

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

Injury No.: 05-040151

Employee: Angela Voges-Burkhardt
Employer: Kuna Food Services (Settled)
Insurer: Commerce & Industry Insurance Company (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries

The parties asked the administrative law judge to resolve the following issues: (1) medical causation; (2) future medical care; (3) temporary total disability; (4) nature and extent of employer's liability for either permanent partial or permanent total disability; and (5) the nature and extent of Second Injury Fund liability for either permanent partial or permanent total disability.

The administrative law judge rendered the following findings and conclusions: (1) employee suffered a sprain/strain injury related to the work accident; (2) employee's herniations at L4-5 are not medically causally related to employee's work injury; (3) employee sustained a 10% permanent partial disability of the lumbar spine as a result of the work injury; (4) employee is not permanently and totally disabled; (5) the Second Injury Fund is not liable for benefits; (6) employer is not liable for temporary total disability benefits; and (7) employer is not liable for future medical benefits.

Employee filed a timely Application for Review with the Commission alleging the administrative law judge erred in crediting the opinions of Dr. Cantrell over those provided by Drs. Lange and Kitchens.

While this matter was pending before the Commission, the employer and employee submitted a Stipulation for Compromise Settlement. The Commission approved the Stipulation for Compromise Settlement on January 31, 2013.

The sole issue remaining before the Commission is that of Second Injury Fund liability.

Findings of Fact

The administrative law judge's award sets forth the stipulations of the parties and the administrative law judge's findings of fact as to the issues disputed at the hearing. We adopt and incorporate those findings to the extent that they are not inconsistent with the modifications set forth in our award. Consequently, we make only those findings of fact pertinent to our modifications herein.

Preexisting conditions of ill-being

In June 1997, employee suffered injuries to her bilateral wrists and elbows; she settled a workers' compensation claim arising from these injuries for 17% permanent partial disability of each hand

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and 17% of each elbow, plus a 10% load. Employee credibly testified (and we so find) that she continues to experience problems with her bilateral wrists and elbows. Employee's hands go numb at night. Employee is unable to use a computer for more than a couple of hours and does not use a keyboard to type at all. Employee's elbows get achy when she lifts things. We find the ratings reflected in the settlement to be persuasive. We find that, at the time of the primary injury, employee suffered permanent partially disabling conditions affecting her bilateral upper extremities to the extent of 17% of each elbow and 17% of each hand.

On October 9, 2000, employee suffered an injury to her left shoulder; she settled a workers' compensation claim arising from this injury for 17% of the left shoulder. Employee credibly testified (and we so find) that she continues to experience problems with her left shoulder. Employee experiences aching pain in her left shoulder when she sleeps. We find the rating reflected in the settlement to be persuasive. We find that, at the time of the primary injury, employee suffered a 17% permanent partial disability of the left upper extremity at the 232-week level.

Nature and extent of disability resulting from the primary injury

Although it's true, as the administrative law judge noted, that employee endorsed significant relief of her low back symptoms when she saw Dr. Du on January 10, 2006, we note that this was less than one month after injections performed on December 16, 2005, and that Dr. Du's diagnosis remained L4-5 disc protrusion.

We note also that Dr. Cantrell's opinions in this case conflict with the opinions of all other experts, including Dr. Lange, who was retained by the employer. We find that Dr. Cantrell's opinions are against the weight of the evidence and are not particularly credible. On the other hand, we find that the opinions expressed by Dr. Lange, and supported by Drs. Kitchens and Margolis, are persuasive and justify a finding that employee suffered more than a mere strain/sprain injury on April 29, 2005.

Accordingly, we conclude that employee's work for employer was a substantial factor causing her to sustain an L4-5 disc herniation as well as a 25% permanent partial disability of the low back as a result of the April 29, 2005, work injury.

We find persuasive and adopt the opinion from Dr. Margolis that employee's preexisting bilateral upper extremity problems constituted hindrances and obstacles to employment, and that these conditions combine synergistically with the effects of the work injury. We find that a 10% load factor is appropriate to represent the synergistic combination of employee's preexisting and primary disabilities.

Conclusions of Law

Second Injury Fund liability

Section 287.220.1 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid from the fund in "all cases of permanent disability where there has been previous disability." That section provides that a preexisting disability must meet certain thresholds before Second Injury Fund liability is triggered.

We have found that, at the time employee sustained the compensable work injury, she suffered from permanent partially disabling conditions affecting her bilateral upper extremities to the extent of 17% of each elbow and 17% of each hand, as well as 17% of the left shoulder. We have also found that employee's primary injury amounts to a 25% permanent partial disability of the body as a whole referable to the low back. Each of these conditions meet the applicable thresholds under § 287.220.1. We have credited Dr. Margolis's opinion that employee's preexisting upper extremity problems constituted hindrances or obstacles to employment at the time the last injury was

Employee: Angela Voges-Burkhardt

sustained. We have also credited Dr. Margolis's opinion that employee's low back injury combines synergistically with the preexisting bilateral upper extremity conditions. We conclude that the Second Injury Fund is liable for permanent partial disability benefits.

We calculate Second Injury Fund liability as follows. Employee's primary injury resulted in 25% permanent partial disability of the body as a whole referable to the lumbar spine, or 100 weeks of permanent partial disability. Employee's preexisting permanent partially disabling conditions total 170.34 weeks of permanent partial disability. The sum of preexisting and primary permanent partial disability is 270.34 weeks. When we multiply the sum by the 10% load factor, the result is 27.03 weeks.

The Second Injury Fund is liable for 27.03 weeks of permanent partial disability benefits at the stipulated rate of \$297.76, for a total of \$8,048.45.

Conclusion

We modify the award of the administrative law judge as to the issues of the nature and extent of disability resulting from the primary injury and Second Injury Fund liability.

The Second Injury Fund is liable for permanent partial disability benefits in the amount of \$8,048.45.

The award and decision of Administrative Law Judge Suzette Carlisle, issued January 5, 2011, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission further approves and affirms the administrative law judge's allowance of an 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 26th day of September 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: Angela Voges-Burkhardt¹

Injury No.: 05-040151

Dependents: N/A

Employer: Kuna Food Services

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

Additional : Second Injury Fund (Denied)

Insurer: Commerce & Industry Ins. Co./
Chartis Claims, Inc.

Hearing Date: October 22, 2010

Checked by:SC

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: April 29, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured her low back when she lifted a lug (tub) of chicken at work.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back
14. Nature and extent of any permanent disability: 10% PPD referable to the low back
15. Compensation paid to-date for temporary disability: \$570.54
16. Value necessary medical aid paid to date by employer/insurer? \$10,898.63

¹ The Division's records reflect Claimant's name as Angela Voges however she testified that she was married in 2007 and her last name is now Burkhardt.

Employee: Angels Voges - Burkhardt

Injury No.: 05-040151

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$446.65
- 19. Weekly compensation rate: \$297.76 / \$297.76
- 20. Method wages computation: Agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

(0) weeks of temporary total disability (or temporary partial disability)	NONE
40 weeks of permanent partial disability from Employer	\$11,910.40

22. Second Injury Fund liability: No

TOTAL: \$11,910.40

23. Future requirements awarded: None

Said payments to begin and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Nile D. Griffiths

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Angela Voges-Burkhardt	Injury No.:	05-040151
Dependents:	N/A		Before the
Employer:	Kuna Food Services		Division of Workers'
Additional :	Second Injury Fund (Denied_		Compensation
Insurer:	Commerce & Industry Ins. Co./ Chartis Claims, Inc.		Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri

STATEMENT OF THE CASE

A hearing was held at the Missouri Division of Workers' Compensation (DWC), St. Louis office at the request of Angela Voges-Burkhardt (Claimant), on October 22, 2010, pursuant to Section 287.450 RSMo (2005).² Claimant seeks a final award for permanent total disability (PTD) against the Employer or the Second Injury Fund (SIF). Attorney Nile D. Griffiths represented Claimant. Attorney Scott J. Kelemetc represented Kuna Food Services (Employer) and Commerce & Industry c/o Chartis Claims, Inc. (Insurer).³ Assistant Attorney General Da-Niel Cunningham represented the SIF. Venue is proper and jurisdiction lies with the DWC. The record closed after presentation of the evidence.

Claimant's Exhibits A- C, Employer's Exhibits 1-2 and joint Exhibits with the SIF: D/3/I - Q/16/XIV are admitted without objection.⁴ Any notations contained in the records were present when admitted. Any objections contained in the depositions but not ruled upon in this award are overruled.⁵

Stipulations

The parties stipulated that on or about April 29, 2005:

1. Claimant was employed by the Employer and sustained an accident which arose out of and in the course of employment in St. Louis County in Missouri;
2. Employer and Claimant operated under the Missouri Workers' Compensation Law;
3. Employer's liability was fully insured;
4. Employer had notice of the injury;
5. A Claim for Compensation was timely filed;
6. Claimant's average weekly wage was \$446.65;
7. The rate for Temporary Total Disability (TTD), Permanent Partial Disability (PPD), and PTD is \$297.76;

² All references in this award are to the 2005 Revised Statutes of Missouri unless otherwise stated.

³ All references to the Employer in this award also refer to the Insurer.

⁴ Exhibit K/10/VIII, pages 135 to 188 are illegible. Also Exhibit M/12/X states there are 38 pages but the Exhibit only contains pages 1-10, 20-21, and 31.

⁵ The SIF's objection is sustained in Exhibit C page 13, lines 21-24 as the question is beyond the scope of Dr. Margolis' testimony, as he testified he would refer to a vocational expert's opinion regarding Claimant's ability to work.

8. Employer paid TTD benefits totaling \$570.54 from May 13, 2005 to May 26, 2005;
9. Employer paid medical benefits totaling \$10,898.63; and
10. Claimant and Employer stipulated that Employer is not liable for past medical expenses.

ISSUES

The parties have identified the following issues for disposition:

1. Is Claimant's herniated disc and recurrent herniated disc at L4-5 medically, causally related to her work activities?
2. What is the nature and extent of Employer's liability for PPD benefits or PTD benefits, if any?
3. What is the nature and extent of the SIF liability for PPD or PTD benefits, if any?
4. Is Employer liable for TTD benefits totally \$20,502.84?⁶
5. Is Employer liable for future medical care?

SUMMARY OF THE DECISION

Based upon the entire record, Claimant's testimony and demeanor during the Hearing, medical records, expert testimony, and the applicable law in the State of Missouri I find Claimant did not meet her burden to show her the herniated disc is medically, causally related to her work activities, and that she is entitled TTD, PTD or future medical benefits. Claimant met her burden to show Employer is liable for PPD benefits.

SUMMARY OF EVIDENCE

1. Claimant was 49 years old at the time of the hearing. Her children are adults and no longer dependent on her for support. Claimant attended special education classes in school and later obtained a GED. She has received no additional education or training.
2. Employer hired Claimant in January 2004 as a utility worker. Claimant wrapped, packed, and lifted meat that weighed up to 70 lbs. She last worked for Employer on January 4, 2008.
3. On April 29, 2005, Claimant's back hurt from lifting during her shift. She bent and picked up a lug (tub) of chicken and nearly lost her balance. She was able to avoid falling and continued to work. The next day she felt pain in her low back and left leg which made it difficult to walk.
4. Claimant treated at BarnesCare and reported low back pain and a dragging left foot.

⁶ Claimant asserts she is entitled to TTD benefits for 3 periods; 1) from 11/1/06 to 12/14/06, 6 weeks totaling \$1,786.56, 2) 4/2/07 to 7/5/07, 13.42 weeks totaling \$3,998.49, and 3) 1/6/08 to 12/18/08, 49.428 weeks totaling \$14,717.85.

5. BarnesCare referred Claimant to **Dr. Lange** who prescribed physical therapy and placed her on light duty, which temporarily relieved her symptoms. Dr. Lane released Claimant to full duty in August 2005.
6. After release, Claimant treated one time with chiropractor **Kathy McCauliffe**. Claimant testified she thought the pain was due to an injury inflicted by her ex-husband in 1992 when pain radiated down her right leg. Claimant has been known to confuse left and right.
7. **Dr. Welch** performed a nerve conduction study and referred Claimant to **Dr. Du** for pain management and percutaneous injections and she missed at least a month from work.
8. On April 2, 2007, Dr. Kitchens performed surgery and released Claimant to return to work on July 5, 2007. However, she did not return to work because she slid in the mud, fell, and fractured her left wrist.
9. Claimant testified that she performed her best on the Functional Capacity Examination, (FCE). However, during the test she stopped walking when the therapist was not looking and she took a pain pill after the test ended.
10. Her last visit with Dr. Kitchens was December 2008. Claimant did not return to work because she has to sit still or lie down. She lies down off and on all day, uses a cushion for her back, but becomes stiff if she lies down too long. She can sit for brief periods but has to move around.
11. Claimant testified left foot drop has persisted off and on since the April 2005 work accident. Claimant has tightness and sharp pains in her low back, and difficulty walking. Her left leg is weak and occasionally the ankle gives out. If she walks too long her left leg gets weak and she “walks like a drunk.” She soaks in the tub at least once a day to relieve pain. Sexual intercourse and coughing aggravate her back. It is difficult to get in and out of the car.
12. Claimant performs housework very slowly. She starts the water for the dishes and sits down for 5 minutes because her leg begins to buckle. She can cook and wash but has constant spasms. She no longer operates the vacuum sweeper. Her pain ranges from 4 to 8 out of 10. Claimant plays games on a computer several hours per day but gets up frequently. She does not recall telling the doctor she had back pain after playing Twister in December 2007.
13. Dr. Agne, Claimant’s primary care physician, prescribed Zanaflex, a muscle relaxer; which Claimant takes several times a week and Percocet for pain once a month.
14. In January 2008 she left work early due to back pain which caused her legs to buckle. She attributed the symptoms to “just working,” but no specific incident. She did not file a claim.
15. Claimant testified she stopped working after she developed back spasms electrodes she received during physical therapy. She has not looked for work because she does not

believe she can work due to increased pain with activity, unstable balance, inability to sit for long periods, lack of education, and she is a slow learner.

16. Claimant has fallen before and after the work accident but testified those falls did not affect her back. At least 15 surgeries have been performed on various parts of Claimant's body since birth.
17. Claimant testified that prior to November 2005; she worked close to 40 hours per week, full duty, lifting up to 20 lugs per shift, without help, that sometimes weighed over 100 pounds. Claimant was able to stand or sit more than 15 minutes at a time, walk more than 100 yards, and did not need to lie down during the day.
18. During the hearing I observed Claimant constantly move in the chair during her testimony. She sat forward and later rose to receive a tissue from me when she began coughing. A short time later she stood up and began to move back and forth. She sat down and her chair shifted downward slightly. Claimant stated she was not injured. Claimant wanted to continue sitting in the chair, but I insisted on a different chair. Claimant sat on the edge of the chair with her right knee on the floor. After Claimant testified, she limbed/hobbled out the door, and at one time she almost lost her balance.

Preexisting Medical Conditions before April 29, 2005

19. Medical records show Claimant experienced low back that radiated to her right leg in 1992 when she fell on her tailbone. X-rays revealed possible fracture near the sacro-coccygeal juncture. She received physical therapy. She reinjured her back and SI joint in 2000 while pushing, pulling or carrying a 30 pound weight. No surgery was involved. Claimant did not seek treatment for her back between 2002 and the 2005 back injury.
20. Left shoulder problems began in 2000. A 2002 MRI showed left shoulder cysts, tendinopathy and rotator cuff peritendinitis. In 2003 Dr. Margolis rated 30% PPD of the left shoulder. The shoulder is achy when she sleeps.
21. A 2002 MRI of the right shoulder revealed tendinopathy possible small tear but no full thickness tear, and joint effusion. Donald a. Weimer, M.D. prescribed physical therapy. Dr. Margolis rated 30% PPD of the right shoulder. Claimant cannot use her right shoulder overhead.
22. On August 21, 1997 Dr. Crandall performed surgery on the right median and ulnar nerves at the wrist. Dr. Margolis rated 35% PPD of the right wrist.
23. On September 10, 1997 Dr. Crandall performed a neurolysis of the left median and ulnar nerves at the wrist. Claimant's hands go to sleep at night. Her right wrist hurts and cracks. Claimant wore a wrist band at work Dr. Margolis rated 30% PPD of the left wrist.
24. On April 30, 1998 Dr. Crandall performed a right ulnar nerve transposition, and a left ulnar nerve compression was performed at the elbow on May 28, 1998. Claimant's elbows ache with lifting. In 2003 Dr. Margolis rated 30% PPD of the right elbow and 30% PPD of the left elbow.

Subsequent Injuries after April 29, 2005

25. In October 2005 Claimant reinjured her back while emptying 20 lugs of meat. The pain radiated from her back into both legs, no claim was filed.
26. On January 19, 2006 Claimant reinjured her back and received treatment at BarnesCare. However Claimant reported no leg or foot pain. Claimant received medicine and modified duty for several days, and returned to full duty on January 23, 2006. The claim recently settled.
27. In March 2007 an MRI showed a herniated disc at L4-5.
28. On April 15, 2007, Claimant sprained her foot when she fell on uneven pavement while walking her dog. She denied injury to her back.
29. In June 2007 Claimant fell on mud and broke her left wrist.
30. In September 2007 a lifting injury occurred at work but no claim was filed.
31. In December 2007 Claimant told the physical therapist she was doing ok until she played twister game. Her pain increased but she did not report the injury to Dr. Kitchens.
32. In January 2008 Claimant left work due to shaking in both legs and difficulty walking which she related to her work but no claim was filed. Dr. Kitchens diagnosed a recurrent disc herniation. While in physical therapy, Claimant said the electrodes caused back spasms.
33. In October 2010 Claimant fractured her right forearm when her left foot became stuck on an uneven pavement.

Treatment for the April 29, 2005 work injury

34. **Kathleen McAuliffe, D.C.** provided manipulations to Claimant six times in May 2005 for a tired back and numbness in the left leg after picking up lugs of chicken.
35. On May 10, 2005 BarnesCare treated Claimant for back pain with numbness into the left leg, and tingling in the left toes after lifting a tub (lug) of meat on April 29, 2005. **Jerald A. Maslanko, M.D.**, diagnosed low back pain. X-rays showed a deficiency in the height of the right femur, and a lumbar tilt to the right, disc space changes and degenerative bone formation at T12, L1 and L2, subchondral sclerosis of the facet joints at L5, and ostitis of the right SI joint.
36. An MRI taken in May 2005 showed spurring, disc narrowing/desiccation in upper segments and L4-5 to the left with mild impingement on the left, and spurring at L4-5 on the left, but no herniation.
37. **David R. Lange, M.D.**, an orthopedic specialist, examined Claimant on May 24, 2005, prescribed physical therapy and imposed work restrictions. By August 25, 2005, Claimant

reported her left lower extremity was “pretty much back” with “slow but sure” improvement of other complaints which included a vague ache in the cervical and mid thoracic spine. Examination revealed ambulation, and heel and toe walk were normal on the left, with mild metatarsus adductus. However when seated, give-way weakness was seen in all motors below the left ankle. Straight leg raise was normal. Dr. Lange found Claimant had achieved maximum medical improvement (MMI) and returned her to full duty.

38. Dr. Lange noted Claimant changed the appointment date on paperwork she was given from August 23, 2005 to August 25, 2005 and called on the 25th to say that was the correct date.
39. Claimant sought treatment on her own from **Dr. Welch** on September 12, 2005 for low back pain radiating into the left lower extremity with left foot and ankle numbness and weakness. Examination revealed a weak left ankle on extension. On September 20, 2005, an EMG and nerve conduction study showed L5-S1 radiculopathy on the left lower extremity. Epidural blocks were provided. An MRI showed an L4-5 disc, but Dr. Welch did not explain the diagnosis.
40. **Hong-Kai Kevin Du, M.D.**, treated Claimant from November 3, 2005 to January 10, 2006 with a history of back pain since April 2005 and re-injury at the end of October 2005. After falling several weeks earlier, complaints included pain in her back and both legs with numbness and tingling in the left foot.
41. Dr. Du read the MRI to show an L4-5 disc protrusion to the left, slightly impressing the nerve roots, lumbar radiculopathy, left worse than right.
42. Dr. Du diagnosed L4-5 disc protrusion to the left, lumbar radiculopathy worse to the left, and multiple levels of degenerative disc disease. He provided multiple epidural injections, and aquatic therapy through December 16, 2005, which seemed to resolve back and left leg pain.
43. By January 10, 2006 Claimant reported lumbar and left leg pain had significantly improved with “hardly any pain at all.” Examination revealed negative straight leg raise bilaterally, symmetric strength, with normal sensation, and deep tendon reflexes for upper and lower extremities, and normal gait. Dr. Du advised her to follow up with Dr. Agne, her primary care physician, and prescribed Lyrica and Flexeril.

Additional low back treatment and injuries

44. On January 19, 2006, Claimant treated at BarnesCare for low back pain after lifting a tub of chicken that weighed about 35 pounds. Claimant denied leg or foot pain and it was documented she had been doing well after several cortisone shots. BarnesCare diagnosed low back strain, placed her on light duty for four days and released her to full duty with no restrictions on January 23, 2006.
45. On July 7, 2006, **Charisse H. Barta, M.D.** provided a surgical evaluation at Claimant’s request for chronic low back pain with left foot dragging, which improved with epidural

blocks, but returned on June 4, 2006. Claimant provided no history of accidents in October 2005 and January 2006.

46. An MRI taken at Memorial Hospital on July 12, 2006 which revealed no disc herniation or spinal canal stenosis, but a deformity of the thecal sac was visualized at L4-5. Dr. Barta diagnosed L5-S1 radiculopathy on the left and recommended repeat epidural blocks, however, Claimant was interested in surgery, and a referral was made to Dr. Chris Heffner.
47. A post myelogram CT scan of the lumbar spine dated July 31, 2006 revealed mild multi-level disc bulges, mild stenosis at L4-5, and abnormal right sacroiliac joint, but no herniation. Dr. Kitchens recommended the CT scan because Claimant continued to have problems and it was more sensitive to disc herniation and nerve root impingement. An x-ray showed an abnormal right sacroiliac joint and mild degenerative disc disease at L1-2, but not compression.
48. From August 15, 2006 to October 2, 2006 Dr. Du performed additional epidural steroid injections after Claimant woke up June 3, 2006 with low back and left leg pain, and numbness and tingling in the left leg and foot. Claimant provided no history of recent injury. Claimant wanted a more permanent treatment, and Dr. Du recommended a percutaneous discectomy.
49. A discogram was obtained on October 13, 2006. Results showed pain at L5-S1 and L4-5. Results show possible annular tear at L4-5 to the left. Claimant reported "much worse" pain after the procedure. Dr. Du performed the percutaneous discectomy and decompressed L4-5 on November 1, 2006. She reported significant improvement after discectomy.
50. On January 24, 2007, **Stefani Poletti**, physical therapist recommended a heel lift for the left shoe for suspected leg length discrepancy. Aquatic therapy prescribed. Claimant worked full time with minimal pain. Dr. Du noticed leg length differences which he suspected caused of back pain.
51. Dr. Agne's medical records show Claimant fell on April 16, 2007 and sprained her foot.
52. On June 29, 2007, Claimant fell and fractured her left wrist, and denied back injury. X-rays of the lumbar spine was unremarkable but bony sclerosis found at right SI joint.
53. **Daniel L. Kitchens, M.D.**, a board certified neurosurgeon, initially treated Claimant on July 27, 2006 at the request of her attorney for back pain radiating to the left leg.
54. Claimant gave a history of low back pain into her left leg after lifting chickens, in April 2005. After treatment the pain resolved until June 3, 2006. Claimant provided no history of injuries in October 2005 or January 2006.
55. Motor examination of the left foot revealed decreased range of motion of the extensor hallucis longus, and eversion weakness. Sensory examination revealed diminished

