

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

Injury No. 10-019420

Employee: Robin Smith

Employers: 1) Premium Transportation Staffing, Inc./Premium of North Carolina
2) Wil Trans Trucking Company

Insurer: 1) Travelers Indemnity Company of America
2) Uninsured

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)

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 November 3, 2015. The award and decision of Administrative Law Judge Victorine R. Mahon, issued November 3, 2015, 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 1st day of April 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Robin Smith Injury No. 10-019420

Dependents: N/A

Employer: 1) Premium Transportation Staffing Inc./
Premium of North Carolina;
2) Wil Trans Trucking Company

Additional Party: Treasurer of State of Missouri as
Custodian of Second Injury Fund (Dismissed)

Insurer: Travelers Indemnity Company of America

Hearing Date: September 3, 2015

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

Checked by: VRM

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: March 17, 2010.
5. State location where accident occurred or occupational disease was contracted: Denver, Colorado.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
Yes – as to Premium Transportation Staffing, Inc. and Premium of North Carolina.
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:
Claimant injured her left arm when pulling a pin on a commercial vehicle.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Left arm.

- 14. Nature and extent of any permanent disability: Permanent and total disability.
- 15. Compensation paid-to-date for temporary disability: \$44,793.01.
- 16. Value necessary medical aid paid to date by employer/insurer? \$28,390.88.
- 17. Value necessary medical aid not furnished by employer/insurer? \$1,325.48.
- 18. Employee's average weekly wages: \$1,166.19.
- 19. Weekly compensation rate: \$777.50 (TTD & PTD) / \$422.97 (PPD).
- 20. Method wages computation: By agreement.

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

For accrued permanent total disability from April 17, 2013 to September 3, 2015 (124 1/7 weeks), at the weekly benefit amount of \$777.50 =	\$96,521.07
Less the \$5,000 advance against permanent disability =	- 5,000.00
Past medical benefits =	+ 1,325.48
TOTAL:	<u>\$92,846.55</u>

- 22. Second Injury Fund liability: Not applicable.

- 23. Future requirements awarded:

Employer/Insurer shall pay permanent total disability benefits each week, beginning April 17, 2013, at the rate of \$777.50 per week, and continuing for the remainder of Claimant's lifetime. The amount of accrued benefits are set forth above, together with the credit due Employer/Insurer for its advance of benefits.

Employer/Insurer also shall pay Claimant future medical benefits to cure and relieve the effects of the work injury consistent with the opinion of Dr. Parmet.

This Award is subject to review and modification as provided by law. Interest shall be paid as provided by law.

The compensation awarded to Claimant shall be subject to a lien of 25 percent of all amounts (less the previous offer of \$1,480.40) in favor of the following attorney for necessary legal services provided to Claimant: Stacey Page.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Robin Smith	Injury No. 10-019420
Dependents:	N/A	
Employer:	1) Premium Transportation Staffing Inc./ Premium North Carolina; 2) Wil Trans Trucking Company	Before the DIVISION OF WORKERS' COMPENSATION Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Additional Party:	Treasurer of State of Missouri as Custodian of Second Injury Fund (Dismissed)	
Insurer:	Travelers Indemnity Company of America	
Hearing Date:	September 3, 2015	Checked by: VRM/db

INTRODUCTION

The undersigned Administrative Law Judge conducted a final hearing in Springfield, Missouri to determine the claim filed by Robin Smith. Stacey Page represented Claimant. Christina Madrigal represented Premium Transportation Staffing, Inc./Premium North Carolina, and Travelers Indemnity Company of America. Wil Trans Trucking Company is uninsured. It did not participate in this hearing. The claim against the Second Injury Fund was dismissed without prejudice on January 6, 2015.

STIPULATIONS

The parties stipulated to the following facts:

1. On March 17, 2010, Robin Smith (Claimant) sustained an accidental injury that arose out of and in the course of her job, although there is a dispute as to who was the employer at the time of the injury.
2. At the time of this injury, Premium Transportation Staffing, Inc./Premium of North Carolina, was a fully insured Missouri employer. Premium was insured with Travelers Indemnity Company of America. Both Claimant and Premium were subject to the Missouri Workers' Compensation Act.
3. Wil Trans Transportation had no insurance.
4. The injury occurred out-of-state. The parties agree that venue and jurisdiction are proper in Springfield, Greene County, Missouri.
5. There is no challenge to the statute of limitations or notice.
6. Claimant's average week wage was \$1,166.19, yielding at temporary total disability and permanent total disability rate of \$777.50, and a permanent partial disability rate of \$422.97.

7. Premium/Travelers paid \$44,793.01 in temporary total disability for the following periods: March 18, 2010 to June 29, 2010, and from June 21, 2012 to April 17, 2013.
8. Premium/Travelers paid \$28,390.88 in medical treatment.
9. Claimant reached maximum medical improvement on April 17, 2013.
10. Premium/Travelers advanced Claimant \$5,000 against any permanency.
11. The claim against the Second Injury Fund was voluntarily dismissed without prejudice.

ISSUES

The sole issues for the hearing are as follows:

- Was Claimant an employee of Premium Transportation Staffing, Inc./Premium North Carolina at the time of her accidental injury on March 17, 2010?
- What is the nature and extent of any disability from the last injury?
- Is Claimant entitled to reimbursement of \$189.22 in transportation costs?
- Is Claimant entitled to reimbursement of \$1,857.01 for past medical treatment?
- Is Claimant entitled to future medical to cure and relieve the effects of the work injury?
- If Claimant is determined to be permanently and partially disabled, and not permanently and totally disabled, is Claimant entitled to compensation for disfigurement?
- Is Claimant's counsel entitled to a lien for legal fees on amounts awarded above the \$1,480.40 previously offered by Employer and its Insurer?

EXHIBITS

The parties offered the following exhibits all of which were admitted:

Exhibits offered by Claimant

1. Medical Records (tabs 1 through 9)
2. Deposition – Dr. Allen Parmet (with exhibits)
3. Curriculum Vitae – Phillip Eldred
4. Vocational Report – Phillip Eldred
5. Alabama Drivers License and Social Security identification
6. Medical Bills
7. Settlement Offer (July 21, 2011)
8. Notice to Take Deposition
9. Car Rental Charges
10. Medical Records of Dr. David W. Scott (February 21, 2011)
11. Authorization of Physical Therapy (February 27, 2013)
12. Employee Handbook

Exhibits offered by Premium/Travelers

- A. Deposition – Robert McAlindon, M.D. (with exhibits)
- B. Deposition – Marissa Howell, Vocational Rehabilitation Counselor (with exhibits)
- C. Declaration of Employment Status

In additional to the above exhibits, upon the request and consent of all parties, the Administrative Law Judge created a legal file which includes the following:

- Order of Dismissal – Second Injury Fund – (January 6, 2015)
- Original and Amended Claims for Compensation
- Answers to the Original and Amended Claims for Compensation
- Report of Injury

FINDINGS OF FACT

Claimant, Robin Smith, aka Robin Oglesby McLain, is 54 years of age, having been born on September 23, 1961. She is married to Rodney McLain and is a resident of Alabama. She has no dependent children or grandchildren.

Claimant worked in the truck driving industry for more than 20 years. Before that, she worked as a cashier, a clerk, and as a seamstress. Although she attended the 12th grade, she did not have a sufficient number of credits to graduate. She never obtained a GED. She is left hand dominant.

When Claimant first applied to drive with Wil Trans in 2009, she completed an application and a Declaration of Employment Status form. She also signed a release for employment records. She returned all of these documents to Wil Trans in Strafford, Missouri. Because of the Wil Trans identification on these documents, Claimant initially had believed that her employer was Wil Trans. Later in the hearing, however, she provided documentary evidence making it clear that her employer was Premium Transportation Staffing, Inc./Premium of North Carolina (Premium).

Once Claimant was hired as a driver to work out of the Wil Trans facility located in Strafford, Missouri, she was provided an Employee Handbook (Exhibit 12). The Employee Handbook contains a “Welcome” from Todd Packard, whom the parties agree was the CEO of Premium (Exhibit 12, p. 1). The Employee Handbook contains a “Preface” which states that the company (Premium) is “an employer, and does not function as an employment agency” and “the company assigns its employees to a variety of companies.” (Exhibit 12, p. 2). Premium, in fact, assigned Claimant to work with Wil Trans. When Claimant was injured on March 17, 2010, the Wil Trans dispatcher directed Claimant to contact Premium. Thereafter, all of her medical care was approved and directed by Travelers’ Indemnity Insurance Company (Insurer), which insured Premium; and not Wil Trans. The parties agree that Wil Trans had no insurance. It also was Travelers on behalf of Premium, which made the initial offer of settlement (Exhibit 7). The overwhelming weight of the evidence supports a finding that Premium was Claimant’s employer at the time of the work accident. It is hereafter referenced as Employer.

The Accident and Treatment

On March 17, 2010, Claimant was working as a truck driver. While in Denver, Colorado, she attempted to pull a fifth-wheel pin. When the pin became loose, Claimant fell backward, injuring her left hand, wrist, left shoulder, and tailbone. Claimant was directed to obtain initial treatment at a local clinic in Denver. Employer/Insurer then arranged for Claimant to ride with another driver to Springfield, Missouri. She thereafter rented a car from Avis to return to her home in Alabama. The cost of the rental car was \$189.22 (Exhibit 9).

Upon her return home, Insurer arranged for Claimant to seek Dr. David Scott and Dr. Ronald Hillyer in Opelika, Alabama. On March 23, 2010, Dr. Scott noted that Claimant sustained a "comminuted distal radius and ulnar fracture." Testing was negative for impingement in the shoulder. Claimant was placed in a cast for six weeks and thereafter had therapy. Claimant attempted to return to work, but she continued to have pain in her left forearm and wrist.

In May 2010, Dr. Scott diagnosed a fracture of the left wrist, for which Claimant received additional treatment. In a therapy note to Dr. Scott dated December 28, 2010, following a Functional Capacity Examination (FCE), Claimant was described as having a two percent rating to the upper extremity or one percent to the body as a whole.

On February 21, 2011, Dr. Scott determined that Claimant was not yet at maximum medical improvement and documented arthritic symptoms in Claimant's left wrist. Then on July 21, 2011, the Employer/Insurer offered Claimant \$1,480.40 to resolve her case, based on its two percent rating to the left wrist (Exhibit 7). Claimant declined the offer, requested additional treatment, and obtained legal counsel.

In a November 23, 2011 report, Dr. Scott diagnosed Claimant as suffering from traumatic arthritis to the left wrist. He suggested that Claimant may benefit from a carpal tunnel release. That surgery was performed on June 21, 2012.

In September 2012, Dr. Scott referred Claimant to Dr. Hillyer who recommended a tendon tenolysis of the first, second and third extensor compartments. This was performed in October 26, 2012.

After additional therapy and bracing, Claimant saw Dr. Robert McAlindon for an Independent Medical Examination (IME) on March 20, 2013. He opined that Claimant was not a surgical candidate but should receive more therapy and complete another FCE. He also noted Claimant's left shoulder complaints and problems elevating and internally rotating the shoulder. Thereafter, Claimant participated in the FCE, during which she again complained of pain in left arm, hand, wrist, and shoulder. Claimant's treating physician determined that Claimant was at maximum medical improvement on April 5, 2013.

On May 27, 2014, Claimant saw Dr. Allen Parmet for an IME in Kansas City, Missouri. Dr. Parmet noted limited movement of left shoulder and quite decreased grip strength in left hand. He diagnosed "post-traumatic left carpal tunnel syndrome" which developed into "left wrist extensor tenosynovitis and arthritis." Dr. Parmet believed the "frozen" left shoulder was related to the primary accident due to prolonged immobilization. He assigned a 30 percent permanent partial disability to the shoulder at the 232-week level, but recommended additional diagnostic testing on the left shoulder. He further assigned a 75 percent permanent partial disability at the 200-week forearm level due to Claimant's two surgeries, ongoing pain, weakness, restricted range of motion, and loss of sensation in the left hand. Dr. Parmet

believed Claimant had a severe loss of motion and grip strength in the left hand. After reviewing the vocational report of Phillip Eldred, he concluded that Claimant was permanently and totally disabled due to her physical complaints and limitations from the last injury alone.

Phil Eldred, who testified live at the hearing, said Claimant was unemployable in the labor market due to the accident on March 17, 2010. In reaching that determination, Mr. Eldred cited Claimant's "advanced age" of 50 – 54 years of age, low academic testing, poor dexterity, and a limited work history in mainly truck driving. He noted that Claimant would have difficulty retraining for any sedentary position, and she physically could not resume her past work. Mr. Eldred determined that it is highly unlikely that any reasonable employer in the normal course of business would hire Claimant for competitive, gainful employment. In fact, Claimant indicated that she had applied for work as a cashier at Wal-Mart but she was refused employment because she was incapable of lifting certain items with both hands.

On January 26, 2015, Claimant saw another vocational expert, Marissa Howell, at the request of Employer/Insurer. In her report and deposition, Ms. Howell indicated that Claimant could perform work as a short order cook, provided she did not have to lift in excess of 10 pounds. She said usually such cooks only lift items such as a fry basket, but the job could require lifting up to 20 pounds. Alternatively, she believed Claimant could work as a food assembler, cashier, hostess, or housekeeper. Ms. Howell found job openings for a hostess, a babysitter, and as a house cleaner in a town 30 miles away from Claimant's home. Ms. Howell said none of these jobs required computer skills. She agreed, however, that if the jobs required a GED, Claimant would not qualify. She also conceded that Claimant had problems with finger dexterity.

During her deposition, Ms. Howell admitted that she was missing an addendum report from Dr. Parmet and some records from Dr. McAlindon. She agreed that if she had received those records prior to the deposition, she would have increased the vocational disability rating, but not to permanent total disability. Moreover, Ms. Howell agreed that Claimant's intelligence was below average and that Claimant could no longer be a truck driver, which was the work she performed for the last two decades.

Current Condition

Claimant had experienced no major surgeries or injuries prior to the work accident in 2010. Previously, she was active in outdoor activities, rode motorcycles and tended horses. She now engages in none of her prior hobbies, except she has taught herself to crochet right handed rather than the left.

Since Claimant's second surgery to her left arm, she has pain, sensitivity at the site of the scars, experiences difficulty in lifting, and has numbness in her hand. She cannot lift anything overhead. She has had difficulty lifting anything heavier than a gallon of milk. She did not believe she could babysit because she could not lift a child. She did not believe she could clean because she cannot wring a mop. She did not believe she could be a cashier in a clothing store because she is unable to hang-up purses or anything overhead. She has problems fingering. She believes she would break glasses if she tried to work as a dishwasher. In his deposition, Dr. Parmet said that Claimant's left hand is only a helper.

Because Claimant does not tolerate prescription pain medicine, she relies on over-the-counter medication for her pain. She has sleepless nights because rolling onto her left side causes sensitivity and pain. Following the development of a frozen shoulder, Claimant also noticed a locking sensation in the arm.

Claimant has had no formal medical treatment since Dr. McAlindon released her. A friend, who is a therapist, has helped Claimant with home exercises. Employer/Insurer offered Claimant additional medical treatment for her shoulder in February 2015, but Claimant declined as she was planning on having surgery for a subsequent, unrelated knee problem which causes her pain. Due to a personal issue, Claimant also has not had the knee surgery.

Past Medical Bills

Claimant alleges that she is due \$1,857.01 in unpaid medical expenses. Exhibit 6 is a compilation of unpaid medical expenses. The first two pages of that exhibit contain a duplicate billing with an outstanding balance of \$220.73 to the Orthopedic Clinic, P.C. in Opelika, Alabama, for a radiologic examination and injections into the acromioclavicular joints. This appears to be charges relating to treatment for Claimant's shoulder. The remainder of the exhibit relates to a bill from Therapy Resources, L.L.C., which was billed to Travelers' Insurance, but also not paid in full. The last page of the exhibit indicates that the "Net Effect on Accounts Receivable," after write-offs and adjustments, is \$1,104.75.

Credibility Findings

While Claimant initially exhibited some confusion regarding the identity of her employer, I see no reason to disregard her testimony as unreliable. Rather, Claimant testified in a very forthright manner. I find her credible.

Given the whole record, I find the opinions of Dr. Parmet and Mr. Eldred more credible than the contrary expert opinions in this case.

FINDINGS AND CONCLUSIONS

Employer or Statutory Employer

Section 287.040.1 RSMo Cum. Supp. 2005, provides in relevant part, as follows:

Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of business.

Under this statute, even if Wil Trans was the immediate employer, Premium arguably could be held liable as a statutory employer. The Employee Handbook, however, clarifies that Premium is an employer, does not function as an employment agency, but assigns its employees to work as drivers for other companies. Premium was Claimant's employer at the time of the work accident. She was assigned to work at the Wil Trans facility in Stafford, Missouri by Premium. Travelers insured Premium.

Nature and Extent of Disability

Claimant seeks permanent total disability. Permanent total disability means an employee is unable to compete in the open labor market. *Forshee v. Landmark Excavating and Equip.*, 165 S.W.3d 533, 537 (Mo. App. E.D. 2005). This means the inability to perform the usual duties of the employment in a manner that such duties are customarily performed by the average person engaged in such employment.

Gordon v. Tri-State Motor Transit Co., 908 S.W.2d 849 (Mo. App. S.D. 1995). “The central question is whether in the ordinary course of business, an employer would reasonably be expected to hire the claimant in his present physical [or mental] condition reasonably expecting him to perform the work for which he is hired [citations omitted].” *BAXI v. United Tech. Auto*, 956 S.W.2d 340, 343 (Mo. App. E.D. 1997). While “total disability” does not require that the Claimant be completely inactive or inert, *Sifferman v. Sears Roebuck and Co.*, 906 S.W.2d 823, 826 (Mo. App. S.D. 1996), *overruled on other grounds Hampton v. Big Boy Steel Erection*, 121 S.W. 2d 220 (Mo. banc 2003), it does require a finding that Claimant is unable to work in any employment in the open labor market, and not merely the inability to return his last employment. *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 884 (Mo. App. S.D. 2001), *overruled on other grounds Hampton v. Big Boy Steel Erection*, 121 S.W.2d 220 (Mo. banc 2003). In determining whether a claimant can return to employment, the Administrative Law Judge may consider the employee’s education, ability to be re-trained, and academic and vocational testing. *Grauberger v. Atlas Van Lines, Inc.*, 419 S.W.3d 795, 801 (Mo. App. S.D. 2013). The fact finder is not bound by the exact percentages of the expert witness and is free to find another percentage of disability. *Ransburg v. Great Plains Drilling*, 22 S.W.3d 726, 732 (Mo. App. W.D. 2000). It is within the province of the Administrative Law Judge to determine the extent of any permanent disability. *Landers v. Chrysler Corp.*, 963 S.W.2d 275 (Mo. App. E.D. 1998).

Claimant suffers an injury only to one arm. She does not have to lie down during the day. She takes no prescription pain medication and there is no testimony that Claimant suffers from a lack of concentration as a result of her injury. On such facts, one might presume that Claimant would be capable of some other work.

In this case, however, Claimant and her expert witnesses provided persuasive testimony that this injury to Claimant’s dominant left arm was catastrophic. Dr. Parmet concluded Claimant was “permanently and totally disabled” based on the work injury of March 17, 2010. Dr. Parmet noted that Claimant’s left arm is nothing but a helper as she had lost grip strength and the ability to lift any significant weight.¹ Vocational expert, Phillip Eldred, who testified credibly at the trial, performed a comprehensive analysis of Claimant’s physical limitations, pain level, limited education, lower academic test results, and lack of transferable skills, age, work history, and functional limitations relating to the left shoulder, left wrist and hand. He determined that when all of these factors were considered, Claimant was permanently and totally disabled from the last injury. Although Employer/Insurer’s vocational expert, Ms. Howell, believed Claimant could perform jobs such as a babysitter, a hostess, or cashier, such opinion is not persuasive in light of Claimant’s lifting restrictions, poor dexterity, and lack of a GED. The facts warrant the determination that Claimant is permanently and totally disabled from the last accident, in isolation.

Dr. McAlindon determined Claimant was at maximum medical improvement in April 2013. Employer/Insurer ceased the payment of temporary total disability on April 16, 2013. Beginning April 17, 2013, and continuing for Claimant’s lifetime, Claimant is entitled to \$777.50 each week in permanent total disability benefits. From April 17, 2013, to the date of hearing on September 3, 2015, is 124 and 1/7 weeks. Multiplied by the weekly benefit amount of \$777.50, the accrued benefits to the date of hearing is \$96,521.07. Employer/Insurer shall have a credit for the \$5,000 it advanced to Claimant.

¹ In *Gonzales v. Butterball, L.L.C.*, 457 S.W.3d 880, 885 (Mo. App. W.D. 2015), Dr. Parmet noted that even one-armed individuals are capable of regular employment. That he opined in this case that Claimant is permanently and totally disabled is particularly persuasive.

Disfigurement

Because I have determined Claimant to be permanently and totally disabled, no disfigurement is awarded.

Past Medical Treatment

Section 287.140 RSMo, requires an employer to provide medical care to cure or relieve the effects of the work accident. Claimant alleges that she is due \$1,857.01 in unpaid medical expenses. Based on the evidence set forth in Exhibit 6, it appears that there is only \$220.73 owed to the Orthopedic Clinic, P.C., and \$1,104.75 owed to Therapy Resources of East Alabama. Claimant is due \$1,325.48 in unpaid medical expenses ($\$220.73 + \$1,104.75 = \$1,325.48$) from Employer/Insurer.

Future Medical Treatment

To obtain future medical benefits, Claimant must show by a reasonable degree of medical certainty that the need for medical care flows from the accident. *Sickmiller v. Timberland Forest Products, Inc.*, 407 S.W.3d 109 (Mo. App. S.D. 2013). Claimant, through the opinion of her expert Dr. Parmet, demonstrated a need for additional evaluation and treatment for the left shoulder. The frozen shoulder occurred from the immobilization of the shoulder while Claimant was receiving treating for the hand and forearm. Treatment of the shoulder flows from the work injury and Claimant is entitled to the same. Therefore, the medical is left open consistent with the opinion of Dr. Parmet.

Transportation Expense

Claimant received initial medical treatment in Denver, Colorado. Claimant could not drive a truck due to her injuries, so another driver provided transportation for Claimant from Denver to Springfield near the Wil Trans headquarters. Desiring to return to her home in Alabama, Claimant incurred the cost of a rental car from Springfield, Missouri to Alabama.

Section 287.140 RSMo Cum Supp. 2005, prescribes that employers shall advance or reimburse an employee all necessary and reasonable expenses in obtaining medical treatment if the injured employee must obtain treatment outside the local or metropolitan area of the employer's principal place of employment. "In no event, however, shall the employer or its insurer be required to pay transportation costs for a greater distance than two hundred fifty miles each way from place of treatment." § 287.140.1 RSMo Cum Supp. 2005. Section 287.800 RSMo Cum Supp. 2005, requires that this statute be strictly construed.

Claimant was assigned by Employer to work with Wil Trans in Stafford, Missouri, a town within the metropolitan area of Springfield, Missouri. Claimant received transportation to Springfield, but then chose to return to her home in Alabama where additional treatment was provided at Employer/Insurer's expense. A strict interpretation of the statute is that Employer is not liable for the transportation costs when the distance is greater than 250 miles. Obviously, the State of Alabama is more than 250 miles from Springfield, Missouri. Reimbursement of Claimant's bill for \$189.22 is denied.

Summary

Beginning April 17, 2013, and continuing for the remainder of her lifetime, Claimant shall receive permanent total disability benefits in the weekly amount of \$777.50. To the date of hearing, the accrued amount is \$96,521.07, less the \$5,000 advanced by Employer/Insurer.

Employer/Insurer shall pay Claimant \$1325.48 in past medical expenses.

Employer/Insurer shall pay Claimant future medical benefits to cure and relieve the effects of the work injury consistent with the opinion of Dr. Parmet.

This Award is subject to review and modification as provided by law.

Attorney Stacey Page shall have a lien of 25 percent of the amounts awarded, less the \$1,480.40 that was offered Claimant prior to her hiring an attorney. This is a reasonable fee for necessary legal services provided to Claimant.

Made by: _____

Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation