

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No. 03-124598

Employee: Donna M. Blyzes

Employer: General Motors Corporation

Insurer: Self-Insured

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, heard the parties' arguments, 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge.

The award and decision of Administrative Law Judge Edwin J. Kohner, issued August 11, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 27th day of May 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Donna M. Blyzes Injury No.: 03-124598
Dependents: N/A Before the
Employer: General Motors Corporation **Division of Workers'**
Compensation
Additional Party: N/A Department of Labor and Industrial
Relations of Missouri
Insurer: Self-Insured Jefferson City, Missouri
Hearing Date: June 2, June 5, & June 20, 2014 Checked by: EJK/lsn, kr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: October 2, 2003
5. State location where accident occurred or occupational disease was contracted: St. Charles 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? Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
The employee alleged that from April 27, 2002 until October 2, 2003, she was exposed to cigar smoke which caused stress.
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: Alleged psychological stress and asthma
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer: None

Issued by DIVISION OF WORKERS' COMPENSATION
Employee: Donna M. Blyzes

Injury No.: 03-124598

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$1,319.69
- 19. Weekly compensation rate: \$662.55/\$347.05
- 20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

None

22. Second Injury Fund liability: No

TOTAL:

NONE

23. Future requirements awarded: None

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Herman L. Jimerson, Esq.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Donna M. Blyzes

Injury No.: 03-124598

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: General Motors Corporation

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Self-Insured

Checked by: EJK/lsn, kr

This workers' compensation case raises several issues arising out of an occupational disease claim in which the claimant, an automotive assembly line worker, alleged she developed asthma and mental stress while being exposed to cigar smoke while working on the employer's automotive assembly line. The issues for determination are (1) Occupational disease; (2) Medical causal connection; (3) Future medical care, and (4) Permanent disability. The evidence supports an award for the defense.

At the hearing, the claimant testified in person along with her husband, William Blyzes and Rick Cavins, a social worker. The claimant also offered the following exhibits:

- Claimant's Exhibit A: Mr. Cavins' letter dated October 19, 2011
- Claimant's Exhibit B: GM Wentzville Plant Special Bulletin
- Claimant's Exhibit C: George Hernia deposition transcript dated January 18, 2013
- Claimant's Exhibit D: Marlin Brown's deposition transcript dated January 18, 2003
- Claimant's Exhibit E: Jerry Meyers, M.D. deposition transcript dated October 31, 2013
- Claimant's Exhibit F: Robert Schlitt, M.D. deposition transcript dated November 8, 2013
- Claimant's Exhibit G-I: Photographs
- Claimant's Exhibit J: Kevin D. Weikart, M.D. medical report dated December 2, 2002
- Claimant's Exhibit K: Personnel Administration medical report.

The employer submitted the following exhibits:

- Employer's Exhibit 1: Robert M. Bruce, M.D. reports dated February 1, 2005 and May 3, 2005

- Employer's Exhibit 2: Roger L. Mell, M.D. records dated July 22, 1991 through December 9, 1992
- Employer's Exhibit 3: Roger L. Mell, M.D. records dated August 29, 2000 and November 29, 2005
- Employer's Exhibit 4: General Motors plant records dated November 19, 1986 through October 19, 1995
- Employer's Exhibit 5: William Sedgwick, M.D. records dated November 19, 1985 and December 3, 1985
- Employer's Exhibit 6: Eliseo Figueroa, M.D. report of October 10, 1995
(Objection on hearsay from Second Injury Fund only sustained)
- Employer's Exhibit 7: Division of Workers' Compensation prior records
- Employer's Exhibit 8: Michael Nogalski, M.D. deposition dated July 22, 2013
- Employer's Exhibit 9: Wayne A. Stillings, M.D. deposition dated January 22, 2014
- Employer's Exhibit 10: Rick Cavins' deposition dated February 24, 2006
(Only received with respect to 2003 case)
- Employer's Exhibit 11: GM Global Security Incident Report dated October 13, 2011
- Employer's Exhibit 12: Claim for Compensation - Injury Number 03-124598
- Employer's Exhibit 13: Claim for Compensation - Injury Number 04-148011
- Employer's Exhibit 14: Claim for Compensation - Injury Number 09-070136
- Employer's Exhibit 15: Deposition of Donna Blyzes dated May 24, 2010 (pgs. 86-92)

The parties stipulated that the claimant was off work on short-term disability from October 8, 2003 through March 22, 2004.

All objections not previously sustained are overruled as waived. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the alleged occupational disease was alleged to have been contracted in Missouri. Any markings on the exhibits were present when offered into evidence. Exhibits G, H, and I were received in the condition as presented with white out and a sticky substance on the documents.

SUMMARY OF FACTS

The claimant, an automotive assembly line worker, alleged that she suffered asthma and psychological stress from cigar smoke in her working area. The claim alleges that she was exposed to smoke on the line from April 27, 2002, until October 2, 2003. See Exhibit 14. The claimant testified that she discovered she was "allergic" to smoke on April 26, 2002, when a co-worker's cigar fumes reached her nose, causing her to state she could never work with a smoker.

The next day several co-workers were standing on a ramp on the right side of the claimant and one said, "It's fireworks time." Todd Asher, a co-worker, then lit a cigar which was about 5 inches from her nose. She said she made several attempts to place a fan by her, but other co-

workers complained about the fan. After a third failed attempt to place a fan by her, she became overwhelmed and went to medical, where she was given a compress and Tylenol.

The claimant then resumed her duties but after a lunch break, Mr. Asher again lit up his cigar and her symptoms returned. She went to plant medical and received the same treatment. When Mr. Asher lit his cigar for the third time that same day, she left to go sit somewhere else, at which point Mr. Asher called over three co-workers, gave each a cigar and one of the three lit up a cigar and walked over to her. However, before she could smell the fumes, she went to medical for the rest of her shift.

The claimant testified that she returned to work the following Monday and Mr. Asher lit a cigar after the first break. The claimant testified that she then went to plant medical again and they sent the claimant to the head of Manpower and she was placed on a different job as a right front door welder. This occurred on April 29, 2002. At that job, she experienced no smoke inhalation.

The claimant testified that on April 30, 2002, she showed up for work early, because it was Election Day for the union. When she got there, the day shift had not gotten out yet and Todd was smoking a cigar. However, she testified that Mr. Asher did not light the cigar in her presence. At that point, the claimant did not go to her specific job, but went to the office and again saw the head of Manpower. At that point, she went out on sick leave and did not return until August 2002.

The claimant testified that another incident occurred on July 25, 2003, when she went into the ladies restroom and smelled "marijuana" and reported it. She did not suffer any physical symptoms from that incident. However, she was upset. She reported the smell to Jan Logan who advised her that it was simply a deodorizer.

The claimant testified that on July 30, 2003, she was asked to work a break and Kevin Skyles, another employee, lit up a cigar. At that point, she told her supervisor and he switched her with another employee, Bill. When she was transferred to a different position, she was not exposed to cigar smoke. On September 19, 2003 the claimant reported that there were several employees smoking around the entrance to the building, forcing her to walk through them in order to get inside.

With respect to her knees, the claimant testified that her problems began in 1991 at which time she had right knee arthroscopic surgery. On April 1, 2004 the claimant's knee problems returned with swelling in both knees when she was placed on a job which required her to get in and out of a van. She stated that the job required her to sit on a pad which was on studs and then run a cable through the van. She testified that during this time, she had restrictions which included no bending, squatting, lifting over 30 pounds, but they were not honored and therefore she had to go out on sick leave.

On November 14, 2005 the claimant testified that Dr. Schaberg recommended a total right knee replacement, which was performed on December 11, 2005. She returned to work around May 2006 and testified that her knee pain was better following the surgery, but the swelling was still sporadic.

The claimant testified that she returned to the body shop and had the same work restrictions after the knee replacement that she had while on the van job, which were again violated. This caused her to be "frozen" from the neck down and on September 9, 2006, she went to plant medical and received an injection.

The claimant testified that on February 15, 2011 she was removed from her position because her work restrictions could not be accommodated. In 2012, she was placed on NJAWR (no job available with restrictions) until November 2012, when she was put on a job in the chassis department aligning carriers underneath of the van. This required her to apply stress and pressure to her shoulders and knees.

Later that same month, she went to the emergency room because of an anxiety attack. Upon her return, the employer placed her with the cleaning crew. However, she is currently on sick leave for unrelated shoulder injuries. The claimant testified that she has been off work since December 12, 2012, for injuries related to her shoulders, which is not part of the claims in these cases.

The claimant testified that smoking was allowed at her employer's premises when she started working in 1985, which included both cigar and cigarette smoke and that smoking has never been totally banned, but rules were put in place to stop smoking in 2004.

The claimant identified Todd Asher as the employee who blew smoke in her face on April 27, 2002. She stated that she began working with Mr. Asher about 40 to 45 days prior to the April 2002 incident and had no problems with him until that time.

The claimant testified that after Mr. Asher blew smoke in her face, she went to the medical unit for a while and then returned to her job. After the second time that he blew smoke in her face, she reported him to Labor Relations. The following work day, which was a Monday, Mr. Asher blew smoke in her face a third time and medical unit told management to put her on a different job. The following day, the claimant went in early to vote and as she was approaching her station, Mr. Asher was on the platform "huffing and puffing" on his cigar. The claimant did not report to her job station but immediately went to report the incident to EAP and they called Manpower.

The claimant testified that the smoking events with Mr. Asher took place over a three-day period in 2002 and those were the only times Mr. Asher smoked cigars around her in the area

where she was assigned to work. The claimant went on sick leave from April 2002 through August 2002, and when she returned, her employer wanted her to wear a respirator, which she refused. The claimant never had any other issues with Todd Asher.

With respect to the July 25, 2003, incident, the claimant testified that when she walked into the women's room, she thought she smelled marijuana but did not smell cigar smoke. She did not become physically sick from the odor. She reported the incident to Jan Logan, and she was advised that it was simply the smell of a deodorizer.

In July 2003, the claimant immediately reported an incident to her supervisor when another employee, Kevin Skyles, lit a cigar, and her supervisor moved her to another position. She did not smell the smoke after she switched positions. With respect to the incident that occurred in September 2003, the claimant confirmed that there were several employees smoking around the entrance to the building and she had to walk through them, but confirmed that they were outside smoking and not in the plant.

The claimant testified that in October 2003, her employer transferred her from the body shop to chassis, but she was not angry about the transfer.

On February 1, 2005, Dr. Bruce examined the claimant, because the claimant was having difficulty breathing. Dr. Bruce noted that she had a comprehensive metabolic panel which was within normal limits. Her specific airway resistance was mildly reduced. Her saturation at rest on room air was 99%. On May 3, 2005, Dr. Bruce reported that the claimant's history was consistent with mild intermittent asthma which is generally considered an inherited condition. He opined that the claimant did not have any work restrictions and did not have any evidence of permanent disability. See Exhibit 1.

On October 13, 2011 two security officers from GM Global Security responded to an incident involving an unknown substance reported by the claimant. See Exhibit 11. It was investigated and determined that the substance appeared to be salt. See Exhibit 11.

The claimant testified that both her second and third husbands smoked.

The claimant testified that she has many pending workers' compensation claims, but she could not recall how many. She also testified that she had filed an ADA Claim in Federal Court against her employer, amongst other suits, for the smoking incident and that she filed an Injunction to try to get the plant to go smoke free. When asked whether these lawsuits had caused a lot of stress, she responded that what caused her stress were the boxes of evidence that she had against her employer which kept getting struck down by their attorneys. The claimant testified that she lost two weeks from work in September 2005 because of stress she was experiencing with her claim in the U.S. District Court.

The claimant testified that her father passed away in February 2010 and that affected her the way it would affect everyone, specifically, that she felt a loss. She was close to her father.

The claimant testified that she owned two properties with her current husband, one in Warrenton and one in Friedheim and that all of the animals are located at the Friedheim property. They have dogs, alpacas, goats, geese, ducks and eight donkeys. She stated that at the Friedheim farm she cuts the grass, waters flowers and feeds the animals in their bunks. She enjoys the animals and they make her feel good. She denied any incident where a goat knocked her over, per Mr. Cavins' testimony.

The claimant testified that at the time of the hearing she was taking Lexapro, Trazodone, Jantoven (for a blood clot), and Abilify. She testified that those medications were impairing her concentration and memory. She testified that prior to the 2002 smoking incident she only had a 1% absent rate at work.

The claimant testified that her involvement in litigation has been stressful because she felt violated, confused and lost, and she was frustrated with her employer and the union because she felt the union should have done more.

The claimant stated that she is not sure if she wants to go back to work, because she is afraid of getting hurt. She wondered whether she would be able to retire or quit and doesn't even know how to look into these options. Besides spending time with her animals, she spends her free time watching TV, mowing the grass on a riding mower and watering her flowers. At the Friedheim residence, it takes her about 2 to 2 ½ hours to mow the entire farm, while the Warrenton residence takes about 1 ½ hours. The Friedheim property is located on nine acres and she does take breaks during mowing to get up and move. She uses a riding mower.

Pre-existing Conditions

With respect to her stress claim, the claimant reported to Dr. Stillings that she was date raped when she was 16, although she testified at the hearing that she did not report that incident to anyone because "back then it wasn't a big deal." When asked whether she considered the date rape to be a traumatic event in her life, the claimant testified that she didn't remember it, that she just went out on a date and it happened.

The claimant testified that her first two marriages had their "ups and downs." The claimant testified that her first husband might have shoved and pushed her, that she did not recall any sexual abuse that her husband had threatened to kill her once, that she does not totally remember it, and that after the threat to kill her, she left and went to a women's shelter. She testified that she did not remember her first husband choking her on multiple occasions, pulling a knife on her at least twice, and threatening her with death if she tried to leave him.

The claimant testified that her first husband put a loaded pistol to her head and told her he was going to play Russian roulette. However, the claimant stated that she could not remember that he held the gun to her head for 15 to 20 minutes. When asked whether her first husband put a rope around her dog and hung him, she testified that she did not know because at that time, she was in a safe house and her son reported that incident to Social Services. She could not remember whether the dog was killed. She testified that Social Services told her that her first husband also put a rope around her son's neck.

The claimant testified in her 2010 deposition that her first husband emotionally and physically abused her. He "smacked" her a couple of times and also put a rope around her son's neck and around the dog. He hung the dog. See claimant deposition, pages 88-89. The claimant testified that she went to DePaul Hospital/St. Vincent's for in-patient care and at that time, the psychiatrist had sex with her. See claimant deposition, page 89. The claimant testified that her second husband was on drugs. See claimant deposition, page 90. He smacked her in the face and she decided she wasn't going to stay in that relationship and left him. See claimant deposition, page 91. When she lived in Delaware she tried to seek counseling and spoke with a psychiatrist. See claimant deposition, pages 91, 92.

On November 19, 1986, the claimant went to the plant medical department and was diagnosed with depression. The claimant was admitted to St. Vincent's from November 20, 1986 until December 6, 1986 for manic depression and received Xanax. She then was placed in an out-patient program. See Exhibit 4. She was diagnosed as manic depressive. See Exhibit 4. The claimant testified in her 2010 deposition that she stayed in St. Vincent's ward so her first husband could not get to her and that she left the ward after her psychiatrist had sex with her. See Exhibit 15. However, at the hearing the claimant testified that she had no recollection of those events.

The claimant did not remember discussing her psychiatric hospitalization with Dr. Stillings when she saw him in January 2012. She did, however, recall going to the Salvation Army and recalled that they referred her to a shelter for battered women.

Upon returning to St. Louis from the women's shelter, the claimant testified she could not remember whether her first husband was stalking and harassing her. She also could not remember whether she got a restraining order out on her first husband. She testified that he was arrested on a few occasions, but did not know if one of those arrests was due to violation of the restraining order.

The claimant testified that after divorcing her first husband, he paid \$10.00 per child per month in support. The claimant did not remember telling Dr. Stillings that she preferred no contact with her first husband and wasn't receiving child support. She also did not remember telling Dr. Stillings that she did not seek legal redress for child support because she didn't want

her first husband around her or her children. She disagreed with the statement that she had previously given to Dr. Stillings.

The claimant testified that she was married to her second husband from 1989 until 2001 and that he was a drug user who cheated on her. The claimant did not agree that her second husband punched her in the face.

The claimant testified that she worked at her employer's plant in Delaware from 1993 until 1995 while she was married to her second husband. She testified that she had problems being away from Missouri, but during the time she was in Delaware, she was not around her second husband much, because he was in and out of jail. She testified that she returned to St. Louis in 1995 and saw Dr. Figueroa on October 10, 1995. She testified that she had to see Dr. Figueroa in order to come back to Missouri. Dr. Figueroa evaluated the claimant on October 10, 1995, and took a patient history that the claimant last worked on August 14, 1995, and had a history of hospitalization for depression the previous year and had been followed by a psychiatrist. At that time, she was experiencing anxiety attacks and when she was still working, she would have some crying spells while on the line. Dr. Figueroa opined that she was still depressed and recommended that she not go back to work until she consulted a psychiatrist. See Exhibit 6. The claimant did not remember telling Dr. Figueroa that she was having crying spells on the line while working, that she was having anxiety attacks, that she was on Xanax, or that Dr. Figueroa told her that she still seemed depressed and should not go back to work until she saw a psychiatrist. The medical records also include an off work slip from Dr. Desai dated August 31, 1994, which notes that the claimant was under his care for treatment for depression and she was unable to work until September 6, 1994. An October 19, 1995 medical history form noting that the claimant had consulted a doctor for depression, anxiety and fatigue headaches. See Exhibit 4.

Rick Cavins

Mr. Cavins, a Licensed Clinical Social Worker, first saw the claimant around May 1, 2002, because she felt she was being harassed by co-workers who were blowing smoke in and around her. Mr. Cavins testified that his observations are that the claimant suffers from depression and anxiety and he did not have any records that noted the claimant was treated for either of these conditions prior to May 2002. Mr. Cavins generated a report dated October 19, 2011 which he sent to the plant medical doctor stating that the claimant was fit to return to work. See Exhibit A. Mr. Cavins had no opportunity to review any of the three depositions of the claimant. He also testified that he did not have a detailed history of the claimant's traumas in her life because he focused on current issues, not past. He testified that the claimant never received medications for any past psychiatric issues before 2002 and never reported any depressive episodes or panic attacks prior to 2002. Mr. Cavins opined that past medical records were relevant to providing an opinion on causation. Mr. Cavins testified that he did not have any information with respect to the problems the claimant was having with either of her first two husbands, nor was he aware that the claimant was raped at age 16.

Mr. Cavins opined that the claimant had other stressors in her life during the time he saw her, including issues with her children that could cause stress. In December 2009, her daughter had some legal issues. Additionally, the claimant was having issues with bankruptcy in April 2009 that could cause stress. In November 2008, the claimant's mother was in a nursing home and had an abusive roommate which caused stress in the claimant's life. He also noted the claimant's son got a DUI in January 2010 and that could cause stress in the claimant's life. He also agreed that on the claimant's September 2005 visit with him, she was unable to manage and was having issues with stress due to litigation currently pending.

During an April 17, 2007 visit, the claimant reported that she was knocked off her feet by one of her goats. Mr. Cavins testified that the claimant had anxiety and depression in 2002, but that it was different in 2011 in that while she still was depressed and anxious, she was well enough that she could return to work.

Mr. Cavins generated a report dated October 19, 2011, reporting that the claimant did not exhibit any serious signs of pathology and she was upbeat and happy about transferring to the second shift. The claimant passed all of the testing and it suggested a normal mood with no major psychological disturbances.

The claimant was initially referred to him in 2002 by Dr. Khojasteh. Mr. Cavins testified to the best of his knowledge, the claimant had never been treated for depression or anxiety prior to the 2002 situation. See Cavins deposition, page 15. Mr. Cavins testified that a smoke free environment wasn't available to anybody in any of the three major assembly plants in 2002. See Cavins deposition, page 34. Mr. Cavins testified that he had no specific information that the claimant was being harassed by any of her supervisors, foreman or anybody in a position of authority at the employer's work place. See Cavins deposition, pages 43-44.

William Blyzes

Mr. Blyzes, a coworker for this employer, first met the claimant in 1985 while working for the employer. He testified that he noticed no stress during 1985 and in the early periods related to his wife. He also testified that from 1985 to 2003, the claimant was happy to come to work and everything was good. Mr. Blyzes married the claimant in 2003; however, they began living together in 2000. Around 2002, he noticed mood changes with his wife due to the smoking that was taking place around her workstation. With respect to her knees, Mr. Blyzes was aware that the claimant had restrictions around 1999 or 2000.

Mr. Blyzes testified that he used to be a smoker. He started smoking in the 1970's and he stopped in January 2003. However, he began living with the claimant around 2000, and so he smoked for three years while living with her. He testified that smoking was allowed in the plant in 2002 and he smoked at the plant himself. With respect to his general statement that the

claimant never suffered any stress from 1985 to 2000, he testified that he wasn't around her very much during that time, since it was before they lived together. Mr. Blyzes testified that the claimant's stress level was much lower now that she was off work and staying home. He testified that she had filed many lawsuits against the employer including an EEOC claim in Federal Court which she lost, and also a Clean Air Act claim which she lost. He agreed that she was frustrated and upset about losing these claims. He testified that the claimant's knee pain started in 2002 when she was sent to chassis and that she had no knee pain before that.

George Hernia

Mr. Hernia has been employed with this employer for 33 years and his current position is Labor Relations Manager. Mr. Hernia did not recall any specific grievances filed by the claimant but testified generally that a grievance is when an employee and a supervisor cannot work out a situation and they get an opportunity to request their committee person to get involved. If the committee person can't work it out with the supervisor or group leader, then a complaint is generated in the form of a grievance. There are several steps involved in filing a grievance. See Hernia deposition, pages 10-11. Mr. Hernia testified that if a person had higher seniority and they bid on a job, they would get it over those with lower seniority. See Hernia deposition, page 16.

Mr. Hernia testified that when a person returns to work with restrictions, the ADAPT Program is implemented to assist in finding another job within those restrictions. The employee has joint representatives from the UAW as well as management, attempt to find them a job that they can do within their restrictions so they can be actively employed. See Hernia deposition, page 22.

Mr. Hernia testified that the employer's plant is currently a non-smoking plant and that people have been disciplined for smoking in the plant in the past. He testified that smoking is not tolerated, because it is State law and they are required to enforce the law. See Hernia deposition, page 28. With respect to placement after work restrictions, Mr. Hernia testified that the plant physician is the final authority on restrictions. See Hernia deposition, page 33. He testified that if an outside physician provides restrictions for an employee, the employer's physician reviews those and either confirms or questions it. The employer's plant physician makes the final determination. See Hernia deposition, page 40.

Marlon Brown

Mr. Brown has worked for this employer for over 27 years and is currently the District Two Committee Person. See Brown deposition, page 6. He is an elected official that has the ability to interpret the local agreement and the national agreement and to represent employees that are in his district if they have any situations with management. He testified that part of the resolution process is the filing of a grievance. See Brown deposition, page 6. He defined a

grievance as a document that is used to get information in order to retrieve a loss or disadvantage of a union worker. See Brown deposition, page 7. Mr. Brown testified that he has written many grievances on behalf of the claimant. See Brown deposition, page 8. Mr. Brown testified that seniority does not guarantee that you get easier jobs. It does allow you to pick better jobs but there are no guarantees. See Brown deposition, page 12. Mr. Brown testified that this plant is a smoke-free plant but he did not know the exact date when that policy went into effect. See Brown deposition, page 24.

Robert E. Schlitt, Ph.D.

Dr. Schlitt, a Licensed Psychologist, examined the claimant on February 10, 2011, and took a history noting that her first marriage lasted ten years producing three children and that first husband was emotionally and physically abusive. See Dr. Schlitt deposition, page 56. Her second marriage lasted 12 years and he was involved in drugs. Dr. Schlitt noted that during these first two marriages, she was able to keep her personal life separate from her work life and therefore, there was no conflict at work at that time. See Dr. Schlitt deposition, page 19. Dr. Schlitt reviewed Dr. Stillings' 2006 report and noted that he disagreed with some of his conclusions. See Dr. Schlitt deposition, page 31-35.

Dr. Schlitt diagnosed mood disorder not otherwise specified and described it as a mix of depression and anxiety. See Dr. Schlitt deposition, page 51. He also noted psycho-social stressors which consisted of the claimant trying to deal with work and its restrictions of placement and also the overall workers' compensation claim which she stated was causing her stress. See Dr. Schlitt deposition, page 52. Dr. Schlitt opined that the claimant suffered a 16% permanent partial disability. In response to the question "And that rating you're saying connected to her job itself, the job itself, sir?" and the doctor's response was "yes". See Dr. Schlitt deposition, page 53. Dr. Schlitt testified that the disability was not associated with any prior injuries.

Dr. Schlitt did not review Dr. Stillings' updated evaluation, dated January 11, 2012, either of the claimant's depositions from 2004 and 2006, Dr. Figueroa's records, the Mid-County Physician's report of Dr. Ziamotes, medical records of Dr. Weikert and Dr. Malik, the GM Plant records, or the Centerpointe Hospital records. See Dr. Schlitt deposition, pages 58-59. Dr. Schlitt testified that if there was specific information that would contradict what previous history he reviewed, then he would need to review it. He testified that it was possible that if he had an opportunity to review the additional records, his opinions could change. See Dr. Schlitt deposition, page 60.

Dr. Schlitt agreed that his report did not contain a history of the claimant being date raped at age 16 and he agreed that that could have lasting psychological effects on someone. He did not take a history of the claimant's sister dying of cancer at age 45 and how that could impact her. Dr. Schlitt agreed that his report did not contain any specific details of the examples of

emotional and physical abuse from both her first and second husbands. He was not aware that her first husband threatened to kill her, nor was he aware that her first husband put a loaded pistol to her head and that he said he was going to play Russian roulette with her. See Dr. Schlitt deposition, pages 60-62.

Dr. Schlitt was unaware that the claimant was admitted to DePaul/St. Vincent's Hospital for ten days while married to her first husband and he was not aware that after that incident, she went to a shelter for battered women. He was not aware that her first husband choked her and sexually abused her. Dr. Schlitt agreed that this type of abusive behavior can lead to psychiatric issues. (p. 62-63).

Dr. Schlitt was not aware that Dr. Figueroa noted in his October 1995 report that the claimant was having anxiety attacks and crying spells while she was working on the line and concluded that she could not work until she saw a psychiatrist. He testified that this was inconsistent with the history the claimant gave to him that she was able to keep her personal life separate from her work life while experiencing issues with her first marriage. Dr. Schlitt did not have an opportunity to review the plant medical records containing a history of her being hospitalized for manic depression in November and December 1986. See Dr. Schlitt deposition, pages 63-65. Dr. Schlitt testified that if the claimant was having anxiety attacks and crying spells while working on the line, and was hospitalized for mental issues in 1986 and 1995, then her mental condition was affecting her job at that time. See Dr. Schlitt deposition, pages 65-66. Dr. Schlitt was not aware that the claimant's second husband had punched her in the face and he was not aware that her second husband killed his second wife by stabbing her to death. See Dr. Schlitt deposition, page 66. Dr. Schlitt opined that if all of the additional information provided to him was accurate, then the claimant had some mental issues before 2002. See Dr. Schlitt deposition, page 67. Dr. Schlitt opined that rape and physical abuse can cause depression and anxiety and that this abuse can cause mental disorders to show up later in life. See Dr. Schlitt deposition, page 67. Dr. Schlitt concluded that he did not receive a complete and accurate history of the claimant's past issues and mental treatment. See Dr. Schlitt deposition, page 67.

Wayne A. Stillings, M.D.

Dr. Stillings, a psychiatrist, initially examined the claimant on June 29, 2006, over concern that the claimant was going to pose a threat of harm to the safety of herself and others in the workplace. Dr. Stillings recommended that she reestablish her relationship with a psychiatrist and see him on a regular basis for treatment until she was fit for duty. He also recommended she continue counseling for a minimum of a six-month period. See Dr. Stillings' deposition, page 8.

On January 11, 2012, Dr. Stillings examined the claimant a second time, took a detailed history, and reviewed medical records forwarded to him along with a mental status examination. With respect to her history, Dr. Stillings noted in his January 11, 2012, report, that she had two verbal altercations with co-workers at work, one in the early 1990's and the second around 1999. In 1999 she complained that the ex-girlfriend of her third husband was putting lipstick on her car, but her story was rather confusing and her thoughts were disconnected. She went to the police, who she claimed turned the situation over to the FBI. This co-worker allegedly gave money to a female individual who is not a GM employee to kill Ms. Blyzes. She also said that this co-

worker, ex-girlfriend of her current husband, gave this other individual a starter pistol. See Dr. Stillings deposition, Deposition Exhibit 2, page 4.

The claimant also reported to Dr. Stillings that she was date raped when she was 16, but did not tell anyone for a long time. Dr. Stillings further notes that she has a complex and abusive marital history. She was first married in 1974 at age 21. The doctor noted that this was an emotionally, physically and sexually abusive marriage. Her first husband threatened to kill her on multiple occasions and she thought he would kill her. He sexually abused her at times, forcing her to have sex when she did not want it or forcing her to engage in sexual behaviors she opposed with threats of death, choking, etc. Not only did her first husband choke her on multiple occasions, but he also pulled a knife on her, threatening to kill her on at least one or two occasions. He stated that the straw that broke the camel's back was when he put a loaded pistol to her head and threatened to kill her and told her they were going to play Russian roulette. The gun was held to her head for 15 to 20 minutes. As a result of this incident, she went to DePaul Hospital emergency department and was admitted to the stress unit for ten days. She received psychotropic medications and counseling but the doctor noted on discharge, she immediately went to see her psychiatrist in his private office and he had sex with her. A month post hospital discharge, she took her two youngest children to the Salvation Army and they referred her to a shelter for battered women where she stayed for about a month or longer. See Dr. Stillings' deposition, pages 5-6.

Dr. Stillings noted in his history that the claimant's first husband also physically and emotionally abused her son. He then began stalking and harassing her and she had to obtain a restraining order. The police arrested him and the harassment ended. About three years later, she obtained a divorce. She noted her ex-husband abandoned the children and her physically, emotionally and financially. He did not pay child support and she did not pursue legal regress because she felt safer that her ex-husband was not around to possibly harm or kill her or injure the children. See Dr. Stillings' deposition, page 6. The claimant advised Dr. Stillings that she had disturbing, intrusive, recurrent recollections, dreams and nightmares of the abuse she suffered with her first marriage. See Dr. Stillings' deposition, Deposition Exhibit 2, page 6.

The claimant advised Dr. Stillings that her second husband abused drugs and he also cheated on her. He notes that her husband became increasingly emotionally abusive and punched her in the face. After divorcing her second husband, the claimant later learned that he killed his next wife by stabbing her to death. Dr. Stillings further notes that after her second husband punched her in the face, General Motors referred her to a psychiatrist in Delaware, whom she saw on one occasion and then she returned to St. Louis to obtain psychiatric treatment. She saw Dr. Figueroa at that time. See Dr. Stillings' deposition, page 7.

Under Axis I, Dr. Stillings diagnosed: (1) pre-existing untreated rape at age 16; (2) post-traumatic stress disorder, chronic and severe (due to emotional, physical and sexual abuse, death threats by first husband, pre-existing); (3) untreated emotional abusive second husband, pre-existing; (4) pre-existing chronic major depressive disorder; (5) pre-existing schizoaffective disorder, Bipolar type, with mild intermittent psychosis and somatoform presentation; (6) pre-existing somatoform, NOS. Under Axis II, Dr. Stillings diagnosed pre-existing personality disorder, NOS with schizoid, paranoid, obsessive-compulsive, histrionic, and narcissistic

personality features. See Dr. Stillings' deposition, page 12. Dr. Stillings described somatoform disorder as when people express their inner psychological conflict as physical symptoms.

Dr. Stillings was asked three causation questions. The first, to provide his opinion within a reasonable degree of medical certainty whether any of these incidents she described to him were a substantial factor in causing her mental diagnosis or the prevailing factor in causing it. Dr. Stillings did not believe any of the incidents or occurrences were either a substantial or prevailing factor in causing her condition. See Dr. Stillings' deposition, pages 14-16. Dr. Stillings opined that none of the incidents that the claimant described demonstrated stress that was extraordinary and unusual when measured by objective standards. See Dr. Stillings' deposition, page 16.

COMPENSABILITY

The claimant has the burden to establish that she has sustained an injury by accident arising out of and in the course of her employment, and the accident resulted in the alleged injuries. Choate v. Lily Tulip, Inc., 809 S.W.2d 102, 105 (Mo.App. 1991).

An accident is defined as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift". Section 287.020.2, RSMo Supp. 2011. "An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability". Section 287.020.3 (1), RSMo Supp. 2011. "An injury is deemed to arise out of and in the course of the employment only if the accident is the prevailing factor in causing the injury and it does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment." Section 287.020.3(2), RSMo Supp. 2011. The Courts, the Commission, and Administrative Law Judges "shall construe the provisions of this chapter strictly" and that "the division of workers' compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflict." Section 287.800, RSMo Supp. 2011.

"The claimant in a workers' compensation case has the burden to prove all essential elements of her claim, including a causal connection between the injury and the job." Royal v. Advantica Rest. Group, Inc., 194 S.W.3d 371, 376 (Mo.App.W.D.2006) (citations and quotations omitted). "Determinations with regard to causation and work relatedness are questions of fact to be ruled upon by the Commission." Id. (citing Bloss v. Plastic Enters., 32 S.W.3d 666, 671 (Mo.App.W.D.2000)). Under the statute, "[a]n injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. § 287.020.2. On the other hand, "[a]n injury is not compensable because work was a triggering or precipitating factor." Id. Awards for injuries 'triggered' or 'precipitated' by work are nonetheless proper *if* the employee shows the work is the prevailing factor in the cause of the injury. Thus, in determining whether a given injury is compensable, a work related accident can be both a triggering event and the prevailing factor."

“[T]he question of causation is one for medical testimony, without which a finding for claimant would be based upon mere conjecture and speculation and not on substantial evidence.” Elliot v. Kansas City, Mo., Sch. Dist., 71 S.W.3d 652, 658 (Mo.App. W.D. 2002). Accordingly, where expert medical testimony is presented, “logic and common sense,” or an ALJ’s personal views of what is “unnatural,” cannot provide a sufficient basis to decide the causation question, at least where the ALJ fails to account for the relevant medical testimony. Cf. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo. banc 1994) (“The commission may not substitute an administrative law judge’s opinion on the question of medical causation of a herniated disc for the uncontradicted testimony of a qualified medical expert.”). Van Winkle v. Lewellens Professional Cleaning, Inc., 358 S.W.3d 889, 897, 898 (Mo.App. W.D. 2008).

In this case, the claimant filed a Claim for Compensation alleging an occupational disease took place from “April 27, 2002 - October 2, 2003”, that she was suddenly exposed to cigar smoke from another worker and was therefore, diagnosed with asthma, and that “GM refusal to ban smoking on the assembly line coupled with employee’s inability to leave the line when a co-worker began smoking, exposed employee to asthma inducing cigar smoke.” See Exhibit 12. She claimed that as a direct result, she suffered disability and great emotional stress. See Exhibit 12. Thus, the claimant apparently claims disability from asthma and emotional stress.

In reviewing the allegation of asthma, the claimant testified that smoking was allowed at the GM Assembly Plant in 2002 and 2003. The plant did not have a smoking ban in place until sometime in mid 2004. Consequently, all of the employees were exposed to both cigarette and cigar smoke at the plant during the time frame that the claimant alleges she suffered a mental injury, which was from April 27, 2002 until October 2, 2003. See Exhibit 12. The claimant testified that cigar smoke was blown in her face while she was working at her job station over a period of three days by a co-employee, Todd Asher. After each incident, the claimant went to medical and reported the incident. After treatment through plant medical, she was ultimately transferred to another area so she did not have to be exposed to the smoke. The claimant was dissatisfied with the remedy proposed by transferring her from the body shop to the chassis department. The claimant mentioned another instance when she thought she smelled “marijuana” in the bathroom; however she was advised that it was simply a deodorizer. She also expressed distaste when she was walking into the building and several co-employees were smoking outside the entrance. However, smoking was allowed in that area.

On the other hand, Dr. Bruce examined the claimant and opined that the claimant suffered from mild intermittent asthma that was not work related. He also opined that she did not suffer any permanent disability. See Exhibit 1. Therefore, claimant has not proven that she suffered from a physical injury from this occurrence that subsequently caused mental stress. Therefore, this does not fall within the physical-mental category of mental stress cases.

Looking at the claim for disability from work-related emotional stress, the claimant has the burden of proving that a claim for mental stress is compensable. A “mental injury resulting from work related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual.” The amount of

work stress shall be measured by objective standards and actual events. Section 287.120.8 RS Mo. 2000. A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer. Section 287.120.9, RSMo. 2000.

In reviewing whether the claimant has submitted a prima facie case to establish a case for disability from emotional stress from work-related mental stress, the claimant testified that she suffered emotional distress from the events involving smoking on her employer's premises. In addition, she submitted forensic medical evidence from a duly licensed psychologist, Dr. Schlitt, who testified:

Q: And that rating you're saying connected to her job itself, the job itself, sir? ...

A: Yes.

Q: Was - - was related to her job?

A: Yes. See Dr. Schlitt deposition, page 53.

However, the evidence submitted does not support a finding of compensability for several reasons. First, a claimant must prove that the working conditions were a substantial factor causing the disability. In this case, Dr. Schlitt's testimony that her disability was related to her job does not prove that the claimant's work was a substantial factor causing the disability.

Second, to meet the burden of proof, the claimant must prove that the mental stress in question was of greater magnitude than the day-to-day stresses experienced by other workers employed in the same or similar job. Williams v DePaul Health Center, 966 S.W.2d 619, 626 (Mo. App. E.D. 1999). In this case, the evidence does not present any comparison of the claimant's stress to stresses of other similar workers. The only evidence the claimant presents is the claimant's own subjective interpretation of the events.

Third, the claimant must prove that the stress is "extraordinary and unusual," and is measured by objective standards stress. The claimant's personal stress appears to have been substantial based on Dr. Schlitt's findings, but the claimant did not establish that the stress was "extraordinary and unusual," and is measured by objective standards stress. See Section 287.120.8, RSMo 2000.

Fourth, the evidence supports a finding that the claimant suffered psychological disability from a variety of sources at work and at home. Generally, where two events, one compensable and the other non-compensable, contribute to the claimant's alleged disabilities, the claimant has the burden to prove the nature and extent of disability attributed to the job-related injury. Strate v. Al Baker's Restaurant, 864 S.W.2d 417, 420 (Mo.App. E.D. 1993); Bersett v. National Super Markets, Inc., 808 S.W.2d 34, 36 (Mo.App. E.D. 1991). Here, the claimant's forensic expert provided an opinion regarding the claimant's overall psychological permanent partial disability, however, he did not establish the portion that arose from the claimant's work and the portion that arose from the large volume of other stressful conditions in the claimant's life. Dr. Schlitt was not provided with a complete history of the claimant's prior mental issues. Dr. Schlitt specifically indicated in his deposition that prior to 2002 the claimant was able to keep her personal life separate from her work life while experiencing issues with her first marriage. See

Dr. Schlitt deposition, page 63. However, Dr. Schlitt also testified that he was not given a complete and accurate history of her past issues and mental treatment. See Dr. Schlitt deposition, page 67. He testified that if he had an opportunity to review the additional records and mental history, his opinions in this case could change. See Dr. Schlitt deposition, page 60.

Fifth, the defense presented forensic expert medical evidence from Dr. Stillings to show that the claimant's psychological disability was not compensable under the Missouri Workers' Compensation Statute. Dr. Stillings, a licensed psychiatrist, opined that the claimant suffered from psychological disability, but contended that all of it is pre-existing. The claimant has quite a substantial history of prior physical, sexual and mental abuse, although she did not remember quite a bit of it at the time of the hearing. Dr. Stillings diagnosed pre-existing post-traumatic stress disorder due to being raped at age 16, along with emotional, physical and sexual abuse and death threats by her first and second husbands. He also diagnosed pre-existing major depressive disorder and pre-existing schizoaffective disorder, bipolar type, with mild intermittent psychosis. See Dr. Stillings' deposition, page 12. In addition, Dr. Stillings had a more detailed history than Dr. Schlitt with respect to the claimant's prior mental treatment and prior deposition testimony. Additionally, Dr. Stillings testified using the appropriate standard, whether the working conditions are "a substantial factor" or "extraordinary and unusual one measured by objective standards." See Dr. Stillings' deposition, page 16. In addition, Dr. Stillings' findings are more consistent with the various records reflecting a pre-existing condition.

Finally, a substantial amount of the claimant's stress was due to the fact that she was transferred from the body shop to the chassis department. See Exhibit F, page 2. The statute clearly states that a mental injury is not considered to arise out of and in the course of employment if it results from any type of job transfer, etc. The only reason the claimant was transferred from the body shop to the chassis department was due to her complaints with respect to the cigar smoke and other fumes and the plant medical department was simply trying to accommodate her needs. Therefore, the employer's actions appear to have been taken in good faith. Frazier v St. Mary's Honor Center, 852 S.W.2d 385, 387 (Mo App. Ed 1993).

Since the evidence supports a finding that the claimant has not proven that her claim is compensable under the Missouri Workers' Compensation law, no disability benefits are awarded.

Made by: _____
EDWIN J. KOHNER
Administrative Law Judge
Division of Workers' Compensation