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

Injury No.: 07-065590

Employee: Ronald Reynolds

Employer: Wilcox Truck Lines, Inc.

Insurer: Accident Fund Insurance Company of America

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries
The parties asked the administrative law judge to determine the following issues: (1) medical causation; (2) nature and extent of employee's permanent disability; (3) employee's average weekly wage; (4) responsibility of the employer/insurer for past medical aid, including mileage and out-of-pocket expenses; (5) responsibility of the employer/insurer for past due temporary total disability benefits; (6) responsibility of the employer/insurer for past temporary partial disability benefits from February 5, 2008, through April 30, 2008; (7) past nursing services for employee from and after March 23, 2011; (8) whether employee is entitled to future medical aid to cure and relieve the effects of his injuries; (9) whether employee is entitled to future nursing services to cure and relieve from the effects of his injuries; and (10) whether employee's temporary disability ended and his disability became permanent.

The administrative law judge determined as follows: (1) employee's post-traumatic stress disorder and depressive condition are medically causally related to the work accident of July 17, 2007; (2) employee is permanently and totally disabled as a result of the work injury; (3) employee's average weekly wage in this case is $728.94, resulting in weekly compensation rates of $485.96 for temporary total and permanent total disability, and $389.04 for permanent partial disability; (4) employer/insurer is liable for $7,874.54 in past medical aid, $1,238.75 in medical mileage, and $754.33 in out-of-pocket expenses; (5) employer/insurer is liable for past due temporary total disability benefits, in the amount of $153,077.40, subject to a credit in the amount of $479.81 for an overpayment; (6) employer/insurer is liable for temporary partial disability benefits in the amount of $2,731.65; (7) employee's claim for past nursing services of his wife is denied; (8) employee is entitled to future medical aid, including nursing care, to cure and relieve the effects of his injuries; (9) employee reached maximum medical improvement on November 19, 2014, and his disability became permanent on that date; and (10) employee's wife, Betty Reynolds, was a total dependent of employee at the time of the work injury, and has been totally dependent upon him continuously from that date through the date of the final hearing on March 16, 2016.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in denying employee's claim for past nursing expenses after March 23, 2011; and (2) in finding employee's average weekly wage was $728.94.

Employer/insurer filed a timely application for review with the Commission alleging the administrative law judge erred in finding employee to be permanently and totally disabled.

For the reasons stated below, we modify the award and decision of the administrative law judge referable to the issue of past nursing care. We additionally supplement the administrative law judge's award to allow the reader to locate the operative findings of fact and conclusions of law that we have adopted from the administrative law judge's award.

Discussion

Affirmative findings vs. summaries of the evidence

Section 287.460.1 RSMo tasks the administrative law judge in a workers' compensation case to issue an award "together with a statement of the findings of fact." Here, the administrative law judge did provide factual findings, but they are interspersed throughout a 136-page decision that includes lengthy summaries of the evidence (including many pages consisting entirely of block quotes from the transcript itself) without accompanying analysis or commentary from the administrative law judge as to how he viewed such evidence. The decision also includes exhaustive recitations of numerous statutory, regulatory, and case law authorities applicable in Missouri workers' compensation proceedings.

The courts have strongly cautioned us against issuing or approving these kinds of decisions:

> Here, there are literally pages of testimony summarization. There are also pages of substantial discussion of abstract legal theory. The ALJ certainly diligently summarized all of the evidence as an impartial and uncritical scrivener. No doubt it was a useful reference tool for the ALJ's own use in understanding the facts. But because of the absence of findings (that is, the lack of critical evaluation and the failure to draw pertinent inferences from the evidence), the summaries, with all due respect, are of little value to this court. ... **We need to know what the Commission actually found to be operative and significant as it reviewed the testimony.**

Stegman v. Grand River Reg'l Ambulance Dist., 274 S.W.3d 529, 532 (Mo. App. 2008)(emphasis added).

In *Stegman*, the court concluded the award, as written, failed to comply with the requirements under § 287.460.1, and that the court was therefore constrained to vacate it and remand the case to the Commission to provide an appropriate statement of the facts. *Id.* at 537. Here, we believe the award ultimately contains findings of fact and

conclusions of law sufficient to permit judicial review, should this matter be subject to further appeal. However, because the findings are interspersed throughout lengthy summaries and recitations of the type the courts have specifically cautioned us against, we discern a need to briefly summarize below the operative findings of fact and conclusions of law with respect to the issues identified at the hearing, which findings and conclusions we are hereby affirming and adopting as our own:

Medical causation

Dr. Stanley Butts provided credible and persuasive testimony (and we so find) that the July 2007 accident was the prevailing factor causing employee to suffer the resulting medical condition of post-traumatic stress disorder (PTSD), depression, and associated disability. *Award*, pages 38, 74.

Nature and extent of permanent disability

Employee provided credible and persuasive evidence regarding his considerable mental difficulties and complaints attributable to the accident; these are exhaustively catalogued in the administrative law judge's award at pages 61-70. Dr. Butts credibly testified (and we so find) that employee is permanently and totally disabled as a result of the July 2007 accident. *Award*, pages 39, 43, 85. We deem such testimony more persuasive than the contrary opinion from Dr. Dale Halfaker. *Award*, pages 13, 87. There is insufficient evidence to persuade us to make a finding that employee suffers from dementia or Alzheimer's disease, or that his inability to work is a result of such conditions. *Award*, page 87. The vocational expert Gary Weimholt also provided persuasive testimony (and we so find) that employee has a total loss of access to the open competitive labor market and is totally vocationally disabled from employment. *Award*, pages 52, 88.

Average weekly wage

The 13 calendar weeks immediately preceding the week in which employee was injured correlates to the time period of April 15, 2007, through July 14, 2007. *Award*, page 75. Employee's evidence is insufficient to persuade us to make a finding that he was absent five regular or scheduled work days during the 13 calendar weeks immediately preceding the week in which he suffered the work injury. *Award*, page 78. Instead, we find, in light of what we deem to be extraordinary facts concerning employee's receipt of a lump sum for vacation pay during the relevant period, and his work of driving various routes rather than working a consistent hourly schedule, that employee's average weekly wage is fairly and justly determined pursuant to § 287.250.4 RSMo by dividing the gross amount of $9,476.18 paid during the 13 weeks by 13, resulting in an average weekly wage of $728.94. *Award*, pages 78, 79.

Past medical expenses - non-nursing care

Employer was aware of employee's injury and his contention that he remained in need of medical care, but did not authorize any treatment for employee between May 1, 2009, and November 21, 2011. *Award*, page 117-19. Employee provided the relevant medical records, medical bills, and testimony linking the disputed treatment to the bills. *Id.* Dr. Butts credibly testified (and we so find) that the disputed past medical services employee received were necessary to cure and relieve the effects of the work injury. *Award*, pages 35, 118. Employer did not provide any evidence to suggest (or prove) that employee is not required to pay the billed amounts, that his liability for the disputed amounts has been extinguished, or that employee has ceased to be liable for write-offs or fee adjustments from the providers. *Award*, page 120. We conclude that employee is entitled to $7,874.54 in past medical expenses from employer/insurer. *Id.* Employee is also entitled to $754.33 as reimbursement for out-of-pocket expenses he incurred in connection with disputed medical treatment, as well as $1,238.75 for mileage. *Award*, pages 122-25.

Temporary total disability benefits

Employee was not underpaid temporary total disability benefits from July 18, 2007, through February 4, 2008, or from May 1, 2008, through November 5, 2008, based on our finding that the appropriate rate for temporary total disability benefits is $485.96. *Award*, page 109. Instead, employer/insurer is entitled to a credit of $479.81 for its overpayment of temporary total disability benefits at the weekly rate of $494.55 during this time period. *Id.* Employee has been unable to work since November 5, 2008, and was engaged in the rehabilitative process through November 19, 2014. *Award*, page 112. Accordingly, employee is entitled to temporary total disability benefits for the period November 5, 2008, through November 19, 2014. *Id.*

Temporary partial disability benefits

Employee worked light duty for employer for 12 weeks and 4 days after the accident. *Award*, page 115. During this period of disability, employee was unable, with the exercise of reasonable diligence, to secure earnings commensurate with what he was earning before the accident; we so find. *Award*, pages 60, 113. We conclude, therefore, that employee is entitled to $2,731.65 in past temporary partial disability benefits. *Award*, page 115.

Future medical expenses

Based on the credible testimony of Dr. Butts, we find that there is a reasonable probability that employee will require treatment in the future to cure and relieve the effects of his work injury. *Award*, pages 40, 128. Accordingly, employer/insurer is liable for future medical treatment to cure

and relieve employee from the effects of the work injury. *Award*, page 128.

Future nursing care
Based on the credible testimony of Victoria Powell, we find that if Mrs. Reynolds becomes unavailable to provide employee with assistance, employee will need someone else to provide him with nursing care. *Award*, pages 53, 128. Accordingly, employer/insurer is liable for future nursing care to cure and relieve the effects of the work injury. *Award*, page 128.

Maximum medical improvement
Based on the persuasive opinion of Dr. Butts, we find that employee reached maximum medical improvement on November 19, 2014. *Award*, page 89.

Past medical expenses - spousal nursing care
Employee suffered a severely disabling psychological injury following a motor vehicle accident on the job. He advances evidence that, based on such disability, his wife, Betty Reynolds, has been required to provide a number of services for him in the nature of nursing care, such that he is entitled to an award of past medical expenses in the form of reimbursement for the reasonable value of such services. The administrative law judge denied employee's claim in this regard, based on a finding that Mrs. Reynolds does not provide employee with constant nursing care, and that the services provided by Mrs. Reynolds are not as extensive or extraordinary as those at issue in the various reported appellate decisions wherein awards of spousal nursing care were approved. Employee appeals.

Our initial and primary concern with respect to this issue is our difficulty in reconciling the administrative law judge's denial of reimbursement for *past* nursing care, with his decision to make an award of *future* medical care that specifically includes nursing services:

> I find and conclude [employee] did not prove he currently needs constant nursing care. I find and conclude that [employee] does not reasonably need constant nursing care of his wife to cure or relieve him of the effects of the July 17, 2007, injury. I also find the services [employee's] wife provides to [employee] are primarily services ordinarily provided by a wife to a husband.

Award, page 106.

> [Employee] will continue to need assistance putting out his medication and going to medical appointments. If Mrs. Reynolds is not available to provide assistance for him, he will need someone else to provide nursing care for him. Based on competent and substantial evidence and the application of the Missouri Workers' Compensation Law, I find [employee]

> will need additional medical aid, including nursing care, to cure and relieve him from the effects of his July 17, 2007, compensable injury.

Award, page 128.

We note that, in the context of past nursing services, the administrative law judge focused on the question whether employee proved he needs "constant" care, and did not examine whether an award of reimbursement for less-than-constant past nursing services would be supported. This is understandable, as employee premised his claim for past nursing reimbursement, in large part, on the testimony from the registered nurse and certified life care planner, Victoria Powell. Ms. Powell opined that, since the date of the work injury, employee has needed 16 to 20 hours of nursing care per day, 7 days per week. After careful consideration, we, like the administrative law judge, are not convinced that employee has a need for nursing services to the extent advanced by Ms. Powell.

However, we also agree with the administrative law judge that, for purposes of future medical care, if Mrs. Reynolds were not available to assist employee in the numerous ways that he requires, someone else would need to be paid to do this.[1] We also agree with the administrative law judge's express finding (based on what he deemed to be a credible opinion from Dr. Stanley Butts) that employee's disabling mental condition has remained materially consistent from July 2007 to the present. See *Award*, page 85. Logically, then, it strikes us that if it is true that employee requires some degree of nursing services from Mrs. Reynolds (or a paid replacement in her absence) today, this was also true as of the date of the work injury.

Accordingly, although we are not persuaded by the accounting advanced by Ms. Powell, we will examine the record to determine whether an appropriate valuation of Mrs. Reynold's past nursing services may be derived. In this regard, we are guided by the holding in *Fitzgerald v. Meyer*, 820 S.W.2d 633, 637 (Mo. App. 1991), that "the Commission may review the entire record and make findings of the amount of time required to render necessary home nursing services[,]" and that we are "not required to accept estimates if the estimates are not believed to be reliable as a measure of the time necessary to render required services."

We will first examine the record in order to identify the particular nursing services that Mrs. Reynolds has performed for employee from approximately July 1, 2009, to the present.[2] In this regard, we find as follows. Mrs. Reynolds manages employee's medications, owing to employee's inability to do this for himself in a consistent or reliable manner. This requires that she keep a list with relevant information regarding

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[1] Employer/insurer did not appeal or challenge, in its briefing, the award of future medical care including nursing services.

[2] As recounted in the administrative law judge's award, Mrs. Reynolds worked full-time up until July 1, 2009, when she left her job in order to care for employee. Employee, however, seeks only an award of past nursing after March 23, 2011, because that was the first date he notified employer/insurer of his need for same as a result of the work injury. See *Compton v. Rinehart's Meat Processing*, 130 S.W.3d 684, 691 (Mo. App. 2004).

dosages and frequency; maintain pharmacy information and obtain timely refills; fill employee's pill box; and monitor employee for any adverse reactions. Mrs. Reynolds helps employee manage his medical appointments, attends these with him, and communicates with employee's caregivers. Mrs. Reynolds does most of the necessary driving. Mrs. Reynolds monitors employee throughout the day, to prevent him from having accidents, or from falling into a psychological crisis.[3] This involves close observation of employee for signs that he is suffering from intrusive memories, or hyper-arousal, both of which are symptoms of his PTSD. When employee suffers panic attacks, Mrs. Reynolds assists in calming him down, using deep breathing exercises and guided imagery. When employee suffers a depressive episode, Mrs. Reynolds offers encouragement. Such encouragement is necessary to address employee's symptoms of withdrawal and avoidance, and to keep employee motivated to continue with his treatment. We find that each of these services were reasonably required to cure and relieve the effects of employee's work injury.

Employer/insurer argues that employee cannot receive an award for the services we have outlined above, because such services are those typically performed by a spouse, and as such cannot form the basis for an award of past nursing care. We acknowledge that the Missouri cases suggest we should delineate between "nursing" versus "spousal" work, and that "[r]emuneration is based upon services which are in excess of normal spousal duties." *Breckle v. Hawk's Nest*, 980 S.W.2d 192, 194 (Mo. App. 1998). However, our careful reading of these decisions reveals that the courts have not, to date, provided us with a definition of "normal spousal duties," or a listing of the specific type of services that, in Missouri, must be deemed to constitute "the services ordinarily performed by a wife for a husband." *Groce v. Pyle*, 315 S.W.2d 482, 491 (Mo. App. 1958).[4] Nor does Chapter 287 provide a definition for "normal spousal duties."

In his award, the administrative law judge did not reference evidence in the record to support his findings regarding the type of services "ordinarily provided by a wife to a husband," see *Award*, pages 106-07, or more specifically, the type of services ordinarily provided by Mrs. Reynolds to employee before the injury. Employer has not directed us, in its brief, to evidence sufficient to permit us to make findings as to what services should be deemed to constitute non-compensable "ordinary spousal duties" in this case.

It thus appears we are asked to take administrative notice, or perhaps to speculate, based upon our own experience, as to those services that a wife normally performs for a husband in Missouri. We are not persuaded to do so, or to deny employee's claim for past nursing care on this basis, for the following reasons.

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[3] The administrative law judge deemed the lack of psychiatric hospitalizations in this case, and evidence of only a few minor accidents, as proof that employee doesn't need supervision. We disagree. This evidence, in our view, tends to support a finding that the services Mrs. Reynolds provided were, for the most part, effective in helping employee maintain psychological stability, as well as in preventing employee from harming himself, and that such services were thus reasonably required in order to "relieve" employee from the effects of the work injury for purposes of § 287.140.1.

[4] In the case of *Jerome v. Farmers Produce Exch.*, 826 S.W.2d 3 (Mo. App. 1991), the court did uphold a discount for time spent preparing meals, but this was based on specific evidence that the employee never cooked his own meals before the work injury, and expected his wife to do so regardless of his condition. *Id.* at 6. In any event, we are not making an award of meal preparation in this case.

First, and most importantly, this case involves a post-2005 injury, such that we are required to apply the strict construction mandate under § 287.800.1 RSMo. As the courts have instructed, the mandate of strict construction requires that we "presume nothing that is not expressed" in the statutes. See *Allcorn v. Tap Enters.*, 277 S.W.3d 823, 828 (Mo. App. 2009). It appears we are asked to presume something not expressed in the plain language of § 287.140.1 RSMo to the extent employer asks us to deny employee's claim for past nursing services—notwithstanding our finding that such were reasonably required to cure and relieve the effects of the work injury, thus satisfying the statutory standard—based solely on the premise that some might perceive such as falling within a loosely-defined category of Mrs. Reynolds's normal "services" or "duties" owing to employee by virtue of her role as employee's spouse.

Second, we find each of the reported Missouri decisions to be distinguishable, where the need for nursing care in this case stems from a purely mental injury. As the administrative law judge aptly noted in his exhaustive summary of the case law on this topic, these facts simply are not comparable to those in cases where employees received awards of spousal nursing care for debilitating, physical injuries which rendered them essentially bed-ridden or helpless. Unlike the injuries at issue in cases like *Breckle* or *Groce*, this employee's injuries did not result in a need for help showering, feeding, getting dressed or ambulating safely around the home. Employee remains physically capable of performing the normal activities of daily living without active assistance or intervention from an attendant.

Employee does, however, suffer from a debilitating, ever-present *psychiatric* injury that renders the performance of his daily activities potentially dangerous to himself, where he is not regularly monitored by a responsible and capable adult, such as Mrs. Reynolds. Indeed, the administrative law judge recognized this when he made an award of future nursing services premised upon a finding that, in Mrs. Reynolds's absence, someone would need to be paid to perform the services she performs for employee. In a case of psychiatric injury, it is not as easy to distinguish something a reasonable spouse might ordinarily do for another from something a paid nurse or attendant would do. An activity like providing encouragement, for example, would likely be discounted by the *Breckle* or *Groce* courts, because of the clear delineation in the facts of those cases between such activities and something like feeding, bathing, or dressing a physically helpless spouse.

Here, on the other hand, we have determined, as a factual matter, that employee has a specific need for encouragement during bouts of depression caused by his psychiatric work injury. We have found that, in Mrs. Reynolds's absence, someone would need to be paid to do this for employee. We have found that employee's need for these services following the work injury was so pressing that it motivated Mrs. Reynolds to quit her job so that she could be available to provide these services.[5] In *Daugherty v. Monett*, 238 192 S.W.2d 51, 56 (Mo. App. 1946), the court recognized that "nursing" may be defined as "[t]o take care of or tend, as a sick person or an invalid; to attend

[5] There is no suggestion in the record that employee's wife was not capable, prior to employee's injury, of providing all services that one might consider to be ordinarily provided by a wife while, at the same time, working on a full-time basis.

upon. To care or provide for tenderly or sedulously." We conclude that each of Mrs. Reynold's activities that we have identified above constituted "nursing" consistent with this definition, and that such activities are therefore compensable in the form of past nursing expenses pursuant to § 287.140.1.

Next, we will examine the record to establish the measure of time necessary to render these required services. As Ms. Powell credibly testified, such a measure is exceedingly difficult to determine in this case, given that employee's psychological condition and his activities vary from day-to-day. Ms. Powell indicated that owing to the variability of employee's condition, it would be impossible to schedule someone to be there for employee precisely when needed. So, Ms. Powell took the route of assuming someone would need to be present with employee constantly, just in case there was a deterioration in employee's condition. In this way, Ms. Powell reached the determination that employee needed nursing services between 16 and 20 hours each and every day.

Although we understand Ms. Powell's reasoning, we disagree with her conclusion. Instead, we credit the evidence indicating that employee's condition waxes and wanes, and that there may be days wherein employee does not need careful monitoring or intervention by an attendant. As Ms. Powell agreed on cross-examination, Mrs. Reynolds would not properly be deemed "on the clock" on those days. On bad days, however, Mrs. Reynolds needs to be present with employee throughout much of the day, as well as available to comfort him in the event of sleep disturbances at night.

From the credible evidence, it appears to us (and we so find) that, so long as employee maintains a regular schedule and consistent activities, his ratio of good days to bad is rather favorable. For example, based on the testimony from employee's oldest son, Ronald Reynolds, Jr., we are able to find that employee has flashbacks only about twice a week. Mrs. Reynolds estimates that employee has disturbing nightmares only about three times per week; we so find. In Mrs. Reynolds's words, employee does "really, really good as long as [they] are there on the farm." *Transcript*, page 113. We so find. After a careful consideration of the testimony from employee and his witnesses, and of the record as a whole, we find that employee averages 3 out of 7 bad days per week, and that on such days, employee needs 16 hours of care from Mrs. Reynolds. We find, therefore, that employee requires a total of 48 hours per week of nursing care.[6]

Finally, we turn to the appropriate rate of compensation for such services. Section 287.140.3 RSMo tasks us with determining the "fair and reasonable" fees and charges in connection with an award of nursing services. Ms. Powell credibly testified (and we so find) that employee is not in need of skilled nursing care from an individual with training in services such as transferring or feeding patients. Instead, the services employee requires could be adequately provided in the guise of what Ms. Powell described as "home care" or "companion care." *Transcript*, pages 3141, 3198. Ms. Powell opined that an appropriate hourly rate for these services in Missouri would

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[6] To be clear, if Mrs. Reynolds (or another resident family member) becomes unwilling to, or incapable of, providing needed care, there may, in the future, be no alternative but to provide round-the-clock care by a professional, consistent with Ms. Powell's conclusions.

be between $16.00 and $19.00 per hour. After careful consideration, we exercise our discretion and find a rate of $16.00 per hour to be fair and reasonable.

Based on our findings above, we calculate a total of 13,056 hours of nursing care between March 23, 2011, and June 8, 2016, the date on which the record presently before us was closed.[7] See *Award,* page 7. At the rate of $16.00 per hour, we find the cost of employee's reasonable and necessary nursing care during this time period was $208,896.00. Consequently, we conclude that employee is entitled to reimbursement for past nursing services in the amount of $208,896.00.

Conclusion

We modify the award of the administrative law judge as to the issue of past medical expenses.

Employer/insurer is liable to employee for $208,896.00 in past nursing care.

The award and decision of Administrative Law Judge Robert B. Miner, issued May 9, 2017, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

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

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

Given at Jefferson City, State of Missouri, this 3rd day of July 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

DISSENTING OPINION FILED

Reid K. Forrester, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

[7] Employee's brief urges us to make an award of past spousal nursing care from March 23, 2011, through the present day. However, we deem it inappropriate to make an award of past medical expenses based upon a time period that is not accounted for in the record before us. Instead, an accounting of such is more appropriately undertaken between the parties in the context of awarded future nursing care. Should the parties identify a need for intervention by a fact-finder to resolve any dispute pertaining to future care, the Commission retains jurisdiction to hear same pursuant to *State ex rel. ISP Minerals, Inc. v. Labor & Indus. Rels. Comm'n*, 465 S.W.3d 471 (Mo. 2015).

DISSENTING OPINION

Although I did not participate in the March 14, 2018, oral argument in this matter, I have reviewed the evidence, read the briefs of the parties, listened to an audio recording of the oral argument, and considered 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 disagree with the majority's decision to award permanent total disability benefits and past nursing care to this employee.

Employee is not permanently and totally disabled based on PTSD

At the outset, it is worth reiterating that for purposes of our analysis, "total disability" as defined in Chapter 287 means an "inability to return to *any* employment *and not merely ... inability to return to the employment in which the employee was engaged at the time of the accident.*" See § 287.020.6 RSMo (emphasis added). Even if I accept the medical evidence, based on the diagnoses from the treating and evaluating experts, that employee suffers from post-traumatic stress disorder (PTSD), and accept that employee remains fearful of driving a semi-truck based on his traumatic experience on July 17, 2007, I do not accept, however, that this single event rendered employee permanently and totally disabled from *all* work.

My research reveals only one other case in Missouri where an injured worker received an award of permanent total disability benefits based solely on a diagnosis of PTSD. In *George v. City of St. Louis*, 162 S.W.3d 26 (Mo. App. 2005), a firefighter was deemed permanently and totally disabled owing to the psychological effects of a long career that regularly exposed him to extremely traumatic events, including arriving at the scene of a school bus accident where the employee witnessed the bodies of children strewn across an interstate; having to respond to fires in family members' homes; witnessing firsthand a mother's grief at her child's death in a fire; and routinely having to witness and interact with burned and dead bodies, including those of children and the elderly. *Id.* at 29. The employee in *George* was also a Vietnam War veteran, and his work exposures to such traumas caused him to relive his numerous wartime experiences of injury, death, and human suffering. *Id.* at 28.

Here, in contrast, employee was involved in a single motor vehicle accident wherein he briefly experienced a fear that he might be trapped in the cabin of his truck as it began to be engulfed in flames. Thereafter, employee returned to work with employer for several months. Although employee had some anxiety after his return to driving, the more persuasive evidence reveals to me (and I so find) that he was able to manage his emotions without medication during this time period. However, after a setback in April 2008 when employee witnessed an accident scene and became upset, he decided to quit driving for employer altogether.

While I can understand employee's choice to quit working as an over-the-road truck driver in light of his emotional reaction to his accident, I am concerned that he never attempted or even considered a return to any other kind of employment. Employee's experts would have us believe that employee's psychological and emotional injuries are so disabling he just can't do work of any kind. However, the records of the treating

psychologist, Dr. Steven Akeson, suggest rather strongly to the contrary. More than a year after the accident, on September 18, 2008, employee told Dr. Akeson that he was working on his farm up to 12 hours per day, 6 days per week. Clearly, employee remains physically capable of performing work, even if he is unable to continue driving trucks.

The records from Dr. Jesse Rhoads further reveal that employee experienced considerable improvement in his psychological condition from late 2011 through early 2013; that employee responded well to steadily lower doses of medication; and that employee was often in good spirits, smiling, and jovial. As of March 11, 2013, employee reported to Dr. Rhoads that he was doing very well on a lower dose of Prozac, and was excited about the prospect of going off his medications altogether. This contrasts sharply with the picture employee presented at the hearing, with his hired expert, Dr. Stanley Butts, of an individual so psychologically disabled that he can't even be left alone for brief periods without posing a significant danger to himself.

Dr. Butts fails to justify his opinion in the face of the demonstrable and remarkable progress revealed by the medical records. I do not believe Dr. Butts. I note that Dr. Butts reached his opinions based, in part, on incorrect information. Specifically, Dr. Butts understood that employee was totally incapable of driving based on the severity of his PTSD. However, employee's own witnesses revealed that employee does considerable driving to Springfield and Thayer, Missouri; that he drives to the grocery store by himself; and, in fact, has insisted on driving in multiple instances, even when accompanied by others.

It is notable to me that employee and his advocates (including Dr. Butts) made a concerted effort to prevent employee from being further evaluated in this case, on the theory that employee was so fragile he just couldn't handle being subjected to any further testing. (Notably, despite giving this opinion in the fall of 2015, Dr. Butts himself deemed it appropriate to nevertheless evaluate employee not once, but twice more.) As a result, employer was forced to take the unusual step of filing motions with an administrative law judge in an attempt to secure the reasonable medical examinations to which employers are statutorily entitled under § 287.210.1 RSMo.

I must pause and seriously question why an employee seeking permanent total disability benefits, based solely on a psychiatric diagnosis not cognizable to laypersons such as myself, would do his utmost to prevent the fact-finding tribunal from having a full and fair assessment of his condition.

As a result, our only real alternative to the uninformed opinion from Dr. Butts comes from the authorized treating neuropsychologist, Dr. Dale Halfaker, who was prevented from personally evaluating employee after November 4, 2008. As of that date, Dr. Halfaker believed employee was suffering a 10% permanent partial disability of the body as a whole referable to his psychological impairment from the work injury. Dr. Halfaker reasonably and credibly explained that employee's PTSD was solely limited to truck driving, being in a vehicle, and driving a vehicle, and therefore employee has the ability to work in positions that don't involve these activities. Dr. Halfaker

reviewed employee's more recent medical history, and determined that Dr. Butts's opinion that employee is totally disabled is an irrational position that defies reason. I agree with Dr. Halfaker's assessment. I find Dr. Halfaker's opinions more persuasive than those from Dr. Butts. I find that employee is not permanently and totally disabled, and that his PTSD is limited to activities involving driving.

This is not a case like *George*, cited above, where an employee's work exposures to repeated, severely traumatic events and activities interacted with a preexisting psychological impairment to produce total disability. Instead, I deem the facts of this case comparable to those of *Minnick v. S. Metro Fire Prot. Dist.*, 926 S.W.2d 906 (Mo. App. 1996). In *Minnick*, a paramedic suffered PTSD symptoms after responding to a series of disturbing emergency response calls. *Id.* at 907. As a result, he suffered emotional problems, behavioral changes, and became moody and withdrawn; symptoms that mirror those reported by the employee in this case. *Id.* In *Minnick*, the Commission deemed those symptoms to result in a 10% permanent partial disability of the body as a whole, and the court affirmed that finding. I think such a rating is much more in line with the credible evidence before us, here.

Ultimately, after a careful review of this case, it becomes clear to me that this employee made the conscious decision that he didn't want to work for a living anymore. Instead, he wanted to retire and spend his days on his farm. From that point forward, employee, his family, and his paid experts did everything they could to emphasize a theory of total disability, while preventing the employer from obtaining any further pertinent information with which to evaluate or defend this case.

While I do not blame employee for seeking solace from his ongoing and considerable emotional problems in those activities he most enjoys, I do not believe the Missouri Workers' Compensation Law is intended to effectively subsidize a worker's voluntary retirement from the open labor market. The award of permanent total disability benefits should be modified to an award of permanent partial disability.

Employee is not entitled to an award for ordinary spousal services provided by his wife

I also disagree with the majority's choice to award to employee the extraordinary sum of $208,896.00 in spousal nursing care. While I agree with the majority that the facts of this case simply are not comparable to those set forth in the numerous reported Missouri decisions wherein such awards were affirmed, this is precisely why Mrs. Reynolds should not be paid for ordinary activities that amount to simply being a caring spouse. There is no need for me to reproduce here the administrative law judge's capable and thorough summary of the relevant and controlling case law in this area. Suffice to say that I find no basis in Missouri precedent for the award rendered by the Commission majority.

To the extent that the majority points to strict construction under § 287.800.1 RSMo as justifying their choice to disregard the repeated admonition from our courts that an award of spousal nursing is only appropriate where the services are shown to go "beyond those ordinarily provided by a spouse[,]" *Breckle v. Hawk's Nest*, 980 S.W.2d 192, 194-95 (Mo. App. 1998), I disagree that the legislature could have contemplated

such a result when they enacted the 2005 amendments to the Missouri Workers' Compensation Law. If anything, under strict construction, we should apply a more stringent, narrow reading of the word "nursing" to these cases, with the result that services such as merely being there for a family member in times of emotional difficulty, cannot be deemed compensable. The record reveals that employee's son, Gregg Reynolds, also comforts employee when he has an episode. Under the majority's reasoning, should we approve another award for those services?

To be clear, I believe the spousal nursing claim, like the claim for permanent total disability, is entirely a product of the concerted efforts by employee and his advocates to portray the effects of this work injury as far more severe than the credible evidence will support. But even if we accept the majority's fact-finding, I think the claim for spousal nursing must fail as a matter of law. I do not accept the proposition that our legislature intended injured employees to receive multiple hundreds of thousands of dollars in additional workers' compensation benefits premised solely upon emotional support their spouses would ordinarily provide, under any reading of the statute.

Conclusion

To summarize, I am convinced that, at worst, employee is permanently and totally disabled from driving a semi-truck, but is not permanently and totally disabled from all employment. I would modify the award of the administrative law judge and find that employee is not entitled to permanent total disability benefits, but rather an award consistent with my finding that he suffers a 10% permanent partial disability of the body as a whole. I would affirm and adopt as my own the administrative law judge's determination that employee is not entitled to an award of past medical expenses in the form of nursing care provided by Mrs. Reynolds.

Because the majority has determined otherwise, I respectfully dissent.

Reid K. Forrester, Member

AWARD

Employee: Ronald L. Reynolds

Injury No.: 07-065590

Employer: Wilcox Truck Lines, Inc.

Insurer: Accident Fund Insurance Company of America

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

Hearing Date: March 16, 2016.

Checked by: RBM

Date Record Closed: June 8, 2016

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.

2. Was the injury or occupational disease compensable under Chapter 287? Yes.

3. Was there an accident or incident of occupational disease under the Law? Yes.

4. Date of accident or onset of occupational disease: July 17, 2007.

5. State location where accident occurred or occupational disease was contracted: Bethany, Harrison County, 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: Employee was injured in a single-vehicle collision when the tractor-trailer he was operating struck a concrete barrier and overturned.

12. Did accident or occupational disease cause death? No.

13. Part(s) of body injured by accident or occupational disease: Head, upper extremities, right thigh, and body as a whole for psychological injury.

14. Nature and extent of any permanent disability: Permanent total disability as a result of Employee's July 17, 2007 injury considered alone.

15. Compensation paid to-date for temporary disability: $27,624.15.

16. Value necessary medical aid paid to date by employer/insurer? $49,605.99.

17. Value necessary medical aid not furnished by employer/insurer? $9,867.62[1]

18. Employee's average weekly wages: $728.94.

19. Weekly compensation rate: $485.96 for temporary total disability and permanent total disability, and $389.04 for permanent partial disability.

20. Method wages computation: Section 287.250, RSMo.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses for out of pocket expenses: $754.33.

Unpaid medical expenses for medical mileage: $1,238.75.

Unpaid medical expenses for treatment at the VA: $7,874.54.

Employee's claim for past nursing services of his wife, Betty Reynolds, is denied.

315 weeks of temporary total disability for the period November 6, 2008 through November 19, 2014 at the weekly rate of $485.96 per week = $153,077.40, subject to a credit of $479.81 for a temporary total disability overpayment, for a net of $152,597.59.

12 4/7 weeks of temporary partial disability for the period January 27, 2008 through April 27, 2008 at the weekly rate of $217.29 per week = $2,731.65.

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[1] This includes out of pocket expenses of $754.33, medical mileage of $1,238.75, and expenses for treatment at the VA of $7,874.54.

Employer is directed to authorize and furnish additional medical treatment, including but not limited to nursing services, to cure and relieve Employee from the effects of his July 17, 2007 work injury, in accordance with section 287.140, RSMo.

Permanent total disability benefits from Employer beginning November 20, 2014, and thereafter, at the weekly rate of $485.96 for claimant's lifetime.

22. Second Injury Fund liability: None. The Second Injury Fund is not a party to this case.

23. Future requirements awarded: As awarded.

Said payments to begin immediately 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: William D. Powell.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ronald L. Reynolds

Injury No.: 07-065590

Employer: Wilcox Truck Lines, Inc.

Insurer: Accident Fund Insurance Company of America

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

Hearing Date: March 16, 2016.

Checked by: RBM

Date Record Closed: June 8, 2016

PRELIMINARIES

A final hearing was held in this case on Employee's claim against Employer on March 16, 2016 in St. Joseph, Missouri. Employee, Ronald L. Reynolds, appeared by his attorneys William D. Powell and Bryan T. Renfrow. Wilcox Truck Lines, Inc., Employer, and Insurer, Accident Fund Insurance Company of America, appeared by their attorneys, Eric T. Lanham and Seth M. Jurcyk. The Second Injury Fund is not a party to this case. William D. Powell requested an attorney's fee of 25% from all amounts awarded.

STIPULATIONS

At the time of the hearing, the parties stipulated to the following:

1. On or about July 17, 2007, Ronald L. Reynolds ("Claimant") was an employee of Wilcox Truck Lines, Inc. ("Employer") and was working under the provisions of the Missouri Workers' Compensation Law.

2. On or about July 17, 2007, Employer was an employer operating under the provisions of the Missouri Workers' Compensation Law and was fully insured by Accident Fund Insurance Company of America ("Insurer").

3. On or about July 17, 2007, Claimant sustained an injury by accident in Bethany, Harrison County, Missouri, arising out of and in the course of his employment.

4. Employer had notice of Claimant's alleged injury.

5. Claimant's Claim for Compensation was filed within the time allowed by law.

6. Employer/Insurer has paid $27,624.15 in temporary total disability from July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008, at the rate of $494.55 per week.

7. Employer/Insurer has paid $49,632.49 in medical aid.

8. The medical expenses incurred to treat Claimant's July 17, 2007 injury were fair and reasonable and usual and customary.

ISSUES

The parties agreed that there were disputes on the following issues:

1. Is Claimant's condition medically causally related to the alleged work injury of July 17, 2007?

2. What is the average weekly wage, and what are the compensation rates in this case?

3. What is Employer's liability, if any, for permanent partial disability benefits, or in the alternative, for permanent total disability benefits?

4. What is Employer's liability, if any, for past nursing services from Claimant's wife from March 23, 2011?

5. What is Employer's liability, if any, for past temporary total disability benefits?

6. What is Employer's liability, if any, for past temporary partial disability benefits from February 5, 2008 through April 30, 2008?

7. What is Employer's liability, if any, for past medical expenses?

8. What is Employer's liability, if any, for out-of-pocket expenses?

9. What is Employer's liability, if any, for medical mileage?

10. What is Employer's liability, if any, for future medical aid to cure and relieve the effects of the work injury, including nursing services?

Betty Reynolds, Ronald Reynolds, Jr., and Greg Reynolds testified on behalf of Claimant. In addition, Claimant offered the following exhibits which were admitted in evidence. The exhibits were admitted in evidence without objection, unless otherwise

noted. The depositions were admitted in evidence subject to objections contained in the depositions.

A- Deposition of Ronald Reynolds
B- Deposition of Betty Reynolds
Employer's objections to the following testimony in Exhibit B are sustained:
p. 34, L:13-23;
p. 35, L:18 – p. 36, L:17;
p. 37, L:21 – p. 38, L:22;
p. 44, L:9-21
p. 56, L:19-21
C- Employee's Notice of Intent to Submit Records of Dr. James Jordan
D- Deposition of Cherie Crawford, with deposition exhibits
E- Extra Materials from Cherie Crawford
F- Deposition of Stanley Butts, PhD with deposition exhibits
G- Deposition of Victoria Powell, with deposition exhibits
H- Second Deposition of Victoria Powell, with deposition exhibits
I- Deposition of Gary Weimholt, with deposition exhibits
J- Missouri State Highway Patrol Report of July 17, 2007
K- Photographs of the accident scene
L- Employee's Demand for nursing Services, dated March 23, 2011
M- Email from Employer's Counsel Eric T. Lanham, dated November 11, 2011
N- Lien from the Veterans Administration
O- VA Expenses
P- Indemnity checks from Insurer
Q- Employee's Military Discharge Report
R- Employee's Medical Mileage
S- Employee's Out-of-Pocket Expenses
T- Bate-stamped and jointly prepared assembly of Employee's Medical Records (the Court finds no objections to Exhibit T were received from the attorneys for Employee or Employer, and Exhibit T is admitted without objection)
U- All previous Orders and Motions filed in the matter

Employer offered the following exhibits, which were admitted in evidence. Exhibit 3 was admitted without objection. Exhibits 1 and 2 were admitted subject to objections contained in the depositions):

1- Deposition of Jessie Rhoads, with deposition exhibits
2- Deposition of Dale Halfaker, Ph.D., with deposition exhibits
3- Printout of temporary total disability payment history

During the March 16, 2016 hearing, it was agreed the record would be left open to permit a transcript of the hearing that was held on January 28, 2016 on Employer, Wilcox Truck Line, Inc.'s Motion to Compel a Medical Evaluation Pursuant to 287.210.1 RSMo filed on January 26, 2016, and Employee's Response to the Motion filed on January 27, 2016, to be prepared and submitted to the Court and attorneys for the parties, and admitted in evidence as Exhibit V with the January 28, 2016 hearing exhibits. The January 28, 2016 hearing exhibits include a transcript of the hearing that was held on December 11, 2015 on Employer, Wilcox Truck Line, Inc.'s Motion to Compel a Medical Evaluation Pursuant to 287.210.1 RSMo filed on December 10, 2015, and Employee's Response to the Motion filed on December 10, 2015, with the December 11, 2015 hearing exhibits.

The Court received the Transcript of the January 28, 2016 hearing with hearing exhibits on June 8, 2016. The Transcript of the January 28, 2016 hearing with hearing exhibits has been marked Claimant's Exhibit No. V. Exhibit V was admitted in evidence on June 8, 2016. The record in this case was closed on June 8, 2016.

Any objections not expressly ruled on during the March 16, 2016 hearing, the December 11, 2015 hearing, the January 28, 2016 hearing, or in this award are now overruled. To the extent there are marks or highlights contained in the exhibits, those markings were made prior to being made part of this record, and were not placed thereon by the Administrative Law Judge.

The post-hearing briefs have been considered.

Findings of Fact

This is a workers' compensation claim arising from a single-vehicle collision on July 17, 2007, on Interstate 35 in Harrison County, Missouri. Exhibit J. Venue for this claim was Bethany, Missouri, but by agreement of the parties and Order of the Division, venue was changed to St. Joseph, Missouri.

At the time of the accident, Claimant was operating a 1998 Ford tractor and pulling a 2002 Trailmobile trailer both owned by Employer. Exhibit D, p. 26. At the time of the accident Claimant was hauling mail for Employer. Exhibit D, pp. 26, 50. At the time of the accident, Claimant was traveling from Thayer, Missouri, to Des Moines, Iowa. Exhibit D, pp. 19-21.

When the accident occurred, the tractor-trailer unit operated by Claimant was northbound on Interstate 35, and entered a construction zone. Employee was crossing a bridge when his vehicle struck a concrete barrier and overturned. The tractor-trailer unit

overturned on the passenger side. Exhibit J. The unit caught fire and Claimant was trapped inside the cab of the tractor. Exhibit T, p. 309.

Claimant smelled diesel fuel in the cab and there was fire in the cab. Claimant kicked the windshield out and escaped from the cab. He ran about 20 or 30 feet, when the entire tractor-trailer unit was engulfed in flames. Exhibit F, Deposition Exhibit 2, Exhibit T, p. 309. At the time of this accident, Claimant was in fear for his life. Exhibit F, Deposition Exhibit 11. Claimant was sixty years old at the time of the accident.

As a result of the accident, Claimant was initially treated at Bethany Hospital. After his initial admission to the Emergency Room, Claimant was transferred by air to North Kansas City Hospital. Exhibit T, pp. 1078-1084.

Claimant's wife, Betty Reynolds, received a call from Bethany Hospital at 2:00 a.m. on July 17, 2007 regarding Claimant's July 17, 2007 accident. She called her sons, Ronnie and Greg, and the three of them went to the North Kansas City Trauma Center in the pickup. When they first saw Claimant, he was in a state of trauma. He was tearing off IV's in both arms. His clothes were burnt. He demanded they take him home. Claimant yelled at Mrs. Reynolds and threw her aside when she told him the nurse needed to see him. She observed blood everywhere. Claimant had cuts from glass. His left arm was bandaged. He had a hole in his left forearm and a cut on his right arm. His back had five bandages. He had knots on the back of his head and blood on his neck.

Ronald Reynolds, Jr. (Ron Jr.) was at the hospital on the day of the accident. Claimant was not happy and wanted to leave right then. Ron Jr. testified Claimant was very agitated and started to yank things out of his arms.

Mrs. Reynolds testified Claimant was frantic, angry, and anxious when he was discharged from the hospital that day about 7:30 a.m. They put Claimant in the back seat of the truck and closed the door. Claimant tried to get out, but they hurried and closed the door. It took six hours to get home. They stopped and ate on the way home. Claimant got more agitated. He never calmed down during the trip home.

Ron Jr. testified they drove from North Kansas City to home after the accident. Claimant broke down and started crying while they were driving. He told them what happened in the accident. He was agitated during the drive. He had cuts on his upper left arm and face and two knots on his head. Claimant was "not there" when they went home.

The boys took Claimant to the bedroom when they got home. They all stayed with him in the bedroom for several hours. Claimant had pain medication.

Claimant was next seen at Ozark Medical Center – Urgent Care in West Plains on the following day, July 18, 2007. Mrs. Reynolds took Claimant to Urgent Care. Workers' Compensation told Claimant to go to Urgent Care. His wounds were debrided and cleansed and he was taken off work. Exhibit T, pp. 1082-1084. Mrs. Reynolds testified Claimant was emotional and agitated there. He treated with Dr. Jordon at the Ozark Medical Center.

On July 24, 2007, Claimant returned to Ozarks Medical Center – Urgent Care for follow up. At that time, he had history of nightmares and flashbacks, and became weepy and distressed thinking about the accident and of getting back into a truck. At that time, Claimant was first diagnosed with PTSD and he was referred to Ozarks Medical Center – Behavioral Health Care. Exhibit T, pp. 1078-1084.

Mrs. Reynolds helped Claimant for three weeks after the accident. She scrubbed the injury on his upper left arm for five minutes four times a day. She cleaned his back two times a day. She picked out glass and black embers and tried to give him moral support.

Claimant treated with Dr. Jordan from September 26, 2007 through February 13, 2008. Dr. Jordan treated Claimant's right thigh contusion. Dr. Jordan fully released Claimant at maximum medical improvement on February 13, 2008 regarding the contusion/laceration/foreign body in his left elbow and the contusion of his right thigh.

Claimant was treated at Behavioral Health Care for PTSD from after the accident. Exhibit T, pp. 30-306. The Behavioral Health records include a request for service on July 25, 2007 and a patient registration sheet on August 18, 2007.

While under treatment at Behavioral Health Care, Insurer referred Claimant for treatment at Neuropsychological Associates of Southwest Missouri. Claimant was first seen there by Steven T. Akeson, Psy.D. on October 3, 2007 in Springfield. Mrs. Reynolds testified that appointment lasted a couple of hours. Claimant took a test there. Mrs. Reynolds was there for the appointment, but she was not in the room with Claimant and the doctor.

Mrs. Reynolds testified Claimant was very emotional when he left the October 3, 2007 session. He was yelling when he got in the pickup. He had anxiety and trauma. He revisited the accident and said he was not going to go back to the doctor. He was withdrawn for several weeks after the appointment. He became more or less a vegetable. He stared at the ceiling. He showed no interest in other people or activities. Mrs. Reynolds had no experience dealing with that type of behavior before then.

Dr. Akeson arrived at a diagnosis of post-traumatic stress disorder, adjustment disorder with mixed anxiety and depressed mood. Dr. Akeson did not find any indications of personality disorder or mental retardation on Axis II, and noted other psychosocial environmental problems to include a work-related truck accident. He gave a Global Assessment of Functioning, or GAF, of 50. He thought the rehabilitation potential to be very good. Exhibit 2, pages 9-10, Exhibit T.

Dr. Akeson recommended therapy to teach Claimant to deal with his anxiety, and be graduated to a return to work program which would be driving a truck. The treatment did occur and Claimant progressed reasonably well. Exhibit 2, pages 12-13, Exhibit T.

Dr. Akeson had ten sessions with Claimant, and the last session was on September 18, 2008. Exhibit T, pp. 968-1008. Mrs. Reynolds took Claimant to the sessions with Dr. Akeson.

Claimant's first treating psychiatrist at Behavioral Health Care was Elizabeth Bhargava, M.D. Claimant treated with Dr. Bhargava on September 19, 2007. That record notes Claimant had occasional suicide thoughts. He thought he was going to die in the accident. She prescribed Prozac. Mrs. Reynolds took Claimant to see Dr. Bhargava.

The Behavioral Health records reflect that Dr. Bhargava assigned a GAF of 64 on January 31, 2008.

The VA records show Claimant treated there with Debbie Schushow on February 21, 2008 for PTSD. A GAF of 54 was assigned. Exhibit T, page 511-515.

Claimant treated with Dr. Donna Gowin at the VA beginning on March 19, 2008. Dr. Gowin diagnosed PTSD. Dr. Gowin's March 19, 2008 note records the incident with a golf cart in which Claimant took off running after the cart hit a bump. Exhibit T, page 417.

Dr. Bhargava's April 30, 2008 Psychiatric Progress Note states in part at Exhibit T, page 83: "He [Claimant] did state that he was evaluated at the Veterans Administration, since he has benefits with them. I am okay with him seeing the Veterans' Administration doctor for his post traumatic stress disorder on a regular basis, if that is not possible he is to return to see me in six to eight weeks." Dr. Bhargava's April 30, 2008 states in part that Claimant should not be able to drive more than two trips per week. Dr. Bhargava assigned a GAF of 60 on April 30, 2008.

Dr. Gowin's note in the VA records dated May 16, 2008, Exhibit T, page 406, states Claimant has complaints of hypervigilance, is easily startled, is easily tired, and has

flashbacks. On May 16, 2008, Dr. Gowin diagnosed depression and PTSD and assigned a GAF of 60.

Dr. Gowin's note of August 11, 2008 states in part that she agreed with Dr. Bhargava that Claimant should not drive at night. Dr. Gowin stated that Claimant should not return to driving probably at all. She assigned a GAF of 70 at that time. Exhibit T, page 390.

Dr. Bhargava's September 11, 2008 Psychiatric Progress Note, Exhibit T, page 80, notes she saw Claimant that day. He had stopped driving. The Note states in part, "He found that he was getting more anxious and stressed." Dr. Bhargava diagnosed "Posttraumatic Stress Disorder." She assessed: "1. Continuing anxiety symptoms 2. Global Assessment of Functioning Score of 55." Her Note states in part: "I believe that the stress of a routine truck driving job is too much for him to handle on an ongoing basis."

Dr. Dale Halfaker Evaluation on November 8, 2008

The deposition of Dr. Dale Halfaker taken on March 3, 2016 was admitted as Exhibit 2. Dr. Dale Halfaker is a licensed psychologist in Springfield Missouri. He identified Exhibit 1, his Curriculum Vitae, Halfaker Deposition Exhibit 1. Halfaker Deposition Exhibit 1 notes Dr. Halfaker has a PhD in counseling psychology and is a licensed psychologist in Missouri. He has been in private practice with Neuropsychological Associates of Southwest Missouri P.C. from 1991 to the present. (Halfaker Deposition, page 5).

Dr. Halfaker practices in neuropsychology which looks at the relationship of the brain's ability to function and its impact on the person's behavior. He works with patients who have had brain injuries, spinal cord injuries, burns, amputations, Alzheimer's, and dementia. A lot of the people he sees have had catastrophic injuries, depression, anxiety, and post-traumatic stress disorder. They evaluate those patients regularly. *Id.* at 6.

Work injuries probably comprise up to 60 or 70 percent of his practice. He treats PTSD patients about once a week. *Id.* at 7.

Dr. Halfaker noted Dr. Akeson of Dr. Halfaker's firm was involved in the care and treatment of Claimant. *Id.* at 8. Dr. Akeson did an initial evaluation of Claimant in October 2007. Dr. Akeson arrived at a diagnosis of post-traumatic stress disorder, adjustment disorder with mixed anxiety and depressed mood. Dr. Akeson did not find any indications of personality disorder or mental retardation on Axis II, and noted other psychosocial environmental problems to include a work-related truck accident. Dr.

Akeson gave a Global Assessment of Functioning, or GAF, of 50. He thought the rehabilitation potential to be very good. *Id.* at 9-10.

The GAF is a rating scale utilized in DSM-IV and DSM-IV-TR to see how someone is doing in their life in terms of social, occupational, educational, and other areas of functioning. It is a 1-to-100 scale. Normal range falls about 71 to 80. 61 to 70 shows some mild symptoms. When the scale drops below 30, an individual needs to be hospitalized most likely. *Id.* at 10-11. 41 to 50 implies serious impairment in social, occupational, or school functioning. *Id.* at 12.

Dr. Halfaker was aware that Dr. Akeson recommended therapy to teach Claimant to deal with his anxiety, and be graduated to a return to work program which would be driving a truck. *Id.* at 12. The treatment did occur and Claimant progressed reasonably well. *Id.* at 13.

Dr. Halfaker saw Claimant on November 4, 2008. He prepared a fourteen-page report, Halfaker deposition Exhibit 2. *Id.* at 14. Claimant had completed his treatment with Dr. Akeson by that time.

Mrs. Reynolds testified she took Claimant to the appointment with Dr. Halfaker. The appointment lasted less than one hour. Claimant refused to take a test because he had taken a test with Dr. Akeson. Dr. Halfaker gave Claimant a verbal test, but not a written test.

Dr. Halfaker testified he readministered the DAPS scale test on November 4, 2008. Dr. Halfaker took a history from Claimant. Claimant's wife and Claimant's rehabilitation nurse case manager, Ms. Munson, were also present. Claimant told Dr. Halfaker he had been in a rollover truck accident on July 17, 2007 and while he was still in the truck, he saw flames. He had to kick out a window in order to extricate himself from the truck, and shortly after he got out of the truck, the truck became fully engulfed in flames. He was transported to Bethany Hospital and then Kansas City North Hospital. He was in pretty significant emotional distress, was very agitated, and was pulling out his tubes. He went home and continued to have issues with emotional agitation, nightmares, being able to relax and sleep. *Id.* at 17-18.

Claimant reported to Dr. Halfaker that he continued to have nightmares up to four times per week. He continued to have intrusive, distressing recollections or images of the accident. He continued to have symptoms or features of reexperiencing of the trauma, which is the first criteria for PTSD under DSM-IV-TR. *Id.* at 18-20. He avoided activities and did not like to see media images of accidents because that can cause him to think about his own accident and then feel anxious and depressed. He tried to avoid driving by himself because of his anxiety. He felt nervous when he was alone. He did

not like to talk about the accident. *Id.* at 20. That is characteristic of post traumatic stress. *Id.* at 21.

Claimant told Dr. Halfaker that he felt different. He thought the accident had changed his outlook on life. He was feeling keyed up, edgy, and was having a hard time relaxing. Being around a lot of people made him feel nervous. That is a symptom of post traumatic stress. *Id.* at 21. Claimant reported having trouble sleeping if he did not take Ambien or Amitriptyline. He talked about having some temper and irritability issues. *Id.* at 22.

At that point on November 4, 2008, Dr. Halfaker believed that absent some sort of intervention, treatment that had not been tried, something different, the PTSD condition was going to be fairly permanent. *Id.* at 23.

When Dr. Halfaker saw Claimant in November 2008, he had records of Dr. Bhargava's office and Dr. Jordan's office. Dr. Bhargava and Dr. Akerson agreed with the PTSD diagnosis. *Id.* at 23. Dr. Bhargava's last GAF was 55.

Dr. Halfaker testified when he saw Claimant, he was not in any great or significant threat to himself or others. *Id.* at 26. A DAPS test administered for PTSD showed Claimant still had some impairment related to his PTSD symptoms. *Id.* at 28. Dr. Halfaker's impression on November 4, 2008 was that Claimant had Post Traumatic Stress Disorder. He did not have a personality disorder. He gave Claimant a GAF of 55. *Id.* at 29-30. Dr. Halfaker stated Claimant had a 10% disability rating on November 4, 2008. *Id.* at 33. He anticipated at that time that Claimant was going to be able to return to some kind of work. He testified Claimant could return to work at that time without psychological restrictions. *Id.* at 34.

Dr. Halfaker saw Claimant only one time. He did not see Claimant after November 2008.

Mrs. Reynolds testified Claimant was very agitated after the November 4, 2008 appointment with Dr. Halfaker. He was upset, afraid, and anxious. His anxiety lasted several weeks. The family was not able to calm Claimant down.

The Behavioral Health records reflect that Dr. Bhargava assigned a GAF of 55 on February 9, 2009.

Dr. Gowin's March 18, 2009 Progress Note in the VA records, Exhibit T, states in part at 381-82:

Diagnosis Being Treated This Visit:

PTSD; Cognitive Disorder NOS

ANY COMPLAINTS/PROBLEMS. . . . . Yes

Mr. Reynolds is a 62 y/o veteran who presents for f/u of PTSD. He has been having some problems with memory, focus and concentration. His wife called in this morning worried about him. She says he is forgetful and that when he is fixing the machinery he can't get it right. They live on a farm. He has also worn out a pair of new sheet [*sic*] by rubbing his feet. He is congenial and doesn't appear to be depressed. He is on workman's comp for his work related injury and to be honest is probably never going to be able to RTW as a truck driver with his PTSD. He continues to see Dr. Barghava [*sic*] for this. On the SLUMS evaluation with a HS education he scored a 20.5 which is borderline between mild cognitive impairment and dementia. He failed to complete the clock face but gave the correct time. I don't know what this signifies. On the ADULT ADH rating scale he scored 23/20 and places him in the range for ADHD. He says the ADHD changes have been recent. He normally used to remember things very well. He was on Ambien at night but they stopped it because he was too drowsy in the morning. He does take Fluoxetine[2] 60mg in the a.m. He is also on something else at night but he doesn't recall what it is. I have recommended that he talk to Dr. Bhargava about trying Donepezil.[3] F/U in 3 to 4 months.

Dr. Bhargava treated Claimant for PTSD until May 1, 2009, when Dr. Bhargava left Behavioral Health Care. Dr. Bhargava's Psychiatric Progress Note dated May 1, 2009, Exhibit T, p. 76, states:

Diagnosis: Posttraumatic stress disorder

Subjective: Mr. Reynolds said that he is doing a whole lot better. He has been socializing more. He has been sleeping well. He has decided not to go back to a trucking job. He is now on disability. Amazingly he got qualified for disability within a week. A heavy load

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[2] : a drug that functions as an SSRI and is administered in the form of its hydrochloride $C_{17}H_{18}F_3NO \cdot HCl$ especially to treat depression, panic disorder, and obsessive-compulsive disorder—see Prozac. (*http://c.merriam-webster.com/medlineplus/fluoxetine*).

[3] : a drug taken orally in the form of its hydrochloride $C_{24}H_{29}NO_3 \cdot HCl$ to treat dementia associated with Alzheimer's disease. (*http://c.merriam-webster.com/medlineplus/Donepezil).*

has been taken off of his shoulders. He occasionally gets anxious when a bridge frightens him or it is nighttime. Otherwise he has been doing well. He brings me a note from Dr. Goen [*sic*] indicating that he has scored a 20.5 on a SLUMS test and he [*sic*] is recommending he be put on Donepezil. He also has a strong family history of Alzheimer's; eight of his parent's siblings had Alzheimer's. He said that at the time he took the test with Dr. Goen [*sic*], he was physically sick and he believed that he was not paying attention but he does describe instances at home where he does not recall his wife telling him something. He however, attributes this to not paying attention. We did do a mental state examination here and he scored 29 out of 30, leaving one point.

Objective: On examination, vital perimeters were stable. He has lost five pounds. His mood was less depressed and anxious. His affect was bright. His thought process was coherent. He was not suicidal or homicidal. He was not responding to internal stimuli.

Assessment: Doing well.

GAF: 58-60

Plan:
1. Continue Prozac 60 mg daily.
2. Ambien 5 mg at bedtime.
3. I think he needs to be closely watched for memory problems.
4. I wrote a note to Dr. Goen [*sic*] indicating that I was leaving the organization.
5. She is to follow him and keep an eye on the Alzheimer's and start him on medication as she thinks necessary.

Dr. Gowin's June 25, 2009 note in the VA records states in part at Exhibit T, page 363: "He [Claimant] does have flashbacks if he sees an accident. He won't watch the news because of the accidents they show. He is not depressed. He does not feel helpless, hopeless or worthless. As long as he sleeps, he does well. He is staying active and busy with his place. He scored 29/30 on the MMSE at BHC. This is much better than he did on the SLUMS. His memory seems to be good in the office today."

Dr. Gowin's October 1, 2009 report states in part at Exhibit T, page 356: "He [Claimant] was seeing Dr. Bhargava for Workman's Comp and she has moved from OMC and his care for the PTSD has been transferred here."

Dr. Gowin's January 28, 2010 Progress Note states in part at Exhibit T, page 350:

> Mr. Reynolds is a 62 y/o veteran who presents for f/u of PTSD. He has been treated for depression in the past but that is pretty much in remission. He is still unable to drive a semi because of his PTSD system - even the thought of it produces hypervigilance, severe anxiety, obsessive thoughts, nightmares, trouble with sleep and he still doesn't like to drive very much. He still takes Zolpidem for sleep at night and averages about 7 hours of sleep. He has been making trips to Columbia with his son who has some health problems. He will drive a little bit on those trips but doesn't do any night driving. His son and wife do most of the driving. Memory is doing pretty well. He does have hobbies and stays busy with his farm. This keeps his depression in check and helps with his PTSD. He is not suicidal or homicidal. He has no problems with his medications. Plan is to continue with Prozac 60 mg a day and Zolpidem 10 mg at night. F/U in four months.

The Behavioral Health records include a counseling record of Thomas Nixon dated August 18, 2011.

Dr. Michael's September 2, 2011 record in the Behavioral Health records, Exhibit T, pages 220-221, notes a diagnosis of PTSD and possible depressive disorder. Dr. Michael assigned a GAF of 55.

The Behavioral Health records include a counseling record of Thomas Nixon dated October 10, 2011.

Claimant treated at the VA for PTSD in 2011 and 2012. On October 17, 2011, Dr. Louisa Lomax of the VA added propranolol for tremors. Propranolol and Prozac have been prescribed for Claimant since then.

Dr. Jesse Rhoads's Psychiatric Treatment

The deposition of Dr. Jesse Rhoads, D.O., taken on January 8, 2016 was admitted as Employer Exhibit 1. Dr. Rhoads testified that he saw Claimant as a psychiatrist. (Rhoads deposition, page 4). Dr. Rhoads testified he has been a licensed psychiatrist in the state of Missouri for roughly four years. He is board certified. *Id.* at 5.

Dr. Rhoads first saw Claimant on November 21, 2011. *Id.* at 7. Claimant was an established patient in the Behavioral Health Clinic where Dr. Rhoads worked. Claimant

had been seen there before Dr. Rhoads saw Claimant. *Id.* at 7. Claimant carried the diagnosis of post traumatic stress disorder.

Dr. Rhoads's November 21, 2011 report indicates that Claimant was not in acute distress at that time and his mood was related as "fine." *Id.* at 8. The report indicates Claimant had been treated pharmacologically and with psychotherapy. Dr. Rhoads thought it would be okay to try lowering those medication dosages. *Id.* at 9.

Dr. Rhoads saw Claimant again on next February 6, 2012. Everything seemed to be pretty stable. Claimant occasionally felt "dysphonic," and did not feel great in the winter from time to time, but otherwise was feeling good. *Id.* at 10.

Dr. Rhoads talked to Claimant about lowering the dosage of his medications. Claimant did not want to do that because he had tried it in the past and his symptoms of PTSD came back. Dr. Rhoads continued his medicines. He encouraged Claimant to start to slowly go off the sleeping aids that he was on. *Id.* at 10.

Dr. Rhoads's February 6, 2012 record states in the "Subjective" section that Claimant had done well in the interim between those two visits. He was not having any flashbacks or nightmares at that time. *Id.* at 10. Claimant denied ongoing mood symptoms and was not having any suicidal or homicidal ideations at that time. *Id.* at 11. Claimant's memory was intact, and he maintained good attention and concentration during the interview on February 6, 2012. *Id.* at 11.

Dr. Rhoads saw Claimant on May 4, 2012. Claimant was doing fine then. There were no concerns. Dr. Rhoads continued Claimant's medicines. *Id.* at 12. Claimant denied any flashbacks or nightmares. Claimant was not endorsing any delusional thinking or suicidal ideation and maintained good attention and concentration during the interview. *Id.* at 13. Claimant's insight and judgment were deemed to be fair given the recognition of problems and his desire for treatment. *Id.* at 15.

Dr. Rhoads next saw Claimant on August 3, 2012. Claimant was doing very well that day. He did not have any concerns. He had been seeing a therapist, but was placed on an as needed basis with a therapist. They continued medicines. The record shows generally an ongoing continual slight improvement of his condition as time was going on. *Id.* at 14. Attention, concentration, insight, and judgment were all found to be good or fair or reasonable. *Id.* at 15.

Dr. Rhoades next saw Claimant on November 9, 2012. Dr. Rhoads wrote, "Ron continues to do very well." Dr. Rhoads assessed that Claimant continued to thrive. They attempted to lower his Prozac dosage from 60 milligrams a day to 40 milligrams a day, and continue his other medicines. Reducing the medication indicated further

improvement in Claimant's condition. *Id.* at 15. Claimant's mood was reported as "fine." He was not having any suicidal or homicidal thoughts. His insight and judgment were deemed to be good, given the recognition of problems and his ongoing desire for treatment. Claimant was reporting "no concerns" at that visit. *Id.* at 16.

The next time Dr. Rhoads saw Claimant was on February 8, 2013. Dr. Rhoads wrote that Claimant was doing "very well." They had decreased Claimant's Prozac with no problems. He had no side effects. Claimant was interested in lowering the medication again, and they lowered the Prozac dose to 20. They continued the medicine propranolol. Dr. Rhoads felt Claimant did not need the propranolol and was planning to get him off that at the next appointment. Dr. Rhoads also continued Ambien at that time. He was trying to take Claimant off all his medicines in time. *Id.* at 17.

Dr. Rhoads's testified the February 8, 2013 note indicated Claimant's "affect is bright and reactive" which meant Claimant was "in good spirits, jovial, smiling, just someone who's easy to talk to and pleasant." *Id.* at 19. Dr. Rhoads assigned a GAF of 75-80 on February 8, 2013. His note states that Claimant was doing very well.

Dr. Rhoads saw Claimant again on March 11, 2013. *Id.* at 20. Claimant was doing well. He did well with the lowered dose of Prozac from 40 to 20. Claimant had no concerns. Dr. Rhoads planned to take Claimant off Prozac on the next visit. He discontinued propranolol at the March 11, 2013 visit, and continued the sleep aid. *Id.* at 21. Claimant's affect was bright and reactive. Claimant's memory was intact. Claimant was able to talk about the trauma involved in this case more easily at that time. *Id.* at 22. Dr. Rhoads assigned a GAF of 80 on March 11, 2013. His note states that Claimant was doing very well.

Dr. Rhoads testified propranolol is sometimes used in psychiatry after a trauma to decrease the symptoms of PTSD and is also off label for anxiety. *Id.* at 23.

Dr. Rhoads did not see Claimant after March 11, 2013. *Id.* at 24.

Dr. Rhoads testified that he was authorized by Employer and Insurer to provide psychiatric care to Claimant. *Id.* at 26. The clinic records show that Claimant was seen in the clinic from November 19, 2007 through May 1, 2009. He was not seen again until he returned on August 2011. *Id.* at 27.

Dr. Rhoads did not know that Claimant had a SLUMS test at the VA before he saw Claimant. *Id.* at 28. He was not aware of that until the day of his deposition on January 2016. *Id.* at 27. The SLUMS test indicated Claimant had cognitive deficits. That is not mentioned in any of his records.

Dr. Rhoads diagnosed Claimant with post traumatic stress disorder. *Id.* at 28. Dr. Rhoads never treated Claimant for any symptoms of Alzheimer's, dementia, or cognitive defect. He never prescribed any medication for Alzheimer's or cognitive defects. *Id.* at 29.

Claimant's visits with Dr. Rhoads were each fifteen minutes in length. *Id.* at 30-32.

Dr. Rhoads had reviewed VA records. He reviewed the VA records the morning of his deposition. *Id.* at 33-34. He had not reviewed any records of Dr. Butts.

Dr. Rhoads was told that Claimant's wife has testified that Claimant lies about his condition. Dr. Rhoads was asked if that was unusual for a person who has post traumatic stress disorder. Dr. Rhoads replied, "I don't think it is unusual for most – a lot of people, regardless." *Id.* at 35.

Dr. Rhoads did not order, nor did Claimant have any psychological testing at Ozark Medical Center. Claimant was only seen in individual counseling at Ozark Medical Center in 2011 on two occasions. That was before Dr. Rhoads started treating Claimant. *Id.* at 36-37.

Dr. Rhoads sees maybe a couple hundred patients for post traumatic stress disorder in a year. *Id.* at 38-39.

Dr. Rhoads never spoke with Claimant's family about decreasing Claimant's medications, or about Claimant's condition and how he was functioning in daily life. *Id.* at 40-41.

Claimant was not employed when Dr. Rhoads saw him. *Id.* at 41-42.

Dr. Rhoads was asked the following questions and gave the following answers at Rhoads deposition, pages 42-44:

> Q. Let's assume as true that Mr. Reynolds was totally disabled because of his posttraumatic stress disorder. Would that qualify as a slight impairment?
>
> A. No.
>
> Q. That would be a severe impairment, wouldn't it?
>
> A. That is – that is correct.

Q. And that would require a much lower GAF?

A. Correct.

Q. If his wife came to you and said that she was the one that always had to bring him from Koshkonong –

A. Koshkonong, yes.

Q. – Missouri, to here, and that he could not drive a car very far at all without having flashbacks, that he couldn't go over a bridge, or the bumps in the road could bring back flashbacks, would that be more than a slight impairment to his social functioning?

A. Yes.

Q. And that would require a lower GAF score?

A. Yes.

Q. The American Psychiatric Association removed the GAF scoring – let me back up. The American Psychiatric Association removed the GAF in the DSM-V, and that was effective on January 1, 2014. Is that correct?

A. That's correct.

Q. And that was, of course, after you saw Mr. Reynolds?

A. Yes.

Q. The – the reasons that the GAF score was removed was because it was subjective in nature. Is that correct?

A. It was -- yes.

Q. And it was an unreliable scoring?

A. Yes.

Q. And it was – there was very poor clinical control?

A. Correct.

Q. Do you agree with those findings?

A. Yes.

Q. And is that based upon reasonable psychiatric certainty?

A. Yes.

Dr. Rhoads testified that at no point in time did Claimant's wife ask to be a part of any of the visits with him and Claimant or speak with him directly. *Id.* at 48.

At the time Dr. Rhoads last saw Claimant, Claimant's global functioning score was an 80. *Id.* at 49.

Mrs. Reynolds testified Claimant did not have treatment for tremors before 2011.

Claimant saw Dr. Jordan again on January 15, 2013 for right leg and thigh pain. Exhibit C.

Claimant saw Dr. Lomax at the VA on April 4, 2013. Exhibit T, pages 583-588. Her Progress Note dated April 4, 2013 at page 584 states in part at page 584:

> Plan:
> Advising patient to go back on the propranolol. It was beneficial to him on several levels.
> I am ordering his Prozac from the VA at a higher dose—40mg, and he may need to go higher in the future. He was doing well on this med and I don't understand why his outside psychiatrist lowered it. Will continue to encourage him to see VA psychiatrists, but in the meantime he will be seeing Dr Reeves, our psychologist.
> X-rays of R hip and low back.

Claimant treated with Dr. Will, a psychiatrist, at the VA beginning on April 9, 2013. On that day, Claimant stated that he needed his meds and his outside doctor had told him to quit Prozac and propranolol. Dr. Will diagnosed PTSD and depression and continued Prozac and propranolol and added Ambien. The records reflect that the Claimant continued to treat at the VA for PTSD in 2013, 2014, and 2015. His medications were continued.

Dr. Will's February June 10, 2013 note, Exhibit 7, pages 568-573 states in part, "CHIEF COMPAINT: 'I need my Meds, they substancly [*sic*] stopped nightmares and flashbacks. I had a major depression but this abated over time with the meds.' 'I have memory problems, age related the doctors say.'" Dr. Will's Assessment/Prognosis states in part:

> This man has greatly improved in all basic Sx for the anxiety/depression and PTSD. He is safe stable and well understands the values of his meds and is motivated.
> (X) AXIS I: PTSD
> Anxiety Ds nos
> Major Depression recurrent type
>
> (X) AXIS II: no evidence of PD
>
> (X) AXIS III: arthritis
>
> (X) AXIS IV: Social withdrawal
>
> (X) AXIS V: 65
>
> PLAN:
> Treatment: Plan and discussion
> He well understands the merits and value as well as limitation of Tx and meds. He finds the good. He is Sx free on current meds. He knows the help line/suicide numbers as well as 911. I will continue the lower dose of Prozac 40 and Ambien 10 hs with the caution of night activation. RTC 4-5 mo.

Dr. Will's February 10, 2014 note, Exhibit 7, pages 465-467, states his Diagnoses were post traumatic stress disorder, anxiety not otherwise specified, and depression not otherwise specified. He noted Claimant was not suicidal, homicidal, or engaged in dangerous activity. The note states there was no evidence of a formal thought disorder. He noted Claimant's memory was intact in all three spheres. He noted Claimant was "positive for symptoms of PTSD, especially flashbacks and hyperirritability and hyperarousability, although over the years things have greatly improved." His note states major stressors were interpersonal, psychosocial, and financial. Claimant was content seeing Dr. Will in about four to five months for medication only.

Dr. Will's February 12, 2015 note states in part at pages 751-752: "He still has some hypervigilance. He still has difficulty being in restaurants and open places. He still tends to threat assessment both consciously and unconsciously." Dr. Will's note states in

part at page 753: "I have asked Ron to consider getting into some cognitive behavioral therapy."

Dr. Will's May 12, 2015 report states in part at Exhibit T, page 747: "It is my considered opinion that this man suffers from post traumatic stress disorder secondary to combat [*sic*]. He is doing his best to improve his situation. He also has an underlying pain disorder." Dr. Will's May 12, 2015 report states in part at Exhibit T, page 748: "WORKING DIAGNOSES: AXIS I: Post Traumatic Stress Disorder secondary to combat [sic]. Anxiety Disorder NOS by history. Mood disorder secondary to general medical cause (pain)."

Exhibit T, page 961 includes an Operative Report of Baxter Regional Medical Center dated June 4, 2015 relating to Claimant's right total hip arthroplasty performed that day.

Dr. Will's Progress Note dated October 9, 2015, Exhibit T, Page 952 states in part that Claimant "does suffer from post traumatic stress disorder, secondary to the truck accident. He does still have some vivid memory/flashback; however, the night activation has dramatically decreased since the discontinuation of the Ambien." Dr. Will's WORKING DIAGNOSES, AXIS I was: "1. Post traumatic stress disorder complex secondary to the truck accident. 2. Depressive disorder. 3. Anxiety disorder." The note states that Dr. Will would like to see Claimant again in about 4 to 5 months.

Dr. Halfaker's Additional Testimony

Dr. Halfaker testified he was not involved in Claimant's case again until 2015 when Employer's attorney sent him additional medical records and asked him for some opinions. *Id.* at 35. He reviewed some of the medical records from Dr. Bhargava, a report from Dr. Lynch, reports from Dr. Butts, and reports from the VA. He was aware Claimant had not returned back to work. *Id.* at 36.

Dr. Halfaker testified the records indicated at times Claimant was getting better. He thought that under Dr. Bhargava's and Dr. Rhoads's treatment, Claimant seemed to make improvement. GAF scores went up and medications came down. *Id.* at 39. He noted some of the VA records indicated it was thought that Claimant had a cognitive disorder not otherwise specified or some cognitive problems. He thought the providers suspected or were concerned that could represent a dementia or depression or something else going on in addition to PTSD. *Id.* at 40.

Dr. Halfaker had reviewed Dr. Bhargava's May 1, 2009 note indicating Claimant had decided not to go back to work, had been qualified for disability within a week, was having some anxiety when he would cross a bridge or have a nightmare when he was

driving, and "otherwise he has been doing well." *Id.* at 41. Claimant brought Dr. Bhargava a note from Dr. Gowin indicating that he had a score of 20.5 on the SLUMS test and that Dr. Gowin recommended Claimant be started on donepezil, a memory drug, typically used with dementia, most often used Alzheimer's. Dr. Bhargava noted that Claimant also had a strong family history of Alzheimer's, with eight of his parents' siblings having had Alzheimer's.

Dr. Halfaker noted Claimant informed Dr. Bhargava at the time he took the test with Dr. Gowin he felt physically sick and that may have had an impact on his ability to pay attention and concentrate. Dr. Halfaker testified Dr. Bhargava did a mini-mental state examination, and Claimant scored 29 out of 30, which is a good score and appropriate for his age. Her assessment was Claimant was doing well, and she gave him GAF of 58-60, which is in the range of moderate symptoms. She recommended Claimant needed to be closely watched for memory problems, and she thought Dr. Gowin should follow Claimant and keep an eye on the Alzheimer's. *Id.* at 42-43.

Dr. Halfaker testified during Dr. Akeson's treatment and at the time of Dr. Halfaker's evaluation, any issues with memory problems or any type of cognitive, dementia type symptoms had never really emerged as a significant complaint. *Id.* at 43.

The SLUMS test, or St. Louis University Mental Status exam, is used as a quick measure of how cognitively someone is doing. A score of 20.5 is within the range of what is called mild cognitive impairment which would almost be in the range of a pre-dementia or pre-Alzheimer's. *Id.* at 44.

Dr. Halfaker noted Dr. Lynch's report of July 24, 2015 indicated a score of 18 with indication of dementia. Dr. Halfaker testified a score of 18 crossed the line from mild cognitive impairment to something that would be more readily identified as dementia. *Id.* at 45.

Dr. Halfaker testified at the time he saw Claimant in 2008, he "had no inkling that he needed any kind of attendant care." He testified if that had been the case, he would have recommended that, and had that been the case, his rating would have been considerably higher. *Id.* at 46. Dr. Halfaker did not have any concerns when he saw Claimant in November 2008 that Claimant was forgetful, that he would not turn off the stove, would not shut a gate, or that he will do things that will put himself or other people in danger. *Id.* at 47.

Dr. Halfaker testified that post traumatic stress disorder is usually not a deteriorating kind of condition. The "usual course is to see gradual improvement across time and then a plateau." He testified PTSD can wax and wane. Dr. Halfaker saw

indications in the records of depression. That could be something that could present with some memory problems, attention, and concentration, worse than the PTSD. *Id.* at 49.

Dr. Halfaker had read Dr. Butts's two reports following Dr. Butts's examination and testing of Claimant. He had looked at the history Mrs. Reynolds and Claimant gave at the time about the problems he was having. Dr. Halfaker testified the type of symptoms described by Claimant and Mrs. Reynolds in that report were not fully consistent with the diagnosis and prognosis that he gave Claimant in 2008. *Id.* at 51.

Dr. Halfaker testified that dementia is a progressive illness in most cases. Dementia generally speaking is a deteriorating course. *Id.* at 52.

Dr. Halfaker testified that in response to a letter from Employer's attorney dated October 20, 2015, Dr. Halfaker wrote a letter indicating he wanted to do a full neuropsychological evaluation. *Id.* at 53. He wanted to do 10 or 12 batteries of tests, 60 level sub tests to differentiate between something emotional like PTSD and depression vs. something organic and psychological like dementia. He testified that the tests Dr. Butts did do not make that same differentiation. *Id.* at 54.

Dr. Halfaker testified without the testing, it is not possible to give a psychological opinion as to what is the cause of Claimant's condition. *Id.* at 56. Dr. Halfaker thought we "potentially have other factors that are present in this case that I cannot speak about because I can't do it with a reasonable degree of neuropsychological certainty because I don't have the data to rely on." *Id.* at 57.

Dr. Halfaker did not anticipate that a neuropsychological battery of tests would be traumatic for Claimant when Employer's attorney sent him a letter dated January 14, 2016. *Id.* at 61.

Halfaker deposition Employee Exhibit A is a summary of and a review of documents, about 24 pages, prepared by a team effort with somebody else in Dr. Halfaker's practice. *Id.* at 63-64.

The evaluation Dr. Halfaker recommended by his October 20, 2015 letter, Halfaker deposition Exhibit 4, was going to take six to eight hours of testing, not including his meeting with Claimant. *Id.* at 69. The evaluation would have taken seven and a half to nine hours. *Id.* at 70.

When Dr. Halfaker was referring to the Sixth Edition in his report, he was referring to the Sixth Edition of the AMA Guidelines, and not the DSM. *Id.* at 72.

Dr. Halfaker had never seen a VA record that said Claimant had a SLUMS test of 20.5 or that Claimant was prescribed donepezil. *Id.* at 73. Dr. Halfaker did not see any medical records showing treatment for Claimant for Alzheimer's or dementia before July 17, 2007. He saw no reference to any dementia or Alzheimer's before July 17, 2007 in any medical records he saw. *Id.* at 70-73.

Dr. Halfaker has not seen any records where Claimant was treated for Alzheimer's or dementia since July 17, 2007. *Id.* at 74. He has not seen any prescriptions given to Claimant for Alzheimer's or dementia since July 17, 2007. *Id.* at 74.

Dr. Halfaker agreed that Dr. Butts did testing for Claimant's memory on two separate occasions, four years apart, and they were identical. *Id.* at 78. Dr. Halfaker received Dr. Butts's raw data from his testing before July 24, 2015 from documents post-marked July 8, 2015. *Id.* at 78.

Dr. Halfaker was aware that during Claimant's deposition on December 18, 2013, after fifty minutes, Claimant became emotionally distraught, lowered his head, and started bawling. Dr. Halfaker testified that from what he had seen in the records, there may have been implications that Claimant has not ever recovered from that deposition. *Id.* at 80.

Dr. Halfker was aware that Claimant had driven a truck for Employer for twelve years, had been an over-the-road driver for many years before that, and that he quit driving the truck because of his PTSD. *Id.* at 81. If the record reflects Claimant's last trip for employer was April 28, 2008, Dr. Halfaker really had no reason to dispute that. *Id.* at 82.

When Dr. Halfaker saw Claimant on November 4, 2008, Claimant was still in treatment by Dr. Bhargava at Behavioral Health. She issued some restrictions that were more significant and restrictive than Dr. Halfaker's opinion that Claimant could return to work without psychological restrictions. *Id.* at 82-83.

Dr. Halfaker agreed that Claimant still suffers from post-traumatic stress disorder. *Id.* at 84.

Dr. Halfaker was asked the following questions and gave the following answers at Halfaker deposition, pages 85-86:

> Q. And all the records that you reviewed showed that he was still, to this day, being treated for post-traumatic stress disorder?
>
> A. Definitely.

Q. And all the clinic--clinicians that you have seen in these medical records confirm or state that he has a diagnosis of post-traumatic stress disorder?

A. Absolutely.

Q. Now, when you saw him on November 4, 2008, he was having nightmares?

A. Yes.

Q. He was having flashbacks or reactions to memory of the accident?

A. Yes.

Q. He was--showed--he was anxious and nervous?

A. Yes.

Q. In fact, he was so anxious that his blood pressure medication had been doubled; is that correct?

A. Correct.

Q. He even had crying spells whenever he thought about the accident?

A. He sometimes had crying spells. Okay? I want to make sure that we're clear on the—on the timing of that. But yes, there were crying spells that were occurring at times when he would think of the accident.

Q. He--he had hostility—

A. Yes.

Q. --towards his family and towards other people?

A. Yes.

Q. He had—he showed anger and anxiety?

A. Yes.

Q. He could not even sit in a restaurant without looking at the door?

A. Right.

Q. He had depression?

A. Yes.

Q. He had significant depression, did he not?

A. I did not give him a separate diagnosis of depression. But yeah, I think--there was a significant affective component to the PTSD, yes.

Q. He still has all of those symptoms, doesn't he, Dr. Halfaker?

A. As I read the records, yes.

Q. You gave him a GAF of 55; is that correct?

A. That's correct.

Dr. Halfaker never tested any cognitive impairment for Claimant. He agreed that in DSM-5 they have done away with GAF scores in part because it is a subjective determination. He thought that they kind of viewed it as not sound. *Id.* at 98.

Dr. Stanley Butts Evaluations

The deposition of Dr. Stanley Butts taken on February 24, 2016 was admitted as Exhibit F. Dr. Butts is a clinical psychologist with a specialty in neuropsychology. *Id.* at 5. He has been in full time private practice since 1976. He is licensed to practice psychology in Kansas. He used to be licensed in Missouri and Kansas for decades and dropped his license to Missouri in 2015. *Id.* at 7. He identified Butts Deposition Exhibit 1, his Curriculum Vita.

Dr. Butts has treated patients with post traumatic stress disorder numerous times. He has done independent evaluations for people with PTSD. He also treated patients with PTSD starting in 1980. *Id.* at 10.

Dr. Butts is no longer actually seeing patients. *Id.* at 7. He saw PTSD patients until November 2014. *Id.* at 11.

Dr. Butts saw and evaluated Claimant. Claimant's wife accompanied Claimant to each visit. *Id.* at 11. Dr. Butts was provided the documents in Butts Deposition, Exhibits 12-A, 12-B, 12-C, 12-D, and 12-E. *Id.* at 11. He first saw Claimant on November 4, 2010. He interviewed and talked to Claimant and Claimant's wife separately. It is standard practice if doing an evaluation for a med-legal kind of situation to get a history of complaints and symptoms from a caregiver to get a valid kind of assessment. *Id.* at 13. It is important to make sure the patient is not downplaying his symptoms and that he is getting the full picture. He found that to be true with Claimant because Claimant tends to very much to understate his problems. *Id.* at 14.

Dr. Butts saw Claimant three times. The second time was in April 1, 2013 and the last time was on November 19, 2014. Claimant's wife was with him on both of those occasions as well. *Id.* at 14.

Dr. Butts saw Claimant November 19, 2014 in West Plains, Missouri because there were two occasions when Claimant's wife reported that after Claimant had been seen, he was so upset that she was afraid he was going to jump out the car while the car was moving. *Id.* at 15-16. Dr. Butts was too concerned about Claimant committing suicide if he were put under the stress of traveling to Kansas City for an evaluation and traveling back home. *Id.* at 16.

Dr. Butts generated a report after he saw Claimant and Claimant's wife on November 4, 2010. Butts Deposition Exhibit 2 is his report written December 8, 2010 regarding his evaluation of Claimant on November 4, 2010. *Id.* at 16.

Dr. Butts identified Butts Deposition Exhibit 3, his response to Claimant's attorney's call on January 11, 2011 regarding the possible effects of Claimant undergoing a deposition. Butts Deposition Exhibit 3 includes notes made at or about the time he talked to Claimant's wife. *Id.* at 17-18.

Dr. Butts identified Butts Deposition Exhibit 4, an October 18, 2011 report regarding the needs of Claimant, and his concerns about Claimant's welfare and immediate need for treatment of his PTSD. *Id.* at 18.

Dr. Butts was asked the following questions and gave the following answers at Butts deposition, pages 18-20:

> Q. (By Mr. Powell) I'll hand you what has been marked Deposition Exhibit Number 4. And can you tell the Administrative Law Judge what that is.

A. Well, really it's about a number of things. In general, it's a response regarding the needs of the patient, Ronald Reynolds, and my concern about his welfare and his immediate need for treatment of his PTSD, along with the extent of his inability to function by himself as a result of his trauma on 7/17/07. My concern that just giving him pills was not adequate treatment.

We talked quite a bit about her constant need to be close for his support and for his protection. It also noted that the son was doing -- essentially doing the chores around the farm instead of Ronald because of Ronald's inability to function effectively on a continuous basis.

It also notes that she had to quit her job because of her fears for him. And I never can remember her name, but Bhargava, or something like that, had told the wife that she needed to be at home with her husband all the time for his safety, and so she quit the job. Well, and it's -- I'm reiterating information also gained from, of course, the previous interactions with him, also, in which he admitted that since the trauma he had, quote, to depend upon her and that she makes most of the decisions.

And I noted that, because of his inability to concentrate or remember, he is a danger to himself. I was concerned about him doing things and starting a fire by getting distracted. For example, when she was off at work, he could have turned on the cooking stove and left it on and, as many people oftentimes do, go off and forget that it's turned on and a fire starts. Or there was the incident where he was cutting down a limb off a tree and it almost -- it was about to fall on her, and that had to be -- that's one of the situations that he got himself into.

He also noted the need of the presence of his wife to calm him down when he gets very, very upset. I recommended the two primary methods that have been well substantiated and accepted in the field for the treatment of PTSD and that -- I recommended that those methods be used with him. And that, until there was substantial improvement, I said he is going to need almost constant services of his wife because of the trauma of 7/17/07. Okay. Also in her report that the psychiatrist had told the wife to stay home from work.

Q. And then the psychiatrist was Dr. Bhargava?

A. Correct.

Dr. Butts identified Butts Deposition Exhibit 6, his handwritten notes from an office visit he had with Claimant and separately with Claimant's wife. *Id.* at 20. Butts Deposition Exhibit 5 includes notes from the phone conference with Claimant's wife April 9, 2013. P *Id.* at 21.

Dr. Butts identified Butts Deposition Exhibit 6, his November 19, 2014 report of the evaluation he made on November 19, 2014. *Id.* at 22. He identified Butts Deposition Exhibit 7, a letter he wrote to Claimant's attorney dated December 11, 2014. *Id.* at 23.

Dr. Butts identified Butts deposition Exhibit 8, his letter dated September 9, 2015. A lot of that letter was clearing up the issue of what started the PTSD and the fact the Dr. Will was confused on the precipitating event. Dr. Will did not consult his record before talking to Claimant and had thought that Claimant had been in Vietnam when in fact Claimant had never left the States during his tour of duty in the Armed Forces. *Id.* at 24.

Dr. Butts identified Butts Deposition Exhibit number 9, his November 10, 2015 report. He was asked the following questions and gave the following answers at Butts deposition, pages 24-26:

> Q. (By Mr. Powell) I'll hand you what has been marked Deposition Exhibit Number 9. Can you tell the Administrative Law Judge what that is.
>
> A. This was kind of a general statement of my training as a neuropsychologist and my past experience in evaluating people with PTSD, the importance of including his wife, the importance of using standardized tests.
>
> Mr. Lanham: What's the date of that report?
>
> The Deponent: November 10, 2015.
>
> Mr. Lanham: And what's the exhibit number?
>
> The Deponent: Nine.
>
> Mr. Lanham: Okay.
>
> The Deponent: Got it?

Mr. Lanham: Yeah.

A. A note that the patient admitted that his problems with memory -- immediate memory and concentration started immediately after the truck accident of 7/17/07. My noting that the performance on the California Verbal Learning Test especially showed that there was no indication of traumatic brain damage, as well as history given by both himself and his wife that he was functioning at a high level before the truck accident, but there was no indication that his -- his decrease in level of functioning was the result of any kind of brain damage.

His short -- his memory as measured by the -- by one of the most commonly accepted methods of measuring memory in the field of neuropsychology, the California Verbal Learning Test, second edition, is the -- he performs the same on both -- on the test four years apart.

And I note that obviously he does not have degenerative dementia because over a four-year period of time his memory would have obviously declined if he were having dementia. And there was no decline. You can't hardly get a more complete repetition of the results than he did.

Again, I talked -- I note that he reported in his MMPI-2 that he -- that, quote, I have recently considered killing myself, and that I have had that concern from the very beginning of my working with him.

I note also that every evaluation I did was traumatic for him, though I was very, very careful in trying to make -- keep him comfortable. And that I felt that it was unnecessarily traumatic and dangerous for his wife for anyone to try to do a full neuropsychological evaluation on him. So it's not only necessary, but also could be very traumatic.

Q. (By Mr. Powell) The statement in the MMPI-2, was that as a result of your testing on November 19, 2014?

A. Correct.

Dr. Butts identified Butts Deposition Exhibit 10, a letter and response to Claimant's attorney's letter December 22, 2015. Dr. Butts testified regarding portions of the January 26, 2016 letter. *Id.* at 28-35. He testified that the professional opinions, impressions, and conclusions in Butts Deposition Exhibits 2 through 11 were based upon reasonable psychological certainty.

Dr. Butts performed psychological testing on November 4, 2010. He gave Claimant the MMPI-2RF, MCMI-III, and the California Verbal Learning Test. The MMPI's are two of the most commonly used tests for measurement of abnormal personality. *Id.* at 36-37. He also gave a test of memory malingering. On that test, Claimant obtained a perfect score on the second sub test indicating he was putting forth good effort in the testing. *Id.* at 37-38. He performed within the average range on immediate recall and long delay recall and recognition on the same test. *Id.* at 38. He had a very unusual number of intrusions in his recall. He showed a considerable deficit in the ability to quickly process the information that was coming in to him. He performed at the 24th percent rank. *Id.* at 40.

The MMPI-2RF scores indicated that Claimant had withdrawn, is avoiding people, is distrustful of others, is preoccupied with physical health concerns, has experienced problems with memory and concentration, has a low tolerance of frustration, tends to be indecisive, feels incapable of coping with problems of everyday life, and feels anxious. *Id.* at 41.

The MCMI-III indicated possible diagnoses of major depression, recurrent severe without psychotic features, adjustment disorder with anxiety, and post traumatic stress disorder. Dr. Butts noted, "The printout further suggests that he is fearfully dependent, socially anxious, self demeaning, and dejected. He is hesitant about asserting himself. He may lean on others for guidance and security, quote, unquote." *Id.* at 42.

Dr. Butts testified at Butts deposition, pages 42-44:

> Further, the printout reported the following, quote, related to but beyond his characteristic level of emotional responsivity, this man appears to have been confronted with an event or events in which he was exposed to a severe threat to his life, a traumatic experience that precipitated intense fear or horror on his part.
>
> Currently, the residuals of this event appear to be persistently reexperienced with recurrent and distressing recollections such as in cases that resemble an aspect of the traumatic event. Where possible, he seeks to avoid such cues and recollections. Where they cannot be

anticipated and actively avoided, as in dreams or nightmares, he may become terrified, exhibiting a number of symptoms of intense anxiety.

Other signs of distress might include difficulty falling asleep, outbursts of anger, panic attacks, hypervigilance, exaggerated startle response, or subjective sense of numbing and detachment.

That's an incredible picture of Ronald, and it's all from answering, you know, paper and pencil test, you know does this apply to you, does this not apply to you. My point is it's strictly an objective test, both MMPI--MCMI-III.

I have no input on what comes out of that computer. It's strictly objective results presented from the test.

Q. In your review of the medical records and the history that you obtained from both Ronald Reynolds and his wife, Betty Reynolds, was there any evidence of preexisting psychological or emotional treatment to Mr. Reynolds?

A. No. There was no indication of any kind of previous psychological dysfunction.

Q. Did you see any medical records where, before July 17, 2007, Mr. Reynolds received treatment for dementia or Alzheimer's disease?

A. I did not.

Q. In your report of November 4, 2010, did you recommend any treatment for Mr. Reynolds?

A. Yes, I did.

Q. And what treatment did you recommend, Doctor?

A. I recommended that the psychotropic medications be continued and that he find somewhere geographically available to him where one of two well-substantiated treatment methods for post traumatic stress disorder could be used with him, the two methods being EMDR and the other--being one method, and other method being prolonged exposure and cognitive processing therapy.

Dr. Butts recommended in his report of November 4, 2010 that Claimant be treated with EMDR, and prolonged exposure in cognitive processing therapy. *Id.* at 44. EMDR is Eye Movement Desensitization and Reprocessing. Claimant did not receive that treatment except for two or three sessions of prolonged exposure in the office after which he was told it was time to go out and drive. *Id.* at 50.

Dr. Butts gave the MMPI-2RF test to Claimant on November 19, 2014 and the California Verbal Learning Test, second edition, again. *Id.* at 51. He also gave him the Memory Malingering Test and the digit vigilance test and the paced auditory serial addition test. The tests were essentially the same results as on November 4, 2010. *Id.* at 52. In the 2014 test, Claimant marked the statement as true, "I have recently considered killing myself." *Id.* at 52. The test indicated that Claimant had significant anxiety and anxiety related problems. He was not comfortable around people and avoided people. He was very outgoing before the accident. Overall, his condition was essentially the same since he first saw Claimant in 2010. *Id.* at 53.

Dr. Butts reviewed the medical records and billing records from the Veterans Administration. The services provided by the Veterans Administration were necessary to cure or relieve Claimant from the effects of his post traumatic stress disorder. The treatments were reasonable. *Id.* at 54-55.

Dr. Butts's October 18, 2011 letter, Butts Deposition Exhibit 4, outlines some of the services that Claimant's wife undertakes for the care of Claimant.

Dr. Butts was asked the following questions and gave the following answer at Butts deposition, pages 55-57:

> Q. (By Mr. Powell) Can you outline to the Administrative Law Judge the significance of the things that Mrs. Reynolds does for the employee?
>
> A. Well, of course, she does the cooking, she goes to the grocery store, she does the shopping. She, you know, does many of the more obvious kinds of things. But some of the less obvious things that people do for one another is the fact that she was working and she was very concerned about what was going on.
>
> She eventually found out that he was taking a sleep medication soon after she left for work, and so he was sleeping through the day. So apparently he was overmedicating, because apparently he was taking it at night and also taking it in the morning again.

But at any rate, Dr. Bhargava, or however it's pronounced, told the wife she had to stay home with her husband. She was very, very concerned about what was happening when -- or could happen to him when the wife was gone. And the wife has told me on a number of occasions that she essentially never lets him out of her sight unless he is with his son or maybe a brother, which doesn't happen very often, but if, for example -- and he doesn't like that. He doesn't like her tagging along all the time, but she always makes up some kind of excuse about -- about being along with him. And she also said she learned very early on not to disagree with him. Because when she did disagree with him early on, he would get very angry and did, in fact, physically attack her on more than one occasion. So she is very, very careful about what she says, but she keeps her eye on him constantly, day and night. And, you know, she doesn't, of course, when she is asleep. But, on the other hand, if he gets out of that bed, she knows it apparently.

If he goes out and he wants very much to do something by himself and he doesn't want her along, she says, well, even if it's very, very cold out, she opens the door so she can hear what's going on outside if, in fact, he gets out of her range of sight. But apparently she stands constantly watching him whenever he is out of the house. Because he does do things like try to weld, and she is very frightened about what's going to happen if he, you know, doesn't pay attention to what he is doing when he is welding, and that is a real problem.

He tried to cut down a tree -- I'm sorry, tried to cut off a tree limb, and she was out there trying to help him and she kept warning him, and the tree limb almost fell on her because he just was not paying proper attention.

And because of his inability to attend to more than one thing at a time or get distracted, I am concerned about him using a torch and doing any kind of welding, and I fully agree with her that he needs to be watched whenever he is doing that kind of welding, and I fully agree with her that he needs to be watched whenever he is doing that kind of thing. But if he goes out on the tractor, she tags along on the riding mower or something. She always manages somehow to be with him. He is a real danger to himself.

Dr. Butts noted Mrs. Reynolds frequently helps keep Claimant calm when he gets upset. *Id.* at 57-58. She does most of the driving.

Dr. Butts was asked the following questions and gave the following answers at Butts deposition, pages 59-65:

> Q. The services that Mrs. Reynolds performs to Ronald Reynolds, are they necessary to cure and relieve from the effects of his PTSD?
>
> A. They aren't going to cure it, but they are necessary to relieve the effects. They're not going to cure his problems. But they're necessary to keep him from setting the barn on fire, from turning the tractor over. Who knows. I mean, just so many things that can happen on the farm.
>
> We all know of the many accidents that occur -- farm accidents that occur to people who are perfectly healthy and have good attention -- focus of attention. This man can't remember to shut the farm gate. He -- he has his -- oh, for crying out loud. I have [my] one myself. Not a crosscut saw. A –
>
> Q. Chainsaw?
>
> A. Chainsaw, that's what it was. I don't know why it went out of my head. He works on something, he sets his chainsaw down, and if his wife wasn't there, he would drive off in the truck and leave it there. So, you know, it -- he just cannot stay focused, and that is dangerous.
>
> Q. I'm going to ask a series of questions for your professional opinion and conclusions. And in answer to those questions, please limit your answer to being based upon reasonable psychological certainty.
> After your evaluations, reading the medical records, history from both Mrs. Reynolds and Ronald Reynolds, did you come to a professional opinion as to what diagnosis Mr. Reynolds' condition is?
>
> A. Yes. The most outstanding feature is the post traumatic stress disorder with all of its ramifications, which include the problems with attention and concentration and memory, because those are part of the criteria for post traumatic stress disorder.

But, also, he is depressed. And I indicated major depressive disorder. I think a lot of other people -- there are some of the various treating doctors that include a separate anxiety disorder. I don't know as that's particularly necessary. I mean, I think it's all part of the posttraumatic stress disorder.

The -- some doctors have included sleep disorder. But, again -- I mean, that's part of the criteria of posttraumatic stress disorder, so I don't pull it out as a separate diagnosis. But I can understand why they do, because it is a very major factor in his life. But, you know, the primary thing is posttraumatic stress disorder and the depression.

Q. Do you have a professional opinion as to what the prevailing factor was that caused that posttraumatic stress disorder condition?

A. Yes, very clearly it's the result of the vehicular accident on 7/17/07.

Q. And what do you base that opinion upon, Doctor?

A. Well, he has flashbacks about running from the truck, the truck being on fire, nightmares about it. He has fears about being in a truck. His brother -- yeah, I'm almost positive it was his brother that got a brand new semi, and his brother went -- his brother is probably proud of it and he also thought that the patient would be interested in it.

And so he tried to get Ronald to go out and look at his brand new semi and to climb up in the cab and see all the wonderful things that -- and Ronald would not even get on the first step of the cab. So, you know, there are a number of things that he avoids. His life is very much constricted. But I may have wandered from your question. I'm sorry.

Q. Did he have any flashbacks before the accident of July 17, 2007?

A. Oh, okay, correct. He had none of these -- none of these problems before the accident. He didn't have any problems with sleeping. He didn't have problems with nightmares. He didn't have

problems with flashbacks. He didn't -- from my knowledge, he didn't have an anger problem.

Q. Do you have an opinion whether or not Mr. Reynolds sustained any disability as a result of the accident of July 17, 2007?

A. Yes.

Q. And what is that opinion?

A. He is permanently and totally disabled. And he also –

Q. And I think you just answered my question. Is that permanent in nature?

A. Yes.

Q. And what do you base that opinion upon?

A. The accident happened on 7/17/07. He is no better now. He might be a little worse from time to time. But for the most part, he is just no worse and no better essentially than he was in July of '07. And this is how many years afterwards?

Q. Was his disability caused by the accident of July 17, 2007?

A. Yes.

Q. Do you -- the records reflect that Mr. Reynolds has been treated by the Veterans Administration, Behavioral Health, Ozark Medical Center, Ozark Medical Center Urgent Care Clinic, Neurological Associates of Southwest Missouri, and at the North Kansas City Hospital immediately following the accident. Was that treatment reasonable and necessary to relieve and cure from the effects of his injuries in that accident?

A. Yes.

Q. Has Betty Reynolds performed caretaking and nursing services to Ronald Reynolds since the accident?

Mr. Lanham: I want to get an objection in here as to foundation, speculation. You can answer.

A. From his reports, the son's reports of the wife, he -- she has taken over a great amount of the responsibilities for the family and -- and, like I say, she -- she is his shadow. I mean, she is there constantly if her son or somebody else that she trusts is not there to make sure that he doesn't do something which is going to endanger himself.

Q. (By Mr. Powell) Do you have an opinion whether Mr. Reynolds will require medical aid in the future?

A. Yes.

Q. And what is that opinion?

A. This isn't going to change. He is going to continue to need constant monitoring to keep him from doing something that will be very harmful to him or somebody else.

Q. Do you have an opinion whether Mr. Reynolds will need nursing services in the future?

Mr. Lanham: Objection, Foundation, calls for speculation. You can answer.

A. Well, that depends on -- if you mean by nursing services the kinds of services that the wife is providing in terms of -- well, even going to the store, because he -- he will not go into a store except for two or three items, to get in and get out, and that's it. So it depends on how you define nursing services.

But if you're including those kinds of services where his everyday needs are just constantly watched over and taken care of, and his physical well-being is guarded in a sense against himself, yes, he is going to have to have nursing services for the rest of his life.

Dr. Butts did not recommend in his original report that is Butts deposition Exhibit 2, that Claimant have around the clock supervisory care. He did not indicate in Exhibit 2 that he felt Claimant was a danger to himself or to others or was homicidal. *Id.* at 73.

Dr. Butts testified Claimant's wife told him on January 11, 2011 that she had quit her job because she had to be with Claimant all the time because Dr. Bhargava had told her to do so. *Id.* at 75. Dr. Butts did not think Mrs. Reynolds had quit her job on November 4, 2010. *Id.* at 75. Dr. Butts agreed that during the daytime, Claimant was not being constantly monitored from the time of the accident until Claimant quit her job. *Id.* at 76.

Claimant's wife reported to him that Dr. Bhargava had told her to stay home from work to be with Claimant. Dr. Butts stated that it is in Dr. Bhargava's notes, but he did not get those notes until later. *Id.* at 77. He could not quote exactly what that note said. *Id.* at 78.

Dr. Butts testified that Claimant does not have a traumatic brain injury and did not suffer a traumatic brain injury in this accident. *Id.* at 81.

Dr. Butts was asked the following question and gave the following answer at Butts deposition, page 91:

> Q. And is it your understanding now that Mr. Reynolds is never left alone? And I mean other than to go to the bathroom by himself, I'm sure she doesn't go in there, things like that. But he's not in the barn by himself?
>
> A. He might be in the barn by himself, but she can see him moving in there. And, like I say, she opens the door to see what sounds she can hear, even in the cold weather. So, yes, he is in the barn by himself, but she is up there at the house watching his movement up there in the barn somehow.

Dr. Butts was asked the following questions and gave the following answers at Butts deposition, page 93:

> Q. He [Claimant] admits that he needs to be watched constantly?
>
> A. No, but he admits that he loses it frequently.
>
> Q. He gets frustrated, he gets angry, he gets short?
>
> A. Yes. He gets to feeling helpless. He -- yes.
>
> Q. I –

A. He admits that he sometimes wants to kill someone. He admits that he becomes confused as to what to do.

Q. Is this him telling you or her?

A. Well, this is her telling me, but he also told me the same kind of thing. Gets agitated around people. He -- this is him talking. If he hears the scraping of a metal noise, it makes him jump and he starts thinking about the MVA, makes him tense. Gets agitated most afternoons if he is around anybody. Don't want the mess -- don't mess with my phone –

When Dr. Butts was in active practice, about three fourths of his practice was spent doing active treatment and one fourth was doing med-legal. *Id.* at 94. Probably eighty five percent or so of his evaluations were done at the request of the plaintiff attorney. *Id.* at 95.

Dr. Butts recommended in February 2011 that Claimant avoid having to talk in detail about the traumatic event. *Id.* at 99.

Dr. Butts's November 4, 2010 report (Exhibit F, Deposition Exhibit 2) states in part:

> It is my opinion that Ronald [Employee] is permanently and totally disabled. He is unable to engage in meaningful, gainful employment. His inability to work because of the Posttraumatic Stress Disorder, the loss of a sense of accomplishment, and the sense of comradeship of work, and social interaction with friends is depressing him. These are permanent impairments from his work injury of 7/17/07.

Dr. Butts met with and evaluated Claimant on November 19, 2014. Dr. Butts's November 19, 2014 report (Exhibit F, Deposition Exhibit 6) states in part:

> **Summary**
> The patient shows a slight improvement since the first evaluation. I do believe the medication is helping and the few visits with the psychiatrist have been of some minor help. However, the reports of the patient and his wife regarding his activities in everyday life and his and her reports of his psychological functioning, indicate there have not been any substantial improvements. That is not to say the medication is not needed. He would most likely, in my opinion, be

> dead by now without the medication, as indicated by what happened when he was taken off the medication. I am still very concerned about his suicidality. I believe it was a correct call for me to extend myself, which I have never done before, and go to the vicinity of his home to do the evaluation. He has been evaluated numerous times, as substantiated by the medical records, by numerous professionals. Each new person involved is especially traumatic to him. Leaving his immediate geographical area to be evaluated is traumatic. There needs to an end to the re-traumatizing of this patient. Further evaluations, if conducted by unbiased persons, are going to end up with the same results. Clearly, the VA would have no bias toward exaggerating the mental status of this man. In fact, the VA would tend, if it has any bias at all, to under-estimate his problems, as that lowers their case load that is greater than they can handle. I believe that to make this man travel any distance for yet another evaluation endangers him, and possibly his wife, and I strongly recommend against it. I strongly believe that my very unusual travel to assess him as a correct, needed decision.

Dr. Butts's December 11, 2014 report (Exhibit F, Deposition Exhibit 7) states in part:

> My final diagnoses remain: (a) Posttraumatic Stress Disorder and (b) Major Depressive Disorder (recurrent, severe, without psychotic features). Regarding prognosis, he is not going to improve to any significant degree as the passage of seven years and treatment by a number of different health providers has made clear.
>
> . . . . . .
>
> In fact, I do not believe this man has been, or will be, capable of performing any regular employment of any kind since his accident of 7/17/07, an accident that is totally responsible for his present mental and psychological impairments. He functioned at a very high level right before his accident as I outlined in detail in my first evaluation. Thus, the only logical conclusion is that the accident is the total cause of his present disabled condition. Further, the triggers, the nightmares, the flashbacks, the various situations he avoids (e.g. TV news of fires), the disturbing thoughts, the sounds that he reacts to (e.g. sirens) are all related to the incident of being in a burning cab that he thought he was not going to be able to get out of, and the later

> explosion of the semi as he was running away from it, looking back as he ran.
>
> To summarize, the patient is moderately impaired in activities of daily living, in social functioning, in concentration and memory, in adaptation to conditions outside his very controlled environment, and in decision making processes. He is in need, as the psychiatrist early on decided, of constant companionship of someone with whom he is comfortable. His situation clearly has not changed. His wife best fits that description, but she needs occasional relief. If something should happen to her, he would need the constant presence of a sibling or a child for a period of time before someone else could be a person he would trust to be his constant companion as a relief to the close relative, unless someone he learns to accept as a companion can be provided to take on that role before something happens to his wife.
>
> . . . . . .
>
> All of my opinions are made within a reasonable degree of psychological certainty and are based upon hard data as provided by psychological testing, in addition to interview of the patient, review of many psychological records (as well as his deposition in which he broke down and the depo had to be ended), interview of the wife, and behavioral observations.

Dr. Butts's November 10, 2015 report (Exhibit F, Deposition Exhibit 9) states in part:

> Evaluations are very traumatic to this patient. After the first evaluation with me, his wife reported that she was afraid that he was going to jump out of the car on the way home while she was driving. On the last evaluation I did of the patient, because of the traumatic effect on him of an evaluation in which it becomes apparent that he is not functioning anywhere near the level at which he used to perform, I went to the geographic area to do the evaluation, though it was a considerable number of miles. On that evaluation, he answered as true the MMPI2-RF item, "I have recently considered killing myself." I have from the first evaluation had a major concern that this man might commit suicide. Every evaluation I did was traumatic for him, though I was very careful to make the situation as non-threatening as I could. Even if a neuropsychological evaluation were broken up into three visits, it is unnecessarily traumatic and dangerous for his life.

> The data in this case is substantial, coming from many different sources. Dr. Halfaker had a chance to administer neuropsychological testing when he first saw the patient a number of years ago and chose not to do so. There is no basis for doing so now and endangering the life of this patient.

Dr. Butts's January 26, 2016 report (Exhibit F, Deposition Exhibit 11) states in part:

> . . . . . In this case, that has dragged out for so long and been so traumatic for the patient, I have had a number of contacts with family members. From early on, I have been concerned that the patient might commit suicide. My concerns for the welfare were also reflected in the request from one of the doctors that first saw the patient at the VA, Dr. Bhargava, who requested that the wife of the patient quit her job and stay home as to be continuously aware of the activities of the patient.
>
> However, the main point of this letter is to note that the request of Dr. Halfaker to interview the patient yet again, after so many different doctors have interviewed Mr. Reynolds regarding his PTSD and have also concerned themselves about the possibility of brain damage, would be injurious to the patient. As noted above, the re-living of the traumatic incident by requesting detailed information related to the incident, as I noted in my concern expressed earlier in a letter regarding this matter, adds to the trauma the patient has experienced. Even the rather carefully conducted deposition of the patient, as we all know, resulted in a major emotional breakdown during the process of the deposition.
>
> The patient has recently agreed to yet another evaluation by yet another doctor, Dr. Jennifer Lynch, a neurologist. Again, the patient, by yet another doctor, was given a diagnosis of PTSD. Further, this neurologist, <u>just five months ago,</u> both before and after reviewing some of the records, concluded that Mr. Reynolds had PTSD. She also gave him the St. Louis University Mental Status Examination for Detecting Mild Cognitive Impairment and Dementia (SLUMS). Dr. Lynch concluded there was no indication of brain damage, including no dementia. <u>There is no reason to believe that giving another mental status exam should produce any different results.</u> Therefore, there is absolutely no reason for Dr. Halfaker to give yet another mental status exam, just as there is no reason for Dr. Halfaker to do yet another

evaluation when the patient has been seen by so many doctors, who are all essentially in agreement. Further, when I evaluated him on two different occasions in November 2010 and four years later in November 2014, I got the same results, including not only on interview of the patient and his spouse, but also objective tests. Over the four years, the patient has not shown any significant improvement regarding his psychological functioning. The MMPI-2R results given four years apart were essentially the same, excepting admitting that, although no one knew it, he had recently considered suicide. His scores on the memory test, highly respected among neuropsychologists, were almost exactly the same, and certainly within the range of normal error variance for re-testing. Without deterioration of memory over a four year period, clearly there is no dementia present, just as the neurologist, Dr. Lynch, chosen by the defense attorney concluded.

Evaluation of Dr. Jennifer Lynch

Dr. Jennifer Lynch, a neurologist, evaluated Claimant at the request of Employer on July 24, 2015. Exhibit T, pp. 307-322. Dr. Lynch's July 24, 2015 notes state in part:

HISTORY OF PRESENT ILLNESS:

. . . . . .

They report that he has had cognitive impairment since the accident, and I cannot elicit any indication of cognitive decline since that time.

. . . . . .

Instrumental Activities of Daily Living:

Assessed and independent in all except:
Driving: gets turned around in unfamiliar territory, restriction K on license
Finances: Farm business bills are done by wife since MVA
Food Prep: Prepares adequate meals if provided with ingredients
Housekeeping: Does lawncare and outside chores
Laundry: Wife has always done laundry
Taking Medications: Wife fills pills box and reminds if he misses, gets mixed up, has taken meds twice on accident
Shopping: Able to shop but avoids people at store

Telephone: Dials a few well known numbers, but most are on cell phone and able to use

Activities of Daily Living:
Assessed and independent in all.

. . . . . .

REVIEW OF SYSTEMS:
See HPI
All other ROS reviewed as negative or not pertinent
Neurologic: Admits to: tremor; memory loss
Psychiatric: Admits to: depression, anxiety, panic attacks
Sleep: Admits to: snoring, difficulty getting or staying asleep, vivid dreaming

. . . . . .

NEURO PHYSICAL EXAM:
. . . . . .

MENTAL STATUS: See SLUMS score of 18. Oriented to person, place and time. Recent and remote memory are fair. Attention span and concentration are mildly impaired. Speech is fluent, without dysarthria or aphasia. Adequate historian with normal fund of knowledge. Moods are consistent with situation, affect is euthymic. thought process is coherent, content is without delusions or hallucinations.

ASSESSMENT & PLAN:
327.42 REM SLEEP BEHAVIOR DISORDER (ICD-327.42) (ICD10-G47.52)- -
DEPRESSION 311 (ICD-311) (ICD10-F32.9 - -
INSOMNIA, CHRONIC 307.42 (ICD-307.42) - -
POSTTRAUMATIC STRESS DISORDER (ICD-309.81) - -
Comments: No evidence for progressive cognitive decline, although clearly does have impaired cognition and symptoms consistent with PTSD and depression, although some mild gradual improvement reported per both patient and wife. He has never had significant cognitive neuropsych evaluation. This could be considered, although notation in prior evaluations does indicate significant decline from prior to the accident, but nothing to suggest further decline since then.

Dr. Lynch administered the SLUMS Mental Status Exam with results of "18—Dementia." There was no diagnosis of dementia or Alzheimer's.

Dr. Lynch's records note at page 309 that Claimant does have a lot of sleep issues with very frequent nightmares.

Dr. Lynch's 09/02/2015 – **Append: Neurology note**, states at page 322:

> In summary, there is no discrete testing to confirm a cognitive decline over time. The patient and the wife both agree that he is gradually improving and adjusting, although they feel he will never be the same as before. They specifically deny that he needs any more assistance or supervision than he did initially.
>
> Given their reports, I do feel he likely suffered a closed head injury, but there is no head imaging to support this. I do feel that he has a static condition, and that no further decline is expected. These findings were relayed by telephone to Eric Lanham, with more detailed review performed subsequently.

Dr. Lynch's February 20, 2015 email to Trish Musick pmusick@mvplaw.com states in part:

> **Subject: Re: Causation issue on dementia**
> . . . . . I have seen a lot of PTSD and they can have a lot of sleep complaints [*sic*] and mild memory issues, but have never seen progressive memory loss.

Dr. Lynch did not receive medical records from Employer until after her examination of Claimant. According to Dr. Lynch's notes, those medical records include: "11/4/2008 Repeat Neuropsych by Dr. Halfaker. Confirms PTSD with GAF of 55 (10% impairment and brief psychiatric ratings scale of 10%)." Dr. Lynch's notes do not indicate she received any raw data from Dr. Butts' psychological testing.

Gary Weimholt Vocational Evaluation

The deposition of Gary Weimholt taken on March 4, 2016 was admitted as Exhibit I. Mr. Weimholt is a vocational rehabilitation consultant. Weimholt deposition, page 4. He has an undergraduate degree in psychology and a graduate degree in guidance and counseling. He first got into vocational counseling rehabilitation in 1985 and has

practiced ever since then. He is certified by the Division of Workers' Compensation as a vocational rehabilitation practitioner and provider. *Id.* at 5.

Mr. Weimholt performed a vocational evaluation of Claimant at Claimant's attorney's request. *Id.* at 6. He did not have an in-person conversation or interview with Claimant. He noted Claimant's deposition was terminated after Claimant broke down and openly wept. Mr. Weimholt thought an interview with Claimant could lead to problems that Claimant previously had as far as talking about the accident and injury, and how they create additional anxiety and stress emotional reactions for Claimant. *Id.* at 7.

Mr. Weimholt performed a record review and generated his report, Weimholt deposition Exhibit 2, the report he completed on June 5, 2014. *Id.* at 8. After Mr. Weimholt generated his January 5, 2014 report, he was provided additional records, reports and pleadings. *Id.* at 9.

Mr. Weimholt was asked the following question and gave the following answer at Weimholt deposition, pages 9-10:

> Q. Can you tell the administrative law judge what those were?
>
> A. Yes. They began with more information from Miss Betty Reynolds in a letter dated 12-20-14; as well as her deposition transcript of 8-12-14; record from Baxter Regional Medical Center from June 2015; records from Knox, K-N-O-S--K-N-O-X, Orthopaedics from July 2015; a report of employee's notice of intent from a Dr. Jordan from July 2015; John J. Pershing VA center from August--and this is certification dates that I'm giving--from August 4, 2015; the military discharge form, DD214; deposition of Cherie Crawford, who is with the employer, that was taken on 10-1-15. A report of a Dr. Lynch from 7-24-15, and that includes her examination and review; an additional report from Dr. Butts of 9-9-15; another letter of Betty Reynolds from 5-13-14; a page about the global assessment of functioning; and also the DSM-5. Then there was a series of reports from Behavioral Health Care. There was a medical examination report of 12-2-2007. There were additional handwritten notes from Dr. Butts and another report from Dr. Butts of 11-10-15.
>
> And then again, there has been the description--or transcription of the deposition of Victoria Powell, who is a nurse and long-term care planner. And there is a deposition of Jesse Rhoads as well. I

> think I would add that with the deposition of Victoria Powell were reports that she had prepared as well.

Mr. Weimholt said the supplemental information provided to him did not change his professional opinion in any regard that was contained in his report. *Id.* at 10-11.

Mr. Weimholt did not believe that Claimant would have been able to return to anything like truck driving following the accident of July 17, 2007. *Id.* at 13.

Mr. Weimholt was asked the following question and gave the following answer Weimholt deposition, pages 13-14:

> Q. And can you tell the administrative law judge what you base that upon, that opinion upon?
>
> A. Right. Well, I base it upon the opinions of the doctor, Butts, for example, indicating he had a severe mental disorder and that along with it went social anxiety, panic attacks that he would have, ongoing PTSD, hypersensitivity in that respect, triggering events, and reliving events or having nightmares and those sorts of things related to it or related to being in any type of similar situation to what he experienced in the injury, even the road bumps and narrow bridges and things of that nature.
>
> I think the history is consistent of post-traumatic stress disorder throughout this period of time with him seeking treatment for that, being on medications for that.
>
> So I think those things lead me, when I consider some of the critical functions and critical situations that a truck driver would encounter in their work, that he would be unable to perform those works, from a vocational point of view.

Mr. Weimholt expressed the opinion that an employer would not hire Claimant in the normal course of employment because of the emotional problems, mental health problems that he has associated with post traumatic stress disorder that have been documented in the file. *Id.* at 15. Age is also a factor in his employability or re-employability. Claimant was going to be sixty-nine years old on March 17, 2016. *Id.* at 16.

It is Mr. Weimholt's opinion based on reasonable vocational rehabilitation certainty that Claimant has not been employable in open labor market since the day of the

injury. *Id.* at 17. The fact Claimant worked for Employer or drove for Employer from late January 2008 to late April 2008 does not affect his opinion because Claimant was limited from nighttime driving, and that period amounted to a trial work. Claimant never returned to full duties in all the routes he had previously driven. Mr. Weimholt was aware of Dr. Bhargava's restrictions. *Id.* at 18.

Mr. Weimholt agreed that if you accepted Dr. Halfaker's belief in his report of November 2008 that Claimant could return to work without any psychological restrictions, Claimant is not permanently and totally disabled. *Id.* at 21.

Mr. Weimholt testified his opinion is based solely on Claimant's psychological condition and does not take into consideration his physical condition. *Id.* at 24.

Gary Weimholt's, June 5, 2014 report states in part:

> Considering the opinions, limitations and restrictions of Dr. Butts it is difficult to see how Mr. Reynolds could consistently meet the requirements for team skills or managing time wisely at work or providing leadership ability. Again, I note that Dr. Butts indicates he is withdrawn, avoiding people, distrustful of others, preoccupied with physical health concerns, has problems with memory and concentration and low tolerance for frustration. Dr. Butts notes he was indecisive and felt incapable of coping with problems of everyday life.
>
> This is not how Mr. Reynolds performed prior the injury of 2007, in which he would have been considered highly active and able to function well in most all areas related to work. Dr. Butts indicated that Mr. Reynolds is depending upon others (especially his wife) for guidance and security. It is also noted that his wife has quit work to remain near him and continues to present to watch him. This condition has now continued for almost 7 years. Dr. Butts also indicated Mr. Reynolds was subject to experiencing panic attacks related to the PTSD and the injury from events, cues and recollections, to the point that he advised against having Mr. Reynolds deposed.
>
> All of the above problems and other problems that have been outlined by Dr. Butts and others suggest that Mr. Reynolds would be at a great disadvantage in competing against other workers and maintaining the work place competencies required by most employers.

I also note that Mr. Reynolds does not appear to have full computer literacy skills and would not be able to meet that work place competency. In terms of transferable skills, it is my opinion that his mental health problems and limitations would prevent the performance of any kinds of detailed or complex occupation that he could be expected to have skills for based upon his education and work history. It is likewise my opinion that he cannot be expected to return to any of his previous occupations, given his mental condition, alone.

I note that Mr. Reynolds is well over 55 years of age. Research has shown that such older persons with one or more work disabilities have a much lower expectation of participation in the labor market than either younger persons with or without work disabilities, as well as older workers without work disabilities. Approximately 18% of such older workers with work disabilities are participating in the labor market versus approximately 68% of worker who have no work place disabilities who are participating in the labor market.

I have considered my own experiences in working with individuals such as this worker and over 25 years of vocational rehabilitation assessments, loss of labor market access evaluations, job placement services, job sites visits and assessments, detailed task loss interviews with hundreds of workers, and labor market surveys. It is my opinion that the research findings described above are consistent with my professional experiences.

Conclusions:

In conclusion, it is my opinion that Mr. Ronald Reynolds has a total loss of access to the open competitive labor market and is totally vocationally disabled from employment. It is my opinion that there is no reasonable expectation that an employer, in the normal course of business, would hire Mr. Reynolds for any position, or that he would be able to perform the usual duties of any job that he has been or is qualified to perform.

I note in the records that Mr. Reynolds continues to have problems and symptoms associated with the workplace injury of July 17, 2007. I note that he has continued to seek treatment for these symptoms and has continued to have PTSD symptoms associated with this injury as recent as the deposition of December 2013. Likewise I

do not believe Mr. Reynolds has been a candidate for vocational rehabilitation services.

My opinions in this case are offered with a reasonable degree of certainty in my profession as a vocational rehabilitation consultant, disability management specialist and job placement specialist.

Victoria Powell Nursing Evaluation

The deposition of Victoria Powell taken on January 4, 2016 was admitted as Exhibit G. Victoria Powell is a nurse consultant. She is a registered nurse in the State of Arkansas. She has been Certified Life Care Planner since 2007. She currently serves as the President of the American Association of Nurse Life Care Planners. (Exhibit G, page 6.)

Ms. Powell performed an evaluation of Claimant as to nursing services provided by Claimant's wife as a result of his injury July 17, 2007 at the request of Claimant's attorney. *Id.* at 8. She reviewed close to 1,500 pages of medical records from the various providers Claimant had seen to get a feel for his diagnosis, what occurred in the accident, and what type of symptoms and limitations he had period. She reviewed information given to her by Mrs. Reynolds and had a lengthy conversation assessment with Mrs. Reynolds about her caregiving responsibilities services. She also researched the cost of caregiving services that she identified in Exhibit G , deposition Exhibit 2, her initial report dated August 9, 2015.

Ms. Powell identified Exhibit G, deposition Exhibit 3, her updated report dated December 18, 2015. The reports were generated as a result of reviewing the documents provided and identified in Exhibit G, deposition Exhibit 4, and her interview of Mrs. Reynolds. Her opinions in her reports were based upon reasonable nursing life care planning services within reasonable professional certainty, and also as case manager. *Id.* at 10.

It is Ms. Powell's opinion that Claimant requires 16 to 20 hours a day seven days a week from Mrs. Reynolds to care for him as a result of the injury July 17, 2007. *Id.* at 15-16; Exhibit G, deposition Exhibit 3. Ms. Powell testified, "And if it were not for Ms. Reynolds, he would have to have hired caregivers. Potentially a live-in caregiver would be the best option for him."

Ms. Powell was asked what services Mrs. Reynolds performs for Claimant. She described those services at Exhibit G, pages 17-19:

A. She observes for reactions. She monitors and observes him for intrusive memories, things that he's trying to avoid, or hyperarousal. She provides support to him during periods of overwhelming emotion or anxiety. She encourages him to participate in treatment.

She fosters relationships with family and friends that he has avoided. She watches for warning signs of potential relapse or exacerbations. She reestablishes feelings of self worth. She encourages him to participate in activities such as the farm activities, home activities, social activities.

She provides empathy and caring. She encourages things like healthy living, adequate sleep, proper diet and exercise. She encourages him to have positive rather than negative self talk. She has intervened at times when it's necessary to remove a source of anxiety or remove him from a source of anxiety.

She assesses him for suicidal ideation. She educates herself and Ron on his medical condition and treatment plan. She advocates for him. She provides crisis reporting. She helps manage his appointments.

She manages medications, including maintaining a list of his medications with dosages, frequencies, and maintains the pharmacy information. She makes sure that he obtains timely refills, determines the response to his medication and any adverse reactions. She reminds him when it's time to take medication to make sure that they're appropriate, going so far as to maintain some medication out of his reach or out of his ability to take that at the wrong time.

She communicates with his caregivers by things – phone calls, writing questions, keeps phone numbers handy. She physically helps him on the things that he cannot physically do. She manages his pain by massaging his back and legs. She has done a lot of blood pressure monitoring, although I think that is decreased at this time.

She provides all of his transportation, even going so far as to think about where they're going, what kind of directions, what they might encounter on the way, such as a bridge, or whether or not there's a wreck up the road, or something that they're trying to avoid to manage his panic attacks.

She brags on his accomplishments to try to give him some buy-in for the treatment plan. She goes behind him closing doors and gates and doing all kinds of reminders of different things. She helps him with math and other level cognitive requirements and so forth.

Ms. Powell testified that the costs for Ms. Reynolds to care for Claimant in this case were exactly the costs that were determined from the national sources she had identified and are relied on by every other life planner in the industry. *Id.* at 33.

Ms. Powell had not spoken to Claimant. She is not a psychologist or psychiatrist. *Id.* at 47.

Ms. Powell was asked the following questions and gave the following answers at Exhibit G, pages 53-57:

> Q. Did you attempt in any fashion to quantify the number of hours that Ms. Reynolds spends specifically performing activities that you would need to be – make sure I have the language down here correct – activities of daily living?
>
> A. Instrumental activities of daily living, yes. I did that by talking about the daily routine that they have, the type of routine that they had prior to the injury, the routine that they have after the injury, both with Mrs. Reynolds' and Mr. Reynolds' daily activities.
>
> The difficulty comes in that today is not like yesterday and it's not like tomorrow, and that's the reason that it's so difficult. So much of what she provides for him is observation and monitoring and cuing and those types of things that you could not bring somebody in, for example, and take care of somebody three hours a day, four hours a day, eight hours a day, because it depends on what his activities are and every day is different.
>
> And what she provides for him outside of observation may only be for 15 or 20 minutes for this hour, and then the next hour it may be two hours of driving around in the middle of the night. And it may involve, you know, multiple trips for transportation. They live in a rural area, and that could be quite extensive if they were going in to medical treatment at the VA or something.
>
> But it's – for example, you could hire somebody to do transportation, but it wouldn't be the same time all the time. You would have to bring somebody in – you would have to schedule around that, if you will. And Ron's symptoms are not on a clock. They don't come at a particular time.
>
> Q. So basically, because of that, it's your position that she's basically on the clock 16 to 20 hours a day?

A. That's the best number of hours that I can give based on my conversations with her, because there is some time that she sleeps. There is some time that she attends to go to church. There is time when a neighbor comes over to visit where she has the ability to get away a little bit. So there are some of those – I was trying to be conservative as possible, but at the same time you have somebody with a condition that waxes and wanes on a minute-by-minute or hour-by-hour basis.

Q. So if Mr. and Mrs. Reynolds are sitting around in the evening and watching TV and it's an uneventful evening, she's still on the clock?

A. For observation and monitoring, yes, to a degree. If they've had a good day, and he's not had any kind of exacerbation with – around the farming, or they haven't been in the car or they haven't had a doctor's appointment, that may be a good day. So they could sit around and watch television, and no, I would call that that she wasn't on the clock during that time.

But the second that he wakes up from sleep with a panic attack or a flashback, then she's back on the clock. And that's the reason I can't give a particular number of hours because you couldn't hire somebody to come in for a limited number of hours per day and do what she does.

Q. But in terms of the hours that she is actually on the clock, so to speak, you didn't make any attempt to itemize those or quantify them in any fashion?

A. Well, that's what I'm saying, I did make an effort; it just wasn't feasible to do so. She may provide care – and a lot of things that she does, she's been doing this for so long, she doesn't even recognize how long it takes her to do certain things. It depends on how bad his attack his [*sic*], or is it in the middle of the night for a drive, or is she taking him to the store and – it just depends on what their activities are. So yes, I made an effort.

Q. She hasn't kept any notes of how much time she spends doing various things, has she?

A. Not to my knowledge as far as the amount of time, no. I mean, we did talk about – it's easier to talk about time when you're talking about ADLs. How long does it take someone to dress or to

groom or to feed or get a meal. Those are much easier to document time. But when you're doing IADLs, it's much more difficult because it doesn't have a particular start and end time.

Q. Did you make any attempt to quantify the ADL?

A. She does very little ADLs for him now. She used to do much more originally, like helping him bathe and groom and those kinds of things initially, but she doesn't do so much of that anymore.

Q. Why not?

A. Because he doesn't require it anymore.

The deposition of Victoria Powell taken on February 10, 2016 was admitted as Exhibit H. At the beginning of the deposition, counsel for Employer did not dispute that the records in deposition Exhibit 4 were mailed to him by disc on January 5, 2016. He had not reviewed those records in the context of the February 10, 2016 deposition. Exhibit H, page 4.

Ms. Powell is a certified brain injury specialist. She believed she received national certification in 2014. *Id.* at 7. She has experience dealing with brain injury cases and post traumatic stress disorder cases. *Id.* at 9-10. She testified interviewing a caregiver is an accepted plan or mode of performing a life care plan or as a certified nurse case manager. *Id.* at 10.

Ms. Powell did not speak with Claimant because she had already reviewed the medical records and the deposition and felt it would be detrimental for her to start having Claimant rehash the situation and the things where his deficits were and point those things out particularly without a psychologist and psychiatrist there to address the situation. She did not want to cause a setback in talking to Claimant. *Id.* at 15-16.

Victoria Powell's August 9, 2014 report states in part:

> Dr. Butts' records reveal that Mr. Reynolds had 'a marked behavior change when she [Mrs. Reynolds] stayed home. Mr. Reynolds has been found to be unable to attend a physician appointment alone. Dr. Barghava [*sic*] recommended that Mrs. Reynolds discontinue her job to stay with him. According to Dr. Butts, her care is necessary secondary to Mr. Reynolds 'poor ability to attend and concentrate [which] can get him in situations of danger.'.

Despite medication, Mr. Reynolds has only been able to make minimal attenuation of symptoms. His periods of improvement are often interrupted by exacerbations of depression and anxiety.

Victoria Powell's December 18, 2015 report states in part:

Mrs. Reynolds manages his medications and appointments. She acts as his advocate because he is not empowered to do so. She monitors his symptoms daily and intervenes when necessary with distraction and redirection. She works to foster his relationships with family and friends and assists in efforts to improve his self-worth. She provides empathy and caring. She encourages healthy living habits, proper diet, adequate sleep, etc. She is within eyesight of Mr. Reynolds at nearly all times even going so far as to use binoculars when necessary. She is able to recognize the signs and symptoms of a panic attack. She is confronted weekly with his exacerbations which require cueing for redirection, deep breathing or guided imagery. She works alongside him to diminish his errors and increase safety. Mrs. Reynolds works hard to ensure that Mr. Reynolds maintains dignity and independence.

. . . . . .

Mrs. Reynolds has no coverage for respite care. Mrs. Reynolds is only able to leave Mr. Reynolds when a neighbor comes to visit or for one hour while she attends church services (near weekly). Family caregiving is difficult and stressful. Providing care and support to those with cognitive or behavioral health conditions is doubly challenging (AARP Public Policy Institute, 2014).

Mr. Reynolds does not require skilled care such as care by a Registered Nurse. Rather he would best benefit from the same type of care his wife has been providing since being recommended to do so by Mr. Reynolds' treatment provider.

. . . . . .

Conclusion
The annual costs for home care range from $247 per day (when live in care is available) and from $16 to $19 per hour. Mr. Reynolds will require between 16 and 20 hours per day of homecare for

maintenance, safety, and wellbeing. These total charges range from $116,800 to $138,700 annually.

Testimony of Betty Reynolds

Betty Reynolds testified she is Claimant's wife. She and Claimant will have been married for fifty years on April 8, 2016. They have three sons, Ronnie Jr., age 46, Steve, age 47, and Greg, age 48. Ronnie and Greg live nearby.

Mrs. Reynolds and Claimant have 115 acres.

Before July 17, 2007, Claimant was very active. He was highly intelligent. He could do anything. He maintained the equipment and truck, overhauled the motor in the truck, and was an experienced welder. He had his own work shed that was well organized. People came and visited Claimant there. He was close to his family before the accident. He was out going and socialized a lot. He went to town met with friends. He played cards.

Claimant was employed by Employer on July 17, 2007. He had worked for Employer for seven years. He worked full time for Employer. He was punctual and did not miss work before the accident.

Claimant drove a truck before he went to work for Employer. He had had his commercial driver's license (CDL license) since age 18. He was a cattle and pig auctioneer. He stopped auctioneering before the accident.

Claimant had a good memory before July 17, 2007. He could figure out how much he would make on sale. He could remember cattle that he previously sold.

Claimant bought calves and they worked and raised them. They kept the good calves and kept 125 calves. They had hogs that she feed. Claimant was the vet for their livestock before the accident. He would administer vaccinations, castrate, and worm animals. She helped him administer medicine.

Claimant and Mrs. Reynolds had a semi-truck they both operated. They split the driving.

Before Claimant's July 17, 2007 accident, he was generally in a good mood. He enjoyed working on the truck. He could take care of himself when Mrs. Reynolds was at work. He was independent and could take care of himself. He was a good provider for the family.

Before the 2007 accident, Claimant was never treated for post-traumatic stress disorder or symptoms of depression or Alzheimer's. He took no medication for Alzheimer's or dementia before the accident. He never saw a psychiatrist before the accident.

Mrs. Reynolds was employed as an assistant office manager for Current, Inc before the July 2007 accident. She worked there for five-and-one- half years and earned $8.50 per hour. Before the accident, she worked from 8:00 a.m. to 4:30 p.m. five days a week.

Mrs. Reynolds stayed home for three weeks after Claimant's July 2007 accident, and then went back to work on Mondays and Thursdays. Mrs. Reynolds resigned from Current on July 1, 2009 to be home with Claimant.

Mrs. Reynolds quit her job on July 1, 2009. She was 63 years old then. She had planned to work until she was sixty-six years old. She had only been working one or two days per week at the time she quit. She was at home with Claimant three days a week after his last trip in 2008 and before July 1, 2009.

Mrs. Reynolds testified at the final hearing that she resigned from work on July 1, 2009 to be at home with Claimant.[4]

Mrs. Reynolds went in some, but not all, of Claimant's appointments with Dr. Bhargava. She understood that Dr. Bhargava thought that she should be home with Claimant toward the end of Dr. Bhargava's treatment there. Dr. Bhargava never gave her anything in writing about that. No doctor has ever given her anything in writing regarding what she should do for Claimant.

Mrs. Reynolds testified she had not seen the medical report from Dr. Bhargava's last office visit on May 1, 2009 note.

Mrs. Reynolds testified Claimant returned to driving for Employer in late 2007. He drove with others when he first returned to work. He was to start back with Employer with one trip. He took his first solo trip on January 27, 2008. Within two weeks, he did two trips. The fourth week, he did three trips. He was very shaky when he came home after that trip.

[4]I sustain Employer's hearsay objection to Mrs. Reynolds's testimony that Dr. Bhargava told her to stay home with Claimant.

Before the accident, Claimant drove to and from Des Moines and Memphis. The trip to Des Moines was a two day trip with an eight hour layover. After the accident, Claimant only drove to Memphis. He left the house at 2:30 a.m. and started the trip at 3:00 a.m. He returned around 5:00 p.m.

Claimant was taking generic Prozac, Tramadol, Ambien, and a high blood pressure medicine on January 27, 2008.

Mrs. Reynolds was working when Claimant did these trips. After the last trip on April 27, 2008, Mrs. Reynolds had to physically help Claimant get out of the truck. He had seen an accident and did not stop. He said he was sorry and had to get on around it. He called her and told her to be there when he got back.

Claimant arrived at 5:15, but he would not get out of the truck. He would not unlock the truck. She talked him into locking the door and got him out of the truck. He was completely depleted at that time. He was not able to get out of his seat belt. He was in a trauma. It took her maybe twenty minutes to get him out of the truck. A trucker helped her.

Mrs. Reynolds put Claimant into the passenger side and drove home. She hoped he did not jump out of the truck. Claimant was withdrawn when they got home. She was not able to reach him. He stared at the ceiling. She called her sons Greg and Ronnie who came over. Mrs. Reynolds does not think that Claimant ever really came out after that.

The last trip that Claimant made for Employer was on April 27, 2008.

Claimant had nightmares after he stopped working on April 27, 2008. He had them more often and they were more dramatic after that. Claimant would jump when he had nightmares. She replaced six bottom sheets because Claimant moved his legs during nightmares.

Claimant's flashbacks became worse after April 27, 2008. They became more frequent and happened at times when he was dozing. Claimant napped a lot. Claimant had breakdowns crying in front of his family continues to do so.

Claimant has not driven for Employer since April 27, 2008. He will not get in a semi truck.

Claimant had tremors in his hands that were getting progressively worse. They were more noticeable in 2008 when he had stress.

Mrs. Reynolds paid the first two bills for Dr. Rhoades. Workers' Compensation paid the bills for Dr. Rhoades after that.

Mrs. Reynolds drove Claimant to Dr. Butts's office. The first evaluation of Dr. Butts was November 4, 2010. Dr. Butts met with Claimant and Mrs. Reynolds individually and together. Claimant took a test during the evaluation and Claimant broke down. He slid down the wall in a hall after the test. She held Claimant until he quit crying and then got him to the pickup truck.

Claimant began to drive home when he got in the truck after Dr. Butts's evaluation. He did not drive far because there was an accident. Mrs. Reynolds drove the rest of the way. Claimant was upset and angry and was crying. Mrs. Reynolds testified she was very much in fear for Claimant then. She held his hand tightly. It took six hours to get home. Claimant was very withdrawn inside himself, angry, and upset. He had trouble sleeping. He was like that for about three weeks after the evaluation.

Mrs. Reynolds testified when Claimant went to Behavior Health on March 11, 2013, Claimant was taken off his medications. He started shaking, withdrawing, and becoming angry. She lied to Claimant about a flu shot and got him to go to the VA on April 5, 2013. The VA immediately took Claimant back to a psychologist and Claimant was given some medicine.

Dr. Butts saw Claimant on April 1, 2013 in Kansas City. Mrs. Reynolds drove to the appointment. Claimant took a small test but broke down at the end of the testing and cried. Mrs. Reynolds drove back home after the appointment.

Claimant was deposed on December 18, 2013 in Claimant's attorney's office. Mrs. Reynolds saw Claimant thirty minutes after the deposition began. He had broken down crying. He was shaking all over and said he was sorry. He cried at his attorney's office for thirty minutes. He was very emotional and crying. He wanted to hurt himself. She was there with her son Ronnie. Ronnie got Claimant into the back seat of the truck.

Claimant last saw Dr. Butts on April 19, 2014. That appointment was in West Plains. Claimant was upset after the evaluation, but was not as emotional as after the first appointment. Claimant told her after that appointment that he felt like a failure. He was withdrawn and subdued for a couple of weeks.

Mrs. Reynolds testified Claimant was last evaluated on July 24, 2015. He was evaluated on that date by Dr. Lynch. Dr. Lynch asked Claimant about the accident and he broke down. Dr. Lynch left the room for fifteen to twenty minutes to let Claimant calm down. Dr. Lynch gave Claimant two tests. They were not reimbursed mileage for that trip.

Mrs. Reynolds testified at the final hearing in 2016 that at that time, Claimant was very withdrawn and depressed. He was unsure of himself. He could not make a decision by himself.

Currently, Mrs. Reynolds does most of the driving. Claimant rides in the vehicle from home to West Plains and back, two to three times per week. West Plains is seventeen miles from their home. Claimant does not drive at night.

Mrs. Reynolds testified that currently Claimant's personality changes constantly through the day. She did not know if he was generally happy or sad. She testified she has to monitor Claimant at all times.

Claimant sometimes has flashbacks from the accident. The number depends on what Claimant does. The week before the final hearing, it happened perhaps ten times during a five day period. Claimant has nightmares three to four times a week. Mrs. Reynolds has observed Claimant yelling, "Help. Get me out of here." He jumps up out of bed and they get up and go to the living room and sit.

On one occasion, Claimant left the house, walked down the road, and got in a vehicle when he was taking Ambien. He was taken off Ambien in February 2015.

Dr. Will asked Claimant to get off Ambien because the VA said the Ambien is bad for Veterans. Dr. Bhargava had prescribed the Ambien.

Claimant did not have problems walking before the accident. He had problems walking after the accident. He limped and his back hurt. He had physical therapy for his back.

Mrs. Reynolds testified Claimant has continued to treat at the VA for PTSD since Dr. Bhargava stopped treating Claimant.

Mrs. Reynolds testified Claimant does really "good" as long as he is on the farm. He is complacent if he works with his horses. He is more inward. He is a "different Ron." They only have immediate family over.

Since March 23, 2011, during a regular day, Claimant gets up and they have coffee. They do chores. She feeds the chickens. He works with harnesses for his horses. They piddle.

Mrs. Reynolds testified she is near Claimant all the time now. She is with him now because he is not very stable when she is not with him. She testified Claimant has

been accident prone since the 2007 accident. He has cut himself and blackened his fingernails with a hammer. He sustained a burn from hot water from a tractor radiator a month before the final hearing and sustained burns on his forehead and neck. She testified he needs to be watched for his safety. She uses binoculars at times to watch him. He cannot make a decision if he gets in a crisis. She was not with him all the time before the accident.

Mrs. Reynolds is with Claimant in the shop at times. The shop is his refuge. He keeps the gates locked. The tools in his shop are scattered and hard to find. He is not able to do things in the shop that he could do before the accident. He has lost strength and has lost interest. He can do measurements, but he cannot retain what he measures. He and their boys have been working on a wagon that is almost done. Before the accident, he would have built the wagon alone in a short time. He works an hour to an hour-and-a-half per day on the wagon. He loses interest and comes back to it with a day in between.

Claimant no longer has the ability to keep track of expenses. Before the accident, he knew to the penny what they had spent. He is not as meticulous with his clothes as he was before the accident.

Mrs. Reynolds sets out Claimant's medication in the morning and the evening. He could not do that by himself. On one occasion while she still worked, he took Ambien and left the house without her knowing. He did not tell her where he had been.

Mrs. Reynolds testified that Claimant cannot care for the cattle. Their boys do that now. They do the inoculations. Claimant does help with the cattle.

Claimant eats with Mrs. Reynolds, not by himself. He cannot do more than one task at a time. He could before the accident.

Mrs. Reynolds does almost all the driving since the accident. Some of the driving is done by their sons. Claimant rarely drives.

Claimant relies on Mrs. Reynolds. He is not independent. He is not the same man that he was before the accident. He does not have confidence in himself. He does not enjoy being with his immediate family. They see eight brothers and sisters twice a year. Before the accident, Claimant and Mrs. Reynolds got together with extended family every weekend. Claimant has two brothers that live close, but he does not visit them now.

Mrs. Reynolds identified Exhibit S, expenses she has paid for care and treatment of Claimant regarding the July 17, 2007 accident. She was not reimbursed for those expenses.

Exhibit R is a list of medical mileage for trips to Behavioral Health, the VA and other places for Claimant's treatment. It is fifty miles from her home to Behavior Health round trip and fifty miles to the VA from their home round trip.

Claimant has been treated by Dr. Frederick Will at the VA. He sees Dr. Will on a television. Claimant is not a Vietnam Vet even though the VA records say that he is. He stayed stateside from May 1966 to May 1968. He never saw combat service. He did funeral detail for twelve months.

Claimant had nightmares before 2007 when he was younger. He did not have prior flashbacks or meltdowns.

Mrs. Reynolds testified Claimant currently takes 40 mg of generic Prozac for PTSD, propranolol for tremors, and a medication at night for sleep.

Mrs. Reynolds and Claimant have been married for more than fifty years. She loves Claimant. She is protective of him. She agreed that the July 17, 2007 accident was a very serious event in both of their lives.

Mrs. Reynolds has twelve years of high school. She has medical terminology vocational tech education and passed State exams in 1995 and 1996. She has no medical degrees and has never treated patients. She is not an expert in psychology or psychiatry.

Mrs. Reynolds's birthday is in October. She started receiving Social Security retirement when she was sixty-two years old.

Mrs. Reynolds agreed Claimant was not evaluated by nurse Victoria Powell. Ms. Powell did not talk to Claimant. Mrs. Reynolds talked to Victoria Powell twice regarding things she did for Claimant to care and support him. She was truthful when she spoke to Ms. Powell.

Mrs. Reynolds wrote to Ms. Powell and Dr. Butts. Mrs. Reynolds did not write to Dr. Bhargava or Dr. Rhoades.

Dr. Lynch was moving when Dr. Lynch saw Claimant. Dr. Lynch did not have information from Workers' Compensation at that time.

Mrs. Reynolds testified Claimant was not employed. He last worked in April 2008.

The deposition of Betty Reynolds taken on August 12, 2014, Exhibit B, was admitted evidence. Mrs. Reynolds testified that she helps Claimant with chores around the farm. B, page 13. She testified Claimant usually lies down to nap about two hours per day and that he will not lay down unless she lays down with him. *Id.* at 15. She brings down his morning medicine. She helps him take a bath or shower and wash his hair. *Id.* at 28-29.

Mrs. Reynolds testified they watch TV together late in the afternoon or early in the evening. Before bed, they feed the chickens and get them up. *Id.* at 31-32. At that time in 2014, Claimant was taking Ambien at night. *Id.* at 33. She testified Claimant wakes a lot at night and she tries to pat him on the shoulder and tell him it's okay. *Id.* at 34.

Mrs. Reynolds testified that she anticipated the VA would continue Claimant on a three month regiment indefinitely for emotional and psychological treatment and to get his medicines refilled. *Id.* at 44.

I find Mrs. Reynolds's testimony to be credible unless discussed otherwise later in this Award.

Testimony of Ronald Lee Reynolds, Jr.

Ron Reynolds, Jr. testified Claimant returned to driving for Employer for a time after the accident. He took a solo trip on January 27, 2008. He was agitated after the trip. He shunned the family and did not talk to them much. He started getting depressed. Claimant was mad at the world and at himself. Claimant's last driving trip was in April 2008.

Ron Jr. sees Claimant three to five times per week. He sometimes sees Claimant every day during the week. He calls his father every day.

Claimant was employed and was independent before the accident. Claimant bought and sold livestock. Some years he bought and sold 1,000 head. Claimant also worked as a truck driver for more than forty hours per week.

Claimant drove a truck before he began working for Employer. Claimant had a shop on the farm where he overhauled tractors, built wagons and other things, fixed equipment, and overhauled truck engines. He was a jack of all trades. He put up new fences when he was younger. He could work his boys into the ground.

Ron Jr. testified Claimant had no serious injuries before the July 2007 accident. He broke his foot when he was a child. He had no serious illnesses before the accident. Had no psychological treatment, no treatment for dementia or Alzheimer's, and no

problems with his memory before the accident. He had no treatment for confusion before the accident. His memory was sharp. He did not go to a doctor regularly before the accident. He could calculate livestock amounts in his head. Ron Jr. saw Claimant recognize a cow he had sold before.

Ron Jr.'s mother enjoyed working before Claimant's accident.

Claimant tries to piddle at the present time. He cannot fully function when he works. He gets distracted. His mind does not let him carry out a process. A job that took an hour before the accident, now takes three to seven hours. They have to baby step when they work.

Claimant just piddles in the shed. He cannot work in there. Before the accident, he did strenuous work there all day long. Before, he overhauled equipment, vehicles, and engines. Now it takes him three days to change a radiator on a tractor. Before, it would take three hours. Claimant cannot do that by himself now.

Claimant drives very seldom. The only time Claimant drives by himself is to the Minimart that is one to two miles away to get gas, chew, or a cup of coffee. Otherwise, he only drives when someone is with him.

Claimant's cognitive memory is not like it used to be since the accident. He makes silly mistakes when he plays cards. He measures a board six times instead of once. He is unsure of himself. He is not the same dad they grew up with. He is irritable and edgy. He has flashbacks at least twice a week. He stops what he is doing when that happens. Ron Jr. gets Claimant away if there is an accident or fire. He protects his dad. He does not want anything to hurt him.

Ron Jr. has seen Claimant while he has been napping. He has seen Claimant flail, kick his chair, and wake up startled a dozen times.

Ron Jr. has seen Claimant hitting himself half a dozen times. Ron Jr. is the only one who can control him. Claimant takes things out on Ron Jr. lots of times.

Ron Jr. testified that his mother is Claimant's primary caregiver. Ron Jr., and his brother, Greg, also do things with Claimant.

Ron Jr. testified someone needs to look after Claimant. His mom watches over Claimant. They need to watch him. Claimant could accidently hurt himself. Claimant recently took a radiator cap off an overheated tractor and it blew up in his face and burnt his face.

Claimant took care of himself before the accident. Ron Jr did not have to help Claimant before the accident, except with heavy things.

I find Ron Reynolds, Jr.'s testimony to be credible unless discussed otherwise later in this Award.

Testimony of Greg Reynolds

Greg Reynolds testified he is Claimant's youngest son. Greg Reynolds drives a truck for Employer. He has worked for Employer for eight-and-half years. He has driven the Des Moines to Memphis route for roughly three and half years.

Greg Reynolds lives forty yards from Claimant. He spends some time with Claimant every day when he is off work. He is off work an average of four days a week.

Claimant stayed busy before the July 2007 accident. He was a good truck driver. He worked full time for Employer. He taught Greg how to drive a truck. Claimant hauled cattle in trucks before the accident. He did a lot buying and selling of cattle. He could do that in his head. He could figure weights and profits in his head. He was a good mechanic and was skilled at building things. He could help with electricity, plumbing, and welding. He built corrals and fencing and did bush hogging around the farm.

During the five years before the 2007 accident, Claimant did not have any serious injuries or illnesses. He probably did not go to the doctor in the five year period before the accident. Claimant took care of himself during that time.

During the five years before the 2007 accident, Claimant did not ever have treatment for psychological problems. He did not have treatment for confusion. He did not have problems with his memory.

Greg Reynolds testified that Claimant cannot take care of himself now. His mindset is different. He is accident prone. He has to be watched. He would get hurt.

Claimant's primary caregiver is Greg's mother, Betty Reynolds. She has looked after Claimant since March 2011. She makes sure Claimant's medicine is taken care of in the morning and at night. Claimant takes his medicines when he eats. Mrs. Reynolds gives Claimant encouragement when he has a bout with depression.

Claimant does easy small things around the house to keep busy. He mows the lawn in the summer. He feeds the horse in the winter. Greg's mother often goes with Claimant when he does those things. Before the accident, Claimant would do those things by himself.

Claimant has panic attacks. He did not have those before the accident. One time when he and Claimant were riding in a golf cart and hit a bump, Claimant bailed out while the cart was moving because he thought they were going to turn over. Greg has seen things like that several times.

Greg has noticed Claimant's flashbacks. He gets quiet and withdrawn.

Greg testified that Claimant can dress himself, feed himself, take care of personal hygiene, shower, and wash his hair. He watches television ok. He plays games on the computer.

Claimant was sixty-nine years old at the time of the final hearing.

Claimant drives during the day. Claimant drives by himself to the Minimart or to Thayer, which is seven to eight miles each way. Greg's mother drives quite often. Claimant usually rides part of the time. They sometimes go to and from Springfield. Claimant will not drive that far by himself.

Claimant returned to Employer to drive between January 27, 2008 and April 27, 2008. Claimant had fewer hours and less income during that time.

Claimant gets down on himself regularly. He is easily upset. He generally only socializes with close family. He does not socialize nearly as much with close friends.

Claimant would have problems returning to work as a truck driver. He would have to run the routes correctly. He would not want to see an accident because that would upset him.

Greg tries to give his Dad encouragement. Claimant sits quietly if he sees an accident or a fire on TV. Scenes like that affect him.

I find Greg Reynolds's testimony to be credible unless discussed otherwise later in this Award.

Claimant's Deposition Testimony

Claimant did not appear in person at any of the hearings in this case. He testified by deposition taken on December 18, 2013. Exhibit A. The deposition commenced at 10:50 a.m., and concluded at 11:40 a.m. Exhibit A, pp. 1, 41.

Claimant testified he spent an hour or two working with cattle on the farm in a day. *Id.* at 14. He spends four or five hours piddling on the farm. *Id.* at 16. He has a shop and spends time there working on a vehicle or old tractor. He worked building a wagon during the summer of 2013. *Id.* at 18.

Claimant considered himself retired. He is able to take care of all of his own personal hygiene needs. He is able to dress himself. Claimant's wife always fixed meals for him, before and after the accident happened. *Id.* at 23.

Claimant testified he took Ambien for sleep, Lisinopril for high blood pressure, and Prozac. He also took propranolol for shaking. He had the shaking ever since the accident. *Id.* at 25.

Claimant testified that he never had any problems with depression or anxiety before the accident of July 17, 2007 that he knew of. He never had any counseling and never saw a psychiatrist until after the accident. *Id.* at 33.

Claimant testified he was unable to go out and get a job and work. Claimant testified he could not think quick, respond quick enough, fast enough, or remember things in order to do a normal job. *Id.* at 27, 31. He also had daily problems with depression where he would want to just sit and look off. He would get up and make himself go outside. *Id.* at 31-32.

Claimant noted that since the accident, he still walked with a limp from the injury to his hip. He was limited in what he could lift and carry, and could pick up a 50-pound bag. *Id.* at. 28.

Claimant testified he had been seeing a psychiatrist at the VA every month or month-and-a-half, but it was going to be every three months. *Id.* at 36.

I find this testimony of Claimant to be credible.

Deposition of Employer's Designated Representative, Cherie Crawford

Claimant obtained the deposition of Cherie Crawford, Employer's designated representative, on October 1, 2015. Exhibit D, p. 5, Deposition Exhibit 1. Ms. Crawford produced documents and testified as to Claimant's wage record (before and after the accident), and employment with Employer. Claimant was hired by Employer on September 23, 1997, and was continuously employed by Employer until his resignation on August 15, 2009. *Id.* at 13. Ms. Crawford testified that before the accident on July 17, 2007, Claimant did not have any evidence of any psychological problems. To her knowledge, he did not suffer from depression or PTSD. *Id.* at 15-16.

Ms. Crawford produced Claimant's DOT physicals before the accident. Exhibit D, Deposition Exhibit 2, pp. 141-152. Those DOT physicals were dated September 23, 1997, September 13, 1999, September 12, 2001, September 10, 2003, and September 10, 2005. Those physical examinations showed no nervous or psychiatric disorder, nor medications for nervous or psychiatric problems. Before the accident, Claimant had no restrictions or limitations for his driving with Employer.

Ms. Crawford agreed that Claimant was restricted from night-time driving after the accident. *Id.* at 37. Between January 27, 2008, and April 27, 2008, Claimant returned to driving from Thayer, Missouri, to Memphis, Tennessee, and return trip to Thayer, Missouri. This was an all-day trip which commenced at 3:00 a.m. with Claimant returning to Employer's base that evening. This limited duty required driving at night in violation of the no night driving restriction. Ms. Crawford was aware that this solo driving was in violation of the restrictions set forth by Dr. Bhargava. *Id.* at 37-38.

On August 15, 2009, Claimant resigned from his employ with Employer for the reason that he was unable to drive at night. *Id.* at 13-14. Ms. Crawford admitted that after the accident they did not have any routes Claimant could drive that did not involve night-time driving. *Id.* at 39.

Rulings of Law

Based on the substantial and competent evidence, the stipulations of the parties, and the application of the Workers' Compensation Law, I make the following Rulings of Law:

1. Is Claimant's current condition medically causally related to the alleged work accident of July 17, 2007?

Section 287.800, RSMo[5] provides in part that administrative law judges shall construe the provisions of this chapter strictly and shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

Section 287.808, RSMo provides:

[5] All statutory references are to RSMo 2006 unless otherwise indicated. In a workers' compensation case, the statute in effect at the time of the injury is generally the applicable version. *Chouteau v. Netco Construction*, 132 S.W.3d 328, 336 (Mo.App. 2004); *Tillman v. Cam's Trucking Inc.*, 20 S.W.3d 579, 585-86 (Mo.App. 2000). *See also Lawson v. Ford Motor Co.*, 217 S.W.3d 345 (Mo.App. 2007).

> The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

Section 287.020.2, RSMo provides:

> The word 'accident' as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

Section 287.020.3, RSMo provides in part:

> 3. (1) In this chapter the term 'injury' is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. 'The prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.
> (2) An injury shall be deemed to arise out of and in the course of the employment only if:
> (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
> (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.
> (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.
>
> (5) The terms 'injury' and 'personal injuries' shall mean violence to the physical structure of the body. . . .

The workers' compensation claimant bears the burden of proof to show that her injury was compensable in workers' compensation. *Johme v. St. John's Mercy*

Healthcare, --- S.W.3d ----, 2012 WL 1931223 (Mo.) *(citing Sanderson v. Producers Comm'n Ass'n,* 360 Mo. 571, 229 S.W.2d 563, 566 (Mo. 1950).

"In a workers' compensation case, the claimant carries the burden of proving all essential elements of the claim." *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.App. 1990), *overruled in part on other grounds by Hampton v. Big Boy Steel Erection,* 121 S.W.3d 220, 230 (Mo.banc 2003)[6]. The employee must establish a causal connection between the accident and the claimed injuries. *Thorsen v. Sachs Elec. Co.,* 52 S.W.3d 616, 618 (Mo.App.2001); *Williams v. DePaul Ctr,* 996 S.W.2d 619, 625 (Mo.App. 1999); *Decker v. Square D Co.*, 974 S.W.2d 667, 670 (Mo.App. 1998); *Fischer*, 793 S.W.2d at 198.

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelley v. Banta & Stude Constr. Co. Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999); *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992)), *overruled on other grounds by Hampton v. Big Boy Steel Erection,* 121 S.W.3d 220, 229 (Mo. banc 2003); *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 162 (Mo.App. 1986). The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith,* 182 S.W.3d at 701; *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 263 (Mo.App. 2004).

The Commission may not arbitrarily disregard and ignore competent, substantial, and undisputed evidence of witnesses who are not shown by the record to have been impeached and the Commission may not base its findings upon conjecture or its own mere personal opinion unsupported by sufficient and competent evidence. *Cardwell v. Treasurer of State of Missouri,* 249 S.W.3d 902, 907 (Mo.App. 2008), *citing Copeland v. Thurman Stout, Inc.,* 204 S.W.3d 737, 743 (Mo.App. 2006).

The testimony of Claimant or other lay witnesses as to facts within the realm of lay understanding can constitute substantial evidence of the nature, cause, and extent of disability when taken in connection with or where supported by some medical evidence. *Pruteanu v. Electro Core, Inc.*, 847 S.W.2d 203, 206 (Mo.App. 1993), 29; *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 367 (Mo.App 1992); *Fischer*, 793 S.W.2d at 199. The trier of facts may also disbelieve the testimony of a witness even if no

[6]Several cases are cited herein that were among many overruled by *Hampton* on an unrelated issue (*Id.* at 224-32). Such cases do not otherwise conflict with *Hampton* and are cited for legal principles unaffected thereby; thus *Hampton*'s effect thereon will not be further noted.

contradictory or impeaching testimony appears. *Hutchinson, 721 S.W.2d* at 161-2; *Barrett v. Bentzinger Brothers, Inc.*, 595 S.W.2d 441, 443 (Mo.App. 1980). The testimony of the employee may be believed or disbelieved even if uncontradicted. *Weeks v. Maple Lawn Nursing Home*, 848 S.W.2d 515, 516 (Mo.App. 1993).

The evidence is undisputed that Claimant sustained an injury by accident on July 17, 2007 while driving for Employer. The Missouri State Highway Patrol Accident Report of July 17, 2017 records the details of Claimant's accident.

The parties stipulated that on or about July 17, 2007, Claimant sustained an injury by accident in Bethany, Harrison County, Missouri, arising out of and in the course of his employment.

I find and conclude that on July 17, 2007, Claimant was injured in a single-vehicle collision when the tractor-trailer he was operating struck a concrete barrier and overturned. I find and conclude that this was an unexpected traumatic event identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.

Claimant has had post traumatic stress disorder since the accident. The medical treatment records discussed previously in this Award describe Claimant's history of his July 17, 2007 injury and the treatment for the injury. The treatment records in evidence record ongoing treatment for post traumatic stress disorder and depression since the accident.

Dr. Butts diagnosed Claimant with post traumatic stress disorder and major depressive disorder. He credibly testified the prevailing factor that caused Claimant's post traumatic stress disorder condition is very clearly the result of the vehicular accident on July 17, 2007. I find the opinions of Dr. Butts are persuasive regarding the cause of Claimant's psychological injury and current condition.

I find and conclude that Claimant's current post-traumatic stress disorder and depressive condition is medically causally related to the work accident of July 17, 2007.

I find and conclude that on July 17, 2007, Claimant sustained a compensable psychological injury by accident arising out of and in the course of his employment for Employer and that the accident was the prevailing factor in causing both the resulting medical condition and disability.

2. What is the average weekly wage, and what are the compensation rates in this case?

Section 287.250, RSMo., provides in part:

287.250. Compensation, computation of--average weekly wage, division or commission may determine, when--additional compensation for persons under twenty-one, when--multiple employers, computation of coverage--weekly wage--compromise settlement.

1. Except as otherwise provided for in this chapter, the method of computing an injured employee's average weekly earnings which will serve as the basis for compensation provided for in this chapter shall be as follows:

. . . . . .

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, *absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week.* (*Emphasis Added*).

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in such manner and by such method as, in the opinion of the division or the commission, based upon the exceptional facts presented, fairly determine such employee's average weekly wage.

Pursuant to the above statute, the thirteen (13) calendar weeks before the accident were from April 15, 2007, through July 14, 2007. Employee was an hourly wage earner, and during this time period was initially paid at the rate of $17.41 per hour. In July 2007, this hourly rate was increased to $17.81 per hour. Exhibit D, pp. 33, 44, Deposition Exhibit 2 (pp. 2-8).

Employer regularly operated seven days of the week. Exhibit D, p. 50.

Cherie Crawford identified payroll records of Claimant for wages paid Employee for all trips between April 15, 2007, and July 14, 2007.

The payroll records are divided into two sections. The upper section represents gross wages paid Claimant per trip. The lower section represent "Fringe" paid to Claimant pursuant to Employer's Contract with the United States Post Office. Exhibit D, pp. 33-34. The "Fringe" was paid by Employer to Claimant pursuant to Employer's contract with the United States Postal Service. Exhibit D, p. 34.

The first column of the payroll records represents the date of the trip. The third column represents the contract Claimant was assigned to run. Exhibit D, p. 31. The fourth column represents the trip Claimant was assigned. The initials "TDM" mean trips from Thayer, Missouri, to Des Moines, Iowa. The initials "DMT" refers to trips from Des Moines, Iowa, to Thayer, Missouri. The initials "TMT" refers to a trip from Thayer, Missouri, to Memphis, Tennessee, and return to Thayer. Exhibit D, pp. 22-23, 25. The last column represents gross wages paid for each of the trips. To arrive at the amount of gross wages paid to Claimant per trip, the amount of wages was added to the "Fringe" paid to Claimant.

According to the payroll records, Claimant had the following gross wages for trips between April 15, 2007, and July 14, 2007.

Week of 4/15/2007 to 4/21/2007			$ 556.41
Trip 4/16	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 4/17	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 4/20	$121.87 Wage + $23.73 Fringe	$145.60	
Week of 4/22/2007 to 4/28/2007			$ 556.41
Trip 4/23	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 4/24	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 4/27	$121.87 Wage + $23.73 Fringe	$145.60	
Week of 4/29/2007 to 5/5/2007			$ 556.41
Trip 4/30	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 5/1	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 5/4	$121.87 Wage + $23.73 Fringe	$145.60	
Week of 5/6/2007 to 5/12/2007			$1,388.41
Trip 5/7	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 5/8	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 5/9	Vacation $696.40 + $135.60 Fringe	$832.00	

Trip 5/11	$121.87 Wage + $23.73 Fringe	$145.60	
Week of 5/13/2007 to 5/19/2007			$ 0.00
Week of 5/20/2007 to 5/26/2007			$ 821.62
Trip 5/21	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 5/22	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 5/25	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 5/26	$159.65 Wage + $31.09 Fringe	$190.74	
Week of 5/27/2007 to 6/2/2007			$ 722.81
Trip 5/28	$139.28 Wage (holiday) + $27.12 Fringe	$166.40	
Trip 5/28	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 5/29	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 6/1	$121.87 Wage + $23.73 Fringe	$145.60	
Week of 6/3/2007 to 6/9/2007			$ 556.41
Trip 6/4	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 6/5	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 6/8	$121.87 Wage + $23.73 Fringe	$145.60	
Week of 6/10/2007 to 6/16/2007			$ 821.62
Trip 6/11	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 6/12	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 6/15	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 6/16	$159.65 Wage + $31.09 Fringe	$190.74	
Week of 6/17/2007 to 6/23/2007			$ 821.62
Trip 6/19	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 6/20	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 6/22	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 6/23	$159.65 Wage + $31.09 Fringe	$190.74	
Week of 6/24/2007 to 6/30/2007			$ 789.14
Trip 6/25	$184.20 Wage + $35.87 Fringe	$220.07	
Trip 6/26	$159.65 Wage + $31.09 Fringe	$190.74	
Trip 6/29	$184.20 Wage + $3.39 Fringe	$187.59	
Trip 6/30	$159.65 Wage + $31.09 Fringe	$190.74	
Week of 7/1/2007 to 7/7/2007			$1,029.34
Trip 7/2	$188.43 Wage + $40.84 Fringe	$229.27	
Trip 7/3	$163.32 Wage + $35.40 Fringe	$198.72	

Trip 7/4	$142.48 Wage + $30.88 Fringe	$173.36	
Trip 7/6	$188.43 Wage + $40.84 Fringe	$229.27	
Trip 7/7	$163.32 Wage + $35.40 Fringe	$198.72	
Week of 7/8/2007 to 7/14/2007			$ 855.98
Trip 7/9	$188.43 Wage + $40.84 Fringe	$229.27	
Trip 7/10	$163.32 Wage + $35.40 Fringe	$198.72	
Trip 7/13	$188.43 Wage + $40.84 Fringe	$229.27	
Trip 7/14	$163.32 Wage + $35.40 Fringe	$198.72	
Total Gross Wages			$9,476.18

Claimant earned a total of $9,476.18 during the thirteen weeks immediately before the accident. $9,476.18 divided by 13 equals $728.94. I find the average weekly wage in this case is $728.94. Two thirds of $728.94 is $485.96. I find that the weekly compensation rate for temporary total disability and permanent total disability is $485.96. This is supported by the following.

First, I find that Claimant did not miss five or more regularly scheduled work days during the thirteen calendar weeks immediately before his injury. Claimant asserts that he was absent from his employment for nine regular work days from May 13, 2007 through May 20, 2007, and June 18, 2007. I disagree. I find Claimant failed to establish that he missed five regular and scheduled work days from May 13, 2007 to May 19, 2007. During this period, Claimant missed Monday, May 14, Tuesday, May 15, Friday, May 18, and Monday, June 18. I find these were the only regular and scheduled work days he missed during this period.

It is noted that the pay records summarized above show that Claimant received $832.00 on May 9 2007 for vacation of $696.40 and fringe of $135.60. $832.00 is included in the $9,476.18 total amount paid during the thirteen weeks before Claimant's injury. Claimant received the benefit of including the $832.00 for vacation in arriving at his average weekly wage. If Claimant is to receive the benefit of including the $832.00 paid for vacation, it is only fair that he not have the benefit of arguing he was absent for a week during the week of May 13, 2007 to May 19, 2007, and dividing $9,476.18 by twelve.

If Claimant were to receive the benefit of subtracting one week from thirteen weeks for five missed days in the thirteen calendar weeks before the accident, it is only fair that the vacation and fringe of $832.00 he received for the vacation week he did not work should also be subtracted from the total paid for wages earned during those weeks. If $832.00 is subtracted from $9,476.18, the net is $8,644.18. $8,644.18 divided by twelve equals $720.35, which is nearly the same as the $728.94 weekly amount when

calculated using the entire amount Claimant received during the thirteen weeks of $9,476.18 is divided by thirteen.

While I find that Claimant was not absent five regular and scheduled work days during the thirteen calendar weeks immediately before the injury, I nevertheless find that Claimant's average weekly wage may be determined pursuant to section 287.250.4, RSMo, and that under that subsection, Claimant's average weekly wage should be fairly determined by including the $832.00 paid for vacation and fringe on May 9, and dividing the total wages paid during the thirteen weeks of $9,476.18 by thirteen.

Based on the foregoing, I find and conclude the average weekly wage in this case is $728.94, and the weekly compensation rate for temporary total disability and permanent total disability is $485.96. I also find the weekly rate of compensation for permanent partial disability is $389.04 per week. Section 287.250, 287.200.1(4), and Section 287.190.5(5), RSMo.

3. What is Employer's liability, if any, for permanent partial disability benefits, or in the alternative, permanent total disability benefits?

Claimant requests an award for permanent total disability benefits from Employer for his July 17, 2007 injury.

The determination of the degree of disability sustained by an injured employee is not strictly a medical question. *Landers v. Chrysler Corp.,* 963 S.W.2d 275, 284 (Mo.App. 1997); *Cardwell v. Treasurer of State of Missouri,* 249 S.W.3d 902, 908 (Mo.App. 2008); *Sellers v. Trans World Airlines, Inc.*, 776 S.W.2d 502, 505 (Mo.App. 1989). While the nature of the injury and its severity and permanence are medical questions, the impact that the injury has upon the employee's ability to work involves factors, which are both medical and nonmedical. Accordingly, the Courts have repeatedly held that the extent and percentage of disability sustained by an injured employee is a finding of fact within the special province of the Commission. *Sharp v. New Mac Elec. Co-op*, 92 S.W.3d 351, 354 (Mo.App. 2003); *Elliott v. Kansas City, Mo., School District*, 71 S.W.3d 652, 656 (Mo.App. 2002); *Sellers*, 776 S.W.2d at 505; *Quinlan v. Incarnate Word Hospital*, 714 S.W.2d 237, 238 (Mo. App. 1985); *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983); *Barrett v. Bentzinger Bros.*, 595 S.W.2d 441, 443 (Mo.App. 1980); *McAdams v. Seven-Up Bottling Works*, 429 S.W.2d 284, 289 (Mo.App. 1968).

The fact-finding body is not bound by or restricted to the specific percentages of disability suggested or stated by the medical experts. *Cardwell,* 249 S.W.3d at 908; *Lane v. G & M Statuary, Inc.*, 156 S.W.3d 498, 505 (Mo.App. 2005); *Sharp*, 92 S.W.3d at 354; *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 885 (Mo.App. 2001); *Landers*,

963 S.W.2d at 284; *Sellers*, 776 S.W.2d at 505; *Quinlan*, 714 S.W.2d at 238; *Banner*, 663 S.W.2d at 773. It may also consider the testimony of the employee and other lay witnesses and draw reasonable inferences in arriving at the percentage of disability. *Cardwell*, 249 S.W.3d at 908; *Fogelsong v. Banquet Foods Corporation*, 526 S.W.2d 886, 892 (Mo.App. 1975).

"The evaluation of medical testimony concerning a claimant's disability is within the peculiar expertise of the Commission, and, as such, the Commission is free to disbelieve the testimony of the claimant's medical expert." *Tombaugh v. Treasurer of State,* 347 S.W.3d 670, 675 (Mo.App. 2011).

The finding of disability may exceed the percentage testified to by the medical experts. *Quinlan*, 714 S.W.2d at 238; *McAdams*, 429 S.W.2d at 289. The Commission "is free to find a disability rating higher or lower than that expressed in medical testimony." *Jones v. Jefferson City School Dist.*, 801 S.W.2d 486, 490 (Mo.App. 1990); *Sellers*, 776 S.W.2d at 505. The Court in *Sellers* noted that "[t]his is due to the fact that determination of the degree of disability is not solely a medical question. The nature and permanence of the injury is a medical question, however, 'the impact of that injury upon the employee's ability to work involves considerations which are not exclusively medical in nature.'" *Sellers*, 776 S.W.2d at 505. The uncontradicted testimony of a medical expert concerning the extent of disability may even be disbelieved. *Gilley v. Raskas Dairy*, 903 S.W.2d 656, 658 (Mo.App. 1995); *Jones*, 801 S.W.2d at 490.

"While we recognize that the Commission does not have 'to accept competent substantial evidence as true, the Commission cannot, nevertheless, arbitrarily cast aside competent, substantial, and undisputed testimony of witnesses who are not shown by the record to have been impeached.'" *Lewis v. Kansas Univ. Med. Ctr.*, 356 S.W.3d 796, 800-01 (Mo. App. 2011) (citations omitted).

The burden of establishing permanent total disability lies with the claimant. *Schuster v. State, Division of Employment Security*, 972 S.W.2d 377, 381 (Mo.App. 1998); *see Carkeek v. Treasurer of State-Custodian of Second Injury Fund*, 352 S.W.3d 604, 608 (Mo.App. 2011) (An employee has the burden to establish permanent total disability by introducing evidence to prove her claim); *see also Clark v. Harts Auto Repair*, 274 S.W.3d 612, 16 (Mo.App. 2009).

The Court in *Carkeek v. Treasurer of State-Custodian of Second Injury Fund*, 352 S.W.3d 604 (Mo.App. 2011) states at 610:

> Thus, we may defer to the Commission's finding on a technical matter, such as the employability of an individual, which is within the Commission's expertise. *See Wright v. Sports Associated, Inc.*, 887

> S.W.2d 596, 600 (Mo. banc 1994), *overruled in part by Hampton,* 121 S.W.3d at 220.
>
> . . . . . .
>
> Even if Koprivica had his opinion as to the extent of disability, such opinion is not so medically technical as to remove it from the expertise that is attributed to the Commission. The question whether a claimant is totally and permanently disabled is not exclusively a medical question. *Crum v. Sachs Elec.,* 769 S.W.2d 131, 136 (Mo.App.1989), *overruled in part by Hampton,* 121 S.W.3d at 220. The Commission, in arriving at its ultimate conclusion as to the degree of a claimant's disability, need not rely exclusively on the testimony of medical experts; rather, it may consider all the evidence and the reasonable inferences drawn from that evidence. *Pavia v. Smitty's Supermarket,* 118 S.W.3d 228, 239 (Mo.App.2003).

See also Treasurer of the State of Missouri v. Majors, 506 S.W.3d 348, (Mo.App. 2016), *reh'g and/or transfer denied (*Nov. 1, 2016*), application for transfer denied (*January 31, 2017*).*

The Court in *Brashers v. Treasurer of State as Custodian of Second Injury Fund,* 442 S.W.3d 152 (Mo. App. 2014), *reh'g and/or transfer denied* (Aug. 13, 2014), *transfer denied* (Oct. 28, 2014), states at 162-63:

> We agree with Claimant that the fact that she maintained employment after the work injury until December 2009 "does not preclude a finding that she was [PTD] based on [the work injury] and her preexisting disabilities." The relevant test remained whether she could compete in the open labor market. *Blackshear,* 420 S.W.3d at 681. "The key question is whether any employer in the ordinary course of business would reasonably be expected to hire the worker in his or her current physical condition." *Schussler,* 393 S.W.3d at 96. "[N]either the worker's ability to engage in occasional or light duty work nor the worker's good fortune in obtaining work other than through competition on the open labor market should disqualify the worker from receiving such *163 total disability benefits under the Workers' Compensation Law." *Minnick v. S. Metro Fire Prot. Dist.,* 926 S.W.2d 906, 910 (Mo.App.W.D.1996). Thus, while Claimant returned to work for SPS after her work injury, this did not necessarily mean that she was not PTD or that SPS would have hired her at that time given her then-existing physical condition.[7]

> Claimant testified that SPS terminated her employment, and Mr. Lala opined that Claimant was PTD at the time he evaluated her after the work injury.

See also, Schussler v. Treasurer of Missouri As Custodian of the Second Injury Fund, 393 S.W.3d 90, 97 (Mo.App. 2012).

Section 287.020.7, RSMo provides: "The term 'total disability' as used in this chapter shall mean inability to return to any employment and not merely inability to return to the employment in which the employee was engaged at the time of the accident." The phrase "inability to return to any employment" has been interpreted as "the inability of the employee to perform the usual duties of the employment under consideration in the manner that such duties are customarily performed by the average person engaged in such employment." *Kowalski v. M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922 (Mo.App. 1982). The test for permanent total disability is whether, given the employee's situation and condition, he or she is competent to compete in the open labor market. *Knisley*, 211 S.W.3d at 635; *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879, 884 (Mo.App. 2001); *Reiner v. Treasurer of the State of Mo.*, 837 S.W.2d 363, 367 (Mo.App.1992); *Lawrence v. Joplin R-VIII School Dist.*, 834 S.W.2d 789, 792 (Mo.App. 1992).

Total disability means the "inability to return to any reasonable or normal employment." *Lawrence,* 834 S.W.2d at 792; *Brown v. Treasurer of Missouri*, 795 S.W.2d 479, 483 (Mo.App.1990); *Kowalski*, 631 S.W.2d at 992. An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Brown*, 795 S.W.2d at 483 The key question is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person's present physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Lewis v. Kansas University Medical Center*, 356 S.W.3d 796, 800 (Mo.App. 2011); *Molder v. Missouri State Treasurer*, 342 S.W.3d 406, 411, (Mo.App. 2011); *Carkeek*, 352 S.W.3d at 608; *Knisley*, 211 S.W.3d at 635; *Brown*, 795 S.W.2d at 483; *Reiner*, 837 S.W.2d at 367; *Kowalski*, 631 S.W.2d at 922. *See also Thornton v. Hass Bakery*, 858 S.W. 2d 831, 834 (Mo.App. 1993).

8 CSR 50–2.010(14) states in part, "Prior to hearing, the parties shall stipulate uncontested facts and present evidence only on contested issues." Such stipulations "are controlling and conclusive, and the courts are bound to enforce them." *Hutson v. Treasurer of Missouri as Custodian of Second Injury Fund*, 369 S.W.3d 269, 2012 WL 1319428 (Mo.App. 2012) (*citing Boyer v. Nat'l Express Co.,* 29 S.W.3d 700, 705 (Mo.App. 2001)).

Based on the substantial and competent evidence and the application of the Workers' Compensation Law, I find and conclude that Claimant's injury on July 17, 2007

considered alone, in isolation, and in and of itself, rendered Claimant permanently and totally disabled. I find and conclude that no employer in the usual course of business would be reasonably expected to hire Claimant in his condition, reasonably expecting him to perform the work for which he is hired.

Factors which support my finding and conclusion that Claimant's injury on July 17, 2007, considered alone, in isolation, and in and of itself, rendered Claimant permanently and totally disabled include the following.

Claimant has not worked since April 27, 2008. He was 69 years old at the time of the final hearing. The medical records consistently document a diagnosis of PTSD since the accident. The evaluating doctors agree Claimant has had PTSD since the accident. Claimant has had ongoing treatment for that condition since that time, including counseling and medication. His family has convincingly described his difficulties and complaints since the accident.

Claimant testified that after the July 17, 2007 accident, he was unable to go out and get a job and work. He testified he could not think quick, respond fast enough, or remember things in order to do a normal job. He has daily problems with depression. I find this testimony is credible.

Mrs. Reynolds credibly testified that currently Claimant's personality changes through the day. She monitors Claimant. She is near Claimant most of the time. He is not very stable when she is not with him. She watches him for his safety. He cannot make a decision if he gets in a crisis. He has frequent flashbacks and nightmares.

Mrs. Reynolds credibly testified Claimant is not able to do things in the shop that he could do before the accident. He has lost strength and has lost interest. He can do measurements, but he cannot retain what he measures. He no longer has the ability to keep track of expenses. Mrs. Reynolds sets out Claimant's medication in the morning and the evening because he cannot do that by himself. Mrs. Reynolds does most of the driving since the accident. He takes 40 mg of generic Prozac for PTSD, propranolol for tremors, and a medication at night for sleep.

Claimant did not work full duty during the trial work period he had with Employer between January 27, 2008 and April 27, 2008. He never returned to full duty and was always under medical restrictions from Dr. Bhargava during the trial work period. His driving duties were in violation of the medical restriction that he not drive at night. Employer admitted they had no other driving positions that did not involve driving at night. Dr. Bhargava wrote on September 11, 2008, "I believe that the stress of a routine truck driving job is too much for him to handle on an ongoing basis."

The Court is mindful of treatment records indicating some improvement in Claimant's condition after the accident. Nonetheless, the evidence is clear that Claimant has continued to suffer from PTSD and depression since the accident. He has continued to take medication for those conditions. He has continued to have nightmares, flashbacks, difficulty performing simple tasks around the farm, and difficulty with numbers. He has continued to avoid people of the immediate family. He does not leave the farm except on rare occasions.

Dr. Butts has thoroughly evaluated Claimant. He took a history of Claimant's accident, reviewed pertinent records, performed psychological testing, and interviewed Claimant and his wife.

Dr. Butts testified the most outstanding feature of Claimant's condition is the post-traumatic stress disorder with all of its ramifications, which include the problems with attention and concentration and memory, and also major depressive disorder. He testified the prevailing factor that caused the post-traumatic stress disorder condition is very clearly the result of the vehicular accident on July 17, 2007.

Dr. Butts noted Claimant has flashbacks about running from the truck and the truck being on fire. He has nightmares about it. He has fears about being in a truck. There are a number of things that Claimant avoids. Dr. Butts noted Claimant's life is very much constricted. Dr. Butts also noted Claimant had none of these problems before the accident. He did not have any problems with sleeping. He did not have problems with nightmares. He did not have problems with flashbacks. He did not have an anger problem.

Dr. Butts's November 4, 2010 report (Exhibit F, Deposition Exhibit 2) states in part:

> It is my opinion that Ronald [Claimant] is permanently and totally disabled. He is unable to engage in meaningful, gainful employment. His inability to work because of the Post traumatic Stress Disorder, the loss of a sense of accomplishment, and the sense of comradeship of work, and social interaction with friends is depressing him. These are permanent impairments from his work injury of 7/17/07.

Dr. Butts's December 11, 2014 report (Exhibit F, Deposition Exhibit 7) states in part:

> In fact, I do not believe this man has been, or will be, capable of performing any regular employment of any kind since his accident of 7/17/07, an accident that is totally responsible for his present mental

and psychological impairments. He functioned at a very high level right before his accident as I outlined in detail in my first evaluation. Thus, the only logical conclusion is that the accident is the total cause of his present disabled condition. Further, the triggers, the nightmares, the flashbacks, the various situations he avoids (e.g. TV news of fires), the disturbing thoughts, the sounds that he reacts to (e.g. sirens) are all related to the incident of being in a burning cab that he thought he was not going to be able to get out of, and the later explosion of the semi as he was running away from it, looking back as he ran.

Dr. Butts testified:

Q. Do you have an opinion whether or not Mr. Reynolds sustained any disability as a result of the accident of July 17, 2007?

A. Yes.

Q. And what is that opinion?

A. He is permanently and totally disabled. And he also –

Q. And I think you just answered my question. Is that permanent in nature?

A. Yes.

Q. And what do you base that opinion upon?

A. The accident happened on 7/17/07. He is no better now. He might be a little worse from time to time. But for the most part, he is just no worse and no better essentially than he was in July of '07. And this is how many years afterwards?

Q. Was his disability caused by the accident of July 17, 2007?

A. Yes.

I find these opinions and conclusions of Dr. Butts are credible and persuasive. I find these opinions of Dr. Butts are competent and substantial evidence and are based on reliable testing he performed.

Employer relies on Dr. Dale A. Halfaker's November 4, 2008 10% disability rating. I find this rating of Dr. Halfaker is not credible or persuasive. Dr. Halfaker testified that when he saw Claimant on November 4, 2008, Claimant could return to work without psychological restrictions. I find this opinion is not credible or persuasive.

Claimant argues Dr. Halfaker failed to adequately take into consideration Claimant's occupational status, and the fact that he had not driven for Employer for six months before the evaluation, and that Claimant did not intend to return to truck driving. I agree. Further, on cross-examination, Dr. Halfaker acknowledged in his March 3, 2016 deposition that Claimant was still having nightmares, four times a week. He was also having flashbacks, was anxious and nervous, had crying spells, showed hostility toward his family and other people, and still suffered from significant depression.

Employer argues that a portion of Claimant's disability was caused by some other cognitive problem not related to the accident. However, there was no evidence Claimant had any psychological problems or disorder before the accident, and there was no evidence he was ever treated for psychological problems, including dementia or Alzheimer's, before the accident. The evidence is clear and convincing that any cognitive issues or problems arose following the accident.

Since the July 17, 2007 accident, Claimant has never been convincingly diagnosed with dementia or Alzheimer's disease. Since the July 17, 2007 accident, he has not been treated for dementia or Alzheimer's disease. Dr. Butt testified, "And I note that obviously he does not have degenerative dementia because over a four-year period of time his memory would have obviously declined if he were having dementia. And there was no decline." I find this opinion is credible and persuasive.

Dr. Halfaker acknowledged in his deposition that during Dr. Akeson's treatment and Dr. Halfaker's evaluation, any issues with memory problems or any type of cognitive, dementia type symptoms had never really emerged as a significant complaint.

Dr. Halfaker has not seen any records where Claimant was treated for Alzheimer's or dementia since July 17, 2007. He has not seen any prescriptions given to Claimant for Alzheimer's or dementia since July 17, 2007.

Dr. Halfaker never tested any cognitive impairment for Claimant. He agreed that in DSM-5, they have done away with GAF scores in part because GAF is a subjective determination. Dr. Halfaker agreed that Claimant still suffers from post-traumatic stress disorder.

Dr. Halfaker testified he wanted to do a full neuropsychological evaluation consisting of 10 or 12 batteries of tests, 60 level sub tests, which he said he needed in

order to differentiate between something emotional like PTSD and depression versus something organic and psychological, like dementia. He testified that the tests Dr. Butts did do not make that same differentiation. He testified without the testing, it is not possible to give a psychological opinion as to what is the cause of Claimant's condition.

Dr. Halfaker thought we "potentially have other factors that are present in this case that I cannot speak about because I can't do it with a reasonable degree of neuropsychological certainty because I don't have the data to rely on." I find this opinion is not persuasive. I find the testing Dr. Halfaker recommended should not be allowed in this case, and I further note that Employer's request that the testing recommended by Dr. Halfaker was denied by previous Orders described later in this Award. No appeal was taken from those Orders.

I find that there is no convincing evidence that Claimant suffers from dementia or Alzheimer's, or that his inability to work is a result of dementia or Alzheimer's. There was no diagnosis or treatment for that condition prior to the accident and there has been no diagnosis or treatment for dementia or Alzheimer's since the accident.

I find the opinions of Dr. Butts are more persuasive than the opinions of Dr. Halfaker regarding the nature and extent of Claimant's permanent disability caused by the July 17, 2007 accident.

Vocational expert Gary Weimholt testified he did not believe that Claimant would have been able to return to anything like truck driving following the accident of July 17, 2007. It is Mr. Weimholt's opinion that an employer would not hire Claimant in the normal course of employment because of the emotional problems and mental health problems that he has associated with post traumatic stress disorder that have been documented. He noted age is also a factor in Claimant's employability or re-employability. Claimant was going to be sixty-nine years old on March 17, 2016. I find these opinions of Mr. Weimholt are credible and persuasive.

Mr. Weimholt also testified based on reasonable vocational rehabilitation certainty that Claimant has not been employable in open labor market since the day of the injury. He noted the fact that Claimant worked for Employer or drove for Employer from late January 2008 to late April 2008 did not affect his opinion because Claimant was limited from nighttime driving, and that period amounted to a trial work. Claimant never returned to full duties in all the routes he had previously driven. I find these opinions of Mr. Weimholt are credible and persuasive.

Mr. Weimholt's June 5, 2014 report sets forth the following conclusions based on a reasonable degree of certainty in his profession as a vocational rehabilitation consultant, disability management specialist and job placement specialist:

> In conclusion, it is my opinion that Mr. Ronald Reynolds has a total loss of access to the open competitive labor market and is totally vocationally disabled from employment. It is my opinion that there is no reasonable expectation that an employer, in the normal course of business, would hire Mr. Reynolds for any position, or that he would be able to perform the usual duties of any job that he has been or is qualified to perform.
>
> I note in the records that Mr. Reynolds continues to have problems and symptoms associated with the workplace injury of July 17, 2007. I note that he has continued to seek treatment for these symptoms and has continued to have PTSD symptoms associated with this injury as recent as the deposition of December 2013. Likewise I do not believe Mr. Reynolds has been a candidate for vocational rehabilitation services.

I find these opinions of Mr. Weimholt are credible and persuasive.

Employer did not offer a current medical or vocational evaluation concluding that Claimant is able to work or that an employer would hire Claimant.

I find Claimant is permanently and totally disabled. I find Claimant's work accident on July 17, 2007 was the prevailing factor in causing Claimant's post traumatic stress disorder and depression, the need for treatment for his psychological injury, and permanent total disability.

The court in *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902 (Mo.App. 2008), stated at 910:

> After reaching the point where no further progress is expected, it can be determined whether there is either permanent partial or permanent total disability and benefits may be awarded based on that determination.
>
> . . . . . .
>
> Although the term maximum medical improvement is not included in the statute, the issue of whether any further medical progress can be reached is essential in determining when a disability becomes permanent and thus, when payments for permanent partial or permanent total disability should be calculated.

The Missouri Supreme Court in *Greer v. SYSCO Food Servs.*, 475 S.W.3d 655 (Mo. banc 2015) states at 668:

> This Court agrees with the holding in *Cardwell* that the commission must decide whether any further medical progress can be reached because that decision is essential in determining when a disability becomes permanent for the purpose of awarding permanent partial or PTD benefits. However, Employer's reading of *Cardwell* to *mandate or require* the commission to accept an opinion regarding the date of maximum medical improvement is incorrect.

In his letter of December 11, 2014, regarding his evaluation of November 19, 2014, Dr. Butts stated:

> My final diagnoses remain: (a) Posttraumatic Stress Disorder and (b) Major Depressive Disorder (recurrent, severe, without psychotic features). Regarding prognosis, he [Claimant] is not going to improve to any significant degree as the passage of seven years and treatment by a number of different mental health providers has made clear.

I find this opinion of Dr. Butts is credible and persuasive.

The treatment records discussed previously note Claimant has been treating consistently for several years since the accident. I find the treatment Claimant received prior to November 19, 2014 was part of Claimant's rehabilitative process. I find Claimant's rehabilitative process ended on November 19, 2014.

Based on the competent and substantial evidence, I find and conclude that Claimant's psychological condition caused by his July 17, 2007 work injury reached the point where no further progress was expected and would no longer improve with medical treatment on November 19, 2014. I find and conclude Claimant reached maximum medical improvement on November 19, 2014 in connection with his July 17, 2007 work injury.

I find Claimant's permanent total disability began on November 20, 2014. I find that since November 20, 2014, Claimant has not been able to compete in the open labor market, and no employer in the usual course of business would be reasonably expected to hire him in his condition, reasonably expecting him to perform the work for which he is hired.

I have found that the rate of compensation is $485.96 per week for permanent total disability.

I award Claimant permanent total disability benefits against Employer in the amount of $485.96 per week beginning on November 20, 2014.

I therefore order and direct Employer to pay to Claimant permanent total disability benefits beginning on November 20, 2014, and thereafter, at the rate of $485.96 per week for Claimant's lifetime, subject to modification and review as provided by law.

4. What is Employer's liability, if any, for past nursing services from Claimant's wife from March 23, 2011?

Claimant seeks past and ongoing nursing services of his wife to relieve him from the effects of the injury. Claimant requests he be awarded benefits for nearly constant, round-the-clock nursing services of his wife. Claimant made demand of Employer and Insurer for nursing aid on March 23, 2011. Exhibit L. Employer and Insurer have not provided Claimant with nursing care or in-home care since the demand was made.

Section 287.140.1, RSMo., states, in part:

> **287.140. Employer to provide medical and other services, transportation, artificial devices, reactivation of claim--duties of health care providers--refusal of treatment, effect--medical evidence--division, commission responsibilities--notice to health care provider of workers' compensation claim, contents, effect--use of employee leave time.**
>
> 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including *nursing*, *custodial*, ambulance and medicines, as may reasonably be required after the injury or disability, *to cure and relieve from the effects of the injury. [Emphasis Added].*

This statute does not require the employment of a trained nurse, but merely holds the employer liable for nursing care. *Daugherty v. City of Monett*, 192 S.W.2d 51, 56 (Mo. App. 1946).

Several Missouri cases have addressed nursing services performed by wives of injured employees.

In *Groce v. Pyle*, 315 S.W.2d 482 (Mo.App 1958), the Court noted at 315 S.W.2d 486:

> At the second hearing on November 8, 1956, claimant testified that so far as being able to get around, walk or move his legs, his condition is worse than it was at the first hearing. His legs are weaker. He is unsteady on his feet. His legs are numb, cause him pain and make him sick. His chest condition and pain are no better. The pain is more frequent. He has blackouts oftener. Because of his condition, he has to have constant help, and it is necessary for his wife to wait on him and care for him more than ever. She is with him constantly.
>
> Claimant's wife testified that she quit her dollar an hour, 40-hour week poultry house job 'because her health wasn't too well, and claimant's condition was such that she was afraid to leave him by himself.' She is with him constantly and has observed his blackouts. They are getting more frequent and she is almost afraid to go to sleep at night. As often as two or three times a week she has to get up at night to tend him. They are financially unable to employ a nurse, and she acts as his nurse. When he has a blackout he would fall over if he were sitting up. She has to give him a kind of artificial respiration; rub his arms and the back of his neck, and bathe his face with cold cloths. He doesn't get around as well now as at the time of the July 5, 1956, hearing, and the pain seems worse.

The *Groce* Court stated at 315 S.W.2d 491:

> There can be no doubt on this record but that there was competent and substantial evidence showing that claimant required care above and beyond the services ordinarily performed by a wife for a husband, and that he has a need for general nursing services. Appellants concede that he is permanently partially disabled. There is evidence to the effect that he is a very sick man with a serious heart condition; that he is unable to stand, walk and get around satisfactorily; that he becomes numb and in extreme pain, has frequent blackouts and would fall if unattended; that it is necessary for his wife to be with him constantly, and especially at night to care for him because of his condition.

In the *Groce* case, the Court affirmed the Commission's award of $40.00 per week for nursing services to a wife for so long as the invalid condition of a 64 year old claimant continued. The Court did not award benefits for constant round-the-clock nursing

services despite wife's testimony that she quit her job because she was afraid to leave claimant by himself and was with him constantly.

In *Stephens v. Crane Trucking, Incorporated*, 446 S.W.2d 772 (Mo.App. 1969), the Commission awarded compensation in the amount of $6.00 per day for nursing services provided by the wife of a severely injured employee. The Missouri Supreme Court affirmed the award and noted at 446 S.W.2d 781:

> In support of the award, Mrs. Stephens stated that at the time of the hearing by the referee (June 18, 1968), her husband was able to be up about half a day, he could not walk or go to the bathroom without his braces and she had to put them on and take them off for him. He could not dress himself, and she had to tend his feet, hair and teeth, help him shave, stand by him to keep him from falling while showering, give medication, assist him on stairs and inclines and to keep his balance when walking. She spent nearly three fourths of her time caring for and assisting her to work.

The *Stephens* Court also noted at 446 S.W.2d 782:

> By contrast, the services performed by Mrs. Stephens for her husband do not 'relieve' him of tasks he would or could otherwise perform but are 'above and beyond the services ordinarily performed by a wife for a husband,' Groce v. Pyle, supra, 315 S.W.2d l.c. 491, and relieve Mr. Stephens from his otherwise helpless bedfast condition. Missouri has recognized that type of services as within the meaning given to the statute, Section 287.140, supra.

In *Jerome v. Farmers Produce Exchange,* 826 S.W.2d 3 (Mo. App. 1981), the Court stated at 6-7:

> On remand, the Commission decided that meal planning and preparation was not nursing care, finding that nursing care "is not intended to include services that were already being performed for the individual prior to the injury, i.e. meals, or that the individual is fully capable of performing for himself." The Commission pointed out that Rex had never prepared his own meals and expected his wife to prepare his meals regardless of whether he had been injured on the job or not. Rex also testified at the hearing that if he could cook and had a modified kitchen in which to do so, he would be able to prepare and plan his own meals without assistance.

Polly testified at the hearing that the only way in which Rex's diet is special is that he requires a little extra fiber and more fluids than in a normal diet. There is little in the record that would show that this preparation and planning is not other than an ordinary household duty performed by a wife for her husband.

Rex relies upon *Daugherty v. City of Monett,* 238 Mo.App. 924, 192 S.W.2d 51 (1946), to support his position. In *Daugherty*, a wife was held to be entitled to payment for nursing services she performed for her husband. *Id.* 192 S.W.2d at 56. The court found that these services "were not the ordinary household services of a wife but extraordinary services in addition to her ordinary duties." Id. Unlike the other services that Polly performs for Rex, her meal preparation and planning is an ordinary duty and no set of special circumstances remove it from this category. Thus, it was not error for the Commission to disallow the meal preparation and planning time, as testified to by the Jeromes, in its calculation of the award.

[7] The eleven and one-half hours awarded are supported by the evidence the Commission had before it in its review of the record. Polly's services to Rex are *7 detailed in *Jerome I.* These services do constitute nursing care and are outside of the duties a wife ordinarily performs for her husband, and are necessary to cure and relieve the effects of his injury. See *Brollier v. Van Alstine*, 236 Mo.App. 1233, 163 S.W.2d 109 (1942). The uncontroverted evidence establishes that Polly massages Rex's legs and back, alleviating spasms and pain; inspects his urine for signs of infection; packs in catheter supplies; helps him to his truck in bad weather; checks his temperature and blood pressure; checks for pressure sores on his buttocks; helps him bathe by washing his buttocks and back; assists him in non-handicapped bathroom facilities; picks him up when he falls; gets his wheelchair in and out of the car; and performs other services as required by his condition. Rex testified that his estimate of the time Polly spends nursing him was about three hours per weekday and five hours per day on Saturday and Sunday for a total of twenty-five hours. There is no evidence contradicting this estimate, although the Commission certainly could have taken additional evidence if it so chose. Apparently, it did not feel the need to do so, choosing to accept the testimony it had before it. The twenty-five hour figure was reduced by the thirteen and one-half hours spent on meal preparation. The resulting eleven and one-half hour basis for the award is thus

supported by substantial evidence. The award of the Commission is affirmed.

In *Fitzgerald v. Meyer*, 820 S.W.2d 663 (Mo.App. 1991), the Court stated at 636:

> The ALJ found wife's services included but were not restricted to: "helping claimant dress himself; assistance getting into and out of shower and bathtub; administering Betadine soaks to the injured foot; and daily massages to the neck, back and lower left leg." Wife testified at the time of the hearing she spent "a good eight hours per day" assisting her husband. In the nighttime, she would rub the leg for cramps, get Tylenol pills or assist with bathroom needs. Wife helped her husband dress; assisted four times a day with Betadine soaks, put lotion on the foot to keep the skin moist; and prepared meals. There was no evidence of how much time was required to perform each service, particularly how much of the eight hours were "nurse" or "spouse" work.
>
> The award of future nursing services is supported by the evidence. A request for such services was made through presentation of evidence at the hearing. Employee is entitled to an order that employer-insurer furnish the services or pay what the ALJ and Commission found to be a reasonable sum of $7.50 per hour for home nursing services as long as required.
>
> In the alternative, employer-insurer contests the finding eight hours a day must be authorized. They claim the Commission misread *Jerome*, 797 S.W.2d at 565. We find the Commission was not obligated to increase the decision for two hours per day nursing services to eight hours per day because of the decision in *Jerome*.

The *Fitzgerald* Court continued at 820 S.W.2d 637:

> On remand of this case, the Commission may review the entire record and make findings of the amount of time required to render necessary home nursing services. Section 287.495 RSMo 1986. It is not required to accept estimates if the estimates are not believed to be reliable as a measure of the time necessary to render required services. Wife testified to eight hours per day but some of her services were not "above and beyond the services ordinarily performed by a wife." *Stephens*, 446 S.W.2d at 781. Accordingly, the finding of the

> Commission supporting an award of eight hours per day home nursing care is supported only by testimony which includes some services not subject to award.

Spousal nursing was the subject of *Breckle v. Hawk's Nest*, 980 S.W.2d 192 (Mo. App. 1998) (hereinafter "*Breckle I*"). In that case, claimant sustained a compensable accident and sought nursing services of his wife, a registered nurse. The evidence was claimant needed home nursing care because of the claimant's back injury and his constant danger of falling. Claimant had two back surgeries after his accident.

The Court in *Breckle I* stated at 980 S.W.2d 193:

> Breckle's wife testified and the Commission also denominated her as a credible witness. Mrs. Breckle is a registered nurse. She stated that prior to the 1989 injury, Breckle did not have difficulty getting around and that he was able to care for all of his personal needs. However, now she provides all of his care. Breckle requires constant observation and supervision. He requires assistance in having meals brought to him, getting dressed, and bathing. He is unable to walk without the assistance of a cane and he can hardly lift his left arm. Breckle has difficulty sitting for long periods of time and is unable to stand for half a day.
>
> Additionally, Breckle cannot be left alone because he experiences episodes of pain in his back and then his legs go numb which leads to his inability to remain standing. He falls two or three times monthly. On three occasions, Breckle's falls were so severe that he had to go to the hospital; Breckle has become unconscious after falling. Twice Mrs. Breckle was unable to transport her husband to the hospital after he fell and required ambulance assistance. These falls resulted in additional shoulder and knee injuries to Breckle. Due to the possibility of falling, Breckle is not alone often. If Mrs. Breckle is not able to be at home with her husband, one of their children assists him.
>
> Mary Pecoraro (Pecoraro), a registered nurse, also testified regarding Breckle's condition. Pecoraro is qualified as a field expert in the nursing profession to determine the reasonable and necessary nursing care the claimant needs. She stated that Breckle is in need of continual nursing care due to the nature of Breckle's unpredictable falling. Due to the constant pain Breckle experiences, he is unable to remain in one position for a prolonged period of time. He constantly moves, even during the night, which increases the opportunity for him to fall.

The Court in *Breckle I* stated at 980 S.W.2d at 194:

> Further, Missouri case law supports compensating Breckle's wife for her nursing services regardless of her qualifications in the medical field. In *Fitzgerald*, the employee/claimant's wife provided services that were both duties of a spouse and a nurse. The wife's aid included helping her husband dress, bathe, soak his foot, and leg massages. She helped him at night by rubbing his cramped leg, getting Tylenol pills and assisting in the bathroom. *Id.* In *Stephens v. Crane Trucking, Incorporated,* 446 S.W.2d 772 (Mo.1969), the claimant was rendered totally and permanently disabled from an accident incurred during the course of his employment and he sought compensation for the nursing services provided by his wife. The claimant's wife helped her husband ambulate, bathe, go to the bathroom, and massage his shoulders. These services were found to be compensable. Following a nine-foot fall to a concrete floor, the claimant in *Groce v. Pyle*, 315 S.W.2d 482 (Mo.App.K.C.Dist.1958) was permanently partially disabled. The claimant could not walk well, suffered periods of extreme pain and numbness and blackouts. The court held that his wife rendered all of his nursing care and should be compensated for her services which were above and beyond the care ordinarily provided to a spouse. In each of these cases, the wives were not health care professionals. However, they were compensated for required nursing care. The courts concluded that their duties were greater than those a spouse would ordinarily be expected to perform during marriage.

The Commission denied claimant's claim for past and future nursing services for the reason claimant failed to make demand for nursing care, and the services of claimant's wife was not above and beyond those services ordinarily performed by a spouse for the other spouse. *Id.* at 194. The Court in *Breckle I* reversed and remanded the matter to the Commission.

The *Breckle I* Court stated at 194-95:

> We address claimant's failure to notify his employer of his need for home nursing care. We recognize that an award for past nursing services is allowable only when the employer had notice of the employee's need for care, or the employee demanded nursing care and the employer refused, failed or neglected to provide the treatment. *Fitzgerald v. Meyer*, 820 S.W.2d 633, 635 (Mo.App. E.D.1991). While Breckle did not specifically request nursing services from

> Hawk's Nest, it is implicit from the following uncontested facts that Hawk's Nest had notice of claimant's need for home nursing assistance.
>
> . . . . . .
>
> Comparatively, Mrs. Breckle's services to her husband also went beyond the ordinary duties of a spouse. She should not be precluded from receiving compensation solely because she works within the health care industry; remuneration is based upon services which are in excess of normal spousal duties.
>
> . . . . . .
>
> Accordingly, we reverse and remand this matter to the Commission in order to determine the amount of reasonable compensation for Mrs. Breckle's past and future nursing services for which Breckle may be compensated. Her services went beyond those ordinarily provided by a spouse and require compensation. If the record is inadequate, then the Commission should require further evidence and make an award requiring employer-insurer to furnish necessary home nursing care or, in the alternative, compensate employee only for his wife's nursing services.

After remand to the Commission, the case returned to the Court of Appeals at 42 S.W.3d 789 (Mo. App. 2001) (hereinafter "*Breckle II*"). In *Breckle II*, the Commission returned with a finding of how many hours of nursing care claimant's spouse had provided, and the rate of compensation for such services. The Commission did not award any nursing services during the period claimant and his wife were separated. The Court in *Breckle II* again reversed the award of the Commission because it failed to follow the prior Mandate of the Appellate Court. The Court stated the Mandate held claimant was entitled to "constant (round-the-clock) home nursing care." The Court stated it does not matter who provided the care, just that the claimant is compensated for the care. The Court in *Breckle II* held at 793:

> Again, the Commission's decision misapprehends and fails to follow our prior mandate in *Breckle*, which held that Appellant was entitled to past and future compensation for constant (round-the-clock) home nursing care, whether such care is provided by his spouse or some other caregiver. It does not matter who provides the care; we have held that Appellant is entitled to the care, and to the necessary money to pay for it, regardless. Accordingly, the Commission erred in

> denying Appellant compensation for nursing services during the period of November 1, 1997 through September 21, 1999, as Appellant was entitled to compensation for the entire period on the basis of 24 hours per day, 7 days per week, 52 weeks per year.

In *Hall v. Fru Con Construction Corp.*, 46 S.W.3d 30 (Mo. App. 2001), the injured employee was paralyzed from the waist down and required assistance with showering, dressing, cooking, laundry, housekeeping, getting into bed at night, and doing a stretching program to relieve spasms in his legs. The Court in *Hall* stated at 46 S.W.3d 33:

> Employer also claims that no evidence was presented by employee to show the time spent by wife for nursing care, the reasonable expense for such care, or the duties performed by wife. As stated in the ALJ's findings of fact and rulings of law, the Commission's award for past nursing care was based on Nurse Barrett's testimony as to the amount of time spent daily by wife assisting in non-spousal duties and the charges for these types of services. Nurse Barrett indicated that employee needs assistance for showering, dressing, meals, cooking, laundry, and housekeeping. Four hours per day would be required for these services, costing approximately $15.00 per hour. Employee also needs assistance getting into bed at night, requiring an additional hour of services, costing approximately $45.00.
>
> We find competent evidence supports the award of past nursing care for wife's services. Point denied.
>
> In its second point on appeal, employer argues the Commission erred because substantial evidence does not support the award for future nursing care. We find that competent evidence supports the Commission's award of future nursing care. In adopting the ALJ's findings, the Commission found the testimony of Nurse Barrett and Dr. Sohn "unrebuttable and credible." Nurse Barrett indicated that employee's wife assists employee in showering, dressing, meals, cooking, laundry, housekeeping, exercising, and getting into bed at night. Dr. Sohn testified that employee's wife was doing a stretching program with employee to relieve spasms in his legs. In addition, Dr. Sohn testified that employee could be independent in cooking, laundry, showering and shopping only if he had accessible facilities. The record indicates employee's home is not accessible to allow for his independence. The types of duties performed by employee's wife are beyond that of spousal duties and are compensable. Breckle, 980 S.W.2d at 194. Based on the testimony of Nurse Barrett and Dr. Sohn,

competent and substantial evidence supports the award of future nursing care. Point denied.

In *Compton v. Rinehart's Meat Processing*, 130 S.W.3d 684 (Mo. App. 2004) the Court states at 691-93:

> In Point II, Employer contends that the Commission erred when it awarded the Claimant's wife compensation for past6 and future nursing care services because the evidence and testimony of Claimant and his Wife demonstrated that Claimant is capable of performing these services on his own. We agree in part. Again, looking at Claimant's exhibit regarding Wife's daily services, we find several items that are simply unsupported by the record *692 as necessary nursing services for Claimant's work-related injury.
>
> At the 1996 hearing, Claimant testified that he had at least four episodes of cellulutis [*sic*] infection per year during which his leg became reddish in color, tender, swollen, and hot. With each outbreak, his Wife assisted in putting on a topical antibiotic and he stayed off the leg for a week and a half to two weeks. Claimant testified that his doctor had encouraged him to exercise7 so he mowed the lawn on a riding mower and with a push mower for thirty minutes to a couple of hours. He picked up sticks and gardened, used a motorized tiller, and bathed himself. He could walk a block and a half, was capable of driving, and could lift fifty pounds of weight. At the 2002 hearing, Claimant testified he hunted for deer yearly; in fact, he gutted a deer and took it to a packinghouse himself. After a tornado damaged his property, Claimant assisted in cleaning up the brush and debris from his deck by loading it onto a tarp and hauling it off to burn. He continued to mow and brush hog their fourteen acres, although he had assistance at times. He occasionally washed the dishes, ran the vacuum cleaner, and fished. He also changed the oil in their vehicles and washed them.
>
> Claimant further testified that he showered and cleaned himself unassisted and was capable of washing and drying his leg three times per day. He could reach all parts of his leg to apply medication while seated, though it would be difficult to reach his feet during a period when the cellulitis was flaring,8 and had only twice tried to put the stockings on by himself. He was capable of washing his stockings, hanging the stockings to dry, preparing his own meals, and taking his medication, and was able to remove the stockings and elevate his leg

without assistance. As for the pump, Claimant felt he could use the pump without assistance, although he was worried about wrinkles in the hose.

The testimony of Claimant and his Wife concerning his functional capacity does not conform to the award of nursing services for eight hours every single day of the week. Some of the claimed services are only necessary during periods of cellulitis outbreak, some of the services are not necessary nursing services at all, and some of the services are not in any way related to Claimant's work-related injury. For instance, the blood pressure checks relate to the hypertension and the blood sugar tests are for diabetes. The only medications for cellulitis are the oral antibiotics and Wife does not need to assist claimant in taking those medications. Further, the testimony does not support nursing services for the preparation of meals or the laundry of the Jobst stockings. Accepting as true all of the limitations given by Claimant and Wife, there simply is not sufficient evidence of a need home nursing services to the extent awarded by the Commission.

A comparison of the award for nursing services in other cases indicates that this award is not in conformity with past awards for nursing services. For instance in *Hall, supra*, even though the claimant was paralyzed as a result of the accident, an award of five hours per day for services rendered by the wife was affirmed. Those services included assistance in showering and dressing the claimant, preparation of meals and laundry, and getting into bed. 46 S.W.3d at 33. Likewise, in *Jerome*, although claimant was paralyzed from the *693 waist down, the Commission awarded eleven-and-a-half hours per week for home nursing services. *See Fitzgerald*, 820 S.W.2d at 637 (discussing *Jerome*).

We find this case most similar to *Fitzgerald*, where an award of fifty-six hours per week for home nursing was reversed and remanded for a determination for services that are not above and beyond the services ordinarily performed by a spouse.

The cases discussed above support the conclusion that Claimant should not be entitled to an award for constant nursing services of his wife in the case at hand. The evidence demonstrates Claimant's wife does not provide constant care for Claimant, and further demonstrates the services she provides to Claimant are primarily services ordinarily provided by a wife to a husband.

The case at hand is distinguishable from *Groce, Breckle, Jerome,* and *Hall.* In those cases, the employees were not able to do numerous tasks because of their physical disabilities. Those cases involved severe physical injuries.

In the *Groce* case, there was evidence to the effect that claimant was a very sick man with a serious heart condition; that he was unable to stand, walk and get around satisfactorily; that he became numb and in extreme pain, had frequent blackouts and would fall if unattended; that it was necessary for his wife to be with him constantly, and especially at night to care for him because of his condition. The Court in *Groce* affirmed the Commission's award of $40.00 per week for nursing services to a wife, but did not award benefits for constant round-the-clock nursing services.

In *Breckle*, the Court found the employee needed constant (round-the-clock) nursing care because of his unpredictable falling due to a back injury that resulted in two back surgeries. The *Breckle* case is clearly distinguishable from the case at hand. Mr. Breckle required assistance in having meals brought to him, getting dressed, and bathing. He was unable to walk without the assistance of a cane. He could hardly lift his left arm. He had difficulty sitting for long periods of time and was unable to stand for half a day. Additionally, Mr. Breckle could not be left alone because he experienced episodes of pain in his back and then his legs go numb which lead to his inability to remain standing. Due to the possibility of falling, Mr. Breckle was not alone often.

In *Jerome,* the injured employee was paralyzed from the waist down. The Court allowed thirteen and one-half hours a week for nursing services performed by Claimant's wife for massaging Claimant's legs and back, alleviating spasms and pain; inspecting his urine for signs of infection; packing in catheter supplies; helping him to his truck in bad weather; checking his temperature and blood pressure; checking for pressure sores on his buttocks; helping him bathe by washing his buttocks and back; assisting him in non-handicapped bathroom facilities; picking him up when he falls; and getting his wheelchair in and out of the car. The Court found these services constituted nursing services.

The Court in *Jerome* did not allow time spent on meal planning and preparation, finding that nursing care "is not intended to include services that were already being performed for the individual prior to the injury, i.e. meals, or that the individual is fully capable of performing for himself." In the case at hand, Mrs. Reynolds did not perform any services similar to the services found to qualify as nursing services in *Jerome.* Further, she prepared meals for Claimant prior to the accident as well as after the accident. In *Jerome,* the Court found the evidence supported eleven and one-half hours per week for nursing services.

In *Hall*, the injured employee was paralyzed from the waist down. The Court found the Commission's award for past nursing care was based on Nurse Barrett's

testimony as to the amount of time spent daily by wife assisting in non-spousal duties and the charges for these types of services. Nurse Barrett indicated that employee needs assistance for showering, dressing, meals, cooking, laundry, and housekeeping. Four hours per day would be required for these services, and Employee also needed assistance getting into bed at night, requiring an additional hour of services. The Court found these types of duties performed by employee's wife were beyond that of spousal duties and were compensable. In *Hall*, the Court found the evidence supported four hours per day for nursing services.

Mrs. Reynolds testified she left her employment on January 1, 2009 to stay home and care for Claimant. Mrs. Reynolds testified that Claimant's personality changes constantly through the day. He is not very stable when she is not with him. He cannot make a decision if he gets in a crisis. She testified he is accident prone and needs to be watched for his safety. She uses binoculars at times to watch him. She testified she is near Claimant all the time. She testified she has to monitor Claimant at all times.

Ron Reynolds, Jr. testified that his mother is Claimant's primary caregiver and she watches over him. Ron Jr. feels someone needs to look after Claimant. He is concerned Claimant could accidently hurt himself.

Claimant's son, Greg Reynolds, testified that Claimant's primary caregiver is Greg's mother, Betty. She has looked after Claimant since March 2011. She makes sure Claimant's medicine is taken care of in the morning and at night. She gives Claimant encouragement when he has a bout with depression.

Dr. Butts testified that because of Claimant's inability to concentrate or remember, he is a danger to himself. He noted the need of the presence of Claimant's wife to calm him down when he gets very upset. He noted she keeps her eye on him constantly, day and night. He agreed with Mrs. Reynolds that Claimant needs to be watched whenever he is doing things like welding. He testified Claimant "is a real danger to himself." Dr. Butts noted Mrs. Reynolds frequently helps keep Claimant calm when he gets upset. He noted she does most of the driving.

Dr. Butts testified, "He [Claimant] might be in the barn by himself, but she can see him moving in there. And, like I say, she opens the door to see what sounds she can hear, even in the cold weather. So, yes, he is in the barn by himself, but she is up there at the house watching his movement up there in the barn somehow." I find this is not credible.

I do not believe Mrs. Reynolds constantly watches Claimant in the barn. This presumes Claimant would be constantly near a window in the barn to permit her to view him. There is no evidence that a camera was installed in his barn to permit Mrs. Reynolds to watch Claimant from the house when he worked there alone. Claimant spends

extended periods of time in the barn. If Mrs. Reynolds constantly watched Claimant while he was in the barn, she would be engaged in no other activities, such as cooking, cleaning, doing laundry, attending to personal needs, performing other chores, or doing activities of daily living while he was in the barn.

I find Claimant is left alone and unwatched often, and for extended periods of time. I find Claimant spends part of his day alone, out of view of Mrs. Reynolds, and unsupervised.

I find Mrs. Reynolds's testimony that she has to monitor Claimant at all times and that she is near Claimant all the time is not credible.

Mrs. Reynolds is understandably concerned about Claimant's safety and well-being. She is protective of him. But I am not convinced that she needs to be with Claimant constantly. Claimant became temporarily very upset and withdrawn after his deposition in 2013 and after appointments with Dr. Halfaker and Dr. Butts, but the voluminous medical records in evidence record no hospital admissions or treatment for suicide attempts. There is no evidence that Claimant has attempted suicide. He was never hospitalized for his psychological injury. His condition has been recorded as "stable" by the treating doctors.

The records and testimony in this case record only a few specific instances of Claimant having had an accident at home. The medical records do not reveal emergency room admissions for accidents. There is testimony of an incident involving a tree limb and chain saw. There is also testimony about a recent incident involving a radiator cap coming off and Claimant being burned. The incident involving Claimant jumping off the golf cart when it hit a bump occurred in 2008. There is no evidence he injured himself while welding after July 17, 2007.

These few instances do not convince me that Claimant is accident prone to the extent that he has needed or currently needs constant supervision of his wife to protect him from having an accident.

In the case at hand, Claimant is not a paralyzed. He did not have a back injury requiring surgery. He is not at risk of falling. He does not need assistance with meals, getting dressed, or walking. He does not have difficulty sitting or standing.

I find Claimant's wife does not provide constant nursing care for him. It is noteworthy that Mrs. Reynolds worked until 2009, and that Claimant did not have home nursing care while Mrs. Reynolds worked. Claimant did not have constant supervision while at home after he stopped working for Employer during the time that Mrs. Reynolds worked.

Claimant spends much of his day piddling around the farm and shop. Mrs. Reynolds is with him at times, but she is not with him at other times. He works alone in his shop part of the day.

Claimant testified he is able to take care of all of his own personal hygiene needs, he is able to dress himself, and his wife always fixed meals for him, before and after the accident happened. He testified he is able to care for his personal needs. He dresses and bathes himself. He does not need help eating. He helps mow the yard and care for the cattle. I find this testimony of Claimant is credible.

Greg Reynolds credibly testified that Claimant can dress himself, feed himself, take care of personal hygiene, shower, and wash his hair. Claimant watches television ok. He plays games on the computer.

Claimant is able to drive and does drive. Ron Reynolds Jr. testified Claimant drives by himself to the Minimart that is one to two miles away. Greg Reynolds testified Claimant drives alone at times to Thayer Missouri, a few miles from home. I find this testimony is credible.

Mrs. Reynolds testified at the final hearing that Claimant does "really good" as long as he is on the farm. I find this testimony is credible.

Dr. Butts testified the services that Mrs. Reynolds performs for Claimant, are necessary to relieve him from the effects of his PTSD. I find this opinion is not credible or persuasive. I believe and find that some things Mrs. Reynolds does for Claimant relieve him from the effects of his PTSD, but other things she does for him do not.

It is Dr. Butts's opinion that Claimant is going to need almost constant services of his wife because of the trauma of July 17, 2007. I find this opinion is not credible or persuasive.

I find the opinions of Mrs. Reynolds, Dr. Butts, and Victoria Powell that Claimant needs to be watched constantly are not credible.

I find Mrs. Reynolds's testimony that she is with Claimant constantly is not credible. I find she does not need to be with Claimant constantly.

The opinions of Dr. Butts & Victoria Powell rely on Mrs. Reynolds's statement that Dr. Bhargava told her to stay home with her husband. But, there is no such record of Dr. Bhargava in evidence. Dr. Bhargava's treatment records and reports do not contain that statement. Dr. Bhargava was not deposed and did not testify to that in this case. I

find the opinions of Dr. Butts and Victoria Powell that Claimant needs constant supervision of Mrs. Reynolds are not credible or persuasive.

Additional factors supporting my finding that the testimony in this case that Claimant needs constant nursing care of his wife is not credible or persuasive include the following.

There are no treatment records or reports recommending Mrs. Reynolds watch Claimant constantly. The treating physicians' records contain no prescriptions for home nursing care. I find that Dr. Bhargava did not prescribe that Mrs. Reynolds provide home nursing care for Claimant.

There are no records or reports in evidence from any of Claimant's treating physicians, psychiatrists, psychologists, or counselors that prescribe or recommend that Claimant have constant round-the-clock nursing care.

The treatment records reflect that Claimant's psychological condition (PTSD and depression) did not materially change over time. The records record minor changes in GAF scores over time, some better, and others worse. His symptoms, complaints, and treatment remained similar over time. He continued to take Prozac, propranolol, and a nighttime sleeping medicine over the years after the accident.

Dr. Butts testified," . . . for the most part, he is just no worse and no better essentially than he was in July of '07."

When Dr. Rhoads last saw Claimant on March 11, 2013, he observed Claimant's affect was bright and reactive. He noted Claimant's memory was intact and Claimant was doing very well.

Dr. Will saw Claimant on February 10, 2014 and noted Claimant was not suicidal, homicidal, or engaged in dangerous activity. Dr. Will stated there was no evidence of a formal thought disorder. He noted Claimant's memory was intact in all three spheres.

Dr. Lynch evaluated Claimant on July 24, 2015. Her report states in part:

Instrumental Activities of Daily Living:

Assessed and independent in all except:
Driving: gets turned around in unfamiliar territory, restriction K on license
Finances: Farm business bills are done by wife since MVA
Food Prep: Prepares adequate meals if provided with ingredients

Housekeeping: Does lawncare and outside chores
Laundry: Wife has always done laundry
Taking Medications: Wife fills pills box and reminds if he misses, gets mixed up, has taken meds twice on accident
Shopping: Able to shop but avoids people at store
Telephone: Dials a few well known numbers, but most are on cell phone and able to use

Activities of Daily Living:
Assessed and independent in all.

I find this assessment of Dr. Lynch is credible and persuasive.

Dr. Lynch did not recommend that Claimant be monitored constantly. Her evaluation of Claimant supports the conclusion that Claimant does not need constant nursing care from Mrs. Reynolds.

I do not believe Claimant currently is entitled to an award for constant round-the-clock home nursing care. I find and conclude Claimant did not prove he currently needs constant nursing care. I find and conclude that Claimant does not reasonably need constant nursing care of his wife to cure or relieve him of the effects of the July 17, 2007 injury.

I also find the services Claimant's wife provides to Claimant are primarily services ordinarily provided by a wife to a husband.

Nurse Victoria Powell described the services Mrs. Reynolds provides for Claimant. She testified:

> A. She [Mrs. Reynolds] observes for reactions. She monitors and observes him for intrusive memories, things that he's trying to avoid, or hyperarousal. She provides support to him during periods of overwhelming emotion or anxiety. She encourages him to participate in treatment.
>
> She fosters relationships with family and friends that he has avoided. She watches for warning signs of potential relapse or exacerbations. She reestablishes feelings of self worth. She encourages him to participate in activities such as the farm activities, home activities, social activities.
>
> She provides empathy and caring. She encourages things like healthy living, adequate sleep, proper diet and exercise. She encourages him to have positive rather than negative self talk. She

has intervened at times when it's necessary to remove a source of anxiety or remove him from a source of anxiety.

She assesses him for suicidal ideation. She educates herself and Ron on his medical condition and treatment plan. She advocates for him. She provides crisis reporting. She helps manage his appointments.

She manages medications, including maintaining a list of his medications with dosages, frequencies, and maintains the pharmacy information. She makes sure that he obtains timely refills, determines the response to his medication and any adverse reactions. She reminds him when it's time to take medication to make sure that they're appropriate, going so far as to maintain some medication out of his reach or out of his ability to take that at the wrong time.

She communicates with his caregivers by things – phone calls, writing questions, keeps phone numbers handy. She physically helps him on the things that he cannot physically do. She manages his pain by massaging his back and legs. She has done a lot of blood pressure monitoring, although I think that is decreased at this time.

She provides all of his transportation, even going so far as to think about where they're going, what kind of directions, what they might encounter on the way, such as a bridge, or whether or not there's a wreck up the road, or something that they're trying to avoid to manage his panic attacks.

She brags on his accomplishments to try to give him some buy-in for the treatment plan. She goes behind him closing doors and gates and doing all kinds of reminders of different things. She helps him with math and other level cognitive requirements and so forth.

The services described by Ms. Powell that Claimant's wife provides for Claimant are primarily services ordinarily provided by a wife for a husband. They are nearly all different than the services found to be compensable nursing services provided by a wife in the cases described above.

Victoria Powell noted that Mrs. Reynolds does very little activities of daily living for Claimant because he does not require it. Ms. Powell said that Claimant does not require skilled care such as care by a registered nurse.

Ms. Powell testified that Claimant required 16 to 20 hours seven days a week from Mrs. Reynolds to care for him as a result of the injury July 17, 2007. I find this opinion is not credible or persuasive.

I find the services Dr. Butts believes Mrs. Reynolds provides for Claimant are primarily services ordinarily performed by a wife and are not compensable as nursing services.

I find Mrs. Reynolds provides a significant amount of care, comfort, and support for Claimant. But nearly all that she does for Claimant is not beyond duties that a spouse would ordinarily be expected to perform during the marriage. She does things for limited times that arguably are nursing duties beyond ordinary spousal duties, such as putting out medicine and accompanying Claimant to doctor's appointments, but the record does not reflect how much time she spent per day doing those tasks.

I find that nearly all of what Mrs. Reynolds has done for Claimant since the July 17, 2007 accident is not nursing care as defined by the cases discussed above. The support that she provides for Claimant is care, comfort, and encouragement one spouse would generally provide another spouse. I find that nearly all of what Mrs. Reynolds has done for Claimant consists of ordinary household duties that are not compensable when provided by a spouse. She should not be compensated for time when she is not providing specific nursing services. She should not be compensated for standby time.

The courts require that spousal nursing awards be based on more than speculation. *Jerome v. Farmers Produce Exchange*, 797 S.W.2d 565, 568 (Mo. App. 1990). *See also, John Hoff, Employee v. St. Clair R-XII School District,* Injury No.: 00-081801 (LIRC, February 14, 2011). I find there is a lack of evidence as to the tasks performed by Mrs. Reynolds and the average time spent on them. I find that Claimant has not met his burden of proving he is entitled to an award for past spousal nursing services.

Claimant has the burden of proof on all issues in this case. I find Claimant had the burden to provide an accurate accounting of the services and time spent for past nursing services, but did not do so. Claimant did not offer detailed evidence of the nursing tasks his wife performed, and the time spent on nursing tasks each day over and above duties a spouse ordinarily would be expected to perform.

I deny Claimant's request for past nursing services of his wife.

5. What is Employer's liability, if any, for past temporary total disability benefits?

a. Is Claimant entitled to an award for past temporary total disability benefits for an alleged past temporary total disability underpayment from July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008?

Claimant requests an award for past temporary total disability benefits for an alleged past temporary total disability underpayment from July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008.

The parties stipulated that Employer/Insurer has paid $27,624.15 in temporary total disability from July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008, at the rate of $494.55 per week, and I so find. Claimant's request for past temporary total disability benefits for an alleged past temporary total disability underpayment for 55 6/7 weeks is based on his assertion that the weekly temporary total disability rate should be $526.45.

I have previously found that the weekly temporary total disability rate in this case is $485.96. Claimant's request for past temporary total disability benefits for an alleged past temporary total disability underpayment from July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008 is denied.

b. Is Employer entitled to a credit for an overpayment of temporary total disability benefits paid for the periods July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008?

The parties agreed there are issues in dispute in this case regarding Employer's liability for past temporary total disability benefits and the average weekly wage. I find that Employer/Insurer is entitled to a credit from the amount awarded to Claimant in this case in the amount of $479.81 for a temporary total disability overpayment. This represents a temporary total disability overpayment for the periods July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008, which is 55 6/7 weeks. Employer/Insurer has paid $27,624.15 in temporary total disability from July 18, 2007 through February 4, 2008 and from May 1, 2008 through November 5, 2008, at the rate of $494.55 per week. I have found the weekly temporary total disability rate is $485.96. The difference between $494.55 and $485.96 is $8.59 per week. $8.59 per week times 55 6/7 weeks equals $479.81.

I find that Employer/Insurer is entitled to a credit in the amount of $479.81 from the amount awarded to Claimant in this case for this temporary total disability overpayment.

c. Is Claimant entitled to an award for past temporary total disability benefits from November 6, 2008 through November 19, 2014?

Claimant requests an award for past temporary total disability benefits from November 6, 2008 through November 19, 2014.

The burden of proving entitlement to temporary total disability benefits is on the Employee. *Boyles v. USA Rebar Placement, Inc.*, 26 S.W.3d 418, 426 (Mo.App. 2000); *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App. 1997). Section 287.170.1, RSMo provides that an injured employee is entitled to be paid compensation during the continuance of temporary total disability up to a maximum of 400 weeks. Total disability is defined in section 287.020.7, RSMo as the "inability to return to any employment and not merely . . . [the] inability to return to the employment in which the employee was engaged at the time of the accident." Compensation is payable until the employee is able to find any reasonable or normal employment or until his medical condition has reached the point where further improvement is not anticipated. *Cooper*, 955 S.W.2d at 575; *Vinson v. Curators of Un. of Missouri*, 822 S.W.2d 504, 508 (Mo.App. 1991); *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641, 645 (Mo.App. 1991); *Williams v. Pillsbury Co.*, 694 S.W.2d 488, 489 (Mo.App. 1985).

Temporary total disability benefits should be awarded only for the period before the employee can return to work. *Greer v. SYSCO Food Servs.*, -- S.W.3d --, 2015 WL 8242710 (Mo banc 2015); *Boyles*, 26 S.W.3d at 424; *Cooper*, 955 S.W.2d at 575; *Phelps*, 803 S.W.2d at 645; *Williams*, 649 S.W.2d at 489. The ability to perform some work is not the test for temporary total disability, but rather, the test is "whether any employer, in the usual course of business, would reasonably be expected to employ Claimant in his present physical condition." *Boyles,* 26 S.W.3d at 424; *Cooper*, 955 S.W.2d at 575; *Brookman v. Henry Transp.*, 924 S.W.2d 286, 290 (Mo.App. 1996). "This standard is applied to temporary total disability, as well as permanent total disability. Contrary to the findings of the Commission, this does not mean that an employer is forced to either make light duty available to a claimant or pay temporary total disability benefits simply because the claimant remains under active medical care and there is a reasonable expectation that the employee's functional level might improve. An employer is only obligated for said benefits if the employee could not compete on the open market for employment." *Cooper*, 955 S.W.2d at 575.

A nonexclusive list of other factors relevant to a claimant's employability on the open market includes the anticipated length of time until claimant's condition has reached the point of maximum medical progress, the nature of the continuing course of treatment, and whether there is a reasonable expectation that claimant will return to his or her former employment. *Cooper*, 955 S.W.2d at 575-76. A significant factor in judging the reasonableness of the inference that a claimant would not be hired is the anticipated length of time until claimant's condition has reached the point of maximum medical progress. If the period is very short, then it would always be reasonable to infer that a claimant could not compete on the open market. If the period is quite long, then it would never be reasonable to make such an inference. *Boyles*, 26 S.W.3d at 425; *Cooper*, 955 S.W.2d at 575-76.

A "'claimant is capable of forming an opinion as to whether she is able to work, and her testimony alone is sufficient evidence on which to base an award of temporary total disability.' " *Stevens v. Citizens Mem. Healthcare Found.,* 244 S.W.3d 234, 238 (Mo.App.2008) (quoting *Landman v. Ice Cream Specialties, Inc.,* 107 S.W.3d 240, 249 (Mo. banc 2003)); *Pruett v. Federal Mogul Corp.,* 365 S.W.3d 296, 309 (Mo.App. 2012).

The Missouri Supreme Court in *Greer v. SYSCO Food Servs.,* 475 S.W.3d 655 (Mo. banc 2015) states at 668-69:

> This Court agrees with the holding in *Cardwell* that the commission must decide whether any further medical progress can be reached because that decision is essential in determining when a disability becomes permanent for the purpose of awarding permanent partial or PTD benefits. However, Employer's reading of *Cardwell* to *mandate or require* the commission to accept an opinion regarding the date of maximum medical improvement is incorrect. The plain language of section 287.149.1 does not mandate the commission arbitrarily rely on the maximum medical improvement date to deny TTD benefits, if the claimant is engaged in the rehabilitative process. Instead, whether a claimant is engaged in the rehabilitative process is the appropriate statutory guidepost to determine whether he or she is entitled to TTD benefits under the plain language of section 287.149.1. It is plausible, and likely probable, that the maximum medical improvement date and the end of the rehabilitative process will coincide, thus, marking the end of the period when TTD benefits can be awarded. However, when the commission is presented with evidence, as here, that a claimant has reached maximum medical improvement yet seeks additional treatment beyond that date for the work-related injury in an attempt to restore himself or herself to a condition of health or normal activity by a process of medical rehabilitation, *669 the commission must make a factual determination as to whether the additional treatment was part of the rehabilitative process. If the commission determines the additional treatment was part of the claimant's rehabilitative process, then he or she is entitled to TTD benefits pursuant to section 287.149.1 until the rehabilitative process is complete. Once the rehabilitation process ends, the commission then must make a determination regarding the permanency of a claimant's injuries.

The Missouri Supreme Court in *Greer* also states at 475 S.W.3d 669:

> This Court is not eliminating the concept of maximum medical improvement from the workers' compensation lexicon. This Court

> recognizes that the date of maximum medical improvement could aid the commission in determining the time when a disability becomes permanent and TTD benefits should be terminated. However, this Court holds the commission is not *required* to accept maximum medical improvement as a bright-line date to terminate TTD benefits when there is substantial and competent evidence presented that a claimant continues to be engaged in the rehabilitative process beyond a date initially believed to be the end of the rehabilitative process. Cases that hold to contrary should no longer be followed.

The evidence establishes, and I find, that Claimant has not worked since April 27, 2008. Claimant credibly testified he was unable to go out and get a job and work. Claimant has continued to treat for PTSD and depression since he last worked. The evidence discussed previously details the problems he has had since then. I have previously found Dr. Butt's testimony regarding Claimant's total disability to be persuasive. I have previously found Gary Weimholt's testimony regarding Claimant not being employable on the open labor market to be persuasive.

I have previously found Claimant reached maximum medical improvement on November 19, 2014 and was not engaged in the rehabilitative process beyond November 19, 2014.

I find there is no substantial and competent evidence presented that Claimant continued to be engaged in the rehabilitative process beyond November 19, 2014.

The parties stipulated at the final hearing that no temporary total disability benefits were paid since November 5, 2008. I find Employer has paid no temporary total disability benefits to Claimant since November 5, 2008.

I find that Claimant has been unable to work and has been temporarily and totally disabled since November 5, 2008, and that he is entitled to temporary total disability benefits from November 5, 2008 through November 19, 2014. I find that the total weeks that Claimant was temporarily and totally disabled as a result of this accident are 315 weeks.

I have previously found the temporary total disability rate in this case is $485.96 per week.

I award Claimant the sum of $153,077.40 from Employer for 315 weeks of past temporary total disability benefits for the period November 5, 2008 through November 19, 2014 at the rate of $485.96 per week.

6. What is Employer's liability, if any, for past temporary partial disability from February 5, 2008 through April 30, 2008?

Section 287.180.1, RSMo. provides in part:

> **287.180. Temporary partial disability, amount to be paid--method of payment.**
> 1. For temporary partial disability, compensation shall be paid during such disability but not for more than one hundred weeks, and shall be sixty-six and two-thirds percent of the difference between the average earnings prior to the accident and the amount which the employee, in the exercise of reasonable diligence, will be able to earn during the disability, to be determined in view of the nature and extent of the injury and the ability of the employee to compete in an open labor market.

Following the accident, Claimant returned to work for Employer. When he returned to work, he was limited to driving the Thayer-Memphis-Thayer (TMT) route, and was not driving the Thayer-Des Moines (TDM) and return Des Moines-Thayer (DMT) routes. Exhibit D, p. 36. Claimant attempted this trial work period from January 27, 2008 through April 27, 2008, a total of 33 trips. Employer's payroll record for when Claimant returned to driving between January 27, 2008, and April 27, 2008 (Exhibit D, Deposition Exhibit 2, pp. 25-32) show Claimant's gross earnings during that period as follows:

Week of 1/27/2008 to 2/2/2008			$ 303.38
Trip 1/27	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 2/1	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 2/3/2008 to 2/9/2008			$ 303.38
Trip 2/3	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 2/8	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 2/10/2008 to 2/16/2008			$ 303.38
Trip 2/10	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 2/15	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 2/17/2008 to 2/23/2008			$ 364.06
Trip 2/17	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 2/18	$49.87 Wage (holiday) + $10.81 Fringe	$60.68	
Trip 2/22	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 2/24/2008 to 3/1/2008			$ 303.38

Trip 2/24	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 2/29	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 3/2/2008 to 3/8/2008			$ 303.38
Trip 3/2	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/7	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 3/9/2008 to 3/15/2008			$ 455.07
Trip 3/9	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/14	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/15	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 3/16/2008 to 3/22/2008			$ 455.07
Trip 3/16	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/21	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/22	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 3/23/2008 to 3/29/2008			$ 455.07
Trip 3/23	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/28	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 3/29	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 3/30/2008 to 04/05/2008			$ 455.07
Trip 3/30	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/4	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/5	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 4/6/2008 to 4/12/2008			$ 455.07
Trip 4/6	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/11	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/12	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 4/13/2008 to 4/19/2008			$ 455.07
Trip 4/13	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/18	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/19	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 4/20/2008 to 4/26/2008			$ 303.38
Trip 4/20	$124.67 Wage + $27.02 Fringe	$151.69	
Trip 4/25	$124.67 Wage + $27.02 Fringe	$151.69	
Week of 4/27/2008			$ 151.69

Trip 4/27	$124.67 Wage + $27.02 Fringe	$151.69
Total Gross Wages		$5,066.45

Claimant requests temporary partial disability benefits for 12 4/7 weeks. The calculations above show that Claimant earned $5,066.45 during the 12 4/7 weeks that he worked light duty after the accident. $5,066.45 divided by 12 4/7 equals $403.01. The difference between the average weekly wage of $728.94 and $403.01 is $325.93. Two thirds of $325.93 equals $217.29. $217.29 times 12 4/7 weeks equals $2,731.65. I award Claimant the sum of $2,731.65 in past temporary partial disability benefits.

7. What is Employer's liability, if any, for past medical expenses?

"Employee had the burden of proving his entitlement to benefits for care and treatment authorized by § 287.140.1, i.e., that which is reasonably required to cure and relieve from the effects of the work injury." *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 266 (Mo.App. 2004); *Rana v. Landstar TLC*, 46 S.W.3d 614, 622 (Mo.App. 2001). Meeting that burden requires that the past bills be causally related to the work injury. *Bowers*, 132 S.W.3d at 266; *Pemberton v. 3M Co.*, 992 S.W.2d 365, 368-69 (Mo.App. 1999).

The employee must prove that the medical care provided by the physician selected by the employee was reasonably necessary to cure and relieve the employee of the effects of the injury. *Chambliss v. Lutheran Medical Center*, 822 S.W.2d 926 (Mo.App. 1991); *Jones v. Jefferson City School District*, 801 S.W.2d 486, 490-91 (Mo.App. 1990); *Roberts v. Consumers Market*, 725 S.W.2d 652, 653 (Mo.App. 1987); *Brueggemann v. Permaneer Door Corporation*, 527 S.W.2d 718, 722 (Mo.App. 1975). The employee may establish the causal relationship through the testimony of a physician or through the medical records in evidence that relate to the services provided. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. 1989); *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo.App. 1994); *Lenzini v. Columbia Foods*, 829 S.W.2d 482, 484 (Mo.App. 1992); *Wood v. Dierbergs Market*, 843 S.W.2d 396, 399 (Mo.App. 1992).

The *Martin* court states at 769 S.W. 2d 111-12:

> In this case, Martin testified that her visits to the hospital and various doctors were the product of her fall. She further stated that the bills she received were the result of those visits. We believe that when such testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the commission to

> award compensation. The employer, of course, may challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question. In this age of soaring medical costs it no longer serves the purposes of the Act to assume that medical bills paid by an injured worker are presumed reasonable (because they were paid), while those which remain unpaid, very probably because of lack of means, must be proved reasonable and fair.

The medical bills in *Martin* were shown by the medical records in evidence to relate to the professional services rendered for treatment of the product of the employee's injury. *Martin*, 769 S.W.2d at 111.

The law in Missouri provides that while the employer has the right to name the treating physician, it waives that right by failing or neglecting to provide necessary medical aid to the injured worker. *Emert v. Ford Motor Co.,* 863 S.W.2d 629, 631 (Mo.App.1993); *Shores v. General Motors Corp.,* 842 S.W.2d 929, 931 (Mo.App.1992); *Herring v. Yellow Freight System, Inc.,* 914 S.W.2d 816, 822 (Mo.App. 1995); *Hawkins v. Emerson Elec. Co.,* 676 S.W.2d 872, 879 (Mo.App. 1984). The Court in *Shores* stated at 931-932:

> The case law under §287.140(1) establishes the employer's right to provide medical treatment of its choice, however, this right is waived when the employer fails to provide necessary medical treatment after receiving notice of an injury. *Wiedower v. ACF Indus., Inc.,* 657 S.W.2d 71, 74 (Mo.App.1983). 'Where the employer with notice of an injury refuses or neglects to provide necessary medical care, the [claimant] may make his own selection and have the cost assessed against the employer.' *Id.*
>
> In the present case, there is substantial evidence which supports a finding that employer had notice of claimant's injuries and refused to provide medical treatment. On the day she was injured, and thereafter whenever the pain made it difficult to work, claimant reported to the plant dispensary to receive medical aid. At some point, a nurse at the dispensary informed claimant that she was no longer welcome and should consult her own doctor for further treatment.

The court in *Farmer-Cummings v. Personnel Pool of Platte County,* 110 S.W.3d 818 (Mo.banc 2003) states at 822:

> As previously noted, the aim of Missouri's workers' compensation law is to remedy the losses incurred by an employee as a result of a

> compensable injury. *Bethel,* 551 S.W.2d at 618. To award Ms. Farmer-Cummings compensation for medical expenses for which she has no liability would result in a windfall rather than compensation. On the other hand, to reduce Ms. Farmer-Cummings' award when she may still be held liable for those reduced amounts vitiates the policy behind workers' compensation-to place upon the shoulders of industry the burden of workplace injury. *See id.* Personnel Pool must reimburse Ms. Farmer-Cummings for all medical expenses incurred as a result of her workplace injury. Moreover, Personnel Pool should not receive an advantage for failing to timely pay medical bills incurred in such treatment at Ms. Farmer-Cummings' expense.
> Ms. Farmer-Cummings had the burden and has produced documentation detailing her past medical expenses and has testified to the relationship of such expenses to her compensable workplace injury. *See Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105, 111-12 (Mo. banc 1989*); *Esquivel v. Day's Inn,* 959 S.W.2d 486, 489 (Mo.App.1998). It is a defense of Personnel Pool, as employer, to establish that Ms. Farmer-Cummings was not required to pay the billed amounts, that her liability for the disputed amounts was extinguished, and that the reason that her liability was extinguished does not otherwise fall within the provisions of section 287.270. *See Martin, 769 S.W.2d at 112*; *Esquivel,* 959 S.W.2d at 489.

The medical records in evidence contain a history of Claimant's care and treatment relating to his July 17, 2007 injury.

Dr. Rhoads provided authorized treatment to Claimant from November 21, 2011 to March 11, 2013. Employer did not provide any authorized treatment to Claimant after March 11, 2013.

Claimant's counsel sent a letter dated March 23, 2011 to Employer's counsel, Exhibit L, notifying Employer's counsel of Claimant being treated at the VA and of a lien of the VA for treatment. Employer's counsel sent an email to Claimant's counsel on November 8, 2011, Exhibit M, advising his client has agreed to authorize treatment with Behavioral Health Services.

Dr. Bhargava's April 30, 2008 Psychiatric Progress Note states in part at Exhibit T, page 83: "He [Claimant] did state that he was evaluated at the Veteran's Administration, since he has benefits with them. I am okay with him seeing the Veterans' Administration doctor for his post traumatic stress disorder on a regular basis, if that is not possible he is to return to see me in six to eight weeks." Dr. Bhargava last treated

Claimant on May 1, 2009 when she left Behavioral Health. Employer did not authorize medical treatment for Claimant between May 1, 2009 and November 21, 2011.

Although Dr. Bhargava was the authorized treating physician, and made a specific referral of Claimant to Veterans Affairs, Employer-Insurer denied medical aid to Employee at Veterans Affairs. Employer-Insurer did not tender any other medical aid until November 2011.

A letter from the Veterans Administration dated March 7, 2016 to William Powell that references Claimant and Date of Injury of "On or about July 17, 2007," Exhibit N, states the balance of the VA lien on this case is $8,918.60.

Exhibit O contains copies of records of VA billings. The VA charges in Exhibit O were incurred before November 21, 2011 and after March 13, 2013, which are the dates Claimant treated at Behavioral Health with Dr. Rhoads, Employer's authorized treating physician.

The VA treatment and billing records in evidence relate to care provided to Claimant for the injury he sustained in this case. Claimant treated at the VA after he last saw Dr. Bhargava on May 1, 2009. The VA records reflect the total VA charges incurred after May 1, 2009 and before November, 2011, are $1,982.27 for treatment from October 1, 2009 to October 17, 2011. The VA records reflect the total VA charges incurred after March 11, 2013 are $7,598.97 for treatment from April 4, 2013 to October 9, 2015. Included in those $7,598.97 charges are charges dated April 7, 2015 relating to x-rays in the total amount of $1,706.70.[7]

Dr. Butts reviewed the medical records and billing records from the Veterans Administration. He testified the services provided by the Veterans Administration were necessary to cure or relieve Claimant from the effects of his post traumatic stress disorder and were reasonable. I find this opinion is credible as to the charges relating to treatment of Claimant's psychological condition.

Dr. Butts testified Claimant has been treated by Veterans Administration, Behavioral Health, Ozark Medical Center, Ozark Medical Center Urgent Care Clinic, Neurological Associates of Southwest Missouri, and at the North Kansas City Hospital immediately following the accident, and that treatment was reasonable and necessary to

[7] The April 7, 2015 charges are in the amounts of $499.62, $313.19, $313.19, $139.15, $171.78, $76.71, $79.39, $61.45, and $52.22. The treatment records relating to the April 7, 2015 charges are found at Exhibit T, pages 733-735, 949-952, and 954-955. The April 7, 2015 treatment records contain no reference to treatment of Claimant's psychological condition.

relieve and cure from the effects of his injuries in that accident. I find this opinion is credible as to treatment of Claimant's psychological condition.

The parties stipulated that the medical expenses incurred to treat Claimant's July 17, 2007 injury were fair and reasonable and usual and customary.

The VA records establish that Claimant incurred these bills for treatment of his July 17, 2007 injury, except for the April 7, 2015 bills for x-rays. These bills were a product of the injury he sustained from a compensable accident while working for Employer, except for the April 7, 2015 bills for x-rays.

Employer had notice of Claimant's July 17, 2007 injury.

Employer refused to provide medical aid to Claimant under workers' compensation represented by the treatment and bills of the VA described in Exhibit O after his July 17, 2007 injury, and after being notified of the injury. As in *Shores,* there is substantial evidence which supports a finding that Employer had notice of Claimant's injuries and refused to provide medical treatment. Where the employer with notice of an injury refuses or neglects to provide necessary medical care, the claimant may make his own selection and have the cost assessed against the employer.

I find and conclude the medical bills in evidence, Exhibit O, were shown by the medical records in evidence to relate to the professional services rendered for treatment of the product of Claimant's injury, except for the April 7, 2015 bills for x-rays. I find and conclude that the medical care Claimant received on the dates represented by the medical bills (Exhibit O) and treatment records in evidence was reasonably necessary to cure and relieve him of the effects of his July 17, 2007 injury that arose out of and in the course of his employment for Employer, except for the April 7, 2015 bills for x-rays.

I have previously found that Claimant's July 17, 2007 compensable accident while working for Employer was the prevailing factor in causing his psychological injury and resulting disability.

Employer did not pay Claimant's medical expenses incurred at the VA for which he seeks payment. The evidence documents that Claimant received the treatment for the injury that is represented by the expenses for which he seeks payment, except for the April 7, 2015 bills for x-rays. Employer offered no evidence that the charges were not fair and reasonable and usual and customary and offered no credible evidence that showed that the medical expenses incurred were not related to the injury in question.

Employer offered no evidence that Claimant was not required to pay the billed amounts, that his liability for the disputed amounts was extinguished, and that Claimant

has ceased to be liable to the VA for write-offs and fee adjustments. I find Employer failed to prove that Claimant was not required to pay the billed amounts, failed to prove that his liability for the disputed amounts was extinguished, and failed to prove that Claimant has ceased to be liable to the healthcare provider for write-offs and fee adjustments.

I find and conclude that Claimant met his burden of proof regarding Employer's liability for past medical expenses incurred at the VA in the sum of $7,874.54 for VA charges incurred between October 1, 2009 and October 17, 2011 and from April 4, 2013 to October 9, 2015 for treatment of his psychological condition. I find that the VA medical expenses incurred in this case during these periods for treatment of his psychological condition in the amount of $7,874.54 were fair, reasonable, and necessary expenses to cure and relieve the effects of the injury that Claimant sustained in the course of his employment on July 17, 2007 while he was working for Employer.

I find Claimant is not entitled to an award of past medical expense at the VA for the charge in the amount of $249.39 on February 19, 2008 because it was incurred while Employer was providing authorized treatment to Claimant and prior to Dr. Bhargava's April 30, 2008 Psychiatric Progress Note stating she was okay with Claimant seeing the Veterans' Administration doctor for his post traumatic stress disorder on a regular basis.

I find Claimant is not entitled to an award of past medical expenses at the VA for the charges in the total amount of $1,706.70 on April 15, 2015 for x-rays because Claimant did not offer convincing proof those charges were reasonably required to cure or relieve Claimant from the effects of the work injury or that those services were rendered for treatment of the product of Claimant's work injury.

I find and conclude that the medical bills incurred at the VA to treat Claimant's July 17, 2007 injury in the total amount of $7,874.54 for charges incurred between October 1, 2009 and October 17, 2011, and from April 4, 2013 to October 9, 2015 should be paid by Employer. I award Claimant the sum of $7,874.54 against Employer for these past VA medical expenses.

8. What is Employer's liability, if any, for out-of-pocket expenses?

Claimant requests reimbursement of out-of-pocket expenses described in Exhibit S.

Section 287.140.1 provides in part:

> 287.140. 1. In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall

> provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance *and medicines*, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. (Emphasis added).

Section 287.020, RSMo provides in part:

> 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.
> (5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, *eyeglasses*, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. (Emphasis added).

Mrs. Reynolds identified Exhibit S, a two-page list of out-of-pocket expenses paid for care and treatment of Claimant regarding the July 17, 2007 accident. Exhibit S totals $853.48.[8] All but five of the items identified in Exhibit S are medications for Claimant's psychological condition. The five items that are not medications are:

Compression tape for sutured arm:	$4.30
Replaced travel bag:	$32.34
Replaced log book holder:	$17.70
Toiletries replaced:	$49.10
Prescription glasses:	$118.00

Mrs. Reynolds testified there was no reimbursement for those expenses. I find the medications described in Exhibit S were reasonable and necessary to cure and relieve Claimant of the effects of the July 17, 2007 injury, and the charges were fair and reasonable. I also find that the amounts paid for compression tape for sutured arm and prescription glasses were reasonable and necessary and are properly compensable and should be paid. I find Claimant has not shown that he is entitled to an award for travel

[8] Exhibit S recites an incorrect total of $853.47 instead of $853.48.

bag, log book holder, or toiletries replaced, and I deny his request for reimbursement for those items.

I find Claimant is entitled to an award of past unpaid out-of-pocket expenses in the amount of $754.33. I award the sum of $754.33 in favor of Claimant and against Employer for unpaid out-of-pocket expenses.

9. What is Employer's liability, if any, for medical mileage?

Claimant requests an award for past medical mileage. Exhibit R is a list of medical mileage for trips to Behavioral Health and the VA in West Plains for Claimant's treatment. Mrs. Reynolds testified it is fifty miles from her home to Behavior Health round trip and fifty miles to the VA from Claimant's home round trip. I find this testimony is credible, and I find it is fifty miles from Claimant's home to Behavior Health round trip and fifty miles to the VA from Claimant's home round trip.

Section 287.140.1, RSMo provides in part: "When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses. . . ."

The Court takes notice that the following mileage reimbursement rates were in effect in Missouri Workers' Compensation cases during the following times:

2007-2008	45.5¢	7/01/07 – 6/30/08
2008-2009	47.5	7/01/08 – 6/30/09
2009	50.0	7/01/09 – 12/31/09
2010	47.0	1/01/10 – 2/31/10
2010	42.0	4/01/10 – 6/30/10
2010-2011	48.5	7/01/10 – 6/30/11
2011-2012	48.0	7/1/11 – 6/30/12
2012-2013	52.5	7/1/12 – 6/30/13
2013-2014	53.5	7/1/13—6/30/14
2014-2015	53.0	7/1/14—6/30/15
2015-2016	54.5	7/1/15—6/30/16

Claimant requests reimbursement for mileage described in Exhibit R:[9]

[9] Exhibit R contains an incorrect mileage reimbursement rate of 41.5 cents per mile instead of the correct 45.5 cents per mile rate, for the periods July 26, 2007 through April

2007 – 2013 Trips to Behavioral Health Clinic, West Plains, MO – 50 miles round trip

07-26-07
08-10-07
08-16-07
08-23-07
09-04-07
09-17-07
09-19-07
10-19-07
12-11-07
01-31-08
04-30-08

550 MILES at 45.5 cents per mile = $250.25

09-11-08
02-02-09
05-01-09

150 MILES at 47.5 cents per mile = $71.25

08-18-11
09-02-11
10-10-11
11-21-11
11-23-11
01-20-12
02-06-12
02-21-12
03-19-12
05-04-12
05-14-12

550 MILES at 48 cents per mile = $264.00

08-03-12
11-09-12
02-08-13
03-11-13

30, 2008 for trips to Behavioral Health and February 21, 2008 through May 15, 2008 for trips to the VA.

200 MILES at 52.5 cents per mile = $105.00

2008 -2015 Trips to VA Clinic, West Plains, MO – 50 miles round trip

02-21-08
03-19-08
05-15-08

150 MILES at 45.5 cents per mile = $68.25

08-11-08
03-18-09

100 MILES at 47.5 cents per mile = $47.50

07-17-09
10-01-09

100 MILES at 50 cents per mile = $50.00

01-28-10

50 MILES at 47 cents per mile = $23.50

05-28-10

50 MILES at 42 cents per mile = $21.00

09-28-10
06-02-11

100 MILES at 48.5 cents per mile = $48.50

10-17-11

50 MILES at 48 cents per mile = $24.00

04-05-13
04-09-13
06-10-13

150 MILES at 52.5 cents per mile = $78.75

10-10-13
02-10-14

100 MILES at 53.5 cents per mile = $53.50

09-04-14
09-30-14

02-12-15
05-12-15
06-04-15[10]

250 MILES at 53 cents per mile = $132.50

10-09-15

50 MILES at 54.5 cents per mile = $27.25

Mrs. Reynolds testified she drove Claimant to his doctor's appointments and evaluations. I find this testimony is credible. The medical records in evidence confirm that Claimant attended medical appointments at Behavioral Health and the VA on the dates set forth above. I find Claimant attended these appointments for necessary medical treatment for Claimant's July 17, 2007 injury, except for the appointment on June 4, 2015. I find Claimant is entitled to be reimbursed medical mileage for the trips described above, except for the appointment on June 4, 2015. Based on the mileage rates in effect at the times the miles described above were traveled, Claimant is entitled to an award of $1,238.75 for medical mileage reimbursement. I award Claimant the sum of $1,238.75 from Employer for unpaid past medical mileage.

10. What is Employer's liability, if any, for future medical aid to cure and relieve the effects of the work injury, including nursing services?

Claimant requests an award of additional medical aid. Section 287.140, RSMo requires that the employer/insurer provide "such medical, surgical, chiropractic, and hospital treatment ... as may reasonably be required ... to cure and relieve [the employee] from the effects of the injury." This has been held to mean that the worker is entitled to treatment that gives comfort or relieves even though restoration to soundness [a cure] is beyond avail. *Greer v. SYSCO Food Servs.*, -- S.W.3d --, 2015 WL 8242710 (Mo banc 2015); *Bowers v. Hiland Dairy Co.*, 132 S.W.3d 260, 266 (Mo.App. 2004). Medical aid is a component of the compensation due an injured worker under Section 287.140.1, RSMo. *Bowers,* 132 S.W.3d at 266; *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo.App. 1996). The employee must prove beyond speculation and by competent and substantial evidence that his or her work related injury is in need of treatment. *Williams v. A.B. Chance Co.*, 676 S.W.2d 1 (Mo.App. 1984). Conclusive evidence is not required. *Farmer v. Advanced Circuitry Division of Litton*, 257 S.W.3d

[10] The medical records in evidence note Claimant received treatment for his right hip on June 4, 2015. There is no record he received treatment on June 4, 2015 for his psychological condition. I find Claimant did not offer convincing proof the treatment he received on June 4, 2015 for his hip was reasonably required to cure or relieve him from the effects of the July 17, 2007 work injury or that those services were rendered for treatment of the product of his work injury.

192, 197 (Mo. App. 2008); *Bowers*, 132 S.W.3d at 270; *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo.App. 1997).

The Missouri Supreme Court in *Greer,* -- S.W.3d --, 2015 WL 8242710 states:

> Greer need not present "conclusive evidence" that future medical treatment is needed to be entitled to an award of future medical benefits. *Null v. New Haven Care Ctr., Inc.*, 425 S.W.3d 172, 180 (Mo.App.E.D.2014). Instead, Greer needs only to show a reasonable probability that the future treatment is necessary because of his work-related injury. Id. Future medical care should not be denied simply because an employee may have achieved maximum medical improvement. *Pennewell v. Hannibal Reg'l Hosp.*, 390 S.W.3d 919, 926 (Mo.App.E.D.2013).

It is sufficient if Claimant shows by reasonable probability that he or she is in need of additional medical treatment. *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511, 524 (Mo.App. 2011); *Farmer*, 257 S.W.3d at 197; *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 53 (Mo. App. 2007); *Bowers*, 132 S.W.3d at 270; *Mathia*, 929 S.W.2d at 277; *Downing v. Willamette Industries, Inc.,* 895 S.W.2d 650, 655 (Mo.App. 1995); *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo.App. 1995). "Probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Tate v. Southwestern Bell Telephone Co.,* 715 S.W.2d 326, 329 (Mo.App. 1986); *Sifferman* at 828. Section 287.140.1, RSMo does not require that the medical evidence identify particular procedures or treatments to be performed or administered. *Tillotson,* 347 S.W.3d 525*; Forshee v. Landmark Excavating & Equipment*, 165 S.W.3d 533, 538 (Mo. App. 2005); *Talley v. Runny Meade Estates, Ltd.*, 831 S.W.2d 692, 695 (Mo.App. 1992); *Bradshaw v. Brown Shoe Co.*, 660 S.W.2d 390, 394 (Mo.App. 1983).

The type of treatment authorized can be for relief from the effects of the injury even if the condition is not expected to improve. *Farmer*, 257 S.W.3d at 197; *Bowers*, 132 S.W.3d at 266; *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 248 (Mo.banc 2003). Future medical care must flow from the accident, via evidence of a medical causal relationship between the condition and the compensable injury, if the employer is to be held responsible. *Bowers v. Hiland Dairy Co.,* 188 S.W.3d 79, 83 (Mo.App. 2006). Once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury. *Id; Tillotson*, 47 S.W.3d 519.

The court in *Tillotson* states at 347 S.W.3d 519:

> The existing case law at the time of the 2005 amendments to The Workers' Compensation Law instructs that in determining whether medical treatment is "reasonably required" to cure or relieve a compensable injury, it is immaterial that the treatment may have been required because of the complication of pre-existing conditions, or that the treatment will benefit both the compensable injury and a pre-existing condition. *Bowers v. Hiland Dairy Co.,* 188 S.W.3d 79, 83 (Mo.App. S.D.2006). Rather, once it is determined that there has been a compensable accident, a claimant need only prove that the need for treatment and medication flow from the work injury. *Id.* The fact that the medication or treatment may also benefit a non-compensable or earlier injury or condition is irrelevant. *Id.*

The court in *Tillotson* states at 347 S.W.3d 524:

> To receive an award of future medical benefits, a claimant need not show 'conclusive evidence' of a need for future medical treatment." *Stevens,* 244 S.W.3d at 237 (quoting *ABB Power T & D Co. v. Kempker,* 236 S.W.3d 43, 52 (Mo.App.W.D.2007)). "Instead, a claimant need only show a 'reasonable probability' that, because of her work-related injury, future medical treatment will be necessary. A claimant need not show evidence of the specific nature of the treatment required. *Id.*

The court in *Tillotson* also states at 525:

> In summary, we conclude that once the Commission found that Tillotson suffered a compensable injury, the Commission was required to award her compensation for medical care and treatment reasonably required to cure and relieve her compensable injury, and for the disabilities and future medical care naturally flowing from the reasonably required medical treatment.

Claimant has continuing and ongoing psychological symptoms and complaints. His psychological injury is permanent. The evidence demonstrates he has continued to receive treatment at the VA, and has continued to have prescriptions filled for his psychological condition caused by the work accident.

Dr. Butts testified Claimant is going to have to have nursing services for the rest of his life. Victoria Powell testified Claimant needs nursing care, "And if it were not for Ms. Reynolds, he would have to have hired caregivers."

The evidence supports the conclusion that Claimant will continue to need treatment in the future to treat his injury, including visits to the VA for check-ups and medication refills. He will continue to need assistance putting out his medication and going to medical appointments. If Mrs. Reynolds is not available to provide assistance for him, he will need someone else to provide nursing care for him.

Based on competent and substantial evidence and the application of the Missouri Workers' Compensation Law, I find Claimant will need additional medical aid, including nursing care, to cure and relieve him from the effects of his July 17, 2007 compensable injury.

Employer is directed to authorize and furnish additional medical treatment, including nursing care, to cure and relieve Claimant from the effects of his July 17, 2007 injury, in accordance with section 287.140, RSMo.

Prior Discovery Orders

In its post-hearing brief, Employer requests the Court to revisit the issue raised in Employer's Motions to Compel Medical Evaluations and stay or reopen evidence in the matter to allow for additional medical evidence necessary to defend the claim.

The Court notes a hearing was held on December 11, 2015 on Employer, Wilcox Truck Line, Inc.'s Motion to Compel a Medical Evaluation Pursuant to 287.210.1 RSMo filed on December 10, 2015, and Employee's Response to the Motion filed on December 10, 2015. Exhibit V contains the transcript of the hearing held on December 11, 2015 with hearing exhibits.

In its Motion filed on December 19, 2015, Employer requested this Court compel Claimant attend a comprehensive neuropsychological assessment with Dr. Dale Halfaker. Employer's Motion states that initially Employer and Insurer planned to obtain a report only from Dr. Halfaker, but after evaluating the medical records and testing results performed by Dr. Butts, Dr. Halfaker found the testing performed by Dr. Butts insufficient to allow him to accurately assess Claimant's medical condition. Employer states in its Motion that Dr. Halfaker has stated that the testing he would administer is not duplicative of the testing performed by Dr. Butts and that Dr. Halfaker is willing to do testing on two separate days in Mountain Grove to accommodate Claimant.

Claimant's Response to Employer's Motion to Compel notes that Dr. Halfaker's October 20, 2015 report estimates the time required to complete the neuropsychological battery of tests would be between six and eight hours.

Claimant alleged that the proposed comprehensive psychological evaluation by Dr. Halfaker is unreasonable and presents a clear and present danger to Claimant's health and well-being and that there are justifiable reasons for Claimant's refusal to appear for Employer's proposed evaluation.

Evidence was heard at the December 11, 2015 hearing, and on December 31, 2015, as noted in Exhibit V, the Court found and concluded there was credible and persuasive evidence justifying Claimant's refusal to undergo a comprehensive neuropsychological evaluation by Dr. Dale Halfaker as requested by Employer. The Court further found and concluded that the requested medical evaluation of Dr. Dale Halfaker was not a reasonable examination under Section 287.210.1, RSMo. The Court found that Dr. Butts's opinions were more persuasive than the opinions of Dr. Halfaker regarding whether the testing and evaluation proposed to be done by Dr. Halfaker would endanger Claimant. The Court found and concluded that the proposed testing and evaluation of Dr. Halfaker would be traumatic to Claimant and would endanger him.

The Court's December 31, 2015 Order states in part: "For the foregoing reasons, I deny Employer's Motion to Compel a Medical Evaluation Pursuant to 287.210.1, RSMo. I further find and conclude that Claimant's refusal to submit to the proposed examination of Dr. Halfaker was justified, and that Claimant's right to compensation for his refusal to submit to the examination shall not be forfeited."

No appeal was taken from this December 31, 2015 Order.

The Court also notes a hearing was held on January 28, 2016 on Employer, Wilcox Truck Line, Inc.'s Motion to Compel a Medical Evaluation Pursuant to 287.210.1 RSMo filed on January 26, 2016, and Employee's Response to the Motion filed on January 27, 2016. Exhibit V contains the transcript of the hearing held on January 28, 2016 with hearing exhibits.

In its January 26, 2016 Motion to Compel a Medical Evaluation, Employer requested this Court compel Claimant attend an evaluation with Dr. Dale Halfaker, PhD not to exceed two hours. Employer's January 26, 2016 Motion states the evaluation would consist of a clinical interview to update the Doctor's information about Claimant's current situation and symptoms, a brief interview with Claimant's wife, and a standard mental status evaluation that would typically take less than ten minutes.

Claimant's Response to Employer's January 26, 2016 Motion to Compel a Medical Evaluation asserts that Employer's request to compel the psychological examination was an unreasonable burden on Claimant and was not crucial to Employer's defense, that the Division does not have statutory authority to order an examination of Claimant by Dr.

Halfaker, a neuropsychologist, and that costs should be assessed against Employer under section 287.560, RSMo for bringing the January 26, 2016 Motion.

Evidence was heard at the January 28, 2016 hearing, and on February 22, 2016, the Court entered an Order that states in part: "For the foregoing reasons, I deny Employer's Motion to Compel a Medical Evaluation Pursuant to 287.210.1, RSMo filed on January 26, 2016. I further find and conclude that Claimant's refusal to submit to the proposed one-to-two hour examination of Dr. Halfaker was justified, and that Claimant's right to compensation for his refusal to submit to the examination shall not be forfeited. I further find and conclude I do not have authority to order Claimant to submit to examination by Dr. Halfaker, a non-physician neuropsychologist. I further deny Claimant's request for costs under section 287.560, RSMo."

No appeal was taken from this February 22, 2016 Order.

Employer's request in its post-hearing brief that the Court revisit the issue raised in Employer's Motions to Compel Medical Evaluations and stay or reopen evidence in the matter to allow for additional medical evidence necessary to defend the claim is denied.

Claimant's objections to Dr. Halfaker's testimony.

Claimant has objected to the admission of parts of Dr. Halfaker's testimony on the basis that it violates section 287.210, RSMo.

Claimant noted objections in the deposition of Dale A. Halfaker, Ph.D. objections to his testimony based upon the "Seven-Day Rule" as set forth in Sections 287.210.3 and 287.140.6, RSMo. Claimant objected to the following testimony by Dale A. Halfaker, Ph.D.:

1. Page 39, Lines 17-25
2. Page 40, Lines 1-18
3. Page 41, Lines 7-25
4. Page 42, Lines 1-25
5. Page 43, Lines 1-3, 13-25
6. Page 44, Lines 1-7, 10-22
7. Page 45, Lines 1, 4, 7-12, 15-25
8. Page 46, Lines 6, 11-16
9. Page 47, Line 11
10. Page 48, Lines 1-12, 22-25
11. Page 49, Lines 21-25
12. Page 50, Lines 1-9
13. Page 51, Lines 23-25

14. Page 52, Lines 4-12, 14-21
15. Page 55, Lines 7-14, 23-25
16. Page 56, Lines 1-3, 7, 18-25
17. Page 57, Lines 1-5

Section 287.210.3, RSMo. provides, in part:

> **287.210. Physical examination of employee--exchange of medical records--admissibility of physician's, coroner's records--autopsy may be ordered.**
> ****
> 3. The testimony of any physician who treated or examined the injured employee shall be admissible in evidence in any proceedings for compensation under this chapter, but only if the medical report of the physician has been made available to all parties as in this section provided. Immediately upon receipt of notice from the division or the commission setting a date for hearing of a case in which the nature and extent of an employee's disability is to be determined, the parties or their attorneys shall arrange, without charge or costs, each to the other, for an exchange of all medical reports, including those made both by treating and examining physician or physicians, to the end that the parties may be commonly informed of all medical findings and opinions. The exchange of medical reports shall be made at least seven days before the date set for the hearing and failure of any party to comply may be grounds for asking for and receiving a continuance, upon proper showing by the party to whom the medical reports were not furnished. If any party fails or refuses to furnish the opposing party with the medical report of the treating or examining physician at least seven days before such physician's deposition or personal testimony at the hearing, as in this section provided, upon the objection of the party who was not provided with the medical report, the physician shall not be permitted to testify at that hearing or by medical deposition.

Claimant asserts the "Seven-Day Rule" applies to this deposition testimony and cites *Lane v. Schreiber Foods*, 903 S.W.2d 616, 618-619 (Mo. App. 1995) in support of his position. The *Lane* Court held in part:

> The report required to be given to adversary parties in workers' compensation cases must include the "patient's history, complaints, details of the findings of any and all laboratory, X-ray and all other technical examinations, diagnosis, prognosis, nature of disability, if

> any, and an estimate of the percentage of permanent partial disability, if any." § 287.210.5. A report that is incomplete warrants disallowance of the doctor's testimony about the excluded matter although the doctor is allowed to testify as to matters included in the report. *Johnson v. Park N Shop,* 446 S.W.2d 182, 187 (Mo.App.1969).

I find that section 287.210, RSMo does not apply to Dr. Halfaker's deposition because Dr. Halfaker is not a medical doctor. I find the *Lane* case is not controlling in the case at hand.

Section 287.210.1, RSMo expressly grants certain parties, including Employer, the right to have physician-conducted medical examination of Employee. These examinations must be by physicians as defined in Chapter 334, RSMo. *State ex rel. Kerns v. Cain,* 8 S.W.3d 212, 216 (Mo. App. 1999).

The Missouri Supreme Court stated in *Greer v. SYSCO Food Servs.,* 475 S.W.3d 655 (Mo. banc 2015) at 666:

> 'Workers' compensation law is entirely a creature of statute, and when interpreting the law the court must ascertain the intent of the legislature by considering the plain and ordinary meaning of the terms and give effect to that intent if possible.' *Templemire v. W & M Welding, Inc.,* 433 S.W.3d 371, 381 (Mo. banc 2014) (quoting *Greenlee v. Dukes Plastering Serv.,* 75 S.W.3d 273, 276 (Mo. banc 2002)). If a statute's language is unambiguous, this Court "must give effect to the legislature's chosen language." *State ex rel. Young v. Wood,* 254 S.W.3d 871, 873 (Mo. banc 2008). Only when the language is ambiguous will the Court resort to other rules of statutory construction. *Goerlitz v. City of Maryville,* 333 S.W.3d 450, 455 (Mo. banc 2011). 'There is no need to resort to statutory construction to create an ambiguity where none exists.' *State v. Moore,* 303 S.W.3d 515, 521 (Mo. banc 2010).[2]
>
> 2
> This Court recognizes section 287.800.1 requires that all workers' compensation statutes are to be construed strictly. However, this Court need only apply strict construction when the statute's language is ambiguous and this Court requires guidance in ascertaining the legislature's intent. Here, section 287.149's plain and ordinary meaning is apparent, and the requirement that the statute be construed strictly does not affect the analysis.

The Court in *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823 (Mo.App. 2009) states at 828:

> '[A] strict construction of a statute presumes nothing that is not expressed.' 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008). The rule of strict construction does not mean that the statute shall be construed in a narrow or stingy manner, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used. 82 C.J.S. *Statutes* § 376 (1999). Moreover, a strict construction confines the operation of the statute to matters affirmatively pointed out by its terms, and to cases which fall fairly within its letter. 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008). The clear, plain, obvious, or natural import of the language should be used, and the statutes should not be applied to situations or parties not fairly or clearly within its provisions. 3 SUTHERLAND STATUTORY CONSTRUCTION § 58:2 (6th ed. 2008).

The Court in *Allcorn,* 277 S.W.3d states at 829: "Where strict construction is required, the court should not enlarge or extend the law, and only the clear, plain, obvious, or natural import of the language should be used. 3 Sutherland Statutory Construction § 58:2 (6th ed. 2008)."

Whether the Division can compel Employee to submit to a neuropsychological examination was specifically addressed in an action in prohibition in *State ex rel. Kerns v. Cain*, 8 S.W.3d 212, 216 (Mo. App. 1999) where the appellate court stated:

> The workers' compensation statute expressly grants certain parties the right to have a physician conduct a medical examination of the claimant. The statute does not, however, allow for any examination of the claimant by a nonmedical person. "[Q]uasi-judicial bodies such as the Division of Workers' Compensation are confined to the powers specifically granted them by statute." *State ex rel. River Cement Co. v. Pepple,* 585 S.W.2d 122, 124 (Mo.App.1979); *See also Ringeisen v. Insulation Services, Inc.,* 539 S.W.2d 621, 627 (Mo.App.1976) (the referee, as the ALJ was then called, derives power from the legislature and has limited rather than general jurisdiction). Within limitations discussed under point III, the ALJ in a workers' compensation case has authority to order medical examinations only. These examinations must be by physicians as defined in Chapter 334.

The court in *Kerns* held at 216: "Disposition of the instant matter is governed by *Lakeman* and *Arnett*. A neuropsychologist is not a physician licensed under Chapter 334 'or the state board of registration for the healing arts in the state of Missouri." §334.021. Accordingly, the ALJ exceeded his authority and jurisdiction by ordering Kerns to submit to an evaluation by a non-physician neuropsychologist.'"

The case of *Lutes v. Schaefer*, 431 S.W.3d 550 (Mo. App. 2014) involved the right of an employer to obtain a vocational rehabilitation assessment under the 2005 amendment to section 287.143 RSMo. Section 287.143, RSMo (2005) provides:

> 287.143. As a guide to the interpretation and application of sections 287.144 to 287.149, sections 287.144 to 287.149 shall not be construed to require the employer to provide vocational rehabilitation to a severely injured employee. An employee shall submit to appropriate vocational testing and a vocational rehabilitation assessment scheduled by an employer or its insurer.

Lutes did not reverse *Kerns*. The logic and principle set forth in the *Kerns* case regarding examination by a neuropsychologist remains intact and is still good law. No Missouri statute has been enacted authorizing an employer to obtain an examination by a non-physician neuropsychologist in a workers' compensation case.

Dr. Halfaker is a non-physician neuropsychologist. He is not a medical doctor. I find and conclude that section 287.210, RSMo does not apply to Dr. Halfaker's deposition because he is not a medical doctor.

Claimant's objections to Dr. Halfaker's deposition are also overruled for the reasons that Claimant's counsel cross examined Dr. Halfaker and did not schedule further cross examination or request a continuance of the final hearing.

The Court in *Sprung v. Interior Const. Service,* 752 S.W.2d 354 (Mo.App. 1988) states at 357-358:

> When a party does not receive a physician's report, medical report, or complete medical report before deposition, it would appear that the party has at least two options. First, as was done here, the party can cross examine the physician immediately following direct examination. If during the deposition, this party decides that further cross-examination is necessary, he is free to schedule further cross-examination. The second option would be to postpone all cross-examination until he has had an opportunity to review the testimony and prepare for cross-examination. Under either of these options, the

> party "not at fault" would be (1) "informed of all medical findings and opinions" and (2) able to prepare for cross-examination. Such procedure protects the rights of that party.
>
> [4] In this case, even assuming that a proper medical report was required to be given seven days before Dr. McFadden's deposition, we fail to see how Interior was prejudiced by Sprung's failure. Dr. McFadden's deposition was taken on September 5, 1985, and the cross-examination of him by Interior consumes 30 pages of testimony. Although the hearing before the administrative law judge was originally scheduled for September 25, 1985, it was not held until April 3, 1986. The record does not disclose any efforts made by Interior to further cross-examine Dr. McFadden or to seek a continuance of the hearing. Rather, the record reflects that the only relief sought by Interior was total exclusion of the deposition. In view of the seven months between the taking of the deposition and its receipt in evidence, we are unable to say that Interior sustained prejudice as a result of the failure to obtain a complete medical report seven days before the deposition. Therefore, Dr. McFadden's testimony could be considered by the administrative law judge and the Commission.

I find Claimant's objections to these portions of Dr. Halfaker's deposition should be overruled, and they are hereby overruled.

Dependency of Betty Reynolds

I find and conclude that Claimant's wife, Betty Reynolds, was married to Claimant at the time of his July 17, 2007 accident and that she had been married to him continuously from the July 17, 2007 accident to the date of the final hearing on March 16, 2016. I find and conclude that Betty Reynolds was a total dependent of Claimant at the time of his July 17, 2007 accident, and has been totally dependent upon him continuously from the July 17, 2007 accident to the date of the final hearing on March 16, 2016.

Attorney's Fees

Claimant's attorney is entitled to a fair and reasonable fee in accordance with Section 287.260, RSMo. *Page v. Green*, 758 S.W.2d 173, 176 (Mo.App. 1988). During the hearing, Claimant's attorney requested a fee of 25% of all benefits to be awarded. I find Claimant's attorney's services rendered to Claimant were fair, reasonable, and necessary. I find Claimant's attorney is entitled to and is awarded an attorney's fee of 25% of all amounts awarded for his legal services rendered to Claimant. The

compensation awarded to 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 Claimant: William D. Powell.

I certify that on 5-9-17 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: Robert B. Miner

Robert B. Miner
Administrative Law Judge
Division of Workers' Compensation

DIVISION OF WORKERS' COMPENSATION
DEPARTMENT OF LABOR
INDUSTRIAL RELATIONS