

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

Injury No. 06-134256

Employee: Tina M. Worley

Employer: American Home Care Management, Inc.

Insurer: Missouri Retailers Insurance Trust

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 3, 2015. The award and decision of Administrative Law Judge Maureen Tilley, issued November 3, 2015, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 21<sup>st</sup> day of April 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

John J. Larsen, Jr., Chairman

---

James G. Avery, Jr., Member

---

Curtis E. Chick, Jr., Member

Attest:

---

Secretary

Employee: Tina Worley

Injury No. 06-134256

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**FINAL AWARD**

Employee: Tina M. Worley

Injury No. 06-134256

Dependents: N/A

Employer: American Home Care Management, Inc.

Additional Party: N/A

Insurer: Missouri Retailers Insurance Trust c/o Claims Management of Missouri, LLC

Hearing Date: July 8, 2015

Checked by: MT/kg

**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? On or about July 5, 2006.
5. State the location where the accident occurred or occupational disease contracted:  
Ste. Genevieve County, Missouri.
6. Was the employee in the employ of above employer at the time of the alleged incident or occupational disease? Yes.
7. Did the employer receive proper notice? Yes.
8. Did the accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was a Claim for Compensation filed within time required by law? Yes.
10. Was the employer insured by the insurer? Yes.

11. Describe the work that the employee was doing and how the accident happened or occupational disease contracted: The claimant, while in the course and scope of her employ, was lifting and turning a paraplegic patient when she injured her low back.
12. Did the accident or occupational disease cause death? No.
13. Part of the body injured by the accident or occupational disease: Low back – body as a whole.
14. Nature and extent of any permanent disability: Permanent total disability.
15. Compensation paid to date for temporary total disability: None.
16. Value necessary medical aid paid to date by the employer-insurer: None.
17. Value necessary medical aid not furnished by employer-insurer: See findings.
18. Employee's average weekly wage: \$365.50
19. Weekly compensation rate: \$243.67
20. Method wages computation: By agreement.
21. Amount of compensation payable: See findings.
22. Second Injury Fund liability: N/A
23. Future requirements awarded: See findings.

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: Lanzotti & Rau, LLC

## **FINDINGS OF FACT AND RULINGS OF LAW**

On July 8, 2015, the employee, Tina Worley, appeared in person and with her attorney, Sarah Heise, for a hearing for a final award. The employer was represented at the hearing by its attorney, Matthew Murphy. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

### **UNDISPUTED FACTS:**

1. Covered Employer: That the employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was fully insured.
2. Covered Employee: That on July 5, 2006, the employee was an employee of American Home Care Management in Ste. Genevieve County, Missouri, and was working under the Workers' Compensation Act.
3. Accident: That on or about July 5, 2006, the employee sustained an accident arising out of and in the course of her employment.
4. Statute of Limitations: That the employee's claim was filed within the time allowed by law.
5. Average weekly wage and rate: That the employee's average weekly wage was \$365.50 and the TTD, PPD and PTD rate is \$243.67.
6. Medical aid furnished by Employer-Insurer: That Employer-Insurer furnished no medical aid to Employee.
7. Temporary disability paid by Employer-Insurer: That Employer-Insurer paid to Employee no temporary total disability benefits.

### **ISSUES:**

1. Notice: Whether Employer had notice of Employee's accident.
2. Medical causation: Whether Employee's injury was medically causally related to the accident.
3. Previously incurred medical.
4. Future medical aid.
5. Temporary total disability.
6. Permanent total disability.
7. Permanent partial disability.

### **EXHIBITS:**

The following exhibits were offered and admitted into evidence:

#### Employee's Exhibits

1. Not admitted
2. Not admitted

3. Medicare Conditional Payment letter
4. Operating Engineers Local 513 Health & Welfare lien (not admitted; offer of proof made)
5. United States Bankruptcy Court Discharge of Debtor Case No. 10-50156
6. Deposition of Dr. David Volarich dated October 18, 2013
7. Deposition of Mr. James England dated October 29, 2013
8. Prior Division of Workers' Compensation records of Employee
9. Certified medical records and bills
10. Updated medical records and bills of Dr. Fan of Ste. Genevieve Physicians Clinic

Employer-Insurer's Exhibits

- A. Medical records of Bonne Terre Primary Care
- B. Records of Missouri Division of Employment Security
- C. Employment records of Employee
- D. Deposition of Debra Detring
- E. Deposition of Employee taken March 28, 2008
- F. Deposition of Employee taken June 29, 2010
- G. Deposition of Lisa Cassidy
- H. Deposition of Sharon Boyer
- I. Various records of United States Bankruptcy Court Discharge of Debtor; Case No. 10-50156
- J. Deposition of Dr. Chabot
- K. Deposition of Mr. Gary Weimholt

Employee's exhibits 1 (Medication list of Employee) and 2 (A list from Employee regarding activities that she is unable to do) were offered into evidence and were taken under advisement. After further consideration, these exhibits were not admitted into evidence. Employer-Insurer's Exhibit C was also offered into evidence. After further consideration, Employer-Insurer's Exhibit C was admitted into evidence.

**FINDINGS OF FACT:**

On or about July 5, 2006, Employee was rolling a 350 pound patient over when she sustained an injury to her back. Employee stated that she felt something pop and fell to her knees.

Employee testified at hearing that she notified her supervisor of her accident by telephone on the date of the accident. Employee stated that she filled out the paperwork requested by her supervisor a few days later.

Employee testified that she advised her supervisor that she was going to her regularly scheduled doctor appointment on July 10, 2006. She stated that her supervisor instructed Employee to report back to the supervisor with the doctor's opinion in regards to her back injury. Employee testified that she mentioned her work accident to her gynecologist.

Employee presented to her gynecologist at Ladies First on July 10, 2006. Due to a history of bladder infections, a urine panel was performed to rule out infection. When this came back negative, she was taken off work and referred to her family physician for a probable back strain. Employee provided that work slip to her Employer.

Employee was then seen on July 13, 2006, at Bonne Terre Primary Care with complaints of low back pain, worse on the left and into her buttocks and legs. At that appointment, Employee described her lifting incident with the paraplegic patient to her physician. A trigger point injection was performed over her left SI joint and into the sciatic notch due to radiation into the lower end of the left buttock. A diagnosis of sacroiliitis and sciatica was given and she was told to remain off work. Employee turned that off work slip in to her employer as well.

After her appointment with Nurse Practitioner Blue, Employee spoke with her supervisor and was put on light duty work. Employee testified that she told her supervisor that she could not lift or twist. According to Employee, the supervisor agreed to call Employee in the event that American Home Care had any light-duty work that Employee could provide. Employee testified that she spoke with her supervisor every four to five months to see if Employee could perform any light-duty work for American Home Care.

On October 4, 2006, Employee had an appointment with Dr. Paul Moniz. The medical records show that Employee's "Chief Complaint" was lower back pain for the past week and a half.

Employee sought work elsewhere in late 2006 into 2007. She testified that she did part-time, light cleaning for another home healthcare business for a short time. She was then able to secure a full-time job with a factory by the name of Silvanus on August 2, 2007. However, after attempting to perform that job for a little over a month, Employee left on September 6, 2007. She indicated that the work was simply too strenuous for her low back.

Employee testified that she was able, through a family connection, to obtain a job with National Vinyl on September 12, 2007. This was much lighter work and she was able to alternately sit and stand as needed throughout her shift. Employee stated that there were a number of days of missed work due to her low back injury. Employee kept that job until March 5, 2009.

After leaving National Vinyl, Employee filed for unemployment. Employee received unemployment benefits starting March of 2009. With the exception of a six month grace period, Employee was required to submit weekly reports to the division of unemployment stating that she was ready, willing, and able to work. After collecting unemployment benefits, Employee filed for social security disability benefits. In 2012, Employee filed bankruptcy. In the bankruptcy proceedings, \$405,878.37 in medical charges was extinguished. \$3,248.76 of medical bills was not extinguished in bankruptcy proceedings and remains outstanding.

When Employee applied to American Home Care, National Vinyl, and Silvanus, her applications indicated that she obtained a high school diploma. Employee testified that she does not have a high school diploma. Employee testified that American Home Care was aware that

she did not have a high school diploma, but the supervisor told her to put in her application that she did. Employee stated that she does not remember checking the box which indicated that she had no previous workers' compensation claims.

Employee testified that she experiences ongoing neck, hand, and back pain. Employee stated that some previous lower back pain was related to female medical issues and is not related to the 2006 injury. Employee also stated that after having a procedure in 2009, the female related back pain subsided. Employee testified that her neck pain began around 2009 and is not related to the 2006 back injury. On a pain scale of zero to ten, Employee described her neck pain as being ten plus and stated that her neck "feels like it's on fire." Employee's neck pain intensifies when looking up, down, and side to side.

Prior to 2006, Employee began having medical issues with her hands and wrists. These issues include bilateral carpal tunnel syndrome, cysts, and arthritis. Employee testified that the issues associated with her wrists and hands caused her to drop out of medical transcriptionist classes which she was taking from her home. Employee has elbow problems which started about three years ago, and right shoulder pain which started about a year and a half ago. Her elbow and shoulder pain make it difficult for her to lift, write, and move things. Employee testified that her hand, wrist, elbow, and shoulder pain are not related to her back injury.

### **Medical and Workers' Compensation Records**

On September 7, 2007, an MRI of Employee's lumbar spine revealed a small central herniated disk at the L4-5 level with mild disc desiccation. On August 3, 2009, another MRI of the lumbar spine showed no appreciable changes when compared to the prior MRI exam. On August 26, 2009, Employee was referred to Dr. Sonjay Fonn for evaluation of her low back pain. During her initial visit, Employee reported that she had back pain since 2007 after attempting to lift a heavy patient. The date of injury on the Claim for Compensation is July 5, 2006. On April 19, 2010, Dr. Sonjay Fonn performed a posterior lumbar interbody fusion and stabilization with laminotomy at L4-5 and L5-S1. On December 1, 2010, Dr. Fonn released her at maximum medical improvement with a restriction of no lifting more than fifty pounds.

### **Prior Missouri Workers' Compensation Records:**

On or about February 27, 2002, Employee filed a claim for compensation while employed with Parkland Health Center. The claim was for a back injury she incurred while helping a patient. The parties settled for a permanent partial disability of seven percent of the body as a whole.

On or about April 25, 2002, Employee filed another claim for compensation while employed with Parkland Health Center. The claim was for a back injury she incurred when a patient grabbed her. The parties settled for a permanent partial disability of three percent of the body as a whole.

Employee testified in her depositions that her back problems from her previous Workers' Compensation cases had resolved. Employee also stated that her low back problems from kidney or "female" problems had also resolved prior to her July 5, 2006 injury.

Medical Records, Claim for Compensation, and Report of Injury:

On June 28, 2006, Employee was diagnosed with menorrhagia for having abnormally heavy bleeding at menstruation.

On June 28, 2006, Employee complained of vaginal discharge and lower abdominal pain. She was diagnosed with possible endometritis and was placed on antibiotics.

Employee presented to her gynecologist at Ladies First on July 10, 2006. Due to a history of bladder infections, a urine panel was performed to rule out infection. When this came back negative, she was taken off work and referred to her family physician for a probable back strain. Employee testified that she provided that work slip to her employer.

Employee was then seen on July 13, 2006, at Bonne Terre Primary Care with complaints of low back pain, worse on the left and into her buttocks and legs. At that appointment, Employee described her lifting incident with the paraplegic patient to her physician. A diagnosis of sacroiliitis and sciatica was given and she was told to remain off work.

On October 4, 2006, Dr. Moniz's report indicated that Employee's back pain began a week and a half prior. Employee stated that the back pain had been getting worse over the last few days and was taking Percodan, but it did not help. She was scheduled for a procedure, cystoscopy, to help alleviate her female related issues, but the procedure was not performed because her insurance ran out. Because of her low back pain and blood in her urine, the doctor recommended x-rays to be taken of the lumbar spine, kidneys, ureters, and urinary bladder.

On October 11, 2006, the medical records issued by Dr. Schaefer from Mineral Area Regional Medical Center state, "The vertebrae are intact in their height and normally aligned. There is no disc space narrowing or hypertrophic lipping." No records indicate kidney, ureters, or urinary bladder x-rays.

On July 23, 2007, Dr. Balacuit referred Employee to a urologist because she complained of low back pain and leg cramping.

On August 13, 2007, Employee was again referred to a urologist to evaluate her complaints and was started on Tylenol #3. She was diagnosed with a hematuria. She complained of back pain. Employee missed her cystoscopy appointment and failed to reschedule. Although x-rays indicated slight decreased disc height at L5-S1, the x-rays revealed no lumbar compression or anterior displacements.

On August 28, 2007, Employee was diagnosed with bilateral carpal tunnel disease. The record indicated that she had a history of back pain and recommended an MRI. She was started on Ultram, Cipro, and Tylenol with Codeine.

On September 7, 2007, Dr. Finnell noted that Employee had a history of scoliosis. She complained of tingling and numbness in the upper and lower extremities. The MRI revealed evidence of a small central disc herniation at L4-5.

On October 4, 2007, Dr. Modh noted that Employee complained of back pain that had started one week prior. Employee reported that the pain began on September 30, 2007 when she was riding in a truck. The pain radiated into the right buttock and right leg below the knee. She rated her pain as 10/10. She was diagnosed with low back pain and started on a steroid pack. No mention of a work-related injury was documented.

On October 10, 2007, Employee was evaluated by Dr. Modh because of a herniated disc.

On November 2, 2007, Employee filed a claim with the Division of Workers' Compensation for an injury that was alleged to have occurred on July 5, 2006.

The Report of Injury was filed with the Division of Workers' Compensation on November 20, 2007. The Report of Injury stated that the employer was notified of the accident on November 8, 2007.

On November 15, 2007, Employee was evaluated by Dr. Modh because of back pain.

On December 11, 2007, the nurse practitioner in Dr. Finnell's office noted that Employee was using Baclofen for back pain, but Employee was evaluated because of sinus congestion.

On January 2, 2008, Employee complained of low back pain. Employee had cancelled her appointment with Dr. Modh, who had requested injections. Pain management for her back pain was recommended. It was noted that her examination was inconsistent with her symptoms. She has some pain and tenderness, but was able to sit and walk in and out of the office without any significant problem. Dr. Finnell prescribed Naprosyn and Medrol Dosepak because Employee stated they helped in the past.

On April 22, 2008, Dr. Balacuit diagnosed Employee with low back pain, acute sinusitis, and pharyngitis. Her complaints included low back pain, no energy, and feeling dehydrated. She was started on physical therapy for one day.

On June 20, 2008, Employee did not complain of back pain, but her complaints involved dizziness and pain on her left side. Employee stated that at work, she was shaking and felt lightheaded. Her spine examination was described as normal.

On July 23, 2008, Dr. Finnell evaluated Employee and refilled her Baclofen. She complained of back pain, fatigue, and nausea. It was recommended that she see Dr. Modh for pain management.

Employee was initially seen by Dr. Chabot, at Employer-Insurer's request, on August 25, 2008. Dr. Chabot stated that Employee alleged that she sustained her back injury at work on July 5, 2006, in the performance of her work duties as a home health aide. He stated "in actuality, she describes a progression of back pain symptoms that occurred over the course of several weeks. He stated that she cannot recount any one specific event. He stated that the records indicate that she had gynecological/pelvic complaints at the same time. He stated that there was a suggestion that her symptoms may be associated her strain injury at work, but a specific work event cannot be recounted. He further stated that Employee was treated conservatively for a couple of months by Dr. Moniz. Dr. Chabot opined that there was not a

causal relationship between the patient's continued problems and complaints with respect to Employee's alleged work injury of July 5, 2006. He stated that Employee's July 5, 2006 injury is not the prevailing factor for her continued problems and complaints. Dr. Chabot also opined that the medical treatment initially performed by the physicians at Dr. Moniz's office for the first month following Employee's injury was reasonable and necessary. He stated that the note from Dr. Moniz dated October 4, 2006, would suggest that she had recurrence of back pain symptoms on or about October 2006 not related to the alleged work injury of July 5, 2006. He stated that the records would indicate that she was employed at a different location at that time.

July 30, 2009, Employee saw Dr. Finnell. Employee presented with complaints of back pain. Employee was diagnosed with low back pain. Employee was started on Norco until she could see a pain management specialist. It was recommended that she undergo an MRI study of the lumbar spine. She was diagnosed with a history of chronic back pain.

August 10, 2009, Employee fell and hurt her ankle.

On August 29, 2009, Dr. Fonn evaluated an MRI study from August 3, 2009 which revealed evidence of a small broad-based disc bulge and annular tear at L4-5. It was recommended that Employee see a physical therapist.

On September 2, 2009, Mid America Physical Therapy record notes that Employee complained of low back pain that started two years ago when she was turning a paraplegic patient at work.

On February 3, 2010, Employee had persisting back pain and was continued on medications. Dr. Fonn recommended that she undergo epidural steroid injections.

On February 18, 2010, Employee received an epidural steroid injection.

On February 25, 2010, Employee received a second epidural steroid injection.

On March 4, 2010, Employee received a third and final epidural steroid injection.

On March 10, 2010, the injections offered poor relief of her symptoms. Dr. Fonn recommended that she undergo discograms to determine the source of her back pain.

On March 16, 2010, Dr. Fonn's note indicates that Employee underwent discograms. It was noted that Employee had discordant pain at L2-3 and L3-4 and concordant pain at L4-5 and L5-S1.

On March 24, 2010, Dr. Fonn indicated, based on the discograms, that Employee was a candidate for a 2-level fusion from L4 to S1.

On April 10, 2010, Dr. Fonn performed surgery on Employee to repair a disc herniation and annular tear.

On April 23, April 27, and May 4, 2010, Employee appeared for post-surgery evaluations.

On May 19, 2010, Employee's preoperative signs and symptoms had resolved. It was recommended that Employee continue wearing the brace and that a CT scan be performed in ten weeks.

On July 28, 2010, Employee was taken out of the brace because the CT scan revealed good fusion and good bony growth through the prior surgical site. Dr. Fonn also recommended physical therapy.

On September 29, 2010, Employee saw Dr. Fonn and complained of SI pain and was continued on physical therapy. It was recommended that she undergo SI injections.

On October 12, 2010, Employee saw Dr. Fonn. Employee complained of back pain radiating into the right lower extremity. It was noted that she was doing well and had great relief of her symptoms, but then presented with complaints of achiness in the right SI region.

On November 9, 2010, a note from Dr. Fonn stated that Employee received her first injection to the right SI region.

November 16, 2010, a note from Dr. Fonn stated that Employee received her second injection to the right SI region.

On November 23, 2010, a note from Dr. Fonn stated that Employee received her third and final injection to the right SI region.

On December 1, 2010, Employee was released at maximum medical improvement. Dr. Fonn placed a fifty pound weight lifting restriction on Employee.

On January 26, 2011, Dr. Fonn suggested Employee follow through with pain management.

On February 10, 2011, Employee sought a second opinion regarding her lower back pain with Dr. Pasia. Employee complained of low back pain radiating into her hips. It was recommended that she do some home exercises, stop smoking, and use anti-inflammatory medication for pain. It was further noted that the only limitation placed on her was not to lift greater than fifty pounds.

Dr. Antonio noted low back pain on March 11, 2011.

Dr. Bashir recommended epidural steroid injections and possible facet block injections on April 5, 2011. Dr. Fonn also noted SI joint pain in May of 2011 and recommended another MRI.

Dr. Bashir recommended a caudal epidural steroid injection on May 17, 2011 and refilled her medications in July.

Dr. Chabot performed a second IME on May 17, 2011.

On October 24, 2011, Dr. Volarich performed an IME of Employee.

Employee continues to seek pain management through Dr. Fan of Ste. Genevieve Physicians Clinic.

Dr. Fonn:

On July 12, 2010, Dr. Fonn responded to questions sent by Employee's attorney. First, Dr. Fonn stated that Employee's work-related injury is a substantial contributing factor to her current medical status and diagnosis. Second, Dr. Fonn stated that his treatment suggestions are necessary and reasonable to cure and aid her work related injury. Third, Dr. Fonn stated that Employee's need to be off work since the work injury is a direct result of the injury sustained on July 5, 2006.

Dr. Chabot:

Dr. Chabot opined that the prevailing factor in the Employee's recurrent back complaints is chronic degenerative changes involving the lumbar spine and that the work injury of July 5, 2006, is not the prevailing factor in her recurrent back complaints.

Dr. Chabot stated that Employee had a history of back pain and an injury in 2002 for which she received a PPD rating. She had evidence of degeneration involving primarily the L4-5 level on the MRI study performed in 2007. Dr. Chabot stated that he does not appreciate evidence of acute changes involving the disc on that study. He also stated that there was no specific documentation of a work injury associated with the onset of her back complaints. He stated that it would appear from the medical records from Dr. Moniz, Dr. Finnell, and Dr. Balacuit that her complaints were intermittent. He stated that the first mention of back pain radiating into the right lower extremity was on October 4, 2007, by Dr. Balacuit and was noted to arise on September 30, 2007, when she was riding in a truck.

Dr. Chabot opined that the prevailing factor in the patient's recurrent back complaints was chronic degenerative changes involving the lumbar spine, more specifically at the L4-5 level. He stated that he did not appreciate significant degenerative changes at the L5-S1 level on her prior diagnostic studies.

Dr. Chabot opined that the treatment the patient received was not associated with Employee's alleged work injury of July 5, 2006.

Dr. Chabot opined that the surgery rendered to the patient by Dr. Fonn was associated with chronic degenerative changes involving the lumbar spine and not her work injury of July 5, 2006.

Dr. Chabot opined that all treatment rendered to Employee was associated with chronic degenerative changes involving the lumbar spine and not her specific work injury of July 5, 2006.

Dr. Chabot opined that the Employee has not sustained any PPD associated with her July 5, 2006 injury. Dr. Chabot opined that Employee should be given an additional 10% permanent partial disability to the Body as a Whole due to Employee's ongoing chronic condition. This would be a total of twenty percent when adding same to Employee's prior workers' compensation settlements. Dr. Chabot's report stated that Employee has reached maximum medical improvement but will require ongoing pain management.

Dr. Chabot further recommends that Employee is restricted to occasionally lifting twenty-five pounds and more frequent lifting in the five to ten pound range. Work duties that require repetitive bending, squatting, and twisting are not tolerable for Employee. Dr. Chabot states that his recommendations are not based on her work injury of July 5, 2006, but are based on her chronic back pain symptoms and prior surgery.

Dr. Volarich:

Dr. Volarich opined that the accident that occurred on July 5, 2006, is the substantial contributing factor, as well as the prevailing or primary factor causing her lumbar radiculopathy. Dr. Volarich stated that "the pain associated with Employee's lumbar radiculopathy is secondary to her discogenic pain from disc protrusions and annular tears that ultimately required surgery." Dr. Volarich also stated that Employee has achieved maximum medical improvement and will require ongoing pain management. In addition, Dr. Volarich recommends Employee receive ongoing psychiatric care.

Dr Volarich opined that Employee will need:

"ongoing care for her pain syndrome using modalities including but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy and similar treatments as directed by the current standard of medical practice for symptomatic relief of her complaints. Ms. Worley will require ongoing pain management for her post-laminectomy syndrome. Epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units, radiofrequency ablation procedures, chronic oral pain medication, as well as consideration to a spinal cord stimulator should also be made."

Dr. Volarich opined that Employee has sustained a sixty-five percent permanent partial disability of the body as a whole rated at the lumbar spine. He also refers Employee to psychiatry for an assessment of her psychiatric disorders. Dr. Volarich believes that a loading factor should be added because the combination of her disabilities creates a substantially greater disability than the simple sum or total of each separate injury/illness.

In his report, Dr. Volarich commented on Dr. Chabot's IME report on October 24, 2011. He stated that Dr. Chabot noted that Employee quit her job voluntarily and accepted another job. He stated that Employee told Dr. Volarich that she could no longer do that job because of the lifting required. Dr. Volarich also notes that Dr. Chabot stated that Employee could not recall any specific event responsible for the onset of her complaints. However, Dr. Volarich stated that Employee stated that she was injured on July 5, 2006, at American Home Care. Dr. Volarich

also stated that Dr. Chabot noted a long history of established back pain symptoms with two prior injuries dating back to 2002. However, Dr. Volarich stated that Employee denied any ongoing complaints from either of these injuries. Dr. Volarich also notes that Dr. Chabot stated that Employee was tolerating work duties at National Vinyl. Dr. Volarich stated that Employee explained to him that she took off work several times due to ongoing low back pain that radiated into her legs and feet, and estimated she missed about one week per month.

In a letter to Employee's attorney, dated April 11, 2013, Dr. Volarich stated that after a review of Employee's vocational assessment, it is his opinion that Employee is permanently and totally disabled as a direct result of the work related injury of July 5, 2006, standing alone.

#### Vocational Rehabilitation Evaluations:

Gary Weimholt interviewed Employee on June 5, 2015. Mr. Weimholt is of the opinion that from a vocational rehabilitation standpoint, Employee remains employable and placeable in the open competitive labor market. Mr. Weimholt took several factors into consideration when reaching his conclusion.

Mr. Weimholt opined that after the injury on July 5, 2006, Employee demonstrated the ability to obtain sedentary employment in semi-skilled occupations. Second, of the occupations suitable for Employee, there are approximately 560 yearly job openings within the general area of Employee's residence. The occupations identified in Employee's interest profile and which are suitable given the restrictions placed on Employee by Dr. Fonn and Dr. Chabot include: Dispatcher, Insurance Policy Processing Clerk, Clerical General/Office, Switchboard Operator, Receptionist, Motel Desk Clerk, Bookkeeping Clerk, Customer Service Representative, Office and Administrative Support Worker, and Telemarketer. Third, based on Dr. Volarich's restrictions, Employee would be able to perform some sedentary occupations such as reception work or other general office work.

James England interviewed Employee on April 1, 2013. Mr. England opined that based on Dr. Chabot's restrictions, Employee would be precluded from most of her past work. However, she would still be able to function as a receptionist, 911 dispatcher, or medical transcriptionist. Mr. England opined that based on Dr. Volarich's restrictions and Employee's description of her day-to-day functioning, Employee may very well be able to obtain a job, but she will not likely be able to sustain it in the long run. In reaching this conclusion, Mr. England opined that there is no job setting that will allow someone to recline up to half the day to deal with pain.

#### **RULINGS OF LAW:**

##### ***Issue 1. Notice***

Section 287.420, RSMo maintains that "[n]o proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice."

In the present case, Employee credibly testified at hearing that she notified her supervisor of her accident by telephone on the date of the accident, and then filled out the paperwork requested by her supervisor a few days later. This was clearly within the thirty days required by law, and Employer presented no evidence to contradict Employee's testimony. Therefore, I find that Employer had notice of Employee's accident as required by law.

### ***Issue 2. Medical causation***

Employee credibly testified that on July 5, 2006, she rolled a 350 pound patient over. Employee stated that she felt something pop and fell to her knees. Employee was then seen on July 13, 2006, at Bonne Terre Primary Care with complaints of low back pain, worse on the left and into her buttocks and legs. At that appointment, Employee described her lifting incident with the paraplegic patient to her physician.

Dr. Fonn, Dr. Volarich, and Dr. Chabot gave opinions regarding medical causation in this case.

Dr. Fonn, Employee's treating physician, stated that Employee's work-related injury is a substantial contributing factor to her current medical status and diagnosis.

Dr. Volarich opined that the accident that occurred on July 5, 2006, is the substantial contributing factor, as well as the prevailing or primary factor causing her lumbar radiculopathy. Dr. Volarich stated that "the pain associated with Employee's lumbar radiculopathy is secondary to her discogenic pain from disc protrusions and annular tears that ultimately required surgery."

Dr. Chabot opined that the prevailing factor in the Employee's recurrent back complaints is chronic degenerative changes involving the lumbar spine and that the work injury of July 5, 2006, is not the prevailing factor in her recurrent back complaints.

Dr. Chabot based his opinion, in part, on his conclusion that there was no specific documentation of a work injury associated with the onset of her back complaints. However, Employee credibly testified that she filled out paperwork regarding her accident a couple of days after the accident occurred. Furthermore, Employee was seen at Bonne Terre Primary Care with complaints of low back pain on July 13, 2006. The medical records note that Employee described her lifting incident with the paraplegic patient to her physician.

Dr. Volarich made some comments regarding Dr. Chabot's IME report. Dr. Volarich stated that Dr. Chabot noted a long history of established back pain symptoms with two prior injuries dating back to 2002. However, Dr. Volarich stated that Employee denied any ongoing complaints from either of these injuries. Employee testified in her depositions that her back problems from her previous Workers' Compensation cases had resolved. Employee also stated that her low back problems from kidney or "female" problems had also resolved prior to her July 5, 2006 injury.

Dr. Volarich also noted that Dr. Chabot stated that Employee was tolerating work duties at National Vinyl. Dr. Volarich stated that Employee explained to him that she took off work several times due to ongoing low back pain that radiated into her legs and feet, and estimated she

missed about one week per month. Furthermore, Employee testified at the hearing that she was able, through a family connection, to obtain a job with National Vinyl on September 12, 2006. Employee stated that this was much lighter work and she was able to alternately sit and stand as needed throughout her shift. Employee stated that there were a number of days of missed work due to her low back injury.

Based on all of the evidence presented, including the medical records and Employee's credible testimony, I find the opinion of Dr. Fonn and Dr. Volarich are more credible than Dr. Chabot on the issue of medical causation. Furthermore, I find Employee's work at American Home Care Management, Inc. was the prevailing factor in causing Employee's injury and medical condition to her low back. Furthermore, I find that Employee's injury to her low back was medically causally related to her accident on July 5, 2006.

### ***Issue 3. Previously Incurred medical aid***

“No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder.” RSMo. § 287.270.

In *Farmer-Cummings v. Personnel Pool of Platte Co.*, the Missouri Supreme Court held that it is a defense of the employer to establish that the Claimant was not required to pay the billed amounts, that her liability for the disputed amounts was extinguished, and that the reason that her liability was extinguished does not otherwise fall within the provisions of section 287.270, i.e. collateral sources such as Claimant's private health insurance. 110 S.W.3d 818, 823 (Mo. 2003). Furthermore, the Missouri Supreme Court stated that if the employer “establishes by a preponderance of the evidence that the healthcare providers allowed write-offs and reductions for their own purposes and [the Claimant] is not legally subject to further liability, she is not entitled to any windfall recovery.” *Id.*

In the present case, Claimant's previous incurred medical bills were extinguished in bankruptcy, and, therefore were not satisfied by collateral sources. At trial, Claimant testified that she had incurred \$409,127.13 in medical expenses related to her back injury. However, in 2012, Claimant filed bankruptcy. In the bankruptcy proceedings, \$405,878.37 in medical charges was extinguished, and \$3,248.76 in medical charges remain outstanding. As a result, Claimant is no longer responsible and will never be responsible for \$405,878.37 in medical expenses. Because the extinguished amount does not fall within the provisions of section 287.270, Claimant is not entitled to recover those amounts. As such, it is proven that Claimant will never be liable for the \$405,878.37.

The employer is only obligated to pay the outstanding balance of \$3,248.76 which was not extinguished in Claimant's bankruptcy proceedings.

***Issue 4. Claim for additional or future medical aid***

The Employee is requesting an Award of future medical aid. To be entitled to the same the employee must establish that it is a reasonable possibility that she will need future medical care. Forshee v. Landmark Excavating and Equipment, 165 S.W. 3d 533 (Mo.App. E.D. 2005) To satisfy this requirement the employee offered the medical opinion of Dr. Volarich.

In Dr. Volarich's report dated October 24, 2012, he stated that the Employee would require:

“ongoing care for her pain syndrome using modalities including but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy and similar treatments as directed by the current standard of medical practice for symptomatic relief of her complaints. Ms. Worley will require ongoing pain management for her post-laminectomy syndrome. Epidural steroid injections, foraminal nerve root blocks, trigger point injections, TENS units, radiofrequency ablation procedures, chronic oral pain medication, as well as consideration to a spinal cord stimulator should also be made.”

In addition, Employee has demonstrated the need for continued care in line with Dr. Volarich's recommendations as she has continued to seek care from Dr. Fan at Ste. Genevieve Physicians Clinic for pain management throughout the years since her release from care by Dr. Fonn in December of 2010.

The Employee's medical evidence clearly demonstrates that in order for the employee to maintain her current state she requires ongoing pain management, physical therapy, and similar treatments under a physician's care.

I find that the medical care referred to by Dr. Volarich is medical care that is necessary to cure and aid the work related injury. It is also of the same nature of the medical care that the employee has undergone since the date of her release from Dr. Fonn. I find that the medical report and deposition of Dr. Volarich established that there is a reasonable possibility that the employee will continue to need future medical care to cure and aid the work-related injury. It is therefore a reasonable possibility that the employee will need future medical care to cure and aid her work-related injury.

***Issue 5. Temporary total disability: Whether the Employee is entitled to TTD benefits from July 5, 2006, to December 1, 2010.***

To be entitled to temporary total disability benefits the Employee must show that she is unable to compete in the open labor market. Further, TTD benefits are to cover the Employee during the healing period. Tilley v. USF Holland Inc., 325 S.W.3d 487 (Mo. App. E.D. 2010).

In this case the Employee is claiming temporary total disability benefits from July 5, 2006, to December 1, 2010.

At hearing, Employee testified that she contacted her Employer asking for light-duty work that did not involve lifting heavy patients, such as the person she was lifting when she was injured on or about July 5, 2006, but was never offered any. Therefore, Employee sought work elsewhere.

In his report of July 12, 2010, Dr. Fonn opined to a reasonable degree of medical certainty that Employee's "need to be off work since the work injury is a direct result of her injury that she suffered on 07/05/2006."

According to employment records, Employee worked at Silvanus from August 2, 2007, to September 6, 2007. According to employment records, Employee worked at National Vinyl from September 12, 2007, to March 5, 2009.

After Employee was laid off from National Vinyl, she filed for unemployment at some point in March of 2009.

Taking all of this into consideration, I do not believe that an employer in the normal course of its business would reasonably be expected to hire the employee during the period from July 6, 2006, through August 1, 2007. This equals 56 weeks of temporary total disability. Therefore, Employer-Insurer is directed to pay Employee \$13, 645.52 in temporary total disability benefits. From August 2, 2007, through March 5, 2009, Employee was employed and therefore not entitled to temporary total disability.

RSMo. §287.170.3. states "An employee is disqualified from receiving temporary total disability during any period of time in which the claimant applies and receives unemployment compensation."

After leaving National Vinyl, Employee filed for and received unemployment benefits. Employee received unemployment benefits starting March of 2009. Therefore, pursuant to Section 287.170.3, RSMo., Employee is disqualified from receiving temporary total disability from March of 2009, until the employee reached maximum medical improvement, because she received unemployment benefits.

#### ***Issue 6. Permanent total disability***

The Employee is making a claim for permanent and total disability. To determine whether or not she is entitled to the same she must demonstrate that given her situation and condition she is unable to compete in the open labor market. Reed v. Associated Electric Cooperative, Inc., 302 S.W.3d 693 (Mo. App. S.D. 2009), Reiner v. Treasurer of the State of Missouri, 837 S.W.2d 363, 367 (Mo. App. 1992) Total disability means the "inability to return to any reasonable or normal employment." Brown v. Treasurer of the State of Missouri, 795 S.W.2d 479, 483 (Mo. App. 1990). To analyze this the perspective of an employer is taken and then it is determined whether an employer in the usual and ordinary course of its business could be reasonably expected to employ the Employee. Garrone v. Treas. of Mo., Second Injury Fund, 157 S.W. 3d 237, 243 (Mo. App. E.D. 2004).

Dr. Volarich opined that Employee is permanently and totally disabled as a direct result of the work-related injury of July 5, 2006, standing alone.

Dr. Volarich placed the employee on the following restrictions:

1. She is advised to avoid all bending, twisting, lifting, pushing, pulling, carrying, climbing and other similar tasks to an as needed basis;
2. She should not handle weight greater than 15 pounds, and limit this task to an occasional basis assuming proper lifting techniques;
3. She should not handle weight over her head or away from her body, nor should she carry weight over long distances or uneven terrain;
4. She is advised to avoid remaining in a fixed position for any more than about 20-30 minutes at a time including both sitting and standing;
5. She should change positions frequently to maximize comfort and rest when needed including resting in a recumbent fashion; and
6. She is advised to pursue an appropriate stretching, strengthening, and range of motion exercise program in addition to non-impact aerobic conditioning such as walking, biking, or swimming to tolerance daily.

Dr. Chabot stated in his October 24, 2011 report that the employee “could probably perform work duties in the light-medium classification with maximum lifting of 25 pounds occasionally and more frequent lifting in the 5-10 pound range. Work duties that require repetitive bending, squatting, and twisting would not be tolerated by this individual.”

The vocational experts in this case have divergent opinions. Mr. England took into consideration both Dr. Volarich and Dr. Chabot’s restrictions. He also took into consideration Employee’s own estimation of her abilities and her statements as to her daily level of functioning. Mr. Weimholt also took into consideration the opinions of Drs. Volarich and Chabot and Employee’s statements as to her level of functioning. Mr. Weimholt, Employer’s own vocational expert, admitted as follows: “[d]epending upon how the need to rest and including a recumbent fashion is interpreted she may not be able to perform even sedentary work as it is typically performed.”

Mr. England opined that based on Dr. Volarich’s restrictions and Employee’s description of her day-to-day functioning, Employee may very well be able to obtain a job, but she will not likely be able to sustain it in the long run. In reaching this conclusion, Mr. England opined that there is no job setting that will allow someone to recline up to half the day to deal with pain.

Employee attempted to continue to work. Employee worked at Silvanus for a short period of time. However, she quit working there because the work was too strenuous on her back. Employee then obtained a job at National Vinyl through a family friend. Employee was able to sit and stand as needed throughout her shift. Furthermore, Employee missed a substantial number of days of work because of her medical condition. Eventually, Employee lost this job because of layoffs at the factory. Employee then applied for and received unemployment compensation. Employee has not worked since she was laid off from National Vinyl, the job she obtained through a family connection.

Based on all of the evidence presented, including the testimony of Employee and the work restrictions placed upon Employee, I find that the opinions of Dr. Volarich and Mr. England are more persuasive than that of Dr. Chabot and Mr. Weimholt.

The employee offered testimony regarding the impact that her work injuries have had upon her and her daily ability to function. I find her testimony to be credible. With the work limitations, need to change positions, need for continued medicine, level of pain, need for assistive devices and physical limitations; I find that no employer in the usual and customary of its business could reasonably be expected to employ the employee. Furthermore, based on all of the evidence presented, I find that Employee is permanently and totally disabled as a direct result of the work related injury of July 5, 2006, standing alone.

The Employer-Insurer is therefore directed to pay the employee the sum of \$243.67 per week commencing on December 2, 2010, and said weekly benefits shall be payable during the continuance of such permanent total disability for the lifetime of the employee pursuant to Section 287.200.1, unless such payments are suspended during a time in which the employee is restored to her regular work or its equivalent as provided in Section 282.200.2.

***Issue 7. Permanent partial disability***

Based on the finding of permanent total disability, the issue of permanent partial disability is moot as shall not be ruled upon.

**ATTORNEY'S FEE:**

The Law firm Lanzotti & Rau, LLC, 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:

---

Maureen Tilley  
*Administrative Law Judge*  
*Division of Workers' Compensation*