

NEW JERSEY DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION
ESSEX COUNTY DISTRICT
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Claim Petition Nos. 1999-4111, 1999-25706, 1999-25747, 2001-14293, 2002-40107, 2002-40115, 2002-40119, 2002-40120

[PETITIONER],
Petitioner

vs.

DECISION

CITY OF NEWARK
Respondent

BEFORE:
HONORABLE SUE PAI YANG
Judge of Compensation

APPEARANCES:
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ISSUES

[Petitioner], an employee of the City of Newark since 1977, filed four traumatic and four occupational claim petitions for injuries, which have been consolidated for trial. Two claim

petitions allege injury to her right hand. The first, Claim Petition Number 1999-4111, is an admitted accident for physical and psychiatric injuries when Phillip Spears, a difficult employee Ms [Petitioner] supervised, threw a chair at some peddlers but hit petitioner when she tried to intervene. The second, CP 1999-25706, is a denied occupational disability for repetitive stress.

The remaining six claim petitions were all denied psychiatric claims during the period of time Darryl Alton Matthews supervised Ms. [Petitioner]. With the support of his supervisor, Marshall Cooper, Mr. Matthews' alleged abusive manner and retaliatory actions created a hostile environment in which Ms [Petitioner] became a victim, resulting in her first psychiatric treatments and hospitalization. All of these claims were denied notwithstanding the fact that the respondent's two psychiatrists found Ms [Petitioner]'s psychiatric disability to be work related. Not only did respondent's Board Certified psychiatrist, Dr. Flicker causally relate Ms [Petitioner]'s psychiatric disability, but in a letter to respondent in November 23, 1998, after Ms [Petitioner] underwent her first psychiatric treatment but before her psychiatric hospitalization the following year, he strongly advised respondent to transfer Ms [Petitioner] from the atmosphere of her present assignment to another unit believing, "it is quite probable she could adapt but that where she is now, she is somewhat overwhelmed and that if she continues in the position she presently occupies, it is quite likely that she will end up with a disability retirement, which will offer nothing to the city taxpayer." Respondent failed to heed its own doctor's advice. In short, all of the psychiatrists agree that not only does Ms [Petitioner] now suffer from major depressive disorder, but furthermore, all of her cumulative psychiatric disabilities are work related.

The three occupational stress claims cover the period from 1997 to 2002 when she worked under Mr. Matthews. CP 1999-25747 is for extreme stress from 1997 to March 1999;

CP 2001-14293 is for stress from August 1999 to the date of filing of the claim on April 27, 2001 and CP 2002-40120 is for stress from April 2001 to the date of filing of the claim on December 15, 2002. Ms [Petitioner] did not file a claim for the period between April 1999 to July 1999 because she was assigned another job under the supervision of Pablo Fonseca and was not subjected to the stress of her primary assignment during the 1998 to 2002 period. By 2003 both Mr. Matthews and Mr. Cooper were removed from their positions.

The three traumatic claims are also during the period she was under the supervision of Mr. Matthews. CP 2002-40107 refers to Susan Gordon, a mentally disturbed former city employee who attempted to assault Ms [Petitioner] with a lead pipe; CP 2002-40115 refers to Raheem Durant, a violent street peddler who threatened to kill her and CP 2002-40119 refers to the night she was trapped alone in an elevator.

ANALYSIS OF EVIDENCE

A composite of Ms [Petitioner]'s profile is as follows: She was born in Dominican Republic on May 21, 1942. She stated that she was born a Jew as was her mother, grandmother and great-grandmother. At the age of seven her mother sent her to a convent in Quebec, Canada so that she could get a better education. She left the convent after seven years when her mother could no longer pay for her stay. While at the convent, she testified that she felt lonely but not abused. She attended school until the second year of college. She speaks six languages and speaks English without any foreign accent. She has five children in their 20's and 30's. Her parents are alive and she had seven siblings, one was deceased.

A background and a composite of the political climate where Ms. [Petitioner] worked from 1998 to 2002 and her duties are as follows: Ms. [Petitioner] commenced her employment

with the City of Newark in 1977. In 1987 she and Pablo Fonseca were both hired at the same time to be Code Enforcement Officers. In 1991 Mr. Fonseca became Chief Code Enforcement Officer and supervised Ms. [Petitioner] until June 1999. However, from 1994 to 1995 she held a political appointment in the Deputy Mayor's office helping constituents and enjoyed the job immensely.

Sometime before 1998, Ms [Petitioner] became a Supervisor Code Enforcement Officer. Mr. Fonseca and Ms [Petitioner] both worked under Marshall Cooper, the Director of the Department of Neighborhood Services. Around 1999 Mr. Fonseca and Ms [Petitioner] both supported Hector Corchatl as a District 1 Freeholder candidate. Mr. Fonseca was the treasurer for the candidate and Ms. [Petitioner] worked on the campaign.

Another employee Mr. Darryl Alton Matthews began working as a Code Enforcement Officer under Mr. Fonseca in 1996 or 1997. Within two years, a new title was created for Mr. Matthews by Director Cooper wherein Mr. Matthews had supervisory duties. Calvin West, an aide to Mayor Sharpe James supported Mr. Matthews for this politically appointed job. In the beginning of the Freeholder campaign in 1999, Mr. Matthews supported Mr. Corchatl but towards the end of the campaign, he switched his support to Mr. Martinez. By December 1999, Mr. Fonseca became an aide to Newark City Councilman Cory Booker.

Mr. Fonseca testified that he supervised Ms [Petitioner] for nine or ten years and found her to be an honest, good employee and never had to discipline her. The day after Mr. Corchatl's election loss, Mr. Fonseca was brought up on charges for failure to perform his duties, not disclosing that he was the treasurer of the campaign etc. He sought an administrative disciplinary hearing in City Hall and was found guilty of all charges. He was then demoted from Chief to Supervising Code Enforcement Officer, suspended 43 days and given a \$30,000 pay cut.

Thereafter, he appealed to the Office of Administrative Law. One and one-half years later, all the charges were dismissed against him. As a result of that proceeding, there were indictments handed down against Darryl Matthews and Kevin Wavers for falsification of legal documents. Mr. Fonseca owned a piece of property in the City of Newark and these two men falsified inspection reports and summonses and issued them against Mr. Fonseca and he had to testify before the grand jury against Mr. Matthews.

After the charges were brought against Mr. Fonseca in June of 1999, the working environment became extremely hostile. Mr. Fonseca testified to constant harassment. Every move he made, he was watched. Anyone who had a relationship with Mr. Fonseca after he was demoted also was harassed, including Ms. [Petitioner].

In the Spring of 1998 Darryl Alton Matthews became manager and became Ms [Petitioner]'s direct supervisor for the Division of Neighborhood Services, Inspections and Enforcement. He created a hostile work environment and supervised her in that environment until August 2002 when both he and Mr. Cooper were removed from their jobs. By September 2002, a new director came and appointed Mr. Thomas McDonald as Acting Manager of the Division of Inspection and Enforcement. He supervised Ms. [Petitioner] from September 2002 to October 2003 and found her to be a good employee with a good attendance record. The stress level for Ms [Petitioner] was then greatly reduced; however, the injury to her psychic was already permanent.

Ms [Petitioner], as a Supervisor Code Enforcement Officer is in charge of supervising the East Ward of the City of Newark and the Code Enforcement Officers that worked in that ward. This includes the whole downtown area from Martin Luther King Boulevard to the Airport and from the Elizabeth line to the Turnpike going towards Jersey City. She supervised six inspectors

who went out in the field doing inspections of constituent complains of ordinance violations including but not limited to sanitation, housing, zoning, garbage and debris licenses. Her responsibilities include inspecting city buildings and teaching the four new inspectors to conduct inspections and write reports. She issues citations, supervises building inspections, prepares inspection reports, and supervises the preparation of such reports by inspectors under her direction. She has also been responsible for gathering facts, sending out notices to code violators, initiating court actions, supervising prosecutions, and testifying against code violators. She is out in the field about four hours a day.

**CP 1999-4111 Traumatic Right Hand Injury on 6/18/98 and
CP 1999-25706 Occupational Injuries to Right Wrist, Hand and Arm 1987 to 8/11/99**

With regard to Ms [Petitioner]'s accidental injury to her hand, she testified that on June 18, 1998, an inspector named Phillip Spears whom she supervised, had an altercation with two vendors because he took away their carts & merchandize. While Ms [Petitioner] was trying to stop the fight, Mr. Spears threw a large chair with metal casings at the vendors but it flew towards Ms [Petitioner]'s face. She raised her right arm to protect herself, and the chair struck her arm. The police came and arrested Mr. Spears because he had an outstanding arrest warrant against him. Ms [Petitioner] found him a difficult person to supervise because he would not follow her directions and his work was not satisfactory to her. This incident caused Ms [Petitioner] to hyperventilate and she was taken to Columbus Hospital. After an EKG was performed, she was discharged that same evening from the hospital.

With regard to her occupational hand injury, she testified that her job requires her to write a lot of reports and citations etc. She testified that in the late 1980's and early 1990's she wrote more and typed less. Now she types more and writes less because every inspector now has a palm computer which can be taken in the field.

Beginning in 1996, Ms [Petitioner] was experiencing pain and weakness in her wrists and began treatment by respondent's doctors. This included Dr. Patel, Dr. Calvin Matthews and Dr. Staggards at University Clinical and Dr. Lee at St. James Hospital. On May 29, 1996 after an EMG test confirmed that she has right hand carpal tunnel syndrome, treatment commenced. Her treatment included cortisone injections, physical therapy, application of hot wax and anti-inflammatory medication. Ms [Petitioner] was also provided with a splint and used "silly putty" to exercise her hand. Notwithstanding this treatment, she testified that her right hand has gotten worse. She has developed a cyst inside the joint, which I observed as a bump, the size of a marble on top of her right wrist.

Ms [Petitioner] testified that when she does not take anti-inflammatory medicine, her right arm and wrist become painful and "I can't write good. I try not to write 'cause it hurts." She feels a sting sensation on top of her right wrist. She has lost strength in her dominant right hand and has trouble lifting heavy objects. She claims her handwriting has deteriorated. She testified that she prefers typing to writing and types every day. However her typing speed has diminished.

CP 1999-25747 Occupational Extreme Stress from 11/97 to 3/99 and

CP 2001-14293 Occupational Stress from 8/99 to 4/27/01

CP 2002-41120 Occupational Psychiatric Injuries from 4/01 to date of filing on 12/15/02

Darryl Alton Matthews was Ms [Petitioner]'s immediate supervisor whom she called her manager from June 1998 to August 2002. He replaced Pablo Fonseca whom Ms [Petitioner] considered a friend and worked well under him without any problems. Under Mr. Matthews, petitioner became a victim of a hostile work environment and political retaliation. For example, on September 11, 1998, Mr. Matthews led a Code Status meeting attended by all four inspection squads totaling 30 to 40 officers and code enforcement supervisors where supervisors were held

accountable for not only their work, but the work of their officers. Two of the people Mr. Matthews assigned Ms [Petitioner] to train; namely, Phillip Spears and Lonnie Spearman were difficult to manage because they would not conform to her standards. When it came time for Ms [Petitioner] to give her report, Mr. Matthews would not allow her to do so. Instead, he screamed and yelled at her, told her she was incompetent and generally humiliated her in front of her peers. Mr. Matthews did not permit her to speak in her own defense when she made an attempt to do so. Ms [Petitioner] testified that she was upset, started to ventilate and left the room. Her lips felt numb and her left side was numb down to her toes. A police officer carried her to the fire department where she was given oxygen and then taken by ambulance to Columbus Hospital.

The Columbus Hospital records reveal that Ms [Petitioner] had chest pain, cramps, nausea, vomiting and difficulty breathing after she was “verbally attacked” by Mr. Matthews. She was diagnosed with chest wall syndrome, hyperventilation, and stress reaction. She was given oxygen, instructed to get bed rest and medication and then was discharged that night. She was referred to the City of Newark doctor, Dr. Patel. Dr. Patel then referred her to Dr. Gomez-Rivera, a psychiatrist. He treated her with Prozac and other medication. His note of September 16, 1998 stated, “To Whom It May Concern: [Petitioner] is under my care due to severe depression and anxiety reaction. She’s unable to work at least 30 to 45 days.”

When Ms [Petitioner] returned to work on October 16, 1998, the hostile work environment intensified and escalated to political retaliation. For example, on the first day Ms [Petitioner] returned to work, no one would talk to her and she found a hand-written note on her desk stating, “Welcome back to hell!” She testified that note “freaked me out.” Mr. Matthews would not speak to her and would not tell her what her light duty would be but gave her supervisory responsibilities to another code enforcement officer. She testified, “I felt idle. ...I

really felt stressed because I really had no direction. She had to write a memo to Mr. Matthews to find out what her responsibilities were. By the summer of 1999 she was given some tasks. She then asked for a meeting with Mr. Matthews and her union representative, Mr. Nance. That meeting took place near the end of May 2000 wherein she was placed on light duty. She was ordered not to use the computer but was never given a reason; therefore, she had to hand-write her reports. She was not allowed to use the computer until she moved to 44 Mount Prospect, which she believes to be around March 2002. Petitioner was also suspended for one day for something that happened during the period between September 11 and October 1998 when she was not working. She filed a grievance with Mr. James Nance, Vice President of the union but the issue was never resolved because Mr. Nance was himself suspended. At the time of testimony, Mr. Nance was in a hospital in Kenya, Africa. Needless to say, these egregious acts caused Ms [Petitioner] to feel insecure about her job, a job she has held for over 17 years.

On October 19, 1999, soon after Mr. Fonseca was demoted as an act of political retaliation, Ana Roman, the secretary to Mr. Matthews told Ms [Petitioner] that he had ordered her to prepare papers suspending petitioner for six months for alleged incompetence. Another employee, Bedsaida, took Ms [Petitioner] into Mr. Matthews' office and showed her the papers in a basket waiting for his signature regarding six charges against Ms [Petitioner] including neglect of duty. She stated, "It really freaked me out." This document was produced without first following personnel policies and procedures pursuant to the City of Newark policies and the union contract. The disciplinary policy in effect in October 1999 required that alleged misconduct initially be brought to an employee's attention at a corrective conference. At the conference the employee could address and/or correct the alleged problem and thus avoid any further disciplinary action. If an agreement could not be reached the respondent's procedure

called for a formal letter of reprimand. If the misconduct continued, the employee would be subject to a short suspension of up to five days. If at any stage the alleged misconduct is corrected, all disciplinary action would stop. For instances, she was never given a verbal warning of what she was doing wrong, nor a corrective conference advising her what she needs to improve. Normal suspensions would be from one to five days, at most 20 days. She thought a 30-day suspension would be extreme and had never heard of six months suspension.

From the above, it is clear that Mr. Matthews violated the respondent's own protocol by issuing a six-month without using the progressive discipline called for by the respondent's own disciplinary regulations.

Upon seeing the suspension notice, Ms [Petitioner] became very upset and went home for about 20 minutes and then went to see Dr. Gomez-Rivera. He advised her to go home and relax. She went home and tried to commit suicide. She attempted to take all her Naprosyn pills and managed to take some of them. She then tried to see Dr. Gomez-Rivera who was not in the office. By phone he told her to go to the emergency room of the St. James Hospital where he was Chief of Staff of Psychiatry. The hospital admitted her for about two weeks where she was placed on hourly watch and given psychotherapy. She was given medication to calm her down. She was not allowed visitors.

After discharge, she continued to see Dr. Gomez-Rivera once a week until the beginning of 2003. She was out of work until May 2000 and never received sick time, vacation time or temporary disability. She did not apply for State Temporary Disability because she heard she did not qualify. During this period she felt despair. She smoked a lot, felt a sense of uselessness.

Mr. George Griffith testified on behalf of petitioner. He retired in April 30, 2003. He worked as a code enforcement officer from 1994 to April 2003. He testified that he thought Ms [Petitioner]'s work was good and she was a very friendly, helpful person.

Mr. Griffith corroborated Ms [Petitioner]'s testimony about the atmosphere generated by Mr. Matthews at the code status meetings. He said he dreaded the meetings and answered why by saying:

“Because you never knew what was going to happen and sometimes you would be criticized for something that you had no control over. And then the tone of voice of it, it was, many times it was like, I don’t know, it’s like a hostile environment that was created. And you had a little apprehension when you came to each meeting because you never knew. Sometimes it would be very friendly and then sometimes it would be, you know, very harsh.

With reference to Ms [Petitioner], he remembered that on or about September 11, 1998, Mr. Matthews “came down on her pretty hard that day.”

Well, my recollection as his tone of voice and his criticism of her and the way that he criticized her. When she like spoke back to defend herself, he would like cut her off. But this was his usual way of doing things. When you came back to defend yourself a lot of times he would just cut you off and not allow you to say anything and then get back on track with your criticism.

...Well, he was loud and dramatic. Like, I don’t know, more so than a minister would be preaching his point down. He was very dramatic with his criticism, with hand gestures and shouting and head gestures. But that was the way that he did. He did it quite often.

Mr. Griffith also corroborated Ms [Petitioner]'s testimony concerning the effect that the unwarranted and unjustified verbal barrages had on her. He noticed that she looked very tired, weary, and flushed, like she was “put through the mill.”

Notwithstanding all that Ms [Petitioner] had to endure as outlined above, in October 2000 she returned to work as a full time Code Enforcement Supervisor. Unfortunately, Ms [Petitioner] was the victim of several incidents which aggravated and exacerbated her depression and anxiety as described below.

CP 2002-40107 Traumatic Psychiatric Injuries on 4/16/01, by Susan Gordon, a Mentally Disturbed Former City Employee Who Stalked and Attempted to Assault Ms [Petitioner] with a Lead Pipe.

Petitioner testified that Susan Gordon, a homeless former City of Newark employee, is someone she sees almost daily around City Hall but whom she otherwise did not know. Ms Gordon appeared to be in her 50's. Ms [Petitioner] did not take her seriously until Ms. Gordon began stalking her and following her to the City Hall bathroom. For no reason known to Ms [Petitioner], Ms Gordon accused her of stealing her husband but Ms [Petitioner] did not know her husband.

Two incidences involving Ms Gordon resulted in police reports. The first was on October 17, 2000 when Ms. Gordon accosted Ms [Petitioner] in the downtown area and threatened to cut her. A second police report, made on April 16, 2001 is the subject of this claim. That day, Ms. Gordon approached Ms [Petitioner] from behind following her to the basement entrance of City Hall. She attempted to assault petitioner with a lead pipe about two feet long and two inches in diameter. Fortunately, a guard saw her lift the pipe and grabbed it out of her hand before she could strike Ms [Petitioner]. However, even under restraint, Ms Gordon screamed at Ms [Petitioner] using a lot of obscenities and saying, I'm going to get you bitch." Regrettably, Ms [Petitioner] continues to see Ms Gordon when she is at City Hall.

CP 2002-40115 Traumatic Psychiatric Injuries on 6/21/01 from Raheem Durant, a Violent Street Peddler Who Threatened to Kill Ms [Petitioner]

Ms [Petitioner] testified that she saw Raheem Durant a/k/a Raheem Davis almost every day because he was a peddler by Broad and Bradford Streets, despite the fact that it is not an official peddler spot. Storeowners in the area complain about him. He has two or three carts and crates and peddles a variety of things including pornographic items, T-shirts and bootleg DVDs

and CDs. It was her duty to make sure peddlers is in compliance with Title 8 of the ordinance. She checks whether peddlers were licensed and knew that Mr. Durant was not licensed.

According to all the treating doctors and medical evaluators, the incident that is the basis of this claim occurring on June 21, 2001 aggravated Ms [Petitioner] psychiatric condition. Mr. Raheem Durant a/k/a Raheem Davis, became violent and threatened to kill Ms [Petitioner] as he was being arrested for violating city codes. Mr. Durant became so violent that three police were required to use mace to subdue him. During this incident Mr. Durant threatened Ms [Petitioner] who issued the summons saying, “When I get out of jail, I’m coming back and I’m going to kill you.” And the threats continued even after he was read his Miranda warnings. As with Ms. Gordon, Ms [Petitioner] continues to see Mr. Durant while she is performing her duties. She testified that she felt nervous whenever she is near him and tries not to have eye contact with him nor address him. She testified to harassments made by Mr. Durant when she was showing another supervisor, Tracy Oliver, the area where she was just assigned there. On another occasion, Ms [Petitioner] had to appear in court to testify against Mr. Durant but he tried to persuade her to drop the case against him for terroristic threats.

Mr. Thomas McDonald testified on behalf on respondent. He corroborated the testimony of Ms [Petitioner] that Raheem Durant was threatening, and used abusive language against her and she was very upset about it. He acknowledged that Ms [Petitioner] had testified at an administrative hearing against Mr. Durant wherein he was suspended and lost his license for about 90 days. He also testified to the fact that Mr. Durant had threatened him and other employees also. He also corroborated Ms [Petitioner]’s testimony that she had been trapped in the elevator and was very frightened by that experience which is the subject of the last claim as set forth below.

**CP 2002-40119: Traumatic Psychiatric Injuries on 12/4/01,
From Elevator That Kept Ms [Petitioner] Locked in it Alone at Night**

Petitioner testified that on or about the evening of December 4, 2001 she was the last to leave her floor at work and she got stuck in between floors in the elevator by herself. She testified that she was in the elevator about 45 minutes and spent 20 minutes calling for help before she was rescued by the fire department. The elevator had light but she thought she was going to die and was going to be asphyxiated. The ambulance came, gave her oxygen and took her to Columbus Hospital. She told the doctors at the hospital that she had difficulty breathing, chest pain, nausea, and a throbbing headache. The records also reveal that she was hyperventilating and anxious. She was monitored and released that night.

She saw Dr. Patel at Universal Clinic who recommended that she stay out of work a couple of days. She returned to work on December 7, 2001. She then went to see her own doctor, Dr. Thomas Ortiz because she was stressed and her diabetes was out of control. She testified that she received medication to calm her down. Dr. Ortiz excused her from work from January 5, 2002 to February 18, 2002.

Petitioner testified that she tries not to use an elevator even though new elevators were installed as a result of her situation. She testified that the heart of the inspections and enforcements is on the fourth floor of 31 Green Street. That is where the complaints come in and where they are disseminated and where she makes copies. In the last three months when she's had to go to the fourth floor, she walks up the stairs. In the last month, she has walked up about four times. She testified that walking up was difficult for her because she has three herniated

discs and congestive heart failure. She testified that she was diagnosed with congestive heart failure around 1994 when she was working at the Mayor's office and she was out four months because of it.

After the elevator incident, she was prescribed multiple drugs. Dr. Chandrakant Patel prescribed Xanax on December 12, 2001 and Dr. Thomas Ortiz prescribed 11 drugs on December 17, 2001. She testified that she was given the following drugs and still takes them everyday:

1. Xanax to calm her nerves
 2. Amaryl, 4 mg for diabetes
 3. Actos, 30 mg., helps with water build-up and makes her heart pump better
 4. K-Dur 10 MEQ
 5. Ambien, 10 mg. Sleep medication
 6. Bumex, 1 mg., for urinary infection
 7. Proventil HFA 90 MCG for her asthma which she pumps to alleviate the symptoms.
- She testified that, "When I can't breathe, that's when my attacks comes on.
8. Glucosamine with Chondroitin,
 9. Prozac, 20 mg, an anti-anxiety, anti-depressant medication for her depression
 10. OS-CAL 500, 500 mg.
 11. Zestril, 20 mg
 12. Celebrex, 200 mg., for pain.
 13. In addition she testified that she takes two other medications given by Dr. Rivera but she cannot remember the names. Dr. Wong testified that she was on Mellaril, prescribed for its sedative effect, and Zoloft an anti-depressant, anti-anxiety medication. Dr. Tuchin's report of February 10, 2003 noted that she also took Glucophage for her diabetes and Pecid and Ditropan by prescription.

PETITIONER'S PRESENT CONDITION

In reply to her attorney's question how she now feels mentally when she is working, at home and trying to sleep, she testified on August 26, 2003 that she has a hard time sleeping and uses sleeping pills. She has a short patience span and gets nervous over any little thing. She testified, "So, I'm always, like, lookin' behind me all the time. When I walk the streets, I have to look all the time because you don't know who's gonna come behind you and Susie Gordon

taught me that. She's still out there." Infrequently, she still has suicidal thoughts. She gets depressed. She gets desperate and feels she doesn't want to live anymore. To stop thinking this way, she isolates herself in her home and locks herself up. She does not answer the phone and does not want to talk to anyone. Then she takes her sleeping pills and goes to sleep.

She testified that she gets overanxious. She's always afraid for some reason. She's afraid of doing the wrong thing or not have a report in on time etc. She testified that she felt this way when she was moved from desk to desk. Around March 2002 when she just moved to 31 Green Street, she was moved from desk to desk five times in one month and was feeling helplessness. However, she recently went back to 44 Mount Prospect and has a desk and feel useful again.

Petitioner testified that she used to socialize a lot with co-workers and attended many political functions. Since her depression, she now has stopped socializing. Whenever she feels anxious, it shows up in a physical symptom of hyperventilation where she finds it hard to breathe. She feels this way when she is in a hurry, when she is going up the stairs, when she is in a hurry anticipating something. In the last three months, she said it happened about four times and they were all at work.

She testified that she hyperventilates when she sees Raheem Davis a/k/a Raheem Durant. Raheem was suspended for a month for violating the Title 8 ordinance. At that hearing Ms [Petitioner] was called as a witness. Now Raheem accuses her of harassing him. He just returned back on the street two weeks ago and Ms [Petitioner] is fearful of him. She testified that last Thursday she had to write him up again for being in violation of the ordinance but she does not look at him because it affects her physiologically. She is glad that she now rides in a

police car, making it easier for her to endure her duties. She tours the whole downtown area everyday.

Petitioner testified that her memory does not feel the same. She has a problem remembering certain things and she becomes disorganized.

TESTIMONY OF DOCTORS

Dr. Cheryl M. Wong, M.D., a Diplomate of the Psychiatry, American Board of Psychiatry and Neurology testified on behalf of petitioner. She examined Ms [Petitioner] on March 18, 2002. With regard to petitioner's arm/hand, Dr. Wong found weakness of the abductor pollicis brevis, which are muscles in the hand. Her Tinel's sign was positive which means when the doctor compressed the wrist area where the median nerve passes through the tunnel, petitioner felt symptoms of numbness and tingling in her fingers and her thumb. She noted the positive 1996 EMG finding for her carpal tunnel syndrome. She also noted a ganglion cyst, which can occur either through repetitive use or through direct trauma to any area, especially in the wrist area. It is an outgrowth pocketing of the ganglion region inside of one of the soft tissues regions with an outgrowth and collection of fluid and sometimes if it gets too large, it can compress on the structures beneath. As a result of this examination, Dr. Wong found a 25 percent permanent disability of the right hand due to right carpal syndrome related to occupational function and the trauma to her wrist.

With regard to the psychiatric examination, Dr. Wong testified that Ms [Petitioner] told her she was feeling very depressed all the time; and noted that she was overweight. She had poor eye contact and she was extremely tearful throughout the interview. She had significant

avoidance about talking about the incidents where her life was threatened such as threats by the peddler, stalked by the homeless woman and when she was trapped in the elevator.

Dr. Wong testified to an actual panic attack during the interview when Ms [Petitioner] was relating the stalking incident. She said a panic attack is:

a constellation of symptoms where you become diaphoretic, that's sweaty, you get palpitations, shortness of breath, sometimes you feel like a choking sensation. You can feel dizzy or feel like you are going to pass out. Hot and cold flashes. Thoughts that you're going to die. Just jittery and anxious. Problems focusing.

Ms [Petitioner]'s panic attack included shortness of breath, choking, diaphoresis and becoming dizzy with hot flashes. Dr. Wong also testified to Ms [Petitioner] having mild dissociative episodes during the interview and when she talked about the traumatic episodes. Petitioner started to disconnect from the doctor. She lost her relatedness. Her attention was not there. She would be staring out and then her mind was somewhere else. Dr Wong testified that dissociation is basically the feeling that your mind and your body are disconnecting and it's not uncommon when someone who has been traumatized with post-traumatic stress disorder, when they are recounting the traumatic episode. When Ms [Petitioner] did talk about the incidences she became extremely upset. In the opinion of Dr. Wong, petitioner's post-traumatic stress disorder is permanent due primarily to the length of time it has already lasted. Generally, Dr. Wong stated, if it does not go in remission after the first year, chances are that it is permanent. Ms [Petitioner]'s has lasted several years to date.

Dr. Wong testified that Ms [Petitioner] had passive suicidal ideation and wanted to die. She did have active suicidal ideation in that she felt it would be better for her to be dead than alive because she was in so much psychological pain. The petitioner's depressed mood occurred nearly everyday. She felt sad and empty, observed by others, and was tearful. However her insight and judgment were intact. Her cognition was intact. She had difficulties following the

discussion at times because she became very anxious and nervous. However, overall she was coherent and logical.

Dr. Wong further found petitioner to have marked diminished interest or pleasure in all activities most of the day and nearly every day. She had insomnia, psychomotor retardation, fatigue, and loss of energy. The psychomotor retardation means she slowed down. She does not react as quickly. She feels like her body is in slow motion. Petitioner was feeling worthlessness, problems thinking, concentrating, and indecisiveness. She had recurrent thoughts of death, but without a plan. These symptoms were causing significant distress and impairment. The Beck Inventory Rating Scale for Depression, which is a self-report questionnaire that patients check off and then the doctor totals at the end. Petitioner had a rating of 30, which indicated significant depression. Normal would be 10 or 12 and below and the teens would indicate mild depression.

Dr. Wong also testified to recurrent unexpected panic attacks that she would have them several times a week making it difficult for her to work; that she had persistent concerns about having additional panic attacks and would worry about them. And there was a significant change in her behavior related to these panic attacks. She was nervous and anxious being in places or situations from which she felt she could not get out of a situation if she needed to, if she had one of these attacks. And because of this she would avoid doing things or going places because of worrying about having one of these panic attacks.

Dr. Wong found that she had experiences that were threats to her life and her physical integrity. Her own response to these traumas was intense fearfulness, helplessness and a feeling of horror. She had distressing recollections of the events. Bad dreams or nightmares with traumatic reliving of these events, with any triggers giving her extreme distress. She had

hypervigilance, she was on edge all the time waiting for something bad to happen all the time, checking.

Dr. Wong also diagnosed petitioner to have agoraphobia. It is being afraid to be in open spaces; in this case in situations where she could not escape easily if she were to get one of these. So she would avoid going to places where she would not feel safe, that she could get out and go home.

Dr. Wong testified that petitioner related to her that she had no prior history of drug or alcohol use or any prior psychiatric admissions. But especially of significance was that the two people who were arrested were now out of prison and back in the area where she works and she would see them and she would be in the vicinity and this would cause added stress on her as traumatic triggers.

Dr. Wong concluded that Ms [Petitioner] suffers from post-traumatic stress disorder, major depressive disorder, panic disorder with agoraphobia causally related to the work exposures with permanent psychiatric disability of 65 percent. (DSM4 296.20) (DSM4 300.21) (DSM4 309.81).

Dr. Edward Decter, an orthopedist, testified on behalf of respondent regarding petitioner's hand and found no disability. He evaluated Ms [Petitioner] on June 9, 2000. He found an occult ganglion of the right wrist, between the navicular and lunate bones on the dorsum of the right wrist attributable to the June 1998 incident. He noted that the ganglion is presently quiescent and benign but that ganglions has a tendency to exacerbate, and surgical removal may be required. Dr Decter denied that Ms [Petitioner] has right carpal tunnel syndrome, noting that treating records stated pain on the dorsum of the hand and wrist, and not the palmer aspect, which normally would be indicative of carpal tunnel syndrome. However, on

cross-examination, he admitted that he was unaware of the positive objective medical evidence from the EMG at the time of his examination of petitioner and furthermore, he had no records of doing a tincl test for carpal tunnel syndrome.

Allen Tuchin, M.D., board certified in adult psychiatry and a Fellow of the American Psychiatric Associates and a distinguished Life Fellow testified on behalf of respondent as the psychiatric expert. Dr. Tuchin examined petitioner on February 10, 2003. He testified that he spent between 45 and 60 minutes taking a history of her work-related accidents, as well as a job history; a medical history, psychiatric history and informed mental status examination. He noted that she had worked for the City of Newark for 25 years, 17 years in Code Enforcement.

Dr. Tuchin in review of petitioner's history admitted that Ms [Petitioner] has major depressive disorder but believed that it is currently in partial remission, as a result of the treatment that she is receiving, including medication. Dr. Tuchin concluded that petitioner has a permanent psychiatric disability of five percent of partial at this time causally related to her job stress. He testified that he did not state any percentage of disability in his report because he was not asked to and in his 30 years of practice he never does unless asked. He testified that he arrived at the apportionment of the multiple episodes as follows:

I think she had responded with depressive symptoms to multiple episodes during the course of her employment by the City of Newark. I think there were five different episodes, after which she complained about depression. So I would have to divide the overall disability equally among the five disabilities and say it's cumulative and give one percent disability for a total five percent partial total.

...Well, the basis is that my overall estimate of disability is five percent and I have no better way of apportioning it to the five different episodes then dividing it equally. There were five episodes.

Dr. Tuchin's five percent partial total disability rating was based in part on the diagnosis but it was largely based on her level of functionality or her degree of disability, not only the

diagnosis. He based her level of functionality on her activities, daily living, ability to go to work, her ability to present herself on time for appointments, present lists, arrange for transportation, hygiene, nutrition.

Dr. Tuchin gave the exact diagnosis criteria for post-traumatic stress disorder from the American Psychiatric Association as follows:

The current diagnosis for post-traumatic stress disorder required a person be exposed to a traumatic event which has both of the following elements. The person experienced, witnessed or was confronted with threatened death or serious physical injury or threat to the physical integrity itself. And the person responded by intense fear, helplessness or harm.

...Also the traumatic event may be re-experienced in one of five different ways, persistent avoidance to the stimuli associated with the trauma and numbing of general responsiveness occur in one of seven different way; that there be persistent symptoms of increased hyperarousal in one of five different ways that the symptoms be ongoing for more than a month; that she cause significant clinical stress or impairment in social, occupational or other important areas of function.

Dr. Tuchin at first testified that he disagreed with Dr. Wong and does not believe Ms [Petitioner] has post traumatic stress disorder primarily based on his evaluation of her. However, he admitted that he did not know all of the facts of Ms [Petitioner]'s cases. Some he learned only in the last two weeks before he testified and some he only learned the day of his testimony. When he was read the state of mind as testified by Ms [Petitioner], he agreed that she suffers from post-traumatic stress disorder when she sees Raheem Durant and her whole body goes into changes; when she passes the corner where Mr. Durant threatened her and affects her emotionally, and every time she passes that corner she looks for him and when she has dreams about violent incidents that happened in downtown Newark.

THE STATEMENT OF LAW

Ms [Petitioner] seeks all three forms of compensation available to her under the New Jersey Workers' Compensation Act for her injuries; namely, medical benefits, temporary disability benefits and permanent disability benefits. While all of her psychiatric claims were denied, her employer not only denied her temporarily disability benefits and some medical benefits but also determined she was not eligible for sick leave or ordinary disability payments for the periods she was out on psychiatric care.

In order for Ms [Petitioner] to receive temporary disability benefits and/or medical benefits retroactively, she must assert whether her injuries are traumatic or occupational in nature. Two different statutes with different standards of proof govern these two classes of injuries. In order for Ms [Petitioner] to receive permanent partial disability benefits, she must in addition prove permanent partial impairment. Ms [Petitioner]'s burdens of proof at each stage of her claims are by a fair preponderance of the evidence.

Ms [Petitioner]'s traumatic/accident claims, whether physical or psychiatric in nature, are covered under N.J.S.A. 34:15-7. That statute provides in relevant part:

When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of this article, compensation for personal injuries to, or for the death of, such employee by ***accident arising out of and in the course of employment*** shall be made by the employer without regard to the negligence of the employer...(emphasis added).

The **(1) arising out of** is related to the origin or cause of the accident. It must be established that the work was at least a contributing cause of the injury and that the risk of the occurrence was reasonably incident to the employment **(2) in the course of**, refers to the time, place, and circumstances of the accident in relation to the employment. Coleman v. Cycle Transformer Corp., 105 N.J. 285, 288 (1986); Zahner v. Pathmark Stores, Inc. 321 N.J. Super.

471, 476 (App. Div. 1999), Valdez v. Tri-State Furniture and Federated Department Stores, approved for publication January 12, 2005 (App. Div. 2005).

Ms [Petitioner]’s occupational disease claims for repetitive activity or exposures over a period of time is governed by N.J.S.A. 34:15-31. That statute in relevant part states:

a. For purpose of this article, the phrase “compensable occupational disease” shall include all diseases arising out of and in the course of employment, which are ***due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment.*** (emphasis added).

Thus, besides proving that her occupational disease “arose out of and in the course of employment” based on the same standards as for injuries caused by trauma or accident, Ms [Petitioner] must meet the following additional burdens of proof: In occupational claims of a physical nature, i.e., her carpal tunnel syndrome, the courts have interpreted it to mean a need for two additional elements of proof; namely, **(3) there be medical evidence that these work conditions were the material cause of the disability. (4) her injuries are objectively verified.**

For the subclass of occupational claims involving a mental nature, i.e., Ms [Petitioner]’s psychiatric disability, the Supreme Court in Goyden v. State Judiciary, 256 N.J. Super. 438 (App. Div. 1991) *aff’d o.b.* 128 N.J. 54 (1992). adopted the following test:

For a worker’s mental condition to be compensable, the working conditions must be stressful, viewed objectively, and the believable evidence must support a finding that the worker reacted to them as stressful. In addition, for a present-day claimant to succeed, the objectively stressful working conditions must be “peculiar” to the particular work place, and there must be objective evidence supporting a medical opinion of the resulting psychiatric disability,

Ms [Petitioner] is therefore required to meet the additional burden of proof to **(5) objectively verify stressful work conditions.**

For Ms [Petitioner] to be entitled to permanent disability benefits for both her traumatic/accidental and occupational injuries, she must meet the permanent partial impairment definition of N.J.S.A. 34:15-36. That statute in relevant part states:

“Disability permanent in quality and partial in character” means a permanent impairment caused by a compensable accident or compensable occupational disease, based upon *demonstrable objective medical evidence*, which *restricts the function of the body or of its members or organs*; included in the criteria which shall be considered shall be *whether there has been a lessening to a material degree of an employee’s working ability*. (emphasis added).

This statute has been held by our Supreme Court in Perez v. Pantasote 95 N.J. 105 (1984) to require proof of:

1. Demonstrable objective medical evidence of a functional restriction of the body, its members or organs; *PLUS*
2. Either a lessening to a material degree of working ability, or if not, whether there has been a disability in the broader sense of impairment in carrying on the ordinary pursuits of life.

Demonstrable objective medical evidence is a legal term peculiar to the New Jersey Workers’ Compensation Act, and is not a medical term normally used by physicians. The Supreme Court in Saunderlin v. E. I. DuPont Co., 102 N.J. 612 (1986) concluded that demonstrable objective medical evidence is required for both permanent partial physical as well as permanent partial psychiatric disability claims.

However, what constitutes demonstrable objective medical evidence differs between the two types of claims. While physical disability requires manifestations of physical symptoms, that becomes optional in psychiatric claims. For the latter, an independent professional medical judgment of the subjective statement of the patient is sufficient to meet that test. Nevertheless, the bear statement of the patient without an independent analysis by such means as the standards used in the Diagnostic and Statistical Manual of Mental Disorders published by the American

Psychiatric Association would be insufficient. The criteria of the 4th edition (1994), known as DSM4 were used by the experts in this case.

In interpreting *a lessening to a material degree of working ability*, once objective medical evidence has been found, Perez v. Capitol Ornamental, 288 N.J. Super. 359 (App. Div. 1996) instructs that in determining the value of the case, the impact of the injury to petitioner's ability to work must be considered. Where there has been a severe impact on work, such as the need for a career change or career loss, awards can be expected to be much higher than a comparable medical condition in a person who gets back to work.

In interpreting *impairment in carrying on the ordinary pursuits of life* once objective medical evidence has been found, Perez v. Monmouth Cable Vision, 278 N.J. Super. 275 (App. Div. 1994) instructs that subjective statements regarding activities that petitioner has curtailed or given up is sufficient proof. *Also see Akef v. BASF Corp.*, 305 N.J. Super. 333 (App. Div. 1997).

FINDINGS OF FACT AND APPLICATION OF LAW

Right Hand Disability

I find that Ms [Petitioner] has met her burden of proof that she suffers a permanent partial disability to her right hand due to repetitive stress and as a result of the accident of June 18, 1998. No medical expert definitively distinguished between Ms [Petitioner]'s traumatic and her occupational right hand disability. I find that she has met both standards of proof and will analyze it in terms of the higher occupational standard. Ms [Petitioner] suffers from the residuals of carpal tunnel syndrome (CTS), and a ganglion cyst causally related to her work.

I find Ms [Petitioner]'s testimony to be credible. She was articulating and related events clearly. I find her testimony to be truthful. No doctor alleged any symptom magnification regarding any of her complaints.

First, I find that Ms [Petitioner]'s residual disabilities to her right hand; namely, her CTS, and a ganglion cyst arose out of and in the course of her employment. She testified that for many years at work she wrote and typed reports and citations for up to four hours a day and often took reports home to finish. Respondent's own doctors diagnosed by objective medical evidence as shown by the EMG in 1996 that Ms [Petitioner] has CTS. Four of respondent's doctors treated her with cortisone injections, physical therapy, application of hot wax, anti-inflammatory medication, splint and the use of "Silly Putty" to exercise her hand. She complains of pain and stinging feelings in her right hand and arm. She has trouble typing and writing now. Ms [Petitioner]'s ganglion cyst is observable and may require future surgery.

I accept Dr. Wong's testimony that petitioner suffers from CTS and her problem is not limited to the dorsal aspect of her hand but also the palmer aspect. I note also that Dr. Wong found a positive tinell test while Dr. Decter's report was silent on such a crucial test he could have performed for CTS. I find that Dr. Decter was unaware of Ms. [Petitioner]'s positive EMG finding at the time of his examination of her and therefore did not look for such clues by way of a tinell test the doctors normally performance for such syndromes.

Dr. Wong testified that Ms [Petitioner] is complaining of right arm pain and stiffness that radiated into her right shoulder and down her right arm into her fingers with numbness and pins and needles sensation, loss of strength and inability to grasp or hold objects securely, and she's right-handed. She tested the muscle around the thumb area for muscle strength and found

weakness of the abductor pollicis brevis. She noted a ganglion cyst which she stated could occur either through repetitive use or through direct trauma to any area, especially in the wrist area.

I reject Dr. Decter's opinion that Ms [Petitioner] suffers no right hand permanent disability. He admitted that when he examined Ms [Petitioner] on June 18, 1998, he only focused on her flying chair accident and not in terms of occupational disability. Dr. Decter admitted that he did not see the EMG report at the time of his examination of Ms [Petitioner] and then I find he later improperly disregarded Ms [Petitioner]'s positive EMG finding which is objective medical evidence of CTS. Ms [Petitioner]'s testimony of continual pain and weakness in her right hand and a reduced ability to write and type in addition to Dr. Wong's positive tinell test demonstrate that her CTS did not dissipate with passage of time. It is generally recognized that CTS is peculiar to workers who put stress on their hands through repetitive writing and typing. I find that Ms [Petitioner] suffers from permanent residuals of the occult ganglion of the right wrist from the accident, which Dr Decter stated might require surgical removal if it gets bigger or more painful.

Respondent argues that the positive EMG test taken in 1996 and the treatment she received stemmed from her fall from a chair on November 26, 1995 and other accidents in 1994 and 1990 and is thus barred by the statute of limitations. However, that is mere conjecture. There is no evidence that the 1990 and 1994 accidents permanently injured her hand. Although Ms [Petitioner]'s hand was treated around the time she received treatment for her neck and back injuries, no doctor causally related her hand injury to the accidents of 1995, 1994 or 1990. Furthermore, the order approving settlement of the claim, CP 1996-030534 for her serious neck and back injuries, did not include the hand despite numerous treating records from Dr. Matthews, Dr. Staggers and Dr. Lee for her right hand with objective medical findings of disability. That

settlement dated June 27, 2000 and approved by Judge Salvator H. Ingraffia was for “33 1/3 of partial total for cervical herniation C6-7 and bulging at C2-3, C5-6 and spondylosis at C5-6 and herniation at L5-S1. Subject to functional credit for 20% partial total credit for pre-existing spondylosis.”

Clearly from the treatment records, petitioner received authorized treatment from respondent’s doctors. There was objective medical evidence that she suffered from a serious case of right hand CTS not only from the positive EMG finding, but also from the extensive treatment she received such as cortisone injections, physical therapy, anti-inflammatory medication and a splint. Based on the evidence before me, had petitioner filed a claim for carpal tunnel after her treatments in the late 1990’s, she would have received permanency benefits. However, by the very fact that she did not file such a claim and does not have the habit of filing workers’ compensation claims except for major injuries in her 20 plus years with the City, is further credible evidence to me that Ms [Petitioner] is now suffering from an occupational CTS as she has testified.

Nevertheless, I find that Ms [Petitioner] did not suffer a permanent partial psychiatric disability as a result of the thrown chair hitting her arm. While she hyperventilated and went to the hospital, she was released the same night and received no psychiatric treatment or medication. It is not reasonable to believe that this incident could cause permanent partial psychiatric disability especially in light of the fact that there are no treating records indicating any psychiatric disability at that time.

Psychiatric Disability

In addition, I find that Ms [Petitioner] has met her burden of proof that she suffers a permanent partial psychiatric disability, both traumatic and occupational. I make this finding based on my review of the following:

1. **Testimonies and Transcripts.** This includes 10 days of testimony taken at trial as follows: 4 days of direct and cross examination of petitioner, 3 days of testimony of the 3 laywitnesses and 3 days of testimony of the 3 medical experts.

2. **Exhibits.** This includes the 30 exhibits from petitioner and the 7 exhibits from respondent entered into evidence including her hospital records.

3. **Briefs.** This includes thorough and well-argued 14-page single-spaced brief plus the supplemental two-page brief by petitioner's attorney and the 24-page doubled-spaced brief by respondent's attorney.

I find Ms [Petitioner]'s testimony to be credible. Throughout the four days she testified, she was articulate and coherent. She testified to events clearly even though at times she became tearful and found it difficult to continue. An example was when inquires were made about her emotional state at the time she attempted suicide, thus forcing her to relive that episode. Recess was granted for her to recompose herself.

Ms [Petitioner] was clearly able to differentiate between people and incidences that elicit an emotional response from her and the degree of that emotional response. For instances, she testified that although Mr. Spears whom she supervises has violent tendencies and has been bloodied at work, he has never intentionally directed his anger at her so she is not fearful of him like she is of Mr. Durant who has threatened to killed her, even in the presence of police, because she must issue summons against him as part of her work duties.

By all accounts of both parties' lay witnesses who have worked with and supervised Ms [Petitioner], she was a competent, helpful employee with no indication of being a troublemaker or malingerer throughout her twenty plus years of service with the City of Newark. This is not withstanding her multiple and serious health problems including but not limited to hypertension,

diabetes, asthma, painful cervical and lumbar disc herniations and congestive heart failure. She also had a total hysterectomy in 1994 and had double pneumonia “way back.” Despite these ailments, I find Ms [Petitioner] to be a strong woman who is not willing to let her disabilities affect her work performance.

The psychiatric experts of both parties testified that Ms [Petitioner] suffers from major depression causally related to her work. Respondent did not contest this issue in its brief. I also independently thoroughly researched the causal relationship from the evidence before me and came to the same conclusion. In fact, this Court personally made the following inquiries of respondent’s psychiatrist as set forth in the transcript:

THE JUDGE: Dr. Tuchin,... you had stated that you found Miss [Petitioner] to be in depression?

THE WITNESS: Yes.

THE JUDGE: You indicated that this might be five percent permanent disability?

THE WITNESS: Yes

THE JUDGE: You are attributing it entirely on her work-related episodes?

THE WITNESS: Correct. As far as I was able to determine there was no history of depression prior to her being employed by the City of Newark.

THE JUDGE: And were you able to evaluate her history, I mean, outside of work, personal problems, that type of thing, you’re not attributing to the depression?

THE WITNESS: She denied any prior history of any mental or emotional problems. I have no other source of information except what she told me and what is in the records. The written records don’t show any episodes of depression prior to her employment by the City of, no episodes prior to the first chair incident that said 1995. She did mention a hospitalization,

which that only came in the summer, Saint James Hospital. There's no date of when they were. I don't know if it's just an error or this information is missing.

THE JUDGE: Okay. You know of nothing in her personal life that might attribute to her depression?

THE WITNESS: Well, there was a hypothetical Mr. Gallagher mentioned about domestic violence, of that there was no mention of depressive symptoms that follow that. The incident was described. It's a potential source but not defined, specifically.

THE JUDGE: So initially you found depression [in his report] but you said, regardless of cause?

THE WITNESS: Now you are attributing it to the specific five incidents in your apportionment?

THE WITNESS: Work-related five incidents.

THE JUDGE: All right. Thank you, Doctor.

Ms [Petitioner]'s first psychiatric hospitalization was to Saint James Hospital, Newark, New Jersey on October 22, 1999 and was discharged on November 5, 1999. I thoroughly reviewed the certified Hospital Psyche Progress Record consisting of over 120 pages entered into evidence. I found that hourly observations for unusual behavior were made on Ms [Petitioner] and her mood and condition were recorded in the written progress notes. The only identifiable issue that gave her stress recorded in the notes by the hospital staff was due to her job. By October 28, 1999, the notes reveal at 11:00 am "Pt has been very cooperative and willing participant in all groups. Pt has met goal of ident. coping skill of escaping to a quiet area in the workplace such as bathroom to escape stressors to allow self to calm down to help cope with

stress.” On November 2, 1999 the notes included, “Patient...verbalizes need to change her job when she goes home ...”

I therefore find that Ms [Petitioner]’s psychiatric disability arose out of her job due to the direct risk of working under Mr. Matthews and was in the course of her employment.

The only disparities between the doctors were the date of onset, which incidents contributed to her psychiatric disability, estimates and apportionment of permanent partial psychiatric disabilities.

Regarding the date of onset of Ms [Petitioner]’s permanent partial psychiatric disability, I reject respondent’s position that petitioner’s psychiatric disability began on November 26, 1995. As already discussed above, on that date, petitioner seriously injured her neck and back. Based on that accident, Dr. Bruce Johnson’s report dated January 21, 1999 found a psychiatric disability of 22.5% for an anxiety disorder (DSM4 300.02) and dysthymic disorder (DSM4 300.4). Respondent takes the position that Dr. Johnson’s report was performed and written after Ms [Petitioner]’s psychiatric hospitalization of September 11, 1998 so her psychiatric disability began in 1995. However, Dr Johnson was only addressing Ms [Petitioner]’s psychiatric condition from a fall off of a chair in 1995. In that report, he itemized the records he reviewed and it did not include petitioner’s psychiatric records used in this trial. Furthermore, there is no indication from his report that he was even aware of petitioner’s psychiatric disabilities related to a hostile work environment.

I find that Ms [Petitioner]’s generalized anxiety disorder and dysthymic disorder, (DSM 4 300.02) and (DSM 4 300.4) as diagnosed by Dr. Johnson dissipated by the time of her neck and back settlement was entered because no psychiatric permanency was recognized in that order approving settlement and because (DSM4 300.02)and (DSM4 300.4) were not found by Dr.

Cheryl Wong on March 18, 2002. Dr. Wong's report dated March 26, 2002 made reference to different DSM findings. She found post-traumatic stress disorder, major depressive disorder and panic disorder with agoraphobia which are (DSM4 296.20), (DSM4 300.21) and (DSM4 309.81).

I find Ms Revalo's emotional/mental health was good before September 11, 1998 because she testified that she has no prior history of any preexisting permanent psychiatric problems and she had never been treated or hospitalized for any psychiatric disability until September 11, 1998 and thereafter; no proof to the contrary was offered. Her hospital records in October 1999 also states that her on set of depression began in September 1998. In those records, she also denied any family history of depression.

The Supreme Court in Goyden, supra set the standard for awarding permanent disability for psychological illness arising out of stressful work conditions. The Court affirmed the opinion of the Appellate Division which requires petitioner to prove the existence of objective evidence of job stress that when viewed realistically establishes working conditions sufficiently stressful to contribute to the development of a mental disorder. It cannot be conditions that only petitioner finds stressful or conditions that were not shown objectively to exist. Therefore, for Ms [Petitioner] to prevail, she must prove that the working conditions must be stressful, viewed objectively, and the believable evidence must support a finding she reacted to them as stressful. In addition, the objectively stressful working conditions must be peculiar to the particular work place and there must be objective evidence supporting a medical opinion of the resulting psychiatric disability in addition to the bare statement of the patient. Furthermore, merited criticism cannot fairly be considered to be a cause and condition characteristic of or peculiar to a

particular trade, occupation, process or place of employment. Merited criticism is common to all occupations and places of employment.

In this case before me, I find that the stress Ms [Petitioner] personally experienced was not limited to her but was due to a hostile, abusive and retaliatory environment that created stress felt by many who worked under Mr. Matthews. In other words, Mr. Matthews, with the backing of Director Mr. Cooper, his supervisor, had created a hostile and abusive environment peculiar to their management style in 1998 that then escalated to political retaliation the following year that adversely affected the people under their supervision and not just Ms [Petitioner]. It was an extreme hostile and abusive environment serving no bona fide business reason. Mr. George Griffith, a retired code enforcement worker corroborated petitioner's testimony of a hostile environment.

This hostile environment was not limited to the code status meetings. Mr. Griffith, Mr. Fonseca and Ms. [Petitioner] all testified to arbitrary and unsupportable disciplinary actions taken against them that required them to expend time and energy to defend, sometimes with the help of the labor union. There is sufficient evidence that Mr. Fonseca's demotion was political retaliation since it occurred the day his candidate lost. I find that political retaliation also affected people who aligned with Mr. Fonseca, like Ms [Petitioner] who was written up for a six-month suspension without due process. These are therefore objective evidence that a stressful condition existed for many employees who worked under Mr. Matthews and Mr. Cooper and the stress was not limited to Ms [Petitioner]. Subjectively, Ms [Petitioner] testified to a series of incidences while working under Mr. Matthews for which she considered to be harassment and was the direct cause of her severe depression as testified by the psychiatric experts of both parties.

What constitutes a “hostile” or abusive” work environment was addressed by Justice Sandra Day O’Connor in the United States Supreme Court case of Harris v. Forklift Systems, Inc. 510 U.S. 17, (1993). With reference to Title VII of the Civil Rights Act of 1964, the Court set forth a standard to determine whether or not an environment is “hostile “ or “abusive”. The directive is to look at all the circumstances involved including the frequency of the discriminatory conduct, its severity, whether the conduct is physically threatening or humiliating, whether it consists of mere offensive utterance and whether or not the conduct unreasonably interferes with an employee’s work performance.

However, the fact that another person or even many persons might not have developed disabling mental and emotional conditions as a result of the stress under which petitioner worked does not itself preclude compensation. A psychological condition such as that suffered by petitioner is inevitably the result of a specific person involved in a specific set of relationships and events. See Bondar v. Simmons Co., 23 N.J. Super. 109 (App. Div. 1952), aff’d, 12 N.J. 361, (1953) (recovery not precluded by fact that claimant’s reaction to work conditions is not typical).

I find that Ms. [Petitioner]’s first mental breakdown occurred on September 11, 1998 after being subjected to the abusive and humiliating tirade of Mr. Matthews because that was the first time she sought psychiatric treatment and received prescription medication for that treatment.

Respondent in its brief takes the position that pursuant to Goyden, super p. 451, merited criticism is not compensable and petitioner has not proven whether Mr. Matthew’s criticism of Ms [Petitioner] on September 11, 1998 was merited or not. However, the manner in which Mr. Matthews criticized Ms [Petitioner] was certainly not meant to be merited. He yelled at her and

shouted her down and would not give her the opportunity to defend herself in front of a large crowd of her peers. This humiliation he subjected her to is evidence that he never intended the criticism to be sincere, helpful and merited but was really meant to cause her mental anguish. That is how she and others who attended those meetings as testified by Mr. Griffith, reacted to Mr. Matthews' tirades. Those meetings were often attended by Mr. Cooper, the director who did nothing to prevent the abusiveness of those meetings. If Mr. Matthews intended to correct her deficiencies he would have taken her into his office and privately explained not only what she was doing wrong, but the way to correct her mistakes.

What is deeply troubling is the fact that the respondent did not produce Mr. Matthews, Mr. Cooper or for that matter, anybody else to rebut each of these serious allegations. Offering no defense, I therefore find that cumulatively, all the recitations testified to by Ms [Petitioner] were without bona fide personnel reason and amounted to stress caused by a hostile and abusive work environment. No employee should be subjected to and tolerate such hostility and abuse. Such bullying by supervisors, which then encourages their allied underlings to follow suit, has no place in the work environment and should not be tacitly condoned by management with impunity. The motive behind these hostile and abusive actions, whether for political or some other impermissible reason is immaterial. Like bullies on the playground now actively being addressed by teachers, it is time for management to be more vigilant of bullying in the workplace and send a message of zero tolerance.

I find that all the hostile stimuli between September 11, 1998 when Mr. Matthews caused Ms [Petitioner] to experience her first psychiatric episode to the day one year later on October 19, 1999 when she was hospitalized for attempted suicide causally related to her work environment, amounted to a continuum of stress for Ms [Petitioner]. This includes the

“Welcome back to hell” hand-written note on her desk the first day she returned to work (though not written by Mr. Matthews, he created the climate to allow it to happen); the refusal of her manager Mr. Matthews to talk to her so she had no direction what she should be doing on light duty as recommended by her doctor; an order that she not be allowed to use the computer without given a reason and thus forcing her to hand write all her report; the one-day suspension she was subjected to for something that happened while she was out for psychiatric disability, and finally the six months suspension notice without due process which triggered her attempted suicide and two week psychiatric hospitalization.

In reviewing the law regarding the compensability of occupational psychiatric disabilities in Wernowski v. Continental Can Company, 261 N.J. Super 269, (App. Div. 1993), the court found that “nervous” injury arising from a work-related mental or emotional stimulus can be compensable. 1B Arthur Larson, The Law of Workmen’s Compensation sec. 42.23 (1987). Moreover, a stimulus that is gradual, in the form of sustained stress, tension, worry, strain, frustration, or harassment is also compensable. Larson, supra, sec. 42.23(b). Thus, the directive of the court is to find objective evidence that the repetitive stimuli, viewed realistically were “peculiar” to the work place. If so, there must be competent objective, medical evidence that the psychiatric disorder is “due in a material degree” to the repetitive work-place stimuli.

Viewed alternatively to Goyden, and because there were incidences at work that aggravated Ms [Petitioner]’s psychiatric condition unrelated to actions by her supervisors as the fact pattern in Goyden detailed, I find that Ms [Petitioner] has been subjected to repetitive, multiple mental and emotional stimuli at work that caused her permanent psychiatric disability. As elaborated about, she has been repeatedly bullied. The first emotional stimulus came in the form of verbal attacks by her manager, Darryl Alton Matthews on September 11, 1998 which

was the direct cause of her first psychiatric treatment. Subsequently, Dr. Gomez-Rivera recommended leave for that condition and Dr. Flicker recommended that she be removed permanent from that assignment. Her testimony was corroborated by her co-worker Mr. George Griffith who said she took the criticism very badly. He noticed that she looked very tired, weary, and flushed, like she was “put through the mill.” The other emotional stimuli between October 16, 1998 and October 19, 1999 have been addressed above.

Her treating physician for the respondent, Jose Gomez-Rivera, M.D., stated in his summary report to Ms [Petitioner]’s attorney dated November 13, 2001 that he first saw her on September 14, 1998 when she was 55 years old. He further stated:

She was working at the City of Newark. Patient stated that she was having a lot of problems at her job which made her very depressed and anxious. She complained of sadness, crying spells, insomnia, headaches, dizziness, nausea and vomiting. She was having episodes close to panic attacks. On October 22, 1999 she was admitted to St. James Hospital due to her condition. She was discharged on November 5, 1999 to continue treatment in my office. Ms. [Petitioner] was placed on Mellaril 10 mg three times a day, Zantac 150 mg. one table[t] daily and Lasix 40 mg once a day. She was also receiving psychotherapy. ***When I saw her for the first time, I recommended her a disability to separate her from the stress at work to see if she would improve.*** (emphasis added).

Dr. Jose Gomez-Rivera found her mood to be severely depressed and anxious. His diagnosis is adjustment disorder with mixed depression and anxiety due to problems at work.

V62.2 309.28.

The three traumatic psychiatric claims demonstrate a continuation of work stimuli that caused stress in Ms. [Petitioner] and her continued exposure to Ms Gordon and Mr. Durant becomes part of her occupational psychiatric case.

Attempted Assault by Susan Gordon. I find that Ms [Petitioner] suffered permanent partial psychiatric disability as a result of an attempted assault on her by Ms Gordon on April 16,

2001. Ms Gordon tried to hit Ms [Petitioner] with a lead pipe while Ms [Petitioner] was entering City Hall but was intercepted by the guard. Ms Gordon was then arrested for terroristic threats and subsequent jailed for that action. Dr. Wong testified that Ms [Petitioner] actually had a panic attack in her office as Ms [Petitioner] related the attempted assault.

I find the incident arose out of and in the course of employment of Ms [Petitioner]. This was a neutral risk, which arose from uncontrollable circumstances, which just happen to occur at work, and is compensable. Coleman v. Cycle Transformer Corp., 105 N.J. 185 (1986). Ms Gordon was a former employee of the City who is now homeless and mills around City Hall daily. I find that Ms [Petitioner] did not know her personally and was not fearful of her until she began to stalk Ms [Petitioner] such as following petitioner to the bathroom at work and to threaten to slash Ms [Petitioner]'s face for which a police report was made. Ms Gordon accusing Ms [Petitioner] of stealing her husband but there is no evidence that Ms [Petitioner] even knew her husband. The burden of proving that the cause of Ms [Petitioner] injury was personal and not compensable is on the respondent and that defense was never raised.

Death Threat by Violent Street Peddler Raheem Durant. I find that Ms [Petitioner] did suffer permanent partial psychiatric disability as a result of the violence exhibited by Raheem Durant and the death threat he made on her life on June 21, 2001.

Mr. Durant is an extremely violent man and Ms [Petitioner] has reacted with panic attacks when she has to write citations against him and when he threatens to kill her. Officer Tommy J. Victor's incident report of June 21, 2001 demonstrates the severity of his violence:

On the above date/time the undersigned officer assigned to code Enforcement (sic) responded to the above location along with P/O C. Nazario and P/O Soto to serve the above actor with an open warrant held by the City of Newark. Upon approaching the actor, he was informed by the said officer and shown a copy of the warrant. Actor then stated that he was not going any where at that time the said officer began to place the handcuff on the actor, and a

struggle insured(sic). Actor began to kick and push to prevent from being arrested. It took the three said officer (s) to secure the above suspect that put up a violent struggle.

When placing the suspect (Raheem David a/k/a Rahim Durant) in mark patrol Unit #838, the actor observed inspector [Petitioner] from code enforcement (sic) for the City of Newark standing at the above location. Actor stated to inspector “when I get out of jail, I’m coming back and I’m going to kill you”.

Actor was advised of his rights, but continue to make verbal threats against the city inspector, by stating I’m going to kill you. Suspect was then transported to the East District where he was slated.

Note: Actor was found to be wanted on (9) nine opened warrants.
Charge: Terroristic threats.

The lay witness, Mr. Thomas McDonald who had worked in the Department of Neighborhood Services also corroborated to the fact that Mr. Durant was threatening and used abusive language against Ms [Petitioner] and she was very upset about it. This incidence was therefore one of the continuing stimuli that contributed to Ms [Petitioner]’s depression.

Ms [Petitioner] testified that she feels nervous whenever she is near Mr. Durant and tries not to have eye contact with him nor address him. The treating and evaluating doctors have confirmed that Ms [Petitioner] experiences panic attacks in dealing with Mr. Durant. It is therefore reasonable to find that on this particular day of June 21, 2001, when Mr. Durant dared to struggle with three police officers when they attempted to arrest him that Ms [Petitioner] would experience stress permanent in nature when Mr. Durant repeatedly threatened to kill her in the presence of these officers and Ms [Petitioner].

I also find that this incident contributed to Ms [Petitioner]’s withdraw from people after work as noted by the psychiatrists. While this particular incident is traumatic in nature, the continued interaction with Mr. Durant as her job requires her to do becomes occupational in

nature and both doctors have found permanent stress from such interactions with him such as the one on June 21, 2001.

As far back as November 1998, respondent's doctor, Dr. David Flick recommended that Ms [Petitioner] be removed from the stress of working in the downtown area and be given another assignment. Dr. Wong also made the same recommendation. The City chose to ignore its own doctor's advice.

Locked in Elevator. I find that petitioner having been locked in the elevator by herself did cause a psychiatric disability that arose out of and in the course of her employment. Even after the elevators are replaced, Ms [Petitioner] testified that she will not take the elevator but would rather walk up four flights of stair with her congestive heart failure condition. As a result of this incident, she was prescribed multiple stress reducing medication by both respondent's doctor, Dr. Patel and her own doctor, Dr. Ortiz as set forth above. I accept Dr. Wong's finding that this incident is a reason Ms [Petitioner] has panic disorder with agoraphobia. This event further aggravated her work induced psychiatric condition. New Jersey adheres to the proposition that the employer takes the employee as the employer finds the employee, with all of the pre-existing disease and infirmity that may exist, Verge v. County of Morris, 272 N.J. Super. 118, 125 (App. Div. 1994). This incident is a neutral risk that occurred at work.

Some of Ms [Petitioner]'s psychiatric breakdowns could be evaluated both as due to traumatic and occupational causes. Although petitioner filed the claims against Mr. Matthews as occupational in nature, respondent is not prejudiced for this Court to alternatively find some of those incidences to also be compensable under N.J.S.A. 34:15-7. Specifically, I find the actions of Mr. Matthews on September 11, 1998 and October 19, 1999 to be separate traumatic "accidents" compensable under N.J.S.A. 34:15-7. Procedurally, these occupational claims were

filed within the two-year period required of accidents. Respondents were aware of these charges because they are based on the same facts as discussed in the occupational analysis. I amend these two claims to also include traumatic injuries. I find these two incidences are compensable for permanent partial disabilities under N.J.S.A. 34:15-7. Whether the criticism of Mr. Matthews which directly caused Ms. [Petitioner] to seek her first psychiatric treatment on September 11, 1998 and the criticism in her suspension notice that directly caused Ms [Petitioner] to be hospitalized for attempted suicide on October 19, 1999 were merited or not is not a factor. Goyden does not apply. The applicable law is Prettyman v. State 288, N.J. Super. 580 (App. Div. 1997), There, Prettyman suffered psychiatric disability alleged due false imprisonment and harassment by state police who accused her of theft at work. There the court found that even if the actions of the police were legitimate law enforcement techniques, the fact that they caused her psychiatric disability was sufficient for an award of benefits. This award was made even though Prettyman had a prior history of psychiatric treatment for the six months after her engagement was broken off. Here, I find that the harassment by Mr. Matthews, even if his criticism were legitimate and merited, caused Ms [Petitioner]'s psychiatric disability. I find that but for being subjected to Mr. Matthews's abusive, hostile and retaliatory treatment, Ms. [Petitioner]'s psychiatric injuries would not have occurred and will accordingly award her for this permanent partial disability.

I find that the three traumatic claims are compensable because they are part of the stimuli that contributed to the cumulative effect of Ms [Petitioner]'s psychiatric condition or aggravated her psychiatric condition.

Furthermore, through the testimonies of Mr. Griffith and Mr. Fonseca, I find that employees of the code enforcement department were subjected to arbitrary and harsh actions by

those in power unrelated to their work performance. Whether Ms [Petitioner] was subjected to retaliation for supporting a failed freeholder candidate is inconclusive; however, the mere fact that Mr. Fonseca was subjected to real retaliation the very next day after their freeholder candidate lost could only have contributed to Ms [Petitioner]'s heightened stress and tension and confirms an atmosphere of arbitrary and capricious actions in the work place that caused greater stress on the job for Ms [Petitioner] than off the job.

The record is replete with objective evidence that Ms [Petitioner] was subjected to repetitive stimuli viewed realistically as “peculiar” to her work place. The way Mr. Matthews conducted himself towards his underlings is peculiar to the department where Ms [Petitioner] works.

Based on the testimony of Dr. Wong and Ms [Petitioner], I also find that these two people still continue to be stimuli to her fragile psychiatric condition and aggravate it. Respondent's treating doctor, Dr. David Flicker as far back as November 23, 1998 and Dr. Wong in her report dated March 26, 2002 as well as her testimony have recommended that Ms [Petitioner] be given another assignment, away from these two, to no avail. I find that the failure of respondent to correct this situation in a timely manner contributed significantly to petitioner's present condition.

Within the three years before being trapped in the elevator, Ms [Petitioner] had been hospitalized for major depression as a result of the negative stimuli at work. In addition, her life had been threatened by Ms Gordon and Mr. Durant whom both medical experts confirmed to have caused her to develop post-traumatic stress disorder. I support Dr. Wong's finding that she has developed panic disorder with agoraphobia causally related to being trapped in the elevator.

Despite having congestive heart failure and a multitude of other health problems, Ms [Petitioner] rather walk up the four flights of stairs to her office rather than take the elevator.

I find that petitioner has permanent partial psychiatric disability for the reasons given in Dr. Wong's testimony and report. The psychiatric experts' percentage of permanent disability were quite far apart; 65 percent permanent partial total given by Dr. Wong versus 5 percent given by Dr. Tuchin. Each of these medical experts does disclose an advocate's prospective which must be weighed in light of objective medical evidence. Such a disparity is not unusual. In Lightner v. Cohn, 76 N.J. Super., 461, 465 (1962) certif. denied 38 N.J. 611 (1962), the court indicated that "The judiciary is not bound by the medical estimates offered by one or all of the physicians." Medical testimony is not conclusive. Therefore, I have used the estimates of disability offered by the physicians merely as guides in formulating my own conclusion as to the degree of disability in this matter.

I reject Dr. Tuchin's arbitrary suggestion that Ms [Petitioner]'s permanent psychiatric disability should be apportioned among five different traumatic events because he had no better way to do so. There is a better way as taken by Dr. Wong. Dr. Wong did not attempt to apportion her psychiatric disability findings related to the post-traumatic stress, the major depression, and the panic disorder with agrophobia. She in essence found it cumulative and occupational in nature in that each additional stimulus caused Ms [Petitioner] to become more anxious and depressed and I agree. However, I have also found that some of these events can also be recognized to be separate "accidents" and can arrive at the same disability due to its cumulative effect.

With regard to petitioner's right hand, I do find that Ms [Petitioner] has sustained her burden to prove a compensable orthopedic and neurological disability of 10 percent of the statutory right hand for her carpal tunnel syndrome and the ganglion cyst for reasons stated up.

I find that Ms [Petitioner] has sustained her burden to prove a compensable psychiatric disability of 40 % of permanent partial total for the reasons given above. This as I have indicated can be considered either cumulative on a traumatic event claims basis or an occupational basis.

I find the complaints given by Ms [Petitioner] to be credible and are consistent with the objective medical evidence of petitioner's psychiatric disabilities. Needless to say, those complaints show a material and significant lessening of petitioner's working ability and her ordinary life pursuits. While petitioner is able to go to work and do a good job, she is doing so at a tremendous cost to her health. To sustain a sense of normalcy, she is treated with numerous anti-depressant, anti-anxiety, sedative and sleep medication such as Xanax, Amaryl, Ambien, Prozac, Mellaril and Zoloft. She requires all this medication in order for her function at work. Her life is not longer what it used to be. She still has occasional suicidal thoughts and gets depressed. She no longer socializes and get involved in political activities like she used to. She isolates herself after work and can only sleep by taking sleeping pills. She will not take the elevator to the fourth floor where she needs to go to work despite the fact of having congestive heart failure. She reacts emotionally when she sees Mr. Davis the peddler who has threatened to kill her and to Ms. Gordon, the deranged homeless woman who has threatened to cut her up.

FEES AND ALLOWANCES

This matter was re-opened upon the request of both parties to obtain outstanding medical bills for Ms [Petitioner]'s unauthorized treatment such as the St. James Hospital bills and for

respondent to verify the days she was out for medical reasons related to this matter. The parties are aware of the recent Supreme Court decision regarding payments to medical providers in decision of Univ. of Mass. Mem. Med. Ctr., Inc v. Christodoulou, 180 N.J. 334 (2004). Petitioner's attorney, Mr. John Kovac has since represented that the insurance carrier for St. James Hospital would not talk to him and would only speak to petitioner. When Ms [Petitioner] contacted the carrier, she was informed that records cannot be located because of changes and a merger of insurance carriers. I have found all of Ms [Petitioner]'s unauthorized medical treatments as reasonable and necessary as determined by her doctors. Therefore, I shall order that respondent hold harmless petitioner and petitioner's estate for all of her outstanding unauthorized medical bills. Due to the recent retirement of respondent's attorneys Hugh Gallagher and Donald Dvorin, the Court extended the time of one cycle (due by April 5, 2005) for respondent Alison Brown Jones to verify petitioner's leave record. If those records cannot be found, then the dates submitted by petitioner's attorney as set forth below shall be binding.

I order temporary benefits be paid to Ms [Petitioner] for the following periods of time she was absent from work, (unless otherwise determined by the terms above) and for which her doctors have determined to be reasonable and necessary:

1. From September 11, 1998 to October 16, 1998
2. From October 19, 1999 to May 1, 2000;
3. From January 5, 2002 to February 18, 2002

Ms [Petitioner] however, is not entitled to the three days of work she missed in December 2002. Her temporary disability benefits shall be paid by respondent at the applicable rate for the years in question.

I find that the CTS first manifested in 1996 with the EMG confirmation and will award the 10 percent of the statutory hand based on the 1996 rate for residues of CTS and the ganglion cyst. The total number of weeks awarded is 24.5 weeks of award at \$128 per week total \$3,136. The fees are assessed as follows: a counsel fee payable to petitioner's attorney of \$627, \$250 to be paid by petitioner and \$376 to be paid by respondent.

I find that the psychiatric disability manifested itself in 1998 and therefore, the compensation rates applicable are those for that year. The total number of weeks awarded is as follows: 240 weeks of award at \$275 per week totaling \$66,000. The court shall assess fees as follows: a counsel fee payable to petitioner's attorney of \$13,200, \$5,280 to be paid by the petitioner and \$7,920 to be paid by the respondent. In addition, petitioner's attorney shall be awarded 20 percent of the total temporary benefits that petitioner is entitled as stated in the above paragraph to be paid by respondent. Dr. Cheryl Wong shall be awarded \$400 for her report which involved reviewing voluminous medical records and performing an independent medical exam on petitioner and \$400 for her lengthy testimony resulting in 80 pages of transcript, payable one-half by each party. Dr. Edwin Turner, Jr. who did not testify shall be awarded \$200 for his report, \$100 to be paid by each party. Respondent shall pay the stenographic service fee of \$1,600 for 10 days of testimony to William C. O'Brien Associates plus the hearings by counsels to reopen the cases. Petitioner's counsel submitted an itemized bill of \$1,487.75 for medical records, transcripts, and service for trial on witnesses, which shall be reimbursed by petitioner from her award.

I direct petitioner's counsel to submit an appropriate order to the court, which conforms, to this Decision and serve it upon to his adversary under the five-day rule.

Date: March 15, 2005

Sue Pai Yang
Judge of Compensation