

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

Injury No.: 09-002662

Employee: Sandra Rainbolt
Employer: Audrain Medical Center
Insurer: Hospital Administration Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Discussion

Past medical expenses

Section 287.140.1 RSMo provides, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.

Employer has an “absolute and unqualified duty” to furnish medical care under § 287.140 RSMo; once a compensable injury is shown (as it was here) employee needs only to prove that the disputed treatments “flow” from the work injury. See *Martin v. Town & Country Supermarkets*, 220 S.W.3d 836, 844 (Mo. App. 2007); *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 519 (Mo. App. 2011). On the other hand, employer has the right under § 287.140.10 RSMo to direct treatment, and the courts have indicated that an employer may avoid an award of past medical expenses if the employee has received treatment with his or her own providers where the employer had no notice that the employee was in need of treatment. *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 85 (Mo. App. 1995).

Here, employee claims \$280.00 in past medical expenses incurred in the course of her treatment with Dr. Jennifer Brockman, a physician that she chose to see on her own. Employee did not ask employer to furnish her with any psychiatric treatment prior to seeing Dr. Brockman, and there is no evidence that employer had notice of employee's need to see a psychiatrist and thereafter failed to furnish treatment. This is not a case wherein the employee was forced to see her own providers after employer denied the claim; rather, it appears that employer had not failed to authorize any needed treatment at

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the time employee started seeing Dr. Brockman. We conclude, therefore, that employer is not liable for the \$280.00 in charges incurred for treatment with Dr. Brockman, because when employee sought treatment with Dr. Brockman, she selected her own physician at her own expense.

Future medical treatment

The administrative law judge rendered the following conclusion with regard to future medical care: "Employer is hereby ordered to provide such medical treatment as Dr. Brockman or any physician to whom the Claimant is referred by Dr. Brockman which is medically reasonable in order to cure and relieve the effects of the injury Claimant suffered on January 18, 2009." *Award*, page 16. Crucially, the foregoing statement does not make clear whether the administrative law judge intended merely to award treatment "as recommended by" Dr. Brockman, or if the administrative law judge meant to order treatment "as directed or provided by" Dr. Brockman. The reference to doctors to whom Dr. Brockman might refer employee seems to indicate that the administrative law judge intended to order that employee's treatment be provided or directed by Dr. Brockman. We believe that such an award would be in contravention of § 287.140.10 RSMo, which provides, in relevant part, as follows:

The employer shall have the right to select the licensed treating physician, surgeon, chiropractic physician, or other health care provider; provided, however, that such physicians, surgeons or other health care providers shall offer only those services authorized within the scope of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

The parties asked the administrative law judge to consider the issue "whether [employee] has sustained injuries that will require future medical care in order to cure and relieve [employee] of the effects of the injuries." *Transcript*, page 4. The parties did not identify any specific future medical procedure, such as a disputed surgery, that is the subject of the dispute over future medical treatment. Compare *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 54 (Mo. App. 2008). Instead, employee is claiming that she has a generalized need for future treatment to cure and relieve the effects of her work injury. The issue thus turns on whether employee has established a reasonable probability that, as a result of the work injury, she is in need of future medical care. *Pennewell v. Hannibal Reg'l Hosp.*, 390 S.W.3d 919, 926 (Mo. App. 2013).

We agree with the administrative law judge's implied finding that Dr. Brockman's credible testimony on the topic of future medical care establishes a reasonable probability that employee will need future psychiatric treatment as a result of the work injury. But we are not permitted to order future medical care to be directed or provided by a specific physician, unless an issue is presented under § 287.140.2 RSMo as to whether employee's life, health, or recovery is endangered such that an administrative law judge or this Commission may order a change in the physician, surgeon, hospital, etc. See, e.g., *Noel v. ABB Combustion Eng'g*, 383 S.W.3d 480, 485 (Mo. App. 2012). Because the parties have not presented any issue implicating § 287.140.2, an award of future medical care "as directed by" or "as provided by" Dr. Brockman would be inappropriate, as it would contravene employer's statutory right to direct treatment.

