

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge
by Separate Opinion)

Injury No.: 95-195401

Employee: Albert Giese
Employer: Trans World Airlines
Insurer: Authorized self-insurer

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence and briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the March 11, 2010, award and decision of the administrative law judge (ALJ). We adopt the findings, conclusions, decision, and award of the ALJ to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminary Matters

The ALJ heard this matter to consider: 1) medical causation; and 2) nature and extent of any permanent disability resulting from the March 1, 1995, accident.

With respect to employee's psychiatric issues, the ALJ found that employee's "evidentiary presentation [was] neither plausible on the issue of medical causation, nor sufficiently specific so as to exclude the non-industrial health issues." Because employee's alleged permanent total disability is largely attributed to employee's psychiatric issues, the ALJ, consequently, found that permanent total disability did not result from the March 1, 1995, accident.

With respect to physical permanent partial disability resulting from the March 1, 1995, accident, the ALJ found that the "Court could reasonably expect to find a disability in the range of 10% [permanent partial disability] to the body as a whole." However, the ALJ further found that 10% permanent partial disability "approximates the employee's net third-party recovery and the employer's credit against any obligations in workers' compensation." Therefore, the ALJ concluded that if he awarded permanent partial disability, said disability would be offset by the credit from the third-party recovery. In sum, the ALJ did not award employee any benefits.

Employee appealed to the Commission alleging: 1) the ALJ's assessment of the nature and extent of employee's permanent disability is not supported by substantial and competent evidence; 2) the ALJ erred in not finding employee's psychiatric condition to be causally related to the March 1, 1995, accident; 3) employee is entitled to future medical care; and 4) employee's attorney is entitled to attorneys' fees in the amount of 25% of all amounts awarded.

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Summary of Facts

On March 1, 1995, as employee was arriving for work, he was involved in a vehicular accident at TWA parking lot in Platte County, Missouri. Employee had pulled his car into a parking space and was backing up to straighten his car within the space when his vehicle was struck on the driver's side by another car. Employee was wearing his seatbelt, but described striking the left side of his head against the interior door of his vehicle. Employee denied any cuts or lacerations in conjunction with this event and stated that both vehicles were drivable after the accident. Employee described an onset of neck pain at the time of the occurrence. Employee alleges physical and psychiatric permanent disabilities resulted from the March 1, 1995, accident.

On October 17, 2006, Dr. Patrick Hughes performed an independent psychiatric evaluation of employee. In reviewing employee's medical records, Dr. Hughes noted that employee suffered an apparent whiplash injury of his neck due to a March 1995 vehicular accident. MRIs of the spine indicated bulging cervical discs, and later myelograms appeared to indicate cervical central disc protrusions.

With regard to employee's psychiatric condition, Dr. Hughes stated that the most medically probable cause is an ongoing, severe major depression with psychotic features. Dr. Hughes believes employee developed two episodes of major depression, a genetically-caused, biochemical disorder of the brain that is not caused by chronic pain or cervical neck injury. He noted that depression secondary to a medical condition is caused only by medical conditions with a direct physiological link to the neuron functioning, and the conditions known to do that do not include chronic physical pain or cervical injury. Dr. Hughes went on to state that employee was gravely impaired psychiatrically, with active psychotic symptoms and, therefore, is unable to work at any gainful employment. Dr. Hughes concluded that employee's impairment cannot be causally attributed to his March 1995 accident.

On October 3, 2007, Dr. William Logan performed a psychiatric evaluation on employee. Dr. Logan found that employee was suffering from major depression and cognitive disorder, among other things. Dr. Logan concluded that, based on employee's emotional conditions related to the 1995 head injury, he would rate employee as having a 60% whole body disability. Dr. Logan further concluded that when said psychiatric disability is combined with employee's physical limitations, it is his opinion that employee has a permanent total disability.

Dr. Logan was deposed on September 24, 2008. Dr. Logan acknowledged, on cross-examination, that employee had a number of predispositions for major depression, including a genetic history and preexisting paranoia. As evidence of the latter, Dr. Logan pointed to an episode in the 1980s when employee had voluntarily left his employment with another employer because he felt co-workers twice tried to kill him. Dr. Logan theorized that a preexisting paranoia had been worsened by the reported vehicular accident and that there are independent psychiatric issues which have developed subsequent to the 1995 accident. Dr. Logan's estimate of 60% psychiatric disability is inclusive of all factors, including paranoia and alcohol abuse. Dr. Logan

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acknowledged that causation for employee's cognitive disorder could not be established with reasonable medical certainty.

Dr. Sidney Cantrell examined employee on September 26, 2007, and provided an independent medical evaluation report dated March 11, 2008. After a review of employee's medical records and a systems limited history and physical examination, Dr. Cantrell concluded that employee suffered herniated discs with spinal stenosis and foraminal stenosis as a direct result of the motor vehicle accident suffered in the parking lot at work. Dr. Cantrell also believes that he has a traumatic brain injury with post concussion syndrome. With regard to employee's physical complaints, Dr. Cantrell estimated that employee is 25% permanently partially disabled of the body as a whole.

In addition, Dr. Cantrell took notice of Dr. William Logan's psychiatric report and found that employee is permanently totally disabled. Dr. Cantrell does not believe employee will ever be able to be gainfully employed in the open job market.

Dr. Jerome Hanson is a neurosurgeon and was one of employee's treating physicians from 1996 through 1999. Dr. Hanson first examined employee on May 21, 1996, and upon reviewing diagnostic films, concluded that employee had degenerative changes at C5-7, cervical spondylosis at C5-6, and a small disc herniation at C6-7. Dr. Hanson stated that the changes seen on employee's MRI and cervical spine x-rays may simply be consistent with his age and work-related activities and other activities of daily living and are not, by definition, indication of some pathologic injury to his cervical spine. Dr. Hanson would not say whether the March 1, 1995, accident did, or did not contribute to employee's cervical condition.

Conclusions of Law

With regard to employee's psychiatric condition, we agree with the ALJ's conclusion that employee failed to provide a plausible evidentiary presentation on the issue of medical causation. As Dr. Logan acknowledged, employee's paranoia episode in the 1980s is clear evidence that employee suffered from some preexisting psychiatric issues. A determination that the March 1, 1995, accident enhanced said preexisting psychiatric issues, or that some independent psychiatric disability resulted from that accident, would be based on mere speculation. There is nothing in the record that definitively supports a conclusion that employee's psychiatric condition was enhanced or caused by the March 1, 1995, accident and, therefore, we adopt the ALJ's determination with regard to that issue.

With regard to employee's alleged physical disabilities resulting from the accident, the ALJ found that a 10% permanent partial disability to the body as a whole would be a reasonable rating. However, the ALJ concluded that because said 10% permanent partial disability is likely what employee's net third-party recovery and the employer's credit against any obligations in workers' compensation would be, there is no reason to award permanent partial disability benefits to employee.

The fact that an award of workers' compensation benefits to an employee may be subject to an employer's right of subrogation as provided by § 287.150 due to a third

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party recovery, does not discharge the duty of the Division or Commission from issuing its award. The workers' compensation benefits awarded will be distributed or apportioned to the parties pursuant to the provisions of § 287.150.

With regard to the nature and extent of employee's physical disabilities, only Drs. Cantrell and Hanson examined employee's cervical condition. Dr. Cantrell concluded that employee suffered herniated discs with spinal stenosis and foraminal stenosis as a direct result of the motor vehicle accident suffered in the parking lot at work. Dr. Hanson concluded that employee had degenerative changes at C5-7, cervical spondylosis at C5-6, and a small disc herniation at C6-7, but would not say whether the March 1, 1995, accident did, or did not contribute to employee's cervical condition.

Both doctors agreed that employee's cervical spine is permanently partially disabled. Dr. Cantrell provided an affirmative opinion that employee's cervical condition was caused by the March 1, 1995, accident. However, Dr. Hanson would not provide an opinion as to the effect, if any, that the accident had on employee's cervical spine. We find Dr. Cantrell's affirmative opinion that the March 1, 1995, accident caused employee to suffer permanent partial disability of the body as a whole to be more convincing than Dr. Hanson's weak conclusion that employee's cervical condition *may* be solely the result of degenerative changes.

Although we agree with Dr. Cantrell's opinion that the March 1, 1995, accident caused employee some permanent partial disability, we disagree with Dr. Cantrell's rating amount of 25% permanent partial disability of the body as a whole. We find, as did the ALJ, that based upon the weight of the medical records and evidence as a whole, employee is only 10% permanently partially disabled of the body as a whole rated at the cervical spine as a direct result of the March 1, 1995, accident.

We note that the parties have stipulated to employee having received a net third-party recovery of \$9,612.50 from the same event and that, pursuant to § 287.150, employee's workers' compensation award is subject to a credit in said amount.¹ Therefore, we find, based upon a weekly compensation rate of \$249.48, employee shall be awarded \$366.70 in permanent partial disability benefits ($\$366.70 = \$9,979.20 \text{ PPD} - \$9,612.50 \text{ net third-party recovery}$).

Award

We modify the award of the administrative law judge and find that employee shall be awarded \$366.70 in permanent partial disability benefits. This amount represents our award of 10% permanent partial disability of the body as a whole rated at the cervical spine less the credit of \$9,612.50 for employee's net third-party recovery. In all other respects, we affirm the award.

¹ The parties' stipulation to employee's net third party recovery is set out on page 4 of the "TRANSCRIPT OF FINAL PROCEEDINGS."

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The award and decision of Administrative Law Judge Mark Siedlik, issued March 11, 2010, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

James R. Brown, Attorney at Law, is allowed a fee of 25% of the benefits awarded for necessary legal services rendered to employee, which shall constitute a lien on said compensation.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 7th day of December 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

CONCURRING OPINION FILED

William F. Ringer, Chairman

Alice A. Bartlett, Member

SEPARATE OPINION FILED

John J. Hickey, Member

Attest:

Secretary

Employee: Albert Giese

CONCURRING OPINION

I submit this concurring opinion to disclose the fact that I was previously employed as a partner in the law firm of Evans and Dixon. While I was a partner, the instant case was assigned to the law firm for defense purposes. I had no actual knowledge of this case as a partner with Evans and Dixon. However, recognizing that there may exist the appearance of impropriety because of my previous status with the law firm of Evans and Dixon, I had no involvement or participation in the decision in this case until a stalemate was reached between the other two members of the Commission regarding the medical causation of employee's psychiatric disabilities. As a result, pursuant to the rule of necessity, I am compelled to participate in this case because there is no other mechanism in place to resolve the issues in the claim. *Barker v. Secretary of State's Office*, 752 S.W.2d 437 (Mo. App. 1988).

Having reviewed the evidence and considered the whole record, I join in and adopt the above-listed final award allowing benefits for employee's permanent partial disability related to his cervical condition and denying benefits for employee's alleged psychiatric disabilities.

William F. Ringer, Chairman

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SEPARATE OPINION

(Concurring in Part and Dissenting in Part)

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I dissent from the majority's decision to deny benefits for employee's psychiatric disabilities.

Dr. Logan concluded that, based on employee's emotional conditions related to the 1995 head injury, he would rate employee as having a 60% whole body disability. The ALJ made a finding that "[e]ven if the Court were inclined to believe Dr. Logan," by "including both industrial and non-industrial disabilities in his rating, he has failed to meet the requirement of *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697 (Mo. App. 1973), holding that no compensation is allowed for conditions traceable to more than one cause, only one of which would be the responsibility of the employer." However, the employee in *Griggs*, failed to meet her burden of proof because the evidence established that the injury resulted "either from one or the other of two causes, for one of which, but not the other, the employer would be liable" and because the medical opinion gave "rise to two utterly inconsistent inferences – that claimant's disability could as well have pre-existed the accident as have been caused by it – and does not allow a substantial basis from which a compensable injury can be inferred." *Griggs*, 508 S.W.2d at 704. The facts in *Griggs* are significantly distinguishable from the facts in this case.

In this case, employee's psychiatric disability was not wholly caused by one or the other of two causes, but is a combination of his preexisting psychiatric condition being escalated to the point of disability by the March 1, 1995, accident. In *Chatmon v. St. Charles County Ambulance Dist.*, 55 S.W.3d 451 (Mo. App. 2001), the court held that a "preexisting but non-disabling condition does not bar recovery of compensation if a job-related injury causes the condition to escalate to the level of disability." There was evidence that employee had a preexisting mental condition involving some paranoia, but there was no evidence that it was disabling.

Dr. Logan opined that to a reasonable degree of medical certainty that employee's current depression and anxiety are the result of the 1995 injury. It is Dr. Logan's opinion that employee's paranoid thinking also is related to the 1995 injury, or to the multiple delays of treatment, or both. Lastly, Dr. Logan believes that employee's paranoia and suspiciousness were preexisting, but exacerbated, or "escalated," by the 1995 injury.

For the foregoing reasons, I believe that employee has carried his burden in proving that the March 1, 1995, accident caused at least some permanent partial psychiatric disability and, therefore, I find that employee should be awarded permanent partial disability benefits for the same.

I concur with the majority's award allowing compensation for employee's cervical condition.

For the foregoing reasons, I respectfully concur in part and dissent in part from the decision of the majority of the Commission.

John J. Hickey, Member

AWARD

Employee: Albert Giese Injury No.: 95-195401
Dependents: N/A
Employer: Trans World Airlines
Additional Party: N/A
Insurer: Authorized self-insurer
Hearing Date: January 28, 2010 Checked by: MSS/cy

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the alleged injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of alleged accident or onset of occupational disease: March 1, 1995.
5. State location where alleged accident occurred or occupational disease was contracted: Platte 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 alleged accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by law? Yes.
10. Was employer insured? Yes, authority to self-insure.
11. Describe work employee was doing and how alleged accident occurred or occupational disease contracted: Vehicular accident in company parking lot.
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: head and neck.
14. Nature and extent of any permanent disability? None.
15. Compensation paid to-date for temporary disability: \$0.00

- 16. Value necessary medical aid paid to date by employer/insurer? \$0.00
- 17. Value necessary medical aid not furnished by employer/insurer? \$0.00
- 18. Employee's average weekly wages: \$673.32
- 19. Weekly compensation rate: \$448.88/\$249.48
- 20. Method wage computation: by stipulation.

COMPENSATION PAYABLE

21. Amount of compensable payable:	
Medical paid:	\$ 0.00
Unpaid medical expenses:	\$ 0.00
Temporary total disability (or temporary partial disability)	\$ 0.00
Permanent partial disability from Employer	\$ 0.00
0 weeks of disfigurement from Employer	\$ 0.00
Permanent total disability benefits from Employer beginning , for Claimant's lifetime - N/A....	\$ 0.00
22. Second Injury Fund liability: N/A	\$ 0.00
0 weeks of permanent partial disability from Second Injury Fund	\$ 0.00
Uninsured medical/death benefits	\$ 0.00
Permanent total disability benefits from Second Injury Fund	\$ 0.00
-- weekly differential (--) payable by Second Injury Fund for -- weeks beginning	\$ 0.00
--and, thereafter, for Claimant's lifetime	\$ 0.00
Total: \$ 0.00	

Employee: Albert Giese Injury No.: 95-195401

Dependents: N/A

Employer: Trans World Airlines

Additional Party: N/A

Insurer: Authorized self-insurer

Hearing Date: January 28, 2010

Checked by: MSS/cy

FINDINGS OF FACT and RULINGS OF LAW

The parties convened for final hearing on January 28, 2010. At that time, it was admitted that the employee had sustained an accidental injury arising out of and during the course and scope of his employment on March 1, 1995, but the Court was asked to resolve the nature and extent of any permanent disability resulting from the accident, including whether all of the conditions complained of were causally related to the event. Claimant Albert Giese testified only briefly, for reasons stated below, and his deposition testimony from August 12, 1997, was offered and received in evidence. The claimant also offered the narrative report of Dr. Sidney Cantrell, D.O., and the narrative report and deposition of Dr. William S. Logan, M.D. The employer offered the narrative report from Dr. Patrick Hughes, M.D., and the deposition of Dr. Jerome Hanson, M.D., and the narrative reports he generated in treatment of Mr. Giese. The parties stipulated that Mr. Giese has secured a net third-party recovery from this same incident in the amount of \$9,612.50, and that pursuant to §287.150 R.S.Mo., the employer is entitled to a credit in this same amount should compensation be awarded.

The evidence received suggests the following sequence of events: Claimant Albert Giese commenced employment with Trans World Airlines in 1993. Mr. Giese was involved in a vehicular accident at the TWA parking lot in Platte County, Missouri, on March 1, 1995, as he was arriving for work. According to the claimant's deposition, the TWA parking lot was marked with specific parking

places. He had pulled his car into a parking space and was backing up to straighten his car within the space when his vehicle was struck on the driver's side by another car. He estimates his own vehicle was traveling slowly, perhaps just a few miles an hour, but that the other vehicle may have been driving over 20 mph. Claimant was wearing his seatbelt, but he describes striking the left side of his head against the interior door of his vehicle. He denied any cuts or lacerations in conjunction with this event and stated that both vehicles were drivable after the accident. Claimant described an onset of neck pain at the time of the occurrence. He believes he did not work that day but that he may have returned to his normal duties at TWA the following day.

Mr. Giese initiated medical treatment on March 20, 1995, at the Hamilton, Missouri Medical Center. Summaries from the various narrative reports received in evidence describe a series of medical consults over the next four years with increasing complaints of anxiety and depression. He developed issues with alcohol abuse (some of which pre-dated 1995), after the death of an immediate family member, and apparently an aborted attempt at marriage with a woman from the Ukraine. Claimant believes he last worked for TWA in April 1997, and he denies employment since then. At trial, he offered no detailed description of his current level of functioning, so this is gleaned from the various medical reports.

Dr. William Logan identified himself as a psychiatrist who examined Mr. Giese on October 3, 2007. He described the claimant as having poor concentration, unusual and paranoid ideas, odd explanations of causation, and current possible hallucinations. He concluded the employee was suffering from major depression and cognitive disorder, among other things, which he felt had resulted in an impairment under the AMA Guidelines of 60% to the body as a whole. Combined with physical complaints, he concluded the employee was totally disabled from working.

On cross-examination, Dr. Logan acknowledged that this employee had a number of predispositions for major depression, including a genetic history and preexisting paranoia. As evidence of the latter, he pointed to an episode in the 1980s when Mr. Giese had voluntarily left his employment with another employer because he felt co-workers twice tried to kill him. Dr. Logan acknowledged that he theorized that a preexisting paranoia had been worsened by the reported vehicular accident. He conceded that there are independent psychiatric issues which have developed subsequent to the 1995 accident and that his estimate of 60% psychiatric disability is inclusive of all factors, including paranoia and alcohol abuse. Although he felt the employee demonstrated a cognitive disorder, he acknowledged the causation could not be established with reasonable medical certainty.

Dr. Sidney Cantrell examined Mr. Giese on September 26, 2007. With regard the claimant's physical complaints, he estimated a disability of 25% to the body as a whole. Coupled with Dr. Logan's rating, he felt the employee was totally disabled from working. He felt the employee had developed a major depressive disorder with psychotic features and histrionic characteristics.

Dr. Patrick Hughes, a psychiatrist, examined the employee at the request of TWA on October 17, 2006. He found the claimant to be actively psychotic and suffering from major depression which he described as a genetically caused biochemical disorder of the brain, unrelated to chronic pain. Dr. Hughes felt the employee was psychiatrically incapable of holding gainful employment, but he did not feel the 1995 vehicular accident was a contributing factor.

Dr. Jerome Hanson identified himself as a neurosurgeon who was one of the claimant's treating physicians from 1996 through 1999. He received Mr. Giese by referral from another physician and was not retained by TWA. His resume included 30 years of practice as a neurosurgeon, with two-thirds of his patients during this time span presenting with head and neck injuries. Dr. Hanson also completed a

masters of science in neurological surgery which includes the study of the neurochemistry of the brain. He first examined Mr. Giese on May 21, 1996, and upon reviewing diagnostic films, concluded that the employee had degenerative changes at C5-7 with a small disc herniation at C6-7. He felt these findings were consistent with the claimant's age and work-related activities and not necessarily an indication of a traumatic injury. He examined Mr. Giese on six different occasions but never identified him as a suitable surgical candidate, in part due to developing psychiatric issues. He testified that, in retrospect, he felt the claimant's pain complaints were demonstrating psychotic components and that a psychopathology was increasingly apparent during the course of his treatment. He felt the vehicular accident to be a trivial, if any, contributor to the claimant's progressive psychiatric deterioration and concluded that the traumatic event in 1995 would not, in his opinion, represent a substantial factor in Mr. Giese's psychotic depression. It was his assessment that the origin of psychotic features is generally unknown, but that the growing body of evidence suggests an underlying basis that is rooted in neurochemical disorders which, in turn, are based on genetics.

An employee bears the burden of proving all elements essential to his case. Thorsen vs. Sach's Electric Company, 52 S.W.3d 611 (W.D. Mo. 2001). At trial, the claimant attempted to answer only a handful of questions. He was somewhat responsive but complained of memory loss and appeared to be a poor historian, denying, for example, that he had ever spoken to Dr. Hanson. From all of the evidence, including the employee's appearance at trial, it is immediately apparent that his predominant health issue is psychiatric in nature. All four of the medical opinions received described either psychosis or symptoms consistent with psychosis. With this diagnosis, the claimant may well be totally disabled, but the question then becomes whether this psychosis has been sufficiently proven to be the outgrowth of the vehicular accident.

On this controlling issue, the Court is not persuaded by claimant's evidence. For one, this is an accident that took place in a parking lot. Claimant's own vehicle was barely moving. Although he estimated the speed of the second vehicle to be over 20 mph, he described memory and recall issues throughout his deposition, as well as through his narrative medical reports, and the accuracy of his testimony is subject to considerable doubt. Even if his description is accepted, he otherwise testified that both vehicles were drivable following the incident and that he himself had sustained no contusions or lacerations. Whatever trauma took place, therefore, was not sufficient to cause even a bump on the head. The notion that a total disability with psychotic features would stem from such an occurrence is dubious upon its face.

The only expert describing an extensive background in head and neck injuries specifically is Dr. Hanson. The fact that he treated the claimant outside of the workers' compensation arena, and independent of TWA, increases his credibility, and the Court is persuaded that, as interpreted by Dr. Hanson, the diagnostic findings were not particularly dramatic or inconsistent with the claimant's age and work history. The objective physical findings, therefore, are not suggestive of a life-altering event, leading to the type of psychiatric disability now demonstrated by the claimant. With his additional background in neurochemistry, the Court is further inclined to accept Dr. Hanson's observation that the cause of psychosis is generally unknown but may, if anything, be a function of genetics. This conclusion would be consistent with the findings of Dr. Hughes, who also found a genetic origin to the disorder. Even Dr. Logan concedes there may be preexisting genetic issues involved in the employee's current psychiatric state of health.

The Court weighs, in particular, the episodes of paranoia dating to the 1980s, when claimant thought co-workers were trying to kill him at another job and actually surrendered his employment because of this belief. Because a loss of employment resulted, it is reasonable to conclude that the

employee's psychiatric issues were both significant and were exerting an impact on his ability to function, well prior to 1995. This episode underscores the notion that the claimant's mental health issues trace to factors in place prior to his employment with TWA.

Even if the Court were inclined to believe Dr. Logan, he readily admitted that his 60% rating includes all of the factors in Mr. Giese's psychiatric history, some of which pre-date and post-date the 1995 occurrence. He was unable to attribute any specific percentage of disability tracing solely to the vehicular accident. By including both industrial and non-industrial disabilities in his rating, he has failed to meet the requirement of Griggs vs. A.B. Chance Co., 503 S.W.2d 697 (W.D. 1974), holding that no compensation is allowed for conditions traceable to more than one cause, only one of which would be the responsibility of the employer. Similarly, Dr. Cantrell included Dr. Logan's findings in his overall assessment of permanent total disability and, indirectly, he also incorporates non-industrial health issues in his final conclusion. Ultimately, claimant's evidentiary presentation is neither plausible on the issue of medical causation, nor sufficiently specific so as to exclude the non-industrial health issues. The Court is unable to conclude that permanent total disability has resulted from the 1995 event occurrence.

This leaves the Court with the remaining issue of whether permanent partial disability has resulted. By all accounts, Mr. Giese's subjective complaints are clouded by his psychiatric health, and it is difficult, if not impossible, to know which of his ongoing complaints are solely the outgrowth of any physical injuries he may have sustained. The same problem with Griggs applies. Although Dr. Cantrell has offered a rating for the purely physical aspects of the case, this, too, appears to have been based in part upon subjective complaints. In the final analysis, Mr. Giese's psychiatric limitations are so profound that the Court is left to speculate as to what, if any, physical residual traces to the vehicular accident. For a vehicular accident occurring in a parking lot, with resulting whiplash type injuries, the Court could reasonably expect to find a disability in the range of 10% to the body as a whole. This, by coincidence,

approximates the employee's net third-party recovery and the employer's credit against any obligations in workers' compensation. Were the Court inclined to award permanent partial disability, the extent of any such disability would be offset by the credit from the third-party recovery.

In summary, the Court is not persuaded that head trauma, and particularly the level of trauma attributed to this event, causes psychosis or psychotic features. The claimant's apparent total disability is felt to be unrelated to his vehicular accident and incorporates health conditions and psychiatric stressors unrelated to the on-the-job injury. Any permanent partial disability from the purely physical injuries sustained has not been sufficiently distinguished from the non-industrial health issues but would not figure to exceed the amount of the third-party credit, in any event. For these reasons, no compensation is allowed.

Made by: _____
Mark S. Siedlik
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this _____ day of _____, 2010
by:

Naomi Pearson
Division of Workers' Compensation