

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: Darrell [REDACTED]

Injury No. 14-038320

Dependents: N/A

Employer: Teters Floral Products, Inc.

Insurer: The Phoenix Insurance Co.

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

Hearing Date: October 24, 2017

Checked by: KAE

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on October 24, 2017. The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about November 11, 2017.

The claimant, Darrell [REDACTED] appeared personally and through his attorney, Randy Charles Alberhasky, Esq. The employer, Teters Floral Products, Inc., appeared through its attorney, Christina R. Madrigal, Esq. The Second Injury Fund did not appear at the proceeding, in light of the parties being in agreement that the Second Injury Fund need not appear, considering the nature of the hearing and their agreement that no evidence admitted will be admitted as to the Second Injury Fund.

### STIPULATIONS

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about April 29, 2014, Teters Floral Products, Inc., was an employer operating under and subject to The Missouri Workers' Compensation Law and during this time was fully insured by Travelers Property Casualty Insurance Company.
- (2) On the alleged injury date of April 29, 2014, Darrell [REDACTED] was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) On or about April 29, 2014, the claimant sustained an accident, which arose out of and in the course and scope of employment.
- (4) The above-referenced employment and accident occurred in Polk County, Missouri. The parties agree to venue lying in Greene County, Missouri. Venue is proper.

- (5) The claimant notified the employer of his injury as required by Section, 287.420, RSMo.
- (6) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (7) At the time of the alleged accident, the claimant's average weekly wage was \$297.15, which is sufficient to allow a compensation rate of \$198.33 for temporary disability compensation and a compensation rate of \$198.33 for permanent disability compensation.
- (8) Temporary disability benefits have been provided to the claimant in the amount of \$6,346.56, representing 32 weeks in disability benefits, payable for the periods of September 11, 2014, through February 12, 2015, and March 23, 2016, through May 17, 2016.
- (9) The employer and insurer have has provided medical treatment to the employee, having paid \$34,565.99 in medical expenses.

#### ISSUES

The parties further stipulated that the sole issues to be resolved by hearing include:

- (1) Whether the claimant has sustained injuries that will require additional medical care in order to cure and relieve the claimant of the effects of the injuries.
- (2) Whether the claimant is entitled to temporary disability benefits. (The claimant seeks payment of \$5,156.58, which represents 26 weeks of past temporary disability compensation.)
- (3) If no further treatment is awarded herein, whether the claimant sustained any permanent disability as a consequence of the alleged accident of April 29, 2017; and, if so, what is the nature and extent of the disability?

#### EVIDENCE PRESENTED

The claimant testified at the hearing in support of his claim. In addition, the claimant offered for admission the following exhibits:

Exhibit 1 ..... Ferrell-Duncan Clinics  
Exhibit 2 ..... Harry S. Truman VA  
Exhibit 3 ..... Peak Performance  
Exhibit 4 ..... Springfield Neurological & Spine Institute  
Exhibit 5 ..... University Hospital & Clinics  
Exhibit 6 ..... Dr. Truett Swaim, M.D., IME  
Exhibit 6a ..... Dr. Truett Swaim, M.D., CV

Exhibit 7..... Claim dated 06/15/2016  
Exhibit 8..... Answer from Second Injury Fund dated 07/07/2016  
Exhibit 9..... Answer from Employer/Insurer dated 07/18/2016  
Exhibit 10..... Report of Injury  
Exhibit 11..... RSMo Section 287.210 letter dated 04/17/2017  
Exhibit 12..... Medical Disclosure to Opposing Counsel dated 05/17/17

The exhibits were received and admitted into evidence.

The employer and insurer did not present any witnesses at the hearing of this case. However, the employer and insurer offered for admission the following exhibits:

Exhibit A..... 06/29/2016 Rating Report of Dr. Christopher Miller, M.D.  
Exhibit B....04/26/2016 Independent Medical Report of Dr. Matthew D. Collard, M.D.

The exhibits were received and admitted into evidence by stipulation of the parties.

The parties also agreed to the stipulations previously outlined on pages 3 and 4 of this award for the purposes of this hearing.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took administrative or judicial notice of the documents contained in the Legal File, which include:

- Notice of Hearing
- Request for Hearing-Hardship Hearing (NOT 203)
- Answer of Employer/Insurer to Claim for Compensation
- Answer of Second Injury Fund to Claim for Compensation
- Claim for Compensation
- Report of Injury
- Letter from Second Injury Fund notifying they would not participate in this Hardship Hearing.

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

#### FINDINGS OF FACT

The workers' compensation law for the State of Missouri underwent substantial change on or about August 28, 2005. The burden of establishing any affirmative defense is on the employer. The burden of proving an entitlement to compensation is on the employee, Section 287.808 RSMo. Administrative Law Judges and the Labor and Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts and are to construe strictly the provisions, Section 287.800 RSMo.

### *Background & Employment*

Darrell [REDACTED] is a 60-year-old veteran male who currently resides in [REDACTED] Missouri. He has been a long-time resident of Missouri. In 1986, Claimant complete his GED. Throughout his working career, the Claimant has held jobs mostly performing manual labor. Mr. [REDACTED] served in the United States Army from 1974 to 1976. His work history includes roofing, red iron, and concrete work. At the hearing he testified about some specific jobs he has held. He has worked 3 years for Bama Pie as a tractor-trailer inspector, repairman, and machine cleaner without any notable injuries; for a time span of 11 years, worked for himself and other businesses as a vehicle mechanic. In 2012, Mr. [REDACTED] held employment as a maintenance worker for Bennett Spring State Park until 2013. He subsequently obtained employment with Teters Floral Products, Inc., the employer, around the end of 2013. His occupational activities included operating a machine which bundled floral products, transferred boxes to and from trailers, lifting materials for the machines, and transferring boxes, which involved a lot of bending and lifting. Ordinarily, the lifting was in the range of 50 to 100 pounds.

In the spring of 2014 while employed with Teters Floral Products in Bolivar, Missouri, when Mr. [REDACTED] was assigned to the warehouse, he would lift boxes off of pallets and stack them in a trailer. If he was assigned to the production facility, he would lift boxes and place them on a conveyor for transfer into the building from a trailer. Mr. [REDACTED] described very heavy objects that required strenuous lifting involving two people and repetitive lifting, twisting in awkward positions. He would arrive before 8 a.m. and perform this activity until breaking for lunch sometime in the early afternoon. This was physically-demanding work that required him to repetitively lift boxes overhead.

### *Prior Medical Conditions*

Mr. [REDACTED] past medical records show a lumbar laminectomy was performed in 2000. In 2007, he had a basal cell carcinoma removed from his chest and grafting to that area and a lipoma removed from his back. He suffers from hearing loss and left ear tinnitus. Additional records from the Veterans Administration were admitted into evidence revealing an extensive history of prior treatments. They are negative for any reference to prior workers' compensation injuries or right shoulder conditions. Furthermore, Mr. [REDACTED] testified that he had no prior issues.

### *Accident*

In May of 2014, Claimant reported his injury, and shortly thereafter the plant was shut down and he was laid off work. For a short period of time of about 90 days he obtained work at a nursing home. During sometime in the beginning of June 2014, Mr. [REDACTED] was evaluated at the Veterans Administration medical clinic with right shoulder pain. Examination revealed right rotator cuff tendinitis. After the diagnosis at the VA, Claimant was authorized to undergo authorized treatment with Dr. Miller. After Mr. [REDACTED] was evaluated by Dr. Miller at Ferrell-Duncan Clinic, he was required to stop working at the nursing home due to the restrictions provided by the doctor.

*Medical Treatment*

During August 2014, Dr. Miller noted that four months ago Claimant's shoulder pain started after doing a lot of heavy lifting and repetitive work. Upon examination, there was no tenderness, Hawkins test was positive, cross body adduction test was positive, O'Brien's test was negative, range of motion was normal; and tests for labral tear were negative. An x-ray of the right shoulder revealed a type II acromion and AC joint arthropathy. Following that, an MRI was ordered and he was placed on a 20-pound weight restriction with no repetitive use of the right arm and/or overhead use of the right arm. This is approximately when Claimant stopped working at the nursing home.

The MRI scan revealed supraspinatus tendinopathy with articular surface and bursal surface fraying. There was also mild infraspinatus and subscapularis tendinopathy and a small amount of fluid in the subacromial/subdeltoid bursa, which may reflect bursitis. It was further noted there was an abnormal signal in the posterior/superior labrum which could represent a chronic SLAP tear; moderate intra-articular long head of the biceps tendinopathy; and mild degenerative changes of the AC joint.

September 2014, upon the follow-up exam with Dr. Miller, he noted the MRI scan revealed a partial thickness tearing and tendinopathy in the rotator cuff; AC joint arthropathy; signal change in the superior labrum. Impingement syndrome and AC joint arthropathy were diagnosed on Claimant's right shoulder due to repetitive use of his right arm at work. Dr. Miller injected the right shoulder with cortisone and placed Mr. [REDACTED] on a 20-pound weight restriction, no overhead use, no repetitive use of right arm, and physical therapy was ordered. Twelve sessions of physical therapy was completed.

During an evaluation on October 29, 2014, with Dr. Miller, Mr. [REDACTED] complained of ongoing right shoulder pain. Impingement tests were positive, cross arm abduction test was positive, and tenderness over the AC joint. As a result, surgery was scheduled.

On November 20, 2014, Dr. Miller performed surgery to the right shoulder. Arthroscopy revealed minimal degeneration of the articular cartilage; intact labral tissue; intact bicep tendon, approximately 30 percent under surface tear of the supraspinatus tendon; anterior acromial spur. Arthroscopic subacromial decompression, distal clavicle excision, and limited debridement of the rotator cuff were performed.

December 1, 2014, was Mr. [REDACTED] post-op appointment. Mr. [REDACTED] had complaints of intermittent aching with activity. Examination revealed mild ecchymosis of the right shoulder. Otherwise, it was noted Claimant was doing well one week status post right shoulder surgery. Prescriptions were given as well as a work restriction of left hand duty only.

During a physical therapy session dated December 8, 2014, it's noted that Claimant had limited motion and strength postoperatively. Mr. [REDACTED] underwent 24 physical therapy treatments between December 8, 2014, and January 30, 2015.

At Mr. [REDACTED] follow-up appointment on January 12, 2015, he was noted to have satisfactory progress and to maintain a 10-pound weight restriction with no overhead use, no repetitive use of the right arm, and finish physical therapy. Physical therapy notes indicated that

he had improved 60-70 percent and range of motion had improved. During an evaluation at the VA on March 29, 2015, he is noted to have 3/5 strength of the right upper extremity.

On July 29, 2015, Dr. Miller assessed Mr. [REDACTED] had a 16 percent impairment of the right upper extremity, which translated to a 10 percent impairment of the whole body. During another evaluation, Dr. Miller felt Claimant had good range of motion and strength. He released him at maximal medical improvement and without restrictions.

After complaining of continued problems, Dr. Ted Lennard was authorized by the employer/insurer to evaluate Claimant on September 8, 2015. The doctor noted ongoing complaints of constant superior right shoulder pain. Upon examination, scars were revealed, tenderness in the subacromial space and over the trapezius muscle, full range of motion noted. Right shoulder x-rays were ordered, and Claimant was to return to work without restrictions and follow up in two weeks. After the follow-up appointment on September 22, 2015, Claimant contacted the VA clinic on November 5, 2015, to discuss his continuing shoulder pain.

In early December 2015, x-rays were performed at the VA which revealed mild subluxation and widening of the AC joint, one or two subcentimeter calcific densities adjacent to the distal most clavicle. An MRI scan was ordered of the right shoulder. During an evaluation at the VA, Mr. [REDACTED] was diagnosed as having osteoarthritis of multiple joints. The MRI scan revealed subluxation of the AC joint, small interstitial tears of the distal inserting fibers of the supraspinatus tendon, the findings were highly suggestive of a tear of the posterior superior labrum.

Upon another MRI/arthrogram of the right shoulder on February 5, 2016, at which point it is noted that a non-displaced SLAP tear of the superior and superior posterior labrum were noted, there was a mild increased signal involving the critical zone and insertion fibers of the supraspinatus and critical zone fibers of the infraspinatus tendons. Supraspinatus and infraspinatus tendinopathy with a high no-grade partial or full thickness rotator cuff tear.

Subsequent to the MRIs performed at the VA, Claimant was authorized by the employer/insurer to return for further evaluation by Dr. Miller. During Dr. Miller's examination on March 23, 2016, it was noted Claimant had ongoing complaints of pain in his right shoulder and felt he would be unable to return to any employment because of his shoulder. Dr. Miller's record from that date states in part:

**"DIAGNOSTIC RESULTS:**

I reviewed his MRI arthrogram. This appears to show a SLAP tear. No other obvious abnormalities are noted. I went back and looked at his preoperative MRI and this was also read as a SLAP tear. However, the reason that this was not treated is that it did not seem to be symptomatic at the time.

**IMPRESSION:**

SLAP tear, right shoulder.

**PLAN:**

I think this does relate to his original injury. It was not treated previously due to the fact that it appeared to be asymptomatic. However, unfortunately now it is symptomatic. For

this reason, I have offered him a right shoulder scope with debridement followed by open biceps tenodesis. The surgery was explained. The risks were explained. He would like to proceed. I have answered his questions today. I have invited him to contact me if he has any questions prior to surgery." (See Exhibit 1)

At the time of the March 23, 2015, appointment, a 10-pound weight restriction was placed as well as no overhead or repetitive use of the right arm. Based on these new restrictions, the employer/insurer provided temporary total disability to the claimant from March 23, 2016, through May 17, 2016.

#### *Independent Medical Examinations*

Instead of sending Mr. [REDACTED] back to Dr. Miller for more treatment, the employer and insurer then sent Claimant to the St. Louis area for an evaluation by Dr. Matthew Collard, who issued a report dated April 26, 2016. In Dr. Collard's April 26, 2016, report, he opined that Mr. [REDACTED] SLAP lesion was not symptomatic upon evaluation. However, he did note ongoing pain, including continued AC atrophy. Dr. Collard further stated that the rotator cuff pathology, impingement, and the labral pathology were not caused by any repetitive work injury, as it takes a mechanism of injury and trauma to cause rotator cuff tears and SLAP lesions. He did recommend additional treatment, such as cortisone injections, prior to considering surgical intervention. The conclusion of Dr. Collard's report indicated that he found the complaints expressed by Claimant to be "credible" and "showed no signs of symptom magnification."

Mr. [REDACTED] wanted additional care and, therefore, sought a third opinion from Dr. Truett Swaim, an occupational and orthopedic surgeon, who evaluated Mr. [REDACTED] on October 13, 2016, at the request of the employee's attorney. Dr. Swaim noted that Claimant was alert, very pleasant and forthright with his answers. No evidence of symptom magnification or exaggeration was exhibited. Claimant's resistance strength test revealed mild weakness of the right shoulder. Dr. Swaim noted Mr. [REDACTED] current status was ongoing right shoulder pain with any increased stress on his right arm due to repetitive use. The right shoulder felt weak, he could no longer throw a baseball, and has difficulties and increased pain with occupational type activities, household chores, yardwork, and sexual activities. Dr. Swaim felt that Claimant would continue to have ongoing shoulder discomfort with decreased motion and weakness unless there is improvement with additional treatment. If no additional treatment is afforded to him, the right shoulder condition will worsen over time. Claimant has reached maximal medical improvement from treatment of the occupational cumulative trauma which culminated on or about April 29, 2014, while employed at Teters Floral Products, Inc. Dr. Swaim does believe Mr. [REDACTED] right shoulder condition necessitates repeat surgical intervention.

Dr. Swaim stated in his report that the primary cause that initiated surgical intervention for a right shoulder rotator cuff tendinopathy, intrasubstance supraspinatus tendon tear, labral tear, impingement syndrome, and symptomatic AC joint arthropathy would be the occupational cumulative trauma which culminated on or about April 29, 2014, while Mr. [REDACTED] performed labor for Teters Floral, Inc. Dr. Swaim attributed a 30 percent permanent partial disability to the right shoulder condition Mr. [REDACTED] sustained performing labor for Teters Floral, Inc., on or about April 29, 2014, if no further treatment were provided. Dr. Swaim states that without additional treatment Claimant's right shoulder condition will worsen over time. Dr. Swaim opined that repeat surgical intervention is a necessitated for the right shoulder condition to cure and relieve

the effects of the work injury. In the meantime, he informed Mr. [REDACTED] that he should limit force with his right arm and only exert 10 pounds of force on an occasional basis, and/or 5 pounds frequently. Furthermore, Claimant should not perform any repetitive use of his right arm extended away from his body or above shoulder height.

With regard to Mr. [REDACTED] pre-existing disabilities labeled by Dr. Swaim, 6.9 percent permanent partial disability due to his hearing loss, 10 percent permanent partial disability due to tinnitus, and a 20 percent permanent partial disability of the body as a whole due to the pre-existing lumbar condition. He further opined the combined effects of these disabilities do create an enhancement of his overall disability by 7.5 percent of the body as a whole. Mr. [REDACTED] should limit repetitive bending, stooping, twisting, squatting, climbing, or crawling as necessitated by lumbar symptoms.

#### *Present Complaints*

The employer and insurer never authorized additional treatment requested by employee and recommended by Dr. Swaim. Mr. [REDACTED] continues to have pain with use of the arm and cannot lift more than a few pounds with it. He isn't working and leads a sedentary lifestyle, only on rare occasion performing mechanic work for friends, if it does not require heavy lifting.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

- (1) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee from the effects of the injuries.

There is clear and objective evidence on the MRI arthrogram of a labral and rotator cuff tear that was unsuccessfully repaired during the first surgery performed by Dr. Miller on November 20, 2014. During that surgery, Dr. Miller performed a subacromial decompression, distal clavicle excision, and debridement of the shoulder *and noted a 30 percent partial tear of the rotator cuff*. Unfortunately, after the surgery the symptoms continued, and Mr. [REDACTED] pain was not substantially relieved. Repeat imaging with MRI arthrogram on February 15, 2016, showed partial of the supraspinatus tendon with 50 percent thickness and a labral tear with tendinopathy, according to Dr. Swaim, who reviewed the actual films.

Dr. Miller also reviewed the film and noted a SLAP tear. Dr. Miller's March 23, 2016, report notes that the SLAP tear was not treated in the first surgery because it "did not seem to be symptomatic at the time. . . unfortunately now it is symptomatic." Dr. Miller recommended a right shoulder arthroscopic debridement followed by biceps tenodesis.

After Dr. Miller made the recommendation for another surgery, Dr. Miller was terminated as the authorized physician by the insurer, and Mr. [REDACTED] was seen by Dr. Collard on April 26, 2016, who agreed that there was a SLAP tear, but opined that it was asymptomatic when he examined Mr. [REDACTED]. Instead, Dr. Miller wrote, "Most of his pain is over his AC joint and previous surgical intervention including distal clavicle resection."



Dr. Collard nonetheless admitted that the rotator cuff pathology could be "aggravated" but not caused by the repetitive work activities.

No one disputes that Mr. [REDACTED] had no symptoms or identified pathology in his shoulder prior to his undisputed work injury. Since developing the undisputed work injury from repetitive lifting, he has had constant and unceasing pain with use. RSMo. 287.140 requires the employer to provide such medical treatment as is reasonably necessary to cure and relieve the effects of the employee's injury; there is no "prevailing factor" standard for medical care. See *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 517 (Mo. App. 2011) (knee replacement necessary to cure and relieve effects of meniscus injury despite preexisting arthritis) citing RSMo. Sec. 287.140.1; *Landers v. Chrysler Corp.*, 963 S.W. 2d 275 (Mo. App. 1997).

It is not necessary that the employee conclusively prove that specific treatment is required to treat or diagnose a condition, but, rather, it is sufficient if "claimant showed 'by reasonable probability' that he was in need of additional medical treatment by reason of the accident." *Sifferman v. Sears, Roebuck and Co.*, 906 S.W.2d 823, 828 (Mo. App. 1995). It must be shown that the need for future medical care "flows(s) from the accident." *Landers v. Chrysler Corp.*, 963 S.W. 2d 275 (Mo. App. 1997) at 283. To "cure and relieve" has been construed to mean treatment that "give comfort even though restoration to soundness is beyond avail." *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo. App. 1996) (parenthesis omitted).

All of the physicians agree that more treatment, including surgery, is required. There is no dispute that an injury occurred. There is an agreement of opinion between Drs. Miller and Swaim that the need for additional treatment relates to the injury. It is troubling that when Dr. Miller offered to provide additional surgery it was not authorized and instead the employee was sent by the insurer to St. Louis for a second opinion from Dr. Collard. After reviewing the records of all three doctors I find the opinions and recommended treatments of Dr. Miller and Dr. Swaim to be most credible and persuasive. Dr. Miller clearly attributes the torn rotator cuff to the original injury and acknowledged its existence at the time he performed surgery on the claimant. The employer and insurer are ordered to authorize the surgical treatment recommended by both Dr. Miller and Dr. Swaim.

- (2) Whether the employee is entitled to temporary total disability compensation. (The employee seeks payment for 26 weeks of temporary total disability compensation, payable for the period of 09/22/2015 to 03/22/16.)

Under the Workers' Compensation Act, temporary total disability benefits "shall be paid throughout the rehabilitative process." Section 287.149.1. The Supreme Court has noted that "TTD benefits should be awarded only for the period before the employee can return to work." *Greer v. SYSCO Food Services*, 475 S.W.3d 655, 666 (Mo.2015) (internal quotations omitted). A Claimant's disability is total, rather than partial, if the claimant is unable to return to any employment. Section 287.020.6. The question is whether any employer, in the reasonable course of business, would reasonably be expected to employ the claimant in his or her present condition. *Cooper v. Medical Ctr. Of Independence*, 955

S.W.2d 570, 575 (Mo. Ct. App. W.D. 1997)(overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003)). "It is clear that a claimant is capable of forming an opinion as to whether [he] is able to work and [his] testimony alone is sufficient evidence on which to base an award of temporary total disability." *Pruett v. Federal Mogul Corp.*, 365 S.W.3d 296, 309 (Mo. Ct. App. S.D. 2012) (internal citations omitted). An employee's ability to perform occasional or light duty work does not disqualify the employee from obtaining TTD benefits. *Cooper*, 955 S.W.3d at 575.

Herein, Mr. [REDACTED] testified that he was laid off from work by the employer shortly after he reported the injury when the entire plant was closed down in June of 2014. Thereafter, he worked at a nursing home for about three months before having to quit because of pain and the fact that he was receiving authorized care. He was paid temporary total disability from September 11, 2014 through February 12, 2015, and again from March 23, 2016, until May 17, 2016.

He seeks additional temporary total disability from September 22, 2015, through March 22, 2016, (when his TTD was briefly restarted). During this time, he was actively seeking authorized treatment and, in fact, was authorized to briefly see Dr. Lennard in September of 2015. The date of the last office visit with Dr. Lennard was September 22, 2015. When care was terminated, he sought treatment on his own through the VA, where an MRI was done showing the objective findings of a labral tear and rotator cuff tear. Dr. Miller was eventually authorized for further evaluation of the claimant on March 23, 2016. At that time, Dr. Miller placed him on a 10-pound weight restriction with no overhead or repetitive use of the right arm.

Mr. [REDACTED] testified that he did not believe himself capable of working during this time period of September 22, 2015, through March 22, 2016. He was previously terminated from his employment and never offered light-duty work and no employer in the open labor market would be expected to hire a 58-year-man with a GED and a 10-pound weight restriction who was awaiting and receiving further medical care. After giving careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law of the State of Missouri, I find and conclude that the employee, Darrell [REDACTED] has met his burden to be awarded temporarily total disability benefits. Temporary total disability in the amount of 26 weeks during the period of September 22, 2015, through March 22, 2016, is ordered.

- (3) If no treatment is ordered herein, whether the employee sustained any permanent disability as a consequence of the alleged accident of 04/29/2017; and, if so, what is the nature and extent of the disability?

An assessment of permanent disability should be delayed until after treatment is concluded.

In light of the award being temporary in nature, the case shall remain open as provided by law. Similarly, all issues not resolved herein shall be deferred pending further hearing. The award is subject to modifications as provided by law.

Issued by DIVISION OF WORKERS' COMPENSATION  
Employee: Darrell [redacted]

Injury No. 14-038320

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

I certify that on 1-9-18  
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 [signature]

Made by:

[signature]

Kevin A. Elmer

Administrative Law Judge

Division of Workers' Compensation

