

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

Injury No.: 10-049134

Employee: Anne Poole

Employer: Preferred Hospice of Missouri SW, LLC

Insurer: Missouri Nursing Home Insurance Trust

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Injury arising out of and in the course of employment

The parties dispute whether employee's injuries resulting from the motor vehicle accident of June 7, 2010, arose out of and in the course of employment. The administrative law judge concluded that they did. We agree with this conclusion, but we wish to provide certain supplemental findings and comments.

Section 287.020.3(2) RSMo provides, as follows:

An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come 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.

The courts have interpreted the foregoing language to involve a "causal connection" test that employees must satisfy in order to prove that an injury has arisen out of and in the course of the employment. *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504, 510-11 (Mo. 2012). The *Johme* court held that an employee who fell and suffered injuries when her foot slipped off her sandal while making coffee "failed to meet her burden to show that her injury was compensable because she did not show that it was caused by risk related to her employment activity as opposed to a risk to which she was equally exposed in her normal nonemployment life." *Id.* at 512.

The administrative law judge determined that employee testified credibly that she was returning to employer's place of business at the time of the motor vehicle accident on

Employee: Anne Poole

- 2 -

June 7, 2010. The administrative law judge had the opportunity to observe the witnesses and we discern no compelling reason on this record to disturb her credibility determination. We agree that employee is credible, and we affirm and adopt the administrative law judge's determination that employee was on her way to employer's premises at the time of the motor vehicle accident that caused her injuries.

The administrative law judge went on to conclude, on page 9 of her award, that "it does not matter in this case whether [employee] had intended to return to the Office or was going home," and analyzed the issue of compensability under a hypothetical alternative factual scenario. Because our finding as to employee's actual destination at the time of the motor vehicle accident is (as employer concedes) dispositive of the issue in favor of employee, there is no need to consider whether her injuries would be compensable otherwise. Accordingly, we hereby disclaim the administrative law judge's additional comments and analysis pertinent to the *Reneau* doctrine and the case of *Harness v. Southern Copyroll, Inc.*, 291 S.W.3d 299 (Mo. App. 2009). We conclude that employee's injuries arose out of and in the course of employment, because employee's injuries did not come 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.

Conclusion

We affirm and adopt the award of the administrative law judge, as supplemented herein.

The award and decision of Administrative Law Judge Victorine R. Mahon, issued July 23, 2013, is attached and incorporated by this reference.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 26th day of February 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Anne M. Poole

Injury No. 10-049134

Dependents: N/A

Employer: Preferred Hospice of Missouri SW, LLC

Additional Party: Not applicable

Insurer: Missouri Nursing Home Insurance Trust,
c/o Maxim Insurance Solutions, LC

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

Hearing Date: June 3, 2013

Reviewed by: VRM/ps

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: June 7, 2010.
5. State location where accident occurred or occupational disease was contracted: Webster County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within the time required by law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee, who traveled as an admissions coordinator for clients who were receiving hospice care, was injured in a motor vehicle accident while leaving from an in-person interview with a client.
12. Did accident or occupational disease cause death? No. Date of death? N/A.

- 13. Part(s) of body injured by accident or occupational disease: Body as a whole.
- 14. Nature and extent of any permanent disability: Permanent Total Disability.
- 15. Compensation paid to-date for temporary disability: None.
- 16. Value necessary medical aid paid to date by employer/insurer? None.
- 17. Value necessary medical aid not paid by employer/insurer? \$390,787.08.
- 18. Employee's average weekly wages? \$1,193.02
- 19. Weekly compensation rate: \$795.35
- 20. Method of computation: Payroll records / agreement of the parties.

COMPENSATION PAYABLE

21. Amount of compensation payable:

124 weeks of temporary total disability at \$795.35 per week	\$98,623.40
31 and 6/7 weeks of accrued permanent total disability at \$795.32:	\$25,337.58
For past medical care:	<u>\$390,787.08</u>
TOTAL:	\$514,748.06

22. Second Injury Fund liability: None.

23. Future requirements awarded:

The continuation of permanent total disability benefits of \$795.35 per week for the remainder of Claimant's life.

Future medical treatment to cure or relieve the effects of Claimant's injuries, as set forth in the Award.

This Award is subject to review and modification as provided by law. Interest shall be paid as prescribed by law. The compensation awarded to the employee shall be subject to a lien of 25 percent of all payments in favor of the following attorney for necessary legal services rendered to Employee/Claimant: Elijah Haahr.

FINDINGS OF FACT and RULINGS OF LAW

Employee: Anne M. Poole

Injury No. 10-049134

Dependents: N/A

Employer: Preferred Hospice of Missouri SW, LLC

Additional Party: Not applicable

Insurer: Missouri Nursing Home Insurance Trust,
c/o Maxim Insurance Solutions, LC (TPA)

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

Hearing Date: June 3, 2013

Reviewed by: VRM/ps

INTRODUCTION

The undersigned administrative law judge conducted a final hearing on this case on June 3, 2013, in Springfield, Missouri. Anne Poole (Claimant) appeared in person and by her attorney of record, Elijah Haahr. Patrick Reidy appeared on behalf of Preferred Hospice Southwest, LLC, and its insurer Missouri Nursing Home Insurance Trust and Maxim Insurance Solutions, LC (TPA), (hereafter referenced collectively as Employer). The Second Injury Fund was not a party to this proceeding. The parties entered into the following stipulations:

STIPULATIONS

1. On June 7, 2010, Claimant Anne Poole sustained injuries as a result of an automobile accident. On that date, she was an employee of Employer.
2. On the date of the accident, Preferred Hospice of Missouri SW, LLC, was an employer operating in the State of Missouri and was fully insured by Missouri Nursing Home Insurance c/o Maxim Insurance Solutions, LC.
3. Claimant was covered by, and Employer was subject to, the Missouri Workers' Compensation Act on the date of the accident.
4. The accident occurred in Webster County, Missouri and the parties have agreed to venue in Greene County, Missouri.
5. Claimant's average weekly wage on the date of the accident was \$1,193.02, yielding a weekly rate of \$795.35 for temporary total and permanent total disabilities.
6. There is no dispute as to jurisdiction, notice, or statute of limitations.
7. Employer has paid no medical benefits and no temporary total disability.

ISSUES

The parties agree that the following are the issues that are in dispute:

1. Did Claimant's injuries arise out of and within the course of her employment for Employer?
2. What is the nature and extent of any permanent disability for which Employer is liable?
3. Is Employer liable for temporary total disability benefits?
3. Is Employer liable for certain past medical care?
4. Is Employer liable for future medical care?

The following evidentiary issues arose during the hearing:

1. Should Exhibit 2 be excluded for failure to comply with § 287.215 RSMo, pertaining to statements of an employee?
2. Was certain testimony of Phyllis Wiley admissible as an exception to the hearsay rule?

These evidentiary issues are rendered moot in light of this Award in favor of Claimant. Moreover, any objections or evidentiary rulings not previously addressed are now ruled in a manner consistent with this Award.

EXHIBITS

The undersigned administrative law judge took official notice of the Division's administrative file, including all claims and answers in this case. In addition, the following exhibits were offered. Each was admitted, unless noted otherwise:

Claimant's Exhibits

- | | |
|-------------|--|
| Exhibit A | Dr. Stuckmeyer Report |
| Exhibit A-1 | Dr. Stuckmeyer Deposition and Exhibits |
| Exhibit B | Dr. Whetstone Report |
| Exhibit B-1 | Dr. Whetstone Deposition and Exhibits |
| Exhibit C | Rehab Consulting-Phil Eldred Vocational Evaluation |
| Exhibit D | Medical Bills (all hospitals) |
| Exhibit D-1 | Cox Medical Center Records |
| Exhibit D-2 | Select Specialty Hospital Records |
| Exhibit D-3 | Mercy Hospital Records |
| Exhibit D-4 | Ozark Neuro Rehab Records |
| Exhibit D-5 | CMH Records |
| Exhibit D-6 | Dr. West-Diagnostic Clinic Records |

Exhibit E	Poole Cell Phone Records
Exhibit E-1	Anne Poole Cell Phone Record – June 7, 2010
Exhibit E-2	David Poole Cell Phone Record – June 7, 2010
Exhibit F	Timesheets – May-June, 2010
Exhibit F-1	Timesheet – June 7, 2010
Exhibit G	Daily Service Reports (DSR) – May-June, 2010
Exhibit G-1	DSR – June 7
Exhibit G-2	DSR – June 4
Exhibit G-3	DSR – June 2
Exhibit G-4	DSR – June 1
Exhibit G-5	DSR – May 8
Exhibit H	Report of Injury
Exhibit I	Police Report
Exhibit J	911 Dispatch Records
Exhibit K	Admission Coordinator Job Description

Employer's Exhibits

Exhibit 1	Payroll Records
Exhibit 2	FMLA statement (Excluded - exhibit remains in the records as an offer of proof)
Exhibit 3	Daily Service Report – June 1

FINDINGS OF FACT

Lay Testimony

Claimant, Anne Poole, testified credibly. She is 57 years old and lives with her husband, David Poole. She holds a bachelor's degree in nursing, and worked about 27 years in the nursing field. In June 2010, she was employed as the Admissions Coordinator by Employer, with an office location in Ozark, Missouri. About 80 percent of her job duties required travel away from the principal office to off-site locations to perform in-person interviews with patients who were being admitted to hospice care. If admissions were not scheduled for a day, she was expected to spend her time conducting supervisory visits or other visits related to patient care. She was required to maintain reliable transportation to perform her job. She was paid about \$27.00 per hour in June 2010, and she was reimbursed for her mileage. She also was required to carry a cell phone so that she could be contacted at any time. Employer paid a stipend for her cell phone. Claimant occasionally was contacted late in the evenings, or on return trips from patient visits, and rerouted to an additional visit. She also carried medical equipment with her at all times, such as a stethoscope and various medicines, and frequently transported patient-related medical records in her vehicle.

Claimant completed Daily Service Reports (DSR) detailing her travel. She routinely submitted her DSR the day following her travel. Occasionally, three or four days might pass before Claimant submitted the DSR. On the date of the work accident, however, Claimant had not completed her DSR or submitted it.

On June 7, 2010, Claimant had traveled to various patient visits. Her last appointment of the day was in Seymour, Missouri. There is disputed testimony as to whether she planned to drive from her last appointment in Seymour directly to her home in Elkland, Missouri, or whether she anticipated returning to the office. Claimant explained that she met with a patient in Seymour whose laboratory reports revealed that the patient had contracted Methicillin-resistant Staphylococcus aureus (MRSA). Based on this report, the facility needed to maintain a sterile environment. Claimant believed the physician needed this information as soon as possible. Claimant was unable to fax the information from the nursing facility, so she made the decision to return to the Employer's place of business to fax the information rather than waiting until the following day. Claimant believed she could have arrived at Employer's place of business between 5:45 p.m. and 6:00 p.m. Employer's witness indicated that Claimant's decision to return to the office would have been highly unusual, particularly since the physician's office would have been closed after hours. In any event, Claimant called her husband at 5:15 p.m. to state that she was going to be late.

As Claimant was crossing the eastbound lane of Highway 60 at Seymour, she was struck by an oncoming vehicle. The accident occurred at a location where Claimant reasonably would have been irrespective of whether she was traveling directly home from the nursing facility in Seymour, or back to the office in Ozark, Missouri.

Emergency responders extracted Claimant from her vehicle. An ambulance transported Claimant to Cox emergency room. Emergency surgery was performed. She was diagnosed with severe head trauma and multiple long bone fractures. She had an open reduction and internal fixation performed on her left hip. Cracks in her pelvis were treated non-surgically. She also had surgery on her left eyelid to ensure closure. After recovering from a coma, Claimant was treated with inpatient care for approximately three months before being discharged to return home. She has little to no recollection of this initial treatment due to her head injury. Claimant continued with physical therapy following her return home.

In addition to the above noted diagnoses, Claimant suffers from an accident-related seizure disorder. She has seized more than ten times since the accident of June 7, 2010, with the worst requiring a life flight to the emergency room for intensive treatment. She takes daily prescription medications including Keppra for her seizure disorder and Amatemine for her short term memory problems. She ambulates with the assistance of a cane. She has been restricted from prolonged standing, walking, lifting, bending, traversing of steps, requires frequent bouts of recumbency throughout the day. She has not returned to work and does not believe she could ever work again. She was approved for and receives Social Security Disability benefits.

Claimant's spouse, David Poole, testified credibly at the hearing. On the day of Anne's accident, he returned home early from work. He and Claimant had contemplated making shrimp together for dinner; however, he related that Claimant called him at 5:15 p.m. to state that her plans had changed. Mr. Poole related that his wife said she was returning to the office, so Mr. Poole should not yet start preparing food. Mr. Poole told Claimant that since she would be later than he originally thought, he would go out and begin mowing the yard. When Mr. Poole did not hear from Claimant by 8:00 p.m., he began to worry. Calls to his wife's cell phone went

unanswered. At 8:25 p.m., he received news regarding her accident. Had Claimant been coming straight home that evening as initially planned, rather than back to the office, he would have expected her home by 6:30 p.m., and would have called her phone sooner.

Mr. Poole described how his life with his wife has changed since the accident. He explained that his wife no longer rides or cares for horses. He now handles many of the chores around the house. They rarely attend social events as they did previously.

Phyllis Wiley, Employer's administrator on the date of the accident, and *Linda Willingham*, Employer's business office manager, testified live for Employer. Neither Ms. Wiley nor Ms. Willingham knew exactly the number of hours Claimant had worked the date of the accident, nor the mileage she had accrued that date. Due to the severity of Claimant's injuries, neither woman had an opportunity to talk to Claimant after the accident to verify such information. Employer obtained Claimant's incomplete DSR from Claimant's husband, who had retrieved the document from Claimant's car. Ms. Wiley and Ms. Willingham then estimated the number of hours Claimant had worked and the mileage she had accrued based on the best information available at the time. Ms. Willingham inserted estimated information with red ink.

Ms. Willingham last saw Claimant at approximately 2:30 p.m. on the day of the accident. She understood that Claimant was to visit two clients in Seymour, Missouri, and go home. She admitted, however, that she had not talked to Claimant between 2:30 p.m. and the time of the accident. Claimant's appointments that day were not the ones she initially believed Claimant was making.

Ms. Wiley went to the hospital once she learned of the accident. While she was unable to speak with Claimant, she did converse with Claimant's husband. As a result of her conversation with Mr. Poole, Ms. Wiley understood that Claimant was on her way home rather than back to the office at the time of the accident.¹

Expert Testimony

Phillip Eldred testified live at final hearing. He saw Claimant on September 20, 2013, for a vocational examination. He had Claimant complete two questionnaires – the Back Function Questionnaire and the Functional Capacity Checklist. He performed two examinations of her in his office – the Wide Range Achievement Test (WRAT-4) and the PTI Oral Directions Test.

Mr. Eldred concluded that Claimant had no prior obstacles to employment. Because of the accident, Claimant can no longer perform any of her prior work, which included 26 years as a registered nurse. He found it unlikely that any reasonable employer would hire Claimant, noting that she has no transferable job skills for the sedentary work level, and it is unlikely that she can be retrained. He noted that individuals with seizures and brain injuries are the two hardest categories of persons to get back to work. Overall, he concluded and testified that she is

¹ Claimant's counsel voiced a hearsay objection to Ms. Wiley's testimony regarding a conversation that Mr. Poole had related to Ms. Wiley. The Administrative Law Judge overruled the objection. Even if the evidentiary ruling was improper, Claimant is not prejudiced by such ruling given the ultimate conclusion in this case.

unemployable in the open labor market, and is thus permanently and totally disabled as a result of the accident.

On cross-examination, Mr. Eldred said it made no difference that Claimant was capable of driving, or the fact that she still can clean, sew, or cook. He said she may be able to perform these tasks one day, but not the next due to her physical limitations. Thus, she could not perform these tasks in the competitive labor market. Moreover, even though she has high academic capabilities, her retraining is limited by her physical limitations.

Dr. James A. Stuckmeyer testified by deposition on March 19, 2013. Dr. Stuckmeyer is an M.D. and orthopedic surgeon. He performed an independent medical examination, and evaluated Claimant on August 28, 2012. Dr. Stuckmeyer opined that the accident of June 7, 2010, was the prevailing factor in Claimant's closed head injury, pelvic and hip fractures, and seizure disorder. He recommended that future medical care be left open due to the need for ongoing treatment for the seizure disorder, including evaluation by a neurologist. He further recommended restrictions of no prolonged standing, walking, lifting, bending, traversing of steps and stated she should be allowed frequent bouts of recumbency throughout the day. He further testified that he reviewed the medical bills from her treatment and found them to be reasonable and necessary to cure and relieve the effects of the injury. Dr. Stuckmeyer testified that Employee was, in his opinion, permanently and totally disabled as a result of the accident.

Dr. Michael Whetstone testified by deposition on March 29, 2013. He holds a Ph.D in Rehabilitation Psychology and is a neuropsychologist at Mercy Hospital in Springfield, Missouri. He examined Claimant on September 24, 2012. He found that Claimant ranked in the 5th percentile on the digit repetition task, ranked in the 18th percentile in the motor coordination and visual motors performance, a memory index in the 1st percentile, and a 2nd percentile score on the comparison task. Additional scores were also in the range of the 1st-5th percentile. Her expected IQ was 107 but her actual IQ was reported at 82 placing her in the 13th percentile. Dr. Whetstone indicated that Claimant suffered from a significant cognitive disorder, depression, and adjustment disorder, all caused by the accident. He recommended additional occupational therapy, antidepressants, and association with the Brain Injury Association in Missouri.

Medical Bills

Exhibit D reflects the bills for the medical treatment that Claimant received for the injuries sustained as a result of the accident on June 7, 2010. Exhibit D also includes a summary of Claimant's medical expenses. Medical records have been admitted (Exhibits D-1 through D-6) demonstrating the related treatment. Dr. Stuckmeyer substantiated that the medical treatment Claimant received was reasonable and necessary and the bills for such treatment appeared reasonable and customary.

CONCLUSIONS OF LAW

Claimant bears the burden of proving her case on all issues in dispute. *Walsh v. Treasurer of the State of Missouri*, 953 S.W.2d 632 (Mo. App. S.D. 1997), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). Based on my review of

the evidence and testimony at final hearing, and application of the workers' compensation law, I find and conclude that Claimant Poole has demonstrated her entitlement to compensation from Employer, including temporary total disability benefits, reimbursement of past medical expenses, future medical treatment, and permanent total disability benefits.

Course and Scope of Employment

Claimant must demonstrate that her injuries were caused by an accident "arising out of" and "in the course of" her employment. § 287.120.1 RSMo; *Gardner v. Contract Freighters, Inc.*, 165 S.W.3d 242, 245 (Mo. App. S.D. 2005). An injury "arises out of" the employment if it is a natural and reasonable incident thereof. *Custer v. Hartford Ins. Co.*, 174 S.W.3d 602, 610 (Mo. App. W.D. 2005). It is "in the course of employment" if the action occurs within a period of employment at a place where the employee may be reasonably fulfilling the duties of employment. 174 S.W.3d at 610.

Claimant testified that she made a decision to return to Employer's office after her final visit of the day because she received lab results indicating that her patient had MRSA. She believed this was time sensitive information that needed to be forwarded to the patient's physician. While Claimant's actions in this regard may have been unusual, and the physician's office may have been closed, nothing in the record suggests that Claimant was anything other than a conscientious employee. Moreover, Employer's witnesses had not spoken with Claimant at any time after 2:30 p.m. on the date of the accident. They did not know Claimant had made an alteration in her plans. Further, Claimant's husband conducted himself in a manner consistent with the belief that Claimant was going to be delayed. He delayed dinner and mowed grass and did not begin to worry about his spouse until much later in the evening. I do not believe Claimant and her husband fabricated their testimonies. Thus, Claimant was benefitting Employer when she was returning to the office to fax sensitive material to a treating physician. The incomplete DSR is not determinative of Claimant's actual intentions on the date of the accident.

Moreover, it does not matter in this case whether Claimant had intended to return to the Office or was going home. The accident occurred in close geographic proximity and time to the last appointment, on the exact same route that Claimant would have taken for either destination.

An accident occurring while an employee is going to and from work generally is not compensable, but there is an exception for the employee whose job duties entail travel. This exception, known as the *Reneau* doctrine, is stated as follows:

An exception to this general rule arises, however, where the employer, because of the distance to the job site or for the convenience of the employer, furnishes the employee's transportation, compensates the employee for use of his own vehicle, or pays the employee for travel time. In those situations, because a specific nexus is established between the work to be done and the physical movement of the employee from point to point, any injury the employee suffers by accident while traveling arises out of and in the course of the employment and is compensable.

Garrett v. Indus. Comm'n, 600 S.W.2d 516, 519 (Mo. App. W.D. 1980), citing *Reneau v. Bales Electric Company*, 303 S.W.2d 75 (Mo. 1957).

Under the *Reneau* doctrine, employees, whose work entails travel away from the employer's premises, are held to be within the course of their employment during the trip, except when on a distinct personal errand. *Baldrige v. Inter-River Drainage Dist. of Missouri*, 645 S.W.2d 139, 140 (Mo. App. S.D. 1982).

In 2005, the Missouri General Assembly amended the law with respect to the coming and going rule. Section 287.020.5 RSMo Cum Supp. 2005, now reads in applicable part as follows:

Injuries sustained in company owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable.

Although the legislature may have eliminated workers' compensation benefits for injuries sustained while traveling between home and an employer's principal place of business, it did not otherwise abrogate the *Reneau* doctrine. As is discussed in *Harness v. Southern Copyroll*, 291 S.W.3d 299 (Mo. App. S.D. 2009), this provision must be strictly construed and the Court cannot enlarge or extend this law, pursuant to § 287.800 RSMo Cum Supp 2005. In *Harness*, the employee was returning from a separate job scene on a route where he could have been going to the office or to his home. As in this case, there was conflicting testimony as to where Claimant was heading at the time of the accident. The Court of Appeals in *Harness* found that because the employee was not traveling between the employer's *principal* place of business and his home, the injury occurred within the course and scope of employment and was deemed compensable. 291 S.W.3d at 380. That is also true in this case. Employer maintained control over Claimant while she was traveling, explicitly required that she use an automobile to work for Employer, and reimbursed her mileage. The trip in which Claimant was engaged was not between her home and Employer's principal place of business. Her injuries sustained in a motor vehicle accident while leaving the Seymour care facility is compensable.

Employer's reliance on *Johme v. St. John's Mercy*, 366 S.W.3d 504 (Mo. banc 2012) is misplaced. There, Claimant fell off her shoes while she was making coffee at work. The resulting injury was ruled not compensable because her risk of injury was something to which she was equally exposed in her "normal non-employment life." 366 S.W.3d at 511-512. In the instant case, and in contrast with *Johme*, Claimant Poole's job required significant travel in her own vehicle for her patient visits. This travel for Employer explicitly opened her up to an increased risk of injury over and above any risk to which she was exposed in her normal non-employment life. It was exactly such employment risk of travel that resulted in her injury. I conclude that Claimant's injuries arose out of and were within the course of her employment.

Past Medical Care

Section 287.140 RSMo, requires an Employer to provide medical treatment as reasonably may be required to cure and relieve an employee from the effects of the work-related injury. To "cure and relieve" means treatment that will give comfort, even though restoration to soundness is beyond avail. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 249 (Mo. banc 2003).

Employer paid for no medical treatment. Claimant submitted \$390,787.08 in past medical bills, as summarized in Exhibit D. Dr. Struckmeyer testified these medical bills were reasonable and necessary to cure and relieve the effects of the work injury. While Employer objected to said testimony, it offered no evidence refuting Dr. Stuckmeyer's opinion. The medical bills are supported by the medical records. Claimant has sustained her burden of proof. Employer shall pay to Claimant \$390,867.08 in past medical benefits.

Future Medical Treatment

Section 287.140.1 RSMo, entitles Claimant to future medical treatment as may reasonably be required "to cure and relieve the effects of the injury." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo. banc 2003). "This means treatment that gives comfort or relieves even though restoration to soundness [a cure] is beyond avail." 107 S.W.3d at 249. Claimant need not prove evidence of any specific medical treatment or produce conclusive testimony or evidence to support her claim for future treatment. Rather, she must demonstrate that there is a reasonable probability that she is in need of additional medical treatment by reason of his work-related accident. *Poole v. City of St. Louis*, 328 S.W.3d 277, 291-92 (Mo. App. E.D. 2010)

Dr. Stuckmeyer and Dr. Whetstone both recommended future medical care for Claimant, particularly in relation to her seizure disorder and short term memory problems. There is no contrary evidence submitted. Therefore, the evidence establishes that Claimant is entitled to future medical care, and the same shall remain open and be provided by Employer for the remainder of Claimant's lifetime.

Temporary Total Disability and Permanent Total Disability

Temporary total disability benefits compensate an employee for the inability to work while in the healing period of an injury, and are payable until an employee returns to work or reaches maximum medical improvement. *Cooper v. Medical Center, Independence*, 955 S.W.2d 570, 576 (Mo. App. W.D. 1997), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). Once an employee reaches maximum medical improvement, if they are still unable to work, the benefits become permanent total disability benefits. The test for permanent total disability is whether the worker is able to compete in the open labor market. "The critical question is whether an employer could reasonably be expected to hire the claimant, considering his present physical condition, and reasonably expect him to successfully perform the work." *Forshee v. Landmark Excavating & Equip.*, 165 S.W.3d 533, 537 (Mo. App. E.D. 2005).

In the present case, Claimant has been unable to work since the date of the automobile accident. She continues to suffer from ongoing seizures. Claimant continues in treatment. Dr. Stuckmeyer indicated that Claimant was permanently and totally disabled when he issued his report and gave his deposition. Claimant alleged that she is permanently and totally disabled as of the date of Phillip Eldred's vocational report of October 23, 2012 (Exhibit C). I find and conclude that as of October 23, 2012, Claimant was permanently and totally disabled. There is no evidence suggesting that Claimant could have returned to any work between the date of the accident and Mr. Eldred's report. Employer offered no contrary opinion on temporary total

disability. Claimant is entitled to 124 weeks of back temporary total disability (beginning the day following the accident on June 8, 2010, to the date of permanent total disability on October 23, 2012), at the rate of \$795.35, for a total of \$98,623.40.

From October 23, 2012, and continuing forward for the remainder of her lifetime, subject to review and modification as provided by law, Claimant is entitled to permanent total disability benefits at the weekly rate of \$795.35. Claimant's injuries are substantial. Most convincing is Mr. Eldred's opinion that persons with severe brain injury or seizure disorder are the most difficult to place. In this case, Employee has both. As Dr. Whetstone revealed, Claimant's I.Q. is much lower than expected due to the work accident. As Dr. Stuckmeyer observed, Claimant has significant cognitive dysfunction, memory issues, gait disturbances, difficulty with speech, ongoing symptoms of left hip pain, midshaft femur pain, and must rely on a cane for ambulation. When her physical and mental deficits are considered together, it is apparent Claimant can no longer work and is permanently and totally disabled. Employer offered no contrary opinion on permanent total disability. Employer owes Claimant 31 and 6/7 weeks accrued permanent total disability benefits at the rate of \$795.35 (October 23, 2012 to the date of the hearing on June 3, 2013), a total of \$25,337.58.

Summary

Employer owes Claimant the following compensation:

- Temporary total disability in the amount of \$98,623.40;
- Reimbursement of past medical bills in the amount of \$390,787.08;
- Accrued permanent total disability from October 23, 2012 to the date of hearing on June 3, 2013 in the amount of \$25,337.58;
- Permanent total disability beginning June 4, 2013, at the weekly benefit rate of \$795.35 for the remainder of Claimant's life;
- Future medical benefits to cure and relieve the effects of the injury.

Attorney Elijah Haahr shall have a lien of 25 percent of all compensation awarded as a reasonable fee for necessary legal services rendered to Claimant.

Interest shall be paid as provided by law. This Award is subject to review and modification as provided by law.

/s/ Victorine R. Mahon
Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation