

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

Injury No.: 04-050587

Employee: Kathy Sandlin
Employer: Daimler Chrysler
Insurer: Self-Insured c/o Sedgwick CMS
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, heard oral argument and considered the whole record. Pursuant to section 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge dated August 13, 2008.

Preliminaries

The issues stipulated in dispute at trial were accident, medical causation, nature and extent of permanent disability; second injury fund liability; temporary total disability benefits; liability for past medical expenses; and future medical care and treatment.

The administrative law judge determined and concluded that employee failed to prove that she sustained an accident which arose out of and in the course of her employment, or that any such incident caused any need for medical treatment or disability benefits. The administrative law judge denied employee benefits on the basis that employee failed to establish by any credible evidence or testimony that she sustained an accident while working for employer.

Employee filed an Application for Review with the Commission alleging the administrative law judge erred in finding that employee did not prove that she sustained an accident arising out of and in the course of her employment on May 28, 2004. Employee alleges that the administrative law judge erroneously concluded that employee was not credible. Employee further alleges that the administrative law judge erred in concluding that employee is not permanently and totally disabled. Employee alleges that the administrative law judge's award is not supported by competent and substantial evidence as the evidence demonstrates that employee is not able to compete in the open labor market.

For the reasons set forth in this award and decision, the Commission reverses the administrative law judge's award.

Summary of Facts

Employee began working for employer in 1995. Employee testified that she worked ten hour shifts for

employer, Monday through Saturday, and traveled approximately one hour and ten minutes each way to work. Employee testified that she injured her low back at work on May 28, 2004, while moving boxes away from her computer terminal.

Employee had two prior shoulder injuries in 1996 and 1997 while working for employer and settled her claims with employer for 22.5% of the right shoulder and 2% of the right shoulder.

Dr. Baker's records indicate that employee had back pain in 2002 after her grandchild elbowed employee in her back. Employee had x-rays of her lumbar spine taken at St. Anthony's Medical center which were negative, showing mild scoliosis. In December of 2003, employee was seen by Dr. Baker for complaints of back pain, stomach pain and diarrhea.

Employee was diagnosed by Dr. Baker with a neck strain on May 13, 2004, and was taken off of work from May 13, 2004, until May 26, 2004. Employee testified that she returned to work on May 27, 2004, to work her evening shift. Employee testified that the usual fork lift driver was not working and the alternate driver placed boxes in front of her work station which obstructed access to her computer. Employee moved the boxes so she could have access to her computer. Employee testified that she used a "wobble pull" motion to move the boxes and felt pain in her back. Employee testified that she felt as if someone had pinched her in the small of her back and twisted on it. Employee testified that the injury occurred at approximately 1:30 a.m. on May 28, 2004.

Employee's witness, Roy Zeier, testified that he was working on May 28, 2004, at the time of employee's injury. Mr. Zeier testified that employee was visible from his workstation. Mr. Zeier testified that he witnessed employee pushing one of the boxes when he heard employee scream and wince in pain. Mr. Zeier testified that employee paged her supervisor, but the supervisor never responded while Mr. Zeier was at work. Mr. Zeier testified that he later spoke with employee about her injury. Mr. Zeier testified that employee told him that she had been moving boxes and experienced shooting pain in her back.

Employee testified that she paged her supervisor on May 28, 2004, before her shift ended to report her injury. Employee finished her shift and drove home. Employee testified that when she arrived home that her back was sore but not as bad as the next morning because she had gotten off work and everything was still loose and limber. Employee put ice on her back and took ibuprofen when she got home. Employee testified that her back was worse when she woke up in the morning and that she felt sharp pains in her back when she attempted to move.

On May 28, 2004, employee drove to work and reported straight to the plant medical department. Employee was provided ice, medicine, and a brief massage before she reported to work. Employee was off the next three days because of Memorial Day holiday. Employee testified that she did not do anything over the holiday weekend except for try to take care of her back. Employee next reported to work on June 1, 2004. Employee paged her supervisor and told him she needed to go to the hospital. Employee went to the emergency room at St. Anthony's Hospital and reported that she had experienced persistent back pain since injuring her lower back at work five days earlier. Employee was diagnosed with a back strain and was taken off work for five days. Employee came to work on June 7, 2004, but testified that she was unable to complete her shift due to pain. Employee was seen by plant medical with a complaint of severe back pain.

On June 8, 2004, employee sought treatment from her primary care physician, Dr. Carl Baker, and was referred to Dr. Thomas Lee. Employee was seen by Dr. Lee on June 11, 2004. Employee underwent an MRI of the lumbar spine on June 16, 2004. The MRI showed a moderate to severe degree of stenosis at L4-5, created by facet arthropathy, prominent ligamentum flavum and diffuse disc bulge at L4-5; diffuse disc bulge at L5-S1 without herniation or root impingement; and diffuse facet arthropathy. Dr. Lee referred employee to pain management for epidural pain injections, physical therapy and pain medication. Employee

was seen by Dr. Lee on July 14, 2004; Dr. Lee noted employee had persisting symptoms related to a central L4-5 herniation, including back pain that radiated to her knee. Employee underwent a myelogram on September 29, 2004, showing a L5-S1 central disc protrusion resulting in compression and probable impingement of the S1 nerve roots bilaterally; and annular disc bulges at L3-4, L4-5, and to a lesser extent at L2-3. Dr. Lee opined that the disc herniation was the cause of employee's symptoms. On September 29, 2004, Dr. Lee recommended laminectomy and discectomy at L4-5 and possibly L5-S1.

Employee was in a motor vehicle accident on October 14, 2004, and was seen at the emergency room at St. Anthony's hospital and by Dr. Baker. Employee reported bumping the left side of her head and pain in her shoulder, neck and knee.

Employee underwent a laminectomy at L4-5 and L5-S1 on October 21, 2004. Dr. Lee opined that employee had a likely recurrent disc herniation at L5-S1 on April 13, 2005. Dr. Lee noted that employee experienced back pain and pain radiating into her left lower extremity. On May 19, 2005, Dr. Lee performed a second surgery on employee including a laminectomy at L4-5, posterior spinal fusion at L4-5 and L5-S1, and placement of bone growth stimulator. On June 5, 2006, Dr. Lee discussed with employee reassessing the fusion at the adjacent levels, and employee only wanted treatment with respect to removal of the bone growth stimulator. Dr. Lee noted that employee did not want to consider any additional diagnostic work-up for reconstruction attempts, which he stated was reasonable given the results thus far. On June 22, 2006, Dr. Lee performed a third surgery to remove the bone growth stimulator implanted during employee's previous surgery. On September 8, 2006, Dr. Lee noted that there were probably areas of incomplete union. On May 7, 2007, Dr. Lee stated that employee had back pain with probable non-united L4-S1 fusion.

Employee testified that she is limited in her daily activities and is unable to clean her house. Employee testified that she has no social life and is barely able to function. Employee testified that she suffers pain and numbness in her lower extremities. Employee testified that she has difficulty sleeping and pain forces her to reposition herself throughout the night. Employee testified that she needs to change positions after 10-15 of sitting. Employee testified that there is no way that she could sit uninterrupted without being able to change positions, stand up or lay down. Employee testified that her pain medication is not always effective and that the medication makes her forgetful and foggy. Employee testified that her condition was worse following her back surgeries. Employee testified that she is electing not to have additional back surgery.

Expert Opinions

Dr. Lee opined that employee's accident on May 28, 2004, was the substantial and prevailing factor in causing employee's lower back condition and need for treatment, including her three back surgeries. Dr. Lee sent employee for the June 16, 2004, open MRI and believed that the MRI results were consistent with a disc herniation or something that may be affecting the nerve root. Dr. Lee found the September 24, 2004, myelogram confirmed the suspected disc herniation on the June MRI. Dr. Lee opined that the myelogram showed that the herniation was displacing the nerve root which would cause the type of symptoms employee was experiencing. During the October 21, 2004, surgical procedure Dr. Lee removed the herniated disc at L5-S1.

Dr. Lee placed the following permanent restrictions on employee: no lifting more than 10-15 pounds; change positions from sit to stand frequently; and avoid bending. Dr. Lee noted that employee was taking pain medications and opined that she would continue to need pain medication in the future and that her dependency on such medication may affect her ability to tolerate work. Dr. Lee recommended rehabilitation efforts. Dr. Lee discussed with employee the option of having another surgical procedure to address the areas not fused. Dr. Lee testified that the stenosis, facet arthropathy, and calcification of the L5-S1 disc pre-existed the May 2004 injury. Dr. Lee testified that employee did not have significant complaints regarding her back prior to May 2004.

Dr. Ronald Hoffmann performed an independent medical examination (IME) on employee on November 28, 2005, at the request of employee's counsel. Dr. Hoffmann rated employee as having a 20% permanent partial disability of the right shoulder; 15% permanent partial disability of the left hand; and 15% permanent partial disability of the body as a whole due to osteoporosis.

Dr. Hoffman noted that employee discussed with Dr. Lee the possibility of removing the implanted battery pack from employee's back as well as performing another surgery to explore the fusion. Dr. Hoffman stated that employee has had two failed back surgeries and at this point is still disabled. Dr. Hoffman opined that employee may or may not need additional surgery. Dr. Hoffman noted that employee was very concerned about having additional surgery given the poor results from the previous two surgeries.

Dr. Hoffman noted that employee reported that she suffered chronic pain and had been referred to pain management. Dr. Hoffman noted that employee was taking pain medications which would cause cognitive problems and would affect her employability. Employee reported difficulty sitting, standing, walking, riding in a car and sleeping at the time of her evaluation and examination.

Dr. Hoffmann opined that employee was 100% disabled due to her problems, mainly secondarily due to her failed back surgeries. Dr. Hoffman later testified that employee was 100% disabled as a result of the injuries sustained to her lower back while moving parts cartons on May 28, 2004. Dr. Hoffman opined that employee's May 28, 2004 injury was the substantial and prevailing factor in causing employee's lower back injury and need for three surgeries. Dr. Hoffman testified that it was unlikely that her percentage of disability would change. Dr. Hoffman stated that employee would need additional treatment in the form of physical therapy, medications, and possibly additional back surgery.

At the request of employer, Dr. Coyle performed an IME on employee. Dr. Coyle opined that the June 16, 2004, MRI did not show evidence of a disc herniation; however did show evidence of stenosis at L4-L5 and degenerative disc disease at L5-S1. Dr. Coyle testified that he thought the herniation at L5-S1 was present on the myelogram performed in September 2004. Dr. Coyle testified that it was his impression that employee underwent surgery for lumbar stenosis at L4-5 which was not a work-related condition, and for a disc herniation which Dr. Lee found at the time of surgery. Dr. Coyle opined that there was no connection between employee's work duties and her spinal stenosis and degenerative disc disease. Dr. Coyle testified that her pre-existing condition could have possibly been asymptomatic at the time of her primary injury. Dr. Coyle testified that because the disc herniation found by Dr. Lee during surgery was not present on the MRI, he did not see any connection between employee's May 28, 2004 injury, subsequent surgery and disability.

Dr. Coyle believed the evidence showed employee suffered a lumbar strain on May 28, 2004. Dr. Coyle opined that the May 28, 2004 injury was not a substantial factor in causing the need for surgeries performed by Dr. Lee. Dr. Coyle found employee to be capable of working within restrictions at a light or sedentary capacity with intermittent sitting, standing and walking.

Dr. John Wagner performed a medical records review for employer to formulate an opinion regarding employee's condition. Dr. Wagner opined employee sustained a back strain injury as a result of the May 28, 2004 incident. Dr. Wagner stated that he agreed with the radiologist that there was no evidence of a herniation on the June MRI; however there was evidence of moderate to severe stenosis at L4-5 and degenerative disc disease at L5-S1, L4-5 and L3-4. Dr. Wagner stated that the September 24, 2004, CT scan showed central disc protrusion with calcification which indicated that the disc protrusion was extremely old. Dr. Wagner opined that the stenosis and degenerative disc disease pre-existed her May 28, 2004 injury. Dr. Wagner believed the pre-existing stenosis and degenerative disc disease is what caused the need for surgery. Dr. Wagner stated that the back strain injury on May 28, 2004 could have made her condition symptomatic. Dr. Wagner testified that employee was not receiving treatment for back pain prior to her primary injury and was not under any work restrictions at that time.

Dr. Kenneth Ball did not believe that employee was able to perform her past work for employer considering the extreme limits on employee's activities resulting from the back injury sustained in May 2004, including the physical limitations and the impact on employee's alertness due to medication and emotional stability. Dr. Ball opined that employee was unemployable in the general labor market based upon all of her physical and emotional limitations. Dr. Ball's opinion was further reinforced by employee's advanced age, limited skills, and inability to drive beyond short distances. Dr. Ball stated that it was clear that the vocational limitations imposed upon employee occurred immediately following a back injury sustained while working for employer in May 2004; and, therefore, her unemployability is directly related to that event. Dr. Ball testified that employee's last injury, three subsequent back surgeries and resultant depression, when taken together, render employee unemployable in the open labor market.

Mr. James England, vocational expert, reviewed medical records to evaluate employee's employability in the open labor market. Mr. England opined that employee was not able to perform her past work for employer. Mr. England stated that it appeared that employee did not have any transferable skills from her past work.

Mr. England testified that based upon the restrictions placed on employee by Dr. Coyle and Dr. Lee, that employee would be limited to entry-level service type employment in the sedentary to light range. Mr. England also felt that with additional vocational training and skill development that employee could perform an even wider range of activity.

Findings of Fact and Conclusions of Law

Upon careful review of the entire record, including the testimony, as well as the medical records offered and admitted into evidence, the Commission determines and concludes that employee has met her burden, showing that she sustained an accident that arose out of and in the course of her employment and is permanently and totally disabled as a result of the work-related injury alone.

Accident

The Commission reviews the record, and, where appropriate, it will also determine the credibility of witnesses and the weight of their testimony, resolve any conflicts in the evidence, and reach its own conclusions on factual issues independent of an administrative law judge. *Pavia v. Smitty's Supermarket*, 118 S.W.3d 228 (Mo.App. S.D. 2003).

The ultimate determination of credibility of witnesses rests with the Commission. The Commission should take into consideration the credibility determinations made by an administrative law judge. However, the Commission is not bound to yield to an administrative law judge's findings, including those relating to credibility, and the Commission is authorized to reach its own conclusions. The law only requires the Commission to take into consideration the credibility determinations of an administrative law judge and not give those determinations deference. *Kent v. Goodyear Tire and Rubber Co.*, 147 S.W.3d 865 (Mo.App. W.D. 2004).

A decision made by an administrative law judge in a workers' compensation proceeding does not in any way bind the Commission and in fact, the Commission is free to disregard an administrative law judge's findings of fact. *Bell v. General Motors Assembly Div.*, 742 S.W.2d 225 (Mo.App. E.D. 1987).

The administrative law judge found employee to be an extremely incredible witness. We disagree. We find employee's testimony regarding the issue of accident to be credible and worthy of belief. There is no evidence contradicting employee's assertion of the accident and injury sustained on May 28, 2004. The medical record supports employee's assertion of the accident, that she incurred an injury to her lower back while pushing cartons at work. The testimony of Mr. Zeier corroborates employee's description of the

accident. Employee timely reported her injury, reporting to the plant medical department when she arrived at work on May 28, 2004. Employee sought medical treatment immediately and consistently reported the factual scenario of the accident and injury.

In the instant case, the employee credibly described the occurrence of the accident and injury sustained. There was no evidence in the record to impeach or contradict employee's testimony with respect to the accident sustained on May 28, 2004; and accordingly the Commission finds her description of the accident and injury sustained to be credible and worthy of belief.

Medical Causation

Employee bears the burden of proving all material elements of her claim. *Pavia*, 118 S.W.3d at 241. "The testimony of . . . lay witnesses as to facts within the realm of lay understanding can constitute substantial evidence of the nature, cause, and extent of the disability, especially when taken in connection with, or where supported by, some medical evidence." *Id* at 234.

Medical causation not within common knowledge or experience must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221 (Mo.App. W.D. 1992), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003).

The Commission is free to accept or reject medical evidence, and may choose to accept one of two conflicting medical opinions. *Pavia*, 118 S.W.3d at 233-234.

Dr. Lee, employee's treating surgeon, offered an opinion as to causation. Dr. Lee opined that employee's injury on May 28, 2004, was the substantial and prevailing factor in causing employee's lower back condition and subsequent need for medical treatment, including three back surgeries. Dr. Lee treated employee conservatively initially without improvement. Dr. Lee reviewed the MRI taken on June 16, 2004 and believed that its results were consistent with the CT myelogram taken in September 2004 which showed employee had a disc herniation at L5-S1. Dr. Lee believed that the disc herniation suspected from the MRI was much clearer on the myelogram. Dr. Lee opined that that disc herniation displacing the nerve root would cause the type of symptoms reported by employee. At that point, Dr. Lee recommended surgery which employee underwent on October 21, 2004. Dr. Lee's assessment was confirmed by the disc herniation present and removed at the time of surgery.

In addition, Dr. Hoffman testified that employee's May 28, 2004, injury was the substantial and prevailing factor in causing employee's lower back injury and need for three surgeries. Dr. Ball concurred, stating that it was clear that the vocational limitations imposed upon employee occurred immediately following a back injury sustained while working for employer in May 2004; therefore her unemployability is directly related to that event.

The opinions provided by Dr. Lee and Dr. Hoffman causally connect employee's back condition to her injury on May 28, 2004. We find the opinion of employee's treating doctor, Dr. Lee, and that of Dr. Hoffman, to be more credible than the opinions of Dr. Wagner and Dr. Coyle.

Dr. Wagner and Dr. Coyle opined that the MRI did not show evidence of a disc herniation; however their opinions were contradicted by employee's treating surgeon, who had the opportunity to examine and provide treatment for employee from the time of her initial May 2004, injury. Based on the medical evidence, including the MRI and CT scan and symptoms manifested by employee, Dr. Lee believed employee suffered a herniated disc as a result of her May 28, 2004, injury and needed to undergo surgery. The herniation was discovered at the time of surgery, confirming Dr. Lee's diagnosis and need for surgical treatment. As such,

we find Dr. Lee's opinion credible and worthy of belief.

Dr. Wagner conceded that employee did not have chronic back complaints prior to May 2004 and was not working under restrictions. Furthermore, Dr. Coyle stated that employee's pre-existing condition was possibly asymptomatic at the time of her primary injury in May 2004. Dr. Wagner opined that employee's pre-existing stenosis and degenerative disc disease is what caused the need for employee to undergo back surgery. Dr. Wagner stated that the back strain injury on May 28, 2004, could have made her condition symptomatic.

A preexisting but non-disabling condition does not bar recovery of compensation if a job-related injury causes the condition to escalate to the level of disability. *Miller v. Wefelmeyer*, 890 S.W.2d 372, 376 (Mo.App. E.D. 1994), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). Therefore, if this Commission found employee to have sustained only a back strain injury on May 28, 2004, and such injury caused her asymptomatic condition to become disabling then employee would still be entitled to benefits.

Based upon the testimony provided by employee, along with the opinion provided by her medical experts, Dr. Lee and Dr. Hoffman, we conclude that the accident of May 28, 2004, was a substantial factor in causing employee's back condition and need for surgical treatment.

Temporary Total Disability

An employee is entitled to temporary total disability benefits to cover healing periods to be paid until the time when the employee can return to work, his condition stabilizes, or his condition has reached a point of maximum medical progress. *Schuster v. Division of Employment Security*, 972 S.W.2d 377, 381 (Mo.App. E.D. 1998). Thus, temporary total disability benefits are not intended to encompass disability after the condition has reached the point where further progress is not expected. *Cardwell v. Treasurer of Mo.*, 249 S.W.3d 902, 909 (Mo.App. E.D. 2008).

We find that as of June 5, 2006, employee's condition was not likely to improve as employee opted not to go forward with any additional surgery (except for the removal of the battery pack). Employee was not happy with the results of her previous surgeries and chose not to undergo any additional surgery to address the failed fusion. As such, employee reached maximum medical improvement on June 5, 2006, and her temporary total disability ended on that date. Dr. Lee opined that it was reasonable for employee to choose not to go forward with additional surgery given the results of the previous two back surgeries.

Employee is entitled to receive temporary total disability benefits from June 2, 2004, through June 5, 2006 (the date she reached maximum medical improvement). This period encompasses 104 and 3/7 weeks. Accordingly, employee is entitled to receive a total of \$69,189.15 in temporary total disability benefits.

Permanent Total Disability

The employee must prove the nature and extent of any disability by a reasonable degree of certainty. *Moriarty v. Treasurer of Mo.*, 141 S.W.3d 69, 73 (Mo.App E.D. 2004). The proof of disability must be based on competent and substantial evidence and not merely on speculation. *Id.*

Permanent and total disability is defined by section 287.020.7 RSMo (2000) as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident.

The test for permanent total disability is whether, given the employee's situation and condition he or she is competent to compete in the open labor market. The pivotal question is whether any employer would reasonably be expected to employ the employee in that person's present condition, reasonably expecting the employee to perform the work for which he or she is hired.

Gordon v. Tri-State Motor Transit Company, 908 S.W.2d 849, 853 (Mo.App. S.D. 1995) (citations omitted).

Employee has sustained her burden of proof, establishing liability against employer, as the evidence supports a finding that employee is permanently and totally disabled as a result of the May 28, 2004, work-related injury alone.

Dr. Hoffman evaluated and examined employee and came to the determination that employee was 100% disabled. Dr. Hoffman stated that employee was disabled due to all of employee's problems, but went on to state that her disability rating of 100% (permanent total disability) was mainly due to employee's failed back surgeries. Dr. Hoffman opined that employee's back surgeries were due to her injury on May 28, 2004; thereby connecting her total disability to her work injury. Furthermore, Dr. Hoffman testified that employee was 100% disabled as a result of the injuries sustained to her lower back while moving parts cartons on May 28, 2004.

Dr. Hoffman provided ratings regarding employee's pre-existing conditions and deemed them to be obstacles to her employment; however, because he attributed the disability to the last injury alone, there is no need to consider employee's pre-existing conditions.

Employee ultimately underwent three back surgeries as a result of her May 28, 2004, injury. Employee continues to experience symptoms following her back surgeries, including chronic back pain and numbness in her lower extremities. Employee's daily activities are severely restricted by her chronic pain and side effects from pain medication.

The record demonstrates that employee was not suffering from chronic pain prior to her May 2004, injury. Employee was also capable of performing her work without restrictions up and until May 28, 2004. It was only after her work-related injury that employee was no longer able to perform her work.

Dr. Ball, vocational expert, provided an opinion as to employee's employability. His opinion was consistent with the opinion offered by Dr. Hoffman. Dr. Ball found that employee was unemployable in the general labor market based upon all of employee's physical and emotional limitations. Dr. Ball testified that employee was unable to sustain work due to her back condition, surgeries and resultant depression. Dr. Ball provided competent testimony that employee's condition rendered her unemployable in the general labor market.

Employee's physical limitations along with her use of pain medication would prevent a reasonable employer from hiring employee. Employee's physical limitations which render employee unemployable are directly attributable to employee's work-related injury on May 28, 2004. These limitations, standing alone, are enough to prevent employee from being able to compete for work in the open labor market.

After considering the entire record, including the expert opinions of Dr. Hoffman and Dr. Ball, we conclude that employee is permanently and totally disabled due to her May 28, 2004, injury alone. Accordingly, employee is entitled to permanent total disability from employer/insurer. The Second Injury Fund has no liability for this injury because we found that employee was permanently and totally disabled by the last injury alone.

Past Medical Expenses

A sufficient factual basis to award past medical expenses exists when employee identifies all of the medical bills as being related to and the product of his work related injury and the medical bills are shown to relate to the professional services rendered by medical records in evidence. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. banc 1989).

Employee failed to satisfy her burden of proof regarding an award of past medical expenses for treatment received for her May 28, 2004, injury. Medical bills were offered into evidence pertaining to such treatment; however there was no testimony relating the medical bills to employee's work-related injury. Employee did not provide any testimony with respect to the medical bills. Therefore, employee has not demonstrated that medical bills were medically causally related to an effort to cure and relieve the employee from the effects of the work-related injury as required by section 287.140 RSMo. We find that the medical record does not support a causal relationship between the work injury and medical bills for treatment. Accordingly, an award of past medical expenses is denied.

Future Medical Care and Treatment

Section 287.140.1 RSMo. 2000, provides:

[T]he 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.

The need for future medical care need not be established as a certainty, but it must be established as being reasonably probable through competent, medical testimony. *Bowers v. Highland Dairy Company*, 132 S.W.3d 260, 270 (Mo.App. S.D. 2004).

Employee was referred to pain management services by Dr. Lee and continues to undergo treatment for pain management including medications. Dr. Lee opined that employee would need pain medication to treat her condition on an ongoing basis. Dr. Lee also opined that employee may benefit from another back surgery, re-evaluating employee's fusion. Dr. Hoffman concurred stating that employee would need additional medical treatment including physical therapy and pain medications, and possibly additional back surgery.

The Commission concludes that the competent and substantial evidence supports a finding that employee is entitled to receive future medical care and treatment reasonably required to cure and relieve her from the effects of her May 28, 2004, injury and this benefit is awarded.

Conclusion

Based on the foregoing, the Commission concludes and determines employee sustained an injury by accident arising out of and in the course of her employment. The Commission concludes that the competent and substantial evidence supports a finding that employee is permanently and totally disabled from her May 28, 2004 injury alone. Employer is liable to employee for permanent total disability benefits beginning June 6, 2006, in the weekly amount of \$662.55 for the remainder of her lifetime, or until as modified by law.

We find employer/insurer is not liable to employee for past medical expenses.

We award future medical care and treatment reasonably required to cure and relieve employee from the residuals and effects of her injury on May 28, 2004, pursuant to the provisions of section 287.140 RSMo.

The award and decision of Administrative Law Mathew D. Vacca, issued
attached solely for reference.

August 13, 2008, is

Donald S. Singer, Attorney at Law, is allowed a fee of 25% of the compensation awarded herein for
reasonable and necessary legal services, which shall constitute a lien on compensation.

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

Given at Jefferson City, State of Missouri, this 16th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Kathy Sandlin

Injury No.: 04-050587

Dependents: N/A

Before the
Division of Workers'
Compensation

Employer: Daimler Chrysler

Department of Labor and Industrial
Second Injury Fund Relations of Missouri
Jefferson City, Missouri

Additional Party:

Insurer: Self Insured c/o Sedgwick CMS

Hearing Date:

May 20, 2008 Checked by: MDV/cw

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No

20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable: 0

22. Second Injury Fund liability: No

Total: \$0

23. Future requirements awarded: None

Said payments to begin 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 of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kathy Sandlin

Injury No.: 04-050587

Dependents: N/A

Before the
Division of Workers'
Compensation
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Employer: Daimler Chrysler

Additional Party: Second Injury Fund

Insurer: Self Insured c/o Sedgwick CMS

Checked by: MDV/cw

ISSUES PRESENTED

The issues presented for resolution by way of this hearing were accident, medical causation, nature and extent of any permanent disabilities against the employer and the Second Injury Fund, TTD benefits, future medical care and Claimant requests \$3,380.54 in past medical expenses.

SYNOPSIS

The parties offered an enormous amount of evidence centering on Claimant's current medical condition. The problem is that the threshold issue of accident was virtually ignored. I find Claimant failed to prove that she sustained an accident which arose out of and in the course of her employment with Daimler Chrysler, or that any such incident

caused any need for medical treatment or disability or benefits.

FACTS

- Claimant was born March 25, 1960. Claimant was 44 years old at the time of the alleged accident and 48 years old at the time of the hearing.
 - Claimant was hired by Daimler Chrysler in May of 1995. Prior to that Claimant worked as a banquet waitress, a roofer, candy factory worker and K-Mart clerk. Claimant has obtained her GED. Claimant is a morbidly obese smoker.
 - Two weeks prior to the alleged injury, Claimant saw her private physician Dr. Baker for complaints of pain in her neck and upper back. Claimant had spasms in the right shoulder. Claimant was diagnosed with a cervical strain and given Naproxen, Flexeril and Vicodin and was taken off work for two weeks.
 - After this two week hiatus, Claimant returned to work at Chrysler on Wednesday, May 26, 2004 and worked one full shift. The second shift, Thursday to Friday, May 28, 2004 Claimant alleges she was injured around 1:30 a.m. Claimant's normal work hours are 5 p.m. until 3 a.m.
 - That work day, Claimant was on a "pick and pack job." This involves taking "scuff plates," or the little plastic molding that covers the carpet on the door jamb, and place it on the vehicle. The scuff plates are centralized in a 4 foot plastic carton cube that was put near Claimant's work site by a fork lift driver.
 - Claimant alleges that the fork lift driver that was placing the plastic cartons near her work station on this particular day wasn't familiar with his job and was "running around like a chicken with its head cut off half the night." The cartons were not laid out in a straight line to Claimant's satisfaction. They were zigzag and this purportedly made Claimant's job difficult.
 - Claimant alleges that she had to move cartons all night to straighten them out so as to walk in between them to get to her parts and to her computer for her track sheets.
 - Claimant testified that she hurt her back when she moved one of the cartons. When full, the carton contained 81 plastic scuff plates.
 - Claimant also testified that she hurt her back when she pulled one carton and pushed another. Claimant never really described the incident but she said that it felt like someone had come up and pinched her in the small of her back and twisted.
 - Claimant testified that a co-worker Roy was working with Claimant on the night in question. Roy Zeier testified that when he talked to Claimant on the night of the accident he had heard her scream and he asked her what happened. Mr. Zeier testified Claimant told him that she had a shooting pain in her back from pushing boxes.
 - This evidence is contradicted by the Claimant's direct testimony in her deposition and her testimony at trial.
 - In the Claimant's deposition she testified she did not say anything to Roy Zeier on the night of the accident. Roy Zeier testified that in addition to screaming, Claimant told him that she had shooting pain in her back from pushing boxes.
 - Again this is contradicted by Claimant's testimony. She testified she had no shooting pain.
 - Claimant continued to work the rest of her shift. Her back was still "loose and limber" when she arrived home at 5am after driving for over an hour. But then she directly contradicts her own testimony by describing her ability to walk as if she "had a corn cob stuck up her butt." This is also contradicted by dispensary records stating she applied ice when she got home.
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- Claimant reported the incident the next day to the plant dispensary. The plant dispensary gave her ice and some supplies for later use. She testified she hid the rest of the shift.
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- The next three days comprised the Memorial Holiday weekend Saturday, Sunday, and Monday and although Claimant said she was in pain all weekend she did not treat on Saturday, Sunday, or Monday. Claimant drove 1 hour and 10 minutes to Chrysler on Tuesday and then drove herself to St. Anthony's emergency room, bypassing the plant medical dispensary. At St. Anthony's Claimant specifically denied any radiating pain in the

- lower extremities and was given Robaxin and Vicodin for a back strain.
- On June 7, 2004, Claimant reported to plant medical. She was standing all contorted, leaning on the door handle and moaning in pain. This type of drama was repeated during the hearing and appeared to me fabricated.
 - Physical examination in the dispensary revealed no radiation in her lower extremities. Claimant was given some non steroidal anti-inflammatory drugs. She never returned to plant medical until approximately four months later.
 - The credible physicians, Drs. Coyle and Wagner determined from the diagnostic evidence that Claimant's medical condition on May 28, 2004 was spinal stenosis and degenerative spinal disease.
 - On the night in question, Claimant described an innocuous back pinching sensation at the dermal layer. There was no radiation, no immediate treatment, no accident.
 - It is not credible for a skin "pinch" to set into motion the voluminous and extensive medical treatment Claimant attributes to the night of May 28, 2004.
 - The evidence of accident is very sparse. Most of the evidence in this case centers on Claimant's degenerative spinal condition, which is not really in dispute.
 - Claimant did not present credible evidence on the threshold accident issue.
 - Claimant was not credible. Claimant was one of the most over-dramatic Employees I have ever seen testify. If any human was actually in as much pain as she portrayed during the hearing, they would pass out or demand to be conveyed to the emergency room.
 - Her testimony rang false. Her demeanor was not believable. The testimony was replete with caveats and qualifications. Her descriptions were overly dramatic. I did not believe her factual assertions.

RULINGS OF LAW

- Claimant has failed to establish by any credible evidence or testimony that she sustained an accident while working at Chrysler whereby she injured her back while by pushing scuff plate cartons.
- Claimant is an extremely not credible witness. Her entire testimony on the issue of accident struck me as fabricated. Her own fact witness contradicted her. The claim is denied. The Second Injury Fund is dismissed.

Date: _____

Made by: _____

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

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation