

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

Injury No.: 02-106108

Employee: Gregory R. Tayborn
Employer: St. Louis Board of Police Commissioners (Settled)
Insurer: Self-Insured (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: September 13, 2002
Place and County of Accident: City of St. Louis, 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 December 11, 2006. The award and decision of Administrative Law Judge Joseph E. Denigan, issued December 11, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 26th day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

DISSENTING OPINION FILED

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Worker's Compensation Law, I believe the decision of the administrative law judge should be reversed.

I do not believe that employee is permanently and totally disabled as a result of the combination of the primary work injury and any preexisting disability. The competent and substantial evidence shows that even if employee did become permanently and totally disabled, it was solely a result of the work injury on September 13, 2002. Therefore, employer and not the Second Injury Fund would be responsible to employee for permanent and total disability benefits.

The only evidence presented regarding employee's alleged preexisting disability was that of Dr. Stillings. It simply consisted of his belief that employee "had to have some pre-existing paranoia, and he certainly had pre-existing dependent, depressive features." Dr. Stillings performed his examination of employee on May 17, 2004, nearly two years after employee's work incident. I do not believe his testimony that his examination revealed that employee had mental disabilities that pre-existed the work incident to be credible. Employee had no prior mental issues aside from a panic attack in 1991. There is also no evidence of any psychiatric treatment or problems prior to the September 13, 2002, incident.

Dr. Smith indicated in her medical report that employee's "current condition is a result of the incident [of] September 13, 2002." Dr. Bassett's report also sets forth that the incident on September 13, 2002, was the cause of employee's anxiety and depressive disorder. Even Dr. Stillings, in his August 17, 2004, letter to the administrative director of The Police Retirement System, in which he criticizes Dr. Smith's and Dr. Bassett's reports, wrote, "[p]olice officer Tayborn's current psychiatric condition is a direct result of the injuries sustained from the work incident occurring on 9/13/02."

Based on all of the above evidence, I believe that if employee did become permanently and totally disabled, it was solely the result of the work incident on September 13, 2002. As such, employer and not the Second Injury Fund should be liable to employee for benefits.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission to allow compensation.

Alice A. Bartlett, Member

AWARD

Employee:	Gregory R. Tayborn	Injury No.:	02-106108
Dependents:	N/A	Before the	
Employer:	St. Louis Board of Police Commissioners (Settled)	Division of Workers' Compensation	
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri	
Insurer:	Self-Insured (Settled)	Jefferson City, Missouri	
Hearing Date:	August 28, 2006	Checked by:	JED:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: September 13, 2002

5. State location where accident occurred or occupational disease was contracted: City of St. Louis, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant was injured in a police shooting on the above date.
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: Body as a whole (psychiatric injury)
14. Nature and extent of any permanent disability: 75% PPD of the body (primary injury); PTD from SIF.
15. Compensation paid to-date for temporary disability: \$1,858.71
16. Value necessary medical aid paid to date by employer/insurer? \$5,302.72

Employee: Gregory R. Tayborn, II Injury No.: 02-106108

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: Maximum
19. Weekly compensation rate: \$649.32/\$340.12
20. Method wages computation:

COMPENSATION PAYABLE

21. Amount of compensation payable:

300 weeks permanent partial disability from Employer	Settled
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22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund: weekly differential (\$309.20) payable by SIF for 300 weeks beginning November 5, 2004 and, thereafter, \$649.32 for Claimant's lifetime	Indeterminate
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TOTAL:	INDETERMINATE
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23. Future requirements awarded:

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to Claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to Claimant:

Stephen W. Thurmer

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Gregory R. Tayborn, II	Injury No.: 02-106108
Dependents:	Alexander and Nicolas Tayborn	Before the
Employer:	St. Louis Board of Police Commissioners (Settled)	Division of Workers' Compensation
Additional Party:	Second Injury Fund	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-Insured (Settled)	Checked by: JED:tr

This case involves a compensable assault resulting in multiple minor injuries to the body and psychiatric disability to Claimant, with the reported accident date of September 13, 2002. The Employer/Insurer previously settled its risk of liability. Claimant and the Second Injury Fund ("SIF") are represented by counsel. The single issue for trial is the liability of the SIF.

FINDINGS OF FACT

Dispositive Evidence

1. Claimant, a member of the St. Louis Police Department was injured when Claimant shot and killed an assailant. Immediately after the incident, Claimant went to Barnes-Jewish Hospital to be treated for physical injuries to his head and ribs. (See Exhibit D – Barnes-Jewish Hospital Records). Within hours of the incident, Claimant's mother died as the result of a massive heart attack.
2. Linda M. Housman Ph.D. first saw Claimant on February 6, 2003 and began treating Claimant for post-traumatic stress disorder and major depression. (See Exhibit G – Linda Housman Ph.D. medical records). Claimant underwent regular counseling with Dr. Housman for over a year and a half.
3. On September 9, 2003, Paul Detrick, Ph.D. found that Claimant was not fit for duty. (Exhibit F –Fit For Duty Evaluation Report).
4. On June 10, 2004, Claimant was examined by Stacey L. Smith, M.D. at the request of the Police Retirement System of St. Louis. In reviewing Claimant's medical history, Dr. Smith stated that records from a 1991 emergency room visit suggest that Claimant most likely suffered from a panic attack prior to the subject injury. (Exhibit H, p. 14). In 1991, Claimant presented with shortness of

breath, tingling teeth, numb hands, he was anxious and hyperventilating, and he had complaints of chest pain and aches throughout his body, and tingling in multiple body parts. The diagnosis was hyperventilation and Dr. Smith wrote: "this history suggests a panic attack."

5. Further review of Claimant's medical history revealed another incident in March of 1998 in which Claimant was seen for shortness of breath and chest tightness. Claimant was treated presumptively for pneumonia although the x-ray was negative. Dr. Smith wrote that this incident "again, may suggest anxiety". (Exhibit H , p. 15).
6. Dr. Smith's report states that Claimant was suffering from PTSD as a result of the events of 9/3/02 and that Claimant suffered from "Pre-existing low level anxiety/depressive/ somatic complaints secondary to the pre-existing Axis II profile." In addition, Claimant had "some low level defenses, which are pre-existing". (Exhibit H, p. 20).
7. Gregg Bassett, M.D. also performed an IME of Claimant at the request of the Police Retirement System of St. Louis. In Dr. Bassett's report, there is discussion of one panic attack prior to the 9/13/02 incident. In this incident early in Claimant's police career, Claimant suffered a panic attack on his first day in traffic. (Exhibit I, p. 17).
8. Wayne A. Stillings also performed an IME of Claimant at the request of the Police Retirement System of St. Louis. Dr. Stillings stated in his May 17, 2004 report that Claimant had "passive, dependent and depressive personality features." Dr. Stillings stated: "In relation to the 9/13/02 work incident, Mr. Tayborn is permanently and totally disabled from a psychiatric standpoint." Dr. Stillings found that "The 9/13/02 work incident is a substantial factor in Mr. Tayborn's posttraumatic stress disorder." (Exhibit C.)
9. Dr. Stillings testified that as the direct result of the shooting, Claimant would be 50% PPD. (p. 30). If the shooting and the guilt over the death of Claimant's mother that Claimant associates to the shooting are both considered, Dr. Stillings stated that the Claimant would be 65% PPD. (Exhibit C, p. 40).
10. Dr. Stillings also stated that "there are other underlying factors that are very important in his case: his personality problems, the paranoia. And I mean the level of paranoia is extremely high...I mean he had to have had some pre-existing paranoia, and he certainly had pre-existing dependant, depressive features."
11. Dr. Stillings testified that Claimant's pre-existing paranoia and pre-existing passive, dependent and depressive features of his personality disorder "absolutely" played a role in leaving Claimant permanently and totally disabled. Dr. Stillings again stated that the actual shooting and the associated guilt when combined with the pre-existing Axis II disorder left Claimant permanently and totally disabled. (Exhibit C, pp. 36-39).
12. Claimant was also examined by James England, a vocational rehabilitation counselor. Mr. England stated that based on the majority of the medical evidence, Claimant would not be employable and he does not see how Claimant is really going to fit back out into the work world Mr. England would not opine on whether the reported injury would have kept Claimant from working and stated he would defer to the [doctors] on the cause of the psychiatric problems.
13. In addition to the aforementioned mental and psychological injuries, Claimant sustained numerous physical injuries as reflected in the medical histories of the treatment records and reports.
14. Claimant last worked for the St. Louis Police Department on November 4, 2004.

RULINGS OF LAW

1. Claimant sustained a compensable injury which resulted in extremely serious psychiatric injury.
2. Claimant presented treatment records and reports reflecting the basis of treatment and permanent injury.
3. Claimant presented cogent unrebutted medical causation evidence and permanent injury.
4. Claimant presented cogent unrebutted medical evidence of traumatic psychiatric disability in the range of two-thirds to three-quarters of the body as a whole referable to the reported injury
5. Claimant presented cogent unrebutted evidence of unemployability in the open labor market.
6. Claimant presented cogent unrebutted expert evidence of synergy between the pre-existing Axis II disorder and the current injury.
7. Claimant testified clearly and in a manner consistent with his psychiatric record of treatment and injury. Claimant was reticent and exhibited flat affect.
8. The evidence compels a finding of permanent total disability as a result of the combination of the current injury and pre-existing disability.

Conclusion

Accordingly, on the basis of the competent and substantial evidence contained within the whole record, Claimant is found to have sustained a seventy-five percent PPD of the body referable to traumatic psychiatric disability as a result of the primary injury and permanent total disability as a result of the synergy between the current PPD and the pre-existing Axis II psychiatric PPD for which the SIF is liable. Absent TTD evidence, PTD benefits are payable beginning November 5, 2004, the date following Claimant's termination of employment.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Employee: Gregory R. Tayborn, II

Injury No.:

02-106108