

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

Injury No.: 97-481778

Employee: Debra Williams
Employer: City of St. Louis
Insurer: Self-Insured
Cannon Cochran Management Services

Date of Accident: December 11, 1997

Place and County of Accident: St. Louis City, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 6, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued February 6, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Debra Williams

Injury No.: 97-481778

Dependents: N/A
Employer: City of St. Louis
Additional Party: N/A
Insurer: Self-Insured c/o Cannon Cochran Mgmt Services
Hearing Date: October 23, 2006/November 9, 2006

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

Checked by: SC:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: December 11, 1997
5. State location where accident occurred or occupational disease was contracted: St. Louis City
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was injured during an inmate altercation.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Neck
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$805.25
16. Value necessary medical aid paid to date by employer/insurer? \$6,206.89

Employee: Debra Williams Injury No.: 97-481778

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$445.00
19. Weekly compensation rate: \$296.67/\$278.42
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

TOTAL:

\$-0-

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

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jennifer Finley

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Debra Williams	Injury No.:	97-481778
Dependents:	N/A	Before the	
Employer:	City of St. Louis	Division of Workers'	
Additional Party:	N/A	Compensation	
		Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Self-Insured c/o Cannon Cochran Mgmt Services	Checked by:	SC:tr

PRELIMINARIES

A hearing was held at the Missouri Division of Workers' Compensation, St. Louis office, on October 23, 2006. Debra Williams ("Claimant") requested a Final Hearing pursuant to §287.450 RSMo. Claimant appeared *pro-se*. Attorney Robert Hart represented St. Louis City ("Employer") and their self-insured third party administrator, Cannon Cochran Management Services. Assistant Attorney General Michael Finneran represented the Second Injury Fund ("SIF").

The hearing was reopened on November 9, 2006, at the request of Attorney Jennifer Finley for her to present evidence regarding her lien. Ms. Finley stated she did not receive notice of the October 23, 2006 hearing. Attorneys Finley and John Wallach withdrew from representing Claimant and filed liens. Judicial notice is taken of AICS records which show an October hearing notice was sent to Attorney Finley for injury number 97-481778 but not injury number 98-058491. Attorney Wallach was also sent notice of the October hearing.

Claimant appeared *pro-se*. Attorney Robert Hart represented Employer and Attorney Eileen Krispin represented the SIF. Attorney Jennifer Finley appeared but Attorney Wallach did not. The hearing was limited to evidence regarding Ms. Finley's lien and the record closed after presentation of evidence.

Injury Numbers 97-481778 and 98-058491 were heard together. Although separate awards are issued, the body of each award contains similar issues and the claims are closely related. Hearing venue is correct and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

The parties have stipulated to the following on or about December 11, 1997:

1. Claimant was employed by Employer.
2. Claimant sustained an injury by accident arising out of and in the course of employment occurring in St. Louis City.
3. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
4. Employer's liability was self-insured by Cannon Cochran Management Services.

5. Employer had notice of the injury.
6. A Claim for Compensation was filed within the time prescribed by law.
7. Claimant's average weekly wage was \$445.00.
8. Claimant's temporary total disability (TTD) rate is \$296.67 and the permanent partial disability (PPD) rate is \$278.42.

The parties further stipulate:

9. Claimant received \$6,206.89 in medical benefits.
10. Claimant received TTD benefits totaling \$805.25; representing two and 5/7 weeks of benefits.

The parties agreed that the issues for disposition in this case are:

1. Medical causation;
2. Liability for past medical expenses;
3. Permanent partial disability; and
4. Attorney's lien.

SUMMARY OF EVIDENCE

A ruling was reserved on all exhibits. Any objections not expressly ruled on are overruled. Any notations found on the exhibits were present when offered into evidence.

Findings and Rulings on Exhibits

Claimant:

1. Exhibit A – Forest Park Hospital records-are excluded based on lack of certification (Section 287.140.7) and hearsay.
2. Exhibit B – Forest Park Hospital/ Dr. Anderson records – are excluded based on Section 287.140.7 and Section 287.210.7.
3. Exhibit C –Social Security records – are excluded based on hearsay and relevance.
4. Exhibit D – Touchette Regional Hospital records - excluded based on Section 287.140.7 and hearsay.
5. Exhibit E – Dr. Volarich' report - excluded based on Section 287.210.7^[1]
6. Exhibit F – Missouri Department of Social Services subrogation letters and Barnes Care records – are excluded based on hearsay and lack of certification under Section 287.140.7.
7. *Exhibit G – Maranatha Health Care, P.C. are admitted. Family Medicine of St. Louis, prescriptions, Healthline, diagnostics, Orthopedic Sports Medicine, and ProRehab are excluded based on hearsay and lack of certification under Section 287.140.7.
8. Exhibit H – St. Louis University Hospital records – are excluded based on hearsay and lack of Section 287.140.7 certification.
9. *Exhibit I –St. Alexius Hospital, Metro West Anesthesia, St. Louis University Hospital, and Dr. Eric Washington records are admitted. Family Medicine of St. Louis, correspondence with former counsel, Orthopedic Sports Medicine, and Forest Park Hospital records are excluded based on hearsay and lack of certification under Section 287.140.7. Social Security Administration records are excluded based on hearsay and relevance.
10. Exhibit J – prescription profile October 31, 2001 to November 25, 2004 –are excluded based on Section 287.210.7 lack of certification.
11. Claimant submitted a number of documents with the post hearing brief which were not admitted as they are hearsay and were not offered at hearing.

Employer:

- I. Exhibit 2 is admitted as Claimant's objection was based on the accuracy of the information contained in the record. Accuracy of information goes to weight, not admission. Employer raised lack of certification for the first time in the post-hearing brief.

Ms. Finley:

- I. Court's Exhibit I.– admitted
- II. Court's Exhibit II. – limited admission ^[2].

* Claimant's Exhibits G and I, Employer's Exhibit 2, and Court's Exhibits I and II are admitted either in whole or in part as described above.

LIVE TESTIMONY

Claimant's Summary

1. Claimant is 46 years old and began working as a Corrections Officer I for the City of St. Louis at the St. Louis Medium Security facility about nine years ago. Claimant's job was to monitor and maintain the safety and custody of prisoners. Claimant last worked for Employer in June 1999.
2. Claimant believed co-workers were out to get her after she came forward with information about a co-worker. Claimant testified co-workers tainted her food with rat poison, urine and spit and told her she was going to die. Claimant became depressed after this occurred.
3. Claimant testified several co-workers "set her up" to be injured on December 11, 1997. Claimant testified co-workers allowed thirty inmates to fight while only Claimant and one guard were on hand. Inmates hit, punched and slammed Claimant into a wall. Claimant treated at Healthline where she requested an MRI but only received x-rays. No records of treatment are in evidence.
4. On January 9, 1998, fifteen inmates began fighting. Again Claimant was hit, punched and thrown into the wall, injuring her left knee. Claimant returned to Healthline, where her knee was x-rayed and she was given a brace. Claimant was placed on light duty; but Claimant testified Employer did not honor the limitations. No treatment records are in evidence.
5. Claimant was seen at St. Louis University Emergency Room on July 17, 1998 when she experienced headaches, and pain and numbness on the left side of her body while monitoring prisoners. Claimant was diagnosed with a sprained shoulder and epidural injections were recommended by Dr. Carter.
6. Claimant testified she has seven 'slipped discs' in her neck, five due to the 1997-98 work injuries. Complaints include pain, headaches and inability to sleep due to the neck pain. Claimant wears a neck brace mainly at night.
7. Claimant testified she has four or five 'slipped discs' in her low back since December 1997. Claimant testified that an MRI showed curvature of the low back which she attributes to the December 1997 and January 1998 work injuries. She believed the curvature would not have occurred if she had received prompt treatment.
8. Claimant complained of left knee pain, fluid, and buckling. Claimant testified it took six years to receive surgery for a left knee meniscal tear. As a result of depression, she sleeps, stays home, cannot work, and has been under the influence of medications for six years which she does not believe she needs. Claimant further testified she was over medicated and received treatment from a detoxification center.
9. Claimant requested a hearing because she does not believe she was treated fairly. Claimant believes she would not have suffered to the extent she has if she had received proper medical care.
10. Claimant testified that she had a nervous breakdown in 2004.

Pre-existing Conditions

11. Prior to 1997 Claimant testified she had two 'slipped discs' in her low back and only minor problems after she received physical therapy.
12. Prior to 1997, Claimant testified she had a mild heart murmur which required antibiotics prior to dental work; but she had no problems performing her work. Claimant had a mitral valve repair of the heart in 2000.
13. Claimant testified she passed an employment physical to become a Corrections Officer. As a Corrections Officer, Claimant walked, knelt, and squatted. She also lifted inmates with suicidal tendencies as needed from ropes, etc. Claimant testified she was not hindered in the performance of her job duties prior to 1997; and "performed well."

Amenta Williams

14. Claimant's daughter, Amenta Williams, testified on behalf of Claimant. Prior to the injuries, Claimant worked, cooked, assisted with homework, shopped, and attended family get-togethers. Between 1997 and 1998 Claimant cried, did not

participate in family activities, did not leave home and did not cook as often.

15. The family experienced a lack of resources and declining health during that time. She observed Claimant cry, take multiple pills, and complain of pain to her lower and upper back and arms.

Attorney Jennifer Finley

16. Ms. Finley testified she represented Claimant from July 31, 2003 through July 28, 2006. Ms. Finley secured a settlement offer from Employer for \$14,000.00 which Claimant initially accepted then rejected (Exhibit II). Ms. Finley is seeking 25% of \$14,000.00 or \$3,500.00 for attorney's fees. Ms. Finley is also seeking \$1,951.28 in costs for a total of \$5,451.28.
17. Ms. Finley offered Exhibit I to show the \$3,500.00 fee was fair compared to the \$6,537.50 she expended on an hourly basis. Exhibit I reflects services provided and the hours worked multiplied by \$150.00. Services included court appearances, trial preparation- twice, and review of records from the prior attorney, social security, and medical providers. Ms. Finley testified the services were fair, reasonable and necessary; therefore the \$3,500 was justified. Claimant objected, alleging Ms. Finley misled her by not taking her case to trial as promised.
18. Expenses incurred total \$1,951.28; including Dr. Volarich's examination and rating report totaling \$1,333.00. Ms. Finley testified that medical records were collected and copied for Employer and SIF.

Medical Evidence Before December 1997

Eric D. Washington, M.D., treated Claimant from May –July 1997 with a history of low back and left leg pain since 1991 when she slipped and fell, landing on her left knee and calf. Complaints also included radiating pain to the left buttock and leg. Treatment included twenty-eight trigger point injections, three lumbar epidural injections, therapy, exercises, and medications without improvement. A March 6, 1997 MRI of the lumbar spine revealed degeneration at L5-S1 with no herniations.

Claimant treated at Maranatha Health Care, P.C., from September to November 1997. On September 22, 1997, Claimant reported tailbone pain, no improvement in her back, and a numb leg. Claimant received physical therapy through November 25, 1997 and was diagnosed with L5-S1 radiculopathy (Exhibit G).

Medical Evidence after December 1997

The first treatment records in evidence for the 1997 work injury are dated July 17, 1998 when Claimant treated at St. Louis University Hospital with a history of assault at work in December 1997. Claimant reported a January 1998 assault when her left shoulder was hit several times and "sprained." Claimant reported increased pain after being released from care in May 1998. Complaints included pain to the head, neck, left shoulder, dizziness, and left face and arm numbness, tingling and weakness. X-rays of the cervical spine revealed reverse lordosis. Claimant was diagnosed with a left shoulder strain (Exhibit I).

On September 22, 1998, Dr. Chabot re-examined Claimant with left shoulder complaints and increased symptoms with movement. Dr. Chabot diagnosed impingement and AC joint degeneration and recommended a surgical consultation by Dr. Weise (Exhibit 2). Earlier examinations by Dr. Chabot are not in evidence.

Mare W. Weise, M.D. examined Claimant on October 2, 1998 for left shoulder pain and did not find the left shoulder to be the major source of pain. An MRI of the shoulder revealed a type II curved acromion with signal change in the supraspinatus tendon, and mild hypertrophy of the AC joint. Dr. Weise diagnosed scapular myofascitis and possible fibromyalgia. He recommended a self-directed aerobic program for the scapular and continued work restrictions imposed by Dr. Chabot (Exhibit 2).

Dr. Chabot re-examined Claimant on November 17, 1998 due to left shoulder pain with practically all activities. Examination revealed limited range of motion of the left shoulder and tenderness. Strength testing was limited due to pain. Dr. Chabot could not explain the lack of improvement and referred Claimant to Dr. Cantrell for a second opinion and continued limited duty (Exhibit 2).

Russell C. Cantrell, M.D. examined Claimant on November 23, 1998 at Employer's request for an independent medical examination. Complaints included left shoulder pain. Examination revealed limited range of motion with pain. Dr. Cantrell found no specific "anatomic pathology" for Claimant's symptoms based on a lack of objective findings or response to cortisone injections. Dr. Cantrell noted clinical findings show symptom magnification; however, no specific findings were stated. Dr. Cantrell opined Claimant was at maximum medical improvement and could return to work full duty (Exhibit 2).

In January 1999, Dr. Cantrell diagnosed myofascial shoulder strain, with "significantly exaggerated complaints" based on non-physiologic pain behaviors. Dr. Cantrell found Claimant had no permanent disability based on lack of significant objective findings, clinical examination and symptom magnification (Exhibit 2).

Dr. Washington treated Claimant from January 13, 1999 to July 26, 1999. Complaints included left neck and shoulder pain, radiating to the elbow, and numbness and tingling fingers on the left hand. Examination revealed tenderness from the trapezius muscle to the subacromial region, limited range of motion of the left shoulder and cervical spine. Cervical spine x-rays revealed minimal spurring at C5-6. Dr. Washington diagnosed cervical disc disease at C5-6 and left shoulder impingement/tendonitis. Claimant reported "concern about the current symptoms being related to an old injury and would provide Dr. Washington with medical records for the December 1997 injury. However, those records are not in evidence (Exhibit I).

A cervical MRI in May 1999 revealed a disc protrusion at C3-4, asymmetric to the left with reversal of cervical lordosis. Dr. Washington referred Claimant to a neurosurgeon for a surgical consultation.

In July 1999 Claimant returned to Dr. Washington with increased low back pain after she slipped and twisted her back trying to avoid a fall. Examination showed lumbar pain, limited range of motion, and positive straight leg raise (Exhibit I).

Jeffrey Carter, M.D. at Forest Park Hospital, examined Claimant August 3, 1999 with complaints of headaches and neck pain radiating to the left shoulder, low back pain radiating to both buttocks and legs to the knees, left arm weakness, numbness and tingling to the fingers of the left hand. Claimant admitted she had low back pain before the work injuries but stated symptoms had increased since December 1997. Dr. Carter noted it was difficult to examine Claimant due to her severe symptoms and periods of crying. Dr. Carter diagnosed a cervical disc herniation C3-4 and low back of questionable origin and took Claimant off work four to six weeks (Exhibit I).

Claimant treated with St. Louis University Hospital from March to November 2000. Claimant reported neck, shoulder, back, leg, and head pain with body numbness, intermittent left arm numbness and tingling, and muscle spasms. Claimant complained of feeling helpless, but not suicidal. Rodney O. Leacock, M.D., a neurologist, opined the May 1999 MRI of the cervical spine showed thecal sac compression to the left at C3-C4, most likely from an old degenerative disc or bony osteophyte.

Dr. Leacock opined Claimant's chronic pain was due to "stress related to depression and two crucial events from December 1997 and January 1998." On August 4, 2000, an MRI of the low back revealed disc bulging at L3-4 and L4-5 with central stenosis, and clumping of the cauda equine related to arachnoiditis (Exhibit I). Joseph E. Sherrell II, M.D., a neurologist, diagnosed arachnoiditis with no recommended surgical treatment.

Robert Sindel, M.D. examined Claimant on August 22, 2004 at St. Alexius Hospital after she reported taking at least seventeen sleeping pills and not wanting to wake up. Claimant was very lethargic upon arrival. Claimant reported upper back pain and attributed her condition to the 1998 work injury. Claimant reported increased pain to her neck, back, tailbone, leg, left arm, chest, and head since the 1998 work altercation. Dr. Sindel diagnosed post traumatic stress disorder (PTSD), profound depression, attempted suicide, and status post multiple traumas. Claimant was hospitalized and found to be opiate dependent. When released August 30, 2004 Claimant was in partial remission (Exhibit I).

FINDINGS OF FACT AND RULINGS OF LAW

After careful consideration of the entire record, based upon the above testimony, the competent and

substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Medical Causation

Claimant has the burden to establish that she sustained an injury by accident arising out of and in the course of her employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. Ct. App. 1991) (overruled on other grounds). For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo.Ct. App.1973).

Neck: I find Claimant did not sustain a compensable injury to her neck. Claimant's testimony was not credible regarding the events leading up to the injury including being setup with urine and rat poison, and attacks by co-workers. However even if Claimant sustained a work injury, I do not find it resulted in permanent disability.

No treatment records are in evidence until July 1998, six months after the second injury. The MRI showing the disc protrusion was taken in May, 1999, sixteen months after the second injury. Although doctors diagnosed cervical spine and left shoulder problems, no opinion connects the injury to work accidents in December 1997 or January 1998.

Dr. Leacock's chronic pain diagnosis is too vague to connect Claimant's neck condition to either the December 1997 or January 1998 injuries. Dr. Leacock's reference to "two crucial events in December 1997 and January 1998" does not establish a causal connection between the chronic pain and work injuries.

Even if Claimant sustained a work related neck injury, Dr. Leacock did not conclude Claimant sustained any permanent partial disability. Dr. Leacock diagnosed chronic pain. The dictionary defines chronic as: "1. lasting a long time or recurring often; said of a disease, and distinguished from acute. 2. Having had an ailment for a long time [a chronic patient]." However, I find no competent and substantial evidence that chronic pain is the same as permanent partial disability.

Dr. Cantrell is the only doctor to give an opinion regarding permanent disability. Dr. Cantrell diagnosed a left shoulder strain but found no anatomic pathology for Claimant's symptoms and noted Waddell symptoms. Dr. Cantrell's opinion is credible that Claimant sustained no permanent disability from the injuries.

Given the lack of causal connection between the neck condition and the work accident, I find Claimant did not show the accident resulted in neck injury.

I find Claimant did not meet her burden to show she sustained an injury by accident which arose out of and in the course of her employment and that the accident resulted in neck injury.

Back: Claimant asserts she had two to three additional 'slipped discs' in her low back since December 1997. Prior to December 1997 Claimant asserts she only had two "slipped discs."

"...Where there is a serious question of pre-existing disability and its extent, the proof of causation is not within the realm of lay understanding nor in the absence of expert opinion is the finding of causation within the competency of the administrative tribunal." *Griggs v. A.B.Chance Co.*, 503 S.W.2d 697,704 (Mo. Ct. App.1973).

I find Claimant did not meet her burden to show injury to her back due the December 1997 or January 1998 work injuries. Claimant had significant low back problems prior to December 1997. Claimant completed ten weeks of physical therapy early in 1997. In May 1997, Claimant was referred to Incarnate Word Hospital Pain Center with a "long history of low back and left leg pain" beginning in 1991 when she slipped and fell on her left knee and calf. Left leg pain developed into low back pain. At the pain center, Claimant received twenty-eight trigger point injections, three lumbar epidural injections, therapy, exercises, and medications, however she reported no improvement.

Claimant arrived at Maranatha Healthcare P.C. on September 9, 1997 for treatment and reported "pain in

my back isn't getting any better, it still hurts." Claimant also reported no improvement by September 22nd and continued in therapy until at least November 25th, sixteen days before the first work injury. The following treatment records contain no mention of low back complaints: St. Louis University Hospital, Dr Chabot, Dr. Cantrell or Dr. Washington through January 1999. Dr. Weise examined Claimant solely for a shoulder opinion.

Even if Claimant injured her back as a result of the two altercations, there is no medical evidence she sustained "four to five slipped discs." A March 6, 1997 MRI of the low back revealed L5-S1 degeneration with mild disc protrusion but no herniations. A 2000 MRI revealed disc bulging at L3-4 and L4-5 with central stenosis, and minimal bulging at L5-S1.

Dr. Leacock's causation opinion is not credible regarding Claimant's low back. The report contains no medical history of low back pain or treatment. There is no indication Dr. Leacock reviewed Claimant's prior medical records and Claimant provided no history of previous back pain or extensive treatment. For these reasons, I find Claimant did not prove a causal connection between her back condition and the December 1997 and January 1998 work injuries.

I do not find Claimant credible regarding her back complaints. There is no mention of low back pain in treatment records until after a slip and twist incident occurred eighteen months later. On July 26, 1999 Claimant reported she slipped and twisted her back a month earlier while trying to avoid a fall. She complained of increased low back pain and was diagnosed with an acute lumbar strain. It is interesting to note Claimant last worked in June 1999, which is the same time period the slip and twist incident occurred. In August, Claimant admitted to Dr. Carter she had back pain before the work injuries, but stated the pain had worsened since the December 1997 altercation. Without providing detail, Dr. Carter concluded the back pain was of questionable etiology. I do not find a causal connection between Claimant's back condition and the December 1997 or January 1998 work injuries.

Depression: Claimant asserts her depression resulted from two traumatic events which occurred during an inmate altercation on December 11, 1997 and January 9, 1998 when she "was slammed against a wall, hit, and punched during an inmate fight." Employer contends Claimant failed to show she sustained a mental injury resulting from a work injury.

An injury is compensable only if it is clearly work related, and an injury is "clearly work related" only if work was a 'substantial factor' in the cause of the injury and the resulting medical disability. Section 287.020. 2 RSMo 2000.

Whether Claimant's mental injury is compensable is based on proper application of the law and the credibility of expert testimony. Missouri has long held that psychological injuries, in addition to physical injuries, can fall under the coverage of the Workers Compensation Law. In *Thompson v. Railway Exp. Agency*, 241 Mo.App. 683, 688, 236 S.W.2d 36, 39 (Mo. Ct. App.1951), the court stated a neurosis can be compensable if a causal connection with an accident sustained in the course of employment is proven by "clear evidence," and that statement is reiterated in other opinions. See, i.e., *Todd v. Goostree*, 493 S.W.2d 411, 417 (Mo.Ct.App.1973) (superseded by statute); and *Webb v. Norbert Markway Const. Co.*, 522 S.W.2d 611, 615 (Mo.Ct. App. 1975). Recently, courts have stated that Missouri's Workers' Compensation Law compensates a worker for a mental condition if it is shown to have been directly and proximately caused by the accident. *McCormack v. Carmen Schell Const. Co.* 97 S.W.3d 497, 505 (Mo.Ct.App. 2002) (overruled on other grounds).

I find Claimant has not met her burden of establishing the work accidents of December 1997 and January 1998 are the substantial factors in her current psychological condition. I do not find credible the testimony of Claimant and her daughter connecting the accidents to Claimant's depression and PTSD. It is unclear the extent to which a lack of resources and other non-work factors may have impacted Claimant's depressed state.

Claimant failed to show the connection between the work injuries and her sleeping behaviors, staying home, inability to work, and over medicating. Although evidence was presented concerning stress Claimant encountered at work prior to the accidents; Claimant testified her depression resulted from the two traumatic work accidents.

Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of

condition and the asserted cause. *Landers v. Chrysler Corp.* 963 S.W.2d 275, 279 (Mo.Ct. App. 1997) (overruled on other grounds) See i.e., *McGrath v. Satellite Sprinkler Systems*, 877 S.W.2d 704, 708 (Mo.App.1994) (overruled on other grounds). Identifying the nature, cause and extent of a mental condition such as Claimant's is complex, and cannot be accomplished without expert medical evidence.

Medical evidence does not establish a causal connection between Claimant's mental injury and the 1997 work accident. Dr. Sindel's PTSD diagnosis does not identify the nature, cause or extent of Claimant's mental condition. Dr. Sindel's records indicate: "[Claimant] lives with her family, her daughters and others are embroiled in many petty and not so petty argumentative issues which [Claimant] takes to heart and cannot deal with." Dr. Leacock is the only doctor that found Claimant's chronic pain resulted from stress related to "depression and the two crucial events from December 1997 and January 1998." However, Dr. Leacock did not opine that the work injuries caused the depression. Dr. Leacock is not a psychiatrist and did not perform testing. I find Claimant failed to show clear evidence that the depression was caused by the work injury.

Permanent Partial Disability (PPD)

Claimant seeks PPD for injuries sustained from December 11, 1997 and January 9, 1998 work injuries. Employer contends Claimant failed to prove the nature and extent of disability, therefore did not meet her burden of proof to allow an award of PPD.

A permanent partial award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991).

Dr. Cantrell found no permanent disability and Claimant provided no opinion that medically causally related her injuries to the work accidents in December 1997 and January 1998. The parties stipulated Claimant sustained an injury by accident, however, I find Claimant failed to show she was permanently and partially disabled due to either the December 1997 or January 1998 accidents.

Attorney's lien

Ms. Finley is seeking \$3,500.00 in fees for settlement negotiations reached with Employer plus \$1,951.28 in costs totaling \$5,451.28. Claimant contends Ms. Finley is not entitled to the full amount because Ms. Finley did not take her case to trial as promised.

The Division is charged with approving reasonable attorney fees. Section 287.260.1 RSMo. 2000. The factors to be considered in determining reasonable value of attorney's fees in Missouri are time, nature, character and amount of services rendered, nature and importance of the litigation, degree of responsibility imposed on or incurred by the attorney, the amount of money or property involved, the degree of professional ability, skill and experience called for and used, and the result achieved. See *Cervantes v. Ryan*, 799 S.W.2d 111, 115 (Mo.App. 1990).

Ms. Finley testified she secured a settlement offer for Claimant for \$14,000.00 and incurred expenses for a rating examination, voluminous records, and copying fees. Exhibits I is the proposed stipulation for compromise settlement signed by Mr. Hart. Exhibit II contains details of each expense. However, I previously found Claimant sustained no PPD; therefore, no attorney's fees are awarded.

Liability for past medical expenses

Claimant asserts Employer is liable for past medical expenses for both the 1997 and 1998 injuries. An approximate amount of \$60,000.00 was stated at the hearing. Employer contends no medical expenses are owed as Claimant failed to show the injuries sustained were medically causally related to a work accident.

Section 287.140.3, RSMo 1986, requires a showing that compensable medical charges be "fair and reasonable for similar treatment of other similarly injured persons...." *Martin v. Mid-America Farm Lines, Inc.* 769 S.W.2d 105, 111 (Mo.,1989) (*superseded by statute on other grounds*). We believe that when such testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the commission to award compensation. *Id* at 111 -112.

I do not find Employer liable for past medical expenses. At the hearing, Claimant did not identify the bills or relate them to treatment for work injuries. Claimant submitted additional medical expenses with the post-hearing brief which are hearsay and not in evidence. No evidence was presented that the medical expenses were fair and reasonable. There is no evidence Employer refused to provide medical treatment. Under Section 287.140.1, Claimant has the right to seek medical treatment at any time at her expenses. Therefore, Employer is not liable for past medical expenses.

CONCLUSION

Claimant did not meet her burden to show she sustained an accident which arose out of and in the course of employment and that the accident resulted in disability. No award is made for attorney's fees or costs. Employer is not liable for past medical expenses.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 98-058491

Employee: Debra Williams
Employer: City of St. Louis
Insurer: Cannon Cochran Management Services
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: January 9, 1998
Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated February 6, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued February 6, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of April 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee:	Debra Williams	Injury No.:	98-058491
Dependents:	N/A		
Employer:	City of St. Louis		
Additional Party:	Cannon Cochran Management Services		
Insurer:	Second Injury Fund		
Hearing Date:	October 23, 2006, November 9, 2006	Checked by:	SC:tr

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

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
3. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? Yes
6. Date of accident or onset of occupational disease: January 9, 1998
7. State location where accident occurred or occupational disease was contracted: St. Louis, 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
10. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes

11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant was injured during an inmate altercation.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
15. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Debra Williams

Injury No.: 98-058491

17. Value necessary medical aid not furnished by employer/insurer? N/A
19. Employee's average weekly wages: \$445.00
19. Weekly compensation rate: \$296.67/\$278.42
20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

22. Second Injury Fund: Dismissed

TOTAL: N/A

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

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jennifer Finley

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Debra Williams

Injury No.: 98-058491

Dependents: N/A

Before the
Division of Workers'

Employer: City of St. Louis

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: Self-Insured c/o Cannon Cochran Mgmt Services

Checked by: SC:tr

PRELIMINARIES

Debra Williams ("Claimant") requested a hearing pursuant to §287.450 RSMo. A hearing was held at the Missouri Division of Workers' Compensation, St. Louis office, on October 23, 2006. Claimant appeared *pro-se*. Attorney Robert Hart represented St. Louis City ("Employer") and their self-insured third party administrator, Cannon Cochran Management Services. Assistant Attorney General Michael Finneran represented the Second Injury Fund ("SIF") on injury number 98-058491. The hearing closed after presentation of evidence.

The hearing was reopened on November 9, 2006, at the request of Attorney Jennifer Finley for her to present evidence regarding her lien. Ms. Finley stated she did not receive notice of the October 23, 2006 hearing. Attorneys Finley and John Wallach withdrew from representing Claimant and filed liens. Judicial notice is taken of AICS records which show an October hearing notice was sent to Attorney Finley for injury number 97-481778 but not 98-058491. Attorney Wallach was also sent notice of the October hearing.

Claimant appeared *pro-se*. Attorney Robert Hart represented Employer and Attorney Eileen Krispin represented the SIF. Attorney Jennifer appeared but Attorney Wallach did not. The hearing was limited to evidence regarding Ms. Finley's lien and the record closed after presentation of evidence.

Injury Numbers 97-481778 and 98-058491 were heard together. Although separate awards are issued, the body of each award contains similar issues and the claims are closely related. Hearing venue is correct and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

The parties have stipulated to the following on or about January 9, 1998:

11. Claimant was employed by Employer.
12. Claimant sustained an injury by accident arising out of and in the course of employment occurring in St. Louis City.
13. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
14. Employer's liability was self-insured by Cannon Cochran Management Services.
15. Employer had notice of the injury.
16. A Claim for Compensation was filed within the time prescribed by law.
17. Claimant's average weekly wage was \$445.00.
18. Claimant's rate for temporary total disability (TTD) is \$296.67 and the permanent partial disability (PPD) rate is \$278.42.

The parties further stipulate:

19. Claimant received no medical benefits;
20. Claimant received no TTD benefits.

The parties agreed that the issues for disposition in this case are:

5. Medical causation;
6. Liability for past medical expenses;
7. Permanent partial disability;
8. Attorney's lien.

SUMMARY OF EVIDENCE

A ruling was reserved on all exhibits. Any objections not expressly ruled on are overruled. Any notations found on the exhibits were present when offered into evidence.

Findings and Rulings on Exhibits

Claimant:

12. Exhibit A – Forest Park Hospital records-are excluded based on lack of certification (Section 287.140.7) and hearsay.

13. Exhibit B – Forest Park Hospital/ Dr. Anderson records – are excluded based on Section 287.140.7 and Section 287.210.7.
14. Exhibit C –Social Security records – are excluded based on hearsay and relevance.
15. Exhibit D – Touchette Regional Hospital records - excluded based on Section 287.140.7 and hearsay.
16. Exhibit E – Dr. Volarich’ report – are excluded based on Section 287.210.7^[3]
17. Exhibit F – Missouri Department of Social Services subrogation letters and Barnes Care records – are excluded based on hearsay and lack of certification under Section 287.140.7.
18. *Exhibit G – Maranatha Health Care, P.C. are admitted. Family Medicine of St. Louis, prescriptions, Healthline, diagnostics, Orthopedic Sports Medicine, and ProRehab are excluded based on hearsay and lack of certification under Section 287.140.7.
19. Exhibit H – St. Louis University Hospital records – are excluded based on hearsay and lack of Section 287.140.7 certification.
20. *Exhibit I –St. Alexius Hospital, Metro West Anesthesia, St. Louis University Hospital, and Dr. Eric Washington records are admitted. Family Medicine of St. Louis, correspondence with former counsel, Orthopedic Sports Medicine, and Forest Park Hospital records are excluded based on hearsay and lack of certification under Section 287.140.7. Social Security Administration records are excluded based on hearsay and relevance.
21. Exhibit J – prescription profile October 31, 2001 to November 25, 2004 –are excluded based on Section 287.210.7 lack of certification.
22. Claimant submitted a number of documents with the post hearing brief which were not admitted as they are hearsay and were not offered at the hearing.

Start:

Employer:

- II. Exhibit 2 is admitted as Claimant’s objection was based on the accuracy of the information contained in the record. Accuracy of information goes to weight, not admission. Employer raised lack of certification for the first time in the post-hearing brief.

Ms. Finley:

- III. Court’s Exhibit I.– admitted
- IV. Court’s Exhibit II. – limited admission.^[4]

* Claimant’s Exhibits G and I, Employer’s Exhibit 2, and Court’s Exhibits I and II are admitted either in whole or in part as described above.

LIVE TESTIMONY

Claimant’s Summary

19. Claimant is 46 years old and began working as a Corrections Officer I for the City of St. Louis at the St. Louis Medium Security facility about nine years ago. Claimant’s job was to monitor and maintain the safety and custody of prisoners. Claimant last worked for Employer in June 1999.
20. Claimant believed some co-workers were out to get her after she came forward with information about a co-worker. Claimant testified co-workers tainted her food with rat poison, urine and spit and told her she was going to die. Claimant became depressed after this occurred.
21. Claimant testified several co-workers “set her up” to be injured on December 11, 1997. Claimant testified co-workers allowed thirty inmates to fight while only Claimant and one guard were on hand. Inmates hit, punched and slammed Claimant into a wall. Claimant treated at Healthline where she requested an MRI but only received x-rays. No records of treatment are in evidence.
22. On January 9, 1998, fifteen inmates began fighting. Again Claimant was hit, punched and slammed into the wall, injuring her left knee. Claimant returned to Healthline, where her knee was x-rayed and she was given a brace. Claimant was placed on light duty; but Claimant testified Employer did not honor the limitations. No records of treatment are in evidence.

23. Claimant was seen at the St. Louis University Hospital emergency room on July 17, 1998 when she experienced headaches, and pain and numbness on the left side of her body while monitoring prisoners. Claimant was diagnosed with a sprained shoulder and epidural injections were recommended by Dr. Carter.
24. Claimant testified she has seven 'slipped discs' in her neck, five due to the 1997-98 work injuries. Complaints include pain, headaches and inability to sleep due to the neck pain. Claimant wears a neck brace mainly at night.
25. Claimant testified she has four or five 'slipped discs' in her low back since December 1997. Claimant testified that an MRI showed curvature of the low back which she attributes to the December 1997 and January 1998 work injuries. She believed the curvature would not have occurred if she had received prompt treatment.
26. Claimant complained of left knee pain, fluid, and buckling. Claimant testified it took six years to receive surgery for a left knee meniscal tear. As a result of depression, she sleeps, stays home, cannot work, and has been under the influence of medications for six years which she does not believe she needs. Claimant further testified she was over medicated and received treatment from a detoxification center.
27. Claimant requested a hearing because she does not believe she was treated fairly. Claimant believes she would not have suffered to the extent she has if she had received proper medical care.
28. Claimant testified that she had a nervous breakdown in 2004.

Pre-existing Conditions

29. Prior to 1997 Claimant testified she had two 'slipped discs' in her low back and only minor problems after she received physical therapy.
30. Prior to 1997, Claimant testified she had a mild heart murmur which required antibiotics prior to dental work; but she had no problems performing her work. Claimant had a mitral valve repair of the heart in 2000.
31. Claimant testified she passed an employment physical to become a Corrections Officer. As a Corrections Officer, Claimant walked, knelt, and squatted. She also lifted inmates with suicidal tendencies as needed from ropes, etc. Claimant testified she was not hindered in the performance of her job duties prior to 1997; and "performed well."

Amenta Williams

32. Claimant's daughter, Amenta Williams, testified on behalf of Claimant. Prior to the injuries, Claimant worked, cooked, assisted with homework, shopped, and attended family get-togethers. Between 1997 and 1998 Claimant cried, did not participate in family activities, did not leave home and did not cook as often.
33. The family experienced a lack of resources and declining health during that time. She observed Claimant cry, take multiple pills, and complain of pain to her lower and upper back and arms.

Attorney Jennifer Finley

34. Ms. Finley testified she represented Claimant from July 31, 2003 through July 28, 2006. Ms. Finley secured a settlement offer from Employer for \$14,000.00 which Claimant initially accepted then rejected (Exhibit II). Ms. Finley is seeking 25% of \$14,000.00 or \$3,500.00 for attorney's fees. Ms. Finley is also seeking \$1,951.28 in costs for a grand total of \$5,451.28.
35. Ms. Finley offered Exhibit I to show the \$3,500.00 fee was fair compared to the \$6,537.50 she expended on an hourly basis. Exhibit I reflects services provided and the hours worked multiplied by \$150.00. Services included court appearances, trial preparation- twice, and review of records from the prior attorney, social security, and medical providers. Ms. Finley testified the services were fair, reasonable and necessary; therefore the \$3,500 was justified. Claimant objected, alleging Ms. Finley misled her and did not take her case to trial as promised.
36. Expenses incurred total \$1,951.28; including Dr. Volarich's examination and rating report which cost \$1,333.00. Ms. Finley testified that medical records were collected and copied for Employer and SIF.

Medical Evidence before December 1997

Eric D. Washington, M.D., treated Claimant from May –July 1997 with a history of low back and left leg pain

since 1991 when she slipped and fell, landing on her left knee and calf. Complaints included radiating pain to the left buttock and leg. Treatment included twenty-eight trigger point injections, three lumbar epidural injections, therapy, exercises, and medications without improvement. A March 6, 1997 MRI of the lumbar spine revealed degeneration at L5-S1 with no herniations.

Claimant treated at Maranatha Health Care, P.C., from September to November 1997. On September 22, 1997, Claimant reported tailbone pain, no improvement in her back, and a numb leg. Claimant received physical therapy through November 25, 1997 and was diagnosed with L5-S1 radiculopathy (Exhibit G).

Medical Evidence after December 1997

The first treatment record in evidence for the 1997 work injury occurred July 17, 1998 when Claimant treated at St. Louis University Hospital with a history of assault at work in December 1997. Claimant also reported a January 1998 assault when her left shoulder was hit several times and "sprained." Claimant reported increased pain after being released from care in May 1998. Complaints included pain to the head, neck, left shoulder, dizziness, and left face and arm numbness, tingling and weakness. X-rays of the cervical spine revealed reverse lordosis. Claimant was diagnosed with a left shoulder strain (Exhibit I).

On September 22, 1998, Dr. Chabot re-examined Claimant with left shoulder complaints and increased symptoms with movement. Dr. Chabot diagnosed impingement and AC joint degeneration and recommended a surgical consultation by Dr. Weise (Exhibit 2). Reports of earlier examinations by Dr. Chabot are not in evidence.

Mare W. Weise, M.D. examined Claimant on October 2, 1998 for left shoulder pain and did not find the left shoulder to be the major source of pain. An MRI of the shoulder revealed a type II curved acromion with signal change in the supraspinatus tendon, and mild hypertrophy of the AC joint. Dr. Weise diagnosed scapular myofascitis and possible fibromyalgia. He recommended a self-directed aerobic program for the scapular and continued work restrictions imposed by Dr. Chabot (Exhibit 2).

November 17, 1998, Dr. Chabot re-examined Claimant with left shoulder pain with practically all activities. Examination revealed limited range of motion of the left shoulder and tenderness. Strength testing was limited due to pain. Dr. Chabot could not explain the lack of improvement and referred Claimant to Dr. Cantrell for a second opinion and continued limited duty (Exhibit 2).

On November 23, 1998, Russell C. Cantrell, M.D. examined Claimant at Employer's request for an independent medical examination. Claimant complained of left shoulder pain. Examination revealed limited range of motion of the left shoulder with pain. Dr. Cantrell found no specific "anatomic pathology" for Claimant's symptoms based on a lack of objective findings or response to cortisone injections. Dr. Cantrell noted clinical findings show symptom magnification; however, no specific findings were stated. Dr. Cantrell opined Claimant was at maximum medical improvement and could return to full duty (Exhibit 2).

In January 1999, Dr. Cantrell diagnosed myofascial shoulder strain, with "significantly exaggerated complaints" based on "significantly exaggerated complaints of pain" based on "multiple non-physiologic pain behaviors." Dr. Cantrell found Claimant had no permanent disability due to a lack of significant objective findings, clinical examination and symptom magnification (Exhibit 2).

Dr. Washington treated Claimant from January 13, 1999 to July 26, 1999. Complaints included left neck and shoulder pain, radiating to the elbow, and numbness and tingling fingers on the left hand. Examination revealed tenderness from the trapezius muscle to the subacromial region, limited range of motion of the left shoulder and cervical spine. Cervical spine x-rays revealed minimal spurring at C5-6. Dr. Washington diagnosed cervical disc disease at C5-6 and left shoulder impingement/tendonitis. Claimant reported "concern about the current symptoms being related to an old injury and would provide Dr. Washington with medical records for the December 1997 injury. However, those records are not in evidence (Exhibit I).

A cervical MRI in May 1999 revealed a disc protrusion at C3-4, asymmetric to the left with reversal of cervical lordosis. Dr. Washington referred Claimant to a neurosurgeon for a surgical consultation.

In July 1999 Claimant returned to Dr. Washington with increased low back pain after she slipped and

twisted her back trying to avoid a fall. Examination showed lumbar pain, limited range of motion, and positive straight leg raise (Exhibit I).

Jeffrey Carter, M.D. at Forest Park Hospital, examined Claimant August 3, 1999 with complaints of headaches and neck pain radiating to the left shoulder, low back pain radiating to both buttocks and legs to the knees, left arm weakness, numbness and tingling to the fingers of the left hand. Claimant admitted she had low back pain before the work injuries. Claimant reported symptoms had increased since the December 1997. Dr. Carter noted it was difficult to examine Claimant due to periods of crying. Dr. Carter diagnosed a cervical disc herniation C3-4 and low back of questionable origin and took Claimant off work four to six weeks (Exhibit I).

Claimant treated with St. Louis University Hospital from March to November 2000. Claimant reported neck, shoulder, back, leg, and head pain with body numbness, intermittent left arm numbness and tingling, and muscle spasms. Claimant complained of feeling helpless, but not suicidal. Rodney O. Leacock, M.D., a neurologist, opined the May 1999 MRI of the cervical spine showed thecal sac compression to the left at C3-C4, most likely from an old degenerative disc or bony osteophyte.

Dr. Leacock opined Claimant's chronic pain was due to "stress related to depression and two crucial events from December 1997 and January 1998." On August 4, 2000, an MRI of the low back revealed disc bulging at L3-4 and L4-5 with central stenosis, and clumping of the cauda equine related to arachnoiditis (Exhibit I). Joseph E. Sherrell II, M.D., a neurologist, diagnosed arachnoiditis with no recommended surgical treatment.

Robert Sindel, M.D. examined Claimant August 22, 2004 at St. Alexius Hospital after she reported taking at least seventeen sleeping pills; stating she did not want to wake up. Claimant was very lethargic upon arrival. Claimant reported upper back pain and attributed her condition to the 1998 work injury. Claimant reported increased pain to her neck, back, tailbone, leg, left arm, chest, and head since the 1998 work altercation. Dr. Sindel diagnosed post traumatic stress disorder (PTSD), profound depression, suicidal attempt, and status post multiple traumas. Claimant was hospitalized and found Claimant to be opiate dependent. Claimant was released August 30, 2004 in partial remission and referred for outpatient treatment but no additional records are in evidence (Exhibit I).

FINDINGS OF FACT AND RULINGS OF LAW

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

Medical Causation

Claimant has the burden to establish that she sustained an injury by accident arising out of and in the course of her employment, and the accident resulted in the alleged injuries. *Choate v. Lily Tulip, Inc.*, 809 S. W. 2d 102, 105 (Mo. Ct. App. 1991). For an injury to be compensable, the evidence must establish a causal connection between the accident and the injury. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo. Ct. App. 1973).

Neck

I find Claimant did not sustain a compensable injury to her neck. Claimant's testimony was not credible regarding the events leading up to the injury including being setup with urine and rat poison, and attacks by co-workers. However even if Claimant sustained a work injury, I do not find it resulted in permanent disability.

No treatment records are in evidence until July 1998, six months after the second injury. The MRI showing the disc protrusion was taken in May, 1999, sixteen months after the second injury. Although doctors diagnosed cervical spine and left shoulder problems, no opinion connects the injury to work accidents in December 1997 or January 1998.

Dr. Leacock's chronic pain diagnosis is too vague to connect Claimant's neck condition to either the December 1997 or January 1998 injuries. Dr. Leacock's reference to "two crucial events in December 1997 and January 1998" does not establish a causal connection between the chronic pain and work injuries.

Even if Claimant sustained a work related neck injury, Dr. Leacock did not conclude Claimant sustained any permanent partial disability. Dr. Leacock diagnosed chronic pain. The dictionary defines chronic as: "1. lasting a long time or recurring often; said of a disease, and distinguished from acute. 2. Having had an ailment for a long time [a chronic patient]." However, I find no competent and substantial evidence that chronic pain is the same as permanent partial disability.

Dr. Cantrell is the only doctor to give an opinion regarding permanent disability. Dr. Cantrell diagnosed a left shoulder strain but found no anatomic pathology for Claimant's symptoms and noted Waddell symptoms. Dr. Cantrell's opinion is credible that Claimant sustained no permanent disability from the injuries.

Given the lack of causal connection between the neck condition and the work accident, I find Claimant did not show the accident resulted in neck injury.

Knee

I do not find Claimant has shown a causal connection between the January 1998 injury and her left knee complaints. Prior to 1998, medical records show Claimant had a "long history" of left leg pain after she fell on her left knee in 1991. Claimant reported a pain level of 8/10 at that time and received physical therapy and medication for her left knee. After the 1998 injury, no medical records show left knee complaints or treatment until August 1999, nearly two years after the injury.

Back

Claimant asserts she had two to three additional 'slipped discs' in her low back since December 1997. Prior to December 1997 Claimant asserts she only had two "slipped discs." "...Where there is a serious question of pre-existing disability and its extent, the proof of causation is not within the realm of lay understanding nor in the absence of expert opinion is the finding of causation within the competency of the administrative tribunal." *Griggs v. A.B.Chance Co.*, 503 S.W.2d 697,704 (Mo. Ct. App.1973).

I find Claimant did not meet her burden to show injury to her back due the January 1998 work injury. Claimant had significant low back problems prior to December 1997. Claimant completed ten weeks of physical therapy early in 1997. In May 1997, Claimant was referred to Incarnate Word Hospital Pain Center. Claimant received twenty-eight trigger point injections, three lumbar epidural injections, therapy, exercises, and medications, however she reported no improvement.

Claimant arrived at Maranatha Healthcare P.C. on September 9, 1997 for treatment and reported "pain in my back isn't getting any better, it still hurts." Claimant also reported no improvement by September 22nd and continued in therapy until at least November 25th, sixteen days before the first work injury. The following treatment records contain no mention of low back complaints: St. Louis University Hospital, Dr Chabot, Dr. Cantrell or Dr. Washington through January 1999.

I do not find Claimant credible regarding her back complaints. There is no mention of low back pain in treatment records until after a slip and twist incident occurred eighteen months later. On July 26, 1999 Claimant reported she slipped and twisted her back a month earlier while trying to avoid a fall. She complained of increased low back pain and was diagnosed with an acute lumbar strain.

It is interesting to note Claimant last worked in June 1999, which is the same time period the slip and twist incident occurred. In August, Claimant admitted to Dr. Carter she had back pain before the work injuries, but stated the pain had worsened since the December 1997 altercation. Without providing detail, Dr. Carter concluded the back pain was of questionable etiology.

Even if Claimant injured her back as a result of the altercation, there is no medical evidence she sustained "four to five slipped discs." A March 6, 1997 MRI of the low revealed L5-S1 degeneration with mild disc protrusion but no herniations. A 2000 MRI revealed disc bulging at L3-4 and L4-5 with central stenosis, and minimal bulging at L5-S1.

Dr. Leacock's causation opinion is not credible regarding Claimant's low back. The report contains no

medical history of low back pain or treatment. There is no indication Dr. Leacock reviewed Claimant's prior medical records and Claimant provided no history of previous back pain or extensive treatment. For these reasons, I find Claimant did not meet her burden to show a causal connection between her back condition and the January 1998 work injury.

Depression

Claimant asserts her depression resulted from two traumatic events which occurred during inmate altercations in December 1997 and January 1998 when she "was slammed against a wall, hit, and punched during inmate fights." Employer contends Claimant failed to show she sustained a mental injury resulting from a work injury.

An injury is compensable only if it is clearly work related, and an injury is "clearly work related" only if work was a 'substantial factor' in the cause of the injury and the resulting medical disability. Section 287.020. 2 RSMo 2000.

Whether Claimant's mental injury is compensable is based on proper application of the law and the credibility of expert testimony. Missouri has long held that psychological injuries, in addition to physical injuries, can fall under the coverage of the Workers Compensation Law. In *Thompson v. Railway Exp. Agency*, 241 Mo.App. 683, 688, 236 S.W.2d 36, 39 (Mo. Ct. App.1951), the court stated a neurosis can be compensable if a causal connection with an accident sustained in the course of employment is proven by "clear evidence," and that statement is reiterated in other opinions. See, i.e., *Todd v. Goostree*, 493 S.W.2d 411, 417 (Mo.Ct.App.1973); and *Webb v. Norbert Markway Const. Co.*, 522 S.W.2d 611, 615 (Mo.Ct. App. 1975). Recently, courts have stated that Missouri's Workers' Compensation Law compensates a worker for a mental condition if it is shown to have been directly and proximately caused by the accident. *McCormack v. Carmen Schell Const. Co.* 97 S.W.3d 497, 505 (Mo.Ct.App. 2002) (overruled on other grounds).

I find Claimant has not met her burden of establishing her January 1998 was a substantial factor in her current psychological condition. I do not find credible the testimony of Claimant and her daughter connecting the accidents to Claimant's depression and PTSD. It is also not clear how a lack of resources and other non-work factors may have impacted Claimant's depressed state.

Claimant failed to show the connection between the work injuries and her sleep behaviors, staying home, inability to work, and over medicating. Although evidence was presented concerning stress Claimant encountered at work prior to 1997, Claimant testified that her depression resulted from the two traumatic work accidents.

Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. *Landers v. Chrysler Corp.* 963 S.W.2d 275, 279 (Mo.Ct. App. 1997) See i.e., *McGrath v. Satellite Sprinkler Systems*, 877 S.W.2d 704, 708 (Mo.App.1994). Identifying the nature, cause and extent of a mental condition such as Claimant's is complex, and cannot be accomplished without expert medical evidence.

Medical evidence does not establish a causal connection between Claimant's mental injury and the 1998 work accident. Dr. Sindel's PTSD diagnosis does not identify the nature, cause or extent of Claimant's mental condition. Dr. Sindel's records indicate: "[Claimant] lives with her family, her daughters and others are embroiled in many petty and not so petty argumentative issues which [Claimant] takes to heart and cannot deal with." Dr. Leacock is the only doctor that found Claimant's chronic pain resulted from stress related to "depression and the two crucial events from December 1997 and January 1998." However, Dr. Leacock did not opine that the work injuries caused the depression. Dr. Leacock is not a psychiatrist and did not perform testing. He referred Claimant to Behavioral Medicine for further evaluation. For these reasons, Claimant has failed to show clear evidence that the depression was caused by the work injury.

Permanent Partial Disability (PPD)

Claimant seeks PPD for injuries sustained from the January 9, 1998 work injury. Employer contends Claimant failed to prove the nature and extent of disability, therefore did not meet her burden of proof to allow an

award of PPD.

A permanent partial award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991).

Dr. Cantrell found no permanent disability and Claimant provided no opinion that medically causally related her injuries to the work accidents in December 1997 or January 1998. The parties stipulated Claimant sustained an injury by accident, however, I find Claimant failed to show she was permanently and partially disabled due to either the December 1997 or January 1998 accidents.

Liability for past medical expenses

Claimant asserts Employer is liable for past medical expenses. At the hearing, Claimant asserted approximately \$60,000.00 was owed. Employer contends no medical expenses are owed as Claimant failed to show the injuries sustained were medically causally related to a work accident.

Section 287.140.3, RSMo 1986, requires a showing that compensable medical charges be "fair and reasonable for similar treatment of other similarly injured persons...." *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105, 111 (Mo.,1989). We believe that when such testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the commission to award compensation. *Id* at 111 -112.

I do not find Claimant met her burden to show Employer is liable for past medical expenses. At the hearing, Claimant did not identify the bills or relate them to treatment for her injuries. Claimant submitted medical expenses with the post-hearing brief totaling \$64,138.02 which are hearsay and not in evidence. Claimant provided no evidence that the medical expenses were fair and reasonable or related to the work accident. There is no evidence Employer refused to provide medical treatment. Under Section 287.140.1, Claimant has the right to seek medical treatment at any time at her expenses. Therefore, Employer is not liable for past medical expenses.

Attorney's Lien

Ms. Finley seeks \$3,500.00 for settlement negotiations reached with Employer plus \$1,951.28 in costs for a grand total of \$5,451.28. Claimant contends Ms. Finley is not entitled to the full amount because Ms. Finley did not take her case to trial as promised.

The Division is charged with approving reasonable attorney fees. Section 287.260.1 RSMo. 2000. The factors to be considered in determining reasonable value of attorney's fees in Missouri are time, nature, character and amount of services rendered, nature and importance of the litigation, degree of responsibility imposed on or incurred by the attorney, the amount of money or property involved, the degree of professional ability, skill and experience called for and used, and the result achieved. *See Cervantes v. Ryan*, 799 S.W.2d 111, 115 (Mo. Ct.App. 1990).

Ms. Finley testified she secured a settlement offer for Claimant for \$14,000.00 and incurred expenses for a rating examination, voluminous records, and copying fees. Exhibits I is the proposed stipulation for compromise settlement signed by Mr. Hart. Exhibit II contains details of each expense. As I previously found Claimant sustained on PPD, no attorney's fees or costs are awarded.

Second Injury Fund

Claimant filed a SIF claim, but SIF liability was not raised as an issue at the beginning of the hearing. Therefore, I find the issue is not before the Court pursuant to 8 CSR50-2.010(14).

CONCLUSION

Claimant did not meet her burden to show she sustained an accident which arose out of and in the course of employment and that the accident resulted in disability. No award is made for attorney's fees or costs. Employer is not liable for past medical expenses. The Second Injury Fund claim is denied.

Date: _____

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

[1] Employer and SIF stated they received Dr. Volarich's report but did not indicate they received "all records and reports received by Dr. Volarich from other health care providers" pursuant to Section 287.210.7.

[2] The Stipulation for Compromise Settlement is admitted for the limited purpose of evaluating the services rendered by Ms. Finley.

[3] Employer and SIF stated they received Dr. Volarich's report but did not indicate they received "all records and reports received by Dr. Volarich from other health care providers" pursuant to Section 287.210.7.

[4] The Stipulation for Compromise Settlement is admitted for the limited purpose of evaluating the services rendered by Ms. Finley.