

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

Injury No.: 99-145116

Employee: Stephen Clemons
Employer: St. Louis Board of Education
Insurer: Self-Insured
c/o CCMSI Insurance Services, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: Alleged October 14, 1999
Place and County of Accident: St. Louis City

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 10, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John K. Ottenad, issued August 10, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25th day of January 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Stephen Clemons

Injury No.: 99-145116

Dependents: N/A
Employer: St. Louis Board of Education
Additional Party: Second Injury Fund (Left Open)
Insurer: Self-Insured C/O CCMSI Ins. Services, Inc.

Before the
Division of Workers'
Compensation
Department of Labor and
Industrial Relations of Missouri
Jefferson City, Missouri

Hearing Date: May 1, 2006

Checked by: JKO

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: (alleged) up through October 14, 1999
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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 occurred or occupational disease contracted: Claimant was employed as a Public Safety Officer for the St. Louis Board of Education and allegedly developed stress related problems from his job activities, including breaking up fights.
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: (allegedly) Body as a Whole
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: Stephen Clemons

Injury No.: 99-145116

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$377.72
19. Weekly compensation rate: \$251.82 for TTD/ \$251.82 for PPD
20. Method wages computation: By agreement (stipulation) of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: None \$0.00

22. Second Injury Fund liability: Left open by agreement of the parties

TOTAL: **\$0.00**

23. Future requirements awarded: None

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Harry J. Nichols.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Stephen Clemons	Injury No.: 99-145116
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	St. Louis Board of Education	Department of Labor and Industrial
Additional Party:	Second Injury Fund (Left Open)	Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured C/O CCMSI Ins. Services, Inc.	Checked by: JKO

On May 1, 2006, the employee, Stephen Clemons, appeared in person and by his attorney, Mr. Harry J. Nichols, for a hearing for a final award on his claim against the employer, St. Louis Board of Education, which is Self-Insured C/O CCMSI Ins. Services, Inc. The employer, St. Louis Board of Education, which is Self-Insured C/O CCMSI Ins. Services, Inc., was represented at the hearing by its attorney, Mr. Eric S. Christensen. The Second Injury Fund is a party to this case, but did not participate in the hearing, since the Fund case is being left open by agreement of the parties. At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of facts and rulings of law, are set forth below as follows:

STIPULATIONS:

- 1) Stephen Clemons (Claimant) has alleged an occupational disease claim with exposure up through October 14, 1999.
- 2) Claimant was an employee of the St. Louis Board of Education (Employer).
- 3) Venue is proper in the City of St Louis.
- 4) Employer received proper notice.
- 5) The Claim was filed within the time prescribed by the law.

- 6) At the relevant time, Claimant earned an average weekly wage of \$377.72, resulting in applicable rates of compensation of \$251.82 for total disability benefits and \$251.82 for permanent partial disability (PPD) benefits.
- 7) Employer has not paid any benefits to date.
- 8) The Second Injury Fund claim is being left open.

ISSUES:

- 1) Did Claimant sustain an occupational disease?
- 2) Did the occupational disease arise out of and in the course of employment?
- 3) Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to his alleged injury at work up through October 14, 1999?
- 4) Is Claimant entitled to future medical care related to this injury?
- 5) What is the nature and extent of Claimant's permanent partial disability?
- 6) Was the Answer to this Claim filed by Employer within the time prescribed by law and if not, what is the effect of the late Answer on this Claim?
- 7) What is the effect and extent of the Attorney's Lien filed by Mr. Richard Barry?

EXHIBITS:

The following exhibits were admitted into evidence:

Joint Exhibit:

- AA. Transcript of Remand proceedings on September 8, 2004

Employee Exhibits:

- A. Records of the Division of Workers' Compensation
- B. Certified medical treatment records from Multi-Care Psychiatric
- C. Certified medical treatment records from Dr. Lawrence F. Kuhn
- D. Report of Dr. Raymond F. Cohen dated October 7, 1997
- E. Report of Dr. S.D. Parwatikar dated June 8, 1998
- F. Correspondence to Mr. Alan D. Pratzel
- G. Correspondence from Mr. Alan D. Pratzel
- H. Correspondence to Ms. Robin Jefferson
- I. Certified medical treatment records from SSM DePaul Health Center
- J. Certified records from Group Health Plan
- K. Deposition of Dr. S.D. Parwatikar with attachments dated December 9, 2005
- L. Labor and Industrial Relations Commission Order dated November 16, 2004

Employer/Insurer Exhibits:

1. Order of Dismissal dated July 10, 2002
2. Order of Dismissal with Prejudice dated August 13, 2003
3. Deposition of Dr. Gordon H. Robinson with attachments dated November 18, 2005
4. Deposition of Claimant dated May 21, 1998
5. Combination Notice from the Division of Workers' Compensation dated December 7, 1999
6. Employer's Answer to Claim for Compensation

Note: Exhibits A-H and 1-2 were previously admitted and contained within the Transcript of Remand proceedings on September 8, 2004, which has also been admitted at this hearing as Exhibit AA. These exhibits were marked separately for this hearing for the convenience of referring to them in this award and also because the parties wanted to ensure their admissibility for this proceeding in addition to their previous admissibility at the Remand Hearing.

Some of the records submitted at hearing contain highlighted portions or other marks. All of these marks were on these records at the time they were admitted into evidence and no other marks have been added since their admission on May 1, 2006.

Exhibits K and 3 were admitted with objections contained in the record. Unless otherwise specifically noted below, the objections are overruled and the testimony fully admitted into evidence.

FINDINGS OF FACT:

Based on a comprehensive review of the substantial and competent evidence, including Claimant's testimony, expert medical opinions and depositions, medical records, and Division of Workers' Compensation records, as well as my personal observations of Claimant at hearing, I find:

- 1) **Claimant** is a 59-year old male who worked as a Public Safety Officer (Security Guard) for Employer for 8 or 9 years. His employment there ended in 2000. His job involved protecting the faculty, students and property at the facilities where he was assigned. The job duties, at various times, included writing reports, walking foot patrols, using metal detectors (hand-held and walk-through) to check every student for weapons, watching for gang activity and other illegal activities, protecting the building from fire hazards and then reporting to Special Services or contacting the authorities, if necessary. His job required him to break up fights on a continued basis.
- 2) Claimant worked at 6 or 7 different schools during his employment with Employer. The last school he worked at was AAA Bush, which is a middle school in South St. Louis. He worked there for approximately a year.
- 3) Claimant described some conflict in his employment situation because the Security Chief would say that the security guards work for him, but then the principals would say that the guards work for them. Claimant felt stuck in the middle between the supervisor and principal, which strained his relationship with the school administrators. Claimant said he got along well with his fellow officers though. Claimant said that he would report fights or gang activities and then they would transfer him because they did not like him reporting it. He explained that was the reason why he worked at so many different schools. He believed that every school had gang activity. He suggested that the administrators at the various schools were trying to cover up bad activity at their schools. He even described one occasion where he took a wad of money from a student, gave it to the office and never saw it again.
- 4) Claimant testified that he filed grievances at the schools where he worked. He said that he was passed over for the Rover job. He was initially offered the job, but turned it down because of the situation with his wife. He said that he was never offered that job again. He testified that when an outside contract security officer was promoted to Rover instead of him, he went to the Union, but nothing was done. He said that he was more qualified than most, but he did not get the job.
- 5) Claimant testified that he had encounters in some of the schools with the "Trench Coat Division" which was an exclusive club of intelligent students who were trouble. He said that they were plotting against the school, including the use of bombs, shooting or fighting. He said they were like the Columbine group. Every time something happened though, he said the principal squashed it. He said that there were also gangs in the schools, including GDs, 48 Specials, Crips, and Bloods.
- 6) Claimant testified that some of the weapons he found in school included knives, and a full box of ammunition. He also said that there were sometimes guns hidden in the bushes. Guns discovered included semi-automatics and 38s. He said that drugs were also found in the schools. He testified that he personally found a brick of marijuana laced with cocaine that he took off of a student at Gateway.
- 7) Claimant testified that there was gang fighting at the schools, including female versus female and male versus male fights. He also said that East St. Louis gangs came to Gateway School to fight. He said that he would try to break up a fight if faculty was involved, and he would call for back up. He described being hit in the back and the head at times. He said that they could handcuff students who would sometimes continue kicking and fighting.
- 8) He admitted that he never had to take a weapon off of a student except for knives. He testified though that removing a knife or a weapon occurred on average, one time a week. Fighting, however, was an every day or every other day occurrence.
- 9) Claimant testified at hearing that the behavior at the schools is about the same everywhere.
- 10) At hearing, Claimant described an incident that occurred at Northwest Middle School in May 1998. He described it as a gang fight. He said the whole school was on the football field for field contests. All total there were about 350 students on the field competing in track races and games. He said that a fight broke out when a student from

another school snuck onto the field. He testified that a boy hit a girl who won the race in the face. He said that teachers were hit in the head, and he also was hit in the head, kicked in the left leg, and punched in the stomach. He testified that 30 students were around him throwing punches at him, and teachers trying to break up the fight were getting hit themselves. He described a kid with a knife lunging at him. He testified that he was able to get the girl that was with him out of the fight. He said that he radioed in for another guard to help because of the fight breaking out, and reported the riot to Security, but police never came. Security showed up afterwards, about 25-30 minutes later, when it was just about broken up. He said the principal told him to stop calling for security. He testified that he received no medical care after this fight, although normally he would go to a doctor after a fight to be checked out. He indicated on cross-examination, however, that he requested to see a doctor immediately after the incident, but the school refused him.

