

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

Injury No.: 99-169466

Employee: Virginia Stephens

Employer: St. Louis County Board of Education,
Special School District of St. Louis

Insurer: American Compensation Insurance Company
c/o RTW

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

Date of Accident: November 24, 1999

Place and County of Accident: St. Louis County

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. 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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 23, 2007. The award and decision of Administrative Law Judge Karla Ogrodnik Boresi, issued July 23, 2007, 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 18th day of January 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri

Workers' Compensation Law, I believe the decision of the administrative law judge should be modified.

I agree with the administrative law judge's finding that employee is entitled to compensation in this claim. However, I disagree with the administrative law judge's finding that the treatment (corpectomy) was not causally related to employee's work accident and that employee is not entitled to an award of past medical expenses. I also disagree with the administrative law judge's finding that employee only suffered a 15% permanent partial disability to the body as a whole as a result of her November 24, 1999 work-related injury. I believe employee has proven a greater degree of disability and that the award should be modified to increase the award of permanent partial disability to 40%.

Medical Treatment

The administrative law judge erred in finding that the treatment sought by employee, specifically the corpectomy, was not causally related to the work injury. The administrative law judge agreed with employer that the corpectomy was not necessary to treat employee's condition. I believe the evidence suggests otherwise.

Under section 287.140.1 RSMo (2000), employer is responsible for providing treatment that may reasonably be required after the injury to cure and relieve the employee from the effects of the injury. Employee has shown that the treatment sought and rendered was reasonable and necessary to cure her from the effects of her work-related injury.

Employee has also shown that the past bills are causally related to the work injury. A sufficient factual basis to award past medical expenses exists when employee identifies all of the medical bills as being related to and the product of the work-related injury and the medical bills are shown to relate to the professional services rendered by medical records in evidence. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105, 111-112 (Mo. banc 1989). The employer may challenge the reasonableness or fairness of the bills or may show that the medical expenses incurred were not related to the injury in question. *Id* at 112.

Employer argued that the corpectomy was not necessary to treat employee's condition. Employer disputed that employee was in need of any additional medical care. Employer argues that Dr. Kennedy did not recommend a corpectomy and it was Dr. Kennedy's opinion that the corpectomy was neither reasonable nor medically necessary to treat employee's work-related injury. While Dr. Kennedy did not propose a corpectomy, he did indicate that employee was in need of further treatment and that his treatment course would include bracing, pain medication, and periods of limited duty. Employee was released from care and no further treatment options were provided by employer which resulted in the continued deterioration of employee's condition. Employer's failure to provide sufficient treatment left employee with no choice but to seek treatment from alternate medical providers. Employee should not be punished for seeking additional treatment as the record clearly demonstrates that her condition warranted further medical treatment.

Employee provided sufficient evidence that the corpectomy was necessary to treat her November 24, 1999 injury. After her fall, employee experienced an immediate onset of pain in her mid-back. Employee underwent testing which revealed abnormality in her thoracic spine and was eventually diagnosed with a compression fracture of the 8th thoracic vertebra. The evidence showed that from the time of the accident until the time the corpectomy was performed, employee suffered from severe back pain that was treated only with physical therapy and medication. Employee's symptoms eventually progressed to the point where it was painful for her to sit and stand and excruciating for her to walk. Since conservative treatment was not resolving her symptoms, employee sought evaluation and treatment from a neurosurgeon, Dr. Wetherington. Dr. Wetherington performed a thoracic corpectomy on March 2, 2000. Following the surgery, employee reported absolutely no back pain.

Dr. Wetherington assessed employee and opined that the surgery was needed to treat the chronic back pain employee suffered as a result of her work injury. Employee was given the choice to proceed with the surgery or continue with medical management; but because employee was failing medical management, Dr. Wetherington felt surgery was warranted. Dr. Wetherington also believed performing the surgery was needed to further evaluate the abnormality present in employee's thoracic spine and to obtain a complete diagnosis. Dr. Wetherington believed that the surgery was necessary to distinguish between a tumor, infection and/or fracture. The surgery and subsequent testing neither revealed a tumor or infection; therefore, employee's diagnosis was a T8

compression fracture. Dr. Wetherington opined that it was reasonable to ascertain that the fracture was caused by a fall, as there was no other history of an incident that would cause the compression fracture. Dr. Wetherington noted in employee's June 2, 2000 and September 14, 2000 office visits that employee reported a complete resolution of her back pain.

Dr. Musich evaluated employee on March 6, 2001. Dr. Musich testified that a corpectomy is used to treat spinal pain, preserve vertebrae, or for pathologies, which can be consistent with infections or tumors. Dr. Musich testified that the surgery in employee's case was to treat her back pain. He testified that there was some suspicion of an abnormality, but that no one could come up with a diagnosis prior to the cervical intervention. The post operative diagnosis was T8 vertebral lesion consistent with bone necrosis. Dr. Musich testified that employee's compression fracture developed bone necrosis, and the bone necrosis is what turned up the abnormality on employee's x-rays. Dr. Musich testified that the surgery was performed because the patient had subjective pain in the back following the fall in November of 1999 as well as an abnormality in the x-ray of her thoracic spine; therefore the surgery was necessary to alleviate the pain employee was experiencing as well as to get a definitive diagnosis. Dr. Musich opined that the traumatic work injury on November 24, 1999 resulted in an acute fracture of the T8 vertebral body, which necessitated surgical intervention due to an unclear diagnosis and chronic pain evaluation.

The overwhelming weight of the competent and substantial evidence reveals that claimant's corpectomy was a natural and legitimate consequence of her fall at work. Employee satisfied her burden of proof as she properly offered into evidence all medical bills pertaining to treatment for her work-related injury and testified that such medical bills and treatment were related to and the product of that injury. Therefore, employee is entitled to reimbursement for past medical expenses for the treatment related to her work injury, including the corpectomy.

Permanent Partial Disability

The extent and percentage of a disability is a finding of fact within the special province of the Commission. *Ransburg v. Great Plains Drilling*, 22 S.W.3d 726, 732 (Mo.App. W.D. 2000) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003)). The Commission may consider all of the evidence, including the employee's testimony, and draw reasonable inferences in arriving at the percentage of disability. *Id.*

I believe the evidence supports that employee is entitled to a greater percentage of disability than awarded by the majority. Employee testified that she still experienced occasional pain in her back and achiness related to weather changes. She testified that she still had occasional difficulty sitting as well as walking long distances as a result of her work injury. Employee did not complain of any lumbar or thoracic pain prior to her accident on November 24, 1999.

Furthermore, Dr. Musich testified that employee's chronic residual complaints regarding her injury on November 24, 1999 resulted in a permanent partial disability of 40% of the person as a whole. He also found no evidence of symptom magnification throughout his examination or any significant pre-existing disability referable to employee's mid or low back prior to November 1999.

Conclusion

Employee has met her burden of proof by establishing that she suffered a work-related injury on November 24, 1999 and that the treatment (corpectomy) is causally related to the work injury. Employee has shown that she is entitled to a greater degree of disability than awarded by the administrative law judge in this case. Accordingly, I would modify the decision of the administrative law judge to increase the award of permanent partial disability to 40% and award past medical expenses.

For the foregoing reasons, I respectfully dissent from the majority's decision.

John J. Hickey, Member

AWARD

Employee: Virginia Stephens Injury No.: 99-169466
Dependents: N/A Before the
Employer: St. Louis County Board of Education, Department of Labor and Industrial
Special School District of St. Louis Relations of Missouri
Additional Party: Second Injury Fund (open) Jefferson City, Missouri
Insurer: American Compensation Insurance Company Checked by: KOB:tr
c/o RTW
Hearing Date: April 25, 2007

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: November 24, 1999
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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: Claimant slipped on mashed potatoes, and fell to the floor, sustaining a compression fracture.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Thoracic spine/Body as a Whole
14. Nature and extent of any permanent disability: 15% of the body as a whole.
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$4,002.78

Employee: Virginia Stephens Injury No.: 99-169466

17. Value necessary medical aid not furnished by employer/insurer? \$ 3,047.95
18. Employee's average weekly wages: \$585.12
19. Weekly compensation rate: \$390.08 / \$303.01
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$ 3,047.95
60 weeks of permanent partial disability from Employer:	\$ 18,180.60

22. Second Injury Fund liability: Open

TOTAL: \$ 21,228.55

23. Future requirements awarded: None.

Said payments to begin immediately 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: James McCartney

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Virginia Stephens	Injury No.: 99-169466
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	St. Louis County Board of Education, Special School District of St. Louis	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (open)	Jefferson City, Missouri
Insurer:	American Compensation Insurance Company c/o RTW	Checked by: KOB:tr

PRELIMINARIES

The matter of Virginia Stephens (“Claimant”) proceeded to hearing primarily to determine whether the medical treatment she received is causally related to her work accident. Attorney James McCartney represented Claimant. Attorney Susan Kelly represented St. Louis County Board of Education, Special School District of St. Louis (“Employer”) and its insurer, American Compensation Insurance Company c/o RTW. Pursuant to an agreement between Claimant’s attorney and the Assistant Attorney General, the claim against the Second Injury Fund was left open pending the outcome of this hearing.

