

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

Injury No.: 08-104278

Employee: June Davis  
Employer: Missouri Baptist Medical Center  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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

**Findings of Fact**

*Did employee threaten to bring a gun to work?*

This case arises from a series of incidents that began on February 25, 2008, when employee's coworkers reported to human resources that employee made some comments about bringing a gun into the workplace. Employer presented written statements from Agnes Gebel, Ashley Davis, and Jennie Hancock, in which these coworkers alleged the following: (1) when discussing with coworkers a recent mass shooting incident, employee expressed empathy for the shooter and indicated sometimes she would like to bring a gun in and shoot everyone; (2) employee told coworker Ashley Davis that employee had pulled a gun on employee's daughter and was ready to shoot until employee's fiancée stopped her; and (3) on February 8, 2008, employee told coworker Agnes Gebel that she could understand why people would walk into a place with guns and start shooting people because she was mad enough to do that herself.

As the administrative law judge noted in her award, employee admitted making comments expressing empathy for the gunman in the mass shooting event and telling a story about pulling a gun on her ex-husband, but denied any comment about holding a gun to her daughter's head or bringing a gun into work. It is not evident from the administrative law judge's award whether she ultimately believed employee's testimony on this topic. As a result, the factual issues whether employee told coworkers she held a gun to her daughters head, or that she would like to bring a gun to work, or that she was angry enough to do so remain unresolved.

After careful consideration, we find employee's testimony to be more credible than the contrary hearsay evidence. We find that employee did not tell anyone that she held a gun to her daughter's head. We find that employee did not tell anyone that she would like to bring a gun into work or that she was angry enough to do so. We find instead

Employee: June Davis

- 2 -

that, while discussing a recent mass shooting event, employee told coworkers that the media wasn't reporting everything that happened and that it was impossible to know what made the individual snap, and that during a different conversation which involved a discussion about a scene from a movie, employee told a coworker a story about pulling her abusive ex-husband's gun on him to prevent him from beating her.

Additionally, in light of the legal analysis provided immediately below, we deem the issue of medical causation to be moot, and accordingly we disclaim the administrative law judge's credibility findings as between the conflicting medical expert testimony provided by Drs. Stillings and Jarvis.

### **Conclusions of Law**

#### Stipulations and disputed issues

We note that at the hearing before the administrative law judge, the parties did not specifically identify any dispute regarding whether employee sustained an injury arising out of and in the course of her employment. Instead, the parties identified the following disputed issues: (1) whether employee had an accident; (2) whether the accident is the medical causation of the condition for which benefits are sought; (3) whether employee provided appropriate notice under the law; (4) what is the nature and extent of employee's permanent partial disability; and (5) liability of the Second Injury Fund. The parties did not stipulate that employee sustained either an accident or injury arising out of and in the course of employment, but rather were wholly silent regarding this issue.

Given these circumstances, and given that our authority under § 287.120.1 RSMo to order an award of compensation is only triggered where the employee is shown to have suffered "personal injury ... by accident or occupational disease arising out of and in the course of the employee's employment," and given the definitions of both "accident" and "injury" set forth in §§ 287.020.2 and .3 RSMo, we are of the opinion that it is necessary, from a subject-matter jurisdiction standpoint, to analyze and determine whether employee sustained an accident and/or injury arising out of and in the course of employment. See *Sodipo v. University Copiers*, 23 S.W.3d 807, 810 (Mo. App. 2000).

#### Injury arising out of and in the course of employment

Section 287.020.3(2) RSMo provides, as follows:

An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

We deny this claim because we are not persuaded that employee sustained injuries arising out of and in the course of the employment. Although § 287.020.10 RSMo, as

Employee: June Davis

- 3 -

adopted by the legislature in 2005, abrogates all prior case law interpreting the phrases “arising out of” and “in the course of employment,” we do have some subsequent decisions upon which we may rely. In a case involving an injury sustained after the 2005 amendments to the Missouri Workers’ Compensation Law, the Missouri Court of Appeals stated that an injury arises “‘in the course of employment’ if the action occurs within a period of employment at a place where the employee may reasonably be fulfilling the duties of employment.” *Harness v. Southern Copyroll, Inc.*, 291 S.W.3d 299, 305 (Mo. App. 2009). Post-2005 case law further suggests that an employee who is injured while engaging in voluntary activities unrelated to her duties for employer cannot be said to have sustained such injuries “in the course of the employment.” *Henry v. Precision Apparatus, Inc.*, 309 S.W.3d 341, 342 (Mo. App. 2010). We recognize that in the more recent case of *Johme v. St. John's Mercy Healthcare*, 366 S.W.3d 504 (Mo. 2012), the Missouri Supreme Court indicated that the statutory language set forth in § 287.020.3(2) comprises the test, or in other words, the exclusive criteria for determining whether an injury arises out of and in the course of employment.<sup>1</sup> See *Johme*, at 509-10. In any event, the case law and the plain language of § 287.020.3(2) require a finding that the injury does not come from a hazard or risk unrelated to the employment, and from this perspective we believe both *Harness* and *Henry* may be harmonized with *Johme* if they are read as dealing with the issue whether a hazard or risk can properly be seen as related to the employment.

Here, employee worked for employer as a clinical specialist technician. Her duties involved receiving tubes or vials of blood and body products and sorting them so that they reached the appropriate area of the lab, performing customer service duties on the telephone, and dealing with specimens that needed to be sent to another facility. Employee alleges injuries resulting when she was deprived of her purse and coat, made to disrobe in view of a surveillance camera, and held in a secure emergency room during a psychiatric evaluation after a representative from a third party employee assistance program determined that she was a homicide risk. Although these allegedly injurious acts occurred on employer’s premises and were performed by employer’s agents, we are of the opinion that these circumstances are not dispositive of the issue whether said acts constitute hazards or risks related to the employment. This is because employer’s allegedly injurious conduct took place in the context of a medical evaluation of a possible medical condition not shown to be work-related. The relationship of the parties at the time of alleged injury was one of patient and healthcare provider, not employee and employer. As a result, we must conclude that employee’s alleged injuries came from a hazard or risk that was unrelated to her employment.

With that said, we do not wish to minimize the indignity that employee suffered. If the evidence supported a finding that employer required employee, as a condition of her employment, to undergo an evaluation of the type she endured on February 26, 2008, the result in this case might be very different. But because we are convinced that employee’s injuries did not arise out of or in the course of her employment, we believe employee’s remedy does not lie under the Missouri Workers’ Compensation Law.

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<sup>1</sup> We note the possible exception in cases dealing with the extension of premises doctrine, which the legislature specifically recognized and, to a certain extent, adopted in 2005 when it only partially abrogated that doctrine with the language of § 287.020.5 RSMo.

Employee: June Davis

- 4 -

In light of the above considerations, all other issues are moot, and employee's claim is denied.

**Conclusion**

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

The award and decision of Administrative Law Judge Karla Ogradnik Boresi, issued August 2, 2013, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of March 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee:	June Davis	Injury No.: 08-104278
Dependents:	N/A	Before the
Employer:	Missouri Baptist Medical Center	<b>Division of Workers' Compensation</b>
Additional Party	Second Injury Fund	Department of Labor and Industrial Relations Of Missouri
Insurer:	Self	Jefferson City, Missouri
Hearing Date:	April 15, 2013	Checked by: KOB

### 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: February 26, 2008
5. State location where accident occurred or occupational disease was contracted: Saint Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Not determined.
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 upset by the manner in which Employer conducted a workplace risk assessment based on allegations of her coworkers.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: n/a
14. Nature and extent of any permanent disability: n/a
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

- 17. Value necessary medical aid not furnished by employer/insurer? 0
- 18. Employee's average weekly wages: \$561.63
- 19. Weekly compensation rate: \$367.73
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

21. Amount of compensation payable: None.

22. Second Injury Fund liability: No

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 -% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: N/A

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	June Davis	Injury No.: 08-104278
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Missouri Baptist Medical Center	Department of Labor and Industrial Relations Of Missouri
Additional Party	Second Injury Fund	
Insurer:	Self	Jefferson City, Missouri
Hearing Date:	April 15, 2013	Checked by: KOB

### PRELIMINARIES

The parties appeared for a final hearing in the matter of June Davis (“Claimant”). Attorney Daniel Gauthier represented Claimant. Attorney Michael Schaller represented Missouri Baptist Medical Center (“Employer”), a self-insured entity. Attorney Da-Niel Cunningham represented the Second Injury Fund.

The parties stipulated that on or about February 26, 2008, Claimant was an employee of Employer, earning an average weekly wage of \$561.63, resulting in a rate of compensation of \$367.73 for temporary total disability benefits (“TTD”), permanent total disability benefits (“PTD”), and permanent partial disability benefits (“PPD”).

Employer paid no benefits. The issues to be determined are: 1) Did Claimant sustain an accidental injury arising out of and in the course of employment; 2) Is work the prevailing factor in causing her injury; 3) Did Claimant provide proper notice; 4) What is the nature and extent of Claimant’s PPD and/or PTD; and 5) What, if any, is the liability of the Second Injury Fund? Claimant seeks to recover permanent total disability benefits.

The exhibits admitted into evidence are:

#### *Claimant’s Exhibits*

- A. September 7, 2010 deposition of Dr. Wayne Stillings
- B. Selected portions of the November 16, 2011 deposition of Dr. Wayne Stillings
- C. Selected portions of the February 7, 2012 deposition of Barbara Larico
- D. Selected portions of the January 20, 2012 deposition of Cathy Williams
- E. Medical Records of the Missouri Baptist Medical Center Emergency Department
- F. Medical Records of Psych Case Consultants
- G. March 25, 2013 deposition of Dr. David Volarich
- H. Medical Records of BJC Medicine Specialists
- I. Stipulation for Compromise Settlement for Injury No. 01-097844
- J. Stipulation for Compromise Settlement for Injury No. 02-073005
- K. Medical Record of Orthopedic Sports Medicine and Spine Care Institute

L. Medical Records of Peggy Taylor, D.O.

*Employer's Exhibits*

1. Sections 287.120.8 and 287.120.9 Mo. Rev. Stat.
2. Claim for Compensation – 08-104278 – mental/emotional injury
3. Written Statement of Agnes Gebel
4. Written Statement of Ashley Davis
5. Written Statement of Jeannie Hancock
6. Deposition testimony of Barbara Larico
7. Deposition testimony of Cathy Williams
8. September 7, 2010 deposition of Wayne Stillings, M.D.
9. November 16, 2011 deposition of Wayne Stillings, M.D.
10. Curriculum Vitae of Michael Jarvis, Ph.D, M.D.
11. Independent Medical Evaluation Report of Michael Jarvis, Ph.D, M.D.
12. Deposition testimony of Michael Jarvis, Ph.D, M.D.
13. First written notice of Corrective Action – January 26, 2007
14. Second (final) written notice of Corrective Action – June 8, 2007

**FINDINGS OF FACT**

Claimant is a 59-year-old woman who obtained her associate's degree in nursing and worked in the medical field in a variety of roles, including a Donor Care Tech for the Red Cross, and Medical Assistant at Barnes and with Dr. Walker in Clayton, and for several years beginning in 1999 as an Office Manager/Medical Assistant in the Missouri Baptist organization. When the doctor's office closed, Claimant took a position in phlebotomy.

Claimant's relationship with Employer was rocky at times. When Employer assigned work on Saturday, her Sabbath, Claimant resigned and filed an EEOC complaint, which was resolved with her reinstatement and payment for back pay. Claimant was dissatisfied with her first experience with EAP because she was unable to obtain assistance to bury a family member. Although she initially enjoyed her work, Claimant became dissatisfied when staffing changes placed her in an isolated position. She was unhappy and wanted a transfer to a job with patient interaction. Claimant received two write-ups for job performance in 2007: one on January 26, 2007, for excessive absenteeism (6 or more in a rolling 12 month period); and a second one on June 7, 2007, for mislabeling a specimen. The second write-up was marked "final written warning."

