MISSOURI WORKERS' COMPENSATION

CASE LAW UPDATE

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Claimant's Fall on Path Cleared by Employer Compensable

In **Savage v. Kaiser Electric,** Injury No. 13-016943, the claimant worked as a journeyman electrician. On the date of the alleged injury, the claimant arrived at the job site and went into the trailer in which he and his co-workers received their assignments. Also in the trailer at this time was Mr. Gerling, the claimant's foreman, who advised the claimant and other workers to use a specific pathway that he had cleared. The claimant walked out of the trailer and slipped on the pathway Mr. Gerling had cleared. At a hearing, an ALJ found the claimant's injury compensable.

On appeal, the employer/insurer argued that the extension of premises doctrine barred recovery. The Commission disagreed with this argument and stated that since Mr. Gerling cleared snow from the pathway in which the claimant fell, the employer exercised control over that area. Furthermore, the pathway in which the claimant was walking was a customary and acceptable route that employees used to depart from the job site trailer. Therefore, the Commission affirmed the decision of the ALJ.

Claimant's Fall on Lunch Break in Employer's Lunch Room Compensable

In **Wright vs. Roto-Rooter Services Co.**, Injury No. 11-110863, the claimant was injured when the chair he was seated in at work collapsed. He settled his claim against the employer and proceeded to a hearing against the Fund. At the hearing, the ALJ found in favor of the claimant.

On appeal, the Fund argued that the claimant's injury came from a risk to which he was equally exposed to in his normal non-employment life. The Commission disagreed and stated that the claimant was not exposed to the risk of that particular chair collapsing under him. Additionally, the Fund argued that the claimant's injury was not compensable because he was on lunch break when his chair collapsed and was not working. The Commission again disagreed and stated that the extension of premises doctrine applied because the claimant was in the employer's lunch room, which was property controlled by the employer. Therefore, the Commission found that it did not matter that the claimant was not working when he was injured because the injury occurred prior to or subsequent to the performance of his job duties and he was on the premises which was controlled by the employer.

Claimant's Fall Compensable After Syncopal Episode Due to Sleep Pattern

In **Riggins v. My Camp**, Injury Nos. 11-019035, 11-102401, the claimant was 13 hours into her second consecutive 17.5 hour work shift when she fell and injured her foot/ankle. The claimant testified that she remembered reaching for her purse, but nothing else until after the fall. The St. Francis Medical Center record from her date of injury states that she had a syncopal episode, did not have good memory of the event, and the doctors did not have a good explanation for her syncope. One of the claimant's experts, Dr. Schwartz, opined that the claimant's work schedules contributed to changes in the sleep-awake pattern which lead to a circadian disorder consistent with a type of sleep schedule disorder. He believed that condition was the prevailing factor in her loss of consciousness.

The employer/insurer obtained a report from Dr. Eisenstein who believed there was inadequate evidence to diagnose the sleep schedule disorder as that diagnosis would require a schedule of her work shifts over the course of at least one month. Dr. Eisenstein stated the claimant was likely sleep deprived but there was no evidence that she had a disorder. At a hearing, an ALJ found that the claimant's long overnight work shifts were a "risk source" to which she was not equally exposed to in her normal non-employment life. Therefore, the matter was found compensable.

On appeal, the employer/insurer argued that the claimant's injuries should be denied as she failed to identify a specific risk or hazard that caused the accident. However, the Commission disagreed with this assertion and stated that the claimant did identify a specific risk or hazard that caused her incident, namely, her work schedule and resulting circadian misalignment and sleep deprivation.

One Commission member dissented and argued that there was no evidence on the record of the claimant's normal sleep patterns and her off-work time. Therefore, the claimant did not establish that she slept less due to her work schedule than she would have in her normal non-employment life.

Traveling Nurse's Fall on Client's Stairs Compensable

In **West v. Pheonix Home Care**, Injury No. 14-006600, the claimant was an LPN and her duties required her to travel and provide home health services. She was compensated for her mileage. On her date of injury, she arrived at a home and as she was walking up the steps, she slipped and fell on ice. The employer/insurer argued the claimant's injury was outside the course and scope of her employment because she had not yet clocked in or arrived for work. At a hearing, an ALJ found the injury compensable. On appeal, the Commission affirmed and noted there is no requirement that the claimant be "on the clock" to be in the course and scope of her employment. The Commission stated traveling was part of the claimant's duties and she was essentially traveling into the home when she fell.

Claimants Need Not Compare Their Stress to Similarly Situated Employees for Psychiatric Injuries

In **Mantia v. MODOT**, Injury No. 08-096413, the claimant was employed as a highway worker and her duties involved assisting and providing traffic control at scenes of motor vehicle accidents. The claimant would respond to the worst of accidents, which often included fatalities. She alleged psychiatric disability as a result of an occupational disease. Dr. Jovick, the claimant's psychiatric expert, and Dr. Stillings, the employer/insurer's psychiatric expert both agreed that the claimant's job duties were the prevailing factor in her psychiatric condition. Despite this, at a hearing, the ALJ denied compensability largely on the basis that the claimant's co-workers were routinely exposed to the same experiences and therefore, she did not show that her work exposure was extraordinary and unusual as compared to other highway workers or similarly situated employees.

On appeal, the Commission reversed. The Commission essentially went on to hold that claimants need not compare themselves to similarly situated employees in order to satisfy the burden that their stress was extraordinary and unusual as measured by objective standards. The Commission stated that all cases requiring claimants to compare their stress to similarly situated employees pre-dated the 2005 amendments and the plain language of the Statute does not require such a comparison. Therefore, the Commission stated that the claimant had met her burden and awarded 50% disability of the body.

Expert's Notice Defense Failed Due to Their Expert's Misdiagnosis

In **Brown vs. Nestle Purina Petcare Company**, Injury No. 05-144425, the claimant alleged that she sustained asthma as a result of occupational exposure to products and chemicals in cat litter. The employer/insurer's expert, Dr. McCants diagnosed restrictive lung disease on October 26, 2005, which was work-related, but the claimant did not notify her employer within the 30 days of that diagnosis. Therefore, the employer/insurer raised a notice defense. However, Drs. Hyers and Tepper diagnosed asthma, which is an obstructive (not restrictive) disease. At the hearing, an ALJ found in favor of the claimant.

On appeal, the employer/insurer again raised their notice defense. The Commission did not find this defense persuasive and stated that the evidence best supported Drs. Hyers and Tepper who concluded that the claimant suffered from asthma, which is an obstructive disease of the lungs, as opposed to a restrictive disease of the lungs, as diagnosed by Dr. McCants. Therefore, the Commission did not believe that Dr. McCants' incorrect diagnosis triggered the 30 day period to report the condition to work and affirmed.

Notice to Employer is Imputed to the Insurer

In **Harrington v. Employers Solutions Staffing**, Injury No. 12-051309, the claimant was injured in the course and scope of his employment. He filed for a hardship, and subsequently, for a hearing. Notice of both proceedings was provided to the employer, but due to error by the Division of Workers' Compensation, was not provided to the insurer. The employer did not

appear at either the hardship or the hearing, and Awards were issued in favor of the claimant. The employer failed to comply with the Awards and therefore, the benefits granted to the claimant were doubled. The insurer appealed arguing it had no notice of the proceedings and should not be liable. The Commission disagreed and held that notice to the employer is sufficient to give notice to both the employer and insurer.

Claimant's C5-6 Disc Herniation Compensable Due to Her Repetitive Lifting

In **Buffington v. Hubell Kiloark Electric,** Injury No. 10-111151, the claimant a 5' 2", 120 pound assembler, began working for the employer in 2007. She assembled light fixtures which required her to work at a waist-high table, work with her arms extended, and lift up to 75 pounds. The claimant alleged that after three years of working for the employer, she developed an occupational disease resulting in injuries to her bilateral wrists, bilateral elbows, and neck. The medical experts agreed that her bilateral elbow and wrist conditions were work related but disputed causation with respect to the neck. Specifically, Dr. Kitchens, believed that the C5-6 disc herniation was not work related opining that repetitive activity cannot cause a disc to rupture and such an injury would require an acute incident. Conversely, Dr. Volarich, the claimant's expert, believed that the fact that she lifted with her arms extended and lifted weights up to 75 pounds, which was over half her body weight, did cause a disc protrusion at C5-6. At a hearing, the ALJ found Dr. Volarich more persuasive in light of the fact that the claimant lifted weights in excess of half her body weight and worked with her hands extended. The ALJ found that the claimant sustained a compensable disc herniation at C5-6 and awarded 15% PPD of the body referable to the cervical spine. On appeal, the Commission smarmily affirmed.

Claimant's Occupational Disease and Accident Claims Denied Because Claimant Did Not Meet Burden of Proof

In **Blyzes v. General Motors Corporation**, Injury No. 09-070136, the claimant worked for the employer for nearly 27 years in the personnel department, on the factory line, in the chassis department, in the body shop, and other positions. She alleged three different theories of injury: 1) that on September 9, 2009 she was working on the left front door install job when her knees "were frozen" and she experienced pain in her knees; 2) that on September 9, 2009 she tripped over a study guide and fell landing on her knees and body; 3) that she sustained an occupational disease to her knees on September 9, 2009. The claimant's occupational disease claim was addressed in a companion decision (Injury No. 04-148011) and the Commission found in favor of the employer and denied benefits. The claimant's expert, Dr. Meyers, opined that her traumatic injury to the right knee was the prevailing factor in her osteoarthritis and necessitated the surgery. While Dr. Meyers did admit the claimant had pre-existing bilateral osteoarthritis in her knees, he did not apportion disability referable to the alleged work injury versus her pre-existing disability. She had also undergone prior total knee replacement surgeries in 2006. At a hearing, the ALJ found that the claimant's job duties were the prevailing factor in causing her knee condition.

On appeal, the Commission reversed. They were particularly persuaded by the fact that Dr. Meyers did not apportion disability between the work injury and any pre-existing disability. They

also did not find Dr. Meyers' opinion with respect to the occupational disease credible because he did not identify any new injury occurring after the claimant's total knee replacement surgeries, which occurred in 2006 and before. Therefore, the Commission found that Dr. Meyers' testimony did not support a finding of any injury on September 9, 2009 or leading up to that date.

Minimal Stress to Shoulder Still a Compensable Injury

In **Clutter v. Conagra Foods, Inc.**, Injury No. 13-051044, the claimant testified that she was lifting a door, like a garage door, so that she could work on it. Once she had lifted the door overhead with both hands, she kept her outstretched left hand on the door to keep it in place while her right hand reached for something. It was at that point that she felt a pop in her left shoulder. She testified that after she felt the pop, and removed her left hand from the overhead door, the door did not move at all and remained in place. The employer/insurer's expert, Dr. Strong, believed that the claimant had degenerative changes and a possible loose body in her shoulder. Dr. Strong did not believe those conditions were work related but stated she was unsure whether the pop the claimant sustained at work caused more damage. The claimant's expert, Dr. Hopkins, stated that the claimant had no pre-existing symptoms and believed that her current condition was consistent with holding a door above her head which produced compression and shearing force on her shoulder. Therefore, Dr. Hopkins opined that her work injury was the prevailing factor in her current condition. At a hearing, the ALJ found Dr. Hopkins more persuasive and a Temporary/Partial Award ordered that additional treatment be provided to cure and relieve the effects of the work injury.

Employer/Insurer Liable for PTD Despite Pre-Existing Low Back Pain Requiring Hydrocodone Use

In **Chesser v. Pepsi Americas**, Injury No. 08-067091, the claimant was injured when she was struck by a falling pallet. Authorized treatment was provided and the claimant underwent two three-level cervical fusions. The claimant had several pre-existing injuries, including multiple injuries to the neck, bilateral carpal tunnel syndrome for which she underwent releases, and low back pain. The claimant testified that her prior cervical and wrists symptoms resolved before the work injury but she did have ongoing low back pain for which she received injections and was taking Hydrocodone on a daily basis. The claimant had a high school degree but her grades were poor, she attended some college but did not graduate, and her employment background consisted almost exclusively of unskilled labor positions.

The ALJ stated that the first inquiry is whether the claimant was permanently and totally disabled as a result of the last injury in isolation. The ALJ believed that given the claimant's advanced age, poor educational background, restrictions which put her in the light demand level, and a lack of transferable work skills, she was unemployable in the open labor market. PTD liability was imposed against the employer/insurer and the ALJ stated that although the claimant did have pre-existing disabilities which were a hindrance or obstacle to her employment, the Fund was not liable because she was PTD as a result of the last injury in isolation. On appeal, the Commission affirmed.

Employer/Insurer Responsible for PTD After 3 Knee Surgeries, RSD, and Depression

In **Rose v. Par Electric Contractors, Inc.**, Injury No. 08-107881, the claimant was working when he lost his footing on some rocks and fell sustaining injury to his left knee. He underwent three surgeries on the knee and was eventually diagnosed with reflex sympathetic dystrophy (RSD). He subsequently developed depression and anxiety which he claimed was due to the work injury. The claimant did have a prior left knee injury in 2004 but returned to work thereafter without restrictions. At a hearing, an ALJ found that the claimant was PTD as a result of the primary injury in isolation, namely his RSD, and imposed liability solely against the employer/insurer. On appeal, the Commission summarily affirmed.

Claimant PTD From Primary Injury Alone Despite Prior Psychiatric Diagnosis and Medications

In **Styles v. Fulton State Hospital**, Injury No. 10-062547, the claimant was struck in the face by a patient on August 10, 2010. Subsequently, the claimant received treatment from a neurologist for headaches, nausea, dizziness, panic attacks, neck pain, and memory problems. While still treating and on light duty, the claimant suffered a fall at his employer's on two occasions. The claimant was seen by a variety of physicians and there was no consensus as to his diagnosis. However, most of the physicians agreed that there was a significant psychological aspect to his ongoing symptoms. The claimant had been assaulted by clients previously in 2009 but stated that he recovered from those assaults without any ongoing symptoms. However, the claimant had been placed on psychiatric medications in 2006 for work related stress and did admit to an increase in depressive symptoms in 2009 due to the assaults.

At the hearing, the claimant testified that he had ongoing daily headaches, dizziness, ringing in his ears, nightmares, mood swings, memory issues, and social anxiety. The ALJ found that the claimant was PTD from the primary injury in isolation and imposed liability solely against the employer/insurer. The ALJ acknowledged that the claimant filed claims for the two subsequent falls that he sustained at work, but the ALJ determined that those two injuries were part of his August 10, 2010 injury. Therefore, the last injury was considered to be the August 10, 2010 injury. On appeal, the Commission summarily affirmed.

Employer/Insurer Liable for PTD Despite Claimant's Pre-Existing Injuries Which Impacted Job Performance

In **Johnston v. Saladino Mechanical**, Injury No. 07-123247, the 49 year old claimant worked as a journeyman plumber. His entire vocational history consisted of plumbing jobs and he most recently worked as a foreman. He sustained an injury to his back at work and underwent a fusion. Post-operatively, he developed a rapid heartbeat and was diagnosed with atrial fibrillation, for which he also underwent surgery. The claimant developed severe complications following his heart surgery including stroke and stenosis of his veins. The stroke affected his vision, memory and endurance. The claimant also had numerous pre-existing injuries, including prior injuries to his back, and testified he had ongoing intermittent problems from these pre-existing injuries and they impacted his ability to perform his job duties. However, he denied any pre-existing heart

problems. The ALJ stated the first question is whether the claimant is PTD from the primary injury alone. The ALJ found the claimant PTD from the work injury alone and held the employer/insurer liable. The Commission affirmed.

