

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

Injury No.: 02-055173

Employee: Taylor Poole
Employer: City of St. Louis
Insurer: Self-Insured c/o CCMSI

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence 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 section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 23, 2009. The award and decision of Administrative Law Judge Matthew D. Vacca, issued April 23, 2009, is attached and incorporated by this reference.

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.

Given at Jefferson City, State of Missouri, this 23rd day of November 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Taylor Poole

Injury No.: 02-055173

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: City of St. Louis

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: None

Insurer: Self c/o CCMSI

Hearing Date: February 19, 2009

Checked by:MDV:cw

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: April 27, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis City
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee tripped over tines of a fork lift.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: Left ankle, right ankle, left wrist, cervical spine
14. Nature and extent of any permanent disability: 45% left ankle, 10% right ankle, 10% left wrist, 5% cervical spine
15. Compensation paid to-date for temporary disability: \$13,886.00 plus an advance payment of \$10,000.00, with a TTD underpayment of \$2,472.90
16. Value necessary medical aid paid to date by employer/insurer? \$45,668.24

Employee: Taylor Poole

Injury No.: 02-055173

- 17. Value necessary medical aid not furnished by employer/insurer? Nil
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$371.00/\$329.04
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	None
weeks of temporary total disability (or temporary partial disability)	\$2,472.90 (underpayment)
122.75 weeks of permanent partial disability from Employer Equals \$40,389.66 less \$10,000 advance	\$30,389.66

22. Second Injury Fund liability: No

TOTAL: \$32,862.56

23. Future requirements awarded: None

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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Charles Bobinette

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Taylor Poole

Injury No.: 02-055173

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: City of St. Louis

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self c/o CCMSI

Checked by: MDV:cw

PRELIMINARY MATTERS

Two claims were tried together, Injury Nos. 02-055173 and 03-062880. Pursuant to 8 C.S.R. 20-3.050 (1)(2) and (3) the claims are inextricably intertwined and resolution of one requires resolution of the other. As Claimant's 2002 injury and his 2003 injury were heard contemporaneously, the following findings incorporate both claims. Nevertheless, two separate awards will issue out of one transcript which shall remain in the designated master file, earlier claim # 03-062880. The parties agree that Claimant is entitled to an additional \$2,472.90 in TTD and that an advance against future payments was made to Claimant in the amount of \$10,000.00 for which Employer is entitled to a credit.

ISSUES

The parties stipulated the issues to be resolved by way of this hearing are whether Claimant's condition is medically and causally related to his injury and the nature and extent of Claimant's permanent partial disability.

FINDINGS OF FACT

Based upon the testimony, all of the competent and substantial evidence, my observations of Claimant at trial and the reasonable inferences to be derived therefore, I find:

1. Claimant is a 54 year-old male who is 5'8" tall and weighs 180 pounds. He is a high school graduate with some junior college. His employment history consists mainly of labor types of jobs. Claimant worked for Employer at various times over the years. In 2002, he worked for Employer in maintenance at the airport. He repaired runways, drove snow plows and large equipment and kept the field drains open. His duties required he be able to lift 75 pounds, and he was on his feet all day.
2. Claimant married Donetta Kee September 8, 2008.
3. On April 27, 2002, Claimant was operating a forklift and tripped over the tines of the lift. He injured his left ankle and sustained a trimalleolar fracture. Dr. Weiss performed three surgeries on Claimant's left ankle. Dr. Gary Schmidt performed a fourth surgery to remove the hardware.

4. During his convalescence for this injury, Claimant tripped in his bathroom and injured his back. He was treated and had physical therapy. Claimant testified he had no back complaints prior to this episode. The back pain was transient and claimant admitted it completely resolved.
5. On July 22, 2002, Dr. Weiss diagnosed Claimant with carpal tunnel syndrome from use of his crutches. Claimant had limited treatment for his hand complaints, and no further recommendations were made. After the use of crutches stopped, claimant's carpal tunnel symptoms resolved. Claimant was involved in a motor vehicle accident later in April 2005, after which he had consistent complaints of numbness tingling and waking up at night with regard to his hands. Claimant's expert, Dr. Schlafly, examined Claimant after the motor vehicle accident and testified a portion of the carpal tunnel condition is attributable to an April 19, 2005, motor vehicle accident. Dr. Schlafly rated Claimant's disability at 30% of each wrist, with 10% attributable to crutches use after the April 27, 2002, injury.
6. Claimant was released to return to work December 3, 2002 from the first accident. He had complaints at that time with his ankle, general back pain and bilateral hand pain. Claimant testified his co-workers helped him with bending and lifting.
7. In January 2003, while Claimant was receiving authorized treatment from Employer's selected physicians, Claimant's attorney sent him to Dr. Knapp for his ankles and back. There is no indication as to when, if ever, Employer became aware of treatment with Dr. Knapp.
8. Dr. Weiss released Claimant to return to work July 9, 2003. He rated Claimant's disability at 30% of the left ankle.
9. Claimant's second work injury occurred June 24, 2003. He injured his low back while lifting an auger from a drum. He felt pain in his low back and around his hips. There was no radiation into the legs.
10. Claimant treated with Dr. Lee and was diagnosed with strain/sprain of the lumbar spine. He was off work and paid TTD benefits until October 1, 2003. The Concentra Medical records indicate no complaints of radiating pain on examinations of June 24 and June 30, 2003. Dr. Lee testified Claimant gave no history of, nor complaints of pain into the left extremity until an intervening episode which occurred at Claimant's home in August, 2003. At that time, Claimant injured his low back while flipping a mattress. He had an increase in low back symptoms and for the first time reported leg pain radiating into his left leg. Claimant denied the mattress episode in deposition, but at Hearing, he remembered the episode.
11. An MRI taken August 23, 2003, after the mattress flipping incident showed a small lateral protrusion in the inferior recess of the left foramen, which contacts the left L4 root. (Dr. Lee's deposition, p. 21, 22) Dr. Lee testified this protrusion didn't appear to be displacing the root or denting the root or causing swelling of the root. Claimant underwent steroid injections.

12. On September 15, 2003, Claimant was involved in an automobile accident. He was rear-ended by a vehicle going 40 to 45 miles per hour. He testified he injured his neck, his shoulder, and the same part of his low back. Claimant testified this was a "temporary exacerbation", and he saw Dr. Knapp twice. Claimant testified he had pain on the outside of his left leg to the calf.
13. Claimant treated with Dr. Lee from July 18, 2003 through October 1, 2003. Dr. Lee ordered a functional capacity evaluation (FCE), which was done September 26, 2003, and showed Claimant was able to work at the medium demand level. Based on the FCE results, Dr. Lee released Claimant to return to work October 1, 2003, with a 25 pound lifting restriction. He diagnosed Claimant with degenerative disc disease in the low back. He rated Claimant's disability at 1% of the low back attributed to the work injury and 3% of the low back attributed to his degenerative arthritic condition.
14. Claimant was laid off from Employer October 4, 2003, due to lack of funds. He drew unemployment compensation December 6, 2003, through the week of March 27, 2004. He has not had meaningful employment since that time. Claimant attributes his lack of employment to his injuries, including the two automobile accidents, which have left him with limitations and pain in his low back and left leg.
15. Claimant did not return to Dr. Lee at any time after the lay off, nor did he seek additional authorized treatment. Neither Dr. Schmidt, Dr. Lee, nor Dr. Weiss told Claimant he could not work. Claimant has not worked steadily since his lay off.
16. Claimant treated with Dr. Knapp for pain in the left ankle, neck, left wrist and low back. Dr. Knapp referred Claimant to Dr. Chen for pain management. Dr. Chen treated Claimant with injections, therapy, and medications at ProRehab and the Rehabilitation Institute. Claimant treated with Dr. Chen until 2005 when his COBRA ran out. He then went to CHIPS clinic from February 9, 2005, until October 2, 2006. Claimant also saw an acupuncturist, Dr. Kim. In October 2006, Dr. Knapp took over treatment and continues to see Claimant monthly for his back and ankle. There is no evidence Employer was aware of any of this treatment nor that the employer denied Claimant further treatment. Claimant never asked for additional treatment and testified he did not speak to anyone at Employer after his lay off in October 2003.
17. During the course of Claimant's unauthorized back treatment, he was involved in another auto accident. This occurred in April 2005. Claimant injured his upper back, right knee, and hands.
18. Claimant testified that in September 2007 he had an increase of pain in his left leg and went to St. Mary's Emergency Room. He was diagnosed with a blood clot. The ER physician told Claimant he developed the blood clot because he was not doing the exercises he had been prescribed.
19. Claimant continues to complain of difficulty walking because of his ankle and difficulty sitting or standing because of his low back. He wears support stockings on each leg and a brace on the left ankle. These were not recommended by any treating doctor, but

Claimant's personal doctor recommended these might help. Claimant testified he has problems sleeping due to the low back pain, has charley horses in the left leg, and numbness and pain in his hands. Claimant testified he was given lifting restrictions by Dr. Knapp, Dr. Bernstein and CHIPS. He testified he has feelings of depression, being worthless, and he has had suicidal thoughts. He has treated with Dr. Knapp and CHIPS for depression.

20. During the trial, Claimant made many references to leg pain. He testified he meant ankle pain in the left ankle. He also has radiating pain in the left leg which is different than the ankle pain.
21. Claimant introduced voluminous medical records, depositions, and billings. He testified he is receiving medical bills from St. Mary's and Dr. Knapp.
22. On September 12, 2008, Claimant filed a lawsuit relating to the September 15, 2003, auto accident. In that lawsuit, (Employer's Exhibit 2), he alleged neck and back pain. He also claimed anguish of mind which he testified was the depression in question.
23. Claimant's expert, Dr. Volarich, examined Claimant on two occasions. He found Claimant had a moderate degree of swelling, crepitus, post traumatic arthritis, and decreased range of motion in his left ankle. He also found some swelling in the right ankle, and he diagnosed a right ankle strain and degenerative disc disease in the cervical area. He testified Claimant injured his low back a little bit in the 2002 injury, and opined the trip in the bathroom was "when it really started giving him trouble". (D 16) This testimony is opposite to that of Dr. Lee who treated for the low back, and the testimony is contradicted by Claimant who testified the pain from the threshold incident is no longer present. Dr. Volarich rated Claimant's disability from the 2002 injury at 45% of the left ankle, 20% of the right ankle, 20% of the cervical spine and 15% of the low back.
24. With respect to the June 24, 2003, back injury, Dr. Volarich notes Claimant stated he felt pain into the left calf after lifting the auger. Dr. Volarich rated Claimant's disability from the 2003 injury at 25% of the low back.
25. Dr. Volarich found Claimant is unable to do substantial work as the result of a combination of his disabilities since around June 2005. He also found moderate to severe depression due to the work accidents. At the time he rendered these opinions, he did not have a history of all the auto accidents involved nor the allegations of depression contained in Claimant's lawsuit.
26. Claimant's vocational expert, Dr. Samuel Bernstein, is a vocational counselor and licensed psychologist. He testified Claimant is unemployable on the open labor market as a result of his combination of disabilities from the 2002 and 2003 injuries.
27. Dr. Stephen Knapp also testified on behalf of Claimant. He initially saw Claimant January 27, 2003 for complaints concerning the left ankle, low back, neck and left wrist. Dr. Knapp prescribed pain medication. He saw Claimant again September 24, 2003 for complaints of neck and back pain following an auto accident. He took a history of the work accident of June 24, 2003 and noted complaints of pain down the left leg. On

October 31, 2003, Dr. Knapp sent Claimant to Dr. Chen for pain management. Claimant returned to Dr. Knapp in 2006, and his complaints were more severe. He prescribed narcotic medications, antidepressants, and seizure medication for neuropathy.

28. Dr. Knapp testified the September auto accident did not permanently aggravate the low back. He testified to emergency room visits, the thrombosis due to inactivity, the need for pain and other medication, and the depression, all of which he related to the work accidents. He made no mention of the episode of increased low back pain and left leg radiculopathy following the mattress episode in August, 2003. This incident, however, is corroborated by the testimony of Dr. Lee and Claimant. Dr. Knapp did not know of this incident. He found Claimant had significant degenerative disc disease in the low back, and diagnosed failed back syndrome. Dr. Knapp was not aware of any other physician making that diagnosis. Dr. Knapp opined Claimant is unable to work because of a combination of the effects of the 2002 and 2003 injuries. Dr. Knapp's opinions are undermined by his lack of knowledge of several episodes of injury which Claimant testified to as causing or aggravating his conditions of ill being. Dr. Knapp did not know of the mattress turning episode, (Knapp deposition 28/1); he was not aware of Claimant's testimony that his depression followed the automobile accident of September 15, 2003; he was unaware of Claimant's testimony that the thrombosis condition resulted from his own failure to do his home exercises; he was unaware of all of the auto accidents involved here and testified the fall at home in March, 2003, caused permanent low back injury, which testimony is contradicted by Claimant.
29. Dr. Thomas Lee testified on behalf of Employer. He believes claimant suffered a 30% permanent partial disability as a result of the forklift injuries and 4% permanent partial disability to the back, 1% due to the auger incident and 3% due to degenerative disc disease.
30. No one has seriously suggested surgery as an option for claimant's back condition.
31. Claimant was a poor for forgetful historian, forgetting even having the mattress incident at deposition.

RULINGS OF LAW

Having given careful consideration to the testimony and entire record, and based upon the competent and substantial evidence, the reasonable inferences to be derived therefore, and the applicable law, I find the following:

1. Claimant’s injuries to his ankles, cervical spine, and left wrist are medically and causally related to his injury of April 27, 2002.

Claimant sustained two work related injuries arising out of and in the course of his employment. For the first injury of April 27, 2002, Claimant alleges injury to his neck, body as a whole, right and left ankles, lower extremities, and left wrist. Although Dr. Volarich found Claimant experienced injury to the low back from this injury, Claimant testified he did not injure his back in the 2002 work injury. He further testified the back pain from the trip over the threshold in the bathroom was no longer present. Accordingly, I allow no compensation for injury to the low back from the 2002 work injury.

2. Claimant has sustained 122.75 weeks of PPD as a result of his 2002 injury

Regarding his wrist complaints, Claimant did not claim injury to his right hand or wrist. Based on his complaints to his left hand, I award 10% PPD to the left wrist. The rest of his wrist disability is related to the later motor vehicle accident. I award 45% of the left ankle, 10% of the right ankle, and 5% of the cervical spine for the remainder of Claimant’s injuries from the forklift accident.

Claimant is therefore entitled to 122.75 weeks of PPD at the rate of \$329.04, or \$40,389.66. There is an agreed underpayment of temporary total disability in the amount of \$2,472.90 and an advance payment against PPD of \$10,000.00. Accordingly, the sum due Claimant from Employer for the 2002 injury is \$32,862.56.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Division of Workers' Compensation

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

Injury No.: 03-062880

Employee: Taylor Poole
Employer: City of St. Louis
Insurer: Self-Insured c/o CCMSI
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 section 287.480 RSMo. Having reviewed the evidence 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 section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 23, 2009. The award and decision of Administrative Law Judge Matthew D. Vacca, issued April 23, 2009, is attached and incorporated by this reference.

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.

Given at Jefferson City, State of Missouri, this 23rd day of November 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Taylor Poole

Injury No.: 03-062880

Dependents: alleged: Donetta Kee

Before the
**Division of Workers'
Compensation**

Employer: Taylor Poole

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self c/o CCMSI

Hearing Date: February 19, 2009

Checked by: MDV:cw

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 24, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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:
Injured low back lifting an auger.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: lumbar spine
14. Nature and extent of any permanent disability: 12.5% BAW re low back
15. Compensation paid to-date for temporary disability: \$6,505.41, underpayment of \$992.60
15. Value necessary medical aid paid to date by employer/insurer? \$7,933.94

Employee: Taylor Poole

Injury No.: 03-062880

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$450.89/\$340.12
- 20. Method wages computation: By Agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	None
Underpayment of temporary total disability	\$992.60
50 weeks of permanent partial disability from Employer	\$17,006.00

22. Second Injury Fund liability: Yes

25.91 weeks of permanent partial disability from Second Injury Fund	\$8,812.51
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TOTAL:	\$26,811.11
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23. Future requirements awarded: None

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% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Charles Bobinette

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Taylor Poole

Injury No.: 03-062880

Dependents: alleged Donetta Kee

Before the
**Division of Workers'
Compensation**

Employer: City of St. Louis

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self c/o CCMSI

Checked by: MDV:cw

PRELIMINARY MATTERS

Two claims were tried together, Injury Nos. 02-055173 and 03-062880. Pursuant to 8 C.S.R. 20-3.050 (1)(2) and (3) the claims are inextricably intertwined and resolution of one requires resolution of the other. As Claimant's 2002 injury and his 2003 injury were heard contemporaneously, the following findings incorporate both claims. Nevertheless, two separate awards will issue out of one transcript which shall remain in the designated master file, earlier claim # 02-055173. The parties agreed that Claimant is entitled to an additional payment of \$992.60 in Temporary Total Disability in this 2003 claim.

ISSUES

The parties stipulated the issues to be resolved by this hearing are whether Claimant's condition is medically and causally related to his accident of June 24, 2003, the nature and extent of Claimant's injuries, the nature and extent of Employer's liability for future medical expenses, and the liability of the Second Injury Fund.

FINDINGS OF FACT

Based upon the testimony, all of the competent and substantial evidence, my observations of Claimant at trial and the reasonable inferences to be derived therefore, I find:

1. Claimant is a 54 year-old male who is 5'8" tall and weighs 180 pounds. He is a high school graduate with some junior college. His employment history consists mainly of labor types of jobs. Claimant worked for Employer at various times over the years. In 2002, he worked for Employer in maintenance at the airport. He repaired runways, drove snow plows and large equipment and kept the field drains open. His duties required he be able to lift 75 pounds, and he was on his feet all day.
2. Claimant married Donetta Kee September 8, 2008.

3. On April 27, 2002, Claimant was operating a forklift and tripped over the tines of the lift. He injured his left ankle and sustained a trimalleolar fracture. Dr. Weiss performed three surgeries on Claimant's left ankle. Dr. Gary Schmidt performed a fourth surgery to remove the hardware.
4. During his convalescence for this injury, Claimant tripped in his bathroom and injured his back. He was treated and had physical therapy. Claimant testified he had no back complaints prior to this episode. The back pain was transient and claimant admitted it completely resolved.
5. On July 22, 2002, Dr. Weiss diagnosed Claimant with carpal tunnel syndrome from use of his crutches. Claimant had limited treatment for his hand complaints, and no further recommendations were made. After the use of crutches stopped, claimant's carpal tunnel symptoms resolved. Claimant was involved in a motor vehicle accident later in April 2005, after which he had consistent complaints of numbness tingling and waking up at night with regard to his hands. Claimant's expert, Dr. Schlafly, examined Claimant after the motor vehicle accident and testified a portion of the carpal tunnel condition is attributable to an April 19, 2005, motor vehicle accident. Dr. Schlafly rated Claimant's disability at 30% of each wrist, with 10% attributable to crutches use after the April 27, 2002, injury.
6. Claimant was released to return to work December 3, 2002 from the first accident. He had complaints at that time with his ankle, general back pain and bilateral hand pain. Claimant testified his co-workers helped him with bending and lifting.
7. In January 2003, while Claimant was receiving authorized treatment from Employer's selected physicians, Claimant's attorney sent him to Dr. Knapp for his ankles and back. There is no indication as to when, if ever, Employer became aware of treatment with Dr. Knapp.
8. Dr. Weiss released Claimant to return to work July 9, 2003. He rated Claimant's disability at 30% of the left ankle.
9. Claimant's second work injury occurred June 24, 2003. He injured his low back while lifting an auger from a drum. He felt pain in his low back and around his hips. There was no radiation into the legs.
10. Claimant treated with Dr. Lee and was diagnosed with strain/sprain of the lumbar spine. He was off work and paid TTD benefits until October 1, 2003. The Concentra Medical records indicate no complaints of radiating pain on examinations of June 24 and June 30, 2003. Dr. Lee testified Claimant gave no history of, nor complaints of pain into the left extremity until an intervening episode which occurred at Claimant's home in August, 2003. At that time, Claimant injured his low back while flipping a mattress. He had an increase in low back symptoms and for the first time reported leg pain radiating into his left leg. Claimant denied the mattress episode in deposition, but at Hearing, he remembered the episode.

11. An MRI taken August 23, 2003, after the mattress flipping incident showed a small lateral protrusion in the inferior recess of the left foramen, which contacts the left L4 root. (Dr. Lee's deposition, p. 21, 22) Dr. Lee testified this protrusion didn't appear to be displacing the root or denting the root or causing swelling of the root. Claimant underwent steroid injections.
12. On September 15, 2003, Claimant was involved in an automobile accident. He was rear-ended by a vehicle going 40 to 45 miles per hour. He testified he injured his neck, his shoulder, and the same part of his low back. Claimant testified this was a "temporary exacerbation", and he saw Dr. Knapp twice. Claimant testified he had pain on the outside of his left leg to the calf.
13. Claimant treated with Dr. Lee from July 18, 2003 through October 1, 2003. Dr. Lee ordered a functional capacity evaluation (FCE), which was done September 26, 2003, and showed Claimant was able to work at the medium demand level. Based on the FCE results, Dr. Lee released Claimant to return to work October 1, 2003, with a 25 pound lifting restriction. He diagnosed Claimant with degenerative disc disease in the low back. He rated Claimant's disability at 1% of the low back attributed to the work injury and 3% of the low back attributed to his degenerative arthritic condition.
14. Claimant was laid off from Employer October 4, 2003, due to lack of funds. He drew unemployment compensation December 6, 2003, through the week of March 27, 2004. He has not had meaningful employment since that time. Claimant attributes his lack of employment to his injuries, including the two automobile accidents, which have left him with limitations and pain in his low back and left leg.
15. Claimant did not return to Dr. Lee at any time after the lay off, nor did he seek additional authorized treatment. Neither Dr. Schmidt, Dr. Lee, nor Dr. Weiss told Claimant he could not work. Claimant has not worked steadily since his lay off.
16. Claimant treated with Dr. Knapp for pain in the left ankle, neck, left wrist and low back. Dr. Knapp referred Claimant to Dr. Chen for pain management. Dr. Chen treated Claimant with injections, therapy, and medications at ProRehab and the Rehabilitation Institute. Claimant treated with Dr. Chen until 2005 when his COBRA ran out. He then went to CHIPS clinic from February 9, 2005, until October 2, 2006. Claimant also saw an acupuncturist, Dr. Kim. In October 2006, Dr. Knapp took over treatment and continues to see Claimant monthly for his back and ankle. There is no evidence Employer was aware of any of this treatment nor that employer denied Claimant further treatment. Claimant never asked for additional treatment and testified he did not speak to anyone at Employer after his lay off in October 2003.
17. During the course of Claimant's unauthorized back treatment, he was involved in another auto accident. This occurred in April 2005. Claimant injured his upper back, right knee, and hands.
18. Claimant testified that in September 2007 he had an increase of pain in his left leg and went to St. Mary's Emergency Room. He was diagnosed with a blood clot. The ER

physician told Claimant he developed the blood clot because he was not doing the exercises he had been prescribed.

19. Claimant continues to complain of difficulty walking because of his ankle and difficulty sitting or standing because of his low back. He wears support stockings on each leg and a brace on the left ankle. These were not recommended by any treating doctor, but Claimant's personal doctor recommended these might help. Claimant testified he has problems sleeping due to the low back pain, has charley horses in the left leg, and numbness and pain in his hands. Claimant testified he was given lifting restrictions by Dr. Knapp, Dr. Bernstein and CHIPS. He testified he has feelings of depression, being worthless, and he has had suicidal thoughts. He has treated with Dr. Knapp and CHIPS for depression.
20. During the trial, Claimant made many references to leg pain. He testified he meant ankle pain in the left ankle. He also has radiating pain in the left leg which is different than the ankle pain.
21. Claimant introduced voluminous medical records, depositions, and billings. He testified he is receiving medical bills from St. Mary's and Dr. Knapp.
22. On September 12, 2008, Claimant filed a lawsuit relating to the September 15, 2003, auto accident. In that lawsuit, (Employer's Exhibit 2), he alleged neck and back pain. He also claimed anguish of mind which he testified was the depression in question.
23. Claimant's expert, Dr. Volarich, examined Claimant on two occasions. He found Claimant had a moderate degree of swelling, crepitus, post traumatic arthritis, and decreased range of motion in his left ankle. He also found some swelling in the right ankle, and he diagnosed a right ankle strain and degenerative disc disease in the cervical area. He testified Claimant injured his low back a little bit in the 2002 injury, and opined the trip in the bathroom was "when it really started giving him trouble". (D 16) This testimony is opposite to that of Dr. Lee who treated for the low back, and the testimony is contradicted by Claimant who testified the pain from the threshold incident is no longer present. Dr. Volarich rated Claimant's disability from the 2002 injury at 45% of the left ankle, 20% of the right ankle, 20% of the cervical spine and 15% of the low back.
24. With respect to the June 24, 2003, back injury, Dr. Volarich notes Claimant stated he felt pain into the left calf after lifting the auger. Dr. Volarich rated Claimant's disability from the 2003 injury at 25% of the low back.
25. Dr. Volarich found Claimant is unable to do substantial work as the result of a combination of his disabilities since around June 2005. He also found moderate to severe depression due to the work accidents. At the time he rendered these opinions, he did not have a history of all the auto accidents involved nor the allegations of depression contained in Claimant's lawsuit.
26. Claimant's vocational expert, Dr. Samuel Bernstein, is a vocational counselor and licensed psychologist. He testified Claimant is unemployable on the open labor market as a result of his combination of disabilities from the 2002 and 2003 injuries.

27. Dr. Stephen Knapp also testified on behalf of Claimant. He initially saw Claimant January 27, 2003 for complaints concerning the left ankle, low back, neck and left wrist. Dr. Knapp prescribed pain medication. He saw Claimant again September 24, 2003 for complaints of neck and back pain following an auto accident. He took a history of the work accident of June 24, 2003 and noted complaints of pain down the left leg. On October 31, 2003, Dr. Knapp sent Claimant to Dr. Chen for pain management. Claimant returned to Dr. Knapp in 2006, and his complaints were more severe. He prescribed narcotic medications, antidepressants, and seizure medication for neuropathy.
28. Dr. Knapp testified the September auto accident did not permanently aggravate the low back. He testified to emergency room visits, the thrombosis due to inactivity, the need for pain and other medication, and the depression, all of which he related to the work accidents. He made no mention of the episode of increased low back pain and left leg radiculopathy following the mattress episode in August, 2003. This incident, however, is corroborated by the testimony of Dr. Lee and Claimant. Dr. Knapp did not know of this incident. He found Claimant had significant degenerative disc disease in the low back, and diagnosed failed back syndrome. Dr. Knapp was not aware of any other physician making that diagnosis. Dr. Knapp opined Claimant is unable to work because of a combination of the effects of the 2002 and 2003 injuries. Dr. Knapp's opinions are undermined by his lack of knowledge of several episodes of injury which Claimant testified to as causing or aggravating his conditions of ill being. Dr. Knapp did not know of the mattress turning episode, (Knapp deposition 28/1); he was not aware of Claimant's testimony that his depression followed the automobile accident of September 15, 2003; he was unaware of Claimant's testimony that the thrombosis condition resulted from his own failure to do his home exercises; he was unaware of all of the auto accidents involved here and testified the fall at home in March, 2003, caused permanent low back injury, which testimony is contradicted by Claimant.
29. Dr. Thomas Lee testified on behalf of Employer. He believes claimant suffered a 30% permanent partial disability as a result of the forklift injuries and 4% permanent partial disability to the back, 1% due to the auger incident and 3% due to degenerative disc disease.
30. No one has seriously suggested surgery as an option for claimant's back condition.
31. Claimant was a poor or forgetful historian, forgetting even having the mattress incident at deposition.

RULINGS OF LAW

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

1. Claimant's injury to his low back is, only in part, medically and causally related to his injury of June 24, 2003.

Claimant alleges injury to his low back and body as a whole resulting from his June 24, 2003 injury. Dr. Volarich rated Claimant at 25% PPD to the low back. However, Dr. Volarich was under the impression Claimant's radicular left leg pain began at or shortly after the lifting injury of June 24, 2003. Dr. Volarich's history reflects Claimant stated he felt pain into his left calf after lifting the auger. I find this history is not accurate. Dr. Volarich had no history of the mattress episode. The true genesis of the radiating pain into the left lower extremity is mattress flipping incident. Up until that time, claimant suffered from a mere sprain/strain. I find the testimony of Dr. Lee who records the beginning of radiculating left leg complaints to the non-work related incident occurring while flipping a mattress on August 25, 2003, some 59 days after the lifting injury, to be more persuasive than that of Dr. Volarich. Kaderly v. Race Brothers Farm Supply, 993 S.W.2d 512, (Mo.App. 1999)). Dr. Lee had seen and treated Claimant before and after the mattress "flipping" incident and is by far in the best position to render an informed opinion on the development of symptoms. Dr. Lee diagnosed degenerative disc disease in the low back and rated the disability at 4% with 1% attributable to the work injury. It should also be noted that Claimant's witness, Dr. Knapp, likewise did not have the benefit of the history of the mattress episode.

2. Claimant has sustained 50 weeks of PPD.

I find Claimant has sustained a sprain/strain injury to his low back from the incident of June 24, 2003. I find the radicular symptoms not to be related to this injury. I award 12 ½% PPD to the body as a whole referable to the low back as the result of this incident. Claimant is thus entitled to 50 weeks of PPD at the rate of \$340.12, or \$17,006.00 from Employer for the 2003 injury.

3. Employer is not liable for past medical bills or future medical treatment.

The record establishes the medical care for Claimant's back complaints was not authorized by Employer, which is their right and obligation under Section 287.140 (RSMo 2000). Claimant did not establish Employer knew of the need for treatment or had refused to provide treatment. Claimant testified he had no contact with Employer after being laid off in October 2003. I find Claimant sought treatment for symptoms and maladies not caused by work. Claimant is not entitled to reimbursement for unauthorized medical bills or unrelated medical bills. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872 (Mo.App. 1984); *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 85 (Mo.App. 1995).

Dr. Volarich testified the treatment from Dr. Chen was necessary due to the radicular pain. As I find the injury of June 23, 2003 did not cause radicular pain, I do not allow Claimant's claim for the billings of Dr. Chen, ProRehab or Rehabilitation Institute as well as the medications involved.

Based on the entirety of the testimony, evidence, and law, I find Claimant's claim for reimbursement of medical expenses and future medical care must be denied.

4. Second Injury Fund Liability

I find liability against the SIF based on the increased disability resulting from the combination of disabilities above cited resulting from the 2002 and 2003 injuries. I find this combination is best represented by a 15% load factor. Under §287.220 RSMo (2000), I find the SIF liable for 25.91 weeks of compensation at the rate of \$340.12 or \$8,812.51 under injury number 03-062880.

Date: _____

Made by: _____

MATTHEW D. VACCA
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Division of Workers' Compensation