

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

Injury No.: 09-101343

Employee: Laveta J. Van Norman
Employer: Fulton State Hospital (Settled)
Insurer: C A R O (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 16, 2013. The award and decision of Administrative Law Judge Vicky Ruth, issued August 16, 2013, 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 17th day of December 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Laveta J. Van Norman

Injury No. 09-101343

Dependents: N/A

Employer: Fulton State Hospital
(SETTLED)

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

Additional Party: Second Injury Fund

Insurer: State of Missouri, c/o CARO
(SETTLED)

Checked by: VR/np

Hearing Date: May 7, 2013

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: December 27, 2009.
5. State location where accident occurred or occupational disease was contracted: Callaway County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant attempted to sit down in a chair at a desk at work and missed the chair, falling to the ground.
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 knee and low back.
14. Nature and extent of any permanent disability: 25% of the left knee and 12.5% of the body as a whole referable to the low back.
15. Compensation paid to-date for temporary disability: N/A.
16. Value necessary medical aid paid to date by employer/insurer? N/A.
17. Value necessary medical aid not furnished by employer/insurer? N/A.

18. Employee's average weekly wages: \$626.85.
19. Weekly compensation rate: \$417.89.
20. Method of wages computation: by agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable from employer: previously settled.
22. Second Injury Fund liability: Yes.
 $15.137 \text{ weeks} \times \$417.89 = \$6,325.60.$
23. Future medical awarded: N/A.

Said payments to begin immediately and to be payable and 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: The Van Camp law firm.

Employee: Laveta J. Van Norman

Injury No. 09-101343

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Laveta J. Van Norman

Injury No. 09-101343

Dependents: N/A

Employer: Fulton State Hospital
(SETTLED)

Additional Party: Second Injury Fund

Insurer: State of Missouri, c/o CARO
(SETTLED)

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

On May 7, 2013, Laveta Van Norman (the claimant) and the Second Injury Fund appeared in Jefferson City, Missouri, for a final award hearing regarding the Second Injury Fund claim. Claimant was represented by attorney Christine Kiefer. The Second Injury Fund was represented by attorney Kristin Frazier. Claimant testified in person at the hearing and by deposition. Dr. A. E. Daniel, Phillip Eldred, Dr. David Volarich, and James England testified by deposition. The parties submitted briefs on May 31, 2013, and the record closed at that time.

STIPULATIONS

The parties stipulated to the following:

1. On or about December 27, 2009, Laveta Van Norman (the claimant) was an employee of the State of Missouri, Fulton State Hospital (the employer), when she sustained an injury by accident to her left knee and low back while in the course and scope of her employment with employer. The parties disagree as to whether claimant also sustained a psychological injury as a result of the accident.
2. The employer was operating subject to the provisions of Missouri Workers' Compensation Law.
3. The employer's liability for workers' compensation was self-insured by the State of Missouri, in care of CARO.
4. The Missouri Division of Workers' Compensation has jurisdiction and venue in Callaway County is proper. For trial purposes, venue is also proper in Jefferson City, Missouri.
5. Notice is not an issue.
6. Claimant filed a Claim for Compensation within the time prescribed by law.
7. Claimant's average weekly wage was \$626.85, yielding a weekly compensation rate of \$417.89 for permanent partial, permanent total, and temporary total disability benefits.

ISSUES

The parties agreed that the issues to be resolved in this proceeding are as follows:

1. Whether claimant is permanently and totally disabled.
2. In the alternative, whether claimant sustained permanent partial disability.
3. Medical causation as to a psychiatric injury.
4. Liability, if any, of the Second Injury Fund.

EXHIBITS

On behalf of the claimant, the following exhibits were entered into evidence without objection:

Exhibit A	<i>Stipulation for Compromise Lump-Sum Settlement,</i> Injury No. 09-101343
Exhibit B	<i>Stipulation for Compromise Lump-Sum Settlement,</i> Injury No. 11-004820
Exhibit C	<i>Stipulation for Compromise Lump-Sum Settlement,</i> Injury No. 11-030618
Exhibit D	Deposition and report of Dr. A.E. Daniel
Exhibit E	Deposition and report of Phillip A. Eldred
Exhibit F	Deposition and report of Dr. David Volarich
Exhibit G	Records from the Missouri Division of Workers' Compensation
Exhibit H	Medical records from Advanced Radiology
Exhibit I	Medical records from Columbia Orthopedic Group
Exhibit J	Medical records from Atlas Physical Therapy
Exhibit K	Medical records from Columbia Orthopedic Group
Exhibit L	Medical records from Runde Occupational & Environmental Physicians
Exhibit M	Medical records from Select Physical Therapy
Exhibit N	Medical records from Callaway Community Hospital
Exhibit O	Medical records from Callaway Physicians
Exhibit P	Medical records from Fulton Medical Clinic
Exhibit Q	Medical records from Capital Region Corporate Health
Exhibit R	Medical records from University Hospital and Clinics
Exhibit S	Medical records from Fulton Medical Clinic
Exhibit T	Medical records from Callaway Physicians
Exhibit U	Medical records from Marilyn H. White, Ph.D.
Exhibit V	Medical records from Runde Occupational & Environmental Physicians
Exhibit W	Medical records from Atlas Physical Therapy
Exhibit X	Medical records from The Orthopedic Center of St. Louis
Exhibit Y	Medical records from Columbia Orthopedic Group
Exhibit Z	Medical records from Pain Treatment Center, Inc./Dr. Graham
Exhibit AA	Medical records from Runde Occupational &

Employee: Laveta J. Van Norman

Injury No. 09-101343

Exhibit BB Environmental Physicians
 Medical records from Callaway Community Hospital

On behalf of the Second Injury Fund, the following exhibits were entered into evidence without objection:

Exhibit 1 Deposition of claimant
Exhibit 2 Deposition of James England
Exhibit 3 Copies of stipulations and dismissals

Note: All marks, handwritten notations, highlighting, or tabs on the exhibits were present at the time the documents were admitted into evidence. All depositions were admitted subject to any objections contained therein. Unless noted otherwise, the objections are overruled.

FINDINGS OF FACT

Based on the above exhibits and the testimony presented at the hearing, I make the following findings:

1. Claimant was 58 years old at the time of the hearing. She lives in St. Charles, Missouri, with her adult son and his girlfriend. Claimant has a high school diploma. Her only additional education or certification was CPR training.
2. Claimant worked for the State of Missouri, Fulton State Hospital (the employer), where she was employed for 18 years as a Security Aide I. Her last day of employment was June 27, 2011. As a Security Aid I, her responsibilities included the supervision and care of mentally ill patients. She was required to assist in volatile situations (“staff supports”) if and when patients became violent.
3. Claimant’s previous employment consisted of working in patient care in a nursing home, working as a waitress and a cook’s helper, and working in a factory.
4. On December 27, 2009, claimant sustained an injury by accident arising out of and in the course and scope of employment with the employer. The accident occurred when claimant attempted to sit down in a chair at a desk, missed the chair, and fell to ground.
5. At the trial, claimant testified that she had immediate pain in the low back, shoulders, buttocks, and left knee. She reported the injury and completed a *Report of Injury* form. In her deposition, taken September 8, 2012, claimant described her condition immediately after the accident as being in shock and feeling stiff; she did not mention pain.¹ She did note, however, that when she returned to work for her next shift, she was aching.
6. On December 28, 2009, claimant treated with Dr. Eddie Runde; **at that visit, claimant told Dr. Runde that she did not have any pain immediately after the incident** and she

¹ Exh. 1, p. 57.

did not hit her head.² The records indicate she complained of back, elbow, and bilateral knee pain. Dr. Runde diagnosed claimant with back pain status post fall onto the buttocks. He placed claimant on restricted duty, noting she was not to participate in staff supports.

7. On January 6, 2010, claimant returned to Dr. Runde complaining of continuing pain in her lower back.³ Claimant did not believe she was getting better. Dr. Runde ordered an x-ray to rule out any bony injury. He continued her on restricted duty.
8. In his January 13, 2010 notes, Dr. Runde recorded that claimant continues to have pain, mostly in her lower back. The doctor noted the recent x-ray report shows claimant has degenerative changes in the lumbosacral spine. There was also shortening of the vertebral body at L4; this was thought to be either due to an acute compression deformity or possibly due to an underlying degenerative process.⁴ Dr. Runde's diagnosis was low back pain, with possible compression fracture of L4. He recommended claimant be referred to an orthopedic surgeon for further evaluation of the possible compression fracture of L4. He continued claimant on restricted duty.
9. On January 28, 2010, claimant was examined by Dr. Matt Thornburg, who noted that claimant is a "very difficult historian, making it difficult to assess exactly what is going on."⁵ His assessment was low back pain, questionable changes consistent with a compression fracture at L4, and possible acute coccygeal injury. He ordered an MRI and physical therapy.
10. At the February 10, 2010 visit, Dr. Thornburg recorded that the MRI did not show any obvious compression fractures. The study did reveal transitional anatomy at the lumbosacral junction, and that claimant has some stenosis at L4-5 and L3-4. Dr. Thornburg's assessment was simply low back pain. He prescribed therapy to work on generalized strengthening and he kept her on light duty.
11. Claimant saw Dr. Runde again on March 11, 2010.⁶ At that visit, claimant reported that on March 5, she was doing exercises (physical therapy) at home when she noticed some pain in her left knee. Dr. Runde diagnosed claimant with left knee pain, probably a strain from an overzealous physical therapy session. The doctor placed claimant on restricted duty and told her to limit prolonged standing as well as squatting and climbing.
12. Claimant returned to Dr. Thornburg on March 17, 2010, and reported that her back was "doing some better."⁷ Claimant, however, had developed some knee pain while doing physical therapy exercises at home; he opined that the exercises had aggravated her pre-existing chondromalacia. The doctor recommended claimant continue stretching and strengthening her back.

² Exh. L.

³ *Id.*

⁴ *Id.*

⁵ Exh. I.

⁶ Exh. L.

⁷ Exh. I.

13. At the April 4, 2010 visit with Dr. Thornburg, claimant again complained of low back and left knee pain. The diagnosis was low back pain and left knee chondromalacia patella. The doctor opined that the knee “is a chronic problem that was aggravated with therapy. I do not believe that the fall in December was the prevailing factor for this and I really believe that she would have begun to have symptoms of chondromalacia regardless of her doing therapy or not...”⁸ Dr. Thornburg provided a cortisone injection for her knee and suggested therapy.
14. On June 22, 2010, claimant saw Dr. Ronald Carter for a second opinion.⁹ Dr. Carter noted that although the MRI revealed a small tear of the medial meniscus, he did not think that was causing her symptoms. Likewise, he did not feel treating the meniscal tear would improve her symptoms. He recorded, however, that claimant did have significant medial quadriceps weakness, and he advised her to do isometric exercises for strengthening the VMO. He did not believe that surgical intervention would help the knee. Moreover, he did not believe the medial meniscus tear arose from the workers’ compensation injury. He believed that the mechanism of injury – falling backwards when the chair moved – did not involve significant torsional injury to the knee, which would be required to cause a meniscal tear.¹⁰
15. On July 7, 2010, Dr. Thornburg administered a Synvisc-One injection to claimant’s left knee. At the August 18, 2010 visit, claimant reported that the injection did not help. Dr. Thornburg found claimant to be at maximum medical improvement as to her back.
16. Medical records from August 2010 indicate claimant treated with Dr. Wells for anxiety during the summer of 2010.¹¹ Dr. Wells diagnosed claimant with depression, and provided her medication for anxiety.
17. On January 5, 2011, claimant treated with psychologist Marilyn H. White, who noted that claimant references distress with several areas of her life, but the most pressing concerns seemed to have been triggered by a back injury she sustained while working as a Security Aide I at Fulton State Hospital on December 27, 2009.¹²
18. Claimant underwent extensive physical therapy for her knee and back before finally being referred to Dr. Gross in April 2011. Dr. Gross assessed left knee degenerative disease and a medial meniscus tear. He believed that the problem was preexisting and not related to work. He recommended arthroscopic surgery.
19. On May 11, 2011, Dr. Gross performed a left knee arthroscopy and a partial medial and lateral meniscectomies and chondroplasty of the medial femoral condyle. Dr. Gross continued to treat claimant until June 27, 2011, when he released her to regular duty.¹³

⁸ Exh. I.

⁹ Exh. I.

¹⁰ *Id.*

¹¹ Exh. O.

¹² Exh. U.

¹³ Exh. X.

Employee: Laveta J. Van Norman

Injury No. 09-101343

20. On August 1, 2011, claimant was seen by Dr. Bus Tarbox of the Columbia Orthopaedic Group.¹⁴ Dr. Tarbox noted claimant's chief complaint was right knee pain from a fall in March 2011. The doctor's impression was arthritis of the knee.
21. Claimant was evaluated by Dr. Graham in August 2011; he put her at MMI on her low back and did not provide any restrictions or treatment.¹⁵

Dr. David Volarich

22. On January 4, 2012, Dr. David Volarich evaluated claimant. Dr. Volarich reviewed medical records, met with the claimant, and assessed the injury of December 27, 2009. He diagnosed the claimant with lumbar syndrome secondary to disc bulging at L3-L4 and L4-L5 causing spinal stenosis along with left knee internal derangement status post arthroscopic partial and medial lateral meniscectomies and chondroplasty. Dr. Volarich provided ratings of 25% of the body as a whole referable to the lumbar spine and 40% of the left knee. He gave restrictions referable to the low back of no lifting over 20 pounds, no handling weight overhead or away from her body or carrying weight over long distances, avoid all bending, twisting, lifting, pushing, pulling, carrying, climbing, and avoid remaining in a fixed position for over 20 to 30 minutes. As it relates to her lower extremities, Dr. Volarich provided restrictions of avoiding all stooping, squatting, crawling, kneeling, pivoting, climbing, and impact maneuvers, as well as limiting prolonged standing or walking to 60 minutes or less. He also advised claimant to be cautious when navigating uneven terrain, slopes, steps, and ladders. Dr. Volarich found that the work injury of December 27, 2009, was the prevailing factor in leading to claimant's symptoms, diagnosis, and disability.¹⁶

Settlement of Primary Injury and Current Complaints

23. Claimant ultimately settled the claim of December 27, 2009, for 25% of the left knee, 12.5% of the body as a whole referable to the low back, and 5% of the body as a whole referable to the psychiatric aspect of the claim.¹⁷ At hearing, claimant testified that following the incident in December 2009, she has a constant pain in her low back that has never let up or resolved. Claimant testified that the pain is at her beltline and radiates into her mid back and that her symptoms are improved when she changes positions, flexes, twists, or stretches. She believed that she could walk for about 30 minutes at a time and stand for about ten minutes, but was unable to carry more than 50 pounds. Claimant testified that since the injury of December 27, 2009, her sleep is disrupted due to pain in her low back and knee.
24. Claimant testified that since this 2009 injury she feels depressed and hopeless. In addition, she is not as active or as socially involved as she was in the past. She testified that she became increasingly depressed over time after the injury of December 27, 2009,

¹⁴ Exh. Y.

¹⁵ Exh. 2.

¹⁶ Exh. F, report.

¹⁷ Exh. A.

and that she also began having difficulties with her memory, attention, and ability to focus. She reported symptoms of anxiety, nervousness, and feeling fearful when she left the house or was around other people. She testified that she had difficulties with sleep due to her anxiety and depressive symptoms. At the time of the hearing, claimant was taking medication for pain, depression, and anxiety.

25. Claimant testified that she did not return to work after June 27, 2011, as she had exhausted all of her light duty leave time and her position was not held for her with Fulton State Hospital.

Pre-existing Conditions

26. Claimant testified regarding her preexisting conditions and injuries. She testified that she had seizures as a child, and that for many years she did not know exactly what was wrong with her as the seizures were petit mal and difficult to diagnose. She testified that she had difficulty in school and had problems socially as a child due to the disorder, but that it was eventually treated with medication. She testified that later as a young adult she began having grand mal seizures, which were much more serious. However, she has been on medication since that time and reports that the seizures are mostly controlled. Dr. Volarich provided a rating of 10% of the body as a whole as it relates to her seizure disorder.¹⁸
27. In 1988, claimant fractured her left ankle and she underwent surgery. She testified that following her surgery and release from treatment, she became more careful when walking and had difficulty navigating on rough terrain. Claimant also testified that she had aching and pain in the left ankle, particularly in cold weather. Upon examination, Dr. Volarich noted a 12-centimeter scar of the distal fibular from her previous open reduction fixation. He also was able to palpate the hardware and screw heads and noted discomfort upon palpation. Dr. Volarich provided a rating of 30% of the left ankle as it relates to this injury.¹⁹
28. In 1993, claimant stepped in a hole in a parking lot and twisted her right ankle. She treated at the emergency room and testified that this injury caused her to have difficulty navigating stairs and rough terrain. Dr. Volarich diagnosed a right ankle sprain/strain and noted on examination discomfort when palpating the lateral compartment along the interior talofibular ligament. He provided a rating of 10% of the right ankle.²⁰
29. In 2003, claimant fell in a parking lot and fractured her left wrist. She treated at the University of Missouri Hospital, where she was diagnosed with a left distal radius and ulna fracture.²¹ Claimant testified that her arm was put in a cast and she underwent physical therapy; she did not have any surgery. Claimant testified that following this injury she had reduced strength, weakness, and pain in cold weather in the left wrist. She

¹⁸ Exh. F, report.

¹⁹ Exh. F, report.

²⁰ Exh. F

²¹ Exh. R.

reported difficulty opening jars and bottles; she compensated with her right hand. On physical examination, Dr. Volarich noted reduced range of motion on flexion, extension, and ulnar deviation in the left wrist. He gave a rating of 15% of the left wrist. Claimant settled her claim with Fulton State Hospital (the employer) for 15% of the left wrist.

30. In 2005, claimant fell down the stairs in a parking lot and injured her right knee. She treated with Dr. Quinn, who took her to surgery in March 2005 and performed a right knee arthroscopic, partial medial meniscectomy, and partial lateral meniscectomy as well as chondroplasty of the patella. She then attended an extensive amount of physical therapy before being released.²² Claimant testified that following this treatment and her release, her right knee remained unstable and that it continued to swell over the years. She reported a sensation as if her knee was “rolling and that it was going to give out on her.” She reported that it was very difficult to navigate stairs and that she remained fearful of falling following this injury. Dr. Volarich evaluated the right knee and noted arthroscopic puncture wound scars along with mistracking and swelling at the prepatellar bursa. He also recorded reduced flexion and provided a rating of 30% of the right knee.²³ Claimant settled this case with the employer for 15.3% of the right knee.²⁴
31. In 2006, claimant fell in a parking lot and fractured her right wrist. She was diagnosed with a non-displaced fracture at the emergency room and was put in a splint. Dr. Pearce noted ongoing numbness and tingling in her fingers and loss of grip strength and referred her to physical therapy.²⁵ Dr. Volarich evaluated the right wrist and found on examination a reduced range of motion in flexion, extension, radial deviation, and ulnar deviation of the right wrist. He provided a rating of 15% of the right wrist.²⁶ Claimant testified that following her right wrist injury she had reduced grip strength and had a difficult time opening things. She indicated that her right wrist was worse than her left following these two injuries. She settled her claim with the employer for 10% of the right wrist.²⁷
32. In February 2008, claimant fell on ice and landed on both of her knees. She treated with Dr. Acosta-Rodriguez, who noted crepitus with extension and flexion as well as right knee minimal narrowing of the medial compartment. He diagnosed bilateral knee pain, chronic chondromalacia, and he prescribed medication. He also gave her an injection in the right knee. He released her in March 2009, diagnosing her with a contusion and strain of both knees.²⁸ Dr. Volarich evaluated the left knee and found reduced flexion, puncture wound scars, crepitus, and mistracking, as well as swelling in the prepatellar bursa. He provided a rating of 5% of the left knee.²⁹ Claimant settled her claim with the employer for 5% of the left knee and 5% of the right knee.³⁰

²² Exh. K.

²³ Exh. F, report.

²⁴ Exh. G.

²⁵ Exh. O.

²⁶ Exh. F.

²⁷ Exh. C.

²⁸ Exh. Q.

²⁹ Exh. F, report.

³⁰ Exh. G.

