

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

Injury No.: 02-071252

Employee: Neil Schaffer
Employer: Litton Interconnect Technology
Insurer: Insurance Company of the State of Pennsylvania
c/o AIG Claim Services, Inc.
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: May 2, 2002
Place and County of Accident: 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 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 16, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret Ellis Holden, issued May 16, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of January 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Neil Schaffer

Injury No. 02-071252

Dependents: N/A

Employer: Litton Interconnect Technology

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

Insurer: Insurance Company of the State of Pennsylvania c/o AIG Claim Services, Inc.

Hearing Date: 1/10/07, 1/11/07, 1/24/07, & 1/25/07 Checked by: MEH

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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
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:
ALLEGED WORK-RELATED STRESS.
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: N/A
14. Nature and extent of any permanent disability: NONE
14. Compensation paid to-date for temporary disability: NONE
16. Value necessary medical aid paid to date by employer/insurer? NONE

Employee: NEIL SCHAFFER

Injury No. 02-071252

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$628.90/329.42
20. Method wages computation: BY AGREEMENT

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: 0

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

0 weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning N/A, for Claimant's lifetime

22. Second Injury Fund liability: Yes No Open

0 weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits: 0

Permanent total disability benefits from Second Injury Fund:
weekly differential (0) payable by SIF for 0 weeks, beginning N/A
and, 0 thereafter, for Claimant's lifetime

TOTAL: SEE AWARD

23. Future requirements awarded: NONE

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

RANDALL REICHARD

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Neil Shaffer Injury No. 02-071252

Dependents: N/A

Employer: Litton Interconnect Technology

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

Insurer: Insurance Company of the State of Pennsylvania c/o AIG Claim Services, Inc.

Hearing Date: 1/10/07, 1/11/07, 1/24/07, & 1/25/07 Checked by: MEH

The parties appeared before the undersigned administrative law judge on January 10, 11, 24, and 25, 2007, for a final hearing. The claimant appeared in person represented by Randall Reichard. The employer and insurer appeared represented by Bill Love and Daniel Malloy. The Second Injury Fund appeared represented by Susan Colburn. Memorandums of law were filed by March 5, 2007.

The parties stipulated to the following facts: On or about May 2, 2002, Litton Interconnect Technology was an employer operating subject to the Missouri Workers' Compensation Law. The employer's liability was fully insured by Insurance Company of the State of Pennsylvania c/o AIG Claim Services, Inc. On the alleged injury date of May 2, 2002, Neil Shaeffer was an employee of the employer. The claimant was working subject to the Missouri Workers Compensation

Law. This employment occurred in Greene County, Missouri. The claimant notified the employer of his injury as required by Section, 287.420, RSMo. The claimant's claim for compensation was filed within the time prescribed by Section 287.430, RSMo. At the time of the alleged occupational disease, the claimant's average weekly wage was sufficient to allow a compensation rate of \$628.90 for temporary and permanent total disability compensation, and a compensation rate of \$329.42 for permanent partial disability compensation. No temporary disability benefits have been paid to the claimant. The employer and insurer have paid no medical benefits. The attorney fee being sought is on an hourly basis up to 25%. The claim against the Second Injury Fund is dismissed by the claimant at the beginning of the hearing.

The exhibits admitted were as follows:

Joint Exhibit:

I. Three volumes, Joint Medical Exhibit – Volumes I and IA are medical records and Volume II is psychological records.

Claimant's Exhibits:

- A. Duties of Environmental Engineer
- B. Duties of Safety Manager
- C. Accident Investigation Report
- D. Claimant's note to Dr. Lyons – Summer 2002
- E. Periods of Medical Leave – Summer 2002
- F. 2002 Environment and Safety Schedule
- G. Summary of Claimant's Training Hours
- H. Claimant's Job Applications
- I. August 1999 Vacation Schedule
- J. Report Preparation – 2000
- K. List of Employers – Mass Resume' Mailing
- L. Duties of Environmental and Safety Manager – May 31, 2002
- M. 2001 Annual Report on Environment and Safety
- N. Claimant's letter to Fox and O'Connell – August 2001
- O. Rebecca Gallay Report
- P. Reallocation of ESM Duties – April 22, 2002
- Q. Current Project Summary – January 24, 2002
- R. Budget for 2002
- S. Performance Review – August 1997
- T. Performance Review – July 1998
- U. Performance Review – July 1999
- V. Performance Review – August 2000
- W. Performance Review – August 2001
- X. Performance Review – January 2002
- Y. Dr. Weachter's letter of July 5, 2002
- Z. Dr. Lyons letter of October 7, 2002
- AA. Memo from Jim Fox dated May 17, 2002
- BB. Claimant's letter regarding Korean Regulations
- CC. Review of Korean Regulations
- DD. Letter to Hector regarding Chicken, Texas of April 4, 1990

