

Issued by THE LABOR AND INDUSTRIAL RELATIONS  
COMMISSION

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

Injury No.: 06-066258

Employee: Gregory Silva  
Employer: Kansas City Power & Light  
Insurer: Self-Insured  
Date of Accident: April 26, 2006  
Place and County of Accident: Kansas City, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 5, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Mark S. Siedlik, issued September 5, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of February 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

FINAL AWARD  
DENYING COMPENSATION

Employee: Gregory Silva

Injury No. 06-066258

Dependents: N/A

Employer: Kansas City Power & Light

Insurer: Self-Insured

Additional Party: N/A

Hearing Date: June 25, 2007

Checked by: MSS/lh

#### 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: April 26, 2006.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: The employee claims workplace 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: Mind, whole body.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: Greater than \$1,045.56.
19. Weekly compensation rate: \$365.08/\$696.97.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.

22. Second Injury Fund liability: N/A

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Gregory Silva

Injury No. 06-066258

Dependents: N/A

Employer: Kansas City Power & Light

Insurer: Self-Insured

Additional Party: N/A

Hearing Date: June 25, 2007

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On June 25, 2007, the employee, Gregory Silva (claimant), employer and self-insured, Kansas City Power & Light Co. (employer) appeared for a Section 287.460 RSMo. Hearing in Kansas City, Missouri. Claimant appeared in person and by and through his attorney, Debra Moore. Employer/insurer appeared by and through their counsel, Kara M. Dorssom. Karen Kono also appeared as a representative of the employer.

STIPULATIONS

The parties stipulated that:

1. On or about April 26, 2006, Kansas City Power & Light Co. was an employer operating under and subject to the terms and provisions of the Missouri Workers' Compensation Act, and that KCP&L was self-insured under that Act.
2. On the date of injury, claimant was an employee of the employer and was working under the provisions of the Missouri Workers' Compensation Act.
3. Employer had notice of the alleged injury.
4. A Claim for Compensation was filed within the time prescribed by law.
5. The Employer has paid no medical benefits as of the date of the Hearing.
6. Employer has paid no temporary total disability compensation as of the date of the Hearing.

The claimant testified in person. The following witnesses were called by the claimant: Ted Stewart, David Haley, Pat May, John Gray, Roger Woods. The claimant presented Exhibits A through J which were admitted into evidence without objection. These exhibits were as follows:

Exhibit A – Work Order

Exhibit B – Calibration Glance Reports

Exhibit C – Fitness for Duty Exam Report

Exhibit D – Email 4/26/06

Exhibit E – Email 4/27/06

Exhibit F – Final Step Up Score Sheet

Exhibit G – KCP&L Bargaining Unit Employee Handbook

Exhibit H – 6/21/06 report of Dr. Norman Heisler

Exhibit I – Certificate of Tier 1 Attendance

Exhibit J – Probationary Employee Review.

Employer/insurer called the following witnesses in person: Dave Warren, Tommie Stowers, Rory Grounds. Employer/insured called the following witnesses by deposition: Dr. Norman Heisler, Patrick Baker, James Roberts, Dominic Scardino. Employer/insured presented 18 exhibits, which were admitted into evidence without objection. These exhibits were as follows:

Exhibit 1 – Heisler Deposition transcript and deposition exhibit 2

Exhibit 2 – Baker Deposition transcript and deposition exhibit 1

Exhibit 3 – Davis Medical Records

Exhibit 4 – Geenens Medical Records

Exhibit 5 – KCP&L CEMS Manual

Exhibit 6 – CEMS log book

Exhibit 7 – File Note 6/24/05

Exhibit 8 – Undated File Note

Exhibit 9 – Meeting Minutes 10/31/05

Exhibit 10 – 11/8/05 letter to G. Silva

Exhibit 11 – 4/27/06 Email

Exhibit 12 – Grounds Interview Notes re G. Silva

Exhibit 13 – Grounds Interview Notes re Roberts and Warren

Exhibit 14 – Calibration Glance Reports

Exhibit 15 – Roberts Deposition transcript and deposition exhibits

Exhibit 16 – DVD video of Roberts deposition

Exhibit 17 – Scardino Deposition transcript and deposition exhibits

Exhibit 18 – DVD video of Scardino deposition.

### ISSUES

The issues presented to the Division are as follows:

1. Did the claimant sustain an injury which arose out of and in the course of his employment at Kansas City Power & Light Co?
2. Was claimant's injury as a result of "extraordinary and unusual" workplace stress as required by Section 278.120.8 RSMo.?
3. Was claimant's injury the result of a "good faith" action by the employer pursuant to Section 287.120.9 RSMo.?
4. Is the employer liable for any medical treatment as a result of the alleged injury?
5. Is the employer responsible for past TTD and future TTD?

### FINDINGS OF FACT

Claimant Silva's employment with Employer KCP&L

1. Claimant Gregory Silva was first hired at Kansas City Power & Light Co. ("KCP&L") on November 10, 1999 at which time he was assigned to work as a technician at KCP&L's Hawthorn Station.
2. In approximately 2004, Mr. Silva bid for and received a transfer to a position as an equipment technician at KCP&L's Northeast Station. In this position, he was responsible for maintenance of KCP&L's gas turbines. Mr. Silva's direct supervisor in this position was Tommie Stowers, the shift foreman for the Northeast turbine group. Mr. Stowers was supervised by Dominic Scardino.
3. Prior to Mr. Silva's transfer to Northeast, Mr. Scardino was involved in a meeting in which Mr. Silva was disciplined for problems with his work performance. As a result, Mr. Scardino believed that Mr. Silva's work performance should be monitored closely to ensure that he was able to perform his responsibilities appropriately.
4. During his tenure in the Northeast turbine group, Mr. Silva was assigned to work at the company's West Gardner location. This position required Mr. Silva to monitor and maintain the company's CEMS units. Mr. Silva's primary responsibility in this position was to maintain a CEMS logbook, required by federal and state regulations as well as company policies. On several occasions, Mr. Silva was noted to have failed to timely document the logbook, an omission that could cause the company to be found in violation of EPA regulations. Mr. Silva also was noted to have attendance problems, and was disciplined for these attendance problems. There is no evidence that Mr. Silva's job duties were more stressful or more extensive than those of the other equipment technicians in his work group.
5. During his testimony, Mr. Silva testified regarding six specific incidents that he alleges caused him mental stress. These were: 1) Failure to initially assign him to work at the West Gardner facility; 2) An argument with Mr. Roberts in October 2005 regarding the method by which work on a PT fuse should be performed; 3) An argument with Mr. Roberts on April 19, 2006 regarding work to be done on a turbine that

had tripped; 4) An incident on April 13, 2006 where Mr. Roberts, who was covering Mr. Silva's position while Mr. Silva was on vacation, reported that certain bottle values were incorrect; 5) a "violent" confrontation in October 2005 in which Mr. Silva alleges that Mr. Roberts threatened to "kick his ass;" and finally, 6) Mr. Roberts' removal of Mr. Silva's personal items from a shared workspace on April 13, 2006.

6. With respect to Mr. Silva's allegation that he was not assigned to work at the West Gardner facility, all of the testimony of his co-workers and that of his supervisor Mr. Stowers establishes that Mr. Silva was, in fact, assigned to work at West Gardner. Indeed, Mr. Silva himself admits that he was assigned to West Gardner where he worked alone and without significant contact with any other employees for the last several months that he was actively working.

7. With respect to Mr. Silva's allegations regarding his arguments with Mr. Roberts, it is clear that the two had a contentious working relationship. The testimony from all witnesses employed in the Northeast turbine group is that Mr. Silva was difficult to work with and had conflicts with many, if not all, of his co-workers. Mr. Roberts, Mr. Silva, Mr. Scardino, Mr. Warren, and Mr. Stowers all testified that Roberts and Silva had several arguments, during which both parties became heated. The evidence establishes that Mr. Silva was an active and voluntary participant in these arguments.

8. The testimony from all witnesses establishes that the disagreements with Mr. Roberts were all the result of differing opinions regarding the way in which work was to be performed. Mr. Silva's complaints regarding Mr. Roberts' changing of certain bottle values is one example of the continuing disagreements between the two regarding correct work procedure.

9. Mr. Silva testified that during an argument in October, 2005, Mr. Roberts threatened to "kick his ass," an allegation that Mr. Roberts denies and the two witnesses to the argument, Mr. Scardino and Dave Warren, also deny. Consequently, I find Mr. Silva's testimony on this issue to be not credible, and to find that while there was an argument between the parties, there was no physical threat to Mr. Silva. Both Mr. Silva and Mr. Roberts were disciplined by Mr. Scardino for this incident. Mr. Roberts' reaction to the discipline was to recognize that his behavior was inappropriate and to agree to try harder to get along with Mr. Silva. Mr. Silva, in contrast, did not acknowledge any responsibility but instead continued to blame Mr. Roberts fully for the argument.

10. Mr. Silva testified that none of his personal items were damaged when they were moved and conceded that the desk on which they were located was a shared workspace.

11. Mr. Silva did not report any of these incidents to his supervisors or to the Human Resources department at KCP&L. Mr. Silva did not ask to be seen by a physician as a result of any of these incidents.

12. On April 25, 2006, Mr. Silva was asked to participate in a meeting with his direct supervisor, Mr. Stowers, and his union steward, Mr. Warren. The purpose of this meeting was to discipline Mr. Silva for his failure to complete a CEMS log book, a requirement of his job. Mr. Silva acknowledged in this meeting and again at the Hearing that he had failed to complete this logbook as required.

13. During this meeting, Mr. Silva became upset and eventually left the meeting before it had concluded.

14. The next day, Mr. Silva did not report to work but instead asked to be sent to the Medical Department for a Fit-for-Duty exam. Mr. Silva was found to be unfit for duty and has not returned to work since that day.

15. Mr. Silva began psychiatric treatment in September 2003, with Anne Wetherrill Davis, M.D. Mr. Silva reported to Dr. Davis that he had "always been fearful of people and on periphery of group." He also reported that he has difficulty making friends. While under the care of Dr. Davis, until February 2004, Mr.

Silva was taking psychiatric medication. Exhibit 3.

16. Mr. Silva then began seeing Dr. Geenens, another psychiatrist, in April, 2004. Mr. Silva again reported that he had difficulty making friends and that he had had multiple jobs and was tired of being the “outcast.” While seeing Dr. Geenens, Mr. Silva continued taking psychiatric medication. Although seeing Dr. Geenens throughout the period he claims he was subjected to extraordinary and unusual stress at work, described above, Mr. Silva did not relate any of these incidents to Dr. Geenens. Indeed, Mr. Silva complained to Dr. Geenens regarding work only once, on April 3, 2006, where he related that he “can’t relate to others” at work. At that time, Mr. Silva made no mention of any alleged harassment at work. Exhibit 4.

17. After being found unfit for duty, Mr. Silva did not return to Dr. Geenens, but instead began therapy with Patrick Baker and began seeing Norman Heisler, M.D. Both Mr. Baker and Dr. Heisler have diagnosed Mr. Silva with depression and Asperger’s Disorder. Dr. Heisler noted that Mr. Silva’s symptoms had been “lifelong,” consistent with Mr. Silva’s complaints to Drs. Davis and Geenens. Exhibit 1 and attached notes; Exhibits 3 – 4.

18. Asperger’s is a “lifelong disorder,” and its causes are not known. Heisler Deposition, Exhibit 1, at 13.

19. Neither Mr. Baker nor Dr. Heisler would offer an opinion that Mr. Silva’s psychiatric problems were caused by any events at work. Baker Deposition, Exhibit 2, at 37; Heisler Deposition, Exhibit 1, at 20.

#### RULINGS OF LAW

The date of the alleged injury in this case is April 26, 2006; hence, this case falls under the amended Chapter 287 which became effective on August 28, 2005. Specifically, §287.020, RSMo. was amended in 2005 to provide:

The word “accident” as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

(1) In this chapter the term “injury” is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. “The prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

1. It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

2. It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

This case further implicates the Act’s provisions regarding the burden of proof and affirmative defenses applicable to a mental injury claim. Specifically, § 287.120 RSMo. provides:

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.

1. A mental injury is not considered to arise out of and in the course of 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.

## FINDINGS

Based on the evidence and testimony presented at the Hearing, together with the Act and case law interpreting the same, the Court makes the following rulings of law.

The Claimant carries the burden of proof to establish all material elements of their claim. In the case involving a mental injury, expert testimony is necessary to establish whether or not a mental injury was sustained in the course of employment. Tibbs vs. Roe Furniture Corporation, 691 SW2d 410 (Mo.App. S.D. 1985). The courts have found that the causation of the mental condition is not as apparent as that of many physical conditions necessitating the requirement of expert testimony to carry the Claimant's burden of proof. Williams vs. DePaul Health Center, 996 S.W.2d 619 (Mo.App. E.D. 1999). In this case, the Claimant has not produced competent evidence to support causation, and in fact his treating health care providers have failed to support his allegations. It is clear from reviewing the evidence and testimony presented that the Claimant's psychiatric conditions are long-term problems that pre-existed his employment at Kansas City Power & Light. The Claimant therefore has not carried his burden of proof in proving that any alleged injury arose out of and in the course and scope of employment in as much as his condition is a result of idiopathic causes and therefore not compensable.

The Claimant carries the additional burden of proof in alleging a mental injury in that the Claimant must prove the work stress was "extraordinary and unusual". §287.120.8 RSMo. The Claimant is required to show this by actual events and objective standards, in comparison with the stress encountered by employees in similar positions. Williams vs. DePaul Health Center 996 S.W.2d 619 (Mo.App. E.D. 1999); Carnel vs. Pride Cleaners, 138 S.W.3d 155 (Mo.App. W.D. 2004). In this case the Claimant, as well as his coworkers, testified that Claimant's workload was not different from other equipment technicians in his group, and none of the specific incidences that Claimant testified to rise to the level of extraordinary and unusual, and in fact the events which Claimant described showed the Claimant was an active and vigorous participant in many of the work-related confrontations alleged. The Claimant called as a rebuttal witness a similarly situated technician, Roger Woods, and under direct examination asked if that person was exposed to job-related stress in the performance of his duties. Mr. Woods did testify that from time to time work-related stress was encountered and the source of that stress was the Claimant himself who was very difficult to work with, was confrontational, threatened violence, and generally had to have his way at work or caused problems for all of his coworkers.

Finally, the employer asserts the Claimant has failed to meet his burden of proof in as much as the Claimant cannot overcome the statutory exemption of §287.120.9 RSMo which prohibits mental injuries that are a result of good-faith disciplinary actions. It has been the employer and insurer's assertion throughout this proceeding that the events which the Claimant references as the source of his stress and compensable claim are the result of confrontations regarding job duties, evaluation and performance, conduct specifically exempted from coverage under §287.120.9.

1. The medical evidence, specifically Exhibits 1 – 4, all establish that Mr. Silva's psychiatric problems were longstanding and existed prior to his employment in the Northeast turbine group at KCP&L. An injury resulting from idiopathic causes is not compensable. Section 287.020.3(3). Consequently, claimant Silva has not met his burden of proof that his psychiatric condition is the result of an injury arising out of and in the course of his employment.

2. The events Mr. Silva alleges were the work-related stresses that caused his mental injury are all personality conflicts and garden-variety workplace disagreements with co-workers. None rise to the level of "extraordinary and unusual" stresses. Mr. Silva has not met his burden of proof that his mental injury arose out of and in the course of employment. Section 287.120.8.

3. The documentary evidence and testimony establishes that the meeting on April 25, 2006 was a disciplinary meeting regarding Mr. Silva's admitted performance deficiencies. It was after this meeting that Mr. Silva sought a Fit-for-Duty exam and it was this incident that is identified in Mr. Silva's claim for compensation as the injury date. Mr. Silva's alleged mental injury was the result of the employer's disciplinary action and therefore is not compensable pursuant to § 287.120.9.

Based on all the evidence, including the testimony of claimant and others at the Hearing, the medical records and deposition testimony of Mr. Silva's health care providers, and, based on the application of Chapter 287, as amended in 2005, the claimant has failed to prove that he sustained an injury by accident arising out of and in the course of his employment for Kansas City Power & Light. Claimant's claim for compensation is denied.

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

Made by:

Mark S. Siedlik  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Jeff Buker  
*Director*  
*Division of Workers' Compensation*