- pinprick on the top and side of the left foot, an antalgic gait, Claimant leaned forward, had a limp and decreased dorsiflexion.
56. Dr. Kitchens interpreted MRI's taken in 2005 and 2006 to reveal no disc herniation. An August 2006 CT-myelogram revealed no lumbar disc herniation or left-sided nerve compression.
 57. Dr. Kitchens diagnosed persistent back pain with possible left leg radiculopathy at L5, but did not recommend surgery. Dr. Kitchens opined he could not tell which injury caused Claimant's complaints if she was injured in April 2005 injury and January 2006.
 58. In March 2007, Claimant reported increased left leg pain and weakness after receiving epidural injections and pain management. An MRI revealed a disc herniation at L4-5 to the left. On April 2, 2007 Dr. Kitchens performed a left L4-5 microdiscectomy.
 59. Dr. Kitchens found the herniated disc was inconsistent with the nerve conduction study ordered by Dr. Welch in September 2006, in that the herniation would not cause S1 radiculopathy.
 60. Dr. Kitchens returned Claimant to work with restrictions on May 11, 2007, and released her to work without restrictions on August 13, 2007. However, Claimant did not return to work because she fell and fractured her left wrist in July 2007.
 61. In September 2007 Claimant reported back pain and left foot tingling after lifting a 90 pound box. Dr. Kitchens prescribed physical therapy.
 62. On November 1, 2007, Claimant reported her pain has resolved, and Dr. Kitchens noted satisfactory progress. But Claimant returned on December 20, 2007 with increased left sided pain and intermittent pain to the left leg and ankle. On December 26, 2007, Claimant reported to the therapist that she was "doing ok" until she had severe bronchitis and coughed a lot. Also, two weeks earlier she played twister, squatted and could not get up and walk.
 63. By January 2008 left leg symptoms continued, right thigh symptoms developed, and she had difficulty walking. Dr. Kitchens diagnosed a recurrent disc herniation based on a repeat MRI on January 9, 2008. On January 14, 2008 Dr. Kitchens performed a second surgery to remove the lamina and the entire disc, and insert pedicle screws and an interbody cage. He prescribed Percocet for pain.

Expert medical opinion

64. On September 10, 2007 **Dr. Lange** provided an Independent Medical Examination (IME) for ongoing back complaints. The left leg complaints were practically resolved. Examination revealed a normal gait, with weakness of the left EHL when seated. Dr. Lange noted the connection is unclear between Dr. Du's "discectomy" and a herniation found after his treatment. Dr. Lange concluded all treatment Claimant received was related to the April 2005 work injury, if Dr. Du's treatment was related to the April 2005 injury.

However, Dr. Lange's report did not mention injuries in January 2006, April 2007, or September 2007.

65. In September 2007 Dr. Lange reviewed x-rays, myelogram/CT dated July 2006 and an MRI dated March 7, 2007, and additional medical records from Dr. Kitchens, but maintained his position that the surgery performed by Dr. Kitchens was causally related to Claimant's work accident.
66. Dr. Lange performed a second IME on October 7, 2008. Examination revealed a lurching, theatrical gait and toe and heel walking. He found the original diagnosis was unclear but Claimant had three procedures, with some temporary improvement and return to original back and left leg complaints. Dr. Lange assumed all treatment was related to the original accident.
67. Dr. Lange did not recommend a functional capacity examination and estimated Claimant's PPD when Dr. Kitchens released her, to be 25 to 30% PPD of the body. He expected Claimant would be limited to sedentary work, and could not return to her former employment.
68. **Dr. Kitchens** testified the MRIs taken in May 2005 and July 2006 and a CT myelogram, performed at three different facilities, must be false negatives based on Dr. Welch's EMG results and objective findings of radiculopathy at L5.
69. In May 2008 Dr. Kitchens released Claimant to work in a sedentary position. By December 2008 Claimant's fusion was solid and she reported her back was better, continued to have discomfort in both legs, difficulty walking, and left leg weakness. Dr. Kitchens concluded Claimant had achieved MMI but was unable to return to work due to pain in her legs and back, left leg weakness, and use of Percocet, a strong narcotic.
70. Dr. Kitchens recommended continued use of narcotic pain medication as needed for her back and left leg. He did not change his opinion after reviewing the 2009 FCE results.
71. **Robert Margolis, M.D.**, a board certified physician in neurology, internal medicine, and vascular neurology, examined Claimant on multiple occasions including February 13, 2009, at the request of her attorney.
72. Dr. Margolis that concluded "getting chicken out of a tumbler" was the substantial and prevailing factor that caused low back pain, and rated 45% PPD of the low back. Dr. Margolis restricted lifting to 20 pounds frequently and 40 pounds occasionally, and recommended she avoid repetitive bending, twisting, and stooping. Dr. Margolis deferred to a vocational expert's opinion regarding Claimant's ability to work within the restrictions.
73. Claimant did not give Dr. Margolis a history of a fall in June 2007 or a lifting injury in September 2007, but it would have been helpful to know so he could interrogate her about the injury, symptoms, and impact of the accidents.
74. **Russell C. Cantrell, M.D.**, a physiatrist, provided an Independent Medical Examination on May 11, 2009 at Employer's request. Dr. Cantrell noted Claimant's loss of strength was

not confined to a particular nerve distribution, and appeared exaggerated. X-rays revealed possible non-union of the fusion, and medical records indicate Claimant continued to smoke during postoperative recovery.