The parties agreed that on November 24, 1999, Claimant sustained an accidental injury arising out of and in the course of employment that resulted in injury to the Claimant. At the time, Claimant earned an average weekly wage of \$585.12, resulting in rates of compensation of \$390.08 for total disability benefits and the maximum rate of \$303.01 for permanent partial disability benefits. Employer paid no temporary total disability benefits, but did pay medical benefits totaling \$4,002.78.

The issues to be determined are: 1) Is the surgery and other medical treatment provided to Claimant causally related to her work accident; 2) is Employer responsible for reimbursing Claimant for paying bills related to the medical expenses; and 3) what is the nature and extent of Claimant’s permanent partial disability.

The following Exhibits were accepted into evidence without objection:

A Unity Corporate Health Services Records
 B Acute Care Center Records
 C Parkcrest Surgical Associates (Dr. Tate) Records
 D Deposition of Dr. Thomas F. Musich
 E SSM Rehab Billing Itemized Statement (3/10/2000 to 3/30/2000)
 F Microsurgery & Brain Research Institute Itemized Statement (1/4/2000 to 10/3/2000)
 G Advanced Pain Control Itemized Statements (12/26/1999 to 4/23/2001)
 H Normandy Fire District Itemized Statement
 I Bellevue Surgical Assoc. Balance Due Statement (non-itemized)
 J DePaul Health Center – Physician Services in Employer on 12/7/1999
 K SSM Rehab Patient Accounts Statement (3/20/2001 to 4/4/2001)
 L St. Mary’s Health Center Itemized Statement (5/3/2000 to 5/5/2001)
 M Midwest Medical Specialists Itemized Statement (1/3/2000 to 5/17/2000)
 N St. Mary’s Health Center Itemized Statement (6/19/2000 to 7/31/2001)
 O St. Mary’s Health Center Itemized Statement (9/8/2000 to 10/26/2000)
 P BJC Home Care Itemized Health Insurance Claim Form – April 2000
 Q Apria Healthcare Statement for Commode
 R Apria Healthcare Statement for Bed
 S St. John’s Mercy Medical Center Itemized Statement (12/25/1999)
 T SSM Rehab Statement (3/14/2000 to 5/22/2000)
 U Abbott Ambulance Statement (12/25/1999)
 V “Workers Compensation Medical Claims” summary – preparer unknown
 1 Deposition of Dr. David Kennedy
 2 Dr. Eyerman Records
 3 Microsurgery & Brain Research Institute Records (Dr. Wetherington)
 4 St. Mary’s Health Center Records

FINDINGS OF FACT

All evidence presented has been considered. Only testimony necessary to support this award will be reviewed and summarized. Based on a careful review of all the evidence, including Claimant’s testimony, the medical records, and the expert opinions, I find as follows.

1. Claimant is a long-term employee of Employer who has worked for many years at the Neuwoehner School. She is a teacher’s assistant in an autistic classroom, where she assists the children with learning and getting around the school. At the time of the accident in 1999, she was engaged mostly in one-on-one work with individual students.
2. On November 24, 1999, while in the course and scope of her employment, Claimant slipped on spilled food and fell forward, experiencing pain in her back. She immediately reported the injury and sought treatment.
3. Employer authorized treatment at Unity Health Care and with Dr. Tate, and Claimant received conservative care. X-rays were reported to be normal. On December 20, 1999, Dr. Tate released Claimant to return to work without restrictions. Thereafter, Employer did not offer any more authorized treatment.
4. Claimant experienced pain on December 7, 1999, and was taken to DePaul Health Center by ambulance for treatment. She submitted documentation for expenses related to this medical treatment totaling \$440.00. ^[1]
5. On December 22, 1999, Claimant saw Dr. Eyerman, who had seen her for muscle weakness on two previous occasions, in the 1970’s and 1980’s. He ordered an MRI that showed an abnormal finding at T8. Dr. Eyerman also discovered Claimant had an abnormal nodular density in her left breast that had grown over the past year, and of which Claimant had been unaware. He suspected a metastatic breast carcinoma.
6. On December 25, 1999, Claimant was admitted to St. Mary’s Hospital under the care of Dr. Eyerman, for back pain, after first going to the emergency room at St. John’s. ^[2] A 12/27/1999 bone scan showed evidence of an acute compression fracture of the 8th thoracic vertebra with no evidence of metastatic disease. She underwent a breast biopsy on December 29, 1999, that revealed the mass in her breast was benign. Dr. Eyerman noted he was treating her for a compression fracture at T8, and anticipated Claimant would be out until mid-January.