- EE. Fax from Mark Stanga regarding Chicken, Texas of April 2, 1990
- FF. Medical Bill Summary
- GG. Pharmacy Bill Summary
- HH. Dr. Lyons' Report of July 27, 2004
- II. Dr. Lyons' CV
- JJ. Dr. Lyons' Deposition of September 24, 2004
- KK. Dr. Lyons' Work Excuse of June 24, 2002
- LL. Dr. Lyons' Work Excuse of July 22, 2002
- MM. Dr. Lyons' Work Excuse of August 20, 2002
- NN. Dr. Lyons' Complete Medical Report dated November 5, 2006
- OO. Dr. Darrow's CV
- PP. Dr. Darrow's Report of July 12, 2004
- QQ. Training Manual for Chemical Response Team
- RR. Photograph of Gray Box of Records/Reports from Litton
- SS. Vocational and Rehabilitation Expert, Phil Eldred's Report
- UU. CV of Phil Eldred
- VV. Deposition of Audie Luna

Employer/Insurers Exhibits:

1. Claimant's Personnel File
2. Deposition of Jim Fox
3. Deposition of Jill Palmer
4. Deposition of Mark Stanga
5. Deposition of Kent Franks
6. Deposition of Dr. Lyons (Part 2)
7. E-mail from Mark Prevedel dated May 22, 2001
8. Job Description for Safety Tech dated August 2000
9. E-mail from Claimant to Dave Edwards dated August 5, 1992
10. Memo from Claimant to Patty Winget regarding Training dated December 1, 1992
11. Memo from Claimant to Dave Edwards regarding New OSHA Regulations dated April 7, 1993
12. Policy/Procedure regarding Occupational Health & Safety dated June 23, 2000
13. Letter from Dr. Daniel F. Lyons to Carl Mentgen regarding Claimant dated June 2, 1998
14. Letter from Claimant to Dr. Lyons regarding stool and history of tachycardia dated sometime after June 12, 1997
15. Environmental and Safety Manager Job Description dated January of 1997
16. Memo from Claimant regarding Chemistry Control on the main System dated May 23, 1997
17. Memo from Claimant to Jeff Criger and Brett Breshears regarding Vacation dated August 3, 2000
18. Memo from Claimant to Mark Prevedel regarding Vacation Time in 2001 dated July 16, 2002
19. Hazardous Waste Management Program Contingency Plan dated January 7, 1994
21. Request for Additional Head Count for the year of 1999 prepared by Claimant dated April 30, 1998
22. Tier II Report dated January 14, 2002
23. EIQ Report dated April 18, 2000
24. Form R Report dated June 26, 2002

25. Waste Summary Report for 2000
26. Summary of Reporting Requirements
27. Memo from Claimant to ECD Operators regarding the Scheduling of Overtime Hours dated March 23, 1996
28. Annual Review of Environmental and Safety prepared by Claimant dated January 8, 2001
29. Letter from Claimant to Dr. Daniel Lyons dated December 7, 1993
30. Letter from Claimant to Dr. Daniel Lyons regarding Iron Content of the Water
31. Letter from Claimant to Dr. Lyons regarding Results of Hearing Test
32. Letter from Claimant to Dr. Lyons regarding stool and history of tachycardia of May 19, 1998
33. Letter from Dr. Daniel Lyons to Claimant dated May 19, 1998
34. Letter from Claimant to Dr. Daniel Lyons and Tod regarding Spicy Foods dated August 23, 2001
35. Letter from Claimant to Dr. Lyons regarding Heart Observations dated May 28, 2002
36. Letter from Claimant to Dr. Daniel Lyons regarding symptoms from May 31 to June 6, 2002
37. Summary of Labor Cost Reductions
38. Summary of Reductions in Force for the years 2001 and 2002
39. Claimant's Vacation Request (pay adjustment forms)
40. Claimant's Proposal for an Environmental Safety Department in 1997
41. The Complete Supervisors Incident/Accident Investigation Report dated July 12, 2002
42. CV of Dr. Rosalyn Inniss
44. Deposition of Dr. Rosalyn Inniss
45. Medical Records of Dr. Duey Ballard

ISSUES:

1. Whether the claimant sustained an occupational disease which arose out of the course and scope of employment.
2. Whether the occupational disease caused the injuries and disabilities for which benefits are being claimed under Section 287.120.8, RSMo.
3. Whether the employer is obligated to pay past medical expenses.
4. Whether the claimant has sustained injuries that will require future medical care in order to cure and relieve the claimant of the effects of the injuries.
5. Any temporary total benefits owed to the claimant.
6. The nature and extent of permanent disabilities, including permanent and total disability.

FINDINGS OF FACT:

The claimant is 54 years old. He is married to Jin Sook Shaeffer. He received a Bachelor's degree with a double major in Biology and Chemistry from the School of the Ozarks in 1977. He Received a Master's degree in Environmental Science from the University of Southwest Louisiana in 1979. He served in the army for two years in the early 1970's and

was stationed in Korea. While in the army he received medical training and worked as a “medical specialist.” His past work experience also included working with tropical fish, owning oriental restaurants, and working in a hotel. He moved to Springfield, Missouri in 1984, and went to work for Solid States Circuits as a “Laboratory Supervisor.” In 1989 he went to work for the employer in this case as an “Environmental Engineer.”

The employer manufactures computer circuit boards. Large amounts of chemicals are used in the manufacturing process. During the times in question they had two plants in Springfield, Missouri; one in Andover, Massachusetts; and one in Fairfax, California. They also had additional clean-up sites in Texas and California.

Claimant had experienced Proximal Atrial Tachycardia (hereinafter referred to as PAT) as a teenager. He was first diagnosed while in the military. Before 1997 he had it 2-5 times a year. He described it as feeling an increase in his heart rate and a little light headed. He said if he stopped what he was doing it would return to normal after 1 – 2 minutes. He did not take any medication or receive treatment for it. It did not interfere with his work or daily activities.

