MISSOURI WORKERS' COMPENSATION CASE LAW UPDATE

April 2016 – June 2016

Injury Sustained by Stepping Off Steep Edge of Sidewalk While Leaving Work Found Compensable

Lincoln University vs. Narens, Case No. WD79003 (Mo. App. 2016)

FACTS: At the end of the claimant's work day, she was walking to her car down a crowded sidewalk on the employer's campus when she stepped to the right to avoid people walking in the opposite direction, at which time her right foot landed on the steep edge of the sidewalk and turned. The claimant fell and broke her ankle. A photograph of the sidewalk where the claimant fell shows that the sidewalk edge is higher than the ground adjacent to it.

At a hearing, an ALJ found the injury compensable. On appeal, the Commission affirmed finding that the claimant was in the course and scope of her employment because, although she was leaving work, the extension of premises doctrine applies because she was on premises owned an controlled by the employer. She also would not have been equally exposed to the risk of walking on a crowded sidewalk with a steep edge on one side in her normal non-employment life.

HOLDING: The Appellate Court affirmed the Commission, finding that the risk source of the claimant's injury was stepping off the steep edge of this particular sidewalk on campus, not simply walking. Therefore, she was not equally exposed to the risk of injury in her normal non-employment life. Also, the claimant did not have to prove that she was engaged in a work related activity when the injury occurred, because the sidewalk where she was injured was owned and controlled by the employer and the extension of premises doctrine applies.

Despite Previous Instances of Horseplay, Injuries Sustained after Claimant Intentionally Ignited a Flammable Substance Not Compensable because Risk did not Arise out of the Course and Scope of Employment

Hedrick vs. Big O Tires, Injury No. 11-058168

The claimant worked as a general mechanic at Big O Tires. Employees sometimes used open flames as part of their job duties, but only when safety methods were utilized to make sure that no flammable materials were nearby. On his date of injury, the claimant intentionally lit a can of glue on fire while a coworker was holding it, which caused an explosion and serious injuries to both the coworker and himself. He pointed to several previous instances of horseplay at work, including greasing a doorknob or snapping a rag. He argued that lighting the can on fire was also horseplay, and since horseplay was prevalent at his workplace, the risk of injury arose out of and in the course and scope of employment.

At a Hearing, the ALJ denied his Claim, finding that the risk did not arise out of and in the course

and scope of his employment, because lighting the can on fire was an intentional dangerous act that had nothing to do with his job duties, unlike the prior instances of horseplay, which were not life threatening. On appeal, the Commission affirmed, holding that the mere presence of dangerous materials on the job site combined with the fact that coworkers occasionally engaged in mild horseplay was insufficient to show that these injuries arose out of and in the course and scope of employment.

Claimant Not Entitled to Permanency or Future Medical because He Failed to Prove that His Continuing Complaints in 2015 were Causally Related to His November 2011 Injury

Jack vs. Triumph Foods, LLC, Injury No. 11-107791

The claimant worked for the employer trimming fat from meat using a wizard knife with his right hand. He began having pain, swelling, and triggering in his right hand in February 2011 and was terminated by the employer in November 2011. He was unemployed until 2014, when he began working for a subsequent employer at a job that required repetitive use of his bilateral upper extremities, and he continued to work there at the time of the Hearing.

The claimant treated on his own with Dr. Prostic in March 2012, at which time the doctor diagnosed cubital tunnel and stenosing tenosynovitis of the long, ring, and little fingers of the right upper extremity. He returned to Dr. Prostic 2 ½ years later in October 2014, at which time the doctor noted he had no physical evidence of stenosing tenosynovitis but instead appeared to have bilateral carpal tunnel syndrome, and assessed 10% PPD of the bilateral upper extremities. Dr. Prostic did not diagnose cubital tunnel syndrome at the 2014 visit.

The claimant was sent by the employer to Dr. Wilkinson in August 2015, at which time the doctor opined that his bilateral upper extremity pain was subjective and found there was no objective evidence of carpal tunnel, cubital tunnel, or stenosing tenosynovitis. The doctor assessed 0% PPD.

At a Hearing, the ALJ found that the claimant did sustain a work related injury to his right hand in 2011. However, the ALJ found that he failed to prove that his current condition was causally related to his 2011 work injury. The ALJ noted that the claimant had been working for a subsequent employer doing repetitive work with his bilateral upper extremities for over a year without accommodations and without receiving treatment for the same. The ALJ found that he was at MMI for his November 2011 injury and had no disability as a result. Therefore, the employer was not responsible for any additional medical treatment. The claimant appealed, and the Commission affirmed the ALJ's decision.