- 11) Claimant testified that there was a normal amount of stress associated with his job, including dealing with the kids, because of the knives, guns and fights. He specifically admitted that breaking up normal fights is a part of the job. On cross-examination, he testified that normal stress in the job included checking kids, keeping undesirables out, kids cursing or yelling at him, and sending kids to the office. More significant stress included dealing with weapons and gang fights, which were sporadic.
- 12) Claimant believed, however, that the situation actually got worse at the schools while he was there because the kids got more violent and they knew nothing would happen to them. He said the BD and LD kids would not get expelled regardless of what they did because the schools got paid to have them there.
- 13) He said that he knows no one from the fight at Northwest Middle School was expelled, but he said that he was suspended for two weeks with pay for writing a report about the riot. He was accused of making the whole thing up; since the administration believed only 5 or 7 kids were involved. He said that the principal did not want him back after this incident and so he was transferred to another school. He testified that he was told he was not allowed on the premises, and if he reported any more fights, he would be fired.
- 14) In describing the general atmosphere of the schools, Claimant said that there was sporadic involvement of weapons, but he would see gang signs every day. He testified that he had training every summer from the police so that he would know what to look for. He said that students would sometimes go to the hospital after fights would occur. He said the worst fight involved about 50 girls, with some girls getting their hair pulled out. He said there was blood visible and scalps pulled out and on the ground. He said that teachers' cars were stolen and broken into every week. He said that he finally had to leave and give up guard duty.
- 15) Claimant testified that normal stress did not affect him. He admitted that his wife was diagnosed with cancer in August or September of 1996. He testified that the diagnosis that his wife was dying of cancer affected him, but did not have a profound affect on his job. He testified on cross-examination that it was not stressful in the early stages of the cancer. Although she had a terminal diagnosis on her breast cancer, they believed she could beat it. He said that he supported her throughout her treatment. He said that his wife passed away after his employment for Employer ended. He admitted that it was stressful, but he dealt with it. He commented that he wasn't losing his life, she was losing hers.
- 16) Claimant testified that treatments from various psychiatrists for stress first began in August or September 1996. At that time, he was having pain in his chest and nightmares. He said that he thought he had a heart attack, but it was just stress. He testified that he had to see doctors for quite awhile (1996, 1997 and into 1998), but he had no insurance so he had to stop going in 1998. He said that he saw a doctor at DePaul, but he was never hospitalized. On cross-examination, Claimant noted that he wanted medical treatment for his sporadic nightmares, but had no insurance. He does have insurance currently and is intending to seek treatment.
- 17) Claimant was specifically asked on cross-examination whether there was anything particular that precipitated his seeking treatment at that point in 1996. He did not state any specific event or conflict, but just generally said that the schools were infested with gangs and situations that would escalate. He noted that the principals were making it difficult for them to do their jobs by telling them not to write reports.
- 18) Claimant testified that he continues to have nightmares of the Northwest fight and of getting stabbed with a shank. Additionally, he is anxious, has hot flashes and bed sweats. He said that he experiences all of these complaints every month, and more than one time a month. While his wife was suffering with cancer, he was worried about who would take care of her if something happened to him. He said he wanted to get out of law enforcement altogether.
- 19) Claimant noted that his last job as a security guard was at Twin City Security. His work involved use of the computer and checking people at Budget Rent-A-Car as they were leaving the premises. He noted that he is working currently.
- 20) On cross-examination, Claimant described his prior work as a security officer for 18-20 years and specifically described his employment as an SIU-E Police Officer. He said that during the two years he worked there from

1978-1980, he experienced normal police work incidents, but nothing major. He did admit that his partner was shot in the abdomen with a sawed off shotgun while Claimant was off duty and nowhere near him. His partner did not die. He testified that this did not stress him out and he did not recall any feelings of panic or anxiety. He admitted that he was concerned for him.

