

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

Injury No.: 00-110337

Employee: Michelle Soard
Employer: Town and Country Supermarkets
Insurer: Benchmark Insurance
Date of Accident: August 11, 2000
Place and County of Accident: Ripley County, Missouri

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. On November 30, 2004, counsel for employer/insurer filed an Application for Review from an award and decision issued by an administrative law judge on November 17, 2004. On December 7, 2004, counsel for employee filed an Answer to Application for Review and a Motion to Submit Additional Evidence and Provide Medical Care During Employer/Insurer's Appeal. On December 9, 2004, the Commission sent the attorneys of record a letter acknowledging Employee's Answer and Motion. The letter stated that the parties had ten days to respond to the motion. On January 7, 2005, counsel for employer/insurer filed its Response to Present Supplemental Evidence. On January 18, 2005, employee filed her Objection to Employer's Response requesting that the response be stricken because it was not filed within ten days of the Commission's letter dated December 9, 2004.

On February 15, 2005, the Commission issued an Order denying employee's motion to strike employer/insurer's response; deferring on ruling on the motion to submit additional evidence until the transcript was received and the parties filed briefs; denying employee's request to order employer/insurer to provide medical care pending Commission review; and, designating the claim for hardship. The transcript was received and briefs were filed pursuant to the briefing order. The Commission granted employer/insurer's request for oral arguments.

On May 13, 2005, the Commission heard oral arguments from the parties in Jefferson City, Missouri. During oral arguments, the parties stated that a hearing had been held before Chief Administrative Law Judge Jack Knowlan in March or April 2001. Judge Knowlan apparently informed the parties that if he had to issue a temporary or partial award and decision, he would find the claim compensable and would order employer/insurer to provide medical care. Counsel for employer/insurer stated that it would agree to provide medical care and any other benefits that Judge Knowlan stated he would award. A written award was not issued and a transcript of the hearing was not prepared. The Commission informed the parties that the transcript should be part of the record before the Commission and the Commission would try to obtain it if possible. The parties stated to the Commission that all of the medical records that were introduced at the hearing before Judge Knowlan were introduced into evidence at the final hearing. Neither party requested that the Commission obtain the transcript. The Commission was not able to timely obtain the transcript without undue delay and is proceeding with review.

MOTION TO SUBMIT ADDITIONAL EVIDENCE

The Commission's regulation regarding the submission of additional evidence is contained in 8 CSR 20.3.030(2), which provides:

- (A) After an application for review has been filed with the commission, any interested party may file a motion to submit additional evidence to the commission. The hearing of additional evidence by the commission shall not be granted except upon the ground of newly discovered evidence which with reasonable diligence could not have been produced at the hearing before the administrative law judge. The motion to submit additional evidence shall set out specifically and in detail –
1. The nature and substance of the newly discovered evidence;
 2. Names of witnesses to be produced;

3. Nature of the exhibits to be introduced;
4. Full and accurate statement of the reason the testimony or exhibits reasonably could not have been discovered or produced at the hearing before the administrative law judge;
5. Newly discovered medical evidence shall be supported by a medical report signed by the doctor and attached to the petition, shall contain a synopsis of the doctor's opinion, basis for the opinion and the reason for not submitting same at the hearing before the administrative law judge; and,
6. Tender of merely cumulative evidence or additional medical examinations does not constitute a valid ground for the admission of additional evidence by the commission.

(B) The commission shall consider the motion to submit additional evidence and any answer of opposing parties without oral argument of the parties and enter an order either granting or denying the motion. If the motion is granted, the opposing party(ies) shall be permitted to present rebuttal evidence. As a matter of policy, the commission is opposed to the submission of additional evidence except where it furthers the interests of justice. Therefore, all available evidence shall be introduced at the hearing before the administrative law judge.

Employee seeks to introduce a report issued by Dr. Robert Swarm, dated October 5, 2004. The hearing was held on September 28, 2004. Employee alleges that Dr. Swarm's report was not produced at trial because the appointment occurred after the hearing. Employee further alleges that the evidence is not cumulative because it contains information regarding the need for ongoing medical treatment as well as a conclusion that employee is permanently and totally disabled.

