

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

Injury No. 99-182337

Employee: Stephen Marino  
Employer: Greystone Partners, Inc. (Settled)  
Insurer: Lumbermens Mutual Casualty Company (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

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

**Discussion**

*Alleged mental injury resulting from an identifiable traumatic event*

While we ultimately agree with the result reached by the administrative law judge in this case, we write to provide the following caveats and clarifications. Employee claims he suffered a mental injury resulting from a specific traumatic event occurring on December 18, 1998, when, in the course of his duties as a property manager for employer, employee intervened while a group of assailants were brutally attacking a security guard on employer's premises. The administrative law judge denied the claim, in part, on a conclusion that the work-related stressors involved in that incident were not "extraordinary and unusual" for purposes of § 287.120.8 RSMo. The administrative law judge reasoned that performing property management work in bad neighborhoods was highly stressful in general.

Assuming for the sake of argument that it was necessary for employee to satisfy the requirements of § 287.120.8, we disagree that the incident described by employee was not "extraordinary and unusual." To the contrary, the potentially life-threatening events of December 18, 1998, as described by the witnesses, certainly appear by any objective measure to have involved stress that was extraordinary (and, therefore, by definition, unusual). We do not believe it necessary to demonstrate that these events were entirely unprecedented or unique in order to sustain the burden of proof of compensability under § 287.120.8. To the extent the award of the administrative law judge may be construed to hold otherwise, we disagree and disavow such finding or analysis.

In any event, we conclude that because employee claims a mental injury resulting from a specific traumatic event—as opposed to generalized workplace stress over a period of time—the "extraordinary and unusual" requirement under § 287.120.8 is not applicable. See *E.W. v. Kan. City Sch. Dist.*, 89 S.W.3d 527 (Mo. App. 2002), wherein the court made clear that § 287.120.8 is only applicable to claims wherein the employee alleges "that their working conditions over a period of time caused them to suffer stress." *Id.* at

Employee: Stephen Marino

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535. The *E.W.* court reasoned that “[t]he need to distinguish extraordinary mental stress from ordinary day-to-day stress is not applicable to a mental injury arising from a traumatic event, so it is understandable why the legislature did not require proof of extraordinary and unusual stress for compensation of a claim for mental injury resulting from a traumatic incident.” *Id.* at 536.

Instead, the appropriate question in this case is whether employee proved that he suffered a compensable injury by accident for purposes of § 287.120.1 RSMo. *Jones v. Washington Univ.*, 199 S.W.3d 793 (Mo. App. 2006). Because the parties disputed the issues of accident, medical causation, and injury arising out of and in the course of employment, it was necessary for employee to satisfy his burden of proof with respect to each of these issues in order to prove that his mental injury by accident was compensable under § 287.120.1.

In that regard, we note that employee’s case turns, to a large degree, on whether his evidence is deemed credible and persuasive. This includes the expert medical opinion evidence employee advanced in support of his claim, as well as employee’s own testimony regarding the (alleged) effect that the incident of December 18, 1998, had upon him. The administrative law judge rendered extensive, thorough, and thoughtful findings with regard to the credibility and weight he gave to all of this evidence. After careful consideration, we are not persuaded to disturb these findings from the administrative law judge.

Accordingly, and because the administrative law judge determined that employee’s evidence is not persuasive with respect to the issue of medical causation, we conclude that employee’s work was not a substantial factor causing employee to suffer any resulting medical condition or disability. For this reason, the claim is denied, and all other issues are moot.

### **Decision**

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

The award and decision of Administrative Law Judge John K. Ottenad, issued May 13, 2014, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 17<sup>th</sup> day of March 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

# AWARD

Employee: Stephen Marino

Injury No.: 99-182337

Dependents: N/A

Employer: Greystone Partners, Inc. (Settled)

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

Additional Party: Second Injury Fund

Insurer: Lumbermens Mutual Casualty Company  
C/O Broadspire Services, Inc. (Settled)

Hearing Date: February 8, 2013  
Record Closed on March 10, 2013

Checked by: JKO

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: (allegedly) December 18, 1998
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
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was a property manager for Employer and allegedly became unable to work anymore as a result of an altercation he witnessed on the property he managed.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: (allegedly) Body as a Whole—Psychiatric (Mental injury)
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: Stephen Marino

Injury No.: 99-182337

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: Sufficient to result in the applicable rates of compensation
- 19. Weekly compensation rate: \$562.67 for TTD/\$294.73 for PPD
- 20. Method wages computation: By agreement (stipulation) of the parties

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Employer/Insurer previously settled its risk of liability

22. Second Injury Fund liability:

Claim denied \$0.00

**TOTAL: \$0.00**

23. Future requirements awarded: None

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

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

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

|                   |   |                                    |
|-------------------|---|------------------------------------|
| Employee:         | Stephen Marino                          | Injury No.: 99-182337              |
| Dependents:       | N/A                                     | Before the                         |
| Employer:         | Greystone Partners, Inc. (Settled)      | <b>Division of Workers'</b>        |
| Additional Party: | Second Injury Fund                      | <b>Compensation</b>                |
| Insurer:          | Lumbermens Mutual Casualty Company      | Department of Labor and Industrial |
|                   | C/O Broadspire Services, Inc. (Settled) | Relations of Missouri              |
|                   |   | Jefferson City, Missouri           |
|                   |   | Checked by: JKO                    |

On February 8, 2013, the employee, Stephen Marino (Claimant), appeared in person and by his attorney, Ms. Ellen E. Morgan, for a hearing for a final award on his claim against the Second Injury Fund. The employer, Greystone Partners, Inc. (Employer), and its insurer, Lumbermens Mutual Casualty Company C/O Broadspire Services, Inc., were not present or represented at the hearing since they had previously settled their risk of liability in this case. The Second Injury Fund was represented at the hearing by Assistant Attorney General Michael Finneran.

To allow the parties time to prepare and file their proposed awards or briefs in this matter, if they chose to do so, the record did not technically close until March 10, 2013. Although we did not go back on the record or take any further evidence in this matter after the initial hearing date, the record was, then, closed on that date and the briefs were submitted by the parties by that date.

At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

**STIPULATIONS:**

- 1) On or about December 18, 1998<sup>1</sup>, Claimant allegedly sustained an accidental injury and/or occupational disease.
- 2) Claimant was an employee of Greystone Partners, Inc. (Employer).
- 3) Venue is proper in the City of St. Louis.
- 4) Employer received proper notice.

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<sup>1</sup> When Claimant filed his Claim for Compensation in this matter, he alleged a date of injury of February 28, 1999. Based on that alleged date of injury, the Division assigned an Injury Number beginning with "99." At the time of hearing, based presumably on the evidence that they anticipated being offered into the record, the parties stipulated to a new alleged date of injury of December 18, 1998, while still keeping the original "99" Injury Number previously assigned by the Division.

- 5) The Claim was filed within the time prescribed by law.
- 6) At the relevant time, Claimant earned an average weekly wage sufficient to result in applicable rates of compensation of \$562.67 for total disability benefits and \$294.73 for permanent partial disability (PPD) benefits.
- 7) Employer has not paid any temporary total disability (TTD) benefits in this case.
- 8) Employer has not paid any medical benefits in this case.

**ISSUES:**

- 1) Did Claimant sustain an accident and/or occupational disease?
- 2) Did the accident and/or occupational disease arise out of and in the course of Claimant's employment for Employer?
- 3) Are Claimant's injuries and continuing complaints medically causally connected to his alleged accident and/or occupational disease at work on or about December 18, 1998?
- 4) What is the nature and extent, if any, of Claimant's permanent partial and/or permanent total disability attributable to this injury?
- 5) What is the liability, if any, of the Second Injury Fund?

**EXHIBITS:**

The following exhibits were admitted into evidence:

***Employee Exhibits:***

- A) Deposition of Dr. Adam Sky, with attachments, dated May 13, 2011
- B) Deposition of Dr. Reuben Schnayer, with attachments, dated June 1, 2011
- C) Deposition of Dr. Jeffrey Magrowski, with attachments, dated June 28, 2011
- D) Records of the Missouri Division of Workers' Compensation for Injury Numbers 91-187447 (Date of Injury of March 11, 1991) and 99-182337 (Date of Injury of February 28, 1999)
- E) Certified medical treatment records of Allied Behavioral Consultants, Inc.
- F) Certified medical treatment records of Psych Care Consultants
- G) Certified medical treatment records of Christian Hospital Northeast-Northwest
- H) Medical treatment records of South Pointe Hospital
- I) Certified medical treatment records of South Pointe Hospital
- J) Medical report of Dr. George Dowell dated February 6, 2006
- K) Records of the U.S. Department of Justice, Federal Bureau of Prisons

- L) *Withdrawn by Employee*
- M) *Withdrawn by Employee*
- N) Medical report of Dr. Suren Chaganti dated April 27, 2003
- O) Medical treatment records from the U.S. Department of Justice, Federal Bureau of Prisons, U.S. Medical Center for Federal Prisoners
- P) Stipulation for Compromise Settlement in Injury Number 99-182337 (Date of Injury of February 28, 1999) between Claimant and Employer
- Q) Certified records of the Missouri Division of Employment Security
- R) Correspondence from the Social Security Office of the Inspector General to Claimant dated December 16, 2005

***Second Injury Fund Exhibits:***

- I. Deposition of Dr. Jennifer Brockman, with attachments, dated August 1, 2011
- II. *Withdrawn by the Second Injury Fund*
- III. Certified medical report of Dr. Stephen Peterson/Logan & Peterson, P.C.
- IV. Claimant's employment records from Greystone Partners, Inc. (Employer)
- V. Stipulation for Compromise Settlement in Injury Number 91-187447 (Date of Injury of March 11, 1991) between Claimant and employer

**Notes:** 1) *Unless otherwise specifically noted below, any objections contained in these Exhibits are overruled and the testimony fully admitted into evidence.*

2) *Some of the records submitted at hearing contain handwritten remarks or other marks on the Exhibits. All of these marks were on these records at the time they were admitted into evidence and no other marks have been added since their admission on February 8, 2013.*

**FINDINGS OF FACT:**

Based on a comprehensive review of the evidence, including Claimant's testimony, the expert medical opinions and depositions, the vocational expert opinion and deposition, the medical records, the other business records, and the testimony of the other witness, as well as based on my personal observations of Claimant and the other witness at hearing, I find:

- 1) **Claimant** is a 57-year-old, currently unemployed individual, who worked for Greystone Partners, Inc. (Employer) as a property manager from August 1998 until February 28, 1999. His employment ended on that date because Employer was no longer managing the property to which he was assigned and the new property management firm did not retain him as the property manager.
- 2) Claimant is still married to his wife, Rosita, who now lives outside Palermo, Italy, since she was deported by the federal government in November 2005, after pleading guilty to drug charges (selling Xanax). He said that he originally met her when he went to Sicily at age 28 to find a wife, since he could not find what he was looking for

in American women. He has two children, Vincenzo, who is age 28, and Daniela, who is age 25, and who herself has a 4-year-old son.

- 3) Claimant currently lives on a mattress on his mother's living room floor because he has no income. He said that he originally received Social Security disability from 1992-1994, but went back to work in 1994 because he had to take care of his wife and children. He again received Social Security disability from February 28, 1999 until December 2004, when it was again stopped for reasons discussed in more detail below. He denied having any employment since 1999, except trying to play the trumpet to make money and illegally selling drugs, which the federal government deemed gainful employment, as described below. He denied having any income at the current time.
- 4) Claimant testified that his father was physically and emotionally abusive as he was growing up. He said that his father drank and beat him and his brother. Claimant testified that he got into a lot of fights while growing up. He justified it as him being a "blue collar kid growing up in a blue collar neighborhood." He said that it was easy for people to make him upset and angry. He noted that sometimes, he just had to get out of the environment to calm down.
- 5) Claimant testified that he graduated from Bishop Duborg High School in St. Louis and attended Southern Illinois University Edwardsville, where he graduated with a degree in Fine Arts & Communications and a minor in Business Administration. He said that he was able to attend that college because he received a scholarship for playing the trumpet.
- 6) Claimant testified that from 1972 until 1992, he had an excellent band, in which he played the trumpet, but no one was hiring bands anymore, so it disbanded. He said that playing the trumpet was a hobby for him. He noted that he would get tips when he sits in with a band on Tuesday and Wednesday nights, but he said that he had no paying performances and he could not make money just playing the trumpet.
- 7) Claimant testified that he was a power lifter and bodybuilder during most of his life. He admitted to using steroids while participating in these activities. He said that it was common in the competition circuit and it was the normal custom and practice for anybody that wanted to win.
- 8) Claimant testified that he had a real estate brokers' license from 1985 until 2004 or 2005. However, he did not renew it at that time and so it is no longer valid. Despite having the license, he testified that he never really worked as a real estate agent and he only used the license for buying his own house and his brother's house. He said that he obtained the license so that he could go into property management, which is a more secure income because of essentially working for a corporation. Claimant testified that his career has been in property management and turning struggling properties around.

- 9) In terms of describing his skills, Claimant said that he “is not a people person.” He noted a number of times during the trial that his specialty is “squeezing” people. He admitted that he is not a salesman. He said that others can make the sale, but if you need someone to “collect,” then he is your guy. He knows how to “squeeze people.” He said that he likes to be in control and keeps a tight rein on everything wherever he is at the time.
- 10) Claimant testified that his first job in property management was working for a property owner, Bob Piles, who owned numerous places in South St. Louis. He said that he managed the properties for Mr. Piles in the mid 1980s. Claimant said that he left that job because Mr. Piles was a rigid individual who did not understand what needed to be done to collect money from people. In that respect, Claimant told a story of how he held a .38 caliber gun behind the door one time when he was dealing with an irate resident with whom he had some problems. He explained, “This guy comes to my door and he wants to talk to me. Little does he know I’m behind the door with my gun like this. I got my .38, and if you open that fucking door I’ll kill you, it’s that simple. I can’t deal with anybody.” Claimant got very agitated and demonstrative while telling this story, but there was almost a sense of pride and joy in his tone that he had a gun behind the door and would not be afraid to brandish it and/or use it, to put the resident in his place and keep control of the situation.
- 11) He also went into business with the owner of REK windows, doors and siding. He said they were partners. Based on his description, he managed the various properties that REK owned and sunk a lot of his personal money into properties that were part of the business as well. At some point, the owner of REK, who was also Claimant’s business partner, committed suicide. Following the suicide, Claimant said that all of the businesses and all of the properties went downhill. Claimant testified that he lost all of his property and even lost his new house. Boatmen’s Bank told him that he was responsible to them for a \$640,000.00 loan that had been taken out for the properties.
- 12) He next worked for Mills Properties in Kinloch from 1991-1992. He agreed with the description of this job as managing “problem properties.” He said they were low income housing, with drugs and other criminal elements pervasive on the properties. Claimant noted that the Kinloch property was the worst property he had ever managed.
- 13) He said that it was important to him to be able to provide for his wife and children and he realized at that point that he could not do it, so he got a gun. Claimant testified that subsequently he received outpatient treatment for three weeks at St. Anthony’s Hyland Center and he was hospitalized for ten days at Christian Hospital Northeast-Northwest in the psychiatric intensive care unit, where they kept him really medicated. Claimant denied having any psychiatric diagnoses prior to 1991.
- 14) The records of the **Missouri Division of Workers’ Compensation** (Exhibit D) confirm that Claimant filed a Claim for Compensation (Injury Number 91-187447) with a date of injury of March 11, 1991 against Mills Properties for psychological disability. Claimant alleged that following the suicide of his former employer, he lost

his job and assets and became despondent, and although Mills knew those facts, they hired Claimant and put him in a stressful environment, resulting in his emotional collapse in March 1991. Claimant alleged in the claim that the on-the-job stressors included repeated insults from tenants, long hours, interruption of his personal life at all hours, harassment, heavy workload assignments, threatening and carrying out evictions and his eventual discharge by Mills.

- 15) Claimant testified that in connection with the 1991 episode, he felt like killing someone or killing himself. In fact, he admitted at trial that he gets the urge to kill people, but he has never done it.
- 16) Medical treatment records from **Christian Hospital Northeast-Northwest** (Exhibit G) document Claimant's admission to that facility from June 17, 1991 through June 21, 1991 for diagnoses of major depression and an underlying personality disorder. The notes from **Dr. Safwat Wahba** contain a history of Claimant sustaining severe financial losses over the prior several months, having family issues with his father and wife and being fired from his job because they did not like his attitude. During his admission, he expressed resentment toward everyone who destroyed him financially, thoughts of hurting others, lots of anger and feeling overwhelmed and stressed out. He was noted to have been arrested for third-degree assault after he had a fight with the loan broker at Boatmen's Bank. He was treated with antidepressant medications and therapy through a PACE program, that he was supposed to continue to attend on an outpatient basis, after he was discharged from the hospital. The notes indicate his last visit, even for the outpatient program was on July 5, 1991.
- 17) A medical report from **Dr. Safwat Wahba** at **Psychiatric Coverage, Ltd.** (Exhibit D) to the Social Security Office dated July 31, 1991 details the psychiatric issues and treatment Claimant had up to that point. The report documents Claimant's severe business losses following his boss's suicide in 1990, his subsequent hiring by Mills Properties on January 2, 1991 and his termination from that job on March 11, 1991. It was noted that, "He was unable to handle the combination of the previous stresses and job related pressures." Dr. Wahba notes that Claimant had his life set up (including his family life) to be in total control and have total responsibility, but finds himself totally out of control, unable to meet responsibilities and without an acceptable avenue to express his depression and aggression. Dr. Wahba opined that Claimant was emotionally disabled at that time and in need of treatment. It was his hope that with some relief of his stress of providing food and shelter for himself and his family, that he could get treatment and once again become a productive member of society. Claimant continued to see Dr. Wahba periodically through February 9, 1998. Notes from 1993 reference jail time in relation to abusing his wife and that his condition decompensates when he is under stress. In February 1994, Claimant reported that he had a job managing 325 apartment units and he "is doing well." According to the notes, throughout the few years that followed, he was characterized as "doing well" and "stable" with regard to his treatment for his psychiatric issues. As of January 16, 1996, Claimant's treatment was transferred to **Dr. Poyanil Mathew**, who saw Claimant four times as of March 30, 1998. He opined that Claimant "suffered a

depressive episode in 1991 that rendered him incapacitated to carry out his duties as resident manager.”

- 18) Regarding the references to his abusing his wife in the 1991 psychiatric records, Claimant testified that he never struck his wife. However, he admitted that he did throw his wife over the hood of her car because it broke down and he had to go get her when he told her not to drive the car in the first place. In that respect, it was almost as if he was suggesting that she had it coming, since she did not listen to him and took the car against his advice to the contrary. He denied having any anger issues with his wife before 1991 and said he was just dealing with “typical woman crap, you know how they are.”
- 19) Claimant also described that during this time he attacked and beat a loan officer who refused to give him a loan. He said that he entered the loan officer’s office, locked the door, and told him to loan him the money or he would break his face. Claimant said that he “beat his brains” and almost bit off the loan officer’s nose. Then, he trashed the office before he left. He said that he could have killed the loan officer that day and that he made the loan officer “look like a woman.” Claimant acknowledged that the steroids he took exacerbated his anger issues.
- 20) Claimant also acknowledged that he beat up his father at some point, but he said that they had mended fences before his father died.
- 21) Claimant and employer resolved their portion of this March 11, 1991 case (Injury Number 91-187447) by **Stipulation for Compromise Settlement** (Exhibits D and SIF V) for the payment of \$15,000.00, as a compromise of all disputes in the case. This Stipulation for Compromise Settlement was approved by Administrative Law Judge Edwin J. Kohner on July 16, 1998.
- 22) Despite receiving Social Security disability, Claimant testified that in January 1994 he went back to work because he had to take care of his wife and kids. He said that he was not going to flip hamburgers and admitted that it paid well for him to work as an apartment manager in bad neighborhoods, so he went back to working the same kind of job that he had prior to his depressive episode.
- 23) He worked for approximately four years at Parque Carondelet Apartments, but quit when he said they went back on a deal to increase his income and because he had no benefits there. He worked for approximately six months at Murphy Blair, but was fired because of “squeezing people.” Finally, he went to work managing the Boaz Apartments in Kinloch in December 1997, which was eventually taken over by Employer in August 1998, making him an employee of Employer.
- 24) Claimant testified that when he managed the Boaz Apartments, he had to deal with drug dealers, turf shootings and prostitution. He said that he erected a wrought-iron fence around the property, but they would pry the bars apart and still get in the property. He noted that he would have to threaten the parents to get their children under control or he would have them evicted.

- 25) Claimant testified that in December 1998, he was sitting back in his office (situated behind the outer office and outer door), when maintenance workers started running through the outer office door saying that they needed to come in and then lock the door. They reported that the security guard was getting beaten up by some intruders.
- 26) Claimant said that he kept his gun in his top drawer in the office. He noted that he usually carried it in his briefcase, but when he was in the office, he placed it in the top drawer. With the security guard getting beaten up outside, he took the gun out of the drawer, opened the door and pointed the gun at the group that was attacking the guard. At that point, the group backed up, ran to their car, got in and drove away. He admitted that he never saw a gun and no shots were fired. The apartment complex workers dragged the guard into the office and called the police and ambulance. Claimant said that he came back into the office, sat down and realized, "These people have no respect for their own people." He said that he thought he was going to be next and he was going to die. He explained that he never felt like he was going to die except at Boaz, because he was always confident and hard to intimidate. He said that in the past he felt like others could try to get him but they would lose. In this encounter, he said that he realized they might have had the security guard's gun and they could have shot him. He said that he was so scared that he shook and realized it was not worth it anymore. He determined that he was not going to do this job anymore and that the money was not worth it.
- 27) Claimant testified that following this incident he did not feel comfortable or safe to stay there. He said that he did not feel like he could work anymore in the ghetto, even though he had worked in ghettos before.
- 28) On December 21, 1998, Claimant submitted a **handwritten note** (Exhibit Q) to his supervisor asking them to look for another manager for the property. He referenced the beating of the security guard, that the place was not safe and that he did not feel comfortable there. He said that he spoke extensively with his family and they collectively decided that it was in his best physical and mental interests to find "a less stressful position somewhere other than the ghetto." However, he did agree to stay in the position so as not to disrupt business with upcoming court proceedings (evictions) with tenants at the property and to break in the new person.
- 29) Despite the letter, Claimant stayed in the position at the same property until February 28, 1999, when a new management company took over the property and decided not to extend the manager position to Claimant. Claimant testified that he never went back to work after February 28, 1999. He said that he interviewed for a year to a year and a half, but he just couldn't do it.
- 30) After Claimant was let go by the new management company as they were taking over the Boaz Apartments, he filed a **claim for unemployment compensation** (Exhibit Q). He indicated that he believed he was entitled to unemployment compensation because he was laid off by Employer. In his application, Claimant wrote that he asked the new company for the manager's job at Boaz, "but they said they had a manager."

In the very next sentence, however, he indicates the place was dangerous and he was looking for a new job anyway. Claimant apparently received unemployment compensation benefits from March 1999 until mid August 1999, when he started indicating “no” to the questions about being able to work and being available for work. His benefits terminated at that point.

- 31) Medical treatment records from **Psych Care Consultants** (Exhibit F) document treatment Claimant received at that office for his psychiatric issues from November 30, 1999 until April 18, 2000. Although the handwritten notes are very difficult to decipher, there are a number of references to Claimant’s inability to hold a job and to him being irritable and angry. He was diagnosed with major depressive disorder, anxiety and possibly bipolar affective disorder, for which he was treated with medications. I found no reference in these treatment records to Claimant’s experiences while working for Employer, nor the specific event that occurred on December 18, 1998.
- 32) Medical treatment records from **South Pointe Hospital** (Exhibit H) document a visit to that facility on April 24/25, 2000 for depression. He complained of issues related to his father dying in July 1999 and having to take care of his mother, losing his job, financial problems and physical problems. He was seeking an admission to receive some psychiatric treatment. He was, then, admitted to that facility from May 1, 2000 through May 11, 2000 for further psychiatric treatment. The admission notes indicate that he was being admitted for multiple concerns: The death of his father last year; helping his mother; being unemployed for 14 months; sciatic pain; and feelings of helplessness and hopelessness. Claimant was diagnosed with major depression and treated with medications and group therapy. Following his discharge, he was instructed to continue to see Dr. Chaganti for further treatment for his psychiatric issues. I found absolutely no reference in these treatment records to Claimant’s experiences while working for Employer, nor the specific event that occurred on December 18, 1998, having any impact on his current psychological issues.
- 33) Additional medical treatment records from **South Pointe Hospital** (Exhibit I) document Claimant’s continued outpatient psychiatric treatment he received from May 17, 2000 through December 6, 2000. Claimant was diagnosed with agitated major depression, recurrent, and generalized anxiety, for which he received periodic office visits and medications. He seemed to be doing better at certain points with reports that his anger had subsided and he was much calmer, but, then, there were other references to continued stress and depression, his inability to hold a job and the negative effect the medications have had on his sex drive. Again, I found no reference in these treatment records to Claimant’s experiences while working for Employer, nor the specific event that occurred on December 18, 1998.
- 34) Claimant filed a **Claim for Compensation** (Exhibit D) on August 7, 2001, alleging injury to his brain and whole body with a date of injury of February 28, 1999, which was assigned Injury Number 99-182337 by the Missouri Division of Workers’ Compensation. Claimant alleged that “at the request of the Insurer/Employer [he] was subjected to mental stresses and became permanently totally disabled.” Claimant filed

an amended Claim on March 11, 2005, which kept the same date of injury (February 28, 1999), alleged psychological/psychiatric injury and “stress related physical injury to whole body” from an injury in the course and scope of employment, and added a Claim against the Second Injury Fund.

- 35) **Dr. Suren Chaganti** (Exhibit N) authored a report dated April 27, 2003 in which he indicated that Claimant had been under his care for many years, suffering from major depression, recurrent, with panic episodes and avoidant personality disorder. He noted that Claimant also has problems with anxiety and memory impairment.
- 36) Claimant admitted that he and his wife were caught in a federal sting operation in 2004 illegally selling drugs. She pled guilty to selling Xanax and he pled guilty to one count of distribution of Anadrol. He said that he served 30 days in the federal penitentiary in Springfield and was also given two years probation. However, after six months, Judge Webber cut his probation so that he could be with his wife, who had to leave the country as a result of her conviction.
- 37) Claimant was sent by his defense attorney in his criminal case for a mental health evaluation to be used during his sentencing with **Dr. Stephen Peterson** (Exhibit SIF III) on April 5 and 13, 2005. Dr. Peterson examined Claimant, administered various tests and reviewed extensive treatment records. A central theme of his report was Claimant’s assertion that he has been going through “andropause” (the male version of menopause) since he was 35 years old, and, thus, has been on an almost constant regimen of testosterone, human growth hormone, thyroid supplementation and I-LGF (Insulin-like Growth Factor). The report also documented his extensive use of steroids in the past and the various psychiatric medications that had been prescribed over the years for his various diagnoses. Consistent with his presentation at his hearing in this matter before me, Dr. Peterson documented that during his evaluation, Claimant vociferously swore with many derogatory references toward family, minorities and government personnel.
- 38) In the report, Claimant noted that he was pursuing a case for mental stress that he experienced as a property manager from 1981 forward at Kinloch Manor. Dr. Peterson noted that while Claimant reported the job duties (collecting money and evicting renters) as stressful, he did it in a “somewhat gleeful and proud manner.” He reported carrying a gun in a hip, ankle or shoulder holster as the season dictated and said that he was fired because “they didn’t like my methods.” Claimant described himself in the report “as very hard to intimidate,” yet, he said the Kinloch Manor residents were driving him crazy and he even explained the legal standard he had to prove to make his Workers’ Compensation case compensable. Despite his assertions in this respect, he went on to explain, “I love it; I could make those people shit or get off the pot.” With regard to the incident involving the security guard at Kinloch Manor being assaulted, Claimant described how he drew his own gun and faced down the five gangbangers to defend the security guard. Dr. Peterson noted that Claimant’s tone of voice suggested pride rather than fear regarding this situation. Claimant reported that he wrote a resignation letter following this incident because they would not let him carry a gun. Despite his descriptions of the crime and violence he

encountered at this complex, he noted, "Nicer neighborhoods didn't need a guy like me." He reported that he was unable to "stoop low" to work for anyone, but he could "run staff" if he didn't have supervisors above him and had "full control." Claimant admitted that he had a rather volatile temper and proudly stated that he had not lost a fight since 1979, including recently knocking out four drunks who were trying to intimidate him. He described prior altercations where he "threw his old lady over their car" and physically beat a loan broker by punching him, body slamming him, biting his nose and trashing his office, because the loan broker would not lend him money. Claimant reported that he learned from these incidents that he "can't handle stupid people" and "The best way to get along with people is to avoid them." Claimant was concerned that psychiatrists were just trying to ruin his sex life with medications. Claimant acknowledged that it is difficult for him to find work because he swears excessively and "can't control my...mouth." He described severe mood swings and anger issues that began in grade school.

39) Based on his examination of Claimant, the test results and his review of the records, Dr. Stephen Peterson diagnosed Claimant as follows:

Axis I: Anabolic-androgenic Substance-induced Mood Disorder (testosterone, Anadrol, I-LGF, Levoxyl); Anabolic and androgenic Steroid Dependence with Physiological Dependence, moderately severe; Polysubstance Dependence (ethanol, marijuana, benzodiazepines) reportedly in sustained full remission since April 2001; and Intermittent Explosive Disorder (likely related to the side effects of the anabolic-androgenic-thyroid stimulating hormone treatment program).

Axis II: Narcissistic Personality Disorder

Axis III: Hypertension, possibly steroid induced; reported hypogonadism, reported "andropause," and reported Hashimoto's Thyroiditis, all of unclear etiology; genital herpes, on suppressive treatment; and vasectomy in the distant past.

Dr. Peterson explained that Claimant's overall psychiatric condition and problems essentially trace back to his excessive and extensive use of steroids and other hormones, the negative effects of which he would try to reduce with the use of other substances such as alcohol and marijuana. He opined that, "The side effects of the anabolic steroids are so much a part of his psychological makeup that his judgment is impaired." He noted that Claimant also demonstrated a physiological dependence on steroids because every time he cycles off of them to normalize his endocrine functioning, he feels low or blue and depressed. He, further, noted that the intermittent explosive disorder may arise as a constant side effect of the steroids as well. Finally, Dr. Peterson observed that even his expressed narcissism could largely be due to the side effects of the hormone treatment program. He opined that it is unclear whether Claimant separately suffered a consistent major depressive disorder that would have been present without the effects of the steroid cycling. He found no clear pattern of bipolar disorder, as his moods appear to be tied to his steroid cycling. He opined that, "the chronic effects of his hormone treatment program have caused a diminished capacity, meaning a significantly altered state of mind so extreme it deprives him of normal adult judgment." He further found that, "The altered state of

mind preceded, coincided with, and persisted beyond the period of the charged offense.” He acknowledged that Claimant has had situational stressors, but “the overriding impact on his psyche has been the waxing and waning of his mood problems due to steroid use and other hormone use.” In short, Dr. Peterson did not relate any of Claimant’s psychiatric issues, difficulties or diagnoses to any work-related event or condition.

- 40) Continued medical treatment records from **Allied Behavioral Consultants, Inc. (Dr. George Dowell)** (Exhibit E) document the psychiatric treatment Claimant received at that office from April 21, 2005 through August 2, 2005. The doctor opined that diagnostically, Claimant has a mix of bipolar disorder and intermittent explosive disorder, from which he struggles with his anger. The notes contain references to difficulties in his marriage and blowing up at his wife, as well as issues with the law involving him being caught selling drugs and exploding with a reporter while in federal court. On June 28, 2005, the doctor wrote, “It is inconceivable that he can work. He is barely out of an institution.” In addition to bipolar mood and intermittent explosive disorder, the doctor wanted to rule out whether Claimant had an antisocial personality disorder. Once again, I found no reference in these treatment records to Claimant’s experiences while working for Employer, nor the specific event that occurred on December 18, 1998 as having any impact on his current psychological issues.
- 41) Claimant and Employer resolved their portion of this February 28, 1999 case (Injury Number 99-182337) by **Stipulation for Compromise Settlement** (Exhibit P) for the payment of \$11,789.20, or 10% permanent partial disability of the body as a whole. The Second Injury Fund Claim was left open on the Stipulation. This Stipulation for Compromise Settlement was approved by Administrative Law Judge Cornelius Lane on November 22, 2005.
- 42) According to the records of the **U.S. Department of Justice, Federal Bureau of Prisons** (Exhibits K and O), Claimant was incarcerated at the U.S. Medical Center for Federal Prisoners in Springfield, MO from November 18, 2005 until December 16, 2005 for the charge of distribution of Anadrol. While in prison, Claimant continued to receive various medications for his mood swings, bipolar depression and anxiety, dating back to 1991.
- 43) As noted above, Claimant was receiving Social Security disability benefits at the time of his federal conviction on drug charges. In a letter to Claimant dated December 16, 2005 from the **Social Security Office of the Inspector General** (Exhibit R), Claimant was advised that he was found to “have made, or caused to be made, false statements, representations, and/or omissions to SSA which you know or should have known were false and misleading.” Social Security found that although he indicated in his application that he was unable to work because of a disabling condition on February 28, 1999, Claimant, in fact, had work activity after February 1999. They found that he reported work activity as a driver/transporter from October 2004 to the time of the letter and he omitted reporting his work activity “in the sale of illegal

drugs.” The purpose of the letter was to give Claimant the opportunity to respond to the allegations before a civil monetary penalty would be assessed.

- 44) Claimant testified that as a result of the letter and the findings contained therein, his Social Security benefits were terminated. He said that he appealed the ruling into the federal courts resulting in findings that he also owed a substantial amount of his previously paid benefits back to the government, since they should not have been paid, but for his false statements to obtain the benefits in the first place.
- 45) In a report dated February 6, 2006, **Dr. George Dowell** (Exhibit J) notes that he has treated Claimant since January 2005 and that Claimant has struggled with depression, anger, insomnia and impulsive behavior. He noted that going back to records he reviewed from 1991, Claimant had trouble with his anger and lost his job because of his attitude and problems with taking direction from others. Dr. Dowell noted that this has continued to be a problem for him because Claimant has a very abrasive manner, is easily angered and uses a vocabulary interspersed with four-letter profanities. He also noted that Claimant had significant affective symptoms in terms of poor sleep and poor focus. He noted Claimant’s ongoing significant symptoms, diagnoses and treatment over the years culminating in his diagnosis of mixed bipolar disorder and intermittent explosive disorder. Claimant apparently provided a history of never holding a job for more than a year and a half, as well as his general dislike of people and his legal issues related to the sale of drugs. There was no mention of any specific stress connected to his job duties for Employer, nor any mention of the altercation that he witnessed in December 1998. Dr. Dowell opined that Claimant had a Global Assessment of Functioning (GAF) of a chronic 50 and that he had “not worked for years because of his constant irritability, insomnia and explosive temper.” He noted that Claimant is also very tired and preoccupied with his anger issues. He found him disabled.
- 46) The deposition of **Dr. Adam Sky** (Exhibit A) was taken by Claimant on May 13, 2011 to make his opinions in this case admissible at trial. Dr. Sky is board certified in psychiatry with an added qualification in geriatric psychiatry, and as a medical examiner. He examined Claimant at the request of Claimant’s attorney on November 13, 2010, but never provided medical treatment to Claimant. In addition to his evaluation of Claimant, he reviewed extensive records, but administered no psychiatric testing. His report contained the history of the violent altercation at Claimant’s work, when he brandished a gun in defense of the security guard, which reportedly altered his usual state of health. Dr. Sky reported that this altercation occurred on February 28, 1999. Surprisingly, Dr. Sky barely mentions Claimant’s extensive prior use of steroids and only comments in his report that there is “some question as to steroid abuse in the past,” although he admits in the deposition that Claimant took a lot of anabolic steroids. Dr. Sky noted that Claimant never worked at any job for more than a year and a half, because he did not like having a boss and could not take orders. According to his deposition testimony, Dr. Sky was also mistakenly under the impression that Claimant lost his disability because of selling drugs prior to the 1999 accident, which necessitated his going back to work. Additionally, he noted a number of times during his testimony that Claimant was fired

for carrying a gun, which he viewed as part of the whole traumatic event involving the security guard.

- 47) Dr. Sky diagnosed Claimant with intermittent explosive disorder, but noted that the possibility of a mixed type bipolar disorder or anabolic-androgenic substance induced mood disorder cannot be ruled out. He opined that Claimant's alcohol, cannabis and steroid abuse by history are all in remission. He also found Claimant to have a mixed personality disorder with antisocial and narcissistic traits. He opined that Claimant had pre-existing psychiatric permanent partial disability of 50% of the body as a whole. He further opined that the "work related accident of February 1999 exacerbated his preexisting disability to the point where he now has one hundred percent permanent psychiatric disability as a result of the combination of the preexisting factors and the April 1999 accident at work." Dr. Sky believed that the February 1999 injury was the prevailing cause of his current psychiatric disability, that Claimant had not yet reached maximum medical improvement and that he needed ongoing psychiatric and psychological treatment. In the cover letter attached to his report, Dr. Sky writes that Claimant's one hundred percent psychiatric disability is probably a combination of a bipolar affective disorder and his intermittent explosive disorder. Interestingly, in his deposition testimony, Dr. Sky opines that the intermittent explosive disorder and possibly the bipolar disorder, as well as the personality disorder, all pre-existed the 1999 accident, but he fails to even mention the steroid abuse. He believes that the 1999 work injury exacerbated these conditions to the point where Claimant is unable to function. Based on his psychiatric disabilities, he did not believe Claimant was employable in the open labor market. He believed the pre-existing psychiatric conditions were a hindrance or obstacle to employment.
- 48) On cross-examination, Dr. Sky admitted that he relied in significant part on the history given by Claimant and if that was inaccurate, the validity of his opinions and conclusions could be affected. He acknowledged that someone with narcissistic traits, such as Claimant, might be less likely to give an objective account of the events in their history. Dr. Sky admitted that the initial treatment records, many months following the 1999 incident, did not mention anything about the traumatic event on February 28, 1999. He also acknowledged that one of Claimant's treating psychiatrists, Dr. Dowell, issued a letter to Claimant's attorney dated June 7, 2007, wherein he agreed that Claimant could not work, but did not feel it was the fault of the employer. Dr. Sky also admitted that the deportation of Claimant's wife was a very stressful situation that occurred subsequent to the 1999 event but prior to his evaluation, such that it was factored into his assessment of Claimant's condition.
- 49) The deposition of **Dr. Reuben Schnayer, Ph.D.** (Exhibit B) was taken by Claimant on June 1, 2011 to make his opinions in this case admissible at trial. Dr. Schnayer is a registered psychologist from Ontario, Canada with a specialty in child-clinical psychology, who was educated and has practiced exclusively in Canada. He examined Claimant at the request of Claimant's attorney on February 11, 2008, but never provided medical treatment to Claimant. This examination occurred in Canada, when Claimant was living there following his wife's deportation. In addition to his evaluation of Claimant, he reviewed treatment records and administered psychological

testing. Based on the history and presentation from Claimant, Dr. Schnayer noted that Claimant had “a very strong and positive relationship with his father.” Additionally, contrary to Claimant’s presentation at hearing, as well as contrary to his presentation to just about every other medical expert in the record of evidence, Dr. Schnayer found Claimant to be “a friendly, cooperative, and talkative adult who could be described as somewhat ‘rough around the edges’.” Regarding the incident with the security guard being attacked by the gang members, contrary to some of his other descriptions of this event wherein he was afraid he could have been killed, Claimant reported to Dr. Schnayer that he was shaking and upset in his office after he pulled the gun on the aggressors, because “he felt that he could have killed those men.” He reported that he scared himself and was afraid that he could have killed someone. There was absolutely no mention in the report of Claimant’s prior steroid use and the effect that could have on his psychiatric issues/problems. I also found no specific references in the report to Claimant’s prior legal issues, nor his prior interactions with individuals that similarly involved him pulling a gun on someone. Dr. Schnayer diagnosed Claimant on Axis I with Intermittent Explosive Disorder and Major Depression, recurrent with panic episodes, as well as on Axis II with Mixed Bipolar Disorder. He opined that Claimant was permanently disabled from all employment in the open labor market by virtue of the combination of the incident while working for Employer and his pre-existing psychological factors. He said that it was because Claimant was not good dealing with authority and would do poorly answering to a supervisor. Dr. Schnayer testified that what was different for Claimant after the 1999 incident was that, “He clearly scared himself.” Dr. Schnayer also suggested that after the 1999 incident, Claimant began to experience some typical PTSD symptoms, including sleeping difficulties, nervousness and anxiety.

- 50) On cross-examination, Dr. Schnayer agreed that Claimant’s difficulties with a volatile temper, insomnia, impulsive behavior, depression and anger management all were well-developed traits prior to 1998. Dr. Schnayer did not know if Claimant was taking any medications for his problems at the time of his evaluation. He could not find his file containing any of the documents he reviewed prior to writing his report, so he was unable to answer questions about those documents during his deposition. He admitted that he was aware of the steroid use, but was really unable to answer how that might affect Claimant’s employability, noting that he is not “an expert on the effects of steroids.”
- 51) The deposition of **Dr. Jennifer Brockman** (Exhibit SIF I) was taken by the Second Injury Fund on August 1, 2011 to make her opinions in this case admissible at trial. Dr. Brockman is board certified in psychiatry with a subspecialty certification in forensic psychiatry. She never personally examined Claimant, but performed a records review at the request of the Second Injury Fund and issued her report dated June 7, 2011. She diagnosed a Mood Disorder Not Otherwise Specified, Polysubstance Dependence in Partial Remission and a Personality Disorder Not Otherwise Specified. She explained that she diagnosed the unspecified mood disorder because without some further information, it is impossible for her to make a more specific diagnosis of bipolar disorder or substance-induced mood disorder. She acknowledged that Claimant’s character structure is pathological, exhibiting

narcissistic and antisocial traits. She opined that his psychiatric symptoms are mostly the result of his longstanding personality disorder, substance use and situational stressors, such as finances, legal issues and marital issues. She agreed that Claimant exhibited the presence of a chronic psychiatric illness which was not caused or exacerbated by his employment and the events leading up to February 28, 1999. She concluded that “the alleged work related stress leading up to February 28, 1999, is not responsible for Mr. Marino’s psychiatric symptoms or disability.” She further opined that his psychiatric symptoms were not a hindrance or obstacle to his employment prior to February 28, 1999. She did not believe he was permanently and totally disabled, but that his use of alcohol and other drugs, and failure to follow a psychiatric treatment regimen, influenced his psychiatric clinical presentation.

- 52) On cross-examination, when Dr. Brockman was challenged regarding her opinion that Claimant’s pre-existing psychiatric issues were not a hindrance or obstacle to employment, she admitted that she did not know how his various jobs had ended in the past, nor how many jobs he had had except to say “numerous,” nor exactly what different types of jobs he had performed. She also admitted that she had not apparently seen all of Claimant’s pre-existing psychiatric records before rendering her opinion. Dr. Brockman believed that because he eventually returned back to work, despite the prior issues, then those issues were not a hindrance or obstacle to employment.
- 53) The deposition of **Dr. Jeffrey Magrowski, Ph.D.** (Exhibit C) was taken by Claimant on June 28, 2011 to make his opinions in this case admissible at trial. Dr. Magrowski is a certified vocational rehabilitation counselor. He met with Claimant at the request of Claimant’s attorney on December 15, 2010 and authored his report dated December 20, 2010. In addition to his meeting with Claimant, he also reviewed extensive records, but administered no vocational testing. Dr. Magrowski found that Claimant had some transferable skills from his past employment, including the management and supervision of employees, hiring and firing, property management, and as a musician and financial manager. Despite these skills, Dr. Magrowski opined that Claimant is unemployable in the open labor market as of 1999. He noted Claimant’s previously obtaining Social Security, the various doctors’ opinions and Federal District Judge Webber indicating Claimant was unemployable due to his serious health conditions, as evidence that supported his opinion in this matter. Dr. Magrowski finally opined that his inability to be employed in the open labor market was the result of the combination of his pre-existing psychiatric issues and the effects of the 1999 work incident. It was clear on cross-examination, that either because he received a faulty history from Claimant or had not fully reviewed the medical records, that Dr. Magrowski did not have a good understanding of exactly what happened to Claimant in 1991 that precipitated his first claim and first round of Social Security disability. He agreed that the description in Dr. Peterson’s report of Claimant being proud of his actions is different from Claimant’s portrayal to him of being scared by this event.
- 54) Claimant testified that in terms of current treatment, he takes lorazepam in the evening to help him sleep. He said that from 1991 up to the present, he has seen

many doctors and taken many medications, but none of it has helped. He said the medications dull him, make him slow and lethargic and ruin his sex life, so he does not want to take them because of these side effects.

- 55) In terms of his ability to work, Claimant testified that he never went back to work because he “just couldn’t deal with those people anymore.” He believed the combination of all the years of everything just built up in him to the point of taking him out of work. He said that he was certain he would get fired if he tried to work again, so he has just not tried to work. He admitted that the primary reason he cannot hold a job is his inability to get along with people.
- 56) **Ms. Virginia Wandrick** testified live at hearing. She worked for Claimant as the Assistant Manager at the Boaz complex in Kinloch. She noted that she had 25 years of experience in doing property management at a couple different “problem properties.” Throughout that period of time she noted that she worked in low income housing (Section 8 Housing), where the properties were infested with illegal drugs and “not good people.” She admitted that there was a high level of stress at each of the properties she had worked at because of the nature of the tenants. She described working at Boaz as a “prison term” because of all the prostitution, fights and police calls. She said that it was frightening at times with outsiders coming onto the property and shootings there, but she did not fear for her life, because the police were there every day. She noted that they tried to keep out the bad elements by erecting a fence and hiring guards, but the bad elements would try to get over or through the fence. Ms. Wandrick confirmed that Claimant was proud of the work he did there and he “did not take crap from anybody.” She said that he was not intimidated by anybody and confronted intruders daily and sent them on their way. She observed that Claimant did not seem overly stressed out on the job as she worked with him on a daily basis.
- 57) Ms. Wandrick basically confirmed the events of December 18, 1998, with the armed security guard they had hired being jumped and beaten by a group of individuals outside the office door. She witnessed Claimant take his gun and go to the door to try to help, and remembered him just leaving after the incident was over. She said that she feared for her life at that moment and she called her husband to come and pick her up. She agreed that this was the only time in her career that she felt like she might die. Despite that, she acknowledged that she did not seek any counseling or treatment as a result of the December 18, 1998 incident. She said that she just let it go and it does not haunt her. She could not remember if Claimant worked anymore after that date and she said that she never talked to Claimant about the incident after it had occurred.
- 58) Claimant admitted that he liked Ms. Wandrick, “even though she was black,” because she took direction and did what she was told. He said that she was a little slow, but no one rattled her.
- 59) On cross-examination, Claimant admitted that he had considerable experience working at problem housing projects over the course of his career. He said that he

carried a gun to work since the late 1980s or early 1990s. He stated that if his life was threatened then he would use it. He acknowledged that he had pulled the gun on others in the past and 1998 was not the first time he had brandished the weapon. He said that he would not let people at the problem properties intimidate him. Claimant noted that the 1998 incident was not the first time he felt homicidal, but it was the first time he felt like he might be killed. He acknowledged that Employer did not approve of him having a gun and he told them that he would get rid of it if they provided security.

60) Based on my observations of Claimant at hearing in this matter, I found him to consistently use offensive, derogatory, racist and sexist language, often laced with profane expletives. He would get agitated at times when talking about topics or situations that did not go his way. I also found a certain sense of pride in his tone when he testified about beating someone up, pulling a gun on them to get them in line, or just generally asserting his perceived superiority over someone else, particularly the tenants who lived in the properties that he managed. In that respect, I was very much left with the impression that he went through life as a bully, basically saying or doing whatever he wanted, attempting to control everyone and anyone around him, and verbally or physically punishing anyone who did not bend to his will or give him what he wanted.

## **RULINGS OF LAW:**

Based on a comprehensive review of the evidence, including Claimant's testimony, the expert medical opinions and depositions, the vocational expert opinion and deposition, the medical records, the other business records, and the testimony of the other witness, as well as based on my personal observations of Claimant and the other witness at hearing, and based upon the applicable laws of the State of Missouri, I find:

***Issue 1: Did Claimant sustain an accident and/or occupational disease?***

***Issue 2: Did the accident and/or occupational disease arise out of and in the course of Claimant's employment for Employer?***

***Issue 3: Are Claimant's injuries and continuing complaints medically causally connected to his alleged accident and/or occupational disease at work on or about December 18, 1998?***

Given that these three issues are so inter-related in this Claim, I will address these three issues together.

As the Claim in this case involves an alleged mental injury brought on by alleged mental stress at work it is necessary to apply **Mo. Rev. Stat. § 287.120.8 and 9 (1992)** to determine if

this matter is a compensable claim under the statute. **Mo. Rev. Stat. § 287.120.8 (1992)** indicates 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.” Further, under **Mo. Rev. Stat. § 287.120.9 (1992)**, “A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.”

Claimant bears the burden of proof on all essential elements of his Workers’ Compensation case. *Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute*, 793 S.W.2d 195 (Mo. App. E.D. 1990) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). The fact finder is charged with passing on the credibility of all witnesses and may disbelieve testimony absent contradictory evidence. *Id.* at 199.

Therefore, under these sections, Claimant has the burden of proving that the stress he suffered from, which led to his mental injury, was both work related, and extraordinary and unusual. He must prove the amount of this stress by objective standards and actual events, and the stress cannot be as a result of good faith employment actions by employer, such as transfers, demotions or disciplinary actions.

Case law in this area has helped to further define the proof needed to meet the requisite requirements of the law to make a mental stress case a compensable claim. In *Williams v. DePaul Health Center*, 996 S.W.2d 619 (Mo. App. E.D. 1999) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003), the Court held that in a purely mental stress case (mental/mental injury), “the proper comparison for the purposes of Section 287.120.8 is to compare Employee’s work-related stress with the stress encountered by employees having similar positions, regardless of employer, with a focus on evidence of the stress encountered by similarly situated employees for the same employer.” That is distinguishable from a mental injury claim based on a physical injury (physical/mental injury), in which Section 287.120.8 would not apply, nor would the “extraordinary and unusual” standard, but rather the general causation standard that must be met for any physical injury to be compensable under the Workers’ Compensation Law. See *Jones v. Washington University*, 199 S.W.3d 793 (Mo. App. E.D. 2006).

Since the Second Injury Fund is also involved in this case, it is also important to consider that under **Mo. Rev. Stat. § 287.220.1 (1992)**, in order to qualify for Second Injury Fund benefits, Claimant must prove the presence of pre-existing permanent partial disability, which combined with permanent partial disability from a subsequent compensable injury results in total and permanent disability. In other words, if the primary injury against Employer is not a compensable injury, then the Second Injury Fund Claim fails.

Having thoroughly reviewed all of the evidence described above regarding Claimant’s alleged mental injury resulting from alleged mental stress at work, including Claimant’s testimony, the testimony of the other witness, the medical treatment records, reports and testimony, and the vocational testimony, I find that Claimant has failed to meet his burden of proving that an accident and/or occupational disease of mental stress and any resulting mental

injury arose out of and in the course of his employment, or was medically causally connected to it.

In beginning to analyze the evidence in this case and applying the appropriate statutory requirements, I must first note that Claimant has requested rulings on both whether an accident or an occupational disease occurred at his job. He contends in various parts of the record that either the overall stress of his work activities for Employer and/or the specific situation that occurred on December 18, 1998 is the reason that he suffered an additional mental stress injury, ultimately taking him out of the work force and leaving him totally disabled when that condition is combined with his pre-existing mental health disability. In order to meet his burden of proof in this matter, Claimant needed to present credible evidence regarding the work environment, as well as competent, credible and reliable medical evidence causally connecting some mental injury and disability to his work for Employer.

I find that it is undisputed in the record that on or about December 18, 1998, Claimant intervened when the security guard for the property he managed for Employer was being attacked, beaten and kicked by a number of intruders on the property. I find that he opened the office door, pointed his gun at the intruders and they fled the property. No shots were fired and Claimant was not attacked in any way, physically or verbally, by the intruders. Given these facts, I find that this is an alleged mental/mental case, not a physical/mental case, because there was no physical contact or component to this injury where Claimant is concerned. Therefore, I find that it is appropriate to use the *Williams* standard for the determination of this matter. It is necessary to determine if the stress was “extraordinary and usual” when compared to “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.”

In this respect, I find that the record is clear, both from Claimant’s testimony and from the testimony of Ms. Wandrick, that working at “problem properties” is a highly stressful situation, including dealing with the crime at those properties, as well as tenants who are sometimes difficult even when it comes to paying their rent. Both witnesses clearly indicated that while Employer’s property in Kinloch may have been one of the worst in this respect, they had worked at other “problem properties” as well with similar issues and stresses. Additionally, Claimant was well aware of the stresses of such a job because he had had the exact same job at the same type of property in the early 1990s which resulted in his filing a similar claim for compensation for stress back then. Nonetheless, he testified that he sought out another such job later in the 1990s at Employer’s property because he knew working at this type of property paid more than working other places as a property manager. It is clear to me that he knew from experience the stressful situation he was putting himself into and, yet, he voluntarily chose to do it. After all, he freely admitted that he had been carrying a gun to work since the late 1980s or early 1990s because he knew of the potential danger associated with working at such “problem properties.” Therefore, I don’t believe that overall, the general stresses complained of by Claimant of dealing with the residents of this particular property are really that “extraordinary and usual” when compared to his work at other similar properties or that of similarly situated employees working as a property manager at “problem properties.”

Admittedly, in addition to the general stresses of the work that Claimant complained of in this case, he also specifically focused in on the event that occurred on or about December 18,

1998 as evidence of the “extraordinary and usual” stress he suffered on this job for Employer. Claimant alleges that pulling his gun on that group of individuals exacerbated his underlying mental condition and resulted in his inability to work anymore, both because he was afraid that he could have killed someone and that he could have been killed himself. In light of the rest of the testimony and evidence in this case, I do not find such assertions by Claimant to be credible.

First and foremost, this was not the first time that Claimant had pulled his gun on individuals both outside of and in the course of his job responsibilities. Claimant freely admitted that he had brandished his weapon in the past and had even had the urge to kill people. He even admitted that if his life was threatened, he was not afraid to use his gun. He gave examples of pulling the gun out of his desk drawer to get residents under control who were in his office complaining, and of holding it behind the door when he answered it in case the person at the door tried to come at him. His testimony and the tone of his descriptions of these events showed me that he was proud of such actions and not afraid to pull out his gun whenever he felt the need. He was also very proud of his ability to “squeeze people,” including intimidating them into doing what he wanted them to do. For all these reasons, I don’t find it credible that on this one particular day he was all of a sudden scared that he could kill someone when he pulled out his gun and pointed it at them to make them flee, when he had used the gun in such a manner in the past for the same purpose of gaining control of a situation.

That leaves us, then, with Claimant’s assertion that this event had such a profound impact on his psyche because it was the first time he had felt like he did not have control of the situation and he might have been killed. I find that this assertion, too, is unsupported by the rest of the facts and records in evidence. First, this event when he pulled his gun on the assailants ended with no shots fired at him and no physical or verbal assaults levied at Claimant. Not only did they not attack him in any way, but they did not even attempt to. They left immediately and ran. In that respect, it seems remarkably similar to past occasions when he described pulling his weapon and getting the individual at the other end of the barrel to do exactly what he wanted. However, even if this occasion could be somehow differentiated from similar occasions he had been in in the past, I do not see how it had such a profound impact on his psyche as he alleges, since he stayed on the same job in the same position for over two more months and since he never mentioned it to any of his treating psychiatrists in the almost two years that followed this event.

Admittedly, he wrote a note to Employer after this situation asking them to look for another manager because of his safety concerns at the property. However, he proceeded to continue to work in the same position at the same property for two more months, until the property management was being taken over by another company. Even then, according to his filing for unemployment compensation, Claimant wrote that he asked the new company for the manager’s job at Boaz, “but they said they had a manager.” If this was such a defining moment for Claimant which had such a detrimental effect on his psyche, it defies reason that he would have stayed at that same position at the same property for two more months and would have also asked the new management company to hire him as a manager for the same property when they took it over on March 1, 1999.

Similarly, I find that it is inconsistent to characterize this event as having such a detrimental effect on his psyche, yet the medical treatment records for Claimant’s psychiatric

treatment following this event, show no record of this event ever being mentioned by Claimant. In my review of Claimant's treatment records from Psych Care Consultants and South Pointe Hospital through December 2000 (two years after the incident), I found absolutely no reference to Claimant's experiences while working for Employer, nor the specific event that occurred on December 18, 1998, having any impact on his current psychological issues. It is not until many years later, after he filed this Claim and was pursuing benefits that this event was mentioned as having any effect on his psyche.

Therefore, based on all of this evidence, I find that Claimant has failed to meet his burden of proof in this matter. He failed to prove that any work-related stress in this case was "extraordinary and unusual." As such, he has failed to prove that an accident and/or occupational disease arose out of or in the course of his employment.

Separate and distinct from these first two issues, in order to prove a compensable Claim in this case, Claimant also needed to provide competent, credible and reliable medical evidence to support his contention that his alleged psychiatric condition and some disability was medically causally related to his work for Employer. For this separate and distinct reason, I further find that Claimant has failed to meet his burden of proof in this matter.

Claimant relies on the opinions of Dr. Adam Sky and Dr. Rueben Schnayer, Ph.D., to support his contention that his mental injury, complaints and some disability are related to his alleged extraordinary and unusual work-related stress. On the other hand, the Second Injury Fund offered the testimony of Dr. Jennifer Brockman, who essentially opined that Claimant did not have any psychiatric diagnoses or disability medically causally connected to his alleged work injury in 1998/1999. Although their testimony was not taken in this matter, the record of evidence also contains a letter from Claimant's treating psychiatrist, Dr. George Dowell, to Claimant's attorney in 2007, wherein he agreed that Claimant could not work, but did not feel it was the fault of the employer, and an extensive report from Dr. Stephen Peterson, which was obtained by Claimant's criminal defense counsel in anticipation of his sentencing hearing in federal court in 2005. Dr. Peterson essentially finds that Claimant's ongoing psychiatric diagnoses, complaints and issues are related to his steroid and substance abuse, not work-related stress.

Of all of these medical (psychiatric) opinions and testimony in the record, based on the totality of the evidence in the record, I find the report and opinions of Dr. Stephen Peterson more competent, credible and reliable in this case, than the competing and sometimes contradictory opinions of the other experts in this case. Unlike Drs. Sky, Schnayer and Brockman, Dr. Peterson was not hired by the parties specifically on account of this case, and, in that respect, his opinion is more independent than those other physicians. However, it cannot be overlooked that he was hired by Claimant's defense counsel in connection with his criminal case, to presumably help with his sentencing. Just comparing the extent of the various reports from these experts and the breadth of the information upon which they had to base their opinions, it is clear to me that Dr. Peterson's report is more thorough and comprehensive than the other experts in the record. Dr. Peterson had a complete picture of Claimant's pre-existing mental health problems, since he not only took a complete history from Claimant, but he also had the extensive medical treatment and other records to review. He had the benefit of the results of multiple psychological tests to

review. I was impressed by the detail, analysis and explanations in his report and found them more consistent with the rest of the evidence in the record.

Dr. Peterson credibly opined that Claimant's overall psychiatric condition and problems essentially trace back to his excessive and extensive use of steroids and other hormones, the negative effects of which he would try to reduce with the use of other substances such as alcohol and marijuana. He opined that, "The side effects of the anabolic steroids are so much a part of his psychological makeup that his judgment is impaired." He noted that Claimant also demonstrated a physiological dependence on steroids because every time he cycles off of them to normalize his endocrine functioning, he feels low or blue and depressed. He, further, noted that the intermittent explosive disorder may arise as a constant side effect of the steroids as well. Finally, Dr. Peterson observed that even his expressed narcissism could largely be due to the side effects of the hormone treatment program. He opined that it is unclear whether Claimant separately suffered a consistent major depressive disorder that would have been present without the effects of the steroid cycling. He found no clear pattern of bipolar disorder, as his moods appear to be tied to his steroid cycling. He opined that, "the chronic effects of his hormone treatment program have caused a diminished capacity, meaning a significantly altered state of mind so extreme it deprives him of normal adult judgment." He further found that, "The altered state of mind preceded, coincided with, and persisted beyond the period of the charged offense." He acknowledged that Claimant has had situational stressors, but "the overriding impact on his psyche has been the waxing and waning of his mood problems due to steroid use and other hormone use." In short, Dr. Peterson did not relate any of Claimant's psychiatric issues, difficulties or diagnoses to any work-related event or condition. I find that these well-developed and well-explained opinions are more consistent with and strongly supported by the record of evidence in this case.

I find that there are profound problems with the reports, opinions and testimony of Drs. Sky and Schnayer that leave me unable to rely on their opinions or testimony to support an award of compensation in this matter. First, I have some profound concerns relying at all on Dr. Schnayer's opinions, since he is not a medical doctor and is not otherwise licensed in any respect to practice in Missouri, or anywhere in the United States for that matter. However, even putting that aside, both Dr. Sky and Dr. Schnayer relied on inaccurate or incomplete histories when formulating their opinions in this matter, and, in that respect, their opinions are not as competent and reliable as the opinions of Dr. Peterson.

Dr. Schnayer could not find his file containing any of the documents he reviewed prior to writing his report, so he was unable to answer questions about those documents during his deposition. He relied on a history that Claimant had "a very strong and positive relationship with his father," when, in fact, his father was physically and emotionally abusive when Claimant was growing up and Claimant even admitted beating up his father when he was old enough to stand up to him. Additionally, contrary to Claimant's presentation at hearing, as well as contrary to his presentation to just about every other medical expert in the record of evidence, Dr. Schnayer found Claimant to be "a friendly, cooperative, and talkative adult who could be described as somewhat 'rough around the edges'." There was absolutely no mention in the report of Claimant's prior steroid use and the effect that could have on his psychiatric issues/problems. In his deposition, Dr. Schnayer admitted that he was aware of the steroid use, but was really unable to answer how that might affect Claimant's employability, noting that he is not "an expert on the

effects of steroids.” I also found no specific references in the report to Claimant’s prior legal issues, nor his prior interactions with individuals that similarly involved him pulling a gun on someone. In short, Dr. Schnayer had an incomplete and inaccurate history which he used to form the basis of his opinions, leaving me unable to rely on those opinions and conclusions in this case.

As for Dr. Sky, I find that he barely mentions Claimant’s extensive prior use of steroids and only comments in his report that there is “some question as to steroid abuse in the past.” Dr. Sky was also mistakenly under the impression that Claimant lost his disability because of selling drugs prior to the 1999 accident, which necessitated his going back to work, when, in fact, the selling drugs and losing his disability occurred after the 1999 incident. Dr. Sky also admitted that he relied in significant part on the history given by Claimant and if that was inaccurate, the validity of his opinions and conclusions could be affected. He acknowledged that someone with narcissistic traits, such as Claimant, might be less likely to give an objective account of the events in their history. I have the same concerns with Dr. Sky’s inaccurate and incomplete history as expressed above regarding Dr. Schnayer, which, similarly leave me unable to rely on his opinions and conclusions in this case.

Having found for the above-stated reasons that I cannot rely on Drs. Sky and Schnayer for any award of compensation in this case, and instead am relying on Dr. Peterson’s competent, credible and reliable opinions, I am left to conclude that there is no medical expert in the record of evidence to support Claimant’s contentions that any of his psychiatric diagnoses, complaints or disability is medically causally related to his work for Employer at or around December 18, 1998. Therefore, Claimant has failed to meet his burden of proof on the issue of medical causation.

Given Claimant’s failure to meet his burden of proof regarding any alleged extraordinary or unusual mental stress at work for Employer, and given his failure to offer any competent or credible medical testimony on the issue of medical causation, I find that he has failed to prove that any such stress resulted in any mental injury for which he currently suffers. Since Claimant has failed to prove the presence of a compensable underlying primary injury in this case, Claimant’s Claim against the Second Injury Fund then fails for that lack of proof. The Second Injury Fund Claim here is denied.

Since this ruling on these issues is dispositive of this case, the other remaining issues in this case are moot and will not be ruled on in this award.

**CONCLUSION:**

Claimant has failed to prove that he sustained a compensable primary injury in this case. He failed to meet his burden of proving the presence of an accident and/or occupational disease of mental stress that arose out of or in the course and scope of his employment for Employer, by failing to provide credible testimony or evidence of any work-related extraordinary and unusual stress in the workplace. He also failed to provide competent, credible and persuasive medical evidence on the issue of medical causation. Since Claimant has failed to prove the presence of a compensable underlying primary injury in this case, Claimant's Claim against the Second Injury Fund then fails for that lack of proof. Therefore, for all of the above-stated reasons, Claimant's Claim against the Second Injury Fund is denied.

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

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