

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 03-144756

Employee: Walter Wyman

Employer: Missouri Department of Mental Health
St. Louis Regional Center for Developmentally Disabled

Insurer: Self-Insured by the State of Missouri

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

Date of Accident: September 18, 2003

Place and County of Accident: St. Louis 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated November 9, 2006.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Linda J. Wenman, issued November 9, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 12th day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Walter Wyman Injury No.: 03-144756
Dependents: N/A Before the
Employer: MO Department of Mental Health - **Division of Workers'**
St. Louis Regional Center for Developmentally Disabled **Compensation**
Department of Labor and Industrial
Additional Party: Second Injury Fund (open) Relations of Missouri
Jefferson City, Missouri
Insurer: Self-insured by the State of Missouri
Hearing Date: September 28, 2006 Checked by: LJW: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 18, 2003
5. State location where accident occurred or occupational disease contracted: St. Louis City, 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 happened or occupational disease contracted: While involved in a crisis intervention, Employee was assaulted by a client.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Psychological injury
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? None

Employee: Walter Wyman

Injury No.: 03-144756

- 17. Employee's average weekly wages: \$304.95
- 18. Weekly compensation rate: \$203.30 / \$203.30
- 19. Method wages computation: Stipulated

COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses:	To be determined
94 weeks of temporary total disability (or temporary partial disability)	\$19,110.20 and ongoing
TOTAL:	TO BE DETERMINED

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Thomas A. Traube

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Walter Wyman	Injury No.: 03-144756
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	MO Department of Mental Health St. Louis Regional Center for Developmentally Disabled	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (open)	Jefferson City, Missouri

PRELIMINARIES

A hearing was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on September 28, 2006.^[1] Walter Wyman seeks issuance of a temporary order providing psychiatric treatment and any necessary temporary disability. Attorney Thomas P. Traube represented Walter Wyman (Claimant). The Missouri Department of Mental Health – St. Louis Regional Center for the Developmentally Disabled (Employer) is self-insured by the State of Missouri, and was represented by Assistant Attorney General LaVander Smith. Briefs were filed and the case was formally submitted on October 27, 2006.

Prior to the start of the hearing the parties identified the following issues for disposition in this case: medical causation; temporary total disability (TTD) as relates to a temporary order; future medical care as it relates to a temporary order; and a statute of limitations defense.

Claimant offered Exhibits A-E, and Employer offered Exhibits 1-4. The exhibits were admitted into the record. Any markings contained within any exhibit were present when received. Any objections not expressly ruled on in this award are overruled.

SUMMARY OF EVIDENCE

All evidence presented has been reviewed. Only testimony necessary to support this award will be summarized.

Testimony

Claimant: Claimant began working for Employer in 1989, left his employment for approximately one year, but resumed employment with Employer until 2004. Claimant served as a Behavior/Crisis Intervention Technician during his period of employment with Employer. Claimant's job duties involved interacting with clients who had their jobs or placement at risk due to their behavior. The clients Claimant dealt with frequently had dual diagnoses including both developmental and mental health disorders, and they were prone to violent outbursts. Claimant received outstanding performance reviews, and was presented with a Governor's Award during his employment with Employer. Claimant has a history of attention deficit hyperactivity disorder (ADHD), depression, and a history of gambling addiction. During the course of his employment Claimant remained in therapy with a psychiatrist.

During 2000, Claimant injured his low back after being assaulted by a client. Claimant required two surgeries to correct a herniated disc at L4-5. When Claimant returned to work, he expressed concern over working with aggressive clients, and his inability to protect himself from further injury. Claimant discussed his concerns with his supervisor, and his future assignments reflected an attempt to limit his exposure when it was possible.

On June 24, 2002, Claimant responded to a crisis involving "Brian". Brian was fourteen years old, tall for his age, and weighed approximately 350 pounds. During the intervention Claimant was assaulted, "911" had to be called, and Brian was removed from his placement and admitted to St. Anthony's Medical Center. Following this incident Claimant became increasingly fearful of being unable to protect himself, had difficulty concentrating, began experiencing nightmares, experienced periods of "fog",^[2] and had an episode at his office that humiliated him.^[3] Despite his problems, Claimant continued to work for the next year.

On September 18, 2003, Claimant responded to a crisis involving "Nate". During this intervention, Nate threatened to kill Claimant. Nate managed to pin Claimant's hands behind his back, and began to strike Claimant. Claimant extricated himself, and "911" was called. Following this incident, Claimant became dysfunctional, was even more fearful for his safety, suffered flashbacks, experienced panic attacks, and had further mental clarity problems. Claimant spoke to his supervisor on a daily basis, and frequently made her aware of his fears of aggressive clients. Claimant requested treatment, but Claimant's supervisor referred him to a mandatory employee assistance program. Despite his prior mental health history, Claimant had never experienced these symptoms.

Following the September 2003 assault, Claimant was unable to return to work. In January 2004, Claimant went

on long term disability which lasted twenty-four months. During that time Claimant continued to treat with his psychiatrist, and also sought treatment with the Center for Trauma Recovery at the University of Missouri – St. Louis (UMSL). At UMSL, it was determined Claimant met the diagnostic criteria for post traumatic stress disorder (PTSD). As of the date of hearing, Claimant does not believe he is capable of returning to work at this time, he is seeking additional mental health treatment due to the assaults, and he emphasized the need for treatment is not due to job related stress.

Upon cross-examination, Claimant acknowledged although he had highly successful performance reviews as related to work with clients, he had received disciplinary reprimands on occasion. Claimant verified he was frequently late completing work related paperwork, but attributed the difficulty due to his ADHD. Finally, Claimant also acknowledged his job description demonstrated his job was to work with aggressive and sometimes violent clients.

Pertinent Medical Record Review

Dr. Stromsdorfer: Dr. Stromsdorfer is Claimant’s treating psychiatrist. Dr. Stromsdorfer was not deposed, and Claimant’s treatment records as recorded by Dr. Stromsdorfer are outlined as follows:

7/31/01 – Claimant has a longstanding history of personal and family depression. Claimant was diagnosed with major depressive disorder, and medication was started.

12/14/01 – Claimant’s condition is slightly worse. His depression is rated 8 (out of 10)(8/10), and his anxiety is 6/10. Medication is adjusted.

2/6/02 – Claimant is noted to be depressed, tense, and dysphoric.

3/8/02 – Claimant is noted to be “doing somewhat better.”

4/5/02 – Claimant is noted to be doing better, and more focused.

4/30/02 – Claimant’s focus is better, it is noted “I’m able to read.” His depression and anxiety are both rated at 0/10.

7/30/02 – It is noted Claimant continues to focus well, and a return visit is scheduled for three months. ^[4]

11/23/02 – The impression is Claimant is “doing o.k.” Claimant’s next visit is scheduled for six weeks.

2/8/03 – Impression is fair. Claimant is noted to be mildly dysphoric. Depression is 0/10, and anxiety is 8/10.

2/19/03 – A telephone call is received from “Karen”, reporting Claimant is not sleeping, anxious, and having nightmares. A sleeping aid is prescribed.

2/25/03 – Claimant is noted to be mildly dysphoric. Depression is noted to be 2/10, and his anxiety is variable.

4/6/03 – Depression is noted at 3/10, and anxiety is considered variable.

6/17/03 – Note indicated Claimant is not doing well, is frozen with anxiety, feeling helpless, not getting things done, and missing work for six weeks. Depression is noted to be 10/10, his anxiety is variable, and his GAF is 50. Diagnosis on Axis IV is indicated as work stress.

7/15/03 – Claimant’s mood is fluctuating. Depression is noted to be 7/10, and his anxiety is variable. His GAF is 60.

8/5/03 – Claimant’s depression is noted to be 3-4/10, his anxiety is variable, and his GAF is 60.

8/19/03 – Claimant is noted to be less dysphoric. His anxiety is 0/10, and his GAF is 65.

8/27/03 – Claimant is noted to be more dysphoric, and indicated he was to anxious to return to work. His GAF is 60.

9/3/03 – Claimant is noted to be improving. His depression is 2-3/10, his anxiety is 4-5/10, and his GAF is 60-65.

9/24/03 – Claimant is noted to be “clearly better.” His depression is noted to be 3/10, his anxiety is 5/10, and his GAF

is 70. Dr. Stromsdorfer also noted Claimant had been attacked by a 14 year old at work.

10/29/03 – Claimant noted to be doing better, and work is going well. Claimant’s girlfriend is moving out. His GAF is 65.

12/3/03 – Claimant’s depression is noted at 1-2/10, and his anxiety is 0/10. His GAF is 70.

2/24/04 – Claimant was involved in a motor vehicle accident on 2/2/04. Claimant noted to be “doing o.k.” Claimant’s GAF was 70.

5/28/04 – Claimant referred to St. Louis University for therapy on sliding scale payment basis.

6/7/04 – Claimant noted to be depressed and anxious. Dr. Stromsdorfer indicated “attacks had occurred at work.” GAF is 60.

1/21/05 – Claimant noted to be doing about the same. Depression is noted to be 6/10, and he is anxious. GAF is 65.

2/25/05 – Claimant is noted to be doing slightly better, but his concentration is compromised. Depression is noted to be 6/10, and his anxiety is variable. His GAF is 65.

4/23/05 – Claimant is noted to be doing “fair,” but his depression is increased at 7/10, and his anxiety is 2/10. His GAF is 65.

Deposition Testimony

Dr. Kabir: Dr. Kabir is a board certified psychiatrist, who evaluated Claimant on December 9, 2004. On the date of evaluation, Claimant appeared confused about the dates of his disability, and the amount of time he had lost from work. Claimant described his childhood as happy, but reported he lacked self-esteem. Claimant had tested with a high IQ in school, but struggled to maintain grades of C’s and D’s, and took Ritalin from the 2nd to the 4th grade. Claimant attempted college for two years, but withdrew because he couldn’t focus. Later he was diagnosed with ADHD and placed on medication.

On the date of evaluation, Claimant was oriented to person, time, and place, displayed a sad affect, and was teary at times. Claimant’s speech was anxiety laden and rapid at intervals. Claimant reported suicidal ideation, but had formed no intent. Claimant expressed paranoid and persecutory thoughts, displayed confusion, decreased concentration, and the inability to keep track of his thoughts. Dr. Kabir felt Claimant’s insight was limited and his judgment was impaired. Dr. Kabir diagnosed post-traumatic stress disorder with depression, a single episode of psychosis, and ADHD. Dr. Kabir assessed Claimant’s GAF at 40, and testified an average GAF is 75-80.

Dr. Kabir opined Claimant first became dysfunctional when he suffered his back injury in 2001, but the 2002 and 2003 assaults produced PTSD and a major depression. Dr. Kabir believed Claimant hid his symptoms from Dr. Stromsdorfer. Dr. Kabir also opined Claimant needs to re-engage in active treatment in the form of medication and psychotherapy, and is not capable of active employment as of the date evaluated.

Upon cross-examination, Dr. Kabir acknowledged he had not reviewed Claimant’s personnel file, did not know Claimant worked with clients predisposed to violence, and had not reviewed medical records regarding Claimant’s low back injury or Dr. Stromsdorfer’s records prior to evaluating Claimant. Claimant had also not informed Dr. Kabir he had been sexually molested as a child, and reported no major depressive episodes prior to June 2002. Dr. Kabir opined the failed disclosures would not have changed his diagnoses other than considering Claimant’s depression to be a regular depression at a moderate level. Regarding Claimant’s work with violent clients on a regular basis, Dr. Kabir indicated he would not change his diagnosis based on the type of trauma Claimant had experienced in the two assaults. Dr. Kabir opined the two assaults were the major causative factors in bringing Claimant’s psychiatric disorders to the surface. Dr. Kabir acknowledged Claimant’s childhood trauma may have effected his growth, but indicated people can compensate for their deficiencies as life is experienced, and how well an individual compensates is judged by looking at their functional capacity. However, Dr. Kabir noted that further trauma may “unglue” this compensation, and incidents from a patient’s past may be brought to the surface due to incidents of the present. Finally, Dr. Kabir acknowledged Claimant’s reliability is questionable due to his depression, inability to concentrate and recall, and indicated memory functions are severely affected in depression.

Dr. Bassett: Dr. Bassett is a board certified psychiatrist, and evaluated Claimant on December 9, 2005. Prior to

evaluating Claimant, Dr. Bassett requested Claimant participate in testing at Washington University School of Medicine. On November 17, 2005, Claimant was administered two psychological tests; the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), and the Millon Clinical Multiaxial Inventory-III (MCMI-III). The validity scales on both tests were found to be questionable, and the examiner noted:

Despite his very careful attention to the item content, he endorsed a very high number of unusual, bizarre and rare psychiatric symptoms throughout the entire test. He endorsed a few symptoms rarely seen in severely ill psychotic patients . . .

Following his formal evaluation of Claimant, Dr. Bassett formed a psychiatric diagnosis using the multiaxial format:

Axis I – Claimant had preexisting ADHD, preexisting reading disorder, preexisting depression and anxiety disorder secondarily to childhood molestation, possible preexisting PTSD, preexisting major depressive disorder, preexisting problematic gambling, symptom amplification, and unreliability of informant.

Axis II – Claimant had probable preexisting schizoid, schizotypal, and avoidant personality features.

Axis III – Claimant had a history of a low back injury.

Axis IV – Claimant had problems related to interaction with the legal system, occupational problems, economic problems, and problems with his primary support group.

Axis V – Claimant reported significant impairment, but there was exaggeration and inconsistent history present, which raised concern for a component of malingering.

Dr. Bassett recommended Claimant be treated for his non-work related ADHD; abstain from his non-work related gambling; receive no further trauma treatment as Claimant should receive supportive medications and psychotherapy focused on here and now issues; receive no anti-psychotic medications; and to allow his recommendations to be modified if additional data became available.

Dr. Bassett found Claimant's version of when his psychiatric problems began did not match Dr. Stromsdorfer's medical records. Dr. Bassett opined Claimant began to psychiatrically decompensate during June 2003, and again in February 2004 after Claimant's motor vehicle accident. Dr. Bassett supported his opinion by looking at Claimant's therapy progress prior to February 19, 2003, which demonstrated steady improvement both before and after the June 2002 assault. Starting with the February 19, 2003 telephone message, Claimant appeared to be decompensating, but by September 24, 2003, Claimant was improved until seen by Dr. Stromsdorfer following the motor vehicle accident in February 2004. Dr. Bassett found that during the treatment periods surrounding the June 2002 and September 2003 assaults, Claimant's depression improved, and Dr. Stromsdorfer saw Claimant at less frequent intervals. Correspondingly, when Claimant was experiencing increased difficulty, Dr. Stromsdorfer would see Claimant more frequently.

Further, Dr. Bassett noted Claimant had started a twelve week program at UMSL's Trauma Center on February 2004, and completed it in May 2004. Dr. Bassett opined it was not inconceivable that the "trauma work" at UMSL "tied together" Claimant's history of molestation, motor vehicle accident, and previously relatively non-problematic work incidents in a manner that caused Claimant to experience a doctor/treater caused generalization of Claimant's anxiety symptoms. Dr. Bassett found Claimant's decompensation to be an aggregate of all his multiple traumatic events versus one or two work related events. Dr. Bassett didn't have UMSL's records to review, but indicated it appeared Claimant was provided cognitive behavioral therapy, which was reasonable treatment for someone with anxiety symptoms as it provides a process of desensitization. However, Dr. Bassett also indicated Claimant didn't realize he was having PTSD symptoms due to work until he had been through the UMSL program. With or without the June 2002 and September 2003 assaults, Dr. Bassett opined Claimant would still have required psychiatric treatment for his preexisting psychiatric conditions.

Regarding Claimant's symptoms magnification on his psychiatric testing, Dr. Bassett testified the finding would not necessarily define Claimant as a malingerer, as Claimant may have been trying to show his level of distress. However, that level of distress could have been due to the work related assaults or due to Claimant's preexisting conditions, but it does make the data unreliable when attempting to interpret it. When asked to apportion percentages of disability between Claimant's preexisting psychiatric conditions and the two assaults, Dr. Bassett declined stating it would be too speculative.

Upon cross-examination, Dr. Bassett acknowledged his opinion regarding how the work at UMSL impacted Claimant is speculation, but it was the only way to reconcile the inconsistencies Claimant presented to him. Although the UMSL records demonstrated Claimant sought treatment after being assaulted by a teen at work, UMSL provided no date on when the event happened, and the treatment records of Dr. Stromsdorfer still would need to be reconciled. Dr. Bassett also acknowledged Claimant's mental health pattern is similar to a roller coaster, but given Claimant's history this would not be unusual. Dr. Bassett agreed Claimant is more fragile due to his psychiatric problems, and that a physical assault made him more susceptible to a psychiatric injury from an assault. Dr. Bassett also agreed Claimant's perceptions of the assault could represent a prevailing factor when looking at an aggravation of his preexisting depressive and anxiety symptoms, and could be a component in Claimant's need for ongoing treatment if the facts around the assaults are substantiated. Dr. Bassett confirmed he had not assessed Claimant's ability to be employed when he evaluated him. Finally, Dr. Bassett indicated he would be open to providing Claimant treatment, if treatment were ordered.

Karen Kitchens: Ms. Kitchens has a Masters Degree in psychology, and was Claimant's work supervisor. Ms. Kitchens verified Claimant's work involved intervening with clients who were dangerous, and at times out of control and violent. Due to the work environment Claimant was provided MANDT training, which was specialized training on how to deal with clients who were agitated and potentially dangerous, but Employer could not guarantee Claimant would not be exposed to violent clients.

Ms. Kitchens considered Claimant a good employee, particularly when working with clients, however, Claimant did not excel at documentation. Ms. Kitchens testified Claimant would comply with the documentation requirements of his job 90% of the time, but she had to remind or assist him 45% of the time. Ms. Kitchens believed Claimant's problems with documentation stemmed from his ADHD and dyslexia. Ms. Kitchens was aware of Claimant's psychological issues throughout his employment, and provided Claimant a mandatory referral to the Employee Assistance Program in June 2002 because Claimant's psychological issues were affecting his work.

In regard to the June 2002 and September 2003 assaults, Ms. Kitchens does not recall the specific incident in June 2002, and her records do not show that an incident report was completed regarding that assault. Ms. Kitchens testified she was meticulous about completing incident reports whenever an injury occurred due to the nature of her employees' work. Ms. Kitchens had an independent recollection of the September 2003 assault, as Claimant had called her about the assault, but he reported he had not been injured. Ms. Kitchens recalled Claimant had sounded frustrated when he called, but it was not different from other employees after they were involved in similar incidents.

In general, between 1999 and 2004, Claimant displayed the appearance of being nervous, agitated and shaking on many occasions. Claimant also never told her the June 2002 or the September 2003 assaults had caused PTSD.

Upon cross-examination, Ms. Kitchens confirmed Claimant was re-hired in 1999 despite his documentation deficiencies because Claimant's "work with our consumers was so fabulous that we would work through the tough stuff with the paperwork." Ms. Kitchens had no documentation demonstrating when Claimant's psychological status began to affect his work, and she could not remember when "serious supervisor conversations" began with Claimant. Ms. Kitchens verified Claimant's back injury had occurred when Claimant tried to restrain an aggressive client. Ms. Kitchens did acknowledge she attempted to provide Claimant referrals to less aggressive clients after his return from back surgery. Ms. Kitchens acknowledged Claimant displayed behavior consistent with being fearful of his job and feeling he was unprotected, but she does not remember when this behavior started, although she thinks it was more likely related to Claimant's back surgery. Ms. Kitchen opined Claimant had a steady psychological decline following his back surgery, and prior to the surgery Claimant never expressed fear of his job. Finally, Ms. Kitchens acknowledged attending a psychiatrist appointment with Claimant, but did this as a friend and to serve as his advocate.

FINDINGS OF FACT & RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Issues relating to medical causation

Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds). Employer argues Claimant must meet the statutory requirements set forth in Section 287.120.8 RSMo., in

order to prevail in this case. ^[6] Section 287.120.8 provides:

Mental injury resulting from work related stress does not arise out of and in the course of 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.

Employer argues medical causation can not be established as Claimant's work stress was neither unusual nor extraordinary given his job description. Employer is mistaken when applying the unusual and extraordinary standard in this case. A mental injury not based upon work-related stress, but rather based upon a traumatic incident is properly determined under §287.120.1 RSMo. *Jones v. Washington University*, 2006 WL 1735324 (Mo.App. E.D.2006); *see also E.W. v. Kansas City Missouri School District*, 89 S.W. 3d 527 (Mo.App. W.D.2002). Claimant was assaulted during June 2002 and September 2003. Although the incidents did not produce physical injury, the incidents may have produced psychological injury. These assaults are properly considered as injuries under §287.120.1, and the unusual and extraordinary standard does not apply.

However, a question does remain as to whether Claimant's need for treatment is related to a psychological injury or an aggravation of his underlying psychological condition due to these incidents. Dr. Kabir opined Claimant's need for treatment is related, and Dr. Bassett opined the need for treatment "could" be related to the incidents if the medical records of Dr. Stromsdorfer could be reconciled with Claimant's perception of the events. Two obvious problems complicate the ability to reconcile the incidents to the need for treatment. First, Claimant is not the most reliable historian. As indicated by Dr. Kabir, Claimant's reliability is questionable due to his depression, and with depression memory functions are severely affected causing an inability to concentrate and recall. Looking to Claimant's supervisor's testimony does not assist in clarifying Claimant's testimony, as Ms. Kitchens had no documentation or independent recollection to demonstrate when Claimant's decline began. Second, as aptly described by Dr. Bassett, Claimant's mental health functioning is similar to watching a roller coaster, as he displayed frequent highs and lows. If one looks at Dr. Stromsdorfer's progress notes in isolation, it appears Claimant experienced episodes of mental health decompensation that predated the June 2002 and September 2003 assaults and again subsequent to the assault dates. Claimant's episodes of psychological decompensation began to occur five to six months after each incident, leading one to question whether the work assaults impacted Claimant's general mental health at the time they occurred. Neither psychiatric expert commented upon the length of time one would expect to lapse before decompensation would assert itself in an individual with Claimant's mental health history. Both psychiatric experts agree that a physical assault may have a greater impact on Claimant than on an individual without Claimant's mental health disorder, and Claimant's perception of the assaults would be a component of his need for treatment.

The aggravation of a pre-existing condition is a compensable injury if the claimant establishes a direct causal link between job duties and the aggravated condition. *See Smith v. Climate Engineering*, 939 S.W.2d 429, 433-34 (Mo. App. E.D. 1996) (overruled on other grounds). If a claimant can show that the performance of the usual and customary duties led to a breakdown or change in pathology, the injury is compensable. *Bennett v. Columbia Health Care*, 80 S.W.3d 524 (Mo.App.W.D. 2002) (overruled on other grounds). The worsening of a pre-existing condition is a change in pathology. *Id.* at 529. As noted by Dr. Kabir, Claimant has experienced numerous traumas during his lifetime, and his childhood trauma may have effected Claimant's growth, but he was able to compensate for the deficiencies as he experienced life. However, further trauma unglued the compensation, and incidents from the past were brought to the surface due to incidents of the present leading to his decompensation (Exhibit A, pgs.49,50). Likewise, Dr. Bassett agreed "if the facts around the assaults are substantiated, it is reasonable that, to think that there is a contribution of those to an aggravation of the underlying condition, but there is an underlying condition." (Exhibit A, pg.87). Both psychiatrists agree Claimant is in need of further psychological treatment.

Turning to the history available, Dr. Stromsdorfer included in his September 24, 2003 progress note Claimant had been attacked at work. Despite Dr. Stromsdorfer's progress notes indicating Claimant's GAF to be 65-70 between September and December 2003, by January 2004 Claimant was no longer working due to the level of his symptoms. It is clear from Claimant's testimony and the UMSL records, around February or March 2004 Claimant began to link his mental health symptoms to a work attack. While Dr. Stromsdorfer's progress note of February 24, 2004 may suggest an intervening trauma surrounding a car accident, the UMSL pre-treatment assessment note speak only to a trauma induced by a work related assault and made no mention of a traumatic response to a car accident. Dr. Bassett did not have access to the UMSL records when rendering his opinion (Exhibit 3, pg.60). On June 7, 2004, Dr. Stromsdorfer again noted Claimant had been attacked at work. I find Claimant has met his burden to demonstrate the work related assaults aggravated his underlying mental health disorder, and further find the car accident was not an intervening event.

However, I do not find the June 24, 2002 assault to be the injury causing the current need for treatment.

Although he continued to require support, until the September 18, 2003 assault Claimant's mental health status varied, but he continued to function in the workplace. I find Claimant's need for ongoing treatment lies in the assault that occurred on September 18, 2003.

Issues related to future psychiatric care

Section 287.140.1 RSMo.(2000), provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the injury. Both psychiatrists agree Claimant is in need of further psychological treatment. I find Employer responsible to provide Claimant with additional psychiatric treatment. I further find Employer is obligated to provide the following treatment:

Employer shall select a competent psychiatrist and authorize any treatment recommended by the physician including, but not limited to:

- 1) any tests and procedures as directed by the authorized treating psychiatrist
- 2) any medications directed by the authorized treating psychiatrist
- 3) any psychotherapy ordered by the authorized treating psychiatrist

Issues relating to temporary total disability

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Claimant seeks past and future TTD benefits. In regard to past owed TTD benefits, Claimant seeks benefits beginning January 2004, but produced no evidence demonstrating a psychiatrist or psychologist found him unable to work until Dr. Kabir, who indicated Claimant was unable to be employed on the date he was evaluated. Claimant was evaluated by Dr. Kabir on December 9, 2004. I find Employer is liable for past TTD benefits from December 9, 2004 until September 28, 2006, a period of 94 weeks or \$19,110.20. Pursuant to this award, Claimant will receive psychiatric intervention. He will also be entitled to receive TTD benefits to cover the healing period associated with such treatment, if Claimant is unable to work during that period.

CONCLUSION

Claimant sustained a psychological injury that arose out of, and in the course and scope of his employment. Claimant is entitled to receive \$19,110.20 in past TTD benefits, and ongoing benefits associated with this injury as described in this award. This is a temporary award, subject to further order, the proceedings are hereby continued, and the case kept open until a final award can be made.

Date: _____

Made by: _____

LINDA J. WENMAN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director

[1] This case was heard in conjunction with Claimant's companion case #02-158221. Claimant seeks issuance of a temporary award on either case.

[2] Described by Claimant as attempting to go somewhere, but not ending up where he intended to go.

[3] Claimant described an office episode in which he barricaded himself in his cubicle, and his supervisor called his psychiatrist to resolve the event.

[4] First appointment after the June 24, 2002 assault.

[5] First appointment after the September 18, 2003 assault.

[6] While arising out of the course and scope of employment was not raised by Employer as an issue in dispute, it will be addressed as the medical experts were made aware of this standard when rendering their opinions.