

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

Injury No.: 06-001088

Employee: Mary Perdue
Employer: PeopLease Corp.
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, heard oral arguments, 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 and decision of the administrative law judge dated August 19, 2009, as supplemented herein.

The findings of fact and stipulations of the parties were accurately recounted in the award of the administrative law judge and are adopted by the Commission. We write separately to address a few matters raised by the briefs.

First, employer argues that employee did not sustain an accident as that term is defined by the Workers' Compensation Law (Law). Second, employer argues that at the time employee began experiencing objective symptoms of an injury she was engaged in the type of activity to which she is equally exposed outside of employment. Finally, employer argues that the administrative law judge failed to properly weigh the medical evidence.

Accident

Is the question of whether employee sustained an accident a justiciable issue?

Employer asserts that employee failed to prove she sustained an accident. Before we consider the merits of employer's point, we must determine if employee's objections to the point are well-taken. Employee argues that whether an accident occurred is not in issue because employer failed to file a timely Answer to employee's Claim for Compensation. Consequently, employee asserts, all statements of fact in her Claim for Compensation shall be deemed admitted. See 8 CSR 50-2.010(8) (B).¹

Employee's argument must fail. Employee did not allege that employee sustained an "accident" in her Claim for Compensation. Where the claim form asked employee to

¹ "Unless the Answer to Claim for Compensation is filed within thirty (30) days from the date the division acknowledges receipt of the claim or any extension previously granted, the statements of fact in the Claim for Compensation shall be deemed admitted for any further proceedings."

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describe what the employee was doing and how the injury occurred, employee alleged: "While in the course and scope of employment, was unloading a trailer resulting in injury." There is no statement of fact pertaining to the issue of accident so there is no fact regarding the issue that can be deemed admitted.

Employee argues, in the alternative, that even if the untimely Answer is considered, employer's Answer itself states "[E]mployer and Insurer specifically admit that Employee was involved in an accident arising out of and in the course of employment for said Employer on or about January 5, 2006..." and for that reason, employer should not be allowed now to argue that an accident did not occur. Employee contends that employer is bound by a judicial admission that employee sustained an accident arising out of and in the course of employment on January 5, 2006.

At the outset of the hearing, the administrative law judge stated that one of the issues to be decided was "whether the employee sustained an accident arising out of and in the course of employment." Counsel for employee did not object to the administrative law judge's recitation of the issues to be tried. Neither did counsel for employee offer into evidence employer's Answer to Claim as proof of the alleged judicial admission. Employer's announced position at the hearing was a de facto amendment of employer's answer to which employee did not object. The issue of accident was a justiciable and controverted issue. See *Snow v. Hicks Bros. Chevrolet, Inc.*, 480 S.W.2d 97 (Mo. App. 1972).

Did employee sustain an accident?

We move on to the merits of employer's first point. Employer argues that the administrative law judge "erred in finding that the employee is permanently and totally disabled because the injurious activity identified by the employee does not constitute an 'accident' as defined by the Missouri Supreme Court in [*Miller v. Missouri Highway and Transportation Commission*, 287 S.W.3d 671 (Mo. 2009)]." We disagree. The *Miller* court does not define or interpret "accident." The decision in *Miller* addressed only the issue of whether Mr. Miller's injury arose out of his employment. *Id.*

"[A]ccident" is defined by section 287.020(2) RSMo as "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." Implicit in employer's argument, is a request that we find the phrase "specific event" to mean the specific physical action in which employee was engaged at the exact moment employee experienced an objective symptom of an injury. We decline to read the statute so narrowly. "The rule of strict construction does not mean that the statute shall be construed in a narrow or stingy manner, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used." See *Allcorn v. Tap Enters.*, 277 S.W.3d 823, 828 (Mo. Ct. App. 2009).

While the definition of "accident" has changed over the years, the legislature has always given "accident" the character of an event.

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The word accident as used in the statute is given the character of an event which is not limited to any single incident or circumstance. The word event is more comprehensive in meaning and in this connection is synonymous with the word occurrence.

Rinehart v. F. M. Stamper Co., 55 S.W.2d 729, 732 (Mo. App. 1932).

The administrative law judge specifically found that employee “engaged in the specific act of unloading pallets that included bending, stooping, lifting, and removing plastic wrappings on those pallets.” As employee cut through shrink-wrap on the 7th skid, she experienced an objective symptom of an injury; her back locked up. We find that the act of unloading pallets was the unexpected traumatic event and the specific event giving rise to employee’s objective symptoms of an injury. We affirm the administrative law judge’s conclusion that employee suffered an accident on January 5, 2006, as described above.

Arising out of employment – impact of non-work exposure

Employer states that “[i]n utilizing the box knife, this claimant was no more at risk for injury that she would have been in countless other daily activities.” Employer argues that this case is analogous to *Miller* in the sense that the activities in which Mr. Miller and employee were engaged at the time of their injuries were similarly “mundane.” We need not determine if employer’s assertions are true, because they have no bearing on the determination of whether employee’s injury arose out of her employment.

The question we must consider is whether employee’s injury came “from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.” Section 287.020.3(3) RSMo. Where the activity giving rise to the accident and injury is integral to the performance of a worker’s job, the risk of the activity is related to employment. In such a case, there is clear nexus between the work and the injury. Where the work nexus is clear, there is no need to consider whether the worker would have been equally exposed to the risk in normal non-employment life.

This case is distinguishable from *Miller*. Here, employee was injured while unwrapping pallets, a necessary activity in the performance of unloading the pallets. Because employee was performing an integral duty of her job of unloading pallets, there is a clear connection (nexus) between the injury and her work; that is, employee’s injury came from a risk related to employment. Consequently, there is no need to consider whether employee is equally exposed to the risk of unloading pallets or the risk of unwrapping shrink wrap or the risk of using a box cutter in normal non-employment life.

Mr. Miller, on the other hand, was engaged in an activity incidental to the performance of his job. Mr. Miller’s job was to provide asphalt to workers paving a roadway. At the time he was injured, employee was walking to his truck to move the truck to where the workers were paving. Because walking was not integral to Mr. Miller’s job of bringing asphalt to the workers, there was no clear nexus between his work and his injury. Because there was no clear work nexus, it was necessary to consider whether

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Mr. Miller was equally exposed to the risk of walking in normal non-employment life. Mr. Miller was equally exposed to the risk, so his injury did not arise out of his employment.

As discussed above, a worker's activity can provide the nexus needed to show an injury came from a hazard or risk related to employment. So, too, can the physical condition of the work environment. Where the physical condition of the work environment creates the hazard or risk giving rise to an injury, the physical condition provides the nexus needed to show the injury came from a hazard or risk related to employment. For example, imagine Mr. Miller stepped in a hole and injured his knee while walking to his truck. Under that scenario, because employer sent Mr. Miller to work on the roadway, the hole in the roadway would supply the nexus between work and the injury. There would be no need to consider Mr. Miller's non-work exposure to the risk of holes in the roadway.

Likewise, imagine a spill on a floor. The spill creates a risk of slipping and falling. If a worker engaged in the incidental activity of walking to her workstation slips on the spill and sustains an injury, the spill on the work premises provides the nexus between the work and the accident. Because the risk of the spill is related to the employment, there is no need to consider the worker's non-work exposure to the risk of spills.

Improper weighing of medical evidence

In addition to the aforementioned arguments, employer also argues in its Application for Review that the administrative law judge "erred in finding that the employee is permanently and totally disabled because, in so doing, she necessarily weighed subjective medical findings over objective medical findings and therefore either ignored or misapplied the provisions of § 287.190.6(2) RSMo."

Section 287.190.6(2) RSMo provides, in part:

In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

As the linchpin of its argument, employer asserts that "on the issue of permanent total disability, the claimant has provided the Court with conflicting expert opinions, one of which concludes she is capable of working." To the extent the medical doctors offered conflicting opinions about employee's employability, the opinions are not medical opinions; they are vocational opinions.

The question whether the claimant is totally disabled within the meaning of the workers' compensation law is not simply a medical question. The test for permanent total disability is whether, given the claimant's total situation and condition, he is competent to compete in the open labor market. This test measures the worker's prospects for returning to employment.

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Crum v. Sachs Electric, 769 S.W.2d 131, 136 (Mo. App. 1989), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

Because employer cites us to no conflicting medical opinions regarding employee's disability, we conclude that the evidence-weighting directive of § 287.190.6(2) was not triggered in this case.

Award

For the foregoing reasons, the Commission agrees with the conclusions reached by the administrative law judge and affirms with supplementation as provided herein. The award and decision of Administrative Law Judge Lisa Meiners, issued August 19, 2009, is affirmed, and is attached and incorporated by this reference.

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 14th day of April 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Mary Perdue

Injury No. 06-001088

Dependents: N/A

Employer: Pro Fleet Transportation

Insurer: AIG Domestic Claims

Additional Party: N/A

Hearing Date: July 20, 2009

Checked by: LM/lh

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: January 5, 2006.
5. State location where accident occurred or occupational disease was contracted: Wheeling, West Virginia.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was Claim for Compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While in the course and scope of employee's work, employee was bending, stooping and lifting resulting to an injury to her back and body as a whole.
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: Back and body as a whole.
14. Nature and extent of any permanent disability: Permanent Total Disability.

15. Compensation paid to-date for temporary disability: \$48,812.29.
16. Value necessary medical aid paid to date by employer/insurer? \$45,502.22.
17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$602.47.
19. Weekly compensation rate: \$401.64/\$365.08.
20. Method wages computation: Average of gross wages earned by employee for the 13 weeks prior to the date of her injury excluding one week when she was on vacation.

COMPENSATION PAYABLE

21. Amount of compensation payable: The employer is liable to employee for permanent total benefits in the amount of \$401.64 per week beginning September 18, 2008 and continuing for Claimant's lifetime.
22. Second Injury Fund liability: None.
23. Future requirements awarded: Employer is to provide employee with additional medical care required to cure and relieve the symptoms related to the injury of January 5, 2006.

Said payments to begin as of the date of the award 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 24 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Ms. Steffanie Stracke.

FINDINGS OF FACT and RULINGS OF LAW:

Issued by DIVISION OF WORKERS' COMPENSATION
Employee: Mary Perdue

Injury No. 06-001088

Employee: Mary Perdue

Injury No. 06-001088

Dependents: N/A

Employer: Pro Fleet Transportation

Insurer: AIG Domestic Claims

Additional Party: N/A

Hearing Date: July 20, 2009

Checked by: LM/lh

FINDINGS OF FACT AND RULINGS OF LAW

The parties appeared for Hearing on July 20, 2009. Mary Perdue, the employee, appeared in person and with counsel, Steffanie Stracke. The employer, Pro Fleet Transportation, through its insurer AIG Domestic Claims, was represented by Thomas Clinkenbeard. The Second Injury Fund was also present and represented by Laura Van Fleet.

STIPULATIONS

The parties stipulated to the following:

- 1) The Claimant was employed subject to the Missouri Workers' Compensation Law;
- 2) The employer was operating subject to the Workers' Compensation Act;
- 3) The notice was given and a claim filed within the time allowed by law;
- 4) The injury by accident occurred in Wheeling, West Virginia but the contract for hire was in Missouri; and
- 5) The employer has paid \$45,502.22 in medical expenses and \$48,812.29 in temporary total disability benefits that were paid until August 26, 2008.

ISSUES

The parties requested the Division to determine the following issues:

- 1) Whether the Claimant sustained an injury by accident that arose out of and in the course of her employment on January 5, 2006;
- 2) Whether the Claimant sustained any disability and, if so, the nature and extent of that disability as a result of the January 5, 2006 accident;
- 3) The liability of the Second Injury Fund;

- 4) Whether the employer/insurer is responsible for paying mileage to Claimant incurred to attend her authorized medical appointments; and
- 5) Whether the employer is liable to the employee for future medical care as a result of the January 2006 accident.

EVIDENCE

Claimant is a 51 year old woman who has worked as a truck driver for the last nine (9) years for a variety of different trucking companies. Claimant was married at the age of 15 and dropped out of school in the 8th grade. She does not have a high school diploma or a GED. Based on the evidence presented, I find on January 5, 2006, Claimant lifted a pallet jack into the back of her truck in order to unload seven pallets full of plastic flowers that she was carrying to a delivery in Wheeling, West Virginia. Claimant was bending, stooping and twisting in order to remove the plastic wrapping from the stacks of flowers and unload them. During this process when she was cutting through the plastic wrapping on the eighth pallet, she experienced an immediate onset of significant pain in her back causing her back to "lock up." Claimant was able to complete unloading in Wheeling, West Virginia and continue with her scheduled work deliveries until she reached exit 188 near Columbia, Missouri. At that point Claimant's back "locked-up" once again. Claimant was in excruciating pain to the point she called 911 and was directed to the nearest hospital. Claimant received medical treatment at Columbia Regional Hospital in Columbia Missouri. Before going to the hospital in Columbia Claimant called in and spoke with her dispatcher and reported her injury. Thereafter Claimant was directed by her employer to see Dr. Russell who performed an MRI. Following a failed series of epidural injections, Claimant was seen by Dr. Ciccarelli who performed back surgery.

Despite Dr. Ciccarelli's release Claimant continued to experience ongoing pain and problems. Claimant testified that she began having leg pain following her surgery with Dr. Ciccarelli that she did not have prior to surgery. Claimant received additional epidurals and other pain management services but eventually Dr. Pratt had nothing further to offer other than medication and a TENS unit. Claimant testified that she continues to take the medication and use the TENS unit prescribed by Dr. Pratt on a daily basis.

Claimant was off work at the authorized doctor's direction and received temporary total disability benefits through August 26, 2008. Claimant was found to be at maximum medical improvement on that date. Employer paid a total of \$48,812.29 in temporary total disability benefits and \$45,002.22 in medical expenses.

Claimant performed light duty work for only approximately two (2) weeks before she was instructed by her employer not to come back to work. Claimant testified that she has constant back and leg pain that varies in severity and is constantly present. Claimant indicates that her pain can range from a four (4) or five (5) to a ten (10) and describes the pain as both burning, aching and stabbing. Claimant testified that she has significant limitations with how long she is able to sit, stand or walk without requiring a change in her posture due to her pain. Additionally, Claimant lies down frequently throughout the day in an attempt to alleviate her pain.

The Employer disputes that Claimant sustained an accident that occurred within the course and scope of her employment. The Employer argues that the medical opinions rendering causation are based on Claimant's history that she unloaded pallets. The Employer points out that Claimant states her back

locked not when physically unloading the pallet from the truck but when Claimant was standing and cutting the plastic wrapping. And as such Claimant has not met her burden of proof. I disagree. Missouri Statute 287.020 defines accident as "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 specific event during a single work shift."

I find Claimant engaged in the specific act of unloading pallets that including bending, stooping, lifting, and removing plastic wrapping of those pallets. I find Claimant properly stated the job activity she performed, the date when it occurred and the time her back began hurting. Indeed I find the act of removing the plastic wrap, then unloading the pallets (7 pallets were unloaded) to be the specific act that caused Claimant's back to lock. Therefore, Claimant sustained an accident that occurred within the course and scope of her employment on January 5, 2006.

Since I find an accident occurred, the next issue is whether or not Claimant is rendered permanently and totally disabled as a result of the January 5, 2006 accident or the result of a combination of her pre-existing disabilities combined with the last accident.

The test for permanent total disability is whether, given the employee's situation and condition, he or she is competent to compete in the open labor market. Total disability means the inability to return to any reasonable or normal employment. The term "total disability" is defined as the inability to return to any employment not merely the inability to return to the employment in which the employee was engaged at the time of the accident. It does not require that the Claimant be completely inactive or inert.

Multiple doctor's opinions were admitted into evidence regarding this issue. Dr. Ebelke, who did not provide any treatment related to the injury sustained on January 5, 2006, performed an independent medical examination wherein on March 17, 2008 he indicated the Claimant had sustained a central to right L3-4 disc herniation in the work injury. In addition, he felt she could be employed in the light medium category but doubted whether Claimant could return to work as a truck driver given that her job involved loading, as well as, driving. Dr. Pratt who provided physical medicine and pain management services to Claimant testified in his deposition that he recommended maximum lifting to 20 pounds and no frequent low back bending or twisting. He agreed with the light medium category of limitations and also felt that it was doubtful that Claimant could return to work as a truck driver. Dr. Pratt felt that Claimant had 12% permanent partial disability to the body as a whole related to her injury on January 5, 2006.

Dr. Koprivica found the January 2006 accident was the prevailing factor of Claimant's identified huge disc herniation at L3-4 with resultant symptomatic stenosis requiring the partial laminectomy at L4 and disectomy at L3-L4 along with decompression of the bilateral lateral recesses at the L3-4 level. Dr. Koprivica further felt that Claimant had a post laminectomy syndrome as a result of her injury on January 5, 2006. Dr. Koprivica assigned a 50% permanent partial disability to the body as a whole due to the post laminectomy syndrome but felt that based on Claimant's overall presentation that she was permanently and totally disabled as a result of her last accident in January 2006 alone.

Dr. Koprivica restricted Claimant to a sedentary physical demand level of activity at the maximum. Dr. Koprivica indicated Claimant would require postural allowances and he recommended captive sitting, standing and walking not to exceed an hour or less as a maximum. Dr. Koprivica further restricted Claimant completely from squatting, crawling, kneeling or climbing. Dr. Koprivica felt Claimant should rarely bend at the waist, push, pull or twist. Dr. Koprivica agreed with Dr. Ebelke and

Dr. Pratt that Claimant could not operate heavy equipment or drive commercially.

Presently, Claimant is limited to standing of approximately 15 minutes. Claimant has to lie down 5 to 10 times a day to alleviate back and right leg pain. Claimant is no longer able to walk more than 30 minutes before her right leg turns numb. Claimant also no longer skates, horseback rides or hunts, which are all activities she performed prior to the last accident. Based on the facts noted above I find on January 5, 2006 Claimant sustained an accident in the course and scope of her employment that was the prevailing factor that required the medical treatment she has received to date and resulted in her current disability. I further find Claimant sustained a 50% permanent partial disability to the body as a whole as a result of the January 2006 accident. I also find that the Claimant is unemployable in the open labor market as a result of the January 2006 accident.

Further, indication that Claimant is permanently and totally disabled is the opinion of Mary Titterington, a vocational expert. Ms. Titterington testified that the doctor's restrictions would prevent Claimant from returning to be a truck driver which is the occupation which she has held for the last nine (9) years. In addition, Dr. Pratt and Dr. Koprivica's restrictions would prevent her from performing the type of work that she performed at Peterson Manufacturing where she was employed for thirteen (13) years. The testing performed on Claimant by Ms. Titterington demonstrated that she had a borderline to below average intelligence. Claimant testified that she has never been successful in completing her GED. Claimant testified that she doubted her ability to do so. Ms. Titterington testified that based on the combination of her severe functional limitations, eighth (8th) grade education, limited academic skills, borderline to below average intellectual ability, dependent edema, emotional lability/depression, difficulties with focus, memory, concentration and her erratic severe pain that she was unemployable in the open labor market.

In addition, Terry Cordray, another vocational expert provided testimony in this matter. Mr. Cordray also performed testing on Claimant and felt that she scored in the bottom range of average. Mr. Cordray testified that not having a GED was a significant barrier to employment. While Mr. Cordray believed that Claimant had the ability to be a cashier or other types of light non-skilled employment he admitted he had done no research into the labor market where Claimant lives in Hume, Missouri. Mr. Cordray admitted that the unemployment rate currently in the state of Missouri is at a record high and that Claimant could not return to be a truck driver. Mr. Cordray further admitted that Claimant's restrictions would place her at best in a light physical demand category.

Again, I find Claimant would not be able to perform substantial gainful employment in the open labor market as a result of her ongoing pain and problems due to her back injury on January 5, 2006, and the significant limitations and restrictions as noted earlier. Therefore, I find Claimant to be unemployable in the open labor market as a result of the January 2006 injury by accident.

Claimant testified that she has sustained a work related back injury while working for Peterson Manufacturing in 1994. While Claimant received a settlement for 17.5% disability to the body as a whole she testified she returned to work without limitations due to her back. Claimant testified she felt the back surgery performed by Dr. Ebelke was a success since she had no ongoing pain. Claimant

testified she did not limit herself in anyway following that injury. Since I find the January 2006 injury by accident to be the prevailing factor rendering Claimant permanently and totally disabled, there is no Second Injury Fund Liability.

The parties request that this Award determine the correct compensation rate. Employee's temporary total disability benefits were paid at a rate of \$435.12 per week. The wage statement was

submitted into evidence indicating that there were total wages of \$7,832.15 between October 4, 2005 and January 3, 2006. I would note that there were no wages earned the week of December 5, 2005 because Claimant was on vacation and therefore will not be considered as a part of the wage calculation. Adding all the other thirteen (13) weeks results in total wages paid of \$7,832.15. Dividing that number by thirteen (13) results in an average weekly wage of \$602.47 and a compensation rate of \$401.64. I find that is the appropriate compensation rate for permanent total disability benefits. The employer is liable to the employee for permanent total disability benefits in the amount of \$401.64 beginning on September 18, 2008 and continuing for Claimant's lifetime.

The next issue is whether Claimant is entitled to mileage for 712 miles that was not reimbursed by the employer/insurer for trips incurred to authorized medical appointments. Claimant's testimony was undisputed that these miles were incurred to attend authorized appointments and that she had not been paid for the mileage she incurred. Therefore, I award mileage to be paid to Claimant for 712 miles at the applicable rate.

The parties request the next issue to be determined is whether the employer is liable to the employee for future medical care as a result of the January 2006 accident by injury. Once again it is a burden of the Claimant to show the need for medical treatment as a result of the January 2006 accident. Several experts' opinions were admitted into evidence addressing this issue.

Claimant's treating physician Dr. Pratt testified that it was reasonable for her to continue to require the medication which he prescribed including Tramadol and potentially Lyrica. In addition, he prescribed a TENS unit which Claimant testified that she continues to use. Claimant testified that initially it had not provided benefit to her because she had not been instructed as to the proper way to use it but ultimately once she learned the proper usage then it has provided benefit to her. Claimant testified that she uses it several times a week to help alleviate her pain. In addition, Claimant's expert Dr. Koprivica testified that Claimant would have ongoing and indefinite pain management needs. I find based on these doctor's opinions expressing the need for future medical care that Claimant's burden has been met. The employer is liable to employee for future medical care to cure and relieve the effects of her injuries sustained in the accident in January 2006.

In sum, the employer is liable to the employee for permanent total disability benefits beginning on September 18, 2008, the date of maximum medical improvement and continuing for Claimant's lifetime at a rate of \$401.64. The employer is liable for mileage at the authorized rate for 712 miles. Lastly, the employer is liable to employee for future medical care in order to cure and relieve the symptoms of the January 5, 2006 accident.

Date: _____

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation