

FINAL AWARD ALLOWING COMPENSATION
(Reversing Award and Decision of Administrative Law Judge)

Injury No. 08-096413

Employee: Linda Mantia

Employer: MODOT

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. We have reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses the award and decision of the administrative law judge.

Preliminaries

The parties asked the administrative law judge to resolve the following issues: (1) whether employee suffered a psychiatric injury by occupational disease which arose out of and in the course of her employment; (2) whether employer received proper notice of an occupational disease injury; (3) whether employee's psychiatric injury is medically causally related to her work activities; (4) whether employer is liable for future medical treatment for psychological injuries; (5) whether employer is liable for either permanent partial disability or permanent total disability benefits; (6) whether the Second Injury Fund is responsible for permanent partial or permanent total disability benefits; (7) whether certain portions of employer's Exhibit 4 are admissible; and (8) whether employer's Exhibit 6 is admissible.

The administrative law judge concluded, as follows: (1) employer's Exhibits 4 and 6 are admissible; (2) employee did not sustain a mental stress injury that arose out of and in the course of employment; and (3) all other issues are moot.

Employee filed a timely application for review alleging the administrative law judge erred in misinterpreting the extraordinary stress standard for establishing mental disability claims.

Findings of Fact

Employee worked for employer for over 20 years as a highway worker. Employee became a crew leader in the early 1990s, and eventually became a supervisor. Employee's last position was Urban Metro Maintenance Supervisor.

Employee's duties for employer involved assisting and providing traffic control at scenes of motor vehicle accidents on the highways. Early in her career, employee observed accident scenes as often as four times per week. Later, in the 1990s, motorist assist workers began handling the less serious accidents, and employee and her crew responded to only the worst of accidents, which often included fatalities.

Employee: Linda Mantia

- 2 -

In 1987 or 1988, employee responded to an accident where a car was on fire. A little boy was trapped inside the car, and there was no way for employee or anyone else to reach the car or help the child. Employee listened to the child's screams as he burned to death.

In 1989, employee responded to an accident scene and observed the slumped, grayish-white body of a deceased young man sitting in a car. Employee observed that the young man's eyes were partially open.

In 1990, employee arrived at a single vehicle accident where the victim was ejected and the car rolled over the victim. Employee wasn't paying attention to her feet and, as she approached the scene, accidentally kicked the victim's decapitated head.

In 1991, employee saw a woman jump to her death from the Dougherty Ferry Bridge onto Highway 270. The woman's body bounced after striking the pavement. Employee stopped traffic and called the highway patrol.

In 1992, employee was called to help control traffic at the scene of an accident. Employee observed two mothers dead in the front seats of the vehicle, and watched as emergency responders pulled two children, still alive, from the back seats. Both children appeared to be about 3 years old, and had bandages around their heads and blood spots where their eyes should have been.

In 1993, a coworker with whom employee worked as often as once a week was killed by a drunk driver. The coworker, John Smith, was working on a flashing arrow that needed repair; employee observed him working as she drove past him. Later, as employee approached the same area, she observed ambulances and fire trucks where Mr. Smith had been working.

In 1996, another coworker, Bill Weeda, died after a highway worker backed over him while repairing potholes. Employee responded to the scene and observed Mr. Weeda's body on the ground; his head had been crushed. The worker who killed Mr. Weeda was still sitting in the truck rocking back and forth and incoherent. Employee was tasked with trying to help this young man get out of the truck.

In 1997, employee responded to an accident where the victim's body was thrown from the vehicle and struck several trees. Employee accidentally tripped over the victim's body while distracted by another worker. Later, the victim's wife arrived and grabbed employee and started hugging her and crying.

In 1999, employee responded to an accident where the victim's car hit the end of a guardrail, and the victim was consequently impaled. Employee observed that the victim's hands still gripped the steering wheel, and that her eyes were wide open.

In 2000, employee responded to an accident where a distraught mother began screaming at employee to get her daughter out of the car. Employee was there by herself. Employee went over to the car to see what could be done, and observed that the teenage girl was obviously dead.

Employee: Linda Mantia

- 3 -

In 2001, employee responded to an accident where a dump truck driver was ejected and partially decapitated.

In 2003, employee responded to an accident scene where a driver struck a truck in which her coworkers were riding. The vehicle that struck the truck was unrecognizable, as there was so much debris thrown about the scene. As employee approached, she saw that half of the driver's head was gone.

In 2006, employee responded to an accident where the car had exploded, burning the victim inside. When employee arrived, the air was filled with the scent of burning flesh. The victim was so badly burned that it could not be determined whether the victim was male or female. Employee observed as responders pulled the body from the seat, and as they did so she heard a spongy, squishy noise which she has never been able to forget. Two days later, employee went to the scene to clean the wall where the accident occurred; the victim's grandparents, who drove past the location every day, had requested that something be done. As employee prepared to sandblast the area, she observed fleshy material stuck to the wall.

In 2007, employee responded to an accident where a delivery truck driver lost control of his vehicle and was ejected from the truck. Employee and her crew were called out because there was orange juice, sour cream, and cottage cheese all over the highway. While walking near the scene of the accident, employee stepped on the victim's teeth.

Employee observed approximately 1000 accident scenes during the course of her career with employer. When employee first began responding to accidents involving violent scenes of death and dismemberment, she would get so sick she was unable to eat for a week. As her career progressed, employee coped with the emotional impact of witnessing and interacting with such scenes by assuming a cold, indifferent attitude. Other workers laughed and joked about the carnage they witnessed, and employee eventually found herself doing the same. As one of very few women in her role, employee wanted to avoid betraying any weakness around her male coworkers.

Eventually, employee began to suffer considerable psychiatric symptoms. Employee experienced rapid mood swings and increased irritability, and had trouble controlling her anger. Employee was previously very social but began to withdraw from family and friends. When employee saw accident scenes in person or on the news, she would experience feelings of panic, sweating, shortness of breath, tremors, and nausea. She also suffered from insomnia and disturbing nightmares. Employee was unable to grieve when her mother, father, or favorite uncles died, because her experiences caused her to view a family member in a coffin as something "laying out in the middle of the highway."

Transcript, page 95.

Psychiatric treatment

Employee's psychiatric symptoms came on gradually, and she was unaware that anything was medically wrong with her until she saw her primary care physician, Dr. Devon Golding, on February 11, 2008. On that date, employee presented with complaints of feeling short-tempered and intolerant of people, and indicated she couldn't stand being near her family.

Employee: Linda Mantia

- 4 -

Dr. Golding had employee fill out a written test for depression, and diagnosed major depressive disorder. Dr. Golding prescribed Trazodone, Lexapro, and Xanax, and referred employee to Dr. Asif Habib.

Dr. Habib first saw employee on May 1, 2008, and took a history suggesting employee was then suffering from mood swings, low frustration tolerance, and depressive episodes with poor energy, poor sleep, and poor appetite. The note states employee further endorsed symptoms of increased energy, decreased need for sleep, and hyper-talkativeness, but also conflictingly states that employee *denied* these symptoms. Dr. Habib diagnosed employee with bipolar disorder, most recent depressed type. Dr. Habib's note of that date reflects his decision to "continue" employee on Celexa and Risperdal, despite the apparent absence of any preexisting prescriptions for these medications. Dr. Habib's later treatment notes suggest he instead continued Dr. Golding's prior prescriptions for Lexapro and Xanax, and added new prescriptions for Wellbutrin and Seroquel.

Employee saw Dr. Habib numerous times between May 2008 and September 2009, but stopped going to him because she felt he was not attentive and was overly interested in prescribing medications. Employee also received counseling from Dr. Timothy Jovick, a clinical psychologist, beginning in August 2008 and continuing into 2013. Dr. Jovick talked with employee about her experiences and psychiatric symptoms, and directed employee on therapeutic "field trips" such as forcing herself to drive somewhere she wished to avoid or participating in a group activity.

Employee continues to take Trazodone, Xanax, Wellbutrin, and Lexapro. Employee credibly testified (and we so find) that these medications, as well as psychiatric therapy, have helped to partially relieve her symptoms. Employee continues to suffer from reclusive tendencies and a lack of desire to be around others; she regularly isolates herself by locking herself in her room, sometimes for days at a time. Employee stopped seeking regular treatment with Dr. Jovick because she felt that talking to him caused her to relive her horrific experiences. Employee continues to have nightmares every couple of weeks. Employee avoids accident scenes or any situation or activity (such as watching the news) which might involve seeing an accident scene.

Expert opinion evidence

Employee advances expert testimony from Dr. Jovick, who believes that employee suffered major depressive and posttraumatic stress disorders (PTSD) due to the cumulative stresses attendant upon her position with employer. Dr. Jovick believes employee's nightmares, anxiety, and panic attacks are products of PTSD, and that employee's low self-image and withdrawal from family and friends are products of major depressive disorder. Dr. Jovick conceded that "it must be kept in mind" that his opinions are those of employee's therapist, and that a "more comprehensive assessment" may be warranted for purposes of adjudicating workers' compensation matters. *Transcript*, page 362. Dr. Jovick indicated he plans to continue seeing employee in connection with her psychiatric condition, suggesting he believes employee has a need for further psychiatric treatment that flows from her injury.

Meanwhile, employer advances expert medical testimony from Dr. Wayne Stillings, a psychiatrist. Dr. Stillings testified that employee suffered a depressive disorder prevaillingly

Employee: Linda Mantia

- 5 -

causally related to the conditions of employee's work for employer resulting in a 2.5% permanent partial disability of the body as a whole. Dr. Stillings explained that he has treated many highway workers suffering from psychiatric injuries as a product of witnessing injury and death on the highways, and that witnessing such scenes is "part and parcel to their job." *Transcript*, page 524. Dr. Stillings also testified employee suffers from a preexisting personality disorder which he rated at 2.5% permanent partial disability of the body as a whole. Dr. Stillings indicated that employee's prior psychiatric treatment was causally related to her work for employer, but that employee does not have a need for additional psychiatric treatment that is prevailingly causally related to her work for employer. Notably, Dr. Stillings did not address the question whether employee has a need for further psychiatric treatment that *flows* from her injury.

We are persuaded by the unanimous causation opinions from Drs. Jovick and Stillings that employee's work with employer caused her to suffer a psychiatric injury. Owing to Dr. Jovick's forthright concession that a more comprehensive assessment may be more probative in light of his role as employee's therapist, we find most persuasive Dr. Stillings's opinion (and so find) that employee suffered a depressive disorder prevailingly causally related to the conditions of employee's work for employer resulting in permanent partial disability. We find, however, Dr. Stillings's permanent partial disability rating to be extremely low, especially considering that employee's psychiatric injuries were partially responsible for motivating her to leave her job of more than 20 years. We find, instead, that employee suffers a 50% permanent partial disability of the body as a whole as a product of her depressive disorder.

Finally, because we have credited employee's testimony that her ongoing psychiatric treatment has helped to partially relieve her symptoms, and because Dr. Stillings agreed that employee's psychiatric treatment up to the date of his June 27, 2012, report (which, as we have noted, included both psychiatric medications and psychological counseling) was causally related to employee's work for employer, we are persuaded (and so find) that employee has a need for ongoing and future medical treatment that flows from the work injury.

Second Injury Fund liability

In her brief, employee fails to direct us to any expert medical opinion or any other evidence identifying and/or explaining any synergistic effect between employee's psychiatric injury and any of her preexisting conditions of ill-being, which include bilateral knee pain, asthma, neck and low back pain, and right carpal tunnel syndrome. At oral argument, employee's counsel tacitly conceded that the record does not contain such evidence, and made clear that it is employee's position that she is permanently and totally disabled as a result of her primary psychiatric injuries considered alone and in isolation. In this regard, employee points to the opinion from Dr. Jovick that employee is 90 to 95% disabled.

After careful consideration, we are not persuaded that employee's psychiatric injuries render her permanently and totally disabled in isolation. As we have noted, Dr. Jovick conceded that his opinions in this matter may be less probative as a product of his role as employee's therapist. With regard to his disability rating in particular, Dr. Jovick stated, "I realize that this impression is based solely upon therapeutic impressions and is not based

Employee: Linda Mantia

- 6 -

upon more comprehensive psychological or psycho-neurological assessments which would present more comprehensive data, impressions and prognosis for gainful employment.” *Transcript*, 363. Suffice to say we do not find particularly persuasive Dr. Jovick’s opinion regarding the nature and extent of disability employee suffered as a result of her psychiatric injuries. We note also that employee appears to have stopped working in February 2008, in part, because of complaints referable to claimed orthopedic injuries; in any event, the treating records from Dr. David Sciortino (the chiropractor who initially took employee off work) do not contain any mention of psychiatric issues.

Ultimately, in the absence of any persuasive expert medical or vocational opinion evidence that employee is incapable of competing for work in the open labor market either because of her psychiatric injuries considered alone or because of a combination of her psychiatric injuries with her preexisting conditions of ill-being, we find that employee is not permanently and totally disabled either by her psychiatric injuries considered alone or because of a combination of her psychiatric injuries with her preexisting conditions of ill-being. Similarly, owing to the absence of any persuasive expert medical opinion or any other evidence identifying or explaining any synergistic interaction between employee’s psychiatric injury and her preexisting conditions of ill-being, we find that employee’s psychiatric injury and preexisting conditions do not combine in such a way as to result in greater or enhanced disability beyond the simple sum of the conditions.

Notice

The parties dispute the issue of notice in this occupational disease claim, but have declined to favor us in their briefs or at oral argument with any suggestion of the date that a diagnostician first made a causal connection between employee’s claimed injury and some work-related activity or exposure. As a result, we were constrained to search the extensive medical treatment record for this evidence.

As we have noted above, employee’s first psychiatric diagnosis came from her primary care physician, Dr. Golding, on February 11, 2008. Dr. Golding diagnosed employee as having major depressive disorder, but did not provide any causation opinion in his treatment note for that date. Nor do we find any causation opinion in Dr. Golding’s other treatment notes or records.

Dr. Golding referred employee to Dr. Asif Habib, who diagnosed employee with bipolar disorder, but did not provide any causation opinion. We have carefully searched the remainder of Dr. Habib’s records (many of which contain illegible handwritten portions) and do not find any apparent causation opinion from Dr. Habib.

The transcript contains a number of handwritten therapy notes from Dr. Jovick between August 13, 2008, and August 28, 2010. Like the handwritten notes from Dr. Habib, we find these notes to be largely illegible, and after a careful review of what little we can decipher, we conclude that they do not contain any diagnosis or causation opinion. Instead, we find a typewritten correspondence dated September 7, 2010, wherein Dr. Jovick opined that employee suffered major depressive and posttraumatic stress disorders due to the cumulative stresses attendant upon her position with employer. As noted above, employer’s medical expert, Dr. Stillings, rendered his opinion of employee’s

Employee: Linda Mantia

- 7 -

work was the prevailing cause of her depressive disorder in a correspondence dated June 27, 2012.

The causation opinions from Drs. Jovick and Stillings dated September 7, 2010, and June 27, 2012, appear from this record to be the only instances wherein a diagnostician made a causal connection between employee's claimed injury and her work. Accordingly, we find that a diagnostician first made a causal connection between employee's claimed psychiatric injury and some work-related activity or exposure on September 7, 2010, the date of Dr. Jovick's opinion. Employee filed her claim for compensation with the Division of Workers' Compensation on October 29, 2008.

Conclusions of Law

Occupational disease arising out of and in the course of employment/medical causation
Section 287.067 RSMo provides, in relevant part, as follows:

1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.
2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

We have found persuasive the uncontested expert medical opinion from Dr. Stillings that employee's depressive disorder is prevailingly causally related to the conditions of her employment with employer. We conclude that employee's injuries had their origin in a risk connected to her employment, and flowed from that source as a rational consequence. We conclude employee's occupational exposure was the prevailing factor in causing both the resulting medical condition of a depressive disorder and an associated permanent partial disability of 50% of the body as a whole.

Mental injury arising out of and in the course of employment

Section 287.120.8 RSMo establishes specific criteria for when a mental injury resulting from work-related stress may be deemed to arise out of and in the course of the employment. Although the parties did not identify any issues under § 287.120.8 at the outset of the hearing before the administrative law judge, the parties do not now challenge the administrative law judge's considering this issue in her decision, and have fully briefed

Employee: Linda Mantia

- 8 -

and argued their positions with respect to the applicability of § 287.120.8. Accordingly, we are confident that the issue is properly before us.

Employer and the Second Injury Fund suggest that any application of § 287.120.8 must be controlled by a case law rule requiring that an employee “compare [his] 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.” *Schaffer v. Litton Interconnect Tech.*, 274 S.W.3d 597, 601 (Mo. App. 2009). This requirement was first identified in Missouri in the case of *Williams v. Depaul Health Ctr.*, 996 S.W.2d 619 (Mo. App. 1999), where the court relied, in part, on decisions from other states interpreting statutes that required such evidence. *Id.* at 628. We are not persuaded. In 2005, our legislature specifically rejected and abrogated all case law interpretations of the meaning or definition of the phrases “arising out of” and “in the course of employment.” § 287.020.10 RSMo. Our research reveals that each reported Missouri decision identifying and applying a similarly situated employee standard under § 287.120.8 involved an injury predating the effective date of the 2005 amendments to Chapter 287. Those decisions identified and applied the similarly situated employee standard in the context of interpreting a statutory provision which defines when a mental injury may be deemed to “arise out of and in the course of the employment.” § 287.120.8. It follows that each of those case law interpretations were rejected and abrogated by our legislature in 2005. Without passing on the question whether we agree with the application of the similarly situated employee standard advanced by employer and the Second Injury Fund in this case, we conclude that, in any event, *Williams* and its progeny are not controlling under the post-2005 version of Chapter 287.

Instead, we will apply the plain, ordinary meaning of the language of § 287.120.8, guided by the legislative mandate that we “shall construe the provisions of [Chapter 287] strictly.” § 287.800.1 RSMo.

[A] strict construction of a statute presumes nothing that is not expressed. The rule of strict construction does not mean that the statute shall be construed in a narrow or stingy manner, but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used. Moreover, a strict construction confines the operation of the statute to matters affirmatively pointed out by its terms, and to cases which fall fairly within its letter. The clear, plain, obvious, or natural import of the language should be used, and the statutes should not be applied to situations or parties not fairly or clearly within its provisions.

Allcorn v. Tap Enters., 277 S.W.3d 823, 828 (Mo. App. 2009)(citations omitted).

Section 287.120.8 RSMo provides, as follows:

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.

Employee: Linda Mantia

- 9 -

There is no contention that the stress employee experienced as a result of witnessing numerous scenes of bodily injury and death was unrelated to her work for employer; accordingly, we conclude that this stress was directly related to her work. We turn to the question whether the “actual events” identified by employee involved stress to such degree as to qualify as “extraordinary and unusual.” The statute requires that we use “objective standards” in answering that question.

Our dictionary defines the word “objective,” in part, as follows: “the use of facts without distortion by personal feelings or prejudices,” “perceptible to persons other than an affected individual,” and “of such nature that rational minds agree in holding it real or true or valid.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1556 (2002). Applying an objective standard consistent with this definition, we cannot conclude that the stress employee experienced was anything other than extraordinary and unusual when, in the course of her work for employer, she listened helplessly to the screams of a child as he burned to death, accidentally kicked an accident victim’s decapitated head, stepped on teeth scattered across an accident scene, breathed air filled with the scent of burning flesh, or observed the crushed skull of a coworker, to mention but a few of the many terrible events employee described in her testimony. We are confident that all rational minds will agree in holding such events and incidents of stress “real or true or valid.”

“In discerning the legislature's intent, we consider the statute in the context of the entire statutory scheme on the same subject to avoid unjust, unreasonable, or absurd results.” *Motor Control Specialities, Inc. v. Labor & Indus. Rels. Comm'n*, 323 S.W.3d 843, 850 (Mo. App. 2010)(citations omitted). Section 287.067, as we have noted above, requires an employee to show that an injury by occupational disease “had its origin in a risk connected with the employment and ... flowed from that source as a rational consequence.” Our conclusion that employee’s injuries had their origin in a risk connected to her employment is supported by the testimony from Dr. Stillings that highway workers often sustain psychiatric injuries derived from regularly witnessing violent and distressing events in the course of their work. Likewise, Dr. Stillings’s testimony about other highway workers supports a conclusion that employee’s injuries flowed from her work-related stress as a rational consequence.

Yet, employer and the Second Injury Fund point to Dr. Stillings’s testimony about other highway workers as evidence that, objectively speaking, employee was not exposed to extraordinary and unusual stress. In other words, employer and the Second Injury Fund argue that the same evidence that *satisfies* employee’s burden of proof under § 287.067 operates to *defeat* her claim under § 287.120.8. We are not persuaded, because to so hold would require us to ignore the context of the entire statutory scheme in which both § 287.067 and § 287.120.8 appear, and would involve our presuming a standard of proof that is not expressed by the clear, plain, obvious, or natural import of the words “objective standards and actual events,” thus violating the mandate of strict construction. Strictly construing § 287.120.8, we are convinced that Dr. Stillings’s testimony *supports* a conclusion that the stress employee experienced was, objectively speaking, extraordinary and unusual: the fact that other highway workers suffered similar injuries when exposed to the same stressors demonstrates that these are the type of stressors that are readily “perceptible to persons other than [employee]” and that

Employee: Linda Mantia

- 10 -

employee's injuries were not the product of "distortion by personal feelings or prejudices." See WEBSTER'S, *supra*.

It is obvious from the language of § 287.120.8 that the legislature intends that the subjective impressions of an employee are not controlling in claims for mental injury resulting from work-related stress. But this is not a case wherein an employee advances a purely personal perception of harsh treatment by a supervisor, or a wholly subjective belief that a workload is unfairly burdensome. This is an employee who regularly witnessed (and personally interacted with) horrific scenes of carnage, death, and human tragedy for over 20 years, and who, according to the only expert medical testimony on the topic, suffered a psychiatric injury as a result. It would be "unjust, unreasonable, or absurd" (not to mention supremely ironic) to interpret § 287.120.8 to deny compensation to this employee precisely *because* such stressors were, as Dr. Stillings put it, "part and parcel" of her work.

We conclude that the stress employee experienced was extraordinary and unusual for purposes of § 287.120.8, and that her mental injury arose out of and in the course of the employment.

Notice

Section 287.420 RSMo sets forth the requirements for the notice an employee must provide her employer regarding a work injury, and provides, in relevant part, as follows:

No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

Under the foregoing provision, the triggering event in the context of an injury by occupational disease is "diagnosis of the condition." The parties appear to have overlooked the relevant and controlling case law interpreting the meaning of this language:

Strictly construing Mo. Rev. Stat. § 287.420 (Cum. Supp. 2005), "the condition" is referring to the previously stated occupational disease or repetitive trauma. Therefore, the question then becomes, at what point is an occupational disease or repetitive trauma diagnosed? Looking to the plain, obvious, and natural import of the language, it follows that a person cannot be diagnosed with an occupational disease or repetitive trauma until a diagnostician makes a causal connection between the underlying medical condition and some work-related activity or exposure.

Allcorn v. Tap Enters., 277 S.W.3d 823, 829 (Mo. App. 2009).

Pursuant to *Allcorn*, the thirty-day notice period did not begin to run for this employee until a diagnostician made a causal connection between her injuries and some work-related activity or exposure. We have found that the date a diagnostician first made a causal connection between employee's psychiatric injury and some work-related activity

Employee: Linda Mantia

- 11 -

or exposure was September 7, 2010, when Dr. Jovick offered his opinion that employee suffered major depressive and posttraumatic stress disorders due to the cumulative stresses attendant upon her position with employer. We have also found that on October 29, 2008, employee filed a claim for compensation with the Division of Workers' Compensation, which amounts to a written notice meeting each of the requirements under § 287.420. "[T]he statute does not require that the notice be given after the diagnosis, but only that it be given *no later than* thirty days after the diagnosis of the condition." *Allcorn*, at 830 (emphasis in original). We conclude that employee provided timely notice to employer meeting each of the elements of the statute. We conclude that employee's claim is not barred by § 287.420.

Future medical care

Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove a reasonable probability that she has a need for future medical treatment that flows from the work injury. *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 51-4 (Mo. App. 2008). We have found that employee has a need for future medical treatment flowing from her psychiatric injuries by occupational disease. We conclude that employer is obligated to provide that future medical treatment that may reasonably be required to cure and relieve the effects of employee's psychiatric injury.

Employer's liability for permanent partial disability benefits

Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee's compensable work injury. We have found that employee suffered a 50% permanent partial disability of the body as a whole referable to her psychiatric injuries. At the stipulated benefit rate of \$389.04, we conclude that employer is liable for \$77,808.00 in permanent partial disability benefits.

Liability of the Second Injury Fund

Section 287.220.1 RSMo creates the Second Injury Fund and sets forth the criteria for an award of benefits for either permanent total or enhanced permanent partial disability. Owing to the dearth of persuasive evidence on the topic, we have found that employee is not permanently and totally disabled because of a combination of her primary psychiatric injuries with her preexisting conditions of ill-being, and that employee's primary psychiatric injury and preexisting conditions do not combine in such a way as to result in greater or enhanced disability beyond the simple sum of the conditions. We conclude, therefore, that the Second Injury Fund is not liable for any compensation.

Award

We reverse the award and decision of the administrative law judge. We conclude that employee suffered a compensable mental injury by occupational disease.

Employee is entitled to, and employer is hereby ordered to pay, \$77,808.00 in permanent partial disability benefits.

Employer is required to furnish future medical care to employee that may reasonably be required to cure and relieve the effects of employee's psychiatric injury.

Employee: Linda Mantia

- 12 -

The Second Injury Fund is not liable for any compensation.

This award is subject to a lien in favor of Jeffrey R. Swaney, Attorney at Law, in the amount of 25% for necessary legal services rendered.

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

The award and decision of Administrative Law Judge Suzette Carlisle, issued July 10, 2014, is attached solely for reference.

Given at Jefferson City, State of Missouri, this 28th day of April 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Linda Mantia

Injury No.: 08-096413

Dependents: N/A

Employer: MODOT

Additional Second Injury Fund (Denied)

Insurer: Self-Insured

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

Hearing Date: March 25, 2014

Checked by: SC

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 February 6, 2008
5. State location where accident occurred or occupational disease was contracted: St. 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? 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
10. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant asserted she sustained mental injury from viewing human tragedy on public highways.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Psychological, body as a whole
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A

16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Linda Mantia

Injury No.: 08-096413

- 17. Value necessary medical aid not furnished by employer/insurer? \$0
- 18. Employee's average weekly wages: \$892.38
- 19. Weekly compensation rate: \$594.92/\$389.04
- 20. Method wages computation: Stipulated

COMPENSATION PAYABLE

21. Amount of compensation payable:

22. Second Injury Fund liability: Denied

TOTAL:

NONE

23. Future requirements awarded: N/A

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Jeffrey Swaney

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Linda Mantia

Injury No.: 08-096413

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: MODOT

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Second Injury Fund (Denied)

Insurer: Self-Insured

Hearing Date: March 25, 2014

Checked by: SC

PRELIMINARIES

The parties appeared before the undersigned administrative law judge on March 25, 2014 at the request of Linda Mantia (“Claimant”) to determine the liability of MODOT (“Employer”) and the Second Injury Fund (“SIF”) for permanent partial disability (“PPD”) or permanent total disability (“PTD”) benefits. Claimant was represented by Attorney Jeffrey Swaney. Attorney Jeffrey Wright represented MODOT and Assistant Attorney General Jane Sportiello represented SIF. The court reporter was Stacy Waterkotte. The record closed on April 8, 2014.

At the hearing, Claimant submitted three claims for compensation, Injury Numbers 08-015329, 08-121761 and 08-096413. Separate awards were written but all three cases were discussed in all three awards as some of the evidence is the same for all the cases.

STIPULATIONS

The parties stipulated to the following:

1. That on or about February 6, 2008, Claimant was employed by the Employer, located in St. Louis County;
2. Employer and Claimant operated under the Missouri Workers’ Compensation Law¹;
3. Employer’s liability was fully self-insured;
4. The claim for compensation was timely filed;
5. Claimant’s average weekly wage was \$892.38 which resulted in a rate of \$594.92 for temporary total disability (“TTD”) and PTD benefits, and \$389.04 for permanent partial disability (“PPD”) benefits.

¹ All references are to the Revised Statutes of Missouri (2005) unless otherwise stated. All references in this award to the Employer also refer to the Insurer unless otherwise stated.

6. Employer paid no TTD or medical benefits.

ISSUES

1. Is Claimant's post-traumatic stress disorder ("PTSD") an occupational disease injury that arose out of and in the course of her employment?
2. Did Employer receive proper notice of an occupational disease injury?
3. Is Claimant's PTSD medically related to her work injury?
4. Is Employer liable for future medical treatment?
5. What is the nature and extent of Employer's liability for PPD or PTD benefits, if any?
6. What is the nature and extent of SIF liability for PPD or PTD benefits, if any?

EXHIBITS

Claimant's Exhibits A through F, Employer's Exhibits 1 through 9, and SIF's Exhibit I (Selected pages) were admitted into evidence over SIF's objections (See Award for Injury Number 08-015329). Any notations contained in the exhibits were present when the exhibits were admitted and were not placed there by the undersigned administrative law judge. Any objections contained in the exhibits or made during the hearing, but not ruled on in this award, are now overruled.

SUMMARY OF EVIDENCE

All evidence was reviewed but only evidence that supports this award is discussed below.

Background

1. Claimant worked for Employer for more than 20 years, where she last worked as an Urban Metro Maintenance Supervisor. In the early 1990s Claimant worked for Employer as a crew member, leader and assistant. Her last date of employment was February 7, 2008. Claimant worked 40 hours per week, with some overtime during winter months.
2. Claimant responded to accident scenes on highways, assisted the Highway Patrol with emergency situations and performed other duties as assigned. During Claimant's career, she witnessed an average of one fatal accident per week, and approximately 1,000 accident scenes. Outside of work, Claimant has witnessed at least four accident scenes and tries to avoid them because they make her physically ill. Claimant was aware of the job requirements when she accepted the position.
3. Claimant laid asphalt, shoveled rock and gravel, operated heavy equipment, drove a truck, used a jackhammer, and stood on her feet up to 7.5 hours per day. Prior to January

2008, Claimant had problems with her knees. To accommodate, Claimant testified she stood on grass or dirt to relieve pain when possible.²

4. Claimant was one of the first women that worked in the field. She became the first female supervisor hired in 1991.

Pre-existing conditions

5. In 1991, Claimant was diagnosed with right carpal tunnel syndrome and continues to wear a brace as needed to relieve wrist pain. No surgery was performed and the condition did not affect her work performance. Claimant did not receive treatment for her right wrist between 1991 and 2008. Claimant settled the case for 10% PPD of the right wrist.
6. In 1996, Claimant injured her neck. An MRI identified a bone spur at C4-5; Dr. David Raskas diagnosed a cervical strain, prescribed physical therapy, and rated 5% PPD of the cervical spine from a work injury.
7. Claimant was diagnosed with sleep apnea and uses a CPAP machine since 2003.
8. Claimant has asthma and coughs when she cannot breathe. She uses inhalers about once per month.
9. Medical records show Claimant received medical treatment in August 1989 for low back pain after a work injury. In 1990 Claimant reinjured her back while lifting a sign. The symptoms quickly resolved.³
10. In 2004, Claimant had two back injuries. In January 2004, she received medication after the first injury. Claimant settled the case for 7.5% PPD of the lumbar spine. After a second injury in September 2004, Dr. Doyle diagnosed degenerative lumbar disc disease at L3-4, L4-5 and L5-S1. Claimant received injections and therapy, but stopped injections early in her treatment due to improvement of her symptoms. Claimant settled the case for 7.5% PPD of the lumbar spine.
11. At the hearing, Claimant testified that prior to January 2008 she experienced low back pain and stiffness off and on with activity, but her low back was asymptomatic on January 29, 2008.⁴ Claimant has not received surgical intervention for her low back condition.
12. After the 2004 low back injuries, Claimant was not placed on permanent restrictions, did not need special accommodations, and her work performance was not affected. Claimant received no additional low back treatment from 2004 to 2008.

² During Claimant's deposition on November 21, 2013, Claimant testified she had no problems doing her job. At the hearing, Claimant explained asphalt and concrete hurt her knees but she did not have anything physical that prevented her from performing her duties.

³ According to Dr. Volarich's report in 2005.

⁴ During her deposition in March 2009, Claimant testified prior to January 2008 she had constant low back pain, varying with intensity, depending on activity, and she took Tylenol P.M. at night. On cross-examination, Claimant testified her pain from 2004 to 2008 seemed normal because everyone at work had back pain.

13. On January 29, 2008, Claimant testified she shoveled snow with a truck attached to a 15-foot plow. Claimant testified the plow was too large for the truck. Therefore, when the plow was in the up position it bounced when it hit snow, which caused the air-ride seat in the truck to bounce. The snow removal operation lasted for several days.⁵
14. Claimant sought medical treatment on her own for her low back from Dr. Sciortino, a chiropractor, and Dr. Golding, her primary care physician. Dr. Sciortino ordered an MRI, and Dr. Golding prescribed unsuccessful physical therapy, and referred her to Dr. Albana for one visit.
15. Claimant had no surgery or injections. She takes medication and uses a heating pad for her low back.
16. Each shift Claimant walked a minimum of 2 miles to inspect work; she sat at a desk up to one hour per day. Claimant used her knee to operate jackhammers and rock drills. Often her knee was inverted to operate machinery. Initially, she used ice to relieve her pain.
17. At the hearing, Claimant testified she injured her knees on February 1, 2008 when she stooped to examine a hydraulic cylinder, stood up, and felt a severe right knee pop.⁶ Claimant did not complete a report of injury, and filed a claim on May 28, 2009.⁷
18. Her knee pain is constant with swelling. Her right knee pops and she has fallen. She can no longer stoop and kneel.

Stress claim February 6, 2008

19. Claimant testified that the observance of car crashes was a mental stress related to her work. Other urban supervisors observed a similar number of traumas. Male workers acted like they were not bothered by death and dismemberment. They made jokes about it at accident scenes. Initially, Claimant was ill for a week.
20. Listed below are 14 examples of Claimant's work activities but it is not a complete list. Claimant observed up to four highway accidents per week. Some weeks no accidents occurred. Claimant testified the death of her parents, grandparents, and two favorite uncles did not affect her.⁸ Claimant testified she did not report depressive feelings to Employer because her symptoms were gradual and seemed normal.
21. In 1987, Claimant arrived at an accident scene and heard a young boy scream in the car as he burned to death.

⁵ Claimant testified she plowed snow from January 29, 2008 to February 1, 2008 which caused her back to hurt. On February 1, 2008 she could not stand the pain when sitting, standing or walking. She took the next two days off, and returned to work February 4, 2008 but pain continued. On February 6, 2008, Claimant took off work early to see Dr. Sciortino.

⁶ During cross-examination, Claimant was asked why she did not mention this mechanism of injury during her November 21, 2013 deposition, and Claimant replied she thought she mentioned it but does not remember being asked. The Claimant further testified she was initially injured before February 1st while using a jackhammer during night operations in 2007 and 2008. However, February 1st is when the right knee popped.

⁷ Claimant provided conflicting histories of bilateral knee injuries. See Award for Injury Number 08-121761.

⁸ Claimant testified she viewed her deceased loved ones as entities lying on the highway.

22. In 1989, Claimant responded to an accident scene and saw a deceased young man in a vehicle. The man was slumped over and appeared grayish-white in color, with half-closed eyelids.
23. In 1990, Claimant arrived at a single vehicle accident where the car rolled over the victim, and his head was decapitated. Claimant inadvertently kicked the victim's head which was lying on the ground.
24. In 1991, Claimant saw a woman jump off the Dougherty Ferry Bridge on Highway 270, hit the pavement and bounce. Claimant stopped traffic and called the highway patrol but "carried on."
25. In 1992, Claimant was called to a traffic scene on Highway 30, and found two mothers dead in the front seat of a vehicle, and two children were in the back seat with head bandages and blood spots where their eyes should have been.
26. In 1993, co-employee John Smith was killed by a drunk driver while working on a flashing arrow that needed repair. Claimant saw Mr. Smith once a week at office meetings.
27. In 1996, Superintendent Mr. Bill Weeda was killed when a truck backed over him. Claimant responded to the call to remove a traumatized driver out of the truck. Claimant observed Mr. Weeda lying on the ground badly injured after the accident.
28. While acting as area superintendent in 1997, Claimant responded to a fatality on Highway 55 and 255. The victim lost control of his car, and his body chopped off the top of three trees. While investigating the scene, Claimant tripped over his body.
29. In 1999, Claimant responded to a highway scene where the female victim hit the guardrail. Claimant observed the guardrail impaled the victim with her hands on the steering wheel and her eyes open.
30. In 2000, Claimant arrived alone at a car accident. The mother yelled for Claimant to get her daughter out of the car, but, the teenage girl was obviously dead.
31. In 2001, the driver of a dump truck lost control of the truck on Highway 141. Claimant responded and observed the victim's ejection and partial decapitation.
32. In 2003, a driver hit the back of the truck Claimant's crew rode in. Claimant responded to the scene and observed that half of the victim's head was missing.
33. In 2006, Claimant responded to an accident scene, where the victim's car was rear ended, and the car hit the Jersey wall, the car exploded and the driver was burned. Claimant smelled burning flesh and could not identify the gender of the victim.
34. In 2007, a delivery truck driver lost control of the truck, flipped a tractor-trailer, ejected the driver, and the truck rolled over him and killed him. While investigating the scene, Claimant walked on the victim's teeth.

35. To handle difficult situations, Claimant became indifferent. Initially, she became so sick she could not eat for a week. Claimant felt she had to prove she was as tough as her male co-employees. She knew something was wrong when she and colleagues made jokes at the accident scenes, and she became irritable. The changes were gradual.
36. Claimant did not seek psychiatric care after any of these incidents because she did not realize there was an issue. Claimant testified her co-employees have also witnessed numerous accidents over time. She did not report her symptoms to her employer because she thought her feelings were normal.
37. In 2008, Dr. Golding provided initial psychological treatment to Claimant and referred her to Dr. Habib. Claimant continued to retreat from people. She took medication for panic attacks (when she became sick to her stomach) and had nightmares. Dr. Habib referred Claimant to Dr. Jovick, a psychologist. Dr. Jovick treated Claimant from 2009 through 2012.
38. Claimant was appointed as trustee in Woodland Estates in Sullivan, Missouri, but she refused to respond to accident scenes. Once she responded to an accident scene and began to sweat, shake, had difficulty breathing, and became sick to her stomach. Now, she has panic attacks if she sees an accident that “takes her back,” and she no longer watches the news.
39. Claimant does not participate in most family functions, because she does not want to be around people. At least once a week, she goes to her room for up to three days. Claimant rarely goes out. One day, Claimant saw an accident and froze because she did not know what the condition of the victim would be in if she looked. Her husband pulled her out of the way which prevented Claimant from being injured.
40. Claimant continues to see Dr. Jovick, as needed. But if Claimant treats too often or too little it creates problems.
41. Claimant takes Xanax, Lexapro and Wellbutrin, which is prescribed by Dr. William Budd.
42. Claimant receives social security disability and retirement benefits.

Psychiatric treatment

43. Asif Habib, M.D., treated Claimant from May 2008 through August 2008 for symptoms of withdrawal and insomnia. Medical records reflect Claimant received psychiatric treatment before May 2008 on an outpatient basis, but no records are in evidence. Dr. Habib diagnosed the following:
 - Axis I – Bipolar disorder
 - Axis II – Deferred
 - Axis III – Asthma, backache
 - Axis IV – Chronic mental illness, medical problems
 - Axis V – GAF 55, last year 75

44. On August 13, 2008, Timothy Jovick, M.D., a clinical psychologist, initially treated Claimant, wrote a report, and testified on her behalf. Dr. Jovick also provided treatment in August and September 2008, 2009, 2010 and 2012. He did not review medical records from any doctors and relied on the history Claimant provided to him.
45. Based on a clinical examination, Dr. Jovick diagnosed the following medical conditions related to witnessing accidents, and loss of life, and loss of limb at work for more than 20 years:
 - Axis I - Major Depressive Disorder, Recurrent, without Psychotic Features, and Post-Traumatic Stress Disorder (“PTSD”)
 - Axis II – None
 - Axis III – Chronic back problems by history
 - Axis IV – Inability to perform job/job loss: family problems due to withdrawal, irritability, fearfulness
 - Axis V - Global Assessment of Functioning (GAF”) 35
45. Dr. Jovick opined Claimant’s traumatic responses were due in large part to the cumulative stresses she witnessed in connection with her job duties. Dr. Jovick testified the stressors included difficulty with administrative personnel, witnessing accidents, death, and loss of limbs, including people on her crew and motorists.
46. In 2008, Dr. Jovick completed a medical retirement form for Claimant, and stated she was not able to perform her duties as supervisor because of poor concentration, disorganization, chronic trauma, uncertainty, depression and lethargy, in addition to back pain.
47. Dr. Jovick describes Claimant’s major depressive disorder as a withdrawal from family and friends. Claimant stopped being sociable, which added to her depression.
48. Dr. Jovick testified PTSD is a condition caused by witnessing extreme events that affect a person psychologically. Reliving the events may trigger nightmares and may affect a person’s ability to function, and avoidance of areas where the incident occurred. Panic attacks may also occur.
49. Dr. Jovick opined Claimant is unable to work with a GAF of 35 and has severe social difficulties. At the time of the examination, he noted difficulty sitting or standing for more than a short time and difficulty with concentration. He observed Claimant to be “cynical, angry, depressed and socially withdrawn.”
50. Dr. Jovick recommended continued psychotherapy, and a comprehensive vocational rehabilitation assessment, as he did not believe Claimant could return to her previous work as a supervisor.
51. Dr. Jovick did not perform any objective tests, and relied on medical opinions about Claimant’s back and leg issues.