75. Dr. Cantrell diagnosed the work accident as a lumbar strain and sprain, superimposed on preexisting degenerative disc disease. Furthermore, the April 29, 2005 work injury was not a substantial factor in causing the lumbar fusion and related treatment.
76. Dr. Cantrell noted the first MRI's and CT scan did not show a herniated disc. Also, when Claimant reinjured her low back on January 19, 2006, she denied leg and foot pain. Furthermore, injections would have worn off in less than six months if there was compression to a nerve from a herniated disc.
77. On June 29, 2009, Dr. Cantrell ordered a Functional Capacity Evaluation (FCE) which showed valid effort and the ability to work in the low end medium demand level. Based on the FCE results, he imposed the following permanent work restrictions: lift less than 20 pounds occasionally, carry less than 25 pounds occasionally, and push and pull less than 50 pounds. However, the restrictions related to the lumbar fusion at L4-5, not the April 2005 work injury.
78. Dr. Cantrell found Claimant had achieved MMI on January 10, 2006, recommended no additional treatment, and rated 5% PPD of the body as a whole for the work accident, and 15% PPD for the multilevel degenerative disc disease and lumbar fusion at L4-5.
79. However, FCE results did not change Dr. Kitchens' opinion about Claimant's ability to work.

Vocational Evidence

80. **Mr. James England**, a rehabilitation counselor, interviewed Claimant at the request of her attorney on April 22, 2009, and administered the Wide Range Achievement Test, Revision 3, where Claimant scored at entry level high school in reading and sixth grade in arithmetic. Mr. England concluded the scores permitted Claimant to perform clerical work, retail, and other service type employment.
81. Mr. England found Claimant to be a younger worker with a history of performing medium to heavy exertion at work, with transferable skills to light exertion if she could function.
82. Based on restrictions imposed by Drs. Margolis and Cantrell, Claimant could perform entry level service jobs.
83. Based on Dr. Kitchens' opinion, Claimant would not be employable in the open labor market given her typical day and the need to lie down up to a third of the day.
84. On October 10, 2010, **Ms. Karen Kane**, a vocational consultant, conducted a records review to assess Claimant's ability to return to work. The assessment included an analysis of transferable skills and a labor market survey. She did not interview Claimant.

85. Based on Claimant's work history Ms. Kane concluded Claimant possessed transferable skills to work as a cashier, parking attendant, inspector, desk clerk, customer service, and file clerk. Claimant's work experience and education provide an aptitude to maintain records, interact with customers, subordinates, coworkers, solve problems, and complete activities with minimal supervision.
86. Ms. Kane contacted employers in the Greater St. Louis area and found Claimant's current physical capabilities, and vocational preparation permit access to positions in the open labor market. Criteria included physical requirements and job duties, prior skills required, opportunities for employment, and on-the-job training. Seventeen employers stated they would consider reasonable accommodations.
87. Ms. Kane concluded Claimant's medical condition would not preclude her from returning to work, seeking, accepting or being hired, and maintaining full-time employment in the Greater East Carondelet, Illinois open labor market. She recommended computer training to improve her chances for being hired.
88. Claimant could work within the restrictions imposed by Drs. Margolis and Cantrell as of 2009. Dr. Kitchens' initial assessment permitted Claimant to return to work in a sedentary position. However, his most recent opinion would prevent her from returning to work.

RULINGS OF LAW

After careful consideration of the entire record, based upon the above testimony, witness observations during the hearing, competent and substantial evidence presented, and the applicable law of the State of Missouri, I make the following findings of fact and rulings of law:

The L4-5 herniated disc and re-herniated disc are not medically causally related to Claimant's April 29, 2005 work injury

Claimant asserts she sustained an L4-5 herniation and re-herniation and fusion after lifting a lug of chicken on April 29, 2005. Employer contends Claimant sustained a strain/sprain from the accident, not a fusion.

In a workers' compensation proceeding, the employee has the burden to prove by a preponderance of credible evidence all material elements of his claim, including Second Injury fund Liability. *Meilves v. Morris*, 422 S.W.2d 335, 339 (Mo. 1968). "The Claimant bears the burden of proving an accident occurred and it resulted in injury. In addition, a claimant must show a disability resulted from the injury and the extent of such disability." *Hunsperger v. Poole Truck Lines*, 886 S.W.2d 656, 658 (Mo. App. 1994) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.)).⁷

A claimant does not meet the burden of proof by establishing there is a "possibility" the injury was the result of the accident, but by showing with reasonable probability that his injury

⁷ This is one of several cases cited herein that were overruled on an unrelated issue by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 224-32 (Mo. banc 2003). Such cases do not otherwise conflict with *Hampton* and are cited for legal principles unaffected by the decision; therefore no further reference will be made to cases impacted by *Hampton*.

resulted from the accident. *Davies v. Carter Carburetor Div.*, 429 S.W.2d 738 (Mo.1968) (Citations omitted). 'Probable means founded on reason and experience which inclines the mind to believe but leaves room for doubt.' *Thorsen v. Sachs Elec. Co.*, 52 S.W.3d 611, 620 (Mo.App. 2001) (Citations omitted).

Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994). The subject of a herniated disc and its diagnosis, causation, and cure has been held to be "the realm of highly scientific techniques where expert opinion is essential." *Silman v. William Montgomery & Associates*, 891 S.W.2d 173, 175 (Mo.App. 1995). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991).

Here, the parties agree Claimant sustained an accident; the issue is whether the fusion was caused by lifting a lug of chicken in April 2005. After a review of voluminous medical records numerous physicians' opinions, and Claimant's testimony that her memory is faulty, I find Dr. Cantrell's opinion more credible than the opinions of Drs. Kitchens, Lange, and Margolis and Claimant's testimony for the reasons stated below.

Dr. Kitchens based his opinion solely on the April 2005 accident because he did not know about the other injuries, including the January 19, 2006 accident. When asked if the April 2005 or January 2006 injury caused Claimant's complaints, he could not say. By inference, the other injuries should make it even more difficult to determine the cause of Claimant's complaints.

Dr. Kitchens concluded the April 29, 2005 lifting incident caused the L4-5 herniation, although he admitted no herniation appeared on the 2005 and 2006 diagnostics and he could not explain why, so he concluded the tests must be wrong. However, it is not likely the tests were wrong because they were performed at three different facilities over a 14 month period.

I find Dr. Lange's causation opinion is not credible because he based it on Dr. Du's treatment being related solely to the April 2005 injury. However, Claimant sustained a second injury to her back before Dr. Du treated her. Despite the subsequent injury, Dr. Du released Claimant in January 2006 with a negative straight leg raise, normal gait, and intact deep tendon reflexes of both lower extremities before she re-injured her back on January 19, 2006. Claimant did not inform Drs. Kitchens or Lange about the January 2006 injury or other injuries she sustained. She settled the January 2006 case prior to the hearing for 5% PPD of the lumbar spine.

Dr. Welch identified an "L4-5 disc," but did not say it was herniated. In fact no herniated disc was diagnosed until twenty-three months after the April 2005 injury, two negative MRI's and a CT scan, at least two more back aggravations, and a percutaneous discectomy performed by Dr. Welch.⁸

⁸ Claimant reported an aggravation in July 2005 after sitting on grass for two hours at a Willie Nelson concert. She reported to Dr. Du that she reinjured her back in October 2005 and had increased back pain radiating into both legs, the left was worse.

After the herniated disc was diagnosed, medical records show numerous falls Claimant sustained; in April 2007 while walking the dog, in June 2007 when she slipped and fell on mud and injured her tailbone, and a lifting incident at work in September 2007, but no claim was filed.

Also, on November 1, 2007, Dr. Kitchens released Claimant with "pain resolved," but on December 20, 2007 she told Dr. Kitchens her pain increased and she has muscle spasms. On December 26, 2007 Claimant informed the physical therapist that she was doing ok until two weeks ago when she had severe bronchitis and "coughed a lot." Also, while playing twister she "squatted down briefly then could not get up to walk out of here," now had pain on both sides of her low back, severe spasms, constant pain on the left side and leg, intermittent on the right, intermittent numbness and tingling down both legs, shaking in both thighs, and left thigh pain. She told Dr. Kitchens she had bronchitis but did not mention she re-injured her back playing twister.

Other factors to consider include Claimant's testimony that she fell in the bathtub, date unknown, and Dr. Welch's prescription for a shoe lift to correct a left leg discrepancy which he thought may have contributed to Claimant's left leg problems.

I find Dr. Margolis' causation opinion is not credible. He did not review the MRI, but concluded Claimant had a herniated disc in 2005 based on 1) Dr. Welch's reference to the MRI, and his reference to subligamentous abnormality, which Dr. Margolis assumed meant lateralized, 2) Dr. Welch's reference to "a disc," which Dr. Margolis assumed meant herniated disc, and 3) Claimant's presentation. He knew about the January 2006 re-injury but dismissed it as a temporary flare up based on Claimant's history. Like Dr. Kitchens, he did not know about the other injuries in 2005 and 2007, but testified it would have been helpful to know in order to determine the impact of those injuries.

On the other hand, Dr. Cantrell credibly testified that Claimant sustained a lumbar sprain/strain as a result of the April 2005 work injury. Furthermore, the work injury was not a substantial factor in development of the L4-5 disc herniation based on several negative MRI's after April 2005, a negative CT scan, and physician and clinical findings over time. Dr. Cantrell found Claimant achieved MMI for the April 2005 work injury on January 10, 2006. At that time, Dr. Du found minimal tenderness, negative straight leg raise and an intact neurologic examination. Additionally, Dr. Cantrell did not find clear evidence that Claimant developed acute radiculopathy from the April 2005 injury based on inconsistent findings by Dr. Lange, negative straight leg raise, and chronic, not acute L5 radiculopathy in September 2005.

I find Claimant is not generally credible. I find Claimant's testimony is not credible that she had constant pain from the April 2005 injury which caused her need for a fusion. The impact of intervening and unreported injuries is unclear but medical records indicate Claimant improved with treatment after the April 2005 injury, had additional falls and injuries, symptoms increased, and she sought more treatment without mentioning the subsequent injuries. Claimant reported the April 2005 injury as the source of all complaints but did not tell Drs. Kitchens or Lange about many of the other accidents. Claimant testified she does not have a good memory and confuses left and right on occasion.

Based on credible testimony by Dr. Cantrell and less than credible testimony by Drs. Kitchens, Lange, Margolis and Claimant, I find that lifting a lug of chicken on April 29, 2005

was not a substantial factor in the development of Claimant's L4-5 herniated disc. I find Claimant sustained a sprain/strain injury related to the work accident and achieved MMI on January 10, 2006.

Claimant sustained permanent partial disability from the last injury alone

Claimant asserts she is PTD after lifting a lug of chicken on April 29, 2005 which caused a L4-5 herniated disc that required fusion surgery. Employer contends Claimant sustained a sprain/strain, not a herniated disc. The SIF contends Claimant is PTD due to the last injury alone.

Section 287.220.1 RSMo (2005)⁹, pertaining to SIF liability, provides that in a case of PPD or PTD benefits, Claimant must prove the following:

- 1) There must be a determination that the employee has permanent disability resulting from the last injury alone which is compensable, and
- 2) There was a pre-existing permanent disability that was serious enough to constitute a hindrance or obstacle to employment or re-employment which combines with the disability from the compensable work related injury to create a greater overall disability to the employee's body as a whole than the simple sum of the disability from the work injury and the pre-existing disability considered separately.
- 3) To establish entitlement to PTD benefits, Claimant must also prove that all of the injuries and conditions combined, including the last injury; have resulted in the employee being permanently and totally disabled. ***Boring v. Treasurer***, 947 S.W. 2d 483 (Mo. App. 1997).

In deciding whether the SIF has any liability, the first determination is the degree of disability from the last injury considered alone. ***Hughey***, 34 S.W.3d at 847. Pre-existing disabilities are irrelevant until the employer's liability for the last injury is determined. ***Id.*** If the last injury in and of itself rendered Claimant PTD, then the SIF has no liability and the employer is responsible for the entire amount. ***Id.*** (*Citations omitted*).