Employer/Insurer Liable for PTD Despite Two Prior Surgeries to the Same Vertebrae

In **Buerk v. King Auto Glass**, Injury No. 09-019616, the claimant sustained a September 2009 work injury, and underwent a fusion in the neck. He also underwent a two level fusion at L4-5 and L5-S1 after an MRI showed a herniated disc at L5-S1. Dr. Coyle, the surgeon who performed the lumbar fusions, testified that the claimant needed to be fused at L4-5 because of his two prior lumbar surgeries. However, in his report, Dr. Coyle did not assess any pre-existing disability because the claimant told him he was fine following his two prior lumbar surgeries and Dr. Coyle had no evidence to the contrary. After his 2007 surgeries, the claimant returned to work and there was no indication he had any difficulty performing his job duties. At a hearing, the ALJ acknowledged the claimant's pre-existing disabilities but stated he was PTD from the work injury alone and imposed liability solely on the employer/insurer. On appeal, the Commission affirmed.

Fund not Liable for PTD Due to Subsequent Deteriorating Condition

In **Gleason v. Treasurer of Missouri as Custodian of the Second Injury Fund**, Injury No 07-072826, the Commission addressed this claim on remand from the Court of Appeals, who found the claimant did sustain a compensable injury after falling from a railcar due to the increased "risk source." Prior to the work injury, in June 2007, the claimant suffered a stroke due to a cerebral vascular condition. In August 2007, the claimant sustained his work injury and surgery was considered but was not recommended given his pre-existing cardiac condition. Subsequently, in September 2009, the claimant underwent bypass surgery for his cardiac condition.

The claimant's expert, Dr. Poppa, evaluated him in March 2008 and assessed 37% disability referable to the work injury as well as 40% pre-existing disability referable to his cardiac and cerebral vascular conditions. Dr. Poppa believed the claimant was PTD as a combination of his work injury and pre-existing disabilities. The Commission found Dr. Poppa generally credible but disagreed with his disability assessments and assessed 15% disability from the work injury (or the amount the employer/insurer and claimant settled for) and 20% pre-existing disability. The Commission stated that they had no question the claimant was PTD when he was evaluated by Dr. Poppa on March 8, 2008 but believed the claimant's condition on that date could not be attributed solely to the work injury and pre-existing conditions, as they found the claimant's cardiac and vascular conditions had deteriorated following the work injury and leading up to Dr. Poppa's evaluation. Therefore, the claimant was awarded PPD benefits against the Fund but was found not to be PTD.

For Fund to be Liable for Claimant's Worsened Pre-Existing Condition After the Primary Injury, the Primary Injury Must be a "Significant" Factor in Worsening that Condition

In **Wilkerson v. Treasurer of Missouri as Custodian of the Second Injury Fund**, Injury No. 09-020605, the claimant had pre-existing major depression and a personality disorder which affected her ability to perform her job duties. On March 21, 2009, she sustained a blow to the head when she was struck by a basketball while at work. She received treatment and was diagnosed with a concussion and a neck strain. She claimed that following the work injury she had much more stress. Following the work injury, the claimant had a number of non-work related stressors leading to at least one failed suicide attempt and three inpatient psychiatric admissions.

The claimant's expert, Dr. Cohen, believed she was PTD from the work injury and her pre-existing conditions. The employer/insurer's expert, Dr. Jarvis, did not believe the work incident played any part in the claimant's psychiatric condition. At the hearing, the ALJ found the claimant's head and neck conditions were work related but the work injury was not the prevailing factor in her psychiatric condition and disability. The ALJ awarded 15% PPD against the Fund for the claimant's pre-existing psychiatric disability but found she was not PTD, either from the work injury alone or in combination with her pre-existing conditions.

On appeal, the Fund argued that if the claimant was PTD, it was due to post-accident deterioration (*e.g*, her three psychiatric admissions following the work injury). The Commission agreed with the ALJ that the primary injury was not the prevailing factor in causing her psychiatric condition, and agreed that her pre-existing conditions were the prevailing factor in her condition. The Commission found the claimant's pre-existing conditions were the prevailing factor in her current condition, but those did not render her PTD. Instead, the subsequent deterioration of her pre-existing conditions rendered her PTD. The Commission stated for the Fund to be liable for PTD benefits, it is enough that the primary injury be a "significant" factor in progressing the pre-existing disability. If so, and the claimant is unable to compete on the open labor market, the Fund is liable for PTD.

Claimant's Expert Need Not Specify Percentage of Disability From Primary Injury to Reach Fund

In **Marciante vs. Treasurers of the State of Missouri**, Injury No. 09-004245, the claimant sustained three prior injuries to his back. For each of these three prior injuries, he underwent surgery and received workers' compensation settlements. The total of his three prior settlements amounted to 60% PPD of the body as a whole. In 2009, the claimant bent over to "pop a line" at work when he sustained another injury to his back and again underwent surgery.

After settling his claim with the employer/insurer, he obtained a report from Dr. Musich who stated his pre-existing back injuries resulted in 60% PPD of the body. Additionally, Dr. Musich stated that the sum of the claimant's past and present disabilities are greater than their simple sum and are a hindrance or obstacle to his daily activities of life. Dr. Musich did not provide a percentage of disability from the primary injury but noted that the claimant was awarded 35% PPD of the body. At the hearing, the Fund argued that the claimant did not meet his burden in

proving the extent of disability he suffered from the last injury alone and therefore, he did not meet his burden in showing that he was not PTD as a result of the last injury alone. The ALJ agreed and denied the claim against the Fund.

On appeal, the Commission reversed. The Commission stated that Dr. Musich did determine the extent of disability resulting from the last work injury. Specifically, the Commission stated that Dr. Musich noted he was awarded 35% PPD of the body and the record indicated that the claimant settled his claim against the employer for 35% PPD of the body. The Commission further stated that proof of permanent disability need not be established within mathematical precision and proof of permanent disability can be shown by providing medical evidence establishing the nature and extent of permanent symptoms, restrictions, and/or limitations, and identifying the medical causes thereof. The Commission noted that Dr. Musich identified the claimant's symptoms, restrictions, and medical causes related to the primary injury. However, the Commission stated that the claimant was not PTD in light of the fact that he returned to work for nearly two years following the primary injury and he provided little evidence as to the nature of his post-injury work or how much assistance was needed or provided to him in order to accomplish his work. Additionally, the Commission noted that Mr. England found that the claimant could perform some function in the medium work demand level. Finally, the Commission stated that the claimant continued to ride an ATV and hunt twice a year. Therefore, they found the claimant was not PTD.

Claimant PTD From Combination of Primary and Pre-Existing Injuries

In **Hallock v. Second Injury Fund**, Injury No. 12-047298, the claimant sustained three work injuries. He settled his first injury for 7.5% of the body referable to the thoracic and lumbar spine sprain/strains, settled the second claim for 17.5% disability of the left middle finger for a conservatively treated trigger finger, and settled his third claim for 30% of the right wrist/hand after undergoing two ORIFs. He then proceeded to a hearing against the Fund. The claimant had a ninth grade education, did not obtain his GED, and had worked in construction, farming, roofing, and remodeling businesses. An FCE placed him in the medium work demand level. His pre-existing injuries included chronic lumbar pain, radiculopathy of the leg, and a heart attack for which he underwent a four vessel bypass. At the hearing, the ALJ found that the claimant was PTD as a result of his work injury and pre-existing conditions. On appeal, the Commission summarily affirmed.

Claimant PTD From Last Injury Alone Despite Conservative Treatment

In **Sartin v. The Second Injury Fund**, Injury No. 11-076995, the claimant alleged an occupational disease to her back. Authorized treatment was provided with Dr. Jordon, who believed that her pre-existing scoliosis was the prevailing factor in her pain and inability to lift at work. The claimant was placed at MMI and released by Dr. Jordon. She then treated on her own with Dr. Peterson who prescribed anti-inflammatories and pain medications as well as a cortisone injection twice per year, but did not perform or recommend surgery. The claimant also had pre-existing bilateral rotator cuff tears which were surgically repaired. She settled her back claim against the employer/insurer for 12.5% and proceeded to a hearing against the Fund.

At the hearing, the claimant testified that she could barely turn her head due to neck soreness and stiffness and needs to lie down multiple times per day, which she did not need to do prior to the work injury. The Fund's vocational expert, Mr. England, testified that if the claimant's complaints were true, her need to lie down throughout the day would in and of itself, preclude all forms of alternative employment. Conversely, the claimant's vocational expert, Mr. Eldred believed the claimant was unemployable as a combination of her pre-existing disabilities and work injury. The ALJ agreed with the Stipulation entered into by the employer/insurer and claimant and found that she sustained 12.5% disability of the body referable to the work injury. The ALJ then found that the claimant was PTD as a result of a combination of her pre-existing shoulder conditions and the work injury.

On appeal, the Commission reversed the ALJ's finding and denied compensation with respect to the Fund. The Commission found that the work injury in isolation rendered the claimant PTD. Therefore, no liability was imposed against the Fund.

Fund Liable for PTD but Employer/Insurer Liable for Future Medical

In **Comic v. Wal-Mart Associates, Inc.**, Injury No. 10-006350, the claimant was lifting a box when she felt pain in her back. She also alleged psychiatric injury. The claimant had pre-existing stressors which included involvement in the Bosnian War, her house being bombed, and having to live in a shelter. The claimant's psychiatric expert, Dr. Brockman, and the employer/insurer's expert, Dr. Stillings, both believed that the work injury was the prevailing factor in causing her major depressive disorder. At a hearing, an ALJ found that the claimant's back strains were compensable and awarded 20% disability. However, the ALJ found that the work injury was not the prevailing factor in her psychiatric condition.

On appeal, the Commission modified the ALJ's Award. They agreed with the ALJ's findings with respect to the claimant's physical injuries, but disagreed with the ALJ's ruling on her psychiatric injury. They stated that in light of the fact that both Drs. Brockman and Stillings agreed that the injury was the prevailing factor in her major depressive disorder, the claimant did sustain a compensable psychiatric injury. They awarded 2% disability of the body referable to psychiatric disability from the work injury. However, the Commission stated that the majority of the claimant's psychiatric issues were pre-existing. Ultimately, the Commission found that the claimant was PTD as a result of the work injury and her pre-existing psychiatric stressors. The Commission found the Fund liable for PTD but the employer/insurer liable for future medical to cure and relieve the effects of the work injury.

Statutory Threshold Does not Apply to Pre-Existing Hearing Loss

In **Priest v. Treasurer of Missouri as Custodian of Second Injury Fund**, Injury No. 10-097781, the claimant sustained a work injury to his shoulder and neck and settled his claim against the employer/insurer. He then proceeded to a hearing against the Fund, alleging pre-existing conditions including hearing loss. At the hearing, the ALJ denied benefits as the claimant's hearing loss did not meet the statutory threshold. On appeal, the Commission reversed

and found the Fund liable. The Commission held the statutory threshold does not apply to pre-existing hearing loss. Instead, the claimant need only show that her hearing loss combined with the primary injury to result in greater disability.

Claimant Can File Civil Claim Against Employer Who Does not Have Workers' Compensation Insurance

Harman vs. Manheim Remarketing, Inc., Case No. SD33414 (Mo. App. Ct. 2015)

FACTS: The claimant was employed by Securitas as a security guard at Manheim. The claimant sustained a work injury in the course and scope of his employment. He filed and settled a workers' compensation claim solely against Securitas. He then brought a civil suit against Manheim alleging negligence and naming Manheim as well as one of its employees as defendants. Manheim argued the claimant's exclusive remedy lay in workers' compensation. The claimant conceded that he was a statutory employee of Manheim at the time of the injury but argued that Manheim's failure to carry workers' compensation insurance allowed him to pursue a civil suit against them. Manheim responded that statutory employers are not required to carry workers' compensation insurance to avoid civil liability. The trial court found in favor of Manheim and dismissed the civil suit.

HOLDING: On appeal, the Court reversed. In a fairly straightforward opinion, the Court stated that the plain language of the workers' compensation statute requires all employers to carry workers' compensation insurance. The Court further noted that following strict construction, there is nothing in the Statute which exempts a statutory employer from civil liability simply because another employer is responsible for Workers' Compensation benefits. Also, the Court stated that being a statutory employer does not excuse that employer from having to carry Workers' Compensation insurance.

Employer/Insurer Liable for Total Knee Replacement to Cure and Relieve the Effects of the Work Injury

In **Bertels vs. Houghton Mifflin Harcourt Publishing Co.**, Injury No. 09-072091, the claimant sustained an injury to her right knee. Authorized treatment was provided and she underwent arthroscopic surgery. She subsequently underwent an unauthorized total knee replacement. The employer/insurer's expert, Dr. Gross, opined that the claimant's need for a total knee replacement did not result from the accident but instead was the product of a spontaneous breakdown in the cartilage in her knee after she was released from care. Conversely, the claimant's expert, Dr. Volarich, believed that her work injury was the prevailing factor in both her traumatic injuries in the knee and the breakdown in her knee following her release from authorized care. At a hearing, the parties stipulated the claimant sustained a work related injury. The ALJ found that the claimant sustained a compensable injury to her right knee and awarded past medical expenses but did not award medical expenses for the claimant's total knee replacement. The claimant appealed.

On appeal, the claimant argued that in light of the fact that the parties stipulated that she sustained an injury by accident arising out of and in the course of her employment that she need only show that her total knee replacement was reasonably required to cure and relieve the effects of the work injury. Conversely, the employer/insurer argued that the first step in the process is to determine whether the accident was the prevailing factor in the claimant's resulting medical condition which necessitated the knee surgery and then to decide whether the total knee replacement was reasonably required to cure and relieve that condition. The Commission agreed with the employer/insurer but went on to find the claimant's expert more credible and believed that the work accident was the prevailing factor in both her acute condition as well as her subsequent breakdown after being released from authorized care. They further found that the total knee replacement was reasonably required to cure and relieve the effects of the work injury and awarded past medical expenses for the total knee replacement.

Heat Exhaustion Compensable After Working in 100 Degree Weather

In **Brown v. City of Columbia**, Injury No. 11-049932, the claimant filed three separate claims, all of which alleged injury due to heat exhaustion. The claimant drove a trash truck, which did not have air conditioning, and he was also often required to wear a haz-mat suit for several hours. The heat indices on his alleged dates of injury were over 100 degrees. As a result of his heat exhaustion, he developed headaches and dizziness. He sought medical treatment on two of the three alleged dates of injury, but no medical evidence was introduced regarding the third alleged date of injury. At a hearing, the ALJ found that the claimant provided evidence of heat exhaustion on two of the three dates of injury and awarded 10% disability of the body for each of those two instances. On appeal, the Commission summarily affirmed.

Heat Exhaustion Not Compensable Due to Lack of Medical Evidence

In **Fowler v. State of Missouri/Department of Corrections**, Injury No. 09-065204, the claimant worked in a control/surveillance tower. On the alleged date of injury, June 27, 2009, she claimed the tower was extremely hot and a thermometer near her desk read 100 degrees. She began to feel lightheaded and testified she contacted her primary care physician on or shortly after June 27, 2009, and reported her symptoms. However, her primary care physician's records showed the claimant called on June 29, 2009 for unrelated reasons and there was no mention of heat exhaustion. The claimant testified to a similar work incident of heat exhaustion on August 4, 2009 and her work log, which she filled out, did indicate the heat was making her sick. Her primary care phyisician's records showed she did call and report sickness from heat on August 4, 2009 but she was not seen. The claimant saw Dr. Elliott on August 11, 2009 and was diagnosed with heat exhaustion based on her self-reported history. At a hearing, the ALJ denied compensation finding that the claimant may have sustained an injury on June 27, 2009 or August 4, 2009 but there was no contemporaneous objective evidence of heat exhaustion in the medical records. The Commission affirmed.