

Simon Law Group, P.C.
701 Market Street, Suite 340, St. Louis, MO 63101
314-621-2828

MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE

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Claimant's Death in One Car Accident Compensable as No Evidence Accident Caused by Texting/Use of Phone

Brazel vs. RTS Waste Services, Injury No. 22-065738

FACTS: The claimant was driving a waste collection truck for the employer, and the vehicle ran off the side of the roadway and the claimant overcorrected. The truck came to rest on its side and the claimant was ejected from the vehicle and died at the scene. At the scene, the surviving passenger, Mr. Ballanger, told the trooper that the claimant veered off the side of the road and overcorrected.

Mr. Ballanger was deposed at which time he testified that he was texting when the truck went off the road and only then did he look over at the claimant and saw his left hand on the steering wheel and his right hand on the phone. He did testify that the claimant was texting as he saw his thumb moving. He did not know if the claimant was on his cellphone immediately before the truck went into the grass and did not see the screen of the cell phone.

The employer denied the case, alleging that the claimant was texting on the phone at the time of the accident and therefore the risk source causing the injuries was texting while driving which led to the accident. The employer also appeared to argue that the claimant was equally exposed to this hazard and risk in his non-employment life.

HOLDING: The judge noted that the important question in this case was who had the burden to prove the claimant was texting at the time of the accident and he noted that it was actually the employer as asserting any claim or defense based on a factual proposition the party asserting such claim or defense must establish that the proposition is more likely true than not. The judge noted that Mr. Ballanger testified that he himself was on his phone and did not look up until the truck had left the roadway and therefore, he was unable to testify as to what the claimant was doing at the time the truck left the roadway. He also noted that the first time that Mr. Ballanger stated that the claimant was texting was 18 months after his accident at the time of his deposition. There was testimony that the employer did not have any phone or seatbelt policy. Therefore, the judge noted that the claimant was not violating any employer policy, assuming he was texting at the time of the accident. He noted that the employer's position requires a finding that the claimant texting, or

use of the phone was not work related and the employer produced no evidence on that issue. He noted that even if he was using his phone there was no evidence that his use of the phone caused the accident. The judge concluded that the employer did not show by a preponderance of the evidence that the claimant was texting at the time of the accident and at the time the truck left the roadway. He found that the claimant met her burden of proof in that the claimant's death was caused by an accident arising out of and in the course of the employment. The claimant was driving the employer's truck, on duty, and was not engaged in any activity prohibited by the employer.

The Commission affirmed with a supplemental decision noting that the risk source in this case was driving the employer's trash truck on a two-lane rural highway and that was related to the claimant's employment with the employer, and the claimant was not equally exposed to that risk source his non-employment life.

Claimant Awarded PPD Not PTD Because Claimant's Report of Physical Activity Inconsistent With Surveillance

Byers vs. New Prime Inc., Case No. SD38916 (Mo. App. SD 2025)

FACTS: The claimant was a truck driver who sustained an injury operating a trailer jack and alleged that he was permanently and totally disabled. The Commission determined that the claimant was not PTD as they did not find him a credible witness in light of video surveillance which showed the claimant engaging in various activities that he said he could no longer engage in due to ongoing pain and depression. He also told his medical and vocational experts that he had limitations which were inconsistent with the video surveillance. Therefore, the Commission found his experts' opinions regarding the claimant's disability unpersuasive. The claimant appealed contending there was not sufficient competent evidence to support the Award in that the overwhelming weight of the evidence proved that he was PTD as a result of the work accident.

HOLDING: The Court noted that an Award that is contrary to the overwhelming weight of the evidence is, in context, not supported by competent and substantial evidence. The Court notes that substantial does not denote quantity or even quality but simply means probative evidence. The claimant essentially argued that his opinions were more credible as his experts were more qualified. The Court noted that the decisions by the Commission as to competing medical opinions lie within its sole discretion and are not subject to Appellate review.

The claimant also argued that the surveillance videos do not support its finding of PPD and argued that the videos merely show him walking, talking, standing, and shopping, but there are no videos of him working, carrying, or lifting heavy objects or engaging in sports and therefore there is nothing in the videos proving his ability to work. The Court noted the argument is misguided because the claimant appears to suggest that the employer had the burden of proving the claimant was not entitled to PTD benefits. However, it is the claimant who bears the burden of proof. The Court noted that the surveillance videos rebutted the claimant's allegations of what he could and could not do. Therefore, the Court affirmed the Commission's Award of PPD benefits.

Claimant PTD as a Result of Last Injury Alone Despite Pre-Existing Blindness

Easley vs. Treasurer of Missouri as Custodian of Second Injury Fund, Case No. ED113451
(Mo. App. ED 2025)

FACTS: In 1988 the claimant sustained a gunshot wound to his face which severed his optic nerve resulting in total blindness. He underwent rehabilitation and began working on an assembly line. On the date of injury, the claimant's foot was run over by a forklift sustaining fractures and resulted in CRPS. The claimant was then diagnosed with left ankle instability, the doctor recommended an ankle brace for daily use and limited the claimant to 4-hour work days and placed him at MMI. He continued to work light duty and was laid off in October 2021. He returned to work in February 2022 and worked in an accommodated position until February 2023. He also was diagnosed with anxiety and depression as a result of the work injury. He was seen by Dr. Sky who assessed 30% disability. Dr. Lantsberger, who the claimant treated with on behalf of the employer, placed the claimant at MMI and assessed 20% disability. Dr. Volarich assessed 40% of the left great toe and 45% of the left lower extremity.

Mr. Hughes opined that the claimant was PTD based on his primary injury alongside his visual impairment. However, he noted that if Dr. Sky was found credible, his PTD would be based on the last injury alone. Dr. Volarich reviewed Mr. Hughes' report and concurred that the claimant was PTD as a result of a combination of his work injury and his blindness. The claimant settled his claim against the employer for 50% of the left ankle and 25% of the body referable to psych. The claimant proceeded to a Hearing against the Fund for PTD benefits. The ALJ denied benefits noting that he did not establish that his preexisting blindness was at least 50 weeks as he did not offer any rating. The ALJ also concluded that the claimant was PTD as a result of the last injury alone. The claimant appealed and the Commission affirmed.

HOLDING: The Court noted that if the last injury in and of itself renders the claimant permanently and totally disabled then the Fund has no liability, and the employer is responsible for the entire amount of compensation. Therefore, until the degree of disability from the last injury is established, Fund liability cannot be determined. The Court noted the Commission in this case was presented with conflicting testimony and made credibility determinations. The Commission found that based on the claimant's own testimony, he was permanently and totally disabled as a result of the last injury alone as he stated he has no physical problems prior to working before the accident. Therefore, the Court upheld the Commission's decision that the claimant is permanently and totally disabled as a result of the last injury alone and therefore, the Fund was not liable for PTD benefits.

Claim Denied as No Contemporaneous Medical Evidence Despite Multiple Treatment Records After Date of Injury Available With No Mention of Work Injury

Volger vs. Mick Mehler & Sons, Inc., Injury No. 23-062420

FACTS: A Hardship Hearing was held wherein the claimant alleged an injury to his low back. Dr. Lee testified on behalf of the claimant and believed that the claimant's condition was related back to the work accident. Dr. Bernardi did not believe that the claimant's condition was related back to the work accident. The ALJ believed that the claimant's condition was work related and that the employer was responsible for additional treatment. The employer appealed.

HOLDING: The Commission reversed the Award and decision of the ALJ. The Commission found there was no credible or persuasive evidence of contemporaneous medical documentation of a work injury on August 18, 2023. The first reference was September 25, 2023, over a month after the alleged work accident. However, this was not the earliest record. The Commission found that a work-related injury was inconsistent with medical records relating to his treatment with a chiropractor, Mercy Urgent Care, Mercy Hospital, and Lincoln County Ambulance along with Mercy Hospital St. Louis between August 21, 2023 and August 30, 2023. The Commission noted that when the claimant was seen on August 29, 2023 the history noted was no new injury, trauma, or fall. Also, when he was seen at the emergency room on August 29, 2023, he reported chronic low back pain with onset of subjective weakness and sensation in the right lower extremity yesterday. The Commission further noted that the claimant's deposition and Hearing testimony included inconsistent accounts regarding his alleged work accident.

The Commission found Dr. Bernardi credible and noted that he stated that the 10-day delay between the employee's alleged work injury and when he reported leg complaints to urgent care on August 29, 2023 did not support a causal link between the two. The doctor further noted that the protrusion was not acute and that the L5-S1 disc herniation was asymptomatic as a left sided disc herniation would not cause right sided back and leg complaints. Therefore, the Commission concluded that the claimant did not meet his burden of production and persuasion regarding medical causation and therefore, compensation was denied.

Claimant Not Entitled to Past/Future Medical as New IME Not Additional Significant Evidence to Modify Temporary Award

Gilbert vs. City of Grandview, Missouri, Injury No. 16-057420

FACTS: The claimant worked as a police officer since 2002. He injured his right knee during a foot chase on July 31, 2016. The claimant had previous compensable work-related injuries to his right knee in 2012 and 2013. The claimant treated with Dr. Strong for the 2016 injury as well as the 2012 and 2013 injuries. He underwent an arthroscopy in 2012 and received a settlement for 15.5% of the right knee. While treating for the 2013 injury, Dr. Strong advised him he would likely need a total knee replacement within 10 years and the claimant settled the 2013 injury for 10% of the right knee. In 2013, Dr. Strong performed an arthroscopy, placed the claimant at MMI, and assessed 4% disability. She also believed that the claimant may need further medical care in the future for his underlying degenerative changes in his knee which were not the result of the meniscus tear for which he was diagnosed with in 2016. The claimant returned to the doctor in 2018 and she did not believe that the claimant's continuing complaints were the result of the 2016 date of injury. The claimant's attorney obtained a report of Dr. Stuckmeyer who opined that the claimant would need a knee replacement, and it was due to all three of the work injuries, essentially an occupational disease.

The claimant moved forward with a Hardship Hearing and the judge believed that Dr. Strong's opinion was more credible and denied additional treatment as a result of the 2016 work injury. The claimant then went and treated on his own and underwent a right total knee arthroplasty. The claimant obtained an IME report from Dr. Rosenthal who did believe that the claimant's knee injury and condition flowed from the 2016 accident. The claimant went to a final Hearing and the

ALJ found that Dr. Rosenthal's report was "additional significant evidence" and sufficient to warrant modifying the Temporary Award and believed that Dr. Rosenthal's opinions were more credible than those of Dr. Strong. The ALJ concluded that the employer must reimburse the claimant for medical expenses, out of pocket expenses, and future medical treatment along with 30% disability as a result of the 2016 injury. The employer appealed.

HOLDING: The employer alleged that the report of Dr. Rosenthal did not constitute additional significant evidence to modify the Temporary Award. The Commission agreed noting that it was not additional significant evidence to support modification of the Temporary Award as the claimant simply switched IME reports. The Commission did not find the opinion of Dr. Rosenthal to be persuasive or credible.

The employer also argued there was not sufficient, competent, and substantial evidence to support an Award of past medical expenses when treatment was denied and also argued that there was not sufficient competent and substantial evidence to support the Award of future medical treatment and the Commission agreed. The Commission also modified the Award of PPD to 17.5% of the right knee.

Prior Low Back Injury Aggravated and Accelerated Work Injury So Fund Liable for PTD Benefits

Anderson vs. Caravan Trailer, LLC & Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 19-058675

FACTS: The claimant sustained an injury to his low back on February 12, 2019 and at a Hearing the ALJ found the claimant had 30% disability referable to the work accident and that the claimant was permanently and totally disabled as a result of the work injury as well as a preexisting low back injury from 2 prior back surgeries. The ALJ found that the evidence clearly showed that the claimant's preexisting low back impairments significantly aggravated and accelerated the claimant's disability as a result of the 2019 accident at work as he credited the testimony of Dr. Aks who testified that the claimant's preexisting scar tissue compounded the claimant's 2019 work injury. Therefore, the Fund was responsible for benefits. The Fund appealed.

HOLDING: The Fund argued that there was insufficient evidence that the claimant's preexisting disability directly and significantly aggravated and accelerated the primary injury as Dr. Aks testified that the 2016 low back injury did not aggravate the 2019 work injury. There was no dispute that the claimant was perm total and the Commission declined to disturb the ALJ's findings. The Commission further noted that Dr. Stuckmeyer's report, which was made part of the record as an exhibit also stated that if the claimant was unemployable, it was due to his work injury and his preexisting condition which constitutes competent and substantial evidence supporting the ALJ's Award.

Dr. Aks testified that the claimant has epidural fibrosis as a result of his prior surgeries and that made him more susceptible to further degeneration of his back as well as being more susceptible to reinjury. He noted that the claimant's primary injury was the prevailing cause of a large, left sided herniated disc, a new pathology that required additional surgery. After repeated questioning,

Dr. Aks did testify on cross examination that the preexisting condition did not aggravate the work injury because it did not really cause it and what caused it was the physical maneuver that he did, herniating the disc. The Fund argued that that testimony supports the argument that the preexisting disability did not aggravate or accelerate the primary injury. However, the Commission disagreed noting that Dr. Aks' confusion about how to interpret "aggravate" in a medical context does not undermine his opinion that the claimant's preexisting epidural fibrosis directly and significantly aggravated the disability resulting from the claimant's large left sided herniated disc, a new pathology caused by his primary injury. Therefore, the Fund was responsible for benefits.