Sometime in early February 2008, Claimant and some co-workers were discussing the then recent Kirkwood City Council shooting, wherein a gunman named Charles Lee "Cookie" Thorton went on a shooting rampage at a public meeting in a nearby community, leaving six people dead and two others injured. Accounts of what she said varied, but Claimant admitted she had a distant connection to, and identified with, the perpetrator, stating, "I don't condone anything that happened but we don't know what made that man snap." Claimant also conceded that during another break-room discussion of a "Madea" movie, she admitted she had used a gun to defend herself against her then-husband's threat of imminent bodily harm, much like a character in the movie. Claimant denied ever having held a gun to her daughter's head for

misbehaving, as was reported by several co-workers. On or about February 25, Claimant's coworkers brought her alleged statements to the attention of her supervisor.

On February 25, 2008, Kris Wheeler, Claimant's supervisor, reported her concerns that Claimant might be a risk to the department to Barbara Larico, a Senior Human Resource Consultant, who initiated an investigation into Claimant's statements. According to what Ms. Wheeler told Ms. Larico, Agnes "Ag" Gebel and Ag's granddaughter "related that this employee, June Davis, had mentioned in some conversation that she might bring a gun to work. Also, she had related to Ashley, the granddaughter, that she pulled a gun on her own daughter when she was misbehaving... Ashley also said she had heard June mention in the hall one time that everyone was driving her so crazy that she is thinking about bringing a gun to work." Upon receipt of this information, Ms. Larico reported up the chain of command, initiated an investigation by taking a statement from Ag, and contacted the private company that handled Employer's EAP issues. Claimant was not at work on February 25, 2008.

On February 26, 2008, at the direction of Jill Oller, the Director of HR for Employer, Barbara Larico and Frank Caruso, head of the Lab Department, called Claimant into Ms. Larico's office as part of the investigation. Since the allegations involved alleged threats of deadly force, Employer had made arrangements for security personnel to be outside the office, and for Cathy Williams, the EAP representative, to be readily available in the next room. Claimant was initially unaware of the purpose of the meeting. When she was told of the allegations, she did not deny them and expressed some empathy for what may have lead Cookie Thorton to do what he did. Ms. Larico informed Claimant she would be off for the rest of the week and asked her if she would be willing to see an EAP counselor. Claimant consented to talking with EAP, but asked for her coat and purse, which Mr. Caruso retrieved. Claimant thought her purse and coat had been searched, which Mr. Caruso denied.

Cathy Williams is a social worker with over 30 years of experience and the counselor contracted to do Employer's EAP work. She was in a nearby office, and met with Claimant for approximately one hour after her 15-minute or so meeting with Ms. Larico and Mr. Caruso. Ms. Williams conducted an assessment to determine whether Claimant was a possible homicide risk. Based on the allegations and Claimant's hostility and anger, Ms. William concluded Claimant was a potential risk. Ms. William testified the routine way of handling situations with treats of violence is to get the individual evaluated by a physician, which is the recommendation she made, and which Employer followed. Claimant did not request food or water, or tell Ms. Williams she was a diabetic, at any time during the initial interview. She consented to the evaluation.

At 12:51 p.m., Claimant presented at the Employer's emergency room "to be evaluated." At 1:02 p.m., nurse Jeanine M. Halley noted, "security at bedside, pt changed into gown, belongings removed from patient. Behavioral health at bedside, Door of room remains open and unlocked at this time. Pt. Cooperative." Claimant testified she was upset when she observed a security camera in the exam room. Beginning around 1:30 p.m., Emergency Room physician Gregory J. Beirne, DO, conducted a physical and psychological evaluation, ordered blood work, and talked with Claimant and the behavioral health consultant. At 2:21, Dr. Beirne noted, "normal examination, normal screening, no evidence for threatening behavior, suicidal ideation or homicidal." He wrote, "[i]t seems quite clear to me that, after a very lengthy discussion with

June, that [sic] someone overheard her conversation and made inferences from her other discussion and jumped to a conclusion that she was making threats to her coworkers. I could find no evidence during the interview that June has any suicidal or homicidal ideation.” After the blood work results came back, Claimant was discharged around 4:00, with instructions to follow up with EAP.

Claimant felt embarrassed, humiliated and victimized by the experience. She was fearful of the effect the event would have on her job and her ability to transfer to a more desirable position. She said she felt sad and was crying the entire afternoon. She testified that right before she was discharged, she asked for something to eat, but nothing was provided.

Claimant met with EAP rep Williams on five occasions, each time expressing anger and hostility. Claimant felt Employer and the EAP made her do lots of things that were not necessary. Although she initially declined the opportunity to meet with a psychiatrist, Claimant did end up meeting with Dr. Batta. On March 26, 2008, Dr. Batta issued a return to work slip. Claimant was scheduled for a vacation. On April 4, Claimant began to experience symptoms of a stroke. From April 5 to April 7, Claimant was an inpatient at Missouri Baptist, and was in subacute rehab for several weeks thereafter. She never returned to work, and was terminated from her employment when her leave ran out.

Claimant attributes her feelings of depression – unworthy, hopeless, crying and loss of enjoyment, and anxiety – overeating, weight gain, apprehension, and hair loss, to the events of February 26, 2008. She feels her ability to be a nurse or caregiver has been taken away from her. Her life has not been without prior psychological stressors. She lived with an abusive foster mother and an abusive husband. She had several interactions with the legal system. She also had prior physical disability; including a 7 ½% PPD left ankle tendon injury, and a 15% PPD of the low back/disc protrusion. In an average day she takes about 16 pills, engages in light activities like dusting, and sometimes volunteers at church. She does not sleep well.

#### *Expert Evidence*

Dr. Michael Jarvis is Medical Director of Inpatient Psychiatry at Barnes Jewish Hospital and Vice President of Clinical Affairs in the Department of Psychiatry at Washington University. He conducted a four-hour evaluation of Claimant, reviewed records and other materials, issued a report and testified by deposition. Based on his 25 years of experience admitting patients through the emergency room, and having conducted risk assessments for some of the area’s largest employers, Dr. Jarvis is particularly qualified to testify with respect to psychological examinations. He testified it is standard practice for an emergency room physician to evaluate an individual with potential psychiatric issues. Only then does a psychiatric resident see them. Changing into hospital pajamas, search of belongings, placement of guards, opening of the door, and other safety measures are the norm.

Following his mental status exam, Dr. Jarvis concluded Claimant continued to be upset about what she perceived happened to her. He identified several other stressors, such as interaction with the legal system, the death of family members, and unpleasant experiences with the EAP following her brother’s death. He diagnosed adjustment disorder with depressed mood. He did not believe she sustained any sort of psychiatric, mental or emotional injury because of

the February 26, 2008 events. He found no connection between the complained of event and her subsequent stroke. He thought it was prudent for someone hearing Claimant's comments to feel threatened. He thought, contrary to the emergency room analysis, that Claimant held grudges against Employer for things that happened in the past. He also disagreed with, and found no support in the record for, Dr. Stilling's diagnoses.

Dr. Wayne Stillings is a psychiatrist who treats patients in private practice and conducts psychiatric IMEs. He has conducted 50 workplace risk assessments in his career. He followed his standard forensic procedure in examining Claimant on more than one occasion, reviewing records and other documents, administering tests, generating a report and testifying by deposition. Like Dr. Jarvis, he identified a history of abuse, and he identified several relevant personality traits.

Dr. Stillings felt the work incident of February 26, 2008 "is the prevailing factor in causing [Claimant] to experience a major depressive disorder of a twenty percent permanent partial disability and an anxiety disorder with an associated fifteen percent permanent partial disability." He also assigned additional PPD of 2 ½%, 5% and 5% respectively for her dysfunctional family of origin, an abusive foster mother, and an abusive first husband. He concluded she was permanently and totally disabled due to her primary and preexisting psychiatric conditions.

Dr. Stillings thought Claimant's emergency room treatment on February 26, 2008 was extraordinary and unusual, and not consistent with the general approach to emergency room visits. He found fault in the qualifications of the examiners, although he did not question that a risk assessment should have been done.

### **RULINGS OF LAW**

Claimant seeks workers' compensation benefits for a mental injury allegedly caused by the events of February 26, 2008. Based on the findings of fact, and the Law of the State of Missouri, I find Claimant's mental injury does not arise out of and in the course of her employment with Employer because 1) work is not the cause/prevaling factor in her mental injuries, and 2) the claim is barred pursuant to §287.120.9.

The Missouri Workers' Compensation Law provides for mental injuries.<sup>1</sup> Mental disorders are compensable injuries if they are directly and proximately caused by a work-related

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<sup>1</sup> Despite the claim form to the contrary, the claim is not for mental stress, i.e., work conditions over a period of time. See *Sherman v. First Fin. Planners, Inc.*, 41 S.W.3d 633, 636-37 (Mo.App. E.D.2001) (allegation hours, duties, responsibilities, and other work-related factors caused stress); *Williams v. DePaul Health Center*, 996 S.W.2d 619, 631 (Mo.App. E.D.1999) (claim work conditions caused stress). Such claims are barred by §287.120.8, which 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." Claimant's claim of mental injury is based actions that occurred over a single day and constituted what she labels as a "strip search and imprisonment." I find Claimant's allegation to be more like *E.W. v. Kansas City Missouri Sch. Dist.*, 89 S.W.3d 527, 535-536 (Mo.App. W.D.2002) (EW's mental was based upon a particular traumatic incident, and, therefore, Section 287.120.8 did not apply) than *Sherman* or *Williams*. Therefore, whether Claimant faced extraordinary and unusual work related stress is an irrelevant and unnecessary inquiry.

accident. *Wilhite v. Hurd*, 411 S.W.2d 72, 77 (Mo. 1967); *Tibbs v. Rowe Furniture Corp.*, 91 S.W.2d 410, 412-13 (Mo. App. 1985). “However, proof of the condition is not proof of causation.” *Wilhite* at 78. To be entitled to workers' compensation benefits, the claimant has the burden of proving not only that the accident arose out of and in the course of his employment but that the alleged injury or death was directly caused by the accident. *Lingerfelt v. Elite Logistics, Inc.*, 255 S.W.3d 1, 6 (Mo. Ct. App. 2008). In other words, a claimant must establish a causal connection between the accident and the compensable injury. *Id.*(Citations omitted). In *Williams v. DePaul Health Ctr.*, 996 S.W.2d 619, 631 (Mo. Ct. App. 1999), the court set for the appropriate standards for causation in a mental injury case, holding:

Employee must show a causal connection between the injury and the job in order to recover compensation. Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. The [fact finder] may determine what weight it will accord expert testimony on medical causation. Where the right to compensation depends upon which [of] two conflicting medical theories should be accepted, the issue is peculiarly for the [fact finder's] determination. (Citations omitted).

Thus, Claimant's right to compensation turns on whether her medical expert is afforded greater weight than Employer's expert.

As is so often the case in Workers' Compensation cases, there are conflicting medical opinions, with Dr. Stillings finding the required causal connection between the events of February 26, 2008 and Claimant's mental injury, and Dr. Jarvis purporting the opposite view. I find Dr. Jarvis' opinion to be clearer, more credible and better supported by the substantial and competent evidence than Dr. Stillings'.

Dr. Jarvis took a more objective approach to analyzing the facts. He considered how Claimant perceived the events, and acknowledged she was upset by how she felt she was treated. He also objectively considered how and why the actions were taken, and explained that Employer's process for conducting the risk assessment was the standard. Dr. Stillings was more subjective, relying on Claimant's characterization of the events. His quarrel with the way Employer conducted the risk assessment was trivial. For example, he thought a risk assessment should be conducted off the employment premises (even if the employer is a Hospital) and complained Dr. Beirne was unqualified to examine Claimant, but Dr. Beirne ultimately concluded Claimant was no risk. Based on all the evidence, I believe Dr. Jarvis' conclusion that Claimant was upset by her perception of Employer's actions, but suffered no permanent disability as a result. The events of February 26, 2008 were not the prevailing factor in causing any disability to Claimant or her psyche.

Even if Dr. Stillings' opinion was the most credible and established the requisite causal connection, specific statutory language bars recover for Claimant's mental injury. Section 287.120.9 states:

A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

On February 26, 2008, Employer initiated an investigation into an alleged threat of workplace violence by Claimant. An employer has a nondelegable duty to provide a reasonably safe place to work, see *Kelley v. DeKalb Energy Co.*, 865 S.W.2d 670, 672 (Mo. 1993), and thus must take all such allegations seriously. Furthermore, an employer has a right to expect its employees to not act in such a way as to disrupt the work place. *Storz Instrument Co. v. Labor and Indus. Relations Com'n*, 723 S.W.2d 72, 73 (Mo.App. E.D. 1986). In *Storz*, the Court held that as a matter of law, making a threat against the life of a co-worker while at the work place is misconduct. Such threat could be expected to disrupt work, diverting supervisory personnel from their regular duties so they could deal with the threat. *Id.* Whether Employer's actions on February 26, 2008 are viewed as evaluating Claimant's work conduct to assure a safe work place, or initiating the disciplinary process for the her alleged misconduct of making a threat, I find the actions taken by Employer to fall within §287.120.9.

In order for the provisions of §287.120.9 to bar this claim, the injury must have resulted from an "action taken in good faith by the employer." "Good faith" requires "an honesty of intention." *Blevins Asphalt Constr. Co. v. Director of Revenue* 938 S.W.2d 899, 902 (Mo. banc 1997). I find that every person involved in the investigation of the alleged threats and risk assessment acted in good faith with an honesty of intention. Barbara Larico responded promptly and thoroughly to the information she received, informing her superiors, questioning those involved, and arranging for the appropriate support for any reasonable outcome of the interview of Claimant. Frank Caruso's participation was faultless. Based on her personal observations and training, the EAP counselor Cathy Williams honestly thought there was a possibility Claimant posed a risk of harm, and made her professional recommendations for further evaluation. The risk assessment conducted in Employer's emergency room was reasonable, and according to Dr. Jarvis, who I find credible, was within the standard of care for such assessments, including the open door, the surveillance, and the change into hospital garb in anticipation of a physical exam. That Claimant proved not to be the risk Employer initially feared, or may not have engaged in serious misconduct, does not negate the fact that Employer undertook and carried out the investigation in good faith.

Claimant has suggested that because Cathy Williams was under contract to Employer for EAP services, and not a direct employee, the actions she took were not actions taken in good faith "by the employer." Furthermore, Claimant suggests that because the staff of Employer's emergency room were not supervisors of Claimant, what occurred to Claimant in the emergency room was not due to actions "taken ...by the employer." Neither proposal has merit. All the actions of which Claimant complains were part of the investigative process reasonably undertaken by Employer to investigate the potential misconduct of Claimant, and assess whether Claimant posed a risk to the work place. The most traumatic event for Claimant, having to change into a hospital gown for her risk assessment, occurred in Employer's emergency department at the direction of Employer's emergency room staff. Even under the strict construction mandated by the provision of chapter 287, the actions which Claimant claims to have caused mental injury are actions taken by Employer.

Claimant suggests in her post-trial brief "what dark force directed the ordeal of [Claimant] appears to be a mystery unto today," thus attempting to establish some entity other than Employer took the harmful actions to avoid the bar of §287.120.9. However, if what

Claimant suggests is true, then Claimant was not in the course of employment when the injurious actions occurred. Claimant cannot have it both ways.

**CONCLUSION**

Based on reports of statements she made, Claimant was subjected to a workplace risk assessment undertaken and conducted in good faith by Employer. Although Employer followed a standard, accepted professional protocol for such evaluations, Claimant perceived what happened to her in an upsetting way. She then suffered an unrelated medical condition, and has not returned to work.

Claimant was upset, but the events of February 26, 2008 were not the prevailing factor in causing any permanent mental injury. Even so, because the assessment was an investigation of potential misconduct (making threats against coworkers) which could have resulted in discipline and was otherwise similar to the actions contemplated thereby, §287.210.9 bars the mental injury claim.

No injury arose out of and in the course of Claimant's employment. All other issues raised are moot, and the claim against Employer is denied. The Second Injury Fund claim is denied.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

KARLA OGRODNIK BORESI  
*Administrative Law Judge*  
*Division of Workers' Compensation*