

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

Injury No.: 09-009602

Employee: Timothy Pearson
Employer: Henry's Wrecker Service
Insurer: Commerce and Industry Insurance Co. c/o Chartis
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)

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, 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) whether the injury arose out of the employment; (2) whether the injury was within the course of employment; (3) the nature and extent of any permanent partial disability; (4) whether the condition is medically and causally related to the work accident; (5) whether the employee is entitled to reimbursement of additional past medical expenses in the amount of \$93,797.97; (6) whether employee is entitled to future medical expenses; and (7) whether employee is entitled to additional temporary total disability benefits through April 30, 2011.

The administrative law judge rendered the following findings and conclusions: (1) employee suffered an accident; (2) employee is credible to the extent that he sustained injuries by accident, but he has exaggerated the extent of his ongoing symptoms and is malingering; (3) employee suffered a 7.5% permanent partial disability of the body as a whole as a result of the work accident; (4) employee reached maximum medical improvement with respect to his work-related injuries when he was released by employer's authorized treating physician on August 6, 2009; (5) employee's seizures, hand tremors, right leg sensory deficit, and right foot drop did not result from the work accident; (6) employee did not sustain any psychiatric injury or psychological condition as a result of the accident; (7) employee is not entitled to his past medical expenses in the amount of \$93,797.97; and (8) employee is not entitled to temporary total disability benefits after August 6, 2009.

Employee filed a timely Application for Review with the Commission alleging the administrative law judge erred: (1) in failing to consider the opinions from employee's treating doctors and psychologists on the issue whether employee sustained post-traumatic stress disorder (PTSD) as a result of the work accident; (2) in denying employee's claim for past medical expenses for PTSD; (3) in denying employee's claim for permanent partial disability, temporary total disability, and medical expenses based on the testimony from Dr. Hughes because Dr. Hughes finds malingering or lack of

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permanent disability in 75% to 100% of cases; and (4) in finding Dr. Corsolini more credible than other doctors.

On June 19, 2012, employer filed a Motion to Dismiss Or In The Alternative For A More Definite And Certain Application For Review (Motion). On June 27, 2012, we denied employer's Motion.

Findings of Fact

The administrative law judge's award sets forth the stipulations of the parties and the administrative law judge's findings of fact on the issues disputed at the hearing. We adopt and incorporate those findings to the extent that they are not inconsistent with the modifications set forth in our award. Consequently, we make only those findings of fact pertinent to our modifications herein.

Post-traumatic stress disorder

On February 7, 2009, this tow-truck driver employee was assisting a stranded motorist when a passing truck veered toward him. Employee tried to jump onto the bed of the tow-truck but the oncoming truck's mirror hit his right hand as it passed at highway speed, causing him to twist his torso. Diagnostic studies suggested employee sustained no internal physical injuries, but employee continued to complain of extreme pain, sleep interruption, cognitive problems and memory loss, and a dramatic tremor in his right hand, none of which the doctors could explain. Employer's authorized treating physician Dr. Corsolini suspected a psychiatric component to employee's problems, but before a neuropsychiatric evaluation could be accomplished, employer's insurer sent employee for a functional capacity evaluation, where he failed the validity criteria. Employer then denied any further authorized treatment without looking into the question of psychiatric injury. Employee subsequently underwent extensive unauthorized treatment for his pain complaints, symptoms such as a hand tremor and right leg sensory deficit, and also for post-traumatic stress disorder (PTSD). The primary issue before us is whether the accident caused PTSD. The parties present conflicting testimony from several doctors.

Employee presents Drs. Swaim, Pro, Stuckmeyer, and the psychologist Suzanne McKenna, each of whom opined employee developed PTSD as a result of the accident. Employer's psychologist Dale Halfaker also opined employee possibly has PTSD. On the other hand, employer presents Dr. Hughes, who opined employee is a "fraud" who "made up" his PTSD symptoms.

The ALJ credited Dr. Hughes's theory that employee did not sustain PTSD as a result of the accident because PTSD symptoms are supposed to appear within an hour to two weeks after trauma, and employee's symptoms didn't emerge until months later. But this theory ignores the fact employee was complaining about sleep disturbance (one of the primary symptoms of PTSD) in his initial treatments with Dr. Corsolini following the accident, and continued to do so until he received treatment on his own for PTSD. And Dr. Hughes agreed on cross-examination that the DSM-IV¹ states PTSD symptoms can

¹ Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition. Dr. Hughes agreed this is the authoritative text for classification/description of psychiatric disorders.

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occur months or years after trauma. When asked to explain, in light of this admission, why he believed employee's symptoms should have appeared immediately, Dr. Hughes opined that delayed onset cases are usually the result of more intense traumas like childhood sex abuse or military service. This testimony suggests Dr. Hughes believes the accident just wasn't serious or traumatic enough, even though employee was exposed to the imminent threat of catastrophic injury or death when he narrowly avoided a direct bodily impact from the speeding truck. We note that Dr. Hughes also failed to recognize that Dr. Kukal treated employee for PTSD, and that these treatments helped resolve his symptoms.

After careful consideration of all the expert medical testimony on the issue, we disagree with the administrative law judge that Dr. Hughes is more credible than the other doctors. Throughout his report and testimony, Dr. Hughes digressed from the purely medical issue presented and ventured into personal attacks on employee. For example, Dr. Hughes dismissed employee's symptoms as "bogus," mocked employee's religious beliefs, and even went so far as to recommend employee be investigated for insurance fraud. By way of comparison, Dr. Corsolini, when asked about comments in his treatment notes indicating employee was lapsing into a disabled role, testified: "I don't claim to read people's minds. It's just a way of trying to describe what I see. Now, lapsing into the disabled role is again not necessarily someone [sic] does on purpose. It's a lot more complicated than that." Faced with a complicated issue of medical causation, we find no assistance in Dr. Hughes's glib take on employee's psychiatric complaints.

We find more credible Drs. Swaim, Stuckmeyer, and Pro on the issue whether employee developed PTSD as a result of the accident. Employee testified that his treatment for PTSD resulted in an excellent recovery, but Dr. Pro opined that employee will remain more susceptible to PTSD as a result of the accident. In light of these factors, we find that employee's permanent disability referable to PTSD amounts to a 17.5% permanent partial psychiatric disability of the body as a whole.

There remains the issue of employee's pseudo-seizures, inexplicable hand tremor, and right leg sensory deficit with foot drop. None of employee's experts were able to credibly testify that these symptoms were associated with PTSD or otherwise linked to the accident. Dr. Swaim acknowledged that he could not state that the accident was the prevailing factor causing employee to suffer seizures or foot drop. Dr. Pro testified that "at least to a certain extent" the "trajectory of the problem would suggest" that the accident caused employee to suffer some seizures, but also testified that we don't really know what caused them. To the extent Dr. Pro opined that employee's seizures, tremors, and foot drop were caused by the work injury, we find his testimony lacking credibility.

Conclusions of Law

Medical causation of PTSD

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

An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and

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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 have credited the testimony from Drs. Swaim, Stuckmeyer, and Pro on the issue whether employee developed PTSD as a result of the accident. But as to employee's seizures, hand tremors, and foot drop, we have found lacking credibility Dr. Pro's testimony linking these symptoms to the work injury or to PTSD. Dr. Pro's obviously strained testimony strikes us as falling below the prevailing factor standard. None of employee's other experts were able to credibly testify that these symptoms resulted from the accident, and Dr. Swaim acknowledged he could not state that the accident was a prevailing factor causing the seizures or foot drop.

Consequently, we conclude the February 2009 accident was the prevailing factor causing employee to sustain PTSD with a 17.5% permanent partial psychiatric disability of the body as a whole, but that the accident was not the prevailing factor causing employee to develop seizures, right upper extremity tremors, or right leg sensory deficit with foot drop. Employer is liable for additional permanent partial disability benefits referable to PTSD.

Temporary total disability

Section 287.170 RSMo provides for temporary total disability benefits to cover an employee's healing period following a compensable work injury. The test for temporary total disability is whether, given employee's condition, an employer in the usual course of business would reasonably be expected to employ him during the time period claimed. *Cooper v. Medical Ctr. of Independence*, 955 S.W.2d 570, 575 (Mo. App. 1997). Accordingly, we look to evidence of employee's condition in the time period following the accident.

Dr. Pro testified employee was temporarily and totally disabled owing to PTSD and depression from the date of the accident until he went back to work in May 2011 as a trash hauler. The record reveals that Dr. Kukal released employee from treatment for PTSD on May 1, 2011. Employee was suffering from severe sleep disturbance, emotional problems, and cognition/memory lapses, and testified he was unable to work during this time period. We are persuaded that an employer in the usual course of business would not reasonably be expected to hire employee during this time period. We conclude employee is entitled to additional temporary total disability benefits through April 30, 2011.

Past medical expenses

We have concluded that employee suffered a compensable psychiatric injury in the form of PTSD as a result of the accident, so he is entitled under § 287.140 RSMo to his past medical expenses for any treatment reasonably required to cure and relieve from this condition, provided he met his burden of proving those expenses. Under applicable case law, the burden is on employee to produce for each medical expense claimed: 1) the medical bill, 2) the medical record reflecting the treatment giving rise to the bill, and

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3) testimony establishing that the treatment flowed from the compensable injury. *Martin v. Mid-Am. Farm Lines, Inc.*, 769 S.W.2d 105, 111-12 (Mo. banc 1989).

Employee put a number of medical bills and records into evidence and identified them as resulting from his treatments for the work injury. Employer did not provide any rebuttal evidence to dispute the amount of the charges or to show that employee is not liable to pay the bills. Turning to the bills themselves, we note that they include treatments employee received for PTSD, but also charges for the seizures, hand tremor, and foot-drop treatments that employee has failed to prove resulted from the work injury.

Unfortunately, employee's brief is somewhat lacking in assisting us in sorting out the bills. Employee summarily identifies the exhibits containing the bills employee wishes employer to pay, and otherwise devotes his brief to advertising the ratio of his attorney's clients who have been diagnosed as malingering by Dr. Hughes. Employee fails to individually identify the disputed charges, and does not provide page citations to the treatment record. In a case with such a complex and extensive medical treatment record, this failure represents a significant imposition upon the Commission.

Nevertheless, scanning each of the bills and comparing them to the treatment record, we have reached the following conclusions with respect to the claimed past medical expenses, erring, in light of employee's failure to provide citations to the treatment record, on the side of denying costs for which we could not find an explanation.

Employer is liable for employee's expenses from St. John's Regional Health Center (Exhibit KK) in the amount of \$2140.80 for the sleep study and EEG ordered to address employee's complaints of sleep disruption, one of the symptoms of his PTSD. Employer is liable for employee's expenses from Walgreen's (Exhibit NN) to the extent they include prescriptions for Sertraline, Gabapentin, Oxycodone, and Diazepam, in the amount of \$201.21, as the treatment record reveals that these medications were prescribed in an attempt to cure and relieve the effects of employee's PTSD.

On the other hand, employee's expenses from Arch Air Medical Services (Exhibit A), Mercy Health Center (Exhibit BB), and University of Kansas Hospital (Exhibit LL) are denied because they were incurred as a result of employee's seizures. Employee's expenses from St. John's Clinics (Exhibit GG) are denied because we were unable to determine which, if any, of these charges were incurred as a result of employee's PTSD treatments, and because the bulk of the charges instead appear to have been incurred as a result of various clinic visits for foot drop and botox shots for employee's tremors. Employee's expenses from Walgreen's (Exhibit NN) are denied to the extent they include prescriptions for Clonazepam (prescribed for employee's hand tremor) and Piroxicam and Amitriptyline (prescriptions for which we could not locate an explanation in the treatment record).

Dr. Kukal's records reveal that she specifically treated employee for PTSD with psychotherapy and eye movement desensitization and reprocessing, so the expenses referable to those treatments would seem to flow directly from employee's psychiatric work injury. Employee's brief suggests that Dr. Kukal's bills are somewhere in the

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exhibits discussed above. We were not able to locate them in the above-mentioned exhibits or any of the other exhibits containing medical bills. To the extent employee invites us, by his failure to provide page citations, to further scan the lengthy transcript in this matter looking for Dr. Kukal's bills, employee asks this Commission to become an advocate on his behalf. This we are not permitted to do. Consequently, we are unable to make an award of employee's expenses referable to his treatment with Dr. Kukal.

In sum, we conclude employer is liable for the additional amount of \$2,342.01 in past medical expenses incurred in the course of employee's treatment for PTSD.

Award

We modify the award of the administrative law judge on the issues of: (1) medical causation of employee's PTSD; (2) temporary total disability benefits; and (3) past medical expenses. In all other respects, we affirm the award.

The award and decision of Administrative Law Judge Victorine R. Mahon, issued March 26, 2012, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees 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 10th day of December 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Timothy Pearson

Injury No. 09-009602

Dependents: N/A

Employer: Henry's Wrecker Service

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Treasurer of Missouri as Custodian of the
Second Injury Fund (dismissed)

Insurer: Commerce and Industry Insurance Co. c/o Chartis

Hearing Date: February 14, 2012

Checked by: VRM/db

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: February 7, 2009.
5. State location where accident occurred or occupational disease was contracted: 20 miles east of Springfield, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was attempting to winch a vehicle on the side of a highway when the mirror of an oncoming pickup truck struck the employee's hand.
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: Right hand and shoulder, rib cage, and back.
14. Nature and extent of any permanent disability: 7.5 percent of the body as a whole.
15. Compensation paid to-date for temporary disability: \$10,352.07.
16. Value necessary medical aid paid to date by employer/insurer? \$28,742.77.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Average weekly wage: \$570.43.
19. Weekly compensation rate: \$380.29.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable:

7.5 percent of the body as a whole (7.5 x 400 = 30 weeks)
30 weeks of compensation at the rate of \$380.29.

TOTAL: \$11,408.70

22. Second Injury Fund liability: N/A.
23. Future requirements awarded: None.

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: Randy Alberhasky.

FINDINGS OF FACT AND RULINGS OF LAW:

Employee: Timothy Pearson

Injury No. 09-009602

Dependents: N/A

Employer: Henry's Wrecker Service

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Treasurer of Missouri as Custodian of the
Second Injury Fund (dismissed)

Insurer: Commerce and Industry Insurance Co. c/o Chartis

Hearing Date: February 14, 2012

Checked by: VRM/db

INTRODUCTION

The undersigned Administrative Law Judge conducted a final hearing in this case on February 14, 2012. Timothy Pearson appeared in person, and with his attorney Randy Alberhasky. Mr. Pearson's employer, Henry's Wrecker Services, and its insurer, Commerce and Industry Insurance Company c/o Chartis, appeared through their attorney, Christopher S. Moberg. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, appeared by Assistant Attorney General, Susan Colburn. Mr. Pearson voluntarily dismissed the Second Injury Fund on the record at the onset of the hearing. The remaining parties stipulated to the following facts and issues:

STIPULATIONS

On February 7, 2009, Henry's Wrecker Service (Employer) was operating under and subject to the Missouri Workers' Compensation Law. It was fully insured by Commerce and Industry Insurance Company c/o Chartis (Insurer). On that same date, Timothy Pearson (Claimant) was an employee of Employer, and was working under and subject to The Missouri Workers' Compensation Law. On February 7, 2009, Claimant sustained an accidental injury on Interstate 44 near Marshfield, Missouri. Jurisdiction and venue is appropriate in Springfield, Greene County, Missouri. Claimant provided notice as required by law. His Claim for Compensation was filed timely. His average weekly wage was \$570.43, sufficient to yield a compensation rate of \$380.29 for all purposes. Employer/Insurer paid \$10,352.07 in temporary total disability benefits and \$28,742.77 in medical expenses. The issues to be resolved by hearing include:

ISSUES

1. Did Claimant have an accident that arose out of and in the course of his employment?
2. Did the accident cause the injuries and disabilities for which benefits are now being claimed?
3. Are Employer/Insurer obligated to pay for certain past medical care and expenses in the amount of \$93,797.97?

4. Does Claimant require future medical care to cure or relieve the effects of the alleged work injury?
5. Is Claimant entitled to additional temporary total disability, subject to a credit for the \$10,352.07 already paid?
6. What, if any, permanent partial disability did Claimant sustain as a consequence of the alleged accident of February 7, 2009?

EXHIBITS

Claimant offered the following exhibits which were admitted:

- A. Arch Air Medical Service, 17 pages records and bills certified 10/26/2009
- B. Concentra, 2 pages certified 9/18/2009
- C. Cox Medical Center, 51 pages certified 5/13/2011
- D. Family Medical Walk-in Clinic, 10 pages certified 8/24/2009
- E. Mercy Health Center, 38 pages certified 10/21/2009
- F. Mercy Health System of Kansas, 87 pages certified 8/17/2011
- G. Orthopedic Specialist of Springfield, 1 page certified 8/24/2009
- H. SNSI, 5 pages certified 9/24/2009
- I. St. Johns Clinic-FIS, 34 pages certified 8/31/2009
- J. St. Johns Clinic-FIM, 43 pages certified 1/13/10
- K. St. Johns Clinic-FIM, Dr. Graham, letter to employee 8/29/2009
- L. St. Johns Clinic-Occupational Medicine, 30 pages certified 8/25/2009
- M. St. Johns Clinic-Occupational Medicine, 6 pages certified 5/2/2011
- N. St. Johns Clinic-Neurology, 11 pages certified 8/25/2009
- O. St. Johns Clinic-Orthopedic Specialists, 15 pages certified 8/28/2009
- P. St. Johns Clinic-Orthopedics, 9 pages certified 7/11/2011
- Q. St. Johns Hospital, 63 pages certified 9/4/2009
- R. St. Johns Hospital (OT records), 69 pages certified 9/1/2009
- S. St. Johns Hospital-Pain Center, 22 pages certified 7/29/2011
- T. St. Johns Hospital-Dr. Kukal, 42 pages certified 7/25/2011
- U. St. Johns Hospital-Dr. Kukal, 137 pages certified 3/30/2011
- V. St. Johns Hospital-Sleep Disorder Center, 30 pages certified 2/2/2010
- W. St. Johns Hospital-Spine/Pain Control, 70 pages certified 3/20/2010
- X. University of Kansas Hospital, 137 pages certified 11/3/2009
- Y. University of Kansas Hospital (Neurology), 9 pages certified 8/9/2011
- Z. Concentra, 1 page certified 9/30/2009
- AA. Family Medical Walk-in Clinic, 1 page certified 9/17/2009
- BB. Mercy Health Center, 8 pages certified 10/28/2009
- DD. Orthopedic Specialists of Springfield, 1 page certified 9/14/2009
- CC. (Not marked and withdrawn)
- EE. SNSI, 1 page certified 2/15/2011
- FF. St. Johns Clinics, 1 page certified 1/20/2010

- GG. St. Johns Clinics, 6 pages certified 3/15/2011
- HH. St. Johns Clinics, 11 pages certified 9/25/2009
- II. St. Johns Hospital, 1 page certified 2/23/2010
- JJ. St. Johns Hospital, 9 pages certified 11/10/2009
- KK. St. Johns Hospital, 3 pages certified 1/13/2010
- LL. University of Kansas Hospital, 5 pages certified 2/15/2011
- MM. University of Kansas Physicians, 5 pages uncertified
- NN. Walgreens, 14 pages certified 10/2/2009
- OO. Dr. Robert Sparks medical exam report for commercial driver fitness (12/22/2008)
- PP. Dr. James Stuckmeyer CV and reports dated 9/17/2009 and 1/18/2010
- QQ. Dr. Truett Swaim CV and reports dated 3/7/2011 and 7/18/2011
- RR. Dr. Suzanne McKenna, Center of Change, 11/17/2009 report certified 11/24/2009
- SS. Claim, 9/11/2009
- TT. Answer-Second Injury Fund of Missouri, 9/28/2009
- UU. Answer-Employer/Insurer, 10/5/2009
- VV. Entry of Appearance (Randy C. Alberhasky), 12/27/2010
- WW. Accident report 2/7/2009
- XX. Letter from insurer stating they will not be authorizing any further treatment 9/4/2009
- YY. Letter from Employee's attorney to employer/insurer's attorney requesting treatment as recommended by Employee's PCP 9/22/2009
- ZZ. Letter from Employee's attorney to employer/insurer's attorney requesting treatment as recommended by their expert Dr. Halfaker at a minimum 5/3/2010
- AAA. Letter from Employee's attorney to employer/insurer's attorney requesting treatment recommended by Dr. Halfaker 6/9/2010
- BBB. RSMo. §287.210 letter dated 5/18/2011 (Dr. Pro 5/3/2011 report) and request for treatment
- CCC. RSMo. §287.210 letter dated 6/1/2011 (Dr. Pro 5/20/11 report)
- DDD. RSMo. §287.210 letter dated 7/13/2011 (Dr. Swaim 3/7/2011 report)
- EEE. RSMo. §287.210 letter dated 7/19/2011 (Dr. Swaim 7/18/2011 report)
- FFF. RSMo. §287.210 letter dated 8/23/2011 (Dr. Pro 8/16/2011 report)
- GGG. RSMo. §287.210 letter dated 8/31/2011 (Dr. Pro 8/25/2011 report)
- HHH. Deposition of Dr. John D. Pro taken 9/13/2011 and exhibits
- III. Dr. Pro's report dated 5/20/2011
- JJJ. Tim Pearson deposition dated 4/12/10

Employer/Insurer offered the following exhibits, which were admitted:

1. Complete Medical Report - Dr. Corsolini
2. Complete Medical Report - Dr. Corsolini
3. Deposition - Dr. Corsolini
4. Complete Medical Report - Dr. Halfaker
5. Complete Medical Report - Dr. Hughes
6. Deposition – Dr. Hughes
7. Deposition – Claimant
8. Wage Statement of Claimant

FINDINGS OF FACT

Background & Employment

Claimant was born February 18, 1974. He resides with his wife and one of his five children in Ozark, Missouri. Claimant attended high school through the 9th grade, and has not received a high school diploma or GED. His only formal training has been as an auctioneer.

For a period of ten years, he purportedly owned and operated his own towing business. He closed that business in 2008. In 2009, Claimant obtained a job with Henry's Wrecker Service (Employer). He worked in and around Springfield, Missouri as a tow truck driver for Employer for only a few weeks when he sustained a work accident on February 7, 2009. After receiving some initial treatment, Claimant was released to return to work. Because Claimant contends he was not physically capable of continuing in his job, despite his medical release to return to work, Claimant's employment ended in July 2009. After being off work for a period of time, Claimant met his current spouse. He now works in his new wife's auction company as an auctioneer.

Prior Medical Conditions

Prior to sustaining the work injury of February 7, 2009, Claimant contends he suffered no permanent disabilities pertinent to this action.

The Accident

On February 7, 2009, Claimant was loading a disabled vehicle onto his flat-bed tow truck. It was around 7:00 p.m. It was dark. Claimant was working on the shoulder of the west bound lane of Interstate 44 between Marshfield and Springfield, Missouri. As Claimant winching the vehicle, he observed a pickup truck coming toward him in the closest lane. The pickup's side-view mirror struck Claimant's right hand, and continued traveling. There is no evidence of a police report.

The operator of the disabled vehicle assisted Claimant in loading the vehicle onto the flat-bed. Claimant then drove the flatbed to a body shop. Claimant notified Employer of the incident. Employer's dispatcher indicated that Employer would send another truck, but Claimant did not want to wait as his hand was beginning to swell. Claimant called his wife, who met Claimant and drove him to the emergency room at St. John's Hospital. In addition to his swollen hand, which was the only part of his body struck by the pickup truck, Claimant indicated that his shoulder also was painful. Claimant said he later developed bruises on his back. There was no complaint of back pain at the time of his emergency room visit.

Summary of Pertinent Authorized Medical Treatment

Claimant was given pain medication at the emergency room. X-rays were taken of his chest, right hand and right shoulder, the results of which were essentially normal. He was discharged with a diagnosis was pain and contusion. Although Claimant testified he was in shock from the accident, nothing in the emergency room records substantiates that contention. I find such contention not credible.

Claimant testified that he ran out of medication and began having "dry heaves." Claimant went to the Walk-In-Clinic, where he was referred to the hospital due to his pain level. Additional x-rays again proved negative. He was given more pain medication and directed to follow-up with a shoulder specialist and primary care physician. Nothing in the medical records indicates that Claimant was suffering dry heaves. He was referred to Dr. Robert Wyrsh, a board certified orthopedic surgeon who specializes in upper extremities.

Dr. Wyrsh gave Claimant more pain medications and recommended a MRI and EMG of Claimant's right arm. Claimant also saw Dr. Marsha Graham, complaining of popping in his hip while walking. Dr. Graham noted tenderness, but no muscle spasms. She suggested x-rays and an MRI of the lumbar spine. She added prescriptions.

Claimant was sent to Dr. Mauldin on February 26, 2009. Dr. Mauldin reported that there was no need for an MRI of the low back at this time. He reassured Claimant that there are no signs of serious back problems, and the symptoms were expected to resolve with time.

Claimant returned to Dr. Wyrsh, who indicated that Claimant could be suffering from a possible incomplete brachial plexus injury to Claimant's right upper extremity. He ordered an MRI to rule out a disc herniation as the cause for Claimant's back pain and an EMG study of the right upper extremity. Claimant also was referred to occupational therapy for six weeks, twice per week. The MRI performed on March 12, 2009, was negative. Claimant then saw Dr. Thomas Corsolini for the EMG/nerve conduction study, which also was mostly negative. There was no specific evidence supporting a diagnosis of radiculopathy or brachial plexopathy. Dr. Corsolini initially believed Claimant might have some mild atrophy in the right hand, but he later changed his mind.

Employer/Insurer then sent Claimant to yet another orthopedic specialist, Dr. Paul Olive, on March 24, 2009. The neurological exam was intact, including motor-sensory reflexes. An MRI of the lumbar spine was essentially negative. Dr. Olive found nothing warranting surgery. He said Claimant suffered from a contusion in the low back. He recommended a referral to a physical medicine specialist.

Claimant was referred back to Dr. Corsolini. By this time, Claimant had developed a tremor in his right hand, which Dr. Corsolini found disappeared upon testing distraction. Dr. Corsolini's overall impression was possible neck strain, possible right brachial plexus injury, and soft tissue strain to the low back. Dr. Corsolini suggested that Claimant was lapsing into a disabled role beyond what was warranted by the physical injuries sustained. On April 22, 2009, Dr. Corsolini ordered more therapy and an MRI of the cervical spine and/or brachial plexus. The MRI scans performed April 28, 2009, were within normal limits.

Claimant returned to Dr. Corsolini on May 19, 2009, with complaints of being burned by a hot pack at therapy, difficulty sleeping, and pain at the shoulders, neck, and right hip/pelvis. He referred Claimant for different therapy, recommended a bone scan, changed Claimant's medications and again maintained his prior restricted duty opinions. Claimant began therapy with Stan Brown. On June 2, 2009, the bone scan recommended by Dr. Corsolini was performed, which revealed no abnormalities of the Claimant's spine, pelvis, hips, right shoulder and upper extremity. It revealed a possible fracture of the sternomanubrial junction.

Dr. Graham saw Claimant on June 4, 2009, who suggested that Claimant may need to see an orthopedist and a physiatrist. Claimant returned to Dr. Corsolini on June 9, 2009 with a mild tremor of the right hand, and blisters on the right upper extremity with evidence of previously healed scars from the same blisters. The restricted duty restrictions were modified to a ten (10) pound lift/carry restriction. No limits were placed on pushing and pulling. A follow up was scheduled for two weeks, which occurred on June 30, 2009.

Dr. Corsolini concluded that the blisters were likely a recurrence of prior shingles. Dr. Corsolini noted that Claimant's gait and step length improved with encouragement. He referred Claimant to a neurologist. He suggested that Claimant's presentation was exaggerated or modified subconsciously.

On July 20, 2009, Claimant saw Dr. Li, the neurologist, and had a brain MRI. The results were unremarkable. Claimant returned to Dr. Corsolini the following day. Dr. Corsolini reported that Claimant's recovery was problematic, and his demonstration was inconsistent with the diagnostic studies which showed no abnormality. Dr. Corsolini referred Claimant for a neuropsychological profile and functional capacity exam. Nancy Dickey performed the FCE on July 27, 2009. She believed that Claimant was attempting to control the test results. Test results indicated overt symptom magnification.

On August 6, 2009, Dr. Corsolini authored a letter to Claimant stating that he had failed the validity criterion of the FCE, and diagnostic studies had resulted in normal findings with no objective evidence of injury. He opined that Claimant had no permanent injury as a result of the February 7, 2009 accident. He informed Claimant that there were no limitations on his physical activities. He prescribed no more medications. In his deposition, Dr. Corsolini testified that he saw Claimant on multiple occasions and at no point had Claimant given him any indication that he was suffering from post traumatic stress disorder. Dr. Corsolini indicated most of the objective test results were normal, although at one point he believed Claimant may have had some atrophy. Dr. Corsolini also indicated that one of the nerve conduction studies (EMGs) showed an exception in the wave from the abductor digiti minimi (ADM muscle) in the right hand.

Having been released from authorized care, Claimant undertook extensive treatment of his own, incurring approximately \$93,000.00 in unauthorized medical treatment. Dr. Graham authored a report/letter dated August 29, 2009, stating that there was an ongoing need for medical treatment, evaluation for pain as it pertained to the Claimant's right side, more physical therapy, soft tissue studies, and an evaluation by a physiatrist.

Expert Opinions

Dr. James Stuckmeyer examined Claimant on September 17, 2009. He opined that the accident on February 7, 2009 was the primary or prevailing factor in causing Claimant's multiple injuries. He did not believe Claimant was malingering. He believed Claimant was temporarily and totally disabled. He recommended a formal psychiatric assessment, a neuropsychiatric evaluation for assessment of post-traumatic stress disorder (PTSD), and ongoing pain management.

Dr. Corsolini reviewed Claimant's case again on October 2, 2009, at which time he reviewed treatment and the report of Dr. Stuckmeyer. He did not believe Claimant needed additional MRIs, but he agreed that Claimant needed a multi-disciplinary treatment in the form of a neuropsychological profile, and

recommended Dr. Dale Halfaker for that assessment. Dr. Corsolini stated that he did not believe the Claimant had any permanent partial impairment as a result of the February 2009 accident.

On November 16, 2009, Claimant saw Suzanne McKenna, PhD, for a psychological evaluation. She administered various tests. The test results showed, in Dr. McKenna's opinion, that Claimant had significant stressors related to "health, marriage, finances, work and legal situation." (Ex. RR, p. 8). Dr. McKenna concluded that Claimant exhibited depression, PTSD, and cognitive deficits, all of which she related to the accident of February 2009. She recommended individual therapy with a marriage therapist or other clinician, participation in a holistic treatment at a self-contained pain management center, and working on puzzles to challenge Claimant's mental functioning.

In December 2009, Dr. Halfaker saw Claimant for the neuropsychological profile recommended by Dr. Corsolini. Dr. Halfaker found that it was possible that Claimant has PTSD because the nature of the accident was the kind of stressor that could give rise to such symptomatology, but his over-reporting made it difficult to ascertain the nature and extent of any such symptoms. He indicated that Claimant attempted to mislead the examiner through inaccurate or incomplete responses or effort, and that there was a psychological overlay present. Dr. Halfaker found that there may also be pre-existing ADHD, which in his view accounted for the Claimant's memory loss, mental confusion, and cognitive dysfunction. Dr. Halfaker said: "At this time, due to the fact that there is significant symptom magnification that prevents a clear understanding of the extent and nature of this man's problems a formal full five axis DSM-IV-TR diagnosis will not be provided." (Ex. 4, p. 37 – Report of Dr. Halfaker). The psychologist recommended that Claimant be referred for counseling and see a psychiatrist – specifically naming Dr. Hughes – in order to allow a physician to assess both the medical and emotional aspects and provide a more definitive opinion regarding Claimant's pseudoneurological symptoms.

On January 18, 2010, Dr. Stuckmeyer completed a medical records review. He issued a supplemental opinion that extensive workups have not offered any insight into the Claimant's ongoing problems. He diagnosed the Claimant with anxiety, depression, PTSD, and cognitive dysfunction. He again recommended a referral to pain management, and opined that Claimant was permanently and totally disabled as a result of the workplace accident.

On October 19, 2010, Dr. Hughes, the psychiatrist recommended by Dr. Halfaker, examined Claimant. Dr. Hughes found that Claimant had no bona fide psychiatric impairment or disability referable to the psychogenic portion of his pain complaints, credibly attributable to the February 2009 injury to Claimant's hand. Noting that symptoms of PTSD did not appear until well after the work accident, he believed the PTSD complaints represented malingering. He found no neuropsychiatric conditions or symptoms that precluded Claimant's ability to return to work immediately. He opined that Claimant did not need any further treatment.

On March 7, 2011, Dr. Swaim, an orthopedic specialist, saw Claimant. Dr. Swaim found that the workplace accident was the prevailing factor in causing a right hand contusion, right hand weakness and fingertip sensory deficit, right shoulder strain, right rib contusion, chronic lumbar/right gluteal strain, depression, and PTSD. He could not state that the workplace accident was the prevailing factor in causing right hand tremors, seizures, right leg sensory deficit and foot drop. He opined that Claimant was at maximum medical improvement, and had a 15 percent permanent partial impairment to the right

arm, a 5 percent permanent partial impairment to the body as a whole for the lumbar condition, and a 20 percent permanent partial disability to the body as a whole for the psychological condition and somatization. He issued working restrictions, and indicated that Claimant did not have any ongoing treatment needs.

Claimant next saw Dr. Pro on May 3, 2011. Dr. Pro found that Claimant suffers from both PTSD and an adjustment disorder with depressed mood. He found that the February 2009 injury was the prevailing cause of both conditions, and that Claimant did not have ADHD (even though Dr. Kukal, Claimant's treating psychologist, stated that Claimant suffered ADHD). Dr. Pro recommended ongoing psychotherapy, and assessed a 20 percent permanent partial disability to the body as a whole for Claimant's psychological disability. He disagreed with the prior medical providers, and found that Claimant was not malingering, was not magnifying his symptoms, and did not have a psychological overlay upon presentment.

Some of the physicians issued follow-up reports or letters after their initial evaluations, indicating that they had reviewed supplemented medical records. None of the physicians changed their opinions.

Credibility Assessment

I find Claimant credible to the extent that he sustained injuries by accident, as substantiated by emergency room medical records. I find that in the accident, Claimant sustained soft tissues injuries to his right hand and shoulder, and rib, and low back. I further find, however, that Claimant has exaggerated the extent of his ongoing symptoms and malingering. I find that Claimant reached maximum medical improvement with respect to his work related injuries as of the date he was released by Dr. Corsolini on August 6, 2009.

Given the examination of Dr. Swaim, whose specialty is in orthopedics, I find credible Dr. Swaim's opinion that Claimant suffered permanent partial disabilities to the right hand due to a contusion, weakness, and fingertip sensory deficit, a right shoulder strain, a right rib contusion, and low back strain. Dr. Swaim opined that Claimant will have ongoing discomfort from these injuries. Although Claimant testified that only his hand was struck by the passing pickup, it is reasonable that he bruised, sprained, and/or strained his shoulder, right rib, and back when he was flung against the flatbed truck upon his hand being struck by the mirror. Even Dr. Corsolini's records substantiates that Claimant's chief complaints included the right shoulder and back.

I further find, however, that Dr. Swaim's rating for the soft tissue injuries is exaggerated. I find that Claimant sustained a 7.5 percent permanent partial disability to the body as a whole, encompassing all of his physical injuries, including the right hand, right arm, shoulder, rib, and lumbar spine. Dr. Swaim could not find, within a reasonable degree of medical certainty, that Claimant's seizure activity, right hand tremors, right leg sensory deficit, or right foot drop were related to the work accident. I find such opinion credible.

I do not find credible Dr. Swaim's opinion regarding Claimant's psychiatric or psychological condition. Even Dr. Swaim noted in his report that he rendered his opinion with the caveat that a physician who treats such disorders would be better qualified to determine any disability related to the psychological condition.

With respect to the psychological issues, Claimant was seen by Dr. Halfaker, who suggested that Claimant may be magnifying his symptoms. While he thought that PTSD was a possibility, it could not be definitively diagnosed. He referred Claimant's case to Dr. Hughes, who is both board certified in psychiatry and neurology, and is also a board examiner for those fields. Dr. Hughes opined that Claimant was malingering and suffered no bona fide psychiatric impairment or disability, and that there were no neuropsychiatric conditions or symptoms that precluded Claimant's ability to return to work. I find the opinions of Dr. Halfaker and Dr. Hughes credible. I find particularly persuasive Dr. Hughes' observation that there is a complete lack of any PTSD symptoms anytime near the time of the work injury; rather, the first symptoms appeared months afterwards. While Claimant contended he was in shock immediately after the accident, there is no contemporaneous medical record to substantiate that contention.

I do not find credible those expert opinions who have opined that Claimant suffers from work-related PTSD, adjustment disorder with depressed mood, or any other psychiatric or psychological condition related to the work accident.

