator cuff tendinopathy, and psychiatric/psychological injury to the body as a whole. I have also found ratings of disability in the record of evidence for the left breast injury from Dr. Musich, for the left shoulder injury from Drs. Musich and Ralph, for the primary and pre-existing psychiatric injury from Dr. Stillings, and for the pre-existing neck and low back disabilities from Drs. Musich and Doll.

Despite Dr. Musich offering a diagnosis regarding the neck and upper back connected with the August 16, 2007 injury, I can find no rating of disability from him that addresses how much, if any, disability Claimant may have attributable to that diagnosis on account of the primary injury. Other opinions in the record from Drs. Doll and Ralph specifically indicate that Claimant has no neck or back disability on account of the August 16, 2007 injury. The assessment of any neck or back disability that may be attributable to the August 16, 2007 injury is further complicated by the fact that Claimant had complaints, problems, diagnoses and treatment for neck and back problems prior to August 16, 2007.

Therefore, I find that it becomes incumbent on Claimant to show what neck and/or back disability may be attributable to the August 16, 2007 work injury as opposed to what neck or back disability may be attributable to the pre-existing conditions. Claimant would normally meet this burden of proof by having a doctor divide out what amount of her disability to the neck and back was related to the work injury as opposed to the pre-existing conditions. However, in this case, Claimant has not offered such a medical opinion that divides the disability, and, in fact, Claimant's doctor is silent on any neck or back disability that may be attributable to the August 16, 2007 accident. In the absence of any rating of disability from a physician that attributes disability to the neck and back as a result of the August 16, 2007 injury, especially in light of Claimant's pre-existing complaints, problems, diagnoses and treatment for the neck and back prior to August 16, 2007, I find that I cannot assess any disability to the neck or back on account of that August 16, 2007 injury.

Based upon all of the competent and substantial evidence in the record, I find that Claimant has 15% permanent partial disability of the left shoulder, 7.5% permanent partial disability of the body as a whole referable to the left breast and 10% permanent partial disability of the body as a whole referable to the psychiatric/psychological injury, all attributable to the August 16, 2007 work injury. Employer is liable for the payment of 104.8 weeks of permanent partial disability to Claimant on account of the August 16, 2007 work injury.

Having already found above that Claimant failed to meet her burden of proving entitlement to permanent total disability benefits, whether from Employer on account of the last injury alone, or from the Second Injury Fund on account of the combination of her disabilities,

the final step of the inquiry then is whether Claimant is entitled to some amount of permanent partial disability from the Second Injury Fund based on the combination of her primary (August 16, 2007) injury and any pre-existing permanent partial disabilities. Having thoroughly considered all of the competent and credible evidence in the record, I find that Claimant has met her burden of proving an entitlement to a permanent partial disability award against the Second Injury Fund.

Turning my attention to Claimant's pre-existing injuries/conditions that were disabling prior to August 16, 2007, I find that Claimant had prior low back, neck and psychiatric/psychological conditions/injuries for which Drs. Musich, Doll and Stillings rated Claimant as having permanent partial disability prior to August 16, 2007. I found medical treatment records in evidence that documented Claimant's complaints, problems, diagnoses and treatment for the low back and neck prior to August 16, 2007, as well as a Stipulation for Compromise Settlement regarding her prior low back injury. I have also found sufficient evidence in the record to show that the pre-existing injuries/conditions were a hindrance or obstacle to employment prior to her August 16, 2007 work injury.

Based on the totality of the evidence in the record, I find that Claimant had pre-existing permanent partial disabilities of 12.5% of the body as a whole referable to the low back, 5% of the body as a whole referable to the neck and 5% of the body as a whole referable to psychiatric/psychological conditions.

Given the applicable statutory thresholds of 15% of a major extremity or 12.5% of the body as a whole (50 weeks), I find that the pre-existing low back injury/condition meets the statutory thresholds to trigger Second Injury Fund liability. The Supreme Court in *Treasurer of Missouri-Custodian of the Second Injury Fund v. Witte*, 414 S.W.3d 455 (Mo. 2013) held that only one of claimant's pre-existing conditions must satisfy the statutory thresholds under § 287.220.1 to trigger Second Injury Fund liability, and that once claimant makes such a showing, all disability referable to pre-existing conditions must be included in calculating Second Injury Fund liability. *Id.* at 467. Finally, consistent with Dr. Musich's opinion on combination, I find that the pre-existing and primary injury disabilities combine to create disability that is significantly greater than the simple sum. I, therefore, find that Claimant is entitled to receive 29.22 weeks of compensation from the Second Injury Fund.

In order to calculate the amount of this award from the Second Injury Fund, I added together all of the qualifying disabilities and assessed a loading factor of 15% [15% of the left shoulder (34.8 weeks) + 7.5% of the body as a whole referable to the left breast (30 weeks) + 10% of the body as a whole referable to psychiatric/psychological conditions (40 weeks) + 12.5% of the body as a whole referable to the low back (50 weeks) + 5% of the body as a whole referable to the neck (20 weeks) + 5% of the body as a whole referable to psychiatric/psychological conditions (20 weeks) = 194.8 total weeks x 15% load factor = 29.22 weeks from the Fund]. I arrived at the 15% loading factor based on the credible evidence submitted at trial and the extent of the disabilities involved in this case.

Accordingly, the Second Injury Fund is responsible for the payment of 29.22 weeks of permanent partial disability pursuant to this award.

**CONCLUSION:**

Claimant sustained a compensable accidental injury arising out of and in the course of her employment for Employer on August 16, 2007. She was working as a housekeeper for Employer on August 16, 2007, when she opened a guest room to clean it and a German shepherd (dog) attacked and bit her. Claimant met her burden of proving that she sustained multiple puncture wounds of the left breast, chronic myofascial pain of the left neck and upper back, internal derangement of the left shoulder due to acute strain and rotator cuff tendinopathy, and psychiatric/psychological injury to the body as a whole, which was all medically causally related to the August 16, 2007 injury.

Without Claimant having requested that Employer provide medical care for her psychiatric condition prior to obtaining the treatment on her own, and without Employer actually failing or refusing to provide that requested medical care, Claimant decided, which she has the right to do under the statute, to control her own medical care and select her own physician, thus, making her, not Employer, responsible for the resulting medical charges for this treatment. Additionally, Claimant failed to meet her burden of proof on both the past and future medical issues, by failing to provide credible and persuasive medical evidence of a need for treatment, as Dr. Stillings was found to be more credible and persuasive in this case than Dr. Wolfgram, with Dr. Wolfgram being the only physician to indicate a need for psychiatric treatment and Dr. Stillings indicating that no further treatment was necessary. Claimant's request for the payment of past medical expenses and future medical treatment is denied.

Claimant has met her burden of proving that she is entitled to an additional \$16.97 in TTD benefits for the period of time of August 17, 2007 to September 30, 2007, but has failed to prove an entitlement to any other additional period of temporary total disability benefits in this case.

Claimant has failed to meet her burden of proving that she is permanently and totally disabled in this case, either as a result solely of the August 16, 2007 work injury (against Employer) or as a result of the combination of that injury with pre-existing disabilities (against the Second Injury Fund).

Employer is responsible for the payment of a total of 104.8 weeks of permanent partial disability related to the August 16, 2007 injury, based on 15% permanent partial disability of the left shoulder, 7.5% permanent partial disability of the body as a whole referable to the left breast and 10% permanent partial disability of the body as a whole referable to the psychiatric/psychological injury.

The Second Injury Fund is responsible for the payment of 29.22 weeks of permanent partial disability pursuant to this award, based on the combination of the disabilities from the August 16, 2007 injury along with pre-existing permanent partial disabilities of 12.5% of the body as a whole referable to the low back, 5% of the body as a whole referable to the neck and 5% of the body as a whole referable to psychiatric/psychological conditions, as well as a 15% loading factor.

Compensation awarded is subject to a lien in the amount of 25% of all payments in favor of Mr. Frank J. Niesen, for necessary legal services.

Made by: \_\_\_\_\_

JOHN K. OTTENAD  
*Administrative Law Judge*  
*Division of Workers' Compensation*