

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

Injury No.: 08-118098

Employee: Shelby Patterson
Employer: Central Freight Lines
Insurer: American Home Assurance
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries

The parties asked the administrative law judge to resolve the following issues: (1) medical causation; (2) future medical; (3) temporary total disability from November 18, 2008, through February 2, 2009; (4) permanent disability; and (5) Second Injury Fund liability.

The administrative law judge rendered the following findings and conclusions: (1) employee's work injury was the prevailing factor causing a herniated disc and disability, and in aggravating his preexisting psychiatric conditions, but that the pars defects were not related to the work injury, and employee failed to establish the work injury was the prevailing factor in causing his incontinence or erectile dysfunction; (2) employee is not entitled to future medical care; (3) employee is entitled to temporary total disability benefits from December 13, 2008, through February 2, 2009; (4) employee sustained a 45% permanent partial disability of the body as a whole as a result of the work injury; and (5) employee's prior disabilities do not meet statutory thresholds and accordingly the Second Injury Fund is not liable for benefits.

Employee filed a timely Application for Review with the Commission alleging the administrative law judge erred: (1) in finding employee's incontinence and erectile dysfunction were not causally related to the work injury; (2) in finding the bulk of employee's psychiatric problems were not causally related to his work injury; (3) in finding employee is not entitled to future medical care; (4) in finding employee is not permanently and totally disabled; and (5) in finding employee was not a credible witness.

For the reasons stated below, we modify the award of the administrative law judge referable to the issues of: (1) medical causation; (2) future medical treatment; (3) permanent total disability; and (4) Second Injury Fund liability.

Employee: Shelby Patterson

- 2 -

Discussion**Medical causation**

The administrative law judge determined that employee failed to establish his urinary incontinence resulted from his low back work injury. We disagree for the following reasons.

It is uncontested that employee now suffers from urinary incontinence. At the time of the accident on November 17, 2008, employee was 40 years of age. At oral argument in this matter, the parties agreed that there is no evidence on this record that would support a finding that employee had any problem with incontinence before the accident of November 17, 2008. In rendering his opinion that employee's accident did not cause him to suffer incontinence, employer's hired expert Dr. Cantrell diagnosed employee with a neurogenic bladder, suggested this condition was inconsistent with employee's diagnosis of disc pathology at L3-4, and pointed to a lack of documentation of employee's incontinence in the initial medical records generated in connection with employee's treatment following the work injury.¹ Dr. Cantrell does not provide any alternative medical theory to explain why a 40-year-old employee developed a neurogenic bladder following the work injury, but rather has, in essence, appointed himself arbiter of employee's credibility. We note that the Missouri courts have declared that "[t]here is no requirement that the medical records report employment as the source of injury." *Daly v. Powell Distrib., Inc.*, 328 S.W.3d 254, 259 (Mo. App. 2010). Notably, Dr. Cantrell indicated he would defer to a urologist; the treating urologist Dr. Bullock ruled out prostate cancer, bladder cancer, diabetes, Parkinson's disease, multiple sclerosis, and other potential non-work-related causes of employee's incontinence.

We are not persuaded that we need the assistance of Dr. Cantrell in determining whether employee credibly reported the timing or onset of his symptoms following the work injury. Nor are we persuaded by Dr. Cantrell's testimony inviting us to find that employee's incontinence in the aftermath of this serious and disabling low back injury was the result of a mysterious coincidence. Especially in the absence of any alternative theory of medical causation on this record, we find most persuasive the opinion from Dr. Poetz that the accident was the prevailing factor causing employee to suffer urinary incontinence.

Section 287.020.3(1) RSMo sets forth the standard for medical causation applicable to this claim and provides, in relevant part, as follows:

An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

We conclude that the accident is the prevailing factor causing the resulting medical conditions of (1) a low back work injury in the form of new disc pathology at L3-4 and exacerbation of preexisting degenerative disc disease; (2) urinary incontinence; and

¹ We note the absence of any evidence on this record that employee suffers from any neurogenic condition or diagnosis apart from that referable to his work injury affecting the lumbar spine.

Employee: Shelby Patterson

- 3 -

(3) aggravation of employee's preexisting psychiatric issues, as well as permanent partial disability associated with each of these conditions. We deem appropriate the administrative law judge's finding that employee sustained an overall 45% permanent partial disability of the body as a whole as a result of the work injury. We find that employee reached maximum medical improvement on January 14, 2010.

Future medical treatment

Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove a reasonable probability that he has a need for future medical treatment that flows from the work injury. *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 51-4 (Mo. App. 2008). The administrative law judge denied employee's claim for future medical care, based on a finding that there is no objective evidence of any need for further treatment and on (implied) findings that the opinions of Drs. Cantrell and Graham provide credible support for this result. We disagree for the following reasons.

In Dr. Cantrell's report dated December 2, 2009, he opined that employee would have a need for ongoing treatment to manage his chronic low back pain. Dr. Cantrell later opined that he did not believe the accident caused any injury to employee's low back, but the administrative law judge rejected that opinion, and employer did not appeal that determination. We, like the administrative law judge, do not find Dr. Cantrell's causation opinions in this matter worthy of belief, but we do find probative his concession that employee will need ongoing care to manage his chronic low back pain. Meanwhile, Dr. Poetz opined that employee has a need for future medical treatment to cure and relieve the effects of his chronic low back pain resulting from the work injury, and this opinion was not directly challenged on cross-examination.