CONCLUSIONS OF LAW

A claimant in a Workers' Compensation proceeding has the burden of proving all elements of his claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 911 (Mo.App. E.D.2008). Claimant must prove that the injury arose out of and in the course and scope of his employment, that the workplace accident is the prevailing factor in the development of any injury, and thus, any resulting disability or impairment. §287.020.3(2)(a), RSMo.

1. Accident / Course and Scope of Employment

To qualify as an "accident," the incident which led to Claimant's injuries must be "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift." § 287.020.2 RSMo. It is undisputed that Claimant suffered an injury, as that term is generally defined, to his right hand when it was struck by the passing vehicle. The undisputed evidence is that this injury occurred while Claimant was working for Henry's Wrecker, having been dispatched by that company. An emergency room record substantiates Claimant's contentions that he sustained an injury when he was struck by a passing vehicle. I find and conclude that Claimant sustained an accident as that term is defined in the Missouri Workers' Compensation Law, and that the injury occurred within the course and scope of Claimant's employment.

2. Medical Causation

It is Claimant's burden to prove not only an accident, but that such accident resulted in an injury. *Lacy v. Federal Mogul*, 287 S.W.3d 691, 700 (Mo. App. S.D. 2009). 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" being defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. *Johnson v. Indiana Western Express*, 281 S.W.3d 885, 889 (Mo. App. S.D. 2009); § 287.020.3(1) RSMo Cum. Supp. 2009. An accident must

produce “at the time objective symptoms of an injury.” 281 S.W.2d at 889; § 287.020.2 RSMo Cum Supp. 2009. RSMo.

Medical records near the time of the injury certainly document that Claimant appeared to be in pain. Treating physicians prescribed pain medications based on their examinations. Dr. Swaim, an orthopedic specialist, certainly makes the case for medical causation, at least as to the right hand, right shoulder, rib, and low back. Dr. Swaim could not state that Claimant’s other physical complaints were medically and causally related, and I find that credible.

For the reasons cited above in the credibility finding, I reject the opinions of those experts who believe that Claimant suffers from psychological or psychiatric conditions related to the work accident. Claimant must establish medical causation by presenting scientific or medical evidence when the nature of the injury is not within common knowledge or experience. *Bond v. Site Line Surveying*, 322 S.W.3d 165, 170 (Mo. App. W.D. 2010). Certainly, psychological and psychiatric injuries are not within the area of expertise of this fact finder. Under § 287.800 RSMo, I can give no benefit of the doubt to either party, but must weigh the evidence impartially. Having done so, I conclude that Claimant has no psychiatric and/or psychological problems related to the work accident, based on the opinions of the Employer/Insurer’s experts.

3 & 4. Past and Future Medical Treatment

An employee has the burden to show that there is a reasonable probability that he needs medical care, and that such medical treatment flows from the work injury. *Fitzwater v. Department of Public Safety*, 198 S.W. 3d 623, 628 (Mo. App. W.D. 2006). Employer/Insurer provided appropriate medical care for Claimant, including extensive diagnostic testing, physical therapy, and medication. The credible evidence in the record demonstrates that Claimant needs no additional medical care for his physical injuries to his right upper extremity, shoulder, rib, and low back. Dr. Swaim, Claimant’s own orthopedic specialist, recommends no additional medical treatment for the hand, shoulder, rib and low back. Dr. Swaim refused to tie the work injury to the hand tremors, foot drop, and other claims of injury or disability. And, as I have found, Claimant does not suffer any psychological or psychiatric condition related to the work accident.

Claimant has failed to prove by a “reasonable probability” that, because of the work-related injury, he needed any additional medical treatment to cure and relieve the effects of the work injuries subsequent to his release by Dr. Corsolini on August 6, 2009. Employer/Insurer does not owe any of the \$93,797.97 Claimant incurred after August 6, 2009. Employer/Insurer is not responsible for future medical care.

5. Temporary Total Disability

“Temporary total disability awards are owed until the claimant can find employment or the condition has reached the point of maximum medical progress.” *Tilley v. USF Holland Inc.*, 325 S.W.3d 487, 492 (Mo. App. E.D. 2010). Dr. Corsolini believed Claimant had reached maximum medical improvement on August 6, 2009. Dr. Corsolini, as a treating physician who had followed Claimant’s course of treatment, was in the best position to determine whether Claimant would have benefitted from additional treatment. I accept Dr. Corsolini’s date of maximum medical improvement.

Employer paid \$10,352.07 in temporary total disability at the rate of \$380.29, which calculates to slightly more than 27 weeks of temporary benefits. From the date of the work accident through the date of Dr. Corsolini's letter releasing Claimant to work is 26 weeks. Employer owes no additional temporary total disability.

6. Permanent Partial Disability

I find and conclude that Claimant sustained a 7.5 percent permanent partial disability to the body as a whole (7.5 percent x 400 weeks = 30 weeks) due to the sprain, strain, and/or contusion to Claimant's right upper extremity, including his shoulder and hand, his rib, and low back. Multiplied by his weekly benefit amount of \$380.29, Employer/Insurer are responsible to Claimant in the amount of \$11,408.70 in permanent partial disability (30 weeks x \$380.29 = \$11,408.70). As stated above, I fail to find credible evidence that the work accident in February 2009 was the prevailing or primary cause of any other injury or condition.

Claimant's attorney, Randy Alberhasky, is entitled to 25 percent of the amounts awarded herein as a reasonable fee for necessary legal services rendered.

Made by: _____
Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation