

FINAL AWARD ALLOWING COMPENSATION

Injury No.: 07-080701

Employee: Rita Pease
Employer: Stockton R1 Public School
Insurer: MUSIC c/o Gallagher Bassett Services
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 briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision supplementing and modifying 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.

Discussion

Natural consequence of the work injury

Employee suffered significant injury to her right knee when she fell at work in August 2007. Treatment included surgery, after which employee used a walker consistent with the treating doctor's recommendations. In April 2008, employee fell again when she lost control of the walker while trying to open a door; employee suffered injury to her left knee and left elbow as a result of this fall. The administrative law judge found that the April 2008 fall was a natural consequence of the 2007 injury, and included the effects of the 2008 fall in his determination as to the nature and extent of employer's liability for the 2007 work injury.

On appeal before this Commission, employer argues that because employee filed a separate claim for compensation in connection with the 2008 fall, and because the 2008 fall meets the criteria for an "accident" under the applicable provision of the Missouri Workers' Compensation Law, employee is thereby precluded from proving a causal connection between the 2007 and 2008 events. Employer fails to cite any authority supporting this proposition.

Employer's argument fails. The courts have held where a compensable work injury (like employee's 2007 right knee injury) is found to have occurred, "every natural consequence that flows from the injury, including a distinct disability in another area of the body, is compensable as a direct and natural result of the primary or original injury." *Pace v. City of St. Joseph*, 367 S.W.3d 137, 147 (Mo. App. 2012). Employer fails to acknowledge the cases discussing what constitutes a "natural consequence" of a compensable work injury. We find the recent *Pace* decision to be analogous to the facts at issue in this case. In *Pace*, the court determined that an employer was liable for permanent total disability benefits where an employee suffered a knee injury at work in 2002, and thereafter suffered two additional falls in 2004 when the injured knee collapsed. *Id.* at 140. The *Pace* court noted that employee filed separate claims for compensation for the 2002 and 2004 incidents; clearly, the *Pace* court was not under the impression that employee was somehow prohibited from showing a causal connection between the incidents simply because separate claims for compensation were filed with the Division of Workers' Compensation. *Id.* at 141-42.

Employee: Rita Pease

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We conclude that employee was entitled to make her case that the 2008 fall was a natural consequence of the 2007 work injury, despite filing claims for compensation in connection with both the 2007 and 2008 incidents. Likewise, we conclude that employee's filing two claims does not restrict our analysis herein with regard to the nature and extent of employer's liability for the 2007 work injury. Meanwhile, employer was free to argue that an "independent intervening cause" was the source of employee's subsequent injury. See *Wilson v. Emery Bird Thayer Co.*, 403 S.W.2d 953, 958 (Mo. App. 1966). But employer has failed to identify any intervening cause, and fails to challenge or even directly address Dr. Koprivica's medical testimony on the issue.

Dr. Koprivica opined that the 2008 fall was a natural consequence and continuation of the 2007 work injury. Dr. Koprivica explained that the severity of the 2007 injury necessitated employee's use of a walker, and employee's losing control of the walker was what led directly to her fall in 2008. Meanwhile, employer's expert Dr. Lennard agreed that it was much less likely that employee would have fallen in 2008 if she had not suffered the work injury in 2007, yet nevertheless insisted that the 2007 work injury was "less than" a prevailing factor in causing her subsequent injuries. Neither party asked Dr. Lennard to explain this position. We note that Dr. Lennard appeared confused when he testified: "I don't know that I understand the question as far as 'natural consequence.'" *Transcript*, page 717.

Dr. Koprivica's testimony makes more logical sense to us. Especially in the absence of any argument from employer as to why we should accept Dr. Lennard's opinions on the issue over those of Dr. Koprivica, we agree with the administrative law judge that Dr. Koprivica provides the more credible testimony and that employee's 2008 fall was a natural consequence of the 2007 work injury, and is compensable herein as a continuation of the work injury.

Timing and commencement of permanent total disability benefits

We agree with the administrative law judge that employer is liable for permanent total disability benefits. But the administrative law judge determined that employer's liability for permanent total disability benefits begins on June 1, 2008, the day following employee's resignation. Absent a showing that employee had reached maximum medical improvement on June 1, 2008, any finding as to the nature and extent of employee's permanent disability as of that date is premature:

Courts have used various terms to determine when an employee's condition has reached the point where further progress is not expected, including the term maximum medical improvement. *Vinson v. Curators of the University of Missouri*, 822 S.W.2d 504, 508 (Mo. App. E.D. 1991) (interpreting a doctor's testimony of employee's maximum treatment potential to mean maximum medical improvement); *Cooper*, 955 S.W.2d at 575 (using the term maximum medical progress to define the point where no further progress is expected for an employee's condition).

After reaching the point where no further progress is expected, it can be determined whether there is either permanent partial or permanent total disability and benefits may be awarded based on that determination. One cannot determine the level of permanent disability associated with an

Employee: Rita Pease

injury until it reaches a point where it will no longer improve with medical treatment. ...

Although the term maximum medical improvement is not included in the statute, the issue of whether any further medical progress can be reached is essential in determining when a disability becomes permanent and thus, when payments for permanent partial or permanent total disability should be calculated.

Cardwell v. Treasurer of Mo., 249 S.W.3d 902, 910 (Mo. App. 2008).

As the foregoing quotation makes clear, the timing of permanent total disability payments is linked to the concept of maximum medical improvement; employee's date of resignation is irrelevant. In a note dated September 10, 2008, Dr. Miller (the physician who provided treatment following the 2008 fall) found employee to be at maximum medical improvement. We find that employee reached maximum medical improvement from the effects of the work injury on September 10, 2008. We find that employee was permanently and totally disabled as of September 10, 2008, and that employer's liability for weekly payments of permanent total disability benefits begins on that date.

Award

We supplement the analysis of the administrative law judge on the issue of whether employee's fall in 2008 was a natural consequence of the work injury. We also modify the date of commencement of employer's liability for payment of permanent total disability benefits.

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

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

The award and decision of Administrative Law Judge Robert H. House, issued January 20, 2012, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 19th day of September 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary



STATE OF MISSOURI
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

3315 WEST TRUMAN BLVD, P.O. BOX 58, JEFFERSON CITY, MO 65102 (573) 751-4231

JANUARY 20, 2012

07-080701

Scan Copy

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Injury No : 07-080701
Injury Date : 08-14-2007
Insurance No. : 010279074896WC01

*Employee : RITA PEASE
19187123 0 2542 EAST 1900 ROAD
JERICO SPRINGS, MO 64756

*Employee Attorney: DARREN J MORRISON
1736 EAST SUNSHINE
PLAZA TOWERS SUITE 104
SPRINGFIELD, MO 65804

*Employer : STOCKTON R I SCHOOL DIST
19187124 7 1400 SOUTH ST
PO BOX 190
STOCKTON, MO 65785

*Insurer : MISSOURI UNITED SCHOOL INSURAN
19187125 4 c/o GALLAGHER BASSETT SERVICES
1630 DES PERES RD STE 200
ST LOUIS, MO 63131-1849

*Insurer Attorney : MICHAEL D MAYES
1717 E REPUBLIC RD
STE C
SPRINGFIELD, MO 65804

*Asst Atty General: ATTY GENERAL CHRIS KOSTER
19187122 3 149 PARK CENTRAL SQ STE 1017
SPRINGFIELD, MO 65806

Enclosed is a copy of the Award on Hearing made in the above case.

Under the provisions of the Missouri Workers' Compensation Law, an Application for Review of the decision of the Administrative Law Judge may be made to the Missouri Labor and Industrial Relations Commission within twenty (20) days of the above date. If you wish to request a review by the Commission, application may be made by completing an Application for Review Form (MOIC-2567). The Application for Review should be sent directly to the Commission at the following address:

Labor and Industrial Relations Commission
PO Box 599
Jefferson City, MO 65102-0599

If an Application for Review (MOIC-2567) is not postmarked or received within twenty (20) days of the above date, the enclosed award becomes final and no appeal may be made to the Commission or to the courts.

Please reference the above Injury Number in any correspondence with the Division or Commission.

DIVISION OF WORKERS' COMPENSATION

Please visit our website at www.labor.mo.gov/DWC

WC-142 (07-11)
AWARD ON HEARING
NLP

AWARD

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

Dependents: N/A

Employer: Stockton R1 Public School

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

Additional Party: Second Injury Fund

Insurer: MUSIC c/o Gallagher Bassett Services

Hearing Date: September 28, 2011

Checked by:

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: 8/14/07 and 4/16/08
5. State location where accident occurred or occupational disease was contracted: STOCKTON, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
FUFILLING DUTIES AS A TEACHER
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: RIGHT KNEE, LEFT KNEE, LEFT ARM
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
15. Compensation paid to-date for temporary disability: 07-080701 -- \$1,132.60
08-039220 -- \$0.00
16. Value necessary medical aid paid to date by employer/insurer? 07-080701 -- \$33,545.25
08-039220 -- \$610.58

Issued by DIVISION OF WORKERS' COMPENSATION

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$792.73
19. Weekly compensation rate: \$528.49 / \$389.04
20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

PERMANENT TOTAL DISABILITY OF \$528.49 PER WEEK AS A RESULT OF THE 8/14/07 INJURY AT WORK.

Unpaid medical expenses: -0-

N/A weeks of temporary total disability (or temporary partial disability)

N/A weeks of permanent partial disability from Employer

N/A weeks of disfigurement from Employer

22. Second Injury Fund liability: NONE

TOTAL: UNDETERMINED

23. Future requirements awarded: FUTURE MEDICAL AS REASONABLE NECESSARY TO CURE AND RELIEVE RITA PEASE FROM THE EFFECTS OF HER INJURY AT WORK

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

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

Darren Morrison

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Rita Pease	Injury No. 07-080701 & 08-039220
Dependents:	N/A	
Employer:	Stockton R1 Public School	Before the DIVISION OF WORKERS' COMPENSATION
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri
Insurer:	MUSIC c/o Gallagher Bassett Services	Jefferson City, Missouri
Hearing Date:	September 28, 2011	Checked by:

AWARD

The parties presented evidence at a final hearing on September 28, 2011. Employee, Rita Pease, appeared in person and with her attorney Darren Morrison. Mike Mayes appeared and represented Employer. Assistant Attorney General Todd Smith appeared and represented the Second Injury Fund.

The parties agreed that the issues for determination at the hearing were the nature and extent of liability against both Employer and the Second Injury Fund and future medical treatment against the Employer. Employee seeks Permanent Total Disability. The parties agreed that the average weekly wage was \$792.73 in both claims, yielding a Temporary Total Disability rate of \$528.49, a Permanent Partial Disability rate of \$389.04, and a Permanent Total Disability rate of \$528.49. These rates are applicable in both claims.

The parties agreed to venue in Joplin, Jasper County, Missouri. The injuries occurred in Cedar County, Missouri, thus venue is proper.

The Employee testified and was the only witness at the hearing. I find her testimony to be credible.

The Employee was born on May 27, 1946. She graduated from high school in 1964. Ms. Pease has done work in the manufacturing sector in the distant past and was self-employed as a farmer with her husband between 1975 and 1984. Employee then attended college at Missouri Southern State College and obtained a Bachelor of Science degree in elementary education, special reading and special education in 1990. Ms. Pease then received a Master of Science degree in elementary counseling from Southwest Missouri State University in 1999, and then fulfilled the requirements to be a professional counselor in 2007.

The Employee's most recent employment began in 1991 in Stockton R1 Public School. Employee began her work at Stockton as a special education teacher before becoming a counselor. Ms. Pease retained this employment until retiring on May 31, 2008.

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

Employee's history of pre-existing disability begins in 1987 when she suffered an injury to her neck in a physical education class while attending college. Due to this injury, Employee suffered a C7 spinous process fracture and was treated at St. John's Regional Medical Center in Joplin. Ms. Pease's treatment has continued throughout the years, including chiropractic treatment from a friend at church, and she describes significant impact on her activity due to the neck condition. Ms. Pease has pain that radiates in her right arm with certain activities such as carrying items or filing, because of her neck condition. She also has limited motion of her neck, which is evident when she moves her head from side to side. Instead of rotating her neck, she tends to move her entire upper body. She has continued to take over-the-counter medications because of ongoing neck pain, and has been limited over the years in activities such as lifting, carrying, working overhead and driving.

