STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126
http://lirc.wisconsin.gov/

RICHARD L DECKER, Applicant
N981 KNEPPRATH RD
CEDAR GROVE WI 53013

KOHLER CO, Employer
DEAN YAGODINSKI MAIL STOP 009
444 HIGHLAND DR
KOHLER WI 53044

KOHLER CO, Insurer
C/O BROADSPIRE
1900 E GOLF RD STE 800
SCHAUMBURG IL 60173-5033

WORKER'S COMPENSATION DECISION

Claim No. 2010-024764

Dated and mailed:

MAY 31 2016

deckiri_wrr.doc:145:

SEE ENCLOSURE AS TO TIME LIMIT AND PROCEDURES ON FURTHER APPEAL

MODIFIED COMMISSION DECISION

Pursuant to authority granted in Wis. Stat. § 102.18(4)(c), the commission reinstates its April 28, 2016, decision in the above-captioned matter with the following modifications:

Add, after the first paragraph of the decision:

> The commission issued a decision in this matter on April 28, 2016. On May 4, 2016, the commission received a request for reconsideration dated May 2, 2016, from the respondent. The applicant's attorney by faxed letter dated May 4, 2016, indicated that it agreed with the information contained in the respondent's letter with respect to an error in the commission's calculation of the applicant's permanent disability. The commission, on May 5, 2016, issued an order setting aside its decision pending further consideration. The commission agrees with the respondent's assertion that the applicant was entitled to a permanent disability rate of $242 per week rather than the $292 used by the commission in its calculations.

Delete the paragraph that begins at the bottom of page 7 and continues onto page 8 under the Findings of Fact and Conclusions of Law and substitute:

> The commission finds that the respondent self-insurer is liable for the payment of permanent partial disability for a total of 500 weeks at $242 per week which amounts to $121,000. The respondent paid temporary disability compensation through May 16, 2011, and indicated at page 9 of its brief that it considered those payments appropriate. As of June 1, 2016, 447 weeks and 2 days have accrued at $242 per week for a total amount of $108,254.67. The applicant's attorney is entitled to a 20 percent attorney fee with a future value of $14,520.00. After an interest credit of $64.48 the present value of that attorney fee is $14,455.52. The applicant's attorney incurred costs of $1,809.38 and he is entitled to those costs. The total payable is $62,339.26 of which $46,074.36 is to be paid to the applicant and $16,264.90 to his attorney. Beginning on July 1, 2016, the respondent shall pay to the applicant the sum of $1,048.67 per month until the sum of $10,196.26 has been paid. The respondent's attorney indicated at the hearing that it conceded 20 percent permanent partial disability to the applicant's back for the 2005 date of injury. The respondent asserted that it paid the applicant 20 percent permanent partial disability. However, the commission could not locate evidence of such a payment in the record. The respondent, in its request for reconsideration, asserted that it paid the applicant $48,400 in compensation for the January 26, 2005, injury which is the equivalent of 200 weeks of permanent partial disability. The respondent attached a WKC-13 form, supplementary report on accidents and industrial diseases that it filed on June 2, 2011 to substantiate this assertion. The applicant by letter dated May 4, 2016, indicated he agreed with the information in the respondent's letter and joined the respondent's request for an amended order setting forth the correct calculations. Thus, the commission has included in its calculations the $48,400 payment made by the respondent for permanent partial disability for the January 26, 2005 injury.

Delete the interlocutory order and substitute therefor:

INTERLOCUTORY ORDER

> The findings and order of the administrative law judge are reversed. Within thirty days, the respondent shall pay to the applicant, Richard L. Decker, as accrued compensation, the sum of Forty-six thousand and seventy-four dollars and thirty-six cents ($46,074.36) in a lump sum and to his attorney, Charles F. Domer, the sum of Fourteen thousand four hundred fifty-five dollars and fifty-two cents

($14,455.52) in fees and One thousand eight hundred nine dollars and thirty-eight cents ($1809.38) in costs.

Beginning on July 1, 2016, the respondent self-insurer shall pay to the applicant the sum of One thousand forty-eight dollars and sixty-seven cents ($1,048.67) per month until the sum of Ten thousand one hundred ninety-six dollars and twenty-six cents ($10,196.26) has been paid.

Jurisdiction is reserved as to all issues for such further findings and orders that may be warranted.

BY THE COMMISSION:

Laurie R. McCallum, Chairperson

C. William Jordahl, Commissioner

David B. Falstad, Commissioner

cc: Attorney Charles F. Domer
Attorney William R. Sachse Jr.

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126
http://lirc.wisconsin.gov/

RICHARD L DECKER, Applicant
N981 KNEPPRATH RD
CEDAR GROVE WI 53013

KOHLER CO, Employer
DEAN YAGODINSKI MAIL STOP 009
444 HIGHLAND DR
KOHLER WI 53044

KOHLER CO, Insurer
C/O BROADSPIRE
1900 E GOLF RD STE 800
SCHAUMBURG IL 60173-5033

WORKER'S COMPENSATION DECISION

Claim No. 2010-024764

Dated and mailed:

MAY - 5 2016

deckeri_wsd.doc:145:

ORDER

Wisconsin Stat. § 102.18(4)(b), provides that the commission may, within 28 days after a decision is mailed, on its own motion, set aside that decision and take further action. Pursuant to its authority in Wis. Stat. § 102.18(4)(b) the commission sets asides its decision of April 28, 2016, pending further consideration.

BY THE COMMISSION:

Laurie R. McCallum, Chairperson

C. William Jordahl, Commissioner

David B. Falstad, Commissioner

cc: Attorney Charles F. Domer
Attorney William R. Sachse Jr.

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126
http://lirc.wisconsin.gov/

RICHARD L DECKER, Applicant
N981 KNEPPRATH RD
CEDAR GROVE WI 53013

KOHLER CO, Employer
DEAN YAGODINSKI MAIL STOP 009
444 HIGHLAND DR
KOHLER WI 53044

KOHLER CO, Insurer
C/O BROADSPIRE
1900 E GOLF RD STE 800
SCHAUMBURG IL 60173-5033

WORKER'S COMPENSATION DECISION

Claim No. 2010-024764

Dated and mailed:
APR 28 2016
deckiri_wrr.doc:145:

SEE ENCLOSURE AS TO TIME LIMIT AND PROCEDURES ON FURTHER APPEAL

An administrative law judge (ALJ) issued a decision in this matter. A timely petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdictional facts, a $1,013.12 gross weekly wage and a compensable work injury of September 15, 2010 are conceded. The respondent self-insurer asserts that any claims of injury to the lower back were a temporary aggravation of a prior January 26, 2005, conceded back injury, and that the 2010 aggravation ended as of December 15, 2010, without need for permanent restriction or permanent partial disability benefits. Respondent's Exhibit 3 was received, a WKC-13 with benefits conceded and paid, noting intermittent periods of temporary partial disability and temporary total disability benefits for a continuous period from September 15, 2010 to May 16, 2011 (both dates exclusive) with $4,314.19 and $5,039.50 in temporary partial disability benefits paid and $675.41 in temporary total disability benefits paid.

The applicant is claiming he is entitled to alternating temporary partial disability and temporary total disability benefits for a continuous period from May 17, 2011 (inclusive) to March 7, 2012 (exclusive), with the parties stipulating to a document received as Respondent's Exhibit 1 and various social security information, including a prior reverse offset calculation worksheet by the department that the ALJ indicated was received into the record on January 23, 2015. The exhibit list indicates that the WKC-3 was amended and this was stipulated to by the parties per the April 16, 2013 letter from the respondent's attorney. The parties stipulate that, if liability is found, this worksheet shall be binding regarding the benefits due.

The applicant is also claiming entitlement to permanent total disability benefits as of March 7, 2012 (inclusive).

In the event that liability is found for medical expense, the parties stipulate that such medical expense should be based upon an amended respondent's Exhibit 4 stipulated by the parties and received on April 16, 2013.

Accordingly, the issues in dispute are the nature and extent of disability and related medical expense for the conceded September 15, 2010, work injury.

The applicant is a 1974 graduate of Ozaukee High School and did not have any post-high school education thereafter. In 1976 he began work for the respondent self-insured employer, Kohler Company, and has over 35 years of experience as a manual caster, primarily involved in the manufacture of Kohler Toilets. His duties involved pouring slurry into a mold and allowing it to harden. After solidifying, the molds were moved, separated and touched up as necessary. After the casting pieces were assembled and inspected, the toilet was processed further in another department for drying and claying in a kiln. The applicant testified that the work was very physical, hot work involving lifting weights between 5 to 80 pounds, with frequent lifting of 80 pounds. The applicant stated that for the first 20 to 25 years he probably worked six days a week with regular overtime.

On January 26, 2005, the applicant sustained a conceded work related injury and was treated with multiple surgeries with Dr. Richard Karr. The two surgeries were a two-level discectomy at the L4-5 level and the L5-S1 level in June of 2005 and repeat surgery in June of 2006. In May of 2007, Dr. Karr released the applicant to return to work without physical limitations. The applicant returned to his work as a manual caster, and in the summer of 2009 he experienced a flare up in his back pain. He returned to work in December of 2009 without limitation. The applicant testified that he had not experienced any problems with his neck prior to September 15, 2010, and testified that he had every intention of working full duty for the respondent until his eventual retirement.

On September 15, 2010, the applicant sustained the conceded work injury but has no recollection of the incident. During the hearing, the parties reached a stipulation of the following facts: "The applicant sustained an injury when an

unfinished toilet bowl fell from a height of 2 to 7 feet with an approximate weight of 80 pounds, striking the applicant on the back left side of the head." The applicant testified that his partner, John Flesch, later informed him that he had lost consciousness for between 2 to 3 minutes. The applicant was taken to the emergency room at the Aurora Sheboygan Medical Center where CT scans were taken. The applicant indicated his neck was sore but did not complain of lumbar pain.

Post-accident, the applicant stated that he experienced pain on the back left side of his head which radiated down into his neck and into his left shoulder and arm. The applicant treated with his primary physician, Dr. DeMaster, at the Aurora Sheboygan Clinic on September 16, 2010, reporting that the prior day a large toilet bowl hit him in the back of the head and neck. The applicant indicated that the prior day he felt "off" and a bit lightheaded. His vision was slightly off but that pretty much resolved. He complained of stiffness in his upper back and neck. He reported headaches on September 22. He was kept off work the next week because his symptoms increased. Dr. DeMaster indicated that the applicant had a CT test done of his head and neck at the time of the accident and apart from degenerative changes there were no concerns or other injuries. On September 29, 2010, he saw Dr. DeMaster and reported gradually feeling better. He experienced lightheadedness if he moved his head too quickly and some stiffness and discomfort in the neck. On December 29, 2010, he told Dr. DeMaster that visual disturbances that he had complained of had resolved and he was not having headaches. Dr. DeMaster indicated that a verbal report from his chiropractor and therapist stated he made continued improvement in the last few weeks. He was able to work with a 40-pound lifting restrictions. Exhibit 13.

The applicant then, on February 25, 2011, sought treatment with Dr. Jablonski indicating he had vision problems. Exhibit O. Dr. Jablonski referred the applicant to Dr. John Broderick, a neurologist at Columbia-St. Mary's Hospital. During his initial visit with Dr. Broderick on March 15, 2011, the office note mentions the applicant providing a history of headaches globally but centered in the left occipital area. He had some problems with speech and fatigue. He had lightheadedness and dizziness with neck flexion and extension which seems to have improved. He complained of short-term memory problems. He reported that physical therapy for the neck and upper back had provided some benefit. Dr. Broderick assured him that most people improve over time. Dr. Broderick performed injections in the applicant's low back, back of his head, neck, upper back and mid back.

The applicant saw Dr. Bernd Remler on June 1, 2011. Dr. Remler indicated that the applicant had some vision problems, and that his symptoms would show gradual improvement that Dr. Remler wanted to try to accelerate with fusional exercises.

On September 12, 2011, the applicant reported a severe flare up of low back pain several days earlier and the applicant had left L5 steroid injections. The applicant

told Dr. Broderick on September 13 that on Friday, he was working at his job and doing well when he sat down for lunch and felt a twinge going down his left leg. This built up over the weekend. Exhibit K. Dr. Broderick took the applicant off work for a week and allowed him to return to work on September 19, 2011. On October 5, 2011, the applicant went to the emergency room after reporting becoming nauseous and dizzy while exercising on his hands and knees. Exhibit M. The applicant indicated that he had been doing these exercises for years at his home for his lower back condition. The applicant did not return to work after that time. Dr. Broderick indicated, on October 6, 2011, that the applicant had returned to the clinic after aggravation of his symptoms after doing exercise. Dr. Broderick noted the applicant's "main complaint" was "radicular symptoms in the left back radiating down all the way to his left toe." Exhibit K.

Dr. Broderick referred him for pain management with Dr. Sadeghi, who performed epidural injections in both the neck and lower back; and for a surgical consultation with Dr. Spencer Block. The applicant saw Dr. Block on October 17, 2011 and January 11, 2012. Dr. Block, on October 19, 2011, indicated the applicant's back condition was worse than his neck. Exhibit J. Dr. Block, in an office note of November 30, 2011, indicated that since the September 15, 2010, work injury the applicant had been experiencing low back pain and radicular left leg pain, numbness and tingling. The EMG revealed left L5 and S1 radiculopathy. He opined that he did not believe urgent surgical intervention was warranted due to good strength at the time of his exam. He noted that lumbar surgical intervention was an option given his failure to improve with non-surgical management but recommended a discogram for further study. Dr. Block opined that the cause of the applicant's symptoms was a pre-existing condition of lumbar degeneration that was exacerbated beyond its normal progression due to the work injury, as he was not experiencing his symptoms prior to the event. Dr. Block did not recommend surgery on the applicant's neck.

The applicant testified that following his discussions with Dr. Broderick he was inclined to not pursue further back surgery. In a narrative report (Applicant's Exhibit T) of March 7, 2012, Dr. Broderick opined the applicant could perform sedentary work, lifting up to ten pounds occasionally, but that he should avoid lifting; and should never bend or stoop, twist, squat, crawl, climb or perform overhead work. He opined that the applicant should not perform any work hours as he was unable to stand, walk, sit or drive during work related activities. He further noted that the applicant required three or more breaks per day in the work setting and was taking Percocet and Soma, narcotic medications which would preclude him from driving or operating machinery in a work setting. He opined the applicant should never drive automotive equipment, be around or operate moving machinery, work at unprotected heights, or work in areas with changes in temperature and humidity. He therefore opined the applicant was unable to work, and noted the aforementioned restrictions were permanent. In response to questions regarding causation, he opined that the restrictions were due to the September 15, 2010, work injury and assessed functional permanent partial disability ratings of 5 percent for the low back condition, 5 percent for the neck

condition; and 5 percent for the head injury, including a post-concussive syndrome.

The applicant was referred by Dr. Broderick to a brain injury program at Sacred Heart Rehabilitation through Columbia-St. Mary's. The applicant saw Dr. Osmon at the Sacred Heart Rehabilitation Hospital between April 2012, and August 2012. Dr. Osmon concluded it was difficult to assess the applicant's condition because he did not generate a consistent effort throughout the task and because he apparently had a verbal learning disability of a premorbid nature. Exhibit AA. At the time of hearing the applicant was treating with two psychiatrists, Dr. Jennifer Kennedy and Dr. Kenneth Johnson. Dr. Kennedy diagnosed a post-traumatic stress disorder and depression. Dr. Kennedy opined the applicant sustained a post-concussive syndrome with post-traumatic stress disorder and difficulty with psychological adjustment. The applicant is prescribed Zoloft and takes it on a daily basis.

The respondent self-insurer relied upon the opinions of Dr. Mark Novom, a neurologist, who examined the applicant on August 9, 2012, and performed various medical record reviews. In a narrative report of August 16, 2012, Dr. Novom opined the applicant was post closed head injury and that his post-concussive syndrome had resolved as of April 29, 2011. Any continuing headache complaints, mental impairment and depression were likely due to personal stress in the applicant's life relating to, among other things, financial autonomy and the past serious illness of his wife. Dr. Novom opined that the applicant reached an end of healing for his post-concussive syndrome; and that the applicant made a full recovery from, and sustained zero percent permanent partial disability in connection with the mild traumatic brain injuries and post-concussive syndrome as a result of the work injury. He opined no further medical treatment or medical therapies were indicated.

The respondent self-insurer also offered the opinions of Dr. Stephen Robbins, an orthopedic surgeon, who examined the applicant at the respondent self-insurer's request on March 26, 2012, and performed a medical record review. Dr. Robbins opined the applicant sustained a temporary exacerbation of his 2005 back injury due to the work injury of September 15, 2010, which resolved as of December 15, 2010, without permanent injury to the lumbar spine. However, the applicant had a 20 percent permanent partial disability to the lumbar spine that resulted from the applicant's 2005 work-related injury. He further opined the applicant sustained a temporary aggravation of cervical degenerative disc disease at the C6-7 level as a result of the 2010 work injury. Dr. Robbins opined that he reached a healing plateau from his neck injury as of December 15, 2010 with no permanent disability. Dr. Robbins also opined the applicant sustained a post-concussive syndrome following the 2010 injury. He opined that the applicant had significant psychosocial issues that were contributing to chronic pain issues and opined the applicant was capable of full-time gainful employment with a permanent 40-pound lifting restriction, but those were secondary to his previous back injury in 2005.

Based upon the record made the commission finds credible the opinion of Dr. Robbins that the applicant sustained a temporary exacerbation of his pre-existing back and neck conditions as a result of the September 15, 2010 injury which both resolved without permanent disability as of December 15, 2010. Dr. Robbins also persuasively opined that the applicant had permanent disability, specifically a 40-pound lifting restriction and a 20 percent permanent partial disability to his lumbar spine as a result of his 2005 work-related back injury.

The commission is not persuaded that the 2010 work injury resulted in anything more than a temporary aggravation of the applicant's pre-existing back problems. The applicant did not initially complain of back pain. The applicant reported low back pain during a physical therapy appointment on November 11, 2010. The applicant returned to work in a limited capacity after the work incident. Dr. DeMaster treated the applicant for his 2010 injury and his notes suggest that the applicant was gradually improving on each visit. However the applicant had a twinge in his back while working on September 9 and on October 5, 2011 reported to the emergency room at Columbia St Mary's with back problems after exercising. He had significant symptoms and was unable to return to work after that. During his visit to Dr. Broderick on October 6, 2011, he indicated that he was doing back and neck exercises with his head flexed when he got dizzy and went to the emergency room. Dr. Broderick indicated that at that point there was "no way" the applicant could go back to work. Dr. Robbins saw the applicant in March 2012, around the same time Dr. Broderick said the applicant was an invalid and found that the applicant was considerably better off than an invalid.

The medical evidence and testing does not show a clear back injury in 2010. Dr. Robbins indicated the medical records did not establish a new herniated disc in the lumbar spine. Further, the applicant's imaging studies did not show any significant findings that would explain the applicant's problems.

The commission is not convinced that the 2010 injury resulted in permanent impairment to the applicant's head and neck. In Exhibit H, Dr. Block indicated that the applicant's neck symptoms and upper extremity symptoms "may" be due to a disc herniation at C6-7. He concluded "it is more probable than not due to his work-related injury causing aggravation of a pre-existing degenerative condition beyond normal progression." Dr. Jablonski did not see a frank herniation at the cervical spine. Dr. Robbins saw no sign of a herniated cervical disc. The commission finds credible the opinion of Dr. Robbins that the applicant's work accident of September 15, 2010, caused a temporary aggravation to the applicant's pre-existing cervical degenerative disease and that his condition returned to its pre-injury state around three months after the 2010 injury, or December 15, 2010.

The commission credits the opinion of Dr. Novom with respect to the applicant's head injury and finds that as of April 29, 2011, the applicant reached a healing plateau and that he no longer suffered the residuals or sequelae of a closed head or mild traumatic brain injury or post-concussive syndrome.

With respect to the head injury, Dr. Novom indicated he no longer saw a suitable biophysiologic explanation for the applicant's protracted headaches and cognitive complaints beyond an expected healing period, which he concluded was at least as of August 16, 2012. Dr. Spencer Block recorded that the applicant had normal recent and remote memory, good attention span and concentration on January 11, 2012 (Exhibit F.) The applicant did not report cognitive problems to Dr. DeMaster between September 16, 2011 and February 18, 2012. Further, Dr. Osmon noted an inconsistent effort by the applicant when he was performing the psychological testing.

With respect to permanent disability the commission credits Dr. Robbins' assessment that the applicant had a 40-pound lifting restriction because of his two back surgeries which were attributable to the applicant's 2005 work injury to his back. With respect to the applicant's vocational loss of earning capacity based on the 2005 injury, Mr. Campbell found his loss would be between 45 and 50 percent while Mr. Woest found the loss to be between 50 to 60 percent. The experts' ranges are very close and in fact overlap. The commission adopts the top of the range of Mr. Campbell or 50 percent, as the applicant's loss of earning capacity. The commission does not believe the applicant sustained only a 45 percent loss of earning capacity because the applicant had been at one job where he performed heavy work for over 35 years. Further, he did not have a strong academic ability. However, the applicant had a 40-pound lifting restriction based on the opinion of Dr. Robbins and as Mr. Campbell explained, this leaves the full range of light work and a broad range of medium jobs available to the applicant. Mr. Campbell noted that the kind of work most appropriate for the applicant based upon his skill set were in manual packing and packaging, filling machine operation, general production functions, production testing and sorting, shipping, receiving, stocking, order filling, delivery, security and the custodial field. The majority of those jobs are classified as light, and light and medium jobs combined comprise almost 90 percent of the aggregate, and heavy jobs are actually in the minority. Thus the commission considered the applicant's loss of earning capacity to be considerably less than 60 percent which is the top of the range given by Mr. Woest.

The respondent conceded 20 percent permanent partial disability for the applicant's low back as a result of the 2005 injury. The applicant's loss of earning capacity is 50 percent and the applicant is therefore entitled to an additional 30 percent permanent partial disability beyond what was conceded.

The commission finds that the respondent self-insurer is liable for the payment of permanent partial disability for a total of 500 weeks at $292 per week which amounts to $146,000. The respondent paid temporary disability compensation through May 16, 2011, and indicated at page 9 of its brief that it considered those payments appropriate. As of May 1, 2016, 259 weeks have accrued at $292 per week for a total amount of $75,628. The applicant's attorney is entitled to a 20 percent attorney fee with a future value of $29,200. After an interest credit of

$1,513.84 the present value of that attorney fee is $27,686.16, of which $14,074.40 is unaccrued. The total payable is $88,188.56 of which $60,502.40 is to be paid to the applicant and $27,686.16 to his attorney. Beginning on May 1, 2016, the respondent shall pay to the applicant the sum of $1,265.33 per month until the sum of $56,297.60 has been paid. The respondent's attorney indicated at the hearing that it conceded 20 percent permanent partial disability to the applicant's back for the 2005 date of injury. The respondent asserted that it paid the applicant 20 percent permanent partial disability. However, the commission could not locate evidence of such a payment in the record. While the commission's award does not reflect the payment of 20 percent permanent partial disability the respondent is of course not liable to pay the applicant compensation which has already been paid to him. If, as seems likely since the applicant had two surgeries for the 2005 back injury, the respondent has made such payment it can adjust the amount it pays to the applicant accordingly. If no agreement can be reached on the amount, if any, that the respondent has already paid to the applicant for permanent disability to his back, the parties can request a hearing to resolve the matter.

The commission further finds that, according to Exhibit 4, the respondent would have been liable for payments to the Aurora Medical Group from September 16, 2010 through February 18, 2011, but that Kohler paid all but a small, written off portion of those bills. The majority of the bills in Exhibit 3 were incurred after the applicant reached his December 15, 2010, healing plateau for the low back and neck and after April 29, 2011, when he reached a healing plateau for his head injury. However, the commission cannot determine from the exhibit exactly what the bills relate to. Therefore the respondent is ordered to pay that portion of the medical bills that relate to the applicant's back, and neck prior to his December 15, 2010 end of healing. The respondent is also required to pay that portion of the applicant's medical bills that relate to the applicant's head injuries which were incurred for treatment prior to the April 29, 2011, healing plateau found by Dr. Novom. If the parties do not agree on an amount, they can request further hearing to resolve the matter.

Because the applicant may require future medical expense to cure and relieve the effects of his injuries, in particular the applicant's back may get worse and he may incur additional treatment expenses for his back, this order will be interlocutory.

INTERLOCUTORY ORDER

The findings and order of the administrative law judge are reversed. Within thirty days, the respondent shall pay to the applicant, Richard L. Decker, as accrued compensation, the sum of Sixty-thousand five hundred two dollars and forty cents

($60,502.40) in a lump sum and to his attorney, Charles F. Domer, the sum of Twenty-seven thousand six hundred eighty-six dollars and sixteen cents ($27,686.16).

Beginning on May 1, 2016, the respondent self-insurer shall pay to the applicant the sum of One thousand two hundred sixty five dollars and thirty-three cents ($1,265.33) per month until the sum of Fifty-six thousand two hundred ninety-seven dollars and sixty cents ($56,297.60) has been paid.

Jurisdiction is reserved as to all issues for such further findings and orders that may be warranted.

BY THE COMMISSION:

Laurie R. McCallum, Chairperson

C. William Jordahl, Commissioner

David B. Falstad, Commissioner

MEMORANDUM OPINION

The commission obtained the demeanor impressions of the ALJ prior to reversing his decision. The ALJ indicated that the applicant was credible and forthcoming when he testified about a lack of recollection of the September 15, 2010, work incident. The ALJ thought the applicant was sincere about wanting to continue working until retirement and with respect to his conversations with Drs. Broderick and Block which led to his decision not to pursue additional back surgery.

The commission did not believe that the applicant was unable to sit, stand, walk, bend or operate motor vehicles as was indicated by Dr. Broderick on February 9, 2012. The applicant testified that he was able to engage in woodworking projects as well as drive a car and a lawn tractor. The commission also found pertinent Dr. Osmon's conclusion that it was difficult to assess the applicant's condition because of his poor ability to generate a consistent effort throughout the task as well as an apparent verbal learning disability that was premorbid. The commission therefore did not find Dr. Broderick's opinions to be credible in spite of his clarification that the restrictions apply only to the workplace.

cc: Attorney Charles F. Domer
Attorney William R. Sachse Jr.