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Accordingly, we modify the administrative law judge's award of future medical treatment as follows. We conclude that employer is obligated to provide future medical treatment that may reasonably be required to cure and relieve the effects of the work injury, to include, but not to be limited to, those psychiatric treatments recommended by Dr. Brockman. We conclude that employer has the right to direct such future medical treatment.

Clerical errors

In the 6th paragraph on page 12 of his award, the administrative law judge states: "Dr. Brockman opined that Claimant had suffered permanent disabilities as a result of the January 18, 2009, injuries of 30% of the body as a whole as a result of the major depressive disorder aggravation, and 100% permanent disability to the body as a whole as a result of the preexisting major depressive disorder." This is an apparent typographical error. We correct the foregoing to read instead as follows: "Dr. Brockman opined that Claimant had suffered permanent disabilities as a result of the January 18, 2009, injuries of 30% of the body as a whole as a result of the major depressive disorder aggravation, and 10% permanent disability to the body as a whole as a result of the preexisting major depressive disorder."

Award

We modify the award of the administrative law judge. Employer is not obligated to pay employee's unpaid past medical expenses in the amount of \$280.00 from treatment with Dr. Brockman. Employee is entitled to such future medical treatment as may reasonably be required to cure and relieve from the effects of the work injury; employer is entitled to direct that treatment.

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

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

The award and decision of Administrative Law Judge David L. Zerrer, issued January 10, 2013, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 23rd day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Sandra Rainbolt

Injury No. 09-002662

Dependents:

Employer: Audrain Medical Center

Additional Party: Second Injury Fund

Insurer: Hospital Administration Trust,
T/P/A Cannon Cochran Management

Hearing Date: October 2, 2012/October 24, 2012

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

Checked by: DLZ

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 18, 2009
5. State location where accident occurred or occupational disease was contracted: Mexico, Audrain 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 time required by Law? Yes
10. Was employer insured by above insurer? Self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was assaulted by patient of Employer
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: Upper extremity; body as a whole
14. Nature and extent of any permanent disability: 35% at the 222-week level; 18% body as a whole
15. Compensation paid to-date for temporary disability: \$11,036.13
16. Value necessary medical aid paid to date by employer/insurer? \$12,070.25

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- 17. Value necessary medical aid not furnished by employer/insurer? \$280.00
- 18. Employee's average weekly wages:
- 19. Weekly compensation rate: \$772.53/\$404.66
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses:	\$280.00
149.7 weeks of permanent partial disability from Employer	\$60,577.60
6 weeks of disfigurement from Employer	\$2,427.96

- 22. Second Injury Fund liability: Yes No Open

46.16 weeks of permanent partial disability from Second Injury Fund	\$18,679.11
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TOTAL: \$81,964.67

- 23. Future requirements awarded: Open

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: Frank Niesen

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Sandra Rainbolt

Injury No: 09-002662

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Audrain Medical Center

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

Additional Party: Second Injury Fund

Insurer: Hospital Administration Trust, T/P/A Cannon Cochran Management

Checked by: DLZ

On the 2nd day of October, 2012, the parties appeared before the undersigned Administrative Law Judge for final hearing. The Claimant appeared in person and by her attorney, Frank Niesen. The Employer appeared by its attorney, Daniel Doyle. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, appeared by Assistant Attorney General Adam Sandberg.

The parties entered into a stipulation as to certain facts which are not at issue in this claim as follows, to wit: On or about the 18th day of January, 2009, Audrain Medical Center was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully self-insured through the Hospital Administration Trust, Third Party Administrator, Cannon Cochran Management Services, Inc.; on the alleged injury date of January 18, 2009, Sandra Rainbolt was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the parties agree that on or about January 18, 2009, Claimant sustained an accident which arose out of the course of and scope of employment; the employment occurred in Audrain County, Missouri, and the parties agree that Audrain County, Missouri, is the proper venue for this hearing; the Claimant notified the Employer of the injury as required by Section 287.420; the Claimant's claim was filed within the

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time prescribed by Section 287.430; at the time of the claimed accident, Claimant's average weekly wage was sufficient to allow the following compensation rates: \$772.53 for temporary total disability and permanent total disability, and \$404.66 for permanent partial disability; temporary disability benefits have been paid in the amount of \$11,036.13, prior to the date of this hearing; the Employer has paid medical benefits in the amount of \$12,070.25 prior to the date of this hearing; Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award.