Another disability predating the last work injury at Stockton R1 Public School is her history of deep venous thrombosis involving the right lower extremity, for which she has ultimately suffered post-phlebotic syndrome. This condition started in approximately 1993. Although she was on Coumadin for approximately six months, she continued to have post-phlebotic symptoms, including varicose veins in the right lower extremity, pain, and persistent swelling. While working as a teacher and counselor, Employee would take postural breaks because of the pain and swelling in her right leg, occasionally elevating the leg to find some relief.

Employee has filed claims for two injuries sustained while in the employment of Stockton R1 Public School. The first injury occurred on August 14, 2007, when she slipped on gravel in the cafeteria parking lot and injured her right knee. Her right knee rotated and popped during this incident and she had significant difficulties in the right knee at the time. Ms. Pease was seen two days later by a nurse practitioner in the office of Dr. Butcher, who is her primary care physician. After seeing Dr. Butcher on a couple of occasions and undergoing an MRI scan of the right knee on August 29, 2007, Employee was referred to an orthopedic surgeon in Springfield, Dr. Miller. Dr. Miller saw her on September 12, 2007, and diagnosed a Grade 1 medial collateral ligament tear in the right knee. Dr. Miller recommended treating the right knee with a hinged brace, which gave her little relief. Dr. Miller became concerned about the possibility of internal derangement of the right knee based on her clinical course, and on November 12, 2007, recommended repeating the MRI scan. During this time period, Employee was self-accommodating at work by using a wheelchair.

The MRI scan of November 20, 2007, revealed a medial meniscus tear. There was also a partial tear involving the lateral meniscus, as well as a moderate medial collateral ligament sprain. Osteochondral defect involving the medial femoral condyle, as well as degenerative joint disease, was also noted.

Dr. Miller performed a partial medial and lateral meniscectomy on December 13, 2007. This surgery was performed arthroscopically.

Employee continued to have significant difficulties with the right knee throughout her follow-up visits with Dr. Miller. On March 19, 2008, Dr. Miller noted that Employee had increased the stress on the medial side of her knee because of her injury and surgery, which was

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exacerbating pre-existent arthritis. Dr. Miller recommended she remain non-weight bearing on the right because of these difficulties, requesting that Employer/Insurer provide Employee with a walker. Dr. Miller then recommended an arthrogram on the right knee on April 2, 2008.

Throughout this time period, Employee was making rather significant accommodations for her right knee injury. Ms. Pease was using a wheelchair at work, and when she was not using a wheelchair, she would use the prescribed walker. Ms. Pease was transferred into a trailer with a ramp so the children could come to her for counseling, since her normal office would have required some stair climbing.

Adding to these difficulties, Employee fell again on the job at Stockton R1 Public School on April 16, 2008. As she was trying to open the door to exit a school building, Employee lost control of her walker and fell while reaching for it.

Employee fell onto her left knee and left elbow. Employee treated the following day with Dr. Butcher, who x-rayed her left elbow. The x-ray was reportedly negative. Ms. Pease was given pain medication at that time, as well as a tennis elbow splint to wear on her left elbow.

Ms. Pease saw Dr. Ted Lennard, a physical medicine doctor at the request of Employer/Insurer, on March 12, 2009. Employee indicated she was having constant medial right knee pain with swelling. Ms. Pease also complained of left elbow pain radiating into the forearm and hand and paresthesias into the fourth and fifth digit.

Dr. Lennard opined that Mrs. Pease sustained a 15% disability of the right lower extremity at the 160-week level as a result of the August 14, 2007, injury, and had a pre-existing disability of 10% due to her non-work related degenerative changes. Dr. Lennard also opined that she may ultimately require a total knee arthroplasty on the right for her right knee degenerative changes. Dr. Lennard also gave her a 5% disability rating of the left upper extremity at the 210-week level for her April 16, 2008, fall, and recommended she avoid squatting and lifting over 25 pounds as a result of the right knee injury. He gave more specific restrictions for her left elbow injury.

Dr. Lennard saw Employee again on November 12, 2009. At that time, Dr. Lennard noted that employee's symptoms were getting worse in both the left elbow and the right knee. Dr. Lennard noted that employee denied prior problems with the right knee, other than the varicose veins, and had not had any difficulty with the left upper extremity prior to the April 2008 work injury. He referenced only a brief notation in Dr. Butcher's records of a prior right knee problem. Dr. Lennard noted that Ms. Pease was still using a rolling walker and moved about with a moderate limp. He opined that Employee needed a cane or rolling walker. Dr. Lennard further opined that the fall of August 14, 2007, was the prevailing factor in Employee's original right knee pain necessitating her two right knee surgeries at the hands of Dr. Miller. Dr. Lennard did not change his disability ratings. He diagnosed the left upper extremity difficulties resulting from her April 16, 2008, injury as left lateral epicondylitis. Dr. Lennard recommended no further treatment.

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Employee was evaluated by Dr. Brent Koprivica at the request of her attorney on November 10, 2008, before her visits with Dr. Lennard. Dr. Koprivica opined that the August 14, 2007, injury was the prevailing factor necessitating her surgeries on the right knee, as well as the prevailing factor in the symptomatic end-stage degenerative disease that is present in the right knee. Dr. Koprivica testified that Employee is now "bone-on-bone" in the right knee and stated that it is speculative to state whether Employee would have developed that type of degenerative change absent the injury of August 14, 2007.

Dr. Koprivica further stated that the April 16, 2008, injury was a direct and natural consequence of the permanent injuries sustained originally on August 14, 2007, in that Ms. Pease fell in 2008 due to the injuries she had sustained in the prior 2007 accident. Dr. Lennard opined that the 2007 injury was a contributing factor to the 2008 fall and that it was much less likely that employee would have fallen but for the 2007 injury. Dr. Koprivica further opined that Employee requires a total knee arthroplasty on the right, and that the August 14, 2007, injury is the prevailing factor necessitating that surgery. Dr. Koprivica also recommended electrodiagnostic studies on the right elbow to rule out anterior interosseus entrapment neuropathy and/or radial neuropathy. Dr. Koprivica agreed with Dr. Lennard that Employee was suffering from lateral epicondylitis in the left elbow and that the use of the cane for gait assistance has aggravated that condition. Dr. Koprivica recommended an MRI scan of the left knee to determine whether or not Employee has any internal derangement in that knee from the fall of April 16, 2008, and recommended that Ms. Pease see an appropriate doctor for all of those treatment recommendations.

