Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
by Supplemental Opinion)

Injury No.: 08-103142

Employee: Maribel Vega-Rivera

Employer: Hyatt Corporation
d/b/a Hyatt Regency Crown Center

Insurer: New Hampshire Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 27, 2010, as supplemented herein.

Introduction

The issues stipulated in dispute at the hearing were: (1) whether employee sustained an accident or occupational disease arising out of and in the course of her employment; (2) employee's average weekly wage and compensation rates; (3) whether employee is entitled to temporary total disability benefits for four weeks totaling $1,577.68; (4) whether employer must reimburse employee for medical expenses totaling $11,266.26; (5) whether employee suffered any disability, and if so, the nature and extent thereof; (6) whether the alleged accident or occupational disease caused the disability the employee claims; and (7) whether employee was an "employee" of employer under section 287.020, RSMo, and whether she is covered under the Missouri Workers' Compensation Law.

The administrative law judge made the following findings: (1) employee did sustain an accident or occupational disease arising out of and in the course of her employment; (2) employee's average weekly wage is $595.02 and her compensation rate is $396.88; (3) employee is entitled to four weeks of temporary total disability benefits totaling $1,587.52; (4) employer is liable for $11,266.26 in past medical bills; (5) employee's repetitive job duties were the prevailing factor causing her occupational disease on November 17, 2008; (6) employee suffers a 12.5% permanent partial disability at the 175-week level of the left upper extremity, a 15% permanent partial disability at the 175-week level of the right upper extremity, and that employee is entitled to a 10% percent load due to the bilateral operative procedures, and six weeks of disability for disfigurement; and (7) employee is covered by the Missouri Workers' Compensation Law.

Employer filed an Application for Review alleging the administrative law judge erred: (1) in awarding benefits to employee; (2) in finding employee was an “employee” under the Missouri Workers’ Compensation Law; (3) in finding employee sustained an injury arising out of and in the course of employment and that that employment was the prevailing factor in the employee’s injury and resulting disability; (4) in finding employee sustained a disability to each upper extremity; (5) in assigning a load factor for permanent disability in contravention to strict construction of the Missouri statute; (6) in finding employee entitled to payment of medical aid in that the benefit was not authorized, was paid through employee’s private health insurance that was funded by the employer, and the amount found by the administrative law judge was incorrect; and (7) in finding employee entitled to temporary total disability benefits.

We affirm the award of the administrative law judge as supplemented herein.

Discussion

Employee was working as an “employee” of employer for purposes of section 287.020, RSMo

Employer alleges employee is an illegal alien and that she was therefore not an “employee” of employer for purposes of the Missouri Workers’ Compensation Law. We write this supplemental decision to make clear that we consider employee covered under the statute, regardless of her alleged illegal status. Section 287.020.1, RSMo, defines “employee” as follows:

> The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies.

It was employee’s burden to present evidence to show she was an “employee” for purposes of the Law. *Bethel v. Sunlight Janitor Service*, 551 S.W.2d 616, 620 (Mo. 1977). Employee testified that she worked for employer[1] for twelve years as a

[1] Employer concedes it is an “employer” as defined in section 287.030, RSMo.

housekeeper. Employee worked from 8:00 to 4:00 cleaning rooms, changing beds, and scrubbing bathrooms. Employer paid employee about $1,200 bi-weekly for her services. Clearly, employee, a "person," was "in the service of" employer, as she was changing employer's beds and scrubbing employer's bathrooms, and she was subject to supervision by an agent of employer in the performance of these duties. Employee's regular provision of services in exchange for regular payment also indicates the existence of a "contract of hire," as there is no indication employee was working for employer for purposes of her own enjoyment or edification irrespective of any agreement that she be paid for her services. This evidence is sufficient to satisfy employee's burden, as the owner-operator exclusion is not at issue in this matter.

But employer alleges employee cannot come within the definition of "employee" under section 287.020.1, RSMo, because she is an illegal alien. We view employer's allegation that employee is an illegal alien as presenting an affirmative defense. "The burden of establishing any affirmative defense is on the employer." Section 287.808 RSMo. It was therefore employer's burden to prove that employee was, in fact, an illegal alien during the relevant time periods. We note that employer has failed to cite us to any authority that supports its contention that employee's testimony, on its face, means she is an illegal alien. Employer cites 8 U.S.C. 1546(b), but this section does not deal with the issue whether an individual is an illegal alien, but rather prohibits employees from working under false documents. This section of the United States Code does nothing to aid our analysis as to whether employee was an illegal alien when she sustained an occupational disease while working for employer, and employer fails to provide any other citation to legal authority. To the extent employer asks us to comb the United States Code on its behalf for the relevant sections to aid in its case, we will not do so in an effort to avoid becoming an advocate for the employer.

But regardless whether employee was an illegal alien when she sustained the work injuries at issue in this case, we are convinced employer's argument fails as a matter of law, and that employee is covered under the statute. This result is required under a strict construction of Chapter 287.

> [A] strict construction of a statute presumes nothing that is not expressed. The rule of strict construction does not mean that the statute shall be construed in a narrow or stingy manner, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used. Moreover, a strict construction confines the operation of the statute to matters affirmatively pointed out by its terms, and to cases which fall fairly within its letter. The clear, plain, obvious, or natural import of the language should be used, and the statutes should not be applied to situations or parties not fairly or clearly within its provisions.

Allcorn v. Tap Enters., 277 S.W.3d 823, 828 (Mo. App. 2009) (citations omitted).

Above, we have set forth, in full, the language of section 287.020.1 RSMo. The clear, plain, obvious, and natural import of that language provides no support whatsoever for employer's argument that the legislature intended to exclude illegal aliens from the Missouri Workers' Compensation Law. Rather, the language makes clear that "every person" in the service of "any employer" under "any contract of hire" is an "employee." The language also makes clear that minors are employees even if they are employed in violation of law. Finally, the language specifically excludes one class of workers: owner-operators who meet the various criteria set forth in the section. The language does not exclude any other class of worker.

Employer acknowledges the mandate of strict construction under section 287.800.1 RSMo, but asks us to carve out an additional exclusion that is not clearly within the scope of the language used by the legislature. Employer directs us to the proviso that "[t]he word 'employee' shall also include all minors who work for an employer, whether or not such minors are employed in violation of law ..." Employer argues this language means the legislature intended to exclude from coverage under the statute anyone over the age of 18 working in violation of law. But the language used by the legislature is that of *inclusion* (namely, minors working in violation of law), not *exclusion*, and employer's argument asks us to presume something that is not expressed (namely, that illegal aliens over the age of 18 are not "employees" under the statute).

We also note that employer's construction of the statute produces what is arguably an absurd result: that illegal aliens *are* covered under the statute—but only until they reach the age of 18, at which point they are no longer "employees." The fundamental principles of statutory construction prohibit us from reading the language of Chapter 287 so as to work unreasonable, oppressive, or absurd results. *Kincade v. Treasurer of Mo.*, 92 S.W.3d 310, 311 (Mo. App. 2002). We decline employer's invitation to assume the legislature meant to provide workers' compensation coverage to illegal aliens only if they are under the age of 18. Even if we could imagine a tender-hearted legislature seeking to protect minors regardless of their immigration status, the very process involves undue speculation and takes us, once again, outside the realm of strict construction and into the act of inferring a legislative intent that is not expressed by the plain language of the statute.

In sum, employer asks us to ignore strict construction and to presume something that is not clearly expressed within the terms of section 287.020.1. This we are not permitted to do. We affirm the administrative law judge's finding that employee met her burden of proving she is an "employee" for purposes of section 287.020.1.

Employer failed to prove employee's liability for past medical expenses is extinguished

Employee presented her medical bills and, through her own testimony and the testimony of Dr. Divelbiss, evidence relating her expenses to treatment for her work injuries. (Contrary to employer's contention in its brief, employee did, in fact, testify as to the amount of her bills, and we find her testimony credible). Accordingly, under *Farmer-Cummings v. Pers. Pool of Platte County*, 110 S.W.3d 818 (Mo. 2003) and *Ellis v. Mo. State Treasurer*, 302 S.W.3d 217 (Mo. App. 2009), the burden shifts to employer to show employee is not liable for the bills and that the collateral source rule of section

287.270 RSMo, does not apply. We are convinced the administrative law judge properly found that employer failed to meet its burden.

On appeal before this Commission, employer directs us to its Exhibits 11 and 12. Exhibit 11 is merely a copy of the bill that employee submitted from Kanza Multispecialty Group, with an additional page showing various adjustments and receipts—but with no information as to the reason for the adjustments, and no entry or field showing the balance that might be outstanding. Employer argues these documents show a zero balance outstanding. We find no such indication on the face of these documents. To the contrary, the bill seems to stand for the same proposition as when employee entered it as her own exhibit—that employee owes $1337.00 to Kanza Multispecialty Group—and the additional page is unenlightening, at best. Employer failed to provide any additional evidence, such as testimony from an account manager with the healthcare provider, to show employee's obligation to Kanza Multispecialty is extinguished.

With regard to Exhibit 12, this evidence was excluded by the administrative law judge for lack of authentication because employer failed to include an affidavit from the custodian of the purported records. Tr. pg. 147. Employer did not appeal the administrative law judge's ruling to exclude this evidence and it is therefore improper for employer to ask us to consider its Exhibit 12.

We agree that employer failed to meet its burden of proving employee's obligation to pay her past medical bills was extinguished and that the collateral source rule does not apply. Accordingly, we affirm the award of past medical expenses.

Decision

We supplement the award of the administrative law judge with the foregoing findings and comments. In all other respects, we affirm the award.

The award and decision of Administrative Law Judge Emily S. Fowler, issued September 27, 2010, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

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

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

Given at Jefferson City, State of Missouri, this 19th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

____
William F. Ringer, Chairman

____
Alice A. Bartlett, Member

CONCURRING OPINION FILED
Curtis E. Chick, Member

Attest:

____
Secretary

Employee: Maribel Vega-Rivera

CONCURRING OPINION

I write separately to disclose the fact that I did not participate in the April 20, 2011, oral argument in this matter. I have reviewed the evidence, read the briefs of the parties, and considered the whole record. I concur with the decision of the majority of the Commission.

____

Curtis E. Chick, Jr., Member

FINAL AWARD

Employee: Maribel Vega Rivera Injury No. 08-103142

Dependents: N/A

Employer: Hyatt Corporation d/b/a Hyatt Regency Crown Center

Insurer: New Hampshire Insurance Company

Additional Party: N/A

Hearing Date: August 13, 2010 Checked by: ESF/pd

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes

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

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

4. Date of accident or onset of occupational disease: November 17, 2008

5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri

6. Was above Employee in employ of above employer at time of alleged accident or occupational disease? Yes

7. Did employer receive proper notice? Yes

8. Did accident or occupational disease arise out of and in the course of the employment? Yes

9. Was claim for compensation filed within time required by Law? Yes

10. Was employer insured by above insurer? Yes

11. Describe work employee was doing and how accident occurred or occupational disease contracted: While in the course and scope of her employment as a housekeeper, Employee was required to use her wrists repeatedly during the day to make beds and clean rooms, causing injury to her wrists bilaterally due to repetitive trauma.

12. Did accident or occupational disease cause death? No. Date of death? N/A

13. Part(s) of body injured by accident or occupational disease: Bilateral upper extremity at the wrists.

14. Nature and extent of any permanent disability: 15% to the right upper extremity and 12.5% to the left upper extremity with a 10% load factor

15. Compensation paid to date for temporary disability: None

16. Value necessary medical aid paid to date by employer/insurer? None

17. Value necessary medical aid not furnished by employer/insurer? $11,266.26

18. Employee's average weekly wages:

19. Weekly compensation rate: $396.88/$396.88

20. Method wages computation: By trial

COMPENSATION PAYABLE

21. Amount of compensation payable: From the Employer to the Employee: 15% permanent partial disability at the 175 week level on the right wrist for 26.25 weeks and a 12.5% permanent partial disability at the 175 week level on the left wrist for 21.88 weeks for a total of 48.13 weeks with a 10% load fact for an additional 4.81 weeks for a total of 52.94 weeks. Additionally this Court awards 6 weeks of disability for disfigurement making the total amount of weeks of disability 58.94 at $396.88 per week for a total of $23,392.11.

Temporary total disability benefits of 4 weeks at $396.88 per week for a total of $1,587.52 due to Employee from the employer.

Further Employer shall pay to employee the sum of $11,266.26 for unpaid medical costs for necessary medical care.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of Mr. Mav Mirfashihi, Employee’s attorney, for necessary legal services rendered.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Maribel Vega Rivera Injury No. 08-103142

Dependents: N/A

Employer: Hyatt Corporation d/b/a Hyatt Regency Crown Center

Insurer: New Hampshire Insurance Company

Additional Party: N/A

Hearing Date: August 13, 2010 Checked by: ESF/pd

On August 13, 2010, the Employee and the Employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Maribel Vega Rivera, appeared in person and with counsel, Mr. Mav Mirfashihi. The Employer appeared through its counsel, Mr. Anton Anderson.

STIPULATIONS

The parties stipulated to the following:

1) that the Employer and Employee were operating under and subject to the provisions of Missouri Workers' Compensation Law on November 17, 2008 and the Employer was fully insured through self-insurance;
2) that Maribel Vega Rivera was an employee of Hyatt Corporation and working subject to the law in Kansas City, Jackson County, Missouri;
3) that Employee notified the Employer of the injuries as required by law and her claim was filed within the time allowed by law; and
4) that the sum of zero was paid for temporary total disability and medical costs.

ISSUES

The issues to be resolved by this hearing are as follows:

1) whether Employee sustained an accident or occupational disease arising out of and in the course of her employment;
2) a determination of Employee's average weekly wage and compensation rates;
3) whether the Employee is entitled to temporary total disability benefits for a total of four weeks amounting to $1,587.52;
4) whether the Employer must reimburse the Employee for medical expenses totaling $11,266.26;
5) whether the Employee suffered any disability and, if so, the nature and extent of Employee's disability;

6) whether the accident or occupational disease caused the disability that the Employee claims; and
7) whether the Claimant is an employee under Section 287.020.

FINDINGS OF FACT AND RULINGS OF LAW

Claimant testified on her own behalf and presented the following exhibits:

Claimant's Exhibit A *– KU Med West Ambulatory records and bills*
Claimant's Exhibit B *– Kanza Multi Specialty Group medical records*
Claimant's Exhibit C *– Kanza Multi Specialty Group bills*
Claimant's Exhibit D *– Concentra medical records*
Claimant's Exhibit E *– Concentra medical bills*
Claimant's Exhibit F *– KU Med West Associates records/bills*
Claimant's Exhibit G *– Dr. Douglas Rope's medical report/CV/notes*
Claimant's Exhibit H *– Dr. Rope's deposition*
Claimant's Exhibit I *– Letter to MVP request for tx and surgery 4/6/09*
Claimant's Exhibit J *– Letter to MVP request for tx and surgery 3/17/09*
Claimant's Exhibit K *– Letter to MVP request for tx and surgery 2/28/09*
Claimant's Exhibit L *– Letter to MVP request for tx and surgery 2/12/09*
Claimant's Exhibit M *–Deposition of Shelley Ferguson*
Claimant's Exhibit N *– Wage Statement*
Claimant's Exhibit O *– Letter from Dr. Yolanda Huet-Vaughn*
Claimant's Exhibit P *– Housekeeper/Room Attendant job description*
Claimant's Exhibit Q *– Attorney contract*

Claimant's Exhibits A, C, E, F, I, J, K, and L were admitted over Employer/Insurer's objection.
Claimant's Exhibit M was withdrawn.

The Employer/Insurer presented the live testimony of Nicole Cook, an employee of Hyatt Corporation and offered the following exhibits:

Employer/Insurer's Exhibit 1 *– Wage Statement*
Employer/Insurer's Exhibit 2 *– Dr. Brian Divelbiss' 11/17/09 report*
Employer/Insurer's Exhibit 3 *– Functional Job Analysis, ARC*
Employer/Insurer's Exhibit 4 *– Dr. Craig Lofgreen's 1/5/09 report*
Employer/Insurer's Exhibit 5 *-- Dr. Craig Lofgreen's 11/19/08 report*
Employer/Insurer's Exhibit 6 *– Concentra medical records 11/17/08 – 1/5/09*
Employer/Insurer's Exhibit 7 *– Letter dated 10/1/09 by Shelley Ferguson*
Employer/Insurer's Exhibit 8 *– Letter dated 8/24/09 by Shelley Ferguson*
Employer/Insurer's Exhibit 9 *– Job Description*
Employer/Insurer's Exhibit 10 *– Affidavit of KU Med West ASC (bill)*
Employer/Insurer's Exhibit 11 *– Affidavit of Kanza Multi Specialty Group (bill)*
Employer/Insurer's Exhibit 12 *– U of K Physicians (outstanding balance)*
Employer/Insurer's Exhibit 13 *– Concentra statement of outstanding balance*
Employer/Insurer's Exhibit 14 *– Deposition of Claimant dated 6/25/09*
Employer/Insurer's Exhibit 15 *– Deposition of Dr. Brian Divelbiss, 5/26/10*

Employer/Insurer's Exhibit 16 – *Deposition of Shelley Ferguson, 8/4/10*

Employer/Insurer's Exhibits 10 and 14 were admitted over the objection of Claimant, and Employer/Insurer's Exhibits 12 and 13 were not admitted.

Based on the above exhibits and testimony of the witnesses, the Court makes the following findings.

Maribel Vega-Rivera is a 42-year-old woman who had been working for Hyatt Corporation since approximately 1996 as a housekeeper. She stated that she worked from 8:00A.M. to 4:00P.M. daily for a minimum of 40 hours a week and sometimes more. She held no other jobs during the 12 years she worked for Hyatt. Her duties were as a housekeeper. The housekeeping duties required her to clean rooms and she stated that she generally cleaned 30 to 40 rooms each day. In these rooms, there were different sized beds, either king-sized or full-sized beds. To make the beds, she would pull the sheets tight and tuck them in. There were approximately four layers per bed to pull tight and tuck in. When she pulled the sheets, she would pull them tight, gripping the sheets, pulling then down and tucking them in. She would replace the pillow covers, gripping them, pulling then out and then putting the new covers on each pillow. There were six pillows per king-sized bed, four pillows per full-sized bed. She would wash and dry the drinking the glasses. She would take a glass and dry it on the inside and out. She would then grip a towel to scrub the mirrors and grip a cleaning utensil to clean the toilets. With 40 rooms, she said she had 40 toilets to clean. She would also clean the bathtubs and the sinks. She would then vacuum each room, pushing and pulling the vacuum cleaner. Her wages on November 17, 2008 were $10 per hour, giving her a weekly wage of $400 a week. By the end of November of 2008, Employee had such pain and discomfort in her hands she was no longer able to work and told her Employer. Prior to working for the Hyatt Corporation, she did not have any problems with her hands. She never had a carpal tunnel injury and never needed surgery. She is right-hand dominant.

Currently, Employee states she cannot use either hand like she could before. She cannot open a bottle; her daughter has to do it for her. She cannot pick up her grandchild. She cannot vacuum the house, wash dishes or clean the bathroom. Making the bed causes pain. Carrying groceries can cause her pain. She wears a protective device on her wrists. When she carries anything, she simply makes sure it is not too heavy. She has pain daily in her fingers, her thumb, index and middle finger and experiences tingling and sharp pain. The pain will last for approximately an hour and then calm down. If she doesn't wear the supports on her wrists, she does have more problems. She will take medication to make the pain slow down. On a bad day, her worse pain is a ten on a scale of one to ten. Her pain can wake her up at night and she loses sleep due to pain. When she uses her hands, it causes the pain to get worse.

Employee stated that the Hyatt did not pay for any treatment for her wrists. She believes she accrued medical expenses of $11,266.26.

Employee stated that she went for an IME with Dr. Divelbiss as requested by the employer. She stated he did not ask her for a description of her actual job duties other than that she was a housekeeper. He did not ask how many days a week, hours a day or rooms cleaned per day. He did not ask how many beds were made, how many sheets came on a bed, how many

corners were on the bed, how many pillow cases she replaced, whether she had to wash or dry glasses, how many rooms she vacuumed, how many sinks or bathtubs or showers she had to scrub, how many towels she had to fold or what type of carts she had to push or how she performed any of these job duties.

Employee has missed two years of work because of her problems with her wrists. Employer paid no temporary total disability or wages since November 17, 2008.

On cross-examination, Employee stated she doesn't speak or read much English. She has a done a little bit of interpreting for Hyatt if it is simple information. She was born in 1967 in Mexico and has been living in the United States for 19 years. She admitted she crossed the border illegally. She was married in California and the social security number she has was given to her by her husband. She is separated from her husband at this time. She is not a naturalized citizen. She stated that she is in the process of sorting out her legal status but did not admit she was an illegal alien.

Employee admitted she has worked for the Hyatt since 1996 as a housekeeper and that she cleans 40 or more rooms a day. She admits remembering having her deposition taken wherein she stated she was cleaning 30 rooms and she felt that the 30 rooms was a statement of an average per shift. Similar rooms she was assigned were complete changeovers and some were stay-overs. A changeover is when a guest would leave and the housekeepers would have to completely clean the room for new guests. A stay-over is when a guest was staying over for the next night, so it would be the same guests in the same room. On stay-over rooms, the housekeepers didn't have to strip the beds, but Employee stated that sometimes the beds were so messed up and rumpled that it was basically like remaking the bed all over. If the pillowcases had been used, she would replace those pillowcases. She said she cleaned at least two glasses for each stay-over room. She said that although the glasses went through the dishwasher, she always had to dry them by hand before placing them in the room. She used a rag and hand spray disinfectants for spraying down and cleaning surfaces, but she used a great deal of force to make sure everything was clean. She used a sponge to clean the toilet with her hand. It would take her approximately 30 minutes to clean a room, maybe 15 minutes for a stay-over room. In the check-out rooms, she would vacuum every time; in a stay-over room, she wouldn't vacuum unless it looked dirty. She would dust every day because she felt that things looked dusty regardless if it was a stay-over or check-out room.

Employee admitted that Hyatt has a point system for workers, one point for a check-out or changeover room and one-half point for a stay-over room. She was required to get a total of 15 points per day.

When asked to review the medical bills submitted, Employee stated that she received the bills; but on some of them, she has not received any current bills for quite a while. She does not know what is outstanding on the bills and she felt her attorney had all the bills. She felt that some of the bills were submitted to the private health insurance and some had been paid.

Employee initially reported the problems with her wrists in November of 2008 and those problems continued until February of 2009. She stated that her employment was terminated in 2009 because she couldn't prove she had legal residence in the U.S. She stated that she did not receive any short-term disability benefits. She has not received any unemployment benefits.

On redirect-examination, Employee stated that her daughter generally goes with her and helps translate for her. She says she went on FMLA after November 17, 2008. She did not receive any benefits for lost wages and although she had to pay for her health insurance, she does not remember the cost of the premiums.

On recross-examination, Employee admitted she was sent to Concentra after reporting the injury. She doesn't recall if she was paid any sick leave.

Employee submitted medical bills from KU Med West Ambulatory, Kanza Multi Specialty Group, Concentra and KU Med West Associates. These bills totaled $11,266.26. Employee also submitted four letters from the Employer's attorney requesting medical care from February of 2009 through April of 2009, a wage statement, a housekeeper room attendant job description and the attorney contract.

Employee submitted a deposition and independent medical report of Dr. Douglas Rope. In his report, Dr. Rope reviewed the medical history with regard to Employee's injury. Employee required carpal tunnel release by Dr. Vincent Key at KU Med West Ambulatory Surgery Center on May 28, 2009 on the right side and on August 20, 2009 on the left side. He found that the worse pain in both hands had remitted and Employee has no longer awakened from sleep due to pain but did continue to have quite sensitive areas at the operated sites bilaterally and her wrists were weak. He found that picking up the weight of a gallon of milk was difficult due to pressure on the operative sites. Additionally, he noted that Employee had difficulty taking the tops off jars such as jelly or peanut butter jars or off bottled water or soda pop due to pain and weakness in both hands. He found that she used her splints approximately once weekly when her pain was more intense, primarily when she is cleaning around the house or cooking. She experienced intensified pain with pushing such as a vacuum or scrubbing pots and pans. In his report of her housekeeping duties, he found that she was working full time for Hyatt Hotels for 13 years, cleaning an average of 40 rooms daily and making 60 beds. Her work involved repeated grasping for the purpose of stretching sheets over the beds as well as for vacuuming and scrubbing sinks and tubs. She apparently used the right hand somewhat preferentially as she was right-hand dominant. He found on physical exam that she did have healed operative scars at the palms of both hands consistent with carpal tunnel repair. She was very tender over the scars but no radiating paresthesias were elicited with compression. She also had discomfort at the wrists with performance of resisted dorsal flexion. At the left upper extremity, there was tenderness over the lateral humeral epicondyle. The Tinel was mildly positive at the wrists bilaterally. Generally, her other testing was normal for her wrists and hands. However, her grip strength measured with a Jaymar-type dynamometer was 11 and 10 kilograms at the dominant right and 10 and 10 kilograms at the left hand position 2. At position 1, maximum grip strength was 10 kilograms on the right versus 8 on the left. He felt the expected values at her age were 23.4 and 21.5 kilograms respectively. Therefore, the results represented a grip strength loss exceeding 50 percent. Her key-type pinch strength was 6 kilograms on the right versus 5 on the left. She was unable to distinguish between two points at distances of less than 10 centimeters. However, she was observed picking up numerous small objects and identifying them by touch alone. He found that she did suffer from bilateral carpal tunnel syndrome onset during repetitive grasping activities on or about November 17, 2008 with status post carpal tunnel release surgeries on the right in May 2009 and on the left in August 2009 with residual pain and grip strength loss. He felt that workers whose job function involved

exposure to repetitive grasping are known to have an increase of carpal tunnel syndrome. Her job involved frequent repetitive wrist and hand grasping activities and, as such, is the prevailing cause of the disabilities that he found. He felt that medical bills related to her care were reasonable and necessary and related directly to the treatment of that injury. He felt she had reached maximum medical improvement and was unlikely to need further invasive or otherwise definitive diagnostic or treatment measures, and he assigned a left upper extremity permanent partial disability at the 175-week level at 20 percent and the right upper extremity permanent partial disability at the 175-week level at 22 percent for carpal tunnel syndrome. He also felt that due to the bilateral operative disorders that he would recommend a load of 10 percent.

With regard to his deposition, Dr. Rope noted that he is board certified in occupational medicine, that although he is not licensed to practice orthopedic medicine, he said there is no difference in licensing. He has not, however, done any carpal tunnel surgeries; although, he has done some injections for carpal tunnel. He stated that although he did ask her what her job duties were and to explain them, he did not actually ever see her do the work. He admitted that for the grip strength testing he used the rapid exchange method for two tries. He felt that this technique was fine. He felt that when he did the grip strength testing he got her maximal and consistent effort which is an important criteria as to whether a patient is voluntarily putting forth their maximal effort. He admitted that he did not know what Claimant's grip strength was prior to her injury but that he was following the AMA guides, which is a statistically valid average strength for an average person.

Also included in Employee's exhibits was a letter from Dr. Yolanda Huet-Vaughn which stated that she certifies Employee was suffering from severe bilateral carpal tunnel syndrome and it is her expert opinion that the repetitive work Employee was doing for the prior 12 years as a housekeeper for Hyatt Regency was the cause of her having carpal tunnel syndrome of both hands.

Employer's evidence consisted of the testimony of Nicole Cook, who has been Director of Housekeeping at Hyatt Regency Crown Center since July 2009. Her duties include overseeing guest services and security. She also oversees how all the work is being done and she has worked as a housekeeper and knows the duties. She stated that there are no rooms with three beds in them. There is an initial requirement of 10 days of training when hired for housekeeping and there is constant retraining in pre-shift meetings, this is continued throughout an employee's employment with Hyatt. The pre-shift meetings are usually at 8:00 in the morning and they go for approximately 10 minutes. Any information given to the employees is based upon inspection of guest rooms and guest concerns. There are also monthly meetings which are security and safety meetings. If there are non-English speaking employees, Hyatt uses other employees to help interpret for those who do not speak English. She said there is a different standard for cleaning an occupied room versus a changeover room. In the changeover rooms, it is a total clean; whereas, in an occupied room, they simply refresh the room. She reiterated the 15-credit system.

Regarding the job description, which was Employer/Insurer's Exhibit 9, the job description for a check-out room includes changing the sheets, dusting, disinfecting, vacuuming, wiping all surfaces down, cleaning all surfaces in the bathroom, the bathtub, the shower and the sink, replenishing items taken such as soap. On page 2, there is a change in protocol and a new standard regarding cleaning stay-over rooms versus occupied rooms. In a stay-over room, a

housekeeper would simply remake the bed without changing the sheets. Ms. Cook explained how employees were required to make the beds with regard to tucking in the sheets. You would first use your fist and then your elbow and tuck the sheet in, starting in the middle and then working to the end. You would get down on one knee and, with your hand in a fist, push forward between the mattress and box springs. Then with your hand in a neutral position, use that hand to push the sheet in. You would do this to the end and the two sides of the bed. In a stay-over room, employees did not have to repeat this entire process but simply straighten the bed as an average guest will not mess up the bed so much. This would require, straightening the sheets and tucking them back in. A housekeeper would use rags to clean surfaces and disinfect. She stated there is no hard gripping, simply wiping the surfaces down with the wrist in a neutral position. Liquid spray would be used on the shower to wipe it down. A stay-over room would be vacuumed but only as needed. The vacuums were self-propelled. She stated there is no need to move a bed or furniture when vacuuming. There is no need to lift a bed when changing it. In a check-out room, all the towels would be replaced; although, these are pre-folded. A toilet brush is used to clean the toilets. The pillowcases are only changed in a changeover room; in a stay-over room, the pillowcases would not necessarily need to be changed. She felt that in a normal typical day most housekeepers would be cleaning approximately 22 rooms, half of those being changeover rooms and half of those being stay-over rooms.

On cross-examination, Ms. Cook stated that she has never had any housekeepers get carpal tunnel syndrome in the 11 years of service there. She noted the Employee worked on the 36th floor, sometimes on other floors. Her office is on the first floor. She stated that Employee would be sent to other floors as needed to fill her credits. She, herself, was in the office 30 percent of the day. The rest of the time, she would be out and about in the hotel dealing with employees or checking out the health club. She admitted that there are no guest rooms on the first floor. She couldn't say on an average how many beds each housekeeper made. She admitted she did have to grip a vacuum to use it and grip a rag to clean the mirrors, also that it was necessary to grip a toilet brush to clean the toilet as well as gripping the cleaning tools for cleaning the tubs, showers and the sinks as well as polishing the floors with a clean rag. She admitted that the push cart the housekeepers use was not self-propelled. She admitted that she has helped every housekeeper at least one time or another in doing their jobs and she does note that she has probably helped Employee at her job and stated that Employee did not always use the proper procedure for making the bed. She admitted that the number of sinks, tubs, toilets that were cleaned on an average were approximately 22 per day to make a total at a minimum of 220 per month and 440 beds per month, which is far more than an average person would make on a daily or monthly basis. There was no change in policy since the Claimant's injury.

On redirect-examination, Ms. Cook stated that most employees have approximately one hour of overtime a day and that Employee did do some overtime.

Employer's other witness was Barbara McKeown. She worked for Athletic & Rehabilitation Center (ARC) as an occupational therapy assistant and an ergonomics expert. She has a degree in occupational therapy and is certified in ergonomics. Her prime function for ARC is job analysis and ergonomics assistance which she has been doing for the last four years. She determines the physical demands of a job. She talks to people, observes the job and takes measurements. Her report is based partly on observations and partly on interviews. She spends a couple hours at the site and a couple hours to prepare her report. She evaluated the housekeeper position at the Hyatt one time. She has, however, done evaluations for other

cleaning positions and janitorial positions. She made her job analysis with regard to the Hyatt based upon how the job description was listed. She was shown how the job was done on the floor, observed what was going on and how housekeepers were doing their job. She was taken to a vacant room where she was walked through all the steps required of housekeepers. She took measurements, watched how things were done and prepared her report. In her report, she noted that the central functions were making beds and cleaning bathrooms. She noted that how the duties were done, allowed for a limitation of repetitiveness. She felt that repetitive flexing of hands and wrists was not required of the job. Most of the job requirements allowed for a neutral position of the wrists and hands. She felt that less than one third of the day required repeated gripping of the hands and then one third of the day was repetitive wrist and hand grasping. She noted that the tools used were vacuums, rags, mops, brooms.

On cross-examination, Ms. McKeown admitted she never spoke to the Employee, did not observe the Employee do her tasks and did not talk to anyone besides Ms. Cook about the tasks, only observed others. She never observed what a full day was like as she was only there a couple of hours. She admitted that making a bed requires frequent pinching and gripping for at least one third of the day. She admitted there was no overtime considered in the report.

Employer’s other evidence consisted of a wage statement, also the medical records of Dr. Craig Lofgreen from Concentra. Dr. Lofgreen initially determined that Employee suffered from cubital tunnel syndrome but that her condition was not caused by her work. Subsequently, Dr. Lofgreen determined that Employee was suffering from carpal tunnel syndrome, but this was work-related either.

Employer submitted the IME of Dr. Brian Divelbiss as well as his deposition. In his report, Dr. Divelbiss found that Employee suffered from carpal tunnel syndrome but with status post bilateral carpal tunnel release with resolution of her numbness and tingling but with persistent sensitivity of the incisions and decreased strength. He noted that while her work as a housekeeper certainly may be an aggravating factor to the presentation of her carpal tunnel symptoms, it was not highly repetitive in nature and he did not believe it was the prevailing factor in the presentation of her carpal tunnel syndrome. In his deposition, he stated that the latest information regarding carpal tunnel syndrome is that it is not caused by the type of work Employee did but by repetitive trauma from using certain tools such as power tools constantly throughout the day which caused vibration and, therefore, injury to the carpal tunnel area. With regard to grip strength testing, he felt that generally the standard method is best to use and if there is a question with regard to maximal effort, then the rapid exchange method should be used. He admitted that in the rapid exchange method that sometimes the employees actually do better and achieve a stronger grip than if they simply did the static test which would indicate that they were not giving maximal effort on their standard test.

On cross-examination, Dr. Divelbiss admitted that he did not ask how many hours she worked, how many rooms she cleaned, how many beds she changed or how many layers of sheets were on a bed. He also did not recall asking her whether she was required to wash and dry glasses, how many rooms she had to vacuum, how many pillowcases she had to change, if she had to vacuum any other areas besides the room or how many sinks or baths she cleaned. He admitted that within a reasonable degree of medical certainty that changing beds, washing and drying glasses, vacuuming, scrubbing and drying sinks and bathtubs all require grasping, pushing and pulling. Further, he did not recall asking her how heavy the utility cart was that she pushed.

Finally, the deposition of Shelley Ferguson was submitted by the Employer. In this deposition, it discussed what Ms. Ferguson knew about Employee's onset of injury and the reasoning for the Employee being dismissed and whether Employee obtained any type of FMLA. Further, there was a review of her job duties similar to that of the review done by Nicole Cook.

The first issue to be determined by this Court is whether the Employee sustained an accident or occupational disease arising out of and in the course of her employment. The evidence before this Court is contradictory. On one hand, the Employee has her personal physician as well as Dr. Rope stating that Employee's activities of her employment were the cause of her carpal tunnel syndrome. The Employer's experts state that it was not. Dr. Divelbiss' report is based on the ARC report done by Ms. Barbara McKeown. Ms. McKeown's report was based upon the written job description, a few hours observing housekeepers and discussions with Ms. Nicole Cook. It is noted that Ms. McKeown never personally observed Employee do these job duties as Employee did them every day. Neither did she interview Employee to determine how she did her job duties on a daily basis. Her determinations about the amount of flexion of the wrists and pushing and pulling and grasping required for the job duties was a general one based on what she was told by the employer and not based specifically on what Employee, herself, did. Although this review is of some value, this Court does not feel it is truly probative of what Employee did on a daily basis. The Court finds that this report is not of great value and gives it very little weight herein.

Dr. Divelbiss failed to ask Employee how many times a day she did each one of her job duties and, further, any type of specific description of what her job duties as she performed them were. Therefore, this Court finds that Dr. Divelbiss' report, although of value, is lacking in its foundation and will also give this report less weight when considering all the evidence herein. On the other hand when reviewing Dr. Rope's report, it appears that he was more thorough in discussing Employee's job duties with her. The job duties that she described to Dr. Rope are more descriptive of her actual job duties as she did them on a daily basis and as she testified about them at court. This Court further finds that Employee's testimony is credible when describing how she performed her job duties. Although Nicole Cook explained that Employee was to use her fist to put her arm in between the mattress and box spring, lift the bed, and then with a flat hand push the sheets in, she did admit that she observed Employee not following this procedure. Employee, herself, described making the beds as requiring the sheets be tight by gripping, pulling and using her wrists in a bent fashion to make the beds as required. Based upon this information, this Court finds that, Employee did sustain an accident or occupational disease arising out of and in the course of her employment.

The next issue this Court is requested to determine is Employee's average weekly wage. Section 287.250.1. (4) "If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured…." Plaintiff was injured on November 17, 2008. According to exhibit 1 Maribel Vega-Rivera earned the following thirteen weeks preceding her injury:

11/08/08 – 11/14/08 = $533.34
10/25/08 – 11/07/08 = $1,042.25

10/11/08 – 10/24/08 = $1,280.05
09/25/08 – 10/10/08 = $1,217.64
09/13/08 – 09/26/08 = $1,296.21
08/30/08 – 09/12/08 = $1,153.34
<u>08/16/08 – 08/29/08 = $1,212.37</u>
Total: $7,735.20/13 = $595.02 AWW x .6667 = $396.88 WC Rate

I find the weekly wage to be $595.02 and the adjusted Workers' Compensation rate to be $396.88. The next issue for this Court to determine is whether the Employee is entitled to temporary total disability benefits for a total of four weeks, totaling $1,577.68. It is undisputed that no temporary total benefits were paid in spite of the fact that Ms. Vega had bilateral carpel tunnel surgery. Dr. Rope testified that Ms. Vega needed to be off work two weeks after each of her surgeries or four weeks total for both separate surgeries. Ex. H, p. 13, lines 13-20. Dr. Divelbiss testified it would be reasonable for Ms. Vega to be off work for four weeks after both surgeries. Ex. 15, p. 30, lines 24-25, p. 31, lines 1-5. Ms. Vega testified she never returned to work after her surgeries because the Employer could not accommodate her restrictions. An award of 4 weeks temporary total disability is hereby entered in favor of employee and computed as follows: 4 weeks x $396.88 = $1,587.52 for Temporary Total disability benefits.

The next issue to be determined by this Court is whether the Employer must reimburse the Employee for medical expenses totaling $11,266.26. Ms. Vega incurred uncompensated medical bills of $11,266.26 represented by exhibits A, C, E, and F which Dr. Rope testified were reasonable, necessary, and caused by the prevailing factor of the November 17, 2008 bilateral carpal tunnel work injury. Ex. G, p. 5, and H, p. 5, lines 10-13. Dr. Divelbiss testified two separate carpel tunnel surgeries would cost around $20,000.00, and that he believed $11,266.26 for the medical bills in Ms. Vega's case were reasonable. Ex. 15, p. 47, lines 6-17. In addition, Ms. Vega testified that these uncompensated bills were incurred for her work injuries of November 17, 2008. The medical records in support of each is in evidence. <u>*Goerlic v. TPF, Inc.*</u>, 85 S.W.3d, 724, 732 (Mo App 2002); <u>*Martin v. Mid America Farm Line, Inc.*</u>, 769 S.W.2d, 105 (Mo 1989). Employer was provided a letter from Dr. Yolanda Huet-Vaughn indicating in her "opinion Ms. Vega's bilateral carpal tunnel is caused by her past 12 years and 10 months of work with the Hyatt…." Ex. 16, p. 45, lines 13-21. Ms. Vega, through her attorney, wrote four separate letters dated February 12, 27, March 17, and April 6, 2009 to Defendant requesting authorization for medical treatment. Ex. I, J, K, L. Employer concedes that it was given "plenty of opportunity to authorize medical treatment for Ms. Vega prior to her actual surgeries." Ex. 16, p. 49, lines 21-25 and Ex. 16, p. 50, lines 1-5. However, employer refused to authorize treatment. If employer is on notice that employee needs treatment and fails or refuses to provide it, the employee may select her own provider and hold employer liable for costs. <u>*Martin v. Town & Country Supermarkets*</u>, 220 S.W.3d 836, 844 (Mo.App.2007); <u>*Reed v. Associated Elec. CO-OP.*</u>, Inc. 302 S.W.3d 693 (Mo.App. S.D. 2009).

Employer argued it should be credited for bills already paid. "The burden to substantiate a credit is on the employer." <u>*Ellis v. Western Elec. Co.*</u>, 664 S.W.2d 643 (Mo.App.1984). "The question then is whether this burden was met by evidence showing claimant was paid by a check of the employer without showing why the payment was paid and that the funds came only from the employer." *Id*. However, Employer did not produce any such evidence. The employer is not entitled to a credit for benefits received by the claimant from a source other than the employer or the employer's worker's compensation carrier. § 287.270; see

also Wiedower v. ACF Industries, Inc., 657 S.W.2d 71, 75 (Mo.App.1983). "The employer could have presented evidence regarding the source of its payment and by not doing so suspicion is created that such evidence might have revealed that it was not entitled to a credit." Ellis v. Western Elec. Co., 664 S.W.2d 643 (Mo.App.1984).

An award of $11, 266.26 representing past uncompensated medical bills is hereby awarded to Employee. Employee requests interest herein. However Employee has failed to show any of the requirements for such pre-judgment interest to be applied herein. Under § 408.020, three requirements must be met for prejudgment interest to be awardable on a claim. First, the expenses must be "due." There are three ways to show that expenses are due, for the purpose of establishing the date from which interest is awardable. A claimant may show he actually paid the expenses or that his creditors are demanding interest of him, or claimant may show that he suffered a loss by the delay in payment. *Martin,* 769 S.W.2d at 112. Employee has failed to offer any evidence which would support a showing that interest would be due herein.

The next issue to be determined is whether the Employee's accident was the prevailing factor causing her injuries**.** The testimony and exhibits document the following work duties which exposed Ms. Vega to repetitive motion disease to a degree greater than and different from that which affects the public generally and which the Court may take notice carries the recognizable link between the distinctive features of these jobs and repetitive motion disease:

1. Gripping and pinching continuously during an eight-hour shift. Barbra McKown and Ms. Vega's testimony at hearing.
2. Making approximately 40-60 beds in a eight-hour shift with four layers on the bed and four sides. Ex. H, p. 12, lines 4-11 and Maribel Vega-Rivera's testimony.
3. All the beds have at least 3-6 layers. Ex. H, p. 12, lines 4-11, testimony of Ms. Vega's and Housekeeping Manager.
4. Vacuuming at least 220 rooms a month. Ex. H, p. 8, lines 22-25, testimony of Hyatt Housekeeping Manager and Ms. Vega.
5. Scrubbing at least 440 sinks a month. Testimony of Hyatt Housekeeping Manager.
6. Scrubbing at least 220 toilets a month. Testimony of Hyatt Housekeeping Manager.
7. Scrubbing at least 220 bathtubs a month. Testimony of Hyatt Housekeeping Manager.
8. Folding at least 220 towels a month. Testimony of Hyatt Housekeeping Manager.
9. Cleaning at least 220 mirrors a month. Testimony of Hyatt Housekeeping Manager.
10. Pushing a utility cart on a daily bases. Testimony of Hyatt Housekeeping Manager.

Dr. Divelbiss testified that (1) making a bed requires grasping, pulling, and stretching by the hands. Ex. 15, p. 44, lines 5-9; (2) vacuuming requires grasping, pushing, and pulling by the hands. Ex. 15, p. 45, lines 5-9; and (3) scrubbing sinks and bathtubs require grasping, pushing, and pulling by the hands. Ex. 15, p. 46, lines 1-5. I find that Maribel Vega-Rivera's repetitive job duties were the prevailing factor that caused her occupational disease on November 17, 2008.

The next issue to be determined by this Court is whether the Employee suffered any disability and, if so, the nature and extent of Employee's disability. Employer offered no rating determining any permanent partial disability the Employee suffered. Employee submitted Dr. Rope's determination that Employee suffered 20 percent permanent partial disability at the 175-week level of the left upper extremity and 22 percent permanent partial disability at the 175-week level at the right upper extremity. After reviewing the testimony of the Employee as well as the findings by the physicians who examined her, it appears that the main symptoms of pain and tingling in her hands dissipated after her carpal tunnel release surgery. However, she still suffers from pain over the incision areas as well as significant weakness of both of her hands. The Court is not bound by the determination of the doctor's ratings but may, based upon the totality of the evidence make a determination as to disability. This Court finds that Employee suffers a 12.5 percent permanent partial disability at the 175-week level of the left upper extremity for 21.88 weeks of disability and 15 percent permanent partial disability at the 175-week level of the right upper extremity for 26.25 weeks of disability. Due to the presence of bilateral operative procedures, this Court would follow Dr. Rope's recommendation of a 10 percent load on this amount for an additional 4.81 weeks of disability. Combining all these weeks totals 52.94 weeks of disability. Additionally this Court finds that after viewing the surgical scars on Employee's wrist that an additional 6 weeks disability for disfigurement shall be assessed thus bringing her total weeks of disability to 58.94. This court therefore orders employer to pay to Employee the sum of $23,392.11 for her permanent partial disability and disfigurement.

The final issue for this Court to determine herein is whether the Claimant is an employee under Section 287.020. Section 287.020(1) R.S.Mo. states in pertinent part, "The word "employee" as used in this chapter shall be construed to mean **EVERY PERSON** in the service of any employer, as defined in this chapter, under **ANY** contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations." *Emphasis added*. When the statute's language is unambiguous, a court must give effect to the legislature's chosen language. *Kerperien v. Lumberman's Mut. Cas. Co.*, 100 S.W.3d 778, 781 (Mo. Banc 2003). "A court may not add words by implication to a statute that is clear and unambiguous. *Asbury v. Lobardi*, 846 S.W.2d 196, 202 n. 9 (Mo. Banc 1993). R.S.Mo. 287.020(1) does not discriminate against race, sex, legal or illegal status of an employee, instead, it clearly states "…every person in the service of any employer…." See R.S.Mo. 287.020(1). Shelley Ferguson is the Director of human Resources for the employer. Ex. 16, p. 4, lines 9-13. Mrs. Ferguson testified Ms. Vega started working as a housekeeper for employer on May 3, 1996. Ex. 16, p. 26, lines 11-17. When asked if "Maribel Vega was an **employee** of the Hyatt Corporation on November 17, 2008…" Mrs. Ferguson answered, yes. Ex. 16, p. 26, lines 8-10. When asked if "Maribel Vega-Rivera was a good employee" Mrs. Ferguson's response was "…[s]he was a great housekeeper and performed those duties well."

Furthermore, the employer has been unable to produce any evidence on the record to prove Ms. Vega's alleged illegal status even though she worked for them full time for over 12 years. She never admitted she was illegal and there was nothing provided by the employer either from their own documentation or from the I.N.S. showing she is or has been determined to be of illegal status. Wherefore this Court finds that based upon strict construction of the statutory language Employee was an employee of employer on November 17, 2008.

Finally, this Court awards to Employee's attorney, Mav Mirfashihi, 25 percent of all benefits awarded herein.

Date: ________________________________ Made by: ________________________________

Emily S. Fowler
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this ____day of ______________ 2010 by:

____
Naomi Pearson
Division of Workers' Compensation