

The social security number and dates of birth  
have been redacted from this opinion.

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
WORKERS' COMPENSATION AGENCY  
BOARD OF MAGISTRATES**

**ELEANOR RAGUCKAS,  
SS# xxx**

**Plaintiff,**

**V**

**STATE OF MICHIGAN,  
DEPT OF CORRECTIONS,  
Self Insured.**

**Defendant**

**APPEARANCES**

**PLAINTIFF**

**JOHN W. SIMPSON  
(P) 20514**

**DEFENDANTS**

**DONALD H. HANNON  
(P) 32745**

**TRIAL DATE**

The case was tried on 12/6/05, 12/13/05, 12/19/05, 1/9/06 and 2/8/06., and 3/22/06. A closing date was held on 5/2/06.

**CLAIM**

Plaintiff, by Application for Mediation or Hearing – Form A, filed on 10/13/03 alleged

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injury dates of 8/3/03 and 8/8/03 as follows: 8/3/03: Plaintiff injured back, neck & lower limbs attempting to pull heavy cart. Plaintiff was subjected to various strains, traumas & pressures, aggravating back, neck, lower limbs and causing functional and emotional disability.

An amended Application for Mediation or Hearing-Form A was filed on 8/19/04 adding the claim of upper limbs wrists, hands, carpal tunnel to the previous injury dates and claims.

**STIPULATIONS**

The parties stipulated that, on 8/3/03, plaintiff and defendant were subject to the Worker's Disability Compensation Act, that defendant was self insured and that defendant employed plaintiff.

Defendant left to proofs that a personal injury arose out of and in the course of plaintiff's employment on 8/3/03. Defendant left to proofs that plaintiff's disability, if any, was due to his/her alleged injury.

Defendant received timely notice of the claimed personal injury. Defendant admitted that plaintiff made timely claim for compensation.

Plaintiff was not engaged in dual employment on 8/3/03. Plaintiff did receive LTD benefits and Social Security benefits that are subject to coordination. The parties agreed to work out those amounts in the event of an award of benefits.

Plaintiff's cash average weekly wage on 8/3/03 was \$1234.05. Plaintiff did receive fringe benefits. The amount and dates of discontinuation were reserved in the event parties could not agree. Plaintiff's IRS filing status on 8/3/03, was married. Plaintiff had no dependents.

**WITNESSES TESTIFYING AT TRIAL**

**PLAINTIFF**

ELEANOR RAGUCKAS  
MARY SYLIVA GREY

**DEFENDANT**

MELISSA SZOSTAK  
CATHERINE OZOR  
YVONNE ALLEN  
MARY ELLEN HYNES  
ALFRED JONES  
JOAN BUSH

**WITNESSES TESTIFYING BY DEPOSITION**

**PLAINTIFF**

RICHARD FELDSTEIN, M.D.  
JACK BELEN, M.D.

**DEFENDANT**

NATHAN GROSS, M.D.  
VALERIE CHEYNE, PH.D.  
HARVEY AGER, M.D.  
JOHN STOKES, CERTIFIED REHAB COUNSELOR

**EXHIBITS**

**PLAINTIFF**

- 1 JOB DESCRIPTION
- 2 DR. VALORIE CHEYNE RECORDS
- 3 MRI WILLIAM BEAUMONT HOSPITAL
- 4 DR. MARK WERNER RECORDS
- 5 DR. BRIAN KOLENDER RECORDS
- 6 PHYSICAL THERAPY RECORDS
- 7 DR. LABAN LMT REHAB RECORDS
- 8 JOB DESCRIPTION MIDNIGHT DUTIES
- 9 PERFORMANCE EVALUATION 5/22/02
- 10 PERFORMANCE EVALUATION 9/3/02
- 11 UNION BOOKLETTE DISCIPLINARY ACTION
- 12 401 K PLAN
- 13 DR. RICHARD FELDSTEIN DEPOSITON
- 14 DR. JACK BELEN DEPOSITION
- 15 3/15/06 LETTER EMPLOYMENT INQUIRY

**DEFENDANT**

- A VIDEO 9/15/05  
B VIDEO 9/15/05  
C FORM 100

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D OFFICER SZOSTAK WRITTEN STATEMENT  
E LOG BOOK PAGES DURANT B HOUSING UNIT  
F STATEMENT CATHERINE OZOR  
G 9/4/03 MEMORDANDUM DOC TO CATHERINE OZOR  
H NOTICE OF CHARGE LETTER AUGUST 3, 2003  
I NOTICE OF CHARGE LETTER AUGUST 8, 2003  
J 8/7/03 MEMO FROM NZUMS TO PLAINTIFF REQUEST FOR STATEMENT'  
K 8/26/03 MEMO FROM NZUMS  
L 8/11/03 MEMO TO JAN EPP  
M NOT OFFERED  
N 9/4/03 INVESTIGATIVE MEMO FROM ALFRED JONES TO YVONNE ALLEN  
O WORK RULE 38 REPORTING REQUIREMENTS  
P 4/21/03 WRITTEN COUNSELING  
Q POLICY DIRECTIVE  
R NOTICE OF DISPUTE  
S 4/10/02 HUMAN RESOURCE INFO REGRADING JOB OFFER  
T INVESTIGATIVE MEMO MIS CONDUCT  
U INVESTIGATIVE MEMO  
V 9/23/03 MEMORANDUM FROM ALFRED JONES  
W EMPLOYEE HANDBOOK  
X DEPOSITION DR NATHAN GROSS  
Y DEPOSITON VALORIE CHEYNE, PH.D.  
Z DEPOSITION DR. HARVEY AGER  
aa DEPOSITION JOHN STOKES REHAB COUNSELOR

**OPINION**

This case concerns four questions:

- 1 Did plaintiff sustain a work related psychiatric injury on or about August 3, 2003?

I find that plaintiff did sustain a work related psychiatric injury.

- 2 Did plaintiff sustain a work related back injury on or about August 3, 2003?

I find that plaintiff did not sustain a work related back injury on or about August 3, 2003.

- 3 Does plaintiff have a limitation of her maximum wage earning capacity in work suitable to her qualifications and training.

I find plaintiff has a limitation of her maximum wage earning capacity in work suitable to her qualifications and training.

- 4 Is plaintiff's disability the result of willful and intentional misconduct that would

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bar her claim to workers' disability compensation benefits?

I find plaintiff's disability is not the result of willful and intentional misconduct.

**SUMMARY OF THE LAY TESTIMONY**

Plaintiff Eleanor Raguckas was born on xxx in Lithuania. At the time of trial she was sixty six years old. Plaintiff is a high school graduate and has attended business school in the past. In 1980 she obtained a nursing degree and she is a licensed registered nurse with a Bachelor of Arts in social science. She is married and has no dependents.

Plaintiff testified regarding her vocational experience. From 1980 until 1990 plaintiff was employed by Wayne County General Hospital as a surgical nurse. She worked at this hospital until it closed down. Thereafter she began working for Harper-Grace Hospital in the operating room. She left that position due to the development of Carpal Tunnel Syndrome. Plaintiff testified she did not pursue a claim for workers compensation benefits and instead retrained herself. She worked in occupational nursing at GM and Chrysler through a temp agency going to different plants. She also worked both part time and full time as a case manager for insurance injury claims and as a home care nurse.

On 4/28/02 plaintiff was hired by defendant to work at the Scott Correctional facility as a registered nurse in the prisoner clinic. Plaintiff had a preemployment physical and was not on any restrictions at the time of hire. Plaintiff's job at Scott Correctional involved all aspects of patient care. Plaintiff's exhibit 1 describes numerous responsibilities as well as the fact that the job requires advanced clinical decision making skills and judgment. The nurse determined the need for and timeliness of an appropriate referral to the physician. The nurse must initiate and sustain life saving care and perform the full range of clinical nursing duties. Plaintiff testified she would have to review the log book, dispense medication, count narcotics. On occasion the nurse would be required to go to the cell. Plaintiff testified the facility was grossly understaffed and she was doing the work of two nurses. It was not unusual for her to see 15 patients a day. Plaintiff described visiting a prisoner in the cell who had been lying in urine for two days. The inmate was paralyzed and later diagnosed with cancer that affected her spine. One aspect of the job that occurred on a daily basis was the dispensing of medication. Plaintiff testified that it took a lot of exertion to push the medication cart.

On or about August 3, 2003 she was pushing and pulling the medication cart when she felt a pop in her back. Plaintiff was scheduled to go on vacation soon and she thought that if she could go on vacation she would be fine. However her symptoms increased she could not straighten up. It was more comfortable to walk bent over. There was pain in her right low back radiating to her leg. She continued to work. At approximately 10:00 p.m. an inmate named Ms Swindle was brought to the clinic with symptoms of hypoglycemia. This prisoner was a high risk prisoner who was required to be hand cuffed and guarded. Plaintiff explained that a hypoglycemic person can rapidly go into a coma or convulsions if not treated immediately. At Approximately the same time Officer Szostak arrived with a pregnant inmate Ms Miller. Shortly thereafter Nurse Ozor, the next shift nurse arrived. Nurse Ozor came in and went into the medications room immediately to do a narcotics count. Plaintiff's shift was supposed to end at 10:15. She continued to assist inmate Swindle with the hypoglycemia. Plaintiff testified Nurse

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Ozor was in the medication room with the lights out. Plaintiff testified Ms Ozor stormed into the clinic and yelled at her. Can you help me? She was belligerent and told plaintiff she should have taken care of the pregnant inmate first and not the one with low blood sugar. Nurse Ozor then began taking care of the pregnant prisoner. Plaintiff testified she asked Nurse Ozor if she would take her report. Plaintiff stayed a half hour after her shift. The Nurse never took her report. It took a half hour to get the state car to take Ms Miller to the hospital. Plaintiff testified the baby was delivered at the hospital. Both inmates recovered from their conditions, however, Nurse Ozor filed a complaint with her supervisor asserting that plaintiff was derelict in her duty by continuing to treat Ms. Swindel and telling Ms. Ozor to treat Ms. Miller.

Plaintiff testified she continued to work in pain from her back injury. Plaintiff testified however that on August 5, 2003 she was contacted by her supervisor Ms. Nzums requesting that plaintiff put in writing what had happened on August 3<sup>rd</sup> regarding the treatment of the two inmates. Plaintiff explained what had happened and advised Ms Nzums that she needed to see her union representative if she had to put something in writing. On August 8<sup>th</sup>, 2003 plaintiff then received a phone call from Ms Yvonne Allen the Director of nursing. Ms Allen asked plaintiff if she knew who she was. She told plaintiff she was the director of nursing and that she needed to fax her written response describing what had happened on August 3<sup>rd</sup>. Plaintiff advised Ms. Allen that she would not do so without representation. Plaintiff testified she felt shaky and that she was going to be fired. She felt falsely accused. She described having heart palpitations, and shaking. Ms Allen called plaintiff a second time. Plaintiff told Ms Allen "you people need to leave me alone." It was brought out at trial that Ms. Ozor, Ms. Nzums, and Ms. Allen are all African American. Plaintiff and Supervisor Hynes are Caucasian. Plaintiff testified she felt Ms. Hynes would take care of things when she returned from vacation. She told Ms. Nzums she needed to lay down. She then called her husband who came and took her home.

Plaintiff saw a Psychologist, Dr. Valorie, Cheyne Ph. D. on August 12, 2003. Dr. Cheyne took plaintiff off work for anxiety and she was placed on medical leave and filed for workers disability compensation. Dr. Cheyne also indicated in her note that plaintiff would seek treatment for her back. Plaintiff thereafter treated with Dr. Leban for her back having physical therapy. Plaintiff was given a release to return to work with restrictions. Defendant indicated it had no restricted work available. Plaintiff testified no disciplinary action had been taken against her.

When questioned as to how she now was functioning plaintiff testified she had planned to work a while. She is anxious, she had lost her confident. She does not sleep well. She had looked for work within her restrictions. She has looked in the newspapers, on line. Plaintiff testified that her previous wages as a surgical nurse were \$16.00 an hour. She could not do that type of work anymore. Plaintiff testified she could not work in a nursing home because they are often short staffed and she could not do the heavy lifting required when an aide is not available.

She testified she earned \$22.00 to \$23.00 per hour doing case management.

On cross examination defendant showed defense exhibits 1 and 2 surveillance videos and then asked plaintiff questions regarding the videos. The videos showed plaintiff walking around

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her property doing some squatting and watering of plants. Plaintiff was asked by defense counsel if after viewing the video plaintiff felt she could do the occasional bending and standing required at the Scott facility. Plaintiff testified now she could two years ago before physical therapy she could not.

Defense counsel also questioned plaintiff about her previous work experience. Plaintiff has had various assignments at General Motors managing occupational injuries. She also worked as a case manager for Crawford and Company and for Metro Life. She acknowledged that one of the things she was trained to do was to look for a timely report of injury. When asked whether she reported an injury to her back on August 3, 2003 plaintiff responded no. Plaintiff acknowledged she did not verbally tell anyone she was hurt, nor did she fill out a critical incident form. Plaintiff testified she could not explain why she did not report a back injury to Dr Klausner on her August 12, 2003 visit. Plaintiff also acknowledged on cross examination that while she worked overtime and double shifts when she first started working for the department of correction by 2003 it was far less frequent.

Plaintiff acknowledged receiving a call from one of the guards a little before 10:00 p.m. that a pregnant prisoner's water had broken. Plaintiff testified she told the guard to bring the prisoner ASAP. Plaintiff explained that her shift ended at 10:30 and the midnight nurse came in at 10:00. Plaintiff also received a call about the same time regarding a hypoglycemic patient in high security. Plaintiff testified she checked the patient's blood sugar, gave her juice and stabilized her. When the pregnant patient arrived plaintiff advised the patient to wait in the waiting room. Plaintiff responded she did not go the waiting room and get the pregnant patient even though she was told the water had broke and the inmate was having contractions. Plaintiff testified that Ms. Ozor came out of a dark medication room and plaintiff asked her can you give me a hand. Ms. Ozor brought the pregnant patient back and started taking care of her at 10:20. Plaintiff testified that Ms. Ozor started yelling at her that she should have taken care of the pregnant patient. Plaintiff asked Ms. Ozor to get the chart and Ms. Ozor took over care of the patient. Plaintiff testified that when she asked to help Nurse Ozor she refused. Nurse Ozor would not take a report. She told plaintiff to write it out and then took the pregnant patient into a room and closed the door.

Plaintiff testified the next day she was written up for failure to give care and failure to give a report. Plaintiff testified on August 4, 2003 Ms. Nzums the day supervisor spoke to plaintiff about the incident. Plaintiff testified she may have tried to convince Ms. Nzums that the priority when you come on a shift is to get a report not count narcotics as Nurse Ozor did. Plaintiff testified Ms. Nzums was extremely unfair and biased. Plaintiff acknowledged she did not speak to Nurse Nzums about the back injury, nor did she give a written report. Plaintiff testified that she did receive a memo dated August 26, 2003 to produce a written statement. On August 26, 2003 she still had not responded to the request. Plaintiff testified that on August 6<sup>th</sup> and 8<sup>th</sup> she responded verbally that she wanted union representation. She wanted to discuss the situation with the union representative first. Plaintiff testified that she was not told by Ms. Nzums that she had a right to union representation in response to a questionnaire but not in response to a request for a written statement as to what had happened. Plaintiff acknowledged receiving a phone call Ms. Allen the Director of nursing for dept of corrections. Plaintiff testified that Ms Allen was at the top of the supervisory group. Ms. Allen first, then Ms. Hynes,

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than Ms Nzums. Plaintiff testified Ms. Allen asked her for a written report. Plaintiff denied telling Ms. Allen I don't care who you are you don't tell me what to do. She denied saying she was sick and tired of you people bothering me. Plaintiff testified she indicated she wanted to discuss the matter with Ms. Hynes. She then hung up the phone. Plaintiff testified she felt harassed and pursued. She knew the nursing process she felt harassed and under stress she could not take it anymore. Plaintiff left work. She testified she was shaking she could not see 8 prisoners so she left work on August 8<sup>th</sup>, 2003. Plaintiff acknowledged working her full shifts on August 6<sup>th</sup>, 7<sup>th</sup> 2003.

On redirect plaintiff testified there has never been a hearing on the charges. There has been no resolution and no discipline. .

Ms. Mary Sylvia Grey a long time friend of plaintiff's also testified on her behalf. Ms. Grey testified that she and plaintiff used to take long walks and shop together. Since the injury with defendant, Ms Grey testified that plaintiff walks a lot slower. One and a half months before trial Ms Grey and plaintiff went to Kensington Park for a walk. Plaintiff could not keep up and her endurance was not what it used to be.

Officer Melissa Szostak testified on behalf of the defendant. Ms. Szostak has been a corrections officer for 4 ½ years. On the alleged injury date of August 3, 2003 Ms. Szostak was assigned to the Scott Correctional Facility. Officer Szostak was told one of the inmates who was pregnant; Ms. Miller's water had broken. Ms. Szostak was advised the clinic had been notified and they were to wait fifteen minutes and then bring the inmate down. Officer Szostak brought the inmate to the clinic. Officer Szostak then went to look for Nurse Raguckas. Ms. Szostak testified Nurse Raguckas was in the back sitting with inmate Swindle. The inmate appeared to be drinking from a cup. Officer Szostak testified the inmate did not appear in any distress. Officer Szostak advised plaintiff that Ms. Miller's water had broken and she was having contractions. Officer Szostak testified that plaintiff told her she had to wait for the midnight nurse because she was dealing with someone now. Officer Szostak went to the lobby and waited with Ms. Miller. Plaintiff came out to the lobby and told Officer Szostak and Ms. Miller she was dealing with an emergency and they would have to wait for the midnight nurse. Nurse Ozor the Midnight nurse then came out and took Ms. Miller and Officer Szostak to the examination room. Plaintiff came into the room and tried to hand a key to Nurse Ozor. Nurse Ozor would not take the key. Plaintiff then forced the key into Nurse Ozor's hand and walked away. Nurse Ozor made arrangement for Ms. Miller to be taken to the hospital and Ms. Miller did deliver a healthy baby. Officer Szostak was still at the clinic when plaintiff left.

On cross-examination Officer Szostak testified that the lights were out in the medication room while Nurse Ozor was in it.

Nurse Catherine Ozor testified on behalf of defendant as well. Nurse Ozor at the time of trial had been employed with the State of Michigan for five years as a registered Nurse. She was assigned to work midnights on August 3, 2003. Her shift began at 10:00 p.m. Nurse Ozor testified that she works alone on the midnight shift so she usually counts the medication first thing when she arrives. Ms. Ozor was advised by the guard where she signed in that there was a pregnant patient in the clinic. Ms Ozor testified that the lobby light reflects into the medication



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room so she did not need to turn on the light. While in the medication room she heard a door open. She however kept looking at the book reviewing the log. Nurse Ozor heard someone yelling my water broke. She then came out of the medication room. She was advised by Officer Szostak that they were told to wait for the incoming nurse. Nurse Ozor told plaintiff she needed to take care of Ms Miller that it was an emergency and Ms Miller needed to be in the back room.. Plaintiff then told Ms. Ozor “you don’t tell me what to do I have another emergency and I can’t take care of two at once.” Ms Ozor testified she observed inmate Swindle sitting up on a stretcher holding a cup. She did not appear to be in distress to Nurse Ozor. Nurse Ozor then got the patients’ chart and took her into a room and began taking care of Ms. Miller. In Nurse Ozor’s opinion the pregnant inmate should have been treated first. Nurse Ozor called a state car and Ms. Miller was taken to Hutzel hospital.

Yvonne Allen testified on behalf of defendant. She is employed by the Michigan Dept. of Corrections as the Regional nursing director. As Regional director, Ms. Allen is charged with responsibility for investigating misconduct by the correctional nurses. Her job is to file a complaint with the Regional health administrator, Alfred Jones, who conducts the investigation.

Ms. Allen testified Ms. Nzums was the first line supervisor at the Scott Correctional Center. Ms. Hynes was the health unit supervisor and Ms. Allen oversaw those below her. Ms. Allen testified she filed a notice of charge of misconduct for failure to meet reporting requirement. No conference has been held to resolve the charges. The charges are still pending while plaintiff is on medical leave. Ms. Allen testified that on August 8<sup>th</sup> 2003, Ms. Nzums and Ms. Allen requested a statement from plaintiff as to the events of August 3<sup>rd</sup>, 2003. Ms. Allen testified that the union contract work rule 38 requires employees to provide oral or written reports when requested by a supervisor. Although plaintiff thought she was entitled to union representation in preparing the report Ms. Allen testified that Union Representation was required only when an investigative questionnaire such as when the one that was issued by the Regional Health Administrator Mr. Alfred Jones is given, and not for a request for a statement by a supervisor.

Ms. Allen testified that Nurse Nzums had requested in writing a written statement from plaintiff regarding the events of August 3<sup>rd</sup> 2006. Plaintiff had failed to provide that statement so Ms. Allen phoned plaintiff directly. Ms. Allen testified plaintiff was aware of the request for a written statement but she would not give the statement. She told Ms. Allen that “I’m sick of you people bothering me you can wait for Ms. Hynes.” Ms. Allen advised plaintiff that Ms. Hynes reported to Ms. Allen. Plaintiff then slammed the phone down. Ms. Allen testified that she and Ms. Nzums were African American and that plaintiff and Ms. Hynes were Caucasian. She took the phrase “I am sick of you people bothering me” to be a racial insult. Ms. Allen testified she never received a written statement from plaintiff. Ms. Allen then spoke to the personnel director Carol Zachary and called plaintiff back. Ms. Allen told plaintiff again, I need you to give your statement. Plaintiff refused and said she was not feeling well. She punched out and then later obtained a medical slip from a doctor.

On Cross examination, Ms. Allen testified she requested a written statement from nurse Ozor on and received it on August 12, 2003.

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Mary Ellen Hynes, testified on behalf of the defendant. Ms Hynes is employed by defendant at the Scott correctional facility as a Health Unit Manager. She oversees operations of the Health Care Dept and the nursing staff. She supervised plaintiff. Ms. Hynes testified that plaintiff was a newlywed and advised Ms. Hynes she did not like to work overtime. Ms. Hynes was questioned about the incident on August 3<sup>rd</sup>, 2003. Ms. Hynes was on leave for the week. When she returned she discussed the situation with Ms. Nzums and Ms Allen. Ms. Hynes testified that Nurse Nzums was plaintiff's direct supervisor. A written report comes first from the supervisor and then goes up through the chain to see what needs to be done such as an investigation. The investigation is then done by the Director or Regional Health Administrator. Ms. Hynes testified that plaintiff did not report a physical injury to her. There is an on call supervisor who could be reached by phone at any time.

Alfred Jones who is a Michigan dept of corrections Administrative Assistant testified on behalf of defendant. If there was an allegation of misconduct it would be his job to investigate it. Mr. Jones testified that plaintiff submitted a written statement on September 11, 2003. In his opinion, a time delay was not acceptable. He did recommend disciplinary charges against plaintiff for refusing to provide medical treatment to a prisoner, leaving the facility without providing a report to the incoming midnight shift nurse, failure to meet reporting requirements and directing inappropriate behavior and words to Ms. Allen. The conference was scheduled for October 20, 2003. Plaintiff was advised she was entitled to Union representation. The conference has never been held.

Joan Bush also testified on behalf of defendant. Ms. Bush is with Labor Relations with the Michigan Department of Corrections. She testified work rule 38 requires an employee to make a verbal or written report at the request of the supervisor. The union contract does not require union representation for responding to a request for a written report. According to Ms. Bush under Article 9 when a formal interview or questionnaire is given such as in an investigation then union representation is required. Ms. Bush explained statements are necessary in the normal course of work. Information is needed when a critical incident occurs. After a written statement is given if the matter progresses from there into an investigation then the employee is entitled to representation.

**SUMMARY OF THE DEPOSITION TESTIMONY**

Dr. Richard Feldstein who is Board Certified in Psychiatry testified on behalf of the plaintiff. Dr. Feldstein evaluated plaintiff on September 2<sup>nd</sup>, 2004 at the request of plaintiff. Dr. Feldstein diagnosed plaintiff as suffering from a major depressive disorder, anxiety disorder, and pain disorder associated with psychological and general medical condition. Plaintiff gave Dr. Feldstein a history of having to work 16 hours per day at the Scott Correctional Facility. She described having to pass out medications to 300 inmates on a daily basis. Plaintiff told Dr. Feldstein she was set up with racial bias to force her out of the work place. She reported having conflict with a co-worker Nurse Ozor and described being falsely accused of ignoring care for a pregnant prisoner. She advised Dr. Feldstein she would be physically harmed by the prisoners or guards, and professionally ruined. She advised Dr. Feldstein she was too fearful to return to the

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work place. She also told Dr. Feldstein she could not sit for more than 30 minutes at a time.

During the mental status exam Dr. Feldstein noted plaintiff was guarded and defensive, distrustful and overly protective in regard to others. He noted her emotions reflect significant levels of anxiety, fearfulness and apprehension. Plaintiff complained of insomnia, lowered energy levels, impaired concentration and focus. Dr. Feldstein reported plaintiff was preoccupied by a sense of victimization and vulnerability in relation to her employment at the Scott Correctional Facility.

In response to a reasonably accurate hypothetical question Dr. Feldstein testified there was a direct and significant causal relationship between the stresses plaintiff experienced at Scott Correctional facility and the development of her disabling psychiatric conditions. Plaintiff's counsel also asked Dr. Feldstein whether plaintiff was disabled. Dr. Feldstein replied he thought plaintiff was quite disabled from return to any and all employment. He explained her levels of interpersonal distrust were significant and in combinations of physical, emotional and psychological factors combine to impair plaintiff's ability to maintain focus and concentration to complete tasks in a timely basis. Dr. Feldstein was also asked to consider personal factors in assessing the work relationship of plaintiff's condition such as the death of her first husband, and going through menopause. Dr. Feldstein did not think either issue was significant. He explained that plaintiff had divorced her first husband and was happily married. She did not demonstrate any difficulty when she spoke about him. In addition plaintiff advised Dr. Feldstein her last menstrual period was ten years ago.

On cross examination, defense counsel pointed out plaintiff had neglected to tell Dr. Feldstein she had found her first husband's body. Dr. Feldstein did not think that was significant since plaintiff was a nurse would have had professional experience in finding dead bodies before. Defendant also pointed out that plaintiff did not work every day 16 hour shifts. Dr. Feldstein responded plaintiff did not tell him she worked 16 hours every day. Defendant also pointed out to Dr. Feldstein that plaintiff had experience in case management and did not report any injury to her back at the time she left.

Dr. Jack Belen who is Board Certified in physical medicine and rehabilitation testified on behalf of plaintiff. Dr. Belen saw plaintiff on June 22, 2004. Dr. Belen took a history of back and neck problems that began gradually around 2003. Plaintiff gave a history of pushing and pulling heavy medication carts which caused a sudden worsening of pain in early August 2003. The pain worsened and plaintiff saw Dr. Berner who prescribed muscle relaxants and then later Dr. LaBan for physical therapy. Dr. Belen also reviewed an MRI report done on January 19, 2004.

Dr. Belen diagnosed Right Carpal Tunnel Syndrome, degenerative arthritis cervical and lumbosacral, and lumbosacral disc disease as well as chronic lumbosacral myofascitis, and chronic, cervical myofascitis.

Dr. Belen testified that the MRI showed a radial tear at L3-4 which correlated with plaintiff's complaints and his physical findings. Dr. Belen noted limited and painful range of

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motion tenderness and decreased sensation over the right L4-L5 dermatomes. There was also a positive straight leg raising test. Dr. Belen also had findings related to the carpal tunnel however those findings were not relevant given the fact that plaintiff did not allege carpal tunnel syndrome.

In response to a hypothetical question which indicated plaintiff was having no problem performing her job until August 3, 2003 when pushing and pulling a cart she developed severe back pain with radiation on the right Dr. Belen responded that it was his opinion the work related injuries caused the disc disease, particularly the radial tear and the lumobasacral myofascitis and aggravated the degenerative arthritic condition.

Dr. Belen testified plaintiff was disabled and needed restrictions to avoid work that involved stooping, bending, twisting. She was to avoid prolonged standing and walking and do a sedentary type of job with a sit stand option no lifting greater than ten pounds.

On cross examination Dr. Belen acknowledged there was a degenerative process on both the MRI and CT scan that was age related. He conceded that many of findings were age related. While acknowledging that the radial tear was minimal, he did not agree that it was more likely degenerative in nature. He testified the radial tear appeared on an acute basis. Dr. Belen also acknowledged on cross examination that he was unaware plaintiff did not report the sudden worsening of her back to anyone on August 3, 2003 through her last day of work of August 8<sup>th</sup> 2003.

Dr. Harvey Ager who is Board certified in psychiatry testified on behalf of defendant. Dr. Ager saw plaintiff on October 25<sup>th</sup> 2004 at the request of defendant. Dr. Ager diagnosed plaintiff has having a Dysthymic disorder with somatic features, histrionic personality traits, and menopausal syndrome and degenerative arthritis. Dr. Ager testified plaintiff gave a history of working at the Scott Correctional facility as a nurse on the afternoon shift. She was about to be able to transfer to days. She felt some favoritism was involved so they were trying to get rid of her. She thought there was racial discrimination. She told Dr. Ager her immediate supervisor Ns Nzums was African American from Nigeria. Her manager Ms. Hynes was Caucasian and the director of the department was a black female named Ms. Allen. Dr. Ager took a history of conflict with a co-worker Ms. Ozor who was also from Nigeria. Plaintiff described the incident of August 3, 2003 to Dr. Ager as she was handling an inmate when she got a call a pregnant prisoner whose water had broken was being brought to the clinic. Plaintiff told Dr. Ager she told the pregnant prisoner she would be with her as soon as she finished with the other patient who was hypoglycemic. In the meantime, Nurse Ozor who was in the medication room came running out yelling at plaintiff she should have taken care of the pregnant prisoner first. Dr. Ager took a history of plaintiff being reprimanded and trying to file a grievance but the union was not interested. Plaintiff advised Dr. Ager she was about to be transferred to days and she believed Ms Ozor was trying to get a friend of hers to take the day shift instead. She also told Dr. Ager she received an angry call from Ms. Allen On August 6<sup>th</sup> 2003 and that she had an anxiety attack. She had her gynecologist place her on medical leave. She gave a history of treatment with a psychologist, Dr. Cheyne. She quit seeing Dr. Cheyne when plaintiff was unable to get a hold of the doctor at a time when she discovered her first husband's dead body in his apartment.

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Dr. Ager performed a mental status exam and reported plaintiff was neatly dressed and pleasant. She only became tearful when discussing finding her first husband's dead body. She was not disheveled and did not describe any feeling of helplessness, hopelessness, or suicidal tendencies. Dr. Ager did not note any defect in concentration or attention. He felt her insight was fair and her judgment was intact.

Dr. Ager testified that the dysthymia which is a mild depression that waxes and wanes had been present for years and would not interfere with plaintiff's ability to work as a nurse. Dr. Ager also testified that plaintiff's most significant complaint about her job was that she was accused of not providing proper care and was brought up on charges. It was Dr. Ager's opinion that if some one had committed willful and wanton misconduct and then loses his job that person would feel guilty because of his own fault. It was Dr. Ager's opinion that those feelings of guilt could cause depression and anxiety.

Dr. Ager testified that the loss of plaintiff's employment for a period of time was a cause of her feeling stressed but he did not feel the condition he diagnosed was related to plaintiff's employment with the department of corrections.

Valorie Cheyne, PhD testified on behalf of the defendant. Ms. Cheyne is a psychologist who treated plaintiff from August 12, 2003 through July 13, 2004. Plaintiff had three initial complaints. First, stress related to her job, second, racial incidents and feeling threatened, third, prejudice, incompetence and mismanagement on the job. The third complaint went on to note that plaintiff feels like a white slave. Ms. Cheyne testified that initially on August 12, 2003 she diagnosed a generalized anxiety disorder due to severe job stress. The doctor testified that guilt could cause anxiety and host of other symptoms. Ms. Cheyne also testified that plaintiff complained of having difficulty dealing with her step children. Ms. Cheyne's notes reflect on October 13, 2003 plaintiff told her that her employer was trying to discipline her over an incident with another nurse. Plaintiff did not mention a back problem until December 8<sup>th</sup> 2003 when she said she had arthritis in her neck, back and hip. It was not until March 9, 2004 she mentioned cars at work bothering her back. The next few visits in April, May, June, July she complained about some family problems with her former husband, step children and parents. She last saw plaintiff on July 13, 2004.

On cross examination Ms. Cheyne acknowledged her diagnosis the entire time of treatment from the first to the last was a generalized anxiety disorder. Ms. Cheyne also testified that from her first visit to the last she did not feel plaintiff was vocationally functional and was totally disabled.

Dr. Nathan Gross who is Board Certified in Physical Medicine and Rehabilitation testified on behalf of the defendant. Dr. Gross diagnosed plaintiff with degenerative disc disease. In response to a hypothetical question which reasonably described plaintiff's job duties, Dr. Gross testified that he did not detect any residuals of an occupational-related lumbar spine abnormality. He did feel plaintiff had a condition of aging that could cause symptoms on an occasional basis. From a physical standpoint Dr. Gross testified plaintiff could return to work at the Scott Correctional Facility with no restrictions.

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On cross examination Dr. Gross testified plaintiff did have pain in the low back with range of motion testing. Dr. Gross acknowledged that plaintiff had an annular tear at L4-5 however he felt it was due to the degenerative process and not trauma.

John Stokes a vocational case manager testified on behalf of defendant. Mr. Stokes testified he was asked to review medical information and a work history regarding plaintiff and determine based on plaintiff's past work experience and current medical condition what jobs were available to plaintiff in the current economy. Mr. Stokes testified that nursing positions are identified as within light to medium physical exertion levels by the Dictionary of Occupational Titles. Given plaintiff's age he did not investigate jobs requiring heavy physical exertion levels. Mr. Stokes identified several jobs he felt plaintiff could do that paid between \$800 to \$1200 dollars a week. It was Mr. Stokes' opinion that plaintiff was capable of earning the average weekly wage of \$1234 that she earned for defendant. Mr. Stokes testified that he contacted several of the employers he identified and described plaintiff to them and inquired if she was qualified for any of the positions they had. Based upon his discussion he determined plaintiff was extremely qualified.

On cross examination Mr. Stokes testified that some of the employers he contacted advised him that plaintiff three year absence from work could be a negative in job placement. Mr. Stokes also acknowledged he did not consider plaintiff's age in determining jobs were available. He also acknowledged he made no attempt to contact defendant to see what jobs were available to plaintiff. Mr. Stokes acknowledged that not one of the employers he contacted was willing to set up an interview for plaintiff. He had no knowledge of any job offers made to plaintiff since her injury of August 3, 2003.

**REVIEW OF THE EXHIBITS.**

Plaintiff's exhibit 1, 2, and 3 were discussed within the testimony section.

Plaintiff's exhibit 4 are the records of Dr. Mark Werner. There is a note dated 8/19/03 plaintiff complained of back and pelvic pain. There is no reference to plaintiff's employment regarding the onset of pain.

Plaintiff's exhibits 5 are the records of Dr. Brian Kolender. Dr. Kolender's note on 8/12/03 has a chief complaint of chest pain. Plaintiff gives a history of anxiety related to work. There is no mention of a back injury at work. On August 25, 2003 plaintiff complained of low back pain and right leg pain. Plaintiff advised the doctor that over the last several months she has had several bouts of this type of problem but a week or two ago she specifically remembers on August 3, 2003 she was pushing a heavy medication cart and developed pain in her low back. She does not recall any other injury or trauma to her back. She advised the doctor she did a lot of heavy lifting at work. In the note of November 24, 2003 the doctor under history of present illness now reports that plaintiff has persistent right sided back pain, right lumbar radiculopathy pain the right shoulder radiating down her right arm all from the trauma and injury she received at work.

Plaintiff's exhibits 6 and 7 are physical therapy records describing the nature of therapy given.

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Plaintiff's exhibit 8 is a description of the duties of a night nurse at the Scott Correctional Facility.

Plaintiff's exhibit 9 and 10 are performance reviews. There are no derogatory references

Plaintiff's exhibit 11 is the disciplinary action discussed during the testimony of Ms. Allen and Mr. Jones.

Plaintiff's exhibit 12 is a statement indicating the state contributes 4% to a 401 k plan.

Plaintiff's exhibit 13 and 14 were discussed under the review of the deposition section.

Plaintiff's exhibit 5 was discussed during plaintiff's testimony.

Defendant's exhibits A and B were discussed during plaintiff's testimony.

Defendant's exhibit C is an Employers Basic report of injury dated 8/26/03. It describes the injury as mental stress. No physical injury was reported.

Defendant's exhibit D through aa were discussed previously.

## **FINDINGS OF FACT**

Plaintiff was required to sustain his/her burden of proof by a preponderance of the evidence. MCL 418.851; MSA 17.237(851); *Aquilina v General Motors Corp*, 403 Mich 206; 267 NW2d 923 (1978). In order to establish a work-related disability, plaintiff must demonstrate that he/she has a limitation of his maximum wage earning capacity in work suitable to his/her qualifications and training. MCL 418.301(4); MSA 17.237(301) (4); *Sington v Chrysler Corp.*, 467 Mich 144, 154; 648 NW2d 624 (2002).

## **PSYCIATRIC INJURY**

(1) Did plaintiff sustain a work related Psychiatric Injury?

MCL 418.301 (2) (B) provides in part that "Mental disabilities and conditions of the aging process...shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof.

In *Robertson v. Daimler Chrysler* 465 Mich 732, 2002, the Supreme Court indicated a claimant must show there are actual employment related events leading to the claimant's disability and the claimant's perception of the event is not unfounded.

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In applying Robertson to this case I find that plaintiff having two inmate patients to deal with on August 3, 2003 close in time, to be an actual event. I find the confrontation between plaintiff and Nurse Ozor regarding who should have treated Ms. Miller, the pregnant inmate, and when she should have been treated, to be a work related event. I find the repeated requests from Ms. Nzums, and Ms. Allen for a written statement to also be work related events. The testimony of plaintiff, Officer Szostak, and Nurse Ozor all confirm there were two patients in the clinic at the same time and that there was a dispute between plaintiff and Ms. Ozor as to who should have treated the pregnant prisoner Ms. Miller first.

The testimony of plaintiff and Ms. Allen as well as several of the exhibits confirm that plaintiff was asked by Nurse Nzums as well as Ms. Allen for a written statement pursuant to work rule 38 as to what happened on August 3, 2003 numerous times.

I do not find the investigative memos by Alfred Jones or his actions to be a significant work related event as plaintiff had already left work by the time Mr. Jones was involved in the case and had been diagnosed as disabled by Valerie Cheyne PH.D.

I find the above actual events made a significant contribution to plaintiff's psychiatric condition.

I make this finding on the basis of Dr. Feldstein's and Valerie Cheyne's PhD testimony. I find their testimony to more persuasive than Dr. Ager's. Ms. Cheyne who treated plaintiff and saw her closest in time to the events at work testified that the entire time she treated plaintiff she thought she was disabled from a generalized anxiety disorder related to job stress. Ms. Cheyne was aware of problems plaintiff had in her family. Plaintiff however did not bring up these concerns until April 2004 more than 8 months after she began treatment with Ms. Cheyne.

Similarly, Dr Feldstein diagnosed an anxiety disorder as well as major depression. Dr. Feldstein testified there was a direct and significant causal relationship between plaintiff's psychiatric condition and the stresses plaintiff experienced at the Scott Correctional Facility.

Dr Ager on the other hand testified that plaintiff did not appear disheveled and was neatly dressed. Dr Ager testified that plaintiff was not suicidal. Instead he felt she had a generalized mild depression dysthymia. I find this testimony unpersuasive given it is inconsistent with the treater's impression and does not take into consideration the timing of the onset of plaintiff's complaints and the history she gave the doctors as to what precipitated her leaving work.

I note there was an allegation of racial preferences and plaintiff feeling mistreated, it is clear from the testimony that plaintiff is Caucasian and all the other nurses and supervisors involved in incident with the exception of Ms. Hynes who was on vacation were African American. I do not make a finding there was any type of racial preference that occurred. However given the make up of the staff I find that it was a concern of plaintiff's employment that a reasonable person in plaintiff's position might have.

I find that the incidents at work significantly contributed to plaintiff's psychiatric disability

In Martin v City of Pontiac School district 2001, WCABO # 118 the Appellate Commission



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identified four factors to be evaluated in determining whether the work contribution is significant.

“The first factor requires raw mathematics: count the contributors.

The second factor for quantifying the contributors requires relative comparison of the contributors: find which contributors contribute the most.

The third factor is the duration of the contributors: longer duration may indicate more contributors.

The fourth factor requires a determination of the permanent effect of the contributing factors.

In applying the Martin test to this case I find plaintiff has proven a significant work related contribution to her disability.

The work stressors for plaintiff were the incident of having to treat two patients close in time, having a conflict with Nurse Ozor over her priorities, having a conflict with Nurse Nzums and Ms. Allen over a written statement. At the time plaintiff left work these were the significant stressors she complained about. Later on during her treatment after plaintiff had left work she found her first husband dead. She also had discussions regarding her step children and her parents. Dr. Ager also suggested that plaintiff might be suffering from menopausal syndromes. Dr. Feldstein did not find these concerns significant contributors to plaintiff's condition, nor did Ms. Cheyne. The timing of the non work related stressors occurred some time after plaintiff left work. She had already been diagnosed with anxiety and found to be disabled. Plaintiff's last menstrual cycle was ten years ago. In contrast the stressors at work occurred in close proximity of plaintiff being diagnosed with anxiety.

### **BACK**

I find plaintiff did not sustain a work related injury to her back on August 3, 2003.

The testimony establishes that plaintiff has training in occupational injuries. She testified that one of the things she was trained to do was to look for a timely report of injury. Plaintiff testified she did not verbally or otherwise tell anyone she hurt her back while pushing a medication cart on August 3, 2003. Plaintiff continued to work the next week and still did not report verbally or otherwise a problem with her back. Even when plaintiff went off work on August 8, 2003 there was no mention of a back problem.

In addition when plaintiff went to see Ms. Cheyne on August 12, 2003 she did not mention a back problem. It was not until December 8<sup>th</sup> 2003 she told Ms. Cheyne she had arthritis in her neck, back and hip. It was not until March 9, 2004 that she mentioned carts at work bothering her back.

I reviewed the records of Dr. Kolender, the first doctor to see plaintiff following her last day of work. Plaintiff did not complain of low back pain until August 25, 2003. On August 25<sup>th</sup> she told the doctor she remember pushing a cart on August 3, 2003 and having pain in her back. She also told Dr. Kolender she did a lot of heavy lifting at work. There is no reference to plaintiff being in pain in her back so that she could not stand up at work on the date of her initial visit with Dr. Kolender following the back injury. In describing her job duties plaintiff did not testify

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to performing a lot of heavy lifting on the job.

Plaintiff also saw Dr. Mark Werner on August 19, 2003 and complained of pelvic and back pain. There was no reference to heavy lifting at work or recently pushing a cart to describe the onset of the pelvic and back pain.

The absence of even a verbal report of pain at work on any of the days plaintiff worked following the alleged August 3, 2003 incident pushing a cart, combined with no reference to such an incident to any of the doctors who treated her until initially, combined with the medical testimony of Dr. Gross are the basis for my finding there was no back injury on August 3, 2003.

I find Dr. Gross's testimony to be more persuasive than Dr. Belen's. Both doctors identified a degenerative process going on. Dr. Belen however felt that radial tear was the result of trauma on an acute basis. Dr. Belen conceded on cross examination that he was not aware that plaintiff did not mention any traumatic injury to her back until August 25, 2003. Dr. Gross on the other hand felt the annular tear was due to the degenerative process. He explained that in this case there were end plate type changes to the vertebra which would make the annular tear more likely degenerative.

### **SINGTON**

I find plaintiff has a limitation of her maximum wage earning capacity in work suitable to her qualifications and training due to a work related psychiatric disability. Dr. Feldstein and Ms. Cheyne both testified plaintiff is unable to return to any employment at this time.

I did not find plaintiff to have sustained a work related back injury. However assuming I had made such a finding and had adopted Dr. Belen's restrictions, I do not find that defendant proved jobs were available to plaintiff within those restrictions that fit her skills and training. Mr. Stokes, defendant's vocational expert identified several positions that were in the light to medium physical exertion category. I am not convinced that plaintiff's restrictions identified by Dr. Belen fall within that category. However the jobs Mr. Stokes referred to did not take into consideration plaintiff's age and the fact that she had not been working for three years. Mr. Stokes gave a profile of plaintiff and inquired whether there was any interest. Mr. Stokes acknowledged that not one of the employers he contacted was willing to set up an interview for plaintiff. No job offers were made. I find none of the jobs referenced by Mr. Stokes was an available job to plaintiff.

### **WILFUL MISCONDUCT**

I find that plaintiff's disability is not result of Wilful and Intentional misconduct.

MCL 418.305 provides:

"If the employee is injured by reason of his intentional and willful misconduct, he shall not

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receive compensation under the provisions of the act.

Defendant argues that plaintiff's emotional condition arises out of violation of work rules. First, plaintiff failed to provide urgent care to a prisoner as required by her employment contract, and Second, Plaintiff did not provide a written statement pursuant to work rule 38.

Plaintiff argues that plaintiff's mental breakdown was caused by defendant's conduct.

I do not accept either of these arguments. There has been no finding that work rules were violated and that plaintiff was derelict in her treatment of Ms. Miller, the pregnant patient. Plaintiff made a medical judgment call in how to treat the patients. Making the judgment call is part of plaintiff's job duties identified in exhibit 1. No medical testimony was presented that plaintiff made the wrong judgment call to treat the hypoglycemic patient first. I am not a medical expert and will not make that judgment. Plaintiff did eventually make a written report. It was not prompt as requested by her supervisors. In the state investigator Mr. Alfred Jones' opinion a time delay was not acceptable. He recommended charges be brought against plaintiff. No hearing has ever been held and no finding has been made that plaintiff violated work rule 38. Mr. Jones did not make that recommendation until well after plaintiff had left work and well after Ms. Cheyne diagnosed plaintiff with anxiety and disabled her. Therefore, plaintiff's disability is not result of Mr. Jones, actions.

I therefore find that plaintiff's disability arose out of a conflict with Nurse Ozor over who should treat the pregnant inmate Ms. Miller and out of a conflict between Ms. Nzums and Ms. Allen's repeated request for a written report.

Assuming however for the sake of argument that I did agree with defendant that plaintiff's emotional condition arose out of violations of work rules. I reject the violation of work rules in this case to be willful and intentional misconduct. In *Daniels v Dept of Corrections*, 468 Mich 34 (2003) benefits were denied on the basis that the violation of the work rules were quasi-criminal in nature. In *Daniels* the claimant a probation officer was found to have violated work rules regarding sexual harassment. There was a disciplinary conference and a finding of violation of the work rules. *Daniels* was denied benefits because the claimant's injury was a result of conduct of a quasi-criminal nature the intentional doing of something with knowledge that it is dangerous and with wanton disregard of the consequences.

I find the case cited by plaintiff in his brief, *Miller v General Motors*, 2005 ACO #59 on point.

In that case the Appellate Commission found that the claimant's injury arose out of the result of an investigatory hearing process. The disability did not arise from the decision of that hearing that the claimant be terminated. In the instant case there has been no hearing, and no determination of a work rule violation. I do not find plaintiff's psychiatric disability to be the result of willful and intentional misconduct.

**ORDER**

See the attached order that is a part of this decision.

**WORKERS' COMPENSATION BOARD OF MAGISTRATES**

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**JOY TURNER, Magistrate (226G)**

Signed this 2<sup>nd</sup> day of October, 2006 at Detroit, Michigan.