

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

Injury No.: 01-105150

Employee: Elaine Myers-Clardy  
Employer: St. Louis Community College  
Insurer: St. Louis Community College  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: Alleged August 31, 2001  
Place and County of Accident: Alleged St. Louis 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 May 24, 2005, with this supplemental opinion. The award and decision of Administrative Law Judge Karla Boresi, issued May 24, 2005, is attached and incorporated by this reference.

In the instant claim, the employee is alleging that she sustained a myriad of medical conditions due to alleged "work related stress" stemming from a series of events that occurred at work on August 31, 2001.

The Commission agrees with the findings and conclusions of law made by the administrative law judge, i.e., the employee did not prove she sustained an injury arising out of and in the course of her employment.

Employee's contention at trial was that she sustained a mental stress type injury or psychiatric disorder due to certain described events that occurred at work on August 31, 2001. After reviewing the entire record, as to the issue of employee's alleged mental stress or psychiatric disorder, and any relationship to events occurring at work August 31, 2001, the Commission finds the most credible, persuasive and cogent medical opinions adduced at the hearing were the medical opinions rendered by Dr. Smith.

In summary fashion, Dr. Smith was of the opinion that employee had not sustained a psychiatric disorder due to the events occurring at work on August 31, 2001; employee was able to work without restrictions from a psychiatric standpoint; and consequently, employee had not sustained any permanent disability attributable to any work events occurring August 31, 2001. Dr. Smith was of the further opinion that employee had a conscious exaggeration of her level of impairment and secondary gain was a contributing factor.

The Commission, based on the credible medical opinions of Dr. Smith, is convinced that the work events occurring August 31, 2001, forming the basis of this claim for compensation, did not result in any medical condition for which employee is seeking workers' compensation benefits. No medical condition for which the employee is presently seeking workers' compensation benefits is medically causally related to the described events occurring at work on August 31, 2001.

Accordingly, the Commission finds the administrative law judge correctly weighed and evaluated the lay and medical testimony in reaching her conclusions. Employee's claims for workers' compensation benefits from both the employer and the Second Injury Fund are denied. Employee did not sustain an injury due to an accident

arising out of and in the course of her employment nor did employee establish a medical causal relationship between any medical condition complained of, and the alleged work related accident.

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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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

**AWARD**

Employee: Elaine Myers-Clardy

Injury No.: 01-105150

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: St. Louis Community College

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

Additional Party: Second Injury Fund

Insurer: Self-Insured

Hearing Date: February 17, 2005

Checked by: KOB:tr

**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 to have occurred on August 31, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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? Yes.

11. Describe work employee was doing and how accident occurred or occupational disease contracted: In assisting a student, Claimant interrupted a professor's class, which prompted an angry outburst and reprimand by the professor, and caused Claimant to feel threatened.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Elaine Myers-Clardy Injury No.: 01-105150

17. Value necessary medical aid not furnished by employer/insurer? \$0
18. Employee's average weekly wages: \$465.43
19. Weekly compensation rate: \$310.30 / \$310.30
20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

21. Amount of compensation payable: \$ 0.00
22. Second Injury Fund liability: No

TOTAL:

23. Future requirements awarded: None.

**FINDINGS OF FACT and RULINGS OF LAW**

Employee:	Elaine Myers-Clardy	Injury No.: 01-105150
Dependents:	N/A	Before the
Employer:	St. Louis Community College	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund	<b>Compensation</b>
Insurer:	Self-Insured	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: KOB:tr

**PRELIMINARIES**

The matter of Elaine Myers-Clardy (“Claimant”) proceeded to hearing to determine whether Claimant is entitled to workers’ compensation benefits. Louise Ryterski represented Claimant. Loretta Simon represented self-insured St. Louis Community College (“Employer”). Assistant Attorney General Eileen Krispin represented the Second Injury Fund.

The parties agreed that as of August 31, 2001, Claimant was an employee of Employer and was earning an average weekly wage of \$465.43. The applicable rate of compensation is \$310.30 for both total disability benefits and permanent partial disability benefits. Venue, notice, and timeliness of the claim are not at issue. Employer has consistently denied this claim, and as a consequence has not paid any benefits.

The issues to be determined are:

1. Was Claimant exposed to work related stress arising out of and in the course of her employment such that the stress rises to the level of a compensable injury;
2. Is Claimant’s medical condition causally related to her alleged stress exposure;
3. Is Employer liable for past medical benefits in the stipulated amount of \$1,616.00;
4. Is Claimant entitled to recover temporary total disability benefits of six weeks beginning September 2, 2001 and ending October 16, 2001;
5. What is the nature and extent of Claimant’s disability;
6. What is the liability of the Second Injury Fund; and
7. Is Claimant obligated to reimburse Employer its fees and expenses pursuant to Section 287.560?

It should be noted that Claimant seeks permanent total disability benefits, or in the alternative, permanent partial disability benefits.

## **SUMMARY OF THE EVIDENCE**

### ***Claimant’s Testimony***

Claimant is a 58-year-old high school graduate who earned a two-year correspondence degree in accounting. She has worked primarily as a secretary at various locations in the educational and private sectors. She also owned her own medical billing company for approximately eighteen months. She was compensated for babysitting her grandchildren from 2001 through 2003. She had a certified daycare facility and earned up to \$4,000.00 in one year, although she testified she also had help from other family members.

In the summer of 1998, Employer hired Claimant as a secretary/administrative clerk. In this role, she served as a receptionist in the Liberal Arts Department, assisted students, handled grades, assisted professors, ordered textbooks, answered the phone, and performed copying and other administrative jobs. From Monday through Thursday, she worked the evening shift from 1:00 to 10:00 when she was the sole secretary, and on Fridays she worked from 8:00 to 4:30.

On August 31, 2001, an incident occurred between Claimant and Professor Skinner, a member of the English Department. From Claimant’s perspective, the events unfolded as follows: Sometime before noon, a student appeared in the office and requested help with a personal problem, which Claimant provided. The student then indicated that she wanted to return to class, but was worried because she had left the class without permission. Claimant told her boss, Jim Soden, that she was to accompany the student back to class, and he said, “Okay.” Claimant testified she had escorted students back to class before, and had never been told not to.

When Claimant and the student arrived at Professor Skinner’s classroom, she motioned him to come to the door, and explained the student’s situation. According to the Claimant, the professor started yelling, in an enraged manner, phrases such as, “Why are you bringing this student to class?” and “I don’t want her-You are just a *damn* secretary!” According to Claimant, he raised his voice in an enraged manner, but did not make threatening gestures. After ten minutes, she and the student returned to the office, wondering what had happened. Then, the professor appeared at her desk, continuing the yelling for five or ten minutes further.

The professor went to the nearby faculty lounge, returned to Claimant’s desk with a steaming cup of coffee, and continued to yell, using the words “hell” and “damn.”<sup>[1]</sup> This time, Claimant said Professor Skinner as “foaming at the mouth like a rabid dog” and shaking the steaming hot cup of coffee at her. She testified she was fearful she would throw the coffee at her. He was “spitting profusely,” and standing above in a manner she perceived as threatening. According to Claimant, Professor Skinner then returned to his class.

Claimant went to Jim Soden’s office, closed the door, and asked what she had done wrong. Professor Skinner then entered the office without knocking, and continued to raise his voice, yelling phrases like, “You ought to stay in your *damn* place,” and “You are just a *damn* secretary.” At one point, Claimant asked Professor Skinner, “What gives you the right?” but without raising her voice. Apparently, Professor Skinner replied, “I’m vested. The college cannot do anything to me.”

During the exchange in Jim Soden's office, which again lasted about fifteen minutes, Jim did not say or do anything. Claimant felt she was trapped because the professor stood between her and the door. When he left after fifteen minutes, Claimant started crying. Jim tried to console her but she refused, asking to be left alone, and to be allowed to call her daughter. Jim told her to take the rest of the day off.

When Claimant's daughter arrived, she went to the office to confront Jim and Professor Skinner. According to Claimant, her daughter asked calmly, "Where do you get off disrespecting my mother?" To which, Professor Skinner replied, "Your mother should mind her own *damn* business. I'm vested – she's only a secretary!" Claimant testified that the tone of the professor was harsh and included crude remarks. When Claimant went home, she was a "total wreck," with her skin crawling and her stomach in a knot. She cried all day and all night. The next day she could not move or stand, her knees were swollen, and she ached all over. Mentally, she was jumpy and nervous. Claimant testified that Professor Skinner never touched her, pushed her, or threw anything at her. She admitted that Professor Skinner told her that the student she was assisting was not allowed back into class. She was never alone with Professor Skinner.

On the next business day, Claimant did not report to work, but went to Employer's nurse for a referral to the urgent care center. The doctor she saw provided minimal treatment, and gave her a referral to a psychiatrist. At that time, she was having problems with her legs, knees, and back, and had developed eczema. Claimant filed a workers' compensation claim

Claimant saw her private doctor, Dr. Carol Evers, and an orthopedic doctor. Claimant also saw Dr. Mistler and Dr. Mengelsdorf. Her twelve visits involved talk therapy, and a prescription for sleep medication. Claimant has not tried to return to work since she left the office on August 31, 2001 because of mental reasons, such as poor concentration and sleep, and physical reasons associated with arthritis. She resigned in mid-October. Her bills are unpaid and her last treatment for mental issues occurred in November 2001, when her insurance ended.

Claimant admitted that she has had several other stresses in her life. For example, she lost a son, was involved in a verbally abusive relationship with her first husband for almost eighteen years, had a relationship with a violent man whom she found dead from alcohol, was burglarized six times while she lived in California, and suffered sexual abuse as a youth at the hands of a family member and has not received treatment for it. Also, recently, her father passed away and she felt a loss.

Claimant had some previous medical problems. She had controlled hypertension. She had a left knee arthroscopy in the early 1990s, and claims surgery did not help her. In 1999, she was diagnosed with heel spurs and plantar fasciitis. Before 2001, she was also diagnosed with arthritis in her knees and back, but was treated conservatively. Claimant also takes a lot of homeopathic medicines because she does not like prescriptions. Claimant testified that the physical demands of her job include stooping, reaching, stacking, and walking. She was able to get help from others when her arthritis flared up. She never really had to lift more than ten pounds and was able to do typing, although sometimes her fingers bothered her. She would also occasionally use a cane or an umbrella for support

Currently, Claimant testified she is doing "okay". She does not sleep very well because she is jumpy, panicky, and uneasy. She is not comfortable leaving her house by herself. Her energy level has decreased, and she cannot do a lot of the things she used to do. She is no longer depressed, but she had previously had episodic depression. Physically, after Claimant stopped working, her knees and legs started swelling more and her back worsened. She cannot bend over and has trouble putting on her shoes. When she has a piercing pain, she uses a heating pad. Claimant testified she reads, works on the computer, and takes two naps a day. She says she no longer dances or shoots pool because she cannot stand, but also testified she exercises by walking up to a mile every other day. She is active with her religion, although that is somewhat curtailed due to her condition.

On cross-examination, Claimant was asked about entries in several medical records to which she replied she did not remember. For example, Claimant did not remember making a statement to Dr. Evers in September 2001 or March 2002 about asking for or getting disability benefits. She also made statements in September 2001 at the urgent care center that she does not recall. To Dr. Metzler, on September 12, 2001, she made a statement "I just want to get what I am entitled to" but does not remember making it. She also does not recall asking Dr. Metzler for an attorney who handles stress claims. Claimant also does not remember making a statement referenced in the November 23, 2002 entry of Dr. Mengelsdorf, wherein it indicates that Claimant just wanted social security but no treatment. Dr. Mengelsdorf said he would refer her to another doctor for evaluation for social security purposes. Claimant has been in a motor vehicle accident before and has received a small payment.

#### *Other Live Testimony*

**Collette Heiner** testified on behalf of Claimant. She is a former employee of St. Louis Community College who worked there for a total of ten years. She was the supervisor of the computer lab in the Liberal Arts Department. She testified that the afternoon of August 31, 2001, she was standing at one side of Claimant's desk, when all of the sudden, Professor Skinner came out of Jim Soden's office and started ranting at Claimant. He was loud, out of control, seemed

agitated, and was acting inappropriate. He was holding a mug of hot coffee and looked threatening. She testified that Claimant responded with a raised tone of voice, but did not yell. The entire interaction she observed between Claimant and Professor Skinner lasted approximately three minutes. Ms. Heiner testified that she was a friend of Claimant, and she only witnessed one exchange between Claimant and Professor Skinner on the day in question. She testified she had never been subjected to yelling or having hot cups of coffee held at her in a threatening manner in the course of her employment with Employer.

**Melissa Green** testified on behalf of Claimant. She was a student at St. Louis Community College-Florissant Valley and worked with Claimant as a work-study secretary for approximately four years. She recalls an incident between Claimant and Professor Skinner which occurred at approximately 11:00 or 11:15, which was sometime after her morning class ended at 10:30. She was located at a desk behind Claimant's desk when she observed the professor talking with Claimant. Professor Skinner was upset and was explaining to her that she was wrong for bringing the student back to class. He was talking in a "soft, angry voice". She testified he was trying not to get everyone involved. However, his face was "frowned up" and his voice was mean. According to Ms. Green, Professor Skinner is normally cheerful, but on this occasion he was not acting normal. There were about six other people in the office. The entire series of exchanges involving Claimant and Professor Skinner lasted thirty to forty-five minutes. Some of the time was spent at the desk and more time was spent in Jim Soden's office. When the parties were in the office, she could tell they were having a fussy argument and each trying to get their points across. After the exchange was finished, both Professor Skinner and Claimant left the office. Before she left, Claimant said she would not come back and she was crying and red in the face.

**James R. Soden** has been employed by St. Louis Community College at Florissant Valley since September 1967. In 2000, he became the Chairman of the English Department, and assumed supervision responsibilities of all faculty and clerical staff in his department.

On August 31, 2001, Mr. Soden became aware of the situation involving Claimant and Professor Skinner. The two were having a disagreement and they came to his office, where the three of them talked for approximately ten minutes. Professor Skinner was very upset because Claimant had assisted a student to attempt to reenter his class after the student had been told to leave class. Claimant was trying to explain herself and the reason she took the action. Mr. Soden testified that generally it is school policy not to interrupt class. He testified he did not remember having a conversation with Claimant about returning the student to class before she went with the student to Professor Skinner's office. Mr. Soden testified there were no raised voices or profanities uttered in the office while he was talking with Claimant and the professor. Claimant was upset following the exchange, so he okayed her going home and knew she had called her daughter to be picked up. Later, both the daughter and Claimant returned to the office to confront Professor Skinner. At that point, Mr. Soden testified he told the daughter and Claimant to leave. Mr. Soden testified that Claimant was a good employee who received high marks on her reviews. She never received a reprimand because she never returned to work. Mr. Soden testified that in his opinion, Professor Skinner did not raise his voice and he would disagree with others who say he did. However, in a hypothetical question, he admitted that typically employees of the college are not normally spoken at with raised voices and do not normally have hot coffee thrust upon them. He testified he was not aware that Claimant had arthritis.

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

Based on the substantial and competent evidence, including the testimony of the live witnesses, who I observed and thus had the opportunity to personally evaluate, as well as the other credible evidence of record, I find that Claimant has failed to establish she suffered a compensable work-related stress injury.

#### **I. Claimant's allegations of mental injury fail to rise to the level of a compensable claim pursuant to § 287.120.8 RSMo 2000.**

Claimant alleges she suffered mental stress rising out of and in the course of her employment when, in a time period of less than one hour, Professor Skinner reprimanded her for bringing a student to his class while it was still in session. As a result, Claimant alleges she has permanent mental stress that has rendered her incapable of any further gainful employment.

A mental injury is compensable under the Workers' Compensation Law. *Rooks v. Trans World Airlines, Inc.*, 887 S.W.2d 671, 673 (Mo. App. 1994) *citing* *Tibbs v. Rowe Furniture Corp.*, 691 S.W.2d 410, 412 (Mo. App. 1985). Mental conditions are compensable "provided they are shown to have been directly and proximately caused by the accident." *Wilhite v. Hurd*, 411 S.W.2d 72, 78 (Mo. 1967). However, proof of the condition is not proof of causation. *Id.* With respect to establishing the requisite causal connection for a claimed "mental injury," §287.120.8 provides:

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.

Thus, to be entitled to benefits for her claimed mental injury, Claimant is required to prove that her condition was caused by

work-related stress, which was extraordinary and unusual in nature, as measured by objective standards and actual events. *Williams v. DePaul Health Ctr.* 996 S.W.2d 619, 628 (Mo.App. ED 1999). The proper test for purposes of § 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. *Id.* Stress is not measured by the employee's misperception of events.

In this case, Claimant has failed to establish that her situation was "extraordinary and unusual" as measured by objective standards and actual events. Her claim is based on her perception of events, the credibility of which is questionable, not an objective evaluation of the situation. While there is consistent evidence that something out of the ordinary transpired between Professor Skinner and Claimant on August 31, 2001, Claimant's testimony is overstated as compared to the other credible testimony. For example, when testifying at hearing, Claimant said Professor Skinner made vulgar and profane statements, i.e. "damn" and "hell," numerous times. However, Claimant did not recount such language in her earlier sworn testimony, and neither Claimant's typed personal statement notes nor the St. Louis Community College Accident and Illness Report dated September 4, 2001 note any vulgar or obscene language used by the professor when describing the incident. The further removed she is from the actual event, the more embellished her description of the event becomes, at least with respect to vulgarities.

Even Claimant's witnesses dispute the intensity at which the exchange between the professor and Claimant occurred. Collette Hiner testified Professor Skinner confronted Claimant in the outer office for about three minutes in a very loud and angry voice, but she deemed it merely inappropriate because of the level of his voice and the location of the incident. Melissa Green described the professor's tone as a "soft, angry voice." She also noted that the professor is normally a cheerful person, however, that day he was using a "different tone." Ms. Green does not describe the incident as extraordinary or unusual. Both indicated Claimant responded to defend herself in a like manner. It is not unusual for a disagreement to arise in the workplace. Although Professor Skinner's confrontation with Claimant could be described as inappropriate or unprofessional, this incident does not rise to the level of extraordinary and unusual stress.

The brief period of time within which the alleged stress occurred is also significant. In Missouri, matters which mental stress has been found "extraordinary and unusual" when compared to objective standards and actual events have a much higher degree of abuse over a longer period of time. In *Carnal v. Pride Cleaners*, the claimant faced extraordinary and unusual job stress when compared to similarly situated employees. Not only did she have substandard working conditions, but her ex-husband, who over a long period of time treated her, and only her, with a great deal of animosity and verbal abuse, also supervised her. *Carnal v. Pride Cleaners*, 138 S.W.3d 155, 156-57 (Mo. App. W.D. 2004). In *Hammerschmidt v. County of St. Louis*, LIRC 12/14/04, the employee faced prolonged verbal abuse and harassment by co-employees and supervisors at work, and was singled out for ridicule because he was mentally slow and took care of his parents. *Id.* He repeatedly asked for someone to intervene on his behalf during more than six years of teasing and harassment. *Id.* The Commission held that the employee met his burden in proving that he was subject to stress of a greater magnitude than the stress encountered by employees in similar positions. *Id.* Finally, mental stress claim was compensable when an employee was subject to a constant array of verbal abuse from his supervisor and officer for approximately one year. *Kenyon v. Sandor Corporation*, LIRC 2/25/01. On at least one occasion, the abuse was the most "profane" imaginable. *Id.* The employee was also subject to efforts to sabotage his work, as well as cursing and berating for not completing projects in a timely manner. *Id.* Neither the duration nor the intensity of the alleged abuse in this case compares to the stress in *Carnal*, *Hammerschmidt* or *Kenyon*.

To meet the burden of proof for compensability, a claimant must prove that the mental stress in question was of greater magnitude than the day-to-day stresses experienced by other workers employed in the same or similar jobs. *Williams v. DePaul Health Center*, 966 S.W.2d 619, 626 (Mo. App. E.D. 1999). In order to carry the burden of proof, the claimant must present evidence comparing her "work-related stress with the stress encountered by other similarly situated employees for the same employer."<sup>[2]</sup> *Sherman v. First Financial Planner, Inc.*, 41 S.W.3d 633, 637 (Mo. App. E.D. 2001)(Stress claim not compensable because claimant failed to submit evidence establishing that her stress was unusual when compared to similarly situated employees).

There is the suggestion that no other employees were subjected to exchanges such as Claimant perceived happened between her and the professor. Witnesses Hiner, Green and Soden testified that it was not part of the work place stress to have employees yelled and screamed at by the instructors; nor was it part of their stress to have steaming cups of hot coffee held over them in a threatening manner. But such testimony was based on Claimant's description of events, i.e. he threatened her with a cup of coffee, and yelled and screamed at her. I find that Professor Skinner's treatment of Claimant, while by no means professional or proper, was nonetheless a common disagreement between two coworkers, the likes of which could occur in nearly any work setting. The evidence indicates Claimant attempted to defend herself, and was not passive. Claimant has not established her stress, as measured by objective standards and actual events, is of a greater

magnitude than stress encountered by employees in similar positions.

Claimant is unable to meet the statutory burden set forth in Section 287.120.8 RSMo 2000. Claimant does not present any evidence that demonstrates she suffered a mental injury arising out of and in the course of employment that is extraordinary and unusual when measured by objective standards and actual events.

**II. Stress resulting from a disciplinary action taken by employer in good faith is not compensable, pursuant to § 287.120.9.**

The events about which Claimant complains stem from criticism by a professor of her work. A claim for “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.” §287.120.9 RSMo 2000. Even if the alleged stress experienced by Claimant otherwise rose to the level of compensability, Employer would avoid liability because of the exception of §287.120.9.

Professor Skinner was not Claimant’s direct supervisor; both she and the professor reported to Jim Sodan. However, as the department secretary, Claimant’s job duties included assisting the instructors. Thus, Claimant could be considered a subordinate of the professor. Claimant’s action of interrupting Professor Skinner’s lesson in order to bring a student back into class was considered inappropriate, and prompted Professor Skinner to reprimand her, and to admonish her for not following procedure. This was an isolated incident, completely contrary to the professor’s character, and not part of any pattern of behavior towards Claimant. Even though the professor seemed to overreact to the situation, his reprimand was taken in good faith as it was based on the inappropriate, however well-intended actions of Claimant.

**III. Claimant, although unsuccessful, had reasonable ground on which to bring this case; Employer shall not recover its costs and fees.**

Employer seeks to recover costs and fees pursuant to § 287.560 RSMo 2000, which provides: “if the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them.” Although this decision favors Employer, that alone is not a sufficient basis on which to award costs. Claimant had the right to prosecute her claim, and did so in good faith. Employer’s claim for costs and fees is denied.

**CONCLUSION**

The credible evidence established that Claimant does not suffer from a mental injury arising out of and in the course of her employment, because the alleged work related stress, as measured by objective standards and actual events, is not extraordinary and unusual. Claimant’s claims for workers’ compensation benefits from Employer and the Second Injury Fund are denied. Employer claim for recovery of cost of the proceedings is denied.

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

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

Karla Ogrodnik Boresi  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia “Pat” Secrest  
*Director*  
*Division of Workers' Compensation*

[1] Claimant admitted on cross-examination that the professor did not actually use the word “hell.” Claimant continued to insist that the professor used the word “damn” several times. However, Claimant’s previous deposition

testimony indicates that Professor Skinner told Claimant it was not her place to assist students in that manner and to interrupt class; he also told Claimant to stay in her place and that she was just a secretary. Claimant's typed personal statement notes no use of the word "damn." (Exhibit 4). The St. Louis Community College Accident and Illness Report dated September 4, 2001 also does not note any vulgar or obscene language used by the professor when describing the incident. (Exhibit R). There is no discussion in these documents about the professor using vulgar language of any type.

<sup>[2]</sup> It is questionable whether the test expressed in *Sherman* can even be applied to the instant situation. Cases like *Sherman* involve industry-specific stress over time (i.e. workload), where this case involves a short, lone clash between two employees in a conventional office setting.