Dr. Koprivica noted that Employee was having sleep interruption as a result of the injury of August 14, 2007. Employee testified that her knee pain would often wake her up in the night, resulting in her being tired and occasionally requiring naps during the day.

Dr. Koprivica opined that due to the August 14, 2007, Ms. Pease had a 60% disability of the right lower extremity, a 32% disability of the left upper extremity, and a 10% disability of the left lower extremity. Dr. Koprivica also opined that as Employee presented, while considering her advanced age, she was permanently and totally disabled, and he recommended a vocational expert's assessment to confirm his opinion. Dr. Koprivica assessed Employee pre-existing disability as 25% at the 207-week level of the right lower extremity and 12½% disability at the 400-week level of the body as a whole as a result of the prior cervical condition. However, Dr. Koprivica ultimately opined that Employee was permanently and totally disabled based on the residuals and restrictions following the August 14, 2007, injury, considered alone.

Employee saw Michael Lala, a vocational rehabilitation consultant, at the request of her attorney on March 3, 2010. Mr. Lala ultimately opined that Employee was permanently and totally disabled as a result of her injuries in 2007 and 2008 as "one continuing injury" which was the "last injury" totally disabling Employee. Mr. Lala testified that the restrictions he used in finding Employee to be permanently and totally disabled as a result of the "last injury" were those restrictions provided by Dr. Koprivica as follows: no use of the left upper extremity except for support for sedentary physical level, no repetitive grasping, pinching or forearm supination/pronation or forceful activities with the left upper extremity, no squatting, crawling, kneeling or climbing, only minimal standing and walking, seated activities only with the

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Injury No. 07-080701 & 08-039220

opportunity to get up whenever necessary, and only a sedentary physical exertional demand. Other restrictions indicated Employee also should be able to use her wheeled-walker, and he had noted in Dr. Koprivica's report and testimony that Employee's sleep was interrupted and that this interruption would cause her an inability to be consistent in reporting for work on a daily basis. In his testimony Dr. Lennard agreed with virtually all of those restrictions except for no repetitive left forearm supination or pronation, but included the restriction of providing "seated-type work" with the allowance of getting up when needed. Mr. Lala felt that these restrictions, based on the injury of August 2007, were sufficient to make the Employee permanently and totally disabled without consideration of her pre-existing disabilities.

Employer sent Employee to St. Louis to see James England, a vocational rehabilitation counselor. Mr. England felt that Employee was able to work as a counselor or as a tutor. On cross-examination, however, Mr. England testified that in Employee's town of Jerico Springs, with only 260 people total and many of those living below the poverty line, there are probably not people able to pay her to tutor their children. Mr. England also testified on cross-examination that if she is having a hard time staying awake and alert during the day, she is permanently and totally disabled.

Permanent Total Disability is defined as the inability to return to employment in the open labor market. §287.020.6 RSMo. The central question is whether any employer in the usual course of business could reasonably be expected to employ the Employee in his present physical condition. *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W. 2d 173, 178 (Mo. App. E.D. 1995), *overruled on other grounds in Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

First, I must consider the disability caused by the last work injury and whether that disability alone results in permanent total disability. §287.020.1 RSMo.

I find and conclude that the Employee is permanently and totally disabled due to the injuries she sustained on August 14, 2007, including the injuries from the 2008 fall that I find and conclude to be the natural consequence of the 2007 accidental injury and is the "last injury" at work. I find the opinion of Dr. Koprivica and vocational expert, Michael Lala, to be persuasive in their conclusions that Employee is medically and vocationally permanently and totally disabled. Although Employee has some pre-existing disability, it is clear that her last injury is the cause of her permanent and total disability. It is also clear from the testimony of Employee, Dr. Koprivica, and Dr. Lennard that Employee had no preexisting disability as a result of the prior degenerative condition of her right knee and that such prior degenerative condition was asymptomatic prior to her last injury. Ms. Pease cannot walk very far; and when she does walk, it is with a walker. Employee frequently needs to use a wheelchair. Even the sedentary jobs that Employer's expert, James England, opined Employee can do, are not present in her geographic area and she cannot drive long distances. Ms. Pease also has sleep interruption that she attributes to the last injury, and the sleep interruption requires her to take naps during the day on occasion. As a result, I find and conclude that because of Employee's physical condition caused by her August 17, 2007, injury at work and her advanced age, she is permanent total disability.

Employee: Rita Pease

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Since I find that Employee is permanently and totally disabled due to her last injury at work, considered alone and in isolation, I find and conclude that there is no Second Injury Fund liability, I deny the claims against Second Injury Fund claim.

Future Medical Treatment

Employee requests that future medical treatment be left open in this case at the Employer's expense. To receive an award of future medical benefits, Employee must show that, because of her work related injury, future medical treatment will be necessary. *Stevens v. Citizens Memorial Healthcare Foundation*, 244 S.W.3d 234 (Mo. App. S.D. 2008). For an Employer to be responsible for future medical benefits, such care must flow from the accident, via evidence of a causal relationship between the condition and the compensable injury. *Bowers v. Highland Dairy*, 132 S.W.3d 260 (Mo. App. S.D. 2004). An employee need not prove that future medical benefits benefit only injuries received in the work accident, rather than pre-existing conditions, and the fact that such future medical treatment also benefits a non-compensable condition is irrelevant. *Bowers* at 268. Proof of future medical care when a compensable injury has been found need be only that such treatment is reasonable required to cure and relieve the injured worker of the effects of the work injury. *Tillotson vs. St. Joseph Medical Center*, WD 7298 (Mo.App. W.D. 2011); §287.140.0, RSMo.

I find and conclude that Employee requires future medical treatment due to her last injury at work, and I order the Employer/Insurer to provide such future medical benefits as may be necessary to cure and relieve the Employee from the effects of her last injury. Naturally, employer/insurer should direct such further medical pursuant to §287.040.1. Dr. Koprivica has testified that Employee at least requires an MRI of the left knee, as well as a total knee arthroplasty on the right. He has further recommended an electrodiagnostic study of the left elbow. Employer's doctor, Dr. Lennard, testified that Employee did not have a pre-existing disability in the right knee or the left knee before August 14, 2007, injury. Dr. Lennard recommended some treatment for Employee's sleep interruption, including pain medication (anti-inflammatories) that she could take at bedtime for her knee complaints and opined the need for a possible right knee replacement.

Having found that Employee is permanently and totally disabled due to her last injury at work, I order the Employer to pay permanent total disability amounts in the amount of \$528.49 for Employee's lifetime. These payments shall begin on June 1, 2008, the date following her resignation, and continue thereafter for Employee's life. I further order the Employer to provide future medical treatment as required to cure and relieve the Employee from the effects of her injury.

I allow Attorney Darren J. Morrison a lien in the amount of 25% of all amounts awarded for necessary and reasonable legal services provided to Employee

Date: I certify that on 1/20/12 I mailed a copy of the foregoing award to the following entities at their address of record: 1) parties by certified mail, and 2) counsel for the parties by first-class mail.
By: mp

Made by: Robert H. House
Robert H. House
Administrative Law Judge
Division of Workers' Compensation

FINAL AWARD DENYING COMPENSATION

Injury No.: 08-039220

Employee: Rita Pease
Employer: Stockton R1 Public School
Insurer: MUSIC c/o Gallagher Bassett Services
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. Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award of the administrative law judge by separate opinion.

Introduction

The issues stipulated in dispute at the hearing were: (1) nature and extent of disability; (2) whether employer/insurer are liable for future medical care; and (3) the liability of the Second Injury Fund for either permanent partial or permanent total disability. The hearing in this matter was combined with the hearing in employee's claim designated as Injury No. 07-080701.

The administrative law judge found that employee did not suffer a new injury on April 16, 2008, but that her fall on that date was a natural consequence of the August 14, 2007, work injury, and therefore the effects of the 2008 incident were compensable in employee's claim designated as Injury No. 07-080701.

Employer filed an Application for Review alleging the administrative law judge erred: (1) in finding employee is permanently and totally disabled; (2) in finding employee is disabled solely as a result of the work injury of August 14, 2007; (3) in finding employee's injury on April 16, 2008, was a natural consequence of her August 14, 2007, work injury; and (4) in finding employee met her burden of proof with respect to the issue of future medical care.

The Commission affirms the award of the administrative law judge with this separate opinion.

Discussion

No separate or new injury

Employee's claim for compensation alleges she suffered a compensable work injury when she fell at work on April 16, 2008. As we noted above, the administrative law judge determined that employee did not suffer a new injury when she fell at work on April 16, 2008, but that this incident was a natural consequence and continuation of the August 14, 2007, work injury.

Where an employee sustains an injury arising out of and in the course of his employment, every natural consequence that flows from the injury, including a distinct disability in another area of the body, is compensable as a direct and natural result of the primary or original injury. Every

Employee: Rita Pease

- 2 -

natural consequence that flows from the injury likewise arises out of employment, unless it is the result of an independent intervening cause ...

Cahall v. Riddle Trucking, 956 S.W.2d 315, 322 (Mo. App. 1997) (citations omitted).

In our Award with respect to Injury No. 07-080701, we affirmed the findings of the administrative law judge with regard to the nature and extent of employer's liability for the August 14, 2007, work injury, and provided our own supplemental analysis. We found that the effects of the April 16, 2008, fall were a natural consequence and continuation of the 2007 work injury, and were thus compensable as part of employee's claim for compensation designated as Injury No. 07-080701.

Consequently, we conclude that employee's fall on April 16, 2008, does not amount to a new or separate work injury, and that she has failed to meet her burden of proving she is entitled to compensation herein. These conclusions are clearly implicated by the administrative law judge's findings on the issue whether the 2008 fall was a natural consequence of the 2007 work injury, but are nowhere set forth in his award. We note that the administrative law judge issued a combined award bearing the two Injury Numbers 07-080701 and 08-039220; apparently as a result of this, he failed to separately deal with employee's claim for compensation designated as Injury No. 08-039220. That claim must be denied because the April 16, 2008, fall was a natural consequence of the compensable 2007 work injury; it follows that employee is not entitled to any compensation with respect to her claim for compensation designated as Injury No. 08-039220.

Therefore, we affirm, with this separate opinion, the administrative law judge's implicit denial of employee's claim for compensation designated as Injury No. 08-039220.

Employee's claim is denied. All other issues are moot.

Decision

We affirm the award of the administrative law judge with this separate opinion. Employee's claim is denied.

The award and decision of Administrative Law Judge Robert H. House, issued January 20, 2012, is attached solely for reference and is not incorporated by this decision.

Given at Jefferson City, State of Missouri, this 19th day of September 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary



STATE OF MISSOURI
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

3315 WEST TRUMAN BLVD, P.O. BOX 58, JEFFERSON CITY, MO 65102 (573) 751-4231

JANUARY 20, 2012

07-080701

Scan Copy

142

Injury No : 07-080701
Injury Date : 08-14-2007
Insurance No. : 010279074896WC01

*Employee : RITA PEASE
19187123 0 2542 EAST 1900 ROAD
JERICO SPRINGS, MO 64756

*Employee Attorney: DARREN J MORRISON
1736 EAST SUNSHINE
PLAZA TOWERS SUITE 104
SPRINGFIELD, MO 65804

*Employer : STOCKTON R I SCHOOL DIST
19187124 7 1400 SOUTH ST
PO BOX 190
STOCKTON, MO 65785

*Insurer : MISSOURI UNITED SCHOOL INSURAN
19187125 4 c/o GALLAGHER BASSETT SERVICES
1630 DES PERES RD STE 200
ST LOUIS, MO 63131-1849

*Insurer Attorney : MICHAEL D MAYES
1717 E REPUBLIC RD
STE C
SPRINGFIELD, MO 65804

*Asst Atty General: ATTY GENERAL CHRIS KOSTER
19187122 3 149 PARK CENTRAL SQ STE 1017
SPRINGFIELD, MO 65806

Enclosed is a copy of the Award on Hearing made in the above case.

Under the provisions of the Missouri Workers' Compensation Law, an Application for Review of the decision of the Administrative Law Judge may be made to the Missouri Labor and Industrial Relations Commission within twenty (20) days of the above date. If you wish to request a review by the Commission, application may be made by completing an Application for Review Form (MOIC-2567). The Application for Review should be sent directly to the Commission at the following address:

Labor and Industrial Relations Commission
PO Box 599
Jefferson City, MO 65102-0599

If an Application for Review (MOIC-2567) is not postmarked or received within twenty (20) days of the above date, the enclosed award becomes final and no appeal may be made to the Commission or to the courts.

Please reference the above Injury Number in any correspondence with the Division or Commission.

DIVISION OF WORKERS' COMPENSATION

Please visit our website at www.labor.mo.gov/DWC

WC-142 (07-11)
AWARD ON HEARING
NLP

AWARD

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

Dependents: N/A

Employer: Stockton R1 Public School

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

Additional Party: Second Injury Fund

Insurer: MUSIC c/o Gallagher Bassett Services

Hearing Date: September 28, 2011

Checked by:

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: 8/14/07 and 4/16/08
5. State location where accident occurred or occupational disease was contracted: STOCKTON, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
FUFILLING DUTIES AS A TEACHER
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: RIGHT KNEE, LEFT KNEE, LEFT ARM
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
15. Compensation paid to-date for temporary disability: 07-080701 -- \$1,132.60
08-039220 -- \$0.00
16. Value necessary medical aid paid to date by employer/insurer? 07-080701 -- \$33,545.25
08-039220 -- \$610.58

Issued by DIVISION OF WORKERS' COMPENSATION

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$792.73
19. Weekly compensation rate: \$528.49 / \$389.04
20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

PERMANENT TOTAL DISABILITY OF \$528.49 PER WEEK AS A RESULT OF THE 8/14/07 INJURY AT WORK.

Unpaid medical expenses: -0-

N/A weeks of temporary total disability (or temporary partial disability)

N/A weeks of permanent partial disability from Employer

N/A weeks of disfigurement from Employer

22. Second Injury Fund liability: NONE

TOTAL: UNDETERMINED

23. Future requirements awarded: FUTURE MEDICAL AS REASONABLE NECESSARY TO CURE AND RELIEVE RITA PEASE FROM THE EFFECTS OF HER INJURY AT WORK

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

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

Darren Morrison

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Rita Pease	Injury No. 07-080701 & 08-039220
Dependents:	N/A	
Employer:	Stockton R1 Public School	Before the DIVISION OF WORKERS' COMPENSATION
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri
Insurer:	MUSIC c/o Gallagher Bassett Services	Jefferson City, Missouri
Hearing Date:	September 28, 2011	Checked by:

AWARD

The parties presented evidence at a final hearing on September 28, 2011. Employee, Rita Pease, appeared in person and with her attorney Darren Morrison. Mike Mayes appeared and represented Employer. Assistant Attorney General Todd Smith appeared and represented the Second Injury Fund.

The parties agreed that the issues for determination at the hearing were the nature and extent of liability against both Employer and the Second Injury Fund and future medical treatment against the Employer. Employee seeks Permanent Total Disability. The parties agreed that the average weekly wage was \$792.73 in both claims, yielding a Temporary Total Disability rate of \$528.49, a Permanent Partial Disability rate of \$389.04, and a Permanent Total Disability rate of \$528.49. These rates are applicable in both claims.

The parties agreed to venue in Joplin, Jasper County, Missouri. The injuries occurred in Cedar County, Missouri, thus venue is proper.

The Employee testified and was the only witness at the hearing. I find her testimony to be credible.

The Employee was born on May 27, 1946. She graduated from high school in 1964. Ms. Pease has done work in the manufacturing sector in the distant past and was self-employed as a farmer with her husband between 1975 and 1984. Employee then attended college at Missouri Southern State College and obtained a Bachelor of Science degree in elementary education, special reading and special education in 1990. Ms. Pease then received a Master of Science degree in elementary counseling from Southwest Missouri State University in 1999, and then fulfilled the requirements to be a professional counselor in 2007.

The Employee's most recent employment began in 1991 in Stockton R1 Public School. Employee began her work at Stockton as a special education teacher before becoming a counselor. Ms. Pease retained this employment until retiring on May 31, 2008.

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

Employee's history of pre-existing disability begins in 1987 when she suffered an injury to her neck in a physical education class while attending college. Due to this injury, Employee suffered a C7 spinous process fracture and was treated at St. John's Regional Medical Center in Joplin. Ms. Pease's treatment has continued throughout the years, including chiropractic treatment from a friend at church, and she describes significant impact on her activity due to the neck condition. Ms. Pease has pain that radiates in her right arm with certain activities such as carrying items or filing, because of her neck condition. She also has limited motion of her neck, which is evident when she moves her head from side to side. Instead of rotating her neck, she tends to move her entire upper body. She has continued to take over-the-counter medications because of ongoing neck pain, and has been limited over the years in activities such as lifting, carrying, working overhead and driving.

Another disability predating the last work injury at Stockton R1 Public School is her history of deep venous thrombosis involving the right lower extremity, for which she has ultimately suffered post-phlebotic syndrome. This condition started in approximately 1993. Although she was on Coumadin for approximately six months, she continued to have post-phlebotic symptoms, including varicose veins in the right lower extremity, pain, and persistent swelling. While working as a teacher and counselor, Employee would take postural breaks because of the pain and swelling in her right leg, occasionally elevating the leg to find some relief.

Employee has filed claims for two injuries sustained while in the employment of Stockton R1 Public School. The first injury occurred on August 14, 2007, when she slipped on gravel in the cafeteria parking lot and injured her right knee. Her right knee rotated and popped during this incident and she had significant difficulties in the right knee at the time. Ms. Pease was seen two days later by a nurse practitioner in the office of Dr. Butcher, who is her primary care physician. After seeing Dr. Butcher on a couple of occasions and undergoing an MRI scan of the right knee on August 29, 2007, Employee was referred to an orthopedic surgeon in Springfield, Dr. Miller. Dr. Miller saw her on September 12, 2007, and diagnosed a Grade 1 medial collateral ligament tear in the right knee. Dr. Miller recommended treating the right knee with a hinged brace, which gave her little relief. Dr. Miller became concerned about the possibility of internal derangement of the right knee based on her clinical course, and on November 12, 2007, recommended repeating the MRI scan. During this time period, Employee was self-accommodating at work by using a wheelchair.

The MRI scan of November 20, 2007, revealed a medial meniscus tear. There was also a partial tear involving the lateral meniscus, as well as a moderate medial collateral ligament sprain. Osteochondral defect involving the medial femoral condyle, as well as degenerative joint disease, was also noted.

Dr. Miller performed a partial medial and lateral meniscectomy on December 13, 2007. This surgery was performed arthroscopically.

Employee continued to have significant difficulties with the right knee throughout her follow-up visits with Dr. Miller. On March 19, 2008, Dr. Miller noted that Employee had increased the stress on the medial side of her knee because of her injury and surgery, which was

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

exacerbating pre-existent arthritis. Dr. Miller recommended she remain non-weight bearing on the right because of these difficulties, requesting that Employer/Insurer provide Employee with a walker. Dr. Miller then recommended an arthrogram on the right knee on April 2, 2008.

Throughout this time period, Employee was making rather significant accommodations for her right knee injury. Ms. Pease was using a wheelchair at work, and when she was not using a wheelchair, she would use the prescribed walker. Ms. Pease was transferred into a trailer with a ramp so the children could come to her for counseling, since her normal office would have required some stair climbing.

Adding to these difficulties, Employee fell again on the job at Stockton R1 Public School on April 16, 2008. As she was trying to open the door to exit a school building, Employee lost control of her walker and fell while reaching for it.

Employee fell onto her left knee and left elbow. Employee treated the following day with Dr. Butcher, who x-rayed her left elbow. The x-ray was reportedly negative. Ms. Pease was given pain medication at that time, as well as a tennis elbow splint to wear on her left elbow.

Ms. Pease saw Dr. Ted Lennard, a physical medicine doctor at the request of Employer/Insurer, on March 12, 2009. Employee indicated she was having constant medial right knee pain with swelling. Ms. Pease also complained of left elbow pain radiating into the forearm and hand and paresthesias into the fourth and fifth digit.

Dr. Lennard opined that Mrs. Pease sustained a 15% disability of the right lower extremity at the 160-week level as a result of the August 14, 2007, injury, and had a pre-existing disability of 10% due to her non-work related degenerative changes. Dr. Lennard also opined that she may ultimately require a total knee arthroplasty on the right for her right knee degenerative changes. Dr. Lennard also gave her a 5% disability rating of the left upper extremity at the 210-week level for her April 16, 2008, fall, and recommended she avoid squatting and lifting over 25 pounds as a result of the right knee injury. He gave more specific restrictions for her left elbow injury.

Dr. Lennard saw Employee again on November 12, 2009. At that time, Dr. Lennard noted that employee's symptoms were getting worse in both the left elbow and the right knee. Dr. Lennard noted that employee denied prior problems with the right knee, other than the varicose veins, and had not had any difficulty with the left upper extremity prior to the April 2008 work injury. He referenced only a brief notation in Dr. Butcher's records of a prior right knee problem. Dr. Lennard noted that Ms. Pease was still using a rolling walker and moved about with a moderate limp. He opined that Employee needed a cane or rolling walker. Dr. Lennard further opined that the fall of August 14, 2007, was the prevailing factor in Employee's original right knee pain necessitating her two right knee surgeries at the hands of Dr. Miller. Dr. Lennard did not change his disability ratings. He diagnosed the left upper extremity difficulties resulting from her April 16, 2008, injury as left lateral epicondylitis. Dr. Lennard recommended no further treatment.

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

Employee was evaluated by Dr. Brent Koprivica at the request of her attorney on November 10, 2008, before her visits with Dr. Lennard. Dr. Koprivica opined that the August 14, 2007, injury was the prevailing factor necessitating her surgeries on the right knee, as well as the prevailing factor in the symptomatic end-stage degenerative disease that is present in the right knee. Dr. Koprivica testified that Employee is now "bone-on-bone" in the right knee and stated that it is speculative to state whether Employee would have developed that type of degenerative change absent the injury of August 14, 2007.

Dr. Koprivica further stated that the April 16, 2008, injury was a direct and natural consequence of the permanent injuries sustained originally on August 14, 2007, in that Ms. Pease fell in 2008 due to the injuries she had sustained in the prior 2007 accident. Dr. Lennard opined that the 2007 injury was a contributing factor to the 2008 fall and that it was much less likely that employee would have fallen but for the 2007 injury. Dr. Koprivica further opined that Employee requires a total knee arthroplasty on the right, and that the August 14, 2007, injury is the prevailing factor necessitating that surgery. Dr. Koprivica also recommended electrodiagnostic studies on the right elbow to rule out anterior interosseus entrapment neuropathy and/or radial neuropathy. Dr. Koprivica agreed with Dr. Lennard that Employee was suffering from lateral epicondylitis in the left elbow and that the use of the cane for gait assistance has aggravated that condition. Dr. Koprivica recommended an MRI scan of the left knee to determine whether or not Employee has any internal derangement in that knee from the fall of April 16, 2008, and recommended that Ms. Pease see an appropriate doctor for all of those treatment recommendations.

Dr. Koprivica noted that Employee was having sleep interruption as a result of the injury of August 14, 2007. Employee testified that her knee pain would often wake her up in the night, resulting in her being tired and occasionally requiring naps during the day.

Dr. Koprivica opined that due to the August 14, 2007, Ms. Pease had a 60% disability of the right lower extremity, a 32% disability of the left upper extremity, and a 10% disability of the left lower extremity. Dr. Koprivica also opined that as Employee presented, while considering her advanced age, she was permanently and totally disabled, and he recommended a vocational expert's assessment to confirm his opinion. Dr. Koprivica assessed Employee pre-existing disability as 25% at the 207-week level of the right lower extremity and 12½% disability at the 400-week level of the body as a whole as a result of the prior cervical condition. However, Dr. Koprivica ultimately opined that Employee was permanently and totally disabled based on the residuals and restrictions following the August 14, 2007, injury, considered alone.