Employer/insurer responds that the medical report of Dr. Swarm should not be admissible because he reaches new conclusions that were not reached or stated in any previous medical records and employer/insurer has not had the opportunity to cross-examine Dr. Swarm or to present its own rebuttal evidence to the opinion that she is permanently and totally disabled from the work accident alone. Employer/insurer further alleges that this report could have been produced at the hearing. Employer/insurer further argues that Dr. Swarm's report is a new report following an additional medical examination, which is specifically inadmissible pursuant to 8 CSR 20-3.030(2)(A)(6).

We deny employee's motion to submit the additional report from Dr. Swarm. We are not persuaded that it could not have been produced at the hearing. Employee knew that she had an appointment scheduled with Dr. Swarm when she testified at the hearing. Employee could have requested to leave the record open at the hearing in order to submit this report. The doctor's deposition could have been scheduled and employer could have had the opportunity to present any rebuttal evidence. This claim was not tried on a temporary or partial basis. If we were to accept this report at this time, the Commission would have to remand for an additional evidentiary hearing, which would ultimately entail both parties needing to secure depositions of various experts. Dr. Swarm also does not give a basis for his opinion that employee is permanently and totally disabled and we note that there are no medical opinions, vocational opinions, or other competent or substantial evidence in the record that would support a finding that she was rendered permanently and totally disabled from the last accident alone. The report is not so material that it would produce a different result from what we find here even if it had been presented at trial. See, *Tidwell v. Walker Constr.*, 151 S.W.3d 127 (Mo. App. 2004). Additionally, we note that employee did not file an Application for Review; thus, did not timely raise as error the administrative law judge's determination of permanent partial disability. Employee's request to submit additional evidence is denied. The doctor's report may support a motion for a change of condition, for which the Commission would consider remanding for an evidentiary hearing regarding whether her condition has physically worsened if we still have jurisdiction.

REVIEW OF THE MERITS

Having reviewed the evidence, considered the whole record from the final hearing and listened to the arguments presented, the Commission finds that the award of the administrative law judge must be modified. Pursuant to section 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge dated November 17, 2004.

Employee tripped over a water hose at work, injuring her left leg and knee on August 11, 2000. She developed chronic regional pain syndrome (CRPS) as a result of the fall for which she has received extensive treatment. The administrative law judge found that employee sustained 75% permanent partial disability to the body as a whole, awarded past medical expenses; and awarded future medical care. Employer/insurer filed an Application for Review, alleging that the award of permanent partial disability is excessive; the award of past medical was in error because employee did not show that the treatment was reasonable or necessary or authorized; and, future medical care was not warranted because employee sustained subsequent accidents and continues to smoke against doctors' advice.

We agree that the award of permanent partial disability is excessive and modify the extent of permanent partial disability. We affirm the award of past medical. We further affirm the award of future medical care; however, clarify the award of future medical to specify that employer/insurer shall provide the necessary medical care as directed by Dr. Reisler and/or Dr. Swarm, or such other neurologist and pain management specialist selected by employer/insurer.

NATURE AND EXTENT

After employee tripped over the water hose at work, she finished her shift, and then went to her family physician at the Ripley County Family Clinic. She notified employer that she was going to her doctor. The doctor gave her crutches, took employee off of work and continued to treat her with pain medications. Because employee's left leg would become discolored when she was sitting, the doctor ordered an ultrasound and eventually referred her to Dr. John True, an orthopedic doctor, on August 24, 2000. Dr. True's notes of that date stated that employee exhibited an exaggerated and magnified response to light stimulus. He found nothing objectively wrong with her left knee or ankle. Dr. True ordered physical therapy for one month and continued to keep her off work.

Employee was next referred to Dr. Winters on September 6, 2000, who continued to prescribe physical therapy and pain medications. She was next referred to Dr. Choudary, a neurologist. Dr. Choudary prescribed Neurontin and continued the physical therapy. Dr. Choudary suspected that employee had CRPS. He recommended Botox injections.

Employee was referred to Dr. Nogalski, an orthopedist, on October 9, 2000, who recommended sympathetic blocks with physical therapy. He felt that employee could perform sedentary work. Employee also saw Dr. Yadava on October 24, 2000, who recommended a bone scan. Employee was referred to Dr. Edwin Dunteman on October 25, 2000, who offered to do a lumbar sympathetic block. Dr. Dunteman noted that employee's response was atypical in that she was more focused on needle discomfort rather than pain relief. However, employee agreed to undergo the block. Dr. Dunteman noted that employee's pain response was exaggerated. He noted that she reported numbness, but then reported pain upon light touch. He stated that she did not have a similar reaction when she was distracted. He concluded that employee has an emotional magnifier to her complaints. Employee stated that the sympathetic block did not help.

Employee went to the emergency room at the Ripley County Hospital several times through October, November and December 2000, for complaints of muscle spasms in her left leg. She was using crutches during this time frame until the end of December 2000, when she started utilizing a wheelchair because putting weight on her leg caused spasms.

Employer referred employee to Dr. David Reisler, a neurologist, on January 8, 2001. Dr. Reisler noted that employee's legs were atrophied and spastic. She was using a wheelchair. Dr. Reisler hospitalized her for a complete evaluation. She was hospitalized at Barnes-Jewish Hospital from January 9, 2001 until January 19, 2001. She was diagnosed with CRPS. She was given intense physical therapy in order to desensitize her legs to various materials rubbing on them. Dr. Robert Swarm, a pain management specialist, became involved in employee's care while she was hospitalized. He gave employee spinal and epidural injections. Employee's symptoms greatly improved. Employee was able to walk with crutches when she left the hospital.

Employee continued to receive weekly epidural injections until February 23, 2001. The injections helped for a while, but employee's spasms returned. Weekly injections were resumed on April 5, 2001, and then increased to twice per week on April 30, 2001. Dr. Swarm saw employee again on May 8, 2001, and scheduled her for admittance to the Rehab Institute for physical therapy. She was admitted to the Rehab Institute from May 14 until May 22, 2001. Dr. Swarm recommended implantation of a spinal infusion pump; however, employer/insurer requested a second opinion from Dr. James Gibbons. Dr. Gibbons recommended lumbar sympathetic blocks. She initially received relief from the blocks. However, employee complained that she developed back and buttock pain as a result of the injections.

Employee continued to treat with Dr. Reisler and Dr. Swarm. Dr. Swarm informed employee that she could get her medications from her local clinic instead of driving to St. Louis each time. Employee has visited her local clinic and emergency room on several occasions. The doctors have also informed employee to quit smoking because smoking can exacerbate CRPS. Employee has quit smoking off and on for periods of time, but starts smoking again after stopping for a time. At the time of the hearing, she was smoking one and one-half packs of cigarettes per day.

Dr. Swarm released employee to return to part-time work in January 2002. She returned to work for employer, but was unable to meet productivity standards. On April 24, 2002, Dr. Swarm noted that employee has had significant improvement in pain, but continued to have mild to moderate pain with periodic exacerbations. He recommended that

she continue working and gradually increase her hours. On May 14, 2002, Dr. Swarm stated that employee's condition could improve if she would increase her physical activity, such as by working. He stated employee needs a home exercise program, analgesics and anti-inflammatory medications.

On May 28, 2003, Dr. Reisler wrote that employee appeared overly dramatic about her complaints of discomfort and spasms of the left lower extremity below the knee. He stated that employee still has CRPS, but some of her symptoms may be intentionally exaggerated. He stated that it was reasonable to assume that employee will not develop additional disability uniquely attributable to the work accident. He voiced concern that employee's casual use of multiple medical resources without any coordination has complicated employee's care. On September 4, 2003, Dr. Reisler stated that employee was at maximum medical improvement on May 19, 2003. He rated employee with 30% permanent partial disability. Although not clear, it appears Dr. Reisler rated her disability at the level of her left knee. He stated that employee would need pain medication and home exercise. He also noted that his examinations of employee failed to justify her frequent visits to the emergency room nor why she had consulted so many doctors.

On August 11, 2002, Dr. Eli Shuter issued a rating report. He assessed employee with 35% permanent partial disability to the body as a whole. He stated that employee needs permanent job restrictions of no continuous sitting or standing for over thirty minutes; no carrying or lifting of over ten pounds; and no repetitive bending. He stated employee will continue to need medications to control her symptoms.

Employee went to work as a cook in a nursing home from June 1, 2003 until January 2004. She quit that job because she stated she had to stand too long, which bothered her legs. She then obtained a job as a hostess in a restaurant in June 2004. She left that job in July 2004, because a co-worker accidentally bumped into her leg, which caused her to have spasms.

Employee testified that her condition has spread up her left leg to just under her bra strap and then down the right leg. She stated something as light as a ladybug landing on her left leg will cause her to have spasms. She described a spasm as a "charley horse" where the foot and leg twist up and around causing severe pain. She stated she now has migraines. Neither Dr. Swarm nor Dr. Reisler felt that her migraines were causally connected to the work accident or the CRPS. She stated that her left leg has daily spasms and is worse at night. She stated that sitting too long causes spasms. She has been prescribed, or is being prescribed, diazepam, oxy IR cap, oxycontin, hydrocodeine, valium, baclofen for back spasms, fluoxetine, tizanidine, tramadol, bextra for migraines, paxil for depression, conestin for hormones, imitrex for migraines, and ultracet for pain. She continues to go the family clinic and emergency room for treatment and medications.

We do not find employee's complaints entirely credible. The treating records are replete with reference to employee exaggerating her symptoms. We do not dispute that she has CRPS and that her condition is painful. However, we do not find that her condition is as excruciating or as disabling as she described. We further find that her injury is at the level of the left knee and is not a "body as a whole" disability. We find employee sustained 70% permanent partial disability at the 160-week level. Employer/insurer is responsible for 112 weeks of permanent partial disability, for a total of \$12,692.96. The permanent partial disability period shall commence running from May 19, 2003, which is the date that Dr. Reisler found that employee reached maximum medical improvement.

FUTURE MEDICAL CARE

Employer/insurer alleges that it should not be responsible for future medical care because employee has had intervening accidents. Employer/insurer cite to the server bumping into her leg while working at the restaurant and to another occasion where employee was reaching for something on the top shelf of a closet. A book fell and struck her in the shoulder, which caused her to fall. She went to the emergency room to get a shot because her left leg started to spasm.

While an intervening independent accident would break the chain of causation, if a subsequent event is the result of the original accident, the chain is not broken.

The chain of causation means the original force which it puts in motion. If an accident causes an injury and that injury moves forward step by step, causing a series of other injuries, each injury accounting for the one following until the final result is reached, the accident which set the first injury or force in motion is responsible for the final result. It is immaterial that the final result might not ordinarily be expected. It is enough if the injury in a given case did produce the final injury or death.

Thus injuries which follow as legitimate consequences of the original accident are compensable, and such

accident need not have been the sole or direct cause of the condition complained of, it being sufficient if it is an efficient, exciting, superinducing, concurring, or contributing cause; thus it is immaterial whether or not a disability results directly from the injury or from a condition resulting from the injury. So, also, if the resultant disability is directly traceable to the original accident, the intervention of other and aggravating causes by which the disability is increased will not bar recovery. The inquiry as to whether to result is natural and probable, or a normal or abnormal one, is immaterial.

Manley v. American Packing Co., 363 Mo. 744, 749, 253 S.W.2d 165, 169 (Mo. banc 1952) (citations omitted.) See also, *Oertel v. John D. Streett & Co.*, 285 S.W.2d 87, 96-97 (Mo. App. 1955) and *Cahall v. Riddle Trucking, Inc.*, 956 S.W.2d 315 (Mo. App. 1997).

We are not persuaded that the two incidents constitute independent or intervening accidents that break the chain of causation. Employee stated that the server bumped into her left leg, which resulted in her experiencing spasms. If she had not previously developed CRPS from the work accident, a bump on her leg would not have resulted in spasms. Similarly, the book falling onto her shoulder would not have caused her left leg to spasm if she had not already had CRPS. While these events triggered symptoms, the events did not cause a change in pathology and her symptoms flowed from the original accident. We are likewise not persuaded that employee's continued smoking breaks the chain of causation. During the times that employee did cease smoking she continued to have symptoms. Employee's smoking does not sever the chain of causation.

Dr. Swarm, Dr. Reisler, and Dr. Shuter unequivocally stated that employee will need future medical care and we order employer/insurer to provide the medical care that is reasonable and necessary to cure and relieve her from the effects of her work injury. Dr. Reisler voiced concern about the lack of coordinated medical care. We find credence in his opinion. Employee is taking, or has taken, a substantial amount of narcotics, which have been prescribed by numerous doctors. We therefore order employer/insurer to provide necessary medical care as directed and coordinated by Dr. Reisler and Dr. Swarm or such other neurologist and pain management specialist designated by employer/insurer in the event that either Dr. Reisler or Dr. Swarm no longer wish to be involved with employee's medical care.

PAST MEDICAL EXPENSES

We adopt and incorporate the findings of fact and conclusions of law of the administrative law judge's award and decision regarding reimbursement of past medical expenses. Although Dr. Reisler stated that employee's numerous trips to the emergency room and various medical providers did not seem necessary, there was no indication that he reviewed the records from those providers. Additionally, Dr. Swarm, employer/insurer's designated treating physician, informed employee that she could seek treatment from her local providers. The award of past medical expenses is affirmed.

CONCLUSION

Employer/insurer are responsible for \$12,692.96 in permanent partial disability benefits. Employer/insurer shall provide future medical care as directed and coordinated by Dr. Reisler and Dr. Swarm or such other neurologist and pain management specialist designated by employer/insurer. Employer/insurer are responsible for the past medical expenses awarded by the administrative law judge.

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

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

The award and decision of Administrative Law Judge Michael Moroni, issued November 17, 2004, are attached and incorporated by this reference except to the extent modified herein.

Given at Jefferson City, State of Missouri, this 7th day of June 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest:

John J. Hickey, Member

Secretary

STATE OF MISSOURI
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

DECISION OF ASSOCIATE ADMINISTRATIVE LAW JUDGE

FINAL AWARD

Employee: Michelle Soard

Injury No. 00-110337

Dependents: None

Employer: Town and County Supermarkets

Additional Party: None

Insurer: Benchmark Insurance

Appearances: Nancy Mogab for Employee; J. Bradley Young for Employer/Insurer

Hearing Date: September 28, 2004

Checked by: MM:sm

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease? August 11, 2000
5. State location where accident occurred or occupational disease contracted: Ripley County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
Yes
7. Did employer receive proper notice? Yes

8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted:
Employee fell and injured her left knee
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Left leg, body as a whole
14. Nature and extent of any permanent disability: Permanent total disability
15. Compensation paid-to date for temporary total disability: 64 4/7 weeks, \$8,644.78
16. Value necessary medical aid paid to date by employer-insurer? \$99,130.97
17. Value necessary medical aid not furnished by employer-insurer? \$11,891.75
18. Employee's average weekly wage: \$200.00
19. Weekly compensation rate: \$133.33/\$133.33
20. Method wages computation: By agreement
21. Amount of compensation payable:

Unpaid medical expenses:	\$11,891.75
Medical mileage or travel expenses:	-0-
weeks of temporary total disability	-0-
300 weeks of permanent partial disability:	\$39,999.00
weeks of disfigurement	-0-

22. Second Injury Fund liability: N/A

TOTAL: \$51,890.75

23. Future requirements awarded: medical aide reasonably necessary to cure and relieve the effects of the injury.

Said payments to begin (see findings) and 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: NANCY MOGAB.

FINDINGS OF FACT AND RULINGS OF LAW

At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

The parties stipulated as follows:

Stipulation 1. The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and liability was fully insured by Benchmark Insurance Company.

Stipulation 2. On or about the date of the alleged accident or occupational disease the employee was an employee of the employer and was working under the Workers' Compensation Act.

Stipulation 3. On or about August 11, 2000, the employee sustained an accident arising out of and in the course of her employment.

Stipulation 4. The employer had notice of the accident.

Stipulation 5. The claim was filed within the time allowed by law.

Stipulation 6. The employee's average weekly wage was \$200.00 with a benefit rate of \$133.33 for all purposes.

Stipulation 7. The employee's initial injury to her knee was caused by the accident.

Stipulation 8. The employer paid \$99,130.97 in medical expenses.

Stipulation 9. The employer paid \$8,644.78 in temporary total disability benefits for 64 and 6/7 weeks which ended in May 2003.

Stipulation 10. The employer agrees to pay charges contained in Exhibit L.

ISSUES:

Issue 1. Liability for unpaid medical bills – whether the medical care was reasonable and necessary.

Issue 2. Liability for future medical care.

Issue 3. Nature and extent of disability.

SUMMARY OF THE EVIDENCE:

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

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- A. Ripley County Clinic records of August 2000 to August 2004
- B. Medical records from Dr. Reisler
- C. Medical records from Dr. Swar.
- D. Reports from Dr. Shuter dated 01/08/01 and 08/08/02
- E. Pharmacy bills from City Drugs
(Medications with check marks were for Regional Pain Syndrome)
- F. Medical bills from Washington University
- G. Medical bills from Ripley County Clinic
- H. Medical records from Dr. Choudary
- I. Medical records from Dr. Steven Winters

- J. Medical records from Dr. John True
- K. Medical bills from Ripley County Hospital
- L. Unpaid medical bills from Three Rivers Healthcare for physical therapy
(employer/insurer agreed that these bills should and will be paid by them)

Employer's Exhibits:

- 1. Report from Dr. Swarm dated 03/22/02
- 2. Report from Dr. Reisler dated 04/10/02
- 3. Report from Dr. Reisler dated 05/14/02
- 4. Report from Dr. Reisler dated 06/03/02
- 5. Report from Dr. Swarm dated 01/24/03
- 6. Report from Dr. Reisler dated 05/28/03
- 7. Report from Dr. Reisler dated 09/04/03

TESTIMONY OF WITNESSES:

Nancy Mogab, the claimant's attorney, submitted an outstanding summary of the testimony and exhibits. Due to its length it will not be reproduced, but the reader is referred to it for further reference.

FINDINGS OF FACT:

Based upon a careful review of the evidence presented and all reasonable inferences arising therefrom, the following findings of fact are made:

- 1. All stipulations are approved and incorporated by reference.
- 2. The claimant is a 37 year-old-female of normal intelligence.
- 3. The claimant suffered an injury arising out of and in the course of her employment when she tripped over a water hose on August 11, 2000. In that accident she injured her left leg and knee.
- 4. As a direct result of the accident, the claimant has developed complex regional pain syndrome (CRPS), formerly referred to as reflex sympathetic disorder (RSD).
- 5. As a direct result of the CRPS the claimant suffers, on a regular and recurring basis, excruciating pain in her left leg which radiates into her right leg and migrates to her trunk and back, just below her bra strap. The claimant refers to this pain as spasms. These spasms cause her to be unable to have clothing touch her left leg. The spasms cause her left leg to involuntarily twist. She suffered such a spasm during the hearing and a recess had to be taken. At that time her father had to assist her from her chair and help her out of the courtroom. Upon reconvening the hearing, she stood in a walker with her dress raised on her left leg up to her waist.
- 6. Because of the CRPS, the claimant missed her father-in-law's funeral, her son's graduation from basic training, and her children's athletic events. She is unable to attend church or do any hobbies. She also has experienced marital problems because the pain causes her to refrain from sex. She is able to drive short distances, but she takes crutches and a walker with her in the car in case she has a spasm. Everyday bumping and rubbing often cause spasms.
- 7. Because of the CRPS, she takes numerous medications. Some of the medications cause difficulty concentrating.
- 8. Since the accident she has worked three jobs for a combined total of less than three months. First as a cake decorator for the employer. She lost that job because her work-related injuries did not allow her to work fast enough, and the employer fired her. She also worked as a cook and as a hostess for short periods of time, but she had to leave those jobs because the work caused her to have spasms. In particular

a slight bump caused her to have to quit working her last job as a hostess at a Poplar Bluff restaurant in July 2004. It is unclear whether these jobs were full or part-time.

9. As a direct result of the accident, the claimant has incurred \$11,248.25 in medical and drug costs. This amount takes into consideration Medicaid reductions and co-pays. In addition to these charges, the Employer has agreed to pay the charges contained in Exhibit L totaling \$643.50. Any other claimed medical charges have not been sufficiently shown and are denied.

RULINGS OF LAW:

Issue 1. Liability for unpaid medical bills -- whether reasonable and necessary

Applicable Law: The employer is required to provide medical treatment “as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.” RSMo. 287.140.1. The claimant bears the burden of proof on this issue. Sutton v. Vee Jay Cement Contracting, 37 S.W.3d 803, 808 (Mo. App. E.D. 2000). An employer is responsible for the payment of reasonable medical fees incurred as a result of a work-related injury. RSMo. 287.140.1. The employer has the right to authorize treatment and select the treating physician at the employer’s cost. RSMo. 287.140.10. If the employee wants a different physician, he or she is free to employ that physician at his or her own cost. RSMo. 287.140.1. If the employer refuses to provide treatment, the employee is free to seek treatment on his or her own and assess the costs to the employer. Blackwell v. Puritan-Bennett Corp., 901 S.W.2d 81, 84-85 (Mo. App. E.D. 1995). In order to assess the costs against the employer, the claimant must show that the costs were necessary, reasonable and related to the accident. Martin v. Mid-America Farm Lines, 769 S.W.2d 105, 111-12 (Mo. 1989). This is initially shown by the testimony of the claimant and the medical records. Id.

Analysis: All of the charges are accompanied by medical records, and the employer-insurer has not presented any evidence that the charges were unreasonable. Therefore, the charges are found reasonable. The real dispute is whether the charges are necessary. From the word “GO,” the employer-insurer has fought this case. When they did provide treatment, it was in St. Louis. The claimant lives in Ellsinore, and given the seriousness of her pain, it is unreasonable to require her to drive to St. Louis for treatment. After observing the claimant at trial, it is clear that she experiences severe pain and as such the medical opinions to the contrary are not credible.

Ruling of Law: The employer-insurer shall pay to the claimant the sum of \$11,248.25 and also pay directly to Ripley County Memorial Hospital the sum of \$643.50 as agreed in exhibit “L.”

Issue 2. Additional Medical Aid

Applicable Law: The Workers’ Compensation Act mandates that the employer-insurer pay future medical benefits, “as may reasonably be required . . . to cure and relieve from the effects of the injury,” “that flow from the accident [or disease].” RSMo. 287.140.1; Sullivan v. Masters and Jackson Paving, 35 S.W.2d 879, 888 (Mo. App. 2001). The claimant bears the burden of proof on this issue and meets it by showing a reasonable probability of the need for future medical treatment. Sullivan, 35 S.W.2d at 888-89.

Analysis: The claimant suffers from complex regional pain syndrome. This causes severe pain such that medication and medical treatment are required. The medical evidence supports such a conclusion. To the extent medical evidence lends support to the argument that the pain is caused by smoking, that evidence is found not credible.

Ruling of Law: The employer-insurer shall provide medical care reasonably necessary to cure and relieve the effects of the claimant’s injury.

Issue 3. Nature and Extent of Disability

Applicable Law: The Southern District in addressing a similar case stated:

[T]he term "total disability" is "defined 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. It does not require that the claimant be completely inactive or inert.

To determine if claimant is totally disabled, the central question is whether, in the ordinary course of business, any employer would reasonably be expected to hire claimant in his present physical condition. The extent and percentage of disability is a finding of fact within the special province of the Industrial Commission. The Commission may consider all of the evidence, including the testimony of the claimant, and draw all reasonable inferences in arriving at the percentage of disability. 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. The Commission is not bound by the expert's exact percentages and is free to find a disability rating higher or lower than that expressed in medical testimony. The acceptance or rejection of medical evidence is for the Commission. The decision to accept one of two conflicting medical opinions is a question of fact for the Commission. When the Commission believes that the ratings of the physicians are too conservative it has the power to increase the rating by an appropriate amount.

Pavia v. Smitty's Supermarket, 118 S.W.3d 228, 233 (Mo. App., S.D. 2003).

Analysis: The medical evidence, testimony and observation of the claimant as a witness leads directly to the findings of fact as found above. No physician has testified that the claimant is totally disabled. While these in and of themselves are not dispositive, this case differs from Pavia in that there was no vocational testimony offered that the claimant was totally disabled. In fact it can be inferred that because the Missouri Division of Vocational Rehabilitation was offering her services, that she is employable from a vocational standpoint. However, the doctors' ratings are wholly inadequate. The injury, while initially confined to the claimant's leg, has spread to the whole body. A body as a whole rating is therefore necessary. Even though the claimant is not totally disabled, her disability is severe. Such a disability warrants a finding of 75% of the body as a whole or 300 weeks.

Ruling of Law: The claimant is found to be 75% permanently and partially disabled to the body as a whole. The employer insurer shall pay to claimant the sum of \$39,999.00 for PPD benefits.

ATTORNEY'S FEE:

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

INTEREST:

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

Date: _____ Made by:

Michael Moroni
Associate Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Renee Slusher,
Director
Division of Workers' Compensation