

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

Injury No. 03-141617

Employee: Cathy Ridenhour  
Employer: Capital Region Medical Center  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, 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**

*Accident and medical causation*

In her decision denying employee's claim for compensation, the administrative law judge summarized employee's testimony, as well as the contrary testimony from employee's supervisor, Mike Shirts. But it is unclear from the administrative law judge's decision whether she ultimately believed any of employee's various allegations of harassment. We write this supplemental decision to provide the unequivocal affirmative factual findings required under § 287.460.1 RSMo. See *Michler v. Krey Packing Co.*, 363 Mo. 707, 718 (Mo. 1952).

The administrative law judge concluded there was no evidence whatsoever that employee was exposed to extraordinary or unusual stress for purposes of § 287.120.8 RSMo. In our view, certain of the claimed incidents of harassment identified by employee would, if proven true, constitute extraordinary and unusual work-related stress. But after careful consideration, we find employee's testimony regarding the purported incidents of harassment to be unreliable and lacking in persuasive force, for the following reasons.

The record contains a copy of a claim for compensation dated July 15, 1991, filed by Cathy Ridenhour against Brown Shoe Co., alleging injury to the nervous system and body as a whole resulting, in part, from the harassment of a supervisor. The Social Security number on the claim is identical to that of the named employee herein. The record also contains a medical report from Dr. Alex Shreim dated January 10, 1992, rendering medical opinions as to the injuries claimed in the July 1991 claim for compensation. From the history detailed in Dr. Shreim's report, it is obvious that the Cathy Ridenhour named in the July 1991 claim for compensation is the employee named herein, and that she claimed to have suffered psychiatric injury resulting from her work for Brown Shoe Co. Yet, at the hearing before the administrative law judge,

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employee denied that she ever filed a claim against Brown Shoe Co. alleging psychiatric injury via workplace harassment, and indicated that her supervisor there was a very nice lady. *Transcript*, pages 2507, 69-70, 80-1.

In light of this and numerous other inconsistencies (thoroughly detailed in employer's brief), it is clear to us that employee, at best, possesses a very poor memory. Because we are convinced we cannot rely on her testimony regarding the claimed incidents of harassment, and because employee did not provide testimony from any witnesses to the claimed events, we are not persuaded that any of the claimed events occurred. We find that employee was not constantly called profane or misogynist names by her coworkers; that employee's coworker Kevin Borgman did not ask employee to perform sexual favors; and that coworkers did not draw sex organs on a chalkboard, put saran wrap on one of the toilets, or place a hotdog rubbed in Vaseline on the floor.

The expert medical testimony and opinions employee provided from Drs. Robert Poetz, Adeluola Lipede, and Wayne Stillings are predicated on the veracity of employee's reports of workplace harassment. Because we have found employee's testimony insufficiently persuasive to support any factual findings in her favor with regard to the claimed incidents of harassment, we find the opinions from these experts to be based on insufficient and/or incorrect information, and thus lacking persuasive force. We conclude, therefore, that employee's work was not a substantial factor in causing any of the medical conditions or disabilities she claims herein. For these reasons, we deny employee's claim.

Statute of limitations and notice

Employer filed an application for review alleging the administrative law judge erred in failing to reach the issue whether the claim is barred by the statute of limitations pursuant to § 287.430 RSMo and/or because employee failed to provide employer with the notice required under § 287.420 RSMo. Obviously, these issues are moot in light of our above findings and conclusions, but we will briefly address them for the benefit of the parties.

With regard to the statute of limitations, we note the following exchange at the outset of the hearing before the administrative law judge:

THE COURT: A claim for compensation was timely filed. ... It's my understanding that the issues to be resolved as the result of today's hearing are the occurrence of an accident; whether an injury occurred; the causation of the injuries alleged; whether appropriate notice was given; the liability of the employer for unpaid temporary disability benefits beginning on February 25, 2004, and going forward into the present; the nature and extent of permanent disability; the liability of employer/insurer for future medical treatment; and then finally, the issue of Second Injury Fund liability. ... Mr. Roussin,<sup>1</sup> do you concur with what I've dictated for the record?

MR. ROUSSIN: I do, your Honor.

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<sup>1</sup> Employee's counsel.

Employee: Cathy Ridenhour

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THE COURT: Mr. Montgomery?<sup>2</sup>

MR. MONTGOMERY: Yes, I do.

THE COURT: And, Ms. Neuner?<sup>3</sup>

MS. NEUNER: Yes, I do, your Honor.

As can be seen above, the parties stipulated that employee's claim for compensation was timely filed, and did not ask the administrative law judge to address any issue regarding the statute of limitations. "Stipulations are controlling and conclusive, and the courts are bound to enforce them." *Boyer v. Nat'l Express Co.*, 49 S.W.3d 700, 705 (Mo. App. 2001). We conclude that employer waived any defense under § 287.430 RSMo by stipulating that employee's claim for compensation was timely filed.

We turn now to the issue of notice. The version of § 287.420 RSMo applicable to this claim provides, as follows:

No proceedings for compensation under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, have been given to the employer as soon as practicable after the happening thereof but not later than thirty days after the accident, unless the division or the commission finds that there was good cause for failure to give the notice, or that the employer was not prejudiced by failure to receive the notice. No defect or inaccuracy in the notice shall invalidate it unless the commission finds that the employer was in fact misled and prejudiced thereby.

In her last amended claim for compensation filed with the Division of Workers' Compensation prior to the hearing before the administrative law judge in this matter, employee claimed two alternative dates of accident: January 14, 2003, or February 25, 2003.<sup>4</sup> Employee's testimony is vague, uncertain, and contradictory with regard to dates, and her brief is wholly unenlightening as to the significance of her claimed dates of injury.<sup>5</sup> After a careful review of the transcript, however, it appears to us that the first alleged date of January 14, 2003, relates to an argument that employee had with Mike Shirts about her schedule. This is because employee described a request to be taken to the hospital following an argument with Mr. Shirts, and Mr. Shirts provided credible testimony in his deposition that this argument occurred in January 2004. It appears, therefore, that employee's claim for

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<sup>2</sup> Employer's counsel.

<sup>3</sup> Counsel for the Second Injury Fund.

<sup>4</sup> Given our ultimate conclusion that employee did not suffer any compensable injuries, we need not (and will not) address the question whether an employee may pursue a claim alleging in the alternative two entirely different events as the accident causing the claimed injuries.

<sup>5</sup> We note that employee's counsel suggested in a number of leading questions that January 14, 2003, was the date employee reported the claimed incidents of harassment to employer, but employee never provided an affirmative response acknowledging this was the actual significance of that date, nor did she explain the circumstances surrounding any such reporting or how that event could be deemed an "accident" for purposes of Chapter 287.

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compensation simply contains a typographical error, and that she meant instead to allege an accident occurring on or about January 14, 2004.

During the course of this argument, employee complained of chest pain and Mr. Shirts offered to call an ambulance for her. Employer had actual notice of this event via Mr. Shirts, so the burden shifts to employer to advance evidence to demonstrate that it was prejudiced by employee's failure to provide the written notice described in the statute. *Willis v. Jewish Hosp.*, 854 S.W.2d 82, 85 (Mo. App. 1993). Employer, in its brief, does not cite any such evidence, and we were unable to locate any such evidence in the transcript. It follows that § 287.420 is not a bar to employee's claim alleging an accident resulting from her argument with Mike Shirts.

We were unable to determine any significance for the alternative accident date of February 25, 2003, on this record. Once again, however, it is obvious to us from employee's testimony that her claim for compensation simply contains a typographical error, and that she meant instead to allege an accident occurring on February 26, 2004, the day employer discharged her from employment. *Transcript*, page 28. Again, this is an event of which employer unquestionably had actual notice. Finding no evidence that employer was prejudiced by employee's failure to provide written notice of this event, we conclude that employee's claim alleging an accident resulting from her discharge from employment is not barred by § 287.420.

### Conclusion

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

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued September 5, 2014, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this \_\_\_\_\_<sup>1<sup>st</sup></sup> day of April 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

\_\_\_\_\_  
James G. Avery, Jr., Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Cathy Ridenhour Injury No.: 03-141617  
Dependents: N/A  
Employer: Capital Region Medical Center  
Additional Party: Treasurer of the State of Missouri,  
Custodian of the Second Injury Fund  
Insurer: Thomas McGee, LC  
Hearing Date: July 15, 2014

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

Checked by: HDF/scb

### 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 January 14 and February 25, 2003
5. State location where accident occurred or occupational disease was contracted: Osage 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? N/A
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:  
See award
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: Alleged anxiety and depression, hypertension and cardiovascular condition
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 -

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- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: ----
- 19. Weekly compensation rate: \$480.49/340.12
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: - 0 -
- 22. Second Injury Fund liability: No.
- 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.

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

Employee: Cathy Ridenhour

Injury No: 03-141617

Dependents: N/A

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: Capital Region Medical Center

Department of Labor and Industrial

Additional Party: Treasurer of the State of Missouri,  
Custodian of the Second Injury Fund

Relations of Missouri

Jefferson City, Missouri

Insurer: Thomas McGee, LLC

Checked by: HDF/scb

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on July 15, 2014. Memoranda were submitted by August 15, 2014.

The parties stipulated that on or about January 14 and February 25, 2003, the claimant, Cathy Ridenhour, was in the employment of the Capital Region Medical Center. Capital Region Medical Center was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was insured by Thomas McGee, LC. A claim for compensation was timely filed. The compensation rate is \$480.49 per week for temporary and permanent total disability benefits and \$340.12 per week for permanent partial disability benefits. No temporary disability benefits have been paid to date. No medical aid has been provided.

The issues to be resolved by hearing include 1) the occurrence of an accident, 2) whether an injury occurred, 3) the causation of the injury alleged, 4) whether appropriate notice was given, 5) the liability of the employer/insurer for temporary total disability benefits from February 25, 2004, forward, 6) the nature and extent of permanent disability, 7) the liability of the employer/insurer for medical treatment, 8) Second Injury Fund liability.

### **FACTS**

The claimant, Cathy Ridenhour, worked for the Capital Region Medical Center (CRMC) from 1997 through 2004 as an EMT and, after 2000, a paramedic. During this time, Ms. Ridenhour worked out of the CRMC ambulance "base" in Belle, Missouri. Ms. Ridenhour testified that the male employees of the CRMC ambulance district did not like to take orders from the female employees, that foul language was directed toward her, that crude pictures were drawn on a chalkboard and that objects with sexual overtones were displayed where she could see them. Ms. Ridenhour testified that Andy Littrell, Kevin Borgmann, and Dave Potter were the perpetrators of the offensive activities. Ms. Ridenhour testified that the offensive activities began in 2002 when Andy Littrell began working for the CRMC ambulance district. Ms. Ridenhour said that Andy Littrell had once dated her daughter and that her daughter had terminated the relationship when she refused to marry Andy Littrell. Ms. Ridenhour testified that she complained to supervisors Brian Levan, Mark Robinette, and Mike Shirts about these activities

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and that nothing was done to stop them. Ms. Ridenhour said that she reported the activities of Andy Littrell and Kevin Borgmann on January 14, 2003. Ms. Ridenhour said that her employment with the CRMC ambulance district was terminated on February 26, 2004, because she allegedly created a hostile work environment and had allegedly slapped her former son-in-law at the ambulance "base" in Belle the previous Saturday.

Ms. Ridenhour claims high blood pressure, heart problems, anxiety, and depression as the result of her alleged harassment at work for the CRMC ambulance district. Ms. Ridenhour claims that the stress of her work at the CRMC ambulance district caused her anxiety and depression.

Ms. Ridenhour testified to receiving psychiatric help in 2004 and 2005.

According to Ms. Ridenhour she was sexually abused by her father from the age of nine through the age of thirteen. Ms. Ridenhour said that she reported the abuse to her mother who did nothing to stop the activity. Ms. Ridenhour also discussed being in abusive marriages.

Ms. Ridenhour testified that she loved being a paramedic and that losing her job made her feel like a "nobody" and that she no longer has a title.

During cross-examination Ms. Ridenhour admitted to using "a few choice words" herself. Ms. Ridenhour was not a supervisor at the CRMC ambulance district. Ms. Ridenhour testified that she was very upset about losing her job with the CRMC ambulance district, that the job paid well, and that she enjoyed her job. Ms. Ridenhour said that she may have given a statement to the local paper that she lies in bed at night crying over the loss of her job with the CRMC ambulance district. Ms. Ridenhour said that she had an argument with Mike Shirts about a month prior to her termination about her schedule. Ms. Ridenhour denied that her termination from the CRMC ambulance district was because she had had sex with her husband on the CRMC ambulance district premises.

Ms. Ridenhour's deposition was initially taken on June 29, 2004. Ms. Ridenhour said that on January 14, 2003, she was put on blood pressure medications as a result of harassment that she had received since the previous December about the number of extra calls she was taking. Apparently CRMC ambulance district employees were paid extra for taking additional calls and the perception was that Ms. Ridenhour was taking too many calls thereby depriving other employees of extra pay. Ms. Ridenhour described discussing her schedule with Mike Shirts, her supervisor, on January 20, 2004, because she was upset with having to work weekends. Ms. Ridenhour developed high blood pressure after the discussion and went to the local clinic where she received oxygen and "nitro" pills, as well as medication for high blood pressure. Ms. Ridenhour said that it was her confrontations with other employees as well as the argument over scheduling that have caused her high blood pressure condition. Ms. Ridenhour testified that she had a falling out with Andy Littrell and Kevin Borgmann on February 7, 2004, over the number of calls that Ms. Ridenhour took.

Ms. Ridenhour's deposition was taken again on October 5, 2006, at which time Ms. Ridenhour said that it was the harassment she received by coworkers at the CRMC ambulance district and the fact that nothing was done about the harassment that caused her high blood pressure, stress,

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and anxiety and caused her to be unable to work. Ms. Ridenhour said that the two people who harassed her were Andy Littrell and Kevin Borgman. Ms. Ridenhour admitted that she was suspended from work in February or March of 2003, along with another female coworker, for creating a hostile work environment. Ms. Ridenhour said that she was terminated on February 26, 2004, because of an altercation at the ambulance district with an ex-son-in-law.

During Ms. Ridenhour's deposition on May 6, 2013, Ms. Ridenhour admitted that everyone at the CRMC ambulance base cursed while she was working there, including herself.

Michael Shirts testified that he is no longer employed by the CRMC ambulance district and that since July of 2004 he has been the director of the Cole County EMS. Mr. Shirts was Ms. Ridenhour's supervisor from 2002 through 2004. Mr. Shirts testified that the atmosphere around the Belle base of the CRMC ambulance district while he was Ms. Ridenhour's supervisor was tense and unpleasant due to Ms. Ridenhour. Mr. Shirts said that his only complaint of injury from Ms. Ridenhour was a complaint of chest pain after Ms. Ridenhour was unhappy with Mr. Shirts' scheduling of her hours in January of 2004. Mr. Shirts testified that the only complaints of harassment, foul language, and name calling he received were from Ms. Ridenhour's co-employees about Ms. Ridenhour and that he received no similar complaints from Ms. Ridenhour about her co employees. Mr. Shirts testified that he had heard Ms. Ridenhour use foul language.

The deposition testimony of Michael Shirts was taken on January 27, 2012. Mr. Shirts testified that he was Ms. Ridenhour's supervisor from mid 2002 through her termination in February of 2004. Mr. Shirts testified that he had complaints from Ms. Ridenhour's coworkers regarding her foul language and demeanor, including expressing sexual innuendos to other employees, but that he never received complaints from Ms. Ridenhour regarding her coworkers. Mr. Shirts also testified that Ms. Ridenhour's coworker described Ms. Ridenhour and her husband having a sexual relationship on ambulance district premises while Ms. Ridenhour was on duty. Mr. Shirts was aware of a suspension from employment that Ms. Ridenhour received in February of 2003.

Contemporaneous medical treatment includes a January 14, 2003 record of treatment of Cathy Ridenhour at the Capital Region Medical Center in Owensville for high blood pressure. Ms. Ridenhour had an emergency room visit at St. Mary's Health Center for headache and neck pain on February 11, 2003; treatment included nonsteroidal medication and Ms. Ridenhour was discharged on February 14, 2003.

On June 4, 2003, Ms. Ridenhour was seen at Capital Region Medical Center for increased blood pressure, headaches, nausea, and dizziness that Ms. Ridenhour related to prior eye surgery,

On October 24, 2003, Ms. Ridenhour was seen at the Capital Region Medical Center for shortness of breath and chest pain; an EKG and chest x-ray were normal and Ms. Ridenhour was discharged with nitroglycerin.

On November 4, 2003, Ms. Ridenhour saw Dr. Daugherty for hypertension, anxiety and depression and was prescribed Atenolol and Lexapro. Ms. Ridenhour was seen later that month for headaches. In January 2004, Ms. Ridenhour was prescribed Celexa. On January 20, 2004,

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Ms. Ridenhour was prescribed Nitroglycerin for severe chest pain after having a heated discussion with a coworker. On February 12, 2004, Ms. Ridenhour had her Atenolol prescription increased.

In April of 2004, Ms. Ridenhour was seen by Dr. Daugherty for depression and anxiety; Ms. Ridenhour acknowledged being under stress since her termination from her job.

Dr. Robert Poetz, board certified in family medicine, testified by deposition that as a result of a December 2002 event, Ms. Ridenhour has a permanent disability of 35 percent of the body due to generalized anxiety disorder and depression and a 25 percent permanent disability of the body attributable to her cardiovascular condition. Dr. Poetz described "essential hypertension and palpitations secondary to stress, 12/02" in his March 11, 2008 report. Dr. Poetz testified that Ms. Ridenhour's hypertension and fluctuation of blood pressures and racing of the heart are psychosomatic symptoms that often accompany anxiety and depression. Dr. Poetz described the December 2002 event which caused Ms. Ridenhour's disability as a coworker who said things to Ms. Ridenhour that she interpreted as harassment. When asked about the more serious stressor, Ms. Ridenhour's history of abusive relationships or offensive remarks made at work, Dr. Poetz responded by saying that losing her job and livelihood would be a greater stressor to Ms. Ridenhour than losing an abusive husband.

### **APPLICABLE LAW**

RSMo (pre 2005) Section 287.120.8. 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.

### **AWARD**

Ms. Ridenhour has failed in her burden of proof that she sustained a compensable injury. In order for a stress related injury to be considered compensable it must not only be work related but extraordinary and unusual. Ms. Ridenhour testified at length regarding the foul language, name calling and sexual innuendo to which she was subjected at work for the CRMC ambulance district. However, Ms. Ridenhour admitted that she also used foul language at work and the testimony of her supervisor was that Ms. Ridenhour also used sexually charged foul language and that other employees complained of Ms. Ridenhour's foul language and use of sexual innuendo at the workplace. It appears that none of the complaints lodged against Ms. Ridenhour or by Ms. Ridenhour were addressed by supervisory staff. Unfortunately, there is absolutely no evidence that the stress to which Ms. Ridenhour was exposed was extraordinary or unusual; rather, the described behavior of many of the employees of the CRMC ambulance district,

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including Ms. Ridenhour, is markedly similar and appears to have been in the usual and ordinary manner of business for the ambulance district. Dr. Poetz' testimony regarding Ms. Ridenhour's blood pressure and cardiac issues is that these symptoms are triggered by anxiety and depression; thus, they hinge on Ms. Ridenhour's claim of a mental injury from her work stress.

In addition, Ms. Ridenhour discussed her anxiety and depression related to the loss of her job. To the extent that Ms. Ridenhour's symptoms relate to her termination, they are not compensable pursuant to Section 287.120.9.

All other issues raised for determination are hereby rendered moot.

Made by: \_\_\_\_\_  
HANNELORE D. FISCHER  
*Administrative Law Judge*  
*Division of Workers' Compensation*