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

Injury No.: 13-000909

Employee: Maral Annayeva

Employer: SAB of the TSD of the City of St. Louis

Insurer: Self-Insured

Additional Party: Treasurer of Missouri as Custodian of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Preliminaries
Employee's claim involves injuries she sustained after walking through an entryway at the beginning of her work day as a high school teacher on January 8, 2013. Employee entered the school through a double set of doors and headed by the security guard, on her way to the time-clock room. When she was just inside the entryway, a few feet inside a public school hallway, employee fell and landed on her hands and knees. Employee went to the emergency room with back pain and knee pain. Subsequently, she returned to work briefly, but soon experienced too much pain and ceased to work. She unsuccessfully attempted to return to work again in August 2013, but she still experienced too much pain and had to stop.

Over time, employee's medical treatment included: injections to her knee, other injections (unspecified), spine adjustments, physical therapy, an MRI of her head, water therapy, neurological evaluations, and psychiatric medication. Medical experts diagnosed employee with somatic symptom disorder.

At the hearing, employee complained of neck pain; head pain due to temperature changes; increased head pain when showering, talking, and laughing; a loss of range of motion in her neck; dizziness when looking up; constant back pain; shoulder and arm pain; pain when sitting straight; right hip pain; bilateral leg pain; depression; anxiety; insomnia; stomach issues; liver issues; cysts on fingers; nausea; and a limited ability to walk, clean, drive, stand, climb stairs, get dressed, etc.

The administrative law judge denied employee's claim for benefits because employee "has failed to provide credible testimony to this Court." *Award*, p. 12. The administrative law judge found that employee's "description of her injuries and their subsequent effects verge on the point of malingering." *Id.* The administrative law judge did not find credible the medical expert opinions because they were based on employee's "own subjective

description of her maladies." *Id.* In conclusion, the administrative law judge found that employee failed to meet her burden of medical causation. He stated, "[t]here is little or no objective medical finding to support any of [employee's] anomalies." *Id.*

Employee appealed the administrative law judge's decision, arguing that employee sustained an injury by way of accident on January 8, 2013 and that the accident and resulting injuries arose out of and in the course of employee's employment. Employee further argued that she is entitled to temporary total disability benefits, permanent partial disability benefits, and the payment of past medical bills and for future medical treatment.

Employer filed a brief arguing that the administrative law judge properly assessed employee's credibility and correctly found that employee failed to establish (1) that her accident arose out of and in the course of employment and (2) the medical causation between her accident and her injuries.

We deny employee's claim because employee did not establish that her injuries arose out of and in the course of her employment.

Discussion
Employee's Injury did not Arise out of Employment

Employee did not establish that her injury arose out of her employment because the risk source was one to which employee was equally exposed in normal non-employment life. See *Miller v. Mo. Highway & Transp. Comm'n*, 287 S.W.3d 671 (Mo. 2009). In *Miller*, the risk source was walking, "one to which the worker would have been exposed equally in normal non-employment life." *Miller*, 287 S.W.3d at 674.

The *Miller* court explained, "[t]he injury here did not occur because Mr. Miller fell due to some condition of his employment. He does not allege that his injuries were worsened due to some condition of his employment or due to being in an unsafe location due to his employment. He was walking on an even road surface when his knee happened to pop. Nothing about work caused it to do so. The injury arose during the course of employment, but did not arise out of employment." *Id.*

Similarly, here, the risk source was walking; employee was walking on an even, flat surface when she fell. There was nothing about employee's work that caused her to fall. "The equal exposure consideration should center on whether the employee was injured *because* he or she was at work, rather than simply *while* he or she was at work." *Mo. Dep't of Soc. Servs. v. Beem*, 478 S.W.3d 461, 467 (Mo. App. 2015) (emphasis in original) (citing *Scholastic, Inc. v. Viley*, 452 S.W.3d 680, 686 (Mo. App. 2014)).

Injuries are not deemed compensable merely because they occurred *while* the employee is working. *Pope v. Gateway to the W. Harley Davidson*, 404 S.W.3d 315, 321-22 (Mo. App. 2012). The court in *Pope* stated that, "[a] worker's compensation award is permitted only if evidence shows a causal connection to employment other than the fact that the injury occurred at work." *Pope*, 404 S.W.3d at 321. A

compensable claim is one where an employee "was injured because he was at work, and not simply because [he] sustained an injury while at work." *Id.*, at 321-22.

Here, employee was injured *while* she was at work, but not *because* she was at work. We also note that employee had not even clocked in for work, was not on any work assignment, and had not taken any action related to work before the incident, e.g., checked in with the principal or department head, entered a classroom, made copies for class, etc. Employee was not in her course of employment at the time of the incident because she had not started for the day. *See Henry v. Precision Apparatus, Inc.*, 309 S.W.3d 341, 342 (Mo. App. 2010) (Affirming a denial of benefits on a finding that an employee was not engaging in work activities at the time of the accident).

We also do not find credible that the condition of the hallway at the date of the injury presented a hazard or risk to employee. When testifying about the condition of the floor at the hearing before the administrative law judge, employee initially indicated in her testimony that the floor was "normal." *Transcript*, page 20. After several follow-up questions by her attorney, employee further testified that the floor was dirty due to "foot traffic," including "some particles of dirt, ice, dust, moist." *Transcript*, page 20. Because employee did not focus on the alleged hazardous condition of the floor until specifically asked by her attorney, employee's testimony on the alleged hazardous condition is questionable.

The record also does not corroborate employee's testimony regarding the alleged hazardous condition of the hallway floor at the time of the injury. Medical records do not indicate any mention of a hazardous condition regarding the hallway floor. The emergency room documents simply indicate that employee's "fall occurred walking." *Transcript*, pages 353. Likewise, medical records from two days later merely report that employee "entered school and slipped and fell forward on both knees and strained her low back." *Transcript*, pages 1043.[1]

Similarly, when describing the event on employer's accident investigation report on the date of the injury, employee did not mention any ice, salt, or dirt on the floor that caused her to slip, but stated that she "could not determine the cause of the accident." *Transcript*, page 1042. Employee also stated that she "walked in as usual . . . [and] suddenly . . . fell down very badly." *Id.* Without additional support in the record for the alleged hazardous condition of the hallway floor, we find that the only risk source in this matter was that *of* walking, one to which employee would have been equally exposed in normal non-employment life.

Because employee did not establish that her injury arose out of and in the course of her employment, we must deny the claim. All other issues are moot.

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[1] Employee testified at the hearing that before entering the building she passed through "snow, ice, salt, dirt" while walking through the parking lot and that there were no floor mats to wipe her feet on as she entered the building. *Transcript*, pages 18-19. This description of the parking lot is also not credibly substantiated by the record. We note that employee first mentioned salt in the parking lot when she reported to the Logan College of Chiropractic on January 24, 2013. *Transcript*, page 547. However, there was no mention of ice anywhere or the hallway floor being moist or dirty.

Decision

We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Marvin O. Teer is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 17th day of January 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Robert W. Cornejo, Chairman

Reid K. Forrester, Member

SEPARATE OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

Premises

I do not agree that employee should be denied benefits because she had yet to clock-in or otherwise perform an action related to work prior to her accident. Employee was on employer's premises, under employer's control, on her way to perform her work. Case law supports a finding of liability when an employee is arriving to work or leaving work and is in an area "where the employer *owns or controls* the area where the accident occurs." *Lincoln Univ. v. Narens*, 485 S.W.3d 811, 819 (Mo. App. 2016) (quoting *Scholastic, Inc. v. Viley*, 452 S.W.3d 680 (Mo. App. 2014)(emphasis in original)).

In *Narens*, an employer was liable for an employee's injuries when the employee slipped and fell while walking on a sidewalk that led to the employer's parking lot after work. 485 S.W.3d 811 (Mo. App. 2016). The court in *Narens* relied on a discussion in the *Viley* decision that explained the history of the premises doctrine prior to 2005 and a change in the law in 2005 that abrogated the extension of the premises doctrine "to the extent it extends liability for accidents that occur on property not owned or controlled by the employer." § 287.020.5, RSMo. However, the *Viley* court explained, an employer is still liable for accidents occurring in areas the employer owns or controls. *Viley*, 452 S.W.3d 684.

"Because extension of premises cases involve injuries sustained before or after the actual performance of job duties, the legislature clearly contemplated and accepted compensability of injuries sustained as a result of work-related risks even though [an] employee was not engaged in the performance of job duties at the time (e.g. going to or coming from [an] employer's worksite)." *Narens*, 485 S.W.3d at 819 (quoting *Mo. Dep't of Soc. Servs. v. Beem*, 478 S.W.3d 461 (Mo. App. 2015)).

The court in *Narens* followed the rationale of *Viley* and *Beem* and stated,

> it is undisputed that Narens was on the Lincoln campus for work. It is undisputed that Narens was leaving work at the end of her regular work day when the injury occurred. It is undisputed that Lincoln owned and controlled the sidewalk where Narens was injured. Under the retained extension of premises doctrine, Narens did not have to prove that she was otherwise engaged in a work-related activity when the injury occurred because "the legislature clearly contemplated and accepted compensability of injuries sustained as a result of work-related risks even though [an] employee was not engaged in the performance of job duties at the time [of the injury]."

Narens, 485 S.W.3d at 819 (quoting *Beem*, 478 S.W.3d at 465).

Similarly, here, employee was at her employer's location for work. She was arriving to work at the beginning of her regular work day when the injury occurred. It is undisputed that employer owned and controlled the entryway where employee was injured. Under the retained premises doctrine, employee did not have to prove that she was otherwise engaged in a work-related activity when the injury occurred in order for employer to be liable.

Reason for the Fall

An employee does not need to be able to explain why she fell in order for the injury to arise out of her employment. "There is no requirement that [employee] must personally identify the specific cause of her fall; a reasonable inference regarding the cause was sufficient." *Dorris v. Stoddard Cty.*, 436 S.W.3d 586, 590 (Mo. App. 2014).

In *Dorris*, an employee suffered an injury after she slipped on a crack in a public road while walking between work locations at the specific request of her employer. The court found that the hazardous condition of the crack of the public road was a risk to which employee was not exposed in her non-employment life. *Dorris v. Stoddard Cty.*, 436 S.W.3d at 592-93.

The *Dorris* court stated, "it is well settled that to prove causation in slip-and-fall cases 'a plaintiff may rely on circumstantial evidence because he or she will not know exactly what happened or what caused the fall.'" *Dorris v. Stoddard Cty.*, 436 S.W.3d at 590 (quoting *Tiger v. Quality Transp., Inc.*, 375 S.W.3d 925, 927 (Mo. App. 2012) (inner quotations omitted)).

The circumstantial evidence in this case is employee's credible and unrebutted testimony that the hallway floor had salt, ice, and dirt on it due to a lack of floor mats at the entranceway. It is reasonable to infer that such hazardous condition caused employee to fall. Because of the hazardous condition of the hallway floor, the holding in *Miller* does not apply in this matter, because *Miller* does not "address the question presented when [employee] is 'in an unsafe location due to his employment.'" *Dorris v. Stoddard Cty.*, 436 S.W.3d at 592 (quoting *Miller*, 287 S.W.3d at 674).

In *Dorris*, the employee "was exposed to cracks in that particular [public] street because of her employment. There is no evidence in the record that [employee] had any exposure to this particular hazard during her nonemployment life and therefore, the record could not support a conclusion by the Commission that she was equally exposed to that hazard in her nonemployment life, as urged by employer." *Dorris v. Stoddard Cty.*, 436 S.W.3d at 592

Similarly, there was evidence in this matter of a hazardous condition on the surface of the particular public hallway floor on which employee was walking. Employee was only exposed to this hazardous condition because of her work. There is no evidence that employee had any exposure to this particular hallway in her non-employment life. Therefore, employee's injury arose out of her employment.

Medical Causation

Regarding medical causation, the administrative law judge erred in stating a medical opinion, instead of relying in the uncontradicted medical expert opinions that employee suffered from somatic symptom disorder. "The commission cannot find there is no causation if the uncontroverted medical evidence is otherwise. *Hayes v. Compton Ridge Campground, Inc.*, 135 S.W.3d 465, 470 (Mo. App. 2004) (citing *Elliott v. Kansas City, Mo., School Dist.*, 71 S.W.3d 652, 657-58 (Mo. App. 2002)). The administrative law judge was not qualified to make a medical causation opinion contrary to the only medical expert opinions in the record. Both medical experts diagnosed employee with somatic symptom disorder. The hallmark of this disorder is precisely the lack of objective evidence to support subjective symptoms. Regardless of this lack of objective support, employee still experienced the subjective pain and discomfort she described. Therefore, employee was not malingering, she was truthfully stating what she was experiencing.

Based on the evidence, I find persuasive the opinion of Dr. Bassett that the work-related accident caused employee's somatic symptom disorder. Therefore, employee's injury was compensable pursuant to the workers' compensation law. Employee is entitled to temporary total disability benefits, permanent partial disability benefits, the payment of past medical bills, and payment for future medical treatment to cure and relieve the effects of the accident.

I would reverse the administrative law judge's award denying benefits. Because the Commission majority has decided otherwise, I respectfully dissent.

Curtis E. Chick, Jr., Member

AWARD

Employee: Maral Annayeva

Injury No.: 13-000909

Dependents: N/A

Employer: SAB of the TSD of the City of St. Louis

Additional Party: Second Injury Fund

Insurer: Self-insured

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

Hearing Date: February 14, 2018

Checked by: MOT:sh

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287?
3. Was there an accident or incident of occupational disease under the Law?
4. Date of accident or onset of occupational disease: January 8, 2013
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant fell while walking into Roosevelt High School.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Back, head, neck, bilateral knees and psychiatric
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? $4,405.02

17. Value necessary medical aid not furnished by employer/insurer? N/A

18. Employee's average weekly wages: $1,058.33

19. Weekly compensation rate: $705.56/$433.58

20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: None

TOTAL: 0.00

23. Future requirements awarded: N/A

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Dean L. Christianson

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Maral Annayeva

Dependents: N/A

Employer: SAB of the TSD of the City of St. Louis

Additional Party: Second Injury Fund

Insurer: Self-insured

Injury No.: 13-000909

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

Checked by: MOT:sh

STATEMENT OF THE CASE

A hearing in this matter was held on February 14, 2018 before the Division of Workers' Compensation in the St. Louis office. The claimant, Maral Annayeva ("Claimant") was represented by Attorney Dean L. Christianson. The employer, the SAB of the TSD of the City of St. Louis ("Employer") and its insurer, SAB of the TSD of the City of St. Louis c/o CCMI was represented by Attorney Mathew D. Leonard. The Second Injury Fund was represented by Attorney Carolyn Bean.

ISSUES

The parties identified several issues for disposition:

1. Accident.
2. Course and Scope of Employment
3. Medical Causation
4. Liability for past medical treatment expenses
5. Liability for future medical treatment
6. Liability for temporary total disability benefits
7. Nature and extent of permanent partial and/or permanent total disability benefits
8. Permanent Total Disability of Claimant
9. Second Injury Fund Liability

EXHIBITS

Claimant offered the following exhibits which were admitted into evidence without objection from the Fund:

Employee's Exhibits:

1. Deposition of Dr. Volarich;
2. Deposition of Dr. Bassert;

3. Deposition of Stephen Dolan;
4. Records from St. Mary's Hospital;
5. Records from Logan College of Chiropractic
6. Records of Dr. Rivkin I;
7. Records of Dr. Rivkin II;
8. Records of BarnesCare;
9. Records of Washington University Orthopedics I;
10. Records of Washington University Orthopedics II;
11. Records of Washington University Neurology;
12. Records of Maryland Medical Group;
13. Records of Breakthrough Pain Relief Clinic;
14. Records of SIU Student Health Services;
15. Records of Memorial Hospital of Carbondale;
16. Records of Dr. Dalu;
17. Billing summary;
18. Defense Letter of February 12, 2013;
19. Employer/Insurer's Answer to Claim for Compensation;
20. Employer's Report of Injury;
21. Records of Concentra;
22. Records of Dr. Benzaquen;
23. Records of Dr. Goldring
24. Records of Vidan Family Chiropractic;
25. Records of Dr. Cutuk;
26. Records of ProRehab;
27. Records of Professional Imaging;
28. Records of Mallinkrodt Institute of Radiology;
29. Records of Shop n Save Pharmacy;
30. Records of Psychiatric Care Consultants;
31. Records of Division of Worker's Compensation;

Employer's Exhibits:

A. Deposition of Dr. Randolph;
B. Deposition of Dr. Harbit;
C. Deposition of Timothy Kaver;
D. Deposition of Dr. Benzaquen.

Second Injury Fund Exhibits:

None

Note: Unless otherwise specifically noted below, any objections contained in the deposition exhibits, but not ruled on in this award, are overruled and the testimony is fully admitted into evidence in this case. Any notations made on the exhibits were not placed there by the undersigned Administrative Law Judge.

STIPULATED FACTS

At the start of the hearing, the parties stipulated to the following facts:

1. On January 8, 2013, Claimant was employed by Employer and sustained an accident that arose out of and in the course of her employment in St. Louis City.

2. The Employer and Claimant operated under the Missouri Workers' Compensation Law.

3. The Employer had proper notice of the injury.

4. A Claim was timely filed.

5. The permanent total disability ("PTD") and temporary total disability rate ("TTD") is $705.56 and the permanent partial disability ("PPD") rate for this claim $433.58.

6. Employer has paid medical benefits in the amount of $4,405.02.

FINDINGS OF FACT

Claimant's Testimony-Background

At the trial of this matter Claimant testified that she was born on February 14, 1964. She is five feet and four inches tall. She weighs approximately 198 pounds. She came to the United States in 2003 from her home country of Turkmenistan.

Claimant identified Exhibit #29 as being a copy of her pharmacy records. She discussed the prescriptions she received in the year 2017, beginning at the end of the document and working her way backwards. She testified that Dr. McCann is a physician with the Grace Hill Clinic, and the Ventolin he prescribed is for asthma. Dr. Mangalat is an emergency room physician, from a hospital where she sought care due to pain complaints. The three medications prescribed by Dr. Mangalat are anti-inflammatories, muscle relaxers and pain medication. Dr. Abdulkarim is also a physician from Grace Hill. Dr. Benzaquen is Claimant's treating neurologist and his medications are pain medications. Dr. Ogden is a physician from Washington University, where Claimant sought care for problems with asthma and breathing. Dr. Farzana is a psychiatrist who was prescribing anti-depressants and anti-anxiety medications for Claimant's depression and anxiety. Dr. Schoenwalder is a physician from Grace Hill and the medications prescribed are for stomach problems. Dr. Wood is a physician from Grace Hill and the medications prescribed are for colon problems. Dr. Boyer is a physician from Grace Hill and her medications were for "female" complaints.

Claimant's education includes a bachelor's degree in Linguistics and a masters' degree in Public Administration and English language. She received a Master's in Public Administration degree from Southern Illinois University at Carbondale in 2006.

Claimant stated she is not currently working. She began working for Employer on October 29, 2007. Her last position was that of a high school teacher, teaching English as a Second Language. She has not worked since she last worked for Employer.

Prior to working for Employer, Claimant held other jobs since arriving in the United States. This includes a sales position with Dillard's department store for four to five months, one semester teaching geography at Harris Stowe State University, a graduate student assistantship while a student at SIU-Carbondale, and two or three short projects working with the defense department concerning Russian language issues.

Claimant testified she was injured on January 8, 2013, at which time she was working for Employer at Roosevelt High School. She arrived at work that day around 7:30 in the morning, and said she was happy and healthy, neither sick, nor light headed nor dizzy. She got to work that day by driving her car, thereafter parking on the school lot. She said the lot is on the school grounds, next to the school building. She had previously been advised to park in this lot by her supervisors. She described it as a large paved lot. Both students and teachers are allowed to park there. She had been using this lot since 2012, and other teachers park there as well.

On the day of the accident Claimant was dressed in black pants, a shirt, a vest and boots. Her pants came down as high as the top of her ankles. Her boots had a heel of two-and-a-half to three inches, and a rubber sole. Her coat came down approximately to her knees. In her hands she was carrying folders to administer testing, along with a curriculum folder, student papers, and lesson plans. She had to walk through the parking lot, approximately 20 spaces, to get to the school entrance. This was the same entrance that she had always used. The parking lot was covered with salt, ice and dirt, which she walked through. When she got to the school building she had to pass through a set of double doors. There were no mats on the outside of the building, on which she could wipe her feet. There were no mats between the two sets of doors. And there were no mats on the inside of the second set of doors.

After entering the building, she had to walk past a guard station. She described the floor inside the building as being linoleum tile. She did not see any defects in the floor, though it was dirty and moist. After entering the building, Claimant was headed to the clock room so that she could "clock in". As she began to walk she slipped on the floor and fell forwards, landing on her hands and knees, and dropping her bags to the floor. The guards at the entrance came over and helped her get up and sit on a chair. She noticed that her clothes were dirty. The school nurse then came and helped her walk back to the nursing office. In the nursing office she laid down, feeling pain and dizziness, and shaking. The nurse took her vitals and placed ice on her knees. She felt pain in her back and knees.

After completing an initial assessment, the school nurse offered an ambulance to take Claimant to the hospital, though Employee refused. Claimant was then provided with the names of several places where she could seek medical treatment on her own. She then called a friend and he took her to the St. Mary's Hospital Emergency Room. In the emergency room x-rays were taken and she was treated with ice and pain medications. She was advised to stay off work for several days. She then went home but returned to the emergency room on the next day due to the amount of pain she was having. She again was evaluated and treated, and this time she was

provided with a splint for her right leg. After this, Claimant was referred by Employer/Insurer to Concentra for medical treatment. She was evaluated at Concentra, provided with a knee brace, and sent for a course of physical therapy. She attended two sessions of physical therapy.

Claimant testified that she returned to work for several days after the accident. However, she was having a great deal of difficulty performing her job, as she stated she was in pain. She therefore stopped working. She did not work again until August of 2013 when the new school year began. She returned to work for two more days but then advised that she could no longer work as she was in too much pain. She has not worked since that time.

Claimant stated that she sought medical treatment on her own, after further care was denied. She initially was evaluated by Dr. Bowen, her primary care physician. He provided her with medication and an injection in her knee. She went to the Logan College of Chiropractic for adjustments and physical therapy. She was seen by a nurse practitioner named Corri Payton in the Washington University Department of Orthopedics, who ordered various radiological studies, and provided her with physical therapy and medications. She also saw Dr. Adam Labore in the same office, and his concern over Employee's head pain lead him to order an MRI of her head, before ordering both physical therapy and water therapy. She went to see Dr. Rivkin, who provided her with medications, physical therapy and referral to a neurologist. She went to the Breakthrough Pain Relief Clinic where she received chiropractic adjustments, injections and physical therapy. She was receiving psychiatric medications through Dr. Farzana, a psychiatrist, though Dr. Farzana retired. She has seen several neurologists, including Dr. Black, Dr. Goldring and Dr. Benzaquen. She continues to receive treatment from Dr. Benzaquen, who provides her with both pain and psychiatric medications, along with injections. She went to Germany in 2015 to visit a clinic, where she was provided with evaluations and medications. She went on one occasion to the St. Louis University Department of Orthopedics. She continues to receive treatment for other conditions through the Grace Hill Clinic.

Claimant identified exhibit #17 as being copies of the billing statements she received regarding the medical treatment she obtained on her own following the work accident.

Claimant then testified about her ongoing complaints. At trial she was wearing a neck travel pillow, which she wears allegedly due to constant pain in her neck. Claimant indicated if she removes the pillow and tries to hold her head level, she gets pain. She was also wearing a stocking cap at trial as she indicated that temperature changes affect the pain she has in her head. Her head pain is constant, always at a level of "2", and becoming worse with activity. It can also be worse with taking a shower, talking and laughing. She described the pain as being in the back and right side of her head. She states her head is tender to the touch. She states her head can feel better with heat and with medications.

Claimant states she has constant pain in her neck. This is made worse by activities and weather changes. She claims she has lost range of motion in her neck and cannot put her chin to her chest. If she tries to look upwards she becomes dizzy. She has increased pain when she is dizzy.

With regard to her back, Claimant testified she has constant pain which is made worse by activities and weather changes. The pain goes through her shoulders, arms and fingers. She is constantly in a bent forward position, as she feels worse when trying to straighten up.

Claimant has complaints in both of her legs. She claims to have pain in the right hip which goes down the leg to the foot. She gets sciatica in both legs. The sciatic pain is mainly in the left leg, but she also has it in the right leg. She treats these complaints with ointments, massage, medication, heat, oils, physical therapy and bed rest.

Claimant has complaints in her arms including pain which extending down to her fingers. This is worsened by activity. Claimant has problems with depression and anxiety. She states that she cannot sleep or socialize. She is always scared and anxious. She is sad and depressed all the time. Claimant complains also of problems with her stomach, with her liver, with cysts on her fingers, with her face drooping, with breathing through her nose, with dizziness, and with nausea.

Before the work accident Claimant had some pain in her back when she overturned a golf cart. She went to an emergency room and was treated conservatively. She felt her complaints were resolved within a few weeks. She later had back complaints after a slip and fall on a parking lot while working for Employer. Employer thereafter provided her with medical care and her back complaints improved after a short period of time. She stated her back was fine prior to January 8, 2013. Claimant also had problems with anxiety on one occasion in the past. She saw Dr. Dalu and received a prescription for an anti-anxiety medication.

Claimant described her current daily activities as being a constant effort to not increase her pain complaints. She states she usually stays in bed applying heat, after taking her medications. She tries to do some stretching. Sometimes she will go grocery shopping, but only with her daughters. She tries to do a little walking with her dog. Sometimes she can only walk from her door to the street; other times she can walk between four and seven blocks. Her daughters wash her laundry due to her pain. She tries to do a little cleaning, though has increased complaints with this. She does not generally read because of her head pain which causes her to be unable to concentrate. She might do a little work in the yard during the summer time, such as watering flowers. She does not mow the lawn, and this is done by her daughters or by friends. She has only driven three times in the last year. She does not have a car. When she drives her pain worsens. Her sleep is not very good, and she is often awake with pain. It is difficult for her to stand and she generally she has to lean to one side to lessen her symptoms. She also must lean while she is sitting due to increased complaints. She can climb stairs but must do this one step at a time. She is not able to take care of all her personal needs. Her daughters give her showers and get her dressed. She is able to put on some small, loose items of clothing.

Claimant's Medical Records

St. Mary's Hospital

Claimant testified she was taken to St. Mary's Hospital emergency room by a friend after her fall at school, wherein she complained of constant bilateral knee and lower back pain as a result6 of her fall. The records note no loss of consciousness and her pain was located in the left and right knee, as well as left and right hands. X-rays were taken of Claimant's spine and knee, diagnosed with right knee contusion, given ibuprofen and discharged. Claimant returned to the

emergency room the next day complaining again of right knee and left knee pain after her fall. It was noted x-rays were negative and she was order to have a splint and an immobilizer. Claimant returned to St. Mary's emergency room again on March 19, 2013 complaining of headaches, dizziness, back pain, and leg pain. She reported chronic headaches that have been present for several months and are increasing in severity. She additionally reported chronic right hip pain with radiating pain down her right leg which has been ongoing for several months. She was discharged with a headache.

Concentra

Claimant was evaluated by Concentra on January 11, 2013. Claimant repeated her description of her fall at school and strained her back. She was assessed with bilateral knee contusion and lumbar strain and was ordered to continue medications. She returned on January 15, 2013 and it was noted she was working within her restrictions and tolerated her job well. It was noted possible issues with Claimant's perception of her disability and was subsequently discharged from physical therapy.

Logan College of Chiropractic

Claimant began treatment at Logan College of Chiropractic on January 14, 2013. She complained of severe pain in both knees and her lower back that began on January 8, 2013, when she fell down at work. She also reported subjective complaints of a "tension headache" with pain at a level of five out of ten. Claimant had x-rays of her lumbar spine, which showed a subacute compression fracture of the vertebral body at L1, a subacute fracture of the posterior aspect of the right T12 rib, mild discogenic spondylosis at L5/S1, and a mild right list of the lumbar spine and posterior shift in lumbar weight bearing. Claimant reported she lived a very stressful life style which caused her to gain weight. Employee continually sought treatment for lower back pain, headaches, and knee pain at Logan Chiropractic College through February 11, 2013. She was last seen on May 12, 2014.

Maryland Heights Family & Acute Care

Claimant was examined at Maryland Heights Family & Acute Care on January 29, 2013. As a new patient, she detailed how she fell at work several weeks before, but no acute problem was found. She reported intermittent vertigo and nausea, as well as bilateral hip pain and some knee pain with headache. She reported similar symptoms on her follow up visits monthly through May 2013.

EXPERT TESTIMONY

Dr. David Volarich

Dr. David Volarich, D.O., performed a medical independent medical examination ("IME") on Claimant's behalf. Dr. Volarich examined Claimant on August 3, 2016, and opined that Claimant sustained the following disabilities due to the January 8, 2013 fall at her work place: 25% permanent partially disabled ("PPD") of the cervical spine, 20% PPD of the lumbar spine, 15% PPD of the right shoulder, 15% PPD of the right hip and 15% PPD of the right knee. Dr. Volarich also rated the following pre-existing conditions or disabilities: 5% PPD of the lumbar

spine, "due to the historic compression fracture at L1 causing vertebral height loss at that level. It is noted she was asymptomatic in the low back prior to January 8, 2013."

Dr. Volarich recommended Claimant undergo vocational evaluation and assessment to determine if she was able to get back to the open labor market. If vocational assessment was unable to identify a job for which she was suited then it was opinion that she was permanently totally disabled ("PTD") as a direct result of the January 8, 2013 injury standing alone. He further opined that she had some minor disability in her low back from a historic compression fracture but was able to return to work full, unrestricted duty prior to January 8, 2013. All of his restrictions relate to this injury.

Dr. Bernard Randolph

Bernard Randolph, M.D., performed a medical IME on behalf of the Employer. Dr. Randolph examined Claimant on November 5, 2015. (ER ex.a). Dr. Randolph examined Claimant and opined Claimant sustained the following disabilities due to the fall at her work place on January 8, 2013: 1% of each lower extremity at the knee, and 4% PPD of the body as a whole ("BAW") for a lumbar sprain. Unrelated to the January 8, 2013 injury he estimated 2% PPD of each knee due to osteoarthritis and 4% PPD each of the neck and lumbar spine due to degenerative disc disease ("DDD"). He opined Claimant was at maximum medical improvement ("MMI") and based on the objective information, she was able to return to normal work activities as a teacher. He found no physical restrictions related to the effects of the knee contusions and lumbar strain occurring on January 8, 2013.

Dr. Gregg Bassett

Gregg E. Bassett, M.D., performed a forensic psychiatric IME of Claimant on her behalf on April 22, 2016. Dr. Bassett noted a pre-injury history of anxiety symptoms (heart palpitation and arm discomfort), an LI compression fracture, and migraine headaches. He obtained neither history of a pre-existing debilitating depressive or anxiety syndrome nor a history of sustained absences from work. Nor did he see records or obtained history of problems stemming from Claimant's July 7, 2005 compression fracture.

Claimant told Dr. Bassett she never treated with a psychiatrist, psychotherapist or mental health counselor before the January 8, 2013 injury. She reported her current depression beginning in 2014 "when her condition was not improving." Id. p.26. It was Dr. Bassett's opinion that the 1/8/13 slip and fall injury was the prevailing factor in her development of a constellation of physical symptoms which are out of proportion to the mechanism of the injury and physical findings which he diagnosed as Somatic Symptom Disorder with a component of Conversion Disorder. The pain and problems with functioning caused by the Somatic Symptom Disorder caused Claimant to develop Major Depressive Disorder.

In that both the Somatic Symptom Disorder had been present for more than three years Dr. Bassett found Claimant to be at MMI for it and the Major Depressive Disorder.

Dr. Bassett found Claimant suffered the following disability as a result of the January 8, 2013 slip and fall at her place of employment: 50% PPD of the BAW, 35% as a consequence of the aggregate effects of her Persistent Somatic Symptom Disorder with component of Conversion Disorder and the other 15% due to her Major Depressive Disorder. Dr. Bassett rated an additional 2% BAW pre-existing for anxiety disorder.

Dr. Melissa Harbit

Melissa Harbit, M.D., performed a psychiatric IME of the Claimant on behalf of her Employer. Dr. Harbit is the Director of Forensic Psychiatry at Washington University, Department of Psychiatry. Dr. Harbit diagnosed Claimant with Somatic Symptom Disorder after reviewing her medical records, taking a history from Claimant and doing a mental status examination. Dr. Harbit opined that the January 8, 2013 slip and fall injury was not the prevailing factor in the development of Claimant's somatic disorder. Dr. Harbit did not believe Claimant had any psychiatric disability related to the January 8, 2013 injury. She additionally noted, Claimant told her she felt unfairly treated about being relieved of her prior position of teacher responsibilities as well as none of her medicals bills were paid and was additionally denied disability.

Tim Kaver

Tim Kaver, vocational rehabilitation counselor, conducted vocational assessment to determine Claimant's employability in the open labor market on January 27, 2017. Mr. Kaver opined that if one assumed that Claimant continued to function at a global assessment of functioning ("GAF") score of 36 per Dr. Farzana's 7/7/14 examination, she would be unable to work. Assuming, Dr. Randolph's release to work without restrictions, Claimant could go back to her prior profession. Assuming Dr. Volarich's sedentary work release, Claimant could go back to work as a teacher unless she needed to rest in a recumbent fashion throughout the day.

It was Mr. Kaver's opinion that if Claimant should be willing and capable of staffing a sedentary job, she would be employable. Her skill set include a graduate degree in Public Administration and a graduate degree in English language and Literature. She possesses a strong professional work history and could consider alternative careers in social services, grant administrator student recruiter, fundraiser, volunteer coordinator among other possible

J. Stephen Dolan

J. Stephen Dolan, a board certified vocational rehabilitation counselor, testified by deposition, an indicated none of Claimant's doctors gave her restrictions that came close to her self-described limitations with the exception of Dr. Farzana. Based on his testing, and with restrictions listed based on assessments from Dr. Volarich and Dr. Farzana, Claimant no longer had access to the labor market. However, Mr. Dolan did not have access to Claimant's psychiatric reports at the time he prepared his report. He acknowledged Claimant is highly skilled and highly educated, had competent computer skills, multiple language proficiencies. His assessment was based primarily on Claimant's subjective complaints and psychiatric conditions.

Burden of Proof

The Courts have long held an employee bears the burden of proving not only did an accident occur, but it also resulted in injury. Silman v. William Montgomery & Associates, 891 S.W,2d 173, 175 (Mo. App 1995) In cases involving medical causation, which is not within the common knowledge or experience, the claimant must present medical or scientific evidence of the cause and effect relationship between the complained of condition and the asserted cause.

In a Workers' Compensation proceeding the employee has the burden to prove all material elements of his Claim, including SIF liability. Meilves v. Morris, 422 S.W.2d 335, 339(Mo. 1968). In addition, Section 287.220 states, the SIF is liable for PTD benefits when three findings are made: 1, The employee has a percentage of disability from the compensable last injury; 2, A preexisting permanent disability exists that was serious enough to constitute a hindrance or obstacle to employment or re-employment; and 3, All of the injuries combine to make the employee PTD.

Under Mo. Rev. Stat. §287.190.6 (1) (2005), "'Permanent Partial Disability' means a disability that is permanent in nature and partial in degree ..." "The claimant bears the burden of proving the nature and extent of any disability by a reasonable degree of certainty. Elrod v. Treasurer of Missouri as Custodian of the Second Injury Fund, 138 S.W.3d 714,717 (Mo. banc 2004). Proof is made only by competent substantial evidence and may not rest on surmise or speculation. Griggs v. A.B. Chance, 503 S.W.2d 697,703 (Mo. App. 1973). Expert testimony may be required when there are complicated medical issues. ***Id.*** at 704. Extent and percentage of disability is a finding of fact within the special province of the fact finding body, which is not bound by the medical testimony but may consider all the evidence, including the testimony of the Claimant, and draw all reasonable inferences from other testimony in arriving at the percentage of disability. Fogelsong v. Banquet Foods Corp., 526 S.W.2d 886, 892 (Mo. App. 1975).

Initially, the Court finds, as to Claimant's credibility, she has failed to provide credible testimony to this Court. It is clear Claimant's description of her injuries and their subsequent effects verge on the point of malingering. As all, if not most, of Claimant's medical expert testimony relies is substantial part on her own subjective description of her maladies, this Court finds the conclusions subsequently provided are equally specious. There is little or no objective medical finding to support any of Claimant's anomalies. Claimant has not met her burden of showing the incident of January 8, 2013 was the prevailing factor causing the physiological and/or psychological complaints. This Court, therefore shall deny this claim on the basis of lack of medical causation. Consequently, all other issues are therefore moot.

Second Injury Fund Liability

When deciding Fund liability, the first determination is the degree of disability from the last injury considered alone. Hughey v. Chrysler Corp., 34 S.W3d 845, 847 (Mo.App. 2000). Therefore, pre-existing disabilities are irrelevant until the employers' liability for the last injury is determined. Id. If the last injury in and of itself rendered Claimant PTD, then the SIF has no liability. Landman v. Ice Cream Specialties, Inc., 107 S.W.3d 240,248 (Mo.2003). Under Section 287.220.1 RSMo (2000), in order to qualify for SIF benefits, Claimant must prove the presence of pre-existing permanent partial disability along with a "subsequent compensable injury resulting in additional permanent partial disability". If the primary injury against Employer is not compensable, then the Second Injury Fund claim fails. As the evidence has failed to show a compensable injury, the SIF has no liability in this case.

CONCLUSION

Claimant has failed to show any medical causation, all issues of temporary total disability, past medical expenses, future medical treatment and Second Injury Fund liability are moot and no further workers' compensation benefits are owed.

I certify that on May 18, 2018, I delivered a copy of the foregoing award to the parties to the case. A complete record of the method of delivery and date of service upon each party is retained with the executed award in the Division's case file.

By MP

Made by:

Marvin O. Teer
Administrative Law Judge
Division of Workers' Compensation

DIVISION OF WORKERS' COMPENSATION
DEPARTMENT OF LABOR INDUSTRIAL RELATIONS