ISSUES

Whether the Employer is obligated to pay for past medical expenses?

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

The nature and extent of any permanent disabilities?

The liability of the Second Injury Fund for enhanced permanent partial disability?

Whether the Claimant is entitled to disfigurement benefits?

DISCUSSION

A legal file was established for this hearing which consisted of the following documents, to wit: Report of Injury; Claim for Compensation, filed with the Division March 17, 2009; Amended Claim for Compensation, filed with the Division October 1, 2012; Answer of Employer to Claim for Compensation, filed with the Division April 9, 2009; Answer of the Second Injury Fund to Claim for Compensation, filed with the Division April 7, 2009; Request for Final Hearing, filed with the Division July 5, 2012.

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Claimant offered and there was admitted, without objection, Exhibits A through J.

Sandra Rainbolt, claimant herein, testified in her own behalf. Claimant testified that she was born June 15, 1951, and that she is married with three children, the youngest of whom is 25 years of age. Claimant's youngest child resides with Claimant and Claimant's spouse in Mexico, Missouri. Claimant is right-hand dominant.

Claimant testified that she graduated from high school and received her RN degree in 1997. Claimant also testified that during her work history she has been a bartender, a retail sales person, and has done some modeling. Since receiving her nursing license, she has worked at the Moberly Hospital, Loma Linda, Macon Healthcare, Charter Center, Audrain Medical Center, University of Missouri Medical Center, and SSM Healthcare (also referred to as St. Joseph Hospital) in Wentzville.

Claimant testified that she worked at the Employer's behavioral unit until it closed in 2010, at which time she began employment at the University of Missouri Medical Center as a registered nurse in the psychiatric unit. She stated that she did not feel safe in the University psychiatric unit and did not trust her memory loss condition in performing duties as a charge nurse, so she resigned and began working at the St. Joseph Medical Center

Claimant testified that her duties for the Employer included that of charge nurse in a behavioral or psychiatric unit where she would admit and discharge patients, supervise staff, follow orders from physicians, and administer medications to patients. In addition, Claimant was responsible for the safety of patients and staff in the behavioral unit. Claimant stated that from time to time it was necessary to control the behavior of patients which was known as "takedowns." She further stated that a "take down" involved physically restraining an out-of-control patient, usually by strapping their hands and/or feet and administering medications.

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Claimant testified concerning the events of January 18, 2009. She stated that she was working a 12-hour shift which began on January 17, 2009, at 7:00 p.m. and was scheduled to end at 7:00 a.m. January 18, 2009. At about 1:00 a.m. a patient was brought to the unit at a time when Claimant and one other person were the only staff on duty. The patient was escorted to the unit without security and when the patient was brought into the intake office, the patient became unruly. The patient struck the other staff person in the facial area causing her to fall to the floor and causing her mouth and facial area to bleed. The patient then grabbed the Claimant and struck the Claimant in the head with his fist and ended up on top of the Claimant. Eventually, the patient's mother came into the room and coaxed the patient out of the room until additional staff of the Employer arrived and took control of the situation.

Claimant testified that she and the LPN working with her were taken to Employer's emergency room for treatment. Claimant had x-rays and a CAT scan of her head. Claimant's arm was placed in a sling, and she was given a prescription for medication. Claimant further testified that her right arm continued to have pain after the treatment at the emergency room and when she followed up with the physicians, it was determined that she had multiple fractures of her right arm.