52. Dr. Jovick recommended a neuropsychological evaluation and independent psychological evaluation if needed.

Expert Psychiatric Testimony

53. Wayne Stillings, M.D., is a board certified psychiatrist who examined Claimant on June 27, 2012, wrote a report, and testified at the request of Employer’s attorney. In addition to clinical examination, Dr. Stillings examined medical records and performed psychological testing.
54. Dr. Stillings administered the tests below and obtained the following results:
- a) Psychometric assessment- The results could not be interpreted because Claimant exaggerated her subjective complaints.
 - b) The MCMI-III suggested major depression.
 - c) The Structured Inventory of Malingered Symptomatology (“SIMS”) revealed Claimant over reported her neurologic, depressive, psychotic, memory dysfunction and low intelligence, which supported MMPI-2 results. The SIMS test results support the MMPI-2 results that Claimant over reported symptoms. Therefore, Dr. Stillings testified the MMPI-2 results are not valid due to exaggeration.
 - d) The Validity Indicator Profile (“VIP”) results showed Claimant did not make a valid effort on verbal and nonverbal questions.
55. Dr. Stillings diagnosed the following psychiatric conditions:
- a) Axis I – Depressive disorder, NOS,
 - b) Axis II – Personality disorder, not otherwise specified with depressive somatoform, schizoid, passive-aggressive, borderline, sadistic personality traits, elements of exaggeration preexisting.⁹
 - c) Axis III – Medical diagnoses
 - d) Axis IV – Litigation
 - e) Axis V – GAF - 75
56. Dr. Stillings testified a GAF of 75 shows Claimant is functioning at an adequate level with mild depression. Dr. Stillings concluded Claimant could work without psychiatric restrictions.
57. For the work injury, Dr. Stillings diagnosed a depressive disorder, and agreed with Dr. Jovick’s opinion that the condition arose out of cumulative stressors from Claimant’s employment. He rated 2.5% permanent partial psychiatric disability (“PPPD”) of the

⁹ Dr. Stillings defined “depressive disorder” as a depressed mood, with symptoms like insomnia and loss of interest.

body for this condition. Dr. Stillings did not recommend additional treatment for the work injury.

58. Dr. Stillings attributed Claimant's disability to witnessing multiple dead and dismembered bodies, anger because she believed her supervisor did not act appropriately and was not disciplined for the death of motorists and co-employees, and her involvement in a stressful political struggle with Employer.
59. Dr. Stillings concluded it was not unusual or extraordinary for highway workers to witness human tragedy on highways. Dr. Stillings testified he has treated many workers from MODOT, Illinois Department of Transportation "IDOT"), and private companies that work highway scenes and struggle over the years with the accumulating scenes they witness. People react differently to these experiences. Unfortunately it is "part and parcel to their job," according to Dr. Stillings.
60. For preexisting disabilities, Dr. Stillings diagnosed personality disorder and rated 2.5% PPD of the body.
60. Dr. Stillings testified Claimant had achieved maximum medical improvement and did not recommend additional psychiatric treatment.

FINDINGS OF FACT and RULINGS OF LAW

After careful consideration of the entire record, Claimant's demeanor during the hearing, competent and substantial evidence presented at the hearing, and the applicable law of the State of Missouri, I make the following findings:

Claimant did not sustain an occupational disease injury that arose out of and in the course of employment

Claimant asserts she developed the occupational disease, PTSD, as a result of her work activities. Employer contends notice is not proper and Claimant failed to show she sustained mental injury pursuant to Section 287.120.8. Section 287.808 states that in asserting a claim or defense based on a factual proposition, the party asserting the claim or defense must establish the proposition is more likely to be true than not true.

Section 287.067.1. defines the term "**occupational disease**" as:

1. An identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The “**prevailing factor**” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Section 287.120.8, states that 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. When conflicting evidence is presented, the fact finder is free to believe or disbelieve any evidence, and the fact finder’s factual determinations control. *ABB Power T & D Co. v. Kempker*, 236 S.W.3d 43, 49 (Mo.App. 2007).

Claimant bears the burden of proving that the alleged mental injury was caused by stress that was work-related and that the work-related stress was extraordinary and unusual. *Schaffer v. Litton Interconnect Technology*, 274 S.W.3d 597, 601 (Mo.App. 2009) (Citations omitted). Further, Section 287.120.8 states the work-related stress shall be measured by objective standards and actual events. In accordance with this objective standard, a claimant “must compare [the] 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.* (Citations omitted). Therefore, “without presenting evidence of similarly situated employee's a claimant is unable to meet the statutory burden set forth in § 287.120.8. *Id.*

In this case, Dr. Jovick diagnosed major depressive disorder, recurrent, and PTSD, based on Claimant witnessing loss of life and limb, and death of co-employees at accident scenes. Dr. Stillings diagnosed a depressive mood disorder based on the opinions of Claimant, Dr. Golding, Dr. Habib (diagnosed mood disorder), Dr. Jovick’s depressive disorder diagnosis, and the MCMI-III which suggested major depression. Both doctors concluded Claimant’s cumulative exposure to work stresses caused the conditions.

However, the question in mental/mental cases such as this is whether the work related stress is extraordinary and unusual based upon objective standards and actual events as required by Section 287.120.8. Here, Claimant testified other MODOT supervisors in urban areas witnessed the same type of accident scenes that she witnessed.

I find Dr. Stillings’ opinion more persuasive that Claimant’s work-related stress is not extraordinary and unusual. Dr. Stillings provided a forensic examination, which considered reasonable objective measures, as required by statute, in addition to Claimant’s history. Dr. Stillings testified he has examined highway workers for years that were employed by Employer, IDOT, and private companies who, like Claimant, have viewed dead bodies related to highway accidents. These workers struggle with seeing human tragedy on the highways which builds up over years, and people react differently. Dr. Stillings testified it is not unusual or extraordinary for highway workers to see human tragedy. It is just “part and parcel to their job.”

In contrast, Dr. Jovick offered no opinion about whether Claimant’s mental condition was extraordinary or unusual; he did not discuss similarly situated employees, did not perform

objective tests, and based his causation opinion solely on Claimant's history. Dr. Jovick testified his causation opinion was based upon "therapeutic impressions" and he recommended independent psychological and neuropsychological evaluations for a more comprehensive assessment.

Claimant proved that her work was very stressful. However, based upon persuasive testimony by Dr. Stillings, and less than persuasive testimony by Dr. Jovick, I find Claimant did not meet her burden to prove she was exposed to extraordinary and unusual work stress compared to other highway workers and supervisors for Employer or other similarly situated employees.

Having found Claimant did not sustain a mental stress injury that arose out of and in the course of employment, all other issues are moot.

CONCLUSION

Claimant did not sustain a work-related stress injury that arose out of and in the course of her employment and was extraordinary and unusual. The Second Injury Fund Case is denied.

Made by: _____

Suzette Carlisle
Administrative Law Judge
Division of Workers' Compensation