

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

Injury No.: 00-177446

Employee: Barbara Boyd
Employer: Camelot Nursing Center (Beverly Enterprises)
Insurer: American Home Assurance c/o Constitution State Service
Date of Accident: February of 2000
Place and County of Accident: St. Francois County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 29, 2004, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Jack H. Knowlan, Jr., is attached and incorporated by this reference.

The Commission finds that the ALJ correctly weighed and evaluated the lay and medical testimony in reaching his conclusions and properly applied the law. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001); *Landman v. Ice Cream Specialties, Inc.*, 197 S.W.3d 240 (Mo. banc 2003).

Given at Jefferson City, State of Missouri, this 21st day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary
ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Barbara Boyd

Injury No. 00-177446

Dependents: N/A

Employer: Camelot Nursing Center (Beverly Enterprises)

Additional Party: N/A

Insurer: American Home Assurance Company c/o Constitution State Service Company

Hearing Date: February 24, 2004 (hearing completed March 15, 2004) Checked by: JK/sm

Date of Accident: February, 2000

SUMMARY OF FINDINGS

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? February of 2000
5. State location where accident occurred or occupational disease contracted: St. Francois 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? No
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 happened or occupational disease contracted: Employee alleged that the stress from her job as a nursing home administrator caused her to suffer psychological injuries, including shortness of breath, depression and panic attacks
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Claim denied
14. Nature and extent of any permanent disability: Undetermined
15. Compensation paid to date for temporary total disability: None
16. Value necessary medical aid paid to date by employer-insurer? None
17. Value necessary medical aid not furnished by employer-insurer? Claim denied
18. Employee's average weekly wage: \$1,400.00
19. Weekly compensation rate: \$578.48 per week for temporary total disability and permanent total disability and \$303.01 for permanent partial disability
20. Method wages computation: By agreement
21. Amount of compensation payable: Claim denied
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None

FINDINGS OF FACT AND RULINGS OF LAW

On February 24, 2004, the employee, Barbara Boyd, appeared in person and by her attorneys, Mr. Gary Matheny and Mr. David Mayhew, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Mr. Richard Fitzgerald. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a summary of the evidence and the findings of fact and rulings of law, are set forth below as follows

UNDISPUTED FACTS:

1. On or about February, 2000, Camelot Nursing Center (Beverly Enterprises) was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and its liability was fully insured by American Home Assurance Company.
2. On or about February, 2000, Barbara Boyd was an employee of Camelot Nursing Center and Beverly Enterprises.
3. Employee's claim for compensation was filed within the time allowed by law.
4. The employee's average weekly wage was \$1400.00 per month and her rate of compensation is \$578.48 per week for temporary total disability and permanent total disability and \$303.01 per week for permanent partial disability.
5. No temporary total disability was paid by the employer-insurer.
6. No medical aid was furnished by the employer-insurer.

ISSUES:

1. Accident or occupational disease
2. Notice
3. Medical causation
4. Future medical aid
5. Nature and extent of disability

SUMMARY OF THE EVIDENCE:

Employee's Evidence

Testimony of Sharron Greco

At the time of the hearing, Sharon Greco was employed as nursing home administrator at Festus Manor. Although Festus Manor was not owned by Beverly Enterprises, Ms. Greco had worked for Beverly Enterprises as a nursing home administrator in the past. She had not, however, been employed at the Camelot Nursing Center in Farmington.

Ms. Greco felt that there were significant differences between Beverly Enterprises and other nursing homes. Although Beverly Enterprises had more resources than smaller, family owned nursing homes, Beverly Enterprises was more structured with a greater focus on maximizing revenues. According to Ms. Greco, the food at Beverly Enterprises was not as good as the food at other nursing homes, the ratio of staff to patients was lower than other nursing homes, and Beverly Enterprises had a higher employee turnover rate. Ms. Greco concluded that all of these factors combined to make the job of a nursing home administrator more difficult at Beverly Enterprises than other nursing homes.

Ms. Greco further testified that during state inspections, Beverly Enterprises took off the limits on staffing and allowed their administrators to call in extra staff. When there were no pending inspections, however, they were required to "stick to the budget."

Other sources of stress included monthly or quarterly administrator meetings and a high volume of e-mail. Ms. Greco indicated that while working for Beverly Enterprises, she received 20 to 30 emails or voice mails each day, and was

expected to respond to many of those messages. As an administrator for Beverly Enterprises, Ms. Greco was required to attend meetings on either a monthly or quarterly basis. She emphasized that during these meetings, the focus was on increasing the number of patients in their buildings (increasing the “census”) in order to increase revenues. Ms. Greco also agreed that on some occasions, the administrators had been subjected to yelling or profanity at the meetings.

The focus of Ms. Greco’s testimony was that she felt that as a nursing home administrator for Beverly Enterprises there was always pressure to increase revenues and control expenses. She agreed that her duties included meeting the budget and looking out for the best interest of the patients, and in some instances, these two objectives were in conflict and made her job more difficult.

At one point, Ms. Greco stated that she did not believe the budget for operating expenses was adequate to take care of patients because they did not have enough staff. She later agreed, however, that the Beverly Enterprises Nursing Home where she worked was not guilty of substandard care and always had good inspections. She simply felt that they did not have enough staff to “do the extras.”

While working as a nursing home administrator for Beverly Enterprises, Ms. Greco was working 70 to 80 hours per week. She acknowledged, however, that this was not totally mandated by Beverly Enterprises. She added that she liked her job and was still working long hours for her current employer.

During cross-examination by the employer-insurer’s attorney, Ms. Greco admitted that she was testifying on behalf of Ms. Boyd and had known her since 1985. Ms. Greco then agreed that she had never worked at Camelot Nursing Center in Farmington and had not been present at Camelot on a daily basis. Ms. Greco further admitted that one of the duties of a nursing home administrator was to meet the budgetary goals of the nursing home, and the nursing homes were expected to make a profit. Although Ms. Greco had testified on direct examination that there were a few Beverly Enterprises facilities that had been fined after inspections, she agreed that her facility had never been fined or given an immediate jeopardy. She also agreed that she was able to operate her nursing home within the parameters set by Beverly Enterprises and was able to avoid any significant violations. She also agreed that her nursing home under Beverly Enterprises had never been cited for substandard care.

During additional cross-examination, Ms. Greco was questioned about the practice of transferring patients who were no longer qualified for Medicare to private pay or Medicaid rooms. Ms. Greco agreed that this practice saved both the nursing home and the patients money, and may have also been done at other nursing home facilities.

At the conclusion of her cross-examination, Ms. Greco agreed that the state inspections generally occurred every 12 to 15 months, and it was common practice for all nursing home administrators to call in extra staff during inspections.

