

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

Injury No. 09-020605

Employee: Jeanetta Wilkerson
Employer: Missouri Department of Corrections (Settled)
Insurer: Self-Insured c/o C A R O (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) accident; (2) medical causation; and (3) Second Injury Fund liability.

The administrative law judge rendered the following determinations: (1) employee suffered an accident when on March 21, 2009, she was unexpectedly struck on the left side of her head by a basketball purposely thrown by an inmate which caused objective symptoms of an injury; (2) the accident was the prevailing factor causing employee to suffer resulting head and neck injuries, medical conditions, and a 17.5% permanent partial disability of the body as a whole, but no psychiatric medical conditions or disability; and (3) the Second Injury Fund is liable for 19.5 weeks of permanent partial disability benefits for a total award of \$7,191.02.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in finding employee did not sustain any psychiatric injury as a result of the accident of March 21, 2009; and (2) in finding that the Second Injury Fund is not liable for permanent total disability benefits.

For the reasons stated below, we modify the award of the administrative law judge referable to the issues of (1) medical causation; and (2) Second Injury Fund liability.

Discussion

The administrative law judge's award sets forth the stipulations of the parties and the administrative law judge's findings of fact and conclusions of law referable to the numerous issues disputed at the hearing. We adopt and incorporate those findings and conclusions to the extent that they are not inconsistent with the modifications set forth in our award.

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Consequently, we make only those findings of fact and conclusions of law pertinent to our modifications herein.

Medical causation

The administrative law judge credited the testimony from the Second Injury Fund's expert Dr. Michael Jarvis, and found that the accident of March 21, 2009, was not the prevailing factor causing employee to suffer any additional psychiatric injury. After careful consideration, we agree with this finding. Employee's personal life before the work injury was marked by years of physical and emotional abuse, familial chaos, and interpersonal strife; and the expert psychiatric witnesses generally agree that employee suffered from preexisting major depression and a personality disorder. In our view, the prevailing factor causing employee's current psychiatric disability is the contribution from her psychiatric diagnoses leading up to the work injury.

On the other hand, while we agree with the administrative law judge that Dr. Jarvis's opinions in this matter are generally credible, we cannot agree with Dr. Jarvis's testimony that there is no causal connection between the work injury and the subsequent, rapid deterioration in employee's psychiatric condition. This is because employee's preexisting psychiatric disability appears to have been in a state of remission at the time of the work injury of March 21, 2009, but it is clear from this record that employee's psychiatric disability following that event has increased to the extent that it poses a serious hindrance and obstacle to employment. In light of this evidence, we find that the accident of March 21, 2009, was a significant (if not the prevailing) factor in causing employee to suffer additional permanent partial psychiatric disability.

Second Injury Fund liability

Section 287.220 RSMo creates the Second Injury Fund and provides when and what compensation shall be paid in "all cases of permanent disability where there has been previous disability." As a preliminary matter, we must ascertain the nature and extent of permanent disability referable to the primary injury considered alone. *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 50 (Mo. App. 2007). We defer to and adopt as our own the administrative law judge's conclusion that the accident of March 21, 2009, was the prevailing factor causing employee to suffer head and neck injuries, but we find his disability rating to be somewhat inadequate. We find instead that the accident was the prevailing factor causing employee to suffer head and neck injuries with an associated 25% permanent partial disability of the body as a whole.

The administrative law judge found that, at the time of the accident of March 21, 2009, employee suffered a 15% preexisting permanent partial disability of the body as a whole referable to psychiatric conditions. We agree that employee suffered preexisting permanent partial disability referable to her psychiatric conditions; the administrative law judge's rating of 15% of the body as a whole strikes us as reasonable. We disagree, however, with the administrative law judge's finding that employee's preexisting psychiatric disability does not combine with the effects of the work injury to render her permanently and totally disabled. Although the accident may not have been the prevailing factor causing employee to suffer additional permanent partial psychiatric disability, we are most persuaded by the opinions from Dr. Cohen and Phillip Eldred that

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the accident combined with employee's preexisting permanent partial psychiatric disability to render her unable to compete for work.

Mr. Eldred in particular credibly opined that it is highly unlikely that any reasonable employer in the normal course of business would hire employee for competitive, gainful employment. In our view, James England's opinion that employee may be sporadically employable doesn't adequately rebut Mr. Eldred's opinion on this point.

We acknowledge the Second Injury Fund's argument that if employee is permanently and totally disabled, it is the product of post-accident worsening of preexisting psychiatric conditions not shown to have been caused or aggravated by the work injury. The Second Injury Fund relies on a case law rule to that effect originating with *Lawrence v. Joplin R-VIII School Dist.*, 834 S.W.2d 789 (Mo. App. 1992). The administrative law judge appears to have accepted this argument, in that he determined the opinions of employee's experts regarding permanent total disability were "substantially adversely affected" because the accident was not the prevailing factor in causing any additional psychiatric injury. *Award*, page 39. We disagree, for the following reasons.

First, we note the absence of any expert medical testimony establishing that employee is permanently and totally disabled solely due to post-accident worsening of a preexisting condition. The Missouri courts have suggested such evidence is necessary to support a finding that an employee's permanent and total disability is the product of post-accident worsening. See, e.g., *Abt v. Miss. Lime Co.*, 388 S.W.3d 571, 581 (Mo. App. 2012), holding that where "no medical expert concluded that [the employee] was permanently and totally disabled due solely to subsequent deterioration, the Commission's finding [that the employee was permanently and totally disabled for that reason] is not supported by substantial and competent evidence."

Second, we question whether the case law rule cited by the Second Injury Fund applies here. Section 287.220.1 RSMo provides, in relevant part, as follows:

After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and **compensation for the balance**, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury **together result** in total and permanent disability, ... then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation

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that would be due for permanent total disability under section 287.200 out of ... the "Second Injury Fund."

(emphasis added).

The courts have declared that "the Second Injury Fund is not liable for any progression of claimant's preexisting disabilities **not caused by** claimant's last injury," *Garcia v. St. Louis County*, 916 S.W.2d 263, 266 (Mo. App. 1995)(emphasis added), but the cases applying this rule do not specify the *degree* of causation required, or that such must be sufficient that the employer would be liable under Chapter 287 for additional compensation. While employee's proof of causation may be insufficient to support an award of permanent partial disability benefits from the employer for psychiatric injury, nothing in the above-quoted language from § 287.220 suggests employee's claim against the Second Injury Fund for permanent total disability must be rejected as a result. Instead, the statutory language specifically contemplates additional disability resulting from a combination effect whenever an employee's preexisting disabilities interact with the last injury to result in greater disability. We are of the opinion that, for purposes of establishing this combination effect, it is sufficient if the work injury is shown (as here) to have a significant causal relationship to progression of the preexisting disability, even if the accident is less than a prevailing factor in causing such progression.

Ultimately, the relevant question for our purposes is whether the last injury and employee's previous psychiatric disability "together result" in permanent total disability. See § 287.220.1, above. We have credited the testimony from Dr. Cohen and Mr. Eldred that employee is permanently and totally disabled owing to the combination of the effects of the work injury and her preexisting psychiatric disability. We discern nothing in the relevant case law that would prevent us from applying the plain language of § 287.220 RSMo (which, of course, we must strictly construe) to assess compensation liability against the Second Injury Fund on the basis of the combinative effect between employee's preexisting disability and the last injury, which, in our view, "together result" in her permanent total disability.

For the foregoing reasons, we conclude employee is permanently and totally disabled owing to a combination of her preexisting disabling conditions in combination with the effects of the work injury. The Second Injury Fund is liable for permanent total disability benefits.

Corrections

The last sentence of the sixth full paragraph on page 35 of the administrative law judge's award states, as follows: "I further find that the injury to the employee's head and neck and the resulting medical conditions and disability are medically causally related to the March 21, 2009 work accident." We correct the foregoing to state, as follows: "I further find that the injury to the employee's head and neck and the resulting medical conditions and disability are medically causally related to the March 21, 2009, work accident."

The last sentence of the second full paragraph of page 19 of the administrative law judge's award states, as follows: "When she saw Dr. Jarvis on June 11, 2012, she told him a

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specific name of who threw the ball but did not tell him that it was Paul Lee Vunn.” We correct the foregoing to state, as follows: “Dr. Jarvis’s report of June 27, 2012, suggests employee told him the inmate who threw the ball was Paul Lee Vunn.”

Conclusion

We modify the award of the administrative law judge as to the issues of (1) medical causation; and (2) Second Injury Fund liability.

The Second Injury Fund is liable for weekly permanent total disability benefits beginning January 11, 2012,¹ at the stipulated weekly permanent total disability rate of \$368.77. The weekly payments shall continue for employee’s lifetime, or until modified by law.

The award and decision of Chief Administrative Law Judge Lawrence C. Kasten, issued November 17, 2014, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission 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 11th day of June 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

DISSENTING OPINION FILED
James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

¹ Employee reached maximum medical improvement from the effects of the work injury on February 10, 2010, and we have determined that the primary injury caused employee to suffer a 25% permanent partial disability of the body as a whole. Permanent total disability benefits thus begin from the Second Injury Fund 100 weeks later on January 11, 2012, in order to give effect to the language of § 287.220 RSMo requiring us to account for the (theoretical) payments from the employer of permanent partial disability benefits at the same weekly compensation rate.

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DISSENTING OPINION

Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the Commission errs in applying § 287.220 RSMo to award permanent total disability benefits to this employee premised, in part, on post-accident worsening of her preexisting psychiatric disability.

The majority quotes only a portion of § 287.220.1 in their decision. The omitted language contains important qualifiers that reveal the error in the majority's analysis:

If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed ... receives a **subsequent compensable injury resulting in additional permanent partial disability** ... and **if the employee is entitled to receive compensation on the basis of the combined disabilities**, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability.

Section 287.220.1 speaks in terms of "the last injury." The foregoing language tells us this last injury must meet certain criteria in order to implicate Second Injury Fund liability. First, the last injury must be "compensable." Second, it must result in "additional permanent partial disability." Third, the employee must be "entitled to receive compensation" on the basis of the combined disabilities, which logically must include the disability resulting from the last injury.

The administrative law judge and the majority have determined (and I agree) that the accident of March 21, 2009, was not the prevailing factor in causing employee to suffer any additional permanent partial psychiatric disability. In other words, employee did not sustain a "subsequent compensable [psychiatric] injury resulting in additional permanent partial [psychiatric] disability" on March 21, 2009. § 287.220.1. It follows that any deterioration in employee's mental state after March 21, 2009, cannot be considered in calculating Second Injury Fund liability, because "the last injury" only includes those disabilities which are *compensable*.

The majority correctly cites *Lawrence v. Joplin R-VIII School Dist.*, 834 S.W.2d 789, 793 (Mo. App. 1992) for the proposition that "[t]he Second Injury Fund provides compensation for previously existing disabilities, not increased disabilities caused by post-accident worsening of pre-existing diseases when that worsening was not caused by or aggravated by the last injury." The majority views the absence in such language of a qualifier as to the degree of causation as an invitation to include *any* degree of progression in preexisting disability that is causally related to the work injury. I disagree. The requisite degree of causation is made clear in the plain language of the statute—namely, that "the last injury" means a *compensable* injury. This implies the elements of compensability set forth in

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§ 287.020.3 RSMo, including the requirement that the accident be the prevailing factor in causing the resulting medical conditions and disability.

If there were any remaining doubt, the language of § 287.220.1 quoted by the majority requiring us to assess “the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained” makes it clear. For purposes of assessing Second Injury Fund liability for permanent total disability benefits, the only relevant disabilities are those (1) attributable to the *compensable aspects* of the last injury, and (2) those referable to preexisting conditions measured as of March 21, 2009.

I would affirm the award of the administrative law judge allowing permanent partial disability benefits from the Second Injury Fund. Because the majority has determined otherwise, I respectfully dissent.

James G. Avery, Jr., Member

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Jeanetta Wilkerson Injury No. 09-020605
Dependents: N/A
Employer: Missouri Department of Corrections (settled)
Additional Party: Second Injury Fund
Insurer: Self c/o CARO (settled)
Appearances: Kevin V. Spear and Doug Van Camp, attorneys for the employee.
Kevin Nelson, attorney for the Second Injury Fund.
Hearing Date: August 11, 2014 Checked by: LCK/rf

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease? March 21, 2009.
5. State location where accident occurred or occupational disease contracted: St. Francois County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by law? Yes.
10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident happened or occupational disease contracted: The employee was hit in the head by a basketball thrown by an inmate.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Body as a whole referable to the head and neck.
14. Nature and extent of any permanent disability: 17.5% permanent partial disability of the body as a whole referable to the head and neck against the employer. Permanent partial disability against the Second Injury Fund.
15. Compensation paid to date for temporary total disability: \$1,580.42.
16. Value necessary medical aid paid to date by employer-insurer: \$27,185.38.
17. Value necessary medical aid not furnished by employer-insurer: N/A
18. Employee's average weekly wage: \$553.16.
19. Weekly compensation rate: \$368.77 for permanent partial and permanent total disability.
20. Method wages computation: by agreement.
21. Amount of compensation payable: \$7,191.02 against the Second Injury Fund.
22. Second Injury Fund liability: \$7,191.02.
23. Future requirements awarded: None.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The Compensation awarded to the employee 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 employee: Van Camp Law Firm.

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW

On August 11, 2014, the employee, Jeanetta Wilkerson, appeared in person and with her attorneys, Kevin V. Spear and Doug Van Camp for a hearing for a final award. The Second Injury Fund was represented by Assistant Attorney General Kevin Nelson. The parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. The State of Missouri Department of Corrections was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and was duly qualified as a self-insured employer c/o CARO.
2. On March 21, 2009, Jeanetta Wilkerson was an employee of The State of Missouri-Department of Corrections and was working under the Workers' Compensation Act.
3. The employer had notice of the employee's alleged accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's average weekly wage was \$553.16. The rate of compensation for permanent total disability and permanent partial disability is \$368.77.
6. The employer paid \$27,185.38 in medical aid.
7. The employer paid \$1,580.42 in temporary disability benefits.
8. The employee reached maximum medical improvement on February 10, 2010.

ISSUES:

1. Accident.
2. Medical Causation.
3. Liability of the Second Injury Fund for permanent total disability or permanent partial disability.

EXHIBITS:

Employee Exhibits:

1. Certified copy of Division of Workers' Compensation records
2. Deposition of Dr. Cohen including his CV and reports.
3. Deposition of Dr. Daniel including his CV and reports.
4. Deposition of Philip Eldred including his CV and report.
5. Medical records of Parkland Health Center.
6. Medical records of Farmington Hand & Physical Therapy.
7. Medical records of Arcadia Valley Family Clinic.
8. Medical records of Dr. Johnson.
9. Medical records of Parkland Health Center.
10. Medical records of Southeast Missouri Mental Health Center.

11. Medical records of Dr. Boland.
12. Medical records of Dr. Zevallos.
13. Medical records of Dr. Benecke.
14. Medical records of Dr. Benecke.
15. Medical records of Dr. Zevallos.
16. Medical records of Barnes Jewish Hospital.
17. Medical records of Washington County Memorial Hospital.
18. Medical records of Dr. Patel.
19. Medical records of Great Mines Health Center.
20. Medical records of St. Anthony's Medical Center.
21. Medical records of Mineral Area Regional Medical Center.

Second Injury Fund Exhibits:

- I. Amended Claim for Compensation in Injury Number 09-020605
- II. Certified copy of the employee's personnel file.
- III. Deposition of Lisa Govreau.
- IV. Deposition of James England including his CV and report.
- V. Deposition of Dr. Jarvis including his CV and report.
- VI. Photograph of Housing Unit 10 & basketball court.
- VII. Photograph of Housing Unit 10 & basketball court.
- VIII. Photograph of Housing Unit 10.
- IX. Photograph of Housing Unit 10.
- X. Photograph of inside of Housing Unit 10.
- XI. Photograph of inside of Housing Unit 10.
- XII. Photograph of inside of Housing Unit 10.
- XIII. Photograph of Dining Hall B.
- XIV. Photograph of Dining Hall B.
- XV. Photograph of Dining Hall B.
- XVI. Photograph of Dining Hall B.
- XVII. Department of Corrections Incident Report form.
- XVIII. Department of Corrections Conduct Violation Report form.
- XIX. Claimant's overtime hours.

Judicial Notice of the contents of the Division's file for the employee was taken.

WITNESSES:

Jeanetta Wilkerson, the employee and James Gober for the employer.

PROPOSED AWARDS:

The employee and the Second Injury Fund filed their proposed Awards on September 15, 2014.

STATEMENT OF THE FINDINGS OF FACT:

The employee testified that she was born in 1959, is 55 year old, and lives in Farmington Missouri. She left school in 11th grade and obtained a GED when she was 34 years old. She was born in California, and moved around a lot due to her father working in construction. She has seven brothers. She had a sister who passed away at the age of three. The employee was five years old when her sister passed away. Her relationship with her mother was difficult being the only girl. Her mother liked her brothers but was mean, cruel, and very abusive physically, emotionally and mentally to her. Her mother would get mad at the boys and take it out on her. She could not do anything right and the boys could do no wrong. She was not allowed to speak unless spoken to, and had to stand until she was acknowledged before she could speak. When the employee was three years old, her mother married a person that she knew as Dad but was not her biological father. Her mother had five children before she was married, and then had 4 children with her husband that they all called Dad. When the employee was 19 years old, she found out that her real father was someone else.

The employee testified that at age 15 or 16 she ran away from home because she felt that no one loved her, and she tried to kill herself with a bottle of aspirin. She then went back to live with her mother and dad, and she was treated the same. She tried to commit suicide again when she was 17, again with aspirin due to problems with her mother. Her brothers did not provide her any support; and they all backed and worshipped her mother. When she was 18 she got married in part to escape from her family. Her first marriage lasted five and a half years, and her husband was sometimes physically abusive. She had a daughter when she almost 21. When they divorced her ex-husband took their daughter. After her divorce, she had a son with a different man when she almost 25 years old. Since she was not married, she felt embarrassed, and moved to California so as to not embarrass her family. When her son was three, she tried to commit suicide by slitting her wrist. She was not emotionally stable, was alone, tired, and did not think she was a good mom. Her marriage to her second husband legally lasted 11 years, but they were only together for 4 months because he was into drugs so bad. Her marriage was annulled. Her third marriage lasted a year but they lived together for a long time. When that husband became a federal correctional officer, he changed and ran the household like a prison. That marriage was in the late 1990s when her son was a freshman in high school. She moved back to Missouri because she thought her mother changed but her mother still was mean to her and to her son. Her mother had not changed. The employee then moved back to California and did not speak to her mother for four years.

The employee testified that in 2002 her mother died and she was in two car accidents. She was treated for psychological issues and saw a psychiatrist. When her mother died, she died without answers, and the employee wanted to know why her mother did not love her. The employee did not know her biological father, and always wanted to belong to someone. Her mother and step dad were married for 40 years, and the employee was raised to be a wife and mom, and that it is what she wanted. She knew she belonged to her mother, and when her mother died, she did not belong to anyone. Her mother did not accept her, and it really messed her up. She was working at Wal-Mart at that time, and had difficulty at work and would cry. She had trouble sleeping.

The employee testified that after her mother died, she got married for a fourth time. She was legally married four years and was with her husband another two years. Her fourth husband was also physically abusive to her. She tried to commit suicide again in 2004 because her husband crushed her, she could not picture her life without him, and she was totally devastated. She tried to kill herself by combining medication and alcohol, and used syringes to try to bleed herself out. She attempted suicide because her mother was gone, she had no answers, her marriage was over, nobody wanted her and there was nowhere to go and nothing left for her.

The employee testified that prior to working for the Department of Corrections she worked at Wal-Mart for 12 years. She started in customer service, and then had a variety of other jobs including the magazine department, the office, merchandise, overnight stocking, and inventory preparation. She had prepared to be and wanted to be an assistant manager. She took a lot of pride in her work and went from making \$5.25 per hour to over \$16.00 an hour. The work helped her confidence but she continued to have a lot of problems. She worked at Wal-Mart from 1995 to 2007. Her issues psychologically affected her ability to do work. She had to take time off from work and called in sick. At times she did well and then at times she struggled at work. It was an up and down on how well she was able to perform her work. She left Wal-Mart because she was getting older and wanted a less physical job that did not involve a lot of lifting. She started working at the Department of Corrections in 2007. She took pride in her work. She felt good at times but still had times from psychological issues when she would call in sick due to physical and mental issues. The psychological problems caused physical symptoms of nausea and a sick feeling and she would lie down in a dark room.

On January 12, 2009, the employee had a migraine headache accompanied with nausea and vomiting and went to Arcadia Valley Family Clinic. She had a frontal headache for five days. Since she had moved from California two years ago she had been very allergic and her headaches had started. She was assessed with cephalgia, taken off work until January 16, 2009, and was prescribed medications.

The employee testified she got psychological treatment in February of 2009. She had gone to Texas to visit her daughter. She had difficulty adjusting, and felt really sad. Her daughter had a boy and girl, and the employee felt that her daughter was always leaving her behind. She went to the doctor and got a prescription for Lexapro.

The employee saw Dr. Johnson at SLU Care on March 4, 2009, for anxiety and depression. She was diagnosed with unspecified anxiety state and depression. She had been taking Lexapro and Klonopin but they had been discontinued. Dr. Thomas prescribed that same medication for anxiety and depression. She had depression due to her family issues including a son with knee problems and no insurance, a grandfather with prostate cancer, her father with congestive heart failure and skin cancer and her daughter who had just had a child. She had a history of depression six years earlier and was prescribed Lexapro, Trazadone and Valium. She had taken herself off of those a year and a half earlier. She was having panic attacks and someone gave her a Xanax that morning. She was taking Excedrin PM at night for sleep. On examination her mood and affect was anxious.

The employee testified that on March 21, 2009, she was working at Farmington Correction Center as a Corrections Officer I. She was working outside as part of the housing unit for drug and alcohol treatment which was a dorm type environment. Her job was to constantly walk around to observe the inmates. Since the inmates appeared to be getting testy, she started walking toward them. An inmate was sitting on a basketball next to the basketball courts, and kept calling her names. She approached him and asked him why he was calling her names. He said that he was not. All of sudden she was hit in the left side of head close to her ear with a basketball. It was a significant blow to her head, her neck snapped, and her knees almost buckled. She informed her Sergeant who was across the basketball court what happened and that she was hurt bad. She sat down and started dry heaving. He radioed medical services; they brought a golf cart, and took her to medical. She threw up, and was taken to the emergency room. She was having dizziness and a headache. She filed a report with the employer, filed a workers' compensation claim and received authorized treatment.

A Report of Injury was filled out which showed that the employee alleged that on March 21, 2009, she was watching offenders at recreation and was struck in the left side of the head and face. The employer was notified on March 21, 2009.

The employee testified that after the injury she developed bad migraines, could not turn her head to the right without pain and numbness down her right arm. If she tilted her head the world would spin violently. She was set up and hit in the head with the basketball on purpose. The basketball did not come off the backboard. Nobody believed her, and she even talked to the Warden about it. She did not see who threw the basketball but it was not the inmate sitting on the basketball.

The employee testified that on March 21, 2009, she went to the emergency room at Parkland Hospital. An x-ray of her neck was taken. She was prescribed a neck brace and Vicodin.

The employee had a cervical CT on March 21, 2009, that was ordered due to a history of being hit on the left side of the head with a basketball and having neck pain. The impression was preexisting spondylosis most pronounced at C4-5.

The employee testified that she saw Dr. Dickinson who prescribed physical therapy for her neck and prescription medication for the neck and headaches, and a muscle relaxer. She was having stiffness in the neck, headaches, right arm numbness, and dizziness.

On March 23, 2009, the employee went to Parkland Health Clinic. She had been to the emergency room after being hit in the head with a basketball on March 21, 2009. A history of neck problems was noted. She was still nauseated, dizzy, and frequently felt off balance. Diagnosed was a neck strain and concussion. The Vicodin was refilled and the employee was taken off work for one week.

On March 25, 2009, Dr. Johnson at SLU Care stated that the employee saw him for anxiety and a concussion from being hit on the head with a basketball by an inmate. Dr. Johnson diagnosed anxiety and depression. The employee had been doing much better on the Lexapro

and Klonopin that he previously prescribed. Since being hit on the head with a basketball she had been having much more stress. She was able to function on Klonopin. Dr. Johnson diagnosed a concussion/neck strain due to being hit by a basketball thrown by an inmate. On examination, the employee's mood and affect were anxious and tearful at the beginning but she improved later. The employee noted improvement after talking to Dr. Maid, a behavioral health consultant. Dr. Johnson continued the Lexapro and Klonopin. FMLA was filled out.

On March 30, the employee went to Parkland Health Clinic for a follow up on her neck strain. Her neck pain goes into the shoulders and her headache was not as bad. She was off balance and her head hurts after bending over. A cervical sprain was diagnosed and physical therapy was ordered. The employee was to return to light duty; and Norflex was prescribed.

The employee started physical therapy on April 1, 2009 for neck pain. She noted that she was hit on the left side of her head with a basketball on March 22, 2009. She had a sudden onset of pain and diagnosed with a concussion and cervical sprain. She was having difficulty turning her head and had headaches. She had 75% range of neck motion in flexion, extension, left lateral flexion, right lateral flexion and right lateral rotation. The cervical compression test suggested nerve root irritation/inflammation.

On April 4, 2009, the employee left work early due to having a headache and that she needed to go home. She said she could not see very well and called to get a ride home.

On April 6, 2009, the employee went to Parkland Health Clinic and stated that her head/neck was killing her and the muscle relaxers were not helping. She had only gotten two hours of sleep. The employee was still hurting a lot and the pain made her unfocused and it was difficult to concentrate. The diagnoses were concussion and right neck sprain. A Lidoderm patch and Tramadol were prescribed. The employee was put on modified duties.

On April 15, 2009, the employee saw Dr. Johnson at SLU care. Dr. Johnson noted that the employee was doing much better with her anxiety. She was working light duty but was a little anxious about returning to full duty. She was doing well with her depression. She was seeing the workers' compensation doctor for her neck pain. She was improving, had no memory loss, was taking Lidoderm and was going to therapy. She was having occasional dizziness due to the concussion. Dr. Johnson diagnosed anxiety state, unspecified, and depression which were both much improved. She will be seen in eight weeks and if she is back to normal at work he would slowly taper the Klonopin. The employee had another behavioral health consultation.

On April 20, 2009, the employee went to Parkland Health Clinic and was very dizzy when she looked over her right shoulder and had tingling down the right arm. The employee had fallen out of her bathtub on Saturday. Her pain had improved a lot but she was still very dizzy and unbalanced. The assessment was post concussion syndrome, dizziness and disequilibrium. Physical therapy was continued, and a referral to a neurologist was made. She was put on modified duties.

On April 20, 2009, the employee requested leave without pay for 22 hours from April 17 through April 20. The employee had a dizzy spell and fell out of the bathtub that she said was due to a workers' compensation injury. Her doctor was going to refer her to a neurologist.

The employee was discharged from therapy on April 24, 2009, with an active range of motion all within normal limits except right rotation and side bending which were at 75%. The pain was 2 out of 10.

The employee signed and filed her original Claim for Compensation on May 6, 2009, showing that on March 21, 2009, the employee was hit in the head by a basketball thrown by an offender thereby resulting in injury to the head, neck, right shoulder, and body as a whole.

On May 4, 2009, the employee sent a memo that she was not at work yesterday due to her daughter taking an overdose of Vicodin due to complications from surgery. The employee requested eight hours of leave on May 11, 2009, due to being dizzy and lightheaded due to a workers' compensation injury.

The employee testified that the therapy made the symptoms worse and she was on light duty working at the prison. She was sent to Dr. Reisler.

The employee saw Dr. Reisler on May 22, 2009, for complaints due to being hit on the left side of her head by a vigorously thrown basketball. The employee stated that the blow caused lessened alertness and subsequent headaches with transient nausea and vomiting. It was Dr. Reisler's opinion that the head injury qualified for a diagnosis of a mild concussion, and she had symptoms of a cervical strain with dizziness and episodic numbness in the right upper extremity. She had intermittent migraine headaches which became more prominent after the injury. Dr. Reisler continued light work duty status, prescribed medication, and indicated that further studies could become necessary if symptoms worsened.

On June 2, 2009, the employee sent a memo requesting leave without pay for June 1 due to a workers' compensation injury and that she got up she could not turn her head. On June 5, 2009, the employee sent a memo requesting leave without pay for three hours and forty minutes on June 2 due to a lot of problems with her neck and arm due to a worker's compensation injury.

On June 9, 2009, Dr. Reisler wrote a note that the employee had an injury and was examined by him on that date, and will return to light duty work on July 13, 2009, with no lifting more than 20 pounds and no running steps, with a follow-up in one month. On June 18, the employee returned to Dr. Reisler with multiple complaints including difficulty working on the computer. Her neck pops when she moves it, her right arm goes numb, and she has popping at the back of her head and neck. Her last partial day at work was June 9, 2009. She was taking hydrocodone.

A cervical MRI on June 24, 2009, showed mild to moderate degenerative disease of the cervical spine worse at C4-5. The C4-5 level showed disc bulge associated with moderate right

facet arthropathy resulting in mild/moderate right and mild left neural foraminal stenosis. There was mild bilateral uncovertebral joint disease and mild central canal stenosis.

The employee saw Dr. Johnson at SLUCare on June 29, 2009. With regard to her anxiety/depression she was doing fine until two weeks ago after a family reunion and she got severely depressed. Her depression got worse when her fiancé's mother died five days before. She had been in bed for four days and was crying and upset. Every time she gets out she has a panic attack. With regard to her neck pain she was out on workers' compensation and was taking Flexeril three times a day and hydrocodone twice a day. Her mood and affect are depressed, anxious, and tearful. She had a behavioral health consultation with Dr. Maid. Dr. Johnson diagnosed depression, anxiety state, and panic attacks. Dr. Johnson stated that her depression and panic attacks had become more severe. He increased her medication and referred her to outside psychiatry and more intensive counseling.

A brain MRI on July 2, 2009, due to a history of headache and dizziness showed likely cavernoma in the right frontal lobe. The MRI of the cervical spine showed mild to moderate degenerative disease worse at C4-5.

The employee saw Dr. Reisler on July 9, 2009. The employee was very upset about the possibility of losing her job. She has two weeks left of FMLA and she was told she would be terminated if she cannot return to work. Her symptoms have not changed, and she could possibly do light duty which the employer will allow for up to three months. The employee had multiple complaints including her inability to turn her head to the left without significant discomfort and intermittent right arm numbness. Dr. Reisler stated that the cervical MRI results did not explain her symptoms and that the brain MRI showed a likely cavernoma in the high posterior front lobe and there was suggestion of evidence of dystrophic calcification with the lesion. Dr. Reisler stated that it appeared that the lesion was not directly caused by the alleged injury sustained on March 21, 2009, but may be the continuing primary cause of her problem with headaches and dizziness. It was his opinion that the employee was experiencing symptoms related to post-traumatic headaches; and the brain lesion could be contributing to her slow recovery. He returned her to light duty with restrictions to lift less than 20 pounds and not to run steps. Dr. Reisler was unable to determine whether the continuing complaints of headache, dizziness, and intermittent right arm numbness were the direct result of her injury or a preexisting undiagnosed condition (cavernoma), or other issue which she takes psychiatric medication and tranquilizers.

The employee testified that she felt the cavernoma was the cause of symptoms. On July 18, 2009, she attempted to take her life again because after she got hurt, no one thought anything was wrong. She was also having problems with her boyfriend at the time because he thought she was abusing her prescription medications. He did not think she was hurt and was counting pills. No one believed she was hurt or got hurt that bad. She did not have any support from anybody, and everyone thought she was not hurt and was milking it. The doctors thought she was faking but she was in a lot of pain. The accusations by her boy friend were the last straw. She was supposed to go to work and sit in the break room office to go through policy and procedures. She could not take the pain medication while she was working. She was running out of comp and leave time, and was feeling anxiety about future employment. On the way to work she got into

argument with her boyfriend and she was an emotional wreck. She called and let the employer know she was not coming in and was going to check into the psych ward. She took an overdose of prescription medications because she was tired of hurting and no one believed her. She went to Parkland Medical Center to check in, and passed out in the parking lot. She woke up five days later in ICU.

The employee was admitted to Parkland Health Center on July 18, 2009, after going to the emergency room stating that she could not cope with life anymore. She had ingested an unknown quantity of Tylenol #3 and muscle relaxants in an attempt to kill herself. She was admitted for further evaluation and possible placement in inpatient psychiatric care. She had several outbursts of agitation and anxiety. Dr. Dickinson discharged her on July 22, 2009, with the final diagnoses of polysubstance overdose, major depression, and chronic neck pain and chronic obstructive pulmonary disease exacerbation present on admission. The patient was transferred to Southeast Missouri Mental Health Center psychiatry unit.

The employee was admitted to Southeast Missouri Mental Health Center on July 22, 2009. The employee said that she never had the intention to kill herself when she took an overdose. She had been in an abusive relationship for the past three years and recently her boyfriend has accused her of abusing the prescription medications. The morning she took the overdose they had an altercation regarding the abuse of the medication and the employee was upset and just wanted to show him what abuse means. In March she had been injured at work when she was hit on the head by a basketball and has been in conflict with the employer regarding the workers compensation issue. The employee denied any suicide attempts in the past. She reported that her anxiety is mostly secondary to employment related issues where she is looking at the possibility of being paid for her injuries. Past psychiatric history included several years ago when her mother died and she went through a complicated grief process. She was put on Lexapro and Valium to help with depression and anxiety and took those for a year and a half with significant relief of all the symptoms. She discontinued the medications and treatment. Past history included depression and anxiety treated by a psychiatrist and primary care physician with medication and therapy, use of alcohol with some abuse, history of significant drug abuse problems in her early 20s and 30s and history of marijuana, meth, and cocaine use 15 years earlier.

Susan Mardini, LCSW, performed a psychological evaluation on July 24. Stressors were noted to be being in an abusive relationship, physical health problems/pain and financial problems. Clinical impressions were depression, alcohol/drug abuse, and personality disorder.

The employee was discharged by Dr. Vangala, a psychiatrist, and Ms. Mardini on July 29, 2009, with final diagnoses of under Axis I of depressive disorder NOS, rule-out major depressive disorder and recurrent moderate, rule-out Opiate abuse, rule-out substance induced mood disorder, rule-out Bipolar disorder type II, and current depression. Under Axis II was rule-out personality disorder NOS; Axis III was head and neck pain due to work injury, recent ICU hospitalization, status/post hysterectomy. Axis IV was stress at job and relationship issues. Axis V was a global assessment functioning of 55. The employee was advised to take medications and follow up with psychiatrist and counseling. She was discharged with Zoloft, Vistaril for

anxiety; Naproxen for pain, and Imitrex for headaches. On July 29, Dr. Vangala wrote a note that the employee was to follow up with Dr. Chan on August 3.

On August 13, 2009, Dr. Reisler stated that the employee was experiencing stress and not handling life. She met with the Warden on August 10, and on August 11 submitted a letter requesting an extended leave or termination without prejudice. Dr. Reisler stated at the time of her visit it was apparent that the employee was experiencing significant emotional disability and that her headaches and neck pain were secondary to her significant emotional difficulties including depression. He prescribed an anti-depressant. Subsequent to the visit, Dr. Reisler was made aware that the employee had been hospitalized for inpatient psychiatric care as the result of an overdose and was not totally honest about her medical situation. Dr. Reisler terminated care. It was his opinion that the post-traumatic headaches and strain injury to the cervical spine was without evidence of structural injury requiring long term intervention or surgery. It was his opinion that the employee had a 2% permanent partial disability as a result of the March 2009 work injury and would not require long-term continuing treatment.

The employee requested leave of absence without pay from August 1, 2009, through August 31, 2009, which was approved.

The employee testified that her last day of employment was on September 8, 2009, when she ran out of sick and comp time.

On September 15, 2009, the employee saw Dr. Reisler. She did not take the anti-depressant because she read the side effects of suicidal tendencies. She still has headaches with not being able to turn her head to the right, nausea, lights bother her, and when she lies down and turns to the left the room spins. She had been terminated.

On September 21, 2009, Dr. Reisler noted that the employee had multiple complaints. She has had stress due to events separate from the work injury. She attended two funerals during the month. His examination did not show evidence of any nervous system abnormalities sufficient to keep her off work. She did not feel that she could try to return to work without medical restrictions. It was Dr. Reisler's opinion that the employee had symptoms of post-traumatic headaches and cervical strain. There was no objective evidence of continuing disability and it would be no more than 2% of the body as a whole. She did not require long-term continuing treatment as far as workers' compensation injury.

The employee started treating with Great Mines Health Center on November 10, 2009, to establish care and secure a psychiatric referral. The March 21, 2009 head injury and the July of 2009 overdose were noted. The employee's mood was tearful and sad with less memory and less concentration. The employee was diagnosed with depression, headaches, and head injury and provided prescriptions of Tramadol and Vistaril.

On December 12, 2009, the employee went to Great Mines with no improvement and continued dizziness. She was worried about an upcoming court date and since she found out she has been stressed, has lost sleep and has crying episodes. The employee was diagnosed with

anxiety, depression, conversion reaction, and head injuries. Medications were adjusted and Seroquel and Lisinopril were added. On December 15, the employee went to Great Mines. Her mood was not as tearful and she was more composed. Among the diagnoses was insomnia and depression. On January 21, 2010, the employee called into Great Mines Health Center crying and stating she was a mess. She had increased thirst, night sweats, diarrhea, and electric shock going through body.

The employee testified that she was sent to Dr. Boland who treated her balance and dizziness issues. She had trouble walking, had a car accident due to vertigo and dizziness, and quit driving for a while. Due to the vertigo, she fell several times while showering, and got a shower chair to use.

The employee went to Dr. Boland at Neurosurgery & Neurology on January 27, 2010, for migraine headaches, dizzy spells, numbness of arms, and neck pain. It was noted that her headaches can get so bad that she has to lie down, cover her eyes, put earplugs in, and shut out the world. The neck pain is mostly on the right side and if she moves her head to the right she will get numbness in her right shoulder down into the hand. She has vertigo and imbalance, and had to stop driving and has to hold to something when walking due to fear of falling. Since her injury she has panic attacks if she is not with someone familiar or tries to get out of the house. It was Dr. Boland's opinion that the employee had post-concussive headache with cervical strain, preexisting C4-5 degenerative disc disease with facet arthropathy, and vertigo possibly related to her injury. Dr. Boland noted that her symptoms were magnified after her July hospitalization. Dr. Boland thought the vertigo was related indirectly to the injury. He recommended evaluation to assess her inner ear.

On January 27, 2010, the employee went to Great Mines Health Center. She stated the Zoloft did not work and she was crying and angry. The employee was diagnosed with depression, anxiety, balance complaints, and head injury.

In correspondence dated February 10, 2010, Dr. Boland stated that he had reviewed the June 24, 2009 cervical MRI and July 1, 2009 brain MRI. It was his opinion that the cavernous hemangioma was not related to her March 2009 work injury and the mild degenerative changes on the cervical MRI pre-dated the March 2009 injury. Surgical intervention for her spine or brain was not necessary. Dr. Boland still recommended an assessment of vestibular function. If there is no objective evidence to support vertigo symptoms she would benefit from psychiatric evaluation.

The employee went to the emergency room on February 17, 2010, due to severe right low back pain. She had vertigo which caused her to fall in the shower. The employee appeared to be anxious. She was diagnosed with lumbar strain and given a Toradol injection.

The employee went to Great Mines Health Center on March 17, 2010, for follow up on medication and a referral for dizzy spells. The employee stated that she had fallen six weeks ago and then fell again last Friday and hurt her back and toe. It was noted that the employee had a granddaughter that was one year old that her daughter did not want. Diagnosed was back injury,

left small toe fracture, and dizziness. She was referred to a counselor for depression and a neurologist for dizziness.

The employee saw Dr. Zevallos at Neuromar, Inc. on March 26, 2010, for dizzy spells and headaches. Her pain is associated with nausea, vomiting, photophobia and phonophobia lasting from a few seconds to several days. The history of depression and anxiety was noted. Dr. Zevallos diagnosed dizziness/giddiness and chronic migraine; ordered a brain MRI and prescribed medications for headaches and seizures.

On April 7, 2010, the employee called Great Mines Health Center stating that she was having side effects from medication which is depression. She wanted to cancel the counseling appointment. She was out of Lexapro and requested a sample. The samples were given and she was told to keep her counseling appointment.

The brain MRI on April 20, 2010, showed no acute findings. The radiologist was unable to confirm a cavernoma in the right front lobe or the remainder of the brain. The findings likely represented early chronic small vessel ischemic changes.

On April 30, 2010, the employee saw Dr. Zevallos and stated that the headaches were better with medication. She has a constant ache of 2-3 out of 10 and has migraines 2-3 times a week with an intensity of 5-6 out 10. She had continued dizziness. On June 4, the employee saw Dr. Zevallos with a lot of pain in the limbs that she could not live with. Dr. Zevallos diagnosed chronic migraine, dizziness/giddiness, cervicgia, lumbago, and thoracic pain. The possibility of pain management was mentioned.

On June 15, 2010, the employee called Great Mines Health requesting refill on Seroquel and other medications. She had to leave for Texas the next day due to her brother being in an accident.

The employee saw Dr. Benecke at Otology Associates on July 12, 2010, for dizziness and episodic vertigo. She had dizziness, nausea, vomiting, and headaches. Her problems moderately limited her activities. She complained of depression but no anxiety. Dr. Benecke assessed vertigo and discriminatory hearing loss and recommended an evaluation of the vestibular system.

The employee went to Great Mines Health Center on July 14, 2010. The employee had family issues with her brother who was injured in accident. She went to Texas so she missed some counseling. It was noted that she manages anxiety without medications due to anxiety techniques. Her granddaughter was now living in St. Louis. She had improvement and was doing better. There was positive neck tenderness with decreased range of motion. Her mood was improved and she was smiling. The plan was for counseling.

The employee saw Dr. Patel at Southeast Missouri Community Treatment Center on August 19, 2010, for depression and anxiety of many years in duration. Dr. Patel diagnosed severe recurrent major depression disorder accompanied with hypertension and head injury, moderate personal stressors, and a GAF of 65. He changed medications.

The employee testified that in 2010 she was in St. Anthony's Hospital for three weeks. She sought treatment to help forget some of the issues with her mother. She had electric shock treatment for depression and to take away some overwhelming bad memories.

The employee was transferred from Jefferson Memorial Hospital to the Hyland Center at St. Anthony's Medical Center on September 16, 2010, to undergo electroshock therapy. The employee stated that she had gotten into argument with her son and she beat him up which was very upsetting. She was crying a lot, was hopeless, and helpless, and she cannot forget the pain and thought she needed a course of electroshock therapy to forget the bad things and problems that had happened to her. She had uncontrollable crying and thought she had brain damage. She is not sleeping without medication and was only sleeping four hours with medication. She said she needed to forget the bad things and problems that happened to her. She was given a course of electroshock therapy. Diagnosed under Axis I was bipolar affective disorder, depressed. Under Axis II was questionable personality disorder mixed or borderline. Axis III was none, and Axis IV was moderate. Dr. Ardekani diagnosed bipolar affective disorder, depression, and questionable personality disorder — mixed or borderline. She was discharged on October 1, 2010, with final diagnoses of mixed bipolar affective disorder and personality disorder.

On October 14, 2010, Dr. Benecke added chronic external otitis to his previous diagnoses of vertigo and discriminatory hearing loss and prescribed medication.

On December 2, 2010, the employee went to Great Mines Health Center for a prescription. She wanted the doctor to call her regarding her situation and feels she may need to go back into the hospital. The employee went to Great Mines Health Center on December 13, where it was noted that she was not taking medications and ran out of her scripts. She had a flat affect, and anxiousness, and she described feeling peaceful during her time at St. Anthony's. The diagnoses included depression, and medications were adjusted. The employee called Great Mines Health Center on December 28, 2010, requesting a refill on Klonopin. It was noted that she needed to go through psychiatry as she was recently hospitalized.

On January 5, 2011, Dr. Benecke recommended restricting ladder climbing. He diagnosed vertigo, discriminatory hearing loss, and chronic external otitis. He recommended follow-up in one year, tapering Valium dosage, and participating in vestibular rehabilitation physical therapy.

The employee went to Great Mines Health Center on January 13, 2011, for depression and nervousness. She was taking Ativan, Cymbalta, Klonopin, and Valium. Her symptoms included anxiety, depression and moodiness. The employee was diagnosed with major depressive affective disorder, single episode, and moderate degree. She was prescribed Vistaril.

On February 8, 2011, the employee saw Dr. Patel who noted that she had been admitted to St. Anthony's. Dr. Patel noted that the employee had a lot of family issues and he adjusted the medications.

The employee saw Dr. Zevallos on February 25, 2011, for follow-up after a couple of missed appointments. The employee had a lot of neck pain and had a lot of problems due to family issues, and had gotten lost in follow-up. Topamax has helped the neck pain. The employee was having worsening cervicgia, improving thoracic spine pain and stable migraines. He continued Topamax and started Flexeril.

The employee saw Dr. Benecke on March 23, 2011, and thought her condition has fully stabilized. He did not believe she was getting any benefit from the valium. The employee will start vestibular rehabilitation physical therapy.

The employee testified that she had another suicide attempt in 2011, where she took a razor blade and was to going to cut her neck. Her hands were sweaty and when she tried to cut herself it did not work. She was hospitalized again because of not having a future and she could not work. After the March of 2009 work accident, she felt completely helpless and hopeless.

The employee was treated at Washington Memorial Hospital emergency room on March 24, 2011. EMS reported that the employee called her pharmacist stating if she did not get her medications she was going to kill herself. The mental health status examination showed the employee was crying, stated she was not supposed to be there and someone made her come there. She stated that she used marijuana and cocaine. With regard to changes in her relationships, the employee said that two of her brothers had cancer, her daughter was going to jail, and they took her children away. When asked if she had major concerns or stressors due to financial problems she stated doesn't everybody. With regard to legal problems, she stated that she had been hit in the head with a basketball. The emergency room doctor's impression was suicidal and homicidal ideas and bipolar. Dr. Simpelo stated that the employee had a two day history of severe depression with suicidal ideation. She apparently tried to cut her neck on the right side and she stated she had attempted that before in the past. She has been under the care of Dr. Patel for severe bipolar depression and claimed to have run out of her medicine for the last two days. She was diagnosed with acute depression, bipolar with suicidal ideation and attempt to cut her neck. She was admitted to the hospital for observation. Dr. Simpelo requested a court order to transfer her to acute psychiatric patient care. A court ordered transfer form for the purpose of psychiatric services identified diagnosis as suicidal and homicidal ideation. She was transferred to Mineral Area Medical Center on March 25, 2011.

The records from Mineral Area Regional Medical Center show that the employee apparently got upset and superficially cut the right side of her neck in a suicide attempt. The employee denied any alcohol or drug abuse but had a positive urine drug screen for multiple substance abuse. Dr. Patel assessed superficial skin abrasions to the right side of the neck, suicidal ideation, and bipolar depression. The employee was admitted to the psychiatric ward for evaluation and treatment for suicidal ideation. An evaluation by Janet Murdick, CNS, reported that the employee stated her life was not worth living and attempted to cut her throat. She was angry she did not hit the vein. The employee had been out of medication for two days, became increasingly depressed and anxious, and developed suicidal ideation. She has had increased recurrence of suicidal ideation for the last several weeks. She had gone to the parking lot of the emergency room and attempted to cut her neck as a suicidal gesture. Since she only had a

superficial wound, she went back home and started texting her family members. Her sister-in-law called the police to her house. When the police questioned her, they thought that the employee was no longer suicidal and just left. The next day, after attempting to get medications from her pharmacy, she told the pharmacist that if she did not get her medication she was going to kill herself. The pharmacist called the police and they took the employee to Washington Memorial Hospital. The employee had a lengthy substance abuse history in the past and her drug screen was positive for amphetamines, opiates, and benzodiazepines. She stated she only had taken her medications and denied any illegal use. The mental status exam showed the employee had an extremely flat affect and was tearful and upset. She had frequent recurring suicidal ideations, crying episodes, anxious, panic attacks and flashbacks. She had some delusional thoughts and paranoia with sleep disturbance short term memory disturbance. She was admitted on a 96-hour involuntary commitment. The diagnostic impression under Axis I was bipolar disorder, depressed, and history of polysubstance abuse. Axis II was none. Axis III was hypertension, gastritis, COPD, and brain aneurysm. Axis IV was severe and Axis V was a GAF of 24.

A psychosocial assessment was done by Jane Wilson, Ms. Williams, on March 28, 2011. The employee stated she was tired of people being mean to her and she ran out of her medications. The employee stated that she was depressed most of her life, had been hospitalized several times for mental illness and thoughts of suicide, and had shock therapy in 2010 for a long history of depression and suicidal ideation. Her current boyfriend had been treating her mean and yelling because her daughter went to their house and stole some things. The employee stated that her mother never liked her growing up, loved her boys, and did not like girls. Her relationship with her mother was always somewhat distant. The employee reported that she was depressed and had thought about suicide for most of her life because of her mother. The employee believed that she has been depressed and suffered with suicidal ideation most other life. After her daughter stole some items from their house, her boyfriend became angry, started yelling and was being mean to her, so she cut her throat in an attempt to end it all because she did not like people treating her mean. Ms. Wilson's recommendation was that the employee could benefit with cognitive therapies to reduce her depression and suicidal ideations. The employee was discharged on March 31, 2011, after feeling better with her mood better, less anxiety and less agitation.

A mediation was held on April 21, 2011. The minute entry from that setting showed that the employee was present along with her attorney. The State of Missouri was represented by its attorney. The employee requested an evaluation for a neurologist and cervical spine evaluation.

The employee filed an amended Claim for Compensation on June 10, 2011, that added psychological injury to the parts of the body injured, and added a claim for permanent partial/permanent total disability against the Second Injury Fund for a preexisting disability "TBD". The employee filed an amended Claim for Compensation on March 16, 2012, adding long standing psyche issues as her preexisting disability for her Second Injury Fund Claim.

The employee testified that the employee authorized and paid Dr. Reisler, Dr. Boland, and Parkland Health. She settled her case against her employer, and as part of the settlement she was to receive medical for her neck.

On June 20, 2013, the employee settled her claim against the employer in Injury Number 09-020605. Included in the disputes were accident, injury, and permanent disability. In the settlement the employer agreed to pay for any and all future medical expenses which are medically necessary and causally related to the March 21, 2009 injury for the employee's cervical spine only. The settlement was for an approximate disability of 17.5% permanent partial disability of the body as a whole for the cervical spine and 7.5% permanent partial disability of the body as a whole for psychiatric injury.

James Gober testified that he has been employed by the Missouri Department of Corrections since March 25, 1991. He is a Major at the Farmington Correctional Center. Major Gober reports to Deputy Warden Tami White. On Monday August 4, 2014, he took Assistant Attorney General Kevin Nelson on a tour of the Farmington Correctional Center along with Deputy Warden White, and Administrative Officer Rob Ebert. Major Gober took a series of photographs of the dining hall and the inside and outside of Housing Unit 10 including the basketball court which are SIF Exhibits VI to XVI. After the tour he, Assistant Attorney General Nelson, and Deputy Warden White went back to her office. At the request of Assistant Attorney General Nelson and in Major Gober's presence, Deputy Warden White conducted a computer search to see if Paul Lee Vunn had ever been incarcerated at Farmington Correctional Center or any other facility operated by the Department of Corrections. Major Gober was looking over Deputy White's shoulder and could see and read the computer screen, and was familiar with the data base. Deputy Warden White tried different combinations and spellings of Paul Lee Vunn. Major Gober was about four feet away. When Major Gober testified as to whether Paul Lee Vunn had ever been incarcerated by any facility operated by the Department of Corrections, the employee's attorney objected to the answer, the objection was sustained, and the answer was not considered in the decision. Major Gober testified that Deputy Warden White was not present at the hearing due to mandatory training.

Major Gober testified that Second Injury Fund Exhibit XVII was the ACE report which was to report an accident or injury to a staff member or inmate. Since the employee was hit in the head, this report should have been filled out and put in her personnel file. If that report was not within the personnel file of the employee, then it was the Department of Corrections position that the incident never happened. He stated that there was a lot of paperwork at the Department of Corrections on a daily basis and paperwork has gone missing. Just because there is not an ACE report in her file does not mean it was not filled out. There is missing paperwork on a daily basis at the Department of Corrections.

The employee testified that after she got hurt they took her to medical, and she filled out some paperwork prior to going to the emergency room. She does not recall seeing Employee Exhibit 1 which is the Report of Injury, but it shows that the employer was notified on March 21, 2009, the date of the injury.

