The Appeals Board of the Utah Labor Commission exercises jurisdiction over this matter pursuant to order of the Utah Court of Appeals, issued November 10, 2005. The Court of Appeals' order set aside the Board's previous decision and directed the Board to evaluate N. M.W.'s claim of stress-induced occupational disease according to the standard for legal causation set forth in Court's order.

BACKGROUND AND ISSUES PRESENTED

On February 26, 2001, Mrs. W. filed an application with the Labor Commission to compel Eastern Utah Broadcasting and its insurance carrier, Workers Compensation Fund (referred to jointly as "Eastern" hereafter), to pay occupational disease benefits for Mrs. W.'s "stress and anxiety" which Mrs. W. attributed to "stressful situations" arising from her employment at Eastern.

After an evidentiary hearing, Administrative Law Judge Hann concluded that Mrs. W. was entitled to occupational disease benefits for anxiety disorder. Eastern then asked the Appeals Board to review Judge Hann's decision. On October 18, 2004, the Appeals Board's majority decision reversed Judge Hann's decision and denied Mrs. W.'s claim. The Board's decision concluded that Mrs. W.'s work-related stress was not "extraordinary" as that term is defined in § 34A-3-106(2)(b) of the Occupational Disease Act and, therefore, did not satisfy the Act's requirement of legal causation.

Mrs. W. appealed to the Utah Court of Appeals. The Court of Appeals set aside the Board's decision with the following conclusion and instruction:

> Under Utah Code section 34A-3-106(2)(b), the extraordinary nature of the stress of [Mrs. W.'s] employment must be judged according to an objective standard in comparison with contemporary national employment and nonemployment life. . . . rather than with employees in her own profession. Because it is unclear whether the stress of [Mrs. W.'s] employment was compared to the stress sustained by those in her own profession of radio advertising sales or compared to the objective standard of contemporary national employment and nonemployment life, we vacate the Appeals Board's order and remand for the Appeals Board to apply the correct standard in accordance with this opinion.

Pursuant to the Court of Appeals' instructions, the Board has reviewed the evidentiary record and the arguments of the parties. The Board now enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Mrs. W. testified at the evidentiary hearing in this matter. Eastern called no witnesses to controvert Mrs. W.'s description of the duties and conditions of employment by Eastern. In addition to Mrs. W.'s unchallenged testimony, the evidentiary record also contains Mrs. W.'s medical

records, opinions of treating and consulting physicians, and the report of the impartial medical panel appointed by Judge Hann. Based on this evidentiary record the Appeals Board enters the following findings of fact relative to the issue of legal causation, which is the only issue in dispute.

Mrs. W. has an 11th grade education. Her only work experience has been in selling radio advertising in rural eastern Utah. Almost all of that employment was with Eastern, where she worked from 1980 until March 16, 2000. At the end of her employment at Eastern, Mrs. W. was earning approximately $58,000 per year in salary and commissions.

Mrs. W.'s work for Eastern was demanding. She handled all duties associated with her customers, including sales calls, writing advertising copy, fielding complaints, billing for services and collecting payment. She was required to contact each customer at least once a week. Over time, she was assigned additional customers and ultimately was responsible for more than 200 accounts. In 1997, she was also designated as the company's sales manager, with responsibilities of supervising and training other sales staff.

Mrs. W. worked more than 50 hours per week. She frequently began work between 7:00 and 7:30 a.m. and occasionally continued at work until 10:00 p.m. She sometimes worked on weekends; she also received business calls and did paperwork and research at home during the early morning and late evening. She carried and monitored two cell phones at the same time for her work.

Eastern experienced a high turnover rate among its advertising sales staff, with some individuals leaving the work because of stress. Other that Mrs. W., none of Eastern's sales staff stayed for more than a few years. Mrs. W.'s 20-year tenure with Eastern was therefore unusual and reflected her extreme dedication to her work.

Mrs. W. has a personality type that predisposes her to anxiety and stress. In addition to the demands of her work, she has experienced some personal health problems and family problems. For several years prior to leaving her job at Eastern, Mrs. W. used prescription medications for depression, anxiety and insomnia. In the period leading up to March 16, 2000, Mrs. W. began to cry over minor work-related mistakes. Then, while at home on March 16, 2000, she began crying uncontrollably and could not stop. She has been under continuous medical care for depression, anxiety, and other medical problems since then. Mrs. W. is not now capable of returning to gainful employment.

DISCUSSION AND CONCLUSIONS OF LAW

In claiming occupational disease benefits, Mrs. W. must, of course, meet all the applicable requirements of the Utah Occupational Disease Act. Judge Hann's original decision concluded that Mrs. W. had satisfied those requirements. Eastern challenged Judge Hann's determination, but only on one point—whether Mrs. W. claim of occupational disease benefits for her stress-related anxiety disorder satisfied the requirement of "legal causation" found in § 34A-2-106 of the Act. Now, on remand from the Court of Appeals, that is the only issue before the Appeals Board.

The requirement of "legal causation" was first grafted into Utah's workers' compensation system by the Utah Supreme Court in *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986). Nine years later, when the Legislature added § 106 to govern mental stress claims under the Utah Occupational Disease Act, the Legislature included a "legal causation" requirement in that section as well. In essence, the requirement of "legal causation" represents a public policy determination of how far employer liability will extend for the consequences of employment conditions and events. See *Dunlavey v. Economy Fire & Casualty, et al.*, 526 N.W. 2nd 845, 853 (Iowa 1995).

Subsection 106's standards for legal causation in mental stress claims are as follows:

> (2)(a) Legal causation requires proof of extraordinary mental stress arising predominantly and directly from employment.
> (b) The extraordinary nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.

In applying this test for legal causation, it is first necessary to identify the "mental stress arising predominantly and directly from employment."[1] As detailed in the "Findings of Fact," above, Mrs. W.'s work required her to work long hours, sometimes from 7 a.m. to 10 p.m. She also worked on weekends, early mornings and late evenings, even when she was at home. In addition to her long work hours, Mrs. W.'s work duties were extensive. She serviced 200 customer accounts, which entailed weekly calls, copy writing, editing, corrections, billing, and collection. In essence, Mrs. W.'s work duties were pervasive, overwhelming and unrelenting.

Having identified Mrs. W.'s stress that "arose predominantly and directly" from her employment, the Appeals Board must determine whether that stress was "extraordinary" within the meaning of § 106(2). As the Utah Court of Appeals explained in its decision, "the objective standard referenced in Utah Code section 34A-3-106(2)(b) requires the Commission to compare the stress of [Mrs. W.'s] employment with the stress that people nationwide **generally** endure in their employment and nonemployment life . . . ." (Emphasis added.) Thus, the proper comparison is not with either the most stressful or the least stressful situations encountered in life, but rather, the broader range of conditions that are "generally" experienced.

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1 Analysis of legal causation in a mental stress claim is similar to the analysis used in workers' compensation claims, where the concept of legal causation first arose.

- In a workers' compensation claim, it is first necessary to identify the nature and extent of the workplace exertion on which the claim is based. After the workplace exertion has been identified, established standards of comparison are used to judge whether the exertion is sufficient to constitute legal causation.
- In stress-related occupational disease claims, it is also necessary to identify the nature and extent of the workplace stress. Then, the test set out in § 106(2)(b) is applied to determine whether the stress is "extraordinary" so as to satisfy § 106(1)'s requirement of legal causation.

Mrs. W.'s unchallenged testimony establishes that she was required to continually work long hours to perform her job duties. The Appeals Board recognizes that many individuals occasionally work long hours to complete a project or meet a deadline. However, overtime wage laws and common practice establish the 40-hour week as a general norm. With respect to the stresses generally endured in nonemployment life, duties such as caring for family members, keeping house, or lawn care can impose time demands similar to what Mrs. W. experienced at work. But in general, the time requirements of home and family do not rise to that level.

Long hours were not Mrs. W.'s only source of work-related stress. She also had the demands of servicing approximately 200 customers. She had to contact each of them each week. She was responsible for all phases of their accounts. She wrote their advertising copy. She monitored broadcasts. She corrected errors and fielded complaints. She billed them for services and collected on the accounts. These duties imposed unrelenting pressure on Mrs. W..

In comparison, other situations impose equal or greater performance pressures. For example, some sales positions impose performance demands and require extensive customer service. In occupations such as medicine or law, practitioners must exercise the utmost care and judgment in situations that are, literally, life and death. Business executives must sometimes perform their duties under extreme pressure for high stakes. However, these situations cannot be viewed as examples of "ordinary" pressures of modern life. When the scope of comparison is limited to the stress that people **generally** endure, such as ordinary work loads and occasional "multi-tasking," the Appeals Board concludes that the demands of Mrs. W.'s work imposed extraordinary stress on her.

In summary, because Mrs. W.'s work-related stress was extraordinary when compared to the customary stress of modern life, the Appeals Board concludes that Mrs. W. has satisfied §106's requirement of legal causation. In light of this conclusion, and in the absence of any other objections to Judge Hann's decision of July 30, 2003, the Appeals Board concurs with Judge Hann's conclusion that Mrs. W. is entitled to occupational disease benefits.

ORDER

For the reasons stated herein, the Appeals Board denies Eastern's motion for review dated August 29, 2003, and affirms the award of benefits to Mrs. W. contained in Judge Hann's decision of July 30, 2003. It is so ordered.

Dated this 31st day of March, 2006.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch