BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

GEORGIA REDMON,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1400998
	)	
WILGUS ASSOCIATES, INC.,	)	
	)	
Employer.	)	

Claimant's headache condition related to preexisting migraine and Not w/a (Dr Sommers [illegible])

DECISION ON PETITION TO DETERMINE ADDITIONAL COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on August 19, 2014, in the Hearing Room of the Board, Milford, Delaware.

PRESENT:

JULIE G. BUCKLIN
Workers' Compensation Hearing Officer

APPEARANCES:

Jay J. Lazzeri, Attorney for the Claimant

John J. Ellis, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDING

On June 27, 2013, Georgia Redmon ("Claimant") was involved in a work-related motor vehicle accident while employed by Wilgus Associates, Inc. ("Wilgus") as an insurance agent. On April 16, 2014, Claimant filed a Petition to Determine Compensation Due seeking acknowledgement that her headaches are causally related to the industrial accident and that she remains totally disabled due to the headaches. Wilgus acknowledged that Claimant's motor vehicle accident occurred within the course and scope of her employment and is compensable. PIP paid the medical bills and lost wages until it was exhausted on May 2, 2014 and Claimant sought workers' compensation benefits.

Wilgus argues that Claimant had preexisting headaches and that her headaches are not causally related to the motor vehicle accident. Wilgus also argues that Claimant is capable of working in a light duty capacity even with the headaches. On August 19, 2014, upon consent of the parties, a Hearing Officer conducted a hearing on Claimant's petition.

SUMMARY OF THE EVIDENCE

Michael Redmon, Claimant's husband of twenty years, testified on behalf of Claimant. Mr. Redmon is the Chief of Police in Bethany Beach.

On June 27, 2013, Claimant was injured in a motor vehicle accident on Route 26, west of Bethany. Mr. Redmon went to the scene. Claimant was behind a car that was making a left turn when she was hit from behind, which caused her to slam into the car in front of her. Mr. Redmon spoke to Claimant and she was upset and disoriented. She was wearing her seatbelt. Her eyes were not focusing while he applied cervical pressure to her neck and chin area, but she was fading in and out until EMTs arrived. She complained about pain in her head, neck, and low back, and kept saying "my head is on fire."

Claimant had a prior history of headaches since 1999 or 2000. Weather was a factor and she called herself "barometer-head." She got headaches behind her right eye and ear. She also got headaches when she was around cigarette and cigar smoke and those headaches would "take her out." At the time of accident, she worked for Wilgus. She had missed some time from work for sinus headaches prior to accident.

Claimant's sinus headaches have never changed, even after the accident. She still gets sinus headaches several times a month that are located behind her right eye. Since the accident, Claimant also gets headaches that start in the back of her head beginning in the neck that she describes as someone hitting her with a hammer because they are so intense. Mr. Redmon believes that the headaches stem from the impact because Claimant hit her head so hard that it broke the headrest in the vehicle. Claimant gets confused and has vertigo, nausea, and lack of concentration. Prior to the surgery, she could not walk well. She walks now, but still has pain.

Claimant has driven since the accident, but gets confused while doing so. Since the accident Mr. Redmon has driven Claimant to her primary care physician, Dr. Zeina Jeha, as well as to her other physicians, including Dr. David Sabbagh (orthopedic surgeon), Dr. Manomani Antony (pain management), Dr. Kennedy Yalamanchili (neurosurgeon), physical therapy, Dr. William Sommers (defense medical examiner), and Georgia Kousoulis (physician's assistant) at Dr. William Thomas' office (neurologist). Claimant drove herself to Ms. Kousoulis' office once or twice, but she got confused driving home, so she called Mr. Redmon for directions to get home. Claimant had low back surgery on March 10, 2014.

Mr. Redmon believes that the television, bright lights, and computer screens are triggers for Claimant's non-sinus headaches since the accident. Mr. Redmon testified that Claimant had

never had back pain prior to the accident, but he is aware now that she saw Dr. Jose Pando, a rheumatologist, in 2011 with complaints of back pain.

Mr. Redmon believes that prior to the accident, Claimant had non-incapacitating headaches once or twice a week and she had incapacitating headaches about twice a month. She had nausea and sensitivity to light with the incapacitating headaches. He was unaware that Dr. Jeha had referred Claimant to a neurologist prior to the accident.

Claimant, fifty-three years old, testified about her industrial accident, medical treatment, and headaches. Claimant works as an insurance agent and service representative, earning $1,013.25 per week with a compensation rate at the maximum rate of $645.01 per week. She has worked for Wilgus since 2000.

Claimant has earned several distinctions in the insurance industry. She is a certified insurance counselor ("CIC"), certified insurance service representative ("CISR"), accredited customer service representative ("ACSR"), and certified professional insurance agent ("CPIA"), but the certification has expired now. Claimant sold insurance and serviced accounts for Wilgus. In 2009, she was awarded a Customer Service Award for the State of Delaware. In 2011, 2012 and 2013, in *Delaware Today* magazine, she was listed as top 7% of all insurance agents in Delaware.

Claimant saw Mr. Greg Sender for her lupus, not Dr. Pando. Mr. Sender is Dr. Pando's physician's assistant. Claimant had joint pain, not back pain. She saw Mr. Sender twice for generalized joint pain in April 2011 and never returned to see him again. Her lupus is no longer showing up on her blood test since the industrial accident.

Claimant saw Dr. Paul Howard, an ear, nose, and throat physician, for her sinus headaches on May 24, 2011, upon a referral from Dr. Jeha. When she got that headache, it was

behind her right eye. Dr. Jeha treated her headaches for years prior to the accident, but Dr. Jeha never asked about the triggers. Dr. Howard is the only physician who asked Claimant about the details about her headaches, including the location of the headaches.

Claimant missed time from work, especially in 2011, when she perforated her colon and missed nearly thirty days of work. From 2007 through 2010, there are no real records of treatment for headaches because she was on Topamax, which worked to control the bad headaches, so she did not miss much work during that time period. In 2011, the headaches returned and she discontinued Topamax and started taking Percocet 5-325 for her headaches at that point.

Before the accident, Claimant's headaches were located behind her right eye and her nose got stuffy also. Her co-workers could tell when she had a headache because her eyes were "droopy and puffy." The pain went through the temple and in the front of her head. Claimant had pain in her ears and around her eyes, but never in the back of her head. Claimant could work with the sinus headaches sometimes, unless they were intense. When the headaches were intense, Claimant had to be in the dark and could not work for two days. Those severe headaches were located in the front of her eyes too. She had the nagging, less intense headaches about twice a week, but she could go to work with those headaches. With the less intense headaches, Claimant took Advil instead of Percocet, because she could not work while taking Percocet. Claimant took about ten Percocet pills per day when she got the intense headaches because she has a low tolerance for pain. She would get the intense headaches two or three times per month.

She never saw a neurologist before the motor vehicle accident because she always thought the headaches were sinus-related. Dr. Howard led Claimant to believe that the

headaches were sinus-related too, so she never believed that she needed to see a neurologist until after the accident.

Since the accident, Claimant's the headaches are located in the back of her head. It feels tight at the back of her neck and it feels like hammering on the back of her head. She never felt anything like this before the accident. Ever since the impact, Claimant has felt a burning pain at the base of her neck and back of her head. She gets three to four bad headaches a week that last for a few days each time. She vomits up the medication sometimes. She tried to work when she had the bad headaches because she loves her job and does not want to miss work, but she made mistakes. She did some insurance quotes from home, but forgot to get back to clients and made mistakes that impacted her clients. Those types of mistakes were out of character for her.

After the accident, Dr. Jeha referred Claimant to Drs. Antony and Yalamanchili. She underwent lumbar spine surgery with Dr. Yalamanchili on March 10, 2014 and then went to physical therapy for her lower back and neck. Her last visit with Dr. Yalamanchili was on April 19, 2014, at which time she was able to walk. She had a procedure called crystallization to help her with the vertigo. Claimant went to speech services as well. Dr. Antony prescribed oxycodone (15mg), a muscle relaxer, Lyrica, and pain patches for her lower back.

Claimant testified that although she wants to return to work, when she gets migraines, she cannot be around people because it knocks her out. Even though Wilgus offered to let Claimant return to work, she does not believe that she can work now because of the bad headaches, especially since a computer screen is a trigger for the headaches. She becomes dizzy, light-headed, and nauseated when she drives and her medications make it irresponsible to drive.

When Claimant saw Dr. Sommers for the defense medical examination, he asked if she had a history of migraines and she reported that she had such a history. She told him that smoke

and weather triggered her headaches before the industrial accident. He never asked where the headaches were located before and after the accident or if there was a difference.

Currently, Claimant sees Dr. Antony for pain management and Ms. Kousoulis at Dr. Thomas' office for her neurology appointments. She is supposed to see Dr. Michele Poynton-Marsh for the confusion, but she needs to get insurance approval first.

Dr. Sommers focused on two notes from Dr. Jeha. Claimant believes that the April 2, 2012 office note that describes two-a-week headaches was referring to the less severe headaches because she would have been incapacitated from the severe headaches. The second note is from April 26, 2013, and says that Claimant does not want to see neurologist. Claimant asked to try the same medication that her sister takes for migraines, rather than taking Percocet. Dr. Jeha never asked about the frequency, triggers, or location of the headaches. Claimant preferred not to take Percocet for her headaches because it clouded her brain. Claimant reported that she did not miss much work for headaches in 2013, but she admitted that she did missed quite a bit of work for various reasons in 2012.

Claimant testified that she cannot walk very far because of the back pain currently, but can work at a desk sometimes. She has a great deal of debilitating pain at the back of her head and neck. She does not go anywhere because of the pain. She cannot work on the computer at home because the light and the movement of her neck bothers her and causes headaches.

Dr. Howard noted that the reason for Claimant's visit was due to headaches that seem to be weather-related and that the headaches started fourteen years ago. Claimant reported that she has pain in the right ear. She described headaches that occur in front and all over with nausea and vomiting, as well as complaints of dizziness and light-headedness. Dr. Howard was the first doctor to ask specifics about the different headaches. He diagnosed Claimant with migraines and

chronic sinusitis and referred her to a neurologist. Claimant did not feel the need to see a neurologist, so she never went to one before the industrial accident. Claimant described the pre-accident headaches as right frontal eye and as very different than the ones she has now post accident. She described the ones post-accident as being located in the rear part of her head and neck. The plan was to follow up with Dr. Howard in six weeks, but she did not return to see him because she felt better.

Claimant has driven herself to some of her own appointments since the accident. No doctor has prohibited her from driving.

Claimant told Drs. Antony and Sommers that she only had one to three headaches a month prior to the accident. She meant that she only had one to three debilitating headaches. She did not specify between the different kinds of headaches when she saw Dr. Sommers because he did not ask her to specify. Claimant admitted that Dr. Antony was not aware of the prior frequency of headaches either, because she only asked about the post-accident frequency.

On February 28, 2011, Dr. Jeha noted that Claimant requested a refill of Percocet because she had migraines three times a week. Claimant believes that Dr. Jeha misinterpreted her report, despite what the doctor's record indicates. On October 7, 2011, Dr. Jeha's record indicates that Claimant took Percocet several times a week for headaches. Claimant again believes that Dr. Jeha's records are inaccurate and that the doctor misinterpreted her statement. On April 2, 2012, Dr. Jeha's records indicate that Claimant reported having chronic familial headaches twice a week that resolve with Percocet.

Claimant denies Dr. Jeha characterizing her migraine condition as "severe" prior to the accident, but Claimant agrees that it could have been characterized as such in her right eye. Dr. Jeha's records from November 26, 2012 indicate that Claimant was using Percocet for the bad

headaches and that sixty pills last for thirty days. On January 16, 2013, Dr. Jeha's records say Claimant complained of bad migraines and used up to four Percocet pills per day if she had a migraine. Dr. Jeha again recommended that Claimant see a neurologist for her migraines, but Claimant did not do so because she believed that the headaches were under control and related to her sinuses and that a neurologist could not help her. On April 26, 2013, Claimant went to see Dr. Jeha for the most recent time prior to the accident in order to switch medication to the same medication that her sister used for migraines. She admitted to having nausea, dizziness, and light-sensitivity from headaches prior to the accident. She also had to take time off from work for her headaches; some months she missed two days from work due to the severe headaches.

Dr. Antony referred Claimant for an evaluation with Dr. James Langan, a neuropsychologist, before she will release Claimant to work. Claimant has cancelled several appointments with Dr. Langan. Delaware Neurology will be the primary provider for the headache condition and they take the most detailed information regarding her headache condition.

Manonmani Antony, M.D., board-certified in anesthesiology and pain medicine, testified by deposition on behalf of Claimant. Dr. Antony began treating Claimant on September 12, 2013. She believes that Claimant's headaches are causally related to the industrial accident and that Claimant is totally disabled due to the headaches.

Dr. Antony reviewed Claimant's medical records from Dr. Jeha, Dr. Sabbagh, Rheumatology Consultants, an MRI of the lumbar spine, Dr. Thomas and Ms. Kousoulis at Delaware Neurology Associates, Tidewater Physical Therapy, Poynton-Marsh Speech Services, and Dr. Howard. Dr. Antony does not believe that there was anything in those records that involved migraine headaches or touched upon the headache issues.

Claimant saw Dr. Howard for sinus headaches on May 24, 2011. Dr. Howard's records indicate that Claimant had headaches that seemed to be weather-related. The onset had been recurrent for fourteen years. Clamant reported having pain and pressure in the right ear and a stuffy, blocked nose on the right side that changes with the season. Her post-nasal drip symptoms were clear. She had numerous sinus infections in the past year and was treated with antihistamines and nasal sprays. Her other symptoms included puffy eyelids that occur all year and feeling very tired in the mornings. She described headaches as occurring in the front in the temple and all over, as well as sensitivity to light, nausea, and vomiting. She also complained of periodic dizziness and lightheadedness that occurs when moving that lasts for seconds and she has nausea. Dr. Howard diagnosed Claimant with chronic migraine and recommended that Claimant see a neurologist. Dr. Howard noted that Claimant's headaches occurred off and on with a blocked, stuffy nose and were weather-related. He did not indicate whether the headaches were on a frequent, daily, or weekly basis.

Dr. Antony was aware that Claimant's work-related motor vehicle accident occurred on June 27, 2013. Claimant was stopped at a traffic light when she was rear-ended by another vehicle and pushed into the vehicle in front. She saw Dr. Jeha on July 3, 2013. Dr. Jeha's records indicate that Claimant reported that she was injured in a motor vehicle accident and that she hit her head on the back of the headrest and hurt her left knee. She had bad headaches, neck pain, and low back pain that went down the left leg. She had gone to the emergency room and the head CT scan was fine. She was prescribed Percocet 10-325, which helped.

Dr. Jeha sent Claimant to Dr. Thomas at Delaware Neurology Associates and to Dr. Sabbagh at Orthopedic Associates. Dr. Sabbagh focused on the low back pain radiating down the left leg. Dr. Sabbagh noted on August 22, 2013 that Claimant had persistent chronic neck

pain with posterior occipital headaches but no evidence of cervical radiculopathy. The headaches that Dr. Sabbagh described are different from the headaches that Dr. Howard described. The headaches that Dr. Howard described were mainly sinus headaches and he did not really touch on the classic migraine headaches; he said that Claimant's headaches were mostly associated with stuffy nose and were weather-related.

On July 22, 2013, Dr. Thomas noted that Claimant was involved in a motor vehicle accident and was experiencing difficulty with concentration, sleep disturbance, memory impairment, vertigo, headaches, loss of consciousness, and neck pain. The headaches began acutely on June 27, 2013 and have increased. The headaches usually begin in the right and left occipital area and involve tightness. She experienced head trauma prior to the onset of the headaches. Claimant also experiences phonophobia, photophobia, and vertigo during the headaches, which means that the headache increases with noise and bright light and the vertigo caused nausea. Dr. Thomas noted that Claimant had headaches previously, which had been treated by her primary care physician.

Claimant underwent an ENG test on August 23, 2013, due to the vertigo complaints. An ENG test is an electronic test for the vestibular nerve. The test was consistent with peripheral vestibular involvement. The vestibular nerve is from the brain to the inner ear and it could be damaged closer to the ear where it actually crosses the inner ear and it would manifest itself with vertigo and dizziness.

Claimant went to Poynton-Marsh Speech Services for cognitive rehabilitation because she had difficulty with concentration, focus, and memory. She was treated for about eight or nine weeks with different exercises. Her primary complaints involved significant headaches accompanied by decreased ability to concentrate, manage doctor appointments, and work in the

insurance business. On October 8, 2013, deficits were noted in areas of immediate memory, organization, and visual, tactical, and executive functions. On November 15, 2013, Claimant had mild deficits in areas of memory and language. She was unable to perform the cancellation test because she was feeling overwhelmed with the visual stimulation. She became anxious and asked to stop the test. On December 19, 2013, Claimant reported that she had gotten lost on the way to her doctor's appointment where she had been many times.

When Dr. Antony first saw Claimant on September 12, 2013, Claimant described the mechanism of her accident and reported that she had neck pain that was seven out of ten on the pain scale and headaches that were eight out of ten on the pain scale. She described the pain starting in the neck that radiated to the left side of the neck and head to the left temple. She also had vertigo associated with nausea, vomiting, and dizziness. She lies down with the headaches. She also complained of back pain that was six out of ten on the pain scale that radiated along the left side and increased with prolonged sitting. The pain interrupted her sleep and she had to change positions while sleeping.

Dr. Antony saw Claimant on a monthly basis through February 27, 2014 and then Claimant underwent lumbar spine surgery with Dr. Yalamanchili, so Claimant did not see her again until April 23, 2014. She has continued to see Claimant on a monthly basis since that time. Most of the visits lasted for more than twenty-five minutes.

When Claimant started treatment, her biggest focus was the neck pain and headaches. Dr. Antony thought that the neck pain was cervical because she had a typical whiplash injury, which is usually a cervical injury. The pain from the facet joints, as well as the occipital nerve irritation, could have caused the pain, which is why Dr. Antony performed the cervical facet block and bilateral occipital nerve block on September 18, 2013. On October 10, 2013, Claimant

said that there was no response to the injections, but later she said that it was a good response. Because Claimant's pain level had decreased, she started feeling more pain in the other areas and the low back pain became more prominent at that point.

Dr. Antony has kept Claimant on a total disability status since September 2013, related to the headache and neck pain. The neck pain has subsided somewhat, but the headaches are very prominent, so Dr. Antony is trying to figure out what is causing the headaches. If she can pinpoint the occipital nerve causing the headaches, she can do an occipital nerve block with radiofrequency or if she can pinpoint the cervical facet joint causing the headaches, she can do the medial branch block and radiofrequency. Those procedures would give Claimant longer pain relief from six to twelve months.

A classic migraine is different from Claimant's headaches. A classic migraine usually starts without a provoking incident. Claimant's migraine headaches last for a few hours or a few days and are associated with phonophobia and photophobia. Prior to the industrial accident, Claimant got the migraine headaches two or three times a month and they lasted for a few hours, sometimes associated with nausea and vomiting. The only medication that she ever took was a preventive medicine called Topamax, which settled down her migraines. She had to stop Topamax because she developed some mood problems. She was able to manage the migraines that she had two or three times a month.

Claimant's current headache is very different from the migraines that she used to get. The current headache starts in the back of the neck and goes to the temples and then to the top of the head and she gets the headache almost daily. Sometimes, the headache lasts for days. Claimant also had phonophobia and photophobia when looking at a computer for a prolonged period, which increases the headache. She started using three to five medications, including

Topamax, amitriptyline, and propranolol, which Dr. Thomas prescribed. She also takes Zomix, which is a medication for severe headaches.

Dr. Antony believes that Claimant's current headaches are related to the June 27, 2013 motor vehicle accident. Claimant's symptoms are more frequent, occurring almost daily, and are provoked by the cervical and occipital nerves. Dr. Antony has recently referred Claimant to a neurologist with subspecialty training in headaches. Dr. Antony believes that Claimant's daily headaches with dizziness, nausea, light sensitivity, and sound sensitivity are a direct and proximate result of the June 27, 2013 motor vehicle accident. Prior to the accident, Claimant was working full-time as an award-winning insurance agent, which involved a lot of cognitive work with a computer and paperwork. The daily headaches have made an impact such that she is unable to work because of the headaches and cognitive deficits.

Dr. Antony agreed that her records do not document the frequency of Claimant's headaches post-accident or pre-accident. She relied on her memory when she testified that Claimant has daily headaches now, but she had them three or four times a month before the accident. Since Claimant was treating with a neurologist for the headaches, Dr. Antony focused her treatment on Claimant's neck and back pain, which is why there is not much written in the records about the headaches. Dr. Antony is aware that Claimant worked full-time and was an award-winning insurance agent before the accident so the headaches did not impact her ability to work before the accident, although it is not documented in Dr. Antony's records.

Dr. Antony reviewed Dr. Yalamanchili's records. Dr. Yalamanchili focused on Claimant's low back issues and performed lumbar spine surgery on March 10, 2014. Claimant only went to one post-operative visit with Dr. Yalamanchili, which was on April 9, 2014. Dr. Yalamanchili noted that Claimant was doing well and was able to walk, which she could not do

before the surgery. He also noted that Claimant was instructed on the use of proper spine biomechanics when bending and lifting. She was cautioned against lifting more than twenty pounds over the following four weeks and was advised to gradually increase activity. Dr. Antony agreed with Dr. Yalamanchili's release regarding Claimant's physical capabilities for the low back.

Dr. Antony did not review any of Dr. Jeha's records from prior to the accident. She only reviewed Dr. Jeha's records beginning on July 3, 2013.

Dr. Antony reviewed Dr. Howard's records and believes that his records refer to the migraines as sinus headaches since the reason for the visit is noted to be weather-related headaches with on and off stuffy, blocked nose that changes with the season. Dr. Howard noted that Claimant had a number of sinus infections over the last twelve years that had been treated with antihistamines and nasal sprays. Dr. Howard also noted Claimant's allergic symptoms with puffy eyelids and tiredness in the morning. The headaches were described as occurring in the front in the temples and all over with nausea, vomiting, dizziness, and light-headedness. Dr. Howard actually said that Claimant has chronic sinusitis as one of the diagnoses; he never used the term "sinus headache," but that is what he described. He also mentions migraines and recommends that Claimant see a neurologist, but it was more sinus than migraine.

Dr. Antony recently referred Claimant to a headache specialist and once the headaches are controlled, she can return to work. In the meantime, her cognitive function has worsened and she needs more rehabilitation. She has an appointment scheduled with Dr. Langdon, so maybe after a couple of appointments, she could undergo a functional capacity evaluation. The neurologist is in charge of making determinations concerning Claimant's neurological condition.

Susan Reis, a Workers' Compensation Specialist at Selective Insurance, testified by telephone on behalf of Wilgus. Ms. Reis reviewed the carrier payment log, which reveals that approximately twenty medical bills have been paid. There were some payments made to Delaware Neurology for services rendered on June 9 and June 23, 2014. The record from June 9th listed a diagnosis of post-concussive syndrome. The June 23rd record came in to Selective Insurance on same day as the June 9th record and the bill was paid by mistake because there was confusion about the name of providers since Dr. Yalamanchili's office name is Delaware Neurosurgical and his bills are compensable. The other reason that the June 23rd bill was paid was because the June 9th record noted a diagnosis of post-concussive syndrome, which has been accepted as compensable.

Ms. Reis generally handles about 150 claims at one time, so mistakes happen. She felt legally compelled to pay for bills related to the post-concussive syndrome and for Delaware Neurosurgical, but not for the headaches. She agreed that bills for certain medications that were used for headaches could have been paid, but those medications have now been removed from the system because they are not authorized. Some of those medications were probably paid by mistake and some were paid because they were believed to be related to the post-concussion syndrome. Wilgus never accepted compensability for Claimant's headaches and Dr. Sommers believes that Claimant's headaches are not related to the industrial accident.

Ms. Reis indicated Delaware Neurology prescribed some of the medications that were paid. She now knows that those medications are for the headaches, but she thought that they were for post-concussive syndrome because Delaware Neurology prescribed them. The carrier has paid for approximately $3,000 for all of Claimant's medication, including medications for the low back and headaches. Ms. Reis did not see any prescriptions from Dr. Yalamanchili. All

of the prescriptions have been from Dr. Antony or Dr. Thomas and were paid under feeling of compulsion because there was compensable treatment for lower back, neck, and post-concussive syndrome, but not for headaches.

David Wilgus, the owner of Wilgus Insurance, testified on behalf of Wilgus. Claimant has been employed with Wilgus since 2000. She worked in Bethany office for most of her tenure, but she also worked in the Lewes office for some time. Mr. Wilgus saw Claimant at work regularly. Claimant remains on the books as an employee. She was a good employee, in general.

From 2000 to 2013, Claimant worked as a personal lines customer service representative and she was usually working in the office. She sat behind the desk using the telephone and computer most of the time, because it was a sedentary duty position. In 2013, Claimant changed jobs to become a commercial lines producer, which meant that she sold commercial insurance policies. She went out to get proposals, visit prospective customers, and deliver policies. The commercial lines producer position required Claimant to work outside and inside the office.

Mr. Wilgus completed a modified duty availability report, which described a way for Claimant to return to work with modified job duties. Wilgus made a formal offer to Claimant in order to get her back to work, although she was never terminated. Wilgus offered for Claimant to return to either of her prior positions earning her prior wage rate with her prior commission opportunities. Claimant rejected the job offer and sent a letter to Wilgus from her doctor, indicating that she would not be able to return to work.

Mr. Wilgus was aware that Claimant has had headaches for years, because Claimant has called in sick due to headaches in the past. Claimant also told him about her headaches before and the intensity of them had varied. He knew that some of the headaches took her out of work

and were fairly severe. When Claimant had the severe headaches, she missed work. Mr. Wilgus did not know many details about her minor headaches. Claimant used sick time when she missed work or left early and if it was headache-related, Mr. Wilgus would normally know about it. Claimant's headaches had been an issue over the years and she missed work on just about every month for headaches before the industrial accident.

Right after the accident, Claimant called and said that she wanted to return to work fairly quickly, but then a few days turned into longer. Claimant tried to help clients from home, but it was not working out because the work was not getting done and she made mistakes. After that, Wilgus believed that Claimant should stop trying to work from home and should focus on getting better. Claimant was paid commissions on her accounts even though she was not formally working after the accident. Her commissions stopped in June 2014.

In 2011, Claimant missed more than twenty days because of some gastrointestinal issues. She missed sixteen days in 2012 for health issues, but Mr. Wilgus does not know for which specific illnesses each day was used. In 2013, Claimant used eight sick days and seven vacation days prior to the accident in June and some of those days off were due to headaches. After the accident, Mr. Wilgus noticed that Claimant was not performing the job as well as it should be done. Prior to the accident, Claimant did her job well. Both Mr. Wilgus and Claimant were upset that she was no longer able to do her job.

Joseph Lucey, a vocational consultant, testified on behalf of Wilgus. Mr. Lucey was aware of Claimant's background and that Dr. Sommers had indicated that she had light duty work restrictions with lifting up to ten pounds and avoiding repetitive bending and twisting.

Claimant graduated from high school and earned an associates degree. She worked as a licensed insurance agent at Wilgus and for another insurance agency previously. Her previous

work experience included customer service in a bank, assistant store manager, and retail manager. As an assistant store manager and retail manager, Claimant has experience in sales, training, ordering, business administration, bookkeeping, and using a computer.

Mr. Lucey determined that Claimant had ability to work in a number of positions. He listed five jobs on the labor market survey as a sampling of the jobs that Claimant could perform that are available in the open labor market. Dr. Sommers approved all jobs listed in the labor market survey. The jobs listed in the survey can be performed while at a workstation and she can alternate sitting, standing, and walking as needed. The average weekly wage for the jobs listed on the survey is $537.84 and Claimant earned $1,013.24 per week at Wilgus. As of a couple days before the hearing, all of the jobs remain available except the job at Nemours.

Mr. Lucey conducted a transferrable skills analysis, which showed that Claimant had people skills, including speaking and signaling, as well as computer skills, attaining set limits and tolerances, taking instructions, and influencing and working with people.

William Sommers, D.O., a board-certified neurologist and a certified medical provider pursuant to the Delaware Workers' Compensation system, testified by deposition on behalf of Wilgus. Dr. Sommers examined Claimant on July 9, 2014 and reviewed Claimant's medical records in conjunction with the examination. Dr. Sommers agrees that Claimant's medical treatment has been reasonable and necessary, but he does not believe Claimant's headaches are causally related to the motor vehicle accident since Claimant has a preexisting history of migraines.

Dr. Sommers treats patients with headaches due to acute injury and those without acute injury. He treats patients with headache conditions similar to Claimant. He also treats patients with back pain.

When Dr. Sommers examined Claimant and issued his first report, he had reviewed the records from Beebe Medical Center, Dr. Jeha, Delaware Neurology Associates, Ocean Medical Imaging, ONI, Orthopedic Associates, Poynton-Marsh Speech Services, Tidewater Physical Therapy, and Sussex Pain Relief. Dr. Sommers did not review Dr. Howard's records or Dr. Jeha's records from prior to the industrial accident until after he examined Claimant.

Claimant indicated that she was involved in a work-related motor vehicle accident on June 27, 2103. She described the accident wherein her vehicle was rear-ended by an SUV and pushed into the car in front of her. She struck her head against the headrest and "saw stars." She immediately developed a headache and a burning sensation of the head. She required assistance exiting her vehicle and received immediate medical attention at Beebe Medical Center, where she was evaluated and released. She was experiencing headache, neck pain, and low back pain. She followed up with Dr. Jeha and was referred for diagnostic testing, including a lumbar spine MRI. She was referred to physical therapy and to other specialists, including Dr. Sabbagh, who is an orthopedic surgeon, and to Dr. Antony for pain management for the headache, neck pain, and back pain with right lower extremity radiation and numbness. She had two MRIs of the lumbar spine with the initial MRI demonstrating some degenerative disc disease and the second MRI demonstrating apparent worsening of the disc disease, which led to a lumbar discectomy with Dr. Yalamanchili.

Dr. Sommers evaluated Claimant about four months after the lumbar discectomy and she continued to experience lumbar spine pain with an element of lower extremity radiation. She also indicated that she was experiencing frequent headaches. She experienced an average of three headaches per week. She used Zomig nasal spray to relieve her pain. The symptoms

included intermittent dizziness, light-headedness, and headache. She had a trial of an occipital nerve block that had not provided any significant relief.

Claimant denied having any preexisting difficulty related to the lumbar spine, left lower extremity, or cervical spine. She described a longstanding history of chronic recurrent headaches, which had been diagnosed as migraine. She characterized the frequency of those headaches to be one or two episodes per month prior to the accident.

The physical examination showed no physiologic pattern of weakness. There was no myotomal pattern of weakness to suggest lumbosacral radiculopathy. Sensory testing demonstrated complete anesthesia or loss of light touch sensation involving the left thigh, calf and foot, which did not conform to a particular dermatome. She reported that the straight leg-raising test produced low back pain at sixty degrees on the right and thirty degrees on the left, which was not felt to be concordant with the sitting root tension sign. Claimant was providing inorganic or unverifiable findings that are not expected.

Dr. Sommers also noted that the straight leg-raising test was provocative of low back pain, which was inconsistent with the sitting root tension maneuver. They are two separate maneuvers that are designed to place tension or stretch on the lumbosacral nerve roots. With the first maneuver, the sitting root tension sign, Claimant was probably unaware that Dr. Sommers was testing her for evidence of nerve root irritation and she did not appear to have any restriction or discomfort; however, with the second maneuver, the straight leg raise maneuver, Claimant reported pain. The results of those two tests were inconsistent.

The only objective finding on examination was the presence of the lumbar surgical scar consistent with the surgery. Dr. Sommers felt that there was an element of symptom magnification characterized by suboptimal effort on manual muscle testing and the non-

concordant findings in the sitting root tension maneuver and the straight leg raise maneuver. The symptom magnification consisted of exaggerating symptoms, as well as less than full effort on testing.

At the time of the examination, Dr. Sommers thought that the history provided was plausible for a minor concussion without documented loss of consciousness, cervical strain/sprain type injuries, and traumatically-induced lumbar disc disease with radiculopathy. He also felt at that time, based upon the information that she reported to him, that there appeared to be an exacerbation of a preexisting migraine condition. Claimant reported that she had some improvement since the lumbar spine surgery.

At the time of the examination, Dr. Sommers thought that there was a plausible basis for total disability for any and all work from June 27, 2013 until his examination date on July 9, 2014. He believed that Claimant was capable of returning to work as of July 9th in a full-time light duty capacity with lifting and carrying up to ten pounds and she should avoid repetitive bending and twisting. He also felt that all of the treatment had been appropriate up to July 9th.

After the examination, Dr. Sommers was provided with additional medical records from Dr. Jeha from November 20, 2003 through June 5, 2013. He also received records from Dr. Howard dated May 24, 2011. After reviewing the additional medical records, Dr. Sommers issued a supplemental report wherein he modified his opinion concerning the exacerbation of Claimant's preexisting migraine disorder. The additional records indicated that Claimant was suffering from frequent migraine headaches and she had underestimated or misrepresented the frequency of those headaches. It is now Dr. Sommers' opinion that there is no objective evidence to indicate that Claimant has suffered any worsening of her preexisting headache disorder. Dr. Sommers noted on the last page of his first report that his opinions were based on

the medical records available to him at that time. With the new information, Dr. Sommers changed his opinion regarding the headache condition, but he maintained his opinion regarding Claimant's work capability. Dr. Sommers now believes that Claimant's headache condition is not causally related whatsoever to the June 27, 2013 industrial accident.

At the time of the examination, Claimant told Dr. Sommers that she had one or two bad headaches per month prior to the industrial accident when, in fact, Dr. Jeha's records indicate that Claimant had two or more headaches per week prior to the industrial accident and every office visit seemed to be dominated by the headache complaint. Claimant was prescribed Percocet on a regular basis to manage headaches and she had been referred to a neurologist for evaluation of migraine, tried various prophylactic medications for migraine, and consideration was being given to referring her back to neurology for better headache management immediately prior to the motor vehicle accident.

Dr. Sommers reviewed Dr. Jeha's records prior to Claimant's accident. On November 20, 2003, Dr. Jeha noted that Claimant had stress-induced headaches and insomnia with associated dizziness. On June 25, 2004, Dr. Jeha noted that Claimant was once again complaining of headaches and she was on Imitrex at that time and had associated insomnia. On August 1, 2006, Claimant referenced bad stress, an increase in headaches, and that she had to take a lot of sick days off. She also referenced anxiety and depression and that Claimant was on Topamax for migraines. On February 28, 2011, Dr. Jeha's notes indicate that Claimant was taking Percocet for migraines three times a week. On October 7, 2011, Dr. Jeha noted that Claimant was taking Percocet several times a week for migraines. On April 2, 2012, Claimant was complaining of two headaches a week that were chronic, problems sleeping, and she was considering a career change. On June 5, 2012, Claimant complained of a bad migraine with

nausea, but she had not seen Dr. Paul Peet, who is a neurologist. On August 31, 2012, Dr. Jeha notes that Claimant reported having a lot of stress and severe primary migraine. On November 26, 2012, Dr. Jeha noted that Claimant had migraines, stress at work, and used Percocet for the bad headaches. She used sixty Percocet pills in three months, which indicates to Dr. Sommers that the bad headaches requiring Percocet were occurring quite frequently. On January 16, 2013, Claimant complained of bad migraines and that she has to use up to four Percocet pills a day for the bad ones. Claimant was asked again to contact Dr. Peet to discuss non-narcotic medication for the headaches because Dr. Jeha was concerned about Claimant being on narcotic medication due to the addictive nature of narcotics. On April 26, 2013, which was Dr. Jeha's last record prior to the industrial accident, Dr. Jeha noted that Claimant complained of "continuing migraines." Claimant has a family history of migraines and her sister has migraines. Claimant wanted to try a medication called zonisamide and Zofran, so she was continued on Percocet and prescribed Zofran and zonisamide.

Based on the medical records, it appears to Dr. Sommers that Claimant's headache condition has been fairly constant since 2003. She was regularly taking various medications including Percocet, Topamax, Zofran, zonisamide, and Imitrex. There did not appear to be any resolution of her headache condition prior to the industrial accident. There were some changes made in the medications after the industrial accident, but Dr. Sommers does not believe that there has been any indication of a significant change in the headache frequency. The current medications for the headaches are geared towards migraines.

Dr. Sommers agreed that Dr. Jeha's records are not very descriptive of the headaches in terms of location or quality of pain. Dr. Jeha does not note where the headaches are located, how long they last, the intensity, whether or not Claimant was sensitive to light or sound, or whether

Claimant was dizzy or having vertigo. Dr. Jeha describes the headaches as being severe at times and requiring significant dosages of Percocet. She also describes frequency at various points averaging several headaches per week. Dr. Sommers also agreed that the records from November 29, 2006 until February 28, 2011 do not mention any headache complaints.

Dr. Sommers also reviewed the May 24, 2011 record from Dr. Howard. Claimant saw Dr. Howard primarily for headaches. Claimant complained of problems that are associated with migraine headaches, including sensitivity to light, nausea, vomiting, dizziness, feelings of giddiness, and light-headedness. Claimant has had some or all of those symptoms post industrial accident also. Tightness in the muscles in the neck is associated with tension and migraine headaches.

Based on the records from Drs. Jeha and Howard, Dr. Sommers believes that Claimant's symptoms have been similar pre and post-industrial accident. Dr. Sommers believes that Claimant's headache condition as it existed from 2003 to today is just a natural progression of the migraine headache condition. Dr. Sommers did not see any evidence to indicate that there has been any significant change in her headache syndrome since the industrial accident. Claimant misrepresented the frequency of her pre-accident headaches to Dr. Sommers.

Dr. Sommers reviewed the ENG that Dr. Thomas ordered to test Claimant's vestibular system. The results were suggestive of peripheral vestibular dysfunction, which means that Claimant had a balance disturbance related to the inner ear or the connections with the inner ear and the brain. Dr. Thomas documented that the condition was resolved. Vestibular dysfunction has no connection to Claimant's headache pattern.

Dr. Antony discusses an occipital nerve block in her deposition. She mentioned that the occipital nerve block was successful in resolving Claimant's pain to some degree. Claimant told

Dr. Sommers that the nerve blocks did not have any substantial impact on her headache pattern. Dr. Antony appears to discuss the occipital nerve being different from migraine. Dr. Sommers believes that Dr. Antony is trying to make a case for what is called cervicogenic headache or headache originated from disease in the cervical spine or from irritation to the occipital nerves. Dr. Sommers disagrees with that diagnosis for Claimant and believes that Claimant's headache pattern is consistent with migraine. Her headaches are associated with nausea, vomiting, light sensitivity, and noise sensitivity, which are all features of migraine. The fact that she was placed on migraine medications and the fact that medications such as Zomig and Imitrex have aborted some of her headaches in the past would indicate that these headaches are migrainous in origin. The headache diagnosis before and after the industrial accident would be migraines for both.

It appears that Dr. Antony did not review Dr. Jeha's records from prior to the industrial accident. Dr. Sommers believes that those records were critical for evaluating causation. Dr. Antony believes that Claimant's prior headache condition was merely sinus headaches. Based on Dr. Howard's records, Claimant did not have just sinus headaches prior to the industrial accident. Under Dr. Howard's assessment, he diagnosed Claimant with migraines and started her on Imitrex, which is a medication specifically to treat migraines and it does not treat sinus headaches. He also referred her to a neurologist for the migraines. Claimant was also diagnosed with sinusitis, which is separate from the migraine condition referenced in Dr. Howard's records.

Dr. Antony references the location of Claimant's headaches as being different before and after the industrial accident. Dr. Antony indicates that the headaches start exclusively in the back of the neck and go to the temples and top of the head and that the headaches occurred on a daily basis since the industrial accident. She indicated that the headaches were associated with phonophobia and photophobia and concluded, based upon these features, that it is not a migraine.

Dr. Sommers explained that the fact that a portion of Claimant's headaches are located in the posterior quadrant does not mean that they are not migraine. The fact that her headaches are oftentimes associated with light sensitivity and noise sensitivity is very descriptive of migraine.

Dr. Sommers is aware that Claimant underwent lumbar spine surgery with Dr. Yalamanchili on March 10, 2014. Dr. Yalamanchili noted on April 9, 2014 that Claimant was doing well postoperatively and was able to walk daily even though she could not walk prior to surgery. He released her to do her activities of daily living. Claimant did not follow up with Dr. Yalamanchili. Dr. Sommers would expect Claimant to continue improving following surgery. He also believes that Claimant is capable of working with restrictions as of the date of his examination. As a neurologist, Dr. Sommers handles the issue of returning to work for patients with similar headaches as Claimant. No one has medically restricted Claimant from driving.

Based on the records, Claimant was able to maintain a job while having regular headaches with symptoms of dizziness and light-headedness prior to the industrial accident. Dr. Sommers believes that Claimant could perform a job in accordance with the forms that Wilgus filled out regarding her job duties. Dr. Sommers sees no neurological explanation as to why Claimant could not perform those job duties. Dr. Sommers also reviewed the labor market survey and approved all five jobs listed on the survey as being appropriate for Claimant. She could perform all of those jobs safely and within the restrictions that he set forth.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant bears the burden of proving that her headaches are causally related to the industrial accident. Wilgus acknowledged that the industrial accident occurred, but argues that Claimant's headaches are not causally related to the industrial accident. For the following reasons, I find that Claimant has not met her burden of proof.

When there is a conflict in the medical testimony, the Hearing Officer must decide which physician is more credible. *General Motors Corp. v. McNemar*, 202 A.2d 803 (Del. 1964). As long as there is substantial evidence to support the decision, the Hearing Officer may accept the testimony of one physician over another. *Standard Distributing Co. v. Nally*, 630 A.2d 640, 646 (Del. 1993). In the case at hand, I accept Dr. Sommers' testimony over Dr. Antony's testimony. I find that Dr. Sommers' opinion was more persuasive as it was consistent with Claimant's overall condition and the facts in this case. Dr. Sommers is a neurologist who regularly treats patients with headache and migraine conditions, whereas Dr. Antony is a pain management physician. Also, Dr. Antony conceded that the main focus of the treatment that she provides is to Claimant's low back and cervical spine, not the headaches. On the other hand, Dr. Sommers regularly treats patients with headaches like Claimant experiences; therefore, he is in a better position to opine regarding the causal relationship of Claimant's headache condition than Dr. Antony.

I find that Dr. Antony's opinion was not persuasive. She did not review Dr. Jeha's records from prior to the industrial accident, so Dr. Antony did not have a clear understanding of Claimant's headache condition prior to the industrial accident. Dr. Antony relied on what Claimant reported about her prior history and that history was not completely accurate. Claimant told Dr. Antony that she had two or three bad headaches per month, but the medical records show that Claimant had two or three bad headaches or migraines per week. Claimant had been referred to a neurologist regarding the migraines prior to the industrial accident, but she failed to go to the neurologist. Furthermore, Claimant reported that Dr. Howard had diagnosed her with sinus headaches; however, Dr. Howard actually diagnosed Claimant with chronic sinusitis and migraine headaches, started Claimant on Imitrex for the migraines, and referred her to a

neurologist for treatment of the migraines. Dr. Antony's belief that Dr. Howard described mainly sinus headaches is incorrect. Without reviewing all of Dr. Jeha's records, Dr. Antony was at a disadvantage in opining regarding causation. Dr. Antony's opinions are based on an incorrect history and, therefore, her opinions are not persuasive. Dr. Antony also thought that Claimant had no problem working prior to the industrial accident, but Claimant actually missed work almost every month due to her migraines prior to the industrial accident. Upon review of those records, Dr. Sommers actually changed his opinion regarding causation because those records were so different from the history that Claimant provided.

I accept Dr. Sommers' opinion that Claimant's headache condition is related to her preexisting migraine condition and not related to the industrial accident. Dr. Sommers explained that Claimant had a longstanding history of migraines prior to the industrial accident and the accident did not aggravate the condition. Her condition today is part of the natural course of her longstanding migraine headache condition.

The additional records that Dr. Sommers reviewed after the defense medical examination involved Claimant's treatment provided in the ten years prior to the industrial accident. The records from before the industrial accident indicated that Claimant was suffering from frequent migraine headaches, she had underestimated or misrepresented the frequency of those headaches when she spoke to Dr. Sommers and Dr. Antony, and now Dr. Sommers' believes that there is no objective evidence to indicate that Claimant has suffered any worsening of her preexisting migraine headache disorder.

At the time of the defense medical examination, Claimant told Dr. Sommers that she had one or two bad headaches per month prior to the industrial accident when, in fact, Dr. Jeha's records indicate that Claimant had two or more headaches per week prior to the industrial

accident and every office visit was dominated by the headache complaint. Claimant was prescribed Percocet on a regular basis to manage her headaches, she had been referred to a neurologist for evaluation of the migraine headaches, she tried various prophylactic medications specifically for migraine, and consideration was being given to referring her back to neurology for better headache management immediately prior to the motor vehicle accident.

Starting in November 2003, Dr. Jeha's records reflect years of complaints regarding serious, frequent migraine headaches that were related to stress, anxiety, and depression. Claimant was getting migraines two or three times per week. There were times when Claimant complained about the stress at work and that she was considering a career change because of the stress and headaches. The headaches were associated with dizziness, nausea, and insomnia and Claimant reported that she has a family history of migraines. Claimant tried numerous medications to treat the migraines, including Percocet, Topamax, Zofran, zonisamide, and Imitrex. There were several years wherein Claimant did not have headache complaints while she was taking Topamax, because it is a medication that prevents migraine headaches. Claimant was referred to a neurologist regarding the migraine headaches because Dr. Jeha wanted Claimant to take non-narcotic medication for the migraines since Claimant was taking a lot of Percocet to control the headache pain.

April 26, 2013 was Dr. Jeha's last record prior to Claimant's June 27, 2013 industrial accident. Dr. Jeha noted that Claimant complained of "continuing migraines" and asked to try the same migraine medication that her sister takes for her migraines, so Dr. Jeha prescribed that medication for Claimant's migraines.

Dr. Sommers also reviewed Dr. Howard's May 24, 2011 record. Claimant saw Dr. Howard primarily for headaches. She complained of problems that are associated with migraine

headaches, including sensitivity to light, nausea, vomiting, dizziness, feelings of giddiness, and light-headedness. Claimant has had some or all of those symptoms post industrial accident also. Tightness in the muscles in the neck is associated with tension and migraine headaches. Although Claimant testified that Dr. Howard diagnosed her with chronic sinus headaches, Dr. Howard actually diagnosed her with migraine headaches and sinusitis. Dr. Howard prescribed Imitrex for Claimant, which is a medication for migraines, not for sinus headaches, and Dr. Howard referred her to a neurologist to treat the migraines. Claimant testified that she did not go to the neurologist at that time because she thought that the headaches were related to the weather and her sinuses. I find that Dr. Howard's records are clear and consistent as he diagnosed migraines, prescribed Imitrex, which is a medication specifically for migraines, and referred Claimant to a neurologist regarding the migraines.

Dr. Antony discussed an occipital nerve block in her deposition and mentioned that the occipital nerve block was successful in resolving Claimant's pain to some degree. Claimant told Dr. Sommers that the nerve blocks did not have any substantial impact on her headaches. Dr. Antony appears to say that the occipital nerve is different from Claimant's migraines. Dr. Sommers believes that Dr. Antony is trying to make a case for what is called cervicogenic headache or headache originated from disease in the cervical spine or from irritation to the occipital nerves. Dr. Sommers disagreed with Dr. Antony's diagnosis for Claimant and believes that Claimant's headache pattern is consistent with migraine, since her headaches are associated with nausea, vomiting, light sensitivity, and noise sensitivity, which are all features of migraine. The fact that she was placed on migraine medications such as Topamax, Zomig, and Imitrex, which have prevented some of her headaches in the past, indicates that Claimant's headaches are

migrainous in origin. Claimant's headaches before and after the industrial accident were migraines.

Claimant argues that there was an implied agreement and that Wilgus already accepted compensability for the headache condition because Wilgus paid for some medical bills related to the headaches. Wilgus argues that the few bills that were paid were actually paid by mistake and not under a feeling of compulsion. I accept Ms. Reis' testimony that she authorized payment for the bills from Dr. Thomas' office because she was confused about the name of his medical practice because it is close to the same name that Dr. Yalamanchili uses for his medical practice. The bill also might have been paid because the June 9, 2014 bill from Dr. Thomas was for post-concussive syndrome, which has been accepted as a compensable injury in this case, so the second bill from Dr. Thomas' office for services rendered on June 23, 2014 was also paid that the same time. Furthermore, because Dr. Thomas prescribed medications, the bills for those prescription medications were paid by mistake until Ms. Reis found out that those medications are for treating headaches. Wilgus has always challenged causation of the headaches, so there is no prejudice to Claimant by the mistaken payments. A simple payment of expenses is not enough to create an implied agreement when the payments were not made under a feeling of compulsion. *Tenaglia-Evans v. St. Francis Hospital*, 913 A.2d 570 (Del. 2006). Based on the testimony, I find that Wilgus paid for Dr. Thomas' bills and some medications by mistake and not under a feeling of compulsion and an implied agreement was not created by those few mistaken payments in this case.

I also find that Claimant is not totally disabled related to the industrial accident. Dr. Yalamanchili noted on April 9, 2014 that Claimant was improving and after four weeks, she could increase her activities. Claimant has failed to return to see Dr. Yalamanchili for additional

treatment and for an additional work release. I accept Dr. Sommers' opinion that Claimant is physically capable of working in a light duty capacity. Wilgus has offered Claimant the choice of two positions, both of which are within Dr. Sommers' restrictions and are without any wage loss. Claimant was able to work in her job at Wilgus with similar headaches prior to the industrial accident and has been recovering from the lumbar spine surgery. Therefore, I find that Claimant is physically able to work and is not entitled to any total disability or partial disability benefits.

Based on the foregoing, I find that Claimant's headaches are not causally related to her industrial accident and, therefore, are not compensable.

STATEMENT OF THE DETERMINATION

Based on the foregoing reasons, Claimant's Petition to Determine Compensation Due is DENIED.

IT IS SO ORDERED THIS 2nd DAY OF SEPTEMBER 2014.

INDUSTRIAL ACCIDENT BOARD

Julie G. Bucklin
Workers' Compensation Hearing Officer

Mailed Date: 9-3-14

OWC Staff