Dr. Cantrell rated 5% PPD of the lumbar spine for the April 2005 accident. The May 2005 MRI revealed spurring, disc narrowing and desiccation to L4-5 with mild impingement on the left, and spurring, but no herniation. Claimant was placed on light duty and received physical therapy and injections. On January 10, 2006 Claimant reported "significant improvement" of her low back and left leg, "with hardly any pain at all." Examination showed a negative straight leg raise bilaterally, symmetric strength, and sensation, normal deep tendon reflexes for upper and lower extremities, and a normal gait.

Based on credible testimony by Dr. Cantrell, medical records and reports, I find Claimant sustained 10% PPD of the lumbar spine for the April 29, 2005 work injury.

⁹ See also ***Hughey v. Chrysler Corp.***, 34 S.W.3d 845, 847 (Mo.App. 2000) and ***Luetzinger v. Treasurer of Missouri, Custodian of Second Injury Fund***, 895 S.W. 2d 591 (Mo. App. 1995).

Claimant is not permanently and totally disabled

The primary determination for permanent-total disability is whether the claimant is able to compete in the open labor market given [her] physical condition and situation. ***Messex v. Sachs Elec. Co.***, 989 S.W.2d 206, 210 (Mo. App. 1999). The test for permanent total disability is whether, given the claimant's situation and condition, she is competent to compete in the open labor market. The central question is whether in the ordinary course of business, an employer would reasonably be expected to hire the claimant in her present physical condition, reasonably expecting her to perform the work she is hired to perform. ***Grgic v. P & G Const.***, 904 S.W.2d 464, 466 (Mo. App. 1995).

Dr. Du released on January 10, 2006 with significant improvement, therefore I find Claimant is not PTD as a result of the April 2005 work injury.

Even if Claimant had met her burden to show the herniated discs were related to the April 2005 injury, Claimant is still not PTD. Claimant worked until the January 2008 surgery, except when had surgery in April 2007. After the 2008 surgery Claimant called Employer and said not to hold her job. Claimant testified she could not work because electrodes were placed on her back in physical therapy and caused her back to spasm. However, the record contains no evidence Claimant reported spasms to Dr. Kitchens, the therapist, or any physician. Nor did Claimant file a claim. Claimant has not looked for work since told Employer not to hold her job.

All physicians agree Claimant cannot return to her former job, but Dr. Kitchens initially found Claimant able to perform sedentary work. Seven months later he changed his opinion even though the fusion remained solid and Claimant's back had improved. Dr. Kitchens refused to accept the FCE results ordered by Dr. Cantrell which placed Claimant in the medium demand level for work. Dr. Lange found Claimant could perform sedentary work and Dr. Margolis imposed work restrictions but did not say she could not work.

Mr. England's conclusion that Claimant cannot work is based on Dr. Kitchens' opinion and Claimant's need to lie down. However, Mr. England's report contains the only mention of Claimant's need to lie down during the day. I previously found Dr. Kitchens and Claimant are not credible. Since Mr. England relied on both of them, I find Mr. England's opinion is not credible that Claimant is unable to compete in the open labor market. Ms. Kane did not interview Claimant but she conducted a records review and contacted employers in the metropolitan St. Louis area. Ms. Kane concluded Claimant's medical condition would not preclude her return to work, seek work or be hired full time. Seventeen employers were willing to consider reasonable accommodations.

Based on credible testimony by Dr. Cantrell, Ms. Kane, medical records, reports and less than credible testimony by Claimant, Dr. Kitchens and Mr. England, I find Claimant did not meet her burden to show she is PTD from the April 29, 2005 work injury.

The SIF is not liable for PPD benefits

Once a determination is made that a claimant is not PTD, the inquiry turns to what degree, if any, is an individual permanently partially disabled for purposes of SIF liability. ***Leutzinger v. Treasurer of the State of Missouri***, 895 S.W.2d 591, 593 (Mo. App. 1995).

Section 287.220.1 RSMo., provides the SIF is triggered in all cases of PPD where there has been previous disability that created a hindrance or obstacle to employment or re-employment, and the primary injury along with the preexisting disability(s) reach a threshold of 50 weeks (12.5%) for a body as a whole injury or 15% of a major extremity. The combination of the primary and the preexisting conditions must produce additional disability greater than the last injury standing alone.

I previously found Claimant sustained 10% PPD of the back for the primary injury (see above). Claimant has numerous preexisting medical conditions, however, I find the SIF is not liable for PPD as the disability from the primary injury does not meet the statutory threshold required to trigger SIF liability.

Employer is not liable for Temporary Total Disability benefits

Claimant contends Employer is liable for TTD benefits totaling \$20,502.84 from November 1, 2006 to December 18, 2008. Employer denies liability for the surgeries which took her off work. TTD benefits are intended to cover the employee's healing period from a work-related accident until she can find employment or her condition has reached a level of maximum medical improvement. *Boyles v. USA Rebar Placement, Inc.*, 26 S.W.3d 418, 424 (Mo.App. 2000). Once further medical progress is no longer expected, a temporary award is no longer warranted. *Id.* Having previously found Claimant achieved MMI on January 10, 2006, I find Claimant has not met her burden to show she was entitled to receive TTD benefits after that date.

Employer is not liable for future medical benefits

Section 287.140.1 provides Claimant establish future medical care is reasonably required to 'cure and relieve' from the effects of the injury. In this case, Dr. Cantrell found Claimant had achieved MMI for the April 2005 work injury by January 10, 2006, and did not recommend additional treatment. Furthermore, Dr. Kitchens recommended pain medication for back and leg discomfort, but had not seen Claimant since December 2008. Dr. Margolis testified Claimant did not report taking pain medicine in February 2009 when he rated her. I find Claimant did not meet her burden to show the need for pain medication flows from the April 29, 2005 work injury.

CONCLUSION

The L4-5 herniated disc, re-herniated disc and related treatment were not medially, causally related to Claimant's work activities. Claimant is not permanently and totally disabled. Employer is liable for permanent partial disability but not future medical benefits or Temporary Total Disability benefits. The Second Injury Fund is not liable for permanent partial disability, and the claim is denied. The award is subject to a lien in favor of Claimant's counsel for legal services rendered.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation