

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

Injury No.: 96-442053

Employee: Michael Massey  
Employer: City of Springfield, Missouri  
Insurer: Self c/o Claims Management, Inc.

Date of Claimed Injury: June 10, 1996

Place and County of Accident: Springfield, Greene 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 associate 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 associate administrative law judge (AALJ) dated August 30, 2004, and awards no compensation in the above-captioned case.

The award and decision of Associate Administrative Law Judge David L. Zerrer, issued August 30, 2004, is attached and incorporated by this reference.

The AALJ determined that employee did not establish that his mental injury was compensable under the 1992 amendments to section 287.120. The 1992 amendments added the following language relating to mental injuries:

8. 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.
9. 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.

In this case employee failed to show that his alleged work related stress was extraordinary and unusual when compared to other similarly situated employees of his employer or of any other employer. Accordingly, as in *Williams v. DePaul Health Center*, 966 S.W.2d 619 (Mo. App. E.D. 1999), employee has failed to prove the elements of his claim.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: John J. Hickey, Member

Secretary

## AWARD

Employee:	Michael Massey	Injury No. 96-442053
Dependents:		Before the
Employer:	City of Springfield, Missouri	<b>DIVISION OF WORKERS' COMPENSATION</b>
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-insured-Claims Management, Inc.	
Hearing Date:	January 12, 2004	Checked by: DLZ

### 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: June 10, 1996
5. State location where accident occurred or occupational disease was contracted: Springfield, Greene 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? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant alleges mental stress injury in connection with disciplinary action and termination
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: Body as a whole
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$412.40
- 19. Weekly compensation rate: \$274.95/\$257.29
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:
  - Unpaid medical expenses: None
  - No weeks of temporary total disability (or temporary partial disability)
  - No weeks of permanent partial disability from Employer
  - 0- weeks of disfigurement from Employer
  - No permanent total disability benefits from Employer for Claimant's lifetime
- 22. Second Injury Fund liability: Yes    No     Open

TOTAL: NONE

- 23. Future requirements awarded: None

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

Employee:            Michael Massey

Injury No: 96-442053

Before the  
**DIVISION OF WORKERS'**  
**COMPENSATION**  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents:

Employer:            City of Springfield, Missouri

Additional Party: Second Injury Fund

Insurer: Self-insured-Claims Management, Inc.

Checked by: DLZ

The parties appeared before the undersigned Associate Administrative Law Judge for a final hearing on January 12, 2004, evidence was adduced, and the hearing was recessed to January 16, 2004, on which date the hearing was concluded. Claimant appeared in person and by his attorneys, Richard D. Crites and Lynn Myers. The Employer appeared by its representative, Linda Richardson, and by its attorney, Patrick J. Platter. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, appeared by Assistant Attorney General, Susan Colburn.

The parties have entered into a stipulation pertaining to certain facts which are not at issue in this claim as follows, to wit: On or about June 10, 1996, the City of Springfield, Missouri, was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully self-insured, administered by Claims Management, Inc.; on the alleged injury date of June 10, 1996, Michael Massey was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the employment occurred in Springfield, Greene County, Missouri, and Greene County, Missouri, is the proper venue for this hearing; the Claimant notified the Employer of his injury as required by Section 287.420; the Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident/occupational disease, Claimant's average weekly wage was \$412.40, sufficient to allow compensation rates of \$274.95 for temporary total disability and permanent total disability, and \$257.29 for permanent partial disability; no temporary benefits have been paid by the Employer prior to the date of this hearing; the Employer has paid no medical expenses prior to the date of this hearing; the Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award; the parties further stipulate to the admission of Joint Exhibit 1, identified as all the exhibits from a personnel board hearing held by the Employer on November 1, 1996, except personnel board hearing Exhibits 25 and 26.

## **ISSUES**

Whether the Claimant sustained an accident/occupational disease.

Whether the accident/occupational disease arose out of the course of and scope of employment.

Whether the accident/occupational disease caused the injuries and disabilities for which benefits are now being claimed.

Whether the Employer is obligated to pay for past medical expenses.

Any temporary total benefits owed to Claimant.

The nature and extent of any permanent disabilities.

## **DISCUSSION**

A legal file was established which consisted of the following documents, to wit: Claim for Compensation, Answer to Claim for Compensation filed by Employer, and Answer to Claim for Compensation filed by the Treasurer of the State of Missouri, as Custodian of the Second Injury Fund.

Joint Exhibit 1 was admitted into evidence by stipulation of the parties.

Claimant admitted exhibits into evidence as follows, to wit:

Exhibit A—Claim for Compensation file stamped June 9, 1998.

Exhibit B—Copy of Claim for Compensation with correspondence

Exhibit C—Medical records of Lakeland Regional Hospital

Exhibit D—Transcript of Personnel Board Hearing of November 1, 1996

Exhibit E—Counseling Assessment Report of Steven Moncher

Exhibit F—Curriculum Vitae of Steven Moncher

Exhibit G—Comprehensive Psychological Evaluation report of Thomas A. Blansett, PhD

Exhibit H—City of Springfield, Missouri, Merit System Rules, adopted October 5, 1981, as amended August 1996

Michael Massey, claimant herein, is a male, age 44, at the date of this hearing. Claimant testified that he previously worked in the wastewater department of the City of Independence, Missouri, until he was involuntarily terminated for violating that city's work attendance policy. The current Employer employed Claimant on January 5, 1994, as a wastewater operator. Claimant holds a Class C operator's license.

Claimant testified in detail concerning his first marriage breakup and termination and further testified concerning his second marriage, separation, and eventual dissolution. Claimant testified that after his second wife deserted him with most of his personal property, he resumed a pattern of heavy alcohol consumption and the use of illegal drugs.

Claimant testified that in early June 1996 he requested the services of Employer's employee assistance program (EAP) because he was "stressed out and very anxious feeling." Claimant was referred to the EAP where he met and was treated by psychologist, Jacqueline Kabonic. Claimant saw Jacqueline Kabonic on June 10, June 17, and June 26, 1996. Ms. Kabonic referred Claimant to Dr. Vic, a psychiatrist, for an evaluation for medication to assist Claimant in handling his mental condition, for which an appointment was made for June 18, 1996. Claimant failed to appear for his appointment with Dr. Vic. Thereafter, the appointment was rescheduled with Dr. Garcia for June 26, 1996. When Claimant arrived for his June 26, 1996, appointment with Dr. Garcia, he was informed that the appointment was cancelled. Claimant testified that he contacted the Employer to see why the appointment was cancelled and was told at that time that he was terminated from employment with the Employer.

Claimant testified that he had a disciplinary interview on June 20, 1996; concerning his taking more time off work than was allowed under the City of Springfield's various leave policies. Claimant testified that he did not remember details of the June 20, 1996, meeting and further testified that he did not remember any discussion concerning his employment or termination of employment from the City of Independence during the meeting of June 20, 1996. Claimant further testified that he did not remember if EAP was discussed at the meeting and that he did not know if Mr. Schaeffer knew that Claimant was in the EAP program. Claimant testified that after the meeting of June 20, 1996, the next matter with regard to his discipline or termination of employment occurred on June 26, 1996, when he was told that he had been terminated.

Claimant also testified that he had previous disciplinary action taken against him for excessive absenteeism when he was placed on six months probation and suspended without pay for one day, effective September 13, 1994. That suspension and probation was not appealed. Claimant testified that in January 1995 he was counseled during an annual review that he left his bank of leave time too low. Claimant testified that, in his opinion, he never actually ran out of leave time for sick leave or vacation. Claimant further testified that the Employer had charged some of his training time to sick leave and that such action was not authorized by any of the Employer's policies. Claimant testified that as of June 6, 1996, he had accumulated 134 hours of leave time and that he used 105 hours of leave time. Claimant further testified as to his understanding of the Employer's policy with regard to sick leave, floating holiday leave, vacation leave, and family leave.

Claimant testified concerning the events of the week of June 9, 1996. Claimant testified that his paternal aunt-by-marriage, Becky Massey, died on June 9, 1996. Claimant testified that his mother informed him of Becky Massey's death on June 10, 1996. Claimant testified that he requested time off for this funeral; however, his immediate supervisor denied his request. Claimant further testified that he told the immediate supervisor that he needed off in order to assist his father in

grieving for the loss of this family loved-one. Claimant testified that he requested off for June 14, 1996, and that Mr. Schaeffer then approved his request.

Claimant testified that he did not remember the date that he requested EAP assistance, but agreed that if the record shows June 10, 1996, then that would be correct. Claimant does not remember the circumstances of the June 14, 1996, absence being the subject of a meeting with Supervisor, Mike Lewis, and Mr. Schaeffer. Claimant remembers the disciplinary meeting of June 20, 1996, but does not remember who told him about the meeting or the details of what was said in the meeting. At the meeting of June 20, 1996, the problem of being absent for the funeral of Becky Massey was discussed. Claimant remembered that there was discussion about the fact that Becky Massey's funeral was held June 12, 1996, and that Claimant did not request off for that day but did request off for June 14, 1996.

Claimant testified that after he found out he was terminated, he became very upset and depressed and that his actions culminated in Claimant's admission to Lakeland Regional Hospital for psychiatric treatment. Claimant testified that he has had no treatment since his follow-up appointment with Carl Dawson and that his job history since June 24, 1996, has been sporadic.

Under cross-examination Claimant admitted that he was terminated from employment with the City of Independence, Missouri, after missing six days of work in a row without prior approval. He further admitted that his termination was about two years after his first reprimand for excessive absenteeism.

Claimant also admitted on cross-examination that he suffered an undiagnosed nervous breakdown in 1987. Claimant received treatment from a psychiatrist provided by the City of Independence, Missouri. Claimant could not recall if he informed the care providers at Lakeland Regional Hospital of his previous history for mental condition.

Claimant further admitted that he learned of his aunt's death on June 10, 1996, and that he told Mr. Schaeffer that he wanted to attend the funeral. Claimant admitted that he could have asked for time off for the funeral on June 13, 1996, the day after the funeral actually occurred. Claimant further admitted that he missed an appointment with Dr. Vic, psychiatrist, on June 18, 1996, because Claimant overslept.

Claimant admitted that he consumed intoxicants heavily after his termination from the Employer and prior to his admission to Lakeland Regional Hospital. Claimant further admitted to heavy alcohol and drug use after his marital separation in February 1995. Claimant also admitted that he would come to work in an impaired condition from the ingestion of cocaine and alcohol. Claimant admitted that he told Dr. Shaheen, a treating psychiatrist during Claimant's hospitalization in July 1996, that the cause of his termination was use of drugs and alcohol. Claimant admitted that he was convicted of driving while intoxicated in January 1996 and that he continued using amphetamines and "crank" during the spring of 1996.

Claimant further admitted on cross-examination that he did not change his official residence address with the Employer when he changed residences to live with a girlfriend. Claimant further admitted that he suffered from depression and anxiety after each of his domestic relationship terminations.

Mr. Steven Moncher testified on behalf of Claimant. Mr. Moncher testified that he was a licensed professional counselor in the State of Missouri. Mr. Moncher testified that he conducted a formal assessment of Claimant using an interview, review of medical records, review of prior psychological evaluation, and the City of Springfield Personnel Handbook, and City of Springfield Personnel Board proceedings. Mr. Moncher testified that he did not perform any testing, but that he conducted an intensive interview with the Claimant. Mr. Moncher testified that he reviewed the conclusions of Dr. Blansett's evaluation with regard to the Claimant, and that he did not disagree with any of those conclusions. Mr. Moncher's specific findings and opinions were excluded from evidence considered at the hearing as being outside of the scope of the witness's license as a professional counselor.

Under cross-examination, Mr. Moncher admitted that the Lakeland Regional Hospital records reflect self-reporting by

Claimant of hearing voices in his head and the Claimant's deposition also confirmed Claimant's statements that he heard voices in his head, all of which predated June 1996. Mr. Moncher further admitted to Claimant's self-reported history of drug use, which started in high school, and continued into the spring of 1996. Mr. Moncher further admitted that Claimant suffered a weight loss of 25 pounds between January 1996 and June 1996, the period following Claimant's second termination of marriage.