Major Gober testified that Second Injury Fund Exhibit XVIII is a Conduct Violation Report that the employee should have filled out since it involved an inmate. If the employee did not know who threw the basketball at her, she could not have filled it out because it was based on the offenders name and Department of Correction number. Conduct Violation Reports that are filled out are put in the offender's classification file. If the employee did not know who hit her, then she was not supposed to fill the form out.

The employee testified that when an inmate assaults an officer a Conduct Violation Report is supposed to be completed. When she was hit in the head she did not know who threw the basketball, so she did not fill out the Report. When she saw Dr. Daniel on August 22, 2011, she did not know who threw the basketball. About two years after the incident she supposedly found out which inmate threw the basketball. It was her understanding that David Lee Nunn was the one who threw it. She got his name during a conversation with a person that was dating David Lee Nunn. It was her understanding and opinion that David Lee Nunn was the one that threw the basketball. When she saw Dr. Jarvis on June 11, 2012 she told him a specific name of who threw the ball but did not tell him that it was Paul Lee Vunn.

The employee testified that she has pain, spasms, and stiffness in her neck on a daily basis which causes her right arm to ache and have numbness. On a good day her pain is a 2-3 out of 10 and on a bad day is 10 out of 10. She has more good days than bad days with her neck. The employee has migraine headaches every day which are worse at times. She takes Topamax daily and uses another medication for break through pain. The headaches vary in length and severity. On a bad day, she has headaches, nausea, and is sensitive to light and noise. She keeps her house dark due to headaches. The dizziness does not occur daily. At times the dizziness is worse. Stress, anxiety, and headache pain will make it worse. After the injury she used a cane and shower chair, and has been in two accidents due to the dizziness. Turning her head to the left sometimes causes dizziness, and the dizziness episodes vary in length and severity.

With regard to her psychological issues, the employee testified that they ebb and flow. At times things are good and at times it is bad. At times prior to March 21, 2009, she could not go camping, or canoeing, and had to take off work from her jobs at Wal-Mart and at the prison due to her psychological issues. Since March of 2009, it is now harder to get back on feet and she has had trouble sleeping due to the psychological problems. She has panic attacks, anxiety attacks, and severe depression all of the time. She has sadness, and spends a lot of time in bed, and will not leave the house unless she has to. Her physical problems, including pain, make depression and anxiety worse. The feeling of vertigo and dizziness makes her more anxious and gives her more depression when she cannot leave the house. She is frustrated by her inability to work. She has had trouble concentrating since the injury, and has very low energy. She has trouble controlling her emotions when she is around people and has trouble interacting with people.

The employee testified that a good day in her life is not having any headaches, dizziness, or pain. On a good day she can go shopping, but only for a couple of hours. She can do laundry, but has to take breaks. Even on a good day she cannot do activities for eight hours and cannot do anymore than a couple of hours. On a bad day, her head hurts, she has vertigo, dizziness, feels depressed and hopeless, and lies on a couch all day. Her bad days will last a few days to a week,

and her last bad day was a couple of weeks ago. She cried a lot, was on the couch, and did not get out.

The employee testified that she has not applied for a job because she cannot work anywhere for eight hours a day five days a week. She cannot be up more than four hours a day. She has lost retirement, insurance, a truck and a boat. Doing household chores is limited since the work injury and it takes her longer to perform them. It is now more difficult for her to do the laundry. She no longer can do yard work, gardening, climb ladders, or go camping and canoeing. She does not go out as much socially and has to have help taking care of her dog.

The employee testified that one of her brothers has a drug and alcohol problem, two other brothers had cancer, another brother is bipolar, and another brother is obese and has bad knees. She was abused by various boyfriends, has been abandoned by multiple partners and has had multiple failed relationships prior to March 21, 2009. She is estranged from her daughter and had arguments over child custody issues. Her daughter has her own psychological issues, has a cocaine problem, has stolen from her, and had been institutionalized multiple times. Those problems have been stressful on her. She has difficulty talking about her suicide attempts with people that she does not know very well. She is not proud of it and feels embarrassed by it. She did not tell Dr. Daniel about the suicide attempts at age 15, age 17, and age 27. She did not tell Dr. Daniel about trying to inject her husband's medication for multiple sclerosis or that she used alcohol in combination with medication. She did not tell Dr. Jarvis about the suicide attempt at age 17. She had a second conversation with Dr. Daniel over the phone and told him about several of the suicide attempts. Since the basketball incident, she has had several suicide attempts. In July of 2009, she took overdose of medications and had been in a verbal altercation with her boyfriend.

Opinions:

Dr. Daniel:

The employee saw Dr. Daniel for a psychiatric evaluation on August 22, 2011. His report was issued on September 16, 2011. Dr. Daniel prepared a supplemental report on November 16, 2011. His deposition was taken on March 9, 2012.

The employee reported that she was hit with a basketball on the left side of the neck and head by an inmate on March 21, 2009. She believed that it was intentional and her frustration was that no one believes her. She reported continued dizzy spells; loss of balance; pain in the neck; and migraines. She complained of depression, becoming upset because nobody believes her, and having persistent suicidal thoughts. The employee attempted suicide on more than one occasion and has had three inpatient psychiatric admissions subsequent to the injury.

The employee stated that she was born in California but her family moved around and finally settled in Missouri. Her mother died nine years ago from cancer. She was raised to believe that her stepfather was her biological father. She later learned who her biological father was. The employee was raised in a large family with seven brothers and one sister. Her sister died in infancy. She was quite young when her sister died and was made to believe that she died

of pneumonia. She reportedly died of a broken neck and when she learned how her sister died, she was quite upset. The employee reported that she felt hated by her mother who was described as mentally and physically abusive.

The employee has had multiple marriages and unstable relationships beginning with her first marriage at age 18 which lasted five years. She has a daughter from her first marriage. Her first husband was emotionally abusive. Following this marriage, she met a man with whom she had a son. Her second marriage was very brief, lasting only four months as her husband was reportedly a drug addict. This marriage was annulled after eleven years. She began seeing another man and they lived together before they married. This marriage lasted one year. Her fourth marriage lasted two years. She is now living with a roommate.

Dr. Daniel stated that the employee had a preexisting psychiatric condition since she was a teenager; had an episode of depression in 2002 with several stressful events that occurred in her life which caused her to be depressed, sad, overwhelmed and have sleep difficulties. After the death of her mother in April, 2002, the employee developed depressive symptoms and severe grief reaction. Her depression was further contributed by her son, who wrecked his car in May of 2002, her grandmother's death in June of 2002, and the employee's car accident in July of 2002. The employee recalled that when these events were occurring, she was sad and overwhelmed and had sleep difficulties. She stated that she suffered from chronic insomnia which she self-medicated with Excedrin PM for years. Her primary care physician prescribed Lexapro, an antidepressant, Valium, and Trazodone which she took for one year in 2002/2003.

In February, 2009, she was on a trip to Texas to attend her daughter's labor. Apparently, she had conflicts with her daughter which caused depressed mood and anxiety. Her primary care physician placed her on Lexapro and Clonazepam which she was taking at the time of the injury on March 21, 2009.

Mental status examination revealed no evidence of any acute distress. She was fully oriented and seemed to be functioning in the average range of intelligence. She reported that her mood has significantly improved with her current regimen of medications and in-home therapy. She denied any active suicide ideation, plan or intent now although she continues to entertain persistent self-defeatist thoughts and ideas of helplessness. She feels that she has lost her identity due to the injury as she is no longer working.

The employee completed the MMPI-2 and her clinical profile is associated with many psychological problems indicative of chronic maladjustment and possible personality deterioration including depressed mood, physical symptoms, and cognitive disorganization. Individuals with similar profiles are highly depressed and anxious. They report a number of physical complaints. Cognitive problems such as confusion and disorientation are typically present. With regard to interpersonal relationships, individuals with similar profiles have not developed effective ways of dealing with others. They have difficulty trusting people, tend to withdraw and may be quite self-absorbed, and have trouble meeting people and appear rigid, uneasy, and over-controlled in social situations.

It was Dr. Daniel's opinion that the employee had the following diagnoses:

- | | |
|------------|---|
| Axis I - | 1) Major Depressive Disorder, Recurrent, Moderate with Post-Injury Exacerbation |
| | 2) Pain Disorder Associated with Psychological Factors |
| Axis II - | Mixed Personality Traits - Dependent and Borderline |
| Axis III - | 1) Hypertension, Stabilized |
| | 2) COPD, by History |
| | 3) Cerebral Cavernoma |
| | 4) Neck and Shoulder Pain and Post-Traumatic Headache |
| Axis IV - | Psychosocial Stressors: Problem with Primary Support and Financial Difficulties. Degree: Moderate |
| Axis V - | Current Global Assessment of Functioning: 49 |

It was Dr. Daniel's opinion that the employee suffers from Major Depressive Disorder, Recurrent, Moderately Severe in Exacerbation Post-Work Related Injury dated March 21, 2009. The employee has a preexisting diagnosis of Major Depression with its onset in 2002. However, her depression was stabilized with medication to the extent that she was functioning at work and in her personal life until she was injured. Immediately following her work-related injury on March 21, 2009, she developed increasingly depressed mood, sleep disturbance, pain in the neck and face, headaches, and chronic suicidal thinking. Later, her depression became severe with persistent suicidal ideation and suicide attempts leading to hospitalizations on three occasions. She developed a self-defeatist attitude partly due to her inability to earn a living and partly due to exacerbation of depression.

The employee has preexisting contributory factors for mental health problems including childhood emotional and physical abuse, conflicts with her husbands and partners, and substance abuse in her 20s and 30s. Despite all this, she remained relatively functional at work. The employee's termination from work, subsequent loss of income, lack of improvement in pain in the neck and post-traumatic headaches aggravated her depression to the point that she became suicidal requiring several inpatient psychiatric admissions.

One of the factors contributing to her depression is inability to work. The fact that she is continuing to experience physical symptoms affecting her balance and posture in terms of dizziness is disturbing and distressing to her, and due to those symptoms she suffers from a reactive depression to her inability to adequately physically function.

It was Dr. Daniel's opinion that the employee sustained a psychiatric injury in the course of her employment. The psychiatric injury diagnosed as Major Depressive Disorder, Recurrent, Moderately Severe in Exacerbation resulted from the work-related accident of March 21, 2009. It was Dr. Daniel's opinion that the accident is the primary and therefore, prevailing factor in causing exacerbation of her depression. The accident set into motion a chain of events which include neck and shoulder pain, post-traumatic headache and loss of her job resulting in the persistence of psychiatrically-based impairment and disability.

The employee had a diagnosis of major depressive disorder which preexisted and continued to exist after the injury, but the exacerbation or the worsening of the depression was caused by the injury on March 21, 2009 and that injury was a pivotal or a critical factor in aggravating her depression and substantial deterioration in psychiatric status and general functioning. She had three subsequent inpatient psychiatric hospitalizations and general impairment in her functioning which were attributable to the exacerbation of depression which was related to the workplace injury.

It was Dr. Daniel's opinion that from a psychiatric perspective, the employee has reached maximum medical improvement. Her symptoms of depression and suicidal thinking have become permanent and stationary but she requires continued treatment. Given her clinical picture she is at risk for psychiatric hospitalization and/or attempted suicide especially due to her history of non-compliance with treatment.

It was Dr. Daniel's opinion that the employee's current psychiatric disability exclusively caused by the injury of March 21, 2009, is rated at 30% of the person as a whole. Her preexisting psychiatric disability is rated at 10%. The psychiatric disability rating is over and above the disability rating secondary to her physical conditions.

Dr. Daniel stated that although she is not totally disabled now from a psychiatric perspective, she is at risk for total disability when her depression becomes worse and as a result, she becomes suicidal requiring inpatient hospitalization as has happened three times since March, 2009. Considering the clinical course of her psychiatric disorder, it is likely that she would have difficulty competing in the open labor market.

When asked if the employee still would have been working had she not been hit in the head with a basketball, Dr. Daniel stated most likely but it was difficult to predict that in the natural course of the disease known as major depressive disorder another episode would not have happened.

On November 16, 2011, Dr. Daniel prepared a supplemental report after receiving additional information. The employee had a more extensive history of preexisting mental health problems than she revealed during her interview on August 22, 2011. Dr. Daniel reviewed Dr. Cohen's addendum report dated August 10, 2011, and conducted a telephone interview with the employee on November 2, 2011. The employee reported that she had attempted suicide several times in her youth and young adulthood. Specifically, she recalled that at age 15, she consumed a bottle of aspirin after she had a fight with her mother who kicked her out of the home. She has a history of wrist cutting at age 27 for which she was treated at the emergency room but not hospitalized. In addition, the employee has suffered from chronic suicidal thinking, low self-esteem and sadness. During the interview, Dr. Daniel reviewed her previously reported depression subsequent to her mother's death in 2002 and other traumatic events which led to use of antidepressant and anti-anxiety medications.

In his original report, Dr. Daniel concluded that the employee had a preexisting psychiatric disorder of Major Depressive Disorder with its onset in 2002. Based on the

additional information it was Dr. Daniel's opinion that the employee suffered from Dysthymic Disorder which is low-grade persistent depressed mood with onset in her teens. She continued to experience Dysthymia through 2002 when she experienced more severe depression. In 2002 and forward, she suffered from Major Depressive Disorder. The employee experienced exacerbation of her clinical depression following the work-related injury on March 21, 2009.

It was Dr. Daniel's opinion that the employee had a 30% permanent partial disability of the person as a whole attributed to her March 21, 2009 work-related injury. It was his opinion that her preexisting psychiatric disability attributable to Major Depressive Disorder and Dysthymia was 15% permanent partial disability of the person as a whole. It was his opinion that the combined disability is substantially greater than that which would have resulted from the last injury, considered alone and of itself. All of his other opinions are the same as in his September 16, 2011 report.

Phillip Eldred:

On January 16, 2012, the employee saw Phillip Eldred for a vocational evaluation. His deposition was taken on March 14, 2012. The employee was friendly, but was a poor historian. She stated that she had a headache during the interview and testing. She stated that it is difficult for her to follow instructions. Mr. Eldred stated that the employee could have been depressed. Outward signs of depression come into play when someone goes to a job interview. Based on the medical records Mr. Eldred did not believe that there was any time that the employee was not depressed. The employee had problems with dizziness which is definitely a hindrance to employment or reemployment. It also affected her ability to drive, and her sister-in-law drove her to the appointment. Migraine headaches are definitely a potential disability when it comes to finding and keeping employment.

The employee was administered the Wide Range Achievement Test (WRAT-4) and the PTI Oral Directions Test (ODT). Her scores on the WRAT-4 show that she is functioning at the eighth grade level in word reading; at the sixth grade level in spelling; and at the fifth grade level in math computation. In word reading, spelling, and math computation she is functioning at the 12th percentile, which means that she scored less than 88% of those persons in her age group. The ODT assesses an individual's ability to follow directions presented orally and is particularly useful for individuals with limited education since the skill required range from basic literacy to somewhat above junior high school level. The employee correctly answered two items which is the equivalent to the first percentile and tends to show an extremely low ability to concentrate and listen to verbal directions.

At the time of the injury, the employee was employed by Farmington Correctional Center and worked there from October of 2007 until September of 2009. Her other jobs in the past has been as cashier-checker, service desk, material handler, receptionist, secretary and nurse assistant. The employee has not worked in competitive employment since September of 2009.

With regard to transferable skills, the employee is diagnosed with emotional deficits, impairing her emotional functioning due to which transferable work skills cannot be assessed.

It was unlikely that an employer in the normal course of his business would consider employing her if they knew what her limitations and disabilities have been.

With regard to physical restrictions, Dr. Reisler and Dr. Benecke gave restrictions that are undefined; Dr. Cohen gave restrictions defined at less than the sedentary work level; and Parkland Health Clinic gave restrictions defined at the sedentary to light work levels. After a careful evaluation of the medical records and the rehabilitation interview, Mr. Eldred felt the employee has vocational restrictions at less than the sedentary work level.

The employee has a non-exertional impairment to employment based on the diagnoses and statements by her doctors and therapists. Dr. Vangala gave a global assessment score of 55 which are considered moderate symptoms or moderate difficulty in social, occupational, or school functioning. Dr. Patel gave a GAF score of 65 which are considered mild symptoms or some difficulty in social, occupational, or school functioning but generally functioning pretty well. Janet Murdick gave a GAF score of 24 which are considered behavior considerably influenced by delusions or hallucinations or serious impairment in communication or judgment or ability to function in almost all areas. Dr. Daniel gave a GAF of 49 which are serious symptoms or serious impairment in social, occupational, or school functioning.

It was Mr. Eldred's opinion that based on the above physical and psychological profile the employee has no potential for future employability. With regard to placement potential, the employee is 52 years of age and individuals approaching advanced age (50-54) may be significantly limited adapting to new work when they have restrictions. Such persons when no longer able to perform past relevant work and who have no transferable skills have little prospect for competitive employment. Mr. Eldred stated that due to the result of her pain, impairments and vocational restrictions, it is unlikely an employer in the normal course of business would consider employing the employee.

Mr. Eldred stated that after reviewing the employee's medical history, records of past medical treatment, and the medical examinations and opinions of Dr. Daniel and Dr. Cohen, it was his opinion that the employee had an impairment, which was vocationally disabling such as to constitute a hindrance or obstacle to employment before March 21, 2009. The employee obtained a GED, had no other training, and her vocational tests reveal that she has a limited ability for educational opportunities, and therefore, realistically cannot be vocationally retrained due to her low academic ability and her physical restrictions. The employee is at the age group where she will be significantly limited when it comes to adapting to new work because of her restrictions. As a practical matter, the employee will not be able to return to competitive, gainful employment.

It was Mr. Eldred's opinion that the employee has preexisting conditions that constitute a hindrance or obstacle to employment; she is unable to perform any of her past work; it is highly unlikely that any reasonable employer in the normal course of business would hire the employee for competitive, gainful employment; she does not have any transferable jobs for the sedentary work level even if she could perform work at the sedentary work level; and she would have problems being retrained in a formal training program due to her pain, dizziness, and low

academic test scores. It was Mr. Eldred's opinion that the employee is unemployable in the open labor market and is permanently and totally disabled as a result of her injury on March 21, 2009, combined with her preexisting medical conditions as stated by the doctors and psychologists who have examined her.

Mr. Eldred stated that the employee had some preexisting problems including the depression that she had since she was 15 years old. The employee is reporting she is needing to lie down and there are not any jobs in the open labor market where one can lie down that he is aware of, and a normal employer is not going to allow that. If she needs to lie down for relief of her migraine headaches, that would certainly seem in and of itself to disqualify her from the open labor market.

Dr. Cohen:

The employee saw Dr. Cohen on August 20, 2009. Dr. Cohen prepared supplemental reports on August 10, 2011, and December 28, 2011. His deposition was taken on March 28, 2012. With regard to preexisting conditions or disabilities, she had a prior history of depression including when her mother passed away and prior to the primary work-related injury when she was treated with Lexapro and Klonopin. Dr. Cohen diagnosed preexisting depression and cerebral cavernoma. It was Dr. Cohen's opinion that the cavernoma was a preexisting defect in the structures of the brain that produce the spinal fluid of the brain and can also be part of the venous system of the brain. It was his opinion that it did not develop as a result of the injury and was not causing the headaches, light headedness, and neck pain. With regard to the work-related injury of March 21, 2009, Dr. Cohen diagnosed post-traumatic vascular headaches and cervical pain. It was Dr. Cohen's opinion that post-traumatic vascular headaches and cervical pain were a direct result of injuries she sustained at work on March 21, 2009, and the work injury was the prevailing factor. With regard to her depression, Dr. Cohen would defer to her psychiatrist and/or psychologist who had been treating her.

When he saw her on August 20, 2009, it was Dr. Cohen's opinion that the treatment the employee received up to that point was reasonable and medically necessary and she needed ongoing neurological treatment for her headaches and neck pain.

Dr. Cohen saw the employee again and issued a supplemental report on August 10, 2011. Dr. Cohen had reviewed subsequent medical records from Dr. Zevallos, Dr. Vangala, Dr. Benecke, Dr. Boland, Dr. Reisler, and Mineral Area Regional Medical Center. The employee was taking Topamax which significantly helped with her headaches and the severity and frequency has declined. She has one severe headache approximately every 2-3 weeks and has some sharp frontal pain which lasts from approximately 5-10 minutes if she is exposed to bright light. She has a deep tension-type pain in her neck which radiates toward the upper right shoulder. She has a pulling sensation down toward the right axilla and some aching down toward the right palm. She takes Flexeril for the neck pain. She continues to have the lightheadedness. She has to be careful going down stairs or steps because it will increase the dizziness as well as bending over. She drives for short distances and the farthest she will drive is 20 miles to her son's home. She is taking psychiatric medications.

The mental status examination showed that the employee was alert and oriented to person, place, and date. The history was related with fluent speech and normal response time with no problems with memory and concentration. Her affect was mildly flat but otherwise she had no significant abnormalities noted. With regard to the cervical spine, she had an approximate 50% loss of motion in flexion, extension, left arm right side bending, and rotation. She complained of discomfort in all directions. She states that right-side bending and rotation increased the dizziness.

It was Dr. Cohen's opinion that the employee had preexisting depression and cerebral cavernoma. It was Dr. Cohen's opinion that as a result of the primary work-related injury of March 21, 2009, the employee sustained a closed head injury subsequent to being struck in the head by a basketball, post-traumatic vascular headaches, post-traumatic dizziness/vertigo, and cervical pain, and were a direct result of the head injury sustained at work and the work injury is the prevailing factor.

It was Dr. Cohen's opinion that the employee had sustained a 25% permanent partial disability of the whole person referable to the head and neck as a result of the work related injury of March 21, 2009. Dr. Cohen stated as to whether there was any psychiatric disability from the March 21, 2009 injury he would defer to a mental health specialist.

It was Dr. Cohen's opinion that the employee will need treatment for her headaches for the remainder of her life including medication for her migraine headaches and need medications for her chronic neck pain.

It was Dr. Cohen's opinion that with regard to the March 21, 2009 accident, the employee needed to be restricted from any work around heights, ladders, any significant use of stairs or steps, and from being around any type of dangerous equipment. She needs to be restricted from any driving other than to and from work except for rare short driving. Those restrictions are mainly due to the complaints of dizziness, instability with the room spinning, and anything to do with balance, severe headaches, and migraines.

On December 28, 2011, Dr. Cohen issued a supplemental report after reviewing additional medical records. He reviewed Dr. Daniel's psychiatric evaluation who noted that the employee is not totally disabled now from a psychiatric perspective but she is at risk for total disability when her depression becomes worse and as a result, she becomes suicidal requiring inpatient hospitalization as has happened three times since March of 2009. Considering the clinical course of her psychiatric disorder, it is likely that she would have difficulty competing in the open labor market.

It was Dr. Cohen's opinion that as a result of the March 21, 2009 work accident that the employee sustained a mild traumatic brain injury, post-traumatic vascular headaches, post-traumatic dizziness/vertigo, and a cervical strain. The prevailing factor in these injuries is the work-related injury on March 21, 2009, after being struck in the head by a basketball. He had previously deferred any psychiatric disability to a mental health expert. Now that he had reviewed the psychiatrist's evaluation, it was Dr. Cohen's opinion that the employee is

permanently and totally disabled and not capable of gainful employment in today's open labor market. As to whether there are any jobs available for her within the restrictions that he had provided for her referable to her head and neck injury as well as any psychiatric restrictions from Dr. Daniel, Dr. Cohen stated he would defer to a licensed vocational expert. Other than her preexisting depression that has been discussed by Dr. Daniel, there are no other preexisting conditions or disabilities which combine with the primary work-related injury.

Dr. Cohen stated that based on the additional information he changed the percentage of disability, and it was his opinion that the employee was permanently and totally disabled and not capable of gainful employment in the open labor market due to the additional psychiatric information. It was his opinion that her preexisting depression combined with the primary work injury to make her permanently and totally disabled. Dr. Cohen stated that when he initially gave his restrictions, he thought the employee could work because he did not know the severity of the combination of the psychiatric situation. It was his medical opinion that the employee was permanently and totally disabled but would defer to a vocational expert whether there was a job within those restrictions, and would defer to a psychiatrist as to any psychological issues. It was his opinion that the employee would still be working if she had not been hit in the head with a basketball.

It was Dr. Cohen's opinion that with regard to the last injury alone of March 21, 2009, in and of itself without regards to any preexisting physical or psychological conditions, she would be employable with certain restrictions.

Dr. Jarvis:

Dr. Jarvis saw the employee for a psychiatric examination on June 11, 2012. His report was dated June 27, 2012, and his supplemental report was dated October 15, 2013. His deposition was taken on November 6, 2013. Dr. Jarvis noted that the employee presented as sympathetic and depressed, and did not attempt to obviously manipulate the examination. There were topics that she did not bring up but it was Dr. Jarvis' impression that it was not an effort to deceive. Her denial of past issues is representation of her personality disorder.

With regard to her workers' compensation claim, the employee said she was hit in the left side of the head with a basketball on March 21, 2009, and the inmate that threw the basketball as hard as he could was Paul Lee Vunn. She does not believe it was an accident. The employee stated that others thought the ball had bounced off a backboard, and was told by the prison administration that she was faking it. She stated that she was vindicated when another correction officer overheard inmates talking about how she was hit on purpose by the basketball.

The employee stated that prior to being hit by the basketball she was overwhelmed and was on medication for depression. She had been on another medication when her mother died of cancer 10 years ago and felt that there were a lot of things left unsettled between her mother and herself at the time of her mother's death. She would lie in bed and cry. Around that same time, her son wrecked his car, her grandmother died, and she wrecked her own car. After about a year, she quit taking the antidepressant medication because she felt she did not need them and she

thought she had dealt with her mother's death. Prior to being hit by the basketball she had a suicide attempt. Her husband took interferon for treatment of multiple sclerosis. Her intention was to take pills and inject herself with her husband's syringes. She had trouble with her veins collapsing and she could not inject herself so she took pills and drank beer. She has had chronic insomnia prior to 2002.

The employee stated that at the time of the injury, she had been on medication for about a month. She took medication because her daughter just had a baby girl, she had just left her daughter and it was difficult to be away from them, and her son had recently hurt his knee.

The employee stated that she took an overdose of medication in the fall of 2009 in a suicide attempt. At the time her boyfriend was saying she was abusing her medication and was secretly counting her pills. She pretended to over-take the pills and when he confronted her on the discrepancy, she accused him of counting. She then decided that she was going to show him and decided to take all of her medication. The employee stated that her intention was to die. She was tired of everything and that had to do with people not believing her about anything.

She had another suicide attempt in 2011. The employee described that when she gets hurt by somebody she remembers her mother's abuse and will get really down on herself. She has been hurt by quite a few people. When he was drunk her boyfriend hit her, grabbed her arm and bruised her, and therefore she decided she was going to kill herself. Her suicide plan was to take a razor blade and cut her neck. Because her neck was wet she could not slice it but only poked little holes. She has had panic attacks and it feels as though somebody is standing on her chest and it is hard to breathe. They happen every once in awhile depending on what's going on, and occur with a provocation such as when she is not able to see her granddaughter.

The employee does not believe she has abused drugs but Dr. Daniel's report has a history of abusing marijuana, cocaine and methamphetamine.

Dr. Jarvis performed a mental status examination. The employee is oriented to person, place and time. She was generally cooperative, cried multiple times throughout the exam or appeared to be stifling a cry. She had a decreased amount of motor activity, fair eye contact, and appeared to answer most questions credibly. Her form of thought is logical and sequential. She is not actively suicidal or homicidal, although the suicidal thoughts seem to happen frequently. Her affect is overall depressed.

It was Dr. Jarvis's opinion that the employee had the following diagnoses:

- Axis I: Major Depression, recurrent, moderate history of drug abuse (alcohol, marijuana, cocaine, methamphetamine) Tobacco abuse
- Axis II: Personality disorder, NOS
- Axis III: COPD
Hypertension

Gastroesophageal reflux
Cavernous Angioma in the high posterior right frontal lobe
Hysterectomy and Oophorectomy
Appendectomy
Crush injury to right thumb
Cosmetic breast implants
LASIK procedure
History of vertigo
Preexisting L4-5 degenerative disc disease
Multiple MVA's and assaults

Axis IV: Childhood physical and emotional abuse ("felt hated") by her mother
Domestic abuse by first and third husband, father of son, and boyfriends
Abandonment by multiple partners
Estrangement from daughter and conflict over child custody
Death of sister from broken neck ("freak accident")
Multiple failed relationships

Axis V: 50-60

Dr. Jarvis stated that Axis I is significant disabling psychiatric illnesses. Axis II is the developmental disorders usually present at birth but may not be expressed until later. He listed personality disorder. In the employee's case, her personality disorder generated interpersonal contact that led to her chronic dissatisfaction and sadness and did not work well for her. Axis III is medical or surgical issues that have confronted the patient. Axis IV is stressors that may have an impact on the patient's coping mechanism. Axis V is global assessment functioning to rate the person's overall coping skills and function on a scale from 0 to 100. Usually the breakpoint for hospitalizations is 30- to 40. Her range was 50-60 which was moderately impaired.

With regard to her current diagnosis, Dr. Jarvis stated that the employee met the criteria for Major Depression as evidenced by persistently low mood with concurring symptoms of poor sleep, appetite, concentration, memory, energy, helplessness and hopelessness. She had chronic suicidal thoughts and attempts prior to and after March 21, 2009. She has received electroconvulsive therapy in the context of continued depression. She is frequently reported to be medically non-compliant. In addition, it is likely that the employee has Post-Traumatic Stress Disorder from her childhood and adult relationships. However, since it is difficult for her to talk about the associated diagnostic complaints, the diagnosis was not established.

Dr. Jarvis stated that the employee's psychiatric illness described as being recurrent in that it clearly preexisted prior to the being hit by a basketball. There is documentation of prior suicide attempts and treatment with psychiatric medications. Her difficulty with interpersonal relationships was well established. The employee has Major Depression, recurrent, moderate and also likely has Post-Traumatic Stress Disorder from her history of childhood abuse and several abuse relationships as an adult, and has a personality disorder.

It was Dr. Jarvis' opinion that all of the employee's psychiatric conditions are preexisting. She had a biological predisposition to depression which was aggravated by a horrific and unstable childhood. She had a prior history of suicide, psychiatric treatment and dysfunctional relationships. The employee told Dr. Jarvis that she has been depressed most of her life. Dr. Jarvis stated that the employee's suicide attempt most proximal to March 21, 2009, had to do with an argument with her boyfriend over prescription drugs.

Dr. Jarvis stated that the employee has many current and past conditions ("stressors") contributing to her current condition in addition to her childhood history of abuse. It was Dr. Jarvis' opinion that being hit by the basketball on March 21, 2009, does not contribute to her condition and was irrelevant. The employee did not suffer significant enough trauma to cause any neurological, biological or psychiatric condition that could be related to the event. Since being hit by the basketball she has two additional failed relationships, called Division of Family Services on her daughter who is now estranged, was in a fight and beaten.

It was Dr. Jarvis' opinion that the injury on March 21, 2009, was not the prevailing or even contributing factor to the employee's psychiatric condition. The employee had emotional trauma associated with abandonment, loss, betrayal and interpersonal conflict that would be hard to distinguish from the work injury. The employee was doing better until June 29, 2009, after a family reunion when she got severely depressed. Dr. Jarvis stated that the available psychiatric treatment notes do not dwell with the March 21, 2009, events other than the employee did not feel that people believe her.

It was Dr. Jarvis' opinion that the employee did not sustain a psychiatric injury or disability as a result of being hit by a basketball on March 21, 2009. It was his opinion that all of the employee's complaints are preexisting to March 21, 2009.

Dr. Jarvis issued a supplemental report on October 15, 2013, after reviewing additional information. He reviewed the employee's employment files from the Department of Corrections with the first identifying date of October 29, 2007. Within these documents there are many applications for leave and overtime notification. After the injury there are requests for time off because of her cataract surgery, for her daughter's overdose on Vicodin on May 3, 2009. Prior to her injury of March 21, 2009, Dr. Jarvis counted 41 separate requests or justifications for comp time or annual leave. Dr. Jarvis reviewed the employee's September 15, 2013 deposition and noted that many of the employee's answers are vague or evasive.

The review of these additional records did not change Dr. Jarvis' opinion that the March 21, 2009 injury was not the prevailing factor in the employee's psychiatric condition and that she had a previously established psychiatric condition. Dr. Jarvis stated that due to insufficient documentation in her employment records, he cannot state to a reasonable degree of medical certainty that the employee's preexisting psychiatric condition was the reason for her work absences prior to the March 21, 2009 injury. He did state that it was very likely it was a significant contribution because there are many instances of her taking time off for being sick, family emergencies, and personal issues. He stated that his opinion stands that she has a preexisting Major Depression, recurrent, moderate and a Personality Disorder.

It was Dr. Jarvis' opinion that the factors that may be contributing to her current complaints and conditions was the continuation of her overall dysfunctional life; the failed relationships, the conflict with her family, her mood disorder, and her substance abuse.

It was Dr. Jarvis' opinion that the basketball injury was not a contributing factor at all to her psychiatric injury disability. The medical records from the hospitalizations show that the basketball injury is not really the issue nor the provocation for the admission to the hospital. When she presented to Dr. Johnson in the beginning of March of 2009, she complained of family issues and was started on medications. She got better and continued to get better and even after the basketball injury was getting better. It was only until late June when she went to a family reunion and then a couple of week's later gets into an argument with her boyfriend that the psychiatric issue became more symptomatic. The cause of her psychiatric illness has to do with her dysfunctional relationships, her chaotic family, and the context of her personality disorder and major depression. Being hit with the basketball was not the prevailing factor or even a contributing factor to her psychiatric illness.

With regard to the three suicide attempts, the July of 2009 incident was in the context of a family reunion that she described as problematic; and about an argument she had with her boyfriend about how much medicine she was taking. The second attempt was more of a significant suicidal ideation in March of 2010 when she went to a family event. The third attempt was in the context of a family situation. The suicide attempt can be used as an example of personality disorder more so than major depression suicide attempts. They are manipulative suicidal gestures versus someone who really wants to kill themselves.

Her depressive condition was becoming much more symptomatic before she lost her job; and was first hospitalized in June of 2009. She lost her job in September of 2009. Losing her job made it more difficult to treat the depression, but prior to that it was due to her family conflict and interpersonal relationship. Dr. Jarvis stated that there is a biological aspect to major depression; and when you have biological depression, and her mood is related to her biological illness, child developmental issues and personality disorder. It had become more symptomatic before the basketball incident and became more symptomatic in June of 2009, and does not seem to be related to the basketball incident.

James England:

James England prepared a vocational rehabilitation evaluation which was dated on January 21, 2014. His deposition was taken on April 24, 2014. Mr. England reviewed medical records and doctors' reports, the employee's deposition, the deposition of Dr. Jarvis and Mr. Eldred's vocational report. The employee stated that she was doing okay physically before the primary injury and was doing okay psychologically except for some need for anxiety medication. The employee completed the 10th grade and later got her GED around 1993. The employee was last employed by the Missouri Department of Corrections as a Corrections Officer I. She apparently began work there around October of 2007 and was last employed in September of 2009. She had worked in the past for Wal-Mart in several locations and performed a variety of different jobs including department manager, support manger, working in claims, receiving,

invoicing, overnight stocking, and inventory. Some of these are sedentary while others are light. The material handling and stocking position might very well have gone into the medium range of exertion. The employee had a fairly stable work history.

Mr. England noted that on the Wide-Range Achievement Test administered by Mr. Eldred the employee was reading at the eighth-grade level and performing math at the fifth-grade level which would certainly be adequate for a variety of entry-level positions, as she has shown successfully in the past.

Mr. England noted that contrary to what Mr. Eldred indicated, Dr. Reisler and Dr. Benecke did not give undefined restrictions. Dr. Reisler did not place any restriction on her ability to function and Dr. Benecke suggested that she might have a restriction involving ladders and felt she needed no other specific restrictions. Dr. Cohen indicated that she should avoid heights, ladders and significant use of stairs or steps or from being around dangerous equipment. She also needed to be restricted to driving other than to and from work. Dr. Daniels assigned a GAF score of 49 but indicated that he did not believe she was totally disabled from a psychiatric standpoint although her problems put her at risk for total disability when her depression would become worse and she would become suicidal requiring possible hospitalization. He thought that it was likely she would have difficulty competing in the open labor market. Dr. Jarvis did not indicate any specific restrictions and did not say that she was totally disabled. He felt that she was moderately impaired from a psychiatric standpoint, and did not believe her psychiatric condition was made worse by the primary injury.

In his summary and conclusions, Mr. England noted that the employee was a woman in her mid fifties and age 55 is advanced age which make it harder to go into a job with a lot of retraining. She had worked for over ten years for Wal-Mart successfully and more recently worked for the Missouri Department of Corrections as a correctional officer. Assuming the restrictions noted by Dr. Cohen, she would be precluded from returning to work as a correctional officer, but would not be prevented from doing entry-level, low-stress employment such as being a motel maid, an office cleaner, and would appear to be physically capable of returning to some of her other past work under his restrictions such as working as a cashier or receptionist. Assuming Dr. Daniel's findings, she might very well be psychiatrically disabled from time to time. Under Dr. Jarvis' findings, she would be no worse psychiatrically than she was before and would still be capable of performing a variety of work activity as she has done in the past. She could certainly avail herself of vocational rehabilitation assistance in the Farmington Office if she had the interest in doing so.

Mr. England testified that if a person has to lie down with any regularity during the workday at unpredictable times that would disqualify her from the open labor market.

Mr. England stated that alcohol and drug abuse, and mental health issues can be a hindrance or obstacle to employment and can affect a person's ability to maintain employment. Mr. England has seen depression and anxiety affect a person's ability to work and mental health diagnoses can wax and wane. Psychiatric issues have special considerations that fall outside just looking at light medium or heavy work because they are not physically limiting and are non-

physical problems. Even if she did not have any physical restrictions the psychiatric issues alone could affect her ability to compete in the open labor market. Her mental health issues never impeded her overall ability to do her job and did not prevent her from maintaining employment with one employer for a long time. Overall she had a good work record.

With regard to Dr. Daniel stating that the employee would not be totally disabled but at times would have difficulty keeping a job, Mr. England stated that if a person is able to go back and sustain work for a period of time, he would not say they are totally disabled. There are people that he has worked with over the years that due to mental illness will work for years at one place, be off work for a couple of years, then go back to work, and be off again at some point. Due to mental illness they may have downtime but they are not totally taken out of the work force. It was his opinion that the employee had a hindrance to employment from time to time.

Mr. England did not see anything in the records that her depression interfered with her ability to do her job as a correction officer, and she indicated she was working full time and overtime as a correctional officer up to the point of the primary injury and did not say that she was missing because of any preexisting problems. There was nothing in the personnel file to lead him to believe she was not performing her job satisfactorily. The entry level light duties such as motel maid or office cleaner are less stressful; they are simple, repetitive light type of work activity with really no psychosocial pressure involved and she would be physically capable of doing receptionist and customer service work she did before. With regard to the psychiatric, under Dr. Daniel her employability may be off and on depending on how she is doing. Under Dr. Jarvis, there was no contradiction to her returning to essentially any type of work she has done before. Based on all the records, deposition and reports it was Mr. England's opinion that the employee is employable in the open labor market.

RULINGS OF LAW:

Issue 1. Accident and Issue 2. Medical Causation.

It is disputed that on or about March 21, 2009, that the employee sustained an accident arising out of and in the course of her employment; and it is disputed that the employee's injuries to her head and neck; and her psychiatric condition was medically causally related to the alleged accident.

The employee testified that on March 21, 2009, she was hit on the left side of her head with a basketball. It was a significant blow to her head; her neck snapped and her knees almost buckled. She immediately became nauseous. She was taken by the employer to the emergency room for neck pain, headaches, and dizziness.

The employee was sent by the employer for additional treatment. All of the medical records corroborate her testimony including the March 21, 2009 cervical CT scan which shows a history of being hit on the left side of the head with a basketball; the March 23 records from Parkland Health Clinic that she was hit in the head with a basketball; the March 25 record of Dr.

Johnson that she had been hit on the head with a basketball by an inmate; the April 1 physical therapy record that she had been hit on the left side of her head with a basketball; and Dr. Reisler's May 22 entry that she had been hit on the left side of her head by a vigorously thrown basketball.

The employer filed a Report of Injury that on March 21, 2009, the employee was watching offenders at recreation and was struck in the left side of the head and face with a basketball, and the incident was reported to the employer on the same day.

Based on a review of the evidence, I find that on March 21, 2009, the employee was unexpectedly struck on the left side of her head by a basketball purposely thrown by an inmate which caused objective symptoms of an injury.

Head and Neck:

It was Dr. Boland's opinion that the employee had post-concussive headaches with cervical strain and vertigo that was related indirectly to the injury. It was Dr. Reisler's opinion that the employee had post-traumatic headaches and strain injury to the cervical spine; and that the employee had a 2% permanent partial disability as a result of the March 2009 work injury.

It was Dr. Cohen's opinion that as a direct result of the March 21, 2009 work accident the employee sustained a mild traumatic brain injury, post-traumatic vascular headaches, post-traumatic dizziness/vertigo, and a cervical strain. The prevailing factor in these injuries is the work-related injury on March 21, 2009, where the employee was struck in the head by a basketball. It was Dr. Cohen's opinion that the employee sustained a 25% permanent partial disability of the whole person referable to the head and neck as a result of the work related injury of March 21, 2009.

Based on a review of all the evidence, I find that the opinions of Dr. Cohen, Dr. Reisler, and Dr. Boland are persuasive on the issue of medical causation and whether the March 21, 2009 accident was the prevailing factor in causing the head and neck injuries.

I find that on March 21, 2009, the employee sustained a work accident and injury that arose out of and in the course of her employment and was the prevailing factor in causing the resulting head and neck injuries, medical conditions, disability and the need for treatment. I further find that the medical care and treatment to the head and neck were medically causally related to the March 21, 2009 work accident and injury. I further find that the injury to the employee's head and neck and the resulting medical conditions and disability are medically causally related to the March 21, 2009 work accident.

Psychiatric Condition:

The employee has the burden to prove that her injuries arose out of and in the course of employment. See *Smith v. Donco Construction*, 182 S.W.3d 693, 699 (Mo. App. 2006).

Section 287.020.3 (1) and (2) RSMo states as follows:

3. (1) In this chapter the term “injury” is hereby 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.
- (2) An injury shall be deemed to arise out of and in the course of the employment only if:
 - (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and,
 - (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of an unrelated to the employment in normal nonemployment life.

The employee has the burden of proof that she suffered a work-related injury and the alleged accident was the prevailing factor in causing both the resulting medical condition and disability. See *Armstrong v. Tetra Pak, Inc.*, 391 S.W.3d (Mo. App. 2012) and *Bond v. Site Line Surveying*, 322 S.W.3d 165 (Mo. App. 2010). A work injury is compensable only if the alleged accident was the prevailing factor in causing both the resulting medical condition and disability. See *Gordon v. City of Ellisville*, 268 S.W.3d 454 (Mo. App. 2008). In order for an event that arises out of and in the course of employment to entitle an employee who has a prior disability to additional benefits the event must be the prevailing factor that results in further disability. It is not sufficient that the event simply aggravates a preexisting condition. See *Johnson v. Indiana Western Express, Inc.*, 281 S.W.3d 885 (Mo. App. 2009).

It was Dr. Daniel’s opinion that the employee sustained a psychiatric injury in the course of her employment. The psychiatric injury diagnosed was major depressive disorder, recurrent, moderately severe in exacerbation resulting from the work-related accident of March 21, 2009. It was Dr. Daniel’s opinion that the accident is the primary and therefore, prevailing factor in causing exacerbation of her depression. The employee had a diagnosis of major depressive disorder which preexisted and continued to exist after the injury, but the exacerbation of the depression was caused by the injury on March 21, 2009; and that injury was a pivotal or a critical factor in aggravating her depression and substantial deterioration in psychiatric status and general functioning.

It was Dr. Daniel’s opinion that the employee suffered from dysthymic disorder which is low-grade persistent depressed mood with onset in her teens and which continued through 2002 when she experienced more severe depression. In 2002 and forward, she suffered from major depressive disorder. The employee experienced exacerbation of her clinical depression following the work-related injury on March 21, 2009. It was Dr. Daniel’s opinion that the employee had a 30% permanent partial disability of the person as a whole attributable to her March 21, 2009 work-related injury and her preexisting psychiatric disability attributable to major depressive disorder and dysthymia was 15% permanent partial disability of the person as a whole.

It was Dr. Jarvis' opinion that the employee has major depression, recurrent, moderate and also likely post-traumatic stress disorder from her history of childhood abuse and several abusive relationships as an adult, and has a personality disorder. Dr. Jarvis stated that the psychiatric illness described as being recurrent clearly preexisted prior to the employee being hit by a basketball. Her difficulty with interpersonal relationships was well established. She had chronic suicidal thoughts and attempts prior to and after March 21, 2009. It was Dr. Jarvis' opinion that all of the employee's psychiatric conditions are preexisting. She had a biological predisposition to depression which was aggravated by a horrific and unstable childhood.

It was Dr. Jarvis' opinion that the employee did not sustain a psychiatric injury or disability as a result of being hit by a basketball on March 21, 2009. It was Dr. Jarvis' opinion that the factors that may be contributing to her current complaints and conditions was the continuation of her overall dysfunctional life; the failed relationships, the conflict with her family, her mood disorder, and her substance abuse. Dr. Jarvis stated that the employee has many current and past stressors that are contributing to her current condition in addition to her childhood history of abuse. The employee had emotional trauma associated with abandonment, loss, betrayal and interpersonal conflict that would be hard to distinguish from the work injury. Dr. Jarvis stated that the employee's suicide attempt most proximal to March 21, 2009, had to do with an argument with her boyfriend over prescription drugs. Since being hit by the basketball she has two additional failed relationships, called Division of Family Services on her daughter who is now estranged, was in a fight and beaten.

Dr. Jarvis stated that the records from the hospitalizations show that the basketball injury is not really the issue nor the provocation for the admissions. In the beginning of March of 2009, the employee complained to Dr. Johnson of family issues and was started on medications. She got better, continued to get better and was getting better even after the basketball injury. It was only in late June when she went to a family reunion and then later got into an argument with her boyfriend that the psychiatric issue became more symptomatic and she was diagnosed with severe depression. The cause of her psychiatric illness has to do with her dysfunctional relationships, her chaotic family, and the context of her personality disorder and major depression. The worsening does not seem to be related to the basketball incident. It was Dr. Jarvis' opinion that being hit with the basketball was not the prevailing factor or even a contributing factor to her psychiatric illness or condition.

Based on a thorough review of the evidence, I find that the opinion of Dr. Jarvis is very persuasive and is more persuasive than the opinion of Dr. Daniel.

I find that the employee failed to satisfy her burden of proof on the issues of accident and medical causation for the psychiatric condition. I find that the employee did not meet her burden of proof that the accident was the prevailing factor in causing both her psychiatric medical condition and disability. I find that the accident on March 21, 2009, was not the prevailing factor in causing the psychiatric injury and therefore the injury did not arise out of and in the course of employment. I find that the employee's accident was not the prevailing factor in causing the resulting psychiatric condition and disability. I find that the employee's psychiatric condition,

injuries, disability and need for medical treatment are not medically causally related to the March 21, 2009 accident.

Issue 3. Liability of the Second Injury Fund for permanent total disability or permanent partial disability.

Permanent Total Disability:

It must first be determined whether the employee suffered a permanent partial disability as a result of the last compensable injury.

It was Dr. Reisler's opinion that as a result of the post-traumatic headaches and strain injury to the cervical spine, that the employee sustained a 2% permanent partial disability as a result of the March 2009 work injury. It was Dr. Cohen's opinion that with regard to March 21, 2009 accident, the employee needed to be restricted from any work around heights, ladders, any significant use of stairs or steps, and from being around any type of dangerous equipment. She needs to be restricted from any driving other than to and from work except for rare short driving. Those restrictions are mainly due to the complaints of dizziness, instability with the room spinning, and anything to do with balance. It was Dr. Cohen's opinion that the employee had sustained a 25% permanent partial disability of the whole person referable to the head and neck as a result of the work related injury of March 21, 2009.

Based on a review of the evidence I find that as a direct result of the March 21, 2009 accident and injury that the employee sustained a 17.5% permanent partial disability of the body as a whole referable to the head and neck.

It now must be determined whether the disability from the primary injury combined with the employee's prior permanent partial disability to result in total and permanent disability.

It was Dr. Daniel's opinion that the employee had a 30% permanent partial psychiatric disability of the person as a whole attributed to her March 21, 2009 work-related injury, a preexisting psychiatric disability of 15% permanent partial disability of the person as a whole; and that the combined disability is substantially greater than that which would have resulted from the last injury, considered alone and of itself. It was Dr. Daniel's opinion that although the employee is not totally disabled now from a psychiatric perspective, she is at risk for total disability when her depression becomes worse and as a result, she becomes suicidal requiring inpatient hospitalization.

It was Dr. Cohen's opinion that the employee had sustained a 25% permanent partial disability of the whole person referable to the head and neck as a result of the work related injury of March 21, 2009. Originally as to whether there was any psychiatric disability from the March 21, 2009 injury he deferred to a mental health specialist. After he reviewed Dr. Daniel's psychiatric evaluation, it was Dr. Cohen's opinion that the employee is permanently and totally disabled and not capable of gainful employment in the open labor market based upon the employee's preexisting depression combined with the primary work injury. Dr. Cohen originally

thought that the employee could work because he did not know the severity of the combination of the psychiatric situation. As to whether there are any jobs available within the restrictions that he had provided for her referable to her head and neck injury as well as any psychiatric restrictions from Dr. Daniel, Dr. Cohen would defer to a vocational expert.

It was Mr. Eldred's opinion that based on the employee's physical and psychological profile the employee has no potential for future employability; it is unlikely that an employer in the normal course of business would consider employing the employee, and the employee will not be able to return to competitive, gainful employment. It was Mr. Eldred's opinion that the employee is unemployable in the open labor market and is permanently and totally disabled as a result of her injury on March 21, 2009, combined with her preexisting medical conditions as stated by the doctors and psychiatrists who have examined her.

I find that the opinions of Dr. Daniel, Dr. Cohen and Mr. Eldred are substantially adversely affected by my rulings in Issue 1 and Issue 2 that the employee did not meet her burden of proof that the March 21, 2009 accident was the prevailing factor in causing both her psychiatric medical condition and disability; that the March 21, 2009 accident was not the prevailing factor in the causing the psychiatric injury; the psychiatric condition did not arise out of and in the course of the employment; and was not medically causally related to the March 21, 2009 accident.

It was Mr. England's opinion that based on all the records, deposition and reports the employee is employable in the open labor market.

I find that the opinions of Mr. England are very persuasive and more persuasive than the opinions of Dr. Daniel, Dr. Cohen, and Mr. Eldred.

I find that the employee failed in her burden of proof that the Second Injury Fund is liable for permanent total disability. I find that the employee's disability resulting from the last injury does not combine with her prior permanent partial disability to result in total and permanent disability; and therefore the Second Injury Fund is not liable for permanent total disability benefits. The employee's claim against the Second Injury Fund for permanent total disability is hereby denied.

Permanent Partial Disability:

In the alternative, the employee has requested an award of permanent partial disability against the Second Injury Fund. Based on the evidence submitted, I make the following rulings:

Primary Injury:

I find that the primary injury to the employee's head and neck resulted in a 17.5% permanent partial disability of the body as a whole at the 400 week level for a total of 70 weeks of compensation.

Preexisting Psychiatric Condition:

I find that the employee's preexisting psychiatric condition constituted a hindrance or obstacle to employment or obtaining re-employment. I find that the preexisting psychiatric condition resulted in a 15% permanent partial disability of the body as a whole at the 400 week level for a total of 60 weeks of compensation.

Conclusion:

I find that the employee's preexisting psychiatric condition and the primary injury to the head and neck combined synergistically to create a total disability of 149.5 weeks. This total disability is based on a loading factor of 15%. After deducting the disability that existed prior to the last injury (60 weeks) and the disability resulting from the last injury considered alone (70 weeks) from the total disability attributable to all injuries or conditions existing at the time of the last injury (149.5 weeks), the remaining balance to be paid by the Second Injury Fund is equal to 19.5 weeks. The Second Injury Fund is therefore ordered to pay to the employee the sum of \$368.77 per week for 19.5 weeks for a total award of permanent partial disability equal to \$7,191.02.

ATTORNEY'S FEE:

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

INTEREST:

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

Made by:

Lawrence C. Kasten
Chief Administrative Law Judge
Division of Workers' Compensation