7. On January 13, 2000, Dr. Tate reviewed the MRI and bone scan, [3] concluded the tests showed a T8 compression fracture, and commented, "(Claimant) should be treated appropriately for her acute compression fracture."
8. In late January 2000, Claimant came under the care of Dr. Wetherington, who suspected Claimant had a cancerous lesion in her spine. He stated, "it is felt that a (corpectomy) may be necessary to completely resolve the issue as to whether or not a multiple myeloma or plasma cytoma and/or other cancerous growth may be present" and, "she needs to undergo this procedure as soon as possible as this may be a cancerous lesion."
9. On February 15, 2000, on behalf of Employer, Dr. Kennedy reviewed Claimant's case, including her history, MRI/bone scan/CT, and pathology report of 12/29 showing no malignancy. He concluded Claimant had a T8 compression fracture that can be treated with bracing. He did not recommend or advocate T8 corpectomy. Dr. Kennedy further opined that if the indication for surgery is to biopsy the abnormal area, the reasonable alternative would be to follow the lesion with serial studies, but that would not be related to work injury.
10. On March 2, 2000, Claimant proceeded to have the surgery advocated by Dr. Wetherington. He noted Claimant had a process ongoing at T8 which may represent compression fracture, but may also represent some type of tumor infiltrate. The post-surgical pathology report showed bone necrosis and fibrosis with no malignancy identified.
11. Claimant did well following surgery, and experienced near full resolution of her back pain, according to the records of Dr. Wetherington. She reached maximum medical improvement from the surgery on August 28, 2000. She still has complaints of activity related pain and incision tenderness, and takes over the counter medication for her symptoms.
12. Dr. Musich performed an evaluation in March 2001 on behalf of Claimant, and concluded Claimant sustained an acute traumatic fracture of the T8 vertebral body which necessitated surgical intervention due to an unclear diagnosis and chronic pain evaluation. As a result, she has permanent partial disability of 40% of the body as a whole. At deposition, he admitted the corpectomy was performed "to treat the pain and find out a diagnosis." He further stated a corpectomy, which is radical and painful, is not the typical treatment for a compression fracture.
13. Dr. Kennedy performed an examination of Claimant on February 15, 2000, issued a report dated November 29, 2000, and testified by deposition on November 21, 2006. He concluded Claimant sustained a T8 compression fracture as a result of her work accident. The normal, recommended treatment was bracing and medication. The corpectomy was undertaken, in his medical opinion, on the basis of a suspected malignancy, not for the purposes of curing the compression fracture, which would have healed with time. He specifically found the compression fracture was not a substantial factor in the need for the corpectomy surgery.

RULINGS OF LAW

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Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find:

- I. The medical treatment for which Claimant seeks compensation (corpectomy) was not causally related to her work accident.

The primary question presented in this case is whether Employer is responsible for paying the costs associated with Claimant's corpectomy procedure. In addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. § 287.140.1. Medical aid is, therefore, a component of the compensation due an injured worker under § 287.140.1. *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo.App. S.D.1996), cited in *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 266 (Mo.App. S.D. 2004). An employee has the burden of proving his entitlement to benefits for care and treatment authorized by § 287.140.1 i.e., that which is reasonably required to cure and relieve from the effects of the work injury. *Id.*. Meeting that burden requires that

the past bills be causally related to the work injury. *Id.*, citing *Pemberton v. 3M Co.*, 992 S.W.2d 365, 368-69 (Mo.App. W.D.1999) overruled in part by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003).

Thus, the initial question is one of causation as it pertains to the need for surgery: are the past bills for the corpectomy causally related to the work injury? Causation is established by medical testimony. *Elliott v. Kansas City, Mo., School Dist.*, 71 S.W.3d 652, 657-58 (Mo.App.2002) overruled on other grounds in *Hampton, supra.* In this case, there are essentially three expert opinions on the causal connection between the accident and the corpectomy. After careful review of the records, Dr. Kennedy opined Claimant had a compression fracture, which is most appropriately treated with bracing and medication. He warned against the surgery, and specifically found the compression fracture was not a substantial factor in the corpectomy surgery. Dr. Wetherington, the treating surgeon, indicated the surgery was needed to rule out a cancer or infection. Dr. Musich testified the radical surgery was to treat the pain and find out a diagnosis. The factfinder has sole discretion to determine the weight given to expert opinions. See, *Maas v. Treasurer of State*, 964 S.W.2d 541, 545 (Mo.App. E.D.1998). Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 877 (Mo. App. 1984). I find Dr. Kennedy to have the most credible opinion on causation.

The opinion of Dr. Kennedy is supported well by the substantial and competent evidence of record. Not only did the diagnostic tests and history at the time support his opinion of February 15, 2000, but the surgery undertaken against his advice ultimately proved Dr. Kennedy to be correct: Claimant did not have cancer, but was suffering from a compression fracture. I find Dr. Wetherington's opinion suspect, in large part because he proceeded with the corpectomy to rule out a cancer when months before Claimant's breast biopsy was begin, and there was no evidence of a history of cancer. Finally, Dr. Musich does not convincingly explain how the painful, radical surgery is a reasonable or necessary treatment for a compression fracture. In sum, I find the corpectomy surgery is not causally related to Claimant's compression fracture, but rather was undertaken to rule out a non-work related diagnosis.

II. Employer is only liable for treatment undertaken to cure and relieve Claimant from the effects of the work accident.

There is a genuine issue as to whether Employer's failure to provide medical treatment justifies Claimant's choice of a corpectomy at Employer's cost. An employer's duty to provide statutorily-required medical aid to an employee is absolute and unqualified. *Martin v. Town and Country Supermarkets*, 220 S.W.3d 836, 844 (Mo.App. S.D. 2007)(citations omitted). If the employer is on notice that the employee needs treatment and fails or refuses to provide it, the employee may select his or her own medical provider and hold the employer liable for the costs thereof. *Id.* However, the treatment obtained must still be causally connected to the work injury, and must "reasonably be required after the injury or disability, to cure and relieve from the effects of the injury." § 287.140.1.

Employer has not provided treatment for Claimant's back pain in accordance with its own experts. Employer cut off treatment on December 20, 1999, when Dr. Tate released Claimant with no restrictions despite ongoing pain complaints. However, when she reviewed the MRI and bone scan in mid-January, Dr. Tate stated Claimant should be treated appropriately for her acute compression fracture." On February 15, 2000, Dr. Kennedy asserted Claimant should undergo a course of bracing and medication to treat her T8 compression fracture. In spite of these opinions, Employer did not authorize treatment. Thus, Claimant was free to seek treatment reasonably required to cure and relieve her from the effect of her thoracic back injury beginning December 20, 1999.

The issue of what treatment was reasonably required to treat Claimant's back injury is a question of fact. See, *i.e. Martin v. Town and Country Supermarkets* at 846. Again, I find Dr. Kennedy to have most credibly addresses the issue of reasonable treatment. Unlike Drs. Wetherington and Musich, who advocated the most radical and invasive treatment possible, Dr. Kennedy first described the appropriate treatment for a compression fracture, which turned out to be the correct diagnosis. Alternatively, he also suggested a more reasonable approach to address the apparent concerns regarding the suspected cancer. Although it would not be work related, opined Dr. Kennedy, the reasonable alternative to a biopsy and corpectomy is to follow the lesion with serial studies. I find Dr. Kennedy's opinion on treatment credible, and I find the corpectomy was not reasonably required to cure and relieve Claimant from the effects of the injury.

I find the reason Claimant underwent a corpectomy was to rule out cancer as the cause for the T8 abnormality. Therefore, it was a diagnostic, not a therapeutic, procedure. "Treatment" which Workmen's Compensation Act obligates employer to furnish does not mean examination to diagnose condition. *Bryant v. Montgomery Ward & Co.*, 416 S.W.2d 195, 199 (Mo.App.1967)("treatment" is applying remedies; the course pursued for remedial purposes)(as cited in *Reynolds v. Dennison*, 981 S.W.2d 641, 642 (Mo.App. S.D.1998). Not only was the corpectomy not causally connected to the compression fracture, but it was undertaken to potentially diagnose an alternate, non-work related condition for which Employer could not be held liable. Such diagnostic procedures do not constitute treatment under workers' compensation law.

When Clamant submitted to the corpectomy, Employer's liability to provide treatment to cure and relieve ceased. Any medical expenses on or after March 2, 2000 should be submitted through Claimant's group health plan, as they are not compensable medical expenses for which Employer can or should be held liable.

Although the corpectomy is not compensable treatment reasonably required to cure and relieve Claimant from the effects of her work injury, there are some expenses prior to the date of the surgery for which Employer is liable. I find Claimant was in need of treatment to cure and relieve her from the effects of her injury after Employer cut off benefits on or about December 20, 1999. Although Claimant had continued complaints, and both Dr. Tate and Dr. Kennedy commented on the need for appropriate, conservative treatment for the compression fracture, there is no evidence Employer tendered such treatment. I find Employer liable for properly documented medical expenses incurred by Claimant to cure and relieve the effects of her T8 compression fracture between December 20, 1999 and March 1, 2000. Employer is not liable for any treatment related to the diagnosis and treatment of Claimant's breast nodule.

Claimant must prove the expenses she looks to recover. Section 287.140 provides that testimony which relates the medical treatment to the work-related injury and accompanied by the medical bills and records produces a sufficient factual basis for the payment of medical bills by the employer or insurance carrier, absent a showing by the employer or insurance carrier that such bills were not reasonable and fair. *Esquivel v. Day's Inn of Branson*, 959 S.W.2d 486, 489 (Mo.App. S.D. 1998)(citations omitted) overruled on other grounds in *Hampton, supra*. I find the following expenses are properly documented, and award \$3,047.95 in expenses to Claimant:

Normady Fire District bill	\$ 295.00
DePaul Emergency Room charges	\$ 145.00.
St. John's emergency room charges	\$1,519.45
Ambulance charge for transfer from St. John's to St. Mary's	\$ 378.50
Advanced Pain Control charges for December 26-28, 1999	\$ 710.00

There were other charges incurred between December 20, 1999, and March 1, 2000, but they are oncology related (i.e., Dr. Glauber is an oncologist), are not supported by medical records (i.e., there is no doctor's statement to support the commode chair or hospital bed from Apria, nor are there records from a 12/07/99 admission), or are not itemized on a bill (most notably, the MRI). Exhibit V, which lists many charges by provider, date, procedure and amounts, appears to be a document summarizing many bills, some of which are not otherwise in evidence. Such a document, purportedly prepared for litigation by persons unknown, is not a document on which expenses can be awarded.

III. Employer is liable for permanent partial disability.

Claimant seeks an award of permanent partial disability. The claimant bears the burden of proving an accident occurred and it resulted in injury. *Dolen v. Bandera's Cafe & Bar*, 800 S.W.2d 163, 164 (Mo.App.1990), overruled on other grounds in *Hampton, supra*. Claimant must prove the nature and extent of any disability by a reasonable degree of certainty. *Zimmerman v. City of Richmond Heights*, 194 S.W.3d 875, 878 (Mo.App. E.D. 2006). With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. See, i.e., *Quinlan v. Incarnate Word Hosp.*, 714 S.W.2d 237, 238 (Mo.App. E.D. 1986).

According to Dr. Kennedy, the corpectomy accomplished nothing more than what time would have, if Claimant had pursued a conservative course of treatment. Although Employer is not liable for compensating

Claimant for the surgery and any disability caused thereby (i.e. the incisional pain), it is responsible for the permanent partial disability caused by the work related compression fracture. Based on Claimant's testimony, the medical records and the expert opinions, I find Claimant's work accident and resulting compression fracture is a substantial factor in causing her permanent partial disability of 15% of the body as a whole.

CONCLUSION

The corpectomy is not causally connected to, nor does it constitute reasonable treatment to cure and relieve, Claimant's work-related T8 compression fracture. Employer shall compensate Claimant as indicated in this award for her work injury alone. This award is subject to a lien of 25% in favor of James McCartney for legal services.

Date: _____

Made by: _____

Karla Ogrodnik Boresi
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey W. Buker
Acting Division Director
Division of Workers' Compensation

[1] Normady Fire District (Exhibit H) of \$295.00 and DePaul Emergency Room charges of \$145.00.

[2] The St. John's emergency room charges totaled \$1,519.45 (Exhibit S), and the ambulance charge for transferring Claimant from St. John's to St. Mary's was \$378.50 (Exhibit U). Advanced Pain Control billed \$710.00 for services from December 26, 27 and 28, 1999.

[3] The bills associated with the MRI and bone scan were not in evidence.