Mr. Moncher testified that at the date of Claimant's interview Claimant was a student at Webster University studying computer systems and scheduled to graduate after completing his current senior year.

Dr. Thomas A. Blansett, PhD, licensed psychologist, testified on behalf of Claimant. Dr. Blansett testified that he evaluated Claimant on January 1, 2004, that he took a personal history from Claimant, that he reviewed certain medical and personnel records identified in Dr. Blansett's report, Exhibit G, herein, and that he conducted certain tests upon the Claimant, all of which are documented in Dr. Blansett's report. Dr. Blansett's report recommends individual psychotherapy and continued assessment for the use of psychotropic medication for depression and anxiety; further assessment of Claimant's substance abuse problems; possible qualification for the use of the Missouri Division of Vocational Rehabilitation in order to assist in retraining as well as substance abuse treatment; possible evaluation of Claimant for any cognitive disorder caused by Claimant's long-term alcohol and drug abuse; possible evaluation for Social Security Disability qualification based on an underlying Bipolar Disorder demonstrated by fluctuation of Claimant's depression from time to time.

Dr. Blansett further opined that due to Claimant's alcohol and drug abuse combined with Claimant's emotional problems, Claimant may be unable to effectively and gainfully be employed in the open labor market. Dr. Blansett testified that, in his opinion, if Claimant received appropriate treatment, he could have a successful recovery. Dr. Blansett further testified that Claimant has the confidence to do any kind of work; however, Claimant lacks the confidence to be employed in a stable manner and therefore, continues to put off reentry into the labor market.

Dr. Blansett testified that Claimant's major depressive episode from June 10, 1996, through June 26, 1996, exacerbated his existing emotional and mental condition caused by Claimant's inability to cope by using alcohol and drugs.

Under cross-examination, Dr. Blansett admitted that his Axis II diagnosis is the same as that of Dr. Bland. Dr. Blansett further admitted that if Claimant was consuming 12 alcohol drinks per night, was ingesting one gram of cocaine per night, and was convicted of driving while intoxicated in January 1996, Dr. Blansett would refer the Claimant for substance abuse.

Mr. Robert Schaefer testified on behalf of Employer. Mr. Schaefer testified that in June 1996 he was Supervisor of Sanitary Services for the City of Springfield, Missouri. Mr. Schaefer testified that Claimant worked under him in 1996 as a Waste Water Operator II. Mr. Schaefer further testified that he talked to the Claimant on June 14, 1996, to discuss Claimant's aunt's death. Mr. Schaefer acknowledged that Claimant requested time off to help his father with the grieving process. Mr. Schaefer testified that he informed Claimant that funeral leave under Employer's personnel policy did not cover an aunt-by-marriage. Mr. Schaefer further testified that he agreed to allow Claimant to be gone from work duties on June 14 and June 15, 1996, on leave without pay. Mr. Schaefer further testified concerning a letter drafted to the Claimant on June 14, 1996, concerning his leave time, but that the letter of June 14, 1996, had nothing to do with the funeral of Claimant's aunt or Claimant's request for time off to attend the funeral.

Mr. Schaefer testified that he was present at the meeting of June 20, 1996, as was Claimant. Mr. Schaefer testified that Claimant did not seem incoherent nor did Claimant look confused. The meeting of June 20, 1996, concerned Claimant's termination of employment from the City of Independence, Missouri, and attendance at the funeral of Claimant's aunt. Mr. Schaefer indicated that he verified the date of Claimant's aunt's funeral and learned that the funeral took place on June 12, 1996, rather than on June 14, 1996, as Mr. Schaefer understood from his conversations with the Claimant. Mr. Schaefer

further testified that he did not recall the Claimant telling him that he was taking Valium medication on June 20, 1996, and that Claimant did not seem to be having any difficulty talking or understanding the events of the meeting of June 20, 1996.

On cross-examination, Mr. Schaefer testified that Claimant had a consistent pattern of using sick days as soon as they accrued rather than allowing any accumulation and that Mr. Schaefer never knew if Claimant was going to show up for work or not.

## **FINDINGS OF FACT AND RULINGS OF LAW**

**Whether the Claimant sustained an accident/occupational disease.**

**Whether the accident/occupational disease arose out of the course of and scope of employment.**

**Whether the accident/occupational disease caused the injuries and disabilities for which benefits are now being claimed.**

Claimant does not allege an accident occurred while performing his duties in the workplace. Claimant's claim is based on emotional stress because he was not allowed sick leave and family leave time at the death of an aunt-by-marriage. Claimant further alleged that he was required to attend a disciplinary meeting while under the influence of Valium and that this occurrence caused him severe emotional distress, depression, and mental and emotional damage (Claim for Compensation, line 15, Schedule A). Claimant's right to recover must be based on Section 287.210.8, which defines mental injuries in the work place. In order to sustain Claimant's burden of proof, he must show that the stress suffered was work related and was extraordinary and unusual when measured by objective standards and actual events. The standard to measure extraordinary and unusual stress in the workplace is a comparison to other wastewater plant operators at this or other employers. The evidence presented at the hearing showed that when Claimant showed up for his work, he performed in a satisfactory manner, except when, by Claimant's own admission, he was less than fit because of ingesting alcohol or illegal drugs prior to coming to work. Claimant was counseled and/or disciplined for excessive absenteeism prior to the events of the month of June 1996. Claimant was terminated from his prior employment in Independence, Missouri, for the reason that he failed to show up for work for several days in succession. Claimant's difficulties in June 1996 that resulted in a disciplinary meeting being held June 20, 1996, were centered on Claimant's use of sick leave and vacation leave. There is no evidence presented at the hearing as to the amount of stress encountered with other plant operators with regard to sick leave and vacation leave accrual and use of time. The evidence adduced at the hearing tended to show that there were no extraordinary or unusual events taking place at the work place at or near the time of Claimant's alleged injury.

Claimant also urges that Claimant felt he was singled out in his treatment during June 1996 and that his termination was not reasonable. If Claimant does not sustain his burden to prove that he suffered an accident or injury that occurred in direct relation to his job duties, then Claimant alleges that his termination caused the emotional injury he suffered. Claimant presented evidence from a licensed psychologist that the events of Claimant's aunt's death, coupled with his termination, exacerbated an existing psychological disorder, which pre-existed the events of June 1996. Indeed, there was substantial evidence that Claimant's emotional problems well predated his employment with this Employer, much less the events of June 1996 which apparently pushed Claimant to an emotional state that caused him to attempt to do himself harm, at which time he was hospitalized.

Section 287.120.9 specifically removes disciplinary action, termination, or similar action from the definition of mental injury if the employer's action is taken in good faith. In order to meet his burden of proof in this respect, Claimant must show that Employer's conduct, with regard to the disciplinary action or termination, was not in good faith. Employer presented testimony and written evidence with regard to the personnel regulations with respect to the accrual and use of sick

leave, vacation leave, and funeral leave. Employer documented Claimant's personnel file with incidents of missed work, counseling, and right of appeal for disciplinary action. There is substantial and credible evidence that the actions of the Employer concerning Claimant's termination followed established procedures and was supported by factual information contained in Claimant's personnel file.

After a review of all the evidence presented at the hearing, both oral and written, I find that Claimant has failed to meet his burden of proof to establish that Claimant suffered a work- related accident or injury within the scope of and course of his employment with the Employer as set out in Section 287.120.8. I further find that Claimant's disciplinary action and subsequent termination of employment were taken in good faith by the Employer. I further find that Claimant's termination, although it may be a substantial cause of Claimant's mental injury, such mental injury was not caused or substantially contributed to by Claimant's work duties. I find these issues in favor of Employer.

**Whether the Employer is obligated to pay for past medical expenses.**

**Any temporary total benefits owed to Claimant.**

**The nature and extent of any permanent disabilities.**

Based on the findings and rulings set out in the previous issues of this award, I find that Claimant is not entitled to reimbursement of past medical expenses, any temporary total disability benefits, or any permanent partial disability or permanent total disability benefits. I find these issues in favor of Employer.

Claimant's attorney fee request is denied.

Date: September 20, 2004

Made by: /s/ David L. Zerrer

David L. Zerrer  
*Associate Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

/s/ Gary Estefson

Gary Estefson  
*Acting Director*  
*Division of Workers' Compensation*