

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

Injury No.: 07-028446

Employee: Kathleen Sikes
Employer: Shepherd Care, Inc.
Insurer: American Home Assurance
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 § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 3, 2012. The award and decision of Administrative Law Judge Margaret D. Landolt, issued July 3, 2012, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this 16th day of January 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Kathleen Sikes

Injury No.: 07-028446

Dependents: N/A

Employer: Shepherd Care

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

Additional Party: Second Injury Fund

Insurer: American Home Assurance

Hearing Date: April 3, 2012

Checked by: MDL

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: April 3, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis 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 occurred or occupational disease contracted:
Employee was taking out trash when she slipped and fell
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Body as a whole – lumbar spine, right wrist, and right ankle
14. Nature and extent of any permanent disability: 30% PPD of the body as a whole – lumbar spine, 5% PPD of the right wrist, and 5% PPD of the right ankle for which Employer is liable, and PTD benefits for which SIF is liable
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$5,075.49

Employee: Kathleen Sikes

Injury No.: 07-028446

- 17. Value necessary medical aid not furnished by employer/insurer? \$199,786.95
- 18. Employee's average weekly wages: \$329.70
- 19. Weekly compensation rate: \$219.60/\$219.60
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$199,786.95
121 -6/7 weeks of temporary total disability	\$26,759.83
136.75 weeks of permanent partial disability from Employer	<u>\$30,030.30</u>
	\$256,577.08

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential (0) payable by SIF for 136.75 weeks beginning September 16, 2009
and, thereafter \$219.60 , for Claimant's lifetime TO BE DETERMINED

TOTAL: TO BE DETERMINED

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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Dean Christianson

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kathleen Sikes

Injury No.: 07-028446

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Shepherd Care, Inc.

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

Additional Party: Second Injury Fund

Insurer: American Home Assurance

Checked by: MDL

PRELIMINARIES

A hearing was held on April 3, 2012 at the Division of Workers' Compensation in the city of St. Louis, Missouri. Kathleen Sikes ("Claimant") was represented by Mr. Dean Christianson. Shepherd Care, Inc. ("Employer") and its insurer American Home Assurance were represented by Mr. Peter Maher. The Second Injury Fund ("SIF") was represented by Assistant Attorney General Carol Barnard. Mr. Christianson requested a fee of 25% of Claimant's award.

The parties stipulated that on or about April 3, 2007 Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; the claim was timely filed; Claimant's average weekly wage was \$329.70 which resulted in rates of \$219.60 for Permanent Total Disability ("PTD") benefits and Permanent Partial Disability ("PPD") benefits; Employer paid medical benefits of \$5,075.49; and in the event Claimant is found to be permanently and totally disabled, PTD benefits should commence on September 16, 2009. The issues for determination by hearing are medical causation; liability of Employer for past medical care of \$235,547.15; liability of Employer for past Temporary Total Disability ("TTD") benefits for the period from May 13, 2007 until September 15, 2009; nature and extent of PPD sustained by Claimant; whether Claimant is permanently and totally disabled; and liability of the SIF.

SUMMARY OF EVIDENCE

Employee is a 52 year old female who completed high school in the St. Louis Special School District and obtained her Certified Nurse's Assistant (CNA) license in 1982. Claimant worked as a CNA for several years during the 1980's until she sustained a fracture of her L-3 vertebra as a result of a work-related incident in 1987. That incident resulted in a Workers' Compensation settlement of 12.5% BAW. Claimant sustained several other work-related injuries to her back while working as a CNA for which First Reports of Injury were filed with the Missouri Division of Workers' Compensation.

Since 1987 Claimant has had an on-going series of low back pains and complaints, some of which were severe, that involved multiple visits to her primary care physicians as well as to hospital emergency rooms. Claimant's medical history includes treatment for pre-existing low back problems for a period of nearly 20 years from 1987 up through a date shortly before the injury in this case.

Following her work as a CNA, Claimant worked in a variety of part-time factory positions as well as in several part-time clerk positions for Walmart and Walgreen's stores. During this period Claimant worked in a factory where she assembled writing pens; during that employment Claimant claimed a repetitive twisting injury to her right hand and wrist for which she filed a worker's compensation claim.

In January 1995 Claimant applied to the Social Security Administration for disability income (SSDI). Claimant sought benefits based on a combination of mental health and physical problems. After the review process was completed, which included Claimant being diagnosed with major depression, Claimant was awarded SSDI benefits as of July 1995. Said benefits were provided to Claimant retroactive to January 1994 and she has been receiving monthly SSDI benefits since that time. Claimant's eligibility to continue receiving benefits precludes her from any full-time employment. Continuing eligibility for SSDI requires that Claimant earn no more than a small amount of income per month from employment sources. Claimant has not sought full-time employment since becoming eligible for SSDI. She has limited her hours worked, accepting only part-time employment to keep her earnings below the SSDI limits.

Due to her worsening problems with depression in March 2000 Claimant was referred by her primary care physician to St. John's Mercy Medical Center where she was admitted into a two-week psychiatric Intensive Out-Patient program (IOP). During this period Claimant was again diagnosed with and treated for symptoms of major depression.

Claimant began working as a part-time employee for Employer in July 2005 and continued until May 12, 2007, approximately one month after the date of injury in this case. Claimant has not worked since that time.

At the time of her injury, Claimant was working for Employer as an on-site, part-time caregiver and assisted the patients with their daily personal care needs. Her duties included assisting patients with their feeding, clothing and hygiene needs, performing light housekeeping duties such as doing the laundry and going grocery shopping, as well as transporting client-patients to medical appointments.

On April 3, 2007 Claimant was working with an elderly couple at a location in Ballwin, Missouri. Claimant was in the process of pulling the patients' trash barrel to the curb. While moving the barrel Claimant lost her balance and fell backward landing on her right wrist and tailbone and also twisting her right ankle. After remaining on the ground for several minutes Claimant was eventually able to get back up on her feet and return to the house where she called Employer to report the fall. Claimant was instructed to drive herself to a Unity Corporate Health facility where she was examined on that same day. Claimant underwent approved treatment at said location on several more occasions through May 11, 2007; contemporaneously Claimant

pursued additional and unauthorized medical care on several occasions at the Emergency Room of St. John's Mercy Medical Center claiming extreme pain.

Unity Corporate Health referred Claimant for additional approved care with Dr. Daniel Sohn on May 23, 2007. Dr. Sohn terminated Claimant's care when she behaved in a threatening manner toward the doctor's staff. Claimant was then referred by Employer to Dr. Tate for a medical evaluation which took place on June 11, 2007. Dr. Tate observed symptom magnification by Claimant and concluded that Claimant's symptoms were not related to the injury on April 3, 2007. Dr. Tate placed Claimant at MMI and released her from further approved medical care. On August 27, 2008, more than a year later, Dr. Tate re-evaluated Claimant. Dr. Tate noted Claimant's extreme pain symptoms, however no objective abnormalities were found. Dr. Tate observed and reported Waddell symptom magnification indicators, and therefore once again released Claimant from care and opined that Claimant had sustained no permanent partial disability as a result of her fall on April 3, 2007.

Meanwhile, in early June 2007 Claimant was referred by her primary care physician Dr. Gunby to a mental health care provider Liss & Associates. At that point Claimant was once again diagnosed with major depression and anxiety, conditions for which Claimant had been receiving treatment and prescribed medications for many years. Claimant was again referred to St. John's Mercy Medical Center for psychiatric treatment related to these conditions and was admitted to another two-week IOP.

Having been released from Employer-approved medical care per Dr. Tate's reports, Claimant continued to seek unauthorized care for continuing low back pain from several doctors and hospitals through the later part of 2007 and into 2008. Per a referral from Dr. Gunby, Claimant was seen by pain management specialist Dr. Rahimi who beginning in February 2008 performed a series of three lumbar epidural steroid injections. The injections were administered at the L4-5 level. Claimant's medical treatment records also indicate Claimant continued to attend monthly visits with Dr. Gunby where both her pain and depression/anxiety medication prescriptions were regularly renewed. Claimant's medical records indicate she also received treatment for conditions unrelated to her fall on April 3, 2007 including flu symptoms, gastric discomfort and jaw/mandibular pain.

Eventually in September 2008 Claimant switched her primary care from Dr. Gunby to Drs. O'Haver and Golding. Based on Claimant's low back symptoms Dr. O'Haver referred Claimant to Dr. Albanna for a surgical evaluation; which was performed on October 21, 2008. After receiving Dr. Albanna's recommendation for surgery, Claimant sought a second opinion and was referred to Dr. Rutz who she saw on November 25, 2008. Dr. Rutz initially pursued injection therapy in lieu of lumbar surgery; however, when this approach failed to improve Claimant's symptoms Dr. Rutz recommended lumbar surgery.

Claimant consented to the surgery and on February 13, 2009 Dr. Rutz performed lumbar decompression and discectomy surgery at Claimant's L4-5 level. During her recovery where Claimant had noted improvement in the left leg radicular pain which she had been experiencing, Claimant stated that she felt a "pop" in her back which caused her left leg radicular symptoms to return. Based on a follow-up MRI which was done on March 31, 2009, Dr. Rutz determined that Claimant would need decompression revision surgery. On April 22, 2009 Dr. Rutz performed a

surgical fusion at the L4-5 level. Following her recovery without further complications, Dr. Rutz placed Claimant at MMI and released her from further medical care on September 15, 2009.

Claimant had reported cervical pain symptoms to several of her physicians and had undergone diagnostic testing on several occasions. At the time of her MMI release Claimant was referred by Drs. Rutz and Golding to Dr. Matz for a cervical evaluation; that evaluation took place on September 18, 2009. Dr. Matz indicated that Claimant was not a surgical candidate for her cervical symptoms.

Following her release from medical care Claimant has continued up to the present time seeing her primary care physicians on at least a monthly basis in order to have her pain and mental health medication prescriptions renewed. Since 2009 Claimant has received treatment for a host of unrelated medical conditions including bronchitis and sinusitis, asthma, stress and fatigue, bilateral shoulder pain, and abdominal pain.

In March 2010 at the recommendation of Dr. O'Haver, Claimant began receiving further psychiatric treatment for major depression at Psych Care Consultants (PCC). Per a report from Dr. Malik of PCC dated November 17, 2010 Claimant was diagnosed with bipolar disorder. Per an earlier PCC report Claimant was also noted to have been disabled as a result of mental health problems since 1994.

EXPERT OPINIONS AND EXPERT TESTIMONY

Dr. Lichtenfeld conducted an independent medical evaluation of Claimant on two separate occasions, April 28, 2008 and January 25, 2010. Dr. Lichtenfeld issued three reports dated June 3, 2008, April 8, 2010 and October 19, 2010. Dr. Lichtenfeld testified Claimant sustained PPD equal to 12.5% of the right wrist, 12.5% of the right ankle and 45% of the body as a whole (BAW) referable to the lumbar spine as a result of the work injury of April 3, 2007. Dr. Lichtenfeld found no PPD relative to Claimant's cervical spine attributable to either this injury or any pre-existing condition or injury. Dr. Lichtenfeld also found 7.5% PPD BAW which was a consequence of Claimant's pre-existing hiatal hernia and gastroesophageal reflux disease. Dr. Lichtenfeld testified it appeared Claimant was experiencing severe depression and at least some of this condition was definitely pre-existing, but he declined to offer any opinions regarding disability which might be attributable to Claimant's depression. Dr. Lichtenfeld stated though Claimant had complained of pain in her right wrist and right ankle since the date of injury she had never received any medical treatment for those body parts. Dr. Lichtenfeld testified he should have attributed 10% PPD BAW for Claimant's pre-existing low back problems. Finally, Dr. Lichtenfeld testified Claimant is permanently and totally disabled due to a combination of both current and pre-existing physical and mental health problems.

Dr. Wayne Stillings testified on behalf of Claimant on two occasions. Dr. Stillings testified Claimant's Axis I disabilities were: 5% PPD BAW, preexisting, which was attributable to her dysfunctional family upbringing; 20% PPD BAW, preexisting, attributable to a dysthymic disorder (chronic mood disorder); 5% PPD BAW, preexisting, which was attributable to her history of abusive partner relationships; 20% PPD BAW due to a mood disorder which the doctor attributed to Claimant's injury in this case; and 15% PPD BAW due to a pain disorder which the doctor attributed to Claimant's injury in this case. Dr. Stillings

testified Claimant's additional Axis II disabilities were: 2.5% PPD BAW, preexisting, due to a learning disability, primarily mathematics; and 2.5% PPD BAW, preexisting, due to a personality disorder with paranoid, depressive, passive aggressive and dependent personality traits. Dr. Stillings also testified per "Axis IV" Claimant had pre-existing emotional problems chronic mood and pain disorder which he attributed to Claimant's injury in this case. Per "Axis V", Dr. Stillings testified Claimant had a GAF score of 40-41 which indicated that she was experiencing serious symptoms and impairment in her ability to function. Finally, Dr. Stillings testified in his opinion from a psychiatric standpoint Claimant was permanently and totally disabled.

Dr. Stillings acknowledged that Claimant had a substantial history of psychological problems pre-dating the injury in this case. Included in those problems was a long history of a dysthymic order, a condition which the doctor agreed is a chronic mood disorder. Also on cross-examination Dr. Stillings acknowledged that he had not reviewed Claimant's records from the Social Security Administration dating back to 1995 when Claimant was found to be eligible for SSDI benefits in large part due to her major depression disorder. He also admitted that he had not reviewed Claimant's IOP records from the psychiatric care she had received in 2000 at St. John's Mercy Medical Center, again for major depression. The doctor admitted these records would be relevant to a psychiatric evaluation of Claimant. Dr. Stillings testified in his opinion Claimant did not have a bipolar disorder. He further stated that Claimant had limited self-insight, maladaptive personality traits, was paranoid and dependent, and behaved in a passive-aggressive manner. The doctor acknowledged that such behavior interferes with Claimant's ability to engage in work. The doctor agreed Claimant had lost or quit a variety of jobs prior to the injury in this case due to her pre-existing mental health disorders.

Dr. Stillings testified for a second time on December 19, 2011. At that time he reported that he had reevaluated Claimant and done some additional testing. He also testified since the time of his first testimony he had the opportunity to review Claimant's SSDI records from 1995 as well as the treatment records from Claimant's psychiatric IOP admission in March 2000. His opinions did not change.

Mr. Timothy Lalk, a vocational rehabilitation counselor, examined Claimant, prepared a report, and testified on behalf of Claimant. He opined though Claimant was a CNA, she possessed no job skills which he deemed to be transferrable. He also testified Claimant's IQ testing indicated she was mentally retarded. Based on his review of the evidence in the case and taking note of Claimant's multiple psychiatric disorders, he opined Claimant was not employable in the open labor market.

Mr. Lalk acknowledged Claimant had a long history of mood swings dating back to when she was 14 years old. He agreed Claimant had a long history of treatment for depression and anxiety symptoms. He noted that all of Claimant's work-related problems, problems which had led to her either being fired from or quitting multiple jobs, must have occurred prior to the injury in this case since Claimant had not worked since the injury on April 3, 2007. Mr. Lalk testified in his opinion Claimant's main problems with obtaining employment were related to her psychiatric symptoms and conditions.

Dr. Elizabeth Pribor conducted an independent psychiatric evaluation of Claimant, and testified on behalf of Employer. Claimant told Dr. Pribor she had a difficult childhood: she had

an alcoholic father; she had to attend schools in the St. Louis Special School District where in kindergarten she was diagnosed as mildly mentally retarded; she was picked on and bullied on multiple occasions as a child; and she underwent several major medical procedures and hospitalizations as a child. Dr. Pribor testified from Claimant's perspective she had been abused emotionally and physically in nearly all of her adult relationships. She had also been sexually abused both as a child and as an adult.

Dr. Pribor testified Claimant told her she didn't keep jobs for long but rather quit work or was terminated by her employers due to moodiness, anger, irritability or the inability to handle stressful situations on the job. Claimant admitted to long-term emotional problems, depression, mood lability, temper tantrums and temper outbursts, irritability, trouble with concentrating, and difficulty with coping with situations. Claimant also acknowledged she had experienced anxiety and panic attacks which had led her to seek emergency treatment on multiple occasions including cases where Claimant thought she was having a heart attack.

Dr. Pribor testified Claimant has the following conditions and disorders under Axis I: bipolar effective disorder; a manic depressive illness; an undifferentiated somatoform disorder; a history of substance abuse; a history of multiple traumas from having an alcoholic father; having several psychiatric hospitalizations; experiencing a simulated rape as an adolescent; having an abusive husband; and being raped by one of her boyfriends. Dr. Pribor diagnosed under Axis II: borderline intellectual functioning; a personality disorder that is consistent with histrionic reaction, dependent features, and a little bit of paranoia. She diagnosed under Axis III: multiple medical problems including a history of childhood medical problems and multiple work related injuries. Dr. Pribor testified with the exception of her substance abuse, all of Claimant's enumerated psychiatric conditions and disorders, and any disability associated therewith, pre-date the injury on April 3, 2007. Dr. Pribor concluded Claimant is permanently and totally disabled due to a combination of factors including her bipolar disorder, which includes her depressive symptoms and a mood disorder, in combination with her undifferentiated somatoform disorder, and her borderline cognitive functioning.

Dr. Lange, performed an IME and provided a corresponding report dated June 7, 2010. In his report Dr. Lange concluded that the fall on April 3, 2007 was in his opinion the cause for Claimant's L4-5 lumbar pathology for which she underwent two surgical procedures in early 2009. Dr. Lange assigned a PPD rating of 20% BAW to that injury and the corresponding care required for said injury. Dr. Lange noted Claimant's obvious psychiatric symptoms but expressed no opinions on them. Dr. Lange opined Claimant was at MMI, additional lumbar surgery was not indicated, and Claimant was not a candidate for cervical surgery.

FINDINGS OF FACT AND RULINGS OF LAW

MEDICAL CAUSATION

Employer's own doctor established medical causation with respect to Claimant's physical injuries resulting from the incident of April 3, 2007. Dr. Lange, Employer's expert, established Claimant's accident of April 3, 2007 was in his opinion the cause for Claimant's L4-5 lumbar pathology for which she underwent two surgical procedures in early 2009. I find there is no medical-causal relationship between Claimant's current psychiatric condition and the incident on

April 3, 2007. I find Employer's expert evidence on this point to be more credible and therefore adopt the opinions of Dr. Pribor.

The parties' respective experts agree Claimant had a very significant and lengthy history of psychiatric problems which pre-dated Claimant's accident. The earliest mental health care records for Claimant, which include the documents obtained from the Social Security Administration, reported that Claimant had been diagnosed with major depression as far back as 1995. (Exh. 3 at p.135). Also, per Claimant's March 2000 Intensive Out-Patient (IOP) treatment records from St. John's Mercy Medical Center (SJMMC) indicate Claimant was admitted for psychiatric care specifically with a diagnosis of depression at that time (Exh. GG at p. 7).

TEMPORARY TOTAL DISABILITY

Claimant is seeking TTD benefits beginning on May 13, 2007, the day after the last day Claimant worked, and extending through September 15, 2009, the day Claimant was placed at MMI by her surgeon Dr. Rutz. Claimant testified she was unable to work since the injury, other than a few hours in a failed attempt to continue working for Employer. The records of Unity Corporate Health show Claimant was placed on a light duty status as of the date of the accident. (Exhibit P). Dr. Sohn's records show he also placed her on light duty as of May 23, 2007, with a ten pound lifting restriction. (Exhibit FF). Dr. Lichtenfeld saw Claimant on April 28, 2008, and indicated she needed restrictions on her activities. (Exhibit A). Claimant saw numerous other physicians regarding her back complaints, and underwent two surgical procedures through the office of Dr. Rutz. Claimant obviously was not able to work after the surgeries, and she was eventually discharged by Dr. Rutz on September 15, 2009. The parties stipulated September 15, 2009 is the date of Claimant's maximum medical improvement.

There is no evidence Claimant was offered any light duty employment during the period of time when she was under medical restrictions. Employer is liable for TTD benefits from May 13, 2007 through September 15, 2009, a period of 121-6/7 weeks.

PERMANENT DISABILITY

Claimant is permanently and totally disabled. All of the medical, psychiatric and vocational evidence in this case is in agreement on this point. The test for determining whether a worker is permanently and totally disabled is whether that worker can compete for work in the open labor market. Houlthouser v. Central Carrier Corp., 936 SW2d. 908 (Mo.App. 1997). Determining whether an injured worker is, or is not, permanently and total disabled is an issue of fact rather than of law. Molder v. State Treasurer, 342 SW3d 406, (Mo.App. 2011). And finally, total disability is defined in the workers' compensation statute as an "...inability to return to any employment and not merely... the employment in which the employee was engaged at the time of the accident." R.S.Mo. 287.020.6.

I find Claimant sustained 30% PPD of the body as a whole referable to her low back, 5% PPD of her right wrist, and 5% PPD of her right ankle as a result of the injury in this case. Since none of Claimant's treating or evaluating physicians have causally related Claimant's alleged neck and cervical spine complaints to the injury in this case, Claimant is found to have no permanent partial disability relative to that portion of her spine as a result of the injury on April

3, 2007. I find Claimant sustained no compensable psychiatric disability as a result of the incident on April 3, 2007 based on the conclusions regarding medical causation.

Claimant's permanent total disability is a result of the combination of the primary work related injury and her preexisting physical and psychiatric disabilities which were a hindrance or obstacle to employment or re-employment. Because I find Claimant's permanent total disability resulted from the combination of her primary and preexisting injuries the SIF is liable for PTD benefits beginning on September 16, 2009.

PAST MEDICAL EXPENSES

Claimant submitted a two page Medical Bill Summary, which include bills for Claimant's psychiatric care, the total of which is \$12,540.00; and bills for medical care which is not related to Claimant's low back injury, the total of which \$23,220.20. The total of these two amounts is \$35,760.20. Employer is responsible for the difference between the total amount requested (\$235,547.15) and the disputed amount (\$35,760.20) or \$199,786.95.

FUTURE MEDICAL CARE

Employer is not liable for future medical treatment. Claimant completed her course of medical care, which included two surgical procedures, and was then placed at MMI by her treating surgeon Dr. Rutz on September 15, 2009. In his report Dr. Rutz determined Claimant had achieved a solid fusion at the L4-5 level and he released Claimant from his care without any qualifications, limitations or requirements for future care, including any more surgery, with respect to said fusion (Exh. N). In his evaluation report dated June 7, 2010 Dr. Lange also concluded Claimant is not a candidate for any more surgery. He further indicated Claimant's problems appeared to be more psychiatric than physical and therefore he offered no recommendations for any future treatment. (Exh. 2). Since Claimant's current psychiatric problems and conditions were not caused by the injury in this case but rather pre-dated the injuries in this case, Employer has no obligation to pay for any future care related to Claimant's mental health needs. Accordingly, based on the opinions of Claimant's treating physician Employer is not responsible for any of Claimant's future medical expenses of any kind.

CONCLUSION

Based on the above Findings of Fact and Rulings of Law, I find Employer is liable for TTD benefits, PPD benefits of 30% of the BAW referable to the low back plus 5% of the right wrist and 5% of the right ankle. Furthermore, I find Employer liable for past medical benefits of \$199,786.95. I find the SIF liable for PTD benefits.

This award is subject to an attorney's lien of 25% in favor of Claimant's attorney Mr. Dean Christianson.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation