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

Injury No.: 11-058211

Employee: Thomas Miles

Dependent: Sharon Miles

Employer: Fred Weber

Insurer: Fred Weber, Inc.

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

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, listened to 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, modifications and clarifications set forth below.

Preliminaries
The parties asked the administrative law judge to determine the following issues: (1) whether employee sustained an accident arising out of and in the course of his employment; (2) whether employee's injury was medically causally related to the accident; (3) whether employer was liable for past medical expenses in the amount of $44,812.48; (4) whether employer was liable for temporary total disability from July 25, 2011 through July 29, 2011; (5) the nature and extent of any permanent disability; and (6) whether there is any liability against the Second Injury Fund.

The administrative law judge determined as follows: (1) employee sustained a work-related accident on July 22, 2011, that arose out of and in the course of his employment; (2) employee's heat exhaustion and dehydration suffered on July 22, 2011, was medically causally related to employee's accident; (3) employer is not ordered to pay the medical bills that employee incurred in the amount of $44,812.48; (4) no temporary total disability was awarded; (5) employee sustained a 5% permanent partial disability to the body as a whole at the 20-week level as a result of the dehydration and heat exhaustion sustained while working; and (6) there is no liability for the Second Injury Fund.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred in ruling that: (1) employer was not liable for certain reasonable and necessary medical treatment costs; (2) that employee was not entitled to temporary total disability; (3) that employee is not permanently totally disabled; and (4) that there is no Second Injury Fund liability.

For the reasons stated below, we modify the award and decision of the administrative law judge referable only on the issue of temporary total disability. We additionally supplement the administrative law judge's decision with respect to the issues of medical causation and past medical expenses.

Discussion

Employee is entitled to temporary total disability benefits.

The parties stipulated that if employee was found to have sustained a work injury, the agreed amount of temporary total disability benefits was the amount of $231.92. Although the administrative law judge found employee had sustained a work injury, he did not award any temporary total disability benefits.

The rules of the Department of Labor and Industrial Relations, in particular, 8 CSR 50-2.010(14), provide: " ... Prior to hearing, the parties shall stipulate uncontested facts and present evidence only on contested issues." It is well established that stipulations are controlling and conclusive, and the courts are bound to enforce them. *Boyer v. Nat'l Express Co.*, 49 S.W.3d 700, 705 (Mo. App. 2001). The administrative law judge and the Commission are limited to deciding only those issues in contention. The parties stipulated to a nominal figure of $231.92 for what appears to be a brief period of temporary total disability following the work injury. This was negotiated by the parties prior to hearing and as further discussed at the hearing. We conclude the record supports a finding that temporary total disability benefits are warranted as agreed in the parties' stipulation.

We modify the award to include temporary total disability (TTD) benefits in the amount of $231.92.

Medical Causation

Section 287.020. RSMo provides in relevant part:

> 3. . . . 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. (emphasis in original)

Employee has proven his exposure to excessive heat at work on Friday, July 22, 2011, was the prevailing factor in causing a single episode of heat exhaustion. After that episode, employee travelled home, stopping at an event along the way. Later that day, he had an episode which required medical attention and he was air-lifted to the hospital. Because employee had a history of cardiac problems, he was attended by his private cardiologist at the hospital. Employee was released from the hospital on Monday, July 25, 2011, with a final diagnosis of dehydration and renal failure (resolved). On July 29, 2011, employer's doctor, Cynthia Byler, authorized employee to return to work. He was cleared to return to work by his cardiologist as of Monday, August 1, 2011.

We note the administrative law judge found employee at maximum medical improvement (MMI) after leaving the worksite. We understand this reference to MMI[1] by the administrative law judge as a finding that employee did not prove any of the subsequent injurious events of that day were caused by his accident.

---

[1] Technically speaking, however, the concept of MMI is to assist the fact-finder in determining when permanent disability for an injury may be assessed and when TTD benefits should cease. *Cardwell v Treasurer, State of MO,* 249 S.W. 3d. 902, 910 (Mo. App. E.D. 2008) Because the parties stipulated to the TTD benefits, we do not address the MMI date further, but note the return to work dates authorized by employer's doctor (Cynthia Byler) and employee's cardiologist, on July 29, 2011 and August 1, 2011, respectively.

We agree with the administrative law judge's finding that employee suffered a work injury on July 22, 2011, in the nature of heat exhaustion, and that some residual effects of that event resulted in a limited permanent partial disability in the nature of 5% to the body as a whole. His exposure to excessive heat at work on that day caused an unusual strain, resulting in objective symptoms of heat exhaustion secondary to dehydration. This event was the prevailing factor in causing the medical condition and disability of ongoing heat intolerance in excessive temperatures.

We agree with the administrative law judge's analysis that the subsequent events of that day were intervening injurious events which broke the causation chain resulting from the work injury. The administrative law judge ruled that employee did not prove that his work injury caused him to sustain posttraumatic stress disorder or other psychological or neurological disorder. In explaining his reasoning, the administrative law judge cited the "two hours of work activities on July 22, 2011," *Award,* page 11, which led up to his heat exhaustion event. The administrative law judge was inaccurate in reciting the employee's theory of recovery on these aspects.

The employee's theory of recovery on this aspect is not as narrowly framed by the administrative law judge. The employee asserts that the causal factor for psychological injury, was that in the course of treatment after heat exhaustion at work, employee had a life threatening experience when treated by paramedics later in the day. We wish to make clear that we understand employee's theory, however, we are not persuaded for the reasons stated herein.

The administrative law judge correctly concluded that the reported conditions of posttraumatic stress disorder, anxiety, depression and evidence of dementia, were not proven to have arisen out of and in the course of the employment. We agree the credible evidence did not support the claim that employee had a permanent psychological or neurological disability arising out of and in the course of the employment. These claimed injuries did not flow from the work injury of heat exhaustion. In so finding, we adopt the administrative law judge's conclusions that Dr. Jay Liss, was not persuasive in his opinion, for the reasons identified by the administrative law judge. Furthermore, no objective evidence was identified to support the doctor's conclusions. In rendering his initial opinions he did not rely on any objective testing such as the Minnesota Multiphasic Personality Inventory (MMPI).[2] This further undermined his opinion, as compared with Dr. Michael Oliveri's more thorough review and evaluation, which included this and other testing.

Past Medical Expenses

Finally, we note the administrative law judge's ruling at page 11 of the Award that "...claimant's heat exposure at work was not the prevailing factor in his need for medical treatment upon or after his arrival in Iron City on the afternoon of July 22, 2011..." We discern a need to clarify that ruling to more precisely state the law with regard to whether medical expenses are recoverable.

Section 287.140 RSMo provides for compensation for such medical care "as may reasonably be required after the injury . . . to cure and relieve from the effects of the injury." Therefore, employee must only prove the compensation for treatment, as described by the Act, was *reasonably required* to cure and relieve the effects of the single heat exhaustion episode earlier in the day. Employee is not required to show the work injury was the *prevailing factor* prompting the extended medical treatment. Once a compensable injury is found, (in this case heat exhaustion), we next turn to the calculation of the extent of compensation, including payment of medical treatment under § 287.140, and other provisions of the statute. As clearly stated in

[2] We refer to the MMPI, a widely recognized psychological testing process with established criteria for evaluation of psychological conditions.

Tillotson v. St. Joseph Medical Center, "each of these statutes presumes that the prevailing factor test described in section 287.020.3(1) has already been applied to permit the conclusion that a compensable injury has occurred." *Tillotson v. St. Joseph Medical Center*, 347 S.W. 3d 511, 517 (Mo. App. W.D. 2011). Therefore, the appropriate inquiry is not whether the work injury was the *prevailing factor* resulting in the subsequent medical treatment, but whether the treatment was *reasonably required to cure and relieve* the effects of the compensable injury.

We conclude employee has not proven that the subsequent medical treatment "upon or after his arrival in Iron City on the afternoon of July 22, 2011..." (*Award,* page 11) or any subsequent medical treatment after he left work that day, was reasonably required to cure and relieve the effects of the single episode of heat exhaustion suffered early in the day on July 22, 2011, at the worksite.

Conclusion

We modify the award of the administrative law judge only as to the issue of temporary total disability. We further supplement the Award relative to the reasoning on the issues of Medical Causation and Past Medical Expenses.

Employee is entitled to, and employer is hereby ordered to pay, temporary total disability benefits in the amount of $231.92.

The award and decision of Administrative Law Judge Lorne J. Baker 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 30th day of January 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Robert W. Cornejo, Chairman

Reid K. Forrester, Member

SEPARATE OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

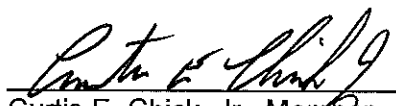
Secretary

SEPARATE OPINION
CONCURRING IN PART, DISSENTING IN PART

The majority has voted to modify the Award of the administrative law judge to order the allowance of temporary total disability in the amount of $231.92 to be awarded to employee, and paid by employer. I agree with this substantive modification and with the clarification of reasoning set forth in the Commission's modifying decision. I write separately to dissent as to the level of permanent partial disability.

Employee suffered heat exhaustion while working in 90 degree weather putting down black fabric before asphalt was poured on a stretch of highway. He developed nausea, fatigue, cramping and vomiting. While he was able to recover from the episode, credible medical opinion was offered that employee could suffer ongoing heat intolerance with temperatures over ninety degrees. Employee's expert, Dr. Volarich opined that employee was permanently partially disabled from both his physical and psychological injuries from the work accident, and he rated the disability at 15%.

I agree with the majority that employee has not proven any psychological or neurological injury, whether as posttraumatic stress disorder, dementia, memory problems, or other diagnosis. For that reason, the disability rating of Dr. Volarich at 15%, which includes a psychological disability is not supported by the evidence. I find the disability limited to the effects of the heat exhaustion. However, I would find that the continuing limitation on employee with regard to the need to avoid working in temperatures over 90 degrees, in light of his past episode, is a limiting factor which should be given more consideration. I would find employee's disability rating at 10%.



Curtis E. Chick, Jr., Member

AWARD

Employee: Thomas Miles

Dependents: Sharon Miles

Employer: Fred Weber

Additional Party: Second Injury Fund

Insurer: Fred Weber, Inc. c/o Gallagher Bassett Services

Hearing Date: December 12, 2017

Injury No.: 11-058211

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

Checked by: LJB

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, in part. See Award.
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: July 22, 2011
5. State location where accident occurred or occupational disease was contracted: Jefferson County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant became dehydrated and sustained heat exhaustion while working construction in temperatures around or over 100 degrees.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Body as a Whole
14. Nature and extent of any permanent disability: 5% PPD Body as a Whole
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

17. Value necessary medical aid not furnished by employer/insurer? $0.00

18. Employee's average weekly wages: $1,231.15

19. Weekly compensation rate: $811.73/$425.19

20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable: 20 weeks of permanent partial disability $8,503.80

22. Second Injury Fund liability: None

TOTAL: $8,503.80

23. Future requirements awarded: None

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

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

FINDINGS OF FACT and RULINGS OF LAW

Employee: Thomas Miles

Dependents: Sharon Miles

Employer: Fred Weber

Additional Party: Second Injury Fund

Insurer: Fred Weber, Inc. c/o Gallagher Bassett Services

Injury No.: 11-058211

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

Checked by: LJB

On December 12, 2017, a hearing was held at the Division of Workers' Compensation in St. Louis, Missouri before Administrative Law Judge Lorne J. Baker. Thomas Miles ("Claimant") was represented by Attorney Daniel Keefe. Fred Weber, Inc. ("Employer") was represented by Attorney E. Thomas Liese. The Second Injury Fund ("SIF") was represented by Assistant Attorney General David Drescher.

The parties agreed to the following: at the time of the alleged injury Claimant was an employee of Employer, Employer received proper notice, venue is proper in St. Louis, the claim for compensation was filed in the time prescribed by law, and Claimant's average weekly wage was $1,231.15 resulting in applicable compensation rates of $811.73 for total disability benefits, and $425.19 for permanent partial disability ("PPD") benefits. In addition, the parties agree if Claimant is found to have sustained a work injury, he shall be entitled to TTD in the amount of $231.92. No temporary total disability ("TTD") or medical benefits have been paid by Employer.

The following disputed issues were for determination: (1) Whether Claimant sustained an accidental injury under Missouri workers' compensation law (the "Act"); (2) Whether the alleged accident arose out of and in the course and scope of employment; (3) Whether Claimant's work was the prevailing factor in the cause of Claimant's injury; (4) The nature and extent of PPD or PTD for which Employer is responsible; (5) Employer's liability for past medical expenses incurred by Claimant, in the amount of $44,812.48; and (6) the liability of the Second Injury Fund.

Claimant's Exhibits 1-16 and 29 were admitted without objection. Claimant's Exhibits 17-28 were admitted over Employer's objection. Employer's Exhibits A-I were admitted into evidence without objection. The Second Injury Fund did not offer any exhibits.

FINDINGS OF FACT

Claimant alleges he is permanently and totally disabled as a result of acute renal failure and psychiatric disability caused by a work injury on July 22, 2011. Claimant is a 61-year-old high school graduate who lives with his wife of 40 years, Sharon Miles, in Viburnum, a small town in Iron County, Missouri. He has four adult children. Claimant was an average student, but an above-average art student. He is a member of the Local 110 labor union. As an adult, he formed his own business, a sign painting company, Miles Signs. The business involves building signs, painting trucks, pinstripe painting, making shirts, and cartoon work. He is the company's only employee, but his daughter sometimes helps him and his wife maintains the books. He and his wife own the building and live in the apartment above the sign business. Claimant worked in the mines for 8 ½ years during the 1970s and 1980s. For most of his adult life, Claimant worked as a construction laborer out of the union hall in the St. Louis area. He is now unemployed.

Prior to the date of injury, Claimant had a history of heart problems and had been diagnosed with small vessel disease, hypertension and coronary artery disease. Claimant had two myocardial infarctions in 2008 and 2009 which necessitated in interventional heart procedures each time. Claimant previously worked for Employer from August 1, 2009, through November 15, 2009, but due to heart related health conditions and construction work being slow, Claimant worked for Miles Signs but did not perform any construction work between November 16, 2009, and July 19, 2011.

On July 5, 2011, (less than three weeks prior to the date of injury) Claimant presented to Dr. William Strecker with the chief complaint of right shoulder and pain since 2010. Dr. Strecker noted Claimant's past medical history of cardiac stents, hypertension, and low back pain in the renal stones. Dr. Strecker's intake form indicates Claimant was experiencing musculoskeletal pain and weakness, that his right shoulder affected his sleep, and that his pain increased with certain activities. According to Dr. Strecker's office notes, Claimant indicated he had for at least a year pain in his hand, complained of weakness over his thenar eminence, and stated that it would jerk. Claimant described having pain in the shoulder with elevation, difficulty sleeping on his right side and waking up at night with numbness in his hand. Dr. Strecker noted Dr. John Demorlis injected Claimant's shoulder without any significant improvement. On exam, Dr. Strecker noted tenderness over Claimant's AC joint and positive impingement. Dr. Strecker found claimant may have impingement syndrome as well as carpal tunnel and wanted to obtain EMG and nerve conduction studies as well as an MRI of the shoulder at that time. The MRI of the right shoulder taken on July 12, 2011 indicated moderate supraspinatus and infraspinatus tendinopatby, mild to moderate acromioclavicular joint osteoarthritis, and a possible moderate superior labral tear.

Claimant returned to his work for Employer doing blacktop work as a construction laborer on August 1, 2011, and worked continuously until August 21, 2011 when he was laid off or not called back. His job duties during this time included shoveling, checking temperature on the asphalt and directing traffic. Claimant subsequently worked for other construction contractors, including Paul Logan for several months in 2012, and he was still a member of Local 110 at the time of his deposition on April 23, 2014. As of that date, Claimant had been working approximately 30 hours per week for Miles Signs and was also looking for other jobs as well. He also stated his sign business was pretty busy but it did not pay for health insurance and that he did construction work to obtain health insurance and other benefits. At his deposition,

Claimant testified he would accept a full-time construction job if offered to him, but was worried whether or not he could perform the work because of his memory loss. At the hearing, Claimant testified that he has retired from construction work.

He began working with Employer as a construction laborer again on July 19, 2011.[1] On that date, Claimant drove his pickup truck from his home in Viburnum to work on concrete sidewalk projects in St. Peters, Missouri. The drive time from his home to the job site was approximately two hours and ten minutes. He did not use the air conditioning in his truck even though the outside temperature was very hot. His work began at 7:00 a.m. and he spent the day shoveling concrete and setting forms for the sidewalks. He stopped working sometime around 1:30 and 2:00 p.m. The hot weather did not have an ill effect on him. He stayed overnight at his brother's residence in St. Peters and returned to the same jobsite on July 20th.

Claimant performed the same job duties in the hot weather the next day, July 20th, and again drove back to his brother's house after work without the use of air conditioning. He returned to the same job site from his brother's house on day three, July 21st, and worked the same duties from approximately 6:00 a.m. until 1:30 and 2:00 p.m. After working on July 21st, he drove his truck home to Viburnum in, what he believes, was one hundred degree temperature, without air conditioning but with one window rolled down. He testified at deposition the drive to Viburnum took approximately two and a half hours and he had Gatorade and water with him in the truck.

The medical records note before he finished working on July 21st, Claimant developed mild bilateral shoulder pain radiating to his neck that resolved after about 45 minutes when he stopped working. The symptom was typical of his previous cardiac pain in 2008 and 2009 before his cardiac stenting procedures. On the evening of July 21st, Claimant was fatigued and had cramping in his hands and calves. He attributed this condition to his body being pushed harder after being back at work after so long of an absence.

On July 22, 2011, Claimant arose very early and drove his unairconditioned Geo Metro automobile from Viburnum during the early morning hours to a different construction site located in Jefferson County, Missouri. Claimant testified when he left home the outside temperature was probably in the mid 80's and was around 90 degrees and climbing when he arrived one hour and forty-five minutes to two hours for his 7:00 a.m. shift. His job duties that day involved putting down black fabric across the highway roadway in advance of the asphalt pour. Claimant stated he was "struggling" since he arrived at work that morning and got to where he "just felt weak."

Claimant worked for an hour and a half to two hours when he developed fatigue, cramping, and nausea, and became too ill to work. He threw up several times and went to the shade to lay on the on the ground. A nurse arrived at the worksite, attended to him with wet towels, hydrated him with oral fluids, and asked questions about his condition. Claimant went inside the air-conditioned office at the job site to rest. The nurse asked if he wanted to see a doctor or go to a hospital, but he declined and indicated he was okay. Around noon, Claimant left the job site to drive home. He did so with all his car windows rolled down. During the drive to Viburnum, he consumed water and Gatorade that he had brought from home.

[1] The parties agree the outside temperature between July 19, 2011 and the date of injury, July 22, 2011, was extremely hot with the temperature increasing during the course of the day.

As Claimant approached Viburnum, he stopped at the Viburnum Country Club to attend his granddaughter's birthday party. While there, he felt weak, nauseated, and pressure across his shoulders. He went to the local ambulance base[2] where he had previously been treated. Claimant remembers telling a woman, Connie, he was going to pass out and then "hit the floor." Due to possible myocardial infarction concerns, Claimant was administered ASA 243 mg and nitro SL which caused him to have a negative reaction and syncope episode. Claimant was then taken by ambulance to the Air Evac EMS premises from which he was air-lifted to Missouri Baptist Medical Center in St. Louis.

When Claimant was admitted to the hospital it was noted he was pain free but had an elevated creatinine consistent with acute renal failure secondary to significant dehydration and heat exposure. Hospital emergency room records indicate Claimant had significant heat cramps earlier and syncope likely related to hypotension from dehydration and heat exposure in addition to significant nitroglycerin administration per the paramedics. Claimant was given intravenous hydration with improvement of his creatinine to a normal range. At the hospital, he came under the care of his personal physician, cardiologist Dr. John P. Hess, III. A nuclear stress test was administrated and came back normal. Claimant was discharged on July 25, 2011, with the diagnosis of history of arteriosclerotic coronary vascular disease and acute renal failure secondary to dehydration, was prescribed several medications, and told to follow up with his primary physician in two weeks and with Dr. Hess in eight months. Dr. Hess signed a return to work note effective August 1, 2011.

Employer referred Claimant to Dr. Cynthia Byler on July 29, 2011, for a return to work examination. Her exam noted Claimant was alert, oriented, ambulatory and in no acute distress. Dr. Byler noted his condition improved and he had been cleared to work by Dr. Hess on August 1, 2011, and she released him to work full duty.

Claimant presented to Dr. John D. Wright, a clinical neuropsychologist, on December 12, 2011, at the request of his primary care physician, Dr. John Demorlis, in the context of the July 2011 injury and Claimant's subsequent memory problems. Dr. Wright's evaluation consisted of a review of available medical records, clinical and collateral interviews of both Claimant and his wife, and interpretation and integration of formal neuropsychological assessment data.

Claimant described problems with short term memory with recognition cues providing some benefit. He indicated repeating himself and sometimes forgetting information, even after only 10 to 15 minutes. He had no problems with remote information, but tended to forget recent information. His wife assisted him with many complex duties of daily living.

Dr. Wright's neurobehavioral status examination indicated claimant was alert, cooperative, oriented and attentive. Dr. Wright noted Claimant showed no evidence of excessive distractibility and tracked the conversation well; provided an adequate history, though lacked in details at times; and was oriented to person, place, temporal and situational information. Claimant's speech was within functional limits for articulation, fluency and spontaneity. Dr, Wright indicated Claimant's memory functions were grossly intact with respect to immediate and remote recall of events, though he seemed to forget more recent detailed information.

[2] The "ambulance base" is also referred to in the records as the "ambulance shed."

Dr. Wright administered several formal tests. Dr. Wright's impression was Claimant was doing well from a neurocognitive perspective, though some variability was noted in higher level/complex problem solving. Dr. Wright indicated Claimant's psychological profile was best characterized as borderline abnormal to nearly normal. Dr. Wright wrote, "Although it is probable that heat exposure may have resulted in cognitive dysfunction in the acute epoch, the extent to which persisting higher-level cognitive dysfunction is related to this event is difficult to determine with medical certainty at this time." In addition, he wrote, "significant memory problems reported by the patient are likely related to psychosocial stressors, especially in the context of doing well on formal learning/memory measures." Dr. Wright indicated fatigue may also play a role in his cognitive presentation at times.

Dr. Wright had no specific recommendations from a cognitive perspective and noted in many ways, Claimant was doing well neuropsychologically. In addition, given some of the psychosocial stressors, including decreased employment in the July 2011 event and/or associated factors, he suggested close monitoring of Claimant's mood and subsequent treatment should occur if indicated.

Dr. David T. Volarich examined Claimant for an independent medical examination on January 16, 2015, and prepared a narrative report at the request of Claimant's attorney. Subsequent to his January 16, 2015 examination, Dr. Volarich reviewed additional medical records and issued a supplemental report dated March 28, 2016. Dr. Volarich testified by deposition on April 10, 2017.

Dr. Volarich diagnosed Claimant with heat exhaustion secondary to dehydration causing acute renal failure with resolution of renal failure and dehydration from the July 22, 2011 work injury. He also diagnosed Claimant with nephrolithiasis (kidney stones), resolved, and ongoing heat intolerance with ambient temperatures exceeding ninety degrees. Dr. Volarich opined Claimant's work activities performed on or about July 22, 2011, when he developed fatigue, cramping, dizziness and vomiting was the primary and prevailing factor causing his dehydration and acute renal failure from exhaustion that require conservative care. Dr. Volarich rated Claimant with 15% PPD due to dehydration and acute renal failure from the heat exhaustion that required medical care. He advised Claimant to not work in temperature over 90° and to always stay well-hydrated. Because Claimant complained of cognitive problems that he associated to his heat exposure, Dr. Volarich deferred him to a psychiatrist for assessment.

Dr. Volarich noted Claimant's preexisting medical conditions: coronary artery disease, status post stent placements; right long finger distal surveillance fracture, well-heeled, right shoulder impingement minimally symptomatic leading up to July 22, 2011; bilateral hand Paris Theseus, minimally symptomatic leading up to July 22, 2011; cervical sprain, resolved; and lumbar strain, resolved. Dr. Volarich did not find any disability from Claimant's preexisting conditions because he was working full and unrestricted duty and had no difficulties from those preexisting conditions.

Dr. Volarich admitted Claimant did not report heat exhaustion symptoms the other days he worked and, based on Claimant's discussion with him, assumed Claimant had heat exhaustion on only one day, July 22, 2011, when the temperature was over 100° at the time. Dr. Volarich indicated he did not know what time of day the incident occurred but Claimant noticed increased fatigue sometime mid to late morning. He understood Claimant had consumed a Gatorade, but

Claimant did not tell him he was attended to by a nurse on the job site and refused additional medical treatment that morning.

Dr. Volarich also did not know Claimant drove from St. Louis to Viburnum without using air conditioning and was unaware Claimant stopped at a country club to attend a birthday party. He was not aware Claimant drove himself to the ambulance base. Both Dr. Volarich's physical and neurological exams of Claimant were normal and he did not find any problem associated with renal failure. He thinks "it is a continuing exposure that is giving him the problem," that the Gatorade given to him at work was a Band-Aid, and the drive home from work "probably made things a little worse." Dr. Volarich agreed Claimant's kidney failure had resolved without any permanent disability. At the time of his only examination, he told Claimant that he could still work in construction as long as he stayed hydrated. Dr. Volarich was aware Claimant worked for Employer until August 19, 2011, and that Claimant did not report any problems working in the summer he after the alleged work injury. Dr. Volarich opined that Claimant was permanently and totally disabled as a direct result of the July 22, 2011 work injury alone from both his physical and psychiatric disabilities.[3]

Dr. Jay L. Liss, a psychiatrist, examined Claimant at the request of his attorney for a psychological examination on November 4, 2015, and testified by deposition on April 7, 2017. Dr. Liss did not know when Claimant had symptoms of kidney failure. Dr. Liss did not review any of the neuropsychological tests, such as the MMPI, or any of the testing results identified in Dr. Michael Oliveri's report. Dr. Liss opined Claimant sustained posttraumatic stress disorder associated with anxiety and depression as well as evidence of a dementia caused by the brain dysfunction secondary to metabolic dysfunction as a result of the July 22, 2011 injury. According to Dr. Liss, Claimant experienced persistent effortful avoidance of distressing trauma-related symptoms after the heat exposure. Dr. Liss noted Claimant worked in his sign shop and could not perform his previous construction work since the alleged date of injury. Dr. Liss opined Claimant is permanently and totally disabled from the work injury from a psychiatric viewpoint.

James M. England, a licensed rehabilitation counselor, saw Claimant for a vocational examination February 29, 2016, and testified by deposition on April 4, 2017. Mr. England would not recommend Claimant go back to construction labor work for fear of his having further cardiac episodes or difficulties because of heat problems. He noted assuming Dr. Volarich's findings from a physical standpoint, he could continue to work as a sign painter. Mr. England testified from a vocational standpoint Claimant was permanently and totally disabled due to a combination of the work injury and preexisting problems, noting Claimant's preexisting and then worsening cardiac issues. Mr. England based his opinions regarding employability primarily on what Claimant told him regarding his complaints and the functional difficulties he was still experiencing. He agreed that the medical records did not paint "as bad a picture of him as he was he felt he was functioning." Mr. England was unaware Claimant returned to work with Employer following the work injury.

Dr. J.A. Marchosky, a neurosurgeon, testified by deposition on April 20, 2017. Dr. Marchosky initially examined Claimant on April 14, 2016, at the request of Employer. The doctor's evaluation included a written and oral medical history obtained from Claimant and his

[3] Dr. Volarich's opinion in this regard followed his review of Dr. Liss' psychiatric IME report and James England's vocational examination report.

wife, a physical examination, and a review of the medical records. Claimant told him he did not have any difficulty driving from the job site to the country club or from the country club to the ambulance base. Dr. Marchosky's physical and psychiatric exams, were both benign and the doctor could not provide a precise diagnosis. Dr. Marchosky opined the fact that Claimant and his wife both concur that there has been progressive neurologic deterioration after restoration of normal physiologic and cardiac function, cannot be explained by the effects of heat exhaustion. The doctor needed more information as to whether or not Claimant had a stroke, whether there was brain damage or a tumor, or malformations of the brain that could be causing the symptoms. Dr. Marchosky recommended Claimant have an MRI scan of the brain, an MR angiogram of the blood vessels that provide blood to the brain, and a neuropsychiatric evaluation.

The MRI scan of the brain indicated that there was no evidence of tumor, malformation or inflammatory disease. Dr. Marchosky noted evidence of previous, very small lacunar strokes which, he testified, is characteristic of people who have hypotension and coronary heart disease. The phenomenon is seen in 70% to 80% of those over the age of 60. The MRI angiogram indicated a little bit of disease in the carotid artery that goes from the heart to the brain. There was some narrowing and some arteriosclerosis mild in degree and non-significant in terms of blood flow to the brain. Dr. Marchosky opined there was nothing seen on either scan which appeared to be related to heat exposure.

Dr. Michael Oliveri, a licensed clinical psychologist with a specialty in neuropsychology, performed a neuropsychological evaluation of Claimant on May 23, 2016, at the referral of Employer's counsel, prepared a narrative report, and testified by deposition on April 19, 2017. In connection with his six hour examination of Claimant and his wife, Dr. Oliveri reviewed the pre-incident and post-incident medical records, as well as Claimant's deposition transcript. Dr. Oliveri administered numerous validated formal neuropsychological tests related to quantify brain behavior function. Dr. Oliveri also administered a self-report questionnaire designed to further evaluate the nature of psychological symptom validity and the nature of current psychological adjustment (MMPI-2-RF). After his review of the relevant records, testing, and examination, Dr. Oliveri was of the opinion Claimant's overall profile was nearly normal and he did not acquire a neuropsychological disorder referable to the heat exposure event.

After he reviewed the neuropsychiatric evaluation by Dr. Oliveri, Dr. Marchosky rendered a final diagnosis. It was his opinion Claimant's renal failure was caused by the acute drop in blood pressure which was probably initiated by the administered nitroglycerin. Dr. Marchosky ultimately concluded there was no evidence of anatomical, neurological, neuropsychological, or radiographical overheat injury to Claimant's brain, or of anatomical or physiologic damage to neurological function. Dr. Marchosky had no opinion as to whether Claimant has PTSD because, according to the doctor, there is no basis for making a definitive diagnosis which is only an opinion.

Claimant believes he suffers from memory loss and fatigue as a result of the alleged work injury. His kids tell him he often repeats himself and is forgetful. He says his memory has worsened since the accident and he has difficulty with concentration and staying on task. He states he has difficulty sleeping, still has occasional nightmares and waking flashbacks about the event. He says now he is bothered when the weather is around 80 degrees or hotter and fatigues easier. His ability to comprehend orders for Miles Signs has been compromised since the date of injury and he works at a much slower pace.

Sharon Miles testified at hearing. She is the bookkeeper and handles all email, communications, invoicing and ordering for Miles Signs. She is also the bookkeeper for a motel and restaurant owned by their daughter. On the morning of July 22, 2011, she called Claimant to check on him and called him again when he was driving back to Viburnum. She testified Claimant wasn't completing sentences and his speech was slurred when he was driving back to Viburnum. She testified after hanging up with him she called the ambulance base and then called Claimant back and told him to meet her there. Claimant did not go to the ambulance base as she directed and went to the country club instead.

She testified Claimant has difficulty with comprehension and memory and noticed within a couple of months of July 22nd he was being forgetful and repeating himself. She stated Claimant's cognitive problems have continued to increase in frequency since the date of injury.

RULINGS OF LAW

Based on the substantial and competent evidence described above, including Claimant's testimony, the testimony of Claimant's spouse, Sharon Miles, the expert medical opinions, the medical records, and my personal observations of Claimant at hearing, I find the following:

An injured claimant seeking benefits under the Act must demonstrate that his injury was caused by an "accident or occupational disease arising out of and in the course of his employment". §287.120.1. An "accident" is defined as 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. §287.020.2. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. §287.020.3(1). As the Commission has recently noted, "§287.020.3(2) does not require an employee to prove an 'accident' arising out of and in the course of employment, but rather an 'injury' arising out of and in the course of employment..."[4]

Section 287.808 (2005) discusses a party's burden of proof in workers' compensation matters: "In asserting any claim or defense based on factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true." Claimant bears the burden of proof on all essential elements of his workers compensation case. *Fisher v. Archdiocese of St. Louis-Cardinal River Institute*, 793 S.W.2d 195 (Mo. App. E.D. 1990) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W. 3rd 220 (Mo. 2003). The fact finder is charged with passing on the credibility of all witnesses and may disbelieve testimony absent contradictory evidence. *Id.* 199.

The Court finds Claimant's work outside as a laborer in the extremely hot weather on July 22, 2011, was an unexpected traumatic event or unusual strain. Claimant's testimony and the medical records are clear in this regard. However, that is where the clarity ends. In the instant case, the key issue is whether the accident was the prevailing factor in causing the injury – the injury being both Claimant's heat exhaustion secondary to dehydration causing acute renal failure with resolution of renal failure and dehydration and his alleged psychiatric injury of PTSD that is associated with anxiety and depression, and evidence of dementia. Claimant

[4] See *Paul Farris v. ADS Waste Holdings, Inc. d/b/a Advanced Disposal Service* (Injury No.: 14-000510), opinion issued on March 7, 2018.

testified and the records confirm after initially feeling the effects of the heat, Claimant was treated at the scene by a nurse and hydrated. Claimant left the confines of the hot weather and went inside an air conditioned indoor space to cool off and rest. He indicated at the time he was fine and did not require any additional medical treatment. He continued to work and close down the work site. He was then able to drive almost two hours in his car without the use of air conditioning and then began feeling ill again. While the Court believes Claimant sustained some degree of injury to the body as whole from the work related heat exhaustion, it does not find Claimant proved it *is more likely to be true than not true* that all of his PPD from the work and zero PPD from driving nearly two hours in a vehicle without the use of air conditioning in temperature near or above one hundred degrees. Dr. Volarich admitted Claimant's drive home from work made his condition worse. The Court further questions Dr. Volarich's credibility here when he opined Claimant had no preexisting medical conditions and that "his symptoms resolved" when the medical records of Dr. Strecker from less than three weeks prior to the date of injury indicate otherwise. I find Claimant sustained 5% PPD to the body as a whole on account of the residual effects of heat exposure related to this July 22, 2011 work injury.

With regard to Claimant's contention his approximate two hours of work activities July 22, 2011, caused him to sustain PTSD that is associated with anxiety and depression, and evidence of dementia, the Court finds the opinions of Dr. Marchosky and Dr. Oliveri *far* more credible than the opinion of Dr. Liss, who the Court does not find in any way credible in this particular instance. The Court notes Claimant has not sought or had any medical treatment or taken any medication prescribed for a psychiatric condition. Furthermore, his primary care physician, Dr. Demorlis, and Dr. Wright, who performed an extensive neuropsychological evaluation, concluded Claimant did not have a work related psychological injury. I find there is no sufficient, competent or credible evidence to support a claim that the heat exposure of July 22, 2011, caused a permanent psychiatric or psychological injury.

In addition, I find Claimant is not permanently and totally disabled as a result of the primary injury alone. In addition to the reasons stated heretofore, Claimant's own vocational expert, James England, believes Claimant is PTD due to a combination of the primary injury and his preexisting conditions. I find there is no sufficient, competent or credible evidence to support a claim that Claimant sustained a work injury on July 22, 2011, which caused him to be PTD or that he is PTD due to a combination of the work injury and his preexisting conditions.

Claimant's request that the Court find Employer liable for Claimant's past incurred medical expenses in the amount of $44,812.48 is also denied. The Court finds Claimant to have been at MMI from his work injury at the time he finished treating with the company nurse at the job site and before he drove home in excessive temperatures without air conditioning. The Court finds Claimant's heat exposure at work was not the prevailing factor in his need for medical treatment upon or after his arrival in Iron County on the afternoon of July 22, 2011, as adequately explained by Drs. Marchosky and Oliveri.[5]

[5] The Court also wishes to note that while the medical bills contained in Claimant's Exhibits 17-28 were introduced into evidence prior to the start of testimony, Claimant was never asked at hearing to testify the medical bills were related to, and were the product of, his injury, and, as such, Claimant did not present a sufficient factual basis for the Court to award compensation for past medical expenses. *Travis Wilkins v. Piramal Glass USA, Inc.* (Mo. App. E.D. No. ED105683).

CONCLUSION

Based on all of the evidence adduced at hearing, the Court finds Claimant sustained 5% PPD to the body as a whole on account of the residual effects of heat exposure related to the July 22, 2011 work injury. Therefore, the Court finds Employer is responsible for the payment of 20 weeks of permanent partial disability benefits, stemming from the compensable work accident on July 22, 2011. The Court finds Employer is not responsible for any additional TTD as it finds Claimant was at MMI on July 22, 2011. Claimant's own expert, Dr. Volarich, opined Claimant did not have any compensable preexisting disability and Claimant did not testify to or offer any other evidence of preexisting disability. The claim against the SIF is denied.

Compensation awarded Claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of Attorney Daniel Keefe for legal services rendered.

I certify that on March 14, 2018 I delivered a copy of the foregoing award to the parties to the case. A complete record of the method of delivery and date of service upon each party is retained with the executed award in the Division's case file.

By CMP

DIVISION OF WORKERS' COMPENSATION
DEPARTMENT OF LABOR
INDUSTRIAL RELATIONS

Lorne J. Baker
Administrative Law Judge
Division of Workers' Compensation

3/12/18