

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

Injury No. 07-128481

Employee: James Bowman
Employer: Central Missouri Aviation, Inc.
Insurer: Wausau Underwriters Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Evidentiary rulings

The administrative law judge determined that employee's Exhibits 10, 11, and 48, consisting of reports from employee's evaluating medical expert, Dr. A. E. Daniel, were inadmissible into evidence for purposes of employee's claim against the Second Injury Fund. From a review of the hearing transcript, it appears that this ruling was based on a finding by the administrative law judge that employee failed to satisfy the requirements of § 287.120.7 RSMo for the submission of testimony from an examining physician via complete medical report. We disagree that employee's Exhibits 10, 11, and 48 are inadmissible as against the Second Injury Fund. Section 287.210.7 provides, as follows:

The testimony of a treating or examining physician may be submitted in evidence on the issues in controversy by a complete medical report and shall be admissible without other foundational evidence subject to compliance with the following procedures. The party intending to submit a complete medical report in evidence shall give notice at least sixty days prior to the hearing to all parties and shall provide reasonable opportunity to all parties to obtain cross-examination testimony of the physician by deposition. The notice shall include a copy of the report and all the clinical and treatment records of the physician including copies of all records and reports received by the physician from other health care providers. The party offering the report must make the physician available for cross-examination testimony by deposition not later than seven days before the matter is set for hearing, and each cross-examiner shall compensate the physician for the portion of testimony obtained in an amount not to exceed a rate of reasonable compensation taking into consideration the specialty practiced by the physician. Cross-examination testimony shall not bind the

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cross-examining party. Any testimony obtained by the offering party shall be at that party's expense on a proportional basis, including the deposition fee of the physician. Upon request of any party, the party offering a complete medical report in evidence must also make available copies of X rays or other diagnostic studies obtained by or relied upon by the physician. Within ten days after receipt of such notice a party shall dispute whether a report meets the requirements of a complete medical report by providing written objections to the offering party stating the grounds for the dispute, and at the request of any party, the administrative law judge shall rule upon such objections upon pretrial hearing whether the report meets the requirements of a complete medical report and upon the admissibility of the report or portions thereof. If no objections are filed the report is admissible, and any objections thereto are deemed waived. Nothing herein shall prevent the parties from agreeing to admit medical reports or records by consent.

Prior to a legislative amendment which took effect on January 1, 2014, the foregoing language included this caveat: "The provisions of this subsection shall not apply to claims against the second injury fund." The amendment removing this language is procedural and thus retroactively applicable, because it relates solely to the procedural "machinery" for carrying on a workers' compensation claim, and does not create a new substantive right or remedy. *Ball-Sawyers v. Blue Springs Sch. Dist.*, 286 S.W.3d 247 (Mo. App. 2009). Thus, we find that § 287.210.7, as set forth above, is applicable to the Second Injury Fund in this matter.

At the February 24, 2015, hearing before the administrative law judge, the Second Injury Fund conceded that it received copies of employee's Exhibits 10, 11, and 48 from employee more than 60 days before the hearing, and was (at least) aware that employee intended to offer Dr. Daniel's reports in lieu of live testimony with respect to his claim against the employer. The Second Injury Fund objected to employee's Exhibits 10, 11, and 48, on the sole basis that counsel for the Second Injury Fund was purportedly unaware of employee's intention to use those exhibits for purposes of his claim against the Second Injury Fund.

The Second Injury Fund did not raise any other evidentiary objection, such as that employee's Exhibits 10, 11, and 48 contain hearsay or lack foundation. Nor did the Second Injury Fund argue that it was without opportunity or otherwise prevented from obtaining cross-examination of Dr. Daniel. The Second Injury Fund did not request a continuance of the hearing for the purpose of obtaining cross-examination of Dr. Daniel.

Nothing in § 287.210.7 requires a party intending to submit a complete medical report in evidence to specify in the notice which party or parties the report is to be admitted against. It *does* require that "all parties" be provided reasonable opportunity to obtain cross-examination testimony. Thus, in our view, § 287.210.7 implies that a notice of intent to submit a medical report is necessarily applicable to "all parties." Moreover (and more importantly) we cannot, under a strict construction mandate, add requirements to § 287.210.7 that are not specifically contained therein, because "a strict construction of

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a statute presumes nothing that is not expressed.” *Allcorn v. Tap Enters.*, 277 S.W.3d 823, 828 (Mo. App. 2009).

The Second Injury Fund’s objection is overruled, and employee’s Exhibits 10, 11, and 48 are hereby received into evidence for purposes of employee’s claim against the Second Injury Fund.

Medical causation

The administrative law judge determined that employee failed to meet his burden of proving that he sustained a compensable psychiatric injury as a result of the accident of July 16, 2007, when a coworker assaulted him at work. After careful consideration, we agree with this result, but wish to provide some clarifying comments and additional analysis of our own.

Employee’s expert, Dr. Daniel, believes the accident of July 16, 2007, was the prevailing factor causing employee to suffer psychiatric injury in the form of severe, chronic, and disabling post-traumatic stress disorder (PTSD), and that employee is permanently and totally disabled as a result of this injury considered alone. On the other hand, employer’s medical expert, Dr. Wayne Stillings, believes employee did not suffer psychiatric injury of any kind as a result of the July 2007 accident, and that employee’s current psychiatric problems are wholly the product of preexisting conditions. We are faced with the unenviable task of resolving the starkly conflicting opinions from these experts against the backdrop of a significant prior traumatic event in employee’s life. Specifically, as detailed in the administrative law judge’s award, employee was the victim of a home invasion, forcible abduction, and armed robbery event in 2003.

We write to make clear that our analysis does not turn on the simple either/or question whether the 2003 or 2007 event caused employee to suffer the medical diagnosis of PTSD. This is because it is possible for employee to have suffered psychiatric injury from *both* events. Under § 287.020.3(1) RSMo, employee had the burden of proving that the work accident was the prevailing factor causing a resulting medical condition and disability. In analyzing whether employee met his burden of proof, it is important to recognize that the term “medical condition” is in no way synonymous with “medical diagnosis.” Our dictionary defines “condition,” in relevant part, as follows:

4 : a mode or state of being ... e : the physical status of the body as a whole ... or of one of its parts ...

WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 473 (2002).

While the term “diagnosis” is defined, in relevant part, as follows:

... 2 : a concise technical description of a taxonomic entity giving its distinguishing characters ...

Id. at 622.

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Once an employee has met his burden of proving that an accident was the prevailing factor causing a resulting medical condition and disability, evidence of a preexisting condition of ill-being and/or disability may be relevant to the issue of Second Injury Fund liability, and/or the nature and extent of compensable disability, but does not defeat the claim. To the contrary, it is well-settled in Missouri that where a work accident is the prevailing factor causing aggravation or exacerbation of a preexisting disabling condition, the resulting aggravation is compensable; this is true even following the 2005 amendments. *Maness v. City of De Soto*, 421 S.W.3d 532 (Mo. App. 2014).

Here, the mere fact that employee was previously diagnosed with PTSD does not, alone, preclude recovery. Stated another way, there is nothing in Chapter 287 to suggest there can be no “change of condition” unless there is a “change in diagnosis.” This is especially true under the 2005 amendments, which require us to strictly construe the language of Chapter 287.

There is evidence in this record which, if believed, would support findings that employee suffered from PTSD in the past, that (although he may have been left in a more fragile state) this condition became quiescent for an extended period of time leading up to the date of injury, and that the sudden, violent assault at the workplace caused a permanent worsening of the latent condition, a permanent increase in disability, and a need for medical care that otherwise would never have been required. Under such circumstances, an award of benefits would be mandated.¹

Accordingly, our inquiry must begin with the sole question whether Dr. Daniel persuasively established that the July 2007 accident was the prevailing factor causing employee to suffer a resulting psychiatric condition and disability, *regardless* of whether employee was also suffering (or had previously suffered) from preexisting psychiatric conditions and/or disabilities.

In resolving that question, we note at the outset that Dr. Daniel found employee’s results on the Minnesota Multiphasic Personality Inventory-2 test to be invalid. (Dr. Stillings found that employee provided the same invalid result on this test.) Dr. Daniel did not perform any other psychological testing. This means that Dr. Daniel was unable to rely on the results of any objective psychological testing in rendering his diagnoses, but instead was constrained to rely on employee’s subjective complaints and symptoms. As a result, the persuasive force of Dr. Daniel’s opinion turns to a substantial degree upon the extent to which we can rely upon employee’s subjective description of his history, complaints, and symptoms.

Turning to employee’s testimony and his statements to the evaluating and treating physicians, we find material inconsistencies. For example, on July 25, 2007, and August 20, 2009, during psychiatric treatment visits at University Hospital, employee admitted daily use of marijuana as a “sacrament.” *Transcript*, page 579, 592. But

¹ Our review of the relevant provisions of Chapter 287 does not provide any evidence of a legislative intent or public purpose that would be served by a construction of the law that would deny compensation to veterans of the armed services with documented past diagnoses of PTSD regardless of the passage of time, level of recovery, or nature of the work trauma giving rise to a recurrence of disabling symptoms.

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employee told Dr. Daniel at his evaluations on January 13 and 19, 2010, that his history of using marijuana was merely “sporadic,” and that he wasn’t then using marijuana at all. *Transcript*, page 430. Employee then admitted to Dr. Stillings he was “still” smoking marijuana “on a daily basis” as of January 3, 2012. *Transcript*, page 1377. Employee’s apparent failure to disclose to Dr. Daniel the extent of his use of a non-prescribed psychoactive drug undermines the persuasive force of Dr. Daniel’s expert opinions.

Employee also told Dr. Daniel he felt he would be killed by the armed assailant in 2003, yet he told Dr. Stillings the opposite, and testified at the hearing before the administrative law judge that he was not in fear for his life at that time. See *Transcript*, pages 80, 429, 1634. Employee’s unwillingness or inability to consistently describe his reaction to the 2003 event casts doubt on the ability of the diagnosticians to appropriately evaluate the significance of that event upon employee’s overall presentation.

Employee testified at the hearing before the administrative law judge that he couldn’t remember ever receiving an apology from the pilot who assaulted him at work. *Transcript*, page 51, 80-1. Yet, on August 3, 2007, employee told his therapist at University Hospital that the pilot had called and apologized to him, and that as a result he felt conflicted about continuing to pursue legal action against this individual. *Transcript*, page 236. Employee’s unwillingness or inability to consistently recount these circumstances casts doubt on his testimony as a whole, including his description of subjective complaints and symptoms referable to the accident.

Employee made no attempt to explain the above-described inconsistencies at the hearing before the administrative law judge. We find that employee is an unreliable witness. Where we are unable to rely on employee’s self-reported subjective complaints and symptoms, it follows that we cannot rely on the causation opinions from Dr. Daniel that were substantially derived therefrom.

For the foregoing reasons in addition to the issues identified by the administrative law judge in his award, we find Dr. Daniel’s testimony insufficiently persuasive to satisfy employee’s burden of proof. Accordingly, we find that the accident of July 16, 2007, was not the prevailing factor causing employee to suffer any psychiatric condition or disability. For this reason, we affirm the administrative law judge’s award denying benefits.²

Correction

We note that in the last sentence of the single paragraph under the heading “EVIDENCE” on page 4 of the administrative law judge’s award, the administrative law judge states, as follows: “Claimant offered the following exhibits, which were admitted into evidence without objection: [.]” It appears that the administrative law judge inadvertently omitted an intended listing after this sentence of employee’s exhibits. The reader is referred to the index of exhibits set forth at the outset of the transcript in this matter for a listing of the parties’ exhibits.

² Because we deem the opinions from Dr. Daniel insufficient to satisfy employee’s initial burden of proof with respect to the issue of medical causation, there is no need to weigh the relative credibility of employer’s contrary expert medical opinion evidence from Dr. Stillings.

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Conclusion

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

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued April 1, 2015, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 24th day of November 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

DISSENTING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: James Bowman

DISSENTING OPINION

Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe employee suffered a compensable psychiatric work injury.

On July 16, 2007, employee was in the course of performing his normal duties for employer when a pilot, Paul Kindling, approached him and instructed him to clean the lavatory on a recently arrived airplane. Employee responded that someone else was already doing so, and there was no need to reiterate. Suddenly and without warning, Mr. Kindling grabbed employee by the throat, placed his other arm across employee's chest, and shoved him against the side of the airplane. Mr. Kindling choked employee for several seconds until he came to his senses and released him. Following this event, employee experienced significant psychiatric impairment, underwent extensive treatment for a diagnosis of post-traumatic stress disorder, and has been unsuccessful finding work in the open labor market. The question is whether employee suffered a compensable psychiatric injury.

Much has been made of the 2003 home invasion event wherein employee was awakened by an armed assailant and thereafter briefly abducted. The administrative law judge reasoned that because this event must have been so traumatizing, employee simply cannot be deemed to have suffered any subsequent psychiatric injury when Paul Kindling choked him at work. The Commission majority tries to backtrack from this obviously flawed analysis, but ultimately endorses the administrative law judge's award in rejecting the expert testimony from Dr. Daniel.

In my view, what we are seeing in the administrative law judge and majority's opinions are a refusal to recognize the reality of psychiatric injury. If employee had experienced, say, a seriously traumatizing back injury in 2003, we would not automatically conclude that any subsequent, relatively less serious back injury is not compensable merely because all of the employee's problems must forever be seen as flowing from the more serious 2003 event. But here, because we cannot easily "see" employee's psychiatric injury/disability, we try to place ourselves in employee's shoes and decide for him which event should have caused his psychiatric problems.

Of course employee suffered psychiatric injury and disability from the 2003 event, in fact, this is undisputed: the administrative law judge and Commission majority studiously ignore the fact that Dr. Daniel *recognized and rated* permanent psychiatric disability as preexisting the work injury in this matter. The problem is that the administrative law judge—substituting his own lay psychiatric opinion for that of Dr. Daniel—postulates that Dr. Daniel simply cannot have read the medical records, because Dr. Daniel reached a different diagnosis (generalized anxiety disorder with post-traumatic features) than the administrative law judge would have reached (PTSD) related to the 2003 event. The administrative law judge failed to recognize that Dr. Daniel's diagnosis of generalized anxiety disorder is the *same diagnosis* contained in the medical records Dr. Daniel supposedly failed to review. The Commission majority appears to be operating under the similar (incorrect) assumption that employee had a preexisting diagnosis of PTSD from his psychiatrists at the time of the July 2007 accident: he did not. It thus appears to me that it is the administrative law judge (and Commission majority) rather than Dr. Daniel who has failed to carefully review the medical treatment records in this matter.

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This much is clear, regardless of the diagnosis: the 2003 event left employee with ongoing psychiatric disability. Employee was having panic attacks, was hyper-vigilant and obsessive about his safety around strangers, and was suffering from sleep disruption. Employee was functional, however, and was able to successfully compete in the open labor market, until Paul Kindling attacked him at work. Suddenly, employee found himself in a world where he wasn't even safe from random violence at the hands of his own coworkers. To make matters worse, his employers laughed at him when he asked for medical treatment. Ultimately, Mr. Kindling was subjected to a mere slap on the wrist (one week's suspension without pay), while employee found himself without a job. Employee has required regular psychiatric treatment since, and continues to experience significant psychiatric disability.