Employer Responsible for Medical Treatment, Even Though Claimant had a Pre-Existing Condition, Because Claimant was Asymptomatic Prior to Her Date of Injury

Stieferman vs. Optima Graphics, Ltd., Injury Nos. 14-025821 & 14-035591

The claimant worked for the employer as a seamstress. On April 7, 2014, she tripped on a roll of

fabric and fell, injuring her right shoulder. She underwent physical therapy and reported 75% improvement in her pain. Two weeks later on April 21, 2014, she tripped again on the same roll of fabric and re-injured her right shoulder.

She was treated by Dr. Hobbs, who diagnosed a retracted full thickness tear of the supra and infraspinatus tendon with retraction to the glenohumeral joint, atrophy, and degeneration with mild glenohumeral osteoarthritis. Dr. Hobbs opined that her tear preexisted both of her work injuries, since retraction occurs over the course of months or years, and opined that her two work injuries merely exacerbated an underlying condition and were not the prevailing cause of her current right shoulder condition. He did not recommend any treatment for the work injuries.

Dr. Emanuel testified on behalf of the claimant and diagnosed a complete tear of the rotator cuff with retraction, joint arthritis, subacromial bursitis, and bicipital tendonitis. The doctor opined that while the claimant most likely had an asymptomatic full thickness rotator cuff tear prior to her April 7, 2014 fall, her April 7, 2015 was the prevailing factor that caused a complete rotator cuff tear. The doctor also concluded that her April 21, 2015 fall aggravated her right shoulder but did not tear it. He recommended a second MRI followed by surgical intervention.

At a Hearing, the ALJ found that both expert witnesses agreed that the claimant had a pre-existing right rotator cuff tear. However, the ALJ found Dr. Emanuel's causation opinion more persuasive than that of Dr. Hobbs and held that the April 7, 2015 fall was the prevailing factor causing the claimant's current condition. The ALJ noted that she had no pain complaints and did not require treatment prior to April 7, 2015. Therefore, the ALJ found that the employer was responsible for medical treatment with respect to the April 7, 2014 date of injury.

Claimant Awarded PPD and Future Medical for Work Related Mental Injury Without Showing That Her Stress Was Extraordinary and Unusual When Compared to Similarly Situated Employees

Mantia vs. Missouri Department of Transportation and Treasurer of Missouri as Custodian of the Second Injury Fund, Case No. ED103016 (Mo. App. 2016)

FACTS: The claimant worked for MoDOT and assisted at motor vehicle accident scenes. During her career she was at the scene of multiple serious accidents involving catastrophic injury, dismemberment, and death. She began to suffer significant emotional and psychological symptoms and filed a Claim alleging psychological injury as a result of an occupational disease.

MoDOT's expert Dr. Stillings opined that the claimant had work related depressive disorder that resulted in 2.5% PPD to the body. The claimant's expert Dr. Jovick opined that she had post-traumatic stress disorder and major depressive disorder that resulted in 95% PPD to the body. Both agreed that she sustained PPD to the body referable to psychological injury as a result of her job duties.

At a Hearing, the ALJ denied the Claim because she failed to prove that she suffered extraordinary and unusual work related stress when compared to similarly situated employees. The

Commission reversed, holding that the 2005 amendments to the Worker's Compensation Statute abrogated the requirement that an employee compare her stress with that experienced by similarly situated employees. The Commission awarded 50% PPD of the body referable to her mental injuries and future medical. MoDOT appealed to the Missouri Court of Appeals.

HOLDING: The Court held that the requirement that an employee compare her work related stress to that of similarly situated employees was a judicially created doctrine which should not be applied under strict construction. Strictly construed, an employee need only show that mental injury resulted from stress that was work related and extraordinary and unusual as measured by objective standards and actual events. The Court held that the Commission's decision was supported by the claimant's testimony and both medical experts, and it affirmed the Award.

Claimant PTD from Last Injury Alone after She Fell and Injured Her Left Upper Extremity

Smith vs. Premium Transportation Staffing, Inc. and Wil TransTrucking Company, Injury No. 10-019420

The 54 year old claimant was employed by Premium Transportation Staffing and assigned to Wil Trans Transportation as an over the road truck driver. Premium's handbook stated that it was an employer, did not function as an employment agency, and assigns its employees to other companies. Therefore, the ALJ found that the employer was Premium.

On March 17, 2010, while working in Denver, Colorado, the claimant attempted to pull a fifth wheel pin, at which time the pin became loose and the claimant fell backwards, injuring her left hand, wrist, shoulder, and tail bone. Premium arranged for the claimant to be transported back to Springfield, Missouri. Once there, the claimant wished to return to her home in Alabama and seek treatment there, which she did at an expense of $189.22.

Dr. Scott, diagnosed a comminuted distal radius and ulnar fracture and traumatic arthritis of the left wrist and performed a left carpal tunnel release on June 21, 2012. Dr. Hillyer, performed tendon tenolysis at the first, second, and third extensor compartments on October 26, 2012. She was placed at MMI on April 5, 2013 but continued to have complaints.

Dr. Parmet performed an IME in 2014 on behalf of the claimant and diagnosed post-traumatic left carpal tunnel syndrome which developed into left wrist extensor tenosynovitis and arthritis as well as a frozen left shoulder related to her primary accident due to prolonged immobilization. He assessed 30% PPD to the shoulder and 75% PPD to the left forearm and opined the claimant was PTD due to her last injury alone.

Mr. Eldred testified on behalf of the claimant and opined that she was unemployable due to her advanced age, low academic testing, medical condition, and limited work history in mainly truck driving. Premium's vocational expert did not agree that she was unemployable.

At a Hearing, the ALJ found the testimony of the claimant and her experts credible and persuasive and found her to be PTD based on her last injury alone and that Premium was liable for PTD

benefits. With respect to mileage reimbursement for the claimant's trip from Springfield, Missouri to Alabama, the Judge found that Premium was not liable because Alabama is more than 250 miles from Springfield, Missouri. Premium appealed this decision, which was affirmed by the Commission.

Claim against Fund was Untimely because Not Filed within Two Years of Date of Injury or One Year of Claim against Employer/Insurer

Reynolds vs. Treasurer of Missouri as Custodian of Second Injury Fund, Injury No. 11-080366

The claimant was a staff support employee at a hospital and sustained an injury on October 9, 2011 when a patient grabbed him in the groin area and pulled/twisted forcibly. He filed a Claim for Compensation on October 27, 2011 and settled with the employer/insurer on August 2, 2013 for 10% of the body referable to the groin. He dismissed his Claim against the Fund on August 16, 2013 before refiling his Claim against the Fund on July 30, 2014.

At a Hearing before the ALJ, the Fund argued that his Claim against them was barred under Statute, because it was dismissed and not re-filed within two years of the date of injury or within one year of the date a Claim was filed against the employer. The ALJ held that the Claim was not barred and awarded PPD benefits from the Fund.

The Fund appealed to the Commission, arguing that the Court of Appeals decision in *Couch v. Treasurer of Missouri as Custodian of the Second Injury Fund* required the Commission to reverse the ALJ's decision. In *Couch* the Court of Appeals found that a Stipulation for Compromise Settlement between an employer and claimant does not constitute a Claim that pushed back the Statute of Limitations for a Claim to be filed against the Fund. The Commission agreed with the Fund and reversed the ALJ's decision, finding that the claimant's second Claim against the Fund was barred because it was not timely filed within two years of his date of injury in October 2011 or within one year of filing a Claim against the employer/insurer in October 2011.

Claimant's Pre-Existing Hearing Loss Constituted Pre-Existing Disability to the Body as a Whole for the Purpose of Triggering Fund Liability

Treasurer of the State of Missouri Custodian of the Second Injury Fund vs. Horton, Case No. WD79261 (Mo. App. 2016)

FACTS: The claimant was employed by a hospital when he was assaulted by a patient and knocked unconscious, after which he suffered from headaches, sensitivity in his left eye, and shoulder, neck, and head pain. He settled the Claim against his employer for 17.5% of the body referable to the neck. He had pre-existing hearing loss in both ears, which one doctor assessed to be 34.75% hearing loss and another assessed to be 75% hearing loss. He filed a Claim for benefits from the Fund.

At a Hearing, the ALJ found that the claimant had 15.5% pre-existing PPD to the body as a result of his hearing loss and awarded benefits from the Fund, which appealed. The Commission

affirmed.

The Fund then appealed to the Missouri Court of Appeals and argued that the claimant did not qualify for Fund benefits because his pre-existing disability, hearing loss, does not meet the threshold to receive those benefits, because it is not a disability to a major extremity or the body as a whole.

HOLDING: The Court found that hearing loss does constitute an injury to the body as a whole. Using strict construction, it interpreted §287.220.1 to mean that any pre-existing partial disability must fall into one of the two above categories, either disability to a major extremity or the body as a whole. Since hearing loss is not an injury to a major extremity, it must be considered an injury to the body as a whole. To hold otherwise would imply that all injuries except those to the eyes and ears trigger Fund liability. The Court held that the claimant's pre-existing hearing loss constituted an obstacle to employment and met the threshold to trigger Fund liability. Therefore, the decision was affirmed.