In 1985 the claimant had an incident with a former girlfriend. He saw Dr. Daniel Lyons reporting that approximately 3 – 4 weeks before he became involved in a very stressful situation with a married woman. During that time he lost 17 pounds, and attributes it to a loss of appetite. He was also vomiting. Approximately 5 days before he had gotten out of the situation and had regained 4 – 5 pounds. He also complained of heart fluttering and rapid heart rate in stressful situations. He was diagnosed with probable anxiety. An electrocardiogram came back normal.

When the claimant began working for the employer in 1989, his duties included such things as: monitoring the chemical treatment system; monitoring performance; being knowledgeable of various local, state and federal regulations governing the use, transportation, and disposal of chemicals; monitoring, preparing and submitting various reports to agencies; training and management of employees; and perform safety inspections of the facilities. The claimant testified that this position required him to work approximately 50 hours a week. He did occasionally take work home, but did not regularly work weekends and holidays.

In 1997 the claimant’s position changed to “Environmental Safety Manager.” The proposal prepared by the claimant for the creation of this new position describes the duties as “Department will assume all duties associated with safety policies and programs, training and safety engineering. All health issues and insurance are to remain with personnel. Accident investigations still controlled by nurse with follow-up on all investigations performed by Env. Engineer.” The safety duties referred to in this proposal were being performed by the Director of Facilities, Jim Fox, who was claimant’s supervisor.

This new position constituted a promotion with additional responsibilities and an increase in pay. The claimant was in the management level of the company. The new position entailed two different aspects, both environmental and safety. In addition to the environmental duties he was previously performing, claimant testified that he was responsible for maintaining safety policies and procedures, safety training, inspections, and was a member of the emergency response team. He was also given partial responsibility for a clean-up site behind the main facility. He held this position from 1997 until he stopped working in 2001.

Claimant testified that his work load was heavier in the first six months of the year when he was preparing and submitting various reports. The second six months was a little easier, and he used that time to catch up on other reports and on his engineering duties.

As part of this position he was on call 24/7 and had to respond to emergency calls. Other members of upper management were also required to be on call 24/7. These increased in the years of 1997 – 2001 and then decreased slightly after 2001.

In 1997 he also became responsible for safety oversight of two other plants, one in California and one in Massachusetts. His role was support, and he was not responsible for the day-to-day operations of these plants. These plants were small compared to the Springfield plant. Other managers were also responsible for providing support for these other plants such as Human Resources, Information Technology, Sales, and Marketing. He was never required to travel to these plants.

Claimant testified that he did not want the new position in 1997 and felt forced to take it on. He said he worked over 70 hours per week, and began working almost all vacations and weekends. He also testified that he had to miss lunch. His wife began going into the office and helping him with typing. Jim Fox found out she was helping and told him she could not do that, and she then did it at home. Claimant said that he expressed his concern about his work load to Jim Fox and asked for more help. He said that Jim Fox expressed concern and told him he should not do more than he had to. Jim Fox testified that he did not feel that it was necessary for claimant to be working the number of hours that he did.

He testified that at this time he began to experience nervousness, mood swings, heart pounding, problems sleeping, and feeling agitated in general. He reported this to Jim Fox, who suggested he see Sue Fuller in personnel. She referred him to the Employee Assistance Plan. They sent him to Dr. Phil Klingensmith, a psychologist.

Dr. Klingensmith saw claimant on October 14, 1997, on a referral for stress evaluation because of activation of diverticulitis. Claimant gave him a history of “extreme stress 3 of friends killed or dead, is an environmental engineer sees some of this in line of duty. Has moved 75x in life, has very ‘bad luck’ eg paint peeling off new truck, etc. Worked 60 hours =- until recent problems – now working more like 40 +.” Dr. Klingensmith’s impressions were adjustment reaction to adulthood with anxiety, some of which is apparently converting to somatic distress; GI, HA, respiratory complaints; moderate to severe psychological stress – number of deaths, high stress job, with history of excessive hours; prognosis fair to good depending on cooperation with therapy; and no history or current potential for suicide, homicide, or psychotic experience. In November 1997 claimant was complaining of worry of because of medical issues in family including being misdiagnosed for basil cell carcinoma and having TB in 1974. He also said his brother had been diagnosed with a large brain tumor, and claimant was having trouble sleeping and had used cold medicine to sleep. In a letter to Dr. Lyons, Dr. Klingensmith suggested a prescription for an antidepressant to help his sleep and his “stomach roll.”

In 1994 the claimant first complained to Dr. Lyons of a change in his bowel habits. On April 11, 1997, he saw Dr. Lyons with a complaint of nausea, vomiting and gas after his boat sank. He was diagnosed with stress gastritis. On May 2,

1997, he saw Dr. Lyons and gave a history of abdominal discomfort and stomach problems that dated back to childhood, and through his twenties and thirties. He said that over the last year and a half he had episodes of cramping and abdominal discomfort four or five times per night and has to get up to eat. Dr. Lyons suspected a combination of Irritable Bowel Syndrome (hereinafter referred to as IBS) and diverticulitis. In June 1997 the claimant returned with an improvement in symptoms. He reported stress at work.

Dr. Lyons' records show that he saw the claimant on December 16, 1997, reflect claimant complained of a feeling in his chest like there is something in there or pushing in his chest. He denied any chest pain per se, and any history of cardiac disease. He did have a history of diverticulitis. An EKG report of the next day refers to a "presence" in his chest about 10 days before. The only mention of any kind of stress was that he was running three miles a day. An EKG showed no evidence of stress-induced myocardial ischemia. A chest x-ray performed December 30, 1997, refers to a history of night sweats and fever. The x-ray showed no acute cardiopulmonary process.

Claimant testified that from 1997 – 2002 his stress increased in frequency and severity of symptoms. He said that he started having additional symptoms of skipped heartbeats and extended cycles between beats; a feeling of electricity in his legs; night sweats; nightmares; panic attacks; mood swings; anger and irritation; crying spells; problems focusing; mind racing; and light headedness. He said that the things that were particular problems were phone calls, conversations, and being nervous. He also testified to having rolling in the stomach which he attributed to the IBS.

Time sheets kept by the claimant from February 1998 to March 2002 reflect 40 hours a week. They reflect days that the claimant worked or was off. They do not record any overtime.

On January 21, 1998, the claimant saw Dr. Lyons complaining about not feeling well, low energy level, fatigue, low-grade fever, which may be associated with night sweats. Dr. Lyons suspected chronic fatigue syndrome but wanted a second opinion. In May 1998 he saw Dr. Lyons complaining of diarrhea which was interfering with his sleep. Dr. Lyons stated: "again, I suspect that this is irritable bowel."

On November 25, 1998, claimant saw Dr. Lyons with main complaint of stress. The notes reflect claimant gave a history of "has been able to delegate a lot of his work. Also taking more breaks of 10 to 20 minutes with prolonged lunch breaks and some daytime naps. Found self getting distracted and an overwhelming urge to do something. This was especially so during the first 10 days. Initially had pounding of heart but when relaxed felt quite well. Now easier to focus and stay slowed down. Heart still pounds about 6 hours per day but this is MUCH better. Patient states he just wanted to let off some steam." Impression: anxiety neurosis, much improved; PAT, improving; depression, neurotic; irritable colon, tachycardia; hyperglycemia, and history of TB. He was treated with over-the-counter medications and he prescribed Xanax to help with sleep.

Later in 1998, at his annual physical, claimant was managing his IBS better, was having PAT and rapid heart beat at random, but might be brought on with real heavy exercise. His impressions were PAT improved, IBS and history of depression.

In 1999, claimant was asked to take over responsibility for the “plating department.” The claimant accepted this responsibility. This added responsibility for raw chemicals in plants, including the plumbing and filtration, and management duties including personnel, output and inventory.

On August 17, 1999, claimant went to Dr. Lyons complaining of electricity feeling in his legs. He was diagnosed with idiopathic edema.

Claimant testified that during this time he was working longer hours. Jim Fox asked him to prepare a report and document his time for a week. This report states he worked hours of 17 ½, 16 ½, 18 ½, 15, and 9.

In 2000 claimant lost the use of the receptionist as his part-time secretary. Claimant testified that he initially had her help him compile reports, but that she was not efficient at this and that he had turned over simpler stuff to her and did the reports himself. He had his wife help him with typing. After this he was required to use other individuals to help him with clerical work. In the fall of 2000 Brian Thompson was hired to assist the claimant with his training duties. After this time, claimant’s training duties declined but he was still responsible for developing training.

Claimant prepared a document called Evaluation of Report Preparation for the Year 2000, reporting the amount of time he was spending on tasks. In this he says he spends 12 hours minimum per day, 7 days a week except for when he was off for 6 days with the flu. He says he averages 90 hours per week.

On May 10, 2000, Dr. Lyons’ records reflect a bad 3 months in terms of stress, including the death of claimant’s father. He said during the worst part of the stress he would have an occasional sweat with palpitations and insomnia. Claimant testified that the death of his father did not cause stress for him, as his father had had a heart attack when the claimant was a teenager and had been ill since then.

On June 20, 2000, claimant again saw Dr. Lyons for anxiety. In his history Dr. Lyons states: “Mr. Schaffer presents to discuss several issues. States that he still has to consciously tell himself to stay calm. This applies both to positive and negative stressors. As long as goes slowly, does not have palpitations. However, even though has gained ground but not stable and not making progress...Now wondering whether he has ‘Pavlovian conditioned’ himself to this stress.”

On November 14, 2000, claimant saw Dr. Lyons for an annual exam and reported generally doing well. “States that Buspar has helped smooth ‘adrenaline swings.’” Dr. Lyons found him to “clinically doing well especially with stress syndrome and irritable colon.” Claimant describes at hearing and in the medical records what he calls a “heightened adrenergic tone from anxiety” or “adrenal state” adrenaline rush where he feels hyperactive. Dr. Inniss testified that she has never heard of this and could not find it in medical textbooks.

In 2001 planning began for an expansion of the Springfield facility. As part of this planning, the claimant, as well as other employer’s managers, were required to work increased hours. The planning of the facility caused all of the managers to take work home to keep up with their regular work load. Ultimately, the expansion plan was abandoned due to decrease in the market for the employer’s product. When this market declined in 2001, the employer instituted a salary and hiring freeze on April 24, 2001. This affected the entire plant. The plant was shut down for one week intervals, and in August

2001 a major layoff occurred and those employees were never recalled. At this time the claimant's requests for additional support staff were denied. The market never returned before claimant retired, and the employer actually had fewer employees when he retired than when he started.

The shut downs of the plant did not affect his job as the waste water was not shut down. He still had to deal with chemicals regardless of the amount of production. He did testify that as reductions in staff were made his safety duties were reduced.

Claimant testified that at this time he was running 4 ½ milesthree time a week and using weights for 45 minutes twice a week.

On August 6, 2001, claimant wrote a letter saying he did not feel he could continue doing his duties and asked for removal of duties.

On November 13, 2001, claimant saw Dr. Lyons for an annual exam. He reported "Generally feels well. Intermittently still has some difficulty with sleeping. Trying to keep self calmer and work more slowly. Has intentionally lost weight although having to work out up to 16 hours per week to do so." Dr. Lyons stated IBS, doing very well; chronic anxiety, much improved; allergies; and hypertriglyceridemia.

In November 2001 the claimant was offered two plant engineers to help him part-time, especially in safety. Claimant testified that this did not help because he trained them in November, but in December and January he was told they could no longer help. In November 2002, Ken Barrymore, an Industrial Engineer, was designated to help. Claimant said that again he trained him and was told he was not available.

In 2002 the nurse's position was eliminated and the claimant was asked to be responsible for first response for first aid in case of an injury. Claimant had always been a member of the emergency response team, fire crew and first aid team. Other members of the team were on call for emergencies and responded. Jim Fox testified that the emergency response team was needed approximately 3-4 times per month.

In April 2002, the claimant and Jim Fox met with Bill Moore, who was in charge of the plant. In this meeting they asked for more staff for claimant. The claimant continued with his same duties through May 2002.

Claimant testified that by 2002 he was working 70 – 90 hoursper week with occasional emergencies. He said he could be working 24 plus hours at a time and in excess of 90 hours. He said that he worked in the evenings and weekends at home. He said he would take vacation time to work at home. In the years 1997 – 2001 he took 17 weeks of vacation time. He says he took work with him on most vacations.

Claimant began looking for other employment in 1997. He and his wife testified that he sent out mass mailings in 2001. He testified that between 1998 and 2001 he sent approximately 50 – 75 applications a year. He had 6 – 7 interviews and one job offer as a project manager for waste water in Saudi Arabia. Claimant testified that between late 1999 and May 2002 he and his wife were monitoring web sites looking primarily for Environmental Health and teaching jobs. Some of these jobs required between 70 – 90 hours a week. He said the Environmental Safety jobs required 60-70 hour weeks, and

these were the ones he applied for.

Claimant took vacation time beginning on May 18, 2002. Claimant testified that he was not planning on working at home during this vacation. On his first day off, May 18, 2002, the claimant got up and ate breakfast. He then decided to weed eat in his yard. As he was walking across his yard he felt a cardiac arrhythmia. It did not resolve, and he thought he was having an atrial fibrillation as his heartbeat felt very fluttery and irregular. The claimant went to the emergency room. His symptoms continued about an hour and 45 minutes. He was monitored and released that day.

The following Monday, May 22, 2002, he saw Dr. Lyons. He diagnosed paroxysmal atrial fibrillation in patient with history of PAT. An echocardiogram was performed, which was normal.

Claimant was on vacation from May 18 - 26, 2002. On May 26, 2002, he returned to work working two hours a day. He did this for 1 ½ weeks. He said that during this time his legs felt weak, his heart pounded and skipped beats, and he began developing chest pain and getting angry. In June he returned to work four hours a day for about two weeks.

Claimant's duties were reassigned to others, and he was no longer responsible for after May 2002.

On June 7, 2002, Dr. Lyons wrote a letter stating "Mr. Schaffer is currently undergoing medical investigation for several complaints. However, these should NOT preclude his working at this time." On June 12, 2002, Dr. Lyons wrote another letter stating: "As an addendum to the previous letter, Mr. Schaffer may work but I would recommend that his work be limited to 4 hours daily until the cause of his symptoms are better elucidated. Thank you for your attention."

On June 14, 2002, claimant saw Dr. Lyons for routine follow-up and gave a report of "Since March, April 2002 life 'has been a bitch.' Is working 70-80 hours per week, multiple family members in the hospital, sleeping 3-4 hours per night, and has been spending what little time he has with Mrs. Shaeffer working on her school work. Feels like a nervous wreck. Seen in ER earlier this week with chest pains. EKG's and rhythm strips during ER visit normal. Very emotional and has some tendency to cry on occasion. States that any physical activity causes chest pain which in turn provokes anxiety. Similarly, when has a PVC, has anxiety." Dr. Lyons' impression was severe stress related anxiety/depression. Dr. Lyons first signed a statement of claim for insurance benefits for the claimant stating that the sickness or injury did not arise out of claimant's employment and that he could return on July 1, 2002. On June 24, 2002, Dr. Lyons wrote another letter stating "NEIL SHAEFFER is unable to return to work until 7/2/02 due to medical difficulties."

Dr. Lyons referred him to Dr. Richard Weachter, a cardiologist.

From June 20, 2002, to July 1, 2002, claimant was taken off work. He testified that during this time his symptoms became so bad he could not work. He says he fell apart, experiencing anger, rage, bad depression, chest pain, and heart pounding. He did nothing while off.

From July 2 - 22, 2002, he returned to work for 8 hours a day. He limited his work to low stress activities and worked no more than 40 hours a week. He met with Jim Fox and designated the low stress activities he would do. The claimant wrote a letter to Dr. Lyons stating that he was on limited duty but that "the Human Resources Department is applying a lot of pressure (1 to 2 hours per day) on me for returning to full workload (60 to 70 hours per week for that

position) as soon as possible. My bosses have done an excellent job at keeping my work hours to less than 40 hours per week.”

On July 22, 2002, claimant again saw Dr. Lyons saying he was having severe anxiety which is significantly interfering with his ability to work, crying spells, apathetic about even household chores, palpitations okay except when upset, nightmares, and attributes to working too many hours, “bosses have been very cooperative but having problems with personnel.” Dr. Lyons referred him to Dr. James Bright, psychiatrist, and an appointment was made for August 13, 2002.

On July 23, 2002, he again went on medical leave until September 16, 2002. He testified that he had the same symptoms as before. He said that during the first three weeks he did not do much, and tried to increase activity after that.

On August 5, 2002, claimant saw Dr. Lyons still feeling depressed but no longer crying. The records show claimant was able to sleep 8 hours, feels unmotivated and apathetic, still feeling skipped heart beats, and states able to mentally focus better.

Dr. Bright, a psychiatrist, evaluated the claimant on August 13, 2002. Claimant gave a history of new responsibility at work 5 years earlier when he took over safety position. He said he went from 60 hours a week to 85 hours a week, 30 – 40 days straight. Says he wakes up shaky but not anxious, and walking helps. He gets up half a dozen times at night to eat. Sees himself as type A. Says he worked 100 days straight that spring. Has crying spells. He had been off work 3 weeks and felt empty, anxious, tired, no energy, fearful of work, lack of motivation and had to force himself to do things. Dr. Bright diagnosed generalized anxiety disorder, major depressive disorder, single episode without psychosis. He increased claimant’s medication.

Claimant returned to Dr. Lyons August 20, 2002, complaining of Dr. Bright and worried about working a 40 hour week. Dr. Lyons kept him off work until mid September, and said then it would be important for him to work a 40 hour week. Dr. Lyons signed a second short-term disability form on August 30, 2002, and this time did indicate that claimant’s condition was related to his work, specifically, “being forced to work too much overtime.”

Claimant again saw Dr. Bright on September 16, 2002. Claimant complained of never being tired and never being rested, was being more active, had little motivation. He was having some side effects from Paxil so Dr. Bright adjusted his medications. From the records it appears another visit was scheduled for October 22, 2002.

He returned to work on September 17, 2002, at a 40 hour week with low stress activities. He testified that it again became “unbearable.” He called Dr. Lyons asking him to take him off work. Claimant wrote a letter to Dr. Lyons after his visit with Dr. Bright on September 16, 2002, and stated “I also spoke clearly and bluntly with Dr. Bright about my feelings on his approach to my mental health condition. I believe he now understands exactly what I expect in the way of communication, and will be willing to meet my expectations.”

Claimant saw Dr. Lyons on October 4, 2002, and said that he had been gradually getting worse despite working 40 hour weeks, and that he finds the level of stress acceptable. Dr. Lyons wrote a letter in which he stated that the claimant

needed to permanently retire. The claimant last worked on October 9, 2002.

The claimant again wrote Dr. Lyons about the conflict he had with Dr. Bright and wanting a referral to a new psychiatrist. He was then referred to Burrell Behavioral Health, and Dr. Brent Bolyard. Claimant continued to follow up with Dr. Lyons.

Dr. Bolyard examined claimant on November 11, 2002. The claimant had two main problems, “first is conversations that give me adrenaline rushes. The second is anything that has to do with work gives me despair.” Claimant gave a history of gradual and overwhelming stress at work, “working upwards of 80 hours per week, being on call at all times and being awakened in the middle of the night.” He also said that he began having tachycardia in 1997 and what he called “adrenaline rushes” in 1999. He also reported symptoms of depression and acceleration of cardiac problems at that time. Dr. Bolyard states in his report under social history: “Neil describes himself as working well with people. He says that work makes him angry but that nothing ever makes him sad. He says that he has no fears. It is his desire to eventually quit this job and spend the rest of his life fishing. At first this sounded like an idealized over-simplification, but as our conversation progressed it became apparent that he is actually intent on spending the rest of his life fishing every day. He says that his home is paid for, and that once his wife is able to graduate and become employed they will be able to live off her salary and he will spend the rest of his life fishing every day.” Dr. Bolyard states in his impression:

Neil Shaffer is a quite verbal, highly intelligent man who finds himself in a situation which he perceives as intolerable. He does provide an internally consistent story that may in fact be an actual description of a job that truly is excessive and intolerable. However, it is also true that Neil tends to view problems in black-and-white terms. While it is unreasonable to expect that any person could tolerate the stresses and demands of the job he describes, it is just as unreasonable to expect a 50-year-old man to spend the rest of his life fishing every day. He has no insight into the fact that his own judgment and decisions have played any sort of role in his current predicament. At this time, I believe the intent of his medications is effective. Minor adjustments will be made below. However, I believe it is critical for him to engage in insight-oriented psychotherapy, as his expectations are unreasonable and it did not appear that he is able to view accurately any responsibility he has for the decisions that have placed him in this unreasonable employment.

Dr. Bolyard continued to treat him with medication, and referred him for psychotherapy to Dr. Lorri Palmer Darrow. Dr. Darrow’s treatment consisted of removing the claimant from outside stimuli, relaxation techniques, and discussions of emotions.

In November 2002 he reported to Dr. Lyons that he was 10-15% better with depression and 20-25% better with “rushes.”

In July 2003, he reported to Dr. Lyons he was 50% improved. In 2004 he began reporting worsening palpitation when under stressful situations, such as attending a deposition. He says the treatment is still effective if he maintains some degree of isolation and takes his medications. He can only go out on a limited basis. He says that he needs to keep his activities at home to a minimum. He does not do any housework. His wife does all the work including cleaning, laundry, balancing the checkbook as well as working a full time job. The claimant does go fishing occasionally and work in his garden. He goes to church, getting there after the service has started and leaving before it is over, goes out to eat if the restaurant is not too crowded, and goes to Lowe’s. He does go to the doctor, and has participated in meeting with his

attorneys and attending all the depositions taken in this case. He says it takes him 1 ½ days to recover from activity. He testified that going to the library caused him a great deal of stress, but witnessing a fatal car accident caused minimal effect on his stress level.

In a note of February 5, 2004, Dr. Bolyard states: “for some reason he is convinced of PSTD diagnosis though I am unconvinced that his degree of trauma from his job alone qualifies as ‘life threatening’ or intense ‘horror.’ However, he is increasingly presenting symptoms of hypomania that combined with his job experience, would render him incapable of responding appropriately to that stress.” Dr. Bolyard recommended an MMPI or equivalent as an indicator of personality profile susceptible to PTSD.

On July 9, 2004, Dr. Lyons wrote claimant a letter in which he states: “I believe that your current medical problems are primarily anxiety related and a direct result of stresses which you experienced at your workplace.” Dr. Lyons’ records reflect that on July 14, 2004, claimant stopped by his office and “needs a revised letter. He said you covered most of the material but left out a couple things. You left out the prognosis. Also, he is suggesting (not requesting) that we put on the letter that he’s permanently totally disabled. He would like to do a quick briefing with you on Monday or Tuesday when your back (5-10 min) to go over a few questions before the deposition. I have the paper he brought in. AL” Dr. Lyons wrote a revised letter dated July 27, 2004. Dr. Lyons noted that claimant’s chronic anxiety was exacerbated by the legal process, and on May 30, 2006, wrote a letter stating that claimant was stable and continues to have problems with intermittent anxiety. He says, “at this point, I believe that his prognosis will be reasonably good once these issues are settled and he remains in isolation from outside stressors. I also feel strongly that his work on Litton Industries directly caused his problems and played a substantial contributory role in his illness. I do not believe he will be able to return to work.”

Claimant testified that the therapy with Dr. Darrow has helped. He has had some slight improvement since he stopped working. He continues to treat with her every other week.

Dr. Rosalyn Inniss, a psychiatrist, examined the claimant on November 24, 2003, and again on November 17, 2004. After an extensive evaluation she made conclusions in her report. She finds that claimant has a longstanding preoccupation with physical problems that predates his time with Litton as well as does the anxiety disorder. She says diagnostically one must consider Somatization Disorder, and notes his reference to “adrenaline rushes” as something being diagnosed by a physician when the records do not support this. She also notes inconsistencies in that he denied knowing what his diagnoses were, yet the records reflect his role in stating he believed he had PTSD. Also, there were inconsistencies in the hours he reported working and the time he spent exercising. She said that he cannot remember things told to him that do not fit with his descriptions of symptoms.

She also felt that there was the issue of possible secondary gain, not only monetary, but also not having to work and being cared for by others. She states:

Another level of secondary gain he has experienced with his ‘illness’ is that he presents himself as unable to work. His wife accepts that he cannot work because of his physical illness, not his psychological illnesses. Because of this, she works a full time job, balances the checkbook, cleans the house, cooks the meals etc. While he remains at home and does nothing. He will change clothes multiple times a day but does not even

do the laundry. He sees himself as never working again and sees no disparity with this as long as he can blame it on the trauma he suffered at the hands of his last employer. If he is declared disabled from his work and duly compensated he can fulfill his ambition to go fishing whenever he wants.

My overall assessment of Mr. Shaffer is that he is far more comfortable being physically ill than psychologically troubled. And after two years of therapy has made no move towards even considering the possibility of a psychological component to his presentation....

He attributes all of his psychological and physiological symptoms to his last employment which he views as being traumatic. Yet he was not prevented from leaving and specifically told this writer that he was advised to leave by others. He would lay responsibility for his social avoidance onto his workplace as well as the sequela from his work environment.

Diagnostically, I cannot attribute Mr. Schaffer's current issues and symptoms to his employment. I would at best give Mr. Schaffer a diagnosis of Generalized Anxiety Disorder, which predates his employment with Litton with a rule out of Somatization Disorder. There are strong Axis II factors in his current presentation.

In her deposition, she testified that over the course of his treatment "has focused largely on issues around the litigation, his physical complaints or his adrenal rushes and his going in and fussing about work. As far as there's some mention of self talk and relaxation, but much more has been spent on other areas. So instead of being able to move away and refocus, he's been obsessively preoccupied with the whole somatic stuff and the litigation and disability and whatever else has gone on." She testifies that she does believe the claimant has chronic anxiety but is less certain it is disabling than he is. She states, "I believe that Mr. Schaffer has the capacity to do more than he has been doing, but there's some secondary gain to be perceived as disabled because of the GAD."

Dr. Kent Franks, a clinical psychologist, examined the claimant on November 11, 2004. In his report he states: Based upon the available information, in my opinion Mr. Schaffer suffers from a Generalized Anxiety Disorder. The subject's occupational stress contributed to this disorder. However, the persisting nature of this disorder cannot be solely attributable to job stress. The subject has a marked tendency to internalize anxiety and develop psychosomatic symptoms. This is a preexisting personality style which does not bode well for psychological treatment. Secondary gain issues and inconsistent symptom reports suggest that Mr. Schaffer has an alternative agenda. He has plainly stated that he does not want to work for the rest of his life. He is not motivated to get well, and he probably will not recover until his case is resolved. Were the subject motivated he has the cognitive ability and the psychological resources to work in a different position which is more in keeping with his stress tolerance.

In his deposition, Dr. Franks testified that there are individuals, who when they experience stress and psychological problems, do not want to acknowledge the psychological aspect and instead will convert them into physical problems instead. He said he felt this is something the claimant does. He had never heard of the "adrenergic" state that the claimant would describe. He felt that the claimant would be able to work. Dr. Franks said that the claimant does have GAD, and that he thinks the claimant's work "became a focal point for him to direct all of his worry upon. I don't know if it was the primary cause of his disorder, but it became the primary cause in his mind, and it became something that he was able to ruminate upon and think upon and to blame."

Dr. Lyons testified that he feels the claimant is overall stable, and explained his conclusion that the claimant's prognosis is reasonably good by saying, "I mean that if we could get this litigation taken care of I think he would be able to lead a productive - much more productive and - productive life." He also explained that when he stated in his report that the

claimant was unable to return to work he meant at Litton. As far as restrictions, he said, "I think that he could start out at a much lower stress job and see how he did and proceed from what progress or lack thereof he experienced." He testified that he thinks the claimant will continue to have anxiety problems but that he will be able to move on.

Phil Eldred, a certified rehabilitation counselor, testified that the claimant is vocationally disabled. Due to the claimant's emotional disability he is unable to do any gainful employment and is therefore permanently and totally disabled.

CONCLUSIONS OF LAW:

Section 287.120.8, RSMo. states:

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.

The key issue in this case is whether claimant can meet his burden of adducing substantial and competent evidence supporting his claim that the alleged occupational disease is attributable to claimant's employment with employer. Claimant bears the burden of proving that the alleged mental injury was caused by stress that was work-related and that the work-related stress was extraordinary and unusual. Sherman v. First Financial Planners, 41 S.W.3d 633, 637. Further, it is clearly stated in §287.120.8 RSMo that the work-related stress shall be measured by objective standards and actual events. §287.120.8 RSMo. In accordance with this objective standard, a claimant "must compare [his] 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." Sherman, 41 S.W.3d at 637 (*quoting Williams v. DePaul Health Center*, 996 S.W.2d 619, 628 (Mo.App. 1999)). Therefore, "without presenting evidence of similarly situated employee's, [claimant] is unable to meet the statutory burden set forth in § 287.120.8 RSMo." Sherman, 41 S.W.3d at 637.

There is no doubt that the claimant found his work to be extremely stressful. He has been diagnosed with a Generalized Anxiety Disorder. The question is not what the claimant subjectively thought and felt, but rather what he can prove by objective standards and actual events.

After carefully considering all of the evidence, I do not find that the claimant has presented sufficient objective evidence to meet his burden of proving the stress he experienced was extraordinary and unusual. He has not shown that the amount of stress he experienced was greater than that in comparable positions in his field. The only evidence as to similarly situated employees was that he was looking for a less stressful job and was unable to find one. He stated that the hours required in the jobs he applied for was 60 – 70.

Nor did claimant show that the stress he experienced was greater than that of other employees of the same employer. The claimant must do this not by his subjective testimony but by objective standards and actual events. Although he testified to the number of hours he was required to work; there were no objective records to confirm his testimony.

Furthermore, the things he stated caused him stress were all things that other employees in the management level at

Litton were required to do. Other managers at Litton experienced similar increases in work load with the plans for the facility replacement. The wage and salary freeze as well as the hiring freeze affected all the managers, and they were required to adjust to the economic downturn. Other management level employees also had very stressful duties that required them to work overtime, be on call, be responsible for issues in other plants, participate on the emergency response team, and take work home. Therefore, while he had an extremely stressful job, I do not find that he has proven that it was objectively, and by actual events, more stressful than other employees at Litton.

I find that claimant has failed to satisfy his burden of proving a work-related stress claim by objective standards and actual events. Therefore, his claim is denied.

As a result of this ruling all other issues are moot.

Date: May 16, 2007

Made by: /s/ Margaret Ellis Holden
Margaret Ellis Holden
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret
Patricia "Pat" Secret
Director
Division of Workers' Compensation