Post-injury Accidents

33. After her 2009 work injury, claimant continued to work – and she continued to suffer work-related injuries.

Injury No. 10-099994

34. Claimant testified that on December 12, 2010, she scooted backwards on a rolling chair, causing it to flip over; as a result, she landed on her back. Dr. Runde recorded in his note of December 30, 2010, that “her past medical history is notable for previous back pain last year when she fell off of a chair.”³¹ He noted that claimant saw Dr. Islam at Fulton Medical Clinic and was prescribed ibuprofen and Flexeril and was reporting ongoing pain in the left low back. Dr. Runde sent her for physical therapy. He released claimant on February 18, 2011, noting low back pain and degenerative joint disease of the lumbar spine as follows:

Since no compression fracture was seen and no other findings consistent with her description of the incident have been found objectively, no further treatment can reasonably be recommended with respect to the occupational injury standpoint. However, she may continue with conservative treatment as directed. She may also follow-up with her doctor for further evaluation and treatment of her underlying DJD.³²

35. Claimant testified that this injury resulted in a temporary exacerbation of her already ongoing low back pain that began after the 2009 injury.
36. Dr. Volarich provided a rating referable to this injury of 17.5% of the body as a whole referable to the low back.³³ It should be noted, however, that this claim was dismissed by the Division of Workers’ Compensation.

Injury No. 11-004820

37. On January 26, 2011, claimant was still on light duty because of her previous back and knee injuries and was pushing a cart and stocking shelves. A lid from a steam pan fell off a shelf and struck the back of her head and the back of her left shoulder. Claimant treated on three occasions with Dr. Runde, who noted that claimant did not have any loss of consciousness and that while at physical therapy for her previous low back injury she began having symptoms in the back of her head. Dr. Runde noted “she has no other specific complaints except for her neck and left shoulder pain that seems to come and go.” On February 18, 2011, Dr. Runde prescribed two weeks of physical therapy and released claimant as to this injury, noting that she should continue conservative treatment with her own doctor for degenerative disc disease. He diagnosed a possible minor contusion of the scalp, neck and left shoulder.³⁴

³¹ Exh. V.

³² Exh. V.

³³ Exh. F, report.

³⁴ Exh. V.

38. The claimant had intermittent pain in the left shoulder, particularly when she has to do any sort of pushing or pulling, and that this pain is actually very similar to what she has in her right shoulder. Dr. Volarich noted that she does not have problems with her range of motion when reaching down in back or overhead. He provided a rating of 17.5% of the neck, 15% of the left shoulder, and 10% of the body as a whole referable to the scalp and head.³⁵
39. Claimant settled her January 2011 work injury with the employer for 5% of the body as a whole referable to the neck and 5% of the left shoulder.

Injury No. 11-030618

40. On April 25, 2011, claimant was sitting at a nurse's station completing paperwork when a patient came up and began to pull her hair and strike her neck. Claimant was referred to the emergency room and then to Dr. Runde. Claimant saw Dr. Runde on one occasion, at which time he noted that she had pain on the right side of her scalp and that she was nervous since the incident. He noted no other complaints and diagnosed a contusion to the right head, neck, and shoulder.³⁶ Claimant had no additional treatment after that visit, but testified that she does have occasional headaches since the incident. Dr. Volarich provided a rating of 15% of the right shoulder and 2.5% of the body as a whole referable to the head.³⁷
41. Claimant settled her April 2011 work injury with the employer for 5% of the right shoulder.

Phil Eldred

42. On March 6, 2012, claimant was evaluated by Phil Eldred, a licensed vocational rehabilitation counselor. Mr. Eldred reviewed medical records, met with claimant, and conducted vocational testing. He noted that claimant's problems consisted of constant back pain, right knee pain, pain in both shoulders, pain in both hands and wrists, poor memory, seizures, and stress. He outlined restrictions given by various doctors and noted that in May 2009, Dr. Berkin gave restrictions that would put the claimant at light work level. Mr. Eldred also indicated that the restrictions given by Dr. Volarich would put the claimant at the less than sedentary work level. Mr. Eldred explained that there are non-exertional impairments affecting claimant as it relates to the psychiatric aspect of her claim. He noted that Dr. Daniel had given a GAF score of 50, which indicates serious symptoms and serious impairment in social, occupational, and school functioning. Vocational testing given by Mr. Eldred indicated a 9th grade spelling level, 8th grade reading level, and 7th grade math level. The Purdue peg board test ranked claimant in the less than 1 percentile category. Mr. Eldred opined that claimant had no transferable skills and was not highly trainable.³⁸

³⁵ Exh. F, report.

³⁶ Exh. AA.

³⁷ Exh. F, report.

³⁸ Exh E, report.

43. Mr. Eldred concluded that claimant had preexisting conditions that constituted a hindrance or obstacle to her employment, that she did not have any transferable jobs for sedentary work even if she could perform at sedentary work level, and that she was unemployable in the open labor market. It was his opinion, that she was permanently and totally disabled **as a result of a combination of her injuries on December 27, 2009, December 12, 2010, January 26, 2011, and April 25, 2011, combined with her pre-existing injuries and medical conditions.** Mr. Eldred also opined that, when considering complaints of pain and a person's employability:

These are issues that would definitely be an impediment to employment. Specifically, if you're having pain and not able to concentrate on a job, if you're unable to sit or stand, do various activities due to the pain, it certainly is going to be something that would keep you from being employed. But when it comes to comparing pain to the list of jobs in the Diction of Occupational Titles, it's impossible to do that.³⁹

James England

44. Mr. James England evaluated the claimant at the request of the Second Injury Fund. Mr. England concluded that claimant appeared to have acquired some transferable skills that could be utilized in an alternative, less physically demanding work setting, including entry-level office positions and working for security companies as an alarm monitor or in a more sedentary security position where the employee does not have to control others. He concluded that Mr. Eldred's testing of claimant demonstrated 8th grade level reading, 9th grade level spelling, and 6th grade level math, which was sufficient for a variety of entry level position.
45. Mr. England noted that none of the treating physicians put restrictions on claimant that would have prevented her past work or a variety of other work activities. When speaking of Dr. Volarich's restrictions, Mr. England conceded that Dr. Volarich's restrictions would put claimant at a less than sedentary work level. This was primarily due to the restrictions he put on her low back – which was injured in her December 27, 2009 injury. **Mr. England reasoned that if the restrictions Dr. Volarich placed on claimant's back were accurate, where she had to rest when needed, including resting in a recumbent position, she could not have worked in her last job after December 27, 2009, until June 27, 2011 (when she left employment with the employer).**⁴⁰
46. Mr. England concluded that considering Dr. Volarich's restrictions for the back alone, claimant would have been precluded from employment from her back injury alone regardless of any combination with prior or future injuries.⁴¹

³⁹ Exh. E, p. 38.

⁴⁰ Exh. F.

⁴¹ Exh. 2.

Dr. A. E. Daniel

47. On February 15, 2011, and March 4, 2011, claimant was evaluated by Dr. A.E. Daniel, a psychiatrist. Dr. Daniel ultimately opined that claimant had a 30% psychiatric disability overall, with 20% resulting from the non-resolution of orthopedic work injuries on **December 7, 2009 and December 12, 2010**, which he found to be the prevailing factors causing her psychiatric condition.⁴² Dr. Daniel opined that the non-resolution of her pain and physical symptoms due to her orthopedic injuries precipitated the recurrence of old depressive symptoms. He determined that claimant could work in a limited fashion from a psychiatric perspective, and that he could not say whether her orthopedic condition per se would preclude her from competing in the open labor market.⁴³ He noted that at the time of her work injury, claimant was not treating for psychiatric or psychological problems. To the best of his knowledge, claimant's background involving prior psychological problems did not have a bearing on her employability or ability to work. He opined that claimant did not demonstrate all the criteria for PTSD.

CONCLUSIONS OF LAW

Based upon the findings of fact, stipulations, and the applicable law, I find the following:

Issue 1: Medical causation as to the psychiatric injury;

Claimant seeks an Award of permanent total disability against the Second Injury Fund, or in the alternative, permanent partial disability benefits. Under Missouri Workers' Compensation law, the claimant bears the burden of proving all essential elements of his or her workers' compensation claim.⁴⁴ Proof is made only by competent and substantial evidence, and may not rest on speculation.⁴⁵ Medical causation not within lay understanding or experience requires expert medical evidence.⁴⁶ When medical theories conflict, deciding which to accept is an issue reserved for the determination of the fact finder.⁴⁷

In addition, the fact finder may accept only part of the testimony of a medical expert and reject the remainder of it.⁴⁸ Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony that it does not consider credible and accept as true the contrary testimony given by the other litigant's expert.⁴⁹

⁴² Exh. D, report pp. 9-10.

⁴³ Exh. D, report p. 10.

⁴⁴ *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App. W.D. 1990); *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. App. 2002).

⁴⁵ *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. W.D. 1974).

⁴⁶ *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596, 600 (Mo. banc 1994).

⁴⁷ *Hawkins v. Emerson Elec. Co.*, 676 S.W.2d 872, 977 (Mo.App. 1984).

⁴⁸ *Cole v. Best Motor Lines*, 303 S.W.2d 170, 174 (Mo.App. 1957).

⁴⁹ *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992); *Hutchinson v. Tri State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo. App. 1986).

The word “accident” as used by the Missouri workers’ compensation law means “an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.”⁵⁰

An “injury” is defined to be “an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The “prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”⁵¹ An injury shall be deemed to arise out of and in the course of employment only if it is readily apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non-employment life.⁵²

Claimant argues that as a result of the December 2009 work injury, she sustained a permanent partial disability of 5% of the body as a whole referable to psychiatric injury. The Second Injury Fund disputes medical causation as to this psychiatric injury.

There is certainly some evidence that claimant developed anxiety and/or depression at some point following her December 27, 2009 injury. Claimant suggests that in about April 2010, during the course of her treatment for her December 2009 injury, she began experiencing symptoms of depression and post-traumatic stress disorder. She treated with Ms. Marybeth Debrodie, LCSW, who diagnosed post-traumatic stress disorder. The claimant also treated with Dr. Wells in the summer of 2010 for anxiety. Dr. Wells continued to treat claimant through August 2010, noting anxiety due to social stress; he diagnosed her with depression. Dr. Wells provided medications for anxiety at that time.⁵³ The medical evidence, however, does not clearly demonstrate that claimant’s psychological condition was medically causally related to the December 27, 2009 injury. In fact, Dr. Daniel, a psychiatrist, opined that claimant had a psychiatric disability resulting from the non-resolution of orthopedic work injuries on **December 27, 2009 and December 12, 2010**, which he found to be the prevailing factors causing her psychiatric condition.⁵⁴ Dr. Daniels did not explain whether claimant sustained psychiatric injury from the December 27, 2009 injury alone.

Based on a review of all evidence, I find that claimant has not sustained her burden of proof that her psychological condition or injury was medically causally related to the December 27, 2009 work injury (and not in combination with the December 2010 injury).

Issue 2: Whether claimant is permanently and totally disabled;

Issue 3: In the alternative, nature and extent of permanent partial disability;

⁵⁰ Section 287.020.3(1), RSMo. All statutory references are to the Revised Statutes of Missouri (RSMo), 2005, unless otherwise noted.

⁵¹ Section 287.020.3(1).

⁵² Section 287.020.3(c).

⁵³ Exh. O.

⁵⁴ Exh. D, report pp. 9-10.

Issue 4: Second Injury Fund liability, if any.

Section 287.020.7, RSMo, provides that “total disability” is 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.⁵⁵ The main factor in this determination is whether, in the ordinary course of business, any employer would reasonably be expected to employ the employee in this present physical condition and reasonably expect him to perform the duties of the work for which he was hired.⁵⁶ The test for permanent and total disability is whether the claimant would be able to compete in the open labor market.⁵⁷ When the claimant is disabled by a combination of the work-related event and pre-existing disabilities, the responsibility for benefits lies with the Second Injury Fund.⁵⁸ If the last injury in and of itself renders a claimant permanently and totally disabled, the Second Injury Fund has no liability and the employer is responsible for the entire compensation.⁵⁹

In order to find permanent total disability against the Second Injury Fund, it is necessary that the employee suffer from a permanent partial disability as the result of the last compensable injury, and that the disability has combined with a prior permanent partial disability to result in total disability.⁶⁰

Where a pre-existing permanent partial disability combines with a work-related permanent partial disability to cause permanent total disability, the Second Injury Fund is liable for compensation due the employee for the permanent total disability after the employer has paid the compensation due the employee for the disability resulting from the work-related injury.⁶¹ In determining the extent of disability attributable to the employer and the Second Injury Fund, an administrative law judge must determine the extent of the compensable injury first.⁶² If the compensable injury results in permanent total disability, no further inquiry into Second Injury Fund liability is made.⁶³ Therefore, it is necessary that the employee’s last injury be closely evaluated and scrutinized to determine if it alone results in permanent total disability and not permanent partial disability.

Various factors have been considered by courts attempting to determine whether or not an employee is permanently totally disabled. It is not necessary that an injured employee be rendered, or remain, wholly or completely inactive, inert or helpless in order to be entitled to receive compensation for permanent total disability.⁶⁴ An employee's ability or inability to perform simple physical tasks such as sitting,⁶⁵ bending, twisting,⁶⁶ and walking⁶⁷ may prove

⁵⁵ See also *Houston v. Roadway Express, Inc.*, 133 S.W.3d 173, 178 (Mo.App. S.D. 2004).

⁵⁶ *Reiner v. Treasurer of the State of Missouri*, 837 S.W.2d 363, 367 (Mo.App. 1992).

⁵⁷ *Id.*

⁵⁸ Section 287.200.1, RSMo.

⁵⁹ *Nance v. Treasurer of Missouri*, 85 S.W.3d 767 (Mo.App. W.D. 2003).

⁶⁰ Section 287.220.1, RSMo.; *Brown* at 482; *Anderson* at 576.

⁶¹ *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 366 (Mo.App. 1992).

⁶² *Roller v. Treasurer of the State of Mo.*, 935 S.W.2d 739, 742-743 (Mo.App. 1996).

⁶³ *Id.*

⁶⁴ *Maddux v. Kansas City Public Service Co.*, 100 S.W.2d 535 (Mo. 1936); *Grgic v. P & G. Const.*, 904 S.W.2d 464 (Mo.App. E.D. 1995); *Julian v. Consumers Markets, Inc.*, 882 S.W.2d 274 (Mo.App. S.D. 1994); *Groce v. Pyle*, 315 S.W.2d 482 (Mo.App. 1958).

⁶⁵ *Brown v. Treasurer of Missouri*, 795 S.W.2d 479 (Mo.App. E.D. 1990).

that the employee is permanently totally disabled. An employee's age may also be taken into consideration.⁶⁸

On December 27, 2009, claimant sustained a compensable injury to her left knee, body as a whole referable to the low back, and body as a whole referable to a psychological injury. This injury occurred during the course and scope of her employment with the employer. Claimant settled this claim with the employer/insurer on or about September 12, 2012, for 12.5% of the body as a whole referable to the low back, 25% of the left knee, and 5% of the body as a whole referable to psychiatric injury. I find that as a result of the December 27, 2009 accident, claimant sustained a permanent partial disability of 25% of the left knee and 12.5% of the body as a whole (low back).⁶⁹

After considering all of the evidence, I also find that the December 27, 2009 work injury did not render claimant permanently and totally disabled, nor did that 2009 work injury, in combination with claimant's pre-existing disabilities, render her permanently and totally disabled. Claimant may very well be permanently and totally disabled as a result of the combination of her pre-existing conditions, her primary work injury of December 27, 2009, **and her subsequent injuries** and conditions. That, however, would not entitle claimant to benefits in this workers' compensation case.

In making these determinations, I find the opinion of Mr. England to be helpful. As Mr. England noted, Dr. Volarich's restrictions (such as resting when needed, including in a recumbent position), if followed, would most likely have prevented claimant from working after the December 27, 2009 injury. Claimant, however, was able to work until about June 27, 2011 – approximately one and one-half years after the work injury. If Dr. Volarich's restrictions on claimant's back are reasonable, then claimant would have been precluded from employment from her back injury alone regardless of any combination with prior injuries – it is clear, however, that claimant continued to work for about one and one-half years after her December 2009 injury. I find that the December 2009 work injury did not render claimant permanently and totally disabled.

In addition, it must be noted that Dr. Volarich opined that claimant "is permanently and totally disabled as a direct result of the work-related injuries of 12/27/09, **12/12/10, 1/26/11, and 4/25/11**, in combination with each other, as well as in combination with all of her preexisting medical conditions."⁷⁰ [Emphasis added.] Under the workers' compensation law, one cannot consider the impact of injuries that occur after the primary, work-related injury – in this case, the December 2010, January 2011, and April 2011 injuries. Thus, Dr. Volarich's opinion is not

⁶⁶ *Sprung v. Interior Const. Service*, 752 S.W.2d 354 (Mo.App. E.D. 1988).

⁶⁷ *Keener v. Wilcox Elec. Inc.*, 884 S.W.2d 744 (Mo.App. W.D. 1994).

⁶⁸ *Tiller v. 166 Auto Auction*, 941 S.W.2d 863 (Mo.App. S.D. 1997); *Reves v. Kindell's Mercantile Co., Inc.* 793 S.W.2d 917 (Mo.App. S.D. 1990). See also *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919 (Mo.App. S.D. 1982).

⁶⁹ I have previously found that claimant did not sustain a psychological injury that was medically causally related to the December 2009 work injury. In the alternative, if such psychological injury were medically causally related to the December 2009 work injury, I find it would not meet the statutory threshold and therefore would not be a factor in determining the Second Injury Fund's liability for permanent partial disabilities.

⁷⁰ Exh. F.

applicable to the question of whether claimant's December 2009 work injury combined with her pre-existing disabilities to render her permanently and totally disabled. And as noted, claimant bears the burden of proof on this issue.

Likewise, Mr. Eldred opined that claimant "is permanently and totally disabled as a result of her injuries on December 27, 2009, **December 12, 2010, January 26, 2011 and April 25, 2011** combined with her preexisting injuries and medical conditions."⁷¹ Again, since Mr. Eldred relies on three injuries that occurred *after* the 2009 work injury in order to find claimant permanently and totally disabled, his opinion does not help claimant make her case.

After carefully reviewing the evidence, I find claimant had failed to meet her burden of proof that she is permanently and totally disabled **due to a combination of the primary (December 2009) work injury and her pre-existing conditions**. Claimant's claim for permanent and total disability benefits fails.

Nevertheless, I find that claimant has established a right to recover from the Second Injury Fund. On December 27, 2009, claimant sustained a compensable work injury that resulted in permanent partial disability of 12.5% of the body as a whole referable to the low back (50 weeks) and 25% of the left knee (40 weeks). Thus, the primary injury resulted in a total of 90 weeks of disability (when determining Second Injury Fund liability).

I also find that at the time of the injury, claimant had the following pre-existing permanent partial disabilities that met the statutory threshold and were of such seriousness as to constitute a hindrance or obstacle to employment or re-employment:

- 12.5% of the left ankle (19.375 weeks)
- 15% of the left wrist (17.515 weeks)
- 15.3% of the right knee (24.48 weeks)

Thus, the pre-existing injuries resulted in 61.37 weeks of disability. I find that although claimant has various other minor pre-existing conditions (including seizures, right ankle, right wrist, and left knee), these do not reach the statutory threshold.

Based on the credible and convincing evidence presented at trial, including claimant's testimony, I find that the last injury did combine with the pre-existing permanent partial disabilities to cause 10% greater overall disability than the independent sum of the disabilities. Therefore, the Second Injury Fund liability is calculated as follows: 90 weeks for the primary injury (body as a whole referable to the low back and left knee) plus 61.37 weeks for the pre-existing injuries (left ankle, left wrist, and right knee) equals 151.37 weeks. I find that it is appropriate to multiply this figure, 151.37 weeks, by a 10% load factor, resulting in 15.137 weeks of overall greater disability. Thus, the Second Injury Fund is liable for \$6,325.60 (15.137 weeks of overall greater disability x \$417.89 weekly compensation rate).

Any pending objections not expressly ruled on in this Award are overruled.

⁷¹ Exh. E.

Employee: Laveta J. Van Norman

Injury No. 09-101343

This Award is subject to a lien in the amount of 25% of the payments hereunder in favor of the Van Camp Law Firm for necessary legal services rendered to the claimant.

Made by: /s/Vicky Ruth – 08/01/2013

VICKY RUTH

*Administrative Law Judge
Division of Workers' Compensation*