

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

Injury No. 13-077155

Employee: Danny Sanders  
Employer: Rollet Brothers Trucking Company  
Insurer: National Interstate Insurance  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

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 by accident arising out of and in the course of employment*

We agree with the administrative law judge that employee sustained an injury arising out of and in the course of employment when he injured his back during a physical evaluation program that employer required him to complete as a condition of returning to active duties. We write to provide some clarifying comments.

We note that the administrative law judge cited and discussed a number of appellate decisions applying the language of Chapter 287 as it existed prior to the legislative changes adopted in 2005. Those legislative changes included the sweeping abrogation of all case law interpretations on the meaning or definition of the terms "arising out of," and "in the course of the employment." See § 287.020.10 RSMo. Consequently, while we believe the pre-2005 case law on this topic may provide a certain degree of guidance where there is a dearth of otherwise applicable authority, our analysis of whether employee's injury arose out of and in the course of the employment must ultimately begin and end with the statutory test set forth at § 287.020.3(2) RSMo:

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.

Having said that, we acknowledge that the administrative law judge did ultimately apply the foregoing test and completed the appropriate analysis. Employer's primary argument is that employee was not "on the clock" and thus did not receive any compensation for the work employer required of him in completing the Work Steps evaluation. The courts have suggested that such an argument is unavailing. See *Henry v. Precision Apparatus, Inc.*, 309 S.W.3d 341 (Mo. App. 2010).

Employee: Danny Sanders

We would additionally point out that by virtue of the mandate of § 287.800.1 RSMo, we must strictly construe the terms of § 287.020.3(2). Strictly construing those terms, we find no requirement that an employee be “on the clock” or receiving remuneration at the time a work injury occurs. Rather, an employee need only demonstrate that the accident was the prevailing factor causing the injury, and that the injury did not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed in normal nonemployment life. We defer to the administrative law judge’s findings of fact, and we agree that they demonstrate that, without question, employee’s injury arose out of and in the course of his employment.

Failure to comply with a temporary award

We wish to remind the parties that § 287.510 RSMo provides, as follows:

In any case a temporary or partial award of compensation may be made, and the same may be modified from time to time to meet the needs of the case, and the same may be kept open until a final award can be made, and if the same be not complied with, the amount equal to the value of compensation ordered and unpaid may be doubled in the final award, if the final award shall be in accordance with the temporary or partial award.

Consistent with the foregoing provisions, if the compensation ordered herein is not promptly paid to employee, it is our intention, in the event we are asked to render a final award in this matter, to double any and all amounts ordered and unpaid.

**Conclusion**

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

The award and decision of Chief Administrative Law Judge Lawrence C. Kasten, issued September 22, 2015, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

This award is only temporary or partial. It is subject to further order, and the proceedings are hereby continued and kept open until a final award can be made.

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

Given at Jefferson City, State of Missouri, this 27<sup>th</sup> day of January 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**TEMPORARY OR PARTIAL AWARD**

Employee: Danny Q. Sanders Injury No. 13-077155  
Dependents: N/A  
Employer: Rollet Bros. Trucking Co.  
Additional Party: Second Injury Fund (Left Open)  
Insurer: National Interstate Insurance  
Appearances: Sarah Elfrink, attorney for the employee.  
Kevin Johnson, attorney for the employer-insurer.  
Hearing Date: July 22, 2015 Checked by: LCK/kg

**SUMMARY OF FINDINGS**

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? October 1, 2013.
5. State location where accident occurred or occupational disease contracted: Perry 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? Yes.
11. Describe work Employee was doing and how accident happened or occupational disease contracted: The employee lifted a box and injured his low back.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Low back and body as a whole.
14. Compensation paid to date for temporary total disability: N/A
15. Value necessary medical aid paid to date by the employer-insurer? \$557.25
16. Value necessary medical aid not furnished by the employer-insurer? \$209.09
17. Employee's average weekly wage: \$644.82
18. Weekly compensation rate: \$429.90
19. Method wages computation: By agreement.
20. Amount of compensation payable:  
  
Unpaid medical expenses-\$209.09  
  
Medical Mileage-\$175.86  
  
Temporary total disability-\$40,533.42  
  
Total: \$40,918.37

This award is only temporary and partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

**IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.**

## FINDINGS OF FACT AND RULINGS OF LAW

On July 22, 2015, the employee, Danny Q. Sanders, appeared in person and with his attorney, Sarah Elfrink, for a temporary or partial award. The employer-insurer was represented by their attorney, Kevin Johnson. The parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

### UNDISPUTED FACTS:

1. Rollet Bros. Trucking Co. was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by National Interstate Insurance.
2. On October 1, 2013, Danny Sanders was an employee of Rollet Bros. Trucking Co. and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's alleged accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage was \$644.82. The rate of compensation is \$429.90.
6. The employer-insurer paid \$557.25 in medical aid.
7. The employer-insurer paid no temporary disability benefits.

### ISSUES:

1. Accident
2. Medical Causation
3. Previously Incurred Medical Aid
4. Claim for Mileage
5. Claim for Additional Medical Aid
6. Temporary Total Disability

### EXHIBITS:

#### Employee's Exhibits

1. Report of Injury
2. Original and Amended Claims for Compensation
3. Medical and billing records from Occupational Medicine Center
4. Billing records from Healthcare Healthmart Pharmacy
5. Employer's Pay-Out Log of Medical Aid Paid
6. Mileage Reimbursement Summary
7. Deposition of the employee
8. Deposition of Dr. Hammond with CV, medical reports, and letters
9. Medical Records for 2011 injury from Dr. Marsh, Mid America Rehab, and Dr. Doll
10. June 24, 2013 Mid America Rehab WorkSTEPS Post Employment/Fit for Duty Report

11. October 1, 2013 Mid America Rehab WorkSTEPS Post Employment/Fit for Duty Report

Employer-Insurer's Exhibits

- A. Deposition of Dr. Cantrell with CV, records, report, and letter
- B. Occupational Medicine Center medical records
- C. Perry County Memorial Hospital medical records
- D. August 11, 2011 MRI Report from Cape Imaging
- E. Medical Records of Dr. Marsh

Judicial Notice of the Contents of the Division's files of the employee was taken.

**WITNESS:**

Danny Sanders, the employee

**BRIEFS:**

The employee filed his proposed award on August 13, 2015. The employer-insurer filed their proposed award on August 24, 2015.

**FINDINGS OF FACT:**

The employee testified that he is 62 years old and has been married for 32 years. He had several prior injuries. In 1979 while working on cable he fell approximately 90 feet. He had extensive surgeries on his feet and ankles. Due to the injury he made a career change and went into truck driving. In 1993 he was working at Gilster-Mary Lee and had an on-the-job hernia. During the surgery, Dr. Pontillas sewed up a nerve which caused a lot of complications. He was not able to work for a long time and had trouble walking. He was on social security disability for about two years, but he wanted to work for a living. Another doctor performed two additional surgeries where a nerve was cut to deaden the pain. Due to an infection, his left testicle had to be removed. After those additional surgeries, he returned to work. He started having heart problems in the late 1990s or early 2000. He was first diagnosed with heart problems when he was in Tupelo, Mississippi. He had stents and then a double bypass. The employee moved back to Missouri, and Dr. Talbert became his heart doctor.

The employee testified that on August 1, 2011, while working at Buchheit, he had a back injury from loading shingles. He felt a pop and had really sharp pains in his back that caused him to fall to his knees on the parking lot.

The employee went to Perry County Memorial Hospital emergency room on August 1, 2011, due to low back pain from lifting shingles at work. X-rays showed posterior facet degenerative changes bilaterally at L5. The employee saw Dr. Marsh on August 3, 2011. On examination, the employee had tenderness with palpation in the middle lumbar region. There was decreased sensitivity in the left quadriceps and hamstring and laterally along the left leg to the knee. Dr. Marsh assessed low back pain with radiation of pain into the left buttock and down

to the left knee. X-rays showed posterior facet degenerative changes bilaterally at L5. Dr. Marsh prescribed Percocet and a Medrol Dosepak. The employee was to continue the Flexeril and physical therapy was ordered. The employee's PT evaluation was performed on August 8, 2011. The employee noted lower back pain with shooting pain down the left leg.

On August 8, 2011, the employee had worse pain from his lower back through the left buttocks, left groin, and left lateral aspect of his knee. Dr. Marsh continued the Percocet, Flexeril, and Medrol Dosepak and ordered a lumbar MRI.

The August 11 lumbar MRI was performed for low back, left hip, and leg pain. At L4-5 there was a central bulging disc with a small central protrusion and peripheral annular fissure was suggested with mild sac effacement, but no root displacement. At L5-S1 there was a tiny peripheral annular fissure seen at the posterior disc margin with central bulging, but less than 2 mm AP diameter. There was no definite protrusion identified and no sac or root compression. Mild facet arthropathy was noted.

On August 12, 2011, the employee saw Dr. Marsh who noted the results of the MRI. The employee was somewhat better but continued to have low back pain down into the knee. Dr. Marsh assessed continued low back pain with radiation into the left buttocks and down to the left knee region. Dr. Marsh continued Medrol Dosepak and Flexeril and prescribed Vicodin. The employee was put on sedentary duty restrictions with four hours work a day, no lifting, and stand and walk as tolerated.

On August 17, the employee saw Dr. Marsh and was doing worse with weakness in the left leg and a feeling of falling with more numbness. On examination, the employee had soreness with palpation over the left lower back, left gluteal, left hip, and lateral aspect of the leg to his left knee. He had loss of strength in the left hamstring, quadriceps, ankle, and big toe. Dr. Marsh assessed worsening low back pain with radiation of his pain into the left buttock through the left hip and down the lateral knee region. Dr. Marsh recommended a nerve conduction study. He prescribed Neurontin and amitriptyline at night. Flexeril and Vicodin were continued.

The employee saw Dr. Marsh on August 24, 2011. He had decreased pinprick in the left leg in the area distal to the patella. The employee was kept off work due to severe low back pain with associated radicular symptoms. Dr. Marsh performed a nerve conduction study on August 24 due to left leg pain. The impression was weak evidence of L4-5 radiculopathy by symptoms, evidence of previous old L5-S1 radiculopathy, and no evidence of new denervation.

On August 26, Dr. Marsh noted that the electrodiagnostic testing demonstrated weak evidence of L4-5 radiculopathy by symptoms. Neurontin was increased. On August 31, the employee saw Dr. Marsh due to low back and left leg pain. The employee had been stumbling more and had continued difficulty sleeping. Dr. Marsh assessed continued low back pain associated with left buttocks, left hip, and left leg pain, and radicular symptoms with reported increased frequency of a catching sensation. Due to the continued low back pain with radicular symptoms involving the left leg and lower extremity weakness, Dr. Marsh recommended a

neurosurgical evaluation. Dr. Marsh continued the Vicodin, Flexeril, and Aleve. Benadryl at bedtime was recommended as a sleep aid.

The employee testified that he does not remember going to a neurosurgeon but was sent to Dr. Doll. He had had problems walking due to his leg, and was sleeping in a recliner.

The employee had a physical therapy plan on September 2, 2011, for low back pain and constant left lateral thigh numbness with intermittent shooting pain. The assessment included left lower extremity weakness, antalgic gait pattern, and decreased lumbar motion.

The employee was sent to Dr. Doll on September 6, 2011, for left low back and buttock pain extending to his posterior left buttock and posterior leg proximally, with some left lateral thigh numbness. On examination, there was tenderness to palpation in the lumbar paraspinal and left SI joint region and mild asymmetry of the left SI joint. There was mild collapsing weakness in the left lower extremity with pain in the left SI joint area. The impression was left lumbosacral strain, left sacroiliac joint strain, and lumbar spondylosis. Dr. Doll recommended therapy and restrictions of sedentary work.

The employee was reevaluated by the physical therapist on September 7, 2011. His complaints were low back pain, left gluteal area pain, left lower extremity shooting pain down the left leg to the knee, left leg lateral thigh numbness and tingling. He had a catching pain in the lower back when performing sit to stand movements. On examination, the range of motion was significantly limited by pain; there was loss of strength in the left lower extremity at the hip, knee, and ankle. On September 8, Dr. Doll performed a left SI joint injection.

On September 20, the employee reported some temporary improvement from the SI joint injection. On examination, the employee exhibited an asymmetric pelvic alignment with focal tenderness over the left sacroiliac joint. Pelvic rocking on the left reproduced left SI joint pain and the straight leg raise test was negative bilaterally. Dr. Doll diagnosed persistent left lumbosacral strain, SI joint strain, SI joint dysfunction, and mild lumbar spondylosis. Dr. Doll continued the therapy and work restrictions.

The employee returned to Dr. Doll on October 20, 2011, and stated that "his condition had turned the corner, as he felt a sudden improvement in his back and buttock pain." He had been able to discontinue his medications and increase his activities. The employee reported no back or buttock pain and no numbness in his lower extremities. He felt fully capable of performing his regular work activities without restriction. On examination, there was full range of motion without discomfort; no bony asymmetries; no muscle spasms; no SI joint tenderness; specifically, no longer any asymmetry of the sacroiliac joint. There was full strength, sensation and reflexes in the lower extremity, and no antalgic gait. Dr. Doll's impression was resolved left lumbosacral/sacroiliac joint strain. He stated that the employee was at maximum medical improvement, did not need any further treatment, and was released with no restrictions.

The employee testified that one night he went to bed hurting and the next morning he was okay. He did not know what had happened. He told Dr. Doll that he was just fine, and he released him to go back to work.

In Injury Number 11-060181 with a date of injury of August 1, 2011, the employee was paid temporary total disability from August 2, 2011, through September 11, 2011. The employee's low back case was administratively closed without a compromise settlement.

The employee testified that after he was released by Dr. Doll on October 20, 2011, he went back to work and had no further problems. He did not have any additional treatment for his low back and had no symptoms. He was good as new, had no limitations in his back, was not on any pain medications, and did not miss work after being released. His back was completely healed, and he had no complaints or limitations until October of 2013.

The employee testified that he started working for Rollet Brothers in March or April of 2013. He was a regional truck driver and drove to Kentucky every day to deliver lime. In June of 2013 he attended a WorkSTEPS program and passed it with no complications.

The employee went to Mid America Rehab in Perryville for a post employment/fit for duty uninjured evaluation on June 24, 2013. The evaluation was a functional employment test to determine whether he possessed the ability to safely and effectively perform the required job functions for the specific position. Testing included cardiovascular, dynamic lifting, and job specific. The employee was able to do all the required box lifts and job specific tests. He reported no pain or discomfort at the completion of the testing and was able to return to full duty with no restrictions.

The employee testified that in September of 2013, he had started having heart symptoms and Dr. Talbert took him off work for testing. He was not paid during his time off work. Dr. Talbert gave him a full duty work release which he took to Susie Fuller, the office manager at Rollet Brothers. She set up a WorkSTEPS evaluation which was required if an employee was off work for more than three days. It took place at Mid America Rehab at Perryville. He was not paid for the time during the WorkSTEPS evaluation or paid mileage to and from the evaluation. He could have chosen not to perform the WorkSTEPS evaluation, but he would have been terminated.

On October 1, 2013, the employee went to Mid America Rehab for a post employment/fit for duty evaluation uninjured. On Dynamic Lifting the employee met 4 out of 4 requirements. On Job Specific Testing the employee met 1 of 5 requirements. It was noted that during Job Specific Test IV the employee had complaints of low back pain after he completed the 80 pound floor to 48" height lift. The test was stopped due to pain and the employer was notified. The therapist noted the employee felt a pull as he was lifting the box up.

The employee testified that at the WorkSTEPS program he was required to lift four different weight boxes. As he was lifting the last box, which he thought weighed about 80 pounds, he straightened up, heard something, and felt something like a hot poker. He went to the ground and had to be helped up. He was given ice and Tylenol at Mid America and stayed there

for about an hour. The October of 2013 pain was no comparison to the pain from 2011. It was the worst pain he had ever had and was even worse than his heart surgery. The therapist told him when he got home to put ice and heat on it. Mid America was supposed to contact Susie. Susie called him the next morning and told him that she heard what happened and that it needed to be reported to workers' compensation. She set up an appointment at Occupational Medicine in Festus. On October 2, he laid on the ice and a heating pad.

The employee saw Nurse Practitioner Cohoon on October 3, 2013, at Occupational Medicine for the October 1, 2013 workers' compensation injury to his lower back, left hip, and leg. The employee was performing WorkSTEPS to go back to work, and as he was lifting a box felt immediate lower back pain. The employee had constant sharp pain in the lower back, mostly left side and center that radiated into the left hip and down the left leg to just below his knee. His leg was numb and cold. On examination, the employee had right paraspinal spasms, a positive straight leg raising test on the right, and a slow cautious gait with the use of a cane. X-rays were ordered. The x-ray history showed trauma with severe low back pain radiating down the left leg. Dr. Junker the radiologist stated that there was moderate disc space narrowing at L5-S1 and mild disc space narrowing at L3-4 and L4-5; and mild osteoarthritic changes in the L2-S1 facet joints. Dr. Junker stated that if the symptoms persisted that a lumbar MRI would be helpful. Nurse Practitioner Cohoon prescribed Norco, Soma, and a Medrol Dosepak injection was performed. The employee was given work restrictions of no bending, squatting, stooping, pushing, climbing, lifting, or pulling. Assessed was a lumbar sprain/strain with sciatica, and a one week follow-up was scheduled. The Workers' Compensation Medical Treatment Form completed by Nurse Practitioner Cohoon noted that the body parts injured were back, hip, and legs.

The employee testified that his son drove him to the appointment due to pain in his back and legs. The nurse practitioner prescribed medications, performed injections, and gave him work restrictions. He turned the work restrictions into Susie, and she told him to go home and rest. He gave the prescriptions to Susie, and she called Healthcare Health Mart.

The employee testified he went back to Occupational Medicine on October 9. His symptoms were the same, and he was not able to work. He was off work and he did not receive any temporary total disability.

On October 9, 2013, the employee returned to Occupational Medicine and was examined by Nurse Practitioner Eggers. The employee continued to have back, right hip, and left leg symptoms. On examination he had an antalgic gait, right paraspinal spasms, a positive bilateral straight leg test, and decreased bilateral hamstring strength. The employee was prescribed MethylPrednisolone, Norco, and Flexeril; and was given an intramuscular injection. The work restrictions continued were no lifting, bending, squatting, stairs, or climbing, and no driving more than one hour at a time. Nurse Practitioner Eggers noted that if the pain had not decreased by next visit that she would obtain an MRI.

The employee testified that the nurse practitioner prescribed medications and performed injections. An MRI was discussed. The nurse practitioner continued the work restrictions. He took the work restrictions to Susie. She told him that he needed to get released to go back to work, which the employee was all in favor of.

On October 16, 2013, the employee saw Nurse Practitioner Eggers with continued paraspinal spasms on the right, sciatic pain with palpation, positive straight leg test on the right, and decreased hamstring strength on the right. The employee was continued on Narco and Flexeril. A referral was made to physical therapy. The work restrictions of no lifting, climbing, bending, or squatting were continued. The next appointment was set for October 30.

The employee testified that on October 16, he asked for a work release but did not receive one. He was not able to return to work and was still on work restrictions. The nurse practitioner prescribed medications and ordered physical therapy which was not approved. After the visit, he went back to Susie and told her that the nurse practitioner would not release him. He was not allowed to return to work.

On October 30, 2013, Nurse Practitioner Eggers noted that the follow-up appointment was cancelled due to the claim being denied.

The employee testified that on October 30, he drove to the Occupational Clinic in Festus. He registered and sat down. After a few minutes, the clerk stated that the insurance company had denied payment and they would not see him unless he paid for it. Since he could not afford it, he left the clinic and drove back to Rollet Brothers and told Susie what had happened. Susie was going to find out what happened, but the appointment was never rescheduled. He has not received any additional medical treatment. He got a letter from the insurance that his claim was denied because they did not feel it was a work-related injury.

The employee testified that he only treated at Occupational Medicine Clinic for this injury. The bills from them included one for \$349.00 with a balance of \$12.25; and another charge for \$100.00. Employee Exhibit 4 includes the bills for medication prescribed from October 3 through October 16 for the back injury. The amount due was \$94.02 and a later statement shows a finance charge, which makes the balance due \$96.84. The employee testified that he never received a check for mileage from the four trips to the Festus Occupational Clinic but was paid mileage for the employer sending him to Dr. Cantrell in November of 2014.

On June 30, 2014, a temporary hearing was held. At the temporary hearing, the parties did not have medical evidence on the issue of prevailing factor. It was agreed that if the employer's injury during the WorkSTEPS program was a compensable injury covered under Chapter 287, the employer-insurer would provide medical treatment unless it was the opinion of the authorized treating physician that the injury was not the prevailing factor to the employee's current medical condition and disability. On September 4, 2014, a Temporary Award was issued. In the Award, I found that the employee sustained a compensable accident and injury that arose out of and in the course of employment

The employee testified that after the Award the employer-insurer sent him to Dr. Cantrell. The employee told him that he had lower back pain 24 hours a day and it goes down one of his legs. Sometimes his right leg goes out and sometime his left leg burns. The employee did not recall if Dr. Cantrell asked him where the pain was on the day of the accident. He told Dr. Cantrell that he had leg pain and numbness after the accident, but it seemed to progress and worsen after 30 days.

The employee was seen by Dr. Cantrell on November 5, 2014. The employee reported that while lifting an 80 pound box at WorkSTEPS on October 1, 2013, he had the acute onset of pain in his lower back. Initially the pain was localized to his lumbar spine, but approximately one month after the onset of his back pain he began to experience numbness and tingling in his bilateral lower extremities. The employee has remained symptomatic and unimproved with the passage of time. Dr. Cantrell noted the 2011 treatment after a back injury while lifting shingles. The employee had resolution of his symptoms and remained asymptomatic after his discharge from Dr. Doll and leading up to October 1, 2013.

Dr. Cantrell noted that the employee presented with a cane and ambulated in a slow, guarded fashion. On physical exam, the employee transitioned slowly from sitting to standing and had limitations in lumbar extension and flexion. The employee had minimal tenderness to palpation throughout the thoracic and lumbar muscles. Straight leg raising test was negative on the left and positive on the right for reproduced low back pain. He was unable to fully extend the right knee due to increased pain. The employee did not have any radicular complaints in straight leg raising in either lower extremity. The employee reported a reproduction of lumbar back pain bilaterally with passive rotational movement of each hip, but manual muscle testing was normal, there was no dermatomal sensory loss in either lower extremity, and that the reflex testing was symmetric at both knees and ankles. Dr. Cantrell ordered x-ray studies which showed normal lumbar curvature with intervertebral disc spacing that was well maintained, and evidence of facet sclerosis bilaterally at the L5-S1 greater than L4-5 levels bilaterally.

It was Dr. Cantrell's opinion that the employee may have sustained a lumbar strain or sprain as a result of his alleged October 1, 2013 injury, but that the prevailing factor for his current and ongoing complaints was not the result of that incident. It was Dr. Cantrell's opinion that the prevailing factor in his current and ongoing subjective complaints was the underlying degenerative disc and degenerative joint disease. Dr. Cantrell stated that the employee did not have any objective abnormalities on examination that necessitated further treatment. Dr. Cantrell stated that since his job at Rollet Brothers did not require any heavy lifting it was not medically necessary to continue to restrict his physical activities due to his subjective complaints. Dr. Cantrell stated that it was his opinion that there was no indication for a lumbar MRI. Based on the diagnostic studies in 2011, the employee had evidence of degenerative disc disease at L4-5 and L5-S1. It was Dr. Cantrell's opinion that the employee did not have any lateralizing neurologic deficits on his examination that would warrant the necessity of a repeat MRI scan of his lumbar spine, and that he does not require any further treatment as it relates to his alleged injury of October 1, 2013.

Dr. Cantrell's deposition was taken on July 15, 2015. Dr. Cantrell testified that the employee's initial complaints were localized to the low back and about a month later he began to experience numbness and tingling in both of his legs. He testified that the timing of the numbness and tingling was important because if the employee had experienced an acute disc herniation, the pain or numbness or tingling in his legs would have been expected to start either immediately or within the first 24 to 72 hours after the lifting event.

Dr. Cantrell testified that the straight leg raising test was to provoke a radicular symptom by stretching the nerve roots and the sciatic nerve, and reproduced symptomology in the leg would be a clinical finding that supported the possibility of a lumbar radiculopathy. A negative test would be non-supportive of radiculopathy or acute disc herniation. The absence of dermatomal sensory loss would not be indicative of lumbar radiculopathy, despite complaints of bilateral leg numbness and tingling. Dr. Cantrell stated that he did not find any indications of lumbar radiculopathy or other neurologic pathologies.

Dr. Cantrell testified that in 2011 the employee underwent an MRI scan due in part to pain shooting down his left leg. The MRI showed a bulging disc at L4-5 with a small central disc protrusion and annular fissure at L4-5; and at L5-S1 there was another tiny annular fissure with a central disc bulge and mild facet arthropathy. Dr. Cantrell testified that test results need to be looked at in conjunction with the symptoms and the clinical findings. The findings could be construed as radiculopathy based on pain, and then later increased numbness in his leg.

With regard to the October 1, 2013 incident, it was Dr. Cantrell's opinion that while the employee may have had a strain or sprain to his low back, he did not believe that incident was the prevailing factor in his current and ongoing back pain complaints, nor the cause of his subjective complaints of numbness or tingling in both of his legs. It was his opinion that the employee did not require any further treatment for his October 1, 2013 injury and that that any further treatment did not flow from the alleged injury. Dr. Cantrell did not order a lumbar MRI because the numbness and tingling did not follow a dermatomal pattern, as might be expected from an acute disc pathology or an isolated radiculopathy; the neuro-tension tests were negative; all other neurologic testing was negative for any lateralizing deficits that would support a radiculopathy; and the records showed over the course of the following couple of weeks his symptoms had been steadily improving and were primary localized to his back.

Dr. Cantrell did not think the October of 2013 strain was the source of the employee's current pain. Dr. Cantrell could not say with certainty what was causing his symptoms and did not know the pathological source of the pain. Dr. Cantrell stated that was not uncommon and that there is not always a definite diagnosis, and often there are multifactorial causes of pain. Dr. Cantrell stated that the argument could be made that to indisputably know whether or not the employee had suffered a change in pathology another MRI would be needed. If there were changes the challenge would be trying to sort out whether they are from the injury or from advancement of degeneration.

The employee testified that he when he saw Dr. Hammond he had leg symptoms which were sometimes in the right leg and sometimes in the left leg.

The employee saw Dr. Hammond on January 29, 2015, and the report was dated February 11, 2015. On examination, the employee was noted to have a shuffling right-sided antalgic gait. The employee had diffuse pain in the lower back radiating throughout his mid and lower lumbar areas and had pain radiating into his right lower extremity. The employee had markedly reduced lumbar forward and lateral flexion and reduced lumbar extension. Passive rotation of the right hip elicited some pain in the lumbar spine. He had a positive straight leg raising test on the right

side in both the seated and lying supine positions. Dr. Hammond diagnosed persistent lumbar strain syndrome. It was his opinion that since the employee's prior 2011 back problem stabilized to the point he was able to return to his full work activities, that the lifting accident at WorkSTEPS is the prevailing factor accounting for the employee's current back problems. It was Dr. Hammond's opinion that based on the employee's difficulties with constant pain and his inability to carry out a wide variety of routine activities of daily living, he rated the employee's permanent partial disability at 75%. It was his opinion that there was a "distinct likelihood" that the employee may require further medical and/or surgical management of his back problems and that the treatments to date were reasonable and necessary.

On March 11, 2015, Dr. Hammond issued a supplemental report. It was Dr. Hammond opinion that there was no question that further diagnostic measures and treatment will be required to deal with the employee's ongoing low back problems. It was his opinion that the employee needed a lumbar spine MRI study, and possibly a lumbar myelogram or a myelogram with contrast. It was his opinion that therapeutic measures such as physical therapy and the continued use of pain and anti-inflammatory medications were quite likely to be required. It was Dr. Hammond's opinion that the employee remained restricted with regard to attempting to participate in any type of strenuous work, including over-the-road truck driving, and should continue to refrain from those work activities until his symptoms can be further relieved.

The deposition of Dr. Hammond was taken on May 14, 2015. It was Dr. Hammond's opinion that the treatment provided by the Jefferson Clinic in Festus was reasonable and necessary for the employee's injury. He agreed with the nurse practitioner's recommendation of physical therapy and remaining off work. It was Dr. Hammond's opinion that that the October 1, 2013 injury was the prevailing factor in the employee's current medical condition, current disability, inability to work, and the need for medical treatment. It was his opinion that the employee was markedly disabled based on his ability to carry out the activities of daily living. Dr. Hammond testified that he recommended additional medical treatment including a lumbar spine MRI or possibly an MRI myelogram or myelogram with contrast, and that those tests would be very informative diagnostic measures.

Dr. Hammond stated that the employee had an injury in August of 2011, and that an MRI showed a bulging disc with a protrusion and annular fissure at L4-5; and at L5-S1 an annular tear and bulging disc which was related to the August of 2011 incident. It was his opinion that the facet arthropathy was pre-existing.

Dr. Hammond testified that he had reviewed Dr. Cantrell's medical report and disagreed with his conclusions because the employee was able to return to work as an over-the-road truck driver and worked for a period of time for Rollet Brothers without any back symptoms. Dr. Hammond testified that with regard to the source of what was causing the employee's current pain complaints; he thought that a new MRI would likely show some exacerbation of his underlying condition. It was his opinion that the October 1, 2013 incident provoked or aggravated any underlying condition that he may have had. Dr. Hammond stated that he could only speculate as to what physical defect or structure was the reason for the employee's pain. Dr.

Hammond could not state what is causing the problems and his complaints; and he is recommending additional testing to determine the source of his complaints.

The employee's deposition was taken on March 17, 2014. He testified that his last DOT physical was on March 8, 2013, and he passed with no issues. When asked about any on-the-job injuries while working at Buchheit, the employee testified that he had strained his back loading some shingles. He received therapy and missed about a week or ten days of work. He did not receive any kind of lump sum disability and went back to work driving. He had no continuing or lingering problems with his back after he returned to work.

The employee testified at the hearing that in general his everyday pain is a 5-6 out of 10, and when it is at its worse it feels like an 11 out of 10. The pain escalates to that level at least twice a day. Due to the pain he cannot sit, lie, or stand for very long and he has to move positions and lies down several times a day due to pain. He is doing his best to get better but is not able to work. He is able to wash a few dishes and mow for 20-30 minutes after his son starts the mower. He has not been able to get any additional treatment on his own. He has called St. Francis, Ste. Genevieve, and Perryville Hospitals to try to get the MRI but was told that he has to be referred by a doctor. In June of 2015 he applied for SSI disability to get Medicare or Medicaid to get the MRI done. It is his goal to get treatment, and return to work.

The employee testified that he had horses all of his life; he got rid of them in 2012 due to no one was there to help him take care of them since he was an over-the-road driver. He did not get rid of them due to his 2011 injury. After the 2011 back injury, he returned to work and performed the same job. After the 2013 accident he has not been able to return to work. The pain is more severe in 2013 than 2011, and does not go away.

## **RULINGS OF LAW:**

### ***Issue 1. Accident and Issue 2. Medical Causation***

It is disputed that the employee sustained an accident arising out of and in the course of his employment and that the employee's injury is medically causally related to the alleged accident.

Section 287.020.2 RSMo defines "accident" as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift."

Section 287.020.3 defines an "injury" as having "arisen out of and in the course of employment." An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Section 287.020.3(2) explains that an injury shall be deemed to arise out of and in the course of employment only if: (a) it is reasonably apparent 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.

On October 1, 2013, the employee was participating in the WorkSTEPS program at Mid America Rehab when he lifted a weighted box from the floor to chest level. He heard something and then felt something like a hot poker with immediate lower back pain. I find that this incident was clearly an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.

The employer had a mandatory policy that any employee who missed more than three days from work had to go through the WorkSTEPS program. No Rollet employee could return to driving a truck without first completing the WorkSTEPS program. The employer scheduled the WorkSTEPS program and paid for the WorkSTEPS program. If the employee did not attend the WorkSTEPS program, he would have been terminated from employment. I find that the employee was directly ordered by the employer to participate in the WorkSTEPS program as a condition of his continued employment.

For the injury to be deemed to have arisen out of and in the course of the employment, the employee must show a causal connection between the injury and the work activity. See *Porter v. RPCS, Inc.*, 402 S.W.3d 161, 172 (Mo. App. 2013). An injury arises “out of” employment if it is a natural and reasonable incident thereof and it is “in the course of” the employment if the accident occurs within the period of employment, at a place where the employee may reasonably be fulfilling the duties of employment. See *Storie v. Americare Systems, Inc.*, 304 S.W.3d 254, 258 (Mo. App. 2010). The Court of Appeals in *Turpin v. Turpin Electric Inc.*, 904 S.W. 2d 539 (Mo. App. 1995) stated that an injury arises “out of” employment, if it is a natural and reasonable incident of the employment, and is the rational consequence of some hazard connected with the employment.

In *Dorris v. Stoddard County*, 2014 WL 350422 (Mo. App. S.D.) the employee’s supervisor asked her to go look at new workstations located in a new building across the street from their present building. The employee fell while crossing the street. The Court held that the employee’s fall occurred while she was completing a task related to work. The employee was exposed to cracks in that particular street because of her employment and which caused the fall. The Court held that there was no evidence that the employee had any exposure to this particular hazard during her nonemployment life. The Court further held that since the employee was walking across the particular street because her supervisor asked her to look at new workstations, there was a causal connection between the employee’s work activity and the accident.

In their proposed Award, the employer-insurer argued that the employee was not entitled to the requested benefits because the subject accident did not arise out of and in the course of his employment and was not the prevailing factor in his medical condition and/or disability. The employer-insurer stated that the completion of the fitness for work examination was a condition precedent to the employee resuming work duties for the employer; and he was not being paid for

the time he spent performing the examination and the completion of such an examination is not something that was ordinarily be done in the course and scope of the employment.

In *Ott v. Consolidated Underwriters*, 311 S.W. 2d 52 (Mo. App. 1958), Ms. Ott went to the premises of the employer at 10:00 a.m. and applied for a job. She was hired; signed an employment contract; and filled out a withholding form. A time card was filled out, she was informed of a group insurance policy, and the employee was to return to the employer to begin work at 3:00 p.m. the same day. The employee was then shown where she would work, was informed of what her job duties were, and was instructed where to enter and leave the building. The employee was injured as she was leaving the building by the exact route the employer directed her to take. The Court held that when the employer in effect detained the employee on the premises for approximately 20 minutes and instructed her on her duties as an employee and she was shown where she would work, she was in the employer-employee relationship and during that time she was in the service of the employer. The Court held that Ms. Ott was employed; the employer had taken charge of her to serve the employer's purpose; instructed her in her work duties; showed her around the work premises; and therefore the injuries arose out of and in the course of her employment.

Mr. Sanders' case is similar to the *Ott* case. Just like Ms. Ott, Mr. Sanders was an employee of Rollet Brothers, but was not being paid when he was injured. Ms. Ott was following the instructions of the employer when she was injured. Just like Ms. Ott, Mr. Sanders was following the instructions of the employer when he was injured.

The employer's liability is not limited to those duties or that work which the employee was originally engaged to perform or to the employee's usual work; there is no doubt that the contract of employment may be enlarged or broadened if the employer directs the performance of additional duties or acts outside the usual scope of employment. See *Elliot v. Darby* 382 S.W.2d 70 (Mo. App. 1964).

In *Nichols v. Davidson Hotel Company*, 333 S.W.2d 536 (Mo. App. 1960), the employee worked for a hotel as a bellhop, porter, desk clerk, and general handyman. He was instructed by the general manager to take a company automobile and pick up several college girls, drive them to a party and then take them back. During the drive back the employee was killed. The Court of Appeals held that whatever the normal course of employment might have been at the hotel, the employer enlarged the duties of the employee by arranging tasks outside the usual area. The Court stated that the request placed the employee in an intolerable dilemma. If the employee refused he might lose his job and if he complied he would be deprived of compensation. The Court of Appeals held that that the injury occurred within the period of employment at a place where the employee may reasonably have been and while he was reasonably fulfilling the duties of his employment or engaged in something incidental thereto.

Mr. Sanders was directly ordered by the employer to participate in the WorkSTEPS program as a condition of his continued employment. The employer scheduled and paid for the WorkSTEPS program. If Mr. Sanders did not attend the WorkSTEPS program, he would have been terminated from employment. Just as in *Nichols*, Mr. Sanders had the choice of refusing to

participate in the WorkSTEPS program and be terminated or participate in the WorkSTEPS program and not get paid for his time or travel.

I find that the employee's injury occurred while the employee was completing a task that he was directed to do by the employer and was related to work. The employee was exposed to the hazards at WorkSTEPS because of his employment. There was no evidence that the employee had any exposure to this particular hazard during his nonemployment life. I find that the injury did not come from a hazard or risk unrelated to the employment to which the employee would have been equally exposed outside of and unrelated to the employment in normal nonemployment life. I find that the employee only participated in the WorkSTEPS program because the employer had directed him to do so, and there was a causal connection between the work activity and the injury.

I find that the employer directed the employee to perform additional duties or acts outside his usual scope of employment. I find that the October 1, 2013 injury to the employee's back while lifting boxes while participating in a mandatory WorkSTEPS program at Mid America Rehab was a natural and reasonable incident of the employment; was a rational consequence of some hazard connected with the employment; and occurred within the period of employment, at a place where the employee may reasonably be and while he was reasonably fulfilling the duties of employment.

It was Dr. Cantrell's opinion that as a result of the alleged October 1, 2013 injury the employee may have sustained a lumbar strain or sprain, but it was not the prevailing factor for his current and ongoing back pain complaints nor the numbness and tingling complaints in both of his legs. It was his opinion that the prevailing factor in his current and ongoing subjective complaints was the underlying degenerative disc and degenerative joint disease. Dr. Cantrell stated that on October 1, 2013, the employee had acute onset of pain in his lower back, and initially the pain was localized to his lumbar spine, but approximately one month after the onset of his back pain he began to experience numbness and tingling in his bilateral lower extremities. It was his opinion that the timing of the numbness and tingling was important because if there had been an acute disc herniation, the pain or numbness or tingling in his legs would have been expected to start either immediately or within the first 24 to 72 hours after the lifting event. Dr. Cantrell did not think the October of 2013 strain was the source of the employee's current pain.

The opinions of Dr. Cantrell are substantially adversely affected by the following: when Dr. Doll released the employee on October 20, 2011, the employee's back and buttock pain and leg numbness had completely resolved. The employee's credible testimony was that after October 20, 2011, his back was completely healed, he did not have any back or leg symptoms, and went back to work without limitations until October 1, 2013. The medical record on October 3, 2013, two days after the lifting incident, show that the employee had back, hip, and leg symptoms including sharp pain in the lower back that radiated into the left hip and down the left leg, to just below the knee with numbness and coldness in his leg. He had a positive straight leg raising test on the right and was diagnosed with sciatica. On October 9 and October 16, the

employee continued to have hip and leg symptoms with decreased hamstring strength and sciatic pain.

Dr. Hammond diagnosed persistent lumbar strain syndrome. It was his opinion that the lifting accident at WorkSTEPS was the prevailing factor accounting for the employee's current back problems. It was Dr. Hammond's opinion that that the October 1, 2013 injury was the prevailing factor in the employee's current medical condition, current disability, inability to work and the need for medical treatment. It was his opinion that the October 1, 2013 incident provoked or aggravated any underlying condition that he may have had.

Based on a review of all the evidence, I find that the opinion of Dr. Hammond is very persuasive and is more persuasive than the opinion of Dr. Cantrell on the issue of medical causation and whether the October 1, 2013 lifting incident was the prevailing factor in causing the low back injury and need for treatment.

I find that on October 1, 2013, the employee sustained a compensable accident and injury that arose out of and in the course of his employment; and the accident was the prevailing factor in causing the resulting low back injury, medical condition, disability and the need for treatment. I find that the medical care and treatment to the low back were medically causally related to the October 1, 2013 work accident. I find that the injury to the employee's low back, the resulting medical conditions, disability, and need for treatment are medically causally related to the October 1, 2013 work accident.

### ***Issue 3. Previously Incurred Medical Aid***

The employee is claiming \$209.09 in previously incurred medical aid. The total requested is \$96.84 from Healthcare Pharmacy for the medications prescribed by Nurse Practitioner Cohoon and Nurse Practitioner Eggers which were filled on October 3, October 10, and October 16, 2013 and \$112.25 for the remaining portion of the bill from the October 3, 2013 visit to Occupational Medicine Center. The employer-insurer is disputing those bills with regard to the authorization, reasonableness, necessity and causal relationship.

The employee testified that he only treated at Occupational Medicine Clinic for this injury and the balance owed is \$112.00. The prescription bills from Healthcare Pharmacy are for medications prescribed from October 3 through October 16, 2013 for his back injury. The amount due was originally \$94.02 but due to nonpayment there were finance charges making the balance due \$96.84.

The employer authorized the treatment from Festus Occupational Medicine Center on October 3, October 9, and October 16, 2013, and paid most of the medical bills with the exception of the \$112.25 from the October 3 visit.

It was Dr. Hammond's persuasive opinion that the medical treatment provided by the Occupational Medicine Clinic in Festus was reasonable and necessary for the employee's injury.

I find that the requested bills and medical treatment are medically causally related to the accident and injury that the employee sustained on October 1, 2013; were necessary and caused by the October 1, 2013 accident and injury; and the amount of medical bills for the treatment that are being requested is reasonable.

I find that the employer-insurer is responsible for and is directed to pay the employee the sum of \$209.09 for the following previously incurred medical bills:

Festus Occupational Medicine Center	\$112.25
Healthcare Pharmacy	\$96.84

#### ***Issue 4. Claim for Mileage***

Under Section 287.140 RSMo, when an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local area from the employee's principal place of employment, the employer shall reimburse the employee for all necessary and reasonable expenses.

The employee is claiming \$175.86 in medical mileage for the four trips he made to the Festus Occupational Clinic on October 3, October 9, October 16, and October 30, 2013. Employee Exhibit 6 shows that the roundtrip mileage from his home to the Clinic in Festus is 82.18 miles. The total miles are 328.72. The employee testified that he never received a mileage check for the four trips to the Festus Occupational Clinic.

I find that the employer-insurer is responsible to reimburse the employee for 328.72 medical miles at the rate of 53.5 cents per mile. The employer-insurer is therefore ordered to pay the employee a total of \$175.86 for the 328.72 medical miles incurred.

#### ***Issue 5. Claim for Additional Medical Aid***

The employee is requesting additional medical aid to his lumbar spine. Under Section 287.140 RSMo, the employee is entitled to receive all medical treatment that is reasonably required to cure and relieve him from the effects of the work-related injury. In *Landers v. Chrysler Corporation*, 963 S.W.2d 275 (Mo. App. 1997), the Court held that it is sufficient to award medical benefits if the employee shows by "reasonable probability" that he is in need of additional medical treatment by reason of his work related accident.

In October of 2013, Nurse Practitioner Egger discussed ordering an MRI and a referral was made for physical therapy. Dr. Junkers recommended an MRI if the employee's symptoms continued. Neither the MRI nor the therapy was provided since the October 30, 2013 follow-up appointment was cancelled and the case was denied.

It was Dr. Cantrell's opinion that the employee did not require any further treatment for his October 1, 2013 accident and injury, and there was no indication for a lumbar MRI.

It was Dr. Hammond's opinion that the employee needed additional medical treatment for the ongoing low back problems including a lumbar spine MRI study and possibly a lumbar myelogram or a myelogram with contrast. It was his opinion that therapeutic measures such as physical therapy and the continued use of pain and anti-inflammatory medications were quite likely to be required.

I find that the opinions of Dr. Hammond, Dr. Junker and Nurse Practitioner Egger are very persuasive and are more persuasive than the opinion of Dr. Cantrell on the issue of additional medical aid including the need for a lumbar MRI.

I find that the employee is in need of additional medical care to cure and relieve him from the effects of his October 1, 2013 work-related low back injury. The employer-insurer is therefore ordered to provide the employee with all of the medical treatment that is reasonably required to cure and relieve him from the effects of his work-related injury to the low back pursuant to Section 287.140 RSMo, including but not limited to the treatment recommended by Dr. Hammond.

#### ***Issue 6. Temporary Total Disability***

The employee is claiming temporary total disability from October 1, 2013 through the date of the hearing July 22, 2015, which is a period of 94 2/7 weeks. The amount being claimed is \$40,533.42.

Temporary total disability benefits are intended to cover healing periods and are payable until the employee is able to return to work or until the employee has reached the point where further progress is not expected. The pivotal question in determining whether an employee is totally disabled is whether any employer in the usual course of business would reasonably be expected to employ the claimant in his or her present physical condition. *Brookman v. Henry Transportation*, 924 S.W. 2d 286 (Mo. App. 1996). The mere fact that the employee might be able to do some light duty cannot be taken as conclusive evidence against his right to temporary total disability benefits. *DuPonte v. Chevrolet-St. Louis Division of General Motors*, 188 S.W.2d 641 (Mo. App. 1938). The fact that an employee was capable of, but did not seek, sporadic or light duty work, would not in itself disqualify the claimant from receiving temporary total disability benefits. *Cooper v. Medical Center of Independence*, 955 S.W.2d 578 (Mo. App. 1997).

The employee's credible testimony was that his pain escalates to over a 10 at least twice a day. He cannot sit, lie, or stand for very long. Due to the pain, he has to move positions and lies down several times a day. He does not feel that is able to work.

The employee was observed during the hearing and appeared to be in pain after approximately 20 minutes after the start of the hearing. The employee was observed walking very slowly.

In October of 2013, the employee was on limited duty work restrictions by the authorized treating nurse practitioners. The employer's office manager told him to stay at home and not come into work until he was released to full duty.

It was Dr. Cantrell's opinion that since his job at Rollet Brothers did not require any heavy lifting, it was not medically necessary to continue to restrict his physical activities.

It was Dr. Hammond's opinion that the employee was markedly disabled and was not able to work until his symptoms are relieved.

Based on a review of the evidence, I find that the opinions of Nurse Practitioner Cohoon, Nurse Practitioner Eggers, and Dr. Hammond are persuasive, and more persuasive, than the opinion of Dr. Cantrell with regard to the issue of temporary total disability.

I find that from October 1, 2013, through the date of the hearing on July 22, 2015, the employee was unable to compete in the open labor market, was still in his healing period, had not reached the point where further progress was not expected, that no employer in the usual course of business would reasonably be expected to employ the claimant in his present physical condition, and was temporarily totally disabled. The employer-insurer is ordered to pay to the employee 94 2/7 weeks of compensation at the rate of \$429.90 per week for a total of \$40,533.42 for the time period October 1, 2013 through July 22, 2015, the date of the hearing.

**ATTORNEY'S FEE:**

Sarah Elfrink, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

**INTEREST:**

Interest on all sums awarded hereunder shall be paid as provided by law.

As previously indicated this is a temporary or partial award. The award is therefore subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Made by:

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Lawrence C. Kasten  
Chief Administrative Law Judge  
Division of Workers' Compensation