Dr. Jolly placed Claimant's right arm in a cast and prescribed medication for pain. Claimant was referred for physical therapy. Eventually, Dr. Jolly performed surgery on Claimant's right elbow. The surgery resulted in a scar on Claimant's right arm approximately six inches in length. Dr. Jolly released Claimant after a period of recuperation and physical therapy following the right elbow surgery.

Claimant testified that she saw a counselor after the injury on three occasions to discuss how she felt after the incident of January 18, 2009.

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Claimant testified that she returned to work at the behavioral unit after her release from treatment. Claimant further testified that when she returned to the unit, she felt emotionally distraught, she had memory issues, she was nervous around patients, and she found it hard to interact with the patients. Claimant stated that she tended to stay in the office rather than go out on the floor and interact with the patients as she had done prior to the January 18, 2009, incident. Claimant also stated that if she had to do a takedown or restraint, her right arm and right elbow would hurt, and she began to not feel safe in the behavioral unit.

Claimant testified that one of the physicians who worked on the behavioral unit was Dr. Brockman. Claimant stated that she began to see Dr. Brockman as a patient and that Dr. Brockman prescribed several medications and also counseled Claimant on a treatment basis. Claimant testified that she continues to see Dr. Brockman on an ongoing basis as late as October 1, 2012.

Claimant testified that in 1991 she fractured her right wrist, which was treated by installing hardware in the wrist which still exists at the date of hearing. Claimant stated that she has ongoing pain and some limitation in range of motion in the right arm. Claimant also stated that her right wrist is weaker than the left; however, she testified that she is able to accommodate that weakness.

Claimant testified that in 2000 she fell from a horse, injuring her right shoulder. Claimant testified that her right shoulder was fractured but that she did not have surgery to repair the shoulder. Claimant stated that she now suffers from lack of range of motion of her left hand and crepitus but that she could continue to perform her nursing duties.

Claimant testified that she suffers from an emotional condition from prior to this injury and as a result of this injury. Claimant stated that she was diagnosed with depression and that

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she took Prozac by prescription. Claimant testified that she has a history of an abusive boyfriend and two abusive husbands.

Claimant testified that as a result of the injury of January 18, 2009, her right arm and shoulder have chronic pain; her smaller fingers are numb; and pain radiates between her elbow and her wrist. Her right shoulder is sorest after working a twelve-hour shift. Claimant testified that after the January 18, 2009, injury she had pain with right wrist flexion, right elbow flexion, and numbness in the right upper extremity.

Claimant testified that she returned to work after her release, but that the behavioral unit of the Employer closed permanently in 2010. Claimant then became employed at the psychiatric unit at the University of Missouri Medical Center with about the same nursing duties as she performed for the Employer. Claimant testified that she did not feel safe at the University of Missouri Medical Center and did not trust her memory skills to perform her duties as charge nurse, so she resigned and became employed at the St. Joseph Medical Center in Wentzville, Missouri, where she is currently employed.

Claimant testified that she is no longer a charge nurse and that she has difficulty operating the "work station on wheels;" that takedowns are more difficult and that she often drops books and charts from her hands. Claimant further testified that she does not feel that her nursing care is as therapeutic with the patients as it was prior to the January 2009 injury and that her memory loss prevents her from finding the right words from time to time.

Claimant testified that outside of work she has difficulty using a vacuum cleaner, as well as handling pots and pans in the kitchen when cooking. Claimant testified that she no longer rides a horse because she cannot comb the horse and cannot handle the saddle. She does not

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water ski as much because she cannot hold on to the tow rope for a period of time. Claimant further testified that when she drives, she does not use both hands to steer the vehicle.

Claimant testified that she has suffered emotional changes since the injury including irritability, crying spells, trouble sleeping soundly, nightmares, and loss of concentration.

Claimant further testified that she believes this injury has made her less of a nurse, because she is more apprehensive when interacting with patients, and she is also more irritable with fellow staff workers. In addition, Claimant has become more anti-social and is not comfortable being around large groups of people.

Claimant testified that she takes a regimen of medications since the injury, including Melloxicam, Prozac, Lamictil, and Zanax, as well as over-the-counter Tylenol, Advil, and Aleve.

Claimant stated that she had out-of-pocket expenses for Dr. Brockman of \$280.00 which has not been reimbursed by the Employer.

On cross-examination, Claimant admitted that she is earning \$41.00 per hour at her current employment and that she has missed work on some days because she cannot face the job duties in the psychiatric unit. Claimant also admitted that she was able to drive from Moberly to Mexico after returning to work after the injury and later drove herself from Moberly to Columbia and Moberly to Wentzville, although she stayed in hotels until she moved to the Wentzville area.

Claimant admitted that she was aware of Dr. Stillings report and that his report erroneously stated that Claimant was raised by uncles. But that, in fact, she was raised by her parents, grandparents, and uncles.

Claimant further admitted that her first two marriages were abusive and ended in divorce.

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Claimant admitted that she visited with Dr. Brochman from time to time while at work about her symptoms and that Dr. Brockman did not place any permanent restrictions on the Claimant's work abilities.

Claimant further admitted that she was prescribed psychotropic medications prior to her January 2009 injury.

On cross-examination by the Second Injury Fund, Claimant admitted that the patient who attacked her should have been medicated before leaving the emergency room upon admission. She further admitted that she had nightmares before the January 2009 injury but that those nightmares were not of the intensity of the nightmares suffered after the January 2009 injury. Claimant further admitted that her memory loss issues occurred after the January 2009 injury and that she now uses a lot of "sticky" notes to guide her activities.

Claimant admitted that she did not have any trouble performing her job tasks before the January 2009 injury, even though she was administered Prozac prior to January 2009 by her family physician.

Claimant admitted that after her 1991 fractured wrist injury, her job was affected, but she was able to compensate with her other hand for any difficulties from the wrist fracture. Claimant admitted that she sold her horse after the 2000 fall but that she acquired her present horse after the 2009 injury.

Claimant also admitted that the pain medication for her right arm is a result of the January 2009 injury and further, that her fear of the patients was a result of the January 2009 injury.

Claimant admitted that prior to 2009 she never dropped things and had no trouble dispensing medications to patients. She further admitted that her word recall difficulties and loss

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of concentration were a result of the 2009 injury, as well as her problems with accurate keyboarding on the computer.

Claimant admitted that she has difficulty working three days in a row and that she had to change her work shifts to stagger her days in order to face the stress of working in the psychiatric unit, and that she did not have that problem before the January 2009 injury.

Claimant admitted that although she took Prozac prior to January 2009 for depression, she did not feel that the medication affected her ability to perform her work tasks.

On re-cross-examination, Claimant admitted that she never asked Employer to provide additional treatment with Dr. Brockman.

Dr. David Volarich testified on behalf of Claimant by deposition. Dr. Volarich testified that he performed an independent medical evaluation of the Claimant and issued a report dated September 1, 2010. Dr. Volarich took a history of the Claimant, reviewed certain medical records, and performed a physical examination of the Claimant. Dr. Volarich found that Claimant had a decrease in the range of motion of the right elbow and wrist. Dr. Volarich diagnosed Claimant with right distal humerus fracture, post traumatic right shoulder ulnar neuropathy, right forearm ulnar fracture, and aggravation of a right shoulder syndrome.

Dr. Volarich further testified that Claimant had pre-existing diagnoses of right wrist radial and ulnar styloid fracture and a fracture of the surgical neck of the right humerus.

Dr. Volarich issued ratings of 50% permanent disability of the right upper extremity at the 222-week level due to the distal humerus fracture; 20% permanent disability to the right upper extremity at the 200-week level due to the ulnar fracture; and 10% permanent disability of the right upper extremity at the 232-week level due to the aggravation of the right shoulder syndrome, all as a result of the January 18, 2009, injuries.

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Dr. Volarich opined that the Claimant had pre-existing permanent disabilities of the right wrist at the 200-week level as a result of the collies fracture and 25% permanent disability of the right shoulder at the 232-week level as a result of a prior shoulder fracture.

Dr. Volarich further opined that the combination of Claimant's disabilities created a greater disability than the simple sum of each separate injury and that a multiplicity factor should be added to establish permanent disability.

Dr. Volarich placed restrictions on the Claimant's activities involving use of her right arm, elbow, wrist, and hand.

On cross-examination, Dr. Volarich admitted that his opinions were the result of a single visit examination and that the ratings issued were at different levels of the same upper extremity.

Dr. Jennifer Brockman testified on behalf of Claimant by deposition. Dr. Brockman testified that she treated Claimant for a period of time following the injury of January 18, 2009. She further testified that her diagnoses of the Claimant under Axis I were major depressive disorder, recurrent, moderate; panic disorder with agoraphobia; post-traumatic-stress-disorder (PTSD), chronic; and alcohol abuse in sustained remission.

Dr. Brockman opined that Claimant had suffered permanent disabilities as a result of the January 18, 2009, injuries of 30% of the body as a whole as a result of the major depressive disorder aggravation, and 100% permanent disability to the body as a whole as a result of the pre-existing major depressive disorder.

Dr. Brockman further opined that Claimant suffered permanent disability of 5% of the body as whole as a result of the panic disorder with agoraphobia as pre-existing the January 18, 2009, injury and an additional 15% of the body as whole permanent disability as a result of the aggravation of the panic disorder caused by the injury of January 18, 2009.

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Dr. Brockman further opined that Claimant suffered a 40% permanent disability to the body as a whole from the PTSD as a result of the injury of January 18, 2009. Dr. Brockman also stated that Claimant would require ongoing future treatment for her psychological conditions, which would include psychotherapy and psychotropic medications.

Claimant admitted several other exhibits which set out medical treatment histories of pre-existing conditions, as well as records from the January 18, 2009, injury. The medical records generally support the testimony of the Claimant and the reports and testimony of the physicians.

Dr. Wayne Stillings testified on behalf of Employer by deposition. Dr. Stillings testified that he performed an Independent Medical Evaluation upon the Claimant on May 24, 2011, and authored a report of that date with regard to his findings and opinions with regard to claimant's injury of January 18, 2009. Dr. Stillings testified that he took a history from the Claimant, reviewed certain medical records, and conducted a thorough examination of the Claimant as part of his evaluation. He further testified that after his evaluation, it was his opinion that Claimant had a 2% psychiatric permanent partial disability to the body as a whole causally related to the January 18, 2009, work injury. He found that, from a psychiatric standpoint, Claimant is able to work without restrictions and that she does not need additional psychiatric care prevailingly causally related to the January 18, 2009, work injury.

Dr. Stillings took note that Claimant was working, doing the same type of job, had no particular dysfunction from an emotional standpoint. He also took note that her testing showed exaggeration and the facts don't fit her story. Dr. Stillings found that Claimant grew up in a very chaotic, disorganized, and abusive manner. Dr. Stillings hesitated to comment on Claimant's family, stating it didn't really exist. Dr. Stillings commented that she was "raised by about eight different adults and booted around from here to there."

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Although Dr. Stillings thought that it was remarkable and a credit to Claimant that later in life she was able to find inner strength and get an R.N. degree, he took note that she had a very dysfunctional upbringing.

Dr. Stillings opined that Claimant did not report any symptoms of PTSD whatsoever to him, and therefore, he did not believe that she had PTSD. Dr. Stillings also stated that the objective tests for PTSD were negative.

Dr. Stillings also took note that Dr. Brockman performed a MMPI-2 which showed non-credible reporting and also exaggeration.

Dr. Stillings believes that the fact that Claimant was abandoned by her mother as a small child interfered with her motivation, confidence, esteem and ability to get ahead in the world. He believed that people with chaotic abandonment usually have depressive disorders and/or anxiety disorders. He also took note that Claimant was taking Prozac and Ambien, with the Prozac being switched out for Lexapro, prior to the work-related injury.

Dr. Stillings questioned whether Dr. Brockman is totally objective or neutral, given the fact that she worked with the Claimant for approximately five years before the incident.

Dr. Stillings noted that the absence of treatment after the injury for a year and one-half and returning to the same employment indicated that Claimant didn't really have any significant permanent psychiatric problems from the injury.

Dr. Stillings believed that Claimant's ultra-dysfunctional upbringing is the likely source of any current psychological problems and that the work-related accident contributed very little.

Dr. Stillings testified that Claimant had pre-existing psychiatric disabilities as follows:

- a. Dysfunctional family of origin with an associated 10% psychiatric permanent partial disability of the body as a whole.

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- b. Partner-relational problem referencing her emotionally and physically abusive boyfriend with an associated 2% psychiatric permanent partial disability of the body as a whole.
- c. Partner-relational problem referencing her abusive first and second husbands with an associated 5% psychiatric permanent partial disability of the body as a whole.
- d. Parent-child relational problem with an associated 1% psychiatric permanent partial disability of the body as a whole.
- e. Major depressive disorder with an associated 5% psychiatric permanent partial disability of the body as a whole.
- f. Personality disorder with an associated 5% psychiatric permanent partial disability of the body as a whole.

Dr. Stillings admitted that all of Claimant's Axis I diagnoses could be viewed as one diagnosis of PTSD.

FINDINGS OF FACT AND RULINGS OF LAW

Whether the Employer is obligated to pay for past medical expenses.

Claimant seeks an award for certain medical expenses incurred by Claimant and not paid by the Employer. The evidence adduced at the hearing was that Dr. Brockman had issued a statement for treatment rendered to Claimant as a result of the injury of January 18, 2009, in the sum of \$280.00.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find there is substantial and competent evidence that Claimant

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received medical treatment from Dr. Brockman to cure and relieve the effects of the injury in the amount of \$280.00, the amount of which was the responsibility of the Employer to provide.

Employer is hereby ordered to reimburse Claimant the sum of \$280.00 as and for medical treatment which was reasonable and necessary in order to cure and relieve the Claimant of the effects of the injury suffered on January 18, 2009.

Whether the Claimant sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries.

Dr. Brockman opined that Claimant would need ongoing medical treatment as a result of the injury of January 18, 2009. Dr. Volarich opined that Claimant would require ongoing treatment modalities, including narcotic and non-narcotic medications, muscle relaxants, physical therapy and other treatments from time to time determined by the then current standard of medical practice. Dr. Stillings opined that Claimant would need no further psychiatric treatment as a result of the injury of January 18, 2009.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find there is substantial and competent evidence adduced at the hearing to prove that Claimant will require ongoing treatment in the future in order to cure and relieve Claimant of the effects of the injury of January 18, 2009.

Employer is hereby ordered to provide such medical treatment as Dr. Brockman or any physician to whom the Claimant is referred by Dr. Brockman which is medically reasonable in order to cure and relieve the effects of the injury Claimant suffered on January 18, 2009.

I further find that the opinions of Dr. Stillings, with regard to the psychological injury which Claimant suffered on January 18, 2009, are not as credible as the opinions of Dr. Brockman, the treating physician.

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I find this issue in favor of Claimant.

The nature and extent of any permanent disabilities?

Dr. Volarich opined that Claimant had permanent disabilities as a result of the January 18, 2009, injury of 50% of the right upper extremity at the 220-week level, 25% of the right upper extremity at the 200-week level, and 10% of the right upper extremity at the 232-week level.

Dr. Brockman opined that Claimant had permanent disabilities as a result of the January 18, 2009, injury of 85% of the body as whole, as a result of the injury of January 18, 2009.

Dr. Stillings opined that Claimant had permanent disabilities as a result of the January 18, 2009, injury of 2% of the body as whole.

Claimant testified that she is working full time as a psychiatric nurse, although she is now working with young people with psychiatric and behavioral issues rather than adults. I do not find Dr. Brockman's disability opinions consistent with Claimant's continuing employment. I also do not find Dr. Stillings reasoning for his opinions as to disability to be credible.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find there is substantial and competent evidence adduced at the hearing to prove that Claimant has suffered permanent partial disabilities as result of the injury of January 18, 2009, of 35% of the right upper extremity at the 222-week level, which includes all disability to the right upper extremity resulting from this injury.

I further find that Claimant has suffered an 18% permanent partial psychological disability to the body as a whole as a result of the injury of January 18, 2009.

The parties stipulated that Claimant's compensation rate for permanent partial disability is \$404.66. Employer is hereby ordered to pay to Claimant the sum of \$60,577.60 [(222 x 35% =

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77.7 weeks) + (400 x 18% = 72 weeks) = 149.7 weeks x \$404.66 = \$60,577.60], as and for permanent partial disability as a result of the injury sustained January 18, 2009.

I find this issue in favor of Claimant.

Whether the Claimant is entitled to disfigurement benefits?

Claimant testified and the medical record exhibits support the fact that Claimant had surgery to her right elbow as a result of her injury of January 18, 2009. During the course of the hearing Claimant's right elbow was observed to have a scar which began near the elbow and continued up Claimant's arm for a distance of about six inches.

A disfigurement benefit is hereby awarded of six weeks, payable at the Claimant's compensation rate of \$404.66. Employer is hereby ordered to pay to Claimant the sum of \$2,427.96, as and for a disfigurement benefit.

The liability of the Second Injury Fund for enhanced permanent partial disability?

Dr. Volarich, Dr. Brockman, and Dr. Stillings testified that, in their opinions, Claimant had pre-existing disabilities. Dr. Volarich testified that Claimant had pre-existing medical disabilities of 20% of the right upper extremity at the 175-week level and 25% of the right upper extremity at the 232-week level. Dr. Brockman opined that Claimant had 15% pre-existing psychological disability. Dr. Stillings opined that Claimant had a 23% pre-existing psychological disability. Both Dr. Volarich and Dr. Brockman opined that the combination of the pre-existing conditions and the disabilities of the injury of January 18, 2009, combine to create a greater disability than the simple sum of the disabilities individually.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find there is substantial and competent evidence that Claimant had a pre-existing permanent partial disability of 25% of the right upper extremity at the 232-week

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level and a pre-existing permanent partial disability of 25% of the body as whole referable to the psychological conditions which occurred prior to January 18, 2009.

I further find that the combination of Claimant's permanent partial disabilities, which occurred as a result of the January 18, 2009, injury, with Claimant's pre-existing disabilities, creates a greater disability than the simple sum of such disabilities and that, as a result, Claimant has suffered an enhanced permanent partial disability to which a multiplicity of factor of 15% should be added. I find that Claimant has suffered an enhanced permanent partial disability of 46.16 weeks $[(232 \text{ weeks} \times 25\% = 58 \text{ weeks}) + (400 \times 25\% = 100 \text{ weeks}) + (222 \times 35\% = 77.7 \text{ weeks}) + (400 \times 18\% = 72 \text{ weeks}) = 307.7 \text{ weeks} \times 15\% = 46.16 \text{ weeks}]$, as a result of the primary injury disabilities in combination with Claimant's pre-existing disabilities.

The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, is hereby ordered to pay to Claimant the sum of \$18,679.11 $[46.16 \text{ weeks} \times \$404.66 = \$18,679.11]$ as and for enhanced permanent partial disability benefits.

I find this issue in favor of Claimant.

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Claimant's attorney requested approval of an attorney fee of 25% of the amount of any award. Claimant's attorney's fee request is hereby approved. Claimant's attorney is awarded a fee of 25% of the amount of this award. Claimant's attorney is hereby granted a lien against the proceeds of this award unless and until the attorney fee shall have been paid in full.

Made by: _____

David L. Zerrer
Administrative Law Judge
Division of Workers' Compensation