

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

Injury No.: 00-143709

Employee: Brenda Patterson  
Employer: SDS Builders  
Insurer: Builders Association Self-Insurance  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: November 3, 2000  
Place and County of Accident: Greene County, Missouri

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, heard oral argument, read the briefs, 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 3, 2007, as supplemented herein.

The administrative law judge concluded that employee was permanently and totally disabled as a result of her back condition. Employer/Insurer filed a timely Application for Review with the Commission alleging that the administrative law judge erred in finding that employer was responsible for 1) temporary total disability benefits; 2) permanent total disability benefits; and 3) future medical benefits. Employee filed a timely Application for Review, as well, alleging that the administrative law judge erred in refusing to award reimbursement of past medical expenses. We disagree and affirm the benefits awarded by the administrative law judge.

The Commission would like to further address the issue of past medical benefits. A sufficient factual basis to award past medical expenses exists when employee identifies all of the medical bills as being related to and the product of the work-related injury and the medical bills are shown to relate to the professional services rendered by medical records in evidence. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo.banc 1989). Employee has the burden of proving that the medical treatment sought is reasonably required to cure and relieve him from the effects of the work injury. Section 287.140.1 RSMo (2000); *Bowers v. Highland Dairy Company*, 132 S.W.3d 260, 266 (Mo.App. S.D. 2004). The need for the medical treatment need not be established as a certainty, but it must be established as being reasonably probable through competent, medical testimony. *Bowers*, 132 S.W.3d at 270.

Employee failed to meet her burden in this case as the treatment she received from Dr. McQueary was not only unauthorized by employer, but it was not necessary and reasonable to cure and relieve her from the

effects of her work injury. In the temporary award, the administrative law judge found that the treatment employee sought on her own was not authorized by employer and was not medically necessary based upon the medical record, including the testimony of Dr. Woodward and Dr. Mace. The administrative law judge remained consistent in her final award denying past medical benefits on that basis.

On June 6, 2002, a hardship hearing was held before the administrative law judge. Among the issues stipulated at hearing was whether employer should be obligated to pay for past medical expenses and/or provide future medical care. A temporary award was issued on October 30, 2002. After the hardship hearing on June 6, 2002 and prior to the award being issued on October 30, 2002, employee sought additional unauthorized treatment from Dr. McQueary. It is unclear why employee chose to forego waiting to receive the award prior to undergoing an invasive surgical procedure on September 6, 2002, when she specifically sought the hardship hearing to determine whether such treatment would be deemed necessary, and consequently the responsibility of employer.

In the temporary award, the administrative law judge found with regard to the issue of past medical benefits that:

the treatment claimant was receiving from Dr. McQueary and the pain clinic was unauthorized and she was pursuing this through her private insurance. The employer was providing treatment through Dr. Woodward and was not authorizing Dr. McQueary. The notes of Dr. McQueary reflect that the claimant was well aware of this and was treating with him on her own. Therefore, the employer is not obligated to pay for these past unauthorized medical bills.

The administrative law judge went on to find that sufficient medical evidence supported a denial of future medical treatment; and based on the testimony of Dr. Woodward and Dr. Mace, found that additional medical treatment, including surgery, was not appropriate.

At the time of the temporary hearing, based on the evidence in the medical record, employee was not in need of additional medical care and was not a surgical candidate. Multiple doctors testified to that fact. Dr. Mace, neurosurgeon, opined that he did not feel that there was any role for surgical treatment in employee's case. Dr. Woodward opined that employee was "not a candidate for any invasive lumbar procedure including discogram or lumbar fusion procedure due to multiple level degenerative disc abnormality and significant pre-existing psychological disorder, which is known to [lead to a] poor lumbar surgical outcome." In addition, Dr. Woodward testified that based on the patient's pain and functional outcome that the surgical procedure employee received, including the spinal cord stimulator, provided no significant physical or pain benefit to employee.

We must emphasize the fact that employee sought the temporary hearing to address in part the issue of the unauthorized treatment she was seeking on her own, including that with Dr. McQueary. However, rather than waiting for an award on the issue, she continued to seek unauthorized treatment. Employee not only sought treatment, but underwent a major medical procedure, a L5-S1 laminectomy, on September 6, 2002. Employee was well aware that this treatment was not authorized by employer and that a temporary hearing on that very issue was held and the award would temporarily decide that matter. Employee showed a disregard for the administrative law judge's impending award by continuing treatment on her own.

The Commission agrees with the ultimate conclusion reached by the administrative law judge, that 1) employee is permanently and totally disabled as a result of her back condition; 2) employee is entitled to future medical care in the form of pain management to cure and relieve her from the effects of her injury; and 3) employer is not obligated to pay for past medical expenses as the treatment sought by employee on her own was neither medically necessary nor authorized by the employer.

The Commission agrees that appropriate workers' compensation benefits were awarded employee.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued July 3, 2007, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 3rd day of March 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

DISSENTING OPINION FILED

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John J. Hickey, Member

Attest:

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Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified to award employee past medical expenses.

I agree with the administrative law judge's finding that employee is entitled to compensation in this claim. However, I disagree with the administrative law judge's finding that employee is not entitled to an award of past medical expenses.

The administrative law judge erred in finding that employee was not entitled to past medical expenses due to the fact that her treatment was not authorized. Employee was referred to Dr. Woodward, a workers' compensation doctor, approved by employer. In January of 2002, Dr. Woodward opined that employee was at maximum medical improvement with regard to her work injury on November 3, 2000. In March of 2002, employer sent employee to a consult with Dr. Mace, a neurosurgeon, at which time he opined that employee was not in need of surgery. After reviewing Dr. Mace's records, Dr. Woodward opined that employee was not in need of additional treatment, including surgery.

Therefore, it is unreasonable to penalize employee for seeking treatment on her own, especially when the doctors she was referred to by employer believed that there was no need for additional treatment.

Employer's doctors, both Drs. Mace and Woodward, gave their opinions with regard to employee's need for additional treatment. Once employer's doctors determined that employee was not in need of treatment, it is highly unlikely that they would change their opinion. Employee requested that employer provide treatment on multiple occasions which was denied by employer. Employer failed to provide treatment and therefore lost its right to direct treatment. Employee was given no choice other than to seek the advice and care of her own doctor, Dr. McQueary, as employer did not offer any other alternative.

Dr. McQueary, employee's treating surgeon, initially provided employee with conservative treatment. However, after extensive conservative treatment failed, Dr. McQueary believed that employee would benefit from surgery. Therefore, employee underwent a laminectomy on September 6, 2002. The surgery was successful in alleviating some of employee's symptoms. Dr. McQueary, noted in employee's office visit on October 15, 2002 that employee showed a 60% improvement in her condition. Employee testified that the treatment, including the laminectomy and spinal cord stimulator, helped to relieve some of her symptoms related to her work accident. Employee testified that her ability to walk was improved and her overall pain level decreased as a result of her treatment. Dr. McQueary testified that the treatment he provided employee was related to the employee's accident on November 3, 2000; and that the treatment was both reasonable and necessary to cure and relieve employee from the effects of her injury.

Dr. McQueary's opinion was supported by Dr. Evenson, employee's pain management specialist. Dr. Evenson opined that the treatment employee sought on her own was necessary to cure and relieve her from the effects of her injury. In addition, Dr. Volarich opined that the treatment, including the laminectomy, was reasonable and necessary to cure and relieve employee from the effects of her work injury.

Employee established that the treatment she sought on her own was necessary and reasonable to cure and relieve her from the effects of her injury. Employee also properly offered into evidence all medical bills pertaining to treatment for her work-related injury and testified that such medical bills and treatment were related to and the product of that injury.

Based upon my review of all the evidence, I find employee met her burden showing the past medical expenses were related to and the product of her work-related injury. Accordingly, I would modify the decision of the administrative law judge and award past medical expenses.

For the foregoing reasons, I respectfully dissent from the portion of the majority's decision denying an award of past medical expenses.

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John J. Hickey, Member

## **AWARD**

Employee: Brenda Patterson

Injury No. 00-143709

Dependents: N/A

Employer: SDS Builders

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

Insurer: Builders Association Self Insurance

**FINDINGS OF FACT AND RULINGS OF LAW**

1. Are any benefits awarded herein? YES
2. Was the injury or occupational disease compensable under Chapter 287? YES
3. Was there an accident or incident of occupational disease under the Law? YES
4. Date of accident or onset of occupational disease: 11/3/2000
5. State location where accident occurred or occupational disease was contracted: GREENE COUNTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?  
YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted: CARRYING BUCKETS OF CONCRETE.
12. Did accident or occupational disease cause death? NO Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: BODY AS A WHOLE
14. Nature and extent of any permanent disability: PTD
14. Compensation paid to-date for temporary disability: \$3,814.55
16. Value necessary medical aid paid to date by employer/insurer? \$5,910.02

Employee: BRENDA PATTERSON

Injury No. 00-143709

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$506.78
19. Weekly compensation rate: \$337.87/314.26
20. Method wages computation: BY AGREEMENT

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses: 0

201 5/7 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning December 5, 2004, for Claimant's lifetime

22. Second Injury Fund liability: Yes No  Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: N/A

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

Total: SEE AWARD

23. Future requirements awarded: PTD AND MEDICAL TREATMENT

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

WILLIAM FRANCIS, JR.

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

Employee: Brenda Patterson Injury No. 00-143709

Dependents: N/A

Employer: SDS Builders

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

Insurer: Builders Association Self Insurance

Hearing Date: 3/23/07 Checked by: MEH

The parties appeared before the undersigned administrative law judge on March 23, 2007, for a final hearing. The claimant appeared in person represented by William Francis, Jr. The employer and insurer appeared represented by Jeff Stigall. The Second Injury Fund appeared represented by Susan Colburn. Memorandums of law were filed by April 20, 2007.

The parties stipulated to the following facts: On or about November 3, 2000, SDS Builders was an employer operating subject to The Missouri Workers' Compensation Law. The employer's liability was fully insured by Builders Association Self Insurance. On the alleged injury date of November 3, 2000, Brenda Patterson was an employee of the employer. The claimant was working subject to the Missouri Workers Compensation Law. On or about November

3, 2000, the claimant sustained an accident, which arose out of and in the course and scope of employment. This employment occurred in Greene County, Missouri. The claimant notified the employer of her injury as required by Section, 287.420, RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged accident, the claimant's average weekly wage was \$506.78, which is sufficient to allow a compensation rate of \$337.87 for temporary total disability compensation, and a compensation rate of \$314.26 for permanent partial disability compensation. Temporary disability benefits have been paid to the claimant in the amount of \$3,814.55. The employer and insurer have paid medical benefits in the amount of \$5,910.02. The attorney fee being sought is 25%.

#### ISSUES:

1. Whether the employer is obligated to pay past medical expenses.
2. Whether the claimant has sustained injuries that will require future medical care order to cure and relieve the claimant of the effects of the injuries.
3. Any past temporary total benefits owed to the claimant, specifically from January 20, 2001, to March 11, 2005, totaling \$68,827.50.
4. The nature and extent of permanent disabilities.
5. The liability of the Second Injury Fund for permanent total disability/enhanced permanent partial disability/unpaid medical bills.

#### FINDINGS OF FACT:

A temporary award was issued in this case on October 30, 2002. The following were findings of facts set forth in the award which I am incorporating in this award:

The parties agree that the claimant had a compensable injury on November 3, 2000, while in the course and scope of her employment at SDS Builders. The claimant worked for the employer finishing concrete. As part of her duties she carried 5-gallon buckets filled with concrete. At the end of the day on November 3, 2000, she went to her car, and when she sat down she experienced pain and problems with her back and legs. She went on home and continued to have problems over the weekend.

On Monday she reported the injury and went to St. John's emergency room. She was given pain medication. Dr. Fred McQueary examined her on November 9, 2000. He diagnosed her with lower lumbar pain with L5 radiculopathy. X-rays showed degenerative disc disease and mild lumbar scoliosis. Dr. McQueary treated her with pain medication.

An MRI was performed on November 10, 2000. It showed degenerative disc disease. Dr. Robert Hufft examined her on November 14, 2000. He diagnosed an exacerbation of pre-existing facet joint osteoarthritis, particularly involving the L5-S1 facet joint. He felt this probably caused some irritation to the passing nerve root. He did not feel she was a surgical candidate. He again saw her on November 21, 2000, and gave her continued medications and kept her off work. He saw her again on December 5, 2000, and gave her prescriptions for Celebrex. He felt that with the hard work she did she should be off work for a lengthy period of time to completely resolve her problem before she went back to unrestricted duty. She did not keep a scheduled appointment for January 3, 2001.

Dr. McQueary's record of November 14, 2000, states that he did not see anything that bad enough to justify surgical decompression, and felt an epidural steroid injection was appropriate. He also notes that she was informed Dr. McQueary was not an authorized Workers' Compensation physician, and wanted to proceed with treatment from him through her personal insurance.

Dr. Jeffrey Woodward examined her on December 8, 2000. He diagnosed her with L5-S1 pain and right L5 radicular or nerve-related symptoms. He treated her with Prednisone and an epidural steroid injection. He prescribed physical therapy and placed her on modified duty. The employer did not have modified duty available.

On December 20, 2000, Dr. Ted Lennard performed an epidural steroid injection. On January 2, 2001, Dr. Lennard prescribed Neurontin and continued physical therapy. An EMG was performed on January 9, 2001, which showed no evidence of right lumbosacral radiculopathy. On January 21, 2001, she began a work-conditioning program. On January 23, 2001, claimant returned to work on modified duty.

Dr. McQueary saw her on January 23, 2001, and referred her to the Anesthesia Pain Clinic at St. John's for additional epidural steroid injections by either Dr. Lampert or Dr. Evenson.

On February 13, 2001, Dr. Woodward released her to regular duty at her own request. She quit after 2-3 days. She was scheduled for a follow-up appointment with Dr. Woodward three weeks later but she failed to appear.

Dr. McQueary saw her again on February 20, 2001, when he recommended injections again and possibly a CT scan. In March 2001, the claimant was treated at the St. John's Pain Clinic. She received lumbar injections. Again on April 3, 2001, she saw him and wanted to continue treatment under her regular insurance.

A CT scan was performed on April 9, 2001. It showed a disc bulge at L3-4 and L4-5, moderate bilateral facet arthritis, and degenerative changes and hypertrophic spur. A lumbar myelogram was performed on April 9, 2001, which showed no significant nerve sleeve attenuation.

Dr. Woodward saw the claimant on January 11, 2002. At that time she complained of significant low back pain, groin pain, pins and needles in inner thighs and aching in the outer thighs, pain in anterior and posterior aspects of both legs, right and left foot numbness and tingling in her heels. These were different complaints than she had made previously. Another MRI was performed which showed no changes from the one in November 2000. Dr. Woodward felt that if Dr. McQueary was recommending surgery that she would need to see a spine surgeon, otherwise he felt she had exhausted all conservative care. He felt that if there was no surgical consideration she was at MMI and rated her with a permanent disability of 6% of the body as a whole.

Dr. David Volarich examined the claimant on January 14, 2002. His impressions were lumbar syndrome with bilateral lower extremity radiculopathy, right worse than left involving both the L5 and S1 nerve roots, and aggravation of degenerative disc disease and degenerative joint disease of the lumbar spine. In his opinion, the claimant's work activities caused these problems. He recommended a course of pain management with anti-inflammatory medications, narcotics, muscle relaxants, trigger point injections, epidural steroid injections, and similar treatments to improve her symptoms. He also felt she needed additional diagnostic testing in the form of a myelogram CT and possibly a discogram of the L3-4, L4-5, and L5-S1 levels. He did not feel she was at maximum medical improvement.

On April 11, 2002, a MRI was performed which showed moderate to prominent degenerative facet disease is present more on the right than the left. The disc appears normal. No subluxation is appreciated. The posterior elements are grossly intact, but some irregularity of the pars appears to be present especially on the right.

On March 11, 2002, Dr. Charles Mace, a neurosurgeon, was consulted. He performed a neurological examination on the claimant. He concluded that she had low back leg pain without any evidence of a significant lumbar stenosis or disc herniation. He did not feel there was any role for surgical treatment for this.

A record dated May 17, 2002, by Dr. Woodward shows that he reviewed Dr. Bright's records and the recent flexion/extension X-rays. He reviewed this with Dr. Mace and felt that she was "not a candidate for any invasive lumbar procedure including discogram or lumbar fusion procedure due to multiple level degenerative disc abnormality and significant pre-existing psychological disorder, which is known to poor lumbar fusion surgical outcome."

Dr. Woodward testified that he did not recommend any surgery. He said "the only reason in this patient to consider discogram is if the doctor would be considering specifically lumbar fusion, surgical procedure. In my opinion, the patient is a poor lumbar candidate for several reasons. It is not reasonable to subject the patient to the risk of a discogram...unless, in my opinion, the patient is a viable fusion candidate. On the patient's prior images, including prior MRI, she has at least three levels of degenerative disc abnormality, and such that the only medical fusion procedure to consider would probably be at least two- or three-level fusion surgery, which, in my opinion, is not indicated for this patient. Part of that opinion would be based on her past psychological history, which is a known predictor of poor outcome from fusion surgery. The other is the patient's significant leg pain complaints which, just going by her complaints, fusion is not meant to relieve leg discomfort but only back discomfort, so that if she got a fusion, we would not be dealing with leg discomfort, and presumably one would still have substantial leg pain that would continue to limit her function and again not be in her best interest."

In his deposition, Dr. Volarich testified that he was not aware of some of the subsequent medical records and the psychiatric records. He testified that his opinion would not change that she needed the discogram, but would defer to the back surgeons on whether she needed surgery.

The claimant treated with Dr. James Bright, a psychologist, between March 23, 1999, and August 24, 2001. In his initial evaluation on March 23, 1999, the claimant complained of feeling stressed and frustrated. She was breaking dishes and windows, hitting her husband, was having problems with her marriage, speaks of quitting nursing because of the losses, she was tired, little energy, having appetite problems. He diagnosed major depressive disorder, single episode, severe psychosis, and prescribed Zoloft.

She continued to treat with Dr. Bright through the rest of 1999 and the summer of 2000. She had appointments scheduled in October and November of 2000 that she cancelled. On July 5, 2001, she called the office hysterical saying that she wanted to die. She was having problems with her husband and was taking no medication. She was sent to the hospital where she was admitted for five days. She continued to treat with him in July and August 2000, and his notes show issues with parents and her husband and that her beagle died. In August there is a reference to being off work and being hurt in November along with the issue of her dog dying.

In the award, the claimant was denied payment of her past medical bills for treatment she received from Dr. McQueary. He was unauthorized, and she was pursuing this treatment on her own. Further medical treatment in the form of a discogram being recommended by Dr. Volarich was denied based on the opinions of Dr. Woodward and Dr. Mace. The claimant was found to be at maximum medical improvement, and temporary benefits were denied.

Since the date of the hearing, I find that the following has occurred.

The claimant continued to seek further medical treatment from Dr. McQueary. This was on her own behalf as this was not authorized by the employer and insurer and was not ordered in the hearing. The claimant saw Dr. McQueary on September 3, 2002, for leg pain. He subsequently performed a laminectomy on September 6, 2002. After the surgery, the claimant initially did well. On October 15, 2002, Dr. McQueary found she was 60% improved.

On December 2, 2002, the claimant went to Dr. McQueary stating that after cleaning her house for 12 hours she had pain in her back, twitching and jerking in her legs. Dr. McQueary concluded she had overexerted herself and recommended physical therapy. On January 14, 2003, Dr. McQueary noted the claimant had not attended physical therapy because she could not meet the "spend down" required by Medicaid.

On March 11, 2003, she saw Dr. McQueary reporting that she had fallen and had increased problems with pain down her right leg. An MRI showed enhancement around L5-S1 interspace and some disc desiccation, but no significant protrusion or neurological compression. Dr. McQueary felt conservative management was indicated and suggested a pain clinic, and possibly epidural injections or a spinal cord stimulator.

Dr. Evenson treated the claimant at the pain clinic. In April – August 2003, she received several injections, without success. In September 2003, a spinal cord stimulator trial was attempted. Due to a spinal puncture the attempt was unsuccessful. In December 2003, Dr. Evenson attempted a spinal cord stimulator again. This was more successful, and a permanent stimulator was placed in February 2004. Dr. Evenson testified that the spinal cord stimulator the claimant now has in place, which will need maintenance, including replacement about every nine years of a pulse generator, which now she has a rechargeable system. She is also taking Percocet for pain relief, which he expects to also continue. Dr. Evenson stated that he did not feel she had a good result, and considered her to have postlaminectomy syndrome, which is interchangeable with failed back syndrome.

In February 2004, the claimant fell increasing her pain in her back and legs. In March 2004 and again in June 2005, the spinal cord stimulator was replaced.

The claimant had continued to treat with Dr. Bright continuously. In January 2006, she changed treatment from Dr. Bright to Dr. Insaf due to a change in her insurance. In February 2006, the claimant had a breast reduction surgery in an attempt to relieve her back pain.

The claimant testified at the hearing, and her depositions were admitted into evidence. She states

that she continues to have back pain. She has pain into her lower right leg and often gets sharp pains into the groin on the right side. She has trouble walking. Her feet become numb. She also cannot ride or sit for long periods of time. She cannot perform personal hygiene such as shaving her legs or painting her toe nails because she cannot bend over or put her leg up to her lap. She says that she has to lay down 4 to 5 times a day for 45 minutes to 1 hour at a time. She testified that her problems are the same as before the surgery in 2002. In her deposition of 2005 she said that some leg pain was lessened but other things were worse. She felt the stimulator helps.

At present, the claimant continues to treat with Dr. Evenson for adjustments to her spinal cord stimulator. She uses the stimulator daily. She recharges the stimulator with a belt re-charger. This can take from 1 to 8 hours.

Dr. Dale Halfaker, a neuropsychologist, evaluated the claimant in October 2004, and issued a report on December 5, 2004. In his report he concludes:

Based upon review of available records, face-to-face clinical interview, behavioral observations, and this psychological data set, it is thought that she is experiencing a significant chronic pain disorder accompanied by a major depressive disorder. It does appear that a significant portion of her depression pre-existed her injury of 11/3/2000 and that there were numerous stressors that were concomitant with her injury, but the concomitant stressors were time limited, potentially resolvable stressors and the most significant problems she faced related to her chronic pain disorder that was chronic, permanent and ongoing, leading to trouble dealing with her numerous losses and a loss of hope for the future. Because of the period of time that has elapsed since the onset of her back injury on 11/3/2000, and the significant amount of psychological treatment that she has had, it does appear that she has reached maximum psychological benefit and it seems appropriate to provide a rating of her psychological impairment.

He then rated her at 30-35% impairment of the whole person. Approximately 15% of this impairment he determined to be pre-existing and the remaining 15-20% due related to and due to psychological ramifications of her work injury on 11/3/2000.

Dr. Woodward was again deposed in May 2006. He was asked to reevaluate her and saw her on January 17, 2006. He felt she did not have a good surgical outcome. He could not identify any substantial improvement in either her symptoms or her functional abilities from 2002 and 2006. He felt her intervening treatments had no benefit at all. He increased his rating to 12% of the body as a whole.

Dr. Mace reevaluated the claimant on December 4, 2006. In his report he notes a history of right L5-S1 laminectomy and nerve root decompression, as well as a spinal cord stimulator placement requiring multiple revisions. He states, "she still has some ongoing back pain and leg pain but feels that overall she is somewhat better than when I saw her last in 2002." In his plan he said, "I inquired as to whether she felt the surgeries had helped her and she felt there was some improvement. She understands the spinal cord stimulator may require revision and change of the battery in the future by Dr. Scarrow. I see no role for any further intervention with regard to her back. She does seem to understand that."

Dr. Pronko, a psychiatrist, reviewed medical records and the claimant's depositions, and issued a report dated May 30, 2006. He was deposed on November 21, 2006. He testified that he felt there were several diagnosis that overlapped. He said, "She described symptoms of depression, but when people are depressed, they also have a lot of physical complaints, complaints of pain. This is true for Ms. Patterson. I think, in line with the testing, psychological testing, and her descriptions, her focusing upon her pain and disability, a better diagnosis would be somatization disorder, or pain disorder, which are – pain disorder is one of the kind of subtypes of somatization disorders in which people concentrate upon their physical symptoms." He concluded that the depression she has is related to pre injury events. He testified that when she went to Dr. Bright in 1999, "she was angry. She was angry with her husband. She blamed him for everything. So I think that's way before her Workers' Comp injury. She also has the background of coming from a family with lots of disturbance, alcohol and depression, with sexual abuse, and such people do have and end up being depressed. So I think that fits her much better. And that the depression she has and experiences come out of her past life has nothing to do with her injury in November 2000." He did not feel that her depression came out of her pain and surgery, rather "she always focuses upon family and the husband as causing the majority of her difficulties."

Dr. Volarich was deposed again on August 18, 2003. He testified that the claimant was asymptomatic before

the work injury. He said that the work injury caused a change in pathology from the degenerative disc disease that she had pre-existing, and the job injury was a substantial factor in causing her injury. He also found her psychological condition to have worsened after the injury, and that when combined with her injury created an overall greater amount of disability than the simple sum of the two. He also said that she would need further medical treatment to relieve the effects of her injury.

Dr. Volarich examined her again on March 11, 2005. He was later deposed again on January 30, 2006. In his report of March 2005, he diagnosed a lumbar syndrome and failed back syndrome and found her to be at maximum medical improvement. He said that she continued to have the same symptomology as before the surgery in September 2002. He felt that the work injury was a substantial factor in causing these conditions. He found the treatment provided by Dr. McQueary was reasonable and necessary. He rated the claimant with 50% of the body as a whole for the back. He also found, when coupled with the depression, she was permanently and totally disabled only if a qualified vocational rehabilitation counselor concluded that due to her restrictions she could not be employed. He further said that she had worsened since he saw her in 2003.

Dr. McQueary was deposed on September 26, 2006. He testified that he diagnosed either L5 and/or S1 nerve root irritation with radiculopathies. He felt all the treatment he performed was reasonable and necessary to cure and relieve her of the effects of her injury. He testified that he was aware the claimant had a history of mental illness when he recommended the surgery. He said that he did not “go into the specifics of mental illness. I don’t look at that as specifically impacting my anatomic decision-making, and I was not in the business of trying to assess her mental capacity at that time other than to try to make sure that she was coming across as a consistent, reasonable person during the times I interacted with her.” Dr. McQueary testified that the claimant was temporarily and totally disabled from the date of her surgery to March 18, 2003, the date he last saw her.

Phil Eldred, a certified rehabilitation counselor, evaluated the claimant on July 23, 2005. After his review of medical records, reports, ratings, and interviewing claimant, he placed her vocationally at less than the sedentary work level. He noted that Dr. Halfaker’s evaluation of her intellectual functioning, and his conclusion that she had a significant chronic pain disorder accompanied by a major depressive disorder resulting in significant permanent partial impairment. Mr. Eldred testified that the claimant was not capable of returning to her old employment because of her physical and functional limitations along with her pain disorder and psychological condition. He said that she had no relevant transferable skills. Her emotional and mental disorder prevents her from being able to function in jobs dealing with people and from going into training programs. Although he felt she did have the aptitude for retraining, he did not think she could retrain because she could not sit long enough. She could not sit in a classroom long enough and listen to the instructor and understand what he is saying.

Mr. Eldred further testified that her need to lay down 2-4 times a day would hinder her employment as no employer would be expected to accommodate this. He further testified considering her physical limitations, pain disorder, depression and other emotional problems, he would not expect an employer to hire her in her physical and emotional condition.

In his report he initially stated that the pre-existing depression, when combined with the work injury of November 2000, caused her to be permanently and totally disabled. When he testified, he stated that after reviewing additional reports, he felt that the work injury triggered the condition again, and that the work injury precipitated the problem to cause her to be unemployable. He recognized the previous depression did not prevent her from doing her job. He felt that the work injury of November 2000, was the precipitating problem keeping her from working, and that it caused her mental conditions to worsen, it was still a combination. He said that if you took away the emotional and psychological problems, based on her pain alone, she would still not be employable.

The claimant incurred medical expenses of \$139,469.41, for medical treatment she has incurred on her own. The employer has not paid these bills, and the claimant is requesting these be awarded to her.

#### CONCLUSIONS OF LAW:

1. Whether the employer is obligated to pay past medical expenses.

The claimant requested additional medical treatment from the employer which was denied. The claimant then sought a temporary hearing in April 2002 on this issue. In the award of October 2002 further medical treatment was denied.

Section 287.140.1 RSMo. states: “If the employee desires, he shall have the right to select his own physician, surgeon or other such requirement at his own expense.” The claimant chose to seek additional medical treatment on her own. She had surgery from Dr. McQueary in September 2002, before even receiving the award. She knew that the treatment was not authorized when she incurred these bills, which

ultimately totaled \$139,469.41.

I find that the employer is not obligated to pay the past medical expenses of \$139,469.41, as these bills were incurred by the claimant on her own and were never authorized by the employer nor ordered to be provided in the temporary award.

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

I find that the claimant will require future medical treatment in the form of pain management to cure and relieve her from the effects of the injuries. The claimant is currently using an implanted spinal cord stimulator which the evidence supports will need monitoring as well as her medications. The claimant has sought extensive medical treatment on her own and requests in her brief that this future treatment be provided by her current physicians including Drs. McQueary, Volarich and Evenson. I find no evidence of any conduct on the part of the employer that could be construed as waiving their right to direct medical treatment. I find that the employer still has the right to direct medical treatment and choose the physicians and health care providers. Therefore, the employer is ordered to provide a future medical treatment as recommended by a competent physician, to cure and relieve the claimant of the effects of her injury.

3. Any past temporary total benefits owed to the claimant, specifically from January 20, 2001, to March 11, 2005, totaling \$68,827.50.

At the time of the temporary hearing, it was found that she was at maximum medical improvement for the physical injuries she sustained. I find this is still a valid finding, although she has incurred further treatment since then for her back, her condition still remains the same. I do not find that the issue of past temporary disability turns on her back condition. Rather, I find that the determination of whether the claimant is owed any temporary disability, and if so, for what time period, is dependent on whether her mental condition was a pre-existing mental condition or whether the work injury caused a portion of the mental injuries.

The issue of causation of the mental condition was an issue at the temporary hearing in 2002. Based upon the evidence at the time, I denied compensation for the mental condition, finding it was not causally related. Subsequent to the hearing, further medical evidence was developed and presented. After carefully considering all of the evidence, I find the opinion of Dr. Halfaker particularly credible. I base my findings on Dr. Halfaker's opinion, specifically his statement that, "It does appear that a significant portion of her depression pre-existed her injury of 11/3/2000 and that there were numerous stressors that were concomitant with her injury, but the concomitant stressors were time limited, potentially resolvable stressors and the most significant problems she faced related to her chronic pain disorder that was chronic, permanent and ongoing, leading to trouble dealing with her numerous losses and a loss of hope for the future." He found her at maximum medical improvement at the time, December 4, 2004, and rated her with 30-35% disability of the body as a whole, 15% pre-existing and 15-20% work-related.

Therefore, I find that at least a portion of the claimant's mental condition was caused by the work injury, and that she remained temporarily and totally disabled due to this condition until the date she was found at maximum medical improvement by Dr. Halfaker. The employer and insurer are ordered to pay temporary disability from January 20, 2001, to December 4, 2004, for a total of 201 5/7 weeks of benefits at the rate of \$337.87, for a total of \$68,153.22.

4. The nature and extent of permanent disabilities.

Phil Eldred, a certified rehabilitation counselor, testified that the claimant could not compete in the open labor market. Dr. Volarich found the claimant permanently and totally disabled. I find no vocational or medical evidence that establishes that she can work. Therefore, I find that the claimant is permanently and totally disabled.

The issue is the basis for the claimant's inability to work. Is it a combination of her pre-existing mental condition and the work injury or whether it is the work injury alone. In making this determination, I again turn to the opinion of the mental health experts, Dr. Halfaker and Dr. Pronko for guidance. They each come to different conclusions about the effect of the work injury on the claimant's mental condition. Mr. Eldred testified that the claimant could not compete in the open labor market due to a combination of her mental condition and her physical condition. He ultimately felt that the portion of the mental condition preventing her

from returning to the open labor market was due to the word-related injury. After carefully considering all of the evidence, I find the opinion of Dr. Halfaker more credible than Dr. Pronko.

Therefore, I find that the claimant is permanently and totally disabled as a result of the physical and mental conditions resulting from the work-related injury alone. Therefore, the employer is responsible for permanent and total disability from the date of maximum medical improvement, December 5, 2004, to the present and into the future for the remainder of claimant's permanent disability.

5. The liability of the Second Injury Fund for permanent total disability.

Based on my findings above, the Second Injury Fund is not liable for permanent and total disability.

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

Date: July 3, 2007

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

A true copy: Attest:

/s/ Lucas Boling  
Lucas Boling  
*Acting Director*  
*Division of Workers' Compensation*