Employee saw Michael Lala, a vocational rehabilitation consultant, at the request of her attorney on March 3, 2010. Mr. Lala ultimately opined that Employee was permanently and totally disabled as a result of her injuries in 2007 and 2008 as "one continuing injury" which was the "last injury" totally disabling Employee. Mr. Lala testified that the restrictions he used in finding Employee to be permanently and totally disabled as a result of the "last injury" were those restrictions provided by Dr. Koprivica as follows: no use of the left upper extremity except for support for sedentary physical level, no repetitive grasping, pinching or forearm supination/pronation or forceful activities with the left upper extremity, no squatting, crawling, kneeling or climbing, only minimal standing and walking, seated activities only with the

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

opportunity to get up whenever necessary, and only a sedentary physical exertional demand. Other restrictions indicated Employee also should be able to use her wheeled-walker, and he had noted in Dr. Koprivica's report and testimony that Employee's sleep was interrupted and that this interruption would cause her an inability to be consistent in reporting for work on a daily basis. In his testimony Dr. Lennard agreed with virtually all of those restrictions except for no repetitive left forearm supination or pronation, but included the restriction of providing "seated-type work" with the allowance of getting up when needed. Mr. Lala felt that these restrictions, based on the injury of August 2007, were sufficient to make the Employee permanently and totally disabled without consideration of her pre-existing disabilities.

Employer sent Employee to St. Louis to see James England, a vocational rehabilitation counselor. Mr. England felt that Employee was able to work as a counselor or as a tutor. On cross-examination, however, Mr. England testified that in Employee's town of Jerico Springs, with only 260 people total and many of those living below the poverty line, there are probably not people able to pay her to tutor their children. Mr. England also testified on cross-examination that if she is having a hard time staying awake and alert during the day, she is permanently and totally disabled.

Permanent Total Disability is defined as the inability to return to employment in the open labor market. §287.020.6 RSMo. The central question is whether any employer in the usual course of business could reasonably be expected to employ the Employee in his present physical condition. *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W. 2d 173, 178 (Mo. App. E.D. 1995), *overruled on other grounds in Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

First, I must consider the disability caused by the last work injury and whether that disability alone results in permanent total disability. §287.020.1 RSMo.

I find and conclude that the Employee is permanently and totally disabled due to the injuries she sustained on August 14, 2007, including the injuries from the 2008 fall that I find and conclude to be the natural consequence of the 2007 accidental injury and is the "last injury" at work. I find the opinion of Dr. Koprivica and vocational expert, Michael Lala, to be persuasive in their conclusions that Employee is medically and vocationally permanently and totally disabled. Although Employee has some pre-existing disability, it is clear that her last injury is the cause of her permanent and total disability. It is also clear from the testimony of Employee, Dr. Koprivica, and Dr. Lennard that Employee had no preexisting disability as a result of the prior degenerative condition of her right knee and that such prior degenerative condition was asymptomatic prior to her last injury. Ms. Pease cannot walk very far; and when she does walk, it is with a walker. Employee frequently needs to use a wheelchair. Even the sedentary jobs that Employer's expert, James England, opined Employee can do, are not present in her geographic area and she cannot drive long distances. Ms. Pease also has sleep interruption that she attributes to the last injury, and the sleep interruption requires her to take naps during the day on occasion. As a result, I find and conclude that because of Employee's physical condition caused by her August 17, 2007, injury at work and her advanced age, she is permanent total disability.

Employee: Rita Pease

Injury No. 07-080701 & 08-039220

Since I find that Employee is permanently and totally disabled due to her last injury at work, considered alone and in isolation, I find and conclude that there is no Second Injury Fund liability, I deny the claims against Second Injury Fund claim.

Future Medical Treatment

Employee requests that future medical treatment be left open in this case at the Employer's expense. To receive an award of future medical benefits, Employee must show that, because of her work related injury, future medical treatment will be necessary. *Stevens v. Citizens Memorial Healthcare Foundation*, 244 S.W.3d 234 (Mo. App. S.D. 2008). For an Employer to be responsible for future medical benefits, such care must flow from the accident, via evidence of a causal relationship between the condition and the compensable injury. *Bowers v. Highland Dairy*, 132 S.W.3d 260 (Mo. App. S.D. 2004). An employee need not prove that future medical benefits benefit only injuries received in the work accident, rather than pre-existing conditions, and the fact that such future medical treatment also benefits a non-compensable condition is irrelevant. *Bowers* at 268. Proof of future medical care when a compensable injury has been found need be only that such treatment is reasonable required to cure and relieve the injured worker of the effects of the work injury. *Tillotson vs. St. Joseph Medical Center*, WD 7298 (Mo.App. W.D. 2011); §287.140.0, RSMo.

I find and conclude that Employee requires future medical treatment due to her last injury at work, and I order the Employer/Insurer to provide such future medical benefits as may be necessary to cure and relieve the Employee from the effects of her last injury. Naturally, employer/insurer should direct such further medical pursuant to §287.040.1. Dr. Koprivica has testified that Employee at least requires an MRI of the left knee, as well as a total knee arthroplasty on the right. He has further recommended an electrodiagnostic study of the left elbow. Employer's doctor, Dr. Lennard, testified that Employee did not have a pre-existing disability in the right knee or the left knee before August 14, 2007, injury. Dr. Lennard recommended some treatment for Employee's sleep interruption, including pain medication (anti-inflammatories) that she could take at bedtime for her knee complaints and opined the need for a possible right knee replacement.

Having found that Employee is permanently and totally disabled due to her last injury at work, I order the Employer to pay permanent total disability amounts in the amount of \$528.49 for Employee's lifetime. These payments shall begin on June 1, 2008, the date following her resignation, and continue thereafter for Employee's life. I further order the Employer to provide future medical treatment as required to cure and relieve the Employee from the effects of her injury.

I allow Attorney Darren J. Morrison a lien in the amount of 25% of all amounts awarded for necessary and reasonable legal services provided to Employee

Date: I certify that on 1/20/12 I mailed a copy of the foregoing award to the following entities at their address of record: 1) parties by certified mail, and 2) counsel for the parties by first-class mail.
By: mp

Made by: Robert H. House
Robert H. House
Administrative Law Judge
Division of Workers' Compensation