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

Injury No. 10-033983

Employee: Steven A. Shipley
Employer: State of Missouri, Office of Administration
Insurer: Central Accident Reporting Office
Additional Party: Treasurer of Missouri as Custodian of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion
Employee's application for review alleges, in part, that administrative law judge Lawrence C. Kasten erred in that he signed the award without hearing the case. As documented in the July 2, 2019, Final Award:

The original hearing was conducted by Administrative Law Judge Amy L. Young on April 1, 2019. The Award [including the findings of fact and rulings of law relating to the issues presented], has been written by Ms. Young based upon the evidence adduced at the hearing and in conformity with the statutory requirements of the Workers' Compensation Law. Due to a change in circumstance, while Ms. Young continues to be employed by the Division, she is unable to sign the Award as an Administrative Law Judge. The Division must proceed with the distribution of the written Award to the parties within the statutorily prescribed timelines, and therefore, I am signing this Award as the Chief Administrative Law Judge of the Cape Girardeau Adjudication Office.

We do not address this allegation of error because appellant's brief to the Commission, filed December 15, 2019, expressly abandons this point.

We consider the language on page 35 of the administrative law judge's July 2, 2019, Final Award, stating, "There are far too many variables that can occur within a six month period" to be extraneous to the administrative law judge's determination regarding credibility of Dr. Raymond F. Cohen's expert opinion and his conclusion that employee

1 Application for Review, Issue 1.
2 Award, p. 35.
3 Appellant's Brief, p. 3, states, "Point 1. Is abandoned."
did not meet his burden of proving that work related events he described rose to the level of extraordinary and usual stress.

This clarification of the administrative law judge's award does not detract from his correct analysis of the evidence in the record or his ultimate legal conclusions.

**Conclusion**
We affirm and adopt the award of the administrative law judge as supplemented herein.

The award and decision of Administrative Law Judge Lawrence C. Kasten, dated July 2, 2019, is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

Given at Jefferson City, State of Missouri, this 1st day of April 2020.
Employee: Steven A. Shipley

DISSENTING OPINION

The administrative law judge erred in finding that employee failed to sustain his burden of proof that he sustained psychiatric stress and a mental/cerebral hemorrhage due to his supervisor’s emotional harassment and abuse.

The administrative law judge’s award is erroneous because its credibility findings are not supported by competent evidence, in particular the finding that Dr. Michael R. Jarvis was more credible than Dr. Raymond F. Cohen.

Dr. Jarvis examined employee on November 29, 2016, on behalf of the employer, over six years after employee filed his claim. He issued an initial report on January 19, 2017, and a supplemental report on June 22, 2018. Dr. Jarvis’ reports, totally thirty-seven pages, are replete with disparaging remarks about employee that include calling him “crude”, “irritable”, “difficult”, “overly dramatic”, and “narcissistic”. Dr. Jarvis criticizes employee for failing to provide a consistent story of the inciting event and accuses him of exaggerating his level of distress. He speculates that the military discharged employee because of employee’s questionable performance as a boiler technician. No evidence in the record supports this conclusion. Dr. Jarvis discards employee’s description of his wartime experiences, describing employee’s accounts as “fictional”. Dr. Jarvis opines that employee’s claim of a hostile work environment is merely part of a “pattern of deception” in which employee positions himself as an innocent victim. Dr. Jarvis volunteers, “More likely than not, Mr. Shipley has always been a difficult, irritable and self-important man.” In a vindictive tone, he concludes employee has no disability and no limitations whatsoever from a psychiatric viewpoint. Dr. Jarvis gratuitously attacks the competence of employee’s expert, board certified psychiatrist Dr. Adam Sky, dismissing Dr. Sky’s expert opinion as “nonsense”. Dr. Jarvis’ assessment demonstrates his personal bias against employee and a complete lack of objectivity. As such, his opinion does not constitute competent and substantial evidence in support of the majority’s denial of compensation.

The employee presented both medical and lay testimony that his working conditions more likely than not would have caused extraordinary and unusual stress to a worker in the same job. Employee’s co-worker Lois Butler testified that based on her experience an employee in a situation similar to employee would have sustained unusual stress. Parks Long testified that employee’s supervisors criticized everything employee did and that employee’s direct supervisor, Larry Brand, was biased against employee.

Dr. Cohen testified, based on his experience with individuals with stress, that employee was at the top of the list for someone undergoing and enduring stress. He testified, based on an objective standard, that anyone would have been extraordinarily and

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1 Transcript, 2972-2974.
2 Id., 2973.
3 Id., 2975.
4 Id., 2974.
5 Id., 2992.
unusually stressed by the conditions employee experienced at work. Dr. Cohen diagnosed employee’s preexisting conditions as post-traumatic stress syndrome, sensorineural hearing loss and tinnitus related to his military service. He diagnosed employee’s conditions attributable to the primary injury as cerebral infarction, expressive aphasia, weakness in his right hand, right leg and cognitive dysfunction, depression, anxiety, and hypertension. Dr. Cohen found that employee’s work related stress was the prevailing factor causing these symptoms, employee’s need for medical care and treatment. Dr. Cohen specifically acknowledged that employee had other stroke risk factors, but that these factors were not prevailing factors relevant to causation of conditions he considered attributable to employee’s work environment.6

Dr. Cohen concluded,

Due to the work-related severe stress that Mr. Shipley had from his work of 3-18-10 it is my opinion that he has a 65% permanent partial disability of the whole person. It is further my opinion that he is permanently and totally disabled and not capable of gainful employment in today’s open labor market.7

Employee has clearly met his burden of proving that he experienced substantially greater work-related stress than that encountered by other employees with similar positions. See Williams v. Depaul Health Center, 996 S.W.2d 619 (Mo. App. 1999). Employee’s credible testimony and Dr. Cohen’s assessment, the only competent medical expert opinion in the record, supports employee’s claim.

I therefore respectfully dissent from the majority’s denial of all compensation in this case.

Shalonn K. Curls, Member

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6 Employee’s brief correctly notes that medical literature supports Dr. Cohen’s opinion, e.g. “Chronic Stress Linked to High Risk of Stroke.” www.sciencedaily.com/releases/2012/08/120829195207.htm.
7 Transcript, 217.
SUMMARY OF FINDINGS

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.


5. State location where accident occurred or occupational disease contracted: Mississippi County, MO.

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

7. Did the 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 the employer insured by above insurer? Yes.

11. Describe work the employee was doing and how accident happened or occupational disease contracted: Employee alleges he sustained a mental injury due to work-related stress that also resulted in a stroke that occurred six months after he left his employment.

12. Did accident or occupational disease cause death? No.

13. Parts of body injured by accident or occupational disease: Mental injury and body as a whole due to stroke.


15. Compensation paid to date for temporary total disability: None.

16. Value necessary medical aid paid to date by the employer-insurer: $22,720.05.

17. Value necessary medical aid not furnished by the employer-insurer: See Award.

18. Employee's average weekly wage: $666.23

19. Weekly compensation rate: $444.15 for PTD; $422.97 for PPD


21. Amount of compensation payable: See Award.

22. Second Injury Fund liability: None.

23. Future requirements awarded: None.
STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW

On April 1, 2019, the employee, Steven A. Shipley (hereafter "Employee"), appeared in person and with his attorney, Michael Moroni for a Hearing for a final award. The State of Missouri, Office of Administration (hereafter "Employer") was represented by Assistant Attorneys General Crystal Williams and Rachel Harris. The Second Injury Fund was represented at the Hearing by their attorney, Assistant Attorney General Joye Hudson. At the time of the Hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with a statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. Employer was operating under and subject to the provisions of the Missouri Workers’ Compensation Act, and its liability was fully insured by the Missouri Office of Administration-Central Accident Reporting Office.
2. On March 17, 2010, Employee was an employee of State of Missouri, Office of Administration and was working under the Workers’ Compensation Act.
3. The employer had notice of the employee’s alleged accident.
4. Employee’s claim was filed within the time allowed by law.
5. The employee’s average weekly wage was $666.23, resulting in a compensation rate of $444.15 for temporary total and permanent total disability benefits and $422.97 permanent partial disability benefits.
6. Employer-Insurer furnished medical aid in the amount of $22,720.05.
7. Employer-Insurer paid no temporary total disability benefits.
8. There is no claim for mileage.

ISSUES:

1. Whether on or about March 17, 2010, Employee sustained an accident or occupational disease arising out of and in the course of Employee’s employment;
2. Whether Employee’s injury was medically causally related to the accident;
3. Whether Employer-Insurer is liable for previously incurred medical aid in the amount of $51,158.08. Employer-Insurer disputes authorization, reasonableness, necessity, and causal relationship;
4. Whether Employer-Insurer is liable for future medical aid;
5. Whether Employer-Insurer is liable for temporary total disability benefits from March 18, 2010 until the date Employee reached maximum medical improvement;
6. Liability of Employer for permanent partial disability versus permanent total disability;
7. Liability of the Second Injury fund for permanent partial disability versus permanent total disability;

There are two claims for compensation in the Division of Workers’ Compensation file both bearing Injury Number 10-033983. The first claim received by the Division of Workers’ Compensation on June 7, 2010 reflects date of injury of March 17, 2010, whereas the second claim received by the Division on June 5, 2012 reflects an injury date of March 18, 2010. At Hearing, the parties stipulated the correct date is March 17, 2010.
8. The date Employee reached maximum medical improvement;
9. Whether or not Section 287.067.6 is applicable to this claim.  

EXHIBITS:

The following exhibits were offered and admitted into evidence without objection:

Employee Exhibits:

1. Deposition of Dr. Cohen with Exhibits 1, 2, A
2. Deposition of Susan Shea with Exhibits 1, 2
3. Deposition of Gary Brown
4. Deposition of Phillip Pfuehler
5. Deposition of Lois Butler with Exhibits 1, A
6. Deposition of Steve Kroner
7. Deposition of Larry Brand with Exhibits 1, 2, 3, A, B, C, D, E, F
8. Deposition of Dr. Adam Sky with Exhibits A, B, 1, 2
9. Various Medical records 2010-2012
10. ER records MO Delta Medical Center 3/17/2010
12. Southeast Hospital records abstract 11/17/2010 to 11/19/2010
13. Records from Southeast Hospital 2010
14. Records from Regional Mental Health Services (Community Counseling Center)
15. Medical bills from 2010 totaling $51,158.08
16. Missouri Department of Mental Health Forensic Report 8/23/2017
17. Southeast Health April 2017
18. V.A. Medical Records 2015 forward
19. V.A. Medical Records up to June 2012
20. Steve Shipley personnel file
21. Emails to/from Lois Butler 2010
22. Statement of Parks Long

Employer-Insurer Exhibits:

A: Deposition of Steven Shipley dated September 23, 2016
B: Letter addressed to Stephen Shipley
C: Deposition of Dr. Jarvis dated July 20, 2018
H: Interoffice Communication from Lois Butler dated June 1, 2010
I: Emails to Larry Brand

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2 Employee concedes in his proposed award that 287.067.6 is not applicable to this case, therefore no findings of fact or conclusions of law are made referable to Issue 9.

3 The Court acknowledges Mr. Shipley's first name is correctly spelled Steven; however, the letter was specifically addressed to "Stephen".
Exhibits D-G and M-N were not offered by Employer-Insurer because they were duplicative of Employee’s exhibits.

The Second Injury Fund did not offer any exhibits.

**WITNESSES:**

Employee presented the following witnesses live at Hearing:

1. Parks Long
2. Lois Butler
3. Cindy Shipley
4. Steven Shipley

Employer-Insurer presented the following witnesses live at Hearing:

1. Larry Brand
2. Jerry Dooling

The Second Injury Fund did not present any witnesses.

The rule for exclusion of witnesses from the courtroom was invoked at Hearing and witnesses were sequestered from the court room until they were called to testify.

Judicial notice was taken of the contents of the file maintained by the Division of Workers’ Compensation in this case.

The parties submitted proposed awards in this matter.

**STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:**

**Background**

Employee was born on September 10, 1957 and was 61 years old at the time of the Hearing. Employee testified that he is a high school graduate, however he reportedly told a vocational consultant, Susan Shea, that he obtained his GED in the Navy.

Employee is married to Cindy Shipley, but they were separated at the time of Hearing. Employee was last employed as a Power Plant Maintenance Engineer II in Charleston, Missouri at the Southeast Correctional Center for the State of Missouri, Office of Administration (hereafter “Employer”). He began this employment in 2001. His job as Maintenance Engineer II required him to make sure the prison’s water, power and electrical was operational. He
supervised five to six employees at the power plant. While working for Employer, he had to lift 75-100 pounds on a very seldom occasion. He testified he was required to be on his feet all day. He resigned in May of 2010 because the stress became too much for him and per his words he was “wrapped like a rubber band and fixing to explode.” He testified that he did attempt to mow yards for pay during one summer after his resignation, but he was not capable of holding down that job.

Before working for Employer, he was employed by Heritage Homes as a maintenance worker for 4 years. He could not recall his employers prior to working for Heritage Homes, but testified that he was in and out of the heating/cooling business all of his life. He testified that he served in the U.S. Navy from 1975 to 1977. He was trained by the Navy and served as a boiler technician.

Description of Stress

Employee alleges that his employment caused him to suffer a mental injury and stroke due the cumulative effects of stress. Specifically, his claim for compensation describes the injury as “Supervisor was constantly criticizing, complaining about claimant, writing up claimant, chewing out claimant, and constantly harassing claimant.” Employee testified that the people that supervised him at the plant “didn’t have a clue.” He testified that they were “out of their league” and “couldn’t visualize how a power plant was supposed to run.” He testified that they “contradicted every damn thing I said, then would turn around and do it the way I said in the beginning.”

Employee testified that one day (he could not recall the date), he walked out of an office and Steve Nolan, a maintenance manager, followed him to the garage. Employee testified that Mr. Nolan was “mouthing” at him and then Mr. Nolan hit Employee on the back of the head. Employee does not recall whether he fell to the ground. Employee testified that he turned around and felt a rage coming out, but another officer, “Schmitty”, said to him “don’t do it, Shipley, don’t do it Shipley” so he instead called Omer Clark, the assistant warden for the prison. Employee acknowledged that he had several disputes with Mr. Nolan because Employee believes “he didn’t know his job” and tried to bully Employee, but he would not put up with it. Employee testified that he was taken off work with pay for two weeks while the matter was investigated. Later, Employee discovered that Steve Nolan was allowed to continue working during the investigation because he already had another job lined up at Noranda. Employee was dissatisfied with the manner in which the situation was handled by management. He did not seek medical treatment following the assault.

Employee testified that he was verbally abused at work by Steve Henson, his first supervisor. He testified that Mr. Henson said things like, “I’m gonna do this to you” and “I’ll have your job.” He testified that Mr. Henson never agreed with him on anything. Employee described that one time he found out “they” were pumping Freon into a cooler at a rate of 30 gallons a week which he contends was against the law. Employee claims there was a “big blowout about that” because they should have investigated the source of the leak instead of pumping Freon into the cooler every week. Employee testified that Mr. Henson “was so far out there” that he was not capable of running the power plant. Employee testified that Mr. Henson stayed away from the power plant.
When Mr. Henson retired, Employee wanted to interview for the position, but was refused an interview. He testified he didn't care because Mr. Henson was “stupid” and he thought anyone would be better, but he was “fooled.” Instead, Mr. Henson was replaced by Larry Brand.

Employee believes that Mr. Brand was brought in to get rid of him. Employee testified that he had problems with Mr. Brand from day one. He testified that his stress level quadrupled by the end of his employment and “they” made it 100 times more stressful than what it should have been. He testified that Mr. Brand criticized him for everything. Employee testified that Mr. Brand often changed Employee’s plans for the night shift without telling him. Employee testified that there were disputes regarding how to run the biomass boiler (a wood burning boiler) because he was given fuel that he thought was “ratty.” He testified that he started refusing to accept delivery of unacceptable fuel.

Employee testified at deposition to experiencing the following stressors at work:

- “All it boils down to is that they wanted me out of there ... “it was Larry Brand, Steve Henson, Jeff Fleenor, John Hequembourg, and Chris Forcks and Steve Croner.”
- On March 17, 2010 Larry Brand stated, “Don’t be walking up on me, boy.” Employee testified an argument ensued and escalated to the point that he contacted Lois Butler, a peer action team member, for assistance.
- Employee testified he had a dispute with Larry Brand every day. When asked for a specific example of name calling, he testified “He told me a lot of times I didn’t know what I was doing.”

**The March 17, 2010 Incident**

In March of 2010 Employee arrived at work at 6:45 a.m. Larry Brand and Ken Chapman were present. Employee approached them to ask what was going on and Employee claims that Mr. Brand responded with “You get away from me, boy.” He also claims Mr. Brand grabbed his shirt during this exchange. Employee turned around and headed to his office. Employee claims that Mr. Brand followed him to his office and started “running his mouth” and cussing at him. He claims Mr. Brand told him he was “a low life piece of blank person that didn’t know his job” and said things to irritate him. Employee testified that he knew he was in trouble and needed help. He called Lois Butler, his friend and a member of the peer action team. He explained the situation to her and she came to his office.

Employee claims that when Ms. Butler arrived, he was at the door waiting for her and they went to his office. When Ms. Butler arrived, there was no one else in the office. Employee testified that Mr. Brand then came back in his office and starting “running his mouth”. He testified that Ms. Butler made a phone call and was able to get Mr. Brand to leave. He testified that Ms. Butler then drove him to a hospital in Sikeston where he was treated for a panic attack. He was transferred to the hospital in Cape Girardeau and was admitted for four to five days. Employee understood from the doctors that he had a mental breakdown.
After he was discharged from the hospital he was off work on medical leave. He attempted to return to work in April of 2010, but resigned in May of 2010. Since the incident on March 17, 2010 Employee has continued to receive treatment for mental health problems.

In November of 2010, Employee had a stroke while at his in-laws' house.

Employee identified Exhibit B as a letter he received at his home address. It was addressed to him and according to Employee it had a postmark from Jefferson City, Missouri. A copy of this letter was admitted into evidence as Exhibit B, but the envelope is not included as part of the Exhibit. The identity of the sender is unknown. The letter suggests that Employee has "been caught up in the tangles of a conspiracy" that "runs very deep." In short, the letter sets forth allegations of nepotism, and specifically that "Mr. Bran" was part of a plan to inflict pressure on Employee to quit his job. Employee testified that he believes several people wanted him to leave his job including Steve Henson, Larry Brand, Chris Forks, Jonathan Carrett, John Heckenberg, Jeff Flinger and Steve Kroner. Employee now believes that Larry Brand was instructed to get rid of him and made deliberate attempts to cause him to lose his temper.

Testimony of Lois Butler

Lois Butler has a high school education. She did not attend college. She worked for the Department of Corrections at the time of Employee's March 17, 2010 incident, but retired in November of 2010 because of back problems. Her job title was Classification Officer for Classified Offenders at Southeast Correctional Center, but she also served as the Peer Action Team Coordinator. She did not work at the power plant. As a Peer Action Team Coordinator, she was in charge of assisting employees in the event of a staff member suicide. She testified that she received several weeks of training for suicide prevention and offering guidance/assistance to employees experiencing grief.

She knows Employee personally as they began their employment at the same time and Employee helped her with some wiring around her pool in 2007.

Ms. Butler testified that Employee called her for assistance in her role as Peer Action team member and asked her to come talk to him at the power plant. She could not recall the exact date and testified at her deposition on July 6, 2017 that she was in a coma in 2014 and still has some memory lapses. She testified that upon entering Employee's office she observed Mr. Brand being very confrontational by screaming at Employee. She testified that Mr. Brand was also confrontational with her and told her to leave, but she was used to that from her experience working with offenders. She testified that she called Omer Clark, assistant warden, to help facilitate her having a private conversation with Employee. She also called the head of the Peer Action Committee for assistance. She testified that someone at Central Office called and convinced Mr. Brand to leave the office. She testified that Employee was upset, agitated, and crying. According to her deposition testimony, Employee informed her he had tried to commit suicide the night before, but could not do it and came back to work. She testified that she took him to the hospital in Sikeston and then she and his wife, Cindy, drove him to Southeast Missouri Hospital. Ms. Butler was not aware of any other altercations between Employee and Mr. Brand subsequent to or before the incident she witnessed.
Ms. Butler identified Exhibit 21 as a true and accurate copy of emails she reviewed and reports she made following this incident. Exhibit 21 includes a memorandum to “Omer Clark DWO” from Lois Butler dated 3/17/2010 that reads as follows:

SUBJECT: I was called to the power plant by PMI Steve Shipley he need a Pact member. I went to the power plant and talk with Mr. Shipley, he informed me of a verbal confrontation between him PM3 Larry Brand and several phone calls to Mr. Shipley after the confrontation. Mr. Shipley made suicidal comments of self harm, I had him call EAP and talk to the counselors. I called Mrs. Michelle Kasak Workplace Violence Coordinator and ask if as a PACT Team I could help OA staff member, she yes and put me through to a OA supervisor named Jeff (last name unknown) in Central office. I informed him Mr. Shipley need to go to the E.R. right way, He took my name and said he would contact Mr. Brand and have him call me. Mr. Brand called me I informed him of the Situation about Mr. Shipley and he need to leave ASAP. He informed me to tell Mr. Gruff he was in charge until a supervisor was called in.

I took Mr. Shipley to Sikeston Hospital where Mr. Shipley made suicidal comment to the Social worker. She was having sent to Cape hospital by ambulance for mental health evaluation impatience care.

Subsequent to the above memorandum, several internal emails were exchanged at the Office of Administration about needing witness statements for Employee’s workers compensation case. Specifically, LeAnn Meyer, Human Resources for Office of Administration, stated in an email to Cindy Buddette, dated May 1, 2010, “We need the statement from the supervisor? We need to know specifically in writing and in as much detail possible on exactly what was said between Mr. Shipley and his supervisor . . . If there were any witness(s) they will need to complete the witness statement form also. We will need a statement from Lois Butler as to what she observed . . .” This email was forwarded to Jeff Fleenor, who forwarded it to Larry Brand who forwarded it to Lois Butler with a request that she provide “a statement of events as you observed” to Cindy Buddette. Another memorandum was prepared by Lois Butler dated June 1, 2010 that was identical to her first memorandum dated March 17, 2010 except she added that the reason she called Michelle Kasak was to ask if she “could help OA staff members because PME3 informed me during his core training I nor any PACT members allowed to talk with OA staff.”

In her deposition testimony, Ms. Butler testified that Mr. Brand told her to get out of his office on the day of incident and further told her she had no capacity over OA staff. She testified that while she spoke to Melissa, the head of the PACT organization, Mr. Brand “screamed at [her] to get out of the office.” She testified “I just knocked on the door and walked in and immediately he’s in my face.” She further testified that central office called and told Mr. Brand to leave the office. She testified that she considered Mr. Brand’s actions of deterring her from...
Employee: Steven A. Shipley

assisting Employee as creating a hostile work environment. These details were absent from both her March 17, 2010 and June 1, 2010 memorandums.

I find that Ms. Butler did come to the assistance of Employee on March 17, 2010 and took him to Missouri Delta Medical Center, however I do not find her testimony that Mr. Brand was present in the office at the time or that he yelled at her to be credible. Her memorandums written contemporaneous to the incident do not include any statements that she personally observed Mr. Brand yelling at Employee or that he yelled directly at her. Such an omission seems unlikely given she was specifically instructed to prepare a memorandum of what she observed that day. Also, her written statement asserts that Mr. Brand challenged her authority to help OA staff members during a training session, not on March 17, 2010 as she testified to at Hearing. Further, Ms. Butler admits to having some memory problems following a medically induced coma in 2014 for six months, which is further evidenced by the fact that she remembers driving Employee to Southeast Missouri Hospital, when medical records and bills indicate he was transported via ambulance.

Ms. Butler also witnessed the incident when Steve Nolan hit Employee in the back of the head.

Ms. Butler testified that Employee is no longer the same person. She testified that before the incident he was a very outgoing, steady person. Now she describes him as a shell of himself. She admits that she does not know much about the power plant because she worked at Department of Corrections, but she knows it was a dangerous job. Ms. Butler testified that in 1999 in the course of her employment she was assaulted by an offender and diagnosed with post-traumatic stress disorder. She saw a mental health professional for 30 days because she could not work without passing out. She testified that based on her experience and training on the Peer Action Review Team as well as her experience being traumatized she believes that an employee similar to Mr. Shipley would have found the events of March 17, 2010 to be unusually stressful.

Testimony of Parks Long

Mr. Long is retired from the Department of Corrections and the US Navy. He served in the Navy from 1983 to 2003. He was trained by the Navy to be an engineer. In the Navy he ran jet engines and associated electrical controls, did tons of paperwork, and worked around boilers.

Mr. Long was last employed by the power plant at Southeast Correction Center as a stationary engineer. He began working for the power plant in 2003 and at that time Employee was manager of the power plant. Mr. Long’s job was to monitor and operate equipment. Mr. Long testified that Employee got along great with the people he supervised. He testified that all the employees were experienced and they discussed together how to accomplish the job.

Mr. Long observed Employee and his superiors over years. He testified that Mr. Henson did not like the power plant and never wanted to follow the employee’s suggestions. He testified that when Mr. Brand started “it was same thing.” He testified that Mr. Brand said “no” to their ideas and told them how to do things, except that “they” didn’t have the experience and “told them to do stuff that wouldn’t work.” Mr. Long testified that it was stressful to be told to do things they knew would not work. Mr. Long testified that Employee’s superiors were critical of Employee and that if Employee wanted to do something, they would tell him “no” and to do
something else instead that would not work. Mr. Long testified that he was asked to leave Employee's office on two occasions and then heard Mr. Brand screaming at Employee. He testified he could not make out what was said. He observed Mr. Brand picking on Employee and telling him to do things all the time. Mr. Long thought Mr. Brand was biased against Employee and that he didn't like him because he would not agree with Employee about anything. He testified that "they" didn't use chain of command and Employee would instruct night shift to do something one way, then the superiors would give the night shift different instructions and took Employee "out of the loop." Mr. Long testified that this caused him stress. He testified that he retired early because he was tired of "stressing out over the games and stupidity." Mr. Long testified that Mr. Brand was not a good leader had only 30% of knowledge that was needed. He testified that Mr. Brand made Mr. Long's job stressful by "jumping over" his supervisor. In response to Employee's counsel asking if the stress that Mr. Brand caused was "unusual" or "higher than normal" he testified that the stress became worse when Mr. Brand started working because Mr. Brand decided to be in the power plant as opposed to having an office outside the power plant and he took Employee's desk. Mr. Long testified that the employees were unable to have meetings in Employee's office because Mr. Brand would disagree with what they discussed doing and Mr. Brand would contradict Employee during meetings. Mr. Long testified that Mr. Brand would disagree with Employee in front of other employees.

Mr. Long also testified that the employees would find equipment that did not work properly and report it, then they would be told to take over caring for it even though their department had less employees than the maintenance crew.

Mr. Long testified that he mostly worked from midnight to 7:00 a.m. or 7:30 a.m. whereas Employee worked day shift as supervisor. Mr. Long testified that he usually saw Employee for an hour to ½ hour in the morning. Mr. Brand also worked the day shift and Mr. Long saw him for about 30 minutes before his shift ended. He testified that he observed Mr. Brand being critical of Employee in the morning during the 30-45 minute time frame they were all there. He testified that he heard Mr. Brand say to Employee "look you dumbass." He testified that he heard Mr. Brand say "F this and F that. This is what I f'ing want done and this is the way it would f'ing be." Mr. Long testified he probably heard Employee say "that's bullshit", but he never heard him cuss out Mr. Brand. He testified that Mr. Brand never cussed out or got mad at Mr. Long because he would never take that.

Mr. Long wrote a statement, marked as Exhibit 22, stating that on one occasion he observed Employee and Mr. Brand step "out of the office and the only voice I heard raised was Mr. Brand's but I closed the door for their privacy, I could not make out any words. On a couple of other occasions they were in the office but did not hear the words but the only loud voice was Mr. Brand. I do not remember the dates of any of these events." Mr. Long could not recall when he wrote this statement, but it was written at the request of Employee in anticipation of litigation.

I find Mr. Park's testimony credible for the most part. I find his testimony regarding Mr. Brand's knowledge and abilities to be his opinions and not findings of fact.
Gary Brown testified by deposition on July 6, 2017. Mr. Brown worked as a stationary engineer for the State of Missouri, Department of Corrections for almost twenty-five years. He is now retired. He worked at the Southeast Correctional Center for the last fifteen years of his employment and Employee was his supervisor for approximately six years. He worked on the day shift with Employee. Mr. Brown testified that his observed Employee’s interactions with Steve Henson and “[i]t wasn’t on a good basis, but he dealt with him, you know, as best he could, you know. They were all the time trying to pick on him or try to make him do something that, you know, you feel is wrong to do, but they was trying to, you know, force him to do. Such as they like to play a lot of games, head games and stuff. And down there around our facility in the power plant especially, we didn’t have room for that. Shipley pretty well tried to keep it out of there. Like I say, it was just a constant battle between those two, you know, just daily.” When asked for an example of head games he explained that “they’d come in and well, we’re going to make all these changes, you know. We’re going to do all this. Like I say, knowing good and well that we can’t do, you know, what they’re asking, you know, and still maintain the safety and security and all that of the power plant or the – they were primarily coming from someone who has no idea what they’re doing, you know. Just I would say promoted above incompetence.” He clarified that Mr. Brand would want to make changes without consulting the design engineers. He admitted that he never heard Mr. Brand ask for these changes, but Employee would ask the whole group of engineers (himself included) whether the changes could be done. He never witnessed conversations between Employee and Mr. Brand regarding these changes.

Mr. Brown also observed interactions between Employee and Mr. Brand and testified that “[i]t was pretty much the same way. You could just feel the tension when he was around, you know.” He testified that he observed Mr. Brand scream at Employee “almost on a daily basis. I mean very disrespectful.” On cross-examination he admitted that it was not every day and that the “majority of the time they wouldn’t even hardly talk to one another. And when they did, it was usually, you know, went right to an argument or one scream at the other one or this or that, you know. They were just like you know, they just couldn’t sit down and talk to one another. Larry had no idea of how to supervise people. It was either his way or the highway.” He admitted that he witnessed both men yell at each other, but he could “vaguely” hear it because these yelling interactions took place in an office while employees were out in the plant. He never heard Mr. Brand cuss, name call, or grab Employee. With regard to other employees, Mr. Brown testified that Mr. Brand didn’t “scream and yell as much, but like I say, his approach and demeanor toward people, it was like I’m in charge, you do what I say and that’s it, you know.” He testified that Mr. Brand yelled at Employee more than the other employees. When asked if he ever heard Employee cussing at Mr. Brand he stated “I mean, I wouldn’t say that I heard him, but I’m sure that – knowing Shipley, I’m sure that went on.” He testified that he also witnessed Employee yell and scream at Mr. Brand.

Mr. Brown testified that Ken Chapman replaced Employee after he resigned that that “[h]e did a lot of alteration and stuff to equipment that shouldn’t have been done. It’s still there as of today and it’s very safety hazard, you know, in my opinion. . . he was doing it just every day doing something different that should not have been done.” Mr. Brown testified that sometimes
Employee was directed by his superiors to make alterations to equipment but the majority of the time if they thought it was a safety issue they wouldn’t do it.

I did not have the opportunity to personally observe Mr. Brown. I find this witness’s statements about what he observed between Employee and Mr. Brand to be contradictory (i.e. Mr. Brand screamed at Employee on a daily basis versus the “majority of the time they wouldn’t even hardly talk to one another” versus he could “vaguely” hear them because the yelling interactions took place behind a closed door.)

Testimony of Phillip Pfuehler

Phillip Pfuehler testified by deposition on July 6, 2017. At the time of deposition, Mr. Pfuehler was employed as a stationary engineer for Employer. He began his employment in 2005 or 2006 and worked under Employee on both the day shift and the 3:00 p.m. -11:00 p.m. shift. Mr. Pfuehler testified that everybody had problems with Mr. Henson. He testified that he heard from a now deceased friend that Mr. Brand’s job was to get rid of Employee. When asked if he ever personally witnessed Mr. Brand chastise Employee, Mr. Pfuehler described an incident where maintenance was scheduled to fix a water leak, but the boiler had not been shut down soon enough. He testified that Employee was going to shut off the water, but Mr. Pfuehler told him it was too hot and it would “blow her up.” According to Mr. Pfuehler, Mr. Brand overheard this “friendly argument” and “got on [Employee] and walked him out.” On cross-exam, Mr. Pfuehler testified that he didn’t know if Employee yelled at him because you have to speak loudly in the plant because there’s so much noise. He acknowledged that Employee may have been a little upset because day shift didn’t plan ahead for the maintenance. He testified that Employee and Mr. Brand were yelling at each other, but he couldn’t understand what was said other than hearing a few cuss words. He testified that he didn’t pay attention because he had work to do and he walked away.

Mr. Pfuehler testified it was his opinion that Mr. Brand was more critical of Employee than other employees and nitpicked at him. When asked on cross-examination if he had ever witnessed specific incidents, he testified “No. I can’t say I’ve seen him say anything direct to him, but he had to have been doing something or he wouldn’t have been there all the time. That’s my opinion.” When asked who told him Mr. Brand was always “nitpicking” Employee, he testified “That was my opinion, I told you.” Mr. Pfuehler could not recall Employee or any other co-workers telling him that Mr. Brand nitpicked at Employee.

Phillip Pfuehler also testified that two nights a week he works his shift alone, which he considered unsafe. He testified that Parks Long also works night shift alone two nights a week and “got burnt real bad a few years ago” and had to go to the hospital.

I find Mr. Pfuehler’s testimony regarding the events he personally observed to be credible, but I do not find his opinion testimony (specifically that Mr. Brand nitpicked at Employee) credible as he provided no reasonable basis for his opinions.
Testimony of Steve Kroner

Steve Kroner testified by deposition on October 2, 2017. During the time period of 2009 to 2010 he was the plant maintenance engineer at the Jefferson City Correctional Center. His job duties included assisting facilities with technical issues and performing assessments of their operations. He would then make recommendations to his supervisor and the supervisor of the facility. Mr. Kroner testified that he was sent to the Southeast Correctional Center to assess their operation and assist with some technical issues around 2008 or 2009. During this assessment he was at the facility once a month. During these visits, he interacted with Employee. He testified that he did not recall witnessing any disagreements or arguments. Employee never showed hostility toward him and he thought they had a "fairly good working relationship." He testified that Employee did not agree with all his recommendations, but that they never had any big disagreements. On cross-examination he testified that he had found some deficiencies in how he performed his job including a "lack of maintenance on equipment, lack of documentation of their operating parameters, compliance with their DNR permit." When asked if there were ever discussions of getting rid of Employee he testified, "No. No one had ever said we should get rid of him. There was always conversations about his ability to do his job just based on findings of not only mine, but other people that have been there." Although I did not have the opportunity to personally observe this witness, I find his testimony credible.

Testimony of Cindy Shipley

Cindy Shipley has been married to Employee 32 years, but they were separated at the time of Hearing. Mrs. Shipley testified that when Employee first started working at the power plant he loved his job. She testified that when Mr. Brand came to work she knew Employee was angry because he would come home and talk about it. Employee talked about things he disliked that he was made to do. He talked about "technical stuff" that she did not understand. She testified that "they" didn't like him because he is not a "yes sir, no sir" employee. She testified he started complaining of headaches. She thought there were "shady things going on." She testified that she documented what Employee told her at home. She testified that nothing was happening at home and they lived a comfortable good life.

She testified that Employee was assaulted by Steve Nolan in May approximately nine years ago. She testified that they did nothing to Mr. Nolan and instead put Employee on administrative leave until he finished his last two weeks and took another job.

Mrs. Shipley testified that on March 17, 2010, Employee was taken to the Sikeston hospital by Lois Butler and she met them there. She testified he was transferred to Cape Girardeau by ambulance and was admitted to the hospital about 3 to 4 days.

She testified that after he quit working he was in bed for 3-4 days at a time. He was severely depressed and complained of headaches. He didn't want to deal with anybody. She testified that on November 17, 2010, Employee had a stroke while at her parents' house helping them with a project. He was in the hospital four to five days. After he came home, it affected his speech. He stuttered and could not get words out right. According to Mrs. Shipley, he did not have this problem before the stroke. She testified that his anger became worse after the stroke. She could not talk to him without him "biting her head off." He would no longer open up to her.
Before 2010, she testified that Employee talked to her about things. She testified that the current situation has been stressful on both of them. They have lost half of their money, she lost her truck because Employee cannot work. She testified that Employee is unable to administer his own medications. She testified they lost their house to a fire in 2018 and Employee saved her.

She testified that up until 2010, Employee was active, he liked building things, and doing things with grandkids. After he left the power plant, he could no longer do the same things. She testified that “He was like a rubber band wound tight and just exploded.” She testified that they had a happy marriage until the stroke. She testified that Employee was intelligent, but no longer shows the same intelligence because of the stroke.

She testified that in 2017 or 2018 she and Employee had a blowout, Employee assaulted her, and he went to jail. She testified he had never acted that way before his breakdown.

I find Mrs. Shipley’s testimony credible.

Testimony of Jerry Dooling

Jerry Dooling worked for the Office of Administration for thirty-four years. He retired approximately one month before the Hearing. He held different jobs throughout his tenure. His most recent position was Energy Management Coordinator. His office was in Jefferson City, but he often worked in the field. He covered facilities throughout the state and compared these facilities. His job required him to evaluate a building’s operating efficiency, such as energy consumption, to identify deficiencies and to improve it. For example, if a building used more energy than it should, this would come to his attention and he would schedule a visit to try and identify the problem. At the visit, he would meet with the plant manager, obtain descriptions of the equipment and look to see if equipment was installed incorrectly. Then, a contractor would be hired to fix the problem.

Mr. Dooling testified that the prison in Licking, Missouri and the prison in Charleston, Missouri are similar in that they both use biomass boilers and are about the same square footage. Between 2009 and 2010, a problem was identified at the Charleston facility. Compared to the Licking prison utilities, utilities at Charleston were higher. Mr. Dooling met with Employee to identify what was not working properly. It was determined that a battleship boiler was installed incorrectly and a contractor was hired to fix that issue. After the work was done, consumption dropped about 40-45% from 2009-2012.

Mr. Dooling testified that Larry Brand started working at the facility the same time he began his evaluation. Mr. Dooling was at the facility much of September, October and November of 2009 and every other week for a few months after that. Mr. Dooling testified that he worked closely with Employee and they had a good working relationship. He denied having any disagreements or problems with Employee. They interacted socially outside of work and Mr. Dooling stayed at Employee’s home during his work visits instead of a hotel.

Mr. Dooling recalled helping Employee format some forms for work. He showed him how to build an excel spreadsheet to use for DNR logs. Mr. Dooling had no knowledge of Employee having problems with DNR logs. Mr. Dooling saw Mr. Brand and Employee every
day and never observed any arguments or problems. Mr. Dooling testified that the problems with the biomass boiler happened during installation and were not caused by Employee. Mr. Dooling never heard any complaints about Employee's job performance. After Employee quit working for the Office of Administration, he had no further interactions with him.

I find Mr. Dooling's testimony credible.

Testimony of Larry Brand

Larry Brand testified at Hearing and by deposition. Larry Brand has worked for the Office of Administration for approximately twenty-eight years. Since 2012, he has worked as a Facilities Operation Level Manager for the Office of Administration in Jefferson City. Before that, he was the Facilities Operation Manager overseeing a super site in Fulton, Mo. In September of 2009, he was promoted to Plant Supervisor III at Southeast Correctional Center. He was also in charge of the Poplar Bluff Community Supervision Center and Kennett Community Supervision Center. Before that, he was a physical plant supervisor.

During his employment at Southeast Missouri Correctional Center, his job duties were to manage operations for the Office of Administration. The customer was Department of Corrections. He supervised maintenance staff and power plant staff. He is familiar with safety protocols for the facility. When he was promoted to Southeast Missouri Correctional Center, he was made aware of some issues with operations regarding energy consumptions. He was informed the facility was expending too much energy and that Mr. Dooling was assigned to identify the issue. Mr. Brand testified it was his number one priority to address and fix these issues in his role as Plant Supervisor III.

Mr. Brand testified Employee was the physical plant supervisor that oversaw stationary engineers. Mr. Brand testified that he primarily communicated with Employee, but also communicated directly with the stationary engineers. If there was a problem that needed to be addressed he testified that he followed the chain of command unless Employee was not there.

Mr. Brand testified that on March 16, 2010 there were repairs that needed to be made for the heating and domestic water system. Mr. Brand scheduled with Employee to shut down the biomass boiler on March 10, 2010 to cool the plant down and affect repairs on evening of March 16, 2010. He explained that it takes time for this to happen and that the other boilers needed to be brought up with hot water circulating so water could continue while making repairs. Mr. Brand testified that he had other employees scheduled to come in to make repairs on March 16. Mr. Brand testified that he arrived on March 16, 2010 around 7:00 p.m. Employee was not there. Mr. Brand noticed that the biomass boiler was not shut down and the boiler was still operating. Mr. Brand testified that he directed the stationary engineer to begin the process. Mr. Brand testified that he knew they could only affect repairs on part of the issues and the other repairs would have to be rescheduled for the following day.

Mr. Brand testified that Employee arrived around 8:00 p.m. According to Mr. Brand, when Employee saw what he was doing, he ordered the stationary engineer to valve off the biomass boiler. The stationary engineer reportedly told Employee he was directed not to do so by Mr. Brand because it was not safe. Mr. Brand testified that Employee engaged in a shouting
match with the stationary engineer. Mr. Brand testified that he took Employee outside and had a
discussion with Employee that they would not valve off the biomass as Employee directed and
that it was not acceptable to yell and cuss at the employee. According to Mr. Brand, Employee
said that was fine, then got in his truck and left.

Mr. Brand testified that he stayed on site and affected repairs that evening. He testified
that the following morning he went to Employee’s office and had a conversation about the prior
evening’s events and coached and re-directed Employee on the behaviors he had witnessed. He
also addressed with Employee that he had not completed the required power plant log data per
DNR guidelines at his previous shift. Mr. Brand testified that he instructed Employee that he
also needed to complete employee performance appraisals so that he could review and submit
them by the April 1, 2010 deadline and he needed to complete the DNR logs to maintain the
operating permit for the biomass boiler. According to Mr. Brand, the operating permit had
expired and was not renewed because the logs were not previously completed and this caused a
problem. Mr. Brand testified that it was Employee’s responsibility to complete these logs. He
testified that Mr. Dooling had previously helped Employee create forms to complete these logs.
Mr. Brand then gave Employee some assignments, then Mr. Brand left for Poplar Bluff for
another assignment. Mr. Brand identified Exhibit J, a letter written by him on March 18, 2010
documenting the events of March 17, 2010. This letter was directed to Jeff Fleenor and
Johnathan Corset in Human Resources at the Office of Administration. The letter contained a
summary at the end which read as follows:

Summary:

1.) Mr. Shipley disobeyed my directive by attempting to shut down
the Bio-Mass boiler with a 1500 furnace temperature.

2.) Mr. Shipley created a hostile work environment by cussing and
intimidating the staff on site that evening.

3.) Mr. Shipley abandoned his post by exiting the facility without prior
authorization.

4.) Mr. Shipley failed to document power plant data on provided log
as required by DNR operating permit and OA/FMDC.

During the March 17, 2010 event, Mr. Brand did have contact with Lois Butler. She
called him on her cell phone during his trip to Poplar Bluff and told him that Employee was
having a personal crisis and that he needed someone there to run the plant. Mr. Brand denied
having any personal interaction with Ms. Butler. He testified that his conversation with
Employee was 10-15 minutes and then he left to go offsite. He testified that he received a call
from Ms. Butler and she said Employee was leaving site in an ambulance. Mr. Brand testified
that he immediately got on the phone with a stationary trainee to dispatch the facility and stay on
site.

Mr. Brand testified that he never grabbed Employee by the shirt and he never called him
“boy.” Mr. Brand testified that Exhibit K is a performance appraisal of Employee. It covered a
rating period of January 1, 2010 through March 31, 2010. The performance appraisal was last
updated on March 17, 2010, the day of Employee’s hospital admission. Employee’s overall
rating indicated that he needed improvement. Specifically, it was noted that the plant needed many repairs that should have been divided between Employee and the stationary engineers. It was commented that he had "not enforced a preventive maintenance program at the Power Plant, he seems to have problems effectively communicating with peers. One vendor refuses to speak with Mr. Shipley, they claim he is rude on the phone when doing business." It was noted that his "record keeping is less than adequate, he was not maintaining the required DNR operating permit logs. This created an enormous problem when applying for permits." It was later noted that he needed assistance to complete the application for DNR operating permit due to poor record keeping. It was also noted that he failed to complete a directive to paint/clean the power plant, that he routinely missed work due to unscheduled leave and that he "often (publicly) voices his disagreement with administrative decisions; this creates problems with moral [sic] of subordinate staff." During his deposition, he testified that Employee routinely communicated his issues with the office of Administration and their policies to Mr. Brand in front of the staff and Mr. Brand felt those should have been private conversations.

It was also noted that Employee had not begun work on performance appraisals of the power plant staff, has difficulty expressing himself with staff and peers, and did not work well with the maintenance staff.

Mr. Brand denied making a statement that he was sent down to fire Employee. Mr. Brand denied having any issues with Employee leading up to the March 17, 2010 incident other than what he testified to at Hearing. At deposition on October 2, 2017 Mr. Brand testified that he and Employee never argued, that Employee was always receptive and cordial (except for March 16, 2010), that there was no tension on his part with Employee, that he never yelled at anybody, and that he always had communications with managers in private behind a closed door. When asked about Mr. Brown’s testimony about observing tension between he and Employee, Mr. Brand testified, “It was my job to identify issues that needed to be addressed at that facility and communicate those issues to the folks whether it be that management team or the management team inside to get those tasks accomplished. I wouldn’t describe that as tension. That was just a daily function of what we did, so absolutely not. No tension on my part.” Mr. Brand also testified at deposition that he thought his working relationship with Employee was fine, but that there were issues that needed to be addressed. He testified, “I think I have made it clear that I had to provide instructions to Mr. Shipley on numerous occasions because of the tasks that I assigned just weren’t being accomplished. But it was always communicated from both parts, in a very civil manner.”

I find Mr. Brand’s testimony regarding the events of March 16, 2010 and March 17, 2010 to be credible. His testimony regarding Employee’s failure to complete timely employee appraisals, to complete DNR logs, and problems effectively communicating with peers was uncontested, and I find that testimony credible. However, I do not find his testimony that he and Employee never argued and yelled at each other to be credible.

It was observed by this fact-finder that Employee’s demeanor, specifically his facial expression, changed during Mr. Brand’s testimony. His expression visibly changed from sadness to anger. Employee was observed staring intently at Mr. Brand in an unsettling manner. Mr. Brand made the comment that Employee’s facial expression made him uncomfortable during his
testimony, but it should be noted that this fact-finder independently noted Employee’s change in demeanor before Mr. Brand brought it to the Court’s attention.

Employee’s personnel file


Employee was issued a Letter of Caution by Steve Henson on June 22, 2009 “concerning the unprofessional way [he] conducted [himself] with DOC Maintenance staff during an incident which took place on the SECC parking lot on June 16, 2009.”

Employee resigned effective May 14, 2010.

Exhibit L: Interoffice Communication from Ricky Alley

Exhibit L is an “Interoffice Communication” from Ricky Alley MS II to Larry Brand dated March 17, 2010 documenting the events of March 17, 2010. The interoffice communication reflects that Employee “entered the power plant and started cussing and saying turn off those mother fucking pumps and get this shit drained to Phil Phueller Stationary Engineer. Mr. Phueller explained that the pumps were running to help cool off the water and the Bio-Mass Boiler which was still at approximately 1500 degrees which was at a temperature that was unsafe to valve off and drain the Bio-Mass Boiler the pumps were not turned off. Mr. Shipley stated that we do this shit all the time and this is my power plant and we will do it my way. In my opinion this was causing a hostile work environment.”

Medical Treatment

Employee was admitted to Missouri Delta Medical Center emergency department on March 17, 2010 with a chief complaint of “angry” and “agitated.” Under “context” the author noted “Anger Management issues.” It was noted that he complained of severe stress, and “homicidal.” He complained of headache. The nurse notes reflect Employee states supervisor “Got in my face” and he became agitated and wanted “to pinch his head off.” A support service progress note reflected that Employee “stated he has been under a lot of stress at work. Pt stated his boss was yelling at him and in his face and pt wanted to hurt him.” The clinical impression was “Psychosis.” A urine test was positive for Benzodiazepine.

Employee was transported by ambulance to Southeast Missouri Hospital. He was admitted to the Psychiatric unit. He gave a history “that over the past few months, he has been overwhelmed with stressors involving his family and his workplace. Apparently his grandchildren are moving away and they are a big part of his life. He has had increase in stress at
Employee: Steven A. Shipley

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work since having a new supervisor that he doesn’t get along with.” He denied regular use of alcohol. He was noted to have a past psychiatric history of mild anxiety and depression treated ineffectively with Paxil, but no prior psychiatric admissions. Employee was diagnosed with a major depressive disorder with anxiety and started on Wellbutrin for mood disorder symptoms, Depakote to treat angry episodes and headaches, and Klonopin for anxiety.

Employee underwent a psychiatric evaluation by Dr. Kishore Khot on April 8, 2010. A treatment plan was discussed to include counseling for job-related stress “and dealing with new boss who is very authoritarian” and medications for depression, anxiety, and headaches. Employee followed up with Dr. Khot on April 22, 2010 and reported medications were helping. He planned to return to work on April 26, 2010 and planned to start counseling through work. He reported that he believed “his bosses authoritarian treatment he believes led to his breakdown . . .” Employee returned to Dr. Khot on May 4, 2010 and was seen as an emergency. It was noted that he “went back to work and again decompensated due to his boss who continued to be authoritarian [sic] changed passwords without telling him and made things difficult for him.” Employee reported that he had submitted two weeks’ notice because he could no longer work in that environment. On May 19, 2010, Employee followed up with Dr. Khot and reported severe depression and suicidal thoughts. He was admitted to Southeast Hospital for his safety.

Employee followed up with Dr. Khot on May 26, 2010 and it was noted “he is obviously in no condition to work and cannot handle the pressure of his old job.” His medications were continued.

On June 6, 2010 Employee was admitted to the psychiatric unit at Southeast Missouri Hospital with “overwhelming depression and alcohol abuse, voicing suicidal thoughts.” He attributed his problems to work. It was noted that he was developing psychotic features and had been non-compliant with medications. He was discharged on June 10, 2010 and instructed to follow up with Dr. Khot and his counselor at Community Counseling Center.

Employee was admitted to the psychiatric unit at Southeast Missouri Hospital on November 17, 2010 with complaints of slurred speech, increased headache, and weakness after a fall. It was noted that he had a history of chronic headaches for three years. It was determined that he had a stroke and left internal carotid artery occlusion and probable right vertebral artery occlusion.

Employee was admitted to the psychiatric unit at Southeast Missouri Hospital on April 10, 2017 for increased depression and suicidal thoughts. It was noted he was hearing voices.

On or about May 1, 2017 Employee assaulted his wife and was subsequently charged with a class D felony of domestic assault in the second degree and the Class E felony of resisting an arrest. The Court ordered him to undergo a psychiatric evaluation to determine his current mental state and competence to proceed. The evaluation was conducted on July 18, 2017. The report detailed Employee’s mental health treatment since 2010. Employee reported that he served in the United States Navy for 3 years and experienced combat when deployed to Vietnam for six months. Employee reported he was honorably discharged. He reported symptoms of post-traumatic stress disorder related to his deployment in Vietnam. With regard to his
employment for the State of Missouri, he reported he quit because it was “too much pressure.”
He reported a history of headaches for several years and a stroke in 2010. He reported he first
received mental health treatment at the VA in 2010 for depression. Employee reported he first
consumed alcohol at age 13 and described himself as a “functional alcoholic.” Employee
reported he quit drinking 10 years ago because it was causing problems. References were made
that he began consuming alcohol again. Employee also reported psychotic symptoms and
specifically reported he began hearing voices three years prior that typically consist of a man and
woman that made comments correcting his actions. His diagnoses were major depressive
disorder with psychotic features, post-traumatic stress disorder, anxiety disorder and history of
alcohol use disorder. The examiner concluded Employee had a mental disease, but did not lack
the capacity to understand the proceedings against him.

VA Medical Records

Employee established services as a new patient at the Poplar Bluff Missouri Veterans
Administration Medical Center on June 28, 2010. It was noted that he had recently been
admitted for treatment in Cape Girardeau for stress. He underwent an Initial Mental Health
Assessment on June 29, 2010 and it was noted that “Veteran had been under a great deal of stress
at his employer, he took great pride in his work and had gotten a new supervisor just prior to the
stress getting to be too much.” It was also noted that Employee had no history of mental health
treatment prior to his admission at Southeast Missouri Hospital stress unit on May 4, 2010, but
Employee reported he had been having stress-related problems for approximately five years. He
reported recent suicidal ideations. Under substance abuse history, it is noted that “Identifies
himself as having a history of being ‘functional alcoholic’. Up until around one month ago was
drinking between 6 and 12 beers daily for 20 years. Denies history of drug abuse. Denies having
any problem with sobriety...” His initial diagnoses were Major Depressive Disorder, Anxiety
Disorder; history of alcohol abuse in remission. He was scheduled for a medical evaluation and
counseling session to develop a safety plan. From June 28, 2010 through January of 2012
Employee received treatment at the VA Hospital primarily for mental health problems
(adjustment disorder, depression, anxiety, mood disorder) and the after-effects of his stroke
(slurred speech, weakness). He also received treatment for other medical conditions such as
hearing loss, tinnitus, osteoarthritis of the lumbar spine, hyperlipidemia, GERD, chronic
obstructive pulmonary disease, occlusion and stenosis of his carotid artery, arthralgia of his
shoulder, etc. There are various references to marital conflict and stress involving his
grandchildren. There is documentation of other stressors including a nephew’s funeral, death of
a previous co-worker, and death of a cousin in an automobile accident. These incidents are
documented as occurring between June 28, 2010 and January of 2012.

No VA records were offered into evidence documenting treatment from January of 2012
to January 2015.

From January of 2015 to July of 2017 Employee received treatment at the VA for various
medical conditions including mental health treatment. It appears that a diagnosis was made of
post-traumatic stress disorder at some point in time, however it is unclear whether the diagnosis
is considered by the VA to be service-related.
The VA records indicate Employee has a 10% service connected disability for tinnitus and 0% for hearing impairment. This fact-finder found no mention of a service-connected disability for post-traumatic stress disorder.

Post-traumatic stress disorder

With regard to his military service, Employee testified at deposition that he ran gun boats. He testified, “A crew of men goes up and down the rivers, and they pick up personnel coming off the beach, usually Green Berets, Rangers, or something like that that’s been in the field for numerous, numerous days. And there is things that I did that I’m not sure was right... We gunned down a big bunch of damn civilians and there was some babies in there, and I just have a hard time dealing with it.” He testified that after he returned home “it’s hard to deal with, and you deal with it on an everyday basis.”

Following his discharge from the Navy, he did not receive treatment for post-traumatic stress disorder. He was not diagnosed with post-traumatic stress disorder until sometime after the March 17, 2010 incident.

Present Symptoms

Since his stroke, Employee has suffered from memory loss and can no longer do things he used to do. For example, if a project requires some technical capability, he must call his nephew to help him. His speech was affected by the stroke. He attended speech therapy, but claims it did not help. Instead, he practiced talking in the mirror to improve his speech. However, he believes it is now getting worse. His speech sounded mumbled at Hearing. Before the “accident” he had no problems with lifting, standing, walking, or being tired. He liked a challenge. Now, he has weakness in his hands. He has loss of coordination. He wears out in 5 minutes with lifting activities. He cannot stand all day. He doesn’t walk very much. He has to drive to get mail a few blocks away. He has to lay down to take naps. Before 2010, did not have to make lists to remember like he does now. He testified that before 2010 he did not have trouble getting along with people. I do not find this statement credible for reasons discussed later in the Award. He does not get along with people now. He now finds everything aggravating. A simple task leads to major problems. He testified that noise did not use to bother him, but now he often needs to find a quiet room to lie down.

Employee testified that he dealt with bad headaches every day that began when he started working for the State of Missouri. He testified that he has been on medications for high blood pressure for about nine years. He has been a smoker all his life.

Employee continues to attend counseling and takes medications for depression, anxiety, and high blood pressure. He testified that he was diagnosed with post-traumatic stress disorder by the Veterans Administration and that he had problems with it every day. He testified that he did not have problems with post-traumatic stress disorder prior to March of 2010.

Employee testified that he began hearing voices in approximately 2014.
Medical Report and Testimony of Raymond Cohen, D.O.

Dr. Cohen, a neurologist, evaluated Employee on or about July 28, 2014. Under the history section of his report, Dr. Cohen identified that Employee reported the following problems at work leading up to March 18, 2010:

- Management changed from the Department of Corrections in 2004 to the Office of Administration and Steve Henson became his new supervisor;
- Employee immediately had difficulty getting along with supervisor Steve Henson;
- "The company" had parties and did not invite the crew;
- Employee perceived directions given by Steve Henson (to leave the power plant unmanned) to be in violation of good engineering practices and brought this to his attention;
- Employee and supervisor would barely speak and if they did it resulted in "yelling or shouting";
- Employee felt that he was unfairly written up for insubordination;
- Employee and supervisor had to take separate vehicles to meetings in Jefferson City;
- Larry Brand replaced Steve Henson as supervisor and Employee also had problems getting along with him;
- Communication between Employee and Larry Brand involved yelling, screaming and hollering;
- In 2010 Employee was assaulted by another employee without significant injury.

Dr. Cohen documented that Employee reported he became agitated, dreaded going to work, and had difficulty sleeping due to stress, developed headaches and depression. The symptoms progressively worsened leading up to his hospital admission on March 17, 2010. Dr. Cohen noted that Employee resigned from employment on May 3, 2010 and subsequently had a stroke on November 17, 2010.

Dr. Cohen reviewed several documents in addition to medical records including Employee's Injury Report, several Interoffice Communication signed by Employee throughout his employment, an undated handwritten statement signed by Larry Holthouser, an unsigned and undated handwritten statement presumably written by Employee, a handwritten statement by Parks Long, a typed statement signed by Employee and dated April 17, 2010, Employee's resignation letter and some other documents pertaining to Employee's claim for workers' compensation. The Interoffice Communication dated January 30, 2004 was directed to Steve Henson and documented Employee's concerns that his supervisor, Steve Henson, gave directives that he considered were a violation of good engineering practices. The November 8, 2006 Interoffice Communication was directed to Omer Clark, the assistant warden, and outlined Employee's perception that Steve Henson created a hostile work environment by issuing him a directive that he believed fell under the duties of the maintenance crew instead of the power plant crew. An Inter-Office Communication dated February 5, 2007 is directed to Omer Clark and outlines Employee's request that his Employee Performance Plan be expunged because Steve Henson made a technical error by failing to put Employee's name on it and because Employee believed Steve Henson failed to follow through with his obligation to meet with Employee to discuss his progress. The Performance Plan was initiated to address Employee's failure to follow
orders, "[not] abiding by Department Policy regarding Employee Conduct and Employee Standards" to ensure that a supervisor was notified if Employee was not working per his regular schedule. A subsequent memo confirms the Performance Plan was terminated.

The written statement of Lany Holthouser states that "on or about March 17, 2010 at approximately 7:30 am Mr. Larry Brand and Mr. Steve Shipley were having a conversation. I departed the immediate area of this conversation and could only hear the loud speaking from Mr. Brand. I was unable to understand any of the words."

A typewritten statement dated April 17, 2010 and signed by Employee documents the events of March 16, 2010 and March 17, 2010. The statement reflects on the evening of March 16, 2010 he had a disagreement with Larry Brand about how to shut down the biomass boiler. The statement reads in part,

"I approached Larry Brand and Phil Pfeuller and told them I thought they missed some valves on the inside domestic water loop. I then noticed the biomass was on line and should have been offline per our training from Hurst Boilers. Earlier in the day I had informed Gary Brown to pass down to take the boiler off line ASAP so the repairs could be made. This was not done and Larry stated we couldn't do it like that; the water had to be circulating through the boilers before it was shut down. Instead of having an argument with Larry I said ok and went back to the biomass plant to take the boiler offline and make the necessary repairs. Larry followed me out and told me to leave it alone. I explained to him that the proper procedure was not being followed and he again told me in a threatening tone to 'leave it alone'. I walked off to return to my office and Larry again followed me stating, 'IF YOU DON'T LIKE THE WAY WE ARE DOING THINGS YOU CAN TAKE YOUR FUCKING ASS HOME'."

Employee states he left to avoid being cursed out. He reports the next morning

"I reported to work at my scheduled time, Ken Chapman, Gary Grubbs, Larry Holtzhouser, and I were planning out our work day when Larry Brand walked in and directed everyone except me to leave the office. He began pointing his finger in my face and chest and yelled 'I WILL WALK YOUR FUCKING ASS OUT OF THIS INSTITUTION AND YOU WILL NEVER OVERSEE ANOTHER PROJECT AGAIN.'" He then states, "5 minutes after Larry had left the plant he called me back and told me he wanted something done by Monday. I am unsure what he was talking about. He repeated this several times, calling and demanding things be done and hanging up. I was upset at the fact that I didn't know what he wanted. I was getting backed into a corner and felt I
had to fight back or leave so I called Lois Butler and told her what was going on and ask her to come to the plant.”

He relates that she came and contacted the workplace violence coordinator. Employee requested disciplinary action be taken against Mr. Brand.

Dr. Cohen opined that Employee sustained a cerebral infarction in the left hemisphere due to a prolonged period of severe workplace stress and that this stress also resulted in depression, anxiety and hypertension. He opined that the prevailing factor in causing his symptoms is the injury/condition at work on March 18, 2010. He further opined that Employee was at maximum medical improvement, but would continue to need psychiatric and medical care for the remainder of his life. He assigned a rating of 65% permanent partial disability of the whole person as a result of his work-related stress and opined that “he is permanently and totally disabled and not capable of gainful employment in today’s open labor market.”

Dr. Cohen also diagnosed Employee as having a prior history of post-traumatic stress disorder due to his military service and he assigned an additional rating of 10% due to PTSD.

Dr. Cohen testified by deposition on July 11, 2016. Dr. Cohen testified that Employee described a “profound history of stress.” He explained that the stress caused problems with Employee’s nervous system and blood pressure. Specifically, he testified that because of this stress over the period of time that he described of working there at the prison and in the power plant, that after enduring that for this number of years, that the effects that has on the brain and the blood vessels that ultimately he had a cerebral infarction that you can only—one can only undergo that type of severe stress for a period of time until something happens.

In his case it was a stroke or cerebral infarction. And that’s based on my review of the records and along with the history he described of this sort of unrelenting pressure and stress that he had that just basically didn’t stop until he resigned.

Dr. Cohen further testified:

The stroke occurred within really a short period of time after he was last working or after he last resigned. Basically it wouldn’t necessarily have to occur right when he was working or when he last resigned. It’s really a slow process. ‘.

... It takes a period of time for the blood vessels of the brain to start becoming occluded. It wouldn’t necessarily happen right at any particular moment while he may be working. But it certainly happened within a time frame of after he left there that it, that meaning this process of the blockage, the slow occlusion of
these vessels during the time that he was working there. It’s a slow process.

Dr. Cohen testified that the post-traumatic stress disorder was a hindrance or obstacle to employment. He testified that he did not believe the post-traumatic stress disorder was causing Employee to be disabled at this point. He testified that it’s the sequelae from the stroke that is causing him to be disabled.

On cross-examination, Dr. Cohen admitted Employee had other risk factors for stroke including that he was a cigarette smoker, had high cholesterol, and high blood pressure.

*Medical Report and Testimony of Adam Sky, M.D., DFAPA*

Employee was evaluated by Dr. Sky, a psychiatrist, on March 14, 2018. According to Dr. Sky, Employee reported to him that he began suffering from stress at work shortly after he started working there in September of 2001, but that the situation became worse in 2004 when management changed and Steven Henson became his supervisor. He perceived Mr. Henson was undermining him and reported he would “frequently belittle, shout, or yell at him.” He also informed Dr. Sky that he received unwarranted letters of reprimand. He also reported that his relationship with subsequent supervisor, Larry Brand, was hostile and contentious. Employee described to Dr. Sky that he had a disagreement with Mr. Brand on March 17, 2010 during which he was verbally abused and “cracked.” After reviewing Employee’s history, medical records, and performing a mental status examination, Dr. Sky diagnosed Employee with a major depressive disorder (moderate to severe) with psychotic features and a generalized anxiety disorder that he causally related to the March 17, 2010 work injury. He further diagnosed the following conditions that predated the March 17, 2010 work injury: post-traumatic stress disorder possibly secondary to military experiences, alcohol use disorder in early remission, jaw reconstruction surgery, chronic headaches, COPD, moderate degenerative joint arthritis of the right acromioclavicular joint, hypertension, hearing loss, tinnitus, hyperlipidemia, gastroesophageal reflux disorder with esophagitis. Dr. Sky noted that Employee’s stroke was “possibly related” to the March 17, 2010 injury. Dr. Sky assigned ratings of 35% permanent partial psychiatric disability related to the March 17, 2010 work injury and 15% pre-existing permanent partial psychiatric disability attributable to post-traumatic stress disorder and alcohol use disorder. He opined Employee is at maximum medical improvement and “will require ongoing psychiatric and psychological treatment including psychotropic medications and evidenced based psychotherapy such as he is now receiving from the VA.”

Dr. Sky testified by deposition on May 25, 2018. Regarding the issue of causation he testified that the prevailing cause of Employee’s psychiatric disability “were the events of March 17, 2010.”

On direct exam, Dr. Sky was asked the following:

Q. So you believe objectively anybody would have been stressed out extraordinarily and unusually by this?
A. I do.

Q. All right. And but in particular it affected him differently than it would affect most people, is that correct?

A. I think it did. I mean, some people might, you know, be able to withstand it, but I think his personality structure, his life experiences, his preexisting experiences, made it particularly difficult for him.

On cross-examination by the Employer-Insurer, Dr. Sky acknowledged that he did not review any witness depositions (including those of Larry Brand, Gary Brown, Lois Butler, Phillip Pfuehler, and Steve Kroner) as part of his evaluation. He did not review the deposition testimony of Employee. He also did not review Employee’s personnel file. Dr. Sky acknowledged he had no knowledge regarding whether Employee followed the policies and procedures of the facility, but did not feel that information “would be in any way determinative” because “The work records, the policy records, if you will, are, to some degree, subjective. If a supervisor wrote him up or sent him a letter of reprimand, it would be arguably a very subjective opinion on behalf of the supervisor. Whether it was warranted or not could be argued by either one of them. So that’s why it’s very difficult to say that, if these records were available, whether they would be the determining factor here.” Dr. Sky testified reviewing the witness depositions would likewise not be determinative for the same reason.

Dr. Sky acknowledged that Employee did not provide him with specific examples of Mr. Brand yelling at him, but he did not consider that unusual considering he saw him eight years after the events.

Vocational Report and Testimony of Susan Shea

Susan Shea is a rehabilitation counselor that evaluated Employee at the request of his attorney on May 24, 2016. She took at history from Employee that he left school in the 11th grade in 1974 and joined the Navy where he obtained his GED. She noted that he was trained as a maintenance engineer in the Navy and that his work history consisted of jobs working as a plant maintenance engineer. Susan Shea opined that Employee is not employable in the open labor market and she considered the following factors in reaching that opinion:

1. Dr. Cohen has stated that Mr. Shipley is permanently and totally disabled.
2. Dr. Cohen has given restrictions which cause Mr. Shipley to be incapable of performing any work as typically performed.
3. Mr. Shipley has ongoing problems including depression, anxiety, speech aphasia and cognitive deficits that require ongoing treatment.
4. Mr. Shipley’s cognitive deficits and memory loss prevent him from learning new work.
5. Mr. Shipley’s physical restrictions cause him to be unable to return to any previous work, or any work as a typically performed in the open labor market.

6. Mr. Shipley’s age makes it unlikely that any potential employer or agency would invest in modifying work, or investing in training him for other work.

7. Mr. Shipley has been determined totally and permanently disabled by the Social Security Administration.

Medical Reports and Testimony of Michael Jarvis, Ph.D., M.D.

Dr. Jarvis, a psychiatrist, performed an Independent Psychiatric Examination of Employee on November 29, 2016. As part of the evaluation, Dr. Jarvis reviewed Employee’s deposition, Dr. Cohen’s report, medical records from Southeast Missouri Hospital, the VA Hospital, Missouri Delta Medical Center and Dr. Khot, Employee’s Report of Injury, and a statement by Mr. Brand dated March 18, 2010. According to Dr. Jarvis, Employee reported he was subjected to a hostile work environment and this led to a stroke. He reportedly described that his supervisors were conspiring against him, he was written up for “stupid stuff” such as his disagreement regarding whether the maintenance group was responsible for certain job activities versus the plant department group that he supervised. Employee reported he was not interviewed for a promotion and Mr. Brand received the position instead. He reported having conflicts with management regarding things not being done properly such as equipment maintenance, not buying new equipment, service contracts and timely inspections. He reported he was punched in the back of the head by a maintenance supervisor yet nothing was done about it. He reported that Mr. Brand criticized everything he did. He was given letters of caution for his unprofessional attitude because he called people “stupid asses.” He reported that Mr. Brand tried to provoke him by getting in his face and daring him to hit him. He described an incident where Mr. Brand said, “Boy, don’t walk up on me.”

Regarding post-traumatic stress disorder, Employee did not want to discuss his military experience with Dr. Jarvis and denied having prior psychiatric treatment for it. He noted Employee reported he was hard of hearing from working in equipment rooms. He noted that Employee denied taking Paxil prior to March 17, 2010 despite records from his psychiatric admission reporting a history of taking Paxil for two years prior to March 17, 2010. At deposition, Dr. Jarvis testified that Employee’s urine drug screen had evidence of Diazepam which showed that he had been taking it for a while, so he considered that evidence that Employee had some kind of prior psychiatric treatment.

Dr. Jarvis diagnosed Employee as having an adjustment disorder with depressed mood. He opined that Employee is “exaggerating his level of distress and therefore it is difficult to formulate a reliable psychiatric diagnosis. The most that can be said is that he has an Adjustment Disorder which is an emotional response out of proportion to the severity of the stressor.” He identified the stressor as Employee’s failure to be promoted and hostility to redirection by his supervisor. He further opined that the March 18, 2010 event was not the cause of his adjustment disorder because “Mr. Shipley was the one yelling and cursing after failing to follow his...
superior’s directions.” He noted that Employee was crude during his evaluation and had admitted to a life time of having a quick temper.

Dr. Jarvis opined that Employee does not have post-traumatic stress disorder as he could identify no credible inciting event. Dr. Jarvis was of the opinion that Employee’s descriptions of his actions in the Navy were not consistent with the documented history of the Vietnam conflict.

Dr. Jarvis opined that Employee is at maximum medical improvement and needs no further psychiatric treatment concerning his March 18, 2010 work injury. He opined that he sustained no permanent partial disability attributable to work injury and that he “would be as competent as he was before the 3/18/2010 [sic] and has no limitations in terms of a psychiatric viewpoint.”

He also offered that “Mr. Shipley’s life long history of tobacco abuse is a known and overwhelmingly dominant risk factor for causing strokes. In addition, he has other risk factors including his weight and metabolic profile. There is no need to add a work related issue of being denied a promotion or being reprimanded as a significant contributing factor to his stroke.”

Dr. Jarvis issued a supplemental report dated June 22, 2018 outlining his review of additional records including the IME by Dr. Sky, the depositions of Larry Brand, Lois Butler, Phillip Pfuehler, Gary Brown, and Employee’s personnel file. Dr. Jarvis stated that after reviewing these documents his opinions as previously stated remained the same.

Medical Bills

Employee incurred the following medical bills:

Claimant incurred the following medical charges for treatment related to stress and his stroke:

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<tr>
<th>Medical Provider</th>
<th>Date of Service</th>
<th>Total Charges</th>
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<tbody>
<tr>
<td>Missouri Delta Hospital</td>
<td>3/17/2010</td>
<td>$1565.45</td>
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<tr>
<td>Scott County Ambulance</td>
<td>3/17/2010</td>
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<tr>
<td>Southeast Missouri Hospital</td>
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<td>5/19/2010-5/24/2010</td>
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<td>Mark Hosler, M.D.</td>
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<tr>
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<td>John Shoenerberger</td>
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<td>John Lake</td>
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<td>3/18/2010</td>
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<tr>
<td></td>
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</tr>
<tr>
<td>Clifford Talbert</td>
<td>3/17/2010</td>
<td>$11.00</td>
</tr>
</tbody>
</table>
Employee: Steven A. Shipley

| TOTAL: | $51,147.08 4 |

**RULINGS OF LAW:**

**Issues 1 and 2: Whether on or about March 17, 2010, Employee sustained an accident or occupational disease arising out of and in the course of Employee’s employment and whether Employee’s injury was medically causally related to the accident:**

Employee has alleged two components to his claim. First, he claims a mental injury due to work-related stress. Second, he claims his stroke on November 17, 2010 was caused by work-related stress. In other words, he alleges both a mental injury and a physical injury.

“It is the claimant’s burden in a worker’s compensation proceeding to prove all of the elements of his claim to a reasonable probability.” *Hoven v. Treasurer of State, Custodian of Second Injury Fund*, 414 S.W.3d 676, 678 (Mo. App. E.D. 2013). Pursuant to RSMo. § 287.020.3(1), an “injury” is “an injury which has arisen out of and in the course of employment.” § 287.020.3(2) further states that an injury arises out of and in the course of employment only if:

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

Section 287.020.3(4) provides:

A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

To prove a mental injury, Section 287.120.8 RSMo provides that:

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.

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4 Employee is claiming $51,158.08 in medical bills, however Employee’s summary of the bills included in Exhibit 15 includes a duplicate entry for a charge in the amount of $11.00 for date of service 3/17/2010 for medical provider Clifford Talbert.
Section 287.120.9 RSMo provides that:

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

The objective standard for determining whether Employee’s stress is compensable is whether the same or similar actual work events would cause a reasonable employee engaged in the same occupation to experience extraordinary and unusual stress. Mantia v. Missouri Department of Transportation, 529 S.W.3d 804, 810 (Mo. 2017). To meet Employee’s burden of proof, it is not enough to show that the actual work events experienced by Employee caused Employee stress, but rather Employee must present evidence that the actual work events he experienced would have caused extraordinary and unusual stress to a reasonable similar employee. Id. “[T]he proper comparison for purposes of Section 287.120.8 is to compare Employee’s work-related stress with the stress encountered by employees having similar positions, regardless of employer, with a focus on evidence of the stress encountered by similarly situated employees for the same employer.” Williams v. DePaul Health Center, 996 S.W.2d 619 (Mo. Ct. App. E.D. 1999) (overruled on other grounds by Hampton v. Big Boy Steel Erection, 121 S.W. 3d 220 (Mo. 2003). The Missouri Supreme Court has held that there may be multiple approaches to meet this objective standard of proof, but that the most common approach is to compare Employee’s level of work-related stress with other employees in the same profession. Mantia v. Missouri Department of Transportation, 529 S.W. 3d 804, 810 (Mo. 2017). Proof of the existence of a psychological condition is not proof of the causation or compensability of the condition. Schaffer v. Litton Interconnect Technology, 274 S.W.3d 597 (Mo. Ct. App. S.D. 2009).

Mental Injury

Based on my review of Employee’s testimony at Hearing, his deposition testimony, and his reports to the evaluating experts, the actual work events alleged by Employee include the following:

- Supervisors “didn’t have a clue” and were “out of their league”;
- Supervisors contradicted Employee;
- Employee alleges he was verbally abused by his first supervisor, Steve Henson, who said things such as “I’m gonna do this to you” and “I’ll have your job”;
- Employee was refused an interview for promotion;
- Larry Brand, Employee’s second supervisor, criticized him for everything; told him he didn’t know what he was doing;
- Communications between Larry Brand and Employee involved yelling, screaming and hollering;
- Mr. Brand changed Employee’s plans for the night shift;
- There were disputes between Employee and his superiors regarding how to run the biomass boiler, i.e. Employee was provided what he considered “ratty fuel”, superiors
pumped Freon into a cooler instead of investigating the source of a leak; power plant crew was assigned to perform tasks Employee thought were the responsibility of the maintenance crew;

- Employee perceived directions given by his superiors to be in violation of good engineering practices;
- Employee felt he was unfairly written up for insubordination;
- The Company had parties and did not invite the crew;
- A co-worker hit Employee on the back of the head and Employee was dissatisfied with the way his supervisors handled the assault;
- The incident of March 17, 2010 involving alleged verbal abuse by Larry Brand and Employee’s admission to the psychiatric unit at Southeast Missouri Hospital.

I find Employee’s testimony regarding the above allegations for the most part credible with some caveats. Employee’s testimony that his supervisors “didn’t have a clue” and were “out of their league” are his opinions, but I make no findings of fact as to whether or not these opinions are true. These are Employee’s opinions, not actual events. Likewise, I make no findings of fact as to whether generally speaking he was frequently given instructions to do things that would not work or were in violation of good engineering practices, but that certainly is Employee’s belief. I do not find credible Employee’s testimony that Mr. Brand was present in his office when Ms. Butler arrived on March 17, 2010 and refused to leave. This testimony is directly contradicted by the written statements of both Employee and Lois Butler that were made contemporaneous to the event. I also do not find credible Employee’s testimony that Mr. Brand grabbed his shirt and said “Get away from me, boy” on March 16, 2010. Employee’s typewritten statement of April 17, 2010 does not corroborate this testimony.

I do find credible Employee’s testimony that he did not get along with either Mr. Henson or Mr. Brand. I find that Mr. Brand was authoritarian in his management style and this resulted in Employee and Mr. Brand raising their voices at each other on occasion. I find that Employee did not respond well to Mr. Brand’s management style and these two gentlemen were unable to effectively communicate with one another. I find there to be credible evidence that Mr. Brand was brash in his dealings with Employee. Understandably, Employee found this very stressful. However, as stated above, Employee must meet an objective standard that the actual work events would cause a reasonable employee engaged in the same occupation to experience extraordinary and unusual stress.

I find that many of the reported actual events (criticisms from his supervisors, being written up for insubordination, being denied a job interview for promotion,) stemmed from actions taken in good faith by Employer. As for the incident he described in which a co-worker assaulted him, I understood Employee’s complaint was his Employer’s lack of appropriate action against this co-worker. Employee admitted he and this co-worker had been involved in disputes and that this co-worker had already accepted another job. Considering the co-worker left Employer’s employment within two weeks of the accident, I am not persuaded Employer’s actions in response to this incident were in bad faith. As for the statement made to Dr. Cohen about employees not being invited to company parties, no testimony was offered at trial, therefore I make no findings of fact regarding the same.
Lois Butler and Parks Long offered testimony regarding their opinions as to whether the actions of Larry Brand created extraordinary and unusual stress. Lois Butler is not an engineer and does not work at the power plant. She admits that she does not know much about the power plant, but she knows it was a dangerous job. Ms. Butler testified that in 1999 in the course of her employment she was assaulted by an offender and diagnosed with post-traumatic stress disorder. She saw a mental health professional for 30 days because she could not work without passing out. Ms. Butler testified that based on her experience and training on the peer action review team as well as her personal experience being traumatized following an assault by an inmate she believes that an employee similar to Mr. Shipley would have found the events of March 17, 2010 to be unusually stressful. Ms. Butler did not offer testimony regarding whether the events leading up to March 17, 2010 would cause extraordinary and unusual stress. As stated before, I do not find Ms. Butler’s recollection of the events of March 17, 2010 to be credible, therefore to the extent her testimony was based on her own observations, I do not find her testimony credible. Further, I find that Ms. Butler is not a reasonable similar employee. She does not work at the power plant and admitted she does not know much about it. I further find that there is no evidence to conclude that she has knowledge of the stress experienced by a power plant engineer. I also find that her trauma from being assaulted by an inmate is not relevant to whether the stress experienced by Employee on March 17, 2010 was extraordinary and unusual. Therefore, I do not find her opinion persuasive.

Employee also offered the testimony of Parks Long, who in response to Employee’s counsel asking if the stress that Mr. Brand caused was “unusual” or “higher than normal,” he testified that the stress became worse when Mr. Brand started working because Mr. Brand decided to be in the power plant as opposed to having an office outside the power plant and he took Employee’s desk. Mr. Long testified that the employees were unable to have meetings in Employee’s office because Mr. Brand would disagree with what they discussed doing and Mr. Brand would contradict Employee during meetings. Mr. Long testified that Mr. Brand would disagree with Employee in front of other employees. I am not convinced the events that Mr. Long describes as being stressful (a supervisor attending a meeting, a supervisor disagreeing with lower level management, or giving directives that employees disagree with) rise to the level of extraordinary and unusual stress. His testimony establishes that this was a stressor shared by all the power plant employees. Whether or not Employee and his subordinate stationary engineers’ disagreements with Mr. Brand’s directives were warranted, I find that those disagreements and Mr. Brand’s presence at employee meetings do not amount to extraordinary and unusual stress.

It is clear from their testimony that both Mr. Long and Employee believed their knowledge and experience as engineers to be superior to upper level management, including both Mr. Henson and Mr. Brand. It is also clear that both Mr. Long and Employee believed that they knew how to perform their jobs better than upper level management and found interference from upper level management to be stressful. However, I do not find, based on the evidence presented, that these struggles with upper management (including Mr. Brand giving instructions to the night shift; issues with maintenance of equipment, issues over the quality of fuel, etc.) rise to the level of extraordinary and unusual stress.
As for the allegations of verbal abuse, Employee’s testimony was generalized and non-specific with the exception of the incident on March 17, 2010, which will be addressed below. The allegations are that Mr. Brand criticized him constantly, told him he did not know what he was doing, and yelled and screamed at him whenever they spoke. It is unclear whether these allegations were Employee’s perceptions or actual events. Employee did not provide any context or examples of these allegations and the witness testimony was equally non-specific. Without a clear description of actual events, it is difficult for this fact-finder to evaluate these interactions by the objective standard set forth in the statute. I find these allegations lack the specificity necessary to objectively evaluate the level of work stress. Although Dr. Sky offered his opinion that anybody would have been stressed out extraordinarily and unusually by a supervisor yelling, belittling and humiliating him, he admitted on cross-examination that Employee did not give him specific examples of these events and he did not review any of the depositions of the various witnesses in this case as part of his evaluation. Dr. Sky did not offer any testimony regarding comparable stress levels of a similarly situated power plant manager or other similarly situated employee and I find that his opinion does not satisfy the standard set forth in Section 287.060.8 RSMo.

Employee did provide a specific allegation of verbal abuse in his written statement following the March 17, 2010 incident. However, that interaction was preceded by an event wherein Employee himself had raised his voice to Mr. Pfuehler, used expletives, and had given instructions to Mr. Pfuehler that both Mr. Brand and Mr. Pfuehler agreed were dangerous. Further, Employee’s written statement of April 17, 2010 confirms that he acted insubordinate by ignoring Mr. Brand’s directive to leave the biomass alone and instead intended to shut it down despite the identified danger. I find that the interaction that took place between Mr. Brand and Employee on the morning of March 17, 2010 stemmed from a work evaluation performed in good faith based on the events of March 16, 2010. I find it more likely true than not true that Mr. Brand was brash in his dealing with Employee that day. I find that subjectively speaking, Employee reacted to Mr. Brand’s criticisms that morning with a high level of stress. But considering the circumstances as a whole, I find Employee did not meet his burden of proof that his mental injury arose out of and in the course of his employment.

I further find Dr. Jarvis’s testimony and opinions to be more credible and persuasive than the testimony and opinions of Dr. Sky and Dr. Cohen. Specifically, I find that Employee more likely than not suffers from an Adjustment Disorder and did not respond well to criticisms of his job performance. The evidence supports that Employee found his employment to be extremely stressful, however I cannot award benefits based on Employee’s subjective experience and perception that he was treated harshly by his supervisors. Despite my empathy for Employee and his current situation, I find that Employee did not meet the objective standard for proof that he was exposed to extraordinary and unusual work stress compared to other power plant managers or other similarly situated employees.

Physical Injury-Stroke

Employee argues that his stroke on November 17, 2010 was caused by prolonged stress at work. Employee resigned from his employment effective May 14, 2010, therefore the stroke
occurred approximately six months after his employment ended. Employee provides the testimony of Dr. Cohen, who believes Employee's unrelenting work stress was the prevailing factor in causing his stroke. Dr. Cohen acknowledged on cross-examination that Employee had other risk factors for stroke including a history of smoking and high cholesterol. But, he didn't address those factors in his report and instead testified that it's a slow process for the stress to cause occlusion of the blood vessels, therefore the time frame in which it happened was not unexpected. Employer-Insurer did not offer any contrary evidence other than the testimony of Dr. Jarvis, their psychiatric expert, who testified that Employee had other more likely risk factors such as tobacco use, his weight, and metabolic profile. I am not persuaded by Dr. Cohen's testimony that Employee's work-related stress was the prevailing factor in causing a stroke that occurred six months after Employee resigned from his employment. In the absence of further medical explanation in support of Dr. Cohen's opinion, I do not find his opinion credible. There are far too many variables that can occur in a six month period and I find Dr. Cohen's opinion to be speculative.

Conclusion

Applying an objective standard, I find that Employee did not meet his burden of proof that the actual events described by Employee, considered alone or collectively, rise to the level of extraordinary and unusual stress.

I further find Employee did not meet his burden of proof that his work-related stress was the prevailing factor in causing his stroke six months after he resigned from his employment.

Having found Employee did not sustain a mental stress injury or a stroke that arose out of and in the course of employment, all other issues are moot. The claim against the Second Injury Fund is denied.

The original hearing was conducted by Administrative Law Judge Amy L. Young on April 1, 2019. The Award [including the findings of fact and rulings of law relating to the issues presented], has been written by Ms. Young based upon the evidence adduced at the hearing and in conformity with the statutory requirements of the Workers' Compensation Law. Due to a change in circumstance, while Ms. Young continues to be employed by the Division, she is unable to sign the Award as an Administrative Law Judge. The Division must proceed with the distribution of the written Award to the parties within the statutorily prescribed timelines, and therefore, I am signing this Award as the Chief Administrative Law Judge of the Cape Girardeau Adjudication Office.

I certify that on 7-2-19, I delivered a copy of the foregoing award to the parties to the case. A complete record of the method of delivery and date of service upon each party is retained with the executed award in the Division's case file.

By

Lawrence C. Kasten
Chief Administrative Law Judge
Division of Workers' Compensation

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