We acknowledge that the pain management specialist, Dr. Graham, opined in his report dated July 6, 2010, that he did not find any indication for continued treatment for low back pain. Dr. Graham pointed to what he perceived as inconsistencies among the various medical treatment records as to employee's account of the mechanism of injury. Again, we feel capable of determining employee's credibility without the assistance of Dr. Graham. We find Dr. Graham's opinion regarding future medical care lacking in probative value.

With respect to the condition of urinary incontinence, we have modified the administrative law judge's findings and conclusions with regard to the issue of medical causation of this condition, and determined that the accident is the prevailing factor causing employee to suffer urinary incontinence. The treating physician Dr. Bullock identified a number of treatment options for this condition, and Dr. Poetz persuasively opined that employee has a need for ongoing care to manage his urinary incontinence.

In light of the foregoing considerations, we find that employee has a need for future medical treatment to cure and relieve his chronic low back pain and urinary incontinence resulting from the work injury. We conclude, therefore, that employer is obligated under § 287.140.1 to furnish those future medical treatments that may reasonably be required to cure and relieve employee's chronic low back pain and incontinence. We affirm and adopt, however, the administrative law judge's determination that employee's need for psychiatric care is a product of his preexisting

Employee: Shelby Patterson

- 4 -

psychiatric problems, and that employee has thus failed to meet his burden of proving that he has a need for future psychiatric care that flows from the work injury.

Accordingly, employer is not required to furnish any psychiatric care to employee.

Permanent total disability

The administrative law judge determined that employee's testimony regarding his limitations lacks credibility, and that employee is not permanently and totally disabled. For the following reasons, we disagree.

Although we acknowledge that the administrative law judge had an opportunity to personally observe employee's testimony, we have carefully reviewed the record in light of the uncontested expert medical evidence suggesting that employee suffers from considerable psychiatric limitations and disability. After careful consideration of the record as a whole, we do not view employee's testimony ascribing numerous and amorphous complaints (such as upper extremity pain and numbness) to his low back work injury as evidence that employee is dishonest or is trying to mislead this Commission. Rather, we view it as wholly consistent with and supportive of a finding that employee does suffer from considerable psychiatric problems.

Employee's treating psychiatrist, Dr. Bassett, opined that employee's psychiatric symptoms are sufficient to keep him from being able to work, but did not offer an opinion as to the causation of employee's psychiatric disability. We find persuasive Dr. Bassett's opinion that employee suffers from considerably disabling psychiatric problems. Employer presented testimony from the psychiatrist Dr. Stillings, who opined that, at the time of the work injury, employee suffered from considerable preexisting permanent partial psychiatric disability. Dr. Stillings acknowledged the lack of any documentation that employee received psychiatric care before the work injury, but explained that the psychiatric testing he administered showed objective evidence of preexisting psychiatric problems. Dr. Stillings also pointed to employee's incarceration and frequent job changes as supportive of his ratings.

After careful consideration, we find persuasive Dr. Stillings's testimony to the extent that he identified significant preexisting permanent partial psychiatric disability. We find that, at the time employee suffered the work injury on November 17, 2008, he suffered a preexisting 30% permanent partial disability of the body as a whole referable to psychiatric problems.

Employee presented testimony from the psychiatrist Dr. Liss, who opined employee is permanently and totally disabled from psychiatric injury resulting from the work injury considered in isolation. On cross-examination, Dr. Liss asserted that even if all of employee's psychiatric conditions and disability had preexisted the work injury, Dr. Liss's diagnoses and opinion linking permanent total disability to the work injury would not change. Especially in light of this remarkably inflexible testimony, we agree with the administrative law judge's determination that Dr. Liss's opinions lack persuasive force in this matter.

Dr. Poetz also opined that employee is permanently and totally disabled as a result of the work injury considered in isolation. We note that in reaching this determination,

Employee: Shelby Patterson

- 5 -

Dr. Poetz opined that the primary injury caused employee to suffer a 20% permanent partial disability of the body as a whole referable to psychiatric injury. Especially in light of our finding that the bulk of employee's psychiatric issues preexisted the work injury, we do not find persuasive the opinion from Dr. Poetz assigning permanent total disability to the primary injury considered alone.

Employer presented testimony from the vocational expert Bob Hammond, who opined that employee has "excellent access" to the labor market. It appears that Mr. Hammond ignored employee's incontinence in reaching this determination. Asked on cross-examination to consider whether incontinence could affect employee's ability to access the open labor market, Mr. Hammond trivialized the daily embarrassment and indignity employee suffers as a result of this condition by suggesting employee is simply trying to find reasons not to work because he doesn't want to work. Mr. Hammond's testimony reveals that he did not actually review the medical records generated in connection with employee's treatment for incontinence, and we note that Mr. Hammond conceded that if he were to review records describing the frequency of employee's episodes of incontinence, his opinions could change. We find Mr. Hammond's opinions in this matter lacking any persuasive force.

The vocational expert James England evaluated employee and provided his opinion that employee is permanently and totally disabled when his physical restrictions are combined with the psychiatric limitations identified by Dr. Bassett. During his deposition, Mr. England provided some testimony suggesting he believed employee is permanently and totally disabled referable to the effects of the primary injury considered alone. To the extent such opinion must rely on assumptions regarding medical causation, it cannot (nor do we believe Mr. England intended it to) substitute for expert medical testimony on the topic.