Given these facts, I strongly disagree that Dr. Stillings provides the more persuasive account of employee's psychiatric issues. This is because the treatment records (the same the administrative law judge faults Dr. Daniel for purportedly failing to review) simply do not support the opinion from Dr. Stillings that employee did not suffer any psychiatric injury as a result of the accident. The records from employee's therapist, Linda Hodges, are particularly revealing and persuasively demonstrate how employee's weak—yet stable—psychiatric state following the 2003 event was exacerbated and rendered seriously disabling by the subsequent attack at the hands of Paul Kindling. How can Dr. Stillings minimize the effects of the accident in light of this overwhelming evidence? The answer is that Dr. Stillings did not even review those records, because the only records he had were Dr. Daniel's evaluations of January 13 and 19, 2010. *Transcript*, page 1631. The administrative law judge thus finds himself in the patently absurd position of crediting a doctor who didn't review *any* of employee's treatment records because, in his lay opinion, employee's doctor didn't review those records *carefully enough*.

Similarly, I am unimpressed with the minor contradictions identified by the Commission majority with regard to employee's testimony and statements to treating and evaluating physicians. As employee's medical records demonstrate, he has longstanding impairment referable to cannabis dependence, which explains his memory issues. Employee is obviously a poor historian; if a poor memory is all it takes to invalidate Dr. Daniel's expert psychiatric diagnosis, one wonders how any psychiatric patient would receive appropriate diagnosis and care. More importantly, employer did not undertake any cross-examination of Dr. Daniel or confront him with any of the "material" contradictions the majority identifies. For this reason, I must strongly disagree with the Commission majority's implied finding (based on no evidence whatsoever) that Dr. Daniel would change his opinion based on any of the identified contradictions.

In sum, I find Dr. Daniel's opinions the only persuasive expert psychiatric evidence on record. I would reverse the award of the administrative law judge and enter an award of compensation. Because the majority has determined otherwise, I respectfully dissent.

AWARD

Employee: **James Bowman**

Injury No. **07-128481**

Dependents:

Employer: **Central Missouri Aviation, Inc.**

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: **Second Injury Fund**

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

Insurer: **Wausau Underwriters Insurance Company**

Hearing Date: **February 24, 2015**

Checked by: **RJD/njp**

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? **There was an accident, but there was no "injury" under Chapter 278, RSMo.**
4. Date of accident or onset of occupational disease: **July 16, 2007.**
5. State location where accident occurred or occupational disease was contracted: **Boone 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: **Employee was working on getting an airplane ready for flight when the pilot pushed Employee and held Employee by the throat..**
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: **None.**
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.**

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17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$350.05.
19. Weekly compensation rate: \$233.39.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

No compensation is payable. The Claim for Compensation against Employer is denied in full. The Claim for Compensation against the Second Injury Fund is denied in full..

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FINDINGS OF FACT AND RULINGS OF LAW

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Dependents:

Employer: Central Missouri Aviation, Inc.

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Second Injury Fund

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

Insurer: Wausau Underwriters Insurance Company

ISSUES DECIDED

The evidentiary hearing in this case was held on February 24, 2015 in Columbia. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on March 10, 2015. The hearing was held to determine the following issues:

1. Whether the July 16, 2007 accident is the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
2. Whether the July 16, 2007 accident is the prevailing factor in the cause of any disability;
3. The nature and extent of Claimant's permanent disability, if any;
4. The liability of Employer, if any, to reimburse Claimant for medical expenses heretofore incurred;
5. The liability of Employer, if any, to provide additional or continuing medical benefits pursuant to §287.140, RSMo;
6. The liability of Employer, if any, for temporary total disability benefits;
7. The liability, if any, of Employer for permanent partial disability benefits or permanent total disability benefits; and
8. The liability, if any, of the Second Injury Fund for permanent partial disability benefits or permanent total disability benefits.

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over this case;
2. That venue for the evidentiary hearing is proper in Boone County;
3. That the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;

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4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That Claimant's average weekly wage is \$350.05, with compensation rate of \$233.39;
6. That Claimant, James Bowman, sustained an accident arising out of and in the course of his employment with Central Missouri Aviation, Inc. on July 16, 2007;
7. That the notice requirement of Section 287.420 is not a bar to Claimant's Claim for Compensation;
8. That Employer-Insurer has paid no benefits; and
9. That Wausau Underwriters Insurance Company fully insured the Missouri Workers' Compensation liability of Central Missouri Aviation, Inc. at all relevant times.

EVIDENCE

The evidence consisted of the testimony of Claimant, James Cody Bowman, as well as the deposition testimony of Claimant; the testimony and report of Gary Weimholt, a vocational rehabilitation consultant; the testimony of Jackie Bowman, Claimant's father; police reports and other correspondence from the Columbia Municipal Court; Social Security Disability award; Social Security records; extensive medical records; medical bills; correspondence; and deposition testimony of Lynn Ann Williams. Exhibits 10, 11 and 48, consisting of narrative reports of Dr. A. E. Daniel, were admitted only as to Claimant's claim against Employer, and were not admitted as to Claimant's claim against the Second Injury Fund. Exhibit A, consisting of the narrative report of Dr. Wayne A. Stillings, was admitted only as to Claimant's claim against Employer, and was not admitted as to Claimant's claim against the Second Injury Fund. Claimant offered the following exhibits, which were admitted into evidence without objection:

FINDINGS OF FACT AND RULINGS OF LAW

Claimant, James Cody Bowman, was born on August 2, 1983. Claimant was not quite 24 years of age at the time of the accident of July 16, 2007.

Claimant grew up in West Plains, Missouri. He graduated from West Plains High School, where he was an honor roll student, president of the Student Council, and was active in school activities. Claimant enrolled at the University of Missouri-Columbia. During the summer between high school and college, Claimant's mother died unexpectedly; apparently she died on Claimant's birthday. Claimant testified that his mother's death placed an emotional toll on him. He believes it had an impact on his grades. While he was enrolled at the University of Missouri, he also worked at Wal-Mart as a door greeter. This was described as a part-time job. Claimant had some tardiness issues at Wal-Mart; Claimant advised Gary Weimholt that he had 47 tardies. Claimant testified at trial that he was tardy because school came first. However, his grades during

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his first year of college were D's and F's. Claimant was able to convince the university to allow him to come back for a second year, but he did not attend college beyond that second year. Claimant does not believe he accumulated any significant college credits.

In 2003, Claimant was kidnapped at gunpoint. An intruder broke into his house at night. Claimant was awakened when the kidnapper struck him with his gun. He was ordered to drive his car to the Hy-Vee, where he was robbed. His car was also stolen. The perpetrator was never apprehended. Claimant admitted to having some problems after the kidnapping, but testified that he was working, had friends and was his usual happy self. He received no psychiatric treatment after this kidnapping incident.

At some point in time, Claimant was discharged from his employment with Wal-Mart, apparently due to excessive tardiness. Claimant obtained employment for a few months with a business operating out of a kiosk at a mall. This employment ended when the business folded.

On June 20, 2005, Claimant was hired by Central Missouri Aviation ("Employer"). He was hired for a full-time position as a "line technician". This job had many duties, including directing traffic on the tarmac, shuffling planes, fueling planes, catering, and setting up hotel rooms and rental cars for the customers. While working for Employer, Claimant also took real estate classes, passed his examinations, and was licensed as a salesperson and as a broker. Claimant did not work in the real estate field, however, and has let his licenses lapse.

On May 4, 2007, Claimant went to Green Meadows Adult Psychiatry Clinic for treatment. Claimant testified that he went there at the suggestion of his roommates. He testified that he was having problems with his girlfriend and went for what he thought would be couples counseling. The hand-written notes from the 5/4/2007 evaluation are hard to read, but the notes state that Claimant had anger management problems after this mother's death, that he was having panic attacks 2-3 times a month, that he was admitted at age 16 for behavioral problems, and had been in rehab for marijuana twice.

Employer does not dispute that an incident happened on July 16, 2007, nor does Employer dispute the manner in which it happened. Claimant was working on getting an airplane ready for a flight. The pilot, Paul Kindling, approached Claimant and asked that the lavatory be cleaned. Claimant responded that someone else was already on the plane cleaning it. The pilot pushed Claimant up against the plane with one arm across Claimant's chest. Kindling's other hand was on Claimant's throat at the base of his neck. Claimant pulled back and leaned up against the plane, saying, "What are you doing?" Claimant testified that it happened so fast he doesn't remember if he could breathe. The incident lasted about five seconds. There were no threats, vulgarities or weapons involved. There were no physical injuries. Claimant had some redness around the base of his neck, which went away.

Claimant testified that he felt scared, confused and helpless. There was no manager on site at the time. Claimant finished his shift and went home that night. He had trouble sleeping and slept in bursts. Claimant reported the incident to Lyn Williams, Employer's Human Resources Manager. Claimant asked Williams for medical treatment, but Employer offered no medical treatment. On his own, Claimant returned to Green Meadows Adult Psychiatry Clinic on July 19, 2007. The physician's note from that date begins: "Feels better on Klonopin, better

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sleep, still gets panic attacks 2-3 times (a) month.” The physician’s note also states that Claimant smokes marijuana almost every day. There is no mention of the July 16, 2007 incident.

On the next evaluation at Green Meadows Adult Psychiatry Clinic six days later, there are two notations joined by a “{“ and marked with an asterisk. The first notation reads: “-03 robbed at gunpoint by blk man, taken hostage & forced to drive man away. Car stolen.” The second notation reads: “-Last wk pilot grabbed (Claimant) by the throat and held him against the plane.” Claimant’s daily marijuana use is also noted, with the additional notation “sacrament”. The “impression” was “chronic anxiety & worry”, “traumatic experience”, and “(rule out) PTSD”.

Claimant was again seen at Green Meadows Adult Psychiatry Clinic on August 1, 2007. The office note from that date reads, in part:

Discussed incident from '03 when (Claimant) was robbed in his home & kidnapped at gunpoint. Reviewed criteria for PTSD (regarding that) incident. (Claimant) endorsed intrusive thoughts, nightmares & sleep disturbances (was unable to sleep for 2 wks after), psychological and physiological reactivity, avoidance of particular people & places, detachment, hypervigilance, loss of interest in activities, difficulty concentrating & irritability. He became “obsessive” about locking & checking his doors. He insists on screening other people friends want to bring into his house. He has slept with a gun close by since the '03 incident, and acknowledged he has not been able to resolve the trauma issues on his own. Normalized his responses, explained PTSD/provided ed. Explained that the recent incident, which was again a threat to his safety, exacerbated his (symptoms). He might not have had such a strong reaction now if the previous incident had not occurred. (Claimant) stated the description of PTSD “fits me to a T.” He was visibly relieved to understand the (symptoms)/reactions in context & to be “finally understood” by someone else.

Claimant continued to have treatment with Green Meadows Adult Psychiatry Clinic. Claimant sought an independent psychiatric evaluation with Dr. Enrique Dos Santos in May 2009. Thereafter he began treatment with Dr. Ganesh Gopalakrishna and Dr. Saleh Parvez of University of Missouri Psychiatry for PTSD and cannabis dependence.

Since the July 16, 2007 incident with the pilot, Claimant has married and divorced a woman he met via the internet. In February 2011 he was admitted as an inpatient at Center Pointe Hospital in St. Charles for suicidal and homicidal ideation; this stemmed from Claimant wanting to harm his brother-in-law, whom he suspected of sexually abusing Claimant’s nephew. Also since the July 16, 2007 incident, Claimant has consistently struggled with marijuana dependence and was arrested and charged with possession of drugs with intent to distribute, eventually pleading guilty to reduced charges of possession. Claimant has not worked since 2007. Claimant claims that he is permanently and totally disabled from post-traumatic stress disorder (“PTSD”); he claims that the July 16, 2007 incident with the pilot is the prevailing factor in the cause of his PTSD, and thus is claiming permanent total disability benefits from Employer.

Section 287.020.3(1) states:

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In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. 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 287.020.2 states, in part: "An injury is not compensable because work was a triggering or precipitating factor."

The threshold question that must be decided in this case is whether the July 16, 2007 accident (i.e., the incident with the pilot) is the prevailing factor in causing the PTSD and the disability therefrom.

Employer offered the report of Dr. Wayne Stillings, a psychiatrist. Dr. Stillings opined that Claimant is at psychiatric maximum medical improvement and has sustained 0% psychiatric permanent partial disability of the body as a whole. He further opined that Claimant has "pre-existing, inherent psychiatric disorders and, possibly, a life threatening incident in 2003, neither of which [were] aggravated by the 7/2007 work incident." Dr. Stillings diagnosed: poly-substance abuse/dependence (pre-existing), adult antisocial behavior (pre-existing) associated with illicit drug abuse, probable bipolar disorder with paranoid psychosis (pre-existing), and post-traumatic stress due to the 2003 life threatening robbery/abduction (pre-existing).

Claimant offered the reports of Dr. A. E. Daniel, a psychiatrist. Dr. Daniel opined that Claimant's "current severe, chronic and disabling PTSD is caused by the injury Mr. Bowman sustained at his worksite on July 17, 2007 (sic) and; therefore, this work-related injury is considered the prevailing factor in his psychological, social and occupational disability."

I find that Dr. Stillings' opinions regarding the cause of Claimant's PTSD are much more persuasive than those of Dr. Daniel. While I would disagree with Dr. Stillings' apparent opinion that the July 16, 2007 incident did not "exacerbate" (at least temporarily) Claimant's pre-existing PTSD, the remainder of Dr. Stillings' opinions appear much more in line with the facts of the case than do Dr. Daniel's opinions.

Employer argues in its brief:

Dr. Daniel's opinion is not persuasive because of the following: 1) he did not review all of Claimant's prior medical records; 2) his report(s) contained inaccurate assumptions; 3) his report(s) contained incomplete histories; and 4) his opinions were lacking in explanation.

I find it very difficult to believe that Dr. Daniel did any type of thorough review of Claimant's treatment records, particularly the records from Green Meadows Adult Psychiatry Clinic. Dr. Daniel obviously did not know that Claimant was having panic attacks 2-3 times a month prior to July 16, 2007. It is almost impossible to believe that Dr. Daniel reviewed the August 1, 2007 quoted above where Claimant and his therapist agreed that Claimant suffered from classic PTSD symptoms from and after the 2003 robbery/kidnapping incident. As Dr.

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Daniel also states “(detailed inquiry did not indicate that (Claimant) has any substance abuse-related legal or occupational problems”, it is extremely difficult to see how he could miss the references to Claimant’s daily marijuana use in the July and August 2007 records, and how he could not see that Claimant was being treated for “cannabis dependence” and how Dr. Daniel could miss the many references to Claimant’s legal problems involving marijuana possession, drug court and probation.

I find that any fair reading of Claimant’s medical records would lead to the conclusion that Claimant’s PTSD was caused by the 2003 robbery/kidnapping incident, and not by the July 16, 2007 incident. The medical records contain the words of medical professionals of Claimant’s choosing who were trying to identify Claimant’s problems and help him with those problems. There is no litigation agenda behind the medical records.

I find that the July 16, 2007 incident was nothing more than a triggering or precipitating factor in an exacerbation of the already-existing symptoms of the already-existing PTSD. I believe that the quoted portion of the August 1, 2007 medical record explains that quite well.

“An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability.” *Section 287.020.3(1)*. The “medical condition” is PTSD. The July 16, 2007 accident was NOT the prevailing factor in the cause of Claimant’s PTSD. The 2003 robbery/kidnapping incident WAS the prevailing factor in the cause of Claimant’s PTSD.

As the accident was not the prevailing factor in causing the medical condition (PTSD), there is no “compensable injury”. Claimant’s Claim for Compensation in this case must fail. All other issues are moot.

ORDER

Claimant’s Claim for Compensation against Employer is denied in full.

Claimant’s Claim for Compensation against the Second Injury Fund is denied in full.

Made by /s/Robert J. Dierkes 03/31/2015
Robert J. Dierkes
Chief Administrative Law Judge
Division of Workers’ Compensation