Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 04-130584

Employee: Gary R. Pace

Employer: City of St. Joseph

Insurer: City of St. Joseph

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

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 25, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Robert B. Miner, issued October 25, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4th day of August 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Gary R. Pace

Injury No.: 04-130584

Employer: City of St. Joseph

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

Before the
Division of Workers' Compensation
Department of Labor and Industrial Relations of Missouri

Insurer: City of St. Joseph

Hearing Date: July 28, 2010

Checked by: RBM

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.

2. Was the injury or occupational disease compensable under Chapter 287? Yes.

3. Was there an accident or incident of occupational disease under the Law? Yes.

4. Date of accident or onset of occupational disease: December 17, 2004.

5. State location where accident occurred or occupational disease was contracted: St. Joseph, Buchanan County, Missouri.

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

7. Did employer receive proper notice? Yes.

8. Did accident or occupational disease arise out of and in the course of the employment? Yes.

9. Was claim for compensation filed within time required by Law? Yes.

10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident occurred or occupational disease contracted: While working in the course and scope of his employment for Employer on December 17, 2004, a dog jumped up and hit Claimant on the back.

12. Did accident or occupational disease cause death? No.

13. Part(s) of body injured by accident or occupational disease: Back and right lower extremity.

14. Nature and extent of any permanent disability: No permanent disability is awarded in this case (Injury Number 04-130584.) Claimant is awarded permanent total disability benefits against Employer in Injury Number 02-134660 as described in the attached Findings of Fact and Conclusions of Law.

15. Compensation paid to-date for temporary disability: None.

16. Value necessary medical aid paid to date by employer/insurer? None.

17. Value necessary medical aid not furnished by employer/insurer? No past medical expenses are awarded in this case (Injury Number 04-130584.) Claimant is awarded past medical expenses against Employer in Injury Number 02-134660 as described in the attached Findings of Fact and Conclusions of Law.

18. Employee's average weekly wages: $771.01 per week.

19. Weekly compensation rate: $514.03 per week for temporary total disability and permanent total disability, and $354.05 per week for permanent partial disability.

20. Method wages computation: By agreement of the parties.

COMPENSATION PAYABLE

21. Amount of compensation payable: No benefits are awarded in this case (Injury Number 04-130584.) Claimant is awarded compensation against Employer in Injury Number 02-134660 as described in the attached Findings of Fact and Conclusions of Law.

22. Second Injury Fund liability: None. Employee’s claim against the Second Injury Fund is denied.

23. Future requirements awarded: No benefits are awarded in this case (Injury Number 04-130584.) Claimant is awarded compensation against Employer in Injury Number 02-134660 as described in the attached Findings of Fact and Conclusions of Law.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Gary R. Pace

Injury No.'s: 02-134660, 04-113970, 04-130561 & 04-130584

Employer: City of St. Joseph

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

Before the
Division of Workers' Compensation
Department of Labor and Industrial Relations of Missouri

Insurer: City of St. Joseph

Hearing Date: July 28, 2010

Checked by: RBM

PRELIMINARIES

A final hearing was held in these cases on Employee's claims against Employer and the Treasurer of the State of the Missouri as Custodian of the Second Injury Fund in Injury Numbers 02-134660, 04-113970, 04-130561, and 04-130584 on July 28, 2010 in St. Joseph, Missouri. Employee, Gary R. Pace appeared in person and by his attorney, Benjamin S. Creedy. Self-insured Employer, City of St. Joseph, appeared by its attorney, Bart E. Eisfelder. The Second Injury Fund appeared by Maureen T. Shine. Benjamin S. Creedy requested an attorney's fee of 25% from all amounts awarded. It was agreed that post-trial briefs would be due on September 10, 2010.

STIPULATIONS

At the time of the hearing, the parties stipulated to the following:

1. On or about December 9, 2002, November 2, 2004, December 10, 2004, and December 17, 2004, Gary R. Pace ("Claimant") was an employee of City of St. Joseph ("Employer") and was working under the provisions of the Missouri Workers' Compensation Law.

2. On or about December 9, 2002, November 2, 2004, December 10, 2004, and December 17, 2004, Employer was an employer operating under the provisions of the Missouri Workers' Compensation Law and was duly self-insured under the provisions of said Law.

3. Employer had notice of Claimant's alleged injuries.

4. Claimant's Claims for Compensation were filed within the time allowed by law.

5. The average weekly wage in Injury No. 02-134660 was $712.80, and the rate of compensation for temporary total disability and permanent total disability in Injury No. 02-134660 is $475.22 per week, and the rate of compensation for permanent partial disability in Injury No. 02-134660 is $340.12 per week.

6. The average weekly wage in Injury Numbers 04-113970, 04-130561 and 04-130584 was $771.01, and the rate of compensation for temporary total disability and permanent total disability in Injury Numbers 04-113970, 04-130561 and 04-130584 is $514.03 per week, and the rate of compensation for permanent partial disability in Injury Numbers 04-113970, 04-130561 and 04-130584 is $354.05 per week.

7. Employer has paid $8,078.73 in temporary total disability at the rate of $475.22 per week for 16 6/7 weeks for the period December 10, 2002 through April 7, 2003 in Injury No. 02-134660.

8. Employer has paid $34,592.05 in medical aid in Injury No. 02-134660.

9. Employer has paid no temporary disability compensation in Injury Numbers 04-113970, 04-130561 and 04-130584.

10. Employer has paid $105.42 in medical aid in Injury No. 04-113970.

11. Employer has paid $411.13 in medical aid in Injury No. 04-130561.

12. Employer has paid no medical aid in Injury No. 04-130584.

ISSUES

The parties agreed that there were disputes on the following issues:

1. Whether on or about December 9, 2002, November 2, 2004, December 10, 2004, and December 17, 2004, Claimant sustained injuries by accident arising out of and in the course of his employment for Employer.

2. Whether Claimant's current condition is medically causally related to the alleged work injuries of December 9, 2002, November 2, 2004, December 10, 2004, and December 17, 2004.

3. Employer's liability for past medical expenses.

4. Liability of Employer for permanent disability benefits, including permanent partial disability and permanent total disability.

5. Liability of the Second Injury Fund for permanent disability benefits, including permanent partial disability and permanent total disability.

6. Employer's liability for future medical aid.

7. Liability for Missouri Department of Social Services, MO HealthNet Division (MHD) lien of $836.42

Claimant testified in person. Claimant also called Diane Pace and Eric Pace to testify. In addition, Claimant offered the following exhibits which were admitted in evidence without objection (the depositions were offered with deposition exhibits, and the depositions and deposition exhibits were admitted in evidence subject to objections contained in the depositions):

A—Deposition of Dr. Garth Russell
B—Deposition of Dr. Bernard Abrams
C—Deposition of Mary Titterington
D—Cal. Summary of Time Cards
E—Medical Records of St. Joseph Imaging
F—Medical Records of Dr. M. DePriest
G—Medical Records of Orthopedic and Sports Medicine
H—Heartland Medical Center bills
I—Medical Records of The Surgery Center
J—Medical Records of Wal-mart Pharmacy
K—Medical Records of Stevenson Family Pharmacy
L—Medical Records of Specialists of Internal Medicine
M—Medical Records of Orthopedic and Sports Medicine
N—Medical Records of Heartland Occupational Medicine
O—Medical Records of Heartland Hospital
P—Medical Records of HealthSouth
Q—Medical Records of Dr. Michael DePriest
R—Medical Records of CVS Pharmacy
S—Medical Records of Benders Prescription
T—Medical Records of Walgreens Pharmacy
U—Medical Records of Center for Pain Management
V—Medical Records of South Side Health Center
W—Photo 2117-19 Garfield
X—Photo 8 ½ x 11
Y— Missouri Department of Social Services, MO HealthNet Division (MHD) lien
Z—Ben Creedy Affidavit
AA—Photo of legs

BB—Photo of legs

Employer offered the following exhibits which were admitted in evidence without objection (the depositions were offered with deposition exhibits, and the depositions and deposition exhibits were admitted in evidence subject to objections contained in the depositions):

1—Deposition of Dr. Koprivica
2—Deposition of Walter Hughes, Jr.
3—Deposition of Stephen Allen
4—Employee Records
5—Time Cards
6—Job Description
7—Misc. Accident Reports
8—Payout Ledger
9—Records of Rick Ford
10—Records of NWMO Phys
11—Records of Dr. Olson

The Second Injury Fund offered the following exhibits which were admitted in evidence without objection:

1—Records of Dr. Smith
2—Dr. Cathcart note

The parties agreed at the hearing that the record be left open temporarily to permit Employer's attorney an opportunity to offer additional medical records. On August 9, 2010, the Administrative Law Judge received a letter from Employer's attorney dated August 5, 2010 advising that he was not going to offer any additional records at that time. The letter from Bart Eisfelder dated August 5, 2010 has been marked as Court's Exhibit 1. The record was closed on August 9, 2010.

Any objections not expressly ruled on during the hearing or otherwise in this award are now overruled. To the extent there are marks, tabs or highlights contained in the exhibits, those markings were made prior to being made part of the record, and were not placed thereon by the Administrative Law Judge.

The post-hearing briefs of the attorneys have been considered.

Findings of Fact

Summary of the Evidence

Claimant, age 59, began working for Employer in December 1998. He started as a work crew supervisor, picking up and returning inmates to the correctional center. He performed that job for a year. He then became a Dangerous Building Inspector for Employer. His duties as a Dangerous Building Inspector required that he take photographs inside and outside of buildings, input information into a computer, and send notices to persons regarding repairs to buildings. He generally went into the field at 9:30 in the morning and returned to City Hall between 3:30 and 4:00 to do paperwork. He also did housing inspections. Claimant stated that Exhibit 6, his job description as Dangerous Building Inspector, accurately and fairly sets forth his job duties.

December 9, 2002 Accident

Claimant testified that on December 9, 2002, while working as a building inspector for Employer, he went to 2100 Garfield to photograph a building. The building had been ordered to be demolished two times before and was in bad shape. Robert Meyers went with him to the building.

Claimant took a few pictures outside the building and then went into a room inside. His right foot dropped into a hole. When he went to turn to take a picture, his right foot was lodged in the floor. His body twisted, he lost his balance, and he went down. His leg stayed forward and he went down sideways on his right side. It took a few minutes to get his foot out. He felt a red-hot stabbing pain in his right knee. He leaned against the building for a few minutes. He drove back to City Hall using his left foot. He reported the incident to his chief building official who wrote up an Incident Report and asked if he wanted to see a doctor. Claimant declined to see a doctor at that time and went home. Claimant described the pain as a ten out of ten at the time of the accident. It was eight out of ten when he went home.

Claimant put ice on his knee and used Tylenol when he got home. The pain went to seven. Claimant was not able to sleep that night. He asked his supervisor for permission to see a doctor and was given permission.

Claimant went to a nurse practitioner, Richard Campbell, where he received pain pills and was told to go home and rest.

Claimant returned to work the next day. The pain was too much and he went home again and returned to Richard Campbell in a couple of days. He was then referred to a specialist, Dr. Bruce Smith, about a week later.

Claimant said his pain was between an eight and a nine before he saw Dr. Smith.

Dr. Smith told Claimant that he needed arthroscopic surgery because of a meniscus. Claimant had surgery as soon as Dr. Smith returned from a vacation.

Claimant's right knee pain was "really high" about a week after surgery. His leg had been wrapped up. A nurse told him to un-wrap the leg. A blood clot was discovered. He went to the hospital and was given blood thinners. He was hospitalized for four days.

Claimant described the pain that he had after he left the hospital. He said he still has similar pain. The pain starts beneath the knee cap and behind the knee and the right leg. It is about three inches below the knee where the blood clot was. His shin bone hurts. The skin at the top of his leg is sensitive to touch. He also has pain around his ankle and calf muscle. Claimant said that he always had right leg pain after the accident and that the right leg pain is always with him.

Claimant was off work between December 10, 2002 and April 7, 2003 after his December 9, 2002 injury. Claimant first returned to light duty work. He later returned to unrestricted work. He tried to elevate his right leg when he was at his desk doing light duty.

Claimant still had pain when he returned to work at Employer in April 2003. It was painful to go up and down steps and to walk on uneven terrain. The pain was so great at times that Claimant had to go to the truck, and also had to go home because of pain. Claimant began doing his inspections and taking photographs from his truck as time went on. Claimant testified he took time off work "a lot of times" after the December 9, 2002 injury because of pain. Claimant used sick time, vacation time, and comp time after he returned to work. As time went on, he would take a half a day off because of pain. He eventually got to the point where he would take time off without pay.

Claimant went home over the lunch hour and took pain pills and lay down in bed and elevated his leg for forty-five minutes after the 2002 injury. He sometimes slept during his lunch break.

Claimant had problems sleeping after the December 2002 accident. Right knee and right leg pain was keeping him up at night. He would get up six times per night with extreme pain. Claimant stated that problems with sleep started with his right knee injury in 2002.

After his December 9, 2002 accident, Claimant put an ice pack on his knee and elevated his right knee when he got home after work. He would lie in bed. He did not do activities at night at home. He went to bed.

Claimant began using a cane prescribed by Dr. Smith. He was unstable when he walked because of his right knee. He used the cane continuously. Later, he began using Canadian crutches with handles. Claimant was given Trazadone to help him sleep.

Claimant testified that he always had problems walking after the December 2002 accident. Walking causes high pain levels. The pain has been so sharp at times, his leg has gone out and he has ended up falling.

April 26, 2004 fall

Claimant testified that on April 26, 2004, he was in his office standing on a wire when he fell forward. He put out his right leg and he fell into someone's lap. He took three days off and then returned to work after that. His pain returned to the level it had been before the April 26, 2004 accident.

Claimant acknowledged that after he tripped over cords on April 28, 2004, he complained that his right knee hurt worse and he complained about his back. He did not file a worker's compensation claim for the April 28, 2004 accident.

Claimant fell on May 2, 2004 while at a therapist office. He landed flat on his face, but was not injured from that fall.

May 2, 2004 fall

Claimant continued to work until November 2, 2004 as a building inspector for Employer.

After his December 9, 2002 accident, and before his November 2004 accident, the soreness in Claimant's leg increased as the day went on. He was able to walk. He was not accommodated by Employer after the December 9, 2002 accident except to be provided a milk crate to rest his leg on while he was on light duty.

From April 2003 until December 17, 2004, Claimant always received good evaluations from Employer. He was never written up or disciplined. He got regular raises. He had no restrictions before his 2004 injuries. After he fell, he returned to his regular job without restrictions.

November 2, 2004 accident

Claimant testified that on November 2, 2004, he was working for Employer as a building inspector. He came out of a restroom on the second floor at City Hall. He was walking with a cane. He had pain in his right leg, spun and twisted. He tried not to fall. His right knee was made worse. He stayed there for a few minutes before he went back

to his office and sat at his desk. The pain increased and he had a little soreness in his low back from twisting. His low back hurt temporarily after the November 2, 2004 incident. He did not remember his hip hurting after that.

Claimant filled out an incident report regarding the November 2, 2004 injury. He complained about his back, left hamstring, and right leg. That was the first time he mentioned his low back or hamstring.

Claimant continued to work after the November 2004 accident until December 10, 2004.

December 10, 2004 accident

Claimant testified that on December 10, 2004, while working for Employer as a building inspector, he started walking down the stairs to the first floor. He had a hard stabbing pain in his right leg and his leg went out. He fell down the stairs and landed on his left elbow and left hip. His left arm was jerked out. He hit his hip and buttocks and bounced down the stairs. He had pain in the lower back area. His left hip, left elbow, left bicep, and left shoulder hurt. He was not able to get up. His right knee hurt more after he fell down the steps at work, but then the pain went back to the base line before the fall.

Claimant complained about his left elbow for the first time after the December 10, 2004 accident. Claimant continued to work from December 10, 2004 until December 17, 2004.

December 17, 2004 accident

Claimant testified that on December 17, 2004, while working for Employer as a Dangerous Building Inspector, he was at an empty lot taking photographs. A full size Malamute dog jumped up and hit him in the back. The dog that jumped on Claimant weighed between fifty-five and sixty pounds. Claimant was knocked down, but he got back up. Claimant landed on one or both knees. He held onto a cane to keep from falling to the ground. After the dog hit him, Claimant picked up his camera and took pictures. He said he hurt a little, but “not real bad.” He was asked to write a report about the incident by his supervisor, Walt Hughes. He filled out an Incident Report and complained about his back and right leg. Claimant stated that the dog jumping on him was no “big deal.” He was temporarily sore, but a week later the soreness was totally gone. He said the December 17, 2004 injury did not cause any permanent problems.

December 21, 2004 incident

Claimant testified that a few days after the December 10, 2004 fall, he grabbed the steering wheel in his truck while at work on the way to an inspection. His left shoulder popped real loud and he felt movement. He had a lot of pain for an hour or two, but then the pain got better. Claimant did not file a claim regarding the December 21, 2004 incident when his left shoulder popped.

Claimant said he was terminated by Employer on February 5, 2005. He continued to work for Employer until February 5, 2005 when he was terminated. He may have been on light duty doing paperwork part of the time before he was terminated. Claimant testified he applied for unemployment compensation in February 2005, but was turned down because he was not able to fulfill any jobs and was not able to work. He has not worked or applied for work since he stopped working for the City on February 5, 2005.

Claimant testified that before his December 2002 accident, he engaged in a lot of hobbies. He and his son played golf, racquetball, tennis, pool, and roller skated. They did something together about every day. His son took karate lessons for seven or eight years and he took his son to the lessons and practiced with him at home. Claimant used to repair automobiles for himself, his family, and friends.

Before the December 2002 accident, Claimant and his wife played tennis, racquetball, and pool, and also did scuba diving. They went to flea markets and auctions. Before the accident, Claimant played golf and walked about half the time when he played golf.

Claimant testified he has not engaged in a hobby since December 2002 except for playing three holes of golf with his son. He said he could not take it. Claimant said he has not otherwise played golf since the accident.

Claimant has different pain levels during the day. Claimant said that the pain in his right knee and shin is always there 24/7. Other pains come and go.

Claimant is able to dust and wash dishes. Activity aggravates his pain. He has tried vacuuming, but it is very hard on his back and right leg. He has done that three or four times. He is very sore after going to the store. His son brings in the groceries unless there are only a few bags. Claimant rides in an electric cart when he goes to the grocery store. He and his wife put grocery bags in a two-wheeled cart that they pull into the house from the car. He said his world moves in slow motion.

Claimant testified he is sleeping a lot better since he started taking Trazadone. He awakes two to three times a night. He has been sleeping in a recliner since 2007 because of his left shoulder and back, and sometimes his right leg. He sleeps with couch pillows.

Claimant said that he had low back pain after the November 2004 and December 2004 incidents. The pain started in the center of his spine and radiated to the right and then to the left side. He said that his back affects activities. If he moves wrong or bends, he has to sit in a recliner. He takes pills all day long.

Claimant testified that he spends all day in the recliner. He reads books. He said he still has pain in the right leg. The pain is there all the time. He also has swelling in the right knee.

Claimant has trouble showering because it is difficult to move his left arm. Claimant has limitation of motion and pain in his left shoulder. He gets a lot of pain if he raises his arm too high. He said he cannot lift anymore because of his pain. Bending causes Claimant to be in pain.

Claimant testified he is able to stand for about fifteen minutes before his pain escalates. He has dizziness from medications and is unstable. His painful right leg also affects his walking. He testified climbing is very risky. If he walks one half hour, his leg swells.

Claimant used to paint pictures quite a few years ago. He is able to paint. He helped a granddaughter paint a painting about three weeks before the hearing.

Claimant takes Dilatid, generic hydromorphine, for pain, five times a day. He takes Flexeril, a muscle relaxer, three times a day for his back and left shoulder. He takes Neurontin for nerve damage in his right leg. He takes Wellbutrin for depression and Trazadone one per night for sleep. He began taking Trazadone on October 4, 2005. He takes Cena-S for constipation. He began taking Wellbutrin a few months before the hearing.

Claimant takes Cymbalta for depression. He feels depressed. Some days are worse than others. He is depressed mostly about poverty, not having a job, and not having job prospects. He started taking medication for depression after he was fired.

Claimant takes Albuterol for a respiratory condition that is not related to the worker’s compensation cases. He takes Avadart for prostate enlargement, but that is not related to the work injuries. Claimant takes Diovan for blood pressure and Lipitor for cholesterol. He said those medications are not related to his work injuries. He also uses Spiriva, but that is not related to the work injuries. He takes a baby aspirin for blood thinner and Lactose for constipation.

Claimant has never had surgery on his left shoulder or his low back. Claimant said doctors will not operate because he is too high a risk.

Claimant uses a cane. He started using the cane with his right hand and later used it with his left hand. Dr. DePriest did surgery on both of his hands.

Claimant now uses two Canadian crutches that have handles that he grips. He started using them in about 2006. Claimant sometimes uses only one crutch. He does not use crutches inside his house. He does not do any home therapy or exercises. He goes to the library every ten days to two weeks. He does not drive now. His wife drives him.

Claimant testified that he did not believe that he could get hired. He could not think of anything he could do. He testified that his leg "is killing him."

Claimant testified that he began treating with Dr. Norman Baade after he was told Employer was not going to do anything more for him. He paid Dr. Baade out of pocket for pain management treatment. Claimant sees Dr. Baade once every three months. He plans to keep seeing Dr. Baade. He was last there the week before the hearing.

Employer stopped paying for Claimant's medical treatment. Claimant then began paying bills himself. He was on Medicaid for a short time and is now on Medicare. Claimant became Medicare eligible about one year before the hearing. He is on social security disability, and has been for one to one and a half years.

Claimant said that his right leg sometimes changes color to purple and red. It sometimes swells. His skin is sensitive around the knee. His right leg feels a few degrees warmer than the left at times. He identified photographs of his knees taken in February 2010, Exhibits AA and BB.

Claimant testified he was in a motor vehicle accident in the 1970s. He injured both elbows and hurt for a couple of years after the accident.

Claimant testified that he had a motor vehicle accident on December 31, 1998 and injured his neck and left shoulder. Claimant was treated by a chiropractor for six months to a year after the 1998 accident. Claimant could recall missing no work after his December 13, 1998 automobile accident. His employer provided no accommodations after that accident. He had some limitations for two to two-and-a-half years after the 1998 accident. He got to where there was nothing to worry about after about two-and-one half years after the December 1998 accident.

Claimant testified he had an automobile accident in March 2002, and had a little soreness in his neck after that.

Claimant identified the following doctors/providers that he has seen: Dr. Cathcart; Open MRI; Dr. Bruce Smith; Surgery Center; Heartland Health; HealthSouth (Physical Therapy); Dr. Baade; Heartland Radiology; Blue Ridge Physical Therapy; Dr. McCormick; Rick Ford, P.A.; Rich Campbell; Dr. Freeman (Physical Medicine); Ed Knapp (FCE); Dr. DiStefano-twice; Dr. James Stuckmeyer (twice-no treatment); Dr. Eden Wheeler (once); Dr. DePriest; Dr. Handler; St. Joe Center for Outpatient Surgery (hand surgeries); Dr. Russell (once); William Dodson; Dr. Abrams (once); Dr. Koprivica (once); Dr. Jura. He also saw Mary Titterington.

Claimant testified that he went through tenth grade and later obtained a GED. He attended college for several months. He has had training in automobiles. Claimant has been married for forty years and has two children.

Before Claimant worked for Employer, he worked in a small motor department, was a truck and trailer mechanic, owned and operated a pet shop, worked as a machinist mechanic for a police department, and worked in an automotive store. He also worked in automotive service and worked at the counter for an automobile parts store. He was also assistant manager at Kovac's grocery for about a year.

Claimant got up slowly at a recess at 10:45 in the morning the day of the hearing. He appeared to be in pain on several occasions during the hearing.

I find Claimant's testimony is credible.

Diane Pace testified that she is married to Claimant and they have been married for forty years. After December 9, 2002, Claimant took pain pills when he got up in the morning. He would then sleep until he went to work. He came home during lunch time and lay down. Sometimes he was not able to return to work after the lunch break.

Since Claimant left Employer, on a good day Claimant sits in a chair and reads or watches TV. He takes pain pills. The pain does not go away. Claimant sometimes cries with pain. He pretty much sits in a chair all day.

Ms. Pace and Claimant did numerous activities together prior to December 9, 2002, including roller skating, going to auctions, scuba diving, bowling, hiking, fishing with their son, and walking. They cannot do those things anymore. They have not done them since December 9, 2002. Claimant avoids shopping most of the time. They have had company over. Claimant is good for an hour or so and then lies down, and later rejoins the group.

Claimant does not help with housework. He is not able to carry groceries. Their son and granddaughter do the shopping. Claimant does not do yard work. He used to do

it all before the December 2002 injury. He also helped with laundry before the December 2002 injury. Their son does most of the work around the house. Claimant no longer works on cars or does household repairs.

Claimant used to play with their grandchildren before the December 2002 injury. He does not do that anymore. He is not able to go to their grandchildren's birthday parties. He used to kid and tease. He used to be happy. Now he is the opposite. Now he does not want to do anything.

I find Diane Pace's testimony is credible.

Eric Pace testified that he is the son of Claimant and Diane Pace. He lived with his parents until one and a half to two years before the hearing. He is twenty-three years old.

Before December 2002, Eric Pace and Claimant were very active. Claimant helped Eric Pace in martial arts. They played racquetball, went bike riding, played golf, went hiking, and went to the firing range together. They have not done those activities since the December 2002 accident. One time when Eric was in high school, Claimant and he tried to play golf with the use of a golf cart. The vibrations of the cart were too much for Claimant.

Eric Pace lived with his parents from December 2002 until February 2005 when Claimant lost his job. After the December 2002 accident, Claimant spent a lot of time in his room. He looked to be in pain. He lay in bed. He now sits in a chair much of the time. Claimant watches golf on TV.

Before the accident, Claimant did the yard work. Eric Pace does the yard work now.

Eric Pace testified that before the December 2002 accident, Claimant was jovial, outgoing and physical. Afterwards, his energy level was reduced to near zero. Claimant went through mild depression and became short-tempered after he lost his job.

I find Eric Pace's testimony is credible.

Exhibit 2 is the deposition of Walter Hughes taken on March 5, 2010. Mr. Hughes testified that he is property manager for Employer and has been for twelve years. His office is in charge of building inspections. Claimant was a dangerous building inspector for Employer.

There was a requirement that Claimant start two new cases or files a day. There was a time when Claimant did not achieve that. Claimant felt he needed a clerk. There were times when Claimant was not feeling well and he wanted to go home for the rest of the day. There may have been times that Claimant said his leg hurts and that he was drowsy. Claimant complained at times about his leg and back. There were times when Claimant missed work because he called in sick and took vacation time.

Claimant had been a "pretty good employee" until a recent period of time.

In June 2004, Mr. Hughes gave Claimant a "good" overall performance rating.

Mr. Hughes was asked about a January 14, 2005 letter that was a personnel action form regarding Claimant. It referred to a twenty day period in which Claimant initiated only 30% of the required cases.

Mr. Hughes knew Claimant was taking medication.

Claimant told Mr. Hughes that a dog had come up and playfully jumped and butted up against him and he had staggered a couple of steps. Hughes deposition Exhibit 2 contains a four page letter dated January 14, 2005 advising that Claimant was suspended for numerous work deficiencies.

I find Walter Hughes' testimony is credible.

Exhibit 3 is the deposition of Steven Allen taken on March 5, 2010. Mr. Allen had worked as a Dangerous Building Inspector for Employer with Claimant. Dangerous Building Inspectors spend about half of their day in the field and half of their day in the office. Some of the houses they inspected were structurally unsound.

Mr. Allen heard Claimant's knee pop on one occasion. There were a few occasions when Claimant talked about his knee popping, his knee hurting, and that he could not get around like he would like because of the pain in his knee. Mr. Allen also testified Claimant expressed complaints about his knee pain "most every day that he was at work." (Allen deposition, p. 16)

I find Steven Allen's testimony is credible.

Medical Treatment Records

Exhibit 9 contains records of MedClinic pertaining to Claimant. The MedClinic records include a note of Rick Ford, P.A. dated December 2, 1999 that states Claimant complained of pain in his neck for approximately one year since a motor vehicle accident.

The note states Claimant had seen a chiropractor and had physical therapy with only moderate relief of symptoms. X-rays showed severe degenerative disc disease.

Rick Ford's February 17, 2000 note in Exhibit 9 states Claimant complained that his neck bothers him at least 50% of the time. He denied radicular symptoms.

Exhibit 10 contains records of Dr. Matthew Keum of Northwest Missouri Physical Medicine and Rehabilitation dated May 5, 2000. Dr. Keum's impression is noted to be left-sided C6 radiculopathy and left carpal tunnel syndrome.

Exhibit 10 includes Dr. Keum's April 24, 2000 record that notes Claimant's symptoms were improving. The impression is noted to be "probable C6 cervical radiculopathy."

Exhibit 10 includes Dr. Keum's April 10, 2000 letter to Dr. Olson. It notes a history of motor vehicle accident and persistent nagging left-sided neck and shoulder girdle pain since a December 31, 1998 motor vehicle accident. The letter also notes a December 17, 1999 cervical MRI showed a small central disc protrusion at C6-7 with mild bulge at C5-C6. Symptoms were noted to worsen with prolonged driving. The impression is noted to be chronic left-sided neck pain and shoulder girdle pain following motor vehicle accident on December 31, 1998.

Exhibit 11 is a March 27, 2000 letter from Dr. John Olson to Rick Ford, P.A. The letter notes Claimant went to Dr. Olson with pain in the left side of his neck and popping and grinding sound in his neck. Results of the MRI of the cervical spine are noted. The letter notes Claimant would likely do well without surgical intervention. The letter further notes that the exam was entirely normal except for some arthritic changes with range of motion of his cervical spine. Dr. Olson recommended physical therapy. The report states in part: "I don't think surgery is an option."

Rick Ford's April 1, 2002 note in Exhibit 9 states Claimant had a motor vehicle accident on March 30, 2002. X-rays showed a trapezius/cervical strain. Claimant was noted to be feeling a little better. He was taking medications. The assessment is noted to be "resolving trapezius/cervical strain."

Rick Ford's May 20, 2002 note in Exhibit 9 states Claimant was in for a refill of medication for hypertension. There is no reference in the note to any complaints regarding Claimant's neck.

Exhibit N contains records of Heartland Occupational Medicine pertaining to Claimant. Records include notes of Richard Campbell dated December 10, 2002 documenting chief complaint right knee following Claimant tripping on December 9,

2002 in a building while performing an inspection. Claimant was given medication and placed on sit-down work only.

Richard Campbell's December 13, 2002 note in Exhibit N documents follow-up. Claimant still had "quite a bit of discomfort throughout the entire knee with palpation as well as with movement." He was diagnosed with "right knee strain rule out internal derangement." He was placed off work and given restrictions.

Claimant returned to Richard Campbell on December 17, 2002 with continued pain.

Exhibit M contains treatment and billing records of Orthopedic Sports and Medicine Center pertaining to Claimant. The records include an MRI scan of the right knee dated December 21, 2002 from Open MRI of St. Joseph. The impressions noted in the report are "1. Abnormal tibia with what appears to be a degeneration or mild stress fracture. 2. Medial and lateral meniscus degeneration. 3. Moderate joint space effusion with chondromalacia."

Exhibit M includes treatment notes of Dr. Bruce Smith. Dr. Bruce Smith's December 31, 2002 note states Claimant reported he was inspecting dangerous buildings in St. Joseph on December 9th when he "turned and felt a popping and sudden pain in his right knee." He was noted to have been unable to walk since. An examination notes Claimant had an effusion. He was scheduled for arthroscopic examination.

Exhibit I contains records of the Surgery Center pertaining to Claimant. Included is an Operative Note of Dr. Bruce Smith dated January 10, 2003. The preoperative diagnosis is noted to be internal derangement of the right knee. The post-operative diagnosis is noted to be chondromalacia of patella and tear of anterior horn of the medial meniscus. Dr. Smith performed a partial right anterior medial meniscectomy and debridement of chondromalacia of right patella on January 10, 2003. The Operative Note states that arthroscopic portals were cut. The anterior cruciate is noted in the report to be healthy. The lateral meniscus and lateral side of the joint are noted to be "very healthy."

Exhibit L contains records of Specialists of Internal Medicine pertaining to Claimant. These document that Claimant was treated by Dr. Edward Kammerer on January 16, 2003 for deep venous thrombosis involving right lower extremity status post surgery by Dr. Daniel Smith. Claimant was started on Lovanox and Coumadin.

The records in Exhibit M note that Claimant followed with Dr. Smith on January 22, 2003 following arthroscopic procedure. He also followed on February 5, 2003. He had no effusion at that time and his motion was good. He was to continue therapy. A prescription cane instead of a crutch was provided. Claimant followed with Dr. Smith on

February 19, 2003 for continued trouble with his knee. Claimant was placed on Celebrex and was kept off work.

Claimant went back to Dr. Smith on March 5, 2003 complaining of a sensation that his knee pops on him while walking. He reported intermittent pain down his shin as far down as the foot. Dr. Smith ordered a bone scan.

Exhibit M contains a Radiology Report dated March 7, 2003 of a nuclear bone scan. The report sets forth the following impression: "1. Changes of the right patella give the appearance of inflammatory change. Possibly chondromalacia could be a consideration or associated to trauma versus arthritis. 2. Very mild arthritic changes of the right knee, in general, and to a lesser degree the left knee as well as the left patella."

Claimant saw Dr. Smith on March 11, 2003 following the bone scan. The office note states that Claimant had had pain ever since "which has been intolerable." It is noted to be worse with activities. Claimant is noted to have a "hot bone scan." The note states in part: "Either this is true post-traumatic OA which is in excess of what we can see on the arthroscopy or this man has a reflex sympathetic dystrophy." Claimant was to see Dr. Baade or Dr. Blachar at the Pain Clinic for treatment and a vigorous therapy program. He was to remain off work.

Exhibit E contains Dr. Smith's March 11, 2003 prescription for "vigorous PT for RSD right lower E; daily x three weeks."

A Radiology Report in Exhibit M dated April 1, 2003 notes "no evidence of deep venous thrombosis is seen."

Exhibit U contains records of The Pain Clinic and Dr. Norman Baade. Dr. Baade saw Claimant on April 1, 2003 for a chief complaint of right leg pain. Claimant's history of a December 9, 2002 accident while working for the City of St. Joseph is noted. Sleep and physical activity are noted to be disrupted. Dr. Baade performed a physical examination. Dr. Baade's report notes in part that there are no trophic changes and no allodynia. Dr. Baade's assessment is noted to be right leg pain, status post DVT. Dr. Baade's note further states: "I do not feel that he appears to have RSD. I think he may be having some sympathetically mediated pain, i.e. in the burning or this could be related to vascular compromise from his DVT. I would possibly suggest arteriogram at this time on the right leg and possibly venogram. It appears to be more vascular related than RSD at this time."

Dr. Bruce Smith's April 1, 2003 note states Claimant returned after seeing Dr. Baade. Dr. Baade did not feel Claimant had an RSD. The note states Dr. Baade felt

Claimant's pain was related to the "DVT that he had on his leg." A sonogram was ordered.

Dr. Smith's Return to Work/School Medical Statement dated April 4, 2003 in Exhibit M states Claimant is able to return to work on restricted duty on April 7, 2003. The type of restriction noted is "sitting work only."

Dr. Smith's April 15, 2003 note reports Claimant came back because he continued to hurt. Claimant was reported to have felt that he "got something of a short shrift from the pain clinic. What he means is that he felt that the examination was cursory and that he wasn't given any treatment for the pain that he experiences at work." Claimant reported to Dr. Smith that he hurt with knee motion. The note stated that Claimant had a bone scan that suggested that he had mild arthritis. Dr. Smith placed Claimant on Feldene.

Exhibit N contains records of Rick Ford pertaining to Claimant dated June 12, 2003. Claimant was being treated for hypertension and was noted to be taking Accupril and Celebrex.

Exhibit P contains physical therapy records of Heath South pertaining to Claimant. These show Claimant had physical therapy visits there thirty times between January 27, 2003 and June 26, 2003 for his right knee.

Dr. Bruce Smith's June 27, 2003 note states in part:

> Based upon the fact he had a meniscal tear and some mild chondromalacia of the knee, I would ascribe a 6% impairment to the lower extremity as the result of Gary's torn meniscus. I cannot explain all of his pain. I have had him see a number of other physicians. The pain clinic, unfortunately did not feel this man had an RSD so I cannot ascribe any impairment to this.
>
> There are no restrictions for Mr. Pace.

Exhibit N contains Rick Ford's note dated July 24, 2003 documenting Claimant was in after he fell at work that day, twisting his right knee. The record notes that Claimant had a prior knee injury December 9, 2002 and had had continued pain with that. He was scheduled for an ultrasound.

A record of Dr. Walter Dean in Exhibit N dated July 25, 2003 notes under physical examination: "He has petechial areas on the right leg, tenderness especially over the anterior tibial and just below the patella, some swelling is noted. The knee has some instability. He is able to walk very well. He has some difficulty climbing up stairs."

Diagnoses are noted to be: "1. Continued leg pain. 2. Injury to the right knee with subsequent surgery." Claimant was given work restrictions, was noted to take Naprosyn and was to continue using the cane as needed.

Richard Campbell's July 29, 2003 note diagnoses ongoing right knee/leg pain. The note states in part: "As of July 28, 2003, the worker's compensation component of this case has been denied and closed per Ed Schilling of the City of St. Joseph." Richard Campbell recommended Claimant pursue further evaluation on a private basis. He recommended repeat MRI of the right knee and consideration of an EMG of the right lower extremity. The note states that his ability to order any of those tests through the worker's compensation system had been denied. The first page of that note states that Claimant had been in to see Richard Campbell that day complaining of continuation of right knee and right leg pain. The history of his treatment since his December 2002 injury was summarized.

Exhibit N includes Dr. David Cathcart's September 24, 2003 note. Claimant was sent to Dr. Cathcart by Claimant's attorney to undergo whatever diagnostic work-up Dr. Cathcart felt was appropriate.

Dr. Cathcart performed a physical examination of Claimant on September 24, 2003. His impression was right knee and leg pain. Dr. Cathcart had a concern of reflex sympathetic dystrophy and noted, "If that is the case then that certainly would be related to his work injury and this diagnosis then would be an extension of that work injury." He said there should be an EMG of Claimant's right leg and an MRI scan of his right knee.

Dr. Baade saw Claimant on February 9, 2004. Claimant was requesting something for knee pain. The physical exam notes no allodynia or redness or trophic changes. Dr. Baade assessed right pain, etiology unknown. Percocet was prescribed.

The records in Exhibit U document that Claimant was given a lumbar sympathetic block for right leg pain/sympathetic mediated pain on March 10, 2004, March 19, 2004, and April 2, 2004.

Dr. Baade saw Claimant on April 19, 2004 for right leg pain. Dr. Baade did not think Claimant had RSD at that time due to the fact that he had no allodynia, trophic changes or temperature differences. He continued Claimant on Percocet.

Exhibit U contains an x-ray of the right knee taken May 12, 2004. The Impression noted is "no acute appearing abnormality of the right knee."

Claimant saw Dr. Baade on May 12, 2004 for right leg pain. He placed Claimant on Dilaudid and ordered an x-ray of the knee and right lower leg.

Claimant saw Dr. Baade on May 26, 2004 for right lower extremity pain. He had had increased pain since he had a fall at his office. Claimant reported popping in his right knee. Dr. Baade asked Claimant to see Dr. Smith regarding the popping. Medication was continued. A bone scan was ordered.

Exhibit U contains a copy of Heartland bone scan dated May 28, 2004. The Impression stated is: "Predominately degenerative-like changes in the right knee, but there is some increased activity in the lateral tibial plateau, also in the blood pools and flow images suggesting a more active process which could just be more active osteoarthritis, but an infection might also have this appearance."

Dr. Smith's June 14, 2004 Encounter Note states since he last saw Claimant, Claimant had tried steroid injections and has had some relief but continues to be hyper-sensitive and has continued catching sensation of the knee. The note states an MRI shows no evidence of an internal derangement. Dr. Smith's diagnosis states in part: "I think this man has an RSD."

Dr. Smith's June 28, 2004 Procedure Report in Exhibit M notes a biopsy was taken from the center of Claimant's patella of the right knee.

A Radiology Report in Exhibit M dated July 3, 2004 notes no deep venous thrombosis was seen.

Dr. Bruce Smith's July 9, 2004 Encounter Note in Exhibit M states Claimant came back and still had dystrophic pain all down his shin. The note states his pathology failed to show any evidence of infection. The note further states, "At this point I think Gary can be discharged from care. He has an established RSD that he is getting treatment for at the pain clinic. He can return to work in terms of the structure of his leg. I have asked him to use the leg as much as he can." Dr. Smith's Return to Work/School Medical Statement dated July 9, 2004 states in the comments section: "No restrictions, back to work 7-12-04."

A Fitness for Duty note in Exhibit M dated July 19, 2004 of Dr. Smith states Claimant is fully able to perform the essential functions of his job.

Exhibit N contains an injury report of Claimant dated November 5, 2004 regarding a November 2, 2004 injury. The form recites in part: "My right leg gave out and I was falling backwards and I twisted to avoid hitting the floor and maintain my balance. The pain in my back and leg was immediate and I went to my office after standing against the wall for about five to ten min. and took pain medication."

Dr. Cathcart's records (Exhibit N) contain a note dated November 5, 2004. The history of present illness states Claimant injured his low back and left groin when his leg gave out and he fell straining his back on November 2, 2004. Dr. Cathcart diagnosed lumbosacral strain. He took Claimant off work and prescribed medication and moist heat packs to his back.

Exhibit N contains a Return to Work Form dated November 12, 2004. It shows Claimant was released to resume regular duties on November 12, 2004 by Dr. Cathcart. Dr. Cathcart's November 12, 2004 Office Note states Claimant was doing quite a bit better, "about 50% better by his estimation but still very sore." He diagnosed lumbosacral strain and released Claimant from further care.

Dr. Cathcart's December 10, 2004 office note pertaining to Claimant in Exhibit N states in part: "The patient is a 54-year-old male who was walking down some stairs to the courthouse and fell, his right leg giving out from another injury (RSD). He complains of pain in his shoulder girdle, left elbow, left hip and left ankle, and multiple bumps and bruises. He did not hit his head. There was no loss of consciousness."

The December 10, 2004 office note states Claimant reported he felt he had just bumped and bruised everything. Dr. Cathcart's impression was "multiple contusions." Dr. Cathcart kept Claimant at full duty and prescribed medications.

Exhibit N includes an Accident Report dated December 12, 2004 signed by Claimant pertaining to December 10, 2004 date of injury. The form contains the question "How did injury happen?" The handwritten response is, "Fell backwards and sideways on stairs." The part of the body injured is reported to be "L elbow, hip, shoulder, back."

Exhibit N includes Dr. Cathcart's December 13, 2004 note. Dr. Cathcart saw Claimant that day. Claimant was improved. The note states in part: "I think that this case needs to be rated and settled with respect to his RSD in his right leg and, frankly, I think he needs to go off at work because I think he poses a considerable risk for himself and his employer." He restricted Claimant to "sit down work-allow frequent position changes as needed for comfort."

Exhibit N contains a handwritten record dated December 20, 2004 that states Claimant reported he "felt left shoulder pop—now has more AROM."[1] A December 20, 2004 note of Dr. Cathcart states Claimant saw Dr. Cathcart on December 20, 2004 and reported discomfort in his left shoulder, neck and low back. Dr. Cathcart performed a physical examination. The note states in part: "He has virtually no tenderness over the

[1] "AROM" is an abbreviation for "active range of motion." *Stedman's Medical Dictionary* (28th Edition.)

rotator cuff region." Dr. Cathcart noted that most of the tenderness was in the shoulder girdle musculature, particularly the upper trapezius.

The records in Exhibit N include Dr. Cathcart's Return-to-Work form dated January 3, 2005. Dr. Cathcart saw Claimant that day and Claimant was improved. Dr. Cathcart released Claimant from further care, and released Claimant to resume regular duties on January 3, 2005.

A report of Open MRI of St. Joseph bearing Claimant's signature and dated February 18, 2005 states in part: "I fell down the marble stairs in City Hall. My back has hurt since I fell."

Exhibit U contains a copy of the open MRI of Claimant's back dated February 18, 2005. The Impression is: "Degenerative disk disease noted at the L4-L5 level with disk desiccation and mild broad-based disk bulge observed, which does not result in the central canal stenosis or neuroforaminal narrowing. Claimant's history is noted to be back pain, history of fall."

Claimant saw Dr. Cathcart on May 20, 2005 with a chief complaint of back pain since Claimant fell down the steps in City Hall. Dr. Cathcart noted Claimant's pain has been addressed and managed with Hydromorphone. Dr. Cathcart noted there was really nothing he could offer Claimant at that point. The note states that Claimant is not a surgical candidate and will likely have exacerbations of his back pain.

Exhibit N contains Dr. Cathcart's July 20, 2005 note. Claimant reported bilateral numbness and tingling in both hands and his right leg giving out. Claimant reported that since using the cane, his hands have become increasingly painful. Cock-up wrist braces were prescribed for use at bedtime. Dr. Cathcart thought Claimant ultimately would require surgery.

Claimant saw Dr. Cathcart on September 6, 2005 for problems with both hands. Claimant reported nocturnal parasthesia and difficulty gripping. Dr. Cathcart's impression was bilateral carpal tunnel syndrome. He referred Claimant to Dr. DePriest.

Exhibit N contains Dr. Cathcart's October 27, 2005 report. It notes Dr. Cathcart had been one of Claimant's primary treating physicians for several years. The report notes that on or about December 9, 2002, Claimant injured his right knee while working for the city. The history of treatment is summarized. The report notes Claimant's right leg remains very painful requiring constant prescription medication including Hydromorphone and Cyclobenzaprine. Dr. Cathcart's report further states in part:

These medications, in addition to his physical limitations, substantially impair Mr. Pace's ability to function on a daily basis. Mr. Pace's right leg continues to periodically give out on him requiring him to utilize assistance in walking. Mr. Pace is currently utilizing a walker to walk. Mr. Pace will require these or similar prescription pain medication to attempt to limit his pain indefinitely for the remainder of his life. Mr. Pace has also subsequently developed bilateral carpal tunnel syndrome resulting in frequent numbness and tingling in both hands.

I have previously expressed the opinion within a reasonable degree of medical certainty that Mr. Pace cannot stand or walk for any extended period of time. I have also previously expressed the opinion within a reasonable degree of medical certainty that Mr. Pace is permanently and totally incapacitated to the extent that he will be unable to perform his duties as an employee and that such disability directly resulted from his knee injury discussed above. These previously expressed opinions remain my opinions today.

It is my opinion within a reasonable degree of medical certainty that Mr. Pace's condition in that regard is unlikely to improve.

It is further my opinion, within a reasonable degree of medical certainty that Mr. Pace has a physical impairment from which recovery or substantial improvement cannot be expected. It is further my opinion that Mr. Pace's physical injuries as outlined above substantially preclude him from engaging in any occupation within his competence. I do not believe Mr. Pace can hold a job for one (1) year or longer. I am familiar with the criteria for Medical Assistance. Based on my opinion and the clinical findings, Mr. Gary Pace is Medical eligible for Medical Assistance.

It is further my opinion within a reasonable degree of medical certainty that Mr. Pace is a person who is prevented due to his physical conditions as outlined above from performing occupations for which he is qualified for a period of ninety (90) days or longer. It is my opinion based on my clinical findings that Mr. Pace is immediately eligible for General Relief in accordance with the definition for medical eligibility for General Relief.

All of the opinions set forth above are reached within a reasonable degree of medical certainty.

Dr. Baade's treatment records contained in Exhibit U document that Claimant saw Dr. Baade approximately every three months beginning February 16, 2005 and continuing through the date of the last record, which is April 8, 2010. Claimant's chief complaint was right lower extremity pain. Some records contain complaints regarding Claimant's lower back pain. Dr. Baade prescribed various medications including Dilaudid and Trazadone.

Exhibit Q contains records of Dr. Michael DePriest pertaining to Claimant. Included are copies of Dr. DePriest's January 13, 2006 Operative Report for left endoscopic carpal tunnel release for left carpal tunnel syndrome and February 10, 2006 Operative Report for right endoscopic carpal tunnel release for right carpal tunnel syndrome.

Dr. Baade started Claimant on a home exercise program on May 23, 2006.

Exhibit E is a report from St. Joseph Imaging Center dated August 7, 2006 pertaining to MRI of the left shoulder. The report notes a large shoulder effusion and states in part, "The findings are consistent with a complex tear."

Exhibit N contains Dr. Cathcart's December 6, 2007 report. That report notes Dr. Cathcart previously expressed the opinion within a reasonable degree of medical certainty that Claimant cannot stand or walk for an extended period and that Claimant is "permanently and totally capacitated to the extent that he will be unable to perform his duties as an employee and that such disability directly results from his knee injury. These previously expressed opinions remain my opinions today. It is my opinion within a reasonable degree of medical certainty that Mr. Pace's condition is unlikely to improve."

Dr. Cathcart's December 6, 2007 report notes that after Claimant's December 2002 injury "because of apparently repeated falls, he had tears to both rotator cuffs that were not felt to be surgically repairable. He has also had bilateral carpal tunnel surgery in both hands. He currently uses a cane which is medically necessary, in my opinion, primarily to keep his leg from giving out."

Claimant's Evaluating Physicians

Dr. Bernard Abrams

Exhibit B contains the deposition of Dr. Bernard Abrams taken on December 9, 2009 with Deposition Exhibit 1, Dr. Abrams' Curriculum Vitae, Deposition Exhibit 2, Dr. Abrams' February 21, 2009 report pertaining to Claimant, Deposition Exhibit 3, Dr.

Abrams' September 15, 2009 supplementary report pertaining to Claimant, and Deposition Exhibit 4, Dr. Abrams' record review pertaining to Claimant.

Dr. Abrams' Curriculum Vitae notes he is Clinical Professor of Neurology at the University of Missouri, School of Medicine, at Kansas City. His Curriculum Vitae, which contains sixteen pages, notes numerous administrative positions, including President of Missouri Pain Initiative for 2009-2010, editorial positions, including Associate Editor, Pain Digest (tutorials), and board certifications, including American Board of Psychiatry and Neurology, Neurology 1971, the American Board of Clinical Neurophysiology, American Association of Electromyography and Electrodiagnosis, and the American Board of Electrodiagnostic Medicine. Memberships and organizations are detailed, including active membership in the American Academy of Neurology. The Curriculum Vitae notes that Dr. Abrams is presently a member of the hospital staff of Menorah Medical Center. The Curriculum Vitae notes numerous publications, lectures, reviews, and videotapes.

Exhibit 3 notes that Dr. Abrams is "experienced in pain problems and complex regional pain syndrome 1 (RSD), having seen and treated hundreds of cases." Exhibit 3 also notes that Dr. Abrams is the author of seven chapters "in the major recent textbooks recognized as authoritative in the field-Waldeman's Pain Management and Raj's Practical Pin [*sic*] Management."

Dr. Abrams' February 22, 2009 report notes that Dr. Abrams saw Claimant on February 18, 2009. Dr. Abrams' report describes the history of Claimant's injuries beginning on December 9, 2002, and the treatment for those injuries. The report notes that from the beginning, Claimant has had significant right knee pain that has gotten worse. The pain is described as "about four inches above and below the knee and is characterized as a burning sensation which is present '99% of the time.'" The pain is in Claimant's right knee.

Dr. Abrams' February 22, 2009 report describes his review of records.

Dr. Abrams' February 22, 2009 report sets forth the following summary and conclusions:

> With reasonable medical certainty, this patient has the following diagnoses:
>
> 1. Complex regional pain syndrome of the right lower extremity. This is secondary to his injury of December 9th, 2002, arthroscopic surgery, January 10th, 2003 which was natural

consequence of a tear of the medial meniscus of the right knee with contusion of the under surface of the patella.

2. As a consequence of this he had a deep vein thrombosis, January 16th, 2003 with development of complex regional pain syndrome 1.

3. He has also as a consequence, acute and chronic low back pain with degenerative disc disease due to a fall November 2nd, 2004 and a tear of the rotator cuff of the left shoulder due to a fall December 10th, 2004.

4. He also has depression which is chronic due to pain.

5. He also has chronic constipation.

In response to your inquiry of January 14th, 2009, all of these conditions that he has enumerated above are permanent. There is a causal connection between his present conditions, i.e., complex regional pain syndrome and left rotator cuff tear as well as bilateral carpal tunnels and his work place injuries. Currently this patient has an extremely limited existence which is horrible for both him and his wife. He is willing to do any treatment advocated by a physician and I would certainly do a spinal cord stimulator trial and if successful, implant a spinal cord stimulator which cost in the neighborhood of 50 to 75,000 dollars with every 3 to 5 year battery replacements at approximately $20,000. If this fails, then the patient will be on the same chronic medication he has been on to this date indefinitely.

This man is with reasonable medical certainty permanently and totally disabled by virtue of his chronic pain due to CRPS1, his left rotator cuff tear, his bilateral carpal tunnel syndrome, and his degenerative spondylosis of the lumbar spine.

Deposition Exhibit 3, Dr. Abrams' September 15, 2009 report, sets forth the following ratings:

> I apologize for not having given the following ratings since I felt (and still do) that he was permanently and totally disabled):
>
> Right leg: 60% at the level of the knee
>
> Left shoulder: 30% at the level of the shoulder
>
> Injury to low back and soft tissues: 5% body as a whole.
>
> Bilateral carpal tunnel syndromes 10% at the level of each wrist.

Dr. Abrams testified regarding portions of his report. His testimony is consistent with his reports. He testified he reviewed the medical records before he saw Claimant. He examined Claimant. Claimant was agitated and clearly depressed about his situation. He was in pain and his pain increased during the examination.

Dr. Abrams diagnosed Claimant as having complex regional pain syndrome of the right lower extremity (Abrams deposition p. 13) that was secondary to Claimant's injury of December 9, 2002, arthroscopic surgery January 10, 2003, and deep vein thrombosis January 16, 2003. He stated that complex regional pain syndrome is sometimes referred to as regional sympathetic dystrophy.

Dr. Abrams was asked the following question and gave the following answer (pp. 13-14):

> Q. Can you tell us what Chronic Regional Pain Syndrome is?
>
> A. Well, Chronic Regional Pain Syndrome is, first of all, a painful condition which goes on for more than three months and which is characterized by a number of criteria. One's sensory, and he does have abnormal sensory findings; that is, things that are ordinarily non-painful are painful, and that was demonstrated by spraying him with cold, observing his pulse. He also has edema or swelling, which he clearly has. He has trophic changes which are changes in the skin striation, changes in the color. He has vasomotor phenomena which are changes in color of the extremities and temperature of the extremities.
>
> So he really has -- oh, and he has motor, which is weakness. So he really has the gamut of findings that you see in Complex Regional Pain Syndrome I.

Dr. Abrams was asked regarding the causation of Claimant's condition. He answered (pp. 20-21):

> A. Well I felt that his Complex Regional Pain Syndrome was secondary to his injury of December 9, 2002, the arthroscopic surgery of January 10th, 2003, and contributed to by his deep vein thrombosis identified January 16th, 2003, which is not uncommon with arthroscopic surgery of the knee so it's a natural consequence of that.
>
> I thought that he had acute and chronic low back pain due to a fall and, you know, also somewhat of his altered state and that he had

> a tear of his rotator cuff left shoulder due to a fall December 10th, 2004, and his other two diagnoses, depression and constipation were natural consequence of his -- of his illness.
>
> I, as you doubtless know, issued a supplementary report where I considered some other things that were related, and at that point I rated him. I thought he had bilateral carpal syndrome from using crutches, and in my supplementary report of September 15th, 2009, I identified the reasons and the rationale for each of my diagnoses and also went through the diagnostic criteria for his Complex Regional Pain Syndrome I.

Dr. Abrams testified that Claimant needs a spinal cord stimulator trial.

Dr. Abrams was asked whether Claimant will need future medical treatment. He answered at page 26:

> Well, he's definitely going to need future medical care. If you just look at the number of medications he's on related to his, you know, condition, then he's going to need somebody to really monitor him closely because just nobody will take the responsibility for giving him those kinds of medications and those kinds of doses without seeing him, you know, monthly or maybe every two months at least.

Dr. Abrams was asked how Claimant's condition affects his ability to perform occupational activities. He answered (page 27), "My opinion is that he is unable to perform any occupation." He testified his opinions stated in his deposition and Exhibits 2 and 3 had been stated within a reasonable degree of medical certainty.

Dr. Abrams was asked the following questions and gave the following answers (page 28):

> Q. And if I understand you correctly, you indicated that he was permanently and totally disability from all the various injuries he has?
>
> A. Yes.
>
> Q. And that's when you take them together and not individually; for example, the torn meniscus doesn't make him totally disabled?

A. No, but a good deal of his problems come from the torn meniscus because of the pain in the knee for multiple medications which sort of obtund him, sort of rendered him less mentally sharp. So a lot of it is that, but when you take the additive of his low back pain and hands and his left shoulder, they really add up.

Q. So it's when you add all of them together, the left shoulder, the knee, the Complex Regional Pain Syndrome, the depression, the low back, all of those things combined to make him totally disabled?

A. Yes.

Dr. Abrams stated Claimant's total disability includes his left arm and shoulder as well as his carpal tunnels.

Dr. Abrams testified that he does not actively treat patients. About ten percent of Dr. Abrams' work is in a medical legal setting. Probably sixty percent of that is on behalf of the injured individual, ten or fifteen percent comes from administrative law judges in Kansas, and the range of twenty-five to thirty percent would be defendant or employer.

Dr. Abrams acknowledged that Claimant was not started on Trazadone or Cymbalta until after his December 2004 injury.

Dr. Abrams testified that he rated Claimant's right leg at 60% at the knee, and that he related the right knee to the December 9, 2002 original injury. He related the 30% rating of the left shoulder to the December 21, 2004 event where Claimant was repositioning himself in the truck.

Dr. Abrams was asked the following questions and gave the following answers (page 61):

Q. And then you indicate injury to his low back and soft tissues 5 percent of the body, and that's in reference to, I believe, three separate falls?

A. Correct. November 2nd, December 10th and December 17th, 2004.

Q. And you didn't apportion any disability between those three falls?

A. Among them, no.

Q. Among them, thank you for correcting me, Doctor.

A. No, I couldn't do that. I mean, the man's recollection five years later is much to imperfect for that.

Dr. Garth Russell

Exhibit A is the deposition of Dr. Garth Russell taken on June 22, 2009, with Deposition Exhibit 1, Dr. Russell's Curriculum Vitae, Deposition Exhibit 2, a partial list of Dr. Russell's depositions and court testimonies given in the past year, and Deposition Exhibit 3, Dr. Russell's May 9, 2008 report. Dr. Russell's Curriculum Vitae notes that he has staff positions with Columbia Regional Hospital, Columbia, Missouri, University of Missouri-Hospital and Clinics, Columbia, Missouri, and Boone Hospital Center, Columbia, Missouri. He is Clinical Associate Professor of Orthopedic Surgery at the University of Missouri, School of Medicine in Columbia, and has been since 1970. He is Board Certified by the American Association of Evaluating Physicians and the American Board of Orthopedic Surgery. He is a licensed Medical Doctor. His Curriculum Vitae identifies numerous professional memberships, committee assignment positions, and directorships. His Curriculum Vitae also includes bibliography, scientific exhibits and numerous audio/visual presentations.

Dr. Russell's May 9, 2008 report states that Claimant "dates his injury to December 9, 2002." The history of Claimant's right knee injury is described in the report, as is the history of subsequent treatment, including arthroscopic knee surgery on January 10, 2003, diagnosis of blood clot, and treatment with Dr. Baade and Dr. Cathcart in 2003 and 2004. The report notes Claimant stated that he tripped over some telephone wires in the office on April 26, 2004 and reinjured his right leg and returned to work. Dr. Russell's report notes that Claimant was subsequently seen by Dr. Cathcart for an injury which occurred on November 2, 2004 where he fell backwards. Claimant stated he injured his low back and left leg. The report notes, "Subsequently, he said he fell backwards on the marble stairs at City Hall, falling in his left side, injuring his left elbow, his left shoulder, his left hip, and lower back."

Dr. Russell's report further notes, "Later, he states that his left shoulder popped while he was adjusting himself in the city truck." Claimant's medical treatment in 2006 is described, including surgery on Claimant's left and right hands in 2006 and an MRI of the left shoulder performed on July 17, 2006 with diagnosed tear of the rotator cuff.

Dr. Russell's report notes Claimant states he is unable to work for a considerable period of time, and he walks with crutches and a walker. Claimant's complaints are noted. The report notes Claimant was presently receiving Hydromorphone and Dilaudid

for pain, Flexeril for muscle relaxation, Trazadone, and Cymbalta for chronic depression. The report discusses the results of Dr. Russell's physical examination of Claimant. The examination of lower extremities revealed "a red splotch, discoloration to both lower extremities from the knee distalward. It was more severe on the right than it was on the left side. Touching, stimulating the right lower extremity produced parasthesia and a reaction on the part of the patient. The measurement of his lower extremities were approximately the same, however, one could not definitely determine because of the history of venous enlargement." Range of motion measurements are discussed.

Dr. Russell's May 9, 2008 report sets forth the following final diagnosis:

> 1. Tear medial meniscus, right knee with contusion of the undersurface of the patella secondary to injury December 9, 2002.
>
> 2. Arthroscopic surgery January 10, 2003 secondary to above.
>
> 3. Deep venous thrombosis January 16, 2003 secondary to above.
>
> 4. Development of complex regional pain syndrome or reflex sympathetic dystrophy, chronic secondary to above.
>
> 5. Acute and chronic lumbar strain superimposed upon pre-existing degenerative disc disease, lumbar area, secondary to fall on November 2, 2004.
>
> 6. Tear rotator cuff left shoulder with additional injury to his lower back secondary to fall of December 10, 2004.
>
> 7. Reactive depression, chronic, severe.

Dr. Russell's report sets forth the following opinions (pp. 7-9):

> It is my opinion that the patient's injury to his right knee is consistent with the fall that he describes on December 9, 2002. His treatment with arthroscopic surgery and chondroplasty was performed. Post-operatively the patient developed a deep vein thrombosis confirmed by venogram. He was treated appropriately but developed severe pain and paresthesias in the right leg. A diagnosis of reflex sympathetic dystrophy or complex regional pain syndrome, Type I, was made. There has been some debate among the treating physicians as well as the evaluating physicians as to the presence of this entity.

Complex regional pain syndrome is an accepted medical condition which produces many varied findings, but with consistent pain and discomfort, chronic, into the extremity in which it occurs. Such is consistent in this case. This is a condition in which there is dysfunction of the sympathetic nerve system secondary to injury. He received three sympathetic nerve blocks by Dr. Baade with only partial relief of his symptoms.

The fact that he received any relief lends some support to the diagnosis of complex regional pain syndrome, inasmuch as he has multiple reasons for the pain and some symptoms may continue following chemical blocking of the nerve.

The patient did return to work, but was receiving massive amounts of narcotic medication over an extended period of time. He, by history, fell upon several occasions, but the two major ones occurred when he fell down marble steps in November of 2004. He sustained additional injury to his back and to his shoulders. This fall is consistent with a patient who has dysfunction of his right knee with pain the right lower extremity. In addition, the muscles were atrophied secondary to the fact that he used ambulatory support, i.e., cane or crutch when walking. In addition, the consumption of the medication which he was taking would cause some dizziness and loss of balance.

There was a documented tear of the rotator cuff and capsule of the left shoulder following the fall. He does show in addition symptoms in his lower back with chronic muscle spasm present. Because of the multiple bulges within the discs, it is my opinion that these did pre-exist his fall, but he did aggravate the pre-existing degenerative disc disease with the fall and now he exhibits chronic spasm in the musculature of his back of a mild to moderate nature.

One of the main difficulties in this patient which contributes to loss of function in his chronic reactive depression. Consumption of the amount of analgesic or pain killing medication of the narcotics the strength of which this man is receiving will produce chronic reactive psychological depression. This patient exhibits this both in his history following the injury of December 9, 2002. This is exhibited by his reaction to his injuries, to his subsequent falls, and response to treatment from multiple practitioners.

> To remove this patient from all of his pain medication at the present time would be a major medical task, inasmuch as the physiological system of his body has become addicted to the medication. In addition, the chronic depression with the pain medication and his anti-depressant medication certainly precludes him from pursing any and all gainful employment. In addition, it is my opinion that these changes are permanent and will continue throughout the remainder of his life.

Dr. Russell testified that he examined Claimant on May 9, 2008. He testified Claimant had the appearance of being in chronic distress and talked with a garbled rambling manner. He was unable to walk without support. There was marked crepitans of the undersurface of the kneecap on the right side. Claimant could only abduct his left arm about half-way between his head and his shoulder. The limitation of motion of the low back was tender over the lumbosacral area and over both sacroiliac joints. He had about 50% of the normal range of motion in his back. Claimant was not able to straighten his right leg out.

Dr. Russell described the diagnoses set forth in his report. He testified Claimant has complex regional pain syndrome. His opinion was based on Claimant's history with his injury, his subsequent surgery, his continued pain, his review of the records of the treating physicians, his examination of Claimant on May 9, 2008, and Claimant's description of the symptoms he was having.

Dr. Russell testified that Claimant's complex regional pain syndrome (which is another term for reflex sympathetic dystrophy) "was secondary to the injury that he had on December the 9th of 2002 which resulted in the surgical intervention of January the 10th of 2003" (pp. 18-19), and that the regional pain syndrome occurred following that surgery. He noted Claimant has had only partial relief from the treatment he has received. He noted Claimant had been receiving a substantial amount of narcotics, hydromorphone.

Dr. Russell testified: "He is receiving treatment for the side effects of the heavy doses of narcotics which is depression, chronic depression. And so he's receiving Cymbalta which is an antidepressant medication. But those are his treatments he is receiving now for his complex regional sympathetic dystrophy." (p. 21).

Dr. Russell testified that the treatment Claimant had received with the medications was appropriate and is appropriate at the present time for complex regional pain syndrome. (p. 22).

Dr. Russell testified, "In my opinion the amount of medication that he is receiving of the narcotics is making him both mentally and physical unable to pursue any gainful employment." (p. 22). He further testified: "It's my opinion that this man is unable to communicate. He is unable to physically function in using his lower extremities and his body. But based upon these two facts it's my opinion he is unable to pursue any gainful employment." (pp. 23-24)

Dr. Russell testified that another diagnosis "was acute and chronic lumbar strain superimposed upon preexisting degenerative disc disease, lumbar area, secondary to a fall occurring on November 2, 2004." (p. 24).

Dr. Russell testified that another diagnosis was a tear of Claimant's rotator cuff of the left shoulder with additional injury to his lower back due to a fall on December 10, 2004. He was asked how he made that diagnosis. He answered: "Well, this was based upon the history of the patient who indicated to me that his, with his right knee could not be trusted and therefore was the source of his fall when he occurred on the city, when he fell on the City Hall's steps I believe on November the 2nd of 2004. And I believe an additional fall had occurred on December the 10th of 2004." (pp. 25-26). Dr. Russell did not recommend surgery to repair the rotator cuff tear.

Dr. Russell was asked about the cause of Claimant's acute and chronic lumbar strain. He answered: "A. My opinion based upon the patient's history that he gave me, upon review of his medical records, that it was due to a fall that occurred on the marble steps on the City Hall of St. Joseph, Missouri which caused the pain in his lower back." (p. 27). He testified that Claimant's lumbar strain was permanent and would interfere with his ability to pursue gainful employment. (p. 28). He stated that Claimant would have difficulty because of his rotator cuff injury in working above his head or lifting anything that would weigh more than fifteen or twenty pounds.

Dr. Russell testified that Claimant has a reactive depression, chronic, severe, which is a known complication of the treatment that Claimant is receiving for his complex regional pain syndrome and will continue that way in the future. (p. 29). Dr. Russell testified that Claimant's use of an assistive device is appropriate because he is unable to ambulate or walk without an assistive device.

Dr. Russell was asked the following questions and gave the following answers (pp. 37-38):

> Q. Were you able to -- do you have an opinion on whether or not the fall that occurred in 2004 is related to the injuries he suffered after December 9, 2002?

A. Yes.

Q. And what is that opinion?

A. It's my opinion that his knee buckled, his right knee buckled causing the fall. And it buckled because of the injury which he sustained in the fall that occurred in 2002 on December the 9th.

Q. And what about his injury from 2002 leads you to that opinion?

A. Well, it was the type of injury that he had, the surgery that he's had and his history of multiple falls after that time and plus the examination of his knee which revealed that the impairment and deformity in the right knee that will produce those falls.

Q. Do you have an opinion on whether or not the fall that occurred in December of 2004 is related to the injuries Mr. Pace suffered in, as a result of his December, 2002 fall?

A. I do have an opinion.

Q. And what is that?

MR. EISFELDER: I'm going to object. It's calling for speculation. No proper foundation.

A. It's my opinion it again that due to the impairment and the function of his right knee which caused it to buckle and fall.

Q. And on what basis do you assert that?

MR. EISFELDER: Renew my objections.

A. Based upon the patient's history.

Dr. Russell stated he is familiar with the Missouri system for rating disabilities and has "rated hundreds and hundreds and hundreds of cases." He testified he has operated on hundreds of knees over the years. He has experience rating knee injuries and shoulder injuries. He has operated on many shoulders and has rated backs, particularly on some of the seven thousand backs that he did surgery.

Dr. Russell testified that "based upon the lack, the loss of motion of the knee, the degenerative changes present and the instability of the knee for ambulation that he had a 60% permanent partial impairment rated at the right knee or at the 160-week level." His rating is based upon reasonable medical certainty. (p. 43).

Dr. Russell rated Claimant as having sustained a 30% permanent partial impairment of his left shoulder at the 232 week level based on physical examination, moderate weakness in the ability to abduct his left upper extremity at the shoulder, restriction of motion. He also noted that Claimant had loss of flexion with the knee of ten degrees, loss of ten degrees of extension in his right knee, marked degenerative changes on the undersurface of the patella with severe chondromalacia and generalized edema and weakness of his right lower extremity and a history of function with the knee in observing his function. He testified that specifically the complex regional pain syndrome did not affect his rating of Claimant's right knee. (pp. 48-49)

Dr. Russell testified Claimant had sustained a 5% whole body physical impairment to his lower back to the body as a whole based on chronic muscle spasm, restriction of motion and subjective tenderness within the back. Dr. Russell also stated, "It was my opinion that based upon the rating of his left shoulder, his knee and his back, that he had 51% whole body physical impairment. It is further my opinion that based on his reactive depression that he was total and completely physically disabled from gainful employment or from function of his body in the future." (pp. 52-53)

Dr. Russell was asked whether Claimant's chronic reactive depression is related in any way to the December 9, 2002 fall and the injuries he sustained as a result of that fall. He answered (p. 54):

> It's my opinion, that the injury to his right knee was secondary to the fall in 2002 which left him with an unstable knee with multiple falls injuring his back in 2004, his left shoulder and his complex regional pain syndrome which required medication which rendered him 100%, which rendered him based upon the second injury phenomena to be 100% physically impaired."

Dr. Russell stated the chronic reactive depression was a second injury fund phenomena "in the fact that this impairment was secondary to his treatment required for the multiple injuries which he had received and then which extended his impairment over his entire body and made it 100% complete." (p. 53). He testified his opinions had been stated within a reasonable degree of medical certainty.

Dr. Russell was asked on cross-examination about what his understanding of what happened on November 2, 2004. He answered: "A. That he had fell on the city steps,

marble steps in the City Hall of St. Joseph, Missouri. He was asked: "Q. Did he indicate that he had slipped?" He answered: "A. I don't remember if he used the word slipped or his knee gave out or what." (p. 62).

Claimant told Dr. Russell he injured his low back and his left leg as a result of the November 2, 2004 event. He did not indicate that his right leg complaints were aggravated.

Dr. Russell was unaware of an injury Claimant had claimed on December 17, 2004 when Claimant indicated he was injured when a dog jumped on him.

Claimant indicated he returned to work after the April 26, 2004 incident when he tripped over some telephone wires in the office and reinjured his right leg. Dr. Russell acknowledged Claimant returned to work after his work accidents in November 2004 and December 2004.

Dr. Russell did not attribute any of Claimant's left shoulder injury to Claimant reaching up and adjusting himself in the city truck when he felt the pop in his shoulder. It was Dr. Russell's opinion that if Claimant's left shoulder did pop or finish tearing in the car, it was secondary to the fall that he had had. (p. 78). He stated, "Just because you're just pulling yourself around in a car would not tear it." (p. 78).

Dr. Russell further testified: "It's my opinion that, that his, 100% whole body impairment is secondary to a combination of the injuries of December '02 and the two injuries in '04." (p. 83). He agreed that the combination of all the injuries with the chronic reactive depression, severe, would apply for the second injury. (pp. 83-84)

Dr. Russell was asked if he had an opinion about whether or not the second injury phenomena is related to the December 9, 2002 accident and subsequent injuries that Claimant sustained. He answered, "Well, it's my opinion that the initial injury of December 9, 2002 caused the injury to his knee with the subsequent complex regional pain syndrome requiring medication and treatment and the deep vein thrombosis. His knee then buckled, was not trustworthy, caused him to fall these multiple times which, so it, it all relates back to that one injury." (p. 93). His opinion was stated within a reasonable degree of medical certainty.

Employer's Evaluating Physician—Dr. P. Brent Koprivica

The deposition of Dr. Koprivica taken on February 16, 2009, Exhibit 1, with Koprivica Deposition Exhibits was admitted subject to objections contained in the deposition. Koprivica Deposition Exhibit 1 is Dr. Koprivica's Curriculum Vitae.

Deposition Exhibit 2 is the July 6, 2009 report pertaining to Claimant. Deposition Exhibits 3 through 8 are records of Dr. David Cathcart pertaining to Claimant.

Dr. Koprivica is a Medical Doctor. He is Board Certified in Emergency Medicine and in Occupational Medicine. He belongs to the American Board of Independent Medical Examiners.

Dr. Koprivica examined Claimant at the request of Employer's attorney, Bart Eisfelder, on July 6, 2009. Dr. Koprivica reviewed medical records identified in his report, Claimant's deposition of March 28, 2005, claims for compensation, report of Dr. Bernard Abrams dated February 21, 2009, report of Mary Titterington dated August 8, 2008, report of Dr. Garth Russell dated May 9, 2008, and additional records identified in the report.

Dr. Koprivica's July 6, 2009 report describes Claimant's educational and vocational history. The report also discusses the history of present injury/illness. The report notes Claimant was involved in a motor vehicle accident in 1999 when the vehicle Claimant was driving was t-boned on the driver and rear passenger side. Claimant reported missing minimal time from work, being treated by a chiropractor, receiving a settlement, and having ongoing chronic neck and left shoulder pain for a couple of years associated with the accident.

Claimant told Dr. Koprivica that his symptoms after the 1999 motor vehicle accident "seemed to resolve." Dr. Koprivica's report further states: "However, on direct questioning, he admitted that he would have an obstacle to reemployment, if he had lost his employment with the City of St. Joseph for any type of job that required any extensive overhead activities, especially using the left upper extremity of the shoulder." The report notes Claimant also had another motor vehicle accident in 2002 and had a neck strain.

Dr. Koprivica's report discusses the history of Claimant's work injury of December 9, 2002. The report notes Claimant's right knee injury and discusses the history of the treatment for that injury. Dr. Koprivica's discussion of the medical treatment Claimant received following that accident is consistent with the medical treatment records in evidence. Claimant worked light duty for a time after the accident. Dr. Koprivica's report describes the medical treatment Claimant received after the injury. An MRI on December 21, 2002 revealed tearing of the medial lateral menisci. Claimant was referred to Dr. Smith who saw him on December 31, 2002. An anterior partial medial meniscectomy and patellar chondroplasty were performed on January 10, 2003. Claimant developed deep venous thrombosis on the right and was hospitalized from January 16, 2003 through January 19, 2003. He had physical therapy. A bone scan on March 7, 2003 revealed some right patella inflammatory changes. Claimant saw Dr. Baade at Heartland Pain Clinic on April 1, 2003. The report notes Dr. Baade concluded

Claimant did not have reflex sympathetic dystrophy. Claimant returned to work on April 8, 2003.

Claimant saw Dr. McCormick on April 30, 2003 for a second opinion. Dr. McCormick gave Claimant a steroid injection. Claimant had ongoing rehabilitation through HealthSouth Rehabilitation. Dr. McCormick recommended a home exercise program and use of Celebrex. Dr. Smith rated Claimant on June 27, 2003 at 6% impairment of the right lower extremity.

Claimant was evaluated by Dr. Cathcart on September 24, 2003. Dr. Cathcart is noted to have been concerned about reflex sympathetic dystrophy and recommended an MRI scan of the right knee and EMG testing.

Dr. Freeman performed electrodiagnostic studies on February 4, 2004 that were negative for any evidence of neuropathy or radiculopathy. Dr. Freeman is noted to have thought there was a probable reflex sympathetic dystrophy or complex regional pain syndrome.

Dr. Koprivica's report states Dr. Baade saw Claimant on February 9, 2004, and noted Claimant was positive for anxiety and depression. Dr. Baade is noted to have reiterated he did not believe Claimant had reflex sympathetic dystrophy. Claimant continued to treat with Dr. Baade and had a series of lumbar epidural injections.

Dr. Koprivica notes Claimant had another injury on April 28, 2004 when he strained his right knee when he caught his foot in cords and wires while standing near a desk. Claimant saw Dr. Baade on May 12, 2004 and reported increased right leg pain. X-rays were negative.

Dr. Koprivica's report notes Dr. Smith discharged Claimant on July 9, 2004 and indicated he could work. Dr. Koprivica's report notes that on July 19, 2004, Dr. Smith indicated that Claimant could perform all the essential functions of his job without restrictions and released him on July 12, 2004.

Dr. Koprivica's report notes Claimant saw Dr. DiStefano on July 27, 2004. Dr. DiStefano is noted to have been concerned about the amount of narcotic use and the duration of the narcotic use. Dr. Koprivica's report notes that Dr. DiStefano saw Claimant on September 23, 2004 and noted there was really no evidence of reflex sympathetic dystrophy changes. Dr. DiStefano was noted to have felt that Claimant's complaints related to post-phlebitic changes related to his prior deep venous thrombosis.

Dr. Koprivica's report notes Claimant had another episode where he fell backward on the stairs because of weakness in the right leg on November 2, 2004. Dr. Cathcart is noted to have seen Claimant on November 5, 2004 and diagnosed multiple contusions.

Dr. Baade saw Claimant on November 16, 2004 and added Klonopin for Claimant's anxiety issues.

Claimant is next noted to have been injured on December 10, 2004 when his right knee gave out causing a loss of balance and he fell walking down the stairs. Claimant saw Dr. Cathcart that day and was diagnosed with multiple contusions. He was released to his regular duty work on December 12, 2004. Dr. Koprivica's report notes that on December 13, 2004, Dr. Cathcart returned Claimant to restricted duty with sit-down work.

Dr. Koprivica notes Claimant was next injured on December 17, 2004 when a dog jumped on his back, resulting in a strain injury to his back and right leg. Claimant saw Dr. Cathcart on December 20, 2004.

Dr. Koprivica notes medical records contain notations that Claimant's left shoulder popped when shifting his weight in a truck on December 21, 2004.

Claimant is noted to have been released by Dr. Cathcart on January 3, 2005. Dr. Koprivica notes that on February 17, 2005, Dr. Stuckmeyer performed an evaluation and assigned a 40% permanent partial disability of Claimant's right lower extremity of the level of the hip based on the December 9, 2002 work injury.

An MRI scan done on the lumbar spine on February 18, 2005 is noted to have revealed degenerative disc disease at the L4-5 level with disc desiccation and broad disc bulge. Claimant continued to follow with Dr. Baade and was maintained on Dilaudid, Klonopin and Flexeril.

Claimant was seen by Dr. Wheeler on June 29, 2005. Dr. Wheeler is noted by Dr. Koprivica to have stated that Claimant's low back complaints were not a cause or consequence of the December 9, 2002 injury. Dr. Wheeler is noted to have assigned a 6% impairment of the right lower extremity at the 160-week level. Dr. Wheeler is noted to have felt the back pain is related to Claimant's November 2, 2004 injury. Dr. Koprivica's report states in part: "I would note that on my understanding of Mr. Pace's history, the back complaints are really more dated to the December 17, 2004, injury, where the dog jumped on him." (page 15).

Dr. Koprivica notes Dr. DePriest performed endoscopic carpal tunnel release on January 13, 2006 and right endoscopic carpal tunnel release on February 10, 2006.

Dr. Koprivica notes Dr. Hendler performed an independent medical evaluation on June 27, 2006. Dr. Hendler is noted to have stated he did not believe there were findings suggesting complex regional pain syndrome or reflex sympathetic dystrophy. Dr. Hendler is noted to have stated he did not believe Claimant required a cane on an ongoing basis. Dr. Hendler is also noted to have stated that the bilateral carpal tunnel syndromes were unrelated to Claimant's gait assistance since he was using the cane in only one hand. Dr. Hendler is also noted to have stated that Claimant's internal derangement of the right knee was attributable to the December 9, 2002 injury and the back pain "would be either due to the gait abnormality that occurred on November 2, 2004 or December 10, 2004."

Dr. Koprivica's report notes Dr. Hendler stated that Claimant was at maximum medical improvement, but required ongoing care and treatment from a chronic pain management standpoint. Dr. Hendler is noted to have assigned a 15% permanent partial disability for the right knee based on the December 9, 2002 injury and 2% permanent partial disability based on back pain. Dr. Hendler assigned a 10% permanent partial disability to the right hand at the level of the wrist (175-week level) for the right carpal tunnel syndrome and a separate 10% permanent partial disability of the left hand at the level of the wrist (175-week level) for the left carpal tunnel syndrome. He noted in combining all the disabilities, the knee, the median neuropathies and the back injuries, Dr. Hendler assigned a twenty (20) percent permanent partial disability to the body as a whole.

Dr. Koprivica discusses Dr. Cathcart's December 6, 2007 report, Dr. Russell's May 9, 2008 report, Mary Titterington's vocational evaluation of August 8, 2008, and Dr. Abrams' evaluation of February 21, 2009.

Dr. Koprivica's report notes Claimant's current complaints including ongoing severe right knee pain underneath the knee cap as well as other complaints in the right lower extremity. He notes Claimant reports low back pain that radiates to the right lower extremity. Claimant is noted to use two canes and sometimes a walker. Dr. Koprivica's report notes Claimant has been told he is too high a risk for left shoulder surgery. Claimant's bilateral hand complaints are noted including thumb pain and ulnar based numbness. Claimant's medications are noted.

Dr. Koprivica performed a physical examination. The results are discussed in detail in the report.

Dr. Koprivica's report sets forth conclusions and recommendations. These include the following:

1. As Mr. Pace presents, there are several conclusions that I would like to make.

In general, it is my opinion with all the data that is available that Mr. Pace is, indeed, permanently totally disabled.

I would note the vocational information provided by Mary Titterington in that regard.

2. Pre-dating the initial work injury claim date of December 9, 2002, Mr. Pace had pre-existent industrial disability based on chronic cervicothoracic pain. This specifically related in terms of onset with the motor vehicle accident that occurred in 1999. The subsequent motor vehicle accident in 2002 did not significantly contribute to this disability, although it is a contributor.

For this pre-existent condition in terms of the chronic cervicothoracic pain, I would assign a twelve and one-half (12-1/2) percent permanent partial disability to the body as a whole.

3. In looking at this pre-existent industrial disability, Mr. Pace would be restricted from repetitive overhead activities, especially weighted activities. He would be limited in climbing. He would also need to avoid activities where head and neck jarring are likely, such as operating heavy equipment.

I would note that Mr. Pace's subjective history of obstacle to re-employment is consistent with this assignment of pre-existent industrial disability.

4. Mr. Pace's work injury of December 9, 2002, represents the direct, proximate and substantial factor in Mr. Pace's development of chronic lower extremity pain.

5. In reference to the December 9, 2002, work injury claim in isolation, it is my opinion that Mr. Pace is at maximal medical improvement.

6. For the primary injury of December 9, 2002, considered in isolation, in and of itself, I would assign a thirty-five (35) percent permanent partial disability of the right lower extremity at the level of the knee (160-week level).

In my opinion, the December 9, 2002, injury is not totally disabling considered in isolation, in and of itself.

9. I would note that there is Second Injury Fund liability associated with the claim injury date of December 9, 2002.

In my opinion, the synergism of combining the pre-existent industrial disability in the cervicothoracic region with the additional permanent partial disability attributable to the December 9, 2002, injury is represented by a 10 percent enhancement factor.

10. Prior to the work injury claim of November 2, 2004, there were additional injuries to the right lower extremity dated April 28, 2004, and May 2, 2004, as I have documented in the text above.

There apparently are not primary work injury claims filed for these injury dates, although I believe they are contributors to the chronic right lower extremity pain that is ongoing.

For each of these claim dates, I would separately apportion five (5) percent permanent partial disability of the right lower extremity at the level of the knee (160-week level).

I would consider these no-work-related injury dates to be substantial contributors to the permanent partial disability with which he presents of the right lower extremity and represented by this assignment of permanent partial disability.

11. The November 2, 2004, claim where he fell backward on the stairs represents a separate injury with further aggravating injury to the right lower extremity. There were other multiple soft tissue injuries associated with this contributing to the chronic pain presentation.

12. For the November 2, 2004, injury considered in isolation, in and of itself, I would consider a five (5) percent permanent partial disability to the body as a whole to be appropriate.

13. I would not find any Second Injury Fund liability associated with the November 2, 2004, work injury.

14. I would clearly point out the November 2, 2004, injury is not totally disabling considered in isolation, in and of itself.

16. For the December 10, 2004, considered in isolation, in and of itself, I would assign a fifteen (15) percent permanent partial disability of the left upper extremity at the level of the shoulder (232-week level).

Separately, for the additional contributors to the chronic pain including the aggravating injury to the right lower extremity as well as other soft tissue contusion, I would assign a separate five (5) percent permanent partial disability to the body as a whole.

When looking at these conditions, globally, a fifteen (15) percent permanent partial disability to the body as a whole is assigned based on the December 10, 2004, injury considered in isolation, in and of itself.

I would not consider the December 10, 2004, injury to be totally disabling in isolation, in and of itself.

17. In my opinion, there are Second Injury Fund liability issues associated with the December 10, 2004, injury claim. When one considers the pre-existent industrial disability of significance as outlined in the text above in combination with the December 10, 2004, injury, an enhancement factor of 10 percent is felt to represent the Second Injury Fund liability issues.

18. As I have pointed out, I believe there is aggravating injury to the left shoulder on December 21, 2004.

For this specific injury, I would separately apportion a ten (10) percent permanent partial disability of the left upper extremity at the level of the shoulder (232-week level).

19. The work injury of December 17, 2004, represents the direct, proximate and substantial factor in Mr. Pace's chronic low back pain. In my opinion, the low back pain with the identified disk disease on MRI scanning is felt to be likely diskogenic in origin with radicular-like symptoms associated with the claim injury date of December 17, 2004.

> 20. In reference to the last work injury claim of December 17, 2004, and all the pre-existent claims that I have outlined. It is my opinion that Mr. Pace is at maximal medical improvement.
>
> 21. In looking at the primary claim injury date of December 17, 2004, in isolation, I would consider Mr. Pace to have reached maximal medical improvement as of the evaluation of Dr. Wheeler on June 29, 2005.
>
> 22. I would note that Mr. Pace's development of bilateral carpal tunnel syndrome is felt to be unrelated to the primary injury claims that I have identified.
>
> 24. When one looks at all the data that is available, it is my opinion that following the December 17, 2004, work injury claim, Mr. Pace is permanently totally disabled.
>
> In looking at the issue of permanent total disability, it is when one combines all of the disabling conditions that pre-dated December 17, 2004, including the concerns about psychological disability with the additional disability attributable to the December 17, 2004, injury that Mr. Pace is permanently totally disabled.
>
> I would not consider Mr. Pace to be permanently totally disabled based on the last work injury claim date of December 17, 2004, considered in isolation, in and of itself.

Dr. Koprivica's October 25, 2009 report notes he has received a copy of Claimant's personnel file, a copy of Dr. Abrams' September 15, 2009 supplementary report, records from Center for Pain Management of Dr. Baade extending through February 12, 2009 and records from Occupational Medicine. Dr. Koprivica's October 25, 2009 report notes that in reviewing those records, he would not materially change any of the opinions or conclusions he has already expressed.

The reports of Dr. DiStefano, Dr. Hendler, Dr. Stuckmeyer, and Dr. Wheeler discussed by Dr. Koprivica were not offered in evidence.

Exhibit 1 is the deposition of Dr. Brent Koprivica taken on February 16, 2009. Dr. Koprivica testified regarding his qualifications. His testimony is consistent with his Curriculum Vitae.

Dr. Koprivica testified that 98 to 99% of his medical/legal practice is on behalf of the injured individual or a referral by his or her representative.

Dr. Koprivica testified that his answers would be within a reasonable degree of medical certainty unless he stated otherwise. He examined Claimant at the request of Bart Eisfelder. Dr. Koprivica identified Exhibit 3, his addendum report dated October 25, 2009.

Dr. Koprivica described the format of the examination, including obtaining the history from Claimant. He described the manner of the physical examination. He thought he spent between three to four hours with Claimant. He reviewed medical records that he summarized in his reports. He noted Claimant had some difficulty with history.

Dr. Koprivica testified that Claimant's residuals of the motor vehicle accident constituted hindrance in employment. He did not think that Claimant's prior great toe fracture in 1986 was significant. Claimant did not identify anything that he really could not do because of the toe fracture.

Dr. Koprivica testified regarding Claimant's work injuries, beginning December 9, 2002. His testimony is consistent with his report. He testified the December 9, 2002 event resulted in permanent disability, and the injury constituted a hindrance in finding employment in the open labor market in and of itself. Claimant worked after that injury. Claimant fell backwards on stairs on November 2, 2004, resulting in soft tissue contusions. The residuals of the November 2 event constituted a hindrance on Claimant's employability. Dr. Koprivica testified that the November 2, 2004 injuries were separate and distinct from the prior disabling conditions that existed prior to November 2, 2004.

Dr. Koprivica testified that on December 10, 2004, Claimant lost his balance and fell while walking down stairs and had multiple body part contusions with a contribution to left shoulder impairment. The residuals from that event constituted a hindrance on his employability. He continued to work until he was injured on December 17, 2004 when a dog jumped on his back resulting in injury to his back and right leg. He worked between December 10 and December 17, 2004. The December 17 event resulted in some disability.

Claimant also testified that on December 21, 2004, while away from work, he was shifting weight in a truck and injured his shoulder. Dr. Koprivica felt Claimant had aggravating injury to a chronic impingement problem involving the left shoulder. That contributed to the limitations involving the left shoulder.

Dr. Koprivica was asked (p. 38):

> Q. With regard to the four injuries you've identified having occurred [*sic*] City of St. Joseph, taken in isolation were any of those-- or did any of those injuries result in permanent total disability?
>
> A. In my opinion no single injury was totally disabling in isolation.

Dr. Koprivica was asked the following question and gave the following answer (pp. 39-40):

> Q. I know in your report you have indicated Mr. Pace is totally disabled. Do you have an opinion as to whether or not that total disability is a result of any single event, or only when you take the various injuries that you've referred to already in your deposition and in your reports together?
>
> MS. SHINE: Same objection, calls for vocational opinion.
>
> A. I have an opinion.
>
> Q. (By Mr. Eisfelder) What is that opinion?
>
> A. Just in response to the question, I'll point out that I did have vocational information in the records that were provided. So my conclusion is based on that additional input. But I do believe that that permanent total disability that's present results from the synergism of combining all of the disabling conditions that we've referenced in your questioning and I outlined in my report, and didn't believe it was attributable to any one specific work-related injury claim.
>
> Q. And the vocational information you're referring to, is that the vocational evaluation by Mary Titterington?
>
> A. Yes.

Dr. Koprivica testified, "On my examination there was not the stigmata of complex regional pain syndrome on July 6th, 2009." (p.42). Dr. Koprivica was asked why he believed that Claimant did not have RSD. He answered (pp. 42-43):

> Q. (By Mr. Eisfelder) As an occupational doctor, board certified in emergency medicine, also in your years of teaching,

> training, experience have you had occasion to evaluate people with reflex sympathetic dystrophy or complex regional pain syndrome?
>
> A. I have had two this week.
>
> Q. You indicated that he did not have the stigma of that -- stigmata of RSD. Why do you believe he did not have RSD?
>
> A. RSD is a syndrome that's marked by loss of skin trigger. It becomes smooth and shiny. There's edema or swelling. There's colored disparity between the opposite extremity where there's a palpable difference in temperature, sweating. And one of the most marked things about it is it is called allodynia, which is distress when you try to examine the part which is slight touch involving the entire part. He didn't have those findings. He has pain, but I just didn't believe he had complex regional pain syndrome.

Dr. Koprivica also stated that there is not a test that is definitive. He noted Claimant's triple-phase bone scan did not show complex regional pain syndrome. He also testified (p. 43), "You would expect with the duration of time that that's had these disabling symptoms he would go on to a markedly atrophic limb, that's what happens as it progresses to atrophy, he didn't have that." Dr. Koprivica testified an atrophic limb looks wasted away. Atrophic means it has lost mass. It is wasted away because it is not being used.

Dr. Koprivica testified that grip strength testing demonstrated strength capabilities that were not Claimant's maximum. He thought Claimant should have been able to demonstrate lumbar motion even though it would be limited. Claimant could not do the motion testing. Dr. Koprivica thought that was an exaggerated finding.

Dr. Koprivica testified that he could not see an association between Claimant's carpal tunnel and any of his work injuries because Claimant's gait assistance was only using one extremity (p. 48). He stated: "So if it was related to the need for gait assistance from his lower extremity injury you would expect it to impact the extremities using for gait assistance." (p. 48).

Dr. Koprivica testified that he thought Claimant was permanent totally disabled. He further testified (p. 49), "My opinion is that no single injury in isolation of any of the four primary injury dates they were not totally disabling in isolation." He stated, "The actual nature of the objective physical impairments that I've identified, and the restrictions that would be necessary based on those specific isolated injuries, they are not of the type that would preclude the ability to access the open labor market alone."

Dr. Koprivica testified that the event of December 9, 2002 was a substantial contributing factor in causing and contributing to cause a substantial factor in producing "internal derangement of his right knee and the complication of post-surgical deep venous thrombosis and problems with right lower extremity pain. I did not believe he had a complex regional syndrome, but I do believe he had chronic extremity pain." (p. 57). He assigned 35% permanent partial disability to the right lower extremity at the level of the knee as a result of the December 9, 2002 event. That is at the 160-week level.

Dr. Koprivica assigned a 12 ½% permanent partial disability to the body as a whole for the chronic cervical thoracic pain predating December 9, 2002. (p. 56).

Dr. Koprivica testified from the event December 2, 2004, Claimant suffered further injury to the right lower extremity that contributed to his chronic right lower extremity pain (p. 58). He assigned 5% permanent partial disability to the body as a whole for the November 2, 2004 injury that included the right lower extremity and also other body parts.

Dr. Koprivica testified that Claimant suffered permanent injury to his left shoulder, contributing to chronic impingement in the left shoulder and chronic left shoulder pain as well as other soft tissue injuries including aggravating pain to the right lower extremity, that were substantially caused by the December 10, 2004 accident. He assigned a global 15% permanent partial disability to the body as a whole including the left shoulder and other multiple body parts.

Dr. Koprivica testified that the December 17, 2004 event resulted in chronic low back pain based on diskogenic pain in the lumbar region. He assigned 15% permanent partial disability to the body as a whole for that injury.

Dr. Koprivica testified that Claimant suffered further aggravating injury to the rotator cuff structures to the left shoulder as a result of the December 21, 2004 event. He ascribed a 10% permanent partial disability to the left upper extremity at the level of the shoulder 232-week level for that event. He testified that the permanent total disability is not attributable to any single work injury claim that he evaluated considered in isolation.

Dr. Koprivica was asked the following questions and gave the following answers (p. 63):

> Q. What is your opinion as to the cause of that permanent total disability assuming him to be totally disabled?

A. I felt that when I combined all of the permanent partial disabilities that predated December 17th, 2004, with that additional disability that he was totally disabled. I don't believe that the subsequent injury date of December 21st, 2004 is of any consequence in that total disability. So I believe it follows that last work injury claim. But it's from the synergism of combining all the disabling conditions.

Q. When you say synergism what do you mean?

A. The impact of combining multiple disabilities leads to inability to accommodate for an underlying disabling conditions due to their -- due to the limitations from the other disabling conditions. And that results in greater disability that's above simply adding the simple arithmetic sum of those disabilities.

Dr. Koprivica attributed chronic pain to Claimant's right lower extremity (p. 64). He thought the December 9, 2002 injury was the majority contributor to the right lower extremity chronic pain, although he thought the subsequent injuries contributed as aggravators. He did not know of any cure for Claimant's chronic pain and believed Claimant would have that for the rest of his life. He believed Claimant would be limited on standing and walking. He recommended intervals in the range of thirty minutes to an hour with flexibility to change between sitting, standing and walking. He would restrict Claimant from squatting, crawling or kneeling. He would restrict Claimant from working at heights and climbing.

Dr. Koprivica testified that Claimant's right side weakness following the December 9, 2002 injury would make Claimant "particularly vulnerable to aggravating the injury in his right leg." (p. 67). Claimant would be at a greater risk of falling because of that. Claimant's April 28, 2004 injury and May 2, 2004 injury aggravated the pain in Claimant's right leg and aggravated the disability of his right leg. (p. 68).

Dr. Koprivica was asked (p. 68):

Q. Do you consider those events to be related to the December 9, 2002 injury?

A. I thought they were distinct events, but there was -- they were associated with the risk of the '02 injury.

Q. Do you consider his right knee giving out is related to the chronic pain in his right leg?

A. Yes.

Dr. Koprivica was asked regarding records of Dr. Cathcart dated November 5, 2004, November 12, 2004 and December 10, 2004 of the diagnosed lumbosacral strain. Dr. Koprivica was asked (p. 71):

Q. Yes. So from that record we see that there's an association or connection between the fall on the stairs and Mr. Pace's back pain.

A. Yes, I would say that's true.

Dr. Koprivica was asked about Dr. Cathcart's May 20, 2005 office record that discusses Claimant's back condition and that relates problems with his back since he fell down the steps at City Hall. Dr. Koprivica said he had not seen any contemporaneous records of Claimant's medical record that related Claimant's back pain or back disability to the December 17, 2004 event with the dog.

Dr. Koprivica testified that Claimant told him his back pain started with the dog incident. He testified if he just considered Dr. Cathcart's records, there was a contribution from November 2, 2004 and December 10, 2004 to his back. If he isolated his opinion based on the records of Dr. Cathcart, he would consider the November 2, 2004 incident to be a substantial factor to Claimant's back disability and to be a factor with more weight in his opinion than the dog jumping on Claimant.

Dr. Koprivica stated the December 9, 2002 injury was a substantial factor in causing the weakness in Claimant's right leg, and in causing the fall on December 10, 2004. The December 10, 2004 incident aggravated Claimant's right leg pain and aggravated his shoulder injury.

Claimant did not tell Dr. Koprivica that he experienced relief when his shoulder popped while shifting his weight in the truck. He was asked about Dr. Cathcart's January 3, 2005 note stating Claimant felt left shoulder pop, and "now has more active range of motion." Dr. Koprivica noted that suggested his shoulder was better. He did not believe the December 21, 2004 event was essential in Claimant being totally disabled.

Dr. Koprivica testified that Claimant's use of Hydromorphone impacted his employability. He testified that it is "pretty rare" that persons having to take chronic narcotics are able to access the open labor market. The medication has the potential to affect cognitive abilities. Persons using the medication should not be around dangerous equipment. The medication has the potential to be sedating. He believed that clinically Hydromorphone is warranted as Claimant presented.

Dr. Koprivica testified that he believed that Claimant is going to need ongoing chronic pain management. He expected Claimant would need to continue to see someone like Dr. Baade and would expect the use of medication to continue.

Claimant's Vocational Expert—Mary Titterington

Exhibit 3 is the deposition of Mary Titterington taken on October 8, 2009, with Deposition Exhibit 1, Ms. Titterington's Curriculum Vitae, and Deposition Exhibit 2, Ms. Titterington's report on the vocational evaluation of Claimant dated August 8, 2008. Ms. Titterington is a self-employed vocational rehabilitation consultant. She has been a self-employed vocational rehabilitation consultant since 1987. She is a licensed professional counselor in the State of Kansas, and is a certified disability management specialist and a certified forensic counselor. She has an MS degree in Guidance and Counseling from Creighton University.

Ms. Titterington's August 8, 2008 report notes that she evaluated Claimant on August 5, 2008. The evaluation lasted three hours and ten minutes. Claimant presented as a "man consumed by his pain and discomfort. He reported substantial pain in multiple body parts." She noted Claimant walked with the assistance of a forearm crutch.

Ms. Titterington's report notes the treatment records, the claim for compensation, and evaluation of Dr. Garth Russell she reviewed. Ms. Titterington's report notes Claimant is being treated by Dr. Norman Baade, pain management specialist, every three months, and by his family physician on an as needed basis. Her report notes Claimant's diagnoses and medical conditions, medications, and current medical problems. The report also identifies physical limitations noted by Dr. Garth Russell in his May 9, 2008 report, Dr. Cathcart and his evaluation of December 6, 2007, Dr. McCormick in his Certificate for Work or School dated April 30, 2003, and Dr. Hendler dated June 27, 2006. Her report describes Claimant's current emotional status, activities of daily living, pre- and post-injury activities, education, military service, work history, and results of testing.

Ms. Titterington's report sets forth the following Vocational Implications (pp. 8-9):

> Mr. Pace worked in a variety of occupations throughout his working history. His most recent job was as a building inspector that required consistent walking, standing, climbing stairs and ladders, bending, stooping, kneeling and squatting. He also worked one year as an inmate supervisor which involved sustained standing and walking. His work immediately prior to the City of St. Joseph, was in

retail work as a parts clerk and night stocker. Both jobs required sustained standing and walking as well as lifting up to and occasionally over 50 pounds. He also worked as a full service auto mechanic which required significant physical exertion. The assessments by Drs. Cathcart, McCormick and Russell preclude Mr. Pace from returning to any of the above jobs.

Dr. Cathcart and Dr. Russell both conclude that Mr. Pace is not employable based on his need for significant amounts of narcotic medication, his sleep disturbance, and his overall pain.

Dr. McCormick limited Mr. Pace to sedentary work. If only this functional limitation is considered, Mr. Pace can return to work in the open labor market.

As Drs. Cathcart and Russell point out, Mr. Pace is on narcotic pain medication consistently throughout the day. A potential employer would have significant concerns about hiring an individual who takes this level of narcotics on a daily basis.

In addition, as Mr. Pace presented there is no employer who would be willing to hire him for work as it is customarily performed. Mr. Pace's total functioning revolves around his pain. He moves very slowly and in a protected manner. These mannerisms would be of significant concern to a potential employer in an interview. With his pain focus, depressive symptoms and reduced work speed, Mr. Pace would not be able to meet the production goals for any job.

Mr. Pace is not a good candidate for retraining given his current functioning level, physical limitations, narcotic pain medications and his age.

Ms. Titterington's report further sets forth the following Summary:

Mr. Pace is a fifty-seven year old man who has incurred multiple impairments throughout his life. He reports a very limited life style and one that involves constant pain even with significant amounts of narcotic medications. In addition, he reports severe depressive symptoms which need to be evaluated by a licensed psychiatrist. Both Drs. Russell and Cathcart have assessed Mr. Pace's multiple problems as too severe to support employment. There is no expectation that any employer would be willing to hire Mr. Pace for a

> job as it is customarily performed in the open labor market. As he presents, Mr. Pace is unemployable.

Ms. Titterington testified that Claimant was "probably one of the top ten pain focused people I have worked with." Since preparing her report on August 8, 2008, she also had received and reviewed Dr. Garth Russell's deposition, Employer's records, Dr. Abrams' evaluation of 2-21-09 and Dr. Koprivica's evaluation of 7-6-09.

Ms. Titterington testified that Claimant indicated he was easily angered, easily upset, had trouble concentrating, had trouble comprehending things and believed he was severely depressed and in need of treatment. His wife had taken over handling the family finances, and he did not get along with strangers. She noted he had difficulty with activities of daily living including washing himself, bathing, grooming, and trimming his toenails. He had trouble sleeping even with sleep medications. He primarily does very sedentary activities-watching television, reading and looking out the window.

Ms. Titterington testified that based upon the tests she administered to Claimant, his scores were consistent with someone with a 91 IQ and below average.

Ms. Titterington testified: ". . . I think it's very clear that he's [Claimant's] unemployable. He's on a great deal of narcotic pain medications, he is having sleep deprivation, he is extremely pain focused." (Titterington deposition, p. 22). She noted that although Dr. McCormick put Claimant to sedentary work, Dr. Koprivica, Dr. Abrams, Dr. Russell and Dr. Cathcart all conclude that Claimant is unemployable. She also testified: ". . . there is no expectation that an employer would be willing to hire him for any job as is customarily performed in the open labor market." (Titterington deposition, p. 22).

Ms. Titterington further testified (pp. 22-23):

> He would not interview well. You know, in an interview I think they would have concerns just about his safety on the work force, which is difficulties rising, with his difficulty walking, his slow work speed -- and not slow work speed, slow walking speed, you know, he would not make a good impression in an interview, and I don't think he would either be hired or he would be employable as he would not meet the basis requirements of work.
>
> He would have difficulty getting there on a daily basis, which he did have during his last couple years of work. He would have trouble meeting production goals, which he did during his last couple years of work with the City, and he would have trouble, basically,

with his irritability and his pain focus. He would have trouble getting along with co-workers, supervisors and any customers if there were some.

So my opinion, professional opinion, and based on what I've documented, he is unemployable in the open labor market.

Q. Okay. And are those opinions given within a reasonable degree of vocational certainty?

A. Yes.

Ms. Titterington was asked the following questions and gave the following answers (pp. 29-30):

Q. Did you -- let me back up. From your other prior testimony that I've been involved in with you, you are not apportioning the disability to any one of four or so work-related injuries or non work-related injuries?

A. That's correct.

Q. You're just saying overall he is unemployable?

A. Right.

Q. And that's as he stands from work-related injuries, non work-related injuries, personal medical problems, everything?

A. Right.

Ms. Titterington said that she absolutely did not think that at this time Claimant was a candidate for voc-rehab (p. 34).

Exhibit 4 contains personnel records of Employer pertaining to Claimant. Exhibit 4 includes a February 4, 2005 letter from Employer to Claimant. The letter states that Claimant was terminated as of February 7, 2005 for performance detailed in the letter that demonstrated "a pattern of inefficiency, incompetence, nonfeasance, and misfeasance that is unacceptable." The letter references Claimant initiating too few cases. The letter also references Claimant authorizing payment for demolition of a building prior to receipt of landfill receipts documenting that asbestos had been properly disposed of. The letter also references that Claimant had failed to initiate the demolition of a building for two months

after September 7, 2004 consent of the owners. The letter also references Claimant having mailed a letter to an owner that improperly included internal comments.

Exhibits F, G, H, I, J and K include medical billing records relating to Claimant.

Rulings of Law

Based on a comprehensive review of the substantial and competent evidence, the stipulations of the parties, and my personal observations of Claimant at the hearing, I make the following Rulings of Law:

Accident

Section 287.020, RSMo[2], provides in part:

> 2. The word **'accident'** as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.
>
> 3. (1) In this chapter the term **'injury'** is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

[2] All statutory references are to the Revised Statutes of Missouri 2000, unless otherwise noted. See *Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo.App. 2007) where the Eastern District Court of Appeals held that the 2005 amendments to Sections 287.020, RSMo and 287.067, RSMo do not apply retroactively. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc.*, 20 S.W.3d 579, 585-86 (Mo.App. 2000).

> (2) An injury shall be deemed to arise out of and in the course of the employment only if:
>
> (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and
>
> (b) It can be seen to have followed as a natural incident of the work; and
>
> (c) It can be fairly traced to the employment as a proximate cause; and
>
> (d) 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 normal nonemployment life;

Section 287.020.2, RSMo provides: "Any reference to the employer shall also include his or her insurer or group self-insurer."

Prior to August 28, 2005, Section 287.800, RSMo provided in part: "Law to be liberally construed.—All of the provisions of this chapter shall be liberally construed with a view to the public welfare. . . ." The fundamental purpose of the Workers' Compensation Law is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted with a view to the public interest, and is intended to extend its benefits to the largest possible class. Any doubt as to the right of an employee to compensation should be resolved in favor of the injured employee. *West v. Posten Const. Co.*, 804 S.W.2d 743, 745-46 (Mo. 1991) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 224 (Mo. banc 2003)[3]. Although all doubts should be resolved in favor of the employee and coverage in a workers' compensation proceeding, if an essential element of the claim is lacking, it must fail. *Thorsen v. Sachs Elec. Co.*, 52 S.W.3d 616, 618 (Mo.App.2001); *White v. Henderson Implement Co.*, 879 S.W.2d 575, 579 (Mo.App. 1994).

The claimant in a workers' compensation proceeding has the burden of proving all elements of the claim to a reasonable probability. *Cardwell v. Treasurer of State of*

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[3] Several cases are cited herein that were among many overruled by *Hampton* on an unrelated issue (***Id.*** at 224-32). Such cases do not otherwise conflict with *Hampton* and are cited for legal principles unaffected thereby; thus *Hampton*'s effect thereon will not be further noted.

Missouri, 249 S.W.3d 902, 912 (Mo.App. 2008); *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App. 1997).

The employee must establish a causal connection between the accident and the claimed injuries. *Thorsen*, 52 S.W.3d at 618; *Williams v. DePaul Ctr*, 996 S.W.2d 619, 625 (Mo.App. 1999); *Fisher v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App 1990). Section 287.020.2, RSMo requires that the injury be "clearly work related" for it to be compensable. An injury is clearly work related, "if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor." *Kasl v. Bristol Care, Inc*., 984 S.W.2d 852 (Mo. 1999). Injuries that are triggered or precipitated by work may nevertheless be compensable if the work is found to be a "substantial factor" in causing the injury. *Kasl*, 984 S.W.2d at 853; *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App 1998). A substantial factor does not have to be the primary or most significant causative factor. *Bloss v. Plastic Enterprises*, 32 S.W.3d 666, 671 (Mo.App 2000); *Cahall*, 963 S.W.2d at 372.

An accident may be both a triggering event and a substantial factor in causing an injury. *Bloss*, 32 S.W.3d at 671. Further, there is no “bright-line test or minimum percentage set out in the Workers’ Compensation Law defining ‘substantial factor.’” *Cahall*, 963 S.W.2d at 372. The claimant in a workers' compensation case has the burden to prove all essential elements of his or her claim, *Royal v. Advantica Restaurant Group, Inc*., 194 S.W. 3d 371, 376 (Mo.App 2006), (citing *Cook v. St. Mary's Hosp.*, 939 S.W.2d 934, 940 (Mo.App. 1997)); *Fischer v. Arch Diocese of St. Louis-Cardinal Ritter Inst.,* 793 S.W.2d 195, 198 (Mo.App. 1990); *Griggs vs. A.B. Chance Co.*, 503 S.W.2d 697, 705 (Mo.App. 1973), including "a causal connection between the injury and the job." *Royal*, 194 S.W. 3d at 376, (citing *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 631 (Mo.App. 1999)).

“Under Missouri Workers' Compensation law, a psychological injury allegedly caused by a physical injury is clearly work-related *if* the claimant's work was a *substantial factor* in the cause of the psychological disorder, but an injury is not compensable merely because work was a triggering or precipitating factor. *See* § 287.020.2 (R.S.Mo.2000).” *Royal*, 194 S.W.3d at 376.

The quantum of proof is reasonable probability. *Thorsen*, 52 S.W.3d at 620; *Downing v. Willamette Industries, Inc*., 895 S.W.2d 650, 655 (Mo.App. 1995); *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 199 (Mo.App. 1990). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Thorsen*, 52 S.W.3d at 620; *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App 1986); *Fischer*, 793 S.W.2d at 198. Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A. B.*

Chance Company, 503 S.W.2d 697, 703 (Mo.App. 1974). Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo.App. 1992). "Medical causation of injuries which are not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Thorsen*, 52 S.W.3d at 618; *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App 1991). Compensation is appropriate as long the performance of usual and customary duties led to a breakdown or a change in pathology. *Bennett v. Columbia Health Care*, 134 S.W.3d 84, 87 (Mo.App. 2004).

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelley v. Banta & Stude Constr. Co. Inc*., 1 S.W.3d 43, 48 (Mo.App. 1999); *Webber v. Chrysler Corp*., 826 S.W.2d 51, 54 (Mo.App. 1992), 29; *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 162 (Mo.App. 1986). The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const*., 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith*, 182 S.W.3d at 701; *Bowers v. Hiland Dairy Co*., 132 S.W.3d 260, 263 (Mo.App. 2004). The testimony of Claimant or other lay witnesses as to facts within the realm of lay understanding can constitute substantial evidence of the nature, cause, and extent of disability when taken in connection with or where supported by some medical evidence. *Pruteanu v. Electro Core, Inc*., 847 S.W.2d 203, 206 (Mo.App. 1993), 29; *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 367 (Mo.App 1992); *Fischer*, 793 S.W.2d at 199. The trier of facts may also disbelieve the testimony of a witness even if no contradictory or impeaching testimony appears. *Hutchinson, 721 S.W.2d* at 161-2; *Barrett v. Bentzinger Brothers, Inc*., 595 S.W.2d 441, 443 (Mo.App. 1980). The testimony of the employee may be believed or disbelieved even if uncontradicted. *Weeks v. Maple Lawn Nursing Home*, 848 S.W.2d 515, 516 (Mo.App. 1993).

In *Manley v. American Packing Co.*, 363 Mo. 744, 253 S.W.2d 165 (Mo.1952), the Missouri Supreme Court stated at 169:

> 'The chain of causation means the original force and every subsequent force which it puts in motion. If an accident causes an injury and that injury moves forward step by step, causing a series of other injuries, each injury accounting for the one following until the final result is reached, the accident which set the first injury or force in motion is responsible for the final result. It is immaterial that the final result might not ordinarily be expected. It is enough if the injury in a given

> case did produce the final injury or death.' Schneider on Workmen's Compensation, Vol. 6, p. 53, and cases cited in footnotes.
>
> 'Thus injuries which follow as legitimate consequences of the original accident are compensable, and such accident need not have been the sole or direct cause of the condition complained of, it being sufficient if it is an efficient, exciting, superinducing, concurring, or contributing cause; thus it is immaterial whether or not a disability results directly from the injury or from a condition resulting from the injury. So, also, if the resultant disability is directly traceable to the original accident, the intervention of other and aggravating causes by which the disability is increased will not bar recovery. The inquiry as to whether the result is the natural and probable, or a normal or abnormal one, is immaterial.' 71 C.J., § 390, pp. 635-636.

The *Manley* court held at 170:

> The evidence in this case warranted the Commission in finding that the injuries sustained by Manley in the automobile accident seriously weakened and impaired the use of his right knee, rendering him unstable in walking and, without warning, frequently causing him to fall; that his fall in the orchard while walking on level, unplowed grassland, was due to the weakened and injured knee rather than to some external force; and that the fatal embolism which followed was, in fact, the culmination of a series of injuries, beginning with the original, each in sequence thereafter being the result of the one immediately preceding. The award is supported by competent and substantial evidence.

The court in *Lawson v. Lawson*, 415 S.W.2d 313 (Mo.App. 1967) states at 321:

> Furthermore, employer's-insurer's point under discussion completely ignores the obtruding question as to whether or not such disability as may have resulted from claimant's subsequent fall on crutches was a compensable consequence of the accident of August 13. 'An injury following a second incident or accident may . . . be the legitimate consequence of the first accident if it results from or is contributed to by a condition brought about by the first accident. Whether this is so is also a question of fact for the Commission, to be determined from all the facts and circumstances in the case.' Oertel v. John D. Streett & Co., Mo.App., 285 S.W.2d 87, 97(2). Otherwise stated, "injuries which follow as legitimate consequences of the original accident are

> compensable, and such accident need not have been the sole or direct cause of the condition complained of, it being sufficient if it is an efficient, exciting, superinducing, concurring, or contributing cause; thus it is immaterial whether or not a disability results directly from the injury or from a condition resulting from the injury." Manley v. American Packing Co., 363 Mo. 744, 749, 253 S.W.2d 165, 169(3). See Wilson v. Emery Bird Thayer Co., Mo.App., 403 S.W.2d 953, 958(7, 8); 1 Larson, Workmen's Compensation Law, ss 13.00 to 13.12, incl., pp. 192.59 to 192.77, incl.

The court in *Wilson v. Emery Bird Thayer Co.*, 403 S.W.2d 953 (Mo.App. 1966) states at 958:

> It is a well established rule in workmen's compensation law that 'injuries which follow as legitimate consequences of the original accident are compensable, and such accident need not have been the sole or direct cause of the condition complained of, it being sufficient if it is an efficient, exciting, superinducing, concurring, or contributing cause'. Manley v. American Packing Co., 363 Mo. 744, 253 S.W.2d 165. As stated in 1 Larson, Workmen's Compensation Law, Sec. 13.11, p. 192.59: 'When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct'. Thus, 'Where, without the fault of the employee, his original compensable injury is aggravated by medical or surgical treatment, there is such a causal connection between the original injury and the resulting disability or death as to make them compensable * * *.' 99 C.J.S. Workmen's Compensation s 207, p. 670, citing Schumacher v. Leslie, Mo.Sup., 232 S.W.2d 913, (cited and relied upon by appellants).

The court in *Lahue v. Missouri State Treasurer*, 820 S.W.2d 561 (Mo.App. 1991) states at 562-63:

> The ankle injury sustained while at work and the hip and low back injury sustained nine days later while receiving treatment for the ankle injury constituted a single injury in the workers compensation vocabulary. By the application of this principle claimant was found to be 100 per cent "work disabled", and was awarded 100 percent permanent partial disability in Kansas. Citing *Reece v. Gas Engineering and Construction Company,* 219 Kan. 536, 548 P.2d 746

(1976), the Kansas Administrative Law Judge wrote:

> The law is well settled, that where a claimant sustains an injury arising out of and in the course of her employment, every natural consequence that flows from the injury, including a distinct disability in another area of the body is compensable as a direct and natural result of the primary or original injury.
>
> The same rule is recognized in Missouri. Injuries sustained during authorized medical treatment of a prior compensable injury are the natural and probable consequence of the compensable injury and the employer is liable for all resulting disability. *See Manley v. American Packing Co.,* 363 Mo. 744, 253 S.W.2d 165 (1952); *Wilson v. Emery Bird Thayer Co.,* 403 S.W.2d 953 (Mo.App.1966); *Wilson v. Metropolitan Life Ins. Co.,* 448 S.W.2d 295 (Mo.App.1969); 1 K. Larson, Workers' Compensation Law § 13.11 (Rev.1990).
>
> The fall from the chair was a part of the same injury as the ankle injury, and was therefore not a "subsequent injury" added to a "previous disability." In order to be a "subsequent injury," entitling the victim to compensation from the Missouri Second Injury Fund, the fall from the chair must have been shown to be a separate and distinct injury from the ankle injury. This was not the case.

In *Cahall v. Riddle Trucking, Inc.*, 956 S.W.2d 315 (Mo.App. 1997), the court states at 322:

> Where an employee sustains an injury arising out of and in the course of his employment, every natural consequence that flows from the injury, including a distinct disability in another area of the body, is compensable as a direct and natural result of the primary or original injury. *Lahue v. Missouri State Treasurer*, 820 S.W.2d 561, 563[2] (Mo.App. W.D.1991). Every natural consequence that flows from the injury likewise arises out of employment, unless it is the result of an independent intervening cause attributable to the employee's own intentional conduct. *Wilson v. Emery Bird Thayer Company*, 403 S.W.2d 953, 958 (Mo.App.1966). So, if the resultant disability is directly traceable to the original accident, the intervention of other causes by which the disability is increased will not bar recovery. *Manley v. American Packing Co.*, 363 Mo. 744, 253 S.W.2d 165, 169 (1952).

Based on the competent and substantial evidence and the application of The Missouri Workers' Compensation Law, I find that Claimant sustained injuries by accident on December 9, 2002 which arose out of and in the course of his employment for Employer, and that Claimant's injuries were clearly work related, and that his December 9, 2002 accident was a substantial factor in causing both the resulting medical condition and disability.

I find the accident December 9, 2002 accident resulted in Claimant's right knee to become weak and unstable, and caused his right knee to give out on him at times. I find his right knee gave out on him on November 2, 2004 and on December 10, 2004 because of the December 9, 2002 accident, and that Claimant sustained additional injuries on November 2, 2004 and December 10, 2004 in the course of his employment for Employer. I find that the injuries Claimant sustained on December 9, 2002, November 2, 2004, and December 10, 2004 resulted in permanent and total disability, and that Claimant's resultant permanent total disability is directly traceable to his December 9, 2002 accident. I find that the injuries Claimant sustained on November 2, 2004 and December 10, 2004 followed as natural and legitimate consequences of the original accident on December 9, 2002. I find the falls on November 2, 2004 and December 10, 2004 were not separate and distinct injuries from the December 9, 2002 injury.

I find that Claimant has met his burden to prove that he sustained an injury that was clearly work related, and that his work for Employer was a substantial factor in causing injury to his right lower extremity, back, left shoulder, right and left wrists, depression, and chronic pain, and resulting disability. I find that Claimant sustained a compensable accident on December 9, 2002 that resulted in injury to his right lower extremity, back, left shoulder, right and left wrists, and depression and chronic pain, and the need for medical treatment for that injury, and in permanent total disability. I also find that Claimant's injury on December 9, 2002 in and of itself rendered Claimant permanently and totally disabled. I find that Claimant is not able to compete in the open labor market.

These findings and conclusions are supported by the following.

The evidence is undisputed, and I find that Claimant injured his right knee by accident while working in the course and scope of his employment for Employer when his right foot lodged in a hole in the floor of a building, and he twisted and fell, on December 9, 2002. I believe Claimant's description of the accident. Employer offered no convincing evidence to contradict Claimant's testimony. The medical treatment records contain histories that are consistent with Claimant's description of the accident and provide persuasive evidence that Claimant sustained this accidental injury while working for Employer. Claimant eventually had knee surgery in 2003, and was hospitalized with a blood clot shortly after his surgery. Employer/Insurer paid medical expenses in the

amount of $34,592.05 and paid temporary disability benefits to Claimant in the amount $8,078.73 relating to his December 9, 2002 accident.

Claimant testified he always had problems walking after the December 2002 accident. Walking causes high pain levels. He testified the pain has been so sharp at times, his leg has gone out and he has ended up falling. I believe this testimony.

Dr. Dean examined Claimant on July 25, 2003 and noted Claimant's right knee had some instability. Claimant saw Dr. Smith on June 14, 2004 for his right knee. Dr. Smith's note states: "I think this man has an RSD."

The evidence is undisputed, and I find that Claimant injured his right knee and low back by accident while working in the course and scope of his employment for Employer when he had pain in his right leg, and he spun and twisted on November 2, 2004. Claimant testified he injured his right knee and low back on November 2, 2004 while at work when he had pain in his right leg, and he spun and twisted. Claimant's Injury Report dated November 5, 2004 in Dr. Cathcart's records regarding the November 2, 2004 injury recites in part: "My right leg gave out and I was falling backwards and I twisted to avoid hitting the floor and maintain my balance. The pain in my back and leg was immediate. . . ." I believe Claimant's description of the accident. Employer offered no convincing evidence to contradict Claimant's testimony.

Dr. Cathcart's note dated November 5, 2004 states Claimant injured his low back and left groin "*when his leg gave out* and he fell straining his back" on November 2, 2004. (Emphasis added.) Dr. Cathcart diagnosed lumbosacral strain. The medical treatment record contains a history that is consistent with Claimant's description of the accident and provides persuasive evidence that Claimant sustained this accidental injury while working for Employer.

The evidence is undisputed, and I find that Claimant sustained injuries by accident while working in the course and scope of his employment for Employer when he had a hard stabbing pain in his right leg, his leg went out on December 10, 2004, and he fell down stairs. Claimant testified that on December 10, 2004, while at work, he had a hard stabbing pain in his right leg and his leg went out. He fell down the stairs and landed on his left elbow and left hip. He felt pain in his left elbow, left arm, left hip and back. I believe Claimant's description of the accident. Employer offered no convincing evidence to contradict Claimant's testimony.

Dr. Cathcart's December 10, 2004 office note states in part: "The patient . . . was walking down some stairs to the courthouse and fell, *his right leg giving out from another injury (RSD)."* (Emphasis added.) Dr. Cathcart has noted that Claimant's right leg continued to periodically give out on him. The medical treatment record contains a

history that is consistent with Claimant's description of the accident and provides persuasive evidence that Claimant sustained this accidental injury while working for Employer.

The evidence is undisputed, and I find that Claimant sustained an accident that caused soreness to Claimant's back and right leg while working in the course and scope of his employment for Employer when a dog jumped up and hit Claimant on the back on December 17, 2004. I believe Claimant's description of the accident. Employer offered no convincing evidence to contradict Claimant's testimony.

I find Claimant did not sustain any significant injury from the April 26, 2004, May 2, 2004, December 17, 2004 or December 21, 2004 incidents. Claimant continued to work after those events and was paid no temporary disability relating to those incidents. He received little or no medical treatment as a result of those incidents. Claimant's complaints relating to those incidents resolved soon after they occurred. I do not find Dr. Koprivica's ratings relating to the December 17, 2004 or December 21, 2004 incidents to be credible. His ratings are not consistent with the treatment records or Claimant's description of his complaints and limitations following these events. No other doctor assigned any disability specifically to the December 17, 2004 accident.

Dr. Cathcart and Dr. Smith treated Claimant and felt Claimant had RSD.

Dr. Russell stated, "It is my opinion that the patient's injury to his right knee is consistent with the fall that he describes on December 9, 2002." He also stated:

> He, by history, fell upon several occasions, but the two major ones occurred when he fell down marble steps in November of 2004. He sustained additional injury to his back and to his shoulders. This fall is consistent with a patient who has dysfunction of his right knee with pain the right lower extremity. In addition, the muscles were atrophied secondary to the fact that he used ambulatory support, i.e., cane or crutch when walking. In addition, the consumption of the medication which he was taking would cause some dizziness and loss of balance.

Dr. Russell concluded Claimant has complex regional pain syndrome. Dr. Russell testified within a reasonable degree of medical certainty: "Well, it's my opinion that the initial injury of December 9, 2002 caused the injury to his knee with the subsequent complex regional pain syndrome requiring medication and treatment and the deep vein thrombosis. His knee then buckled, was not trustworthy, caused him to fall these multiple times which, so it, it all relates back to that one injury." Dr. Russell testified that Claimant's complex regional pain syndrome (which is another term for reflex sympathetic

dystrophy) "was secondary to the injury that he had on December the 9th of 2002 which resulted in the surgical intervention of January the 10th of 2003." I find these opinions to be credible.

Dr. Russell testified that another diagnosis was a tear of Claimant's rotator cuff of the left shoulder with additional injury to his lower back due to a fall on December 10, 2004. I find this opinion to be credible.

Dr. Russell did not attribute any of Claimant's left shoulder injury to Claimant reaching up and adjusting himself in the city truck when he felt the pop in his shoulder. I find this opinion to be credible. I do not find credible Dr. Koprivica's opinion that Claimant sustained 10% permanent partial disability to the left upper extremity at the level of the shoulder (232 week level) for this event. Claimant testified he felt movement after his shoulder popped and the pain got better after an hour or two. Dr. Cathcart's December 20, 2004 note states Claimant has virtually no tenderness over the rotator cuff region, and had more active range of motion after he felt his left shoulder pop.

Dr. Russell testified that Claimant has a reactive depression, chronic, severe, which is a known complication of the treatment that Claimant is receiving for his complex regional pain syndrome. He stated Claimant's chronic reactive depression was secondary to his treatment required for the multiple injuries which he had received. I find these opinions to be credible.

Dr. Russell stated Claimant's acute and chronic lumbar strain was due to the fall that occurred on the marble steps in the City Hall of St. Joseph, Missouri which caused the pain in his lower back. He stated the lumbar strain was permanent and would interfere with Claimant's ability to pursue gainful employment. I find these opinions to be credible.

Dr. Abrams diagnosed complex regional pain syndrome of Claimant's right lower extremity secondary to his injury of December 9, 2002, and his arthroscopic surgery on January 10th, 2003 "which was natural consequence of a tear of the medial meniscus of the right knee with contusion of the under surface of the patella." Dr. Abrams concluded, "a consequence of this he had a deep vein thrombosis, January 16th, 2003 with development of complex regional pain syndrome 1." He also stated Claimant has depression which is chronic due to pain and Claimant also has chronic constipation. I find these opinions to be credible.

Dr. Abrams also concluded that Claimant "has also as a consequence, acute and chronic low back pain with degenerative disc disease due to a fall November 2nd, 2004 and a tear of the rotator cuff of the left shoulder due to a fall December 10th, 2004."

Dr. Abrams testified:

> I felt that his Complex Regional Pain Syndrome was secondary to his injury of December 9, 2002, the arthroscopic surgery of January 10th, 2003, and contributed to by his deep vein thrombosis identified January 16th, 2003, which is not uncommon with arthroscopic surgery of the knee so it's a natural consequence of that.
>
> I thought that he had acute and chronic low back pain due to a fall and, you know, also somewhat of his altered state and that he had a tear of his rotator cuff left shoulder due to a fall December 10th, 2004, and his other two diagnoses, depression and constipation were natural consequence of his -- of his illness.

I find these opinions of Dr. Abrams to be credible.

I believe and find that Claimant has complex regional pain syndrome of his right lower extremity, chronic low back pain, left shoulder rotator cuff tear, and reactive depression, and that Claimant's accident on December 9, 2002 was a substantial factor in causing these conditions.

I find these opinions of Dr. Russell and Dr. Abrams to be credible regarding Claimant's condition and causation. I find their opinions that Claimant has complex regional pain syndrome are more persuasive than the opinion of Dr. Koprivica that Claimant does not have complex regional pain syndrome. Dr. Russell and Dr. Abrams are highly qualified experts. Dr. Abrams is experienced in pain problems and complex regional pain syndrome 1 (RSD), and has seen and treated hundreds of cases. He is Clinical Professor of Neurology at the University of Missouri, School of Medicine, at Kansas City and is Board Certified in Neurology. He has written extensively in the field. Dr. Russell is Clinical Associate Professor of Orthopedic Surgery at the University of Missouri, School of Medicine in Columbia, and has been since 1970. He is Board Certified in Orthopedic Surgery. He treats patients with knee and back injuries.

Nature and extent of disability

The determination of the degree of disability sustained by an injured employee is not strictly a medical question. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 284 (Mo.App. 1997); *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 908 (Mo.App. 2008); *Sellers v. Trans World Airlines, Inc.*, 776 S.W.2d 502, 505 (Mo.App. 1989). While the nature of the injury and its severity and permanence are medical questions, the impact that the injury has upon the employee's ability to work involves factors, which are both medical and nonmedical. Accordingly, the Courts have repeatedly

held that the extent and percentage of disability sustained by an injured employee is a finding of fact within the special province of the Commission. *Sharp v. New Mac Elec. Co-op*, 92 S.W.3d 351, 354 (Mo.App. 2003); *Elliott v. Kansas City, Mo., School District*, 71 S.W.3d 652, 656 (Mo.App. 2002); *Sellers*, 776 S.W.2d at 505; *Quinlan v. Incarnate Word Hospital*, 714 S.W.2d 237, 238 (Mo. App. 1985); *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983); *Barrett v. Bentzinger Bros.*, 595 S.W.2d 441, 443 (Mo.App. 1980); *McAdams v. Seven-Up Bottling Works*, 429 S.W.2d 284, 289 (Mo.App. 1968). The fact-finding body is not bound by or restricted to the specific percentages of disability suggested or stated by the medical experts. *Cardwell*, 249 S.W.3d at 908; *Lane v. G & M Statuary, Inc.*, 156 S.W.3d 498, 505 (Mo.App. 2005); *Sharp*, 92 S.W.3d at 354; *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 885 (Mo.App. 2001); *Landers*, 963 S.W.2d at 284; *Sellers*, 776 S.W.2d at 505; *Quinlan*, 714 S.W.2d at 238; *Banner*, 663 S.W.2d at 773. It may also consider the testimony of the employee and other lay witnesses and draw reasonable inferences in arriving at the percentage of disability. *Cardwell*, 249 S.W.3d at 908; *Fogelsong v. Banquet Foods Corporation*, 526 S.W.2d 886, 892 (Mo.App. 1975).

The finding of disability may exceed the percentage testified to by the medical experts. *Quinlan*, 714 S.W.2d at 238; *McAdams*, 429 S.W.2d at 289. The Commission "is free to find a disability rating higher or lower than that expressed in medical testimony." *Jones v. Jefferson City School Dist.*, 801 S.W.2d 486, 490 (Mo.App. 1990); *Sellers*, 776 S.W.2d at 505. The Court in *Sellers* noted that "[t]his is due to the fact that determination of the degree of disability is not solely a medical question. The nature and permanence of the injury is a medical question, however, 'the impact of that injury upon the employee's ability to work involves considerations which are not exclusively medical in nature.'" *Sellers*, 776 S.W.2d at 505. The uncontradicted testimony of a medical expert concerning the extent of disability may even be disbelieved. *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658 (Mo.App. 1995); *Jones*, 801 S.W.2d at 490.

Section 287.020.7, RSMo provides: "The term 'total disability' as used in this chapter shall mean 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 phrase "inability to return to any employment" has been interpreted as "the inability of the employee to perform the usual duties of the employment under consideration in the manner that such duties are customarily performed by the average person engaged in such employment." *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922 (Mo.App. 1982). The test for permanent total disability is whether, given the employee's situation and condition, he or she is competent to compete in the open labor market. *Knisley*, 211 S.W.3d at 635; *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 884 (Mo.App. 2001); *Reiner v. Treasurer of the State of Mo.*, 837 S.W.2d 363, 367 (Mo.App.1992); *Lawrence v. Joplin R-VIII School Dist.*, 834 S.W.2d 789, 792 (Mo.App. 1992).

Total disability means the "inability to return to any reasonable or normal employment." *Lawrence*, 834 S.W.2d at 792; *Brown v. Treasurer of Missouri*, 795 S.W.2d 479, 483 (Mo.App.1990); *Kowalski*, 631 S.W.2d at 992. An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Gordon v. Tri-State Motor Transit Co*., 908 S.W.2d 849, 853 (Mo.App. 1995); *Brown*, 795 S.W.2d at 483. The key question is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person's present physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Knisley*, 211 S.W.3d at 635; *Brown*, 795 S.W.2d at 483; *Reiner*, 837 S.W.2d at 367; *Kowalski*, 631 S.W.2d at 922. See also *Thornton v. Hass Bakery*, 858 S.W. 2d 831, 834 (Mo.App. 1993).

Claimant has continued to have significant pain complaints since his December 9, 2002 accident. Claimant takes medication daily for pain. His right leg pain is always with him. He sees Dr. Baade every three months for management of his pain medication. Claimant's activities are very limited. He no longer participates in hobbies. He has difficulty sleeping. He spends much of his day in a recliner. He has trouble walking.

Claimant's wife and son corroborate Claimant's testimony regarding his limitations and activities. I find Claimant's testimony about his complaints and limitations to be credible.

Claimant has had extensive pain management treatment since 2003 that continues. Treatment records document diagnoses of chronic pain continuing into 2010.

Dr. Abrams stated the left shoulder, the knee, the Complex Regional Pain Syndrome, the depression, the low back, all of those things combined to make Claimant totally disabled.

Dr. Abrams stated Claimant is, with reasonable medical certainty, permanently and totally disabled by virtue of his chronic pain due to CRPS1, his left rotator cuff tear, his bilateral carpal tunnel syndrome, and his degenerative spondylosis of the lumbar spine.

Dr. Abrams: "My opinion is that he is unable to perform any occupation." He stated:

> Q. And if I understand you correctly, you indicated that he was permanently and totally disability from all the various injuries he has?
>
> A. Yes.

Dr. Abrams also stated:

> Q. And that's when you take them together and not individually; for example, the torn meniscus doesn't make him totally disabled?
>
> A. No, but a good deal of his problems come from the torn meniscus because of the pain in the knee for multiple medications which sort of obtund him, sort of rendered him less mentally sharp. So a lot of it is that, but when you take the additive of his low back pain and hands and his left shoulder, they really add up.
>
> Q. So it's when you add all of them together, the left shoulder, the knee, the Complex Regional Pain Syndrome, the depression, the low back, all of those things combined to make him totally disabled?
>
> A. Yes.

It is also Dr. Abrams' opinion that Claimant is unable to perform any occupation. I find these opinions of Dr. Abrams to be credible.

Dr. Cathcart also stated Claimant is permanently and totally incapacitated to the extent that he will be unable to perform his duties as an employee and that such disability directly resulted from his knee injury. I find this opinion to be credible.

Dr. Russell testified Claimant was "total and completely physically disabled from gainful employment or from function of his body in the future." (Russell deposition pp. 52-53).

Dr. Russell was asked whether Claimant's chronic reactive depression is related in any way to the December 9, 2002 fall and the injuries he sustained as a result of that fall. He answered (p. 54):

> It's my opinion, that the injury to his right knee was secondary to the fall in 2002 which left him with an unstable knee with multiple falls injuring his back in 2004, his left shoulder and his complex regional pain syndrome which required medication which rendered him 100%, which rendered him based upon the second injury phenomena to be 100% physically impaired.

I find these opinions of Dr. Russell to be credible.

Dr. Koprivica stated Claimant is permanently totally disabled. He concluded Claimant's permanent total disability was from combining all of the disabling conditions

that pre-dated December 17, 2004 with the additional disability attributable to the December 17, 2004, injury. I do not find this opinion of Dr. Koprivica to be credible. As discussed previously, I believe and have found that Claimant's permanent and total disability resulted from Claimant's December 9, 2002 accident considered alone and in isolation. I have found that the injuries Claimant sustained on November 2, 2004 and December 10, 2004 followed as natural and legitimate consequences of the original accident on December 9, 2002, and that the December 9, 2002 accident resulted in injury to Claimant's right lower extremity, back, left shoulder, right and left wrists, and depression and chronic pain, and in permanent total disability. Further, Claimant's complaints relating to the December 17, 2004 incident resolved soon after it occurred. His rating of 15% permanent partial disability to the body as a whole for the December 17, 2004 incident is not consistent with the treatment records or Claimant's description of his complaints and limitations following that event. I find Claimant did not sustain any permanent partial disability relating solely to the December 17, 2004 accident.

Mary Titterington testified: ". . . I think it's very clear that he's [Claimant's] unemployable. He's on a great deal of narcotic pain medications, he is having sleep deprivation, he is extremely pain focused." (Titterington deposition, p. 22). She noted that although Dr. McCormick put Claimant to sedentary work, Dr. Koprivica, Dr. Abrams, Dr. Russell and Dr. Cathcart all conclude that Claimant is unemployable. She also testified: ". . . there is no expectation that an employer would be willing to hire him for any job as is customarily performed in the open labor market." (Titterington deposition, p. 22). Ms. Titterington felt Claimant "is unemployable in the open labor market." (Titterington deposition, p. 23.) I find these opinions of Ms. Titterington to be credible.

Claimant was working full-time without limitations or restrictions prior to his December 9, 2009 accident. He was active away from work and participated in numerous hobbies with his family before that accident. Claimant's condition worsen progressively as he continued to work in 2003 and 2004. He received ongoing treatment for his pain complaints. He had significant difficulty performing his required job duties until he was no longer able to properly perform his job and was terminated.

I find the opinions of Dr. Russell, Dr. Abrams, Dr. Cathcart, and Dr. Koprivica that Claimant is permanently and totally disabled to be persuasive and credible. I find the opinion of Mary Titterington that Claimant is not employable on the labor market to be persuasive and credible. I find that Claimant is not able to be employed on the open labor market because of his complaints and limitations, and that he is permanently and totally disabled because of his December 9, 2002 accidental injury. I find that Claimant's injury on December 9, 2002 in and of itself rendered Claimant permanently and totally disabled.

The court in *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902 (Mo.App. 2008), stated at 910:

> After reaching the point where no further progress is expected, it can be determined whether there is either permanent partial or permanent total disability and benefits may be awarded based on that determination. One cannot determine the level of permanent disability associated with an injury until it reaches a point where it will no longer improve with medical treatment. Furthermore, an employers' liability for permanent partial or permanent total disability does not run concurrently with their liability for temporary total disability.
>
> Although the term maximum medical improvement is not included in the statute, the issue of whether any further medical progress can be reached is essential in determining when a disability becomes permanent and thus, when payments for permanent partial or permanent total disability should be calculated.

I find Claimant was not able to compete in the open labor market after his termination on February 5, 2005 because of his December 9, 2002 injury that resulted in his November 2, 2004 and December 10, 2004 accidents. I find that Claimant reached maximum medical improvement on February 5, 2005, and that Claimant's permanent total disability began on February 6, 2005.

Claimant has not worked since he was terminated on February 5, 2005. Dr. Cathcart noted on May 20, 2005 that there was really nothing he could offer Claimant at that point. Dr. Koprivica's July 6, 2009 report notes Claimant was at maximum medical improvement. He did not state the date Claimant reached maximum medical improvement.

I find that Claimant has not been able to work since he was terminated by Employer on February 5, 2005. I find that Claimant's injury reached the point where it no longer improved with additional medical treatment on February 5, 2005, and that Claimant reached maximum medical improvement on February 5, 2005. Claimant has continued to receive medical treatment since February 5, 2005, but the treatment has been palliative. The only surgery Claimant received after February 5, 2005 was carpal tunnel surgery, but that surgery did not materially improve Claimant's condition. It did not make him employable. Claimant's principal complaints since February 5, 2005 have resulted from his chronic right lower extremity pain, lower back pain, and left shoulder pain. Those conditions have not materially changed since February 5, 2005.

I find that on February 6, 2005, Claimant was permanently and totally disabled. I find that since February 6, 2005, Claimant has not been able to compete in the open labor market, and since that time, no employer in the usual course of business would be reasonably expected to hire him in his condition, reasonably expecting him to perform the work for which he is hired.

The parties stipulated the rate of compensation for permanent total disability benefits is $475.22 per week in Claimant's December 9, 2002 case (Injury Number 02-134660.) I award Claimant permanent total disability benefits against Employer in the amount of $475.22 per week beginning on February 6, 2005 in Injury Number 02-134660.

I therefore order and direct Employer to pay to Claimant permanent total disability weekly benefits beginning February 6, 2005, and thereafter, at the rate of $475.22 per week for Claimant's lifetime in Injury Number 02-134660.

No permanent disability benefits are awarded against Employer in Injury Numbers 04-113970, 04-130561, or 04-130584.

Liability of the Second Injury Fund

In deciding whether the fund has any liability, the first determination is the degree of disability from the last injury considered alone. *Landman v. Ice Cream Specialties, Inc*., 107 S.W.3d 240, 248 (Mo. banc 2003); *Hughey v. Chrysler Corp*., 34 S.W.3d 845, 847 (Mo.App. 2000). Accordingly, pre-existing disabilities are irrelevant until the employer's liability for the last injury is determined. If the last injury in and of itself renders the employee permanently and totally disabled, then the fund has no liability and the employer is responsible for the entire amount of compensation. *Landman*, 107 S.W.3d at 248; *Hughey*, 34 S.W.3d at 847.

The court in *Vaught v. Vaughts, Inc.*, 938 S.W.2d 931 (Mo. App. 1997), stated at 939:

> As explained in *Stewart, id.* at 854, § 287.220.1 contemplates that where a partially disabled employee is injured anew and sustains additional disability, the liability of the employer for the new injury "may be at least equal to that provided for permanent total disability." Consequently, teaches *Stewart,* where a partially disabled employee is injured anew and rendered permanently and totally disabled, the first step in ascertaining whether there is liability on the Second Injury Fund is to determine the amount of disability caused by the new accident alone. *Id.* The employer at the time of the new accident is liable for that disability (which may, by itself, be permanent and total).

> *Id.* If the compensation to which the employee is entitled for the new injury is *less* than the compensation for permanent and total disability, then in addition to the compensation from the employer for the new injury, the employee (after receiving the compensation owed by the employer) is entitled to receive from the Second Injury Fund the remainder of the compensation due for permanent and total disability. § 287.220.1

See also Stewart v. Johnson, 398 S.W.2d 850, 854 (Mo.1966).

Because I have found that Claimant's accident on December 9, 2002 in and of itself considered alone rendered him permanently and totally disabled, the Second Injury Fund has no liability. The compensation to which Claimant is entitled for the December 9, 2002 injury is not *less* than the compensation for permanent and total disability. *Vaught*, 938 S.W.2d at 939. All of Claimant's claims against the Second Injury Fund are denied.

Liability for Past Medical Expenses

Claimant is requesting an award of past medical expenses from Employer in the amount of $16,376.26. These expenses are itemized in an attachment to Employee's Brief. The itemized medical expenses sought by Claimant and identified in his Brief are as follows:

PROVIDER	DATE	PURPOSE	CHARGE
Dr. Baade	10.04.05	Pain management	$35.16
Dr. Baade	01.03.06	Pain management	$38.16
Dr. Baade	05.23.06	Pain management	$33.96
Dr. Baade	08.22.06	Pain management	$31.36
Dr. Baade	08.22.06	Pain management	$30.86
Dr. Baade	11.20.06	Pain management	$45.00
Dr. Baade	02.19.07	Pain management	$112.00
Dr. Baade	05.16.07	Pain management	$117.00
Dr. Baade	05.16.07	Pain management	$32.00
Dr. Baade	08.20.07	Pain management	$58.32
Dr. Baade	08.20.07	Pain management	$40.06
Dr. Baade	11.20.07	Pain management	$58.32
Dr. Baade	11.20.07	Pain management	$40.06
Dr. Baade	02.20.08	Pain management	$60.44
Dr. Baade	02.20.08	Pain management	$39.96
Dr. Baade	05.21.08	Pain management	$60.44
Dr. Baade	05.21.08	Pain management	$39.96
Dr. Baade	08.19.08	Pain management	$60.44
Dr. Baade	08.19.08	Pain management	$39.96
Dr. Baade	10.17.08	Pain management	$60.44
Dr. Baade	10.17.08	Pain management	$62.38

PROVIDER	DATE	PURPOSE	CHARGE
Dr. Baade	11.07.08	Pain management	$58.70
Dr. Baade	11.07.08	Pain management	$39.96
Dr. Baade	02.12.09	Pain management	$63.10
Dr. Baade	02.12.09	Pain management	$66.84
Dr. Baade	05.14.09	Pain management	$22.60
Dr. Baade	05.14.09	Pain management	$73.64
Dr. Baade	09.04.09	Pain management	$66.84
Dr. Baade	09.04.09	Pain management	$66.34
Dr. Baade	04.08.10	Pain management	$53.13
Dr. Baade	04.08.10	Pain management	$62.30
CVS Pharmacy	10.21.05	Hydromorphone	$53.46
CVS Pharmacy	03.02.08	Cymbalta	$10.99
Dr. DePriest	01.12.06	Carpal tunnel treatment	$139.00
Dr. DePriest	01.13.06	Carpal tunnel treatment	$183.00
Heartland Hospital	02.06.04	MRI Knee	$1,093.59
Heartland Hospital	05.28.04	Three phase bone scan	$756.50
Heartland Hospital	07.03.04	Ultrasound of legs	$358.67
St. Joseph Imaging Ctr	08.07.06	MRI of left shoulder	$1,997.00
Stevenson Pharmacy	06.01.10	Cymbalta, Senna, Trazadone, Cyclobenzaprine	$169.61
Stevenson Pharmacy	05.07.10	Hydromorphone	$150.37
Stevenson Pharmacy	05.04.10	Cymbalta, Senna, Cyclobenzaprine, Trazadone	$170.41
Stevenson Pharmacy	04.13.10	Hydromorphone	$150.37
Stevenson Pharmacy	04.06.10	Cymbalta, Senna, Cyclobenzaprine, Trazadone	$170.41
Stevenson Pharmacy	03.11.10	Hydromorphone	$150.37
Stevenson Pharmacy	03.05.10	Senna, Cyclobenzaprine, Trazadone, Cymbalta	$170.41
Stevenson Pharmacy	02.10.10	Hydromorphone	$150.37
Stevenson Pharmacy	02.08.10	Cycolobenzaprine, Trazadone, Senna, Cymbalta	$170.41
Stevenson Pharmacy	01.11.10	Hydromorphone	$150.37
Stevenson Pharmacy	01.08.10	Hydromorphone	$21.74
Stevenson Pharmacy	01.05.10	Senna, Cyclobenzaprine, Trazadone, Cymbalta	$172.66
Stevenson Pharmacy	12.23.09	Hydromorphone	$91.00
Stevenson Pharmacy	12.08.09	Senna, Cyclobenzaprine, Trazadone, Cymbalta	$172.66
Stevenson Pharmacy	11.27.09	Hydromorphone	$150.37
Stevenson Pharmacy	11.20.09	Senna	$14.98
Stevenson Pharmacy	11.02.09	Senna, Cyclobenzaprine, Trazadone, Cymbalta	$162.74
Stevenson Pharmacy	10.27.09	Hydromorphone	$150.37
Stevenson Pharmacy	10.05.09	Senna, Cyclobenzaprine, Trazadone, Cymbalta	$162.74
Stevenson Pharmacy	09.28.09	Hydromorphone	$150.37
Stevenson Pharmacy	09.08.09	Cyclobenzaprine, Trazadone, Cymbalta	$147.76
Stevenson Pharmacy	09.04.09	Hydromorphone, Senna	$86.53
Stevenson Pharmacy	08.19.09	Hydromorphone, Senna	$56.37
Stevenson Pharmacy	08.04.09	Trazodone, Cyclobenzaprine	$22.44
Stevenson Pharmacy	08.03.09	Cymbalta	$126.91
Stevenson Pharmacy	07.18.09	Hydromorphone	$71.55
Stevenson Pharmacy	07.09.09	Senna	$14.98
Stevenson Pharmacy	07.08.09	Cymbalta, Trazodone, Cyclobenzaprine	$150.72
Stevenson Pharmacy	06.19.09	Senna	$14.98
Stevenson Pharmacy	06.11.09	Cymbalta, Senna	$141.89
Stevenson Pharmacy	05.29.09	Trazodone, Cyclobenzaprine	$23.81
Stevenson Pharmacy	05.16.09	Hydromorphone	$71.55
Stevenson Pharmacy	05.13.09	Senna	$14.98

PROVIDER	DATE	PURPOSE	CHARGE
Stevenson Pharmacy	04.22.09	Cymbalta	$126.91
Stevenson Pharmacy	04.21.09	Hydromorphone	$71.55
Stevenson Pharmacy	04.20.09	Trazodone, Cyclobenzaprine, Senna	$38.79
Stevenson Pharmacy	03.30.09	Cymbalta, Trazodone, Cyclobenzaprine, Hydromorphone, Senna	$237.25
Stevenson Pharmacy	03.20.09	Hydromorphone, Trazodone, Cyclobenzaprine, Senna	$29.28
Stevenson Pharmacy	03.04.09	Senna	$14.98
Stevenson Pharmacy	02.21.09	Hydromorphone, Trazodone, Cyclobenzaprine,	$95.36
Stevenson Pharmacy	01.30.09	Cymbalta, Senna	$133.96
Stevenson Pharmacy	01.23.09	Hydromorphone	$71.60
Stevenson Pharmacy	01.20.09	Trazodone, Cyclobenzaprine,	$23.91
Stevenson Pharmacy	01.07.09	Senna	$14.98
Stevenson Pharmacy	12.29.09	Cymbalta	$121.34
Stevenson Pharmacy	12.20.08	Senna	$14.98
Stevenson Pharmacy	12.18.08	Trazodone, Cyclobenzaprine, Hydromorphone	$54.14
Stevenson Pharmacy	11.25.08	Cymbalta	$121.34
Stevenson Pharmacy	11.21.08	Hydromorphone, Senna	$55.14
Stevenson Pharmacy	11.07.08	Senna	$14.98
Stevenson Pharmacy	10.22.08	Hydromorphone	$40.16
Stevenson Pharmacy	10.17.08	Trazodone, Cyclobenzaprine,	$14.53
Stevenson Pharmacy	09.22.08	Hydromorphone, Senna	$55.62
Stevenson Pharmacy	08.19.08	Hydromorphone	$49.87
Stevenson Pharmacy	07.23.08	Hydromorphone, Cyclobenzaprine, Senna	$89.50
Stevenson Pharmacy	06.23.08	Hydromorphone, Senna	$69.65
Stevenson Pharmacy	05.22.08	Hydromorphone	$49.87
Stevenson Pharmacy	05.25.08	Hydromorphone, Senna	$63.63
Stevenson Pharmacy	03.20.08	Hydromorphone, Senna	$69.65
Stevenson Pharmacy	02.22.08	Hydromorphone, Senna	$69.65
Stevenson Pharmacy	01.18.08	Hydromorphone, Senna	$69.65
Stevenson Pharmacy	12.21.07	Hydromorphone	$49.87
Stevenson Pharmacy	11.26.07	Senna	$19.78
Stevenson Pharmacy	11.25.07	Hydromorphone	$49.87
Stevenson Pharmacy	10.22.07	Hydromorphone	$69.64
Stevenson Pharmacy	09.21.07	Hydromorphone	$49.86
Stevenson Pharmacy	09.07.07	Senna	$19.78
Stevenson Pharmacy	08.23.07	Hydromorphone	$49.86
Stevenson Pharmacy	08.03.07	Senna	$19.58
Stevenson Pharmacy	07.24.07	Hydromorphone	$39.70
Stevenson Pharmacy	06.20.07	Hydromorphone	$49.86
Stevenson Pharmacy	05.30.07	Senna	$19.58
Stevenson Pharmacy	05.18.07	Hydromorphone	$49.85
Stevenson Pharmacy	04.20.07	Hydromorphone	$49.85
Stevenson Pharmacy	03.20.07	Hydromorphone, Senna	$69.43
Stevenson Pharmacy	02.21.07	Senna	$19.58
Stevenson Pharmacy	02.20.07	Hydromorphone	$49.85
Stevenson Pharmacy	01.31.07	Senna	$1.00
Stevenson Pharmacy	01.20.07	Hydromorphone	$49.85
Stevenson Pharmacy	01.11.07	Senna	$19.58
Stevenson Pharmacy	12.22.06	Hydromorphone	$49.85
Stevenson Pharmacy	11.25.06	Hydromorphone, Senna	$69.43
Stevenson Pharmacy	10.23.06	Hydromorphone, Senna	$69.43
Stevenson Pharmacy	09.25.06	Hydromorphone, Senna	$69.43

PROVIDER	DATE	PURPOSE	CHARGE
Stevenson Pharmacy	08.22.06	Hydromorphone, Senna	$3.00
Stevenson Pharmacy	07.31.06	Hydromorphone	$48.94
Walgreens	01.30.05 - 08.08.06	Senna	$249.75
Walgreens	01.18.05 - 06.12.06	Cyclobenzaprine	$387.57
Walgreens	01.10.03 - 06.28.06	Hydromorphone	$2,560.77
Walgreens	10.04.05 - 04.28.06	Trazodone	$112.95
Wal-Mart	12.19.07 - 09.21.08	Trazodone	$67.36
		TOTAL:	**$16,376.26**

Section 287.140, RSMo requires that the employer/insurer provide "such medical, surgical, chiropractic, and hospital treatment … as may reasonably be required … to cure and relieve [the employee] from the effects of the injury."

The employee must prove that the medical care provided by the physician selected by the employee was reasonably necessary to cure and relieve the employee of the effects of the injury. *Chambliss v. Lutheran Medical Center*, 822 S.W.2d 926 (Mo.App. 1991); *Jones v. Jefferson City School District*, 801 S.W.2d 486, 490-91 (Mo.App. 1990); *Roberts v. Consumers Market*, 725 S.W.2d 652, 653 (Mo.App. 1987); *Brueggemann v. Permaneer Door Corporation*, 527 S.W.2d 718, 722 (Mo.App. 1975). The employee may establish the causal relationship through the testimony of a physician or through the medical records in evidence that relate to the services provided. *Martin v. Mid-America Farm Lines, Inc*., 769 S.W.2d 105 (Mo. banc 1989); *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo.App. 1994); *Lenzini v. Columbia Foods*, 829 S.W.2d 482, 484 (Mo.App. 1992); *Wood v. Dierbergs Market*, 843 S.W.2d 396, 399 (Mo.App. 1992). The medical bills in *Martin* were shown by the medical records in evidence to relate to the professional services rendered for treatment of the product of the employee's injury. *Martin*, 769 S.W.2d at 111; *Esquivel v. Day's Inn of Branson*, 959 S.W.2d 486, 488 (Mo.App. 1998).

The law in Missouri provides that while the employer has the right to name the treating physician, it waives that right by failing or neglecting to provide necessary medical aid to the injured worker. *Emert v. Ford Motor Co.,* 863 S.W.2d 629, 631 (Mo.App.1993); *Shores v. General Motors Corp.,* 842 S.W.2d 929, 931 (Mo.App.1992); *Herring v. Yellow Freight System, Inc.,* 914 S.W.2d 816, 822 (Mo.App. 1995); *Hawkins v. Emerson Elec. Co.,* 676 S.W.2d 872, 879 (Mo.App. 1984). The Court in *Shores* stated at 931-932:

> The case law under §287.140(1) establishes the employer's right to provide medical treatment of its choice, however, this right is waived when the employer fails to provide necessary medical treatment after receiving notice of an injury. *Wiedower v. ACF Indus., Inc.,* 657 S.W.2d 71, 74 (Mo.App.1983). 'Where the employer with

> notice of an injury refuses or neglects to provide necessary medical care, the [claimant] may make his own selection and have the cost assessed against the employer.' *Id.*
>
> In the present case, there is substantial evidence which supports a finding that employer had notice of claimant's injuries and refused to provide medical treatment. On the day she was injured, and thereafter whenever the pain made it difficult to work, claimant reported to the plant dispensary to receive medical aid. At some point, a nurse at the dispensary informed claimant that she was no longer welcome and should consult her own doctor for further treatment.

The Court in *Blackwell v. Puritan-Bennett Corp*., 901 S.W.2d 81 (Mo.App. 1995) states at 85:

> An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those costs against his employer. Therefore, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. *Hawkins v. Emerson Electric Co.,* 676 S.W.2d 872, 880 (Mo.App.1984).

See also, Reed v. Associated Electric Cooperative, Inc., 302 S.W.3d 693, 700 (Mo. App. 2009).

The Employer long ago refused to provide further medical care. Claimant testified that Employer stopped paying for his medical treatment and he began paying bills himself. He began treating with Dr. Norman Baade after he was told Employer was not going to do anything more for him. He paid Dr. Baade out of pocket for pain management treatment. Medical bills in evidence note Claimant made payments in 2005.

Richard Campbell's July 29, 2003 note states in part: "As of July 28, 2003, the worker's compensation component of this case has been denied and closed per Ed Schilling of the City of St. Joseph." Richard Campbell recommended repeat MRI of the right knee and consideration of an EMG of the right lower extremity then. Richard Campbell's July 29, 2003 note states that his ability to order any of those tests through the worker's compensation system had been denied.

Dr. Baade's records indicate that Mr. Pace has sought treatment for pain on an approximately quarterly basis and that Dr. Baade has treated the pain and its effects with Hydromorphone, Senna, Trazadone, Cyclobenzaprine and Cymbalta. Dr. Baade also ordered several diagnostic tests in conjunction with his treatment.

Dr. Russell testified that the treatment Claimant had received with the medications was appropriate and is appropriate at the present time for complex regional pain syndrome. I find this opinion to be credible.

Employer has denied Claimant's claims for past medical expenses and has not paid Claimant's medical expenses for which he seeks payment. The evidence documents that Claimant received the treatment for his injuries that is represented by the expenses for which he seeks payment. The medical billing records in evidence are shown by the medical records in evidence to relate to the professional services rendered for treatment of the product of the employee's injury.

On July 20, 2005, Claimant reported to Dr. Cathcart bilateral numbness and tingling in both hands and his right leg giving out. Claimant reported that since using the cane, his hands have become increasingly painful. Cock-up wrist braces were prescribed for use at bedtime. Dr. Cathcart thought that Claimant ultimately would require surgery. Claimant saw Dr. Cathcart on September 6, 2005 for problems with both hands. Claimant reported nocturnal parasthesia and difficulty gripping. Dr. Cathcart's impression was bilateral carpal tunnel syndrome. He referred Claimant to Dr. DePriest. Dr. DePriest performed left endoscopic carpal tunnel surgery on January 13, 2006 and right endoscopic carpal tunnel surgery on February 10, 2006.

Dr. Koprivica testified that he could not see an association between Claimant's carpal tunnel and any of his work injuries because Claimant's gait assistance was only using one extremity (p. 48). I do not find this opinion to be credible. Claimant testified he started using a cane with his right hand and later used it with his left. I find that testimony to be credible. I find Claimant used both upper extremities when he used gait assistance.

Dr. Abrams thought Claimant had bilateral carpal tunnel syndrome from using the crutches. His report states: "There is a causal connection between his present conditions, i.e., complex regional pain syndrome and left rotator cuff tear as well as bilateral carpal tunnels and his work place injuries." I find this opinion to be credible. I find Claimant's December 9, 2002 accident was a substantial factor in causing his carpal tunnel condition and the need for the resulting carpal tunnel surgeries. I find the medical expenses that Claimant incurred to treat his carpal tunnel condition and that are requested by Claimant should be paid by Employer.

Employer had notice of Claimant's injuries within days that they were sustained. As in *Shores*, there is substantial evidence which supports a finding that Employer had notice of Claimant's injuries and refused to provide medical treatment. Where the employer with notice of an injury refuses or neglects to provide necessary medical care, the claimant may make his own selection and have the cost assessed against the employer.

Employer made no credible showing that the bills requested by Claimant were not fair and reasonable or were not related to Claimant's injury.

I find that the medical care Claimant received which is represented by the medical bills itemized and requested by Claimant was reasonably necessary to cure and relieve him of the effects of his December 9, 2002 accident that arose out of and in the course of his employment for Employer.

I find that the medical expenses requested by Claimant,[4] are fair and reasonable, usual and customary, necessary, and causally related to Claimant's December 9, 2002 injury sustained in the course of his employment for Employer, and that they should be paid by Employer. The medical expenses requested by Claimant in the amount of

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[4] Claimant has requested the total sum of $16,376.26 in past medical expenses pursuant to the itemization set forth in pages 79-82 of this Award. However, a review of the billing records reveals the correct total amount requested should have been the sum of $16,465.84. The 3-30-09 entry in Claimant's itemization for Stevenson Pharmacy requests $237.25 for Cymbalta. The billing record for that date shows a charge of $126.91 for Cymbalta. No charges are shown on the billing for Trazodone, Cyclobenzaprine, Hydromorphone, or Senna for that date. The 3-20-09 entry in Claimant's itemization for Stevenson Pharmacy requests $29.28 for Hydromorphone, Trazodone, Cyclobenzaprine, and Senna. The billing record for 3-20-09 shows charges totaling $110.34 for Hydromorphone, Trazodone, Cyclobenzaprine, and Senna for that date. The 11-21-08 entry in Claimant's itemization for Stevenson Pharmacy requests $55.14 for Hydromorphone for that date. The billing record for 11-21-08 shows charges totaling $40.16 for Hydromorphone for that date. The itemization also incorrectly refers to a charge made at Stevenson Pharmacy on 5-25-08, when the charge was actually made on 4-25-08 according to the billing record. The amount of the charge for 4-25-08 is correctly shown in Claimant's itemization. The itemization for Stevenson Pharmacy's record for 10-22-07shows a charge for Hydromorphone, when the charge according to the billing record is for Hydromorphone and Senna. The amount of the charge for 10-22-07 is correctly shown in Claimant's itemization. Based on a review of the billing records of Walgreen Pharmacy, the correct amount of charges for 1-30-05—8-8-06 should be $249.21, not $249.75, and the correct amount of charges for 1-10-03—6-28-06 should be $2,695.15, not $2,560.77. The amounts set forth in the billing records described above in this footnote total $89.58 more that the amounts listed in Claimant's itemization.

$16,465.84, should be paid by Employer. Claimant is awarded the sum of $16,465.84 from Employer for these past medical expenses in Injury No. 02-134660.

I also find the additional medical expenses in the amount of $836.42 set forth in the Missouri Department of Social Services, MO HealthNet Division (MHD) lien (Exhibit Y) are fair and reasonable, usual and customary, necessary, and causally related to Claimant's December 9, 2002 injury sustained in the course of his employment for Employer, and that they should be paid by Employer. Employer is ordered to pay the sum of $836.42 pursuant to the terms and provisions of the lien (Exhibit Y) in Injury Number 02-134660.

No past medical benefits are awarded against Employer in Injury Numbers 04-113970, 04-130561, or 04-130584.

Liability for Future Medical Aid

Claimant is requesting an award of future medical aid. Section 287.140, RSMo requires that the employer/insurer provide "such medical, surgical, chiropractic, and hospital treatment … as may reasonably be required … to cure and relieve [the employee] from the effects of the injury." This has been held to mean that the worker is entitled to treatment that gives comfort or relieves even though restoration to soundness [a cure] is beyond avail. *Bowers*, 132 S.W.3d at 266. Medical aid is a component of the compensation due an injured worker under Section 287.140.1, RSMo. *Bowers*, 132 S.W.3d at 266; *Mathia v. Contract Freighters, Inc*., 929 S.W.2d 271, 277 (Mo.App. 1996). The employee must prove beyond speculation and by competent and substantial evidence that his or her work related injury is in need of treatment. *Williams v. A.B. Chance Co*., 676 S.W.2d 1 (Mo.App. 1984). Conclusive evidence is not required. *Farmer v. Advanced Circuitry Division of Litton*, 257 S.W.3d 192, 197 (Mo. App. 2008); *Bowers*, 132 S.W.3d at 270; *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo.App. 1997).

It is sufficient if Claimant shows by reasonable probability that he or she is in need of additional medical treatment. *Farmer*, 257 S.W.3d at 197; *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 53 (Mo. App. 2007); *Bowers*, 132 S.W.3d at 270; *Mathia*, 929 S.W.2d at 277; *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995); *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo.App. 1995). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App. 1986); *Sifferman* at 828. Section 287.140.1, RSMo does not require that the medical evidence identify particular procedures or treatments to be performed or administered. *Forshee v. Landmark Excavating & Equipment*, 165 S.W.3d 533, 538 (Mo.

App. 2005); *Talley v. Runny Meade Estates, Ltd.*, 831 S.W.2d 692, 695 (Mo.App. 1992); *Bradshaw v. Brown Shoe Co.*, 660 S.W.2d 390, 394 (Mo.App. 1983).

The type of treatment authorized can be for relief from the effects of the injury even if the condition is not expected to improve. *Farmer*, 257 S.W.3d at 197; *Bowers*, 132 S.W.3d at 266; *Landman v. Ice Cream Specialties, Inc*., 107 S.W.3d 240, 248 (Mo.banc 2003). Future medical care must flow from the accident, via evidence of a medical causal relationship between the condition and the compensable injury, if the employer is to be held responsible. *Bowers*, 132 S.W.3d at 270. Medical aid may be required even though it merely relieves the employee's suffering and does not cure it, or restore the employee to soundness after an injury or occupational disease. *Mathia*, 929 S.W.2d at 277; *Stephens v. Crane Trucking, Incorporated*, 446 S.W.2d 772, 782 (Mo. 1969); *Brollier v. Van Alstine*, 236 Mo.App. 1233, 163 S.W.2d 109, 115 (1942). To relieve a condition is to give ease, comfort or consolation, to aid, help, alleviate, assuage, ease, mitigate, succor, assist, support, sustain, lighten or diminish. *Stephens*, 446 S.W.2d at 782; *Brolier*, 163 S.W. 2d at 115.

Claimant testified he has been having ongoing pain since his December 9, 2002 injury. He has been seeing Dr. Baade for pain management since 2003 and plans to keep seeing him. Dr. Baade's records reflect that Claimant is followed by Dr. Baade on a quarterly basis to monitor Mr. Pace's pain and to manage his pain medications. The records show that the pain Dr. Baade treats and the pain medications he prescribes relate to Claimant's right leg injury, which according to the substantial evidence, resulted from the December 9, 2002 workplace accident.

Dr. Cathcart stated Claimant will require prescription pain medication indefinitely for the remainder of his life.

Dr. Russell concluded Claimant has complex regional pain syndrome. Dr. Russell stated Claimant's reactive depression, chronic, severe, which is a known complication of the treatment that Claimant is receiving for his complex regional pain syndrome, will continue that way in the future. He noted Claimant was receiving Cymbalta which is an antidepressant medication, for his complex regional sympathetic dystrophy. Dr. Russell testified that the treatment Claimant had received with the medications was appropriate and is appropriate at the present time for complex regional pain syndrome. He stated that Claimant's use of an assistive device is appropriate because he is unable to ambulate or walk without an assistive device.

Dr. Koprivica testified he did not know of any cure for Claimant's chronic pain and believed Claimant would have that for the rest of his life. He believed that Claimant is going to need ongoing chronic pain management. He expected Claimant would need to

continue to see someone like Dr. Baade and would expect the use of medication to continue.

Dr. Abrams stated:

> Well, he's definitely going to need future medical care. If you just look at the number of medications he's on related to his, you know, condition, then he's going to need somebody to really monitor him closely because just nobody will take the responsibility for giving him those kinds of medications and those kinds of doses without seeing him, you know, monthly or maybe every two months at least.

I find Dr. Abrams', Dr. Koprivica's, Dr. Cathcart's, and Dr. Russell's opinions regarding Claimant's need for future medical care to be credible. Claimant's testimony and Dr. Baade's treatment records also support the need for ongoing medical treatment. I find that Claimant will need future medical aid to cure and relieve him from the effects of his December 9, 2002 work injury, including chronic pain management.

Employer is directed to authorize and furnish additional medical treatment to cure and relieve Claimant from the effects of his December 9, 2002 work injury (Injury Number 02-134660), in accordance with Section 287.140, RSMo.

No future medical benefits are awarded against Employer in Injury Numbers 04-113970, 04-130561, or 04-130584.

Attorney's Fees

Claimant's attorney is entitled to a fair and reasonable fee in accordance with Section 287.260, RSMo. An attorney's fee may be based on all parts of an award. *Page v. Green*, 758 S.W.2d 173, 176 (Mo.App. 1988). During the hearing, and in Claimant's presence, Claimant's attorney requested a fee of 25% of the benefits to be awarded. Claimant did not object to that request. I find Claimant's attorney, Benjamin S. Creedy, is entitled to and is awarded an attorney's fee of 25% of all amounts awarded for necessary legal services rendered to Claimant. The compensation awarded to 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 Claimant: Benjamin S. Creedy. Claimant's attorney's request for reimbursement of expenses set forth in Exhibit Z is also approved.

Made by: /s/ Robert B. Miner
Robert B. Miner
Administrative Law Judge

Division of Workers' Compensation

This award is dated and attested to this 25th day of October, 2010.

/s/ Naomi Pearson
Naomi Pearson
Division of Workers' Compensation