

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

Injury No.: 06-135311

Employee: Joy D. Stewart  
Employer: The Parking Spot, Go Jet Airlines  
Insurer: Insurance Company of the State of Pennsylvania  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by §287.480 RSMo. In addition, employee and employer/insurer submitted certain motions to the Commission. On October 6, 2008, the Commission issued an Order that addressed all such motions, other than employer's request for sanctions against employee under §287.560 RSMo and to present additional evidence in support of its motion. To the extent we have not already done so, we hereby deny all motions.

Having reviewed the evidence and considered the entire 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 §286.090 RSMo the Commission affirms the award of the administrative law judge dated August 4, 2008.

The award and decision of Administrative Law Judge Edwin J. Kohner issued August 4, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11th day of February 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

# AWARD

Employee: Joy D. Stewart Injury No.: 06-135311  
Dependents: N/A Before the  
Employer: The Parking Spot, Go Jet Airlines **Division of Workers'**  
**Compensation**  
Department of Labor and Industrial  
Additional Party: Second Injury Fund Relations of Missouri  
Jefferson City, Missouri  
Insurer: Insurance Company of the State of Pennsylvania  
Hearing Date: July 17, 2008 Checked by:

## 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: May 31, 2006 (alleged)
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? No
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? Go Jet Airlines was insured by the above insurer.
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
The employee was sitting in a booth at the workplace processing transactions for the employer related to cars that were parked on the lot.
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: Allegedly emotional injury, back, leg, hip, arm, mind, and neck.
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

Employee: Joy D. Stewart Injury No.: 06-135311

17. Value necessary medical aid not furnished by employer/insurer? None

- 18. Employee's average weekly wages: \$720.00
- 19. Weekly compensation rate: \$480.00/\$365.08
- 20. Method wages computation: The claimant worked for twelve days for this employer for \$18.00 per hour for 40 hours per week

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:
 

None
- 22. Second Injury Fund liability: No
- Total: None
- 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.

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: N/A

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

Employee:	Joy D. Stewart	Injury No.: 06-135311
Dependents:	N/A	Before the
Employer:	The Parking Spot, Go Jet Airlines	Division of Workers'
Additional Party:	Second Injury Fund	Compensation
Insurer:	Insurance Company of the State of Pennsylvania	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by:

This workers' compensation case raises several issues arising out of an alleged work related injury in which the claimant, a flight attendant trainee, filed a claim alleging that she suffered a work related injury from "sitting in a booth at the workplace processing transactions for the employer related to cars that were parked on the lot". The issues for determination are (1) Accident or occupational disease arising out of and in the course of employment, (2) Notice, (3) Medical causation, (4) Liability for Past Medical Expenses, (5) Future medical care, (6) Temporary Disability, (8) Permanent disability, and (9) Second Injury Fund liability. The evidence compels an award for the defense, because the claimant's evidence does not establish a compensable claim for workers' compensation benefits.

At the hearing, the claimant testified in person and offered a collection of documents into evidence. The defense objections are overruled. The defense offered its Motion to Dismiss, but the claimant's objection was sustained based on the lack of probative value.

All objections not previously sustained are overruled. Jurisdiction in the forum is authorized under Sections 287.110, 287.450, and 287.460, RSMo 2000, because the injury was alleged to have occurred in Missouri. Since the claimant filed a request for hearing pursuant to Section 287.203, RSMo 2000, as amended, all motions for continuances were denied, because the parties were unable to agree on a date for a continuance. The hearing took place on the fifty-seventh day after the claimant filed her request for hearing. The claimant stated in her request for hearing that she had completed all discovery and was prepared to present her evidence at hearing. The claimant requested that her case be heard by telephone to allow the her to testify in Colorado without a physical appearance. No objections were received, and the hearing proceeded.

### **SUMMARY OF FACTS**

The claimant, a flight attendant trainee for Go Jet Airlines from April 5, 2006, to April 17, 2006, received monetary compensation from her employer at the rate of \$18.00 per hour for forty hours per week. She testified that during the course of her twelve day employment co-employees and her supervisor stuck her with needles as she walked past them for no known reason. She testified that she reported the occurrence to her supervisor, Michela Green, but the employer took no action to support the claimant's position in the dispute. The claimant testified that the workplace constituted a hostile working environment. The employer discharged the claimant from work on April 17, 2008. The claimant testified she applied for unemployment benefits. The claimant became employed with The Parking Spot as a cashier in May 2006, and left that firm on September 30, 2006. The claimant became employed in Colorado as a data entry operator in October 2006, worked for the firm for two and one half months, and was discharged from employment on December 19, 2006. See Exhibit A. The claimant liked the work she did for the employer and attempted to do the work as well as she could. See Exhibit A. She was advised that she was being discharged because the employer was of the opinion she had disrespected a supervisor. See Exhibit A. The claimant was unaware of any activities involving her work which justified her dismissal. See Exhibit A. The claimant was discharged by her employer on December 19, 2006, but not for misconduct connected with her work. See Exhibit A. The claimant has not been employed in any capacity since December 19, 2006. See Exhibit A.

On August 2, 2007, Dr. Barry C. Markell, a licensed clinical psychologist, examined the claimant and opined that she suffered from a severe and disabling depression, was troubled by paranoia, had some agoraphobic symptoms, and was plagued by obsessions. See Exhibit A. He opined that the claimant was "incapable of making clear and cogent personal decisions rendering her totally incapable of making personal or financial plans." See Exhibit A.

On December 11, 2007, the claimant visited the Denver Health Medical Center and a physician opined that the claimant was "gravely ill" as a result of "grandiose delusions that she is a lawyer and paranoid delusions that the police are harassing her." See Exhibit A.

In 2008, the claimant filed a claim for compensation with the Colorado Division of Workers' Compensation against The Product Line in Denver, Colorado, alleging that from October 20, 2006, to December 19, 2006, the claimant's coworkers "at the job site were working in tandem to stick and poke me while I was working and injured me." See Exhibit A.

On May 21, 2008, the claimant filed a claim for compensation with the Missouri Division of Workers'

Compensation against The Parking Spot and Go Jet Airlines, alleging that on May 31, 2006, the claimant "was sitting in a booth at the workplace processing transactions for the employer related to the cars that were parked on the lot." See Claim on file. On the same date, the claimant filed a request for hearing pursuant to Section 287.203, RSMo Supp 2007. The claimant represented that all necessary discovery had been completed and that the parties were prepared to present their evidence at hearing. The Division set the case for hearing on July 17, 2008, and all motions for continuances were denied, because the parties could not agree on a date for a continued hearing. On July 2, 2008, Go Jet Airlines filed an answer to the claim for compensation denying the allegations and contesting notice and the statute of limitations. On July 14, 2008, three days before the hearing, the claimant filed an amended claim alleging that the date of injury was on September 20, 2006, and dropping Go Jet Airlines as an employer. The Division of Workers' Compensation processed the amended claim on July 18, 2008, the day after the hearing.

### COMPENSABILITY

The claimant has the burden to establish that she has sustained an injury by accident arising out of and in the course of her employment, and the accident resulted in the alleged injuries. Choate v. Lily Tulip, Inc., 809 S.W.2d 102, 105 (Mo.App. 1991).

Claimant must establish a causal connection between the accident and the injury. Claimant does not, however, have to establish the elements of her claim on the basis of absolute certainty. It is sufficient if she shows them by reasonable probability. "Probable means founded on reason and experience which inclines the mind to believe but leaves room for doubt." The Commission's awards on disability claims are not solely dependent on medical evidence given by expert witnesses, but its findings are to be judged on the basis of the evidence as a whole. The testimony of the claimant, or other lay witnesses, as fact within the realm of lay understanding can constitute substantial evidence of the nature, cause and extent of the disability, especially when taken in connection with, or where supported by, some medical evidence. The Commission is authorized to base its findings and awards solely on the testimony of the claimant; her testimony alone, if believed, constitutes substantial evidence. Fischer v. Archdiocese of St. Louis, 793 S.W.2d 195, 198, 199 (Mo.App. 1990).

Under Section 287.120.1 RSMo Supp. 2007, every employer subject to the provisions of the Workers' Compensation Law is liable, irrespective of negligence, to furnish compensation for personal injury or death of the employee by accident arising out of and in the course of the employee's employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. Thus, an employer is liable for workers' compensation benefits if 1) the employee sustained personal injury 2) by accident 3) arising out of and in the course of his employment.

The legislature established a two step process to determine whether a claim was compensable: The prevailing factor test and the hazard test. The legislature defined the prevailing factor, "The prevailing factor" means, "the primary factor, in relation to any other factor, causing both the resulting medical condition and disability." §287.020.3(1) RSMo. Supp 2007. "Primary" means, "first in rank or importance." "Factor" means, "something (as an element, circumstance, or influence) that contributes to the production of a result." Substituting the above dictionary definitions into the statutory definition, *the prevailing factor is the most important influence, in relation to any other influence, in causing both the resulting medical condition and disability*. The second test is the hazard test. The injury must 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. See Section 287.020.3 RSMo Supp. 2007.

The claim filed in this case is not compensable for several reasons. In relation to Go Jet Airlines, the Claim for Compensation and the amended Claim for Compensation list the dates of injury as May 31, 2006, and September 20, 2006, respectively. The claimant testified that she worked for Go Jet Airlines from April

5, 2006, to April 17, 2006. The evidence demonstrates that the claimant was not employed by Go Jet Airlines on either date of injury listed on the Claims for Compensation filed by the claimant. With certain exceptions not applicable here, the term “employee” is defined as “every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations.” See Section 287.020.1, RSMo Supp. 2007. Based on the claimant’s testimony, the claimant was an employee of The Parking Spot on both dates of injury and was not in the service of Go Jet Airlines. Therefore, the claim against Go Jet Airlines is denied.

In relation to The Parking Spot, the claimant became employed with The Parking Spot as a cashier in May 2006, and left that firm on September 30, 2006. At the hearing, the claimant offered no evidence about events causing any injury while working for The Parking Spot on May 31, 2006 or September 20, 2006.

The claimant testified that she suffered a mental impairment from coworkers and supervisors poking her and sticking her with needles and sharp objects while working for Go Jet Airlines. She testified that supervisors and coworkers for subsequent employers also poked her and stuck her with sharp objects and needles. The claimant filed a claim for compensation with the Colorado Division of Workers’ Compensation against The Product Line in Denver, Colorado, alleging that from October 20, 2006, to December 19, 2006, the claimant’s coworkers “at the job site were working in tandem to stick and poke me while I was working and injured me.” See Exhibit A. The Claim for Compensation filed in this Missouri case alleges that the claimant had a preexisting mental impairment. See Claim on file. Thus, the claimant alleges that she suffered a mental impairment from conditions that occurred before, during, and after her employment with each of these employers. Generally, where two events, one compensable and the other non-compensable, contribute to the claimant’s alleged disabilities, the claimant has the burden to prove the nature and extent of disability attributed to the job related injury. Strate v. Al Baker’s Restaurant, 864 S.W.2d 417, 420 (Mo.App. E.D. 1993); Bersett v. National Super Markets, Inc., 808 S.W.2d 34, 36 (Mo.App. E.D. 1991). The claimant in this case has not produced evidence to establish the extent of her mental impairment that resulted from preexisting conditions, the extent that resulted from her employment with Go Jet Airlines, the extent that occurred from her employment with The Parking Spot, and the extent that occurred from her employment with the Product Line.

The burden of proving an entitlement to compensation is on the employee. See Section 287.808, RSMo Supp. 2007. Generally, forensic evidence is used to show causation and the extent of disability in workers’ compensation cases involving complex medical conditions. A mental impairment is a complex medical condition, not susceptible of lay evaluation. The claimant offered medical evidence showing that she suffered from a mental impairment from August to December 2007. On August 2, 2007, Dr. Barry C. Markell, a licensed clinical psychologist, examined the claimant and opined that the claimant suffered from a severe and disabling depression, troubled by paranoia, some agoraphobic symptoms, and plagued by obsessions. See Exhibit A. He opined that the claimant was “incapable of making clear and cogent personal decisions rendering her totally incapable of making personal or financial plans.” See Exhibit A. On December 11, 2007, the claimant visited the Denver Health Medical Center and a physician opined that the claimant was “gravely ill” as a result of “grandiose delusions that she is a lawyer and paranoid delusions that the police are harassing her.” See Exhibit A. However, neither medical provider offered an opinion regarding the etiology of the claimant’s mental impairment or whether the impairment was permanent. The claimant offered no evidence to prove that any occurrence on either May 31, 2006, or September 20, 2006, was the prevailing factor causing her medical condition or her disability. In addition, she did not offer evidence that her injury did 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.

Based on the evidence in the record, the claimant did not submit sufficient evidence to prove that she suffered a compensable injury as alleged in her Claim for Compensation.

## OTHER ISSUES

While the claimant did not submit evidence to establish that she suffered a compensable injury under the Missouri Workers Compensation Statute as discussed above, it is necessary to comment on other issues. The claimant did not submit any medical bills to prove that she incurred any medical expenses related to the occurrence alleged in the claim for compensation. The claimant offered no evidence to prove that she required any future medical care related to the occurrence alleged in the claim for compensation. Although the claimant proved that she was totally disabled from August 2, 2007, to December 11, 2007, 18 6/7 weeks, she did not prove that her total disability resulted from a compensable injury as discussed above. The claimant offered no evidence to prove that she suffered from any permanent disability or that any such disability resulted from the incident alleged in the claim for compensation. Finally, the claimant failed to prove the extent of any preexisting partial disability as well as the extent of any permanent disability resulting from the alleged occurrence in the claim for compensation. Given the absence of evidence to prove the claim for compensation and any benefits relating to the alleged injury, the claim is denied.

## COSTS

Go Jet Airlines filed a Motion for Sanctions and Fees pursuant to Section 287.560, RSMo 2000. The pertinent provisions of the section state: “[I]f the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them.”

As an exception to the general rule, the Division or the Commission may assess the whole cost of the proceedings upon a party who, without reasonable ground, brought, prosecuted, or defended a proceeding before the Division or Commission. Section 287.560 ; Landman v. Ice Cream Specialties, Inc., 107 S.W.3d 240, 250 (Mo. banc 2003) (overruled in part on other grounds by Hampton, 121 S.W.3d 220) The Commission should exercise its discretion to assess the cost of the proceedings under this section where the issue is clear and the offense is egregious. Landman, 107 S.W.3d at 250. The “whole cost of the proceedings” includes all amounts the innocent party expended throughout the proceeding brought, prosecuted, or defended without reasonable grounds, including attorney's fees. Landman, 107 S.W.3d at 252. In Landman, the Missouri Supreme Court reasoned that legal fees are the largest cost incurred by an employee who is forced to sue an employer to recover worker's compensation benefits. Id. There, the Court further reasoned that including attorney's fees in the whole cost of the proceeding makes the sanction under Section 287.560 meaningful and furthers the goal of providing a quick recovery to injured employees without the expenses and delays associated with litigation. Id. Delong v. Hampton Envelope Company, 149 S.W.3d 549, 555, 556 (Mo.App. E.D. 2004).

The claimant testified that she was poked and stabbed with sharp objects and produced evidence that she suffered a mental impairment and disability over a year later. She did not prove that she was an employee of Go Jet Airlines on the date of injury and she did not prove that the occurrence alleged in the claimant's Claim for Compensation was the prevailing factor causing her mental impairment and disability. Thus, the claimant failed to produce sufficient evidence to prove her case. However, assuming that the claimant's prosecution of the claim for compensation was without reasonable ground, the defense offered no evidence of costs. The Parking Spot ignored the Claim for Compensation and did not appear for the hearing. The Second Injury Fund filed an Answer to the Claim but did not appear for the hearing. Go Jet Airlines filed an Answer to the Claim, a Motion to Dismiss, a Motion for Sanctions, and appeared at the hearing with two attorneys, who cross-examined the claimant on statements made in the Claim for Compensation. None of the parties conducted any discovery. However, the defense offered no evidence to show the extent of any expenses. The only basis to assess cost would be mere speculation. Therefore, no costs are awarded to any party in this case.

CONCLUSION

For the reasons stated above, the Claim for Compensation is denied, because the claimant did not submit sufficient evidence to prove that an accident at work was the prevailing factor causing her disability and did not prove that she was an employee of Go Jet Airlines on the date of injury. No costs are awarded to any party.

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

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

EDWIN J. KOHNER  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
*Jeffrey W. Buker*  
*Director*  
*Division of Workers' Compensation*

We note that employee submitted an amended claim for compensation a couple of days before her July 17, 2008, hearing; however, the administrative law judge had not received that amendment at the time of the hearing. The amended claim had no affect on the outcome of the case.