- 21) Caroline Penberthy at **SSM DePaul Health Center** (Exhibit I) evaluated claimant for his stress condition on September 16, 1996. Claimant described chest pains and other physical complaints after being relocated from a "safe school" to an "unsafe environment" because of a vindictive principal. Claimant was off work and fearful of going back to work because of the environment. The note also indicates that his wife has been diagnosed with breast cancer.
- 22) Claimant first received medical care for his alleged stress from Dr. Ballard at **Group Health Plan** (Exhibit J) on September 16, 1996. Claimant presented with chest pain and pain in the left arm related to stress. The handwritten note indicates that he "usually notices [this pain] while under some form of stress." The note contains a history that he was transferred to a different school, not by his choice, because of a conflict with the Vice Principal. It also says that he found out his wife has terminal cancer and she has two months to live. The typed note from that date lists the stress from the cancer diagnosis first and then notes "difficulty with work." The last visit in these notes with Dr. Ballard was on October 17, 1996 when he was noted to have an element of depression, but there was no specific discussion of work or non-work-related factors causing it.
- 23) Medical treatment records from **Multi-Care Psychiatric** (Exhibit B) document treatment Claimant received there from September 29, 1996 until October 17, 1996. The handwritten notes from the first examination on September 29, 1996 indicate a history of stress brought on by the principal giving him a hard time since he does not like him. The notes also describe the promotion of an outside contractor to a supervisory position and Claimant's feeling that he is being discriminated against. He believes he is being treated worse since he complained to the Union. It also indicates, "In the meantime, wife was DX to have breast cancer. This has become overwhelming. Now he is being transferred." The notes also state that he is preoccupied with the stressful situation at work and also worried about his wife's health and his health. There is a diagnosis of major depression single episode severe, panic disorder and financial and work related stressors.
- 24) Subsequent notes from that same facility contain references to conflicts with Mr. Sparks (an administrator at his school) who doesn't like him because he complained about some football players when Mr. Sparks was the football coach at Gateway. He also repeats that he feels cheated because he was passed over for the promotion that the outside contractor was given. The records do contain a note regarding a telephone call from Claimant on February 20, 1997, when Claimant wanted the doctor to take him off work again because of a stressful situation. The doctor refused given Claimant's noncompliance with treatment and failure to follow-up. Claimant blamed the doctor for no appointment and was apparently upset. The examination of October 17, 1996 was the last time Claimant was actually seen by the doctor at this facility.
- 25) Claimant next treated with **Dr. Lawrence Kuhn** (Exhibit C) from April 28, 1997 until July 31, 1997. At the time of the initial examination, Claimant was complaining of chest pain and left arm pain associated with emotional stress. The note indicates he was working at Northwest Middle School where there were lots of threats and fights. The record also indicates that his wife is going through chemotherapy for left breast cancer. There is no description of a specific event or incident in this note. He is, however, diagnosed with Acute Stress Disorder.
- 26) Dr. Kuhn's June 1997 note indicates that the principal transferred Claimant to a different school after a student riot. Claimant filed a grievance that is pending. Claimant liked the new school and described his sleep as OK. There was no description of nightmares or any other effects from the "riot" in the note. He was not taking any medications. The last note from Dr. Kuhn dated July 31, 1997 described that he was feeling much better in his present job. His sleep was improved and his wife was doing well.
- 27) **Dr. Raymond Cohen** (Exhibit D) generated a one-page report dated October 7, 1997. He generally states that Claimant has some disability related to his stress at work, but notes that he does not have any expertise in rating this condition and so he defers to a psychiatrist. The six-line report, however, contains no history, no opinion on medical causation, no discussion of complaints and no formal diagnosis.
- 28) **Claimant's deposition** was taken on May 21, 1998 and was submitted into evidence in this case (Exhibit 4). Claimant significantly noted in the deposition that he was under constant pressure and harassment at Cleveland ROTC from the assistant principal, sometimes the principal and some of the safety officers that worked with him. Claimant also described the "riot" at Northwest Middle School while he working there as a guard. He said that one girl punched another girl who won the race and then the 400 students all got involved and starting moving "like a wave." He stated that teachers were being hit from behind, but he never mentioned that he was actually hit. When asked what he was doing, he stated, "Making sure that I didn't get hit; calling for assistance from Mr. Williams."
- 29) **Dr. S.D. Parwatar** saw Claimant one time at the request of his attorney and generated a report dated June 8,

1998 (Exhibit E). Dr. Parwatikar's deposition was taken by Claimant on December 9, 2005 (Exhibit K) to make his opinions in this case admissible at hearing. Dr. Parwatikar is a Board Certified Psychiatrist who is retired from the active practice of psychiatry. At the time of his examination, Claimant reported nightmares to Dr. Parwatikar, among other physical complaints. Claimant said that the nightmares usually consisted of having a conversation with his supervisor and then he would feel like things were crawling and coming at him. They occurred one to two nights a week and got worse with a bad day at work.

- 30) According to Dr. Parwatikar's report, Claimant described the onset of these stress complaints in September 1996 when he was transferred to a school on September 13, 1996 (a Friday) with an assistant principal who did not like him because of what Claimant did to his football players when he was the coach at another school. Then Claimant had disputes with the assistant principal and called his union, prompting a transfer to another school that Claimant considered more dangerous. The chest pains started at the thought of this transfer. At least one of the disputes was regarding the promotion of a contract employee to be a supervisor over the safety officers, which Claimant did not feel was right. In the work history, Dr. Parwatikar recorded that Claimant had a pre-existing traumatic event, when his partner got shot. According to the report, that bothered Claimant and caused him to change jobs. The report also notes that the transfer bothered Claimant because he did not want to be put in a situation where he would remember what happened to his partner.
- 31) Dr. Parwatikar diagnosed Panic Disorder without Agoraphobia medically causally related to the stress at work from encounters with the assistant principal beginning in September 1996. He did not believe the panic disorder was related at all to his wife's breast cancer. (It should be noted that Dr. Parwatikar mistakenly reported that Claimant's partner was killed in the prior shooting. Although he corrected this error in his deposition, the report contains numerous references to it, and the reasoning on page 11 of his report regarding medical causal relationship contains an errant reference to the loss of his partner in the prior shooting.) Dr. Parwatikar rated Claimant as having 25% partial disability from a psychological standpoint related to this stress, but noted that if Claimant received proper care, the disability could be lessened to 15% permanent partial disability.
- 32) **Dr. Gordon Robinson** examined Claimant on two occasions at the request of Employer's attorney, and generated a report dated March 30, 2000. Dr. Robinson's deposition was taken by Employer on November 18, 2005 (Exhibit 3) to make his opinions in this case admissible at hearing. Dr. Robinson is a Board Certified Psychiatrist who is in the active practice of psychiatry. Dr. Robinson's extensive, 30-page report covers the complete history of these events, as well as any of Claimant's pre-existing significant events, in extraordinary detail, with numerous direct quotations from Claimant contained in the report.
- 33) With regard to the pre-existing incident involving the shooting of his partner, Claimant apparently told Dr. Robinson that it bothered him quite a bit, and he had nightmares and trouble sleeping, as well as anxiety attacks. He said that he quit the force because of it. With regard to incidents at the various schools he worked at for Employer, Claimant went into great detail to explain the problems he had with various administrators and supervisors at those schools. There were numerous references to administrators trying to pin things on him, or punishing him for writing reports. He again dated the onset of his stress to his transfer in September 1996 to a school where the assistant principal, Mr. Starks did not like him. Claimant said he felt harassed and singled out. At Gateway Michaels School he had trouble because he would not help with the kids and was not "a team player" so he got transferred from there as well.
- 34) Claimant also described to Dr. Robinson the incident at Northwest Middle when he was involved in the "riot" during the field day. Claimant said the fighting started when one girl punched another girl who had lost a race. He stated that he was surrounded by 50 kids punching and kicking him. He said that 2 children were down on the ground, were not moving and appeared not to be breathing, but he could not get to them. He said a Rover showed up and was attacked as well. Claimant also described incidents where he felt mistreated at Mason and AAA Bush Schools. He noted that he had been kicked out of 5 schools and filed a grievance over every one of them.
- 35) Dr. Robinson diagnosed Major Depressive Disorder recurrent, Panic Disorder without Agoraphobia, Obsessive Compulsive Personality Disorder, and Paranoid Personality Disorder. His report notably contains 11 ½ pages of an explanation of how Claimant's complaints and problems support the diagnoses rendered by Dr. Robinson based on the criteria from the DSM-IV. Dr. Robinson opined that these psychiatric problems were not significantly exacerbated by or caused by work stress or a work-related injury. Specifically, he did not believe Claimant's employment was a substantial factor in causing his problems. He opined that the psychiatrically related work problems were the result of long standing Personality Disorders. He also drew an insightful distinction between Claimant's perception of the events and what they actually were. While he did believe some treatment would be beneficial, he reiterated that the need for treatment was not related to the employment. He did not believe Claimant was disabled by virtue of a work injury or illness.
- 36) The **records of the Division of Workers' Compensation** (Exhibit A) provide a procedural history of this claim. Claimant filed his first Claim for Compensation, which was assigned Injury No. 97-464111 with alleged dates of injury of 1995 through 12/97. It was date stamped January 15, 1998 on the first page, but January 20, 1998 on the second page. An acknowledgement of the claim was sent by the Division on January 29, 1998 and an Answer

was filed by Employer on February 23, 1998. Claimant then filed an Amended Claim for Compensation that was date stamped November 8, 1999, which changed the date of injury to "through 10/14/99." Because of the change of the date of injury, it was assigned a new Injury No. of 99-145116. An acknowledgement of the new claim was sent by the Division on November 30, 1998. An Answer by Employer was dated December 7, 1999, and then acknowledged by the Division on December 10, 1999. (Exhibit 6) Both injury numbers were then combined by the Division on December 7, 1999 under the 1999 injury number. (Exhibit 5)

37) Claimant's original attorney, Harry Nichols, withdrew on September 27, 2000. An Entry of Appearance for Claimant's new attorney, Rick Barry, was received by the Division on December 1, 2000. Mr. Barry then withdrew on November 26, 2001 and asserted a lien for attorney's costs and fees in the amount of \$625.00.

38) The Claim for Compensation was initially dismissed on July 10, 2002. (Exhibit 1) Mr. Nichols filed an Application for Review and his new Entry of Appearance with the Commission on July 29, 2002. On September 26, 2002, the Commission set aside the Order of Dismissal and reinstated the Claim for Compensation. The Claim for Compensation was then dismissed with prejudice again on August 13, 2003. (Exhibit 2) Claimant filed an Application for Review with the Commission on March 8, 2004. On November 16, 2004, the Commission again set aside the Order of Dismissal and reinstated the Claim for Compensation. (Exhibit L)

RULINGS OF LAW:

Based on a comprehensive review of the substantial and competent evidence, including Claimant's testimony, the expert medical opinions and depositions, medical records, and Division of Workers' Compensation records, as well as my personal observations of Claimant at hearing, I find:

Since Issue 6 involves a procedural and preliminary issue, I will address it before the substance of the case is reached.

Issue 6: Was the Answer to this Claim filed by Employer within the time prescribed by law and if not, what is the effect of the late Answer on this Claim?

The Division Rules in effect at the time the claim was filed indicated that unless the Answer is filed within 30 days from the date the Division acknowledges receipt of the claim, the statements of fact in the claim shall be deemed admitted for any further proceedings. **8 CSR50-2.010(8)(B)**

In this case, the claim for Injury Number 99-145116 was acknowledged by the Division on November 30, 1999. The Answer filed by Employer was dated December 7, 1999 and that Answer was acknowledged by the Division on December 10, 1999.

Accordingly, based on the competent and substantial evidence, I find that Employer's Answer to this Claim for Compensation was filed within the time prescribed by law, and thus it has no effect on the admission of any facts contained in the claim.

Given the ruling on this issue, it is now appropriate to move on to the merits of the case and address the following three issues together.

Issue 1: Did Claimant sustain an occupational disease?

Issue 2: Did the occupational disease arise out of and in the course of employment?

Issue 3: Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to his alleged injury at work up through October 14, 1999?

Claimant alleges an occupational disease of mental stress brought on by his work conditions. Mental conditions are compensable "provided they are shown to have been directly and proximately caused by the accident." ***Wilhite v. Hurd, 411 S.W.2d 72, 78 (Mo. 1967)***. However, proof of the condition is not proof of causation. ***Id.*** With respect to establishing the requisite causal connection for a claimed "mental injury," **Mo. Rev. Stat. § 287.120.8** provides:

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

Additionally, **Mo. Rev. Stat. § 287.120.9** provides:

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 other similar action taken in good faith by the employer.

Thus, to be entitled to benefits for his claimed mental injury, Claimant is required to prove that his condition was caused by work-related stress, which was extraordinary and unusual in nature, as measured by objective standards and actual events. *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 628 (Mo.App. ED 1999). The proper test for purposes of § 287.120.8 is to compare Employee's work-related stress with the stress encountered by employees having similar positions, regardless of employer, with a focus on evidence of the stress encountered by similarly situated employees for the same employer. *Id.* Stress is not measured by the employee's misperception of events. Claimant must also prove, however, that the stress was not the result of disciplinary action, work evaluation, job transfer, layoff, demotion, termination or other similar action.

Considering the competent and substantial evidence listed above, I find that Claimant failed to meet his burden of proving the presence of an occupational disease of a mental or psychological nature (stress) that arose out of and in the course of employment for Employer.

In arriving at this conclusion, I first and foremost considered the testimony provided by Claimant on the job duties associated with his position as a Public Safety Officer. Claimant consistently testified that his job involved protecting the faculty, students and property at the facilities where he was assigned. The job duties, at various times, included writing reports, walking foot patrols, using metal detectors (hand-held and walk-through) to check every student for weapons, watching for gang activity and other illegal activities, protecting the building from fire hazards and then reporting to Special Services or contacting the authorities, if necessary. He even admitted that his job required him to break up fights on a continued basis. He said that fighting was an every day or every other day occurrence. He also admitted that he never confiscated a gun, but did confiscate knives approximately one time per week.

While there certainly are elements of danger associated with doing this job as a Public Safety Officer for the St. Louis Board of Education, there was nothing about the routine elements of his job that struck me as inflicting an "extraordinary or unusual" amount of stress. With metal detectors at every school and every student being searched when they come in the building, it seems clear that there was some anticipation that students bringing weapons to school was a potential problem that the schools recognized. Finding the weapons then, when metal detectors are set up and guards are hired for that purpose, is not extraordinary or unusual. Likewise, if the officers are told to look out for gang and other illegal activities, or to break up fights, then there must have been some anticipation that those sorts of incidents were possible. That is why guards were hired in the first place. If the officers, when they are hired, were told to deal with these activities, and had yearly training on gang activities, then that is part of the regular job and not extraordinary or unusual. Similarly situated Public Safety Officers encountered the same types of stress that Claimant encountered in his job. In that respect then, there was nothing extraordinary or unusual about the work-related stress faced by Claimant in the routine elements of his job.

Aside from the routine elements of the job, which though they may be dangerous at times, are not extraordinary or unusual, Claimant seems to cite two additional reasons for the amount of stress he felt he suffered as a result of his job for Employer. He points to the treatment he received from his supervisors and the administrators at the various schools where he worked, and he cites the "riot" at Northwest Middle School in which he was involved. For the reasons described below, I do not find that either of these situations rises to the appropriate level to make this a compensable case.

Based on my review of the medical treatment records and depositions, as well as based on Claimant's testimony, I find that while Claimant may characterize the treatment from his supervisors as harassment and stressful, the objectionable actions he describes fall into the category of disciplinary actions, work evaluations, job transfers, demotion, or failure to promote, all of which are excluded actions when it comes to determining whether a mental injury arises out of and in the course of employment.

Claimant fairly consistently describes the onset of his stress complaints in September 1996. The records for the visits with the various doctors describe that he is upset because he has been passed over for a promotion and the promotion was instead given to a less qualified contract employee. Numerous times Claimant indicates that he is upset and has stress related symptoms because he is being transferred to different schools. The SSM records clearly document that Claimant described chest pains and other physical complaints after being relocated from a "safe school" to an "unsafe environment." He is upset about the job assignments that he is given in the schools. He does not like criticism from his supervisors and feels singled out because of it. I find that all of these things that Claimant describes as harassing and stress provoking behavior, which occurred closely in time to the alleged onset of his complaints, are actions specifically contemplated by §287.120.9. As such, any mental injury resulting from these actions does not arise out of or in the course of employment.

Based on Claimant's testimony, I am sure he would argue that these actions by his supervisors were extraordinary and usual, and further, that they were not taken in good faith. I believe Claimant's arguments in that regard are without merit, because I find Claimant is not credible when it comes to describing his interactions with his supervisors/coworkers, his work environment, or his personal reaction to stressful events in his life.

First, I find Claimant is not credible when it comes to describing his interactions with his supervisors and coworkers. With regard to his coworkers, Claimant testified at hearing that he got along well with his coworkers. In his deposition, however, he testified that he was under constant pressure and harassment at Cleveland ROTC from the assistant principal, sometimes the principal and some of the safety officers that worked with him. He even identified some of the officers that he believed were harassing him. These are directly contradictory statements.

Regarding his supervisors, Claimant constantly attributed what he believed to be harassing actions toward him, to their dislike of him and their desire to single him out. Claimant presented no credible proof, however, to support his accusations. He described an incident regarding the disappearance of his time clock and blamed it on the administration, but there was no proof of that. It was nothing more than Claimant's own unfounded speculation. He described run-ins he had with Mr. Sparks and blamed it on actions he took against some of Mr. Sparks' football players in the past. Again though, this was nothing more than unfounded speculation. Further, if Mr. Sparks was the only administrator he had problems with, maybe then the speculation deserves a second look. But Claimant had problems with just about every supervisor and every administrator in every school where he worked. This was not an isolated incident with just one administrator. This was not a vendetta between him and Mr. Sparks over some football players in the past, when so many other administrators at so many other schools also had problems with him and had him transferred. Based on all of these things, as well as based on further findings below, I do not believe Claimant credibly described his interactions with his coworkers or supervisors, and so his testimony in that regard must be discounted.

Second, I find Claimant is not credible when it comes to describing his work environment. Claimant testified at hearing that the behavior at the schools is about the same everywhere. In the medical records on September 16, 1996 however, Claimant described the onset of complaints specifically because he was being transferred from a "safe school" to an "unsafe environment." He also went to great lengths to explain how his transfer to Roosevelt was proof of the harassing behavior he had to endure. If the behavior is the same everywhere though, then there is no "safe" and "unsafe" and there is no vindictive transfer. One of these two characterizations Claimant made cannot be correct.

Claimant also described in great detail at hearing the "riot" that occurred during field day when he was at Northwest Middle School. He described the same "riot" in his deposition from May 21, 1998, in Dr. Kuhn's note from June 1997 and in the report of Dr. Robinson from March 30, 2000. Most interestingly though, there is no description of this "riot" in Dr. Parwatar's report from June 8, 1998. Additionally, Claimant's descriptions of the "riot" and the effects it had on him are not consistent in these various records. At hearing, Claimant described this event as if it was very traumatic and noted he continued to have nightmares about it. Not only did he not tell Dr. Parwatar about the riot, but also he never mentioned nightmares about it. The only nightmares he mentioned to Dr. Parwatar were nightmares regarding his supervisor. Dr. Kuhn's records are also silent on any nightmares regarding the student riot. If this was such a traumatic event, why would he not mention it or the nightmares to Dr. Parwatar, when his attorney specifically sent him to that doctor to evaluate him for this claim? Why would Dr. Kuhn's records also not record any nightmares since Dr. Kuhn was the first to see him after this event?

In comparing Claimant's descriptions of the "riot" in these various records, there are also some glaring inconsistencies. At hearing, he said it was a boy hitting a girl after a race that started it. In his deposition and in Dr. Robinson's report, it was a girl hitting another girl that started it. At hearing, he said that he was surrounded by 30 students hitting in the head, kicking in the leg and punching him in the stomach. In Dr. Robinson's report, he was surrounded by 50 kids punching and kicking him. In his deposition and in Dr. Kuhn's note, he never described getting hit or kicked at all. When he was asked in his deposition what he was doing at that time, he stated, "Making sure that I didn't get hit; calling for assistance from Mr. Williams." Again, Dr. Parwatar's report is silent on any physical injury from this "riot". At hearing, he described a kid lunging at him with a knife and noted he had nightmares of getting stabbed with a shank. That description of the involvement of a knife or resultant nightmares about it is found in none of the other medical records. In Dr. Robinson's report, he described two kids down on the ground, not moving, who appeared to not be breathing, and his inability to get to them. That part of the story is not found in any of the other descriptions of the event in any of the other records.

Although individually none of these discrepancies or omissions may seem very important, when added all together, and combined with the fact that neither the event nor the nightmares are mentioned to Dr. Parwatar, it leaves this fact finder suspicious of the credibility of the Claimant when it comes to describing his work environment.

Third, I find Claimant is not credible when describing his personal reaction to stressful events in his life. At hearing, when describing the pre-existing shooting of his partner, Claimant testified that he was nowhere near the partner when it happened and his partner did not die. He seemed to downplay the event and said that he did not recall any feelings of panic or anxiety, although he was concerned for him. This is a vastly different history than is recorded by Dr. Parwatar and Dr. Robinson. Dr. Parwatar's report notes that the shooting bothered Claimant to the point where he had to change jobs. According to the report, Claimant told him that the transfer to the more dangerous school bothered Claimant because he did not want to be put in a situation where he would remember what happened to his partner. The comments regarding the shooting in Dr. Robinson's report are substantially similar to what is contained in Dr. Parwatar's report, but Dr. Robinson's notes contain even more detail. Claimant reported to Dr. Robinson that he had nightmares, trouble sleeping and anxiety attacks as a result of the shooting. Just as he had told Dr. Parwatar, he apparently told Dr. Robinson that he quit the force because of the shooting. With both of the doctor's reports containing fairly consistent histories of his reaction to the pre-existing shooting, Claimant's attempt to downplay the shooting and his reaction to it negatively impacts his credibility.

Additionally, Claimant tried to downplay his reaction to his wife's breast cancer at hearing, when compared to the histories contained in various medical records regarding that event. At hearing, Claimant testified that his wife's breast cancer diagnosis in August or September 1996 affected him, but did not have a profound effect on his job. He testified that

during her early treatment, it was not stressful for him, because although they got a terminal diagnosis, they believed she could beat it. This attempt to downplay his reaction to this stressful event leaves Claimant as a less than credible witness, when comparing this testimony to what is contained in the medical records at that time. Though he testified at hearing that the diagnosis in the early stages was not stressful, the records from SSM DePaul list the diagnosis of breast cancer as a stressor. The stress from the breast cancer diagnosis is listed first, before difficulty at work, in a note from Group Health Plan. Additionally, at Multi-Care Psychiatric on September 29, 1996, Claimant describes his perceived discrimination and then indicates, "In the meantime, wife was DX to have breast cancer. This has become overwhelming. Now he is being transferred." The notes also state that he is preoccupied with the stressful situation at work and also worried about his wife's health and his health. All of these contemporaneous medical records paint the clear picture that Claimant, understandably, was having increased stress in September 1996 because he had just received a terminal diagnosis on his wife's breast cancer. To downplay and/or outright deny the stressfulness of that situation in his testimony at hearing, only further negatively impacts his overall credibility.

Based on the totality of the substantial and competent evidence presented at hearing and described above, I find Claimant is not credible when it comes to describing his interactions with his supervisors/coworkers, his work environment, or his personal reaction to stressful events in his life. As he is not credible in describing those facets of his history and his case, he has failed to provide the requisite credible evidence to meet his burden of proof in this matter.

For the same reasons described above when addressing the overall credibility of Claimant, I do not find the "riot" at Northwest Middle School in which he was involved to be a credible or persuasive reason upon which to base a compensability finding in this claim. As noted in detail above, breaking up fights was an accepted, regular part of his job as a Public Safety Officer. Though Claimant characterized this as much more than just an average fight, for the specific reasons set out above when discussing Claimant's lack of credibility, I do not believe Claimant credibly or consistently described the event and so I do not believe his testimony in that regard can serve as a competent and substantial basis upon which to base an award for benefits.

I should also add that even if I got past the Claimant's lack of credibility on these matters, from a medical standpoint, when comparing the opinions of Dr. Parwatarikar and Dr. Robinson, I find Dr. Robinson's opinions to be much more thorough and credible than Dr. Parwatarikar's.

Although both physicians had similar diagnoses, Dr. Parwatarikar's report contained some factual inaccuracies, such as the killing of Claimant's partner, which he did correct on deposition, but which he still seemed to take into account when rendering his opinion on medical causation on page 11 of his report. His report based on his one visit with Claimant seemed less than complete in parts of the history as well.

In contrast, Dr. Robinson's 30-page report was much more complete and extensively covered the history associated with Claimant's problems. I was particularly impressed with the 11-1/2 pages of explanation of how Claimant's complaints and problems support the diagnoses he rendered based on criteria from the DSM-IV. Dr. Robinson's opinion that Claimant's psychiatric conditions were not causally related to work, were more thoroughly and persuasively supported in his report and in his testimony than the contrary opinions of Dr. Parwatarikar.

Even putting the credibility determinations aside and just looking at the medical causation issue alone, since Dr. Robinson's opinion that these conditions are not related to work is more competent and persuasive than the opinion of Dr. Parwatarikar, Claimant also fails to meet his burden of proof in that regard. Accordingly, Claimant's case is denied on a medical causation basis, in addition to the other reasons for denial listed above.

For all of the reasons stated above, I do not believe Claimant has met his burden of proof to show that there is a compensable occupational disease of a mental or psychological nature (stress) that arose out of and in the course of his employment for Employer, or that was medically causally connected to it. Given this finding, the remaining issues in this case become moot and will not be addressed.

CONCLUSION:

Employer's Answer to this Claim for Compensation was filed within the time prescribed by law, and thus it has no effect on the admission of any facts contained in the claim. Claimant failed to meet his burden of proving that he sustained a compensable injury/ occupational disease of a mental or psychological nature (stress) that arose out of and in the course of his employment for Employer, or that was medically causally connected to it. As such the rest of the issues presented for determination are moot and the Claim for Compensation is denied.

Date: _____

Made by: _____

JOHN K. OTTENAD
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation