

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

Injury No.: 04-017015

Employee: Ann Dudley  
Employer: Commerce Bancshares  
Insurer: Liberty Mutual Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

Date of Accident: Alleged January 2, 2004

Place and County of Accident: Alleged Kansas City, Jackson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge 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 April 19, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Paula A. McKeon, issued April 19, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 6<sup>th</sup> day of October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Ann Dudley

Injury No. 04-017015

Dependants: N/A

Employer: Commerce Bancshares

Insurer: Liberty Mutual Insurance Company

Hearing Date: February 17, 2005

Checked by: PAM/bi

### **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: January 2, 2004.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Unusual and extraordinary work stress.
12. Did accident or occupational disease cause death? No. Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: None.
  
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? \$9,774.05.
18. Employee's average weekly wages: By agreement.
19. Weekly compensation rate: \$662.55/347.05
20. Method wages computation: By agreement.

### **COMPENSATION PAYABLE**

21. Amount of compensation payable: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Ann Dudley Injury No. 04-017015  
Dependants: N/A  
Employer: Commerce Bancshares  
Insurer: Liberty Mutual Insurance Company  
Additional Party: Second Injury Fund

On February 17<sup>th</sup>, 2005, the Employee and Employer appeared for hearing. The Division has jurisdiction to hear this claim pursuant to §287.110. The Employee, Ann Dudley appeared in person and with counsel, John McKay. The Employer and Insurer appeared through counsel, John Graham. The Second Injury Fund did not appear for the hearing.

### **STIPULATIONS**

The parties stipulated:

- 1) that on or about January 2, 2004, Commerce Bancshares was an employer operating under and subject to the provisions of the Missouri Workers' Compensation Law with its liability fully insured by Liberty Mutual Insurance Company;
- 2) that on January 2, 2004, Ann Dudley was an employee of Commerce Bancshares working subject to the laws in Kansas City, Jackson County, Missouri;
- 3) that Ms. Dudley provided notice and a timely claim for compensation was filed;
- 4) that Ms. Dudley's compensation rate is \$662.55/347.05 per week;

- 5) that no medical expenses or past temporary total benefits have been provided by the Employer; and
- 6) that Ann Dudley has incurred medical expenses in the amount of \$9,774.05.

### **ISSUES**

The parties requested the Division to determine:

- 1) whether Ann Dudley sustained an accident and/or occupational disease arising out of and in the course of her employment with Commerce Bancshares.

### **FINDINGS AND RULINGS**

Ann Dudley has alleged she sustained an accident or occupational disease as a result of undue stress in the scope of her employment with Commerce Bancshares. Recovery for a mental injury from work-related stress is dependent upon showing the stress was “extraordinary and unusual” §287.120.8 RSMo. 2000. Additionally, such work stress must be measured by “objective standards and actual events”. To establish a claim under §287.120.8, Dudley must present credible evidence of similarly situated employees with the focus on evidence of the stress encountered by those employees. Absent such evidence Dudley fails in meeting her burden of proving the objective nature of stress. See Carnal v. Pride Cleaners, 138 S.W.3d 155 (Mo.App. 2004); Williams v. DePaul Health Center, 996 S.W.2d (Mo.App. 1999). The seminal issue in this case is whether the stressors alleged by Dudley are extraordinary and unusual as contemplated by chapter 287 and whether sufficient evidence was presented to show that the work stress was extraordinary and unusual as measured by objective standards.

§287.120.8 states: “(8) Mental injury resulting from work-related stress does not arise out of and in the course of 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. (9) A mental injury is not considered to arise out of and in the course of employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action taken in good faith by the employer.”

The focus of Dudley’s evidence and theory is that her work-related stress resulted in depression and anxiety.

Dudley essentially contends two separate theories of what caused her stress at work. The first involves Dudley’s relationship with co-employee and former supervisor, Mark Tanksley. The second involves a job transfer to Commerce Bank downtown facility in June 2003.

Ann Dudley was branch manager at the Commerce Bank downtown branch from June 30, 2003 to approximately December 2003. Dudley was previously bank manager at Commerce Bank Barry Road branch. One of Dudley’s job duties was to sell annuities. Dudley was Commerce Bank’s top performer for annuities sales. In 2002 Dudley earned approximately \$35,000 in annuity commission in addition to her base salary. Her supervisor at the Barry Road location was Mark Tanksley.

Dudley testified that Tanksley made disparaging remarks about women and various members of Commerce Bank board of directors. Dudley believed that Tanksley misrepresented promotion opportunities.

Dudley filed a grievance with Commerce Bank about Tanksley’s remarks and demeanor. Tanksley was required by Commerce to undergo counseling following the complaint by Dudley.

Dudley testified that Tanksley still promoted a hostile work environment following the counseling. Dudley said Tanksley refused to speak with her directly, made faces at her, and once squealed his tires in front of her in the bank parking lot.

Dudley filed a second grievance regarding Tanksley. In December 2001 Tanksley was transferred to a different bank branch although remained as Dudley’s immediate supervisor.

Dudley sought medical treatment for depression as a result of the stress created at work by Mark Tanksley.

Dudley applied and accepted transfer to Commerce Bank downtown branch in June 2003 in part to get away from Mark Tanksley. Dudley had two occasions of stress related to Tanksley after her transfer downtown. First, Tanksley requested that Dudley service the annuity customers that she had sold and received commissions on at the Barry Road branch. Dudley agreed to that request. Second, Dudley and Tanksley both claimed credit for creating a new business account and loan. Dudley worked hard to obtain the business customer. Commerce ultimately attributed the credit for the business to Dudley rather than Tanksley to resolve the dispute.

The second stress for Dudley followed her transfer to the Commerce Bank downtown branch in June 2003. Dudley provides a comprehensive list of her job duties as branch manager. Virtually all of the duties cited by Dudley produced work stress for her. Dudley's complaints fall into three basic categories: Duties primarily the same as before her transfer with increased volume; new duties from her previous position as Barry Road manager; and new duties from previous downtown manager Sherry Jones.

Dudley's duties that were similar to her previous job with Commerce Barry Road branch but with increased volume downtown include:

- 1) Maintaining master keys for vaults and safe deposit boxes.
- 2) Preparing overdraft lists.
- 3) Reviewing internal and external e-mails.
- 4) Responding to internal and external phone calls.
- 5) Meeting with sales staff and coaching.
- 6) Preparing expense reports.
- 7) Monthly sales reports.
- 8) Branch manager meetings.
- 9) Annuity calls.
- 10) Teller operation meetings.
- 11) Sales compliance meetings.
- 12) Small business meetings.
- 13) Benefits banking.
- 14) Personnel issues concerning employees hiring, firing, scheduling.
- 15) Customer complaints both in person, by e-mail, and telephone calls.

In each and everyone of the above cited job duties, Dudley testified that the volume increased significantly from her job duties at the Barry Road location to the point where Dudley felt overwhelmed and unable to complete her tasks.

One of Dudley's primary complaints on her transfer to the downtown branch was that her desk was in the middle of the open lobby. She found it almost impossible to complete any tasks without interruption. Dudley previously had a private office at the Barry Road branch. However, Sherry Jones, the previous manager at the downtown location also sat in the open-air lobby. The current bank manager also is in the open lobby.

Many of the Commerce Bank executives were located at the downtown branch. Dudley was required to notify her supervisor in the event an executive or board member made an inquiry or complaint. Dudley found this task to be stressful and extraordinary. Sherry Jones also was required to notify her supervisors in the event bank executives or a member of its board of directors had made a complaint or inquiry.

Dudley also had to participate in a new technology rollout at the downtown branch. Commerce tried its new photo ID technology at the downtown and select suburban branches during Dudley's tenure. Commerce would periodically propose new technologies to provide services to its customers. The downtown branch was not the only branch participating in the technology rollout.

Dudley also significantly complained about the benefits banking program. The benefits banking program attempts to encourage individual employees of a large Commerce business clients to open accounts with Commerce Bank. Bank representatives are sent to the employer on a regular basis to drum up new business. Bank representatives provide individual business cards to potential customers with their phone numbers and e-mail addresses. Dudley participated in this activity and her cards were available to any potential new customer. The benefits banking employer customers were Hallmark, HOK, Valentine Radford and DST. The number of potential customers from the employers numbered in the thousands. Dudley was overwhelmed by the thought that several thousand people had her e-mail address and direct line phone number at Commerce Bank.

Dudley also had to coordinate occasional after work activities or events in the lobby of the downtown branch. This also was a job that had been performed by previous downtown manager Sherry Jones.

Dudley was in charge of employee personnel as she was at the Barry Road division. Dudley felt that the staff was inadequate at the downtown branch, despite having an assistant manager which no other suburban branch had. Dudley requested additional staffing from human resources at Commerce Bank, but was not provided with any additional resources.

The only duties Dudley did not perceive as stressful include: acting as a notary or as a signature guarantee. Dudley worked approximately 50 hours at the Barry Road Commerce Bank to anywhere between 60 to 80 hours per week during her six-month tenure as downtown bank manager. Dudley felt pressured to sell annuities at the downtown bank and would increasingly work on selling annuities from home evenings and weekends.

Sherry Jones worked at the Commerce Bank downtown branch as manager for approximately 17 years prior to June 2003. Jones testified that she performed most of the job duties Dudley performed as downtown manager.

Jones did not notarize documents. Jones was not assigned DST, HOK, or Valentine Radford as benefits banking customers. Jones did not participate in the photo ID program. Jones did not make annuity contacts or calls at home or on the weekends.

Jones performed essentially all the other tasks performed by Dudley. Jones testified all bank managers need to perform these duties. Jones did not consider any of the duties unusual or extraordinary.

Jones indicated during her tenure as downtown manager she participated in the benefits banking program. She occasionally visited Hallmark, but would often delegate another representative to go. Jones business card with phone number and e-mail was provided to any potential customers as well. Jones testified on the times that she did go to the benefit banking meetings a limited number of customers might approach the bank representatives. She recalled that while the potential for large numbers of customers existed, in fact, maybe only eight to ten new contacts would be made at each meeting. Jones testified that she as well as other branch managers would participate in periodic updates of new technologies. Jones also was required to report any executive or board member contacts to her supervisor.

While part of Jones job requirements was to sell annuities, Jones did not make any annuity contacts or sales from her home at night or on weekends. The downtown branch was closed on Saturdays unlike all other Commerce Bank branches.

Jones is currently employed by Commerce Bank as branch manager.

Hall Brent, senior vice president at Commerce is responsible for all branch managers. Brent filled in as downtown manager from the lapse between the Jones/Dudley tenure and from after Dudley's departure in January 2004 to June 2004 when Dudley was replaced. Brent testified the job duties performed by Dudley are still performed, the number of the employees at the downtown branch is the same, and the lobby desk of the branch manager is still the same. That virtually all the job duties listed on Ann Dudley's list are still performed by the current bank manager.

According to Brent all bank managers are responsible for implementing new technologies providing benefits banking customers to clients and making annuities sales. Brent indicated Dudley had made all the goals established for her upon her move to the downtown branch. Brent was pleased with Dudley's performance during her six-month tenure as downtown branch manager.

Dudley presented no other testimony of any other similarly situated employees other than Sherry Jones and herself. Dudley argues at great length that the volume of work she had was greater when compared to her prior job. However, there is no testimony to suggest that the volume of work she had was greater than that of Sherry Jones. Dudley testified at length about the time she spent away from the office calling annuity clients on the weekends and in the evenings. However, Dudley was in the business of not only managing the downtown bank, but of selling annuities and chose to spend more time selling annuities for which she was paid significant commissions. She was one of the top sellers of annuities while working at Commerce. When she took the position to be downtown bank manager, she was asked to continue her annuity business and to get up sales. She testified that she achieved this job performance during the six months she was downtown.

Both Drs. Pro and Koprivica attribute Dudley's medical condition and her need for treatment to work-related stress. Dr. Pro testified Dudley's work stressors were unusual and extraordinary. Dudley perceived the job responsibilities as unusual and extraordinary. Both doctors attribute her current medical condition to the work stress she sustained on the job

transfer to Commerce Bank downtown branch in June 2003.

While I do think the medical evidence supports the finding that Dudley's job related stress was a substantial factor in causing or aggravating her depression and anxiety, Dudley still cannot recover for her depression and anxiety under §287.120.8-9. While she has established that her stress was work-related and that her disability was caused by the work-related stress, she has failed to show that the stress was extraordinary was unusual as required by §287.120.8. The job duties Dudley described at the hearing was conduct one would expect from any busy bank manager and even if I find Dudley's testimony credible regarding the increased volume of activities, I do not find this constitutes extraordinary stress. Dudley failed to offer any evidence that her job duties were in any way unlike the job duties that other bank executives experienced at Commerce or in other banks. See Sherman v. First Financial Planners Inc., 41 S.W.3d 633 (Mo.App. 2001) Williams 996 S.W.2d 628.

Dudley's claim that she sustained injury by accident arising out of and in the course of her employment under §287.120.8-9 is denied on the basis that she did not establish that she suffered stress that was extraordinary and unusual.

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

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

Paula A. McKeon  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*