We do find persuasive Mr. England's opinion that employee is permanently and totally disabled when his physical limitations resulting from the work injury are combined with the psychiatric issues identified by Dr. Bassett. Because we have determined that the bulk of employee's psychiatric issues are the product of a 30% preexisting permanent partial psychiatric disability of the body as a whole, we view Mr. England's testimony as supportive of a finding that employee is unable to compete for work in the open labor market as a result of the effects of the primary injury in combination with employee's preexisting permanent partial psychiatric disability.

In light of the foregoing considerations, we find that employee is unable to compete in the open labor market as a result of the effects of the primary injury in combination with his preexisting psychiatric issues.

Second Injury Fund liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in "all cases of permanent disability where there has been previous disability." As a preliminary matter, the employee must show that he suffers from "a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed..." *Id.* The

Employee: Shelby Patterson

- 6 -

Missouri courts have articulated the following test for determining whether a preexisting disability constitutes a "hindrance or obstacle to employment":

[T]he proper focus of the inquiry is not on the extent to which the condition has caused difficulty in the past; it is on the potential that the condition may combine with a work-related injury in the future so as to cause a greater degree of disability than would have resulted in the absence of the condition.

Knisley v. Charleswood Corp., 211 S.W.3d 629, 637 (Mo. App. 2007)(citation omitted).

We have found that employee suffered from a preexisting permanent partially disabling condition referable to his psychiatric problems at the time he sustained the work injury. We are convinced this condition was serious enough to constitute a hindrance or obstacle to employment. This is because we are convinced employee's preexisting psychiatric condition had the potential to combine with a future work injury to result in worse disability than would have resulted in the absence of the condition. See *Wuebbeling v. West County Drywall*, 898 S.W.2d 615, 620 (Mo. App. 1995).

Having found that employee suffered from a preexisting permanent partially disabling condition that amounted to a hindrance or obstacle to employment, we turn to the question whether the Second Injury Fund is liable for permanent total disability benefits. In order to prove his entitlement to such an award, employee must establish that: (1) he suffered a permanent partial disability as a result of the last compensable injury; and (2) that disability has combined with a prior permanent partial disability to result in total permanent disability. *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 50 (Mo. App. 2007). Section 287.220.1 requires us to first determine the compensation liability of the employer for the last injury, considered alone. If employee is permanently and totally disabled due to the last injury considered in isolation, the employer, not the Second Injury Fund, is responsible for the entire amount of compensation. "Pre-existing disabilities are irrelevant until the employer's liability for the last injury is determined." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo. 2003).

We have determined that, as a result of the accident on November 17, 2008, employee sustained a 45% permanent partial disability of the body as a whole, and we have found lacking credibility the expert opinions assigning employee's permanent total disability to the effects of the primary injury. We conclude that employee is not permanently and totally disabled as a result of the last injury considered in isolation.

We conclude employee is permanently and totally disabled owing to a combination of his preexisting disabling conditions in combination with the effects of the work injury. The Second Injury Fund is liable for permanent total disability benefits.

Conclusion

We modify the award of the administrative law judge as to the issues of (1) medical causation; (2) future medical treatment; (3) permanent disability; and (4) Second Injury Fund liability.

Employee: Shelby Patterson

Employee is entitled to, and employer is hereby ordered to provide, that future medical treatment that may be reasonably required to cure and relieve employee from the effects of his chronic low back pain and incontinence resulting from the work injury.

The Second Injury Fund is liable for weekly permanent total disability benefits beginning January 14, 2010, at the differential rate of \$114.79 for 180 weeks, and thereafter at the stipulated weekly permanent total disability rate of \$519.45. The weekly payments shall continue for employee's lifetime, or until modified by law.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued October 4, 2013, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

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

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

Given at Jefferson City, State of Missouri, this 11th day of April 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



[Signature]
John J. Larsen, Jr., Chairman

[Signature]
James G. Avery, Jr., Member

[Signature]
Curtis E. Chick, Jr., Member

Attest:

[Signature]
Secretary

AWARD

Employee: Shelby Patterson

Injury No.: 08-118098

Dependents: n/a

Employer: Central Freight Lines

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

Additional Party: Second Injury Fund (SIF)

Insurer: American Home Assurance

Hearing Date: July 2, 2013

Checked by: KMH

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: November 17, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured his low back and psyche as a result of a fall in the course and scope of his employment.
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: low back, psyche
14. Nature and extent of any permanent disability: 40% low back, 5% psyche
15. Compensation paid to-date for temporary disability: \$41,858.04
16. Value necessary medical aid paid to date by employer/insurer? \$104,946.09

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Shelby Patterson

Injury No.: 08-118098

Dependents: n/a

Employer: Central Freight Lines

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

Additional Party: Second Injury Fund

Insurer: American Home Assurance

Checked by: KMH

A hearing was held on the above captioned matter July 2, 2013. Shelby Patterson (Claimant) was represented by attorney Genavieve Fikes. Central Freight Lines (Employer) was represented by attorney Kent Schultz. The SIF was represented by Assistant Attorney General Maria Daugherty.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

STIPULATIONS

The parties stipulated to the following:

1. Claimant was injured by accident November 17, 2008, while in the course and scope of his employment for Employer in St. Louis.
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by American Home Assurance.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant's average weekly wage was \$779.18. His rates for TTD/PTD and PPD are \$519.45 and \$404.66 respectively.
6. Claimant has been paid compensation to date in the amount of \$41,858.04 for 82 weeks of TTD from February 3, 2009 through August 27, 2010.
7. Employer paid TTD at an incorrect rate, and agrees Claimant is entitled to an additional TTD payment of \$915.94.
8. Claimant has received \$104,946.09 in medical benefits.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Medical Causation
2. Future medical care
3. TTD from November 18, 2008 through February 2, 2009
4. Permanent disability
5. SIF liability

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 45 year-old male who is married, but separated from his wife. He lives with his five year-old son. He has two adult daughters by two other women, but the daughters do not live with him. Claimant is the fourth of six kids. His father left the family when Claimant was seven years old. He was raised by his mother. Claimant completed the 8th grade and is able to read and write. He last worked December 12, 2008, when Employer closed. He was awarded SSD April 29, 2010.
2. Claimant completed the eighth grade and dropped out of high school. He was convicted of felony burglary, stealing and leaving the scene of an accident at the age of seventeen. He was sentenced to 18-20 years in prison and served seven and a half years. While in prison, he earned his GED. When he was released, he was self employed in the lawn care business. He earned a cosmetology license and worked the next three to four years as a hairstylist until that employer went out of business. He worked in telemarketing and the restaurant industry. Claimant then worked approximately two years as a laborer and forklift driver in warehouses. He attended trucking school and earned his commercial drivers' license. He worked as an over-the-road driver until he was hired by Employer as a local driver.
3. On November 17, 2008, Claimant's supervisor, Torre Tyler, asked Claimant to help him clean up an oil and glue spill in one of Employer's trucks. The glue and oil was substantial and difficult to clean up. As Claimant and Mr. Tyler were cleaning up the spill, Claimant slipped off the ramp twice and fell on his buttocks. Mr. Tyler testified he saw Claimant fall. Claimant testified he felt a stabbing, sharp pain in his back, but kept working because he thought his symptoms would improve.
4. Claimant testified he was in so much pain that he could not stand up straight or walk, so he went to Christian Hospital Emergency Room on November 28, 2008. The records indicate Claimant complained of low back pain with numbness in his legs for the past month from lifting, bending, and twisting at work. He testified he told the doctors Employer had been asking him to do extra duties for the last month, and last week he

slipped and fell. X-rays revealed a bilateral L5 pars fracture, and he was given Toradol and Vicodin.

5. Claimant continued to work full-time to help Employer wrap up and close their business. He last worked when Employer closed December 12, 2008.
6. Claimant's pain did not improve, and he saw Dr. O'Neill January 22, 2009. Dr. O'Neill reviewed Claimant's x-rays from the hospital and noted Claimant had a bilateral pars fracture. Claimant had pain down both legs, but denied problems with bowel or bladder control. Dr. O'Neill ordered an MRI which showed an extruded fragment. He ordered an EMG of the lower extremities, which was unremarkable. Claimant testified Dr. O'Neill gave him a prescription for a wheelchair, but this is not reflected in the records. Dr. O'Neill referred Claimant to Dr. Hoffman.
7. Claimant testified through January and February 2009, he had what he describes as irritable body movements, difficulty walking, and incontinence.
8. Claimant saw Dr. Hoffman at the end of February 2009 and had complaints of pain in his arms down to his wrists, pain across his low back into his buttock, pain in his legs, and he had some shakes and muscle spasms. He also complained of incontinence and erectile dysfunction. Dr. Hoffman ordered additional studies which showed a large broad-based disc herniation at L3-4. He advised Claimant the pars defects were not related to the fall, and he recommended surgery to repair the herniation. Claimant testified he was told he needed immediate surgery because the herniation was cutting him off from top to bottom.
9. On March 26, 2009, Dr. Hoffman performed an L3-4 decompressive laminectomy and discectomy, and noted the post operative course was uneventful. Claimant testified the surgery provided relief from the pressure inside, but he still had low back pain and difficulty walking. He testified he was able to stand better, he had some leg pain, and he still had incontinence. Dr. Hoffman's follow-up records have several notations of complaints of incontinence and pain throughout his body. Dr. Hoffman ordered a new MRI in June 2009 due to Claimant's ongoing complaints. This showed the herniation was repaired and Claimant had no additional problems in his lumbar spine.
10. Claimant began treating with Dr. Cantrell in July 2009. He reviewed the records and examined Claimant, noting Claimant was using a cane. He noted the only objective finding was mild weakness with right knee and toe extension, and Claimant had no upper motor neuron pathology. Claimant had improvements in bowel incontinence following the surgery, had normal rectal tone, and had no evidence of cauda equina. He prescribed Lyrica and recommended Claimant continue physical therapy and remain off work.
11. Claimant had no psychiatric treatment or diagnoses before the work injury. Claimant testified the pain medications made him depressed and caused some problems with his behavior and personality. Dr. Cantrell referred him to Dr. Bassett, a psychiatrist, in August 2009. Much of the focus throughout his treatment was on Claimant's relationship with his wife, his jealousy and paranoia, from both before and after the work injury.

12. Claimant's symptoms continued, and Dr. Cantrell ordered new electrodiagnostic studies. He opined they showed no evidence of radiculopathy, plexopathy, or peripheral polyneuropathy. He prescribed a muscle stimulator for the pain and recommended continued physical therapy and medications. The physical therapy records indicate Claimant ambulated with a cane, but can ambulate without assistance. A functional capacity evaluation indicated Claimant could work in a light capacity level, but he failed a number of validity criteria, suggesting submaximal performance.
13. Claimant advised Dr. Cantrell that Dr. Hoffman recommended a fusion. This is not reflected in Dr. Hoffman's records. Dr. Cantrell recommended a second opinion with Dr. Raskas to address the need for additional surgery. In November 2009, Dr. Raskas reviewed the records and examined Claimant. He noted Claimant walked in an exaggerated fashion with the assistance of a cane. Dr. Raskas opined Claimant would not do well from a second surgery.
14. Claimant also was referred to a urologist, Dr. Adkins, in August 2009. He diagnosed urge incontinence, urinary tract infection and impotence of organic origin. He recommended a number of tests which revealed Claimant had sensory urgency with detrusor instability. Dr. Adkins tried a number of medications and treatments, but Claimant testified he has had minimal improvement.
15. Dr. Cantrell released Claimant at MMI in January 2010 and opined Claimant could work in a sedentary capacity. In March 2010, the Salvation Army offered Claimant transitional employment involving data entry and typing. Claimant testified he declined the offer because he thought he could not physically do the job and emotionally he could not endure the embarrassment of interacting with the public.
16. Many of Dr. Bassett's office notes indicate Claimant used a cane. Dr. Bassett's notes from the spring of 2010 indicate he was treating Claimant for depressive disorder, not otherwise specified, anxiety, and symptoms of jealousy/paranoia. He opined Claimant developed a depression with psychotic features or a separate delusional disorder. He prescribed medications and opined Claimant will have a lifelong need for psychiatric medications. By March 2010, Dr. Bassett opined Claimant's psychiatric symptoms were sufficient to keep him from being able to work. He opined adding the urinary issues created an even greater hurdle to being able to work. Claimant discussed the transitional job offer with him, and Dr. Bassett was concerned Claimant would psychiatrically decompensate if he returned to work in a setting that required regular interpersonal contact and the risk of public embarrassment. Dr. Bassett declined to provide an opinion as to the cause of Claimant's psychiatric conditions.
17. Claimant saw Dr. Graham, a pain management specialist, in early 2010. He opined the records of various treating physicians failed to document findings consistent with a true cauda equina syndrome diagnosis. Claimant had complaints throughout his body that could not be explained by a disc surgery or cauda equina syndrome. Dr. Graham opined there was a psychiatric/psychologic component to his complaints. He recommended evaluations by a neurologist, Dr. Peeples, to evaluate the cauda equina and by a urologist,

Dr. Shands, to evaluate the urinary incontinence. He also recommended a psychiatric causation opinion.

18. Dr. Peeples examined Claimant and opined Claimant's symptoms, which include lower extremity and upper extremity symptoms, cannot be explained on the basis of a cauda equina syndrome or his work injury or surgery. He opined Claimant had a psychiatric dysfunction which may be the prevailing factor in causing his disability, and opined from a neurologic standpoint, Claimant was able to work in at least some capacity.
19. Dr. Shands examined Claimant and opined he could not relate Claimant's urinary incontinence and erectile dysfunction to the work injury. He opined incontinence can be managed and Claimant could continue to work.
20. Based on these opinions, Dr. Graham concluded Claimant did not have radiculopathy or myelopathy. He had widespread subjective complaints over most of his body that cannot be explained by the pathology in his lumbar spine. Dr. Graham concluded Claimant did not need further pain management treatment.
21. In August 2010, Dr. Cantrell reviewed a number of records indicating Claimant had low back pain with radiation and treatment prior to the 2008 work injury. Claimant testified he does not recall any treatment or low back or leg pain before the 2008 injury. Dr. Cantrell questioned whether Claimant's work injury was the prevailing factor in causing the current problems. He opined there was not supportive evidence for a diagnosis of cauda equina syndrome, and released Claimant to work with a 50 pound lifting limit and avoidance of repetitive bending. He rated Claimant's disabilities at 10% of the body referable to the work injury.
22. Claimant continues to have a number of symptoms he relates to the work injury. He testified he has constant pain in his back and legs and is in a wheelchair most of the time, even in the house. He still has the muscle stimulator that Dr. Cantrell prescribed. It helps keep his body and back relaxed and numb so he doesn't notice the pain. He does not go out much anymore. He can't cut the grass or do much of anything for himself. He feels he is a third of the man he used to be. He can walk short distances, but then he has pain and back swelling, so it is better not to stand. He can lift a milk jug, but not much more than that. His mother-in-law comes to his house 4-5 hours a day, 5 days a week. She helps with cooking, cleaning, chores, and makes phone calls for him.
23. Claimant testified he has had urinary incontinence since the date of the injury. It stops him from doing a lot of things. He never had this problem before the injury. He carries a water bottle with him to urinate in. He mostly stays in the house and urinates in the sink. The urologist prescribed medications that did not help. He talked about a catheter, but thought it would cause infections, so he tried a bladder stimulator unit, which didn't work. He has a number of accidents each day. He wears diapers which cause rashes. This affects him mentally and causes paranoia because he thinks he smells. He uses cologne to cover up the smell. He thinks people are looking at him and thinking about it. People think he is being disrespectful when he has to reach down to see if he is wet.

24. Claimant was also diagnosed with erectile dysfunction. He testified this affected his relationship with his wife, and they are separated now. He thinks she is seeing someone else because he can't please her.
25. He testified he also has depression and anxiety from this injury. He feels down, like giving up, like life is treating him unfair, he has no chance to pursue his dreams or goals, and he can't control that.
26. Claimant testified he had small incidents of back pain prior to his 2008 injury, but they never prevented him from working. He had no low back pain, leg pain, depression, or anxiety immediately before the 2008 injury.
27. Claimant's medical expert, Dr. Poetz, opined Claimant is permanently and totally disabled as a result of the work injury and its complications. He opined the work injury caused Claimant's herniated disc, pars fractures, urinary incontinence, erectile dysfunction, depression and anxiety. He recommended continued treatment for each of these conditions.
28. Claimant's vocational expert, Jim England, opined Claimant could work based on Dr. Cantrell's restrictions. Assuming Dr. Poetz and Dr. Bassett's restrictions, Claimant could not work. He further opined considering Claimant's self-reported symptoms and limitations, he would not be able to successfully compete for or sustain work. He is not employable based on the restrictions from the last injury alone, his age, education, and transferable skills. He agreed Claimant's criminal history and problems interacting with people in the past are impediments to employment.
29. Claimant's psychiatric expert, Dr. Liss, is a specialist in post traumatic stress disorder, and is the founder of the Traumatic Society of America. He opined nothing in Claimant's family history affected him psychiatrically and Claimant's imprisonment did not cause any psychiatric injury. He diagnosed ptsd with anxiety and depression, and opined this is caused by the work injury because Claimant had no history of psychiatric symptoms or treatment prior to the work injury. He testified even if Claimant had multiple pre-existing psychiatric diagnoses, he would still conclude the work injury is the sole cause of Claimant's total disability. He opined Claimant is permanently and totally disabled because of his psychiatric condition alone, and that is the result of the work injury. He is the only doctor to diagnose ptsd.
30. Dr. Liss testified Dr. Stillings' diagnoses were not psychiatric diagnoses, but were social diagnoses. He testified Dr. Stillings' psychiatric testing does not focus on the most common work injuries, which are traumatic brain injuries, post concussion syndrome, and ptsd. He criticized Dr. Stillings for not performing standardized tests for these injuries even though nothing in the treatment history indicates these conditions.
31. Employer's medical expert, Dr. Cantrell, opined Claimant's work injury was not the prevailing factor in causing his herniation, incontinence, erectile dysfunction, and psychiatric conditions for a number of reasons. First, Claimant gave an inconsistent history in the initial Emergency Room records. He also denied prior back problems and

denied problems with bowel or bladder control until three months after the injury. In addition, the expansion of Claimant's symptoms to include his upper extremities would not have any neurologic basis for an injury to the lumbar spine. He testified it is possible the herniated disc was caused by the work injury.

32. Employer's vocational expert, Bob Hammond, noted Claimant was a poor historian, and was verbally combative during their interview. Mr. Hammond had to contact Claimant's attorney twice in order to get Claimant's cooperation. He opined the preponderance of the medical evidence indicates Claimant is able to work in some capacity and has access to the open labor market. Presenting in a wheelchair lowers the scope of the jobs he might have available, and he wouldn't get any of the jobs Mr. Hammond listed.
33. Employer's psychiatric expert, Dr. Stillings, administered numerous tests, that he testified are the general standard and have imbedded validity tests. He reviewed the records, and examined Claimant in May 2010. He detailed Claimant's dysfunctional family history, his abandonment by his father, and his numerous problems in school leading to his placement in a children's home for two years, juvenile detention center for months, and finally prison for several years. His testing indicated Claimant exaggerated his symptoms. He made numerous diagnoses he relates to Claimant's pre-existing psychiatric condition, and opined the work injury aggravated Claimant's pre-existing personality disorder. He opined Claimant may benefit from additional psychiatric care related to his pre-existing psychiatric conditions. He opined Claimant is able to work from a psychiatric standpoint, but is limited in his ability to work due to his pre-existing psychiatric conditions.
34. Dr. Stillings disagreed with Dr. Liss' conclusions and methodology. Although Dr. Liss opined Dr. Stillings included every diagnosis possible under psychiatry and psychology, Dr. Stillings noted there are several hundred possible diagnoses. He further explained Dr. Liss' opinion there was no history of psychiatric symptoms or treatment prior to the work injury is misleading. Many people don't know they had pre-existing psychiatric symptoms. He opined there are no medically evidence-based facts to support the diagnosis of ptsd and psychosis.

RULINGS OF LAW

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

- 1. Claimant's low back injury and part of his psychiatric injury are medically and causally related to his work injury. His incontinence, erectile dysfunction, and the bulk of his psychiatric conditions are not related to his work injury.**

The parties stipulated Claimant sustained an injury by accident on November 17, 2008. To be compensable, the accident must be the prevailing factor in causing both the resulting condition and disability. Section 287.020.3 RSMO (2005).

Claimant alleges the work injury caused his low back condition, psychiatric condition, urinary incontinence and erectile dysfunction. Employer argues while they authorized low back surgery and some treatment for Claimant's other conditions, his accident was not the prevailing factor in causing his conditions or disability.

a. Low Back

Employer authorized the treatment provided by and through Dr. Hoffman, Dr. Cantrell and Dr. Graham. They each related Claimant's herniated disc and need for treatment to the work accident. Once Dr. Cantrell reviewed medical records indicating Claimant had low back pain prior to the 2008 work injury, he opined the work accident was not the prevailing factor in causing the low back injury, incontinence, erectile dysfunction or psychiatric conditions.

Claimant's prior records indicate emergency room visits for low back pain and some leg pain. He was diagnosed with strains. There is no indication a doctor recommended MRIs or other tests, Claimant had no treatment for his low back from 2004 until the 2008 injury, and Claimant was able to work full time until the 2008 injury. He had a traumatic injury in 2008, and developed immediate pain. His symptoms were different than they had been at the time of his prior treatment, and Dr. Hoffman noted Claimant needed immediate surgery to repair a large herniated disc. Dr. Cantrell testified it is possible the herniated disc was caused by the work injury, and he assigned some low back disability to the work injury.

I find the overwhelming weight of the medical evidence establishes Claimant's work injury was the prevailing factor in causing his herniated disc and disability associated with that condition. I find his pars defects were not related to the work injury.

b. Incontinence and erectile dysfunction

With respect to Claimant's remaining medical conditions, I find Claimant has failed to establish the work injury was the prevailing factor in causing his incontinence or his erectile dysfunction.

Claimant denied bowel or bladder problems until months after the injury. The January 22, 2009, records from Dr. O'Neill indicate Claimant denied problems with bowel or bladder control. Dr. Cantrell explained this timing is important. If Claimant had cauda equina syndrome as a result of the injury, he would have had early loss of bowel and bladder function, and this would be a surgical emergency. The first documentation in the medical records of incontinence is Dr. Hoffman's records at the end of February 2009. Claimant had substantial treatment and tests to determine whether he had cauda equina syndrome, and this was ruled out by each

physician, including Dr. Poetz. Claimant was diagnosed with detrusor instability, but there is no indication as to the cause or as to how often this condition occurs in the general population. The only causation opinion from a urologist is that the incontinence and erectile dysfunction are not related to the work injury.

c. Psychiatric conditions

Although the bulk of Dr. Bassett's records focus on Claimant's difficult relationship with his wife, Dr. Liss testified he was not aware of any marital problems. Claimant told him he did not have trouble in school, and Dr. Liss concluded there is no evidence of psychiatric injury as a result of the imprisonment. He opined Claimant's imprisonment was related to the fact he was a teenager and not related to any psychiatric diagnosis. He testified Claimant does not have a personality disorder because Claimant has one imprisonment, not a life long history of antisocial behavior and dysfunction. Dr. Liss testified even if Claimant had prior psychiatric care, was schizophrenic, or had multiple preexisting diagnoses, his opinion would not change.

Dr. Liss criticized Dr. Stillings' tests as not standardized for an injury such as post concussion syndrome, traumatic brain injury and ptsd. He opined Dr. Stillings' evaluation and testing did not focus on the actual injury or the most common work injuries, which are traumatic brain injuries, post concussion syndrome, and ptsd. Dr. Liss agreed the treating records do not indicate a post-concussion syndrome, traumatic brain injury, or diagnosis of ptsd, and he is the only psychiatrist to diagnose ptsd in this case.

While Claimant had no psychiatric treatment before the 2008 injury, he has multiple prior factors that contributed to his psychiatric condition. Dr. Stillings is the only expert who had an accurate picture of Claimant's life. He notes a dysfunctional family of origin. Claimant created problems in and out of school as a juvenile, and he was placed in a children's home for two years. His disruptive behavior continued, and he was placed in juvenile detention. At the age of 17, he was convicted of various felonies and sentenced to prison for 18 years. This demonstrates a life-long history of anti-social behavior, and shows Claimant had a personality disorder prior to his work injury. His dysfunctional family contributed to his personality disorder, makes it more difficult for him to sustain employment, and makes him unmotivated to work.

Dr. Stillings administered a number of psychological tests, which he testified are the general standard in this type of case. He opined Claimant's responses and his diffuse symptoms indicate he exaggerated his symptoms. He diagnosed a number of psychiatric conditions and disorders. He opined the work injury was the prevailing factor in aggravating his pre-existing personality disorder and rated Claimant at 5% PPD from the work injury. He opined Claimant has substantial pre-existing psychiatric diagnoses and disabilities, and may benefit from psychotropic medications related to these pre-existing conditions. He opined Claimant is able to work, but this may be limited by his pre-existing conditions. He noted there are no facts to support a diagnosis of ptsd and psychosis.

I find the opinions and conclusions of Dr. Liss to be based on an incomplete and inaccurate picture of Claimant's history. He makes a number of statements that are not worthy of belief and are inconsistent with the facts of this case. Dr. Liss did not focus on the actual injury, and seems to focus on trying to fit Claimant into his specialty, brain injuries. There is no indication anywhere in the medical records that Claimant suffered a brain injury.

I find Dr. Stillings opinions to be based on a complete picture of Claimant's injury, his life, and his history. Dr. Stillings' opinions are well reasoned and persuasive. I find Claimant's work injury was the prevailing factor in aggravating his pre-existing conditions. Claimant had pre-existing conditions, and that is the cause of his ongoing psychiatric condition and disability.

2. Claimant is not entitled to future medical care.

Claimant has had numerous diagnostic studies on his low back since his surgery. Dr. Hoffman ordered a repeat MRI, which was negative. Dr. Cantrell then ordered studies which showed no evidence of radiculopathy, plexopathy, or peripheral polyneuropathy. He sought the opinion of Dr. Raskas, who examined Claimant and opined he would not benefit from additional surgery. Dr. Cantrell ordered a functional capacity evaluation that showed Claimant could work in a light capacity, but Claimant failed a number of validity criteria, suggesting submaximal performance.

Employer authorized treatment with Dr. Graham. Because Claimant had symptoms in his upper and lower extremities, Dr. Graham recommended evaluations by a neurologist and urologist. The neurologist opined the lower and upper extremity complaints could not be explained on the basis of a low back injury. The urologist opined the incontinence and erectile dysfunction could not be related to the work injury. Based on these opinions and his own examinations, Dr. Graham opined Claimant had no radiculopathy or myelopathy, and his widespread complaints could not be explained by pathology in the lumbar spine. He opined Claimant did not need further pain management treatment.

The diagnostic studies performed well after surgery confirm the herniated disc was repaired and there is no need for additional surgery. There is no objective evidence of any need for further treatment and no indication of any progression of his low back condition or complications thereof. The urologist released Claimant and opined there is no further treatment needed.

Dr. Stillings opined Claimant would benefit from psychiatric care, but that is related to his prior diagnoses. Claimant has reached MMI and does not need psychiatric treatment as a result of his work injury.

Dr. Poetz recommended Claimant remain under the care of a urologist and treat for his depression and anxiety, but I find those conditions are not related to the work accident.

3. Claimant is entitled to TTD from December 13, 2008 through February 2, 2009

Claimant testified he continued to work after the injury until Employer closed their business December 12, 2008. Employer began TTD benefits February 3, 2009. Claimant's work injury caused his low back condition and need for treatment. I find Claimant is entitled to TTD benefits from the time he last worked until TTD benefits began, or from December 13, 2008 through February 2, 2009. This totals 7 3/7 weeks, or \$3,858.77.

4. Claimant has sustained 45%PPD to the body as a whole as a result of the work injury and is entitled to \$72,838.80 in compensation.

Claimant alleges he is permanently and totally disabled as a result of his work injury alone. Section 287.020.6 (RSMo 2005) provides the "term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident."

Dr. Poetz concludes Claimant is permanently and totally disabled as a result of all his medical conditions, which he relates solely to the work injury. Dr. Liss opines Claimant is unable to work due to his work injury and psychiatric disability caused by the work injury. I do not find his opinion credible.

Dr. Cantrell and Dr. Graham considered the effects of Claimant's back injury and opined Claimant can work. Dr. Cantrell and Dr. Graham opined the expansion of Claimant's symptoms into his upper extremity cannot be attributed to a lumbar spine injury. Dr. Stillings opined Claimant has no psychiatric work restrictions as a result of his work injury, and any limitation in his ability to work is due to his pre-existing psychiatric conditions.

The vocational experts agree Claimant can work when considering the restrictions of Dr. Cantrell. When considering the restrictions of Dr. Poetz, he cannot work. However, it appears Dr. Poetz's opinion encompasses Claimant's other medical and psychiatric conditions which are not related to the work injury.

I agree Claimant has some permanent disability as a result of the back surgery, but to find him totally disabled requires me to lend tremendous credibility to Claimant. The doctors who opined Claimant cannot work base their opinions on Claimant's diagnoses that are not related to the work injury and base much of their opinion on Claimant's own assessment of his abilities and inabilities. Claimant's description of his functioning is exaggerated, and is not consistent with the numerous objective medical tests. Claimant has diffuse complaints, including alleged complaints in his upper extremities. The credible medical experts opine this cannot be correlated to a lower back injury. Multiple doctors noted Claimant overdramatized and exaggerated his symptoms.

Claimant's testimony indicated his entire life has changed since the primary injury. He said he was able to perform his full job duties without restriction leading up to work injury. He seems to blame all his failings in life on the work injury. For example, he appeared at trial in a wheelchair. No doctor has recommended a wheelchair and it is not noted in any treating records. Claimant contends he needs to wear diapers and use a urinary flask, but there is no evidence of receipts or of an attempt to use a catheter except Claimant's statements. He asserts he has significant psychiatric disability related to the injury, but is not seeking any counseling or treatment. His testimony does not have the ring of truth, and cannot be relied on.

I find Claimant is not permanently and totally disabled. I find he has sustained 40% PPD to his low back and 5% psychiatric PPD as a result of the work injury. Claimant is entitled to \$72,838.80 in compensation.

5. Claimant's prior disabilities do not meet the statutory threshold and he is not entitled to SIF benefits.

Dr. Poetz concluded Claimant had 5% PPD as a result of his prior back injuries. I find Claimant has 5% prior disability to his low back. This is not sufficient to assess SIF liability.

Dr. Liss concluded Claimant's psychiatric disability is the result of his work injury alone. Dr. Stillings rated Claimant at 32.5% PPD as a result of his prior psychiatric conditions. Although Claimant did not have prior psychiatric treatment, I find he had prior psychiatric disability of 10%. This is not sufficient to trigger SIF liability, and the SIF case is hereby dismissed.

I certify that on 10/4/13,
I delivered a copy of the foregoing award
to the parties to the case. A complete
record of the method of delivery and date
of service upon each party is retained with
the executed award in the Division's case file.

By CP

Made by: Kathleen M Hart
KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

