

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

Injury No.: 99-128810

Employee: Belinda A. Markworth

Employer: Shirkey Leisure Acres

Insurer: Self-Insured

Date of Accident: May 26, 1999

Place and County of Accident: Richmond, Ray County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 28, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge R. Carl Mueller, issued September 28, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 9<sup>th</sup> day of February 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

**FINAL AWARD**

Employee: Belinda A. Markworth

Injury No: 99-128810

Dependents: N/A

Employer: Shirkey Leisure Acres

Additional Party: N/A

Insurer: Self-Insured

Hearing Date: August 30, 2006

Briefs Filed: September 14, 2006

Checked by: RCM/rm

### 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 May 26, 1999
5. State location where accident occurred or occupational disease was contracted: Alleged Richmond, Ray County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleges work-related stress caused a mental breakdown.
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: None; no compensable injury.
14. Nature and extent of any permanent disability: None; no compensable injury.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None
17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$772.40
19. Weekly compensation rate: \$514.93 for permanent partial disability and \$294.73 for temporary total disability
20. Method wages computation: By stipulation
21. Amount of compensation payable: None; no compensable injury.
22. Second Injury Fund liability: N/A
23. Future requirements awarded: None; no compensable injury.

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

Employee: Belinda A. Markworth Injury No: 99-128810  
Dependents: N/A  
Employer: Shirkey Leisure Acres  
Additional Party: N/A  
Insurer: Self-Insured  
Hearing Date: August 30, 2006  
Briefs Filed: September 14, 2006 Checked by: RCM/rm

On August 30, 2006, the employee and employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Ms. Belinda A. Markworth, appeared in person and with counsel, David W. White. The employer appeared through its counsel, David P. Macoubrie and Danette L. Rardon. The Second Injury Fund was not a party to the case. The primary issues the parties requested the Court to determine were whether or not Ms. Markworth suffered an accident arising out of and in the course of her employment on May 26, 2006, and whether she sustained any disability. For the reasons noted below, I find that Ms. Markworth did not suffer an injury that arose out of and in the course of her employment. Therefore, I deny her claim.

### **STIPULATIONS**

The parties stipulated that:

1. On or about May 26, 1999 (“the alleged injury date”), Shirkey Leisure Acres (“Shirkey”) was an employer operating subject to Missouri’s Workers’ Compensation law with its liability fully self-insured;
2. Ms. Markworth was its employee working subject to the law in Richmond, Ray County, Missouri;
3. Ms. Markworth both notified Shirkey of her alleged injury and filed her claim within

the time allowed by law; and,

4. Ms. Markworth earned a \$772.40 average weekly wage resulting in a weekly compensation rate of \$514.93 for temporary total and \$294.73 for permanent partial disability compensation.

## ISSUES

- The parties requested the Division to determine:  
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1. Whether Ms. Markworth sustained an accident or occupational disease arising out of and in the course of employment?
2. Whether Ms. Markworth is entitled to temporary total disability benefits from June 11, 1999 through August 1, 1999 representing 7 1/7 weeks for compensation totaling \$3,751.63?
3. Whether Shirkey must provide the employee with additional medical care? And,
4. Whether Ms. Markworth suffered any disability and, if so, the nature and extent of the disability?

## FINDINGS

Ms. Markworth testified on her own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

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- Exhibit A – Affidavit & Records from Two Rivers Psychiatric Hospital
  - Exhibit B – Deposition of Belinda Markworth, December 19, 2001

- Exhibit C – Deposition of Donald Wayne Hinton, M.D., November 7, 2005
- Exhibit D – Deposition of Joseph S. Edwards, PhD, December 28, 2005
- Exhibit E – Deposition of Kathryn Ballou, PhD, August 25, 2005

Shirkey subpoenaed Ms. Michele Kist and Ms. Jennifer Hosman to testify and presented the following exhibits, all of which were admitted into evidence without objection:

- Exhibit 1 – Handwritten Note, Belinda Markworth, June 11, 1999
- Exhibit 2 – Letter dated June 22, 1999 from Belinda Markworth
- Exhibit 3 – Medical Report, Wayne A. Stillings, M.D., September 4, 2002

Based on the above exhibits and the testimony of Ms. Markworth, Ms. Kist and Ms. Hosman, I make the following findings. Ms. Markworth is 52-years old and lives with her husband in Higginsville, Missouri. She is a high school graduate and has obtained degrees as a LPN and BSN. Ms. Markworth worked at Shirkey from October 1978 to May 1987 and again from August 1989 through June 11, 1999. Shirkey is a nursing home. Prior to working for Shirkey in 1989, Ms. Markworth worked at Ray County Memorial Hospital as a staff nurse and at Pleasant Valley Manor as a Director of Nursing Services. Ms. Markworth prefaced her testimony with the caveat that she had suffered a stroke in 2004 which she stated negatively affected both her speech and memory. However, I specifically noted that she spoke with perfect clarity and without any uncertainty in recollecting the pertinent facts and situations surrounding her claim. She was quite forthright in testifying that her stroke “miraculously” cured her of her depression. However, Ms. Markworth testified that she continues to take Lexapro (20 mg/day) - a prescription anti-depressant - and Xanax as needed, usually twice a month.

Regarding her claimed injury, Ms. Markworth testified that on May 26, 1999 she was employed as the Director of Nursing Services at Shirkey. Her job included organizing and directing nursing services, arranging monthly in-service education programs and developing nursing care programs for each resident. Out of the previous eleven (11) workdays before the alleged incident, Ms. Markworth worked only four (4) days. On May 25, 1999, Shirkey's board of directors gave the facility employees forty-eight (48) hours to correct the deficiencies

which were received in March of 1999. Ms. Markworth was told to go home and not to worry about it. Ms. Markworth left the facility that same afternoon. On May 26, 1999, Ms. Markworth took an overdose of Librium and was admitted to Carroll County Hospital in Carrollton, Missouri, and was then later admitted to Two Rivers Psychiatric Hospital.

Ms. Markworth has suffered from depression, panic disorder, and anxiety for a good part of her life. She remembers being depressed as a child and was first diagnosed with depression in the early 1990's. She has been on medication for the condition since 1990-1991. Ms. Markworth was first diagnosed for anxiety and panic disorder in 1996 or 1997 and has been on medication ever since. Before May 26, 1999, Ms. Markworth was hospitalized at Shawnee Mission Hospital in 1996 and College Meadows. Both times, Ms. Markworth left the facilities against medical advice. Ms. Markworth has shown a pattern of periodic episodes of hospitalizations. The evidence was that before May 26, 1999, Ms. Markworth would work two or three years and then require treatment and hospitalization for anxiety, panic disorder and depression. This occurred at least two times from around 1995 and again in about 1997. The same situation occurred after Ms. Markworth worked for the Lexington Public Schools. She began her employment in August of 1999 and worked for two and a half years before her mental condition caused her to resign.

Ms. Markworth's family situation in May 1999 was complicated by events surrounding her daughters, Rikki and Betty. In 1997 Rikki began serving a ten year sentence at the Women's Eastern Correctional Facility in Vandalia, Missouri for selling narcotics. See, Claimant's Exhibit B at 10:14-19. Betty, her other daughter, was receiving treatment for bipolar disorder, which she had dealt with for most of her life. In 2000 Betty began serving a five year sentence for forgery at the same prison. See, Claimant's Exhibit B at 8:19-9:13. A foster family adopted one of Betty's children, and Betty's other child was placed in foster care with the same family. *Id.* at 9:24-10:2.

Ms. Markworth resigned as Director of Nursing on June 11, 1999. In her resignation letter, she asked to stay on as a staff nurse but did not state that she had any disability to prevent her from working. See, Employer's Exhibit 1. Ms. Markworth began working at the Lexington Public School District in August 1999 and worked as a teacher for three years. Currently, she is employed with a nursing home in Lexington, Missouri, as a registered nurse.

Ms. Markworth entered into evidence the deposition of Donald Hinton, M.D. Dr. Hinton is a practicing psychiatrist in Independence, Missouri and treated Ms. Markworth when she was hospitalized at Two Rivers Psychiatric Hospital in May 1999. Dr. Hinton opined that the stress that Ms. Markworth experienced at work was "the straw that broke the camel's back." See, Claimant's Exhibit C at 52:17. Dr. Hinton also admitted that her work-related stress was a "triggering" effect. *Id.* at 52:19-23. And, although Dr. Hinton admitted that Ms. Markworth had anxiety disorder before working at Shirkey, he opined that her work possibly did - and possibly did not - make her condition worse. *Id.* at 63:18-23. Dr. Hinton first learned under questioning on cross-examination that Ms. Markworth had been hospitalized previous to being at Two Rivers. *Id.* at 53:14-17. This oversight by Dr. Hinton is significant because he noted in his May 27, 1999 report that her Two Rivers admission was "her first ever psychiatric admission." *Id.* at exhibit page 30.

Dr. Hinton admitted that he was publicly reprimanded by the Missouri Board of Healing Arts. *Id.* at 9: 19-20 and 67:6-19. Interestingly, this stemmed from his treatment of a patient whom *Dr. Hinton believed* was Elvis Presley. Dr. Hinton and "Elvis" co-authored a book published in June 2001 that "talked about the continued existence of Elvis Presley." *Id.* at 8:15-24. Dr. Hinton observed that "the book had some notoriety" and resulted in a "couple of negative stories about me being a professional and saying such a thing." *Id.* at 67:8-11. However, Dr. Hinton testified this incident did not in any way influence his opinion or analysis of Ms. Markworth in this case. *Id.* at 9:12-14.

Ms. Markworth also presented the deposition testimony of Joseph F. Edwards, Ph.D. Dr. Edwards first became acquainted with Ms. Markworth when she met with him in approximately 1990 about her daughter's emotional difficulties. See, Claimant's Exhibit D at 5:18-20. Regarding Ms. Markworth's case, Dr. Edwards "saw her once or twice at Two Rivers but I'm not sure." *Id.* at 5:9-10. Dr. Edwards also opined that the events at Shirkey were "the straw that broke the camel's back." *Id.* at 15:22-16:1. Furthermore, Dr. Edwards testified that in a person suffering from depression, ". . . their view of everything is perceived often as a stressor." (Emphasis

added) *Id.* at 33:3-5. Also, people with depression overreact, exaggerate conditions and magnify the negative. *Id.* at 33-34. Dr. Edwards testified that Ms. Markworth tended to focus on the negative side of life “because she couldn’t function or she couldn’t get up to get out of the house by herself.” *Id.* at 34:18-20.

Lastly, Claimant presented the deposition testimony of Kathryn A. Ballou, PhD, RN. Dr. Ballou holds a Doctorate in Nursing and serves as a Clinical Associate Professor at the University of Missouri at Kansas City. Dr. Ballou has worked in all levels of nursing and now teaches nursing students at a graduate level as well as serving as a clinical instructor and Associate Dean for the Nursing School. After interviewing the employee by phone for two hours and fifteen minutes, Dr. Ballou identified several specific factors that she thought characterized work-related stress for Ms. Markworth:

1. Role overload and over-responsibility: Ms. Markworth was assigned additional roles outside the normal scope of responsibility for a nursing director. According to Dr. Ballou, Ms. Markworth was used as “on call nurse” when other nurses called in sick or the facility was short-staffed;
2. Administrative Abandonment: Disregard or indifference to Ms. Markworth’s stated concerns, such as reduced staffing level, non-availability of on-call administrators, complaints about questionable staff actions;
3. Administrative Intimidation and Coercion: coerced by Ms. Karami to write a letter to the Board explaining her stressors, received inappropriate and disparaging remarks by superiors if she didn’t like the Board decisions.
4. Pressure to Comply with Illegal/Illicit Organization Actions: administrator smoking marijuana at conferences, directed to forge documents to make the staffing and employee vaccination records look “adequate” on paper, directed to stop performing “pre-assessments” on new residents or override assessments when performed that would prevent admission of a resident;
5. Sabotage and Scapegoating: Markworth worked fourteen hour or longer days and most weekends because of staff vacancies; Markworth’s article was claimed and published in the administrator’s name only; required to answer for deficiencies in all departments outside of her scope of authority;
6. Usurping of Authority: Administration overriding her choice of vendor though she ordered supplies; indifference to her concerns about staffing levels, inappropriate employee behaviors; Markworth reported facility Staff Educator was ineffective, administration indicated then Markworth should perform employee education; and,
7. Sexual Harassment: maintenance director would come to her office, a prior Administrator sexually harassed Markworth.

See, Claimant’s Exhibit E at 29:19-20 and 58-65.

Dr. Ballou, as noted, interviewed Ms. Markworth via telephone and has never even met her. *Id.* at 73:18-20. Dr. Ballou did not verify the individual to whom she was speaking actually even was Ms. Markworth. *Id.* Although no assertion was made that Dr. Ballou was speaking with someone other than Ms. Markworth, this does reflect a certain amount of carelessness on her part. Dr. Ballou’s report did not indicate the date of her telephone interview of Ms. Markworth, and Dr. Ballou could not testify to the specific date of the interview. *Id.* at 74:17-22. However, she believed it occurred in November 2004. *Id.* at 74:22. Dr. Ballou did not know that Ms. Markworth had suffered a stroke. *Id.* at 75:7. Dr. Ballou noted - as I did at hearing - that Ms. Markworth “. . . easily recalled situations and facts and dates.” *Id.* at 79:1-3. Dr. Ballou never attempted to verify any information Ms. Markworth provided with Shirkey Leisure Acres or any other nursing home. Again, this demonstrates a certain level of carelessness on her part. *Id.* at 75:19-22. Dr. Ballou did not know whether Ms. Markworth was on any type of medication during the interview. *Id.* at 75:13-18. Dr. Ballou had no knowledge of staffing of nursing homes and

had never been associated with a rest care facility. *Id.* at 76:17-77:4. Dr. Ballou assumed all of the information provided to her - including the history provided by Ms. Markworth - was true. *Id.* at 77:5-24. When, on cross-examination, Dr. Ballou was asked if the removal of many of the factors on which she based her report would alter her report, she was evasive and often times said it would not. *Id.* at 82-89.

Counsel for Shirkey presented the psychiatric independent medical exam performed by Wayne A. Stillings, M.D. Dr. Stillings examined Ms. Markworth in person on September 4, 2002 and reviewed the records from Shirkey, Two Rivers Psychiatric Hospital, Eastern Jackson County Psychiatric Associates, and the deposition of Ms. Markworth. See, Employer's Exhibit 3 at 1. Dr. Stillings found that Ms. Markworth's memory was selective and that she was manipulative. *Id.* at 8. Dr. Stillings also found that Ms. Markworth "blames others and external situations for her personal shortcomings and problems in life rather than taking responsibility for them herself." *Id.* at 8-9. For example, he pointed to the fact that Ms. Markworth maintained that her own psychiatric problems and the legal problems of two of her daughters had nothing to do with her emotional status.

Dr. Stillings opined that while Ms. Markworth's employment "may have aggravated her pre-existing undifferentiated somatoform disorder to the extent that she has sustained a 1-2% permanent partial psychiatric disability" but that her "employment situation at Shirkey Leisure Acres is a very minor component to her current psychiatric status . . ." *Id.* at 10, ¶ 2. He also found that Ms. Markworth was capable of performing any job for which she is suited by training, education and experience. Dr. Stillings noted that she was "unwilling to do so". Of course, that opinion was rendered in 2002 and Ms. Markworth testified that her condition has improved dramatically since then. She testified that her 2004 stroke cured her of her depression and has enabled her to once again return to the work place. Ms. Markworth testified that since March 2006 she has been working four days a week at the Lexington Care Center as a supervisor and R.N. Dr. Stillings further opined that Ms. Markworth's depression and anxiety " . . . are not causally related to the conditions of her employment with Shirkey Leisure Acres." *Id.* at 10.

Also testifying at the Employer's request by subpoena were Ms. Michele Kist and Ms. Jennifer Hosman. Both were former co-workers of Ms. Markworth's at Shirkey. Ms. Kist testified that Ms. Markworth's duties were the same or similar to other directors of nursing. In addition, she testified that Ms. Markworth's stress was no greater than any other employees at Shirkey. Ms. Kist concluded her testimony by stating that Ms. Markworth spent most of her time at work in her office visiting with family members regarding her own personal problems. Ms. Hosman testified that, if anything, Ms. Markworth was treated with more leniency than the other employees at Shirkey.

## RULINGS

Regarding whether Ms. Markworth sustained an accident arising out of or in the course of her employment, I find that she did not. Specifically, I find that the Claimant failed to meet her burden of proof. Missouri law states, in pertinent part, 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.

MO.REV.STAT. §287.120.8.

Missouri law further provides that:

An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor. (Emphasis added)

MO.REV.STAT. §287.020.2.

Our courts have held that:

Accordingly, a mental injury is not compensable, unless it can be shown that the alleged work-related stress was a substantial factor in causing the injury. Bloss v. Plastic Enters., 32 S.W.3d 666, 672 (Mo.App.2000). Thus, it is not enough that the stress can be shown to be a "triggering or precipitating factor." Id. at 671 (citing § 287.020.2; Cahall v. Cahall, 963 S.W.2d 368, 372 (Mo.App.1998)). However, recognizing that a work-related accident can be both a triggering event and a substantial factor in causing an injury, a mental injury triggered or precipitated by a work-related accident is nonetheless compensable provided it can be shown that the accident was a substantial factor in causing the injury. Id. (citing Kasl v. Bristol Care, Inc., 984 S.W.2d 852, 853 (Mo. banc 1999)).

Tangblade v. Lear Corp., 58 S.W.3d 662, 667 (Mo.App. W.D. 2001).

None of Ms. Markworth's experts ever testified that they considered her work to be a substantial factor in causing her mental condition. In addition, Ms. Markworth did not submit persuasive objective evidence to the Court that her stress was extraordinary or unusual when compared with employees in the same or similar position. The only witness to testify that Ms. Markworth's stress was extraordinary and unusual was Ms. Markworth herself. This subjective account is insufficient. Williams v. DePaul Health Ctr., 996 S.W.2d 619 (Mo. App. E.D. 1999). Additionally, Ms. Markworth's recollection is suspect after considering the testimony of her own doctors who stated that depression causes people to overreact and magnify the negative in a given situation. Both Dr. Hinton and Dr. Edwards testified that Ms. Markworth's experiences at Shirkey were no more than "the straw that broke the camel's back" and what "triggered" her anxiety on May 26, 1999. However, it is undisputed that Ms. Markworth had suffered from depression and for quite some time. This is not a case where the Claimant simply was "pre-disposed" to developing depression; Ms. Markworth had taken prescription anti-depressant's for years before May 26, 1999 and had been hospitalized for her psychiatric condition multiple times before then, as well. In addition, Dr. Hinton opined that her work possibly did - and possibly did not - make her condition worse.

Dr. Ballou's testimony is not persuasive. Dr. Ballou never met Ms. Markworth but merely talked with her on the telephone. Dr. Ballou never attempted to verify any information with Shirkey Leisure Acres or any other nursing home. Dr. Ballou had no knowledge of staffing of nursing homes and had never been associated with such a facility. She was more of an advocate than a witness. It would be incredible to accept Dr. Ballou's opinions when she testified that if the facts she used to write her report were not true, her report nonetheless would not change. I find her testimony neither credible nor persuasive. Even if I were to find her testimony persuasive, it constitutes no more than subjective evidence as it is based solely on facts as presented by Ms. Markworth without any attempt by Dr. Ballou to verify the information.

Moreover, the testimonies of Ms. Michelle Kist and Ms. Jennifer Hosman directly contradict Ms. Markworth's recollection which formed much of the basis for Dr. Ballou's opinions. Ms. Kist testified that Ms. Markworth's duties were the same or similar to other Directors of Nursing and that Ms. Markworth's stress level was no greater than any other employee at Shirkey. Ms. Kist also testified that she had experience conducting assessments in other nursing homes and that the environment that employees experienced at Shirkey was no different than other nursing homes. In addition, Ms. Hosman's testimony that Shirkey's management treated Ms. Markworth with leniency also contradicted Ms. Markworth's statements to Dr. Ballou. Again, Dr. Ballou relied on the accuracy of Ms. Markworth's statements - and made no attempt to corroborate them independently - in creating her report. The testimony of both Ms. Kist and Ms. Hosman call into question the accuracy of Ms. Markworth's perspective on her actual work situation at Shirkey. I find the testimony of Ms. Kist and Ms. Hosman both persuasive and believable. Both were friends and former long-term co-employees of Ms. Markworth and both testified against their will under subpoena and had no incentive to color their testimony in a way that would be unfavorable toward her; if anything, the opposite would be true.

Furthermore, the Court cannot simply ignore Ms. Markworth's family life as a source of stress in her life. Although both of Ms. Markworth's doctors stated that any work-related stress was the straw that broke the camel's back and thus was a triggering factor for Ms. Markworth, both also admitted that the Employee had significant stressors apart from work. Again, these included the recent death of her mother; the incarceration of one daughter; the long-term drug dependency of her other daughter (and eventual incarceration); and her own chronic

history of depression and anxiety that resulted in multiple hospitalizations long before her alleged May 26, 1999 injury.

Instead, I adopt the opinion of Dr. Stillings that Ms. Markworth's depression and anxiety ". . . are not causally related to the conditions of her employment with Shirkey Leisure Acres." In addition, even if I were to find that Ms. Markworth's condition was minimally attributable to her work at Shirkey, I would find that her work was no more than a triggering factor and specifically not a substantial factor in causing any alleged injury. Again, this is exactly what Ms. Markworth's own experts testified was the effect of the events of May 26, 1999. Thus, any such injury still would not be compensable under the law. And, if I were to find that she sustained a compensable injury - or am reversed on the denial of compensability - I would assess no more than two percent (2%) whole body disability as found by Dr. Stillings. Although Ms. Markworth testified that her 2004 stroke cured her of her depression and mental problems, I note that she continues to take prescription medications, albeit in very small amounts. However, my conclusion is that Ms. Markworth did not sustain a compensable injury and her claim for compensation is hereby denied. Despite that denial, I laud Ms. Markworth for working through many difficult life situations involving her children and an abusive former spouse which has resulted in her returning to gainful employment.

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

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

Carl Mueller  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*

**Division of Workers' Compensation**