Testimony of Carolyn Stocker

Carolyn Stocker testified that she worked at the Camelot Nursing Center for approximately 18 ½ years. Beverly Enterprises operated Camelot Nursing Center from October 1, 1985 through September 30, 2002. Ms. Stocker was the business office manager, and was responsible for financial matters, workers' compensation matters, Medicare and Medicaid. Barbara Boyd worked as the nursing home administrator at Camelot Nursing Center from sometime in 1988 or 1989 until sometime in the year 2000.

Ms. Stocker testified that sometime in the early part of 2000, she noticed significant changes in the behavior of Barbara Boyd. Ms. Stocker recalled that the employee experienced anxiety attacks and became very ill. She testified that the employee was very agitated and was not able to make good, clear decisions at work. Ms. Stocker testified that Ms. Boyd needed help at work, and on several occasions was not able to drive her vehicle to work. She recalled that several of the other employees at Camelot Nursing Center helped the employee by picking her up from work or taking her to the emergency room. She noted that during this time period, she was doing as much of Ms. Boyd’s work as she could.

Ms. Stocker further testified that, to her knowledge, the employee was not experiencing any marital or financial problems. She then agreed that there were significant pressures and a lot of stress working for Beverly Enterprises. Ms. Stocker commented that, “they expected a lot of us.” Ms. Stocker also agreed that they received a lot of e-mails from Beverly Enterprises, and stated that Beverly Enterprises was “real strict” regarding census numbers and collecting money.

During cross-examination by the employer-insurer’s attorney, Ms. Stocker agreed that in a prior conversation with an insurance company adjuster, she had stated that there were no improprieties in regard to Medicaid during her 17 years with Camelot Nursing Center. She also acknowledged that she had advised the adjuster that Camelot Nursing Center had never worked short-staffed under the fire code, but felt that on some occasions they had worked at the bare minimum. Ms. Stocker also agreed that the Camelot Nursing Center had never been shut down or threatened by the state inspectors. Ms. Stocker also agreed that she had told the adjuster that she did not believe Barbara Boyd was faced with any greater stress than any other administrator would have been faced with.

During redirect, Ms. Stocker testified that she had attended management meetings, but noted that separate meetings were held for business officers and the nursing home administrators. She recalled, however, that on some occasions Barbara

Boyd would come out of the administrators meetings looking agitated or angry.

During additional questioning by the employer's attorney, Ms. Stocker agreed that all administrators at Beverly Enterprises Nursing Home facilities were under a lot of stress at the time. Although she felt that the stress level of an administrator at Beverly Enterprises was higher than the stress of those working at other nursing homes, she agreed that Barbara's stress was typical for the stress experienced by other administrators at Beverly Enterprises Nursing Homes.

Testimony of Jhena Copeland

Jhena Copeland was the medical records clerk at the Camelot Nursing Center, and worked under the supervision of Barbara Boyd from 1982 until 2000. Ms. Copeland testified that beginning in the early part of 2000, Barbara Boyd began to experience problems breathing, was unable to walk, and missed work from time to time due to "panic attacks." Ms. Copeland added that she helped the employee by driving her to and from work, and taking her to the emergency room. Ms. Copeland testified that she was not aware of any marital or financial problems being experienced by Ms. Boyd, but did believe that Ms. Boyd was experiencing problems with her job. She recalled that at the time there were several new nursing homes in the area, and they were feeling pressure to get their census back up.

During cross-examination by the employer-insurer's attorney, Ms. Copeland agreed that the Camelot Nursing Center had 90 residents at one time, but in the last few years prior to Ms. Boyd's health problems, the numbers had been down to 70. Ms. Copeland acknowledged that because of this decrease, there were fewer residents to take care of.

Testimony of Sandi Brooks

At the time of the hearing, Sandi Brooks had worked for approximately three years as a medical surgical nurse at Mineral Area Regional Medical Center. Ms. Brooks had worked at the Camelot Nursing Center for approximately 15 years from 1982 until 1998. At the time she left Camelot Nursing Center, she was employed as the director of nursing.

While working at Camelot Nursing Center as the director of nursing, Ms. Brooks attended management meetings with Barbara Boyd in Cape Girardeau. The nursing directors and the administrators would start together as a group, and would then split into separate meetings. Ms. Boyd testified that on some occasions after these meetings, Barbara Boyd would appear irate and upset. Ms. Brooks testified that Ms. Boyd was upset because Beverly Enterprises was asking her to do things that she did not feel were in the best interests of the patients, and "were financially motivated." According to Ms. Brooks, Beverly Enterprises wanted them to adjust their staffing to maximize billing for Medicare patients. She was of the opinion that they were being encouraged to document a certain percentage of staff on the Medicare hall whether the staff was there or not.

During cross-examination, Ms. Brooks agreed that she had not worked at the Camelot Nursing Center since 1998, and had not worked during the last two years of Barbara Boyd's employment. She also acknowledged that she had no personal knowledge of the operation of Camelot Nursing Center during those last two years. Ms. Brooks also agreed that Barbara Boyd had delegated the responsibility for scheduling the nursing staff to her, and it was her duty, as director of nursing, to maintain staffing.

During additional questioning about the Medicare halls, Ms. Brooks agreed that Camelot Nursing Center had never been cited or fined for Medicare irregularities. She also admitted that the state regulators had never threatened to shut their facility down. Ms. Brooks further agreed that the staffing was adequate for "fire coverage," but in her opinion, she did not feel it was sufficient for the patients to get the kind of care they needed.

Testimony of Linda Wade

Linda Wade worked as a restorative therapy aide at Beverly Enterprises for approximately 18 years. Her job required her to maintain the residents after therapy through exercise, walking or other means ordered by the therapist. Ms. Wade worked under the supervision of Barbara Boyd and Sandi Brooks.

Ms. Wade testified that there were a lot of times when patients did not get as much therapy as she thought they needed because she was pulled out of therapy to work as a CNA. Ms. Wade felt that there was a "short staffing problem" at Camelot Nursing Center, and everyone's workload increased during state inspections. Ms. Wade also felt that Beverly Enterprises had a high turnover rate for their employees.

At some point in October of 2000, Ms. Wade testified that Barbara Boyd had problems breathing and walking. Ms. Wade was not aware that the employee was experiencing any financial or marital problems, and concluded that she appeared to be stressed from her work. Ms. Wade was familiar with Beverly Enterprises budget restrictions on staffing, and agreed that Barbara Boyd's job was "very stressful." Ms. Wade concluded that working for Beverly Enterprises was more stressful than other nursing homes because they "always wanted us to do the best with less."

During cross-examination by the employer-insurer's attorney, Ms. Wade agreed that she had worked 18 years at Camelot Nursing Center and was not directly familiar with the operation of other nursing homes.

Testimony of Barbara Boyd

Barbara Boyd was employed by Camelot Nursing Center from 1985 through December of 2000. Ms. Boyd worked as the nursing home administrator from 1988 until she left on medical leave in December of 2000. Ms. Boyd noted that her job was stressful all the time, but had worsened over time. Ms. Boyd felt that her job had become unbearable over the last few years.

When asked to give examples of her job stress, Ms. Boyd indicated that at the corporate meetings for administrators, they were told they had to code 1 ½ hours to 2 hours of staff to Medicaid wings whether they were there or not. In addition to over reporting hours on the Medicare wing, Ms. Boyd also testified that they were encouraged to move residents off of the Medicare wing as soon as the hundred day maximum was reached. According to Ms. Boyd, “all they were concerned about was the bottom line – making money.”

In addition to problems with staffing the Medicare wing, Ms. Boyd also indicated that her job was stressful because of poor quality food and a high volume of e-mail messages. Ms. Boyd testified that during the two years prior to her medical problems, she was receiving 20 or more emails or voice mail messages each day, and was expected to respond to most of those messages. She also stated that her nursing home was limited to purchasing food from particular vendors in Fort Smith, Arkansas, and she did not believe the food was as good as other nursing homes.

Ms. Boyd also testified that there was a problem with therapy at Camelot Nursing Center due to a change in the Medicare law. At some point the payments system was changed by Medicare to limit the number of days for which Medicare would pay for therapy. After this change, Ms. Boyd testified that Beverly Enterprises limited the therapy to the number of days allowed by Medicare. Consequently, Ms. Boyd did not believe that some of the residents were getting as much therapy as they needed.

Ms. Boyd felt that her job as an administrator was made more difficult because of the stress created from state inspections. The state inspections were not scheduled, but occurred approximately every 15 months. She noted that if Camelot Nursing Center had a bad survey, she would be in trouble with the company. During normal times when there were no state inspections, Ms. Boyd believed that Beverly Enterprises budget was too restrictive and felt that they were understaffed. During state inspections, however, she was allowed to go over budget and call in extra staff. According to Ms. Boyd, this extra work during inspections or “mandatory overtime” contributed to a high staff turnover rate at Camelot Nursing Center.

In addition to the problems with understaffing, Ms. Boyd testified that Beverly Enterprises also pressured their administrators to increase revenues by increasing “the mix” of residents. She explained that the nursing home received higher pay for private pay and Medicare residents than they did for Medicaid residents.

In addition to state inspections, Ms. Boyd explained that Camelot Nursing Center was also subject to quality assurance inspections by consultants hired through Beverly Enterprises. These consultants literally checked everything and created additional stress on the staff and administrators.

During additional questioning by her attorney, the employee agreed that her job description as reflected in Employer-insurer’s Exhibit 2 required her to “maintain excellent care for the residents/patients while achieving the facilities business objectives.” According to the employee, the business objective of making money overrode the other objectives. Ms. Boyd stated, “We tried to meet the patient’s needs, but there was no way we could do as well as we wanted due to the budget restrictions.” Ms. Boyd did not believe that the budget provided by Beverly Enterprises allowed her to adequately meet their staffing needs.

The final example of stress given by Barbara Boyd related to the staff meetings in St. Louis and Cape Girardeau. Ms. Boyd testified that they met in Cape Girardeau one time per month. During direct examination she stated that these meetings included “hours of being cussed out.” On one occasions, Ms. Boyd testified that she was called a “f-u-c-k-e-r,” and on another occasion her manager had used filthy language and told her that he had dreamed about her the night before and she was wearing “ a black teddy.”

During these meetings, Ms. Boyd stated that the emphasis was always on improving the census. Even when they were operating at or near capacity, Ms. Boyd still felt pressure to increase the mix of patients.

At some point the payment system for Medicaid was changed to a “prospective payment system,” which basically provided less money for the nursing homes. After this change, Ms. Boyd said that “management went nuts,” and were on them all the time to make changes to increase billings. According to Ms. Boyd, the e-mails increased and their meetings became even more intense.

At some point, Ms. Boyd testified that the pressure got to her. In February of 2000, she started experiencing shortness of breath and had problems getting up and walking around. She was experiencing chest pain and dizziness, and

later had problems with incontinence. As a result of these symptoms, Ms. Boyd was not able to do her chores at home, and was also unable to perform her duties at work. She reached the point where she could not walk to the restrooms or down the hall, and was no longer able to talk to the residents. Although her department heads tried to help her perform her job, the employee was eventually forced to stop working due to her medical problems.

At some point in the year 2000, the employee testified that she started experiencing panic attacks. On one occasions, she contracted into a fetal position and remained motionless. Although she could hear other people talking, she was not able to respond or move.

After making several trips to the emergency room, Ms. Boyd sought treatment from her family physician and Missouri Baptist Hospital. After consultations with several specialists, the employee was referred to the Mayo Clinic.

The employee eventually came to believe that her problems were related to stress from her job. After informing her supervisor, she agreed that he was very understanding and helped her obtain medical leave.

Ms. Boyd ultimately came under the care of Dr. Herath, who is a psychiatrist at Barnes Jewish Hospital. The employee sees Dr. Herath every three weeks, and is seeing a counselor every two weeks. Ms. Boyd testified that she is still taking medication for depression and her breathing and panic attacks.

When questioned about her current symptoms, Ms. Boyd indicated that she experienced a panic attack approximately two weeks ago in which she had problems breathing for approximately 20 minutes. The employee also has problems with incontinence and has problems with her memory and cognitive abilities. Ms. Boyd testified that on some occasions, she has gotten lost in town, is no longer able to do math or her ABCs, and has difficulty counting money.

At one point four or five months prior to the hearing, the employee attempted to work part-time doing clerical work for the SEMO Treatment Center. The employee was only able to work two days because of problems with dizziness, nausea, and walking. As a result of this experience, the employee testified that she did not believe that she would be able to perform any other type of job.

When questioned about her daily activity, the employee indicated that if she is not experiencing symptoms, she is able to perform some housework. The employee does not want to leave the house, and when her husband is gone, she keeps the house locked and has access to a stun gun.

At the conclusion of her testimony, the employee emphasized that she loved her job and would like to go back to work if her health problems could be resolved. Her understanding was that she was suffering from panic attacks, anxiety, depression and paranoia. The employee felt that she had been totally disabled since December 26, 2000.

During cross-examination by the employer-insurer's attorney, Ms. Boyd agreed that one of her duties as the nursing home administrator was to operate the facilities within the approved budget. She also agreed that nursing homes were expected to make a profit, and if they were not able to make a profit, they would not stay in business. When questioned about her hours, she indicated that she generally worked 42 hours per week. She typically worked from 8:00 a.m. to 4:30 p.m. on weekdays and normally did a walk-through on weekends.

Ms. Boyd agreed that she had never been disciplined for poor performance and her annual reviews had always been good. Ms. Boyd also acknowledged that the Camelot Nursing Center had never been cited by the state for being understaffed, and their facilities had never been fined for Medicare problems.

During additional questioning, Ms. Boyd agreed that Camelot Nursing Center had operated at close to full capacity up until the last year or two of her employment. The capacity was 90 residents, but during the last two years of her employment, the count had been down to approximately 72 residents.

The employee was then questioned about the hospital records from the Mayo Clinic. Ms. Boyd agreed that her medical history indicated that her relationship with her mother was not very good. Although she denied physical or mental abuse from her mother, Ms. Boyd agreed that her mother was very cold and very critical, and they did not get along. Ms. Boyd also acknowledged that she did not have a good relationship with her first husband, who was both physically and mentally abusive. Ms. Boyd emphasized, however, that she had a good relationship with her second husband, and was having no problems during the time that she started experiencing shortness of breath and panic attacks.

During additional questioning by the employer-insurer's attorney, Ms. Boyd agreed that full surveys for nursing homes that were in good standing occurred on a 12 to 15 month rotation. Ms. Boyd acknowledged that Camelot Nursing Center had good surveys and the state considered them a good nursing home. When questioned about the regional meetings in Cape Girardeau and St. Louis, Ms. Boyd agreed that it was Gary Crane who was the problem. At one point Mr. Crane had been the employee's immediate supervisor, but she agreed that Mr. Crane had not been her supervisor during the three years immediately preceding her emotional breakdown. During the last three years of her employment, Ms. Boyd acknowledged that Carroll Allen was her supervisor. She also admitted that Mr. Allen did not curse, and was the person who had completed her performance evaluations. She also acknowledged that Mr. Allen had been very helpful when she had informed him of

her health problems, and had approved her request for a medical leave of absence.

During additional questioning, Ms. Boyd was asked to be more specific about the meetings in which Mr. Crane had cussed at her. Ms. Boyd stated that the "black teddy" incident occurred approximately four years before she stopped working. Ms. Boyd testified that they were sitting around a table at lunch and Mr. Crane told her that he had a dream about her in which she was wearing a black teddy with nylons and stated that she had "climbed on me and really rode me." This first incident occurred shortly before Mr. Allen took over as her director, and after that point, Ms. Boyd agreed that Mr. Crane was no longer attending the monthly meetings that were held in St. Louis.

The second incident in which Mr. Crane cussed at the employee occurred late in 1999 or early in 2000. Although Mr. Crane was no longer her supervisor, he was still running the Dexter office that delivered laundry to Camelot Nursing Center. After Ms. Boyd complained about the fact that the laundry was only being delivered every other day, Mr. Crane said, "you fucker" to Ms. Boyd at a regional meeting. The employee did not identify any other instances in which Mr. Crane used profanity or inappropriate language that was directed toward her during the last two or three years of her employment.

Deposition testimony of Pearl Underwood

The deposition of Pearl Underwood was taken on February 11, 2004, and was admitted as Employee's Exhibit K. Ms. Underwood indicated she was employed as the nursing home administrator for a nursing home in Desoto, Missouri, called "The Villas." Prior to her employment at The Villas, she worked at the Fleur-de-lis nursing home in Farmington. Ms. Underwood was the administrator of the Fleur-de-lis nursing home from 1975 through 1999. The Fleur-de-lis nursing home was owned by Richard Montgomery and Americare Systems, but Ms. Underwood noted that for a two year time period from 1985 to 1987, the facility was leased and operated by Beverly Enterprises (Employee's Exhibit K, page 7).

Ms. Underwood was asked to compare the management style of the nursing home while it was being leased to Beverly Enterprises versus the management style of Mr. Montgomery and Americare. Ms. Underwood stated that there was "quite a bit of difference," because Richard Montgomery and Americare Systems would give her whatever staff she needed while Beverly Enterprises staffed strictly in accordance with fire code regulations. She noted that the fire code required one employee for every 10 residents on days, one employee for 15 residents on evenings and one employee for every 20 residents on nights for the nursing staff (Employee's Exhibit K, page 8). Ms. Underwood then agreed that this number of staffing was consistent with the regulations as set forth by the federal and state government (Employee's Exhibit K, page 8).

When asked to identify other differences between Beverly Enterprises and Americare Systems, Ms. Underwood noted that during the two-year time period when Beverly Enterprises leased the facility, she testified that the food was, "a very poor quality," which made their job more difficult. In addition to the food, Ms. Underwood emphasized that Beverly Enterprises really pushed them to make as much profit as they could out of their therapy department. She concluded that in some instances, therapy was being over-utilized when there were other times when the therapy was being under-utilized (Employee's Exhibit K, page 10 and 11).

During additional questioning about the budget with Beverly Enterprises, Ms. Underwood stated that Beverly Enterprises "really watched the budget close, the bottom line." She added that if their staffing for patient care was too high or if they worked overtime, they would receive a call (Employee's Exhibit K, page 17).

During this portion of Ms. Underwood's direct examination, the employer-insurer's attorney made a standing objection on the grounds that Ms. Underwood's testimony about what happened in 1985 through 1987 was not relevant for a claim that occurred in February of 2000 (Employee's Exhibit K, page 22). After this objection, Ms. Underwood testified that she did not feel that Beverly Enterprises had adequate staff to meet the day-to-day needs of their residents in 1985 and 1986. She also testified that the management meetings they attended in Cape Girardeau were terrible because the operations director would cuss, rant, rave and harass them (Employee's Exhibit K, page 24 and 25). Ms. Underwood complained about the operations director to his supervisor, and ultimately told Richard Montgomery that if he re-leased the facility to Beverly Enterprises she would resign (Employee's Exhibit K, page 25 and 26).

At the conclusion of her direct examination, the employee's attorney asked Ms. Underwood if she felt the management philosophy of Beverly Enterprises had changed over the years. In response to that question, Ms. Underwood stated that she really could not answer that question because she did not have any knowledge of that (Employee's Exhibit K, page 28).

During cross-examination by the employer-insurer's attorney, Ms. Underwood agreed that she had not been associated with or employed by Beverly Enterprises since 1987. Ms. Underwood also agreed that she had never worked at the Camelot Nursing Center (Employee's Exhibit K, page 41). Ms. Underwood then admitted that she was not personally familiar with the operations of Camelot Nursing Center during the time period from 1998 through 2000 (Employee's Exhibit K, page 42).

During additional questioning by the employer-insurer's attorney, Ms. Underwood agreed that owners of nursing home facilities are in that business to make a profit, and if they do not make a profit, they cannot stay in business (Employee's Exhibit K, page 45). At the conclusion of her cross-examination, Ms. Underwood also admitted that she did not know what the management practices of Beverly Enterprises were at Camelot Nursing Center during the time that Barbara Boyd was the administrator (Employee's Exhibit K, page 50).

Deposition testimony of Samuel Bernstein

Dr. Bernstein has a Ph.D. in vocational rehabilitation and psychology, but has worked primarily in the area of vocational rehabilitation.

Dr. Bernstein evaluated the employee on May 13, 2003. Dr. Bernstein diagnosed the employee as having major depression and panic disorder (Employee's Exhibit J, page 14). Dr. Bernstein also felt that these diagnosed conditions were caused by the financial issues and administration policies which she had described from her job (Employee's Exhibit J, page 15).

Dr. Bernstein concluded that because of her psychological problems, the employee was not capable of working in the open labor market. He stated that "she would have problems in terms of concentration, persistency and carrying out tasks." (Employee's Exhibit J, page 17).

During cross-examination by the employer-insurer's attorney, Dr. Bernstein stated that he was familiar with the job requirements of a nursing home administrator, and agreed that it can be a stressful job (Employee's Exhibit J, page 27). Dr. Bernstein also acknowledged that one of the job responsibilities of a nursing home administrator would be to prepare a budget and meet the financial goals established by the employer (Employee's Exhibit J, page 27).

The employer-insurer's attorney also questioned Dr. Bernstein about the medical records from the Mayo Clinic. Dr. Bernstein agreed that he had not reviewed those records, and was not aware that they had made no comment on whether Ms. Boyd's depression was work-related (Employee's Exhibit J, page 31).

At the conclusion of his cross-examination, Dr. Bernstein acknowledged that most of his evaluations and reports were prepared at the request of the claimant as opposed to the defense. He estimated that 90% of his evaluations were done for plaintiffs and 10% for the defense (Employee's Exhibit J, page 33).

Medical records

The medical records offered by the employee include records from most of the health care professionals who have treated the employee. These records confirm that the employee started to experience shortness of breath and hyperventilation sometime in February of 2000 (Employee's Exhibit A and Employee's Exhibit B). The employee was also complaining of chest pain, anxiety, and stress that she felt was due to her work (Employee's Exhibit A and Employee's Exhibit B). Ms. Boyd was evaluated by a number of specialists, including a cardiologist, a pulmonologist, and an endocrinologist. The tests performed by these physicians were all negative, and the physicians began to look at the possibility of anxiety and depression as a differential diagnosis (Employee's Exhibit C).

The employee was eventually referred to the Mayo Clinic in Rochester, Minnesota. Although the records from the Mayo Clinic mentioned a history of physical and emotional abuse by her first husband many years ago, and possible emotional and physical abuse by her mother, the employee also gave a history in which she described her job as being extremely stressful. She advised the Mayo physician that there was another nursing home "essentially taking over in her home area, and she is concerned she may lose her job." (June 30, 2000 report in Employee's Exhibit F). The psychiatrist at the Mayo Clinic diagnosed the employee as having "major depression, single episode, severe and non-psychotic; rule out GAD, panic disorder and dysthymia." (Employee's Exhibit F).

Following her evaluation at the Mayo Clinic, the employee's family physician, Dr. Charles D. Rainbolt, wrote a letter to the employee's supervisor, Carol Allen, on September 29, 2000. After reviewing the employee's treatment, Dr. Rainbolt stated as follows:

At this time no one has been able to offer her a treatment that controls her problem. She is unable to work due to this condition which includes attacks of chest pain, shortness of breath, severe headaches, and a feeling of impending doom. In my opinion, this condition is employment related, if not entirely caused by the ongoing stress of her many years as administrator at Camelot. I, therefore, feel that Barbara is permanently disabled and should be given 100% disability due to the permanent condition.

(Employee's Exhibit G.)

At the time of the hearing the employee was under the care of Dr. Adolph Herath, who is a psychiatrist with BJC Behavioral Health in Park Hills, Missouri. Dr. Herath's records indicate he performed a psychiatric evaluation on August 29, 2000. Dr. Herath diagnosed the employee as having, "major depression, chronic or current panic disorder without

agraphobia.” Under Axis IV, Dr. Herath stated “moderate to serious stressors, mainly extremely stressful work atmosphere; fear of losing her job; fear of having to forgo a big income.” (Employee's Exhibit H).

In addition to the records of Dr. Herath, the employee also introduced the medical records of Dr. Raad Roubey, who is an internist with the Medical Arts Clinic in Farmington. The most recent entry from Dr. Roubey, dated June 5, 2002, indicates the employee was still experiencing complaints of agitation and panic attack, but her symptoms were less severe and less frequent than before (June 5, 2002 entry in Employee's Exhibit I).

Employer-Insurer's Evidence

Deposition testimony of Wayne A. Stillings, M.D.

Dr. Stillings, who is a psychiatrist in St. Louis, Missouri, was deposed on November 5, 2003. Dr. Stillings evaluated the employee on February 11, 2003. Based on this evaluation and his review of the medical records, Dr. Stillings prepared a report dated February 11, 2003, that was admitted as Deposition Exhibit 2, attached to Employer-insurer's Exhibit 1.

As part of Dr. Stillings' evaluation, he gave the employee a mental status exam and an MMPI test (Employer-insurer Exhibit 1, page 14 and 16). Based on these tests, his review of the medical records and his interview of the employee, Dr. Stillings reached the following psychiatrist diagnosis:

AXIS I: History of emotional and physical abuse by mother and first husband.

AXIS II: Chronic and long standing personality disorder, NOS with dependent, depressive, hysteroid, and manipulative features.

AXIS III: Shortness of breath, GERD, migraine headaches, back pain.

AXIS IV: Non-working, interaction with the legal system.

AXIS V: GAF = 68.

(Deposition Exhibit 2 attached to Employer-insurer Exhibit 1).

In addition to his psychiatric diagnosis, Dr. Stillings stated a number of additional conclusions regarding the employee's condition. Dr. Stillings testified that “Ms. Boyd has no psychiatric disorder or illness causally related to the conditions of her employment with Camelot Nursing Center.” (Employer-insurer Exhibit 1, page 21). Dr. Stillings also testified that “Ms. Boyd does not meet the diagnostic criteria per DSM-IV for panic disorder, nor major depression.” (Employer-insurer Exhibit 1, page 21). Dr. Stillings then added that “Ms. Boyd has a preexisting personality disorder,” and “has a history of physical and emotional abuse by her mother and first husband.” (Employer-insurer Exhibit 1, page 21). Dr. Stillings also concluded that “possibly Ms. Boyd has incurred a 1 to 2 percent permanent partial psychiatric disability on the basis of aggravation of her preexisting personality disorder.” He then added, “however, it is noteworthy that she has not worked in greater than two years at the time I saw her and still reports a myriad of vague and diffuse subjective symptoms which do not organize into a psychiatric diagnosis aside from her personality disorder.” (Employer-insurer Exhibit 1, page 21 and 22). Dr. Stillings did not believe, however, that Ms. Boyd had any degree of permanent partial psychiatric disability resulting from her employment with Camelot (Employer-insurer Exhibit 1, page 22).

Dr. Stillings then concluded that “from a psychiatric standpoint, she is able to work without restrictions.” He also added that “Ms. Boyd does not need psychiatric treatment in relation to the conditions of her employment with Camelot Nursing Home.” He agreed, however, that she might benefit from treatment for her personality disorder, but emphasized that the need for treatment was not related to her employment at Camelot Nursing Center (Employer-insurer Exhibit 1, page 22 and 23).

Job description for executive director at Beverly Enterprises

The employer-insurer introduced a detailed job description for executive directors or nursing home administrators at Beverly Enterprises. The employer-insurer has noted that the list of essential job functions includes business management and marketing and revenue management duties. Specifically, the nursing home administrator is obligated to meet established budget and accounts receivable goals, and is also required to develop and implement a marketing strategy that maximizes census, payroll mix, and ancillary revenues (See essential job functions under Employer-insurer Exhibit 2). The employer-insurer also noted that the general purpose of the executive director is “To lead and direct the overall directions of the facility in accordance with customer needs, government regulations, and company policies, with focus on maintaining excellent care for the residents/patients while achieving the facilities business objectives.” (Employer-insurer Exhibit 2).

Deposition testimony of Renee Ridling

At the conclusion of the hearing on February 24, 2004, the parties requested that the hearing be continued and the

record left open to allow the employer-insurer to complete the deposition of Renee Ridling. This deposition was taken on February 27, 2004, and was filed with the Division on March 15, 2004. Ms. Ridling testified that she has been licensed and working as a nursing home administrator since 1993. Mr. Ridling has a bachelor's degree in English and a master's degree in health administration.

At the time of her deposition, Ms. Ridling was the nursing home administrator for VIP Manor in Wood River, Illinois. Prior to that she worked at the Spanish Lake Nursing Center in Florissant, Missouri, and the Parkway Care Home in Edwardsville, Kansas. Ms. Ridling first started working for Beverly Enterprises in 1992, and took her first position as a nursing home administrator in 1996. Ms. Ridling has worked as a nursing home administrator in nursing homes that were owned by Beverly Enterprises and a nursing home that was not owned by Beverly Enterprises (Employer-insurer Exhibit 3, page 5, 6 and 7).

The employer-insurer's attorney first questioned Ms. Ridling regarding the number of hours she worked as a nursing home administrator. Ms. Ridling indicated that she generally worked 10 to 11 hours per day, 5 days a week, and was also frequently in the facilities on weekends. She agreed that it was a "24 hour a day business," and she had worked those types of hours regardless of the facility she had been employed by (Employer-insurer Exhibit 3, page 8). Ms. Ridling was then asked to describe Beverly Enterprises policy toward staffing. She stated that they were required to maintain a certain number of hours per patient day for both nursing staff and non-nursing staff. Ms. Ridling acknowledged that she had never worked in a situation where she felt she had too many people working for her (Employer-insurer Exhibit 3, page 9).

Ms. Ridling was also questioned about her responsibilities in the area of marketing. She commented that "our business is about putting residents in the facility. That's how we make our money. Beverly's directive to executive directors – which is what the administrator position is called – is that we are actively involved in bringing new business into the facility, bringing new residents into the facility." (Employer-insurer Exhibit 3, page 9 and 10). Ms. Ridling added that she probably spent anywhere from 25-50% of her time actively trying to find new residents by working with hospitals, discharge planners and physicians (Employer-insurer Exhibit 3, page 10). Ms. Ridling added that the word "census" meant the number of occupied beds within the nursing facility or the number of residents that they took care of. She added that Beverly projects their revenues off of a budgeted census, and expects the nursing home administrators to be at or above their budgeted census goals. When questioned about Beverly's expectations in regard to their budget, she responded by stating, "we're expected to stay within our budget, control costs, stay within our labor budget, control our hours of labor within the census that we are given." (Employer-insurer Exhibit 3, page 11).

In addition to her concerns about meeting the budget, Ms. Ridling also discussed the stress created as a result of state surveyors doing periodic inspections. She noted that state surveyors can come into the facility at any time without notice. If someone complains, the surveyors have to investigate it, and she recalled that at Spanish Lake she had surveyors coming in as many as 10-15 times a year. After describing the inspection process, Ms. Ridling commented, "the staff is on alert. I would say it is a very stressful situation for everyone involved." (Employer-insurer Exhibit 3, page 13).

During the surveys, Ms. Ridling was questioned about whether it was common to bring in more people in order to satisfy surveyors and any concerns they might have about the level of staffing. Ms. Ridling responded to this question by stating, "occasionally we would bring some extra folks in, but not really. If you're staffing to budget on a daily basis, you should be able to take care of your residents and meet those needs. So, no, I would say not as a rule." (Employer-insurer Exhibit 3, page 13).

Ms. Ridling was also asked to explain the Medicare payment system for physical therapy. Ms. Ridling indicated that the payment from Medicare was originally cost-based, which she explained meant that their charges were based on the cost of the services furnished. At some point this system was changed to a prospective payment system. Under the new system the federal government implemented therapy caps, and they were only allowed \$1,500.00 per year for physical and speech therapy combined (Employer-insurer Exhibit 3, page 14).

The employer-insurer's attorney also questioned Ms. Ridling about the preferred method of communication between corporate people and nursing home administrators. Ms. Ridling testified that with the advent of e-mail, they had changed from voice mail to e-mail. She estimated that she received an average of 10-20 e-mails per day, and that number was fairly typical for nursing home administrators (Employer-insurer Exhibit 3, page 15, 16 and 17).

At the conclusion of her direct examination, Ms. Ridling was questioned about the stress of working as a nursing home administrator. In response to this question she stated that her job was very stressful, and when asked to explain why, she replied as follows:

Because you are responsible for the lives and well-being of the people in your facility. You're managing a staff. And whenever you're working with people, there are any number of issues that can come up. Everyone has personal problems, and you have to deal with those. You deal with families. The families can be probably – the residents are easy to take care of, the families are sometimes the more difficult people to take care of. They have really high expectations. Their demands for what they want for their families are quite extensive. No one is going to take care of their mother like you would. You know, on a daily basis things can change. You're dealing with lives. So on a daily basis I'm going to say we're very stressed. Any time of the day you can be, everything can be fine one

minutes, and the next minute someone can have an emergency. Trauma can happen.

(Employer-insurer Exhibit 3, page 17 and 18).

During cross-examination by the employee's attorney, Ms. Ridling indicated she had no ownership interest in Beverly Enterprises. She also agreed that there were some complaints from residents about the food at the nursing homes, but noted that their menus were selected by corporate staff for the entire facility, and they were not able to do individual menus because it was not cost effective (Employer-insurer Exhibit 3, page 22). Ms. Ridling also testified that she attended regional meetings for Beverly Enterprises, but had not experienced yelling or profanity from the management staff. Ms. Ridling was then questioned if the topics during the meeting included discussion related to maximizing profits. She responded by stating, "it includes matters of making our budgeted goals. We have a budget. We're expected to generate revenue to make that budget. That is through census and cost control." (Employer-insurer Exhibit 3, page 24).

The employee's attorney also questioned Ms. Ridling about whether she had ever felt pressure from management to enhance revenues when they were operating at capacity. Ms. Ridling agreed that even when they were at capacity, they tried to develop new programming through therapy or the mix of patients to increase revenues. She emphasized that they were not trying to do anything illegal, but added, "I mean, that is just business. We're there to have revenues to make money. It is a for-profit company." (Employer-insurer Exhibit 3, page 26).

During additional questioning by the employee's attorney, Ms. Ridling was asked if she knew anything about fines that Beverly Enterprises had paid for Medicare violations. She noted that a Corporate Integrity Agreement was signed with the Office of Inspector General in the year 2000 because Beverly Enterprises had some questionable practices in about 10 to 15 of their facilities, but she had no information about the dollar amount of the fines. Ms. Ridling stated that the agreement related to how Beverly Enterprises had staffed their Medicare wings and how they had moved hours within their payroll. She was then asked if there had ever been any communication from management people to encourage her to effect Medicare staffing in order to maximize profit, and Ms. Ridling responded by stating, "Absolutely not." (Employer-insurer Exhibit 3, page 35).

The employee's attorney also questioned Ms. Ridling about the general purpose statement from Employer-insurer's Exhibit 2. The employee's attorney asked Ms. Ridling if she felt that trying to accommodate the governmental regulations and maintaining excellent health care was in conflict with Beverly's business objectives. In response to this question, Ms. Ridling stated, "No. I wouldn't say that at all." She then added, "I have never felt that we are compromising resident care to achieve business goals ever. Our business is to take care of residents." When questioned about the goal of maximizing the return of the profit for the business owners and stockholders, Ms. Ridling commented, "Well, we do have, we are a publicly owned company. We do have people who invest in our company. And we have an obligation to do our very best to see that their trust in us is rewarded. I do not think that we are being asked to do anything that would maximize profit for our company while jeopardizing or causing our residents not to be cared for, no." (Employer-insurer Exhibit 3, page 39 and 40).

Ms. Ridling was also questioned about staffing at the fire code level. She agreed that they did staff to the fire code, but was then asked if she felt staffing to the fire code met the needs of their residents. Ms. Ridling responded by stating, "That is the absolute minimum staffing requirement in the facility in Missouri. And no, I do not think that it meets our residents needs necessarily. So I usually staff above fire code, but never below. Ms. Ridling was then asked if she could do that within the budget and responded, "Yes, I can. I am actually budgeted to do that, yes." (Employer-insurer Exhibit 3, page 40).

After the deposition of Renee Ridling was filed on March 15, 2004, both attorneys requested leave to submit a brief on the disputed issues. The employee's brief was filed with the Division on March 29, 2004, and the employer-insurer's brief was received on May 10, 2004.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical records from Medical Arts Clinic
- B. Medical records from Parkland Health Center
- C. Medical records from Missouri Baptist Medical Center
- D. Medical records of Dr. Mitchell D. Botney
- E. Report from Dr. James N. Heins
- F. Medical records from Mayo Clinic
- G. September 29, 2000 letter to Beverly Enterprises from Dr. Charles D. Rainbolt
- H. Medical records of Dr. Adolph Herath
- I. Medical records of Dr. Raad Roubey
- J. Deposition of Samuel Bernstein, Ph.D, C.R.C.
- K. Deposition of Pearl Underwood

Additional Notes:

1. The first sentence of the second paragraph in the October 10, 2000 letter from Dr. Roubey admitted as part of Employee's Exhibit A has been deleted based on Employer-insurer's hearsay objection.
2. Dr. Charles Rainbolt's letter of September 29, 2000 was admitted by agreement for the sole purpose of establishing notice to the employer, and the parties stipulated that this letter would not be admissible or given consideration on any other disputed issues.

Employer-Insurer's Exhibits

1. Deposition of Wayne A. Stillings, M.D.
2. Job description of executive director for Beverly Enterprises
3. Deposition of Renee Ridling

FINDINGS OF FACT AND RULINGS OF LAW:

Issue 1. and Issue 3. Accident and Medical Causation

Although the workers' compensation law must be liberally construed in favor of the employee, the burden is still on the claimant to prove all material elements of the claim. *Melvies v. Morris*, 422 S.W. 2d, 335, Mo. (1968) and *Marcus v. Steel Constructors, Inc.*, 434 S.W. 2d 475 (Mo. 1968). Therefore, the employee in this case has the burden of proving not only that an accident occurred which arose out of and in the course of her employment, she must also prove that there is a medical causal relationship between the accident and the injuries and the medical treatment for which she is seeking compensation. *Griggs vs. A. B. Chance Company*, 503 S.W. 2d, 697 (Mo.App 1973).

Under Section 287.020 RSMo., the word accident is defined to mean, "an unexpected or unforeseen identifiable event or series of event happened suddenly and violently, with or without human fault and producing at the time objective symptoms of an injury." This section further provides that "an injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in causing the resulting medical condition or disability." "An injury is not compensable merely because work was a triggering or precipitating factor."

In addition to the definition of accident under Section 287.020, in cases involving a claim of mental injury, Section 287.120 RSMo. provides as follows:

8. Mental injury resulting from work related stress does not arise out of and in the course of employment, unless it is demonstrated the stress is work related and was extraordinary and unusual. The amount of stress shall be measured by objective standards and actual events.
9. A mental injury is not considered to arise out of and in the course of 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.

In determining whether work-related stress is "extraordinary and unusual" as required under Section 287.120, the Eastern District Court of Appeals has held that "the proper comparison for purposes of Section 287.120.8 is to compare employee's work-related stress with the stress encountered by employees having similar positions, regardless of the employer, with a focus on evidence of the stress encountered by similarly situated employees for the same employer. *Williams v. DePaul Health Center*, 996 S.W. 2d 619, 628 (Mo.App. 1999), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo.banc 2003).

In the *Williams* case, the Court of Appeals concluded that "employee did not demonstrate the stress encountered by other hematologist within the stat lab either for this employer or any other employer. Employer's evidence ... shows employee's work conditions were no greater than anyone else in the same position in the stat lab or employer." Id at 629. The Court therefore held that the employee's evidence did not establish that her stress was extraordinary and unusual when compared to other similarly situated employees of the employer or any other employer.

The most recent case involving the application of Section 287.120.8 is *Carol Carnal v. Pride Cleaners and American International Group*, Case Number WD 63411, which was handed down by the Missouri Court of Appeals, Western District, on July 13, 2004. In the *Carnal* case, the employee was the manager of the Grandview Dry Cleaning and Laundry Services production facility. As a result of a national reorganization, a number of stores served by the Grandview facility doubled. Consequently the facility experienced a significant increase in its workload for dry cleaning, preventive maintenance and accounting and record keeping responsibilities. The employees at the Grandview facility were therefore required to work up to 14 hours a day, 6 days per week. These longer hours plus the company's decision to eliminate attendance bonuses caused

a higher level of turnover among employees at the Grandview facility. The Grandview facility was also housed in an older, dilapidated building with poor ventilation.

Ms. Carnal's situation was further complicated by the fact that her supervisor was her ex-husband. The administrative law judge found that Ms. Carnal's ex-husband treated her in an indifferent, demanding and uncaring manner. Other production facility managers described their working relationship as having a great deal of animosity, and the judge concluded that the ex-husband's treatment of Ms. Carnal, was significantly different than his treatment of the rest of the managerial staff.

On June 8, 2000, Ms. Carnal was summoned by her ex-husband to a meeting at another facility. While en route, she suffered a panic attack, was hospitalized, and did not return to her employment.

Although the employer argued that the work-related stress experienced by Ms. Carnal was shared by managers at other production facilities, the administrative law judge and the Western District Court of Appeals concluded that the employee had suffered extraordinary and unusual work-related stress. The Western District Court of Appeals noted that Ms. Carnal was faced with "unique circumstances that were not shared by her fellow plant managers." The Western District Court of Appeals differentiated Ms. Carnal's stress from the stress of other managers noting, "First, there was evidence that the Grandview facility in which Carnal worked was in poor condition, compared with Pride's other local production plants." The Court of Appeals then added, "Second, Carnal faced a unique situation as compared to Pride's other production managers, in that her supervisor was her ex-husband, Dennis Dye. There was testimony that there was a great deal of animosity in the working relationship between Carnal and Dye." (Page 4 of *Carnal v. Pride Cleaners and American International Group* at <http://www.osca.state.mo.us/courts>.)

Given these statutory provisions and the *Williams* and *Carnal* decisions, in cases involving claims of mental injury from work-related stress, the employee has the initial burden of proving that her work-related stress was "extraordinary and unusual." If this burden is satisfied, the employee must also prove a causal relationship between the work-related stress and the mental injury (her work related stress was a substantial factor in causing her mental injury).

The evidence supports a finding that the employee's job as a nursing home administrator at Camelot Nursing Center involved a significant level of stress. The evidence also supports a finding that the employee's work-related stress was a substantial factor in causing her shortness of breath, anxiety, and possible panic attacks and depression. The evidence does not support a finding, however, that the employee's work-related stress was extraordinary and unusual.

All of the witnesses who testified, either at the hearing or by deposition, indicated that the job of nursing home administrator is a very stressful position. There is a natural, ongoing conflict between addressing the needs of the residents and making a profit. Many nursing home administrators come from a nursing background, and have a natural tendency to focus on providing the highest level of care. Many upper level managers, however, tend to focus on maximizing profits. This conflict is present in all nursing home administrator positions. The quality of the food, the level of staffing, employee turnover, operating the facility at capacity, improving the mix of residents, and offering therapy and other services in a manner that maximizes revenues are all common issues for nursing home administrators. On one hand, if nursing homes spend too much money on the level of patient care, they will lose money and go out of business. On the other hand, if nursing homes don't spend enough money on its residents and the care becomes inadequate, they risk losing residents to other nursing homes and running afoul of government regulations.

Given the fact that the "profit motive" and natural conflict between providing the best possible care for the residents and making money is present in every private sector nursing home, the employee's claim can only be found compensable if the stress she experienced can be differentiated from the stress experienced by other nursing home administrators. The employee's attorneys attempted to portray Beverly Enterprises as the "evil profit monger" of nursing homes. While there may be some differences between large, corporate nursing homes with multiple facilities and smaller privately held nursing homes, the employee's evidence did not establish that the stress she experienced as the nursing home administrator at Camelot Nursing Center was significantly different than the stress experienced by nursing home administrators either at other Beverly Enterprises facilities or at facilities owned by other companies.

In the *Carnal v. Pride Cleaners* case, the administrative law judge relied heavily on the fact that the employee's supervisor was her ex-husband, and there was a great deal of animosity in their relationship. The parallel in this case is the alleged abuse she received from her former supervisor, Mr. Crane. During her direct examination, Ms. Boyd testified in a general manner indicating that she was subjected to profanity and other inappropriate behavior by her supervisor at monthly meetings in Cape Girardeau. During cross-examination and in response to questions from the administrative law judge, however, Ms. Boyd gave more details which significantly reduced the impact of this alleged abusive behavior. Ms. Boyd agreed that the supervisor that did the yelling, screaming, and cussing was Mr. Crane, and he had not been her supervisor during the two or three years preceding her emotional breakdown. She also admitted that her supervisor during the two or three years prior to her emotional problems was Mr. Carrol Allen, and she had a very good working relationship with Mr. Allen. Upon further questioning, Ms. Boyd could only identify two occasions when Mr. Crane used profanity or inappropriate behavior directed at her. The first was the "black teddie" comment when Mr. Crane told her at lunch that he had a sexually explicit dream about her. Ms. Boyd indicated that this conversation had occurred approximately four years before she left her employment with Camelot Nursing Center. The second incident took place in late 1999 or early 2000

when Mr. Crane was upset because she had complained about the fact that he was only delivering the laundry every other day. Mr. Crane referred to Ms. Boyd as "you fucker," and after this incident, Ms. Boyd reported Mr. Crane to his supervisor.

While these incidents were clearly inappropriate and may have been the basis for a claim of sexual harassment or other disciplinary action, under the circumstances of the employee's case, they appear to be extras thrown in by the employee's attorney with no clear causal relationship to the employee's emotion problems.

The early medical records from Mayo Clinic and other health care providers indicate that the real stressor in the employee's life was work-related, but it had nothing to do with the prior inappropriate behavior of Mr. Crane. The census at Camelot Nursing Center was down as a result of increased competition from other nursing homes. Ms. Boyd had turned down a job at one of the competing nursing homes, and had later heard that they were going to "put her out of business." Ms. Boyd was worried that she might lose her job, and, consequently, her "big salary."

Based on the stipulated average weekly wage of \$1,400.00 per week, it appears the employee had an annual salary of approximately \$72,800.00 per year. Ms. Boyd was paid a relatively high salary to perform a very stressful job. Her employer expected results, and like most other businesses, their focus was on the bottom line. Ms. Boyd was stressed because she knew the census at Camelot Nursing Center was well below historical levels due to increased competition, and she was concerned that her job might be at risk.

In conclusion, the employee was exposed to significant, work-related stress as part of her job as the nursing home administrator at Camelot Nursing Center. The evidence does not support a finding, however, that the employee's work-related stress was unusual or extraordinary. To the contrary, the testimony of the other witnesses indicates that the stress experienced by Barbara Boyd was the same kind of stress experienced by other nursing home administrators, whether they were employed by Beverly Enterprises or other nursing homes.

I therefore find that the employee has failed to satisfy her burden of proof on the issues of accident and medical causation. The employee's claim for compensation must therefore be denied. Based on this denial, the remaining issues are moot and shall not be ruled upon.

Date: _____

Made by:

Jack H. Knowlan, Jr.
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Ms. Renee Slusher
Director
Division of Workers' Compensation