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MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE

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Court Affirms Commission Decision that Claimant's Injury Compensable Because Claimant's Work Was an Unusual Strain, Despite the Fact They Were Her Normal Job Duties That She Performed Every Day

Clark vs. Dairy Farmers of America, Case No. SD34826 (Mo. App. 2018)

FACTS: The claimant worked in cheese production, and her job duties primarily involved leaning against the edge of a large vat and using a shovel to turn the cheese. This involved leaning her chest against the vat and repeatedly pushing the shovel in and out of the cheese to stir the mixture, which could weigh up to 40 pounds. On her date of injury, the claimant was attempting to lift the shovel back out of the cheese mixture when she sustained a rib fracture.

At the hospital, she was also noted to have a lytic lesion close to the fracture spot, which was later revealed to be a rare malignancy that can weaken a bone "to the point that it can fail under a force that is less than normal". Therefore, the employer argued that her job duties were not the cause of her fracture. However, the claimant's doctor opined that her job duties were the prevailing factor and were sufficient to cause a rib fracture even without the lesion.

At a Hearing, the ALJ held that the injury was not compensable. On Appeal, the Commission reversed the ALJ's decision and found that the claimant did suffer a compensable accident.

HELD: The employer appealed and argued that there was not a compensable accident. First, it argued that the pop, or fracture, could not be both the "accident" and the "injury." The employer also argued that the act of performing her normal job duties could not have been the "accident" because she did this every day, and therefore, it was not an unusual strain under the statute. The Court agreed with the Commission and held that the claimant's normal job duties that she performs eight hours per day can still constitute an unusual strain under the statute, and an accident does not require "something distinguishable from and in addition

to routine work, such as a precursor event.” Therefore, the Court affirmed the Commission’s decision and award.

Court Affirmed Summary Judgment for Defendant in Negligence Claim Because Using Fork Truck in Unsafe Manner was Breach of Employer’s Non-Delegable Duty to Provide a Safe Workplace

Fogerty vs. Armstrong & Meyer, Case No. SC96030 (Mo. Sup. Ct. 2018)

FACTS: The claimant and Meyer (the defendant) were working for a construction company and were assigned to install a fountain, but the employer did not provide detailed instructions on how to do so. They were required to move large stones and decided to use a front loader by using a strap as a sling to carry the stones beneath the front loader’s forks. Meyer asked the claimant to walk beside the stone to keep it from swinging as he drove the front loader. While the claimant did so, one of the forks unexpectedly hit the claimant in the back. He settled a workers’ compensation claim against the employer and subsequently filed suit against Meyer for negligence.

Meyer moved for summary judgment, arguing that the suit was barred because the claimant failed to show that he breached a duty that was separate and distinct from the employer’s non-delegable duty to provide a safe workplace. The Circuit Court agreed and granted summary judgment in Meyer’s favor. The claimant appealed.

HOLDING: The Missouri Supreme Court held that in order to maintain a negligence action against a co-employee, the claimant must show that the co-employee breached a duty that was separate and distinct from the employer’s non-delegable duty to provide a safe workplace. Here, the employer failed to provide a safe manner and means for constructing the fountain and using the front loader to move large stones. Therefore, Meyer’s negligence in deciding how to install the fountain and move the stones was reasonably foreseeable by the employer, and it was a breach of the employer’s non-delegable duty to provide a safe workplace. The Court affirmed the Circuit Court’s decision, and the claimant was barred from pursuing a third-party action against Meyer.

Court Affirmed Summary Judgment for Defendant in Negligence Claim Because Decision to Have Claimant Drive in Icy Conditions was Breach of Employer’s Non-Delegable Duty to Provide a Safe Workplace

McComb vs. Norfus & Cheese, Case No. SC96042 (Mo. Sup. Ct. 2018)

FACTS: The claimant worked as a courier and was scheduled to work on a day when there was a severe winter storm warning. He was advised by his supervisors to complete his route despite the winter storm but to drive slowly and carefully. Before the end of his shift, his vehicle slid off the road and flipped several times, and he died as a result. The claimant's widow (plaintiff) sued the co-employees, his supervisors, alleging that they were negligent in sending the claimant on his route despite weather conditions.

Co-employees moved for summary judgment, claiming that the suit was barred by the exclusivity provision. The trial Court initially granted summary judgment in favor of the co-employees. The plaintiff appealed, and the Court of Appeals reversed the decision.

HOLDING: The co-employees appealed to the Missouri Supreme Court, which reversed the Appellate Court's decision and held that the decision to have the claimant drive in inclement weather was a breach of the employer's non-delegable duty to provide a safe work place. Therefore, the plaintiff could not file a wrongful death action against the co-employees.

Claimant Injured in Course and Scope After Falling From the Top of a Truck Because He Was Climbing Down from the Roof in Order to Leave the Premises After He was Locked in, and He Was Not Equally Exposed to Risk of Falling Off a Truck Outside of Work

Brown vs. Superior Linen Supply Company, Injury No. 14-093366

The claimant sustained an injury on October 31, 2014 after he became locked inside the employer's courtyard at the end of his shift and was attempting to escape the premises by climbing a fire escape ladder to the roof, walking across the roof to the other side of the building where delivery trucks were parked, and climbing down onto the top of a delivery truck. As he attempted to climb from the truck to the ground, he fell and sustained an injury to his right ankle, for which he underwent two surgeries.

At a Hearing, the claimant testified that he believed he needed to climb down from the roof onto the truck in order to escape the courtyard area and catch his bus. The employer argued that the injury did not arise out of and in the course and scope of employment because he was doing something that was not a normal work activity. The ALJ found that the claimant's injury arose out of and in the course and scope of his employment because climbing down from the roof was incidental to his work because he was attempting to clock out and leave for the day.

The employer appealed to the Commission, which affirmed the ALJ's decision and Award

with a supplemental opinion. The Commission noted that compensation is not limited to workers who are injured while actively engaged in their job duties. Instead, when considering unequal exposure, the focus should be on whether the employee was injured *because* they were at work rather than simply while they were at work. The Commission reasoned that the claimant was injured because he became locked inside the courtyard as the direct result of a normal work-related activity, i.e. gathering his things before clocking out and heading home. Also, the risk of becoming locked inside the employer's courtyard was not a risk or hazard to which he would be equally exposed outside of his employment. Therefore, his injury arose out of and in the course and scope of his employment.

Employer Liable for Future Medical, Despite Fact that Future Medical Would Also Provide Treatment for Non-Work-Related Injuries

Morris vs. Captain D's and Treasurer of the State of Missouri as Custodian of the Second Injury Fund, Case Nos. SD34835 and SD34836 (Mo. App. 2018).

The claimant was injured in two work-related accidents in January 2007. He had several pre-existing injuries and disabilities. He was initially evaluated by Dr. Volarich in January 2008, at which time the doctor opined he was PTD as a result of his primary injuries in combination with his pre-existing medical conditions and recommended ongoing pain management. The claimant proceeded to undergo multiple surgeries with his personal doctor, including cervical and lumbar fusions. Dr. Volarich again recommended ongoing pain management in December 2012 and testified that the need for future medical was due to a mixture of his work injuries, pre-existing back problems, and his subsequent neck and low back problems. The employer presented medical testimony that the claimant did not require additional medical treatment for either work injury.

At a Hearing, the ALJ found the claimant PTD and the Fund responsible for the same. The ALJ also found Dr. Volarich persuasive and held that the employer was liable for future medical treatment with respect to the two primary injuries. The ALJ noted that although Dr. Volarich was not clear as to which treatments were for which disabilities/injuries, the doctor had not changed his mind that the claimant required some treatment for pain as a result of his work injuries. On Appeal, the Commission affirmed the ALJ's decision and Award.

The employer appealed the award of future medical treatment and argued it was not supported by substantial evidence on the record because Dr. Volarich testified that treatment would be related to a "mixture" of work and non-work-related problems and the "lack of clarity of specificity from Dr. Volarich... does not support a finding that the claimant is in need of future medical treatment related to the injuries of January 3, 2007 and January 14,

2007". The Court agreed with the Commission and affirmed its Decision and Award. The Court noted that an employer may be ordered to provide future medical care that will also treat non-work-related injuries if evidence establishes that the need for treatment is caused by the work injury. The Court reasoned that the claimant established a reasonable probability that future treatment was needed for his neck and back due to the January 2007 work accidents.

Claimant PTD Due to Occupational Disease From Exposure to Biological Particulates Created By Construction Project in Building Where He Worked As Janitor

Cooper vs. Mid-Missouri Mental Help Center and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 07-130828

The claimant, a 50-year-old janitor, was working for the employer in the same building where a couple of construction/demolition projects were occurring, which produced a large amount of white dust that the claimant cleaned daily for approximately two months. He was not given a dust mask or any type of protective gear. He soon after developed multiple symptoms, including shortness of breath, headaches, dizziness, blurred vision, and memory issues. He was ultimately diagnosed with hyper-sensitivity pneumonitis and developed various other conditions as a result of his treatment for the same.

The claimant's medical expert, Dr. Parmet testified that environmental sampling of the area where the claimant was working showed that 20% of the dust he was exposed to was comprised of fungi and biological particles, and in his medical opinion, exposure to a large amount of particles in the air can overwhelm the body's natural defenses and result in hyper-sensitivity pneumonitis. Dr. Parmet opined that this exposure was the prevailing cause of the claimant's conditions.

At a Hearing, the ALJ found Dr. Parmet's testimony persuasive regarding medical causation. The ALJ noted that the claimant does not need to establish the exact cause of the occupational disease if he can show that the disease is one that the general public is not exposed to, and that there is a probability his occupational activities caused the disease. The ALJ held that the claimant met his burden to establish injury by occupational disease that was medically causally related to work and ordered the employer to pay PTD benefits, past medical expenses, and future medical. The ALJ also ordered a 15% penalty against the employer because it did not use any methods for the prevention of occupational diseases caused by exposure to the dust. The ALJ reasoned that if the employer had provided effective devices or a means/method of prevention, such as dust masks, the occupational disease could have been prevented. On appeal, the Commission modified the ALJ's decision

and Award with respect to the 15% safety penalty and noted that there was no evidence on the record showing that there were effective devices, means, or methods that existed for the prevention of the employee's injury or that the employer failed to provide the same.

Muscle Tear and Hematoma Compensable Because Claimant Was Squatting in Order to Perform a Job Duty, and Hematoma Prevailing Cause of Subsequent Staph Infection

Wilkins vs. Piramal Glass USA, Inc., Case No. ED105683 (Mo. App. 2018)

FACTS: The claimant was squatting in an awkward position while changing a spool at work, and when he stood up, he tore his left calf muscle. He was also diagnosed with a hematoma in his left calf and developed a staph infection in his left leg. He underwent authorized treatment and was placed at MMI. Notably, the claimant was also diabetic and had a sore on his left ankle a few days prior to his injury. He also treated for cellulitis less than two months prior to his date of injury.

Dr. Woiteshek evaluated the claimant at his attorney's request and opined that the work accident was the prevailing cause of the claimant's muscle tear, hematoma, and the subsequent infection. Dr. Burns testified on behalf of the employer that the claimant's uncontrolled diabetes and the sore on his left ankle were the prevailing causes of his infection. Dr. Burns opined that although a hematoma can become infected, the infection must enter the body another way, such as the ankle sore, and would not spontaneously develop from a hematoma. At a Hearing, the ALJ awarded compensation referable to the muscle tear and hematoma, but not the staph infection, and held that the infection was not medically causally related to the accident. On appeal, the Commission reversed the ALJ's decision and held that the claimant's work accident was the prevailing cause of the torn muscle and hematoma, which in turn caused the staph infection. The employer was ordered to pay PPD for all three conditions.

HOLDING: The employer appealed and argued that the Commission erred in finding the injury arose out of and in the course and scope of employment because rising out of a squatting position is something people do outside of their employment, and therefore he would have been equally exposed to that risk in his normal non-employment life. However, the Court noted that the claimant was squatting at work in order to replace a spool on the employer's machine, which was a function of his job, and according to Dr. Burns' testimony, rising from this awkward position caused the muscle tear. Therefore, the claimant was injured because he was at work and not simply while he was at work. The employer also argued that the staph infection was not medically causally related to the torn calf muscle, but the Court found the opinion of Dr. Woiteshek persuasive on the issue of medical causation.

Therefore, the Court affirmed the Commission's decision and Award.

Claimant Not PTD Because Testimony Regarding His Complaints Not Credible When Compared to Other Evidence on The Record, Including Surveillance Video

Page vs. OCCI, Inc. and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 08-096549

The claimant, a 43-year-old heavy equipment operator and general contractor, sustained an injury to his left ankle and right knee at work on October 3, 2008. The claimant underwent multiple surgeries to the same, ultimately undergoing a complete left ankle fusion in March 2011. He only briefly returned to work in January 2011 before he "rolled" his ankle on January 12, 2011, but none of the doctors who treated or evaluated the claimant believed the 2011 incident was the prevailing cause of his left ankle condition or need for surgery. He did not have any significant pre-existing disabilities.

Mr. Weimholt, the claimant's vocational expert, opined the claimant was unemployable as a result of his 2008 injury. This opinion was based in large part on the claimant's subjective reports that he could not perform any interior or exterior maintenance and had to use a cane to enter and exit vehicles. However, video surveillance of the claimant obtained in 2009, 2013, and 2014 documented him pushing his motorcycle, walking on the roof of a carport, loading lumber into a van, hooking a trailer to a vehicle, operating digging equipment, entering and exiting a van without the assistance of a cane, and helping lift a jackhammer, among other things.

At a Hearing before an ALJ, the claimant admitted to performing all of the activities documented in the surveillance video. However, he continued to testify that he had severe left ankle pain which made him unemployable. The ALJ did not find the claimant's testimony credible in light of the surveillance video and also noted that despite testifying he had to take 5-10 pills of narcotic medication per week, he had not filled a prescription for narcotic medication for two years. The ALJ found that the January 12, 2011 injury was not compensable because it did not result in a separate injury. The ALJ did find that the claimant sustained 70% PPD of the left ankle and 35% PPD of the right knee as a result of the October 3, 2008 accident, but he was not PTD. On appeal, the Commission affirmed the ALJ's decision and Award.

Employer Liable for PTD Benefits Due to Permanent Work Restrictions for Last Injury, Despite Fact Claimant's Back Was Treated Conservatively and She Had Significant Pre-Existing Disabilities

Carty vs. Southeast Missouri Mental Health Center – State of Missouri and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 11-089630

The 66-year-old claimant sustained an injury to her low back when she lost her balance on November 8, 2011, fell to the ground, and sustained an L2 burst fracture with a 5-millimeter fragment retropulsion into the spinal canal. She was given a back brace and pain medication and briefly underwent physical therapy. She did not undergo surgery. The claimant also had pre-existing conditions, including ongoing discomfort and stiffness in her left knee after a torn meniscus in 2005 and a disc bulge at L4-5 for which she underwent injections in 2008 and continued to miss 2-4 days of work per month. However, she did not have any permanent work restrictions for either injury.

Dr. Volarich evaluated the claimant at her attorney's request and assessed 35% PPD of the lumbar spine due to her primary work injury as well as significant pre-existing PPD to the lumbar spine and left knee. However, Dr. Volarich recommended permanent restrictions of changing positions frequently and resting as needed during the day, which were necessary as a result of the last injury alone. Vocational expert, Ms. Gonzalez, opined that the claimant was unemployable as a result of Dr. Volarich's permanent restrictions. The employer presented expert medical evidence that contradicted Ms' Gonzalez's opinion.

At a Hearing, the ALJ found the claimant's testimony credible regarding her complaints and the need to rest up to two hours during the work day. The ALJ also found the opinion of Dr. Volarich persuasive and noted that the permanent restrictions recommended by the doctor were referable to the primary injury alone. Therefore, the ALJ ordered the employer to pay PTD benefits and future medical care. On appeal, the Commission affirmed the ALJ's decision and Award.

Employer Responsible for PTD Due to Claimant's Physical Injuries, Psychiatric Injury, and Opiate Dependency, Despite Fact Medical Evidence and Surveillance Video Showed Claimant Was Exaggerating Her Complaints and Disability

Houchen vs. Trimmasters, Injury No. 06-022626

The claimant, a 57-year-old high school graduate, sustained an injury to her neck and bilateral shoulders on January 13, 2006. Dr. Rosenberg performed a cervical fusion at C5-6 on March 15, 2006. Dr. Frevert performed surgery to repair a rotator cuff tear on the left shoulder on June 16, 2006, and on the right shoulder on August 7, 2006 and a re-tear on

February 22, 2007. The claimant developed depression as a result of her injury and chronic pain and was prescribed Xanax but did not receive any other treatment for the same. Medical records also suggest that she developed an opiate dependency as a result of her injury.

The doctors on both sides agreed that the claimant's neck and shoulder injuries and need for surgery resulted from the work injury. Dr. Poppa testified on behalf of the claimant's attorney that the claimant was PTD as a result of a combination of her physical injuries, mental condition, and use of medications. Dr. Caffrey provided the only vocational evaluation, on behalf of the employer, wherein he noted that she was significantly exaggerating her level of disability but still opined she was unemployable due to her physical limits and lack of transferable skills. Pain management specialists and the treating doctor opined the claimant was exaggerating her complaints and noted she was also seeking opioid medication from other physicians. Surveillance video showed the claimant engaging in activities that were inconsistent with her testimony regarding her level of disability. In particular, one video showed her single-handedly pushing a stalled pick-up truck on a grassy parking area.

At a Hearing, the ALJ agreed that evidence showed the claimant was significantly exaggerating her pain complaints. However, the ALJ also noted that she underwent four surgeries and suffered from depression and likely opioid dependence as a result of her work injury. Also, Dr. Caffrey's was the only vocational opinion presented at the Hearing. Therefore, the ALJ found the claimant to be PTD as a result of her primary work injury and found the employer responsible for the same. On Appeal, the Commission affirmed the ALJ's decision and Award.

Employer Responsible for PTD Benefits After Primary Injury Caused Low Back Injury and Psychological Condition, Which Required Claimant to Take Narcotic Pain Medications and Take Frequent Breaks

Kittrell vs. Townsend Tree Service, Injury No. 12-085091

The claimant, a 40-year-old high school graduate, sustained an injury to his low back on October 30, 2012. Dr. Wayne recommended lumbar ESIs and a TENS unit. Dr. Coyle subsequently performed a lumbar fusion at L4-S1. He underwent additional injections with Dr. Wayne and continued to complain of back and lower extremity symptoms. Dr. Coyle had the claimant undergo an FCE in January 2014, and after the claimant refused to cooperate with the evaluator, Dr. Coyle placed him at MMI. The claimant proceeded to treat on his own with Dr. Harness. At a Hearing, the claimant testified that he is limited by his back pain and also developed major depression as a result of his injury. He testified that he is unable to

sleep more than two or three hours at a time and takes naps during the day.

The claimant's attorney had the claimant evaluated by Dr. Woiteshek, a psychiatrist Dr. Sky, and Mr. England, a vocational rehabilitation specialist. Dr. Woiteshek opined he was PTD as a result of the work injury and recommended ongoing pain management. Mr. England opined the claimant was unemployable in light of his lack of transferable skills below the medium physical demand level, his poor math and reading levels, and his need to take frequent breaks throughout the day. Mr. Patsavas provided a vocational report on behalf of the employer and opined the claimant was capable of working in the sedentary to light physical demand category. However, Mr. Patsavas did not consider the effect that being on medication would have on the claimant's ability to perform these jobs and that taking narcotic medication could prevent him from being hired by employers.

At a Hearing, the ALJ found the opinions of Dr. Woiteshek and Mr. England persuasive and the claimant's testimony credible regarding his disability. The ALJ held that the claimant was PTD as a result of the work injury alone and noted his need to take frequent breaks and also his psychiatric problems. The employer was ordered to pay PTD benefits and provide past and future medical treatment for the claimant's physical and psychological complaints. On Appeal, the Commission relied upon the ALJ's credibility determinations and affirmed the ALJ's decision and Award with a supplemental opinion.

35-Year-Old Claimant with GED PTD After Spinal Fusion, Despite Surveillance Video, Because Claimant Can Be Unemployable Without Being Completely Inactive

Jackson County Missouri vs. Earnest, Case No. WD81083 (Mo. App. 2018)

FACTS: On March 11, 2014, the 35-year-old claimant sustained a compression fracture at T7 when a tree fell on him. He underwent an authorized ORIF and fusion of the thoracic spine along with an associated rib resection for bone graft and additional procedures. He also underwent pain management with Dr. Pang, who placed him at MMI, assessed 15% PPD of the body referable to the thoracic spine, and recommended follow up with his personal doctor for continued pain management.

Dr. Stuckmeyer evaluated the claimant at his attorney's request and recommended several permanent restrictions, including no prolonged standing or walking and the ability to change positions frequently throughout the day. Dr. Stuckmeyer recommended evaluation by a vocational expert, who opined the claimant was unemployable because, although positions might be available within the claimant's work restrictions, these would be for a highly skilled individual in an office setting, and the claimant would not qualify.

At a Hearing, the claimant testified that on good days he could perform some chores and yardwork, but he also testified that he had difficulty sleeping and took up to five naps per day, and he had trouble concentrating due to pain and had no experience using computers. The employer presented surveillance video of the claimant performing various household chores, including mowing his lawn, pushing a broom, and hosing down his driveway. The ALJ found the claimant's testimony credible and held that he was PTD as a result of his last injury alone. The ALJ reasoned that the claimant could still be PTD despite being able to perform some type of work on an ongoing basis, and the activities shown on the video did not translate to the ability to perform sustained employment as they were "mere snapshots in time." The ALJ also noted that even Dr. Pang, the employer's doctor, reviewed the video and opined that "a one-time surveillance video of one activity is not always reflective of one's capability to hold a full-time job." On Appeal, the Commission affirmed the ALJ's decision and Award.

HOLDING: The Court affirmed the Commission's decision and Award and found the employer responsible for PTD benefits. The employer argued that the Commission's finding was against the weight of the evidence because the claimant's testimony was inconsistent regarding his ability to do yardwork. However, the Court found that the ALJ and Commission found the claimant's testimony regarding his capabilities to be credible, and his testimony was supported by medical evidence.

Fund Liable For PTD Because Claimant Unemployable Due To Combination of Primary Injury, Prior Injuries, Learning Disability, and Functional Illiteracy

Potts vs. State of Missouri, Fulton State Hospital and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 11-063860

The claimant, a 54-year-old laborer, was working for the employer on August 10, 2011 when he fell and sustained injuries to his low back and neck. He underwent physical therapy and multiple injections but did not undergo surgery. He returned to work with accommodations for 17 months before ultimately retiring. The claimant also had significant pre-existing disabilities, including frostbite injuries to both feet, Type II diabetes with neuropathy, right knee pain, cervical DDD, and prior low back complaints. He also had a significant pre-existing learning disability and was functionally illiterate. He had the equivalent of a fourth-grade education and was admitted to Fulton State Hospital as a child for severe behavioral problems.

At a Hearing, the ALJ found the employer was responsible for 25% PPD of the body, 5% of which was referable to the neck and 20% was referable to the low back. However, the ALJ found the claimant was not PTD.

The claimant appealed, and the Fund argued that it was not responsible for PTD benefits because the claimant's pre-existing conditions were not a hindrance or obstacle to his employment because he had successfully worked with those conditions for over 30 years. The Commission held that the claimant's learning disabilities and functional illiteracy qualified as a pre-existing permanent disability, and it also held that the claimant's preexisting physical and psychological conditions were a hindrance or obstacle to his employment because they had the potential to combine with a future work injury to result in worse disability than would have resulted in the absence of the pre-existing conditions. The Commission also held that the claimant was PTD as a result of his primary work injury combined with his preexisting conditions because, although he could *physically* perform some jobs, his prior academic history and illiteracy would significantly limit his ability to obtain and perform those jobs. It also reasoned that the claimant was only able to continue working for 17 months after his injury due to an informal arrangement with his long-time employer, and a new employer would be unlikely to provide the same accommodations to a newly hired employee. Therefore, the Commission held that the Fund was responsible for paying PTD benefits.

Fund Liable for PTD Benefits Due to Combination Claimant's Pre-Existing Physical and Psychiatric Disabilities and Primary Injury

Kalajdzic vs. St. Louis Children's Hospital and Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 12-063341

The claimant, a 47-year-old nurse's aide, was changing the sheets on a bed that was awkwardly positioned, which required her to reach across the bed to lift the mattress, when she sustained an injury to her low back. Dr. Robson performed a three-level lumbar fusion, and the claimant also required mental health treatment after her work injury because she became depressed and heard voices. The claimant had a history of prior low back issues and lumbar injections, most recently in December 2011, two months prior to her date of injury. She also had a history of depression and anxiety and had previously been prescribed Xanax.

Dr. Volarich evaluated the claimant on behalf of her attorney and recommended permanent restrictions, including changing positions frequently to maximize comfort and resting as needed, and he opined she was PTD as a result of a combination of the primary injury and her pre-existing medical conditions. Mr. England, a vocational expert, opined the claimant was unemployable as a result of Dr. Volarich's permanent restrictions, her anxiety and sleep

deprivation, and her need to lie down throughout the day.

At a Hearing, the ALJ denied compensation and held that the injury did not arise out of and in the course and scope of employment, because the claimant failed to show a causal connection between her injury and work.

On appeal, the Commission reversed the ALJ's decision and Award. The Commission found the claimant's testimony credible and held that she sustained an injury by accident when she attempted to lift a mattress on a hospital bed that was in an awkward position. The Commission found that the claimant sustained 25% PPD of the body referable to her low back and 10% PPD of the body referable to a psychiatric disability as a result of her primary injury and was PTD as a result of the combination of her primary injury and pre-existing disabilities. Therefore, the Fund was responsible for PTD benefits, and the employer was ordered to pay past